



SOCIO-ECONOMIC INTEGRATION OF REFUGEES THROUGH EDUCATION AND EMPLOYMENT A Case Study of Afghan Refugees in Iran

**Department of Political Sciences
PhD in International Order and Human Rights**

**Written by:
Mohsen Jafari
Student No:1808905**

**Supervisor:
Prof. Sergio Marchisio**

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Abstract

Facilitating the integration of refugees into local societies is one of the main concerns of many host states across the world. In this regard, the provision of various socio-economic integration policies and schemes can assist states in reaching this crucial goal. This thesis, through a qualitative method of research, concentrates on education and employment as the two key instruments that facilitate the socio-economic integration of refugees into the host society. This study employs a combination of descriptive and normative legal approaches to address the rights of refugees in regard to access to education and to employment, under the core international human rights instruments. In other words, these regulations are analyzed to identify legal opportunities to address refugees' difficulties in access to education and employment in the reception countries for the sake of enhancing their socio-economic integration.

This paper demonstrates the close interconnection between education and employment of refugees. In fact, without a qualified educational background, it is hard for refugees to find a job sufficient to their needs in the host state's labour market. In less-developed countries where there is neither a sufficient educational budget nor scholarships for refugees, workers must earn enough for their family's basic needs of food and shelter, while trying to pay for education for themselves and/or their children. There are other problems in continuing their education in their new country. For instance, strict language requirements as well as lack of recognition and/or proof of their previous educational qualifications. This changing and unpredictable combination of obstacles makes it difficult to find a job that recognizes either their past educational achievements, or their human potential. The thesis illustrates that while the 1951 Refugee Convention regulates legal standards in respect of refugee's right to employment, refugees can benefit from other provisions in other international human rights instruments and their more generous provisions. A case study on Afghan refugees in Iran presented in this thesis, proves that although there are still many shortfalls concerning integration of Afghan refugees in Iranian society, particularly in terms of their employment, since 2015 Iran has taken great steps towards providing free education and health insurance to Afghan refugees. However, as socio-economic integration of refugees has undeniable effects on all aspects of their lives in the host state, as well as the lives of its citizens, further research and efforts are required to effectively protect the quality of the lives of all effected by refugee movement.

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Introduction

Background

Today, the increasing number of refugee crises across the world, particularly in some European countries, has led to various pressures and challenges being placed on destination countries. One of the most significant problems facing host countries, is how best to facilitate the integration of refugees into their local communities and broader societies.

Without having full access to the protection of basic services such as accommodation, food, education, employment and healthcare, refugees are not able to become successfully involved in and integrated into their host communities.

Several international human rights instruments recognize some social and economic rights for enhancing the integration of refugees. For example, Article 34 of the 1951 Geneva Convention emphasizes the assimilation and naturalization of refugees through integration processes. Every Member State of this Convention not only has to protect people under the refugee status, but should also struggle to integrate and empower these refugees in their host community that will eventually become their home.

Migration is not just a matter of how many people are moving from their countries to other countries, it is also about the ability of these people to successfully integrate into the society of the destination countries.¹ Although migration is a sensitive political issue, and states have absolute authority over their borders, it cannot be denied that integration of refugees needs to occur in many different places including their neighborhoods, workplaces, schools, etc.²

An important issue, in the effective integration of refugees into a host society, is the level of economic development in the relative state. For example, in countries where there is no high rate of unemployment, refugees could potentially have more opportunities for access to the labor market and they may experience less discrimination compared to countries that have economic crises.³ However, successful experiences of integration could empower refugees to have a huge contribution to their new society in different forms namely economically or socially.⁴

In terms of education, the right to education is one of the fundamental rights of human beings. According to the UNESCO, refugees, particularly adolescent children are five times more

1 OECD, *Working Together for Local Integration of Migrants and Refugees*, (2018), p.17.

2 OECD, *Working Together for Local Integration of Migrants and Refugees*, p.3.

3 OECD, *Working Together for Local Integration of Migrants and Refugees*, p.4.

4 OECD, *Working Together for Local Integration of Migrants and Refugees*, p.17.

likely to be at risk of being out of school compared to their non-refugee peers. Having access to fair, inclusive and good quality educational opportunities for all refugees, in any age group, will lead to better integration of refugees in the host communities.

Eurostat, OECD, and European Commission data all suggest that social cohesion has been declining in recent decades. Young migrated men and women as well as refugees, face a wide range of difficulties in education, in the labor market, and in the transition from education to the labor market. For example, migrants need to cope with a lot of challenges to be integrated into the labor market of their host state. They suffer from higher unemployment rates, are paid lower than native people and are more likely to be overqualified for their positions.⁵ Although, according to some statistics (such as PISA results), these people have great potential aspiring to work as professionals or managers in some host countries, even more than non-migrant students.

Having access to good quality education opportunities without any discrimination can have significant implications on next steps such as finding eligible jobs in the host communities. On the other hand, improving intercultural dialogues between different ethnicities, religions, and cultures in more diverse societies, can lead to further achievements in terms of integration. These intercultural dialogues could be made within educational institutions as well as many other migration organizations and centers.

Recently, hate speech and far right positions by a group of global politicians has increased. This trend can indicate some dangerous inequalities and discrimination towards immigrants and refugees regarding their fundamental rights in these receiving countries. In addition, lack of intercultural understanding and hostility towards religious, ethnic, and cultural diversity can enhance racism, discrimination and exclusion and have inevitable effects on the social integration of refugees as well as impeding the process of positive youth development in the host societies.

To put it briefly, one of the common challenging issues for a wide range of refuge countries is finding appropriate initiatives for solving the refugees' integration problems. Making and improving legal frameworks under the national legal systems could be quite problematic for the host states, which will need proper coordination and cooperation by all involved actors including official authorities, various organizations, and NGOs, civil society and the international community.

⁵ OECD, Working Together for Local Integration of Migrants and Refugees, p.29.

Purpose of Research

As can be seen from my earlier research I will focus on the socio-economic integration of refugees in order to find a durable solution. Indeed, for refugees in the country of refuge, there are three durable solutions including voluntary repatriation, local integration, and resettlement. However, this thesis will focus solely on socio-economic integration of refugees through education and employment. Therefore, it primarily discusses the meaning of the concept of socio-economic integration in the sense of a permanent solution, as the definition of the purposes of this study.

Notably, although there is a plethora of definitions about integration particularly in sociology, which have been offered by social scientists, there is not any single and universal definition for it. Furthermore, the Refugee Convention of 1951 contains no legal definition of integration, though it does discuss the facilitation of assimilation and the naturalization process under Article 34. Referring to the term of assimilation, and using it alongside naturalization, has resulted in different arguments by some scholars about the interpretation of this article as well as the definition of local integration, which will be extensively discussed during the next part. Nevertheless, it is clear from the legal history of Article 34 of the Refugee Convention, that the term assimilation in this provision is used with the meaning of integration. In fact, the distinction between the concepts of assimilation and integration as used in sociology is not accepted and used by many refugee law scientists. They are reluctant to consider this distinction at least in regard to Article 34.

Thus, the primary purpose of this research, is to respond to this main question: **“What does socio-economic integration mean? And what are the rights of refugees in relation to education and employment within the 1951 Geneva Convention and other international human rights law instruments?”**

There is also an important sub-question namely: **What is the main purpose of Art. 34 of the 1951 Geneva Convention?**

Notably, for the purposes of this research, I take my definition of socio-economic integration from the UNHCR’s definition of integration. According to the UNHCR, local integration is considered as **“the end product of a dynamic and multifaceted two-way process with three interrelated dimensions: a legal, an economic and a social-cultural dimension. Integration requires efforts by all parties concerned, including preparedness on the part of refugees to adapt to the host society without having to forego their own cultural identity, and a**

corresponding readiness on the part of the host communities and public institutions to welcome refugees and to meet the needs of a diverse population.”

According to this definition, on the one side, is the refugees’ willingness to adapt themselves to the circumstances of the host community, and on the other side, is the openness of the receiving society to welcome and accommodate refugees. These two essential elements are of crucial value in achieving successful integration.

In my research, the socio-economic integration of refugees means giving refugees opportunities to be effectively involved in the social, economic, and cultural life of the host state. Education and jobs are the most important goals for refugees to become settled in their new country. Access to education and meaningful work facilitate and accelerate their socio-economic integration into the host society.

For this purpose, I have chosen education and employment as two important instruments for assisting refugees to be socially, economically, and culturally integrated into their reception society. It is also worth noting that, using the definition of local integration provided by UNHCR, socio-economic integration is the primary aspect of integration.

There is a strong interconnection between education and employment. Refugees will not experience successful socio-economic integration if one of these two is overlooked. Obviously, without having an appropriate educational background or vocational and technical skills it will be relatively hard for refugees to find a job in the host country’s labour market. In addition, through employment refugees will increase their experience as well as contribute to the economic development of their country of asylum.

However, regardless of language barrier there are a number of other factors such as lack of recognition of refugees’ previous educational qualifications and the high cost of study which keep the doors of educational centers closed to refugees. These and similar problems will be discussed in depth. This research emphasizes the main responsibility of the host state to guarantee refugees’ rights to education and employment as these play a vital role in their socio-economic integration in the reception country. This research follows an international perspective to respond to the questions above. The major focus will be on the most significant international human rights instruments such as; the 1951 Geneva Convention, the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the 1966 International Covenant on Civil and Political Rights (ICCPR) and others.

For example, in the case of education, in addition to Art. 26 of the 1948 Universal Declaration of Human Rights (UDHR) which can be considered as a soft law instrument, there are binding

instruments mentioned in the previous paragraph, e.g., Art. 22 of the 1951 Geneva Convention, Art. 13 of the ICESCR and Art. 18(4) of the ICCPR.

Regarding employment, refer to; Art. 23 of the 1948 UDHR, Arts. 17 & 18 of the 1951 Geneva Convention and Arts. 6, 7 and 8 of the ICESCR discussed later. Exploring and discussing these rights under relevant legal instruments is essential to improve policy toward refugees' access to education and to their employment opportunities considered in this study. Evaluating various legal arrangements and regulations will provide insight into potential solutions which may remedy legal shortages and barriers within the 1951 Geneva Convention in regard to refugees' rights to education and employment.

The purpose of considering these international human rights instruments is to seek more protective regulations and provisions in regard to refugees' rights to education and employment to reinforce their socio-economic integration in the host country. In this regard, this study will introduce good practices and constructive policies which are already implemented by the host countries.

In addition, differences between the diverse legal regimes which exist under the 1951 Geneva Convention with respect to the right to primary and higher (secondary and university) education, and the right to self-employment and wage-earning employment, will comprise other crucial parts of my thesis.

To sum up, considering the right to education and the right to employment as two effective instruments, that facilitate and enhance socio-economic integration of refugees into the host society, is the main aim of this research. To do this, relevant international instruments, regulations, and provisions will be explored and legal barriers and gaps in these areas will be discussed.

Methodological Approach

The scope of my research encompasses a qualitative approach. It considers both primary and secondary sources including legal documents and arrangements (international conventions, treaties, declarations, etc.) plus existing literature and textbooks in my research subject.

Conducting this desk research study of the subject matter can strongly contribute to the improvement of the existing literature and research findings in the field of socio-economic integration of refugees.

In general, the thesis follows a deductive view, since it considers education and employment as two important instruments which can facilitate and strengthen the socio-economic

integration of refugees into the reception state. In fact, it tries to examine and scrutinize various international legal instruments and principles in the context of rights to education and employment for refugees. Accordingly, recognition of existing legal gaps in these instruments and regulations plus finding the relevant resolutions for them, holds great value for this study. Hence, these two important spheres, education and employment considered as the main dimensions of socio-economic integration of refugees, are discussed in my thesis in accordance with an international law perspective.

In addition, the research employs both descriptive and normative legal approaches for identifying and analyzing relevant legal rules and provisions in the context of socio-economic integration of refugees through education and employment.

Therefore, the aim of research is not only exploring the related statutes and regulations in various international and regional instruments but also analyzing these legal rules and provisions and their interpretations to protect refugees more effectively.

However, as previously mentioned, once a clear and comprehensive legal analysis is established, several existing initiatives and best practices would be offered as well through related chapters.

Thesis Structure

In addition to an introduction, my thesis has four chapters. The first chapter discusses the definition of socio-economic integration and its characteristics in the sense of a durable solution. In this chapter the UNHCR's definition about integration will be adopted and in line with this definition I will show my definition of the socio-economic integration process for the purposes of my research. Furthermore, other integration-related issues such as the effects of citizenship on socio-economic integration of refugees as well as existence and substance of the concept of integration under international law especially Art. 34 of the 1951 Geneva Convention about facilitation of naturalization and assimilation will be discussed.

The second chapter will consider refugees' right to education. Within this chapter a set of various issues concerning the right to education in the context of refugee integration will be examined and discussed. For example, some significant topics like different legal regimes in terms of rights to primary, secondary and higher educations; recognition of refugees' educational qualifications; organizing language and vocational training courses and their interconnection with labor market integration; the role of international organizations like UNHCR, IOM and UNICEF and the importance of their collaborations with national

governments and NGOs with regard to the education of refugees will be discussed. It also identifies the most common policy gaps in educational integration of refugees and presents a set of current good practices for facilitating and enhancing the educational opportunities of refugees.

The third chapter highlights refugees' integration through employment and access to the labor market. In this chapter, I have an extensive look at refugees' rights regarding employment under various international human rights arrangements including the 1951 Geneva Convention and the 1966 ICESCR. One of the key subjects in this regard is the existence of different legal regimes under some refugee-related instruments for self-employment, wage-earning employment, and liberal profession opportunities. Furthermore, in this chapter some legal barriers to the refugees' labor market access and other crucial issues such as the role of international organizations, national governments, civil society, and NGOs in the economic integration of refugees as well as relevant best practices will be debated.

The last chapter will focus on a case study of the socio-economic integration of Afghan refugees in Iran. In this chapter, the different Iranian laws and regulations about rights to education and employment for refugees in Iran will be explored and analyzed in depth. An assessment of socio-economic integration of Afghan refugees in Iran in the light of international law will also be presented. Furthermore, the pros and cons of the Iranian legal regime in respect of refugee protection, plus recent improvements of national policies and initiatives in this domain are discussed.

1 Chapter I: Integration

In this part, the focus will be on the definition of integration and how this preferred definition will fit the first part of my main research question regarding: **“What does socio-economic integration mean?”**

Before discussing the legal definition of integration and all its aspects, it is necessary to briefly speak concerning an existing conceptual framework on immigrant’s acculturation strategies developed by John Berry. According to Berry’s model, immigrant’s acculturation can be divided into four strategies including:⁶

- Assimilation: it considers situation of refugees who do not maintain their cultural identity and try to fully adapt themselves within the culture of the new society as well as interacting with other people from a different group. In the assimilation process, there is only identification with the culture of the reception country while the refugee’s culture is not practiced within the host country.
- Separation: it happens when refugees wish to maintain their cultural identity but avoid interaction with other people from another group. Indeed, there is an identification with only the refugee’s culture and their contact with their own compatriots.
- Marginalization: it includes refugees who have little intention to maintain their own culture and are also reluctant to make communications with people from other groups. In fact, there is not any identifications and contacts for either culture (neither the culture of refugees nor culture of the reception country).
- Integration: it indicates the situations of those refugees who wish to maintain their original culture while they interact with members from other groups. Thus, there are identifications and contacts with both cultures, the refugee’s culture, and the culture of the host country.⁷

⁶ Robila, M., *Refugees and Social Integration in Europe*, (2018), p.2.

⁷ Ryabichenko, T. A. and Lebedeva, N. M., *Assimilation or Integration: Similarities and Differences Between Acculturation Attitudes of Migrants from Central Asia and Russians in Central Russia*, (2016), p.4.

However, it is worthy of note that while in sociology there is a distinction between integration and assimilation, under international refugee law especially Art. 34 of the 1951 Geneva Convention the term assimilation has a similar meaning to integration. In fact, the drafters of Art. 34 meant the facilitation of refugees' integration and not the definition of assimilation in sociology as explained above. It is related to this fact that the Refugee Convention was written around 70 years ago when scholars did not yet commonly use the term integration.

1.1 Definition of Integration

In fact, there is no consensus on the definition of integration and therefore there is a lack of a formal definition concerning refugee integration under international refugee law.⁸ It discloses this fact that integration is a dynamic and subjective concept. Indeed, it demonstrates that a refugee may maintain a strong relationship with his/her country of origin while on the other hand s/he creates close links with receiving and transit countries.⁹ The only article within the 1951 Geneva Convention which speaks explicitly about integration is Article 34. Nevertheless, this article only discusses the facilitation of assimilation (integration) and naturalization therefore it does not constitute a definition of integration or other establishments in respect to refugee integration.¹⁰

Furthermore, other refugee-related instruments, such as regional refugee conventions also do not contain a particular article or provision on the definition of integration. For example, Art. 2¹¹ of the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU) refers solely to the local settlement¹² of the refugees as a mean of temporary accommodation of refugees and does not discuss local integration.¹³

In fact, this article is basically for a mass refugee crisis and intended to protect prima facie refugees. It is literally created for temporarily accommodating a mass population of refugees in the host country. As it happens, it is supposed that this group of refugees would be repatriated to their original country when the situation allows. Thus, it takes no step towards local integration of refugees as would be required for a longer term and more sustainable solution in

8 Hopkins, G., *A New Beginning: Refugee Integration in Europe*, (2013), p.13.

9 Hopkins, A New Beginning: Refugee Integration in Europe, p.13.

10 See Art. 34 of the 1951 Convention Relating to the Status of Refugees.

11 Art. 2: "Member States of the OAU shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality."

12 This concept and other similar terms are properly discussed within the next part.

13 Crisp, J., *the Local Integration and Local Settlement of Refugees: A Conceptual and Historical Analysis*, (2004), p.2.

the context of refugee protection. Consequently, the only formal definition in this regard, is that prepared by the UNHCR Executive Committee in 2005. This definition will be discussed and analyzed within the next part.

1.1.1 UNHCR's Definition of Local Integration

According to the UNHCR and for the purposes of this study on integration of refugees, local integration is considered as:

“the end product of a dynamic and multifaceted two-way process with three interrelated dimensions: a legal, an economic and a social-cultural dimension. Integration requires efforts by all parties concerned, including preparedness on the part of refugees to adapt to the host society without having to forego their own cultural identity, and a corresponding readiness on the part of the host communities and public institutions to welcome refugees and to meet the needs of a diverse population.”¹⁴

However, local integration incorporates new elements (refugees) into an existing social system.¹⁵ According to this definition, it contains three different but interrelated dimensions including legal, economic and socio-cultural components.

Firstly, integration is a legal process, as refugees are gradually granted a wider range of rights and entitlements by the host country that are broadly comparable to those given to the citizens of the country of refuge. For instance, these rights include the right to access employment and labor markets as well as other income-generating activities, access to public services such as education and health care, freedom of movement, owning and disposing of properties, access to administrative assistance, the ability to travel with valid travel and identity documents and the realization of family unity. However, over time this process would lead to permanent residence rights and in some cases the acquisition of citizenship in the reception state.¹⁶

Secondly, it is considered as an economic process. In fact, through integration, refugees become able to pursue sustainable livelihoods and to try to obtain a growing degree of self-reliance. Thus, this leads eventually to becoming less dependent on external and humanitarian assistances that are provided by the host governments. Importantly, those refugees who do not have access to the labor market have a quality of life that is comparably less than the poorest

14 Hopkins, *A New Beginning: Refugee Integration in Europe*, p.14.

15 Robila, *Refugees and Social Integration in Europe*, p.10.

16 Crisp, *the Local Integration and Local Settlement of Refugees: A Conceptual and Historical Analysis*, p.1.

nationals living in the reception states. The refugees are not truly recognized for being locally integrated.¹⁷

Finally, integration is understood as a socio-cultural process. Indeed, integration as a two-way process requires refugees to acclimatize themselves with the circumstances of the host community. On the other hand, host communities must welcome and accommodate refugees to make them able to live amongst and alongside the receiving populations without any fear of discrimination or exploitation. As a result, this will give refugees an opportunity to actively contribute to the social life of the host state.¹⁸

Finally, local integration is considered as a process that progressively leads to a durable solution for refugees, in conjunction with other alternatives, including voluntary repatriation and resettlement.¹⁹ In fact, the extent and speed of the integration process as a durable solution depends on the refugee caseload and the social and economic situations of the receiving country.

However, local integration is highly recommended for those refugees who are born in the territory of the asylum country and otherwise would be at risk of statelessness.²⁰ Furthermore, it is suitable also for those refugees who have already established close ties with the reception state, as well as those groups that due to well-founded reasons, are unable or unwilling to return to their country of origin under the voluntary repatriation schemes.²¹

Again, since the term assimilation as it is used in refugee-related instruments especially the 1951 Geneva Convention corresponds with the definition of local integration, thus within the next part the most significant elements of this definition provided by UNHCR would be concretely debated and scrutinized.

1.1.1.1 Key Elements About Definition of Local Integration

There is a plenty of elements within the definition of local integration provided by UNHCR that should be discussed and explained.

1.1.1.2 A Two-Way Process

17 Crisp, the Local Integration and Local Settlement of Refugees: A Conceptual and Historical Analysis, p.1.

18 Crisp, the Local Integration and Local Settlement of Refugees: A Conceptual and Historical Analysis, p.1.

19 Crisp, the Local Integration and Local Settlement of Refugees: A Conceptual and Historical Analysis, p.2.

20 UNHCR, *Refugee Protection and Mixed Migration: the 10-Point Plan in Action*, (2011), p.194.

21 UNHCR, *Refugee Protection and Mixed Migration: the 10-Point Plan in Action*, p.194.

As it can be understood from the wording of the definition itself, both refugees and the host community will be engaged in this process. In fact, in the integration process on the one side, refugees must adapt themselves with circumstances of the host state without being obliged to forget their cultural identity. On the other side, the host state would properly welcome and accommodate refugees and respects their cultural identity. This two-way interaction between the refugees and the host state comprises an important part of the definition of integration.

1.1.1.3 Interrelated Dimensions

Basically, local integration contains three different but interrelated dimensions including legal, economic, and socio-cultural ones. In the previous part these three dimensions were concretely explained and discussed. The phrase “interrelated dimensions” emphasizes that these three areas are affected and complemented by each other. For example, if the legal aspect refers to some rights, like access to employment or education, these rights can then assist a refugee in becoming economically self-reliant and make him able to progressively pursue a sustainable livelihood. Hence, this refugee would become economically integrated due to his previous legal integration.

Another example can be imagined, where a refugee has a further chance to get a job or be employed as s/he has already successfully completed her/his education or a specific training course. In fact, this right to education has been granted to him/her based on his/her previous legal integration. Therefore, the relevant circle between these three different dimensions of local integration can be clearly realized. A social integration in the cover of access to education which has itself resulted from the previous legal integration (having a right to education) can ultimately lead to an economic integration through having access to the labour market.

1.1.1.4 Without Having to Forego Their Own Cultural Identity

As previously mentioned, according to sociology, this phrase is one of the fundamental elements for local integration that distinguishes it from an assimilation process. Indeed, social scientists believe that in an assimilation process refugees forget their own cultural identity and their way of life and they try to immerse completely into the host countries’ culture.²² But in an integration process refugees are not obliged to forego their own cultural identity and they

²² In sociology this can be considered as a central factor which distinguishes integration from assimilation process.

are only required to acclimatize and adapt themselves to the circumstances existing in the new country of residence. Again, legal scientists are reluctant to draw such a distinction. In fact, they consider that the term of assimilation used in Art. 34 of the Refugee Convention is identical to integration.

In the next parts, we would also speak about other relevant concepts in the field of refugees' integration and their distinctions with local integration. However, it is also essential to make clear what cultural identity means? Therefore, first we will focus on the meaning of cultural identity and then continue to examine and discuss these similar concepts.

1.1.2 What Is Cultural Identity?

Before speaking about the main differences between local integration and other corresponding concepts, the term of cultural identity may require some clarification. Therefore, it would be significant to briefly discuss the definition of cultural identity in refugee law. There is a wide range of definitions submitted by social scientists and legal commentators. But firstly, we need to understand each term. What is culture? And what does identity mean?

Culture is the set of features, beliefs, and the value system of a society, which is practiced and passed through generations. It is common among a group of people and unifies them together into a community. However, the UN Committee for the Elimination of All forms of Racial Discrimination (CERD) has extended the scope of the definition of culture. For them, it contains “the distinct history, language and way of life as an enrichment of the State’s cultural identity.”²³

Identity can be understood as one’s conception and perception of self and a way in which a person sees himself/herself as unique from others. In addition, personal and social changes could impact identity as it can be realized once migration or acculturation processes have happened.²⁴ Thus, cultural identity “**refers to specific values, ideals, and beliefs (e.g., individualism, collectivism, filial piety) adopted from a given cultural group, as well as one’s feelings about belonging to that group.**”²⁵

As noted above, cultural identity as an aspect of social identity can be changed, for instance, once migration and acculturation have happened. In fact, as refugees try to adopt those beliefs, social values, and behaviours, which are held and practiced by the people in the reception state,

23 Bhugra, D. and Becker, M. A., *Migration, Cultural Bereavement and Cultural Identity*, (2005), p.4.

24 Bhugra and Becker, *Migration, Cultural Bereavement and Cultural Identity*, p.4.

25 Schwartz, S. J., Montgomery, M. J. and Briones, E., *the Role of Identity in Acculturation Among Immigrant People: Theoretical Propositions, Empirical Questions, and Applied Recommendations*, (2006), p.7.

the cultural identity of the refugees could be changed. Hence, they would try to expand their definition of in-group, through integrating their heritage members with the native-born people living in the receiving state. As a result, those native-born people who have been previously considered as members of a different out-group could now be part of the in-group members.²⁶ However, there are many factors that are effective in changing one's cultural identity. In other words, whether a refugee can maintain his/her heritage cultural identity and make a coherent co-existence between his/her own heritage beliefs, values and behaviours with those of the reception state, or entirely replace them with those of the host society depends on several significant factors.

These factors include the degree of similarity between the two cultures, the existence of any support for the heritage culture's beliefs in the host society, the existence and extent of any discrimination and prejudice that a refugee faces within the host country, and the degree of tolerance and flexibility that a cultural identity has to integrate two different cultural beliefs which appear contradictory.²⁷

For example, in a case where values, ideals, and behaviours associated with both cultures are completely varied, the extent to which the respective refugee might encounter identity distress is very high. Hence, in this case, the refugee would likely have to shift to the receiving state's cultural beliefs from his/her own culture of origin.²⁸

For clarification let us imagine a refugee family who has fled to one of the European countries from the Middle East and wishes to build a new life in the country of refuge. However, for this family there are some fundamental differences between its eastern culture and the western one. For instance, sooner or later the prevailing western views concerning family, such as individualistic culture would impact the traditional values of this Middle Eastern family, which has more collectivistic features.

Not surprisingly, the young children who are frequently in communication with their European fellows at school, would possibly find some confusions between their own culture (emphasizing Islamic values) and the European culture. For instance, beginning with the early adolescence years, the European lifestyle pushes them to get separated and become completely independent from the family. But according to their own culture, these Muslim children would

26 Schwartz, Montgomery and Briones, the Role of Identity in Acculturation Among Immigrant People: Theoretical Propositions, Empirical Questions, and Applied Recommendations, p.7.

27 Schwartz, Montgomery and Briones, the Role of Identity in Acculturation Among Immigrant People: Theoretical Propositions, Empirical Questions, and Applied Recommendations, p.10.

28 Schwartz, Montgomery and Briones, the Role of Identity in Acculturation Among Immigrant People: Theoretical Propositions, Empirical Questions, and Applied Recommendations, p.10.

be expected to live with their parents until they have been married. As a result, these young children will possibly be influenced by their European friends to follow the prevailing culture and become independent from their family, while their family believes they are still too young.

1.2 Differences Between Local Integration, Assimilation, Self-Reliance, and Local Settlement

There is a set of different concepts used within some legal or other scientific writings which share some similarities with the concept of local integration. However, as previously mentioned, genuinely in social science there is a distinction between local integration and other similar concepts, which are sometimes used interchangeably by scholars and commentators. In this section, the focus will be on these differences, plus the main truisms about the concept of integration in line with the chosen definition (UNHCR's definition), which was explained, in the previous section.

1.2.1 Self-Reliance and Local Settlement

According to the UNHCR, self-reliance is “the social and economic ability of an individual, a household or a community to meet essential needs (including food, water, shelter, personal safety, health, and education), in a sustainable manner and with dignity. Self-reliance as a programme approach, refers to developing and strengthening the livelihoods of people of concern, reducing their vulnerability and their long-term reliance on humanitarian and external assistance.”²⁹

As can be understood from this definition, the main goal in achieving self-reliance is helping refugees to become economically independent. Self-reliance does not presuppose that refugees will find a durable solution in the country of refuge, although this is a main feature of the integration process.³⁰ Given that, local integration is grounded on a notion that refugees will remain indefinitely in the receiving country and find a durable solution for their predicament in the host state. Consequently, refugees might be ideally, but not necessarily, granted an opportunity to apply for citizenship in the country of refuge.³¹

29 Davey, C., *Handbook on Self-Reliance*, (2005), p.1.

30 De Costa, R., *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations*, (2006), p.8.

31 Crisp, the Local Integration and Local Settlement of Refugees: A Conceptual and Historical Analysis, p.3.

The distinction between local settlement and local integration is more nebulous. As Jeff Crisp rightly points out, in contrast with local integration as a process that leads eventually to a durable solution, local settlement is usually a strategy used with large scale refugee influxes.

To this end, the host countries try to accept and accommodate massive refugee movements on a prima facie basis and sometimes provide them with lands where they are able to establish their new settlements and engage in agriculture and other economic activities.³² In other words, the receiving countries would permit refugees who are recognized on a prima facie basis, to become self-reliant and stay temporarily in their territories until they are able to repatriate to their original countries voluntarily.

However, sometimes refugees who are locally settled might be allowed by the host state to remain in their territory to become progressively integrated into the host society. But in most cases local settlement is considered a temporary phase.³³ Hence, the local settlement like self-reliance does not presuppose that refugees will find durable solution in the country of refuge.

1.2.2 Differences Between Integration and Assimilation

As formerly mentioned, there is no such a distinction between assimilation and integration in international human rights instruments including in the Refugee Convention and Art. 34 which speaks expressly about facilitation of assimilation (integration) and naturalization. However, from a sociological point of view, there is a clear distinction between these two concepts. Due to the importance of this issue in social science and to better understanding the substance of integration, we briefly discuss this subject here. In addition, within the next section the opinions of some legal scholars in the field of international refugee law about these two concepts will be discussed.

It is worth noting that, the classical theory of assimilation was derived from studies of European immigrants who arrived in the US in the early of the 20th century. These studies proved that European immigrants were assimilated entirely and progressively. In fact, it happened to them as an inevitable phenomenon, so that it affected both third and fourth generations more intensely. For example, Anglo-conformity is considered as one of the classical theories of assimilation. Indeed, the newcomers were expected to learn the English language and adapt

32 De Costa, Rights of Refugees in the Context of Integration: Legal Standards and Recommendations, p.8.

33 Da Costa, Rights of Refugees in the Context of Integration: Legal Standards and Recommendations, p.8.

and conform to the values, traditions, norms, and institutions of Anglo-American society as well as the wider Anglo-Saxon majority.³⁴

However, the first theory concerning the concept of assimilation was developed by Richard E. Parks at University of Chicago in 1920 and known as “The Race Relations Cycle”. He believed that the assimilation process is an unavoidable phenomenon within democratic countries, whereby racial and ethnic groups would soon or later lose their cultural identity.³⁵

This theory speaks about the four phases of the assimilation process including contact, conflict, accommodation, and assimilation. It starts with contacts between people who compete. Gradually a hierarchical structure would be created where a dominant group controls subordinate groups. However, this trend ultimately leads to assimilation.³⁶

As with integration, there is also not an agreed formal definition for assimilation. However, to form an accurate view about it, I tried first to identify the main features of assimilation as found in different definitions, for example, by International Organization for Migration (IOM) and some refugee law scholars. Secondly, I established my understanding of assimilation based on these definitions. According to the IOM, assimilation is:

“Adaptation of one ethnic or social group – usually a minority – to another. Assimilation involves the subsuming of language, traditions, values, mores and behaviour or even fundamental vital interests. Although the traditional cultural practices of the group are unlikely to be completely abandoned, on the whole assimilation will lead one group to be socially indistinguishable from other members of the society. Assimilation is the most extreme form of acculturation.”³⁷

Thus, assimilation can be interpreted as: **a one-sided process facilitated by the host state in which refugees try to forget and give up their own cultures, beliefs and specific identities and soon adopt and conform to the existing cultural norms of their new society in order to become entirely part of the dominant society which makes them socially indistinguishable from other members of the society.**

34 Darko Donkor, A., *Assimilation and Social Success; Cultural Identity of Second-Generation Nigerian Migrants in Oslo, Norway*, (2016), p.22.

35 Darko Donkor, *Assimilation and Social Success; Cultural Identity of Second-Generation Nigerian Migrants in Oslo, Norway*, p.23.

36 Darko Donkor, *Assimilation and Social Success; Cultural Identity of Second-Generation Nigerian Migrants in Oslo, Norway*, p.23.

37 Perruchoud, R. and Redpath-Cross, J., (Eds.), *Glossary on Migration, International Migration Law Series No. 25*, (2011), p.11.

As it can be understood from the IOM's definition and my interpretation, there are some crucial discrepancies between assimilation and integration. In the following, these differences are discussed.

1.2.2.1 Forget Their Own Cultural Identity

One of the main distinctions between integration and assimilation is ignorance of cultural identity by refugees whether voluntarily or compulsory. Given that, in assimilation refugees freely or under a coercion of the receiving state forget their cultures and try to follow the ways of the host countries' cultures. As it happens, refugees change themselves and adopt new cultural norms to become full members of their new countries. This story never happens in integration process. In fact, though during the integration process refugees try to adapt themselves to the circumstances of new environment but they never entirely lose their cultural identity and reciprocally the host society respects refugee's culture as well.

1.2.2.2 Adopt and Conform to the Culture of New Society

As mentioned above, in assimilation refugees try to follow new ways of culture entirely, while in integration, refugees never fully follow the cultural norms of the new society. Indeed, integration is a two-fold process whereby newcomers attempt to adapt themselves with the conditions of their new country without completely adopting the culture of their new home. Moreover, the receiving society will similarly welcome the refugee's culture, which is practiced by them in its territory. But assimilation is in fact a one-way process, so that only the refugees try to change themselves and absolutely follow the culture of their new reception country. Hence, there is not any attempt on the side of the host country to accept and welcome the refugee's cultural identity.

1.2.2.3 Become Entirely Part of the Dominant Society and Socially Indistinguishable from Members of the Host Society

The main reason behind assimilation which obliges refugees to conform completely the new cultural norms, is to make them entirely indistinguishable from nationals of the country of refuge. But in the integration process, the main emphasis is on incorporating refugees who are basically from different contexts into the new society as equals. In other words, refugees would be able to celebrate their differences, while making a strong contribution to their new country and being involved in many aspects of the social life of their new society.

Thus, while the eventual outcome of integration might be acquisition of citizenship in the host country, integration will make every effort to allow refugees to maintain their cultural identity and avoid making them indistinguishable from the native people.³⁸

1.2.3 Substance of Local Integration

During this part, the opinion of some famous legal scholars such as Hathaway and Zimmermann, in respect of the substance of local integration, will be demonstrated and explained. It seems necessary to mention again that, in line with the view of legal scholars and for the purposes of this study, the terms assimilation and integration have an identical meaning here.

Notably, Hathaway believes that integration cannot go beyond the simple respect of refugee rights that are established within the 1951 Geneva Convention. He shows that local integration is in fact all rights which are articulated in the Refugee Convention and are granted to the refugee once s/he is considered as a refugee by the reception country. He states that:

*“local integration means in essence that a refugee is granted some form of durable legal status that allows him or her to remain in the country of first asylum on an indefinite basis, and fully to participate in the social, economic, and cultural life of the host community. So conceived, local integration is not distinguishable from the primary solution envisaged by the Refugee Convention, namely simple respect for refugee rights. That is, the rights which are said to be the hallmarks of the solution of local integration are essentially the same rights which actually accrue by virtue of refugee status itself.”*³⁹

Regarding Art. 34 of the Refugee Convention, he also stipulates that:

“Because local integration is not really an alternative solution to simple respect for refugee rights, the focus here is instead on the possibility of moving beyond refugee status towards the acquisition of citizenship in the asylum country. In contrast to simple local integration, enfranchisement through citizenship is legally sufficient to bring refugee status to an end. Becoming a citizen bespeaks a qualitatively distinct level of acceptance of the refugee by the host state...By granting the refugee the right to participate in the public life of the state, naturalization eliminates the most profound gap in the

38 Zimmermann, A., (Ed.), *the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol*, (2011), p.1448.

39 Hathaway, J. C., *the Rights of Refugees Under International Law*, (2010), p. 978.

rights otherwise available to refugees, since full political rights are not guaranteed to refugees under the Refugee Convention, nor to non-citizens under general principles of international human rights law."⁴⁰

From statements above, it is clear that Hathaway believes that integration is not something different from the various rights of refugees under the 1951 Geneva Convention including rights to education, employment, public relief, housing, etc.

Indeed, he thinks that integration means all economic, social, and cultural rights that are enunciated in the Refugee Convention. Finally, he proves that while Art. 34 speaks about assimilation (integration), it is more about the naturalization process and its facilitation. Integration requires consideration of the whole rights within other articles of the Refugee Convention. These Conventional rights are in fact spontaneously granted to refugees by virtue of the refugee status itself.⁴¹

This idea is also in line with second sentence of Art. 34 which⁴² tries to make some examples regarding the facilitation of naturalization, whereas there is no similar example regarding the facilitation of assimilation. In fact, it is understandable from the second sentence of Art. 34, that the main purpose of the drafters about facilitation of naturalization had been to facilitate as far as possible all the administrative formalities.

As it happens, these administrative formalities are placed between the submission of refugee's application for citizenship and its result decided by the relevant authorities of the host states. Therefore, Hathaway concludes that the two examples codified in the second sentence are related solely to the naturalization proceedings.

In addition, in accordance with the phrase "*In contrast to simple local integration, enfranchisement through citizenship is legally sufficient to bring refugee status to an end...*"⁴³ in fact Hathaway explains that after naturalization the refugee would lose his refugee status (according to the Art. 1(C) (3))⁴⁴ and consequently the local integration of the refugee no longer makes any sense. Since under this scenario the respective person is no longer a refugee, speaking about her/his

40 Hathaway, the Rights of Refugees Under International Law, p.980.

41 Hathaway, the Rights of Refugees Under International Law, p.979.

42 Art. 34: "The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."

43 Hathaway, the Rights of Refugees Under International Law, p.980.

44 Art. 1(C): "This Convention shall cease to apply to any person falling under the terms of section A if: ... (3) He has acquired a new nationality and enjoys the protection of the country of his new nationality."

integration is incorrect. In other words, s/he is now a new citizen of the receiving country and his/her legal status has been changed from a refugee to a citizen.

Likewise, he reflects that the refugee rights regime calls Member States to protect refugees from isolation and to grant them a wide range of socio-economic and civil rights, and sometimes more favorably compared⁴⁵ to those enjoyed by native people living in the host state.⁴⁶

Additionally, the duty of non-refoulement as a customary international law principle, requires State Parties to not expel refugees and to continue to host them in the absence of other alternative solutions. Indeed, they shall respect and protect refugee's rights in accordance with the 1951 Geneva Convention and other regional refugee conventions as well as the general rules of international human rights law.⁴⁷

Finally, he writes that the duty of implementation of a treaty in good faith, might ignore the dynamic role of local integration as an important way to bring these Conventional rights into a more social reality.⁴⁸ Hence, he concludes that local integration cannot add additional values more than a simple respect to the rights under the Refugee Convention

However, according to the legal history of the Refugee Convention and as Hathaway refers to it, a French representative tried to explain the term assimilation as being "*clearly corresponded to the condition that a refugee should fulfill in order to qualify for naturalization....*"⁴⁹ The French representative continues that assimilation is in fact an intermediate stage between refugee establishment and his naturalization; "It was an apt description of the intermediate stage between the establishment of the refugee on a particular territory and his naturalization."⁵⁰ Besides, the Canadian representative also remarked that, "a country might not be prepared to grant naturalization if the refugee were not assimilated."⁵¹

Additionally, as Hathaway acknowledges, this notion is also in line with Grahl Madsen's view: "*What is meant... is in fact the laying of foundations, or stepping stones, so that the refugee may familiarize himself with the language, customs and way of life of the nation among whom he lives, so*

45 In this case, it is worth noting that, within the 1951 Geneva Convention there are still provisions such as Art. 22.2 regarding the right to secondary and higher education which provide less protection for refugees in compare to native people living in the country of refuge.

46 Hathaway, the Rights of Refugees Under International Law, p.978.

47 Hathaway, the Rights of Refugees Under International Law, p.979.

48 Hathaway, the Rights of Refugees Under International Law, p.979.

49 Hathaway, the Rights of Refugees Under International Law, p.984.

50 Hathaway, the Rights of Refugees Under International Law, p.984.

51 Hathaway, the Rights of Refugees Under International Law, p.984.

that he – without any feeling of coercion- may be more readily integrated in the economic, social and cultural life of his country of refuge.”⁵²

Therefore, as it can be understood from the above-mentioned facts, integration can play a crucial intermediary role in preparing refugees more readily for engaging in the social, economic, and cultural life of the national community where they choose to live. It is a voluntary process that gives refugees an opportunity to avoid isolation and become a functioning part within their new society. Integration might lead refugees to persuade and convince the host states to grant them their citizenship.

Another key point drawn by Hathaway is that full integration of refugees within the political life of the reception society would happen once they are granted the citizenship of that country. Given that refugees cannot have access to the full political rights such as the right to vote even if they are fully integrated into the host society. Thus, he believes that this most profound gap in the rights otherwise available to refugees will be removed only by naturalization.

Like Hathaway, but through varied legal reasoning from other scholars like Zimmermann, assimilation is viewed as different from naturalization which are both referred in Art. 34 of the 1951 Geneva Convention. Given that, in accordance with the drafting history of the 1951 Geneva Convention; *“the word assimilation is not used in the meaning of loss of the specific identity of the persons involved but in the sense of integration into the economic, social and cultural life of the country of reception.*”⁵³

Thus, he interprets the term “assimilation”, used within Art. 34 of the Refugee Convention, as identical to integration. In fact, he believes that where Art. 34 uses the term assimilation, it must be interpreted as integration.

He also demonstrates that *“by facilitating the assimilation of refugees, the contracting State is, to a certain extent, also facilitating the naturalization of refugees.*”⁵⁴ Finally, he emphasizes that the assimilation process is not compelling refugees to immerse themselves into the culture of the receiving state.

Finally, he emphasizes that in accordance with the wording of Art. 34 and its drafting history, this article does not impose an obligatory provision in respect of access to naturalization.⁵⁵ In other words, Member States are not obliged to grant refugees their citizenship even though they

52 Hathaway, *the Rights of Refugees Under International Law*, p.984.

53 Zimmermann, (Ed.), *the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, p.1448.

54 Zimmermann, (Ed.), *the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, p.1448. In the next parts, the definition of socio-economic integration that is quite a new concept in the refugee integration area will be debated.

55 Zimmermann, (Ed.), *the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, p.1451.

have been in their territories for a long time. As a matter of fact, Art. 34 imposes a particular obligation on Member States to facilitate and expedite the naturalization proceedings and reduce its required costs and charges. As a result, once the refugee is granted an opportunity to make an application for naturalization, the respective state must as far as possible expedite the naturalization proceedings and its charges.⁵⁶

In addition, Art. 34 does not declare that refugees should be treated more favourably than other aliens in relation to the acquisition of the host state's citizenship.⁵⁷ Nevertheless, as Zimmermann rightly points out, the only exception to this provision is Art. 10⁵⁸ of the Refugee Convention which is about the situations of those refugees who have been forcibly removed to the territory of the Member States.⁵⁹

Consequently, in line with these two scholars and according to Art. 34, this minimalist obligation concerning access to naturalization cannot even consider the steps taken by the Member States which reduce refugees' naturalization opportunities, as clearly unlawful measures.⁶⁰ However, as Hathaway rightly demonstrates, it would be outright incorrect to consider Art. 34 and its very soft obligation entirely without any force.⁶¹ Within the next part, the definition of socio-economic integration, that is quite a new concept in the area of refugee integration, will be discussed.

1.3 What Does Socio-Economic Integration Mean?

As previously mentioned, there is no comprehensive and formal definition for local integration.⁶² Accordingly, for socio-economic integration which is in fact a form of local integration, there is a shortcoming of a formal definition as well. However, in this study and for its purposes, I would try to establish my definition of socio-economic integration in the context of refugee protection which is based on my research and findings in this regard.

56 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1452.

57 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p. 1450.

58 Since the possibility of existence of this group of refugees would be very rare, this article is not currently practiced by Member States, therefore.

59 Art. 10: 1. "Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory. 2. Where a refugee has been forcibly displaced during the Second World War from the territory of a contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required."

60 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1453. See also Hathaway, J. C., *the Rights of Refugees Under International Law*, (2010), p.988.

61 Hathaway, the Rights of Refugees Under International Law, p.988.

62 For the purposes of this study, the UNHCR's definition of local integration is used.

As can be seen from the term socio-economic integration, it focuses on the social, economic, and cultural dimensions of the integration process. Indeed, it gives refugees an opportunity to be integrated into the society and economy, as well as the culture of the host community. It addresses the social, economic, and cultural rights which refugees should enjoy during their residency in the country of asylum.

These rights can be found in the 1951 Geneva Convention and other international and regional human rights law instruments namely UDHR, ICESCR, ICCPR, etc. For example, some economic, social and cultural rights are: the right to property, the right to work, the right to education, the right to health, the right to housing, the right to social security and the right to food.

It is worth noting that some of these rights are multifaceted and contain a combination of different aspects of social, economic, and cultural rights. For instance, the right to education can be considered as a multidimensional right which comprises all three social, economic, and cultural aspects of human rights.⁶³

Firstly, it is a social right, because it fosters the full development of human dignity and personality. Secondly, it is considered as an economic right, since it enhances and facilitates economic self-reliance through employment and self-employment. Lastly, the international community uses education as a key tool to establish a universal culture of human rights. Therefore, it can be considered as a cultural right.⁶⁴

According to the UNHCR's definition of local integration that was mentioned in the previous part,⁶⁵ socio-economic integration can be considered as an important part of local integration which mainly emphasizes social, economic, and cultural issues. Subjects such as employment, education, health, housing, and social security are discussed under socio-economic integration. Consequently, we can define socio-economic integration as:

“An important part of the local integration process that principally concentrates on the social, economic and cultural rights of refugees, enunciated within international, regional and national human rights law instruments, in order to facilitate and enhance their integration into the host society.”

63 Claude, R., *the Right to Education and Human Rights Education*, (2005), p.1.

64 Claude, the Right to Education and Human Rights Education, p.1.

65 “The end product of a dynamic and multifaceted two-way process with three interrelated dimensions: a legal, an economic and a social-cultural dimension. Integration requires efforts by all parties concerned, including preparedness on the part of refugees to adapt to the host society without having to forego their own cultural identity, and a corresponding readiness on the part of the host communities and public institutions to welcome refugees and to meet the needs of a diverse population.”

However, for the purposes of this study, our focus here is solely on the rights to work and education, considering them as two key tools in the context of the socio-economic integration of refugees. Thus, the right to education as a multifaceted right which contains social, economic, and cultural aspects of human rights, and the right to work as an economic right, will be discussed in the relevant chapters of this study.

These two different rights are laid down within a number of international and regional human rights law instruments including the 1951 Geneva Convention, ICESCR, ICCPR, UDHR, the 1989 Convention on the Rights of the Child (CRC), the 1965 Convention on the Elimination of all Forms of Racial Discrimination (ICERD), the 1981 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the 1961 European Social Charter, the 1981 African Charter on Human and Peoples' Rights, etc.

Some of these instruments will be discussed in the relevant chapters and sections. In the next section, a critical issue in the area of integration; the implications of citizenship on refugees' socio-economic integration, will be discussed.

1.4 Citizenship and Naturalization in Relation to the Integration of Refugees

As previously mentioned, while there is a similar view about the link between integration and citizenship, various scholars explain their opinions in different ways. There is a consensus that citizenship is not an obligatory and essential element for integration, but it can be complemented by acquisition of the host country's citizenship. For instance, some scholars like Hathaway believe that integration would be completed through naturalization so that the culmination of the integration process is the acquisition of the host state's citizenship.

Maarten Peter Vink also identifies citizenship as a significant measurement of integration, since it helps refugees to have a right to live unconditionally in a host state. Indeed, like Hathaway, he believes that through naturalization, refugees would be able to take part in the political elections and it can be also considered as a sign of intentional choice so that the refugee ties his future with that of the reception state.⁶⁶ On the other hand, other scholars like Zimmermann proclaim that integration is an intermediary stage between refugee establishment in the reception state and his naturalization.

In fact, on the one side, integration is a long process which needs to be started as soon as possible upon arrival of the refugee in the receiving country. On the other side, for acquisition

66 Boubock, R. and Tripkovic, M., (Eds.), *the Integration of Migrants and Refugees*, (2017), p.24.

of citizenship in the reception state, depending on the immigration law of the respective state, a refugee needs to stay in the country of refuge for a quite prolonged period of time.⁶⁷ However, in many cases it can be seen that the respective refugee has been involved in many activities in the host state while he has not still acquired the citizenship of the host country.

According to some scholars like Hathaway, integration means to make refugees capable of enjoying all rights that exist within the Refugee Convention and other related instruments. Given that, integration is in fact the whole rights which refugees obtain under refugee-related instruments including the 1951 Geneva Convention.

The rights which would be only granted to those who have already acquired the citizenship of the receiving country are political rights. As Hathaway rightly points out, these political rights are the most profound gap between refugees and citizens of the host state. Therefore, he concludes that integration of refugees would be completed through naturalization because only under this scenario the refugee can enjoy political rights.

1.4.1 Impacts of Citizenship on Socio-Economic Integration of Refugees

One of the best ways to become a full and equal member of society is the acquisition of citizenship through the naturalization process.⁶⁸ Nevertheless, sometimes due to the existence of various barriers, such as high costs or complicated requirements, refugees are discouraged from applying for citizenship.⁶⁹

Moreover, the effects of citizenship on integration of refugees might depend both on the receiving countries' institutional context under which citizenship (or other alternative legal status) are granted to the refugees and also on the personal context and life circumstances of an individual refugee.⁷⁰ Hence, such an effect could vary from country to country. However, within this part, the focus will be on the relationship between citizenship and the socio-economic integration of refugees, to explore whether citizenship matters for the socio-economic integration of refugees into the reception society?

According to research in the Netherlands, acquisition of citizenship could raise the chance of refugees being employed in the labor market. It might include an increase of 12 and 13 percent

67 For example, in some European countries the obligatory length for getting citizenship is more than 5 years.

68 Boubock and Tripkovic, (Eds.), the Integration of Migrants and Refugees, p.24.

69 Boubock and Tripkovic, (Eds.), the Integration of Migrants and Refugees, p.24.

70 Boubock and Tripkovic, (Eds.), the Integration of Migrants and Refugees, p.26.

for men and women, respectively.⁷¹ Actually, according to the theory of anticipation citizenship, as migrants get closer to the naturalization moment, their chance to have paid employment would be increased so that it is doubled at the time of naturalization compared to three years before naturalization.⁷²

The reason might be because as refugees approach the moment of naturalization, the employers identify and accept that these potential laborers have more qualifications and skills (such as language and civic knowledge) than newly arriving refugees. Naturalized refugees anticipate the advantages that acquisition of citizenship will provide them, such as access to more job opportunities in the labor market.

Thus, according to this idea, early acquisition of the host country's citizenship accelerates the integration process of refugees.⁷³ For instance, according to research in the Netherlands,⁷⁴ when the naturalization process happens too late, the chances for refugees to have well-paid employment decrease, which also affects their integration into the host society.⁷⁵

Nevertheless, there are two major opposing attitudes about the implication of naturalization on integration. According to the first view, acquisition of citizenship acts as a catalyst promoting the integration process of refugees.⁷⁶

Given that, naturalization provides required resources including economic and social resources, as well as motivation for refugees to be further integrated into the reception society. In other words, naturalized refugees would obtain more rights and responsibilities in comparison with non-naturalized ones. Therefore, they will have a better chance to be effectively integrated.⁷⁷ For example, they might have equal chances for being employed in some public sector jobs as natives, or receive higher salaries due to being hired for better positions.

Furthermore, naturalized refugees feel a stronger connection to the host society and have a stronger sense of attachment to their new country. And, from the point of view of native people, naturalized refugees are considered their true equals and they are accepted more easily and openly. As a result, it can enhance refugee's self-confidence and consequently improve their

71 Peters, F., Vink, M. P. and Schmeets, H., *Anticipating the Citizenship Premium: Before and After Effects of Immigrant Naturalization on Employment*, (2018), p.9.

72 Boubock and Tripkovic, (Eds.), *the Integration of Migrants and Refugees*, p.39.

73 Boubock and Tripkovic, (Eds.), *the Integration of Migrants and Refugees*, p.39.

74 This research has been done by Maarten Peter Vink in 2016.

75 Boubock and Tripkovic, (Eds.) *the Integration of Migrants and Refugees*, p.39.

76 Hainmueller, J., Hangartner, D. and Pierrantuono, G., *Catalyst or Crown: Does Naturalization Promote the Long-Term Social Integration of Immigrants?*, (2017), p. 260.

77 Hainmueller, Hangartner and Pierrantuono, *Catalyst or Crown: Does Naturalization Promote the Long-Term Social Integration of Immigrants?*, p.260.

social interaction with the native people.⁷⁸ However, the most important method of facilitating naturalization proceedings for refugees is the simplification of all the stringent and complicated requirements of citizenship which could discourage refugees from applying for naturalization.⁷⁹

A second theory considers naturalization a reward which is solely granted to those refugees who have already completed their integration process. According to this perspective, refugees must improve their integration to acquire citizenship of the reception country.⁸⁰ In other words, naturalization does not promote integration, but will be granted once the qualified refugees completed their integration process. Therefore, the outcome would be the imposition of high requirements for acquisition of the host country's citizenship, which means it is only granted to those refugees who are well integrated into the host society.⁸¹ These two distinct views result in different naturalization policies.

Another important issue is the impact of the timing of the naturalization process on refugees' socio-economic integration. Indeed, according to the two approaches just described, earlier or later naturalization can have different consequences for the integration of refugees. For example, in the case of considering naturalization as a catalyst and a factor that fosters refugees' integration, earlier acquisition of citizenship is beneficial for the integration of refugees.⁸² In fact, under this scenario, the naturalized refugees would need quite a long time and require adequate resources, as well as further benefits, to improve their integration into the host community. Thus, this perspective supports an early and easy naturalization policy.⁸³

On the other side, in accordance with the attitude that considers integration as a condition for acquisition of citizenship,⁸⁴ delayed naturalization is more favored. Indeed, as mentioned

78 Hainmueller, Hangartner and Pietrantuono, *Catalyst or Crown: Does Naturalization Promote the Long-Term Social Integration of Immigrants?*, p.259.

79 Hainmueller, Hangartner and Pietrantuono, *Catalyst or Crown: Does Naturalization Promote the Long-Term Social Integration of Immigrants?*, p.260.

80 Hainmueller, Hangartner and Pietrantuono, *Catalyst or Crown: Does Naturalization Promote the Long-Term Social Integration of Immigrants?*, p.260.

81 As in Switzerland, one politician has stated that route to naturalization should be like "marathon", not "a short distance run."

82 Hainmueller, Hangartner and Pietrantuono, *Catalyst or Crown: Does Naturalization Promote the Long-Term Social Integration of Immigrants?*, p.260.

83 Hainmueller, Hangartner and Pietrantuono, *Catalyst or Crown: Does Naturalization Promote the Long-Term Social Integration of Immigrants?*, p.260.

84 There is a research in Switzerland which indicates naturalization has had most positive effects on most marginalized refugees from Turkey and the former Yugoslavia. Thus, this is in stark contrast with this opinion which citizenship should be granted to most well-integrated refugees who have been long time in the host countries. See also Hainmueller, J., Hangartner, D. and Pietrantuono, G., *Catalyst or Crown: Does Naturalization Promote the Long-Term Social Integration of Immigrants?*, (2017), p.271.

before, this view recognizes integration as a condition for the acquisition of the host state's citizenship.

It argues that early naturalization would ruin the motivation of refugees towards integration because in this situation, they have already gained the citizenship of the host country and are not incentivized any more towards integration to be eligible for citizenship. As a result, earlier naturalization might inhibit refugees from being perfectly and appropriately integrated into the receiving society.⁸⁵

Moreover, refugees with a long residency background in the country of refuge are better equipped than newly arrived refugees to take advantage of a naturalization opportunity than groups which have arrived later.⁸⁶ For example, a group of refugees who have been in the host country for a quite long time, would speak the language of country better and/or have further financial resources and social networks.

85 Hainmueller, Hangartner and Pietrantuono, *Catalyst or Crown: Does Naturalization Promote the Long-Term Social Integration of Immigrants?*, p.260.

86 Hainmueller, Hangartner and Pietrantuono, *Catalyst or Crown: Does Naturalization Promote the Long-Term Social Integration of Immigrants?*, p.260.

1.5 Conclusion

What is clear from Art. 34 is that assimilation can be considered as a tool to facilitate naturalization of refugees. Although assimilation and naturalization are different concepts, there is a link between them as described within this article. In fact, Art. 34 states that: “*The Contracting States shall as far as possible facilitate the **assimilation** and **naturalization** of refugees....*” Thus, it is clear that the authors intended to make a distinction between these two concepts. They would not identify assimilation beside naturalization if they believed these two concepts had the same meaning.

Indeed, according to Zimmermann assimilation is an instrument to simplify and facilitate the naturalization of refugees by further integrating them into the social, economic, and cultural life of the reception country. For example, education is an effective and significant tool to help refugees particularly children to be integrated into the new environment where they live. Assimilation can be considered as a method to overcome isolation and achieve the main goal, to give refugees an opportunity for being dynamically engaged in the socio-economic activities of daily life within the host community.

Zimmermann refers to the drafting history of Art. 34 and writes⁸⁷ “*a state might not be prepared to grant naturalization if the refugee was not assimilated. The notion of assimilation was thus linked to the mere fact of permanent settlement of immigrants.*”⁸⁸

The second part of this statement highlights two important points. Firstly, it demonstrates that the integral part for acquisition of the host country’s citizenship is assimilation. Secondly, it proves that assimilation and local integration are identical. In fact, the phrase “permanent settlement of immigrants” refers to local integration of immigrants (refugees), though the drafters at that time used the so-called old-fashioned term assimilation for that.

He continues that, in accordance with Art. 34, assimilation is “*an apt description of a certain stage in the development of the life of the refugee and to the general refugee problem. Indeed, it clearly corresponds to the conditions the refugee should fulfil in order to qualify for naturalization.*”⁸⁹

Interestingly, Zimmermann in fact confirms Hathaway’s opinion when he refers to Hathaway’s statement;⁹⁰ “*so convinced assimilation is not about compelling refugees to change their identity and*

87 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1449.

88 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1449.

89 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1449.

90 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1449.

their individual way of life, but rather a means of giving refugees a fair chance to persuade states of their suitability for citizenship."⁹¹

Consequently, it can be understood that assimilation is an effective instrument that helps refugees convince their host states to grant them citizenship. Indeed, refugee integration is a stage before naturalization which can prepare refugees quickly and appropriately for acquisition of host country's citizenship.

Likewise, states are more interested in granting citizenship to refugees who are more integrated into their society. For instance, refugees who are not able to speak the host state's language are more at risk of isolation and having their citizenship application rejected. Accordingly, Zimmermann's view about considering assimilation as a certain stage in which a refugee's life is developed is correct. It is a reasonable message, that to obtain citizenship from the host government, a refugee would first need to be integrated into the new society in which he lives. Therefore, the integration process is an essential and crucial step toward applying for naturalization.

⁹¹ As mentioned repeatedly in previous part, this emphasis of Hathaway's statement by Zimmermann indicates that he also, like many other legal scholars, assumes term assimilation within Art. 34 identical with integration.

2 Chapter II: Integration of Refugees through Education

In this chapter, the focus will be on the refugee's right to education. Firstly, I would explore the different articles pertaining to the right to education in the 1951 Geneva Convention and other international human rights law instruments such as the ICESCR and the ICCPR. Secondly, these articles will be discussed to understand and identify the legal gaps that exist in these provisions, as well as to explore potential resolutions for filling these gaps.

In fact, when discussing these various regulations and comparing them, those provisions that best protect a refugee's right to education will be identified to be used in the context of refugees' integration. Finally, some best practices and policy recommendations in terms of resolving problems of educational integration of refugees are proposed.

As mentioned, Art. 34 of the 1951 Geneva Convention speaks expressly about the facilitation of assimilation (integration) and naturalization proceedings. Thus, it means that refugees should enjoy and have access to all rights and entitlements which are essential for their integration and citizenship in the reception country.⁹²

Education is not only a right, but also a crucial means to realize other human rights.⁹³ It might be identified as a primary and vital instrument, which allows refugees to flee from poverty and improve their financial situation and consequently take strong steps toward integration into the host community.⁹⁴

UNESCO identifies education as “a fundamental human right and essential for the exercise of all other human rights.”⁹⁵ It promotes individual freedom and empowerment and yields important development benefits.⁹⁶ Therefore, the right to education is one of the fundamental rights and has been enunciated in many national, regional, and international human rights laws including the 1951 Refugee Convention and the ICESCR.

Importantly, enabling refugees to have appropriate access to the educational facilities, is one of the main responsibilities of the receiving states toward refugees which has great implications on their integration. In this regard, it is also included in Sustainable Development Goal 4, which

92 UNHCR, *UNHCR Notes on Refugee Integration in Central Europe*, (2009), p.10.

93 Eide, A., Krause, C. and Rosas, A., (Eds.), *Economic, Social and Cultural Rights*, (1995), p.189.

94 UNHCR, *UNHCR Notes on Refugee Integration in Central Europe*, p.19.

95 Eide, Krause and Rosas, (Eds.), *Economic, Social and Cultural Rights*, p.189.

96 González Fernández, J., *International Legal Protection of the Right to Education for Refugees and Asylum Seekers*, (2017), p.20.

ensures an equitable and inclusive access to good quality education for all people (including refugees).⁹⁷

According to the Agenda 2030 for Sustainable Development, education plays a crucial role in providing long-term resolutions for refugees. Indeed, through education, refugees acquire essential equipment for rebuilding their lives and communities, either in the reception country or upon their return to the country of origin.⁹⁸

Education can be the primary worry of refugees on arrival. Anxiety about children's education and their future in the new country, leads refugee parents to take serious actions toward the education of their children.

The role of education in fostering refugees' chances of finding employment and then becoming self-reliant cannot be forgotten.⁹⁹ Educational development enhances refugees' skills, which can ultimately result in professional development and sustainable livelihoods.¹⁰⁰ Educational centers are important places of integration, where refugees are able to improve their knowledge and skills, ultimately leading them to become less reliant on any financial assistance provided by the host states or other external stakeholders.¹⁰¹

Furthermore, Education can play a significant role in intensifying peace, justice and understanding in societies. It can also lead to active citizenship and create more responsible citizens by increasing citizens' personal abilities and skills.¹⁰² Education can be used as an instrument to reduce terrorism and all forms of violent activities in societies as well as in the international community.¹⁰³ However, according to the UNHCR's statistics "only 61 per cent of refugee children attend primary school, compared to 92 per cent of children globally."¹⁰⁴ In addition, "the UN Refugee Agency reveals that refugee girls at secondary level, are only half

97 See the 2030 Agenda for Sustainable Development, (Goal 4: ensure inclusive and equitable quality education and promote lifelong learning opportunities for all).

98 Moumné, R. and Sakai, L., *Protecting the Right to Education for Refugees*, (2017), p.16.

99 Eide, Krause and Rosas, (Eds.), *Economic, Social and Cultural rights*, p.189.

100 Moumné and Sakai, *Protecting the Right to Education for Refugees*, p.6.

101 Marchisio, S., *Dritto All'Istruzione E Integrazione Dei Rifugiati*, (2018), p.274. See also Committee on Economic, Social and Cultural Rights (CESCR), *The Duties of States Towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights*, (2017), p.3.

102 Moumné and Sakai, *Protecting the Right to Education for Refugees*, p.6.

103 Moumné and Sakai, *Protecting the Right to Education for Refugees*, p.6.

104 UNHCR, *Four Million Refugee Children Go Without Schooling: UNHCR Report*, <https://www.unhcr.org/news/latest/2018/8/5b86342b4/four-million-refugee-children-schooling-unhcr-report.html>.

as likely to enroll in school as their male peers, even though girls are half of the school-age refugee population.”¹⁰⁵

This might be due to barriers such as traditional social values and cultural conventions which impede girls attending school. According to the UNHCR around 85 per cent of refugees are settled in developing states. Therefore, it cannot be expected that refugees in the less developed countries will have good access to educational facilities.

Given that these countries may be unable to provide full educational programs for their citizens, refugees residing in their territories will fare no better, and will more likely have less access to educational programs than the indigenous children. Thus, financial constraints can be considered as one of the most crucial factors in causing educational deficiencies in the context of refugee protection.¹⁰⁶

Moreover, parents may fear loss of cultural identity by the education of their children in the country of refuge. As Hathaway mentions, the hope of eventual repatriation to the country of origin by refugees and their strong wish to retain the cultural identity of their children is a challenging situation for parents.¹⁰⁷ The requirement of some receiving states to oblige refugees to study in the national language of their new country could make refugee parents concerned about keeping the cultural identity of their children and their repatriation.

However, sometimes preventing refugees from gaining access to the education is simply done by the receiving states to discourage them from seeking asylum. Host states may try to discourage existing refugees and/or potential ones who might seek asylum by denying educational opportunities to them.¹⁰⁸

2.1 Different Articles Describing the Right to Education for Refugees

Education as a fundamental human right was recognized for the first time by Art. 26 of the 1948 Universal Declaration of Human Rights (UDHR).¹⁰⁹ It stipulates that:

1. “Everyone has the right to education. Education shall be free, at least in the elementary and

105 UNHCR, *Her Turn: UNHCR Report Reveals Critical Gap in Education for Refugee Girls*, <https://www.unhcr.org/news/press/2018/3/5a9eb2024/turn-unhcr-report-reveals-critical-gap-education-refugee-girls.html>.

106 Hathaway, *the Rights of Refugees Under International Law*, p.586-587.

107 Hathaway, *the Rights of Refugees Under International Law*, p.584.

108 Hathaway, *the Rights of Refugees Under International Law*, p.586.

109 Beiter, K. D., *the Protection of the Right to Education by International Law*, (2006), p.86. See also Marchisio, S., *Dritto All’Istruzione E Integrazione Dei Rifugiati*, (2018), p.268.

fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”¹¹⁰

2. *Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.*¹¹¹

3. *Parents have a prior right to choose the kind of education that shall be given to their children.*”¹¹²

Though the 1948 UDHR can be considered as a soft law instrument, its principles such as Art. 26 have been reflected in many international legally binding instruments (hard laws) which impose enforceable obligations on Member States. In addition to provide direct moral and political commitments for states, the reflection of such soft law regulations within other international treaties create legally binding influence on State Parties by proxy. For instance, in subsequent years, other international human rights law instruments such as Art. 13 of the ICESCR have used the content of this article (para 2 of Article 26). According to some scholars,¹¹³ Arts. 13 & 14 are comprehensive and might be considered to have codified the right to education in international law.

Three important elements can be identified from the text of Art. 26 of the UDHR. Firstly, the right to education is an individual right with no discrimination based on any prohibited grounds such as race, religion, skin, sex, age, nationality, social origin, or political opinions. Secondly, it not only requires free and compulsory primary education, but it also discusses technical and professional education which should be made generally available as well as equal access to higher education for all people on the base of merit. Finally, Art. 26 like other international law, refers to the prior right of parents to choose the kind of education that their children should receive.¹¹⁴

110 This paragraph refers to the social aspect of the right to education as it asks the states to positively take steps toward realization of the different levels of education. See also Beiter, K. D., *The Protection of the Right to Education by International Law*, (2006), p.91.

111 This paragraph demonstrates the purposes of education. See also Beiter, K. D., *the Protection of the Right to Education by International Law*, (2006), p.92.

111 Marchisio, Dritto All'Istruzione E Integrazione Dei Rifugiati, p.269.

112 This paragraph reflects the freedom dimension of the right to education. The aim of this part of Art. 26 is in fact to protect children against state indoctrination. See also Dieter Beiter, *The Protection of the Right to Education by International Law*, p.93.

112 Marchisio, Dritto All'Istruzione E Integrazione Dei Rifugiati, p.269.

113 Beiter, *the Protection of the Right to Education by International Law*, p.86.

114 Marchisio, Dritto All'Istruzione E Integrazione Dei Rifugiati, p.269.

Interestingly, Art. 26 indicates that education is crucial for the full development of the human personality and their dignity, as well as being necessary to protect other fundamental human rights. Thus, education can empower people to become a functional part of the life of a free society.¹¹⁵ Hence, the right to education plays a significant role in integration processes for all people, especially refugees.

However, in addition to Art. 22 of the 1951 Geneva Convention relating to public education, which is considered a specific regulation in terms of refugee's right to education, there are also many other provisions and regulations about the right to education.

These regulations which are in other international hard law instruments, can be extended to the situation of refugees as well.¹¹⁶ For instance, Art. 13 and 14 of the 1966 ICESCR, Art. 5(v) of the 1969 Convention on Elimination of All Forms of Racial Discrimination (CERD), Arts. 28 & 29 of the 1989 Convention on the Rights of the Child (CRC), Art. 10 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as well as Art. 24 of the Convention on the rights of Persons with Disabilities. The legal standards provided by the UNESCO such as the 1960 Convention against Discrimination in Education are also relevant in the context of educational protection of refugees.

Furthermore, at European level, Art. 2 of the Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms¹¹⁷ as well as Art. 14 of the Charter of Fundamental Rights of the European Union both refer to the right to education in general.¹¹⁸

In terms of the right to education for refugees, the most important legal provisions include Art. 27 of Directive 2011/95/EU of the European parliament and of the Council (2011)¹¹⁹ and Art. 14 of Directive 2013/33/EU of the European parliament and of the Council (2013).¹²⁰

115 Marchisio, *Dritto All'Istruzione E Integrazione Dei Rifugiati*, p.269.

116 Moumné and Sakai, *Protecting the Right to Education for Refugees*, p.16.

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

118 Art. 14: "1. Everyone has the right to education and to have access to vocational and continuing training. 2. This right includes the possibility to receive free compulsory education. 3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right."

119 Art. 27: "(1) Member States shall grant full access to the education system to all minors granted international protection, under the same conditions as nationals. (2) Member States shall allow adults granted international protection access to the general education system, further training or retraining, under the same conditions as third country nationals legally resident."

120 Art. 14: "(1) Member States shall grant to minor children of applicants and to applicants who are minors access to the education system under similar conditions as their own nationals for so long as an expulsion measure against them or their parents is not actually enforced. Such education may be provided in accommodation centres. The Member State concerned may stipulate that such access must be confined to the State education system."

Before discussing these different articles and provisions, it is necessary to describe the nature of refugee education in the host state.

2.2 Conflicts Over the Nature of Refugee Education

One of the challenges frequently seen between refugees and host communities and even international agencies, is conflict over the nature and substance of refugee education. Given that, sometimes there is no agreement on which of the durable solutions including voluntary repatriation, local integration and resettlement is most appropriate for refugees.¹²¹

For example, some developed countries schedule methodologies with more western and industrial features for the educational curriculum they arrange for local integration of refugees, while refugees may have a background that is completely different. In fact, as they hope to return to their countries one day, they are more interested in a curriculum which is appropriate for that expectation. They prefer a curriculum intended to prepare them to serve their people and country when they return to their homeland. As a result, in this situation the key question is:

Should the educational curriculum be integration-oriented or based on a repatriation approach?

In these circumstances, as Hathaway points out, if there is any certainty that refugees would be returned to their country of origin, then the educational curriculum must be adapted to a repatriation-oriented method.¹²² This trend is in line with UNHCR's attitude, as it usually advocates such methods of teaching in the host state's educational institutions. However, in most cases refugees are not certain of their return to their countries of origin. Uncertainty is so frequently a part of refugee's status, that states cannot be obliged to fund and prepare such repatriation-oriented curriculum in their educational institutions.¹²³

Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority. (2) Access to the education system shall not be postponed for more than three months from the date on which the application for international protection was lodged by or on behalf of the minor. 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 as set out in paragraph 1. (3) Where access to the education system as set out in paragraph 1 is not possible due to the specific situation of the minor, the Member State concerned shall offer other education arrangements in accordance with its national law and practice.”

121 Hathaway, *the Rights of Refugees Under International Law*, p.588.

122 Hathaway, *the Rights of Refugees Under International Law*, p.606.

123 Hathaway, *the Rights of Refugees Under International Law*, p.588.

However, it must be mentioned that providing refugee-specific education by the host state should be based on compelling reasons, rather than merely due to a matter of organizational expedience.¹²⁴

2.3 Article 22 of the 1951 Geneva Convention

In this part, the focus will be on discussing and analyzing the legal regime of Art. 22 of the 1951 Geneva Convention. This article has two paragraphs, the first discusses elementary education and the second one speaks about education other than elementary education. This article under the heading of “Public Education” highlights that:

1. *“The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.*

2. *The Contracting States shall accord to refugees, treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.”*

This article deals with learning in schools, colleges, faculties, universities, courses, and other educational establishments.¹²⁵ In addition, as it is clear from its title, it encompasses only education supplied by public authorities and any education that is totally or partially provided by public funds. Thus, private educational institutions cannot be covered by provisions in this article. Moreover, according to Zimmermann, and as the drafting history of Art. 22 also points out, the Ad Hoc Committee on Statelessness and Related Problems, explicitly mentions in its report that:

“The Committee intended this provision to apply to education conducted by public authorities with public funds and to any education subsidized in part or whole by public funds. It does not apply to private educational activities.”¹²⁶

Likewise, as can be understood from the wording of Art. 22, it includes different legal frameworks relating to all the various levels of education, ranging from elementary education to higher education. These diverse legal standards will be discussed in the following section.

124 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1034.

125 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1022-1023.

126 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1024.

2.3.1 Analysis of Para 1 of Art. 22 of the 1951 Refugee Convention

In this section, the focus will be on Art. 22(1) and refugees' rights to primary education. Furthermore, the distinct aspects of the legal protections included in this provision are discussed.

Article 22.1 states that:

“The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.”

According to the wording of Art. 22.1, Member States have to treat refugees in the same way as they treat the nationals of their countries with respect to elementary education. Firstly, it must be noted that in line with the drafting history of this article, elementary education means primary education. The French version of the 1951 Refugee Convention changed the word *“l'enseignement élémentaire”* to *“l'enseignement primaire.”*¹²⁷

However, while according to this interpretation, elementary education is identical to primary education, an analysis of the definition of this phrase as it is enunciated in other legal instruments will be undertaken. For example, Art. 13.2 (a) of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), Art. 28.1 (a) of the 1989 Convention on the Rights of the Child (CRC) and even Art. 26 of the UDHR can be important in this regard. The latter considers elementary education as a part of the broader concept of fundamental education.

In fact, elementary education includes basic education like literacy, basic mathematics, and basic civic education.¹²⁸ With regard to the meaning of basic education, it can be also useful to consider Art. 1.1 of the 1990 World Declaration on Education for All. As it stipulates that:

“Every person – child, youth and adult – shall be able to benefit from educational opportunities designed to meet their basic learning needs. These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning. The scope of basic learning needs and how they should be met varies with individual countries and cultures, and inevitably, changes with the passage of time.”

127 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1035.

128 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1035.

Thus, the term “primary education” used by both Art. 13.2 (a)¹²⁹ of the ICESCR and Art. 28.1 (a)¹³⁰ of the CRC could be interpreted in line with the content of basic learning needs defined by Art. 1.1 of the World Declaration on Education for All.¹³¹ However, as this article indicates, the scope of basic learning needs and the way to reach them might vary, according to the specific conditions and culture of each country and over time. Consequently, the scope, form, and content of elementary education can vary from country to country.

While the term “elementary education” provided by Art. 22.1 of the Refugee Convention is not considered synonymous with the concept of basic education as used by the World Declaration on Education for All, it contains same meaning of the term “primary education” used in the relevant articles of the ICESCR and the CRC.¹³² Another significant question is:

Does Art. 22.1 refer only to the refugee children or are adults included as well?

What is clear from the wording of this article is that there is no age limitation in it; Art. 22.1 does not say that its scope is limited only to refugee children. It merely articulates that refugees are to be treated as nationals with respect to elementary education, and it therefore applies to every refugee, regardless of their age.

In addition, Zimmermann believes that this interpretation is also in line with the content of Art. 26.1 of the UDHR which provides that:

“Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”

In fact, he argues that Art. 26.1 of the UDHR includes a right to education for everyone.¹³³ Consequently, adults who did not receive any elementary education during their childhood could be granted such elementary education. But contrary to this opinion, from the clause

129 Art. 13(2): “The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all.”

130 Art. 28(1): “States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all.”

131 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1035.

132 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1036.

133 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1037.

“Education shall be free, at least in elementary and fundamental stages,” it could be that the drafters meant to make a distinction between elementary and fundamental education.

Fundamental stages of education apply to those adults who have not previously received or completed their elementary education. This view is confirmed by Art. 13.2 of the ICESCR which similarly distinguishes between elementary and fundamental education. In para 2 (a) it states that: “Primary education shall be compulsory and available free to all”, and later in para 2 (d) highlights: “Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.”

As a result, in accordance with the ICESCR, primary education refers only to the education of children thus those adults who have not received or completed their primary education during their childhood can be protected by being offered fundamental education, which is not compulsory, but it is highly encouraged.

Therefore, this way of interpretation of Art. 13.2 can be used for Art. 22.1 of the 1951 Geneva Convention as well. Moreover, as Zimmermann points out, such interpretation is confirmed by the opinion of the Secretary General regarding elementary education of stateless people. He demonstrates that, the Secretary General addresses only stateless children when it comes to the need of elementary education. However, stateless persons are defined without any age limitation when considering other forms of education.¹³⁴ Hence, it is appropriate to note that Art. 22.1 of the Refugee Convention only refers to refugee children and not adults.

Secondly, this article does not mention anything concerning the right of refugees to elementary education, in fact it only speaks about treating refugees like nationals of the host state regarding elementary education. Furthermore, it also has no provision regarding the substance and the extent of the education granted to refugees.¹³⁵

Before discussing the issues mentioned above, there is another crucial question which is quite relevant to these points and it is also interconnected to the phrase “the same treatment as is accorded to nationals with respect to elementary education.” The question which is raised is:

Do the host states, in accordance with Art. 22.1, have an obligation to make elementary (primary) education compulsory and free of charge for refugees?

As it can be understood from the wording of Art. 22.1, “the same treatment as is accorded to nationals...,” there is no doubt that unless in the receiving state’s educational system, the

134 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1037.

135 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1032.

elementary education is compulsory and free for nationals then it must be the same for refugees as well. Refugees must be granted equal treatment as is enjoyed by nationals in respect of elementary education. In addition, as Zimmerman notes, it can be seen in the drafting history of the Refugee Convention, that this provision is genuinely inspired by Art. 26¹³⁶ of the 1948 United Nations Declaration on Human Rights.¹³⁷

Thus, an interpretation that considers primary education mandatory and free of charge for refugees would be in line with Art. 26 of the UDHR, and would protect refugees more favourably in terms of primary education.

Furthermore, it is noted that, the 1960 UNESCO Convention against Discrimination in Education has the relevant obligations which Contracting States must consider when planning equal treatment and educational opportunity.

One of the strategies to strengthen equality of treatment and provision of the same educational opportunity for all, is to make education free and compulsory. This obligation can include criteria based on age and certain educational attainment, such as only for primary education students.¹³⁸ However, there are two main points about the principle of equal treatment regarding refugees' primary education.

Firstly, an accurate implementation of equal treatment implies that refugees have equal opportunities to access and enjoy primary education without discrimination. Therefore, any kind of discrimination hampering refugees from the full realization of their right to gain access to and enjoyment from compulsory and free primary education cannot be acceptable.¹³⁹

Secondly, from an international law point of view, making primary education compulsory and completely free of charge for refugees can be considered as an obligation, which Member States are required to provide.¹⁴⁰ For instance, the Contracting States that support their citizens through free and compulsory primary education, should also protect refugees similarly. Another question is:

136 Art. 26: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory...." Regarding principle of free and compulsory primary education, see also Art. 13(2) (a) of the ICESCR, Art. 28(1) (a) of the CRC as well as Art. 4(a) of the UNESCO Convention against Discrimination in Education.

137 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1033.

138 This is the case for many countries in the world.

139 Other provisions of international law regarding prohibition of discrimination in right to education are: Art. 5 (e) (v) of the 1965 CERD, Art. 10 of the 1979 CEDAW as well as Art. 5(2) of the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief.

140 Eide, Krause and Rosas, (Eds.), Economic, Social and Cultural Rights, p.199.

What is the scope of States' responsibilities to provide education? Would building new educational institutions be required or is it sufficient to guarantee equal access to existing schools?

As it can be understood from para 1 of Art. 22, Member States are not obliged to actively build and establish new educational institutions. It seems sufficient to guarantee having equal access to the existing schools.¹⁴¹ However, it is agreed in legal literature that there should be no limitations of any kind regarding access to primary education. State Parties must at least guarantee the provision of minimum educational institutions and facilities. As a result, Contracting States have a main responsibility in ensuring that every refugee has access to, and enjoys free and compulsory primary education provided at a standard that is equal to that provided to their own nationals.

2.3.2 A Merit-Based Standard Under Art. 22.2 of the 1951 Refugee Convention with Regard to Post-Elementary Education

Article 22(2) of the 1951 Geneva Convention describes a merit-based evaluation of access to secondary and higher educational. It stipulates that:

“The Contracting States shall accord to refugees, treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.”

As previously mentioned, para 2 of Art. 22 provides a lower standard with respect to secondary and higher education than paragraph 1. Moreover, in opposition to this article, Art. 13(2) of the ICESCR under clauses (b) and (c) provides that education other than elementary education must be available and accessible to all.¹⁴² This article will be discussed in the next sections.

141 Eide, Krause and Rosas, (Eds.), Economic, Social and Cultural Rights, p.197.

142 Art. 13(2): “(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.”

In fact, Art. 22(2) of the Refugee Convention has a lower standard than Art. 13(2) of the ICESCR in terms of the right to post-elementary education. Thus, it is more useful and protective for refugees to invoke Art. 13(2) instead of Art. 22(2).

Besides, it can be realized from the text of Art. 13(2) that, even though this provision makes a distinction between secondary education and higher education (e.g. college & university), it does however consider technical and vocational education as a form of secondary education.¹⁴³ It also makes clear that without financial support, the duty of making education accessible and available for all cannot be realized. Therefore, in paragraph (e) it says:

“The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.”¹⁴⁴

In fact, para (e) of Art. 13.2 complements the Art. 22(2) of the Refugee Convention as the latter emphasizes providing refugees treatment like aliens in general in respect to the remission of fees and charges, and the granting of scholarships regarding post-elementary education.

This less protective standard can trigger unavoidable barriers for those refugees who want to apply for secondary and university education. According to the UNHCR’s statistics “today only 3 per cent of eligible refugees have access to higher education, compared to 37 per cent of global youth.”¹⁴⁵

However, it is essential to firstly describe and analyze some phrases in para 2 of Article 22. For instance, the phrase “in the same circumstances” should be read in conjunction with Art. 6 of the Refugee Convention. This article, under the heading of the term “in the same circumstances” provides that:

“For the purposes of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfill for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.”

Thus, as can be seen in Art. 6, refugees must fulfill all requirements such as length and conditions of sojourn or residence which are obligatory for enjoying the rights provided by Art.

143 Hathaway, *The Rights of Refugees Under International Law*, p.612.

144 This paragraph will be discussed in the next section.

145 UNHCR, *Tertiary Education*, (n.d.), <https://www.unhcr.org/tertiary-education.html>.

22.2 with an exception to those requirements granted if, by their very nature, they are impossible to fulfill. For example, the country of refuge cannot ask a refugee to provide documents indicating his/her birth in its territory as a condition of enjoying the educational rights enumerated in Art. 22(2) even though other aliens must satisfy this sort of requirement.¹⁴⁶ In addition, the clause “education other than elementary education” refers to all types of education that are not considered elementary (primary) education including various levels of both secondary and university education.¹⁴⁷ Likewise, Art. 22(2) speaks about “the recognition of foreign school certificates, diplomas and degrees....” Thus, this question might be raised that:

Is recognition of foreign diplomas only important for educational purposes or it can also be used to establish credentials for professionals who have earned their diploma?

As it is clear from the content of para 2, its main purpose is to focus on post-elementary education in the context of the rights of refugees. This view can be complemented by Art. 19.1 of the Refugee Convention regarding the right to use a diploma to exercise a profession.¹⁴⁸ Article 19.1 highlights that:

“Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practicing a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.”

Therefore, according to Art. 22(2) refugees can ask for recognition of their school certificates, diplomas, and degrees that they have received in their original countries solely due to educational purposes. As a result, they must use Art. 19.1 unless they want to apply for a job or other professional purposes by using their foreign diplomas.

It is worth noting that, if all aliens, due to a specific regional instrument, benefit from more privileges for recognition of their diploma, in which the host state is also a member of that regional arrangement, then this higher standard should be granted to refugees as well.¹⁴⁹ This is, in fact in line with the phrase “treatment as favourable as possible” under para 2 of Art. 22, though para 2 requires Contracting States to remit fees and charges. In this case however, Art. 29 proposes more favourable treatment for refugees. It provides that:

146 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1038.

147 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1038.

148 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1040.

149 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1040.

“The Contracting States shall not impose upon refugees, duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.”

Thus, as this provision clarifies refugees shall be treated as nationals of the host country regarding duties, charges or taxes of any description. In fact, the phrase “of any description” means that it can be extended to the educational charges too. Again, as mentioned above, due to the higher protection of this article it can be prioritized over provision of Art. 22(2) which declares refugees would be treated as favourable as possible and, in any event, not less favourable than that accorded to aliens in general.

Finally, according to para 2 of Art. 22, refugees must be awarded scholarships as favourable as possible and, in any event, not less favourable than that accorded to aliens in general in the same circumstances. But the question is:

Should this scholarship include both individual scholarships and those supplied by private educational institutions?

For replying to this question, we need to consider the general meaning of Article 22(2). As it was explained in the previous part, Art. 22 focuses only on public educational facilities and not private institutions.

Accordingly, it does not contain any scholarship which is supplied by the individual or private institutions. However, what is clear is that if this scholarship is funded by the respective state and is given to a private institution to distribute among the qualified students, then eligible refugees can also have a right to access to it in accordance with Article 22(2).¹⁵⁰ The other key question which can be raised is:

Should refugees have a right under Art. 22(2) to gain access to a scholarship, when it is based on a reciprocal agreement between the host state and another foreign state?

As usual, the potential response could be realized from the wording of Article 22(2). Indeed, it demonstrates that refugees would be treated as favourable as aliens in general, in terms of scholarships when they are “in the same circumstances.” However, once the country of refuge awards scholarships exclusively to particular aliens, who come from a country which has a reciprocal agreement with the receiving state for granting scholarships, then this means that

150 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1041.

these aliens and refugees are not in the same circumstances. Consequently, in line with provision of para 2, refugees cannot be covered by this type of scholarship which is based merely on a reciprocal agreement.¹⁵¹ In the next part, the normative content of Art. 13 of the 1966 ICESCR will be discussed.

2.4 Normative Content of Art. 13 of the 1966 ICESCR

Article 13 of the ICESCR¹⁵² is most inclusive and complete article on the right to education in international human rights law.¹⁵³ The first paragraph of this provision is quite like Art. 26(2) of the 1948 UDHR.¹⁵⁴

Furthermore, the educational purposes and goals mentioned in Art. 13(1), are in fact expressly in line with the fundamental principles and purposes of the United Nations (UN) encircled in Arts. 1 & 2 of the 1945 Charter of the United Nations.¹⁵⁵ Before discussing this article, it is necessary to speak about its applicability in the context of refugees' rights.

151 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.1041.

152 Art. 13 (1): "The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace. (2). The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved. (3). The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. (4). No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

153 Committee on Economic, Social and Cultural Rights (CESCR), *CESCR General Comment No. 13: The Right to Education (Art. 13)*, (1999), p.1.

154 Art. 26(2): "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace."

155 Committee on Economic, Social and Cultural Rights (CESCR), *CESCR General Comment No. 13: The Right to Education (Art. 13)*, p.1.

According to the first sentence of Art. 13 (“*the States Parties to the present Covenant recognize the right of everyone to education*”) it can be realized that the term “everyone” includes all people living in the Member State concerned, regardless of their legal status.¹⁵⁶

This opinion is also in line with the ICESCR General Comment no. 20 (2009). Indeed, the Committee under the nationality headline states that: “the ground of nationality should not bar access to Covenant rights, e.g. all children in a Member State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care.¹⁵⁷ The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”¹⁵⁸

However, while each State Party to the ICESCR implements Art. 13 in accordance with its own circumstances, but as the Committee on Economic, Social and Cultural Rights (CESCR) states, they must respect the following interrelated and vital requirements.¹⁵⁹ These requirements include:

Availability: it means that Member States should provide enough educational institutions and programmes plus making them available for all people (including refugees). The quantity and quality of facilities and equipment which the respective Member State should provide are based on its own developmental context.¹⁶⁰ For instance, while some facilities, like buildings, fresh water, sanitation services for both sexes, trained teachers, teaching materials and so forth are supplied in many states, only wealthier states, may be able to provide services such as computer laboratories, libraries, and information technology.

Accessibility: Member States must make their educational facilities and programmes reasonably accessible for everyone without any discrimination. Thus, refugees must have access physically and economically to the educational services and programmes.¹⁶¹ In fact, here accessibility means that refugees can easily attend and reach schools as well as

156 Willems, K. and Vernimmen, J., *the Fundamental Human Right to Education for Refugees: Some Legal Remarks*, (2018), p.223.

157 See also Art. 2 of the CRC and the CRC General Comment no. 6 (2005).

158 Paragraph 30 of General Comment no. 30 (2004) of the Committee on the Elimination of All Forms of Racial Discrimination on non-citizens also obliges Member States to “ensure that public educational institutions are open to non-citizens and children of undocumented immigrants residing in the territory of a State party.”

159 Office of the High Commissioner for Human Rights, CESCR General Comment No. 13: The Right to Education (Art. 13), p.2.

160 Eide, Krause and Rosas, (Eds.), *Economic, Social and Cultural Rights*, p.197.

161 Eide, Krause and Rosas, (Eds.), *Economic, Social and Cultural Rights*, p.3.

universities. This may be problematic for those living in remote and rural areas. It also requires that refugees be able to afford the cost of education.¹⁶² The respective state should endorse education of refugees through imposing and implementing supportive national legislations and plans. Thus, this approach would result in facilitation of accessibility to the educational amenities for refugees.¹⁶³ For example, states must facilitate the attendance of those refugees who lack educational or identification documents such as academic qualification or transcripts. In addition, prohibition of discrimination should be unconditional and refugees cannot be discriminated against in any situation. Hence, lack of sufficient resources cannot be considered as a justifiable reason for discrimination.¹⁶⁴

Acceptability: as CESCR¹⁶⁵ notes: “*the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents.*” However, learning in the language of the reception country might impede refugees from entering the national schools directly upon their arrival. Accordingly, providing education in the mother tongue languages of refugees, at least in basic education, and in its initial stages can be considered as a reasonable solution.¹⁶⁶ But it should not be forgotten that the priority is the language of the host state because this is the only way that refugees can integrate quickly into their new society. Therefore, supporting refugees through arranging intensive language courses plays an important role in educational, and in their general social integration.¹⁶⁷

Adaptability: Education should be flexible to adapt to the needs of changing societies.¹⁶⁸ Indeed, the educational system must satisfy the needs of learners who come from diverse cultural and social contexts.¹⁶⁹ For example, Member States can provide flexible and accelerated schools for those older children and adolescent refugees who could not complete

162 Moumné and Sakai, Protecting the Right to Education for Refugees, p.22.

163 Moumné and Sakai, Protecting the Right to Education for Refugees, p.22.

164 Moumné and Sakai, Protecting the Right to Education for Refugees, p.22.

165 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.3.

166 Moumné and Sakai, Protecting the Right to Education for Refugees, p.22.

167 Moumné and Sakai, Protecting the Right to Education for Refugees, p.22.

168 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.3.

169 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.3.

their primary school. These educational programmes can give young refugees a chance to learn skills that they have missed in their original countries. As a result, these flexible and accelerated educational programmes can somewhat decrease unemployment in refugee camps.¹⁷⁰

Finally, as a principle these four interconnected and crucial requirements should be applied by all Member States, thus ensuring the best interests of the students.¹⁷¹

2.4.1 Analysis of Art. 13.2 (a): The Right to Primary Education

Article 13.2 (a) speaks about the right to primary education. It articulates that:

“The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all.”

Before discussing Art. 13.2 (a), it is necessary to mention that in the earlier part the substance and definition of the term “primary education” was discussed fully.¹⁷²

Two key elements are found in this paragraph. Firstly, primary education must be compulsory, and secondly, it should be free of charge for all people.¹⁷³ In course of compulsion, the CESCR stresses¹⁷⁴ that neither parents, nor guardians, nor the states have any discretion to choose whether children can go to primary school. Indeed, education can be considered as a public function that protects children from their parents and from any other economic abuse.¹⁷⁵

However, though Art. 13.2 does not formulate any provision in which the holder of the right to education has a power to choose whether to practice his/her right, the term “compulsory” in paragraph (a) proves that there is no such an option for the holder of the right to primary education. Consequently, all people including refugee children should have full access to a primary education without any discrimination and exceptions, neither from the family of the refugee concerned nor the respective state.

170 Moumné and Sakai, Protecting the Right to Education for Refugees, p.23.

171 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.3.

172 See paragraph 9 of CESCR General Comment No. 13: The Right to Education (Art. 13), (1999), p.4.

173 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.4.

174 See paragraph 6 of General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant), (1999), p.2.

175 Eide, Krause and Rosas, (Eds.), Economic, Social and Cultural Rights, p.205.

The committee also stipulates that the nature of the second feature, “free of charge”, is very obvious.¹⁷⁶ It mentions that all charges and direct costs imposed by government, official authorities or schools should be abolished. These charges might create an enormous barrier for some students to be able to attend primary school. It concludes however, that indirect costs might be allowed, but the Committee must assess them case-by-case.¹⁷⁷ In the following, paragraph 2(b) of Art. 13 concerning the right to secondary education will be evaluated.

2.4.1.1 Analysis of Art. 13.2 (b): The Right to Secondary Education

Article 13.2 (b) includes the right to secondary education. It specifies that:

“Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.”

It is worthy to note, that like the primary education the secondary education also includes availability, accessibility, acceptability, and adaptability elements.¹⁷⁸ According to the CESCR’s view, whereas the structure of secondary education might change from country to country and even over time it does however complete the basic education and raises the chance of life-long learning and human development. Thus, enabling students to be prepared for taking advantage of vocational and higher educational opportunities.¹⁷⁹

The phrase “its different forms” in Art. 13.2 (b) requires States Parties to establish a secondary educational system which contains flexible curricula and delivery systems which can fit with the diverse needs of students from various social and cultural backgrounds. In this respect, we can refer to the “alternative” educational programme initiatives alongside regular secondary education in the Member States. These sorts of educations are highly supported by the CESCR.¹⁸⁰

176 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.2.

177 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.2.

178 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.4.

179 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.4.

180 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.4.

This article also says that secondary education “shall be made generally available and accessible for all”, which means it does not require any measure of student’s ability. In contrast to para (c) concerning higher education which measures student’s capacity this paragraph allows all students to have full access to secondary education without any merit-based restriction. In addition, this phrase also indicates that drafters meant to require states to provide secondary educational facilities, in a way in which all people could take advantage of them on the same basis.¹⁸¹

Notably, the phrase “every appropriate means” refers to the requirement of flexibility of secondary school systems in the Member States. Indeed, it requires that Member States should also take into consideration the needs of students from cultures other than the host country. They are obliged to supply educational programmes and curricula which respond to the needs of diverse social and cultural settings.¹⁸²

Finally, as the CESCR highlights¹⁸³the phrase “progressive introduction of free education” implies that Contracting States must give appropriate attention to the provision of free secondary education. Given the priority of the provision of free primary education, states are obliged to make plans and take action to ensure free secondary education in their territories. In the next part, paragraph 2(c) of Art. 13 regarding the right to higher education, will be discussed.

2.4.1.2 Analysis of Art. 13.2 (c): The Right to Higher Education

Article 13.2 (c) mentions that:

“Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.”

Before embarking on further discussion of this provision, it is essential to emphasize that higher education, like other levels of education, includes availability, accessibility, acceptability, and adaptability features as well.

It is CESCR’s view that this provision has some disparities with secondary education. Firstly, it does not contain the phrase “in its different forms,” while para (b) includes that. Indeed, para

181 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.5.

182 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.5.

183 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.5.

(b) obliges Member States to provide secondary education in its different forms particularly technical and vocational education (TVE), whereas para (c) speaks neither about different forms of higher education nor TVE.

However, as CESCR mentions, this shortage of references in para (c) about different forms of higher education and TVE is in fact a difference of emphasis.¹⁸⁴ The drafters meant to avoid repetition; otherwise it would have been impossible to respond to the various needs of students from different social and cultural contexts. Actually, in order to respond appropriately to the needs of these students it would be essential to have flexible curricula and wide-ranging educational delivery systems.

In addition, following Art. 6.2¹⁸⁵ of the ICESCR and Art. 26.1¹⁸⁶ of the UDHR, technical and vocational education is the main element of all educational levels and not just secondary education.¹⁸⁷ Accordingly, both secondary and higher education should be available “in different forms.”

Finally, para (b) highlights that secondary education “shall be made **generally** available and accessible to all,” while para (c) has another criterion. It mentions that higher education “shall be made equally accessible to all, **on the basis of capacity**.” In fact, in contrast to the secondary education it does not speak about a general availability and accessibility of higher education to all and imposes a merit-based measurement for the accessibility of higher education. Consequently, the enjoyment of the right to higher education depends on the capacity and merits of the individuals concerned.¹⁸⁸ This capacity is evaluated based on all the related qualifications and experiences of the respective individual.¹⁸⁹ Needless to say, that as with secondary education, the Contracting States also have an obligation to take concrete steps towards provision of progressively free higher education.

184 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.6.

185 Art. 6.2: “The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”

186 Art. 26.1: “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”

187 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.6.

188 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.7.

189 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.7.

It is important that in comparison to Art. 22.2 of the Refugee Convention, paragraphs (b) and (c) of Art. 13.2 have more protective standards for refugees in respect of post-elementary education, whether secondary or higher education. These two provisions require Member States to treat all people including non-nationals equally, during secondary and higher education.

It means that refugee students enjoy the same rights as local students, in terms of secondary and higher education. In this regard, attention can be drawn to Art. 2 of the CRC¹⁹⁰ and Art. 3 (e) of the UNESCO Convention against Discrimination in Education,¹⁹¹ as both discuss the broad applicability of the non-discrimination principle.¹⁹²

In fact, according to these articles non-nationals residing in the host states should not be discriminated against in their access to education, based solely on their colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability, birth or other status.¹⁹³ Thus, the principle of prohibition of discrimination can be extended to refugees as well, as seen in the General Comment of the ICESCR Committee no. 13 (1999). Actually, it highlights that “the Committee.... confirms that the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status.”¹⁹⁴

In contrast to primary education however, Art. 22.2 holds a lower standard for both post-elementary education, and for the treatment of refugees to be as favourable as possible, and, in any event, not less favourable than aliens generally in the same circumstances. In the following part, para 2(d) of Art. 13 concerning the right to fundamental education will be debated.

2.4.1.3 Analysis of Art. 13.2 (d): The Right to Fundamental Education

Article 13.2 (d) provides that:

190 According to Art. 2: “1. States Parties shall respect and ensure the rights set forth in the present Convention to each child in their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.”

191 According to Art. 3: “In order to eliminate and prevent discrimination in the meaning of this Convention, the States Parties thereto undertake: ... (e) To give foreign nationals resident in their territory the same access to education as that given to their own nationals.”

192 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.8.

193 However, under some circumstances the states can establish or maintain various educational systems or institutions. See article 2 of the 1960 UNESCO Convention against Discrimination in Education.

194 Willems and Vernimmen, *The Fundamental Human Right to Education for Refugees: Some Legal Remarks*, p.6.

“Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.”

Similar to the other stages of education, fundamental education also contains the previously mentioned features of availability, accessibility, acceptability and adaptability.¹⁹⁵

According to this provision, those people who have not received or completed the whole period of their primary education have a right to a fundamental education. There is no age or gender-based limitation for enjoying this right and all children, youth, and adults, including older people, have a right to this sort of education.¹⁹⁶ Thus, all people including refugees from different age groups can be eligible to enjoy this provision. It is worth noting that, the fundamental education corresponds to basic education. This view is confirmed by both the World Declaration on Education for All and CESCR.¹⁹⁷

In addition, the CESCR also affirms that fundamental education is not solely for those who have not received or completed the whole period of their primary education but it also covers those who have not satisfied their basic learning needs yet.¹⁹⁸ This results from an interpretation of Art. 1 of the World Declaration on Education for All which holds “every person-child, youth and adult-shall be able to benefit from educational opportunities designed to meet their basic learning needs.”

Fundamental education may be considered as a crucial part of adult education and life-long learning.¹⁹⁹ Finally, this type of education should consist of flexible curricula and delivery systems so that all age groups can meet their needs according to their age requirements.

Therefore, by virtue of this provision, Member States should, as far as possible, give refugees an opportunity to have access to the same fundamental education as nationals. In addition, although there is no provision in Art. 13.2 (d) relating to the monetary aspects of fundamental education, according to the first part of Art. 26.1 of the UDHR, it should be free of charge.²⁰⁰

195 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.7.

196 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.7.

197 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.7.

198 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.7. See also Art. 1 of World Declaration on Education for All.

199 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.7.

200 Art. 26.1: “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages....”

Subsequently, as this type of education corresponds to basic education and is principally for those who have not received or completed the whole period of their primary education (that is completely free), it seems that it must be free of charge for everybody including refugees. In the following, para 2(e) of Art. 13 will be discussed. This paragraph considers the active development of a system of schools and fellowships, as well as considering the continuous improvement of the material conditions of teaching staff.

2.4.1.4 Analysis of Art. 13.2 (e): A School System; Adequate Fellowship System; Material Conditions of Teaching Staff

Article 13.2 (e) states that:

“The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.”

This paragraph has three provisions which will be discussed, respectively. Firstly, it speaks about the responsibility of Contracting States to have a continuous plan to develop their school systems at all levels. In fact, this developmental strategy must include all educational levels. However, the ICESCR demands that the States Parties give priority to primary schools in comparison with other educational stages.²⁰¹ Notably, the phrase “actively pursued” enhances this view that the developmental plan should be placed among the main governmental concerns, in order to be appropriately performed.²⁰² This duty of preparing a developmental strategy for education would in fact, foster the main responsibility of states in terms of the direct provision of the right to education in most circumstances.²⁰³

The second part remarks that an adequate fellowship system must be established by Member States in order to help disadvantaged groups of people. This fellowship system is created to favour people who are financially disadvantaged. Moreover, this fellowship system would be based on the provision of equality and the prohibition of discrimination.²⁰⁴

201 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.7.

202 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.8.

203 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.14.

204 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.8.

One of these vulnerable groups can be refugees who may not have adequate financial resources to attend educational institutions, especially universities. Likewise, Art. 22.2 recognizes that Member States are obliged to treat refugees, as favourable as possible and not less than aliens generally in the same circumstances in respect of the remission of fees and charges as well as the awarding of scholarships.²⁰⁵

The last part of para (e) highlights constant improvement in the material conditions of teaching staff. Importantly, as CESCR points out,²⁰⁶ the working conditions of teachers have direct implications on the full realization of students' rights to education. As a matter of fact, providing a good quality of education requires that teachers and personnel of schools be satisfied with their working conditions and also have ample access to the required teaching materials which are necessary for providing quality inclusive education.²⁰⁷ The next part will concentrate on paragraphs (3) and (4) of Art. 13 relating to the right to educational freedom.

2.4.2 Analysis of Art. 13(3) and (4): The Right to Educational Freedom

Article 13(3) formulates that:

“The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.”

As CESCR highlights in its general comment on Art. 13,²⁰⁸ this provision includes two components. One element features general education, and another is about liberty regarding choosing religious education which can be considered as a part of the general education.

Indeed, one measure is the liberty of parents and legal guardians in terms of choosing a religious and moral education for their children, which is commensurate with their own

205 Art. 22.2: “The Contracting States shall accord to refugees, treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.”

206 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.8.

207 See also the 2030 Agenda, sustainable development goal 4.

208 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.8.

conviction. This provision requires Member States to respect the liberty of parents and guardians in this regard.

CESCR believes that in following this provision, public schools might teach some courses about general history of religions or ethics, providing that it is taught in an impartial and objective way which respects freedoms of opinion and conscience as well as expression.²⁰⁹ In this regard, it can also be seen in Arts. 4 of the 1951 Geneva Convention²¹⁰ and 18(4) of the ICCPR.²¹¹ As it happens, these provisions like Art. 13.3 also recognize the parental liberty to choose the religious and moral education of their children in conformity with their own convictions. It is worth noting that, Art. 18(4) of the ICCPR reiterates the latter part of Art. 13(3) of the ICESCR.²¹² In fact, like Art. 13(3) it also reflects the freedom aspect of the right to education. It allows parents to protect their children against state indoctrination.²¹³

At the regional level, the attention can be drawn to the second sentence of Art. 2 P-1 ECHR that states:

“...In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

Furthermore, it can be also seen in the second part of paragraph 3 of Art. 14 of the EU Charter of Fundamental Rights which formulates:

“...and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical, and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.”

However, it is agreed that the teaching of a particular religion or ethics in a public school is in contrast to the educational freedom imposed by Article 13.3.²¹⁴ If a refugee in one of the

209 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.8. See also the rule of the UN Human Rights Committee in *Hartikainen v. Finland* No.40/1978.

210 Art. 4: “The Contracting States shall accord to refugees in their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.”

211 Art. 18(4): “The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

212 Beiter, *The Protection of the Right to Education by International Law*, p.103.

213 Beiter, *The Protection of the Right to Education by International Law*, p.103.

214 Eide, Krause and Rosas, (Eds.), *Economic, Social and Cultural Rights*, p.206.

Member States of these Covenants is forced to attend a specific religious and moral course, which is provided by a public school and does not comply with the refugee's conviction, then this will constitute a violation of Arts. 13.3 of the ICESCR, 4 of the Refugee Convention and 18(4) of the ICCPR.

Nevertheless, unless the public school wants to do so, it should arrange non-discriminatory exemptions or alternatives that take into consideration the preferences of parents or guardians.²¹⁵ When a particular religious or moral course is taught in a school, the authorities of this school should also allow students to choose those religious and moral courses that are following their own convictions.

It is worth mentioning that, while public schools can have their own admission policies, these policies should be objective and rational.²¹⁶ For example, parents of refugee children can claim for a violation of Art. 13.3, when an educational institution in the country of refuge establishes a particular admission policy that does not take into consideration a diversity of beliefs and religious convictions.

The other principal element that the CESCR notes is that parents and guardians have the liberty to choose educational institutions other than public schools for their children. The purpose of granting such a right to refugee parents is to allow refugee students to be taught in a way which conforms with their culture, language, and religious convictions. Hence, two important points can be understood from Art. 13.3 of the ICESCR. Firstly, states should allow refugee parents to freely choose educational institutions other than public ones, and secondly, states have no obligation to provide the financial resources and funds to support and facilitate this. However, the crucial question which may be raised is:

Does Article 13.3 include a right for refugees to study in their language of origin?

Providing a response to this significant question is challenging because there are different views toward it. As a matter of fact, there is no currently a unified response to this important question among the reception states. The contemporary perspective and most recent legal instruments and reports including the 2010 UN Human Rights Council report somehow believe

215 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.8.

216 Equality and Human Rights Commission, *Article 2 of the First Protocol: Right to Education*, (2018), <https://www.equalityhumanrights.com/en/human-rights-act/article-2-first-protocol-right-education>. In this regard, see also the case of (Hounslow London Borough Council) v. School Admissions Appeal Panel for Hounslow London Borough Council (2002).

in states' obligations to support refugees' rights for studying in their own languages. In order to discuss this question properly, we will need to consider related articles under other international instruments including Art. 27 of the ICCPR²¹⁷ and Art. 28.1 of the CRC.

Language of instruction can create a strong barrier for refugees' accession to education. In this regard, flexibility from the country of asylum to provide classes and courses in refugees' original language plays a vital role. In many cases in the host countries, refugees are not taught in their native language, or that of earlier education.²¹⁸ According to a research by Erling, Adiolfi and Hultgren in 2017,²¹⁹ young students will have better performance in school when they are taught in their first language.

This research concludes that after acquiring literacy in the first language, children can then be asked to improve their learned skills and continue their study in the regular language of the educational system.²²⁰ However, one of the most common reasons for frustration, low performance and a high dropout rate of students is the problem of the language barrier they face in the host states' schools.

Notably, despite all efforts made towards the realization of this right, many states yet feel no responsibility for it. Hence, the right to be educated in the refugees' original language has quite a long path to travel before becoming a universal, basic, and fundamental feature.

In fact, Art. 13.3 through allowing refugee parents to send their children to other educational institutions than public schools, indirectly accepts the view that refugees have a right to be educated in their language of origin. Nevertheless, in practice it does not oblige Contracting States to facilitate and support this through financial resources.²²¹ Consequently, paragraph 3 of Art. 13 does not impose an obligation on states to respect the linguistic preferences of refugee parents in the education of their children, when arranging schools' curriculums.²²² This is a quite important gap in Art. 13.3 of the ICESCR.

217 This article is about the rights of minorities to enjoy their own culture, religion and language.

218 Pedró, F., Moumné, R., Bouëtard, M. and Nguyen, K., *Enforcing the Right to Education of Refugees: A Policy Perspective*, (2019), p.13.

219 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.13.

220 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.13.

221 Willems and Vernimmen, *The Fundamental Human Right to Education for Refugees: Some Legal Remarks*, p.8.

222 For an opposite view, see Art. 4(4) of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities that formulates: "States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing in their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole."

The only exception is when the minority language is a national language in the asylum country.²²³ As a result, in this situation the relevant state must guarantee a right to education in the language of the minorities in question. However, a generous interpretation from Contracting States can fill this legal gap and make educational opportunities more available to refugees who do not speak the official language of the country of refuge, especially newcomers.²²⁴

On the other hand, Art. 27 of the ICCPR stipulates that all ethnic, religious, or linguistic minority groups have the right to enjoy their own cultures, to profess and practice their own religions and to speak and use their own languages. Thus, in line with this provision, refugees can also be considered as a particular minority group that can enjoy the rights promised in this article.

Yet, the Committee of the ICCPR does not believe that it can also cover the situation of refugees.²²⁵ It envisages that this provision makes a distinction between national minorities and other categories of minorities²²⁶ such as migrants and refugees.²²⁷ Consequently, the ICCPR Committee maintains that Art. 27 does not oblige Contracting States to provide or subsidize education in the languages of refugee students. In other words, refugees are not the main target group of the minority rights provided by Art. 27 and that it specifically focuses on national minorities rather than other minority groups such as migrants and refugees.²²⁸

In fact, in practice both Arts. 27 of the ICCPR and 13.3 of the ICESCR are similar. If Member States only allow refugees to be educated in their own schools, without taking any responsibility towards supporting and financing these private educational institutions, then in

223 Willems and Vernimmen, *the Fundamental Human Right to Education for Refugees: Some Legal Remarks*, p.8.

224 In this regard, see Art. 4(3) of the 1992 the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities which stipulates: “States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.” According to this provision, the phrase “adequate opportunity” can be interpreted to dedicate necessary means and financial resources to private educational institutions where based on certain culture, religion and language.

225 Art. 27: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” See also Willems, K. and Vernimmen, J., *the Fundamental Human Right to Education for Refugees: Some Legal Remarks*, (2018), p.227.

226 Such a distinction exists also in some other international and regional instruments such as the UN Declaration on the Rights of Indigenous Peoples, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

227 Willems and Vernimmen, *the Fundamental Human Right to Education for Refugees: Some Legal Remarks*, p.9.

228 Willems and Vernimmen, *the Fundamental Human Right to Education for Refugees: Some Legal Remarks*, p.9.

practice it will be very hard for refugees to cover these costs themselves and consequently this right will remain an empty shell.

It should be pointed out, nonetheless, that this interpretation of the ICCPR Committee is in clear contrast to the view of UN Special Rapporteur (Vernor Muñozo). As a matter of fact, he highlights in the UN Human Rights Council report of 2010, that the phrase “equal opportunity” in Art. 28.1 of the CRC might defend the opinion of those people who believe in the differentiated treatment of children of migrants, refugees, and asylum seekers regarding their right to education such as teaching this group of pupils in their language of origin. He also emphasizes that these distinguished treatments should be based on non-discriminatory measures.²²⁹

This attitude will lead to an effective realization of the right to education. Given that, without supporting other minority groups like asylum seekers and refugees through providing education in their native language, their rights to attend school and to study might become impossible, at least during the first years of arrival.²³⁰

Moreover, it is also in line with the view of the UN Human Rights Committee General Comment No. 23 that extends the scope of Art. 27 of the ICCPR to migrants and refugees as well.²³¹ Again, this provision is still controversial because it might be concluded that, it refers only to the right to use one’s minority language, not the right to be educated in a particular language.²³²

Besides, as can be understood from Art. 13.3, it is assumed that children must respect and follow the views of their parents regarding their school and religious education. Thus, children themselves have no right to choose their own education.²³³ In accordance with contemporary educational theories, Art. 13.3 cannot strongly support involving them in the decision-making processes of choosing their own school and moral education. The goal and purpose of education is to fully develop children’s personalities and talents so they can participate in a free society.

229 Willems and Vernimmen, the Fundamental Human Right to Education for Refugees: Some Legal Remarks, p.9.

230 Willems and Vernimmen, the Fundamental Human Right to Education for Refugees: Some Legal Remarks, p.9.

231 “Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practise their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights.... The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.”

232 Willems and Vernimmen, the Fundamental Human Right to Education for Refugees: Some Legal Remarks, p.9.

233 Eide, Krause and Rosas, (Eds.), Economic, Social and Cultural Rights, p.205.

So, any restriction on their engagement in the decision-making process of choosing their own type of education and school will limit their active participation in a free society and could impede them reaching the goals mentioned above.²³⁴ However, the educational institutions chosen by the parents of children should respect the relevant minimum educational standards that are imposed or approved by the respective state.²³⁵ Another important question which is raised is:

If a Member State allocates education allowances and/or other subsidiary privileges such as free transportation and school meals only to public schools, can it then be considered discriminatory treatment toward refugees who choose to study in educational institutions other than public ones?

For responding to this question, it is essential to understand whether the financial assistances and services are open to all students in public schools without discrimination of any kind?

According to the Human Rights Committee's view,²³⁶ if these financial assistances and services cover all students without discrimination of any kind, then it cannot be recognized as discriminatory behaviour.²³⁷ Given that these refugee students consciously preferred to study in private educational institutions due to religious, linguistic, or other cultural considerations, when they also had the possibility of being enrolled in public schools. They deliberately chose not to exploit the benefits of the financial supports and privileges, which are open to all students on a corresponding basis. However, if refugee students are hindered from studying in public schools, and as a result, they must go to other private educational schools then this practice can be considered to be clear discrimination.²³⁸

Again, this restrictive interpretation by the Committee can be moderated by generous policies and programmes of the Member States. In the following, paragraph 4 of article 13 will be discussed which genuinely concentrates on people's right to establish and direct their own educational institutions. Paragraph 4 of Art. 13 formulates that:

234 Eide, Krause and Rosas, (Eds.), *Economic, Social and Cultural Rights*, p.205.

235 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.8.

236 Cases of Blom, Lindgren et al. and Hjord et al. v. Sweden.

237 Eide, Krause and Rosas, (Eds.), *Economic, Social and Cultural Rights*, p.202.

238 For example, this can violate Art. 26 of the ICCPR on effective prohibition against discrimination.

*“No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.”*²³⁹

At first glance, both paragraphs 4 & 3 of Art. 13 discuss the same issue but that is not the case. In fact, the later speaks about freedom of choice confirming that parents or legal guardians have a right to choose educational institutions other than public ones, whereas para 4 discusses the liberty of the establishment and management of educational centers by individuals and bodies.²⁴⁰ Furthermore, it can be also seen in Art. 29(2) of the CRC²⁴¹ and the first part of Art. 14.3 of the EU Charter of Fundamental Rights²⁴² at the European level which both hold the same provisions in this regard. Moreover, according to the opinions of both the earlier European Commission of Human Rights and European Court of Human Rights (ECHR), the second sentence of Art. 2 of P-1 ECHR²⁴³ also includes a right for individuals to establish and run private schools.²⁴⁴

However, in accordance with Art. 13.4, everyone including non-nationals has a right to establish or run an educational institution. As this paragraph demonstrates, the liberty to establish and manage educational institutions can also be extended to bodies such as legal persons and entities.²⁴⁵ Furthermore, all forms of educational institutions from nursery and primary to universities and schools for adult education can enjoy this freedom under Article 13.4.²⁴⁶

239 In this regard, it can be referred to Art. 29(2) of the CRC.

240 Indeed, these two paragraphs have been derived from paragraph 154 of the German Constitution of 1849. See also Eide, A., Krause, C. and Rosas, A., (Eds.), *Economic, Social and Cultural Rights*, (1995), p.197.

241 Art. 29(2): “No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article 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.”

242 Art. 14(3): “The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.”

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

244 In this regard, the reference can be made to statements of ECHR and Commission regarding cases of Kjeldsen, Busk Madsen and Pedersen v. Denmark (1976) and Ingrid Jordebo Foundation of Christian Schools and Ingrid Jordebo v. Sweden (1987) in which in both cases Court and Commission believe that Art. 2 of P-1 ECHR contains the right to establish and maintain private schools. See also Beiter, K. D., *the Protection of the Right to Education by International Law*, (2006), p.170.

245 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.9.

246 Eide, Krause and Rosas, (Eds.), *Economic, Social and Cultural Rights*, p.207.

It is important to mention that there is no specific article under international law regarding the freedom to establish and direct private educational institutions. In fact, this freedom has only been formulated as a limitation clause to the right to education.²⁴⁷ However, if an individual or body decides to found or manage an educational institution, they must ensure that the principles of non-discrimination, equal opportunity and effective participation in the society are guaranteed for all.²⁴⁸ Private educational institutions like public schools must respect and follow all the general human rights of students and treat them with dignity and without discrimination.

In addition, like para 3 these institutions must also respect all the educational objectives as laid down in Art. 13.1 plus other special minimum standards that are imposed or approved by the respective state. From a CESCR's point of view, these certain minimum standards may be attributed to the admission, curricula, or acknowledgement of certificates, which should be consistent with the educational objectives laid down in Article 13.1.²⁴⁹ However, a question which can be raised is:

Do states have to supply financial assistance to private schools and support them with all the facilities and services provided to public schools?

Many private schools and NGOs advocating the free funding of education have brought cases in different states, to acquire education on an equivalent basis, by requiring states to support private schools through offering free education. So far neither the UN Human Rights Committee, nor the European Commission have obliged states to allocate special budgets to private educational institutions. Another question is:

Can refugees be segregated from other students in separate classrooms? Would this be a human rights violation?

There are several articles²⁵⁰ on the prohibition of discrimination regarding the right to education. Some of these provisions focus on specific discrimination against target groups of

247 Eide, Krause and Rosas, (Eds.), *Economic, Social and Cultural Rights*, p.206. See also Art. 29(2) of the CRC.

248 Eide, Krause and Rosas, (Eds.), *Economic, Social and Cultural Rights*, p.9.

249 Eide, Krause and Rosas, (Eds.), *Economic, Social and Cultural Rights*, p.9.

250 See also Art. 3 of the 1963 International Declaration on the Elimination of All forms of Racial Discriminations which provides: "Particular efforts shall be made to prevent discrimination based on race, colour or ethnic origin, especially in the fields of civil rights, access to citizenship, education, religion, employment, occupation and housing."

people who are entitled to refugee protection. For example, Art. 5 (e) (v) of the International Convention on the Elimination of All Forms of Racial Discriminations (CERD) which is based on racial discrimination states:

*“In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights... (e) Economic, social and cultural rights, in particular... (v) Right to education and training.”*²⁵¹

Another article of foremost importance that is created for protection of rights of women is Art. 10 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979 (CEDAW). In its first part it articulates that:

*“States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women; (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training; (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard an school premises and equipment of the same quality; (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods; (d) The same opportunities to benefit from scholarships and other study grants; (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women; (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely; (g) The same Opportunities to participate actively in sports and physical education; (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.”*²⁵²

251 Beiter, *The Protection of the Right to Education by International Law*, p.106.

252 This article in fact reconfirms article 9 of the previous Declaration on the Elimination of Discrimination against Women of 1967. See also Beiter, K. D., *The Protection of the Right to Education by International Law*, (2006), p.110.

Indeed, the whole content of Art. 10 can be summarized in the following elements. (i) women must have equal rights with men regarding access to education and quality norms of education including curriculum, examinations, teaching personnel, school premises and utilities, (ii) co-educational system should be promoted, (iii) those stereotyped attitudes which impair or nullify the role of women in the society should be changed through education.²⁵³

Therefore, in accordance with this provision, Contracting States must take positive actions in order to prohibit and eliminate all forms of racial discrimination that impede people in enjoying their rights to education. In addition, they should guarantee that all people will be equal before the law and that there will be no discrimination based on any prohibited grounds.

However, from a legal point of view, it is necessary to consider whether such a treatment of refugee segregation from other students is a violation of the principle of direct or indirect non-discrimination?²⁵⁴ Before answering this question, it is worth noting that these separate classes and courses may be temporary features due to the refugees' low language proficiency.

According to the view of the ECHR and the UN Human Rights Council, arranging temporary separate classes, like preparatory courses for refugees, cannot automatically lead to the violation of the principle of non-discrimination.

Nevertheless, as the ECHR expressly says, the state should prove that different treatment follows a legitimate aim and the measures taken to achieve it are necessary, appropriate, and proportionate.²⁵⁵ For example, if a State Party segregates those refugees who lack a sufficient language proficiency from other students and place them in another classroom then this decision cannot be considered as an illegitimate aim. However, the measures taken for reaching such legitimate decisions should not be unnecessary, disproportionate, and inappropriate. For instance, the enrolment criteria for educational facilities or expected learning outcomes from these classes should respect these above-mentioned elements.²⁵⁶ The chosen measures must be essential to achieve the goal of integration of refugees in the educational system and general curriculum of the state at question.

253 Beiter, *The Protection of the Right to Education by International Law*, p.112.

254 Willems and Vernimmen, *The Fundamental Human Right to Education for Refugees: Some Legal Remarks*, p.10.

255 Willems and Vernimmen, *The Fundamental Human Right to Education for Refugees: Some Legal Remarks*, p.10.

256 Willems and Vernimmen, *The Fundamental Human Right to Education for Refugees: Some Legal Remarks*, p.10.

Thus, the state should ensure that any measures taken do not lead to de facto discrimination; but rather are clearly meant to help refugees fully enjoy their right to education.²⁵⁷ However, it is essential to employ protective safeguards against those governmental measures which damage people of a particular ethnic group disproportionately or exclusively.²⁵⁸ In the next part, the discussion will focus on the legal obligations of states in relation to Art. 13 of the ICESCR.

2.4.3 Legal Obligations of States Parties

Despite, the ICESCR acknowledgement that Member States only have a responsibility to progressively achieve the full realization of the rights enunciated in the Covenant, it also imposes some specific obligations on states. For instance, in terms of the right to education, the Contracting States must take steps towards the full realization of this right and to ensure that this right is exercised without discrimination based on any prohibited grounds.²⁵⁹ These state's obligations can be categorized as general and specific legal obligations.²⁶⁰ In the following, these two types of state's obligations will be debated.

2.4.3.1 General Legal Obligations of States Toward the Right to Education (Art. 13)

Member States under Art. 13 have three levels of obligations. These three obligations include: the obligation to respect, protect and fulfil. In addition, the obligation to fulfil includes both the obligations of facilitation and provision.²⁶¹

According to the obligation to respect, states are prohibited from taking measures that impede people's rights to education. This is an obligation of non-action and/or prevention against taking any measure that contradicts the enjoyment of the right to education. For example, states are not allowed to impose regulations which prevent non-nationals from having access to educational facilities unless these regulations are justified and permitted by the ICESCR.

257 Willems and Vernimmen, the Fundamental Human Right to Education for Refugees: Some Legal Remarks, p.10.

258 Willems and Vernimmen, the Fundamental Human Right to Education for Refugees: Some Legal Remarks, p.10.

259 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.12.

260 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.12.

261 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.12.

In contrast to this, the obligation to protect obliges states to take measures in preventing third parties from restricting people's enjoyment of the right to education. This is an obligation of action and/or taking measures to protect the people's rights to education against third parties. Finally, State Parties must fulfil Art. 13 concerning the right to education. As mentioned above, obligation to fulfil includes both facilitation and provision commitments.

Obligation to facilitate considers the state's responsibility to enable and support individuals to enjoy the right to education through setting positive policies and measures.²⁶² Where individuals cannot achieve the right to education due to causes beyond their control, their right to education should be provided by the Member State, according to its developmental policy and procedures.²⁶³

As a matter of fact, one of the general obligations of Contracting States in relation to the right to education is reaching full realization of this right. Again, even though the ICESCR speaks about a progressive realization of this right, it does not mean that States have an unlimited discretionary power in their implementation of Article 13. In fact, State Parties have a specific and ongoing obligation to move as rapidly and effectively as possible toward the full realization of the right to education.²⁶⁴

Therefore, any delay in full realization of the right to education must be justified by the respective state. For example, in the case of taking a retrogressive measure, the respective state should prove that it has most carefully considered all the existing options, and ensure that any measure taken does not conflict with other rights under the Covenant. The respective state should also prove that despite using its maximum available resources, there was no other alternative available which could have better protected the educational rights of individuals in question.²⁶⁵

However, as the CESCR emphasizes, to fully understand the extent of the obligation of provision, it is necessary to take into consideration the text of the Covenant.²⁶⁶ Actually, it is clear from Art. 13 that State Parties have the main responsibility and obligation for direct

262 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.12.

263 According to the CESCR this is considered as a general rule. See also *CESCR General Comment No. 13: The Right to Education (Art. 13)*, (1999), p.13 that speaks about Committee's observation in terms of country's laws and practices in this connection.

264 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.13.

265 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.12.

266 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.13.

provision of education in most circumstances. For example, Art. 13.2 (e) declares that “*the development of a system of schools at all levels shall be actively pursued.*” What is important in this regard is that different paragraphs of Art. 13 make varied obligations in relation to the provision of different levels of education. Article 13 encompasses different legal regimes and protections in relation to primary, secondary, higher, and fundamental education.²⁶⁷ Thus, as mentioned above, in order to show clearly the extent of Member State’s obligation towards the provision of education at each level, it is necessary to take into consideration the text of the Covenant (Art. 13) appropriately.

2.4.3.2 Specific Legal Obligations of States Toward the Right to Education (Art. 13)

State Parties must, alongside their general legal obligations, also follow the specific legal obligations in relation to the right to education. One of these legal obligations is to make sure that curricula of all levels of education are in line with the educational objectives enunciated in Article 13.1.²⁶⁸ These educational objectives can be described as: (i) full development of the human personality and the sense of its dignity, (ii) strengthen the respect for human rights and fundamental freedoms, (iii) participate effectively in a free society, by promoting understanding, tolerance and friendship among all nations and among all racial, ethnic or religious groups, to further the activities of the United Nations for the maintenance of peace. Furthermore, states are obliged to respect and protect, as well as to fulfill the essential features of the right to education. These essential features include availability, accessibility, acceptability, and adaptability which have been discussed previously. For example, the CESCR believes that a state should respect the availability of education through not impeding private schools from absorbing students. Likewise, the state must protect the accessibility of education, by way of preventing third parties such as students’ families from hindering girls’ attendance at school or university. It also demonstrates that a state must fulfill (facilitate) the acceptability of education through arranging positive measures and policies which provide a good quality of education for all students. Likewise, it should also guarantee that the education offered is in line with the cultures of minorities and indigenous students.

Furthermore, it stipulates that states must fulfill (provide) adaptability of education by offering and supplying resources to curricula which fit the changing needs of students in a modern

267 All of these different educational levels have been discussed in the previous parts.

268 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.13.

world. The states ought also to fulfill (provide) availability of education through constructing classrooms, supplying teaching materials, offering programmes, having regular plans for training, and paying domestically competitive salaries to teachers.²⁶⁹

In the next part, a set of policy recommendations about refugees' rights to education will be discussed. The following section attempts to consider the most noticeable gaps currently existing in the educational plans and policies of many host countries. This part will also propose policy recommendations and sustainable solutions.

2.5 Protection of the Right to Education of Refugees through the Improvement of Educational Policies

Although, improving policy in every area is useful, there are many complex interrelated objectives and an equally complex set of laws governing them. Educational policies differ from country to country. For example, a country may have a specific programme which supports refugees to study in their own language and another does not. Thus, in this section we will address the most common policy gaps which refugees normally encounter in their new countries. The potential solutions and a number of current good practices for filling these gaps will be presented. Firstly, the most pervasive barriers that refugees might face when attending schools and universities are discussed.

2.5.1 Most Significant Barriers to the Educational Integration of Refugees

There are a variety of barriers for refugees in many host countries which prevent them from completing their education. These barriers vary from country to country. But there is a set of problems which are similar for many receiving countries. Here we will propose policy recommendations to reduce some common prevalent educational barriers.

The educational barriers for refugees, especially children and youths, are multifaceted, intertwined, and complicated. They can be divided into three major groups including household, systemic and functional.²⁷⁰

The household barriers consider to what extent refugees and their families have the potential to afford education and how easily they can attend educational institutions. The systemic barriers deal with those characteristics of the educational system which might reduce refugees'

269 Committee on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 13: The Right to Education (Art. 13), p.14.

270 Pedró et al. Enforcing the Right to Education of Refugees: A Policy Perspective, p.8.

abilities to achieve and enjoy equal and inclusive educational access. Lastly, the functional barriers are how the system opposes refugees and some probable consequences.²⁷¹ In the following, these three educational barriers are discussed.

2.5.1.1 Household Barriers

These obstacles include; financial limitations created by the direct or indirect costs of schooling, school distance, language problems, security concerns, xenophobia, and bigotry.²⁷² It has been frequently seen that displacement acts as a barrier which prevents refugees from attending school even when they consider education a crucial factor for their future integration.

Cost of education: The problems created by displacement such as financial restraints and food insecurity can make education seem less important than these imminent and urgent needs.²⁷³ As a matter of fact, while many host countries offer free primary education to refugees, it might still be difficult for some refugees to attend school because there are many costs, which are rarely covered by the receiving countries, such as transportation, stationery, uniforms and operational charges (electricity, gas, water, etc.).

Educational costs can also make it hard for refugees to transit from primary school to secondary school.²⁷⁴ For example, only 2% of Syrian refugees in Lebanon have attended secondary schools in this country²⁷⁵ because they do not have sufficient resources to pay their nominal tuition and transportation costs.²⁷⁶ To make matters worse, tertiary education that is provided by the private sector is expensive. It is beyond the reach of many refugees without sufficient financial assistance.²⁷⁷

Involvement in income-generating activities and early marriage are tools which refugees may use to manage financial stress during displacement.²⁷⁸ These factors play a significant role in

271 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.8.

272 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.8.

273 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.8.

274 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.8.

275 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.8. According to another report by the Education Working Group of the UNHCR in 2013, 80% of Syrian refugees in Lebanon did not attend school.

276 In Uganda also more than 70% of both male and female refugee students aged 13-18 in camps remained in primary schools due to high costs of exam fees at the secondary schools. See also Pedró, F., Moumné, R., Bouëtard, M. and Nguyen, K., *Enforcing the right to education of refugees: a policy perspective*, p.8.

277 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.9.

278 According to a research by UNESCO, early marriage among Rohingya refugees increased after that they have been displaced. This proves their intendency to get rid of financial challenges during their displacement. See also Pedró, F., Moumné, R., Bouëtard, M. and Nguyen, K., *Enforcing the Right to Education of Refugees: A Policy Perspective*, (2019), p.8.

keeping refugees away from education especially at the high school level.²⁷⁹ Furthermore, inadequate quality education in primary schools and traditional and religious values (mostly for girls) can also impede refugees from attending secondary schools.²⁸⁰

However, host governments, the international community, particularly international organizations, civil society, NGOs, and the private sector may all play a crucial role in covering educational costs for refugees. For example, in both Jordan and Lebanon, their governments have waived all tuition fees for public schools for Syrian refugee students. In addition, in these two countries the UNHCR in collaboration with the UNICEF supports Syrian students through providing them with uniforms, bags, stationery and books.²⁸¹ In Malta many NGOs which are funded by public donations try to support refugees' integration into the education system. For example, asylum seekers and refugees can also ask for waivers of their educational fees from the Ministry of Education and Employment.²⁸²

In some European countries such as Portugal a number of scholarships have been dedicated to Syrian refugees and higher educational centers in order to further develop their own academic plans toward educational integration of refugees.²⁸³ In Italy the Ministry of Interior Affairs provided educational funds for integration of 100 refugees into higher education.²⁸⁴ The Ministry of Education, Universities, and Research together with the Rectors Conference support those policies that are genuinely aimed at integration of refugees into education.²⁸⁵

Long distance: Sometimes because of the long distance to schools, refugees may take hours to reach their school.²⁸⁶ This is a real barrier to refugees' education. For example, for people from remote areas, traveling to school causes huge travel costs, which are frequently unaffordable for refugee families.²⁸⁷ Long travel distances can also prevent girls from attending

279 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.8.

280 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.8.

281 UNHCR, *the Future of Syria: Refugee Children in Crisis*, (2013), p.45.

282 Crosier, D. and Kocanova, D., *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, (2019), p.18.

283 Crosier and Kocanova, *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, p.18.

284 This measure is implemented by the Rector Conference. See also Crosier, D. and Kocanova, D., *Integrating asylum seekers and refugees into higher education in Europe: national policies and measures*, (2019), p.18.

285 Crosier and Kocanova, *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, p.18.

286 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.9.

287 According to a report by UNICEF in 2013, the travel cost in Jordan impedes many families to send their children to the schools where are located in the urban areas. See UNICEF, *Shattered Lives: Challenge and Priorities for Syrian Children and Women in Jordan*, (2013), p.18-20.

schools because of security reasons like sexual abuse, harassment and abduction.²⁸⁸ Furthermore, long distances can make refugees' integration harder, and sometimes segregate refugee children from native children.²⁸⁹ For instance, according to a report by the UNESCO, in Kenya local students are not well integrated with refugee students living in the refugee camps. This occurs when schools are placed in refugee camps in remote areas.²⁹⁰ Overcrowded classes present another problem which hinders refugee children from having fair and full access to education. For example, in both Jordan and Lebanon, refugee students from Syria face a major barrier to be enrolled in the local schools.²⁹¹

Security concerns, xenophobia, and bigotry: Frequently, vulnerable groups like refugees can be stigmatized because of financial recession and problems of national security in many receiving countries.²⁹² Many anti-migrant parties and people in reception countries consider refugees as a threat to their national security. This opinion has gained credence due to recent terrorist attacks in some European countries. Some groups of people also believe that the influx of refugees increases the unemployment rate in the labour market. These negative attitudes can be felt by refugees at some of the schools. This discourages refugee students attendance at school and can increase the number of dropouts.

Education has always been considered as a powerful instrument for integration and elimination of barriers among students coming from different backgrounds. Qualities like diversity, non-discrimination, equality, democracy, and respectfulness are strengthened by education.²⁹³ However, factors such as xenophobia, stigmatization and exclusion hazard these virtuous attributes and make the school an unsafe and unwelcoming environment for refugees who want to attend the school, and can force them to drop out.²⁹⁴

Corporal punishment, sexual harassment and bullying at school by teachers, school administrators, classmates or even by bus drivers are some of the common examples that can result from the above-mentioned factors.²⁹⁵ As a matter of fact, such behaviours are typically

288 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.9.

289 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.9.

290 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.9.

291 UNHCR, *the Future of Syria: Refugee Children in Crisis*, p.46.

292 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.10.

293 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.10.

294 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.10.

295 According to a research in 2016, 33% of Syrian refugees face discrimination in Lebanese schools. See also Pedró, F., Moumné, R., Bouëtard, M. and Nguyen, K., *Enforcing the Right to Education of Refugees: A Policy Perspective*, (2019), p.10.

carried out by those teachers and school staff who are not trained to deal with vulnerable students, such as refugees. Therefore, having a specific programme to train teachers and the other employees of schools with large numbers of refugee students, can play a significant role in the reduction of such behaviours.²⁹⁶

Different UN agencies and their partners provide substantial effort in training public school teachers about how to treat children who suffer from psychological problems or who may need additional assistance such as refugees.²⁹⁷ For example, in Jordan some international organizations like UNICEF, UNESCO and other institutions (in partnership) provide teacher training services in schools located in both urban and camp areas. This teacher training includes lessons on how to help children who have had difficult life experiences, teaching in emergency circumstances and coaching strategies.²⁹⁸

Linguistic barriers: We discussed linguistic barriers in the earlier parts. Refugees are rarely taught in their original language in the host countries' schools. This can create an obstacle to school attendance for refugee students who are still learning the language of instruction. Flexibility in the educational system of a host country can allow it to generously welcome multilingualism and intercultural education. This can have an irrefutable implication on prosperous schooling.²⁹⁹ For example, since August 2017 Luxembourg has undertaken some changes towards the further integration of newly arrived foreign students into its compulsory education system. Two efforts have been made. Firstly, Luxembourg augmented multilingual education programmes with their early childhood education and secondly it tried to supply care service vouchers to those students who were newcomers in order to remove discrimination and to offer an equal start to all pupils.³⁰⁰

Another example is that Australia introduced an English as an Additional Language or Dialect (EALD) scheme for those school-aged students who do not speak Standard Australian English as a first language.³⁰¹ Students can attend an EALD project in particular schools or in Intensive English Language Centers. This program facilitates the integration of students into mainstream education through offering English language lessons focused on the areas of crucial learning subjects in the regular curriculum.³⁰² Indeed, students must firstly improve their Australian

296 UNHCR, the Future of Syria: Refugee Children in Crisis, p.45.

297 UNHCR, the Future of Syria: Refugee Children in Crisis, p.45.

298 UNHCR, the Future of Syria: Refugee Children in Crisis, p.45.

299 Pedró et al. Enforcing the Right to Education of Refugees: A Policy Perspective, p.11.

300 Cerna, L., *Refugee Education: International Models and Practices in OECD Countries*, (2019), p.36.

301 Cerna, *Refugee Education: International Models and Practices in OECD Countries*, p.38.

302 Cerna, *Refugee Education: International Models and Practices in OECD Countries*, p.38.

English skills within 12 months and after completing this successfully, they can attend the regular classes offered by the mainstream education.³⁰³

A lack of sufficient competency in instruction languages can make refugee students frustrated and lead to low performance in the class and eventually, to dropping out of school.³⁰⁴ This problem can be worse for unaccompanied children. Indeed, these groups of refugee children have frequently suffered from traumatic incidents and need additional attention for their successful integration into the education system of the host state. They are often not used to the education environment and do not have a sufficient level of language competency to attend school.³⁰⁵

However, supporting this vulnerable group of refugees through more sustainable educational access policies and schemes at both international and local levels can build a better future for their integration into the host society. For example, in the United States, since the 1980s the government has established a particular program known as the Unaccompanied Refugee Minors (URM) program, for those refugee children who are living unaccompanied in the US due to varied reasons. As it happens, this scheme helps unaccompanied refugee minors to obtain relevant skills to enter adulthood and become socially self-reliant. Since the first years till now, this program has covered nearly 13,000 refugee minors.³⁰⁶

By a network of caretakers it supports unaccompanied refugee children through indirect financial support for housing, food, clothing, health care, etc., intensive case management by social workers, educational support including educational training vouchers (ETVs), English training courses, career/college counseling and training, mental health protection and social integration facilities.³⁰⁷ In addition, those refugee children who face family breakdown after their arrival in the US might be also qualified for the URM scheme provided they meet its requirements.³⁰⁸

303 The students and their families are assisted by most schools and/or Intensive English Language Centres during the transition process into mainstream education. See also Cerna, L., *Refugee education: international models and practices in OECD countries*, (2019), p.38.

304 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.11.

305 Cerna, *Refugee Education: International Models and Practices in OECD Countries*, p.21.

306 Office of Refugee Resettlement, *About Unaccompanied Refugee Minors Program*, (2019), www.acf.hhs.gov/orr/programs/urm/about.

307 Cerna, *Refugee Education: International Models and Practices in OECD Countries*, p.21.

308 Office of Refugee Resettlement, *About Unaccompanied Refugee Minors Program*, www.acf.hhs.gov/orr/programs/urm/about.

Trauma: Refugees often face unbelievable hardships in their lives and suffer from traumatization. These difficulties might happen in their country of origin including political or religious suppression, separation from family and friends, sexual abuse, imprisonment, torture, loss of property, malnutrition, etc.³⁰⁹ Generally speaking, schools in host countries do not spend much on mental health services for refugees. Many teachers in schools are not trained to deal with refugee students who suffer from severe trauma or other mental disorders.³¹⁰ Providing mental health training programmes for schoolteachers dealing with traumatized refugee students would be immensely helpful in this regard.

2.5.1.2 Systemic Barriers

Systemic barriers are genuinely caused by shortages in the provision of public education, as well as intentional exclusion of refugees from the national educational system and/or administrative barriers.³¹¹ These factors are discussed below.

Intentional exclusion of refugees from the national educational system: Although many countries do not have any legal or administrative restrictive measures in place to be able to deny national education to refugees, there are many countries where refugees receive only insufficient support.³¹² As it happens, in the countries where there are no formal legal or administrative protections to assure refugee rights, their access to formal schools may not be respected or guaranteed.³¹³

Consequently, refugees often have to enroll in informal schools that are typically located far from urban areas and might not have the quality required in the formal schools.³¹⁴ This is the only alternative for refugees when there is no other option for them to be enrolled in the formal educational institutions.³¹⁵ For instance, in Lebanon 42,000 Syrian refugee students took part in summer courses provided by 17 different humanitarian organizations.³¹⁶

309 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.11.

310 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.11.

311 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.11.

312 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.12.

313 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.12.

314 For example, in Malaysia only about 37% (5,134) of refugees have access to the school of any kind. See also Pedró, F., Moumné, R., Bouëtard, M. and Nguyen, K., *Enforcing the Right to Education of Refugees: A Policy Perspective* (2019), p.12.

315 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.12.

316 In Jordan also around 8000 Syrian students participated catch-up summer courses in camps and urban areas supported by UNICEF. See also UNHCR, *the Future of Syria: Refugee Children in Crisis*, (2013), p.53.

This informal education can be offered in the form of catch-up or accelerated learning courses. For example, in both Jordan and Lebanon such courses were provided for those Syrian children who; had been out of school for a long period of time, had not been qualified to attend school (due to lack of eligibility or other access-related problems), and to children who had difficulty with the curriculum and language of the host country.³¹⁷

However, this sort of informal education does sometimes follow an approved curriculum. After finishing these courses successfully, children are then permitted to attend public schools or obtain equivalency certificates.³¹⁸

Interestingly, since 2016 in Helsinki (Finland) a “skills center” offers a set of vocational and language training to refugees who are not able to attend formal schools due to age limitations. In fact, this specific center focuses on refugee with age of 17 or more to integrate them into the education system and/or labour market by combining vocational education, employment, and language training services.³¹⁹

In Turkey where more than 1 million school aged Syrian children are living,³²⁰ since summer 2016 the Turkish government has developed projects to facilitate integration of refugee children into the national education system.³²¹ For instance, by laying down a governmental order all Syrian families can currently choose to enroll their children in either temporary education centers (TECs) or public schools.³²² Furthermore, these TECs are required to hold 15 hours of Turkish language training per week in order to facilitate transition of Syrian pupils into Turkish public schools.³²³ This project is supported by both the European Union’s Facility for Refugees in Turkey and Promoting Integration of Syrian Children into the Turkish Education System (PICTES).³²⁴ The next phase of this project (2019-2022) will have a greater implication on early children education and care which will be implemented in 26 Turkish provinces.³²⁵ However, as indicated by the statistics, since 2016 approximately 360,000 Syrian children have been covered by the intensive Turkish classes. In addition, currently a touch over 100,000 Syrian students are studying intensive Turkish language classes that are held by 282

317 UNHCR, the Future of Syria: Refugee Children in Crisis, p.53.

318 UNHCR, the Future of Syria: Refugee Children in Crisis, p.53.

319 Cerna, Refugee Education: International Models and Practices in OECD Countries, p.36.

320 Cerna, Refugee Education: International Models and Practices in OECD Countries, p.17.

321 Cerna, Refugee Education: International Models and Practices in OECD Countries, p.17.

322 Cerna, Refugee Education: International Models and Practices in OECD Countries, p.17.

323 Cerna, Refugee Education: International Models and Practices in OECD Countries, p.17.

324 Cerna, Refugee Education: International Models and Practices in OECD Countries, p.17.

325 Cerna, Refugee Education: International Models and Practices in OECD Countries, p.17.

TECs in 23 provinces.³²⁶ Language training, catch-up training, back up training and training for school leaders have improved the scores of students and their sense of belonging. Further, the rates of both absenteeism and grade retention have been reduced by these training services as well.³²⁷

Administrative barriers: As frequently happens, a lack of access to the required administrative documents can also hinder refugees from attending school.³²⁸ For example, due to the overnight and unplanned flight of many refugees, birth certificates and/or educational records required for school enrolment, may not be available. This can represent a major barrier to refugees wanting to enroll in the public schools of the receiving country. However, it can also happen that refugees' educational qualifications, including school or university certificates, transcripts, or equivalencies, are not recognized by the educational system of the country of refuge.

The high costs of providing the required educational documentation can have identical implications on the continuation of refugees' education as well.³²⁹ According to a survey, only 3% of the 71 million displaced people in the world have been able to attend higher education in the host countries.³³⁰ A major reason is the lack of an effective system for the recognition of refugees' educational qualifications in many receiving countries.³³¹ This problem can deteriorate the situation of refugees in the host countries. In fact, those refugees who did not get formal recognition for their educational achievements, would neither be able to continue their education to reach a higher level nor would they be able to find relevant jobs that match their educational background.

326 Cerna, *Refugee Education: International Models and Practices in OECD Countries*, p.17.

327 Cerna, *Refugee Education: International Models and Practices in OECD Countries*, p.17.

328 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.12. See also Committee on Economic, Social and Cultural Rights (CESCR), *The Duties of States Towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights*, (2017), p.4.

329 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.12.

330 Jack, A., *Unesco Accord Pushes for Recognition of Educational Qualifications*, (2019), <https://www.ft.com/content/18a946ca-0f05-11ea-a7e6-62bf4f9e548a>. The current number of forcibly displaced people has reached 82.4 million people in 2021.

331 Regarding recognition of refugees' educational achievements at the regional level (Europe), see "the 1997 Lisbon Recognition Convention" (Convention on the Recognition of Qualifications concerning Higher Education in the European Region). The Article VII of the 1997 Lisbon Recognition Convention stipulates that: "Each Party shall take all feasible and reasonable steps in the framework of its education system and in conformity with its constitutional, legal, and regulatory provisions to develop procedures designed to assess fairly and expeditiously whether refugees, displaced persons and persons in a refugee like situation fulfil the relevant requirements for access to higher education, to further higher education programmes or to employment activities, even in cases in which the qualifications obtained in one of the Parties cannot be proven through documentary evidence."

Consequently, this barrier can delay their integration into the host community either through education or employment. However, a set of initiatives has been introduced by some international agencies such as UNESCO in order to improve the recognition of refugees' qualifications. For example, the "UNESCO Qualifications Passport" for refugees and vulnerable migrants in Zambia, is a considerable step forward in helping these vulnerable people receive further education and employment.³³² This Qualification Passport includes three parts including the assessment, the explanatory, and the way ahead.

The assessment part focuses on information about the highest attained qualification(s), subjects filed, relevant work and other qualifications as well as language proficiency (if it is relevant and can be validated). The explanatory part concentrates on the status of the document and its provenance.

The last part of the qualification passport includes information on the way ahead. It includes the contact details of potential officials and organizations that can help migrants and refugees along their paths to finding an appropriate job or pursuing their higher-level study. Nonetheless, the Qualification Passport cannot be used as a formal document that authorizes its holder to practice a particular job. It only certifies the educational and work qualifications and language ability of the owner.³³³

Regarding national initiatives, there is a broad action plan performed in Croatia. The Action plan of 2017-2019 is a comprehensive scheme which contains different areas including language learning and educational access. A part of this far-reaching action plan presents a supportive IT environment to facilitate refugees' enrollment in higher education institutions and recognition of their educational qualifications. Moreover, this initiative provides refugee students who suffer from financial limitations with state scholarships and dormitory accommodations equal to national students.³³⁴

In the light of Article VII of the 1997 Lisbon Recognition Convention, in 16 European countries there are clear legal frameworks for procedures in respect of recognition of refugees' academic credentials. For example, Norway is one of the most supportive countries toward

332 Another great step taken by UNESCO is adopting "the Global Convention on the Recognition of Qualifications Concerning Higher Education" in 2019.

333 UNESCO, *What You Need to Know About the UNESCO Qualifications Passport for Refugees and Vulnerable Migrants*, (2019), <https://en.unesco.org/news/what-you-need-know-about-unesco-qualifications-passport-refugees-and-vulnerable-migrants>.

334 Crosier and Kocanova, *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, p.18.

recognition of refugees' academic qualifications.³³⁵ Indeed, in 2014 it designed a particular procedure known as the Recognition Procedure for Persons without Verifiable Documentation (UVD-procedure).³³⁶

Under this procedure, those refugees who either have no documentary evidence or hold incomplete educational qualifications can apply for UVD-procedure to become able to have access higher education studies. This project is managed by the Norwegian Agency for Quality Assurance in Education (NOKUT) and includes assessment of the available documents, preliminary interview and interview and test with the panel of experts.³³⁷

In addition, Norway has introduced a similar project called "NOKUT's kvalifikasjonsvurdering" for refugee students which complies same structure as European Qualification Passport for Refugees that was already explained above.³³⁸ Some European countries (Germany, the Netherlands, Hungary, Sweden, France, and Denmark) have tried to facilitate the recognition procedure through issuance of a particular document known as "background paper." In fact, this initiative is in line with subsidiary text to the Lisbon Recognition Convention on the Revised Recommendation on Criteria and Procedures for the Assessment of Foreign Qualifications.³³⁹

Although, the background paper itself is not a formal evaluation but acts as an authoritative description or reconstruction of the claimed educational qualifications based on the available documentation.³⁴⁰ The main goal for this practice is to facilitate integration of those refugees who hold good reasons to lack documentary evidence for their academic achievements into higher education studies or labour market of the reception state.³⁴¹ This paper is basically generated and used by the competent recognition authorities of the country of refuge and can

335 UNESCO and Council of Europe, *Monitoring the Implementation of the Lisbon Recognition Convention*, (2019), p.59.

336 Crosier and Kocanova, *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, p.20.

337 UNESCO and Council of Europe, *Monitoring the Implementation of the Lisbon Recognition Convention*, p.59.

338 Crosier and Kocanova, *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, p.20.

339 UNESCO and Council of Europe, *Monitoring the Implementation of the Lisbon Recognition Convention*, p.59.

340 UNESCO and Council of Europe, *Monitoring the Implementation of the Lisbon Recognition Convention*, p.60.

341 UNESCO and Council of Europe, *Monitoring the Implementation of the Lisbon Recognition Convention*, p.60.

have a considerable implication on the process of refugee' integration into the higher education institutions and/or their employability in the labour market.³⁴²

However, though many countries still lack a particular national procedure toward recognition of refugees' educational qualification and competencies, many of them try to respond to this problem in other ways. For example, in Armenia, due to the lack of a formal procedure the Ministry of Education undertakes a method of case-by-case examination in order to help with this challenging issue.³⁴³ There is a similar story for many reception countries to provide educational opportunities that recognize earlier academic achievement.

Inadequate school capacities: Often refugees have serious problems entering public schools due to the lack of enough seats in the public schools of many receiving countries.³⁴⁴ Indeed, these countries were already suffering from insufficient capacity even before the recent refugee crisis.³⁴⁵

This problem may be more significant at the level of secondary education. This is partly due to the high costs of the secondary schools, where particular infrastructure and services such as more professional teachers are required.³⁴⁶ As a matter of fact, one of the common responses by countries to cope with this problem is to create two or more shifts within the system.³⁴⁷ However, according to the experiences of some countries, financial and administrative shortages can be a serious obstacle to an increased shift system, thereby it is not always an effective option.³⁴⁸

Specific barriers to higher education: Continuing schooling for tertiary-level education is one of the main goals of many refugees who have completed their secondary education.³⁴⁹ This

342 UNESCO and Council of Europe, Monitoring the Implementation of the Lisbon Recognition Convention, p.60.

343 UNESCO and Council of Europe, Monitoring the Implementation of the Lisbon Recognition Convention, p.60.

344 Pedró et al. Enforcing the Right to Education of Refugees: A Policy Perspective, p.13.

345 Pedró et al. Enforcing the Right to Education of Refugees: A Policy Perspective, p.13.

346 Pedró et al. Enforcing the Right to Education of Refugees: A Policy Perspective, p.13.

347 Pedró et al. Enforcing the Right to Education of Refugees: A Policy Perspective, p.13.

348 For example, some Syrian refugees in Lebanon due to lack of meeting minimum enrolment criteria are not able to enter the higher grades while the system of second shift is a common policy solution there. See also Pedró, F., Mounné, R., Bouëtard, M. and Nguyen, K., *Enforcing the Right to Education of Refugees: A Policy Perspective* (2019), p.13.

349 This is a key issue in many countries especially European ones. For example, roughly 51.5% of first time applicants are refugees aged between 18 to 34 years old. As it happens, this age category is in fact closely linked to higher education level. See Crosier, D. and Kocanova, D., *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, (2019), p.11.

goal is difficult to achieve due to the many obstacles that prevent refugees from entering higher education. One of the critical barriers preventing refugees from being able to attend universities is lack of adequate financial resources.

Many refugees cannot afford the expenses required for university enrolment such as tuition and fees.³⁵⁰ It is worth noting that, while a set of national or international scholarships are dedicated to help refugees for their higher education, the quantity of these resources are not sufficient for refugees' needs and demands.³⁵¹ For example, the DAFI scholarship provided by UNHCR for facilitating refugees' higher education is highly competitive and only covers 2% of all refugee applications.³⁵² Furthermore, there is no major support or regular donations for refugees' higher education.³⁵³

In terms of national schemes, the attention must be drawn to Germany that provides the most developed package of educational measures for the integration of refugees into tertiary level education.³⁵⁴ For instance, the organization of the German Academic Exchange Service (DAAD) generally tries to support refugees through accelerating their university admission processes, classifying their language proficiency skills and recognizing their ability to study in Germany. A set of tools which were already in use for foreign students, are now used for refugees as well. Bespoke student aptitude tests (TestAS for refugees) for evaluating general and subject-related cognitive abilities as well as web-based linguistic skills tests are required before beginning to study in German higher education institutions.³⁵⁵ "INTEGRA" is a particular DAAD programme which genuinely concentrates on integration of refugees into the German higher education. Indeed, it financially supports academic language and preliminary courses at 170 German universities and preparatory colleges. This integration scheme covers as many as 10400 students annually.³⁵⁶

350 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.14.

351 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.14.

352 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.14. The other funding resources for refugees in course of higher education are WUSC (the World University Service of Canada) and the Windle Trust.

353 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.14. For example, nearly in half of the education systems of European countries, there is no a specific policy for asylum seekers and refugees in top-level steering documents directed to their higher education studies. See also Crosier, D. and Kocanova, D., *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, (2019), p.14.

354 Crosier and Kocanova, *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, p.16-17.

355 Crosier and Kocanova, *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, p.17.

356 Crosier and Kocanova, *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, p.17.

Another DAAD initiative with respect to the integration of refugees into higher education, focuses on student-led volunteer projects. These projects cover costs for student assistants (8-10 hours per week) to facilitate the integration of refugees through tutorials, creation of information material, mentoring, translations, and language training. This initiative provides budget for more than 150 projects.³⁵⁷ In addition, it arranges professional training for university employees whose jobs are to advise refugee students.³⁵⁸ DAAD also has launched an information portal for those refugees who are interested in attending university degree programmes. This portal provides information to higher education centers and the public as well.³⁵⁹ The DAAD educational schemes were initiated in 2016 and the German Federal Ministry of Education and Research (BMBWF) supports its required budgets.³⁶⁰

Besides, Portugal is another European country that introduced a new generous policy by improving its legal framework. Indeed, its 2018 policy decree on international students identifies the rights of refugees to higher education.³⁶¹ The main purpose of this new regulation is to treat refugees as Portuguese students concerning rights to higher education, including eligibility to have access to state social assistance. However, such crucial supportive policy in favour of refugees has been unprecedented within the national education system of Portugal.³⁶² Similarly, in Serbia also students have an opportunity to access public financial support with lower criteria than those created for native pupils.³⁶³

Being out of the formal education system makes it much harder for refugees to attend university. The displacement and interruption of refugee's education keeps many refugees out of formal educational institutions for many reasons. Some refugees consider displacement as a deadlock which puts an end to the continuation of their education.

Additionally, while universities expect official documentary evidence such as diplomas, certificates, and examination scores, in many cases displacement has deprived refugees of these

357 Crosier and Kocanova, *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, p.17.

358 This is run by specific organization known as the International DAAD Academy (IDA).

359 Crosier and Kocanova, *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, p.17.

360 Crosier and Kocanova, *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, p.16.

361 Crosier and Kocanova, *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, p.14.

362 Crosier and Kocanova, *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, p.14.

363 Crosier and Kocanova, *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, p.14.

documents.³⁶⁴ Lack of required official documents plus difficulty with the foreign educational qualifications of the host countries' universities are major problems for refugees when applying for higher education.³⁶⁵

As previously mentioned, the recent Global Convention on the Recognition of Higher Education Qualifications adopted in 2019 is a great achievement for both refugees' and migrant's situations in respect to their access to higher education in destination countries.³⁶⁶ The main purpose of the adoption of this convention is to create a universal legal procedure that recognizes foreign higher educational qualifications, and that is totally fair and transparent and excludes any discriminatory criteria.

Importantly, it supports all kinds of migrants and refugees, even those who have no documentary evidence to prove their educational qualifications.³⁶⁷ Finally, as previously discussed, the language barrier plays a significant role in keeping refugees out of higher education institutions. Many universities in the receiving states are less likely to offer programs in other languages than their own. Providing refugees with language training courses at universities or other educational institutions can be very helpful in their integration into the education system. For example, the Czech Republic has created general language training and information services for refugees and asylum seekers that are also available for those refugees who want to attend higher education studies.³⁶⁸

However, even in cases where English is enough, many refugees due to their low proficiency skills cannot join these programmes.³⁶⁹

2.5.1.3 Functional Barriers

The quality of education available for refugees is not always comparable with their local fellows. The low quality of education is a principal factor which has a significant impact on refugees' dropout rate and reduces their demand for education.³⁷⁰ Inequalities will be increased by the low quality of education available to refugee students. In fact, the quality of education

364 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.14.

365 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.14

366 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.14.

367 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.15.

368 Crosier and Kocanova, *Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures*, p.16.

369 For example, a survey in the Jordan proves that many universities in this country mainly offer English programmes while many of Syrian refugees who already completed their secondary schools in Arabic are not able to pick up these disciplines. See also Pedró, F., Moumné, R., Bouëtard, M. and Nguyen, K., *Enforcing the Right to Education of Refugees: A Policy Perspective* (2019), p.15.

370 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.15.

plays a vital role in refugees' educational successes and the lack of it reduces the chances of refugees attending tertiary education.³⁷¹

However, as mentioned above refugee students normally suffer from low quality education. For example, they are often placed in schools with extremely poor facilities and overcrowded classrooms. Many teachers in these schools are not well-trained to deal with vulnerable students such as refugees.³⁷² During the recent refugee crisis many receiving countries have not been able to meet refugees' educational needs effectively. For example, many of these countries did not have sufficient structural and human resources to concretely respond to the huge educational demands of refugee students. Consequently, they hired non-professional people who were not qualified to teach students with refugee backgrounds.³⁷³

It is worth noting that, in addition to the vital role of teachers in quality of education, their qualifications affect refugees' futures very dramatically.³⁷⁴ Implementing policies that target the training of teachers and improving their qualifications, will lead to improving refugees' learning outcomes, and consequently, their access to higher level of education.³⁷⁵

In the next part, three important proxy indicators that are usually used by the international community to measure the quality of refugees' education will be evaluated.

2.5.1.4 Three Proxy Indicators to Measure the Quality of Refugees' Education

Although, there is a lack of correct data on refugee learning outcomes, there are three proxy indicators for measuring the quality of refugees' education that have been introduced by the international community.³⁷⁶ These three indicators include: "(i) the number of students per teacher; (ii) percentage of qualified teachers; and (iii) the extent to which refugee/returnee qualifications are recognized."³⁷⁷

The minimum standard for the first indicator (the number of students per teacher) is 40-1. A survey demonstrates that 14 of the 26 selected refugee camps have classes with many more students than the minimum standard of 40 people.³⁷⁸ For example, in Ethiopia while there are

371 Pedró et al. Enforcing the Right to Education of Refugees: A Policy Perspective, p.15.

372 Pedró et al. Enforcing the Right to Education of Refugees: A Policy Perspective, p.15.

373 Pedró et al. Enforcing the Right to Education of Refugees: A Policy Perspective, p.15.

374 Pedró et al. Enforcing the Right to Education of Refugees: A Policy Perspective, p.15.

375 Pedró et al. Enforcing the Right to Education of Refugees: A Policy Perspective, p.15.

376 Pedró et al. Enforcing the Right to Education of Refugees: A Policy Perspective, p.16.

377 Pedró et al. Enforcing the Right to Education of Refugees: A Policy Perspective, p.16.

378 Pedró et al. Enforcing the Right to Education of Refugees: A Policy Perspective, p.16.

two shifts for schools in camps but in every single class there are around 80 students.³⁷⁹ One of the major reasons for overcrowded classes in refugee settings is a shortage of enough teachers. This phenomenon intensifies the dropout rates among refugees especially when the transition from primary school to secondary school occurs.³⁸⁰

The second indicator, the “number of qualified teachers” has great implications for the quality of education. Other problems of a shortfall of learning resources include shortages of textbooks and/or laboratory facilities in schools, a lack of competent and available teachers, and the legal and administrative obstacles against refugee teachers who may not be paid according to the standards for their teaching positions.³⁸¹ These can be exacerbated by having teachers without sufficient essential knowledge and preparation for teaching refugee children.³⁸²

In addition, even though using refugee teachers in national educational systems is advantageous, they sometimes face barriers to their participation. For example, it has frequently been seen that refugee teachers do not know the educational system, language, and curriculum of the host country very well. Their teaching qualifications may not be validated. They have no legal right to official employment and they are not allowed access to higher education.³⁸³

The indicator of “the extent to which refugee/returnee qualifications are recognized” refers to two facts. Firstly, it considers the importance of the recognition of refugees’ qualifications obtained in the country of origin. Indeed, this recognition affects not only the individual’s life but also families, communities and societies can be impacted.³⁸⁴

The second part highlights the reality that sometimes the refugee’s qualification and certifications acquired in the country of refuge are not validated in the original country. This lack of recognition will leave refugees with difficulty in accessing further education and/or finding a relevant job which matches the education they received as a refugee in another

379 Another example can be drawn from Chad camps in Eastern parts that while they accommodate more than 90000 refugee children but there are only 62 schools in place in these camps. See also Pedró, F., Moumné, R., Bouëtard, M. and Nguyen, K., *Enforcing the Right to Education of Refugees: A Policy Perspective* (2019), p.16.

380 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.16.

381 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.16.

382 For instance, a survey in Algeria and Ethiopia proves that some students have disciplinary issues and suffer from psychological problems without any motivation for study. See also Pedró, F., Moumné, R., Bouëtard, M. and Nguyen, K., *Enforcing the Right to Education of Refugees: A Policy Perspective* (2019), p.16.

383 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.16.

384 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.16.

country after they return to their home countries.³⁸⁵ Establishing cross-border examination systems can help refugees validate the qualifications they obtained in the host country.³⁸⁶

As mentioned previously, the Global Convention on the Recognition of Higher Education Qualifications can have a substantial effect on enhancing the validation of the refugees' education qualifications.

It can help to create an international network where Member States through improved collaborations and communications can achieve effective methods for the issues of recognition of refugees' education qualifications. Moreover, this international convention establishes legal standards in which refugee's education qualifications should be recognized in a timely manner, with no discrimination on any prohibited grounds.³⁸⁷ One of the obvious achievements in this case can be the presentation of a specific regional project that is called "European Qualifications Passport for Refugees."³⁸⁸

Although this thesis focuses on international instruments and programs, this passport is a regional European initiative which is a model for educational and economic integration of refugees and will be briefly discussed.

This passport, which has been introduced by the Council of Europe, is based on the "Lisbon Recognition Convention."³⁸⁹ Article VII³⁹⁰ of the Lisbon Recognition Convention imposes an obligation on Member States to make procedures which facilitate and accelerate the assessment of the qualifications of refugees, displaced people and persons in a refugee-like situation. However, according to a study reported in 2016 a wide range of States Parties are still reluctant to do so.

This report indicates that 70% of Member States have no regulations in place to implement article VII, so that they have done nothing. In addition, whereas 15 states have imposed national

385 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.17.

386 For example, In Uganda those pupils from South Sudan have a possibility to take examinations from both their original country and the country of living. See also Pedró, F., Moumné, R., Bouëtard, M. and Nguyen, K., *Enforcing the Right to Education of Refugees: A Policy Perspective* (2019), p.17.

387 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.17.

388 As mentioned in previous parts, the UNESCO has started a similar project in Zambia. See page 78 of this paper.

389 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.17.

390 Article VII: "Each Party shall take all feasible and reasonable steps in the framework of its education system and in conformity with its constitutional, legal, and regulatory provisions to develop procedures designed to assess fairly and expeditiously whether refugees, displaced persons and persons in a refugee-like situation fulfil the relevant requirements for access to higher education, to further higher education programmes or to employment activities, even in cases in which the qualifications obtained in one of the Parties cannot be proven through documentary evidence."

regulations, they have only procedural measures in place for the submission of documents and for the recognition of qualifications for admission to bachelor programmes.³⁹¹

Nevertheless, the European Qualifications Passport for Refugees could be a key fast-track tool for facilitating refugees' integration into the job markets or educational systems of the receiving countries.³⁹² However, as discussed in the case of Zambia, this passport is not a legal document for replacing official educational documentation. In fact, it is a specially developed assessment scheme for refugees, which provides useful information relating to their higher education qualifications as well as their work experience and linguistic competency.³⁹³

Finally, some communities try to use the curriculum of the refugees' countries instead of the national one. This can create problems for refugee students, such as the prohibition of participation in examinations or ineligibility for receiving educational certificates. Consequently, refugee children can face immovable barriers to their pursuit of higher education levels, if the country where they hope to study will not recognize their achievements.³⁹⁴

391 The Committee of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, *Monitoring the Implementation of the Lisbon Recognition Convention*, (2016), p.14.

392 The first pilot phase of this project has been launched in 2017 in Greece supported by the UNHCR. The second phase was started in January 2018 with more actors from qualification recognition centres in Armenia, Canada, France, Germany, the Netherlands, Italy, Greece, the UK and Norway. See also Eliassen, I. and Malichudis, S., *Europe's Refugee Regime Pushes External Borders to the Limit*, (2020), <https://www.investigate-europe.eu/en/2020/europes-new-refugee-regime-pushing-external-borders-to-the-limit/>.

393 UNHCR and Council of Europe, *European Qualifications Passport for Refugees: Integration through Education and Employment*, (2018), <https://www.unhcr.org/news/press/2018/3/5aba426d4/european-qualifications-passport-refugees-integration-education-employment.html>.

394 Pedró et al. *Enforcing the Right to Education of Refugees: A Policy Perspective*, p.17.

2.6 Conclusion

Even though, refugees face diverse problems in their new countries they are still persistently interested in continuing their education there. Reception countries cannot ignore their substantial obligation and commitment toward refugees' rights to education, which is in line with their legal obligations under multiple laws of the international human rights regime.

However, as was indicated in the earlier parts, Art. 22 of the 1951 Geneva Convention provides two different legal regimes for refugees in terms of their right to education. Concerning elementary education, it obliges Member States to treat refugees as nationals, but unfortunately it does not guarantee refugees' rights to post-elementary education. This is really a critical gap which has resulted in very low numbers of refugees in post-elementary education, especially at the higher levels.³⁹⁵

Nonetheless, as proposed in the previous parts, to provide better protection to refugee students we should move beyond the Refugee Convention and examine other international human rights instruments and regulations. For instance, Art. 13 of the ICESCR offers more supportive provisions about the right to education particularly at the tertiary level. While Art. 13 is not specially focused on the rights of refugees, because of its general characteristics, it can be used in the refugee context.

As a matter of fact, this article provides that all people (including refugees) have a right to enjoy free primary education. This education is compulsory and Contracting States are strongly committed to take serious steps towards the full realization of this right. The main advantage of Art. 13 of the ICESCR over Art. 22 of the Refugee Convention relates to the right to secondary and higher education. Whereas States only must meet their commitments under Art. 13 progressively, in fact there is no such distinction between local people and non-nationals (including refugees) as is found in Art. 22 regarding the right to secondary and tertiary education. Again, this higher protection offered by Art. 13 of the ICESCR is of significant use in filling the existing gap in the 1951 Geneva Convention in terms of right to post-elementary education.

Furthermore, according to Art. 13.2 (d) all people from different genders and age groups who have not received or completed the whole period of their primary education should enjoy the right to fundamental education. Thus, as explained during the previous sections, those refugees who did not receive or complete their primary education can have access to this type of

³⁹⁵ According to the UNHCR, only 3 per cent of refugees are enrolled in university.

education which shall be free of charge as well. It is worthy to note that, though Art. 13 like other articles of the ICESCR requires Member States to meet their commitments progressively and following their own circumstances, all states must fully comply with the four interconnected requirements of availability, accessibility, acceptability and adaptability.

Apart from the legal standards however, the significant role of international and regional organizations in collaboration with national organizations, civil society, NGOs and more importantly governments cannot be underestimated. As was previously indicated, international and regional agencies can, through arranging constructive programmes and initiatives,³⁹⁶ support and help refugees to improve their status regarding their right to education. For example, the recent non-binding document of the Global Compact on Refugees of 2018, which was proposed by UNHCR and later endorsed by the General assembly, is significant.

This global framework aims to strengthen and make more predictable and equitable the burden and responsibility-sharing among all members of the international community.³⁹⁷ In regard to education it can be seen in paragraphs 68 & 69.³⁹⁸ Some crucial matters which are covered by these two paragraphs are: the facilitation of refugees' access to educational facilities through enhancing the quality and inclusiveness of national education systems by states and relevant stakeholders, and minimizing the duration of time that refugees have to be out of the education system, by more direct financial support.

In this regard, referred to the Education Co-sponsorship Alliance which was formed when preparing the Global Refugee Forum (GRF) in December 2019 in Geneva. The Alliance collected around 205 educational pledges by early 2020. These commitments are attributed to

396 Some of these programmes and initiatives which were discussed in this chapter include: different informal schools like school in camps, summer and accelerated school, Qualifications Passport for Refugees, etc.

397 Cerna, *Refugee Education: Integration Models and Practices in OECD Countries*, p.19.

398 “68. In line with national education laws, policies and planning, and in support of host countries, States and relevant stakeholders will contribute resources and expertise to expand and enhance the quality and inclusiveness of national education systems to facilitate access by refugee and host community children (both boys and girls), adolescents and youth to primary, secondary and tertiary education. 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.”

“69. Depending on the context, additional support could be contributed to expand educational facilities (including for early childhood development, and technical or vocational training) and teaching capacities (including support for, as appropriate, refugees and members of host communities who are or could be engaged as teachers, in line with national laws and policies). Additional areas for support include efforts to meet the specific education needs of refugees (including through “safe schools” and innovative methods such as online education) and overcome obstacles to their enrolment and attendance, including through flexible certified learning programmes, especially for girls, as well persons with disabilities and psychosocial trauma. Support will be provided for the development and implementation of national education sector plans that include refugees. Support will also be provided where needed to facilitate recognition of equivalency of academic, professional and vocational qualifications.”

policies that invest in inclusive and quality education at all levels for both refugees and their host community peers.³⁹⁹ For example, specific task teams are created to enhance access to, and the quality of early childhood development programmes (ECD) as well as primary and secondary education in refugee-packed regions for all learners.⁴⁰⁰ In fact, this approach follows inclusion of refugees in national education systems which is a key goal of the 2018 Global Compact for Refugees and one of the main outcome areas of the Global Framework for Refugee Education that is authored by the Alliance.⁴⁰¹

Such opportunities will help male and female refugees attend technical and vocational education and training (TVET) and higher education programmes to acquire required skills and qualifications for their future employment.⁴⁰² The topic of better inclusion of refugees in national education systems during global emergencies was discussed as well.⁴⁰³ Moreover, raising longer-lasting and sustainable financial and technical supports by host states and international donors to bolster inclusion of refugees in national educational systems is supported by the Alliance.⁴⁰⁴

In general, the Global Refugee Forum process can play a crucial role to monitor implementation of education pledges made before the 2019 and those made during the Forum to give deeper insight into improvements and deficiencies.⁴⁰⁵

Nevertheless, there is still a long path to travel to reach an inclusive, equitable and good quality education for all, which is aligned with Sustainable Development Goal 4. To achieve this goal, states should give serious attention to concretely transposing the international norms, standards, and regulations regarding the right to education, into domestic laws. For instance, some countries lack a detailed legal framework with respect to refugees' rights to education. In fact, their national laws take a very broad view towards the right to education, without investing in

399 UNHCR (Global Compact on Refugees), *Education Co-sponsorship Alliance Brief 2020*, (2021), <https://globalcompactrefugees.org/article/education-co-sponsorship-alliance-brief-2020>.

400 UNHCR, *Education Co-sponsorship Alliance Brief 2020*, (2020), p.5.

401 For example, during the Global Refugee Forum in 2019 roughly 25 commitments, largely by states, addressed the need of refugees' inclusion in national education system through the education continuum including primary education. See UNHCR, *Education Co-sponsorship Alliance Brief 2020*, (2020), p.6.

402 UNHCR, *Global Framework for Refugee Education*, (2019), p.7. See also UNHCR, *Education Co-sponsorship Alliance Brief 2020*, (2020), p.8.

403 For example, in accordance with new reports great steps have been taken toward coordination, support and capacity building for reacting to the Corona crisis. See UNHCR, *Education Co-sponsorship Alliance Brief 2020*, (2020), p.12.

404 This issue was discussed during the Global Refugee Forum (GRF) in 2019. See UNHCR, *Education Co-sponsorship Alliance Brief 2020*, (2020), p.17.

405 Hine, S. and Wagner, E., *Save the Children, Progress Under Threat*, (2021), p.10.

the educational rights of refugees. This can trigger many complications and inconveniences that prevent the enforcement of the right to education for refugees.⁴⁰⁶

Finally, it is essential that states can, through different policies and schemes, extend and improve their relations with the original countries of refugees and with international organizations, in order to remove those barriers which, prevent refugees from enjoying their fundamental rights, such as the right to education.

406 Pedró et al. Enforcing the Right to Education of Refugees: A Policy Perspective, p.6.

3 Chapter III: Integration of Refugees through Employment

This chapter concentrates on the refugee's right to employment. It follows the same framework as the previous chapter on the right to education for refugees under international law. First, I examine those articles and provisions which relate to the right to employment in the 1951 Geneva Convention and the other international human rights law such as ICESCR and ICCPR. Secondly, these articles are discussed to identify legal gaps regarding refugees' right to employment and explores resolutions for overcoming these gaps.

Indeed, the main reason for analysing and comparing these articles and regulations to each other is to recognize those provisions which best protect refugee's right to employment. These most protective provisions will be identified in the sake of maximising economic integration of refugees into the host countries. Finally, this chapter ends with proposals for best practices and some policy recommendations with regard to economic integration of refugees and related problems in this domain.

The right to work has recently become an important topic in the human rights debates. However, a great number of people across the world are still suffering from shortages of meaningful job opportunities. This situation can be worsened for vulnerable populations such as asylum seekers and refugees who often face systematic restrictions from access to the labour market and self-employment opportunities in the host country.⁴⁰⁷ According to a report by Eurostat in 2017, people who born outside the EU were recognized twice as likely to be affected by poverty or social exclusion than native residents.⁴⁰⁸

Indeed, there is often a strong concern in the reception countries as to how enabling refugees to enter the labour market will impact native workers' wages negatively. Thus, it is quite normal to see tensions between refugees and host communities in this regard.⁴⁰⁹

Access to work opportunities plays an important role in human dignity and socio-economic integration of refugees into a host society. During the integration process refugees move gradually toward self-reliance while becoming less dependent on the host country aid and international assistance. Hence, economic inclusion is a substantial part of refugees'

407 Bhattacharjee, S., *Situating the Right to Work in International Human Rights Law: An Agenda for the Protection of Refugees and Asylum Seekers*, (2013), p.43.

408 Eurostat, *Archive: Europe 2020 Indicators - Poverty and Social Exclusion*, (2019), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Archive:Europe_2020_indicators_-_poverty_and_social_exclusion&oldid=394836.

409 Hathaway, *the Rights of Refugees Under International Law*, p.730.

integration.⁴¹⁰ One of the signs of successful integration is to be ensured that refugees have sufficient access to work opportunities in the reception country's labour market.⁴¹¹

Furthermore, from a societal standpoint there is a strong link between refugees' employment and their social integration into the receiving community. Strengthening employment opportunities for refugees facilitates their social integration through several factors. For example, employment helps refugees to improve their language proficiency and broaden their social networks and occupational interactions with local people.

In addition, employment assists refugees to positively contribute to the economy of the country of refuge. For instance, a survey by UNHCR and the World Bank Group in Kenya demonstrated that refugees living in and around Kakuma camp with a population of 180,000 had a US \$56 million contribution to the labour economy in one year alone.⁴¹² As a result, all these factors help refugees to be further accepted by native people which can ultimately accelerate their integration into their new home.⁴¹³

Enhancing refugees' right to work can also alleviate some risks. The restrictive legal views toward refugees' access to employment leads them to the crowded informal market which is already busy with many native employees. This movement to the shadow economy can expose refugees to various unpleasant and dangerous experiences such as workplace exploitation, underpayment, gender discrimination, risk of injuries and forcing their children to work (child labour).⁴¹⁴

Providing refugees with decent work opportunities is one of the policies which host countries should consider. Given that, without access to a reliable source of income refugees' integration is not completed. Employment enables refugees to meet their essential needs such as housing, food, education, health care, etc while progressively reducing their dependency on national and international aid.

One of the negative coping mechanisms which refugees might undertake to escape unpleasant outcomes of unemployment is being involved in criminal activities.⁴¹⁵ Thus, supporting refugees into appropriate employment will prevent their exploitation by the criminal groups.

410 Da Costa, *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations*, p.56.

411 Da Costa, *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations*, p.56.

412 UNHCR, *Economic Inclusion of Refugees*, (2018), p.4.

413 Da Costa, *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations*, p.56.

414 Zetter, R. and Ruaudel, H., *Refugees' Right to Work and Access to Labor Markets – An Assessment*, (2016), p.1.

415 UNHCR, *Economic Inclusion of Refugees*, p.3.

Additionally, access to the destination country's labour market keeps refugees from having to think about further movements to seek employment in other country.⁴¹⁶

This attitude is emphasized by Sustainable Development Goal 8 which aims to promote sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all, including refugees.⁴¹⁷ It identifies the connection between poverty alleviation and full and productive employment and decent work for all and requires all states to take serious action toward youth employment. The core facets of decent work can be also traced in the targets of most of the other 16 SDGs.⁴¹⁸

However, according to the UN Refugee Agency around 85% of the refugee population live in developing countries and nearly 70% of them face challenges finding jobs in their country of refuge. The UNHCR also reports that in 50% of the host countries refugees still do not have legal access to the labour market.⁴¹⁹ This restriction on working in the host country's labour market can sometimes occur in combination with other limitations such as lack of access to education or vocational training, restrictions on internal movements, prevention from having access to significant business-related facilities such as banking and restrictions on rights to housing and land.⁴²⁰

Enabling refugees to work in the labour market will result in boosting host country's economy in the long-term. Refugees often bring new skills and experiences to their country of asylum that could benefit host economy even in low-and middle-income countries.

Furthermore, the role of employment and entrepreneurship in gender equality and protection of female refugees against gender-based violence should not be forgotten.⁴²¹ Employed refugee women experience less gender-based violence as well as being able to better protect their families against financial problems. For example, single mothers who are in paid work can better support their young children to resume their schooling instead of working in underground economy.⁴²² In the next part, various articles and provisions relating to the right to employment of refugees will be discussed.

416 UNHCR, Economic Inclusion of Refugees, p.3.

417 Huskamp Peterson, T., *the Universal Declaration of Human Rights: An Archival Commentary*, (2018), p.59.

418 The United Nations (Department of Economic and Social Affairs, Sustainable Development), *Employment, Decent Work for All and Social Protection*, (n.d.), <https://sdgs.un.org/topics/employment-decent-work-all-and-social-protection>.

419 UNHCR, Economic Inclusion of Refugees, p.4.

420 UNHCR, Economic Inclusion of Refugees, p.1. This issue will be discussed in the last chapter with regard to economic integration of Afghan refugees in Iran.

421 UNHCR, Economic Inclusion of Refugees, p.4.

422 Currently the women's global labour force participation rate is nearly 49%. In addition, according to a report by the Georgetown Institute for Women, Peace and Security in 2018, the labour force participation rate for women

3.1 Different Articles in the Context of Economic Protection of Refugees

In addition to Articles 17, 18 & 19 of the 1951 Geneva Convention which deal with the right to wage-earning employment, self-employment, and access to the professions of refugees respectively, there is a set of other general provisions and regulations (both soft and hard laws) that apply to refugees. These general provisions exist in other international human rights law including Art. 23 of the 1948 Universal Declaration of Human Rights (UDHR), Arts. 6 & 7 of the 1966 of the International Covenant on Economic and Social and Cultural Rights (ICESCR), Art. 8.3 (a) of the 1966 International Covenant on Civil and Political Rights (ICCPR), Art. 5 of the 1969 Convention on Elimination of All Forms of Racial Discrimination (CERD), Arts. 11 & 14 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Art. 32 of the Convention of the Rights of the Child (CRC).

Furthermore, in terms of social security and labour legislations there are also other international standards such as Art. 24 of the 1951 Geneva Convention, Arts. 9 and 10 (2) & (3) of the ICESCR, Art. 13 (a) of the CEDAW as well as Art. 26 of the CRC.

Under EU law and Common European Asylum System (CEAS), Art. 26 (1) and (3) of the Qualification Directive (2011/95/EU) hold that refugees and those with subsidiary protection should be granted the right to access to employment and self-employment opportunities. Moreover, Art. 28 of the same Directive grants refugees rights equal to nationals regarding evaluation of their previous education when they lack any documentation to prove their qualifications. This Directive also provides refugees with vocational and technical training on the same terms as nationals. The regulations mentioned above are impacted by Arts. 17, 18, 19 & 22 (2) of the Refugee Convention.

Besides, various ILO Conventions which generally provide international labour standards such as Recommendation No. 71 of 1994 and the 2011 UN Guiding Principles on Business and Human Rights might be also relevant in the context of refugee's economic protection. In this chapter the main attention will be paid to those important provisions of international instruments which best satisfy the purposes of this study.

3.1.1 Article 23 of the 1948 Universal Declaration of Human Rights (UDHR)

in the 36 fragile and war-impacted countries (categorized by the World Bank) was 4 in 10 while this figure for men stood for 7 in 10. See UNHCR, *Economic Inclusion of Refugees*, (2018), p.4.

From a historical standpoint, Art. 23 of the UDHR has been influenced by drafters with communist philosophy.⁴²³ This includes a strong emphasis on the right to work and other work-related rights in Art. 23 as follows:

1. *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*
2. *Everyone, without any discrimination, has the right to equal pay for equal work.*
3. *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented if necessary, by other means of social protection.*
4. *Everyone has the right to form and to join trade unions for the protection of his interests.*

Due to the general characteristic of the 1948 UDHR, it applies to all groups of individuals including refugees. As previously mentioned, though the 1948 UDHR can be categorized as a soft law instrument, its moral and political influence on Member States should not be undervalued. Many of UDHR's regulations have been reflected in succeeding regional and international human rights instruments such as the Refugee Convention, ICESCR, ICCPR, ECHR, etc.

Although, Art. 23 is straightforward, it contains a set of interconnected economic rights and principles which comprise the foundation for the human rights of labour in four core principles.⁴²⁴ First, a non-coercion principle which highlights everyone (including refugees) has the right to work. This right of individuals to work cannot be limited by the state or employers. Furthermore, to practice this right, individuals should be free to choose their job. Thus, neither state nor employer can oblige any person to be employed in a job which is not of his/her choice.⁴²⁵

Other crucial factors which are essential to enjoy the right to work are the working conditions.⁴²⁶ As paragraph 1 holds, the conditions of work should be just and favourable and all workers should be accorded the principles of dignity and fairness. These rights are the main

423 Office of the United Nations High Commissioner for Human Rights (OHCHR), *Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles - Article 23*, (2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23963&LangID=E>.

424 Backer, L. C., *New Draft Posted: "From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Article 23, the ILO, and Working Rights Principles"*, (2019), p.3.

425 Backer, *New Draft Posted: "From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Article 23, the ILO, and Working Rights Principles"*, p.3.

426 Backer, *New Draft Posted: "From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Article 23, the ILO, and Working Rights Principles"*, p.3.

principles of protection against slavery, given that, these rights protect individuals and workers from exploitation by employers. These provisions prevent states or employers from constraining freedom of individuals to choose freely their interested job or obliging them to work under unfair and abusive conditions. Furthermore, states have an obligation to ensure that people have sufficient access to job opportunities to protect them against unemployment. To this end, the capacity of states and their available resources should be taken into consideration.⁴²⁷

The second is a limited non-discrimination principle. Paragraph 2 deals with equality in payment for the same work. Once a person is employed s/he should be paid equally for equal work irrespective of her/his ethnicity, religion, race, nationality, social origin, gender, political beliefs. Yet, after 72 years since the imposition of this provision, still this anti-discrimination principle is not respected in many situations.

The discriminatory grounds mentioned above not only play a determinant role in employers' primary decision in respect of hiring or expelling their employees, but also in paying them.⁴²⁸ For example, female workers in many countries still receive less than their male fellows for the similar work.

The third is a living wage principle. There are several points in paragraph 3 which must be discussed. First, it states that those who work should enjoy a just and favourable remuneration which guarantees a dignified living for the worker and his/her family.⁴²⁹ Therefore, the concept of fairness must be evaluated in accordance with employee's conditions rather than those of his employer. The offered remuneration should provide the worker and his/her dependents with an adequate dignified standard of living worthy of human dignity. Secondly, two distinct obligations can be separated in this paragraph.⁴³⁰

The first refers to the obligation of employers to pay fair and just wages (that are regulated by markets or other mechanisms) to their employees. The second requires them, whenever necessary, to atone for any difference between fair wages and living wages (that is determined by conditions and circumstances of relevant employee and his/her dependents). This obligation

427 Backer, New Draft Posted: "From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Article 23, the ILO, and Working Rights Principles", p.3.

428 Backer, New Draft Posted: "From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Article 23, the ILO, and Working Rights Principles", p.3.

429 Backer, New Draft Posted: "From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Article 23, the ILO, and Working Rights Principles", p.3.

430 Backer, New Draft Posted: "From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Article 23, the ILO, and Working Rights Principles", p.3.

of states refers to their commitment to support vulnerable groups of people whose incomes are not sufficient to live a dignified life through other ways of social protection such as a social security system.⁴³¹

The last one is a collective action principle. According to paragraph 4 every person has a right to create or to join trade unions to protecting his/her interests. Indeed, this right is for both employers and employees to establish and join associations of their interest. To this end, states must give full freedom to both groups and should not interfere or restrain their liberty to do so. In respect of employees, states must also take essential steps to create a mechanism which protects the rights of workers against employers' interference to prevent them to establish or attend trade unions of their own choice.⁴³²

Furthermore, though paragraph 4 does not speak about the rights to collective bargaining and collective action (such as strike) for employees, nonetheless, it can indirectly comprise these rights too. In other words, as the right to bargain collectively and right to collective action are in fact indispensable elements of the right to freedom of association (the right to form and to join trade unions).⁴³³

3.1.2 Right to Wage-Earning Employment Under Art. 17 of the 1951 Geneva Convention

There is a distinction between self-employment (independent economic activity) and wage-earning employment (being employed). Given that, according to the 1951 Geneva Convention these two distinct forms of employment comply with different legal regimes. First, the attention will be paid to wage-earning employment and its diverse dimensions and then self-employment will be discussed.

Article 17 of the 1951 Convention Relating to the Status of Refugees provides:

431 Backer, New Draft Posted: "From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Article 23, the ILO, and Working Rights Principles", p.3.

432 National Research Council, *Monitoring International Labour Standards: Techniques and Sources of Information*, (2004), p.105.

433 This argument is enhanced by a set of other conventions such as the ILO Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Charter of Fundamental Rights of the European Union (Art. 28), the 1961 European Social Charter (Art. 6) and the 1989 Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). In addition, the European Court of Human Rights also identifies the right to collective action such as strike as one of the elements of the trade union rights set out by Art. 11 of the ECHR.

1. *“The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.*
2. *In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned or who fulfils one of the following conditions: (a) He has completed three years’ residence in the country; (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse; (c) He has one or more children possessing the nationality of the country of residence.*
3. *The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.”*

In this part emphasis is on the right to engage in wage-earning employment (to be employed) in the context of the refugee integration.

3.1.2.1 The Protective Power of Art. 17 in Comparison with Art. 6 of the ICESCR

The right to wage-earning employment enshrined in Art. 17 of the Refugee Convention can be moderated by consideration of national economic circumstances. Conversely, as stated in paragraph 3, Member States have a duty to give a sympathetic consideration to matching the refugee’s rights to wage-earning employment with those of nationals of the reception country.⁴³⁴ Hathaway believes that Art. 17 employs more protective provision in terms of right to employment than Art. 6 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴³⁵ Given that, Art. 6 has a minimalist approach to the right to employment in the context of refugees since it provides:

1. *“1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*
2. *The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and*

434 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.954.

435 Hathaway, the Rights of Refugees Under International Law, p.741.

techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”

Article 6 should be read in conjunction with Art. 2 (3) of the ICESCR. As the latter states:

“...Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”

It could be understood from this article that developing countries which accommodate a vast majority of world’s refugees might have some justifications to fail to reach the aims of Art. 6 with regard to the right to work.⁴³⁶

Whereas this article generally imposes a responsibility for states to ensure that non-citizens are not unfairly discriminated against and/or denied the right to work or be subjected to forced labour, nonetheless, Member States can still fulfil their commitments under this provision progressively. Therefore, Member States are not under a duty of immediate result in contrast with Art. 17 of the Refugee Convention which allows States to give refugees a right to access to wage-earning employment as soon as they get their status and meet all relevant requirements.⁴³⁷

According to Hathaway under Art. 6 which must be read in conjunction with Art. 2(3), there is a possibility for Member States particularly for less-developed countries to delay or even fail to meet their commitments. But such justification cannot be accommodated under Art. 17 of the Refugee Convention even by developing countries unless they maintain a reservation to it. However, Zimmermann strongly disagrees with this opinion and believes that Art. 6 of the ICESCR is more protective and supportive than the 1951 Geneva Convention rights. This argument is discussed next.

3.1.2.2 Scope of Refugees Legally Staying in the Host State

Discussion of the scope of refugees legally staying in the territory of the reception state is important for protection of refugee’s right concerning employment. Generally speaking, those asylum seekers who are granted refugee status can be considered as refugees legally staying in

436 Hathaway, the Rights of Refugees Under International Law, p.740.

437 Hathaway, the Rights of Refugees Under International Law, p.741.

the territory of the country of refuge. According to this definition, those asylum seekers who are still waiting for verification of their refugee status, refugees in the territory of the host state, are excluded from this meaning.

However, sometimes it can be seen that some receiving countries are granting a so-called temporary protection status to refugees. Thus, as Hathaway explains, the scope of the “refugee lawfully staying in” can be extended to this group of refugees.⁴³⁸ The logic behind this idea is that the term “lawfully staying in” refers to a presence of a refugee on an ongoing basis which can comprise both refugee status holders and those refugees who are already covered by the temporary protection regime.⁴³⁹

Therefore, it can be considered as a violation of Art. 17.1 of the Refugee Convention, if refugees who are granted a temporary protection status confront a hierarchical standard which accommodates them in a lower rank in comparison to other legally resident third country nationals in terms of right to engage in wage-earning employment in their country of refuge. In other words, this group of refugees should not be subordinated in comparison with other most-favoured nationals living in the host country.⁴⁴⁰

In addition, though the phrase “in the same circumstances” requires refugees to satisfy all relevant requirements which are needed to enjoy the right to engage in wage-earning employment as other most-favoured nationals. However, according to Art. 6 of the 1951 Geneva Convention under particular circumstances these requirements can be cancelled for refugees.⁴⁴¹ If this is an insurmountable requirement because of special refugee’s circumstances, it must be annulled in favour of the concerned refugee. Given that, this insurmountable requirement would potentially prevent refugees from being able to have access to the relative employment. For example, if a Member State imposes a particular length of residency in its territory to become qualified for the right to employment and consequently refugees due to their vulnerable circumstances could not meet this requirement, then its applicability against refugees is controversial.

Notably, granting the right to wage-earning employment solely to the refugees lawfully staying in the host state indicates the main intention of Member States to prevent refugees from filing unfounded refugee status claims which may be made for temporarily taking advantage from this right.⁴⁴²

438 Hathaway, *the Rights of Refugees Under International Law*, p.188.

439 Hathaway, *the Rights of Refugees Under International Law*, p.752.

440 Hathaway, *the Rights of Refugees Under International Law*, p.752.

441 Hathaway, *the Rights of Refugees Under International Law*, p.752.

442 Hathaway, *the Rights of Refugees Under International Law*, p.754.

3.1.2.3 Article 31.1 of the 1951 Geneva Convention

Article 31.1 of the Refugee Convention under the heading “Refugees unlawfully in the country of refuge” provides:

“The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”

According to Art. 31.1, those refugees who illegally entered and stayed in the territory of the host state shall not be penalized. But to avoid being penalized, they must present themselves without delay to the authorities of the host state and indicate a good reason for their unlawful entry or stay. Notably, though Art. 17 of the Refugee Convention cannot be immediately applied with regard to such refugees who have entered or stayed in the territory of the host state illegally, they will still enjoy the right to employment recognized by Art. 17 once their status has been regularized by the authorities.⁴⁴³

However, it is important that if an individual who has been recognized as a refugee lawfully staying in the host state, but then has been prevented from applying for employment solely due to his/her previous illegal entry or presence, such prevention could be considered a penalty which violates refugee’s right under Article 31.1.⁴⁴⁴

3.1.2.4 Non-Discrimination Principle Under Art. 3 of the 1951 Refugee Convention

Article 3 of the Refugee Convention under the of heading “Non-Discrimination” stipulates:

“The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.”

In accordance with this Article, refugees cannot be discriminated based on their race, religion, or nationality in respect of their rights guaranteed by the Refugee Convention. Thus, if the host state tries to impose regulations which directly or indirectly deprive refugees from their right to work only on account of their race, religion, or country of origin, this can be considered as

⁴⁴³ Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.962.

⁴⁴⁴ Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.962.

a discriminatory measure and is unlawful.⁴⁴⁵ For example, it is absolutely a discriminatory treatment when refugees from particular country are not allowed to be employed only because of political conflicts between their country of origin and the reception state.

Furthermore, non-discrimination plays an important role with respect to protection of the right to work under international human rights law. Nationals and non-nationals should enjoy equally the right to work which is recognized under different international human rights instruments, regardless of a few exceptions that exist. However, protection against racial and other types of discrimination is a fundamental principle of international law.⁴⁴⁶

As Zimmermann mentions, sometimes refugees can face so-called constructive refoulement which is due to attempts of the host state to deprive refugees from their rights to work whether through direct or indirect means.⁴⁴⁷ Indeed, restrictive measures on refugee's employment imposed by the reception state would endanger the very survival of refugees.

These refugees are not capable of undertaking any employment or self-employment activities in the host labour market and as a result would encounter financial pressures which force them to leave the country of refuge and even return to their original countries. This treatment would infringe Art. 33 of the Refugee Convention about prohibition of refoulement.

3.1.2.5 Analysis of Art. 17.1 of the 1951 Geneva Convention

In this part we analyse the para 1 of Art. 17 of the Refugee Convention. The rest of Article is discussed subsequently. First, we will clarify terms in the following paragraph:

“The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.”

As it can be seen from the phrase “The Contracting States **shall** accord to refugees...” Art. 17.1 requires the Member States to accord refugees the most favourable treatment accorded to nationals of a foreign country in the same circumstances regarding the right to engage in wage earning employment. Thus, this is a binding provision and not a discretionary one with which Member States may do as they wish.⁴⁴⁸

445 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.962.

446 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.963.

447 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.963.

448 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.963.

Article 17 only applies to “**refugees lawfully staying in their territory...**”. This term is translated from the French term “résidant régulièrement”. Therefore, some important points about this term will be mentioned. An important question is that:

Who can be considered as refugees lawfully staying in the territory of the receiving state?

First, although there is no an agreed view about meaning of this term, it goes beyond the mere presence in the country of refuge. Second, as Zimmermann writes, it can be defined as “permitted regularized stay of some duration” which comprises both permanent and temporary residence and does not apply to those refugees who have entered the country of refuge on a temporary permit for a particular reason and time period. It also does not include refugees who enter a Member State as a transit country.⁴⁴⁹

As mentioned above there are different opinions concerning who can be considered as “lawfully staying in” the host state. Zimmermann points out, some scholars like Goodwin-Gill and McAdam believe that refugees should hold some types of permanent, indefinite, or unrestricted statuses in order to verify their lawful residence in the receiving state.⁴⁵⁰

However, Hathaway believes that the term “lawfully staying in” refers to the de facto circumstances of a refugee. The refugee’s ongoing presence in practical terms in the host state plays an important role in respect of qualification for the right to work, not his/her legal status.⁴⁵¹ According to this idea, where there is no system of refugee status determination or it is suspended then asylum applicants can be also qualified for the right to wage earning employment provided that de facto circumstances prove their ongoing presence in the reception state.⁴⁵²

It is same when there is no individual refugee status determination process in the country of refuge. However, in case of group determination of refugee status, rather than the process of individual determination of refugee status, group will be covered by Article 17 as well. The logic behind this approach is that under these circumstances it is hard to distinguish between refugees lawfully in and those lawfully staying in the host state. Furthermore, this approach is

449 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p. 964.

450 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p. 965.

451 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p. 964.

452 There is no requirement in Art. 17 in respect of having formal refugee status determination, the permanent residence status or domicile in the host state in order to be qualified for it. See also Zimmermann, (Ed.), *the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, (2011), p.964.

in line with international law position regarding the declaratory nature of refugee status, i.e., it is not a constitutive status.⁴⁵³

Thus, refugees when their refugee status is not officially determined because of lack of a determination process in the country of refuge but their de facto circumstances indicate their presence for a long time, they should be protected by Art. 17 as well.⁴⁵⁴ In contrast, Hathaway thinks that in those states where there is a formal process of refugee status determination, asylum seekers are just lawfully present and not lawfully staying when their status is not yet officially sanctioned.⁴⁵⁵

In addition, if accepting Goodwin-Gill and McAdam's opinion, this could give Member States a good justification for denying refugees who have not yet gotten permanent residence status; or potentially allow the host countries to refuse to grant refugee status to disqualify refugees for the right to wage-earning employment under Article 17.

However, as Zimmermann believes, these additional conditions (permanent residence, formal refugee status determination and establishment of domicile) can be used as alternatives for refugee status but not as additional or subsequent conditions. Because using these conditions as additional requirements would make it much harder for refugees to be protected by Article 17.

Though asylum seekers are not covered by Art. 17, if their refugee status determination is suspended or has been delayed for a long period of time, their de facto circumstances could amount to "lawfully staying" of some duration.⁴⁵⁶ For example, according to the European regulation (the Reception Directive 2013/33/EU)⁴⁵⁷ if the status of an asylum seeker is not determined in 9 months then relative state would decide conditions for granting access to the labour market for the applicant.⁴⁵⁸ Furthermore, according to Art. 12 of the Council Directive (EU) 2001/55,⁴⁵⁹ refugees with temporary protection status might also enjoy the rights to self-

453 Bhattacharjee, *Situating the Right to Work in International Human Rights Law: An Agenda for the Protection of the Refugees and Asylum-Seekers*, p.47.

454 Zimmermann, (Ed.), *the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, p.965.

455 Bhattacharjee, *Situating the Right to Work in International Human Rights Law: An Agenda for the Protection of the Refugees and Asylum-Seekers*, p.47.

456 Zimmermann, (Ed.), *the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, p. 965.

457 Council Directive 2003/9/EC of 27 January 2003 on laying down minimum standards for the reception of asylum seekers.

458 Art. 15.1 "Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant."

459 Council Directive 2001/55/EC on minimum standards for giving protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States.

employment or wage-earning employment, education, vocational training and other relevant rights.⁴⁶⁰

Historically speaking, the notion of “refugees lawfully staying in” was in fact invented after repercussions of World War II when refugees were frequently lawfully in the host states while had not applied for a formal refugee status.⁴⁶¹

Notably, the “lawfulness” of the presence or stay are decided by the national laws of the state. However, the relevant Member State should treat refugees in the same way as other foreign nationals. In other words, refugees should not be discriminated because of their race, religion or country of origin when considering the lawfulness of their stay in the host state.⁴⁶² Another question which might arise is that:

Who can be considered as wage-earning employees?

The phrase “as regards the right to engage in wage-earning employment” includes all types of paid employments. Therefore, refugee people who are engaged in self-employment or liberal jobs are not protected by Article 17. However, those refugees who are assisting the self-employed or liberal job employers can be considered as wage-earning employees and consequently covered by Article 17.⁴⁶³

3.1.2.6 Analysis of Art. 17.2 of the 1951 Geneva Convention

The second paragraph of Art. 17 contains some exemptions for particular groups of refugees. The measure of “the most favourable treatment accorded to nationals of foreign countries in the same circumstances” might be ignored for specific categories of refugees. Restrictive measures affecting aliens in general or being imposed regarding their employment in a particular situation due to national labour market requirements are not applied for specific groups of refugees. According to para 2, these refugees include people who have already been

460 Art. 12: “The Member States shall authorise, for a period not exceeding that of temporary protection, persons enjoying temporary protection to engage in employed or self-employed activities, subject to rules applicable to the profession, as well as in activities such as educational opportunities for adults, vocational training and practical workplace experience. For reasons of labour market policies, Member States may give priority to EU citizens and citizens of States bound by the Agreement on the European Economic Area and also to legally resident third-country nationals who receive unemployment benefit. The general law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.”

461 Bhattacharjee, *Situating the Right to Work in International Human Rights Law: An Agenda for the Protection of the Refugees and Asylum-Seekers*, p.48.

462 Zimmermann, (Ed.), *the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, p.965.

463 Zimmermann, (Ed.), *the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, p.968.

exempted from such restrictive measures at the date of entry into force of the Refugee Convention for the Member State concerned or who fulfil one of the following conditions: (i) they have completed three year's residence in the host state, (ii) have a spouse possessing the nationality of the country of residence, except refugees who have abandoned their spouse, or (iii) have one or more children possessing the nationality of the country of residence. Now, the question which might arise is that:

Which sort of restrictive measures can be covered by para 2 of Article 17?

Generally speaking, those restrictive measures which are not attributed to the protection of national labour force would not be covered by para 2 of Article 17. For example, those limitations which are based on national security considerations are excluded from the jurisdiction of Article 17.2.⁴⁶⁴

The logic behind para 2 of Art. 17 is to protect refugees as much as possible.⁴⁶⁵ Therefore, refugees who are already recognized or would be subsequently granted refugees status could keep their previous exemptions which have been granted to them prior to the ratification of the Refugee Convention by the relative state. This continuation of exemption from employment restrictive measures must be respected by the relevant reception state after its ratification of the Refugee Convention.

Concerning other conditions, they have a non-cumulative character so that meeting one of these three requirements would be sufficient to exempt a refugee from restrictive measures. However, there are still some questions which are needed to be discussed.

The first question relates to para 2 (a) (*they have completed three year's residence in the host state*), and it is:

When does this three-year period begin? And do Member States have any discretionary powers to change this time limitation?

This three-year limitation is the maximum time in which a relative state might prevent a refugee from enjoying the right to wage-earning employment under Article 17.⁴⁶⁶ Furthermore, as

464 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.968.

465 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.968.

466 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.969.

Zimmermann writes, a fair interpretation is to calculate this residence time since a refugee lodges an asylum application. However, where refugee status determination has not proceeded or it is suspended, the starting point would be from the date of entry into the territory of the host state.⁴⁶⁷

Thus, according to this view once these three years are completed a refugee should be exempted from all restrictive measures which are based on national labour market considerations. Notwithstanding, states can reduce this time limitation in favour of refugees. For example, in practice many developed countries allow refugees to enter the labour market, as soon as they have been recognized as refugees, on the same conditions as nationals which is a generous interpretation of para 2.⁴⁶⁸ In this case, Art. 26.1 of Directive 2011/95/EU (the Qualification Directive)⁴⁶⁹ which has been mentioned previously, and part III, para 11 of the 1984 Cartagena Declaration which states:

“To make a study, in countries in the area which have a large number of refugees, of the possibilities of integrating them into the productive life of the country by allocating to the creation or generation of employment the resources made available by the international community through UNHCR, thus making it possible for refugees to enjoy their economic, social and cultural rights.”⁴⁷⁰

The second question attributes to para 2 (b) (*has a spouse possessing the nationality of the country of residence*), and it is:

What kind of separation will exclude refugees from exemption right in para 2 (b) of Art. 17?

In accordance with this sub-paragraph, refugees who are married to a national of the reception state should be exempted from any restriction measures based on national labour market concerns. But it also states that *“a refugee may not invoke the benefit of this provision if he has abandoned his spouse.”* Thus, there is a restriction to this exemption and it is when a refugee abandons or divorces his/her spouse; then s/he would not be covered by this provision.

467 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.969.

468 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.969.

469 Art. 26.1: “Member States shall authorise beneficiaries of international protection to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service, immediately after protection has been granted.”

470 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.970.

However, the opposite outcome of this interpretation is when the story is reversed, and refugee is abandoned or divorced. Under this scenario abandoned or divorced refugees can still enjoy the exemption provided by this sub-paragraph.⁴⁷¹ Such interpretation could be in favour of refugees and would better protect their employment rights under Article 17.2.

As both Zimmermann and Hathaway point out, the generous and modern interpretation of this provision requires that those partners who do not cohabit for different reasons or who are not legally married but just live together should be exempted from restrictive measures as well.⁴⁷² Again, this approach can protect and assist refugees to become independent and self-reliant through protection of their employment rights under Article 17. It also reinforces the idea of further integration of refugees into the host society.

The next question is about para 2 (c) (*has one or more children possessing the nationality of the country of residence*), and it is:

Is legitimate birth of child/children a required condition in order to allow refugees to enjoy exemption advantage of para 2 (c) of Art. 17?

Para 2 (c) allows those refugees who have one or more citizen children to avoid national labour market-associated restrictive measures. Though, it was understood that this provision could increase concern regarding refugee's having a child or children in order to get citizenship, this should be dealt with through a state's national law on citizenship. Hence it is irrelevant to this provision.⁴⁷³

Both legitimate and illegitimate children can be covered by this sub-paragraph.⁴⁷⁴ Actually, according to Hathaway the term "children" in Art. 17.2 (c) should be applied in general meaning. He thinks that the ordinary meaning of "children" is not dedicated exclusively to the offspring of a married parents.⁴⁷⁵ Therefore, both legitimate and illegitimate children are included by this interpretation. This view is in keeping with text of Art. 17.2 (c) that does not contain any limitation in which only refugees who their children are born in wedlock will enjoy the benefits in this article.⁴⁷⁶ Thus, it seems that the drafters aimed to protect all refugees who have citizen child/children whether born in or out of wedlock. This view is also in line with the

471 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.970.

472 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.970.

473 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.971.

474 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.971.

475 Hathaway, the Rights of Refugees Under International Law, p.760.

476 Hathaway, the Rights of Refugees Under International Law, p.760.

second part of Art. 25.2 of the UDHR that states “...all children, whether born in or out of wedlock, shall enjoy the same social protection.”

Furthermore, as Zimmermann also refers to the opinion of the US delegate during the drafting process, having greater feelings of belonging and loyalty to the country of refuge due to having a child/children who might be a citizen is one of the reasons for imposing this provision. According to this view, such refugees whose child or children are citizen(s) of the reception country find themselves much closer and more loyal to that state. Thus, they should be exempted from any restrictive measures due to these fidelity and attachment aspects.⁴⁷⁷ Now, an important question which might arise is that:

Would refugees be also exempted from those restrictive measures that are based on other reasons than labour market protection?

Hathaway replies to this question by saying that refugees can only be excluded from those limitations on wage-earning employment which are associated with the protection of the national labour market by impeding foreign competition created by refugees. Hence, those restrictive measures which follow other aims than labour market protection like public and social security cannot be relevant to Article 17.2.⁴⁷⁸ Notwithstanding, Art. 17.2 does not provide any exemption for refugees whenever citizens of the reception states are also affected by restrictive measures. The other crucial question is:

Does the exemption right in Art. 17.2 cover exclusively refugees who staying lawfully in the host country or can other groups of refugees also benefit from it?

Once a refugee meets one of the requirements mentioned in Art. 17.2 (being previously exempted from restrictive measures, having a three-year residency, married to a citizen spouse, or having one or more children), then s/he should be exempted from restrictive measures for protection of the national labour market. Thus, the advantage of exemption contained in Art. 17.2 covers all refugees who can meet one of the requirements mentioned above whether s/he is lawfully staying in the host country or not.⁴⁷⁹

477 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.971.

478 Hathaway, the Rights of Refugees Under International Law, p.762.

479 Hathaway, the Rights of Refugees Under International Law, p.756.

3.1.2.7 Analysis of Art. 17.3 of the 1951 Geneva Convention

This paragraph states:

“The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.”

Regarding paragraph 3, the important point is the commitment of Contracting States to assimilate the rights of refugees as equal to those of nationals of host country in respect of wage-earning employment. As Zimmermann states, para 3 is an obligation of conduct rather than result.⁴⁸⁰ It requires State Parties to give their sympathetic consideration to grant equivalent treatment to refugees as nationals regarding right to wage-earning employment under Article 17.

In addition, he believes that this paragraph emphasizes the significant of employment in refugee integration process and long-term stay as well as their self-sufficiency. Therefore, he concludes that this paragraph overlaps Art. 34 of the Geneva Convention regarding assimilation (integration) and naturalization of refugees.⁴⁸¹

The second part of this paragraph focuses on assimilation of rights of those refugees who have entered the host state under labour recruitment programmes or immigration schemes. However, currently, this para must extend its consideration to also protect those refugees who are in the territory of the reception country for other reasons than immigration or labour contract schemes.⁴⁸² For example, those people who have been granted refugee status based on humanitarian reasons or resettlement programmes.⁴⁸³

To sum up, having a restrictive view of Art. 17 of the 1951 Geneva Convention regarding definition of the refugee’s right to employment has been based on the incapability of Member States and their difficult circumstances. In other words, this narrow approach regarding refugee’s right to employment by the drafters of this article simply discloses the fact that they thought it is not always possible to find a balance between refugee’s full access to employment and maintaining vital national interests.⁴⁸⁴

480 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.971.

481 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.971.

482 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.971.

483 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.971.

484 Hathaway, the Rights of Refugees Under International Law, p.763.

However, whereas refugees still might encounter some restrictive measures regarding wage-earning employment due to the national labour market considerations, in practice many industrialized countries allow refugees to enter the labour market as soon as they have been recognized as a refugee. Consequently, have more immediate access to the employment and enjoy much broader wage-earning employment opportunities which results in their better integration into the host society. Continuing this treatment could enhance the attitude that refugees must be granted such right.⁴⁸⁵

Furthermore, though asylum seekers are not allowed to enjoy the right to wage-earning employment provided by Art. 17, the EU has tried to improve this situation. For instance, Art. 15.1 of Directive 2013/33/EU (the Reception Directive)⁴⁸⁶ determines a 9-month time limit to grant asylum seekers a right to access the labour market. Indeed those asylum seekers who have been waiting for their refugee status recognition for more than 9 months could then apply for the right to wage-earning employment provided that a first instance decision is not yet taken and the delay cannot be attributed to the applicant.⁴⁸⁷ Actually, this EU constructive approach demonstrates a commitment to the spirit of Art. 17.2 (a) even in a more favourable way with a lesser waiting time (9 months) than that of the Refugee Convention (3 years).

Again, these new approaches in terms of facilitation of wage-earning employment conditions will reinforce integration of refugees into the host community. Given that, through enhanced employment opportunities refugees will improve their language proficiency, broaden their social network, and have financial contribution to the receiving countries' labour market. All of these, mentioned above, affirm refugee's progress, and bolster their acceptance among the host country's native people leading to more successful integration.

3.1.3 Right to Self-Employment Under Art. 18 of the 1951 Geneva Convention

Article 18 of the 1951 Geneva Convention provides:

“The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.”

485 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.972.

486 Art. 15.1: “Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.”

487 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.972.

The right to self-employment imposed by Art. 18 is a new right. It is one of a kind in the context of refugee's rights. There is no similar right to self-employment for refugees either in previous refugee-related conventions or subsequent international covenants. It also complements the rights of refugees to occupy and deal with both movable and immovable types of private property and establishes some rights for them in respect to taxation regulations imposed by the host country.⁴⁸⁸ It does employ a less generous and protective standard than Art. 17 as regards wage-earning employment. Under Art. 18 refugees lawfully in the reception state are not given a treatment as most-favoured nationals but as other aliens in general.⁴⁸⁹

However, the definition of phrase "a refugee lawfully in their territory..." can be challenging. According to the drafting history and as Hathaway writes, the initial proposal referred to "regular resident" (re'sidant re'gulie`rement) in the country of refuge. It was later translated to "lawfully staying in" the host state which still exists with respect to employment (Wage-earning employment). However, Art. 18 of the Refugee Convention was revised by the Ad Hoc Committee changing it to "lawfully in" (se trouvant re'gulie`rement) the territory of the reception state.⁴⁹⁰ Now a question which may arise is that:

Who is recognized as a refugee "lawfully in" in order to be qualified for a right to self-employment provided by Art. 18 of the Refugee Convention?

Lawfully in the territory means an earlier stage which a refugee is regularly present in the territory of a state party. Therefore, it can cover those: (i) refugees or asylum seekers who are permitted to reside for a fixed term, normally a short-term, in the country of refuge, (ii) asylum seekers who have already applied for refugee status and are still waiting for their result, and (iii) asylum seekers who are present in those states where there is no refugee status determination (RSD) system or where the procedure is excessively extended.⁴⁹¹

Indeed as Hathaway quotes Robinson's view, the mere fact that a refugee is lawfully present in the host state even without any tendency of permanence should suffice to grant him/her a right to engage in self-employment activities.⁴⁹² Therefore, all states practices that postpone

488 Hathaway, *the Rights of Refugees Under International Law*, p.724.

489 Da Costa, *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations*, p.54.

490 Hathaway, *the Rights of Refugees Under International Law*, p.725.

491 Wirth, A., Defilippis, C. and Therkelson, J., *Global Refugees Work Rights Report*, (2014), p.12. See also Hathaway, *the Rights of Refugees Under International Law*, (2010), p.725.

492 Hathaway, *the Rights of Refugees Under International Law*, p.725.

the assignment of the right to self-employment to refugee applicants until recognition of their refugee status will breach Art. 18 of the Refugee Convention provided that there is such a right for non-citizens in general.⁴⁹³ However, there are a few countries that comply fully with their commitment under Art. 18. One of these countries is Ecuador which since its new Presidential Decree 1182 in mid-2012, all asylum seekers can enjoy the right to work prior to be recognized as refugees. Furthermore, since July 2012 refugees do not need to ask for work permit to work in Ecuador.⁴⁹⁴ The next question is that:

What is the legal meaning of the phrase “on his account”?

The phrase “as regards the right to engage **on his own account...**” is ambiguous and needs to be defined. According to Grahl-Madsen, the phrase “on his own account” was not in the Secretariat draft and was added to Art. 18 later during the Conference of Plenipotentiaries. It was in fact thought that using the word “engage” in an article attributed to self-employment cannot be appropriate. Hence, the drafters later added the words “on his own account” to enhance the text of Art. 18.⁴⁹⁵

The phrase of “on his own account” refers to the new activities which are generated by refugees themselves.⁴⁹⁶ Given that, while it has been agreed that refugees should be allowed to have early access to the right to self-employment, they are often initially refused access to employment and professional practices.⁴⁹⁷ In addition, in the context of self-employment there is a real tendency among Member States to permit only self-employment activities of newly generated approved by competence authorities in the reception state. Accordingly, those independent economic activities which are approximated to either employment or investing in a field which has been previously established or operated by others can be excluded from this right under Article 18. The rationale behind this opinion is that, this can cause receiving state to bear burdens of undue competition from refugee’s side.⁴⁹⁸

However, as Hathaway writes this exclusion of the right to self-employment based on undue competition cannot be only aimed at refugees rather than at non-citizens in general.⁴⁹⁹ Given

493 Hathaway, *the Rights of Refugees Under International Law*, p.725.

494 Wirth, Defilippis, Therkelson, *Global Refugees Work Rights Report*, p.25.

495 Grahl-Madsen, A., *Commentary on the Refugee Convention 1951, Articles 2-11, 13-37, 1963, Republished by UNHCR, Division of International Protection*, (1997), p.45.

496 Hathaway, *the Rights of Refugees Under International Law*, p.726.

497 Hathaway, *the Rights of Refugees Under International Law*, p.726.

498 Hathaway, *the Rights of Refugees Under International Law*, p.726.

499 Hathaway, *the Rights of Refugees Under International Law*, p.726.

that, as Art. 18 demonstrates refugees must be treated as favourable as possible and, in any event, not less than that accorded to aliens generally in the same circumstances. This result is also in line with Art. 7.1 of the Refugee Convention that stipulates:

“Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.”

Generally, refugees will be granted a right to self-employment if other non-citizens generally in the same circumstances enjoy such facility as well.⁵⁰⁰ Consequently, refugees can spontaneously have identical rights in terms of engaging in self-employment activities, if there are some indications which prove all non-citizens in general have already access to this sort of activities. For instance, some of these indications may consist of existing national law, de facto benefit from the right to self-employment by most non-citizens, or pervasive bilateral or multilateral arrangements which can be extended to the refugees as well.⁵⁰¹ The other crucial question is that:

Is there any situation in which refugees are exceptionally given a right to self-employment under Art. 18, while other non-citizens are not in general?

In keeping with some scholars such as Hathaway, host states are legally obliged to adjust or remove those kinds of limitations concerning undertaking self-employment activities which fail to consider real vulnerabilities of refugees. Article 18 imposes a duty on states to give proper attention in good faith to exclude refugees from those restrictions which are not based on rational circumstances but merely on formalistic and mechanistic nature, even though they can be applicable to foreigners in general.⁵⁰²

While these general restrictions are applicable to aliens in general, Member States need to take into consideration special circumstances that refugees have already or are still experiencing.⁵⁰³ For example, decision to prohibit refugees and aliens from specific categories of jobs such as taxi driving or serving alcohol which is not based on logical grounds (sensitive matters) but

500 Wirth et al. Global Refugees Work Rights Report, p.11.

501 Hathaway, the Rights of Refugees Under International Law, p.727.

502 Hathaway, the Rights of Refugees Under International Law, p.728.

503 Hathaway, the Rights of Refugees Under International Law, p.728.

purely an arbitrary or traditional approach or custom, could oppose the spirit of Art. 18 and the obligation of states toward the non-discrimination principle.

Furthermore, in according to Art. 6 of the Refugee Convention⁵⁰⁴ Member States are also under a legal duty to exempt refugees from insurmountable requirements. This provision refers to the term “in the same circumstances” in which those foreigners who are not refugees have to follow respective requirements that are needed for the enjoyment of a particular right. However, refugees might be exempted from such requirements. In other words, this sort of exemptions is because of very nature of refugee’s vulnerability to satisfy these general conditions. While these general requirements might be applied with regard to other non-citizens in general but respective host state may have to exempt refugees from fulfilling these general requirements. This incapability might be related to the process of their flight from persecution or other issues like financial hardships.⁵⁰⁵

Lastly, as Grahl-Madsen writes, the self-employment activities enumerated in Art. 18 should be interpreted in the broadest possible way.⁵⁰⁶ Therefore, the demonstrated activities namely agriculture, industry, handicrafts, commerce and establishing commercial and industrial companies are only examples of the broad range of common activities which refugees are usually expected to do.

In principle, when in practice any independent economic and entrepreneurship activity is accessible to non-nationals in general, then this right should be extended to refugees too. This argument is in fact in keeping with the phrase “treatment **as favourable as possible** and, in any event, **not less favourable** than that accorded to aliens generally in the same circumstances.” By way of example, if in an asylum country, non-nationals in the same circumstances can participate in a particular job in service-producing sector such as delivering private education (which may not be included in the list provided by Art. 18), then refugees should also be allowed to do so. Importantly, this broader view toward permissible self-employment activities in favour of refugees reinforces their accessibility to work opportunities and ultimately will result in their integration improvement.

3.1.4 Right to Liberal Professions Under Art. 19 of the 1951 Geneva Convention

504 Art. 6: “For the purposes of this Convention, the term ‘in the same circumstances’ implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.”

505 Hathaway, *The Rights of Refugees Under International Law*, p.728.

506 Da Costa, *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations*, p.55.

Article 19 is about the right of refugees in respect of practicing liberal professions in the country of refuge. It states:

“1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practicing a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.”

This article can be considered as an innovation under international refugee law as well.⁵⁰⁷ However, it inherits some features from each of its two preceding articles namely Arts. 17 & 18 of the Refugee Convention. On the one hand, like Art. 17 it holds that only refugees “lawfully staying” in the territory of the host state will be granted a right to professional practice. Thus, it means that other groups of refugees such as those lawfully in Member States are not covered by it. This restrictive approach can in fact exclude those refugees who are present for a brief time in the country of asylum. Furthermore, many of those refugees who are already waiting for verification of their refugee status plus those who are in a country where there is no a system of refugee status determination (RSD) can be put at risk of omission from beneficiaries of Art. 19 unless they can effectively indicate an ongoing presence in the host country over the time.⁵⁰⁸ This issue has been discussed in the previous parts so that here will not be covered again.

However, as Hathaway believes, the phrase “treatment as favourable as possible” asks Contracting States to give due consideration in good faith to exempt refugees from general limitations applicable to aliens.⁵⁰⁹ For example, in Switzerland while non-citizens are prohibited to practice their professions as doctors, veterinarians, dentists and pharmacists but the Swiss government particularly excepted refugees from such restriction by imposing a specific law.⁵¹⁰

507 Grahl-Madsen, Commentary on the Refugee Convention 1951, Articles 2-11, 13-37, 1963, Republished by UNHCR, Division of International Protection, p.46.

508 Hathaway, the Rights of Refugees Under International Law, p.794.

509 Hathaway, the Rights of Refugees Under International Law, p.791.

510 Hathaway, the Rights of Refugees Under International Law, p.787.

Legally speaking, as Hathaway also rightly points out the commitment of Member States toward this right is only an obligation of process, not a duty of result. In other words, when the reception state gives due consideration in good faith to the problem, but dedicates some specific jobs only to their own citizens, then this action cannot breach its commitments under Art. 19 of the Refugee Convention. According to Art. 19 refugees will be granted an identical protection concerning the right to engage in liberal professions if, either in law or in practice, there is such privilege for other non-citizens (in the same circumstances) in general.⁵¹¹ Now, an important question is that:

Would the legal regime offered under Art. 19 be solid enough to protect refugees from unnecessary limitations impeding them to practice their professions in the reception country?

The employed legal standard by Art. 19 does not provide non-citizens including refugees with a high level of protection toward unreasonable professional practice restrictions.⁵¹² However, a wide range of these limitations are implemented by professional societies and sanctioned by the government to maintain requirements for engaging in professional practices. Hence, in many countries great discretion is given to professional bodies in determining requirements for professional practices.⁵¹³ These limitations usually relate to demanding requirements for licensing or certification.⁵¹⁴

For instance, if a non-citizen wants to work as a professional in his/her country of refuge, s/he should expect a wide range of rigid requirements such as holding an authentic diploma validated by the official authorities of the host state, positive evaluation of experience in his/her country of origin and passing successfully required training courses or examinations arranged by asylum country.⁵¹⁵

However, sometimes these accreditation requirements do not protect the public interest, but simply protect the local practitioners from competition. According to Hathaway, compared to Art. 17 regarding wage-earning employment, during discussion of Art. 19 the drafters were reluctant to exclude refugees from those accreditation requirements which simply focus on

511 Hathaway, *the Rights of Refugees Under International Law*, p.791.

512 Hathaway, *the Rights of Refugees Under International Law*, p.791.

513 Hathaway, *the Rights of Refugees Under International Law*, p.791.

514 Hathaway, *the Rights of Refugees Under International Law*, p.791.

515 Hathaway, *the Rights of Refugees Under International Law*, p.791.

prevention from competition with local professionals.⁵¹⁶ Accordingly, such rather weak protective regime offered by Art. 19 as regards the right to liberal professions give enough space to professional associations to exercise rigid limitations mentioned above. Such a situation can exclude refugees from engaging in professional practices and consequently endangers their economic integration in the reception society. Another question which might arise is that:

Would recognition of refugee qualifications be sufficient to guarantee their professional practice in the labour market of asylum country?

Replying to this question requires to refer to the text of Art. 19 which holds two separate requirements. First, it asks refugees to possess a diploma recognized by the competent authorities of the reception state. Second, it stipulates that refugees should be desirous of engaging in a liberal profession. Thus, as it can be realized from writings of Art. 19 merely possession of formal credentials is not adequate to permit refugees to exercise their right under this provision and they should also be interested in practicing their professions in the host country.⁵¹⁷

However, as previously mentioned. the commitment of Member States under Art. 19 to give refugees the same treatment as aliens in general “**in the same circumstances**”, requires them to exempt refugees from those requirements which in line with refugee’s circumstances seem insurmountable to fulfil. This argument is in keeping with Art. 6 of the same convention.⁵¹⁸ For instance, if a State Party obliges normally non-citizens to submit a certification issued by the official authorities in their original country to verify their expertise for accreditation, then such requirement might be revoked in favour of refugees who due to their special conditions cannot meet it. These circumstances can be based on the refugee’s country deficiency of having a system of occupational registration or on a refugee’s personal limitations prohibiting refugee to register his/her exercised profession.⁵¹⁹ The next vital question is:

516 Hathaway, the Rights of Refugees Under International Law, p.792.

517 Hathaway, the Rights of Refugees Under International Law, p.792.

518 Art. 6: “For the purposes of this Convention, the term ‘in the same circumstances’ implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.”

519 Hathaway, the Rights of Refugees Under International Law, p.793.

Does Art. 19 add important value to refugee entitlements in comparison with Arts. 17 & 18?

To consider all conditions mentioned above Art. 19 does not present any crucial value to refugees. As Hathaway rightly believes, in the absence of this article the right of those refugees interested in professional activities might have been protected by provisions in either Art. 17 on (wage-earning employment) or Art. 18 on (self-employment). Thus, under each of these scenarios, refugees would have enjoyed more protective treatment. For example, while Art. 17 proposes refugees a treatment assimilated to most-favoured nationals, however, Art. 19 gives refugees a protection as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Moreover, though Art. 18 establishes less restrictive measure in terms of the attachment level of the eligible refugee namely “lawfully in” the host country, nonetheless, Art. 19 employs a more rigid protective approach to cover only refugees lawfully staying in asylum country. Again, it adopts the worst criteria of both Arts. 17 & 18 namely “lawfully staying in” and “treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances”, respectively.⁵²⁰

Furthermore, the second paragraph of Art. 19 does not contain an effective protection as regards professional refugees. It stipulates that:

“2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.” Now, the question which may arise is that:

Why does para 2 of Art. 19 ask Member States to give their utmost efforts to relocate refugees to non-metropolitan places?

As Grahl-Madsen also correctly points out this provision reflects the concern of the host states over potential competitive pressures from refugees on professional workers in their metropolitan areas. Therefore, they may decide to send refugees to other non-metropolitan places in their jurisdiction. Whereas, these mostly overseas territories are frequently in urgent needs for qualified professional workers, nonetheless, national people are often reluctant to go

⁵²⁰ Hathaway, *The Rights of Refugees Under International Law*, p.794.

there, thus professionally qualified refugees are an appropriate alternative for filling this gap.⁵²¹ Thus, according to the drafters it could be a beneficial process for both of professional refugees and the host country, indeed.⁵²²

According to Hathaway, Art. 19.2 holds a minimalist formula of recompense in return for the exclusion of professional refugees from more favourable provisions in either Art. 17 or 18 of the Refugee Convention.⁵²³ It only requires Signatory States to do their best attempts (duty of persuasion) in keeping with their existing national laws and constitutions to resettle professional refugees in subordinate territories.

Thus, the main reception states are merely asked to give their utmost efforts to influence their subordinate territories' official authorities which accepting professionally qualified refugees is profitable for their economies. Article 19.2 pays a due attention to the autonomy of dependent territories upon their immigration affairs. To this end, it narrows its duty of process only to those subordinate territories whose international relations are under jurisdiction of the metropolitan state and are not located close enough to the host state to be identified as a part of its metropolitan area.⁵²⁴ However, regarding the wording of para 2 of Art. 19 there are many ambiguous points which are discussed in the following.

First, the term "liberal professions" as a form of work is vague. According to Grahl-Madsen, the term "liberal professions" has quite a broad meaning and can be divided into two parts. The first part "profession" refers to any activity which is based on formal qualification "normally confirmed by a diploma from a university, or a similar institution, or a licence from a state agency, a chartered society or some other legally competent body allowing him to practise."⁵²⁵ The second part "liberal" demonstrates that "the person concerned acts on his own, not as an agent of the state or as a salaried employee."⁵²⁶ Therefore, excluding those who have acquired formal credentials but their work does not involve a substantial level of independent activity like clergy, teachers, judges, etc.⁵²⁷

521 Grahl-Madsen, Commentary on the Refugee Convention 1951, Articles 2-11, 13-37, 1963, Republished by UNHCR, Division of International Protection, p.47.

522 Hathaway, the Rights of Refugees Under International Law, p.795.

523 Hathaway, the Rights of Refugees Under International Law, p.797.

524 Hathaway, the Rights of Refugees Under International Law, p.797.

525 Grahl-Madsen, Commentary on the Refugee Convention 1951, Articles 2-11, 13-37, 1963, Republished by UNHCR, Division of International Protection, p.47.

526 Grahl-Madsen, Commentary on the Refugee Convention 1951, Articles 2-11, 13-37, 1963, Republished by UNHCR, Division of International Protection, p.47.

527 Grahl-Madsen, Commentary on the Refugee Convention 1951, Articles 2-11, 13-37, 1963, Republished by UNHCR, Division of International Protection, p.47.

On the other hand, Hathaway believes that, Art. 19 regarding refugees who are liberal professionals is an exception which contains a much stricter approach than Arts. 17 & 18. Hence, it should not be interpreted in a broad way otherwise it could not be in line with the human rights spirit of the 1951 Geneva Convention.⁵²⁸

In explanation of term “liberal professions”, he calls attention to the European Court of Justice’s decision about a tax law case. Hathaway concludes that in line with the Court’s opinion, a liberal profession comprises an activity “(1) of a marked intellectual character, (2) requiring a high-level qualification, (3) normally subject to clear and strict professional regulation, and (4) incorporating a personal element and a significant level of independence.”⁵²⁹

Thus, this interpretation will narrow the area of precepting any type of work as a liberal profession which is simply based on two elements of formal qualification and intensive independent activity which will ultimately trigger to exclusion of refugees from the more protective regimes under Arts. 17 or 18.⁵³⁰ An important question which may arise is that:

Will the offered provisions in Art. 19 be in contrast with the general duty of non-discrimination under Art. 26 of the ICCPR?

As Hathaway also points out, placing a refugee as a liberal professional under Art. 19 should be based on reasonable grounds. Again, as this provision takes much more rigid view than Arts. 17 & 18, it must be used very cautiously. In other words, since it separates professional refugees from all other refugee workers (wage-earners, self-employed and other refugee workers engaged in professions not labelled as liberals) enjoying the more favourable treatment standards, based on their occupational status might violate Art. 26 of the ICCPR.⁵³¹ Given that, Art. 26 ensures the equality of all people before the law and entails equal access to the protection of the law as well as prohibits any discriminatory behaviour on any ground.

Therefore, when there is no reasonable ground to exclude a professionally qualified refugee from more protective standards under either Art. 17 or 18, then applying Art. 19 with a

528 Hathaway, the Rights of Refugees Under International Law, p.798.

529 Hathaway, the Rights of Refugees Under International Law, p.798.

530 Hathaway, the Rights of Refugees Under International Law, p.799.

531 Art. 26: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

minimalist approach to them will breach the general provision of non-discrimination (here based on professional refugee's status) enshrined in Art. 26 of the ICCPR.⁵³² Under this scenario, refugee's right to work is not in fact judged on his/her status as a liberal professional, but through an objective assessment of refugee's profession itself which could be identified as either wage-earning employment (Art. 17) or self-employment (Art. 18).⁵³³ Again, Art. 19 does, in sum, add no significant value to refugees so that without it refugees who are involved in liberal professions would probably have been regulated by either Art. 17 or 18 both of which offer more protective legal measures and more importantly support broader integration of refugees into the host society. In the next part, the attention will be paid to Art. 6 of the ICESCR and its relevance in the context of refugee protection.

3.1.5 Article 6 of the 1966 ICESCR

In this part, Art. 6 of the 1966 ICESCR is discussed in depth. Furthermore, as mentioned this article and other articles in the 1951 Geneva Convention relevant to the right to employment (most importantly Arts. 17 & 18) will be compared. Article 6 of the 1966 ICESCR in fact contains two paragraphs as follows:

"1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."

Generally speaking, Art. 6 discusses the right to work in a broad sense. It echoes the fundamental purposes and principles of the United Nations encircled in Art. 1.3⁵³⁴ of the Charter

532 Hathaway, the Rights of Refugees Under International Law, p.799.

533 Hathaway, the Rights of Refugees Under International Law, p.800.

534 Art. 1.3: "To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

of the United Nations.⁵³⁵ These objectives were later reflected in Art. 23.1 of the 1948 UDHR.⁵³⁶

It enunciates the right to work in a general sense.⁵³⁷ Article 6 of the ICESCR does not distinguish between self-employment, wage-earning employment and liberal professions or refugees, asylum seekers and other migrant groups like the 1951 Geneva Convention in Arts. 17, 18 & 19.⁵³⁸

The international right to work does not ensure to secure or provide work.⁵³⁹ It tries to safeguard a right freely to seek work. Furthermore, the right to work would protect individuals from being subjected to the forced labour and against discriminatory denial of work.⁵⁴⁰ It also provides each worker with a system of protection ensuring their access to employment.⁵⁴¹

These elements can be considered as minimum central elements which are not changeable and have an immediate effect in comparison to other aspects of the right to work which can be gradually realized.⁵⁴²

The first paragraph of Art. 6 enunciates a definition of the right to work while the second one holds the obligations of Member States regarding this right in a non-exhaustive way.⁵⁴³ In keeping with the view of the CESCR, Zimmermann certifies, three elements of the right to work can be imagined under Art. 6 including the right to have access to the employment, the right to freely choose employment and protection against unjust dismissal.⁵⁴⁴

The initial challenge that refugees frequently encounter in the country of asylum is having access to the labour market.⁵⁴⁵ However, the right to have access to the employment itself contains different components namely state's responsibility to take required steps progressively

535 Committee on Economic, Social and Cultural Rights (CESCR), *the Right to Work General Comment No. 18*, (2006), p.2.

536 Committee on Economic, Social and Cultural Rights (CESCR), *the Right to Work General Comment No. 18*, p.2.

537 Committee on Economic, Social and Cultural Rights (CESCR), *the Right to Work General Comment No. 18*, p.2.

538 Zimmermann, (Ed.), *the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, p.961.

539 Edwards, A., *Human Rights, Refugees, and the Right 'To Enjoy' Asylum*, (2005), p.328.

540 Zimmermann, (Ed.), *the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, p.958.

541 Committee on Economic, Social and Cultural Rights (CESCR), *the Right to Work General Comment No. 18*, p.3.

542 Zimmermann, (Ed.), *the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, p.958.

543 Committee on Economic, Social and Cultural Rights (CESCR), *the Right to Work General Comment No. 18*, p.3.

544 Committee on Economic, Social and Cultural Rights (CESCR), *the Right to Work General Comment No. 18* p.3. See also Zimmermann, A., (Ed.), *the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, (2011), p.958.

545 Edwards, *Human Rights, Refugees, and the Right 'To Enjoy' Asylum*, p.328.

toward full realization of job opportunity, equal access to work opportunities, employment services and job-related training as well as having a chance to make a living by work.⁵⁴⁶

Likewise, free choice of employment can include components such as existing sufficient opportunities available for every person (worker) to find a suitable job which fits with his/her skills and qualifications, protection against forced labour, having right to strike and not being subjected to undue restrictions on the right to strike as well as having the right not to work or avoid it.⁵⁴⁷

As the CESCR points out, work proclaimed in Art. 6 should be “decent work”. Guaranteeing the fundamental rights of individuals, protection of the right of workers as regards safe working environment and payment as well as ensuring a revenue which enables workers to support themselves and their families are the main elements for considering work as decent. Moreover, ensuring the physical and mental health of the worker for undertaking his/her employment is a crucial part of their fundamental rights.⁵⁴⁸

Although some exceptions can be imagined to the general principle of non-discrimination under the ICESCR making it possible to make some distinctions between nationals and non-nationals in some exceptional cases. However, overall the rights under the ICESCR apply equally to nationals and non-nationals. In other words, these exceptional cases shall be explicitly permitted by the law or otherwise justified by “reasonable and objective criteria”.⁵⁴⁹ For instance, according to the ICESCR a national cannot be prioritized over a refugee if they are both in the same circumstances unless a well-founded justification such as a particular national economic interest is provided by the state in question.⁵⁵⁰

In addition, as demonstrated in the previous chapter in Art. 13 of the ICESCR (the right to education), the CESCR believes, whereas State Parties to the ICESCR are free to do their commitments under the Covenant accorded to their special circumstances, nonetheless, they must respect the following interrelated and crucial elements as regards the right to work.⁵⁵¹

Availability: Member States have an obligation to dedicate services to support and help individuals including refugees to find available employment.

546 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.958.

547 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.958.

548 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p.3.

549 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.960.

550 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.960.

551 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p.3.

Accessibility: States Parties also must open their labour market to all people who are under their jurisdiction including refugees. Accessibility encompasses three dimensions: (i) according to Arts. 2.2 and 3 of the ICESCR people should not be discriminated in access to and retainment of employment based on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, health status, physical and mental disability, sexual orientation, property, birth, civil, political, social or other status that is meant or has implication on damaging exercise of the right to work on an equivalent basis, (ii) having physical accessibility to employment (iii) Accessibility also contains the right to seek, acquire and impart information in the sake of obtaining access to employment. To this end, the creation of data networks on the employment market at the local, national, regional, and international levels is essential.

Acceptability and quality:⁵⁵² protection of the right to work includes several segments including the right of the worker to just and favourable working conditions especially safe working environment, the right to form trade unions and the right to freely choose and accept work.⁵⁵³

In accordance with the CDESCR, there is a set of general and special legal obligations on Member States in relation to the right to work under Art. 6 of the ICESCR. In the following, first the general legal obligations will be discussed. Those with a special character will be discussed in the next section.

3.1.5.1 General Legal Obligations of States Under Art. 6 of the ICESCR

According to the CDESCR, the main responsibility of Signatory States is to guarantee the progressively realization of the exercise of the right to work.⁵⁵⁴ Member States should expeditiously take relevant steps such as introducing measures in order to achieve full employment.⁵⁵⁵ While it can be claimed that Art. 6 of the ICESCR allows Member States to fulfil their commitments progressively and certifies the special problems of States Parties with regard to their limited available resources, nonetheless, no state can be completely exempted

552 This element refers to rights and conditions at work. See Zimmermann, A., (Ed.), *the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, (2011), p.959.

553 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p.5.

554 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p.6.

555 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p.6.

from its commitments.⁵⁵⁶ In other words, states under Art. 6 have some obligations with regard to the right to work which carry out immediate effect.⁵⁵⁷

First, they are obliged to ensure that there is no discrimination of any kind in terms of undertaking the right to work (Art. 2.2 of the ICESCR). Second, states have immediate obligation on taking deliberate, concrete, and targeted steps toward full realization of the right to work in Art. 6 (Art. 2.1).⁵⁵⁸

Though the full realization of the right to work happens over time, however, Member States cannot exclude themselves from a specific and ongoing obligation to achieve the full realization of the right to work under Art. 6 as quickly and effectively as possible.⁵⁵⁹

Moreover, like all other rights in the ICESCR, states should not principally restrict the right to work of individuals regressively. Therefore, in case of doing so, they have to justify their decision through indicating that they have already considered all other possible options plus they have used their maximum available resources before coming to this restrictive conclusion.⁵⁶⁰ Consequently, the situations of refugees who have been in refugee camps and reception centres for a long period of time due to different reasons without being permitted to be employed or undertaking self-employment activities can be in clear contrast with the meaning of this provision.⁵⁶¹

Importantly, the right to work as other human rights makes three sorts or levels of obligations on states namely the obligations to respect, protect and fulfil. The obligation of respect requires states to avoid of intruding directly or indirectly into the people's enjoyment of the right to work (obligation of non-action). The obligation to protect speaks about the responsibility of states toward preventing third parties from interfering with the people's enjoyment of the right to work through taking required measures (obligation of action). Finally, the obligation to fulfil itself divides into three obligations to provide, facilitate, and promote. It in fact describes the duty of states to impose proper legal, administrative, financial, judicial, and other standards in

556 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.954.

557 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p.6.

558 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p.6.

559 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p.6.

560 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p.7.

561 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.959.

the sake of accomplishing full realization of Article 6.⁵⁶² These three types of obligations will be discussed in the following.

3.1.5.2 Specific Legal Obligations of States Under Art. 6 of the ICESCR

States are obliged to respect the right to work by, inter alia, combating forced and compulsory labour as well as avoiding of preventing or limiting equal access to decent work for all people⁵⁶³ particularly vulnerable and secluded persons and groups such as prisoners and detainees, members of minorities and migrant workers.⁵⁶⁴

Essentially, states have the obligation to respect the right to work of women and the youth plus empowering them to access decent work. To this end, they must impose appropriate measures in favour of consolidating equal access to the work opportunities and against discriminatory behaviours.⁵⁶⁵

For example, in Denmark in order to enhance labour market integration of refugees a website “Good Reception” has been established because of a collaboration between the Danish Immigration Service, the Red Cross, Local Government Denmark and the Ministry of Immigration, Integration and Housing. This platform contains successful cases of integrated asylum seekers and refugees in the labour market as well as provides recommendations on how local authorities should take decision on this matter. It mainly concentrates on improving educational enrolment of young refugees plus their economic integration into the labour market. It offers plans in terms of integration of refugee women investing in a wide spectrum of different issues rather than labour market alone.⁵⁶⁶ Regarding pregnant women, it also refers to Art. 10.2 of the ICESCR which articulates working mothers should be paid special attention with paid leave or leave with sufficient social security benefits.⁵⁶⁷

562 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p7.

563 Edwards, Human Rights, Refugees, and the Right ‘To Enjoy’ Asylum, p.328.

564 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p7.

565 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p.7.

566 Martín et al. *From Refugees to Workers Mapping Labour-Market Integration Support Measures for Asylum Seekers and Refugees in EU Member States*, (2016), p.25.

567 Art. 10.2: “Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”

In keeping with Art. 10.3 of the Covenant,⁵⁶⁸ Signatory States also have specific obligations to protect children under the age of 16 from forced labour and economic exploitation. Taking that into account, states should take required measures especially legal standards to severely hamper child labour practices.⁵⁶⁹ In the context of refugees, it is worth noting that Art. 10.3 says that children and young persons should not be discriminated by parentage or other conditions, such as social or legal status, in terms of protection from child labour and economic exploitation. Therefore, according to this provision refugee children regardless of their legal status should be also defended against child labour and economic abuses.

In addition, Member States should adopt legislative and other appropriate measures to facilitate equal access to work and training to meet their commitments toward protecting the right to work under Art. 6 of the ICESCR. This obligation also requires states to defend the rights of workers against privatization measures. While states are free to adopt policies to consolidate the flexibility of their labour market, they should not endanger the work stability or the social protection for the workers. Another crucial aspect of the obligation to protect the right to work attributes to the impediment of the forced and compulsory labour by non-states stakeholders.⁵⁷⁰ Contracting States are under the obligation to fulfil (provide) the right to work if individuals or groups due to the reasons out of their control cannot enjoy this right themselves by the means at their disposal. The obligation to fulfil (provide) requires States Parties to insert the right to work in their national legal systems plus arranging a national policy on this right as well as adopting a comprehensive action plan for its full implementation.⁵⁷¹

Furthermore, the right to work obliges states to adopt and implement an employment policy which particularly targets economic prosperity and development, improvement of quality of life, reduction of unemployment and underemployment, etc. In terms of unemployment, states should maximise their efforts to dedicate additional resources for shrinking unemployment rates especially among vulnerable groups such as women and the disadvantaged and

568 Art. 10.3: “Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”

569 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p.7.

570 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p.7.

571 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p.7.

marginalised persons. Thus, adoption and implementation of effective policies and initiatives is one of the main responsibilities of Signatory States in respect to combating unemployment. For example, in France the Forum Réfugiés launched a project called “the Accelair Programme” to assist newly recognized refugees (in the first year after recognition) through different customised services such as provision of housing, technical and vocational training as well as job. One of the strategies in which the Forum Réfugiés uses often to develop its projects is to create extended partnerships by bringing together various public and private actors (such as local public authorities, prefectures, social housing owners and refugee experts). Such developed partnerships are basically meant to facilitate socio-economic integration process of refugees. In course of unemployment, Forum’s employees help refugees through providing applications for unemployment allowances, job seeking, developing occupational plans, skill assessment as well as language training. As reported by the Forum, it provided two thirds of refugees covered by the Accelair project with either vocational training or job. However, it is estimated to take more than 4 months to receive a training programme and more than 8 months to find a job.⁵⁷²

Another obligation which states have to follow is creation of a compensation system which those who lost their jobs can access. States are also obliged to arrange employment services either public or private at both local and national levels in order to support people through employment-associated affairs.⁵⁷³

The obligation to fulfil (facilitation) the right to work refers, inter alia, to the duty of states regarding their positive interventions through imposing appropriate measures in assisting people to enjoy this right. The obligation to fulfil (facilitation) also requires states to organize technical and vocational training programmes for obtaining access to employment opportunities.⁵⁷⁴

The obligation to fulfil (promote) the right to work describes the responsibility of states regarding promotion of this right through diverse channels. For example, states are required to arrange educational and informational programmes directed to raise public knowledge on the right to work.⁵⁷⁵

572 Martín et al. From Refugees to Workers Mapping Labour-Market Integration Support Measures for Asylum Seekers and Refugees in EU Member States, p.28.

573 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p.8.

574 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p.8.

575 Committee on Economic, Social and Cultural Rights (CESCR), the Right to Work General Comment No. 18, p.8.

For instance, in 2014-2015 the German Federal Employment Agency launched a particular pilot project called “Early Intervention” in nine cities to facilitate entry of asylum applicants into the labour market. Further to the employment coaching facilities which were provided by the relevant employment agencies, participants also received a set of other services such as special placement support, linguistic and practical job training and skills and qualifications assessment.

Approximately 10% of the partakers (1400 persons) succeeded to get on traineeship or normal employment. This pilot project had a significant added value for the employment agency workforces whereby they were educated to work more efficiently with selected asylum applicants. Through this programme they could obtain new intercultural skills and information as well as becoming more familiar with refugee laws. Importantly, other federal states and cities are now using their information and experiences which were attained during the pilot phase.⁵⁷⁶

It is also important to discuss Art. 2 (especially paragraph 3) of the ICESCR as it states:

“1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”

As it can be understood from para 3, developing countries can restrict the economic rights of non-nationals which are provided by the ICESCR. However, there are some restrictions on this right and developing countries must justify their decisions with due regard to human rights standards and their national economic interests. Therefore, developing countries do not have

⁵⁷⁶ Martín et al. From Refugees to Workers Mapping Labour-Market Integration Support Measures for Asylum Seekers and Refugees in EU Member States, p.30.

unlimited discretion to deny the economic rights of refugees.⁵⁷⁷ These decisions should be harnessed by the human rights measures of necessity, reasonableness, and proportionality. Regarding Art. 2.3, as Zimmermann points out, it had been drafted after some economic groups of foreigners had tried to take over the economy of colonized countries during colonial times. Thus, he concludes that para 3 should be narrowly interpreted with regard to vulnerable populations like asylum seekers and refugees.⁵⁷⁸ For example, if a developing country decided to limit refugee's economic rights only based on nationality or race considerations, this decision is considered as a discriminatory measure which is not acceptable nor reasonable.⁵⁷⁹ Hence, such decision can be unreasonable if refugees are denied entry into the labour market, engaging in self-employment activities or are prohibited from access to social security benefits. Denying refugees from social security benefits and the right to work at the same time by the reception state can endanger the situation of bona fide asylum seekers who hold a well-founded fear of persecution. Given that, these prospective refugees will be most likely discouraged from applying for the refugee status which can ultimately threaten their very existence as well.⁵⁸⁰ Moreover, it is also against obligations of protection of individuals from inhuman and degrading treatment.⁵⁸¹ Another example of violation of Art. 2.3 is when the restrictive decision is not in line with national economic considerations. As demonstrated above, according to Art. 2.3 only developing countries are entitled to make distinction between non-nationals and nationals in respect of economic rights and developed countries are prohibited to do the same unless they are permitted by other relevant laws. Now a critical question is that:

What is the legal obligation of those developed countries that are members of both the Refugee Convention and the ICESCR toward refugee's working rights?

Essentially, if a developed state is member of both the 1951 Geneva Convention and the 1966 ICESCR the latter would take precedence over the Refugee Convention. As previously demonstrated according to the former it is possible to distinguish between refugees and native people. Nonetheless, subsequent acceptance of the 1966 ICESCR which includes wider rights

577 Edwards, Human Rights, Refugees, and The Right 'To Enjoy' Asylum, p.325.

578 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.960.

579 Edwards, Human Rights, Refugees, and The Right 'To Enjoy' Asylum, p.325.

580 Edwards, Human Rights, Refugees, and The Right 'To Enjoy' Asylum, p.326. See also Zimmermann, A., *the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, (2011), p.960.

581 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.960.

rather than the 1951 Geneva Convention (with a narrower protection) implicitly proves the intention of the relative state to grant further rights to refugee people.⁵⁸²

Regarding Art. 17 of the Refugee Convention, as Zimmermann rightly points out, the legal history of this article demonstrates that it was influenced by the economic crisis after the Second World War. The economic insecurity during the post-Second World War, the expensive rebuilding programmes as well as concern on competition between nationals and non-nationals led to give refugees “**the most favourable treatment accorded to nationals of a foreign country in the same circumstances**” in respect of wage-earning employment.⁵⁸³

He then continues that, there is a duty for Member States to interpret Art. 17 according to their contemporary situation. In other words, it is necessary to go beyond the restrictive and historical reading of the text of Art. 17.⁵⁸⁴ Because in this case, refugees would end up in severe socio-economic problems which influence themselves and even their families.

For example, at the European level, though there are some prioritizations for EU and EEA nationals in respect of the right to access to work in the Qualification Directive 2011/95/EU, its Art. 26.1 provides that:

*“Member States shall authorise beneficiaries of international protection to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service, immediately after protection has been granted.”*⁵⁸⁵

But once a developing country is unable to give a generous interpretation to refugee’s right to work or there is a reasonable economic hardship for a developed country, a restrictive application of Art. 17 might be applied. Nevertheless, this restrictive position should be accompanied with compelling justifications by any respective state such as financial crisis or engagement in war.⁵⁸⁶

Furthermore, as Zimmermann rightly avers, this approach is in line with position of Art. 2 of the ICESCR in which developing countries are permitted to curb economic rights of non-nationals, nonetheless, developed countries would not enjoy such an advantage.⁵⁸⁷ However, the developed states may resort to Art. 4 of the ICESCR and take advantage of prediction of

582 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.960.

583 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.967.

584 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.967.

585 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.968.

586 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.967.

587 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.967.

restrictions under certain circumstances as regards the rights in it.⁵⁸⁸ Art. 4 of the ICESCR provides that:

“The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.”

Although this article permits states to make limitations to their regulations which are imposed in conformity with the rights in the ICESCR, nevertheless, there are some essential requirements which must be respected by Member States. According to these requirements which are stated in Art. 4 of the ICESCR, the restrictive measures, here in respect of the right to work, must be primarily determined by the law; then they must be compatible with the nature of respective right and should be solely made for promoting the general welfare in a democratic society. These three conditions are mandatory to impose any limitation toward the rights enshrined in the ICESCR.⁵⁸⁹

In keeping with the view of the Committee on Economic, Social and Cultural Rights (CESCR) and contrary to the perception of states, Art. 4 is more a protective provision in the favour of the rights of individuals (including refugees) than a permissive measure allowing states to impose any form of limitation on the rights in the ICESCR.⁵⁹⁰

Further, the denial of the rights to work against refugees would undoubtedly compromise their integration into the host society. Giving refugees an opportunity to attend the labour market, engaging in self-employment activities or practicing their liberal professions would enhance their self-confidence, understanding, sense of self-esteem and dignity as well as promoting the general welfare of the host society which is in line with the purpose of Art. 4 of the ICESCR. This leads to building trust between refugees and nationals and as a result, it will facilitate integration of refugees into their new home.⁵⁹¹

The right to work under Art. 6 of the ICESCR is conceivably broader in scope than the rights of wage-earning employment, self-employment and liberal professions provided by Arts. 17, 18 & 19 of the 1951 Geneva Convention, respectively.

588 Da Costa, *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations*, p.51.

589 Zimmermann, (Ed.), *the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, (2011), p.961. See also Da Costa, R., *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations*, (2006), p.51.

590 Edwards, *Human Rights, Refugees, and The Right ‘To Enjoy’ Asylum*, p.327.

591 Edwards, *Human Rights, Refugees, and The Right ‘To Enjoy’ Asylum*, p.327.

Article 6 contains all people and does not make any distinction between refugees, asylum seekers and other groups of migrants. It also does not apply for any residence-related requirements as it is the case for the Refugee Convention. More significantly, Art. 6 generally treats non-nationals and nationals equally unless there are exceptions based on a particular law. Essentially, Art. 6 can be relevant in the context of refugees and asylum seekers; and whereas there is a set of limitations in the ICESCR, these restrictions should be narrowly interpreted especially in relation to the rights of refugees.⁵⁹² For instance, those restrictive measures which are discriminatory in nature or are in contrast with the aims and purposes of the ICESCR must be discarded. Given that, these restrictions threaten the human dignity and negatively impact integration opportunities for refugees. Nevertheless, Arts. 17, 18 & 19 of the Refugee Convention is still relevant when a country is not a member state of the ICESCR or when a particular group of recognized refugees are targeted.⁵⁹³ Importantly, as Zimmermann writes, the right to work under Art. 6 can be linked to the right to an adequate living standard provided by Art. 11.1 of the ICESCR⁵⁹⁴ as it stipulates:

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

Thus, as the CESCR believes the denial of the right to work toward asylum seekers and refugees could violate their right to an adequate living standard recognized by Article 11.1.⁵⁹⁵ This could be more intensive once asylum seekers and refugees enjoy no financial support or social benefit from government of the host states. For example, a refugee who has come to the host state and is denied from the right to work according to the reception state’s national law would face economic pressure and even marginalization. This situation would become worse if he is not also financially supported during his early residence in the host country. He would not be capable of satisfying his/her basic needs and would enjoy no adequate living standard in the reception state. Thereby these conditions will jeopardise his human dignity and even his

592 Edwards, Human Rights, Refugees, and The Right ‘To Enjoy’ Asylum, p.327.

593 Edwards, Human Rights, Refugees, and The Right ‘To Enjoy’ Asylum, p.327.

594 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.961.

595 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.961.

integration into the receiving society. Now, a significant question which might be come up is that:

Could denial of the right to work amount to an inhuman and degrading treatment?

According to Zimmermann, the existence of such denial might not be per se considered as an inhuman or degrading treatment. However, if such rejection of the right to work is simultaneously coupled with lack or even inadequate access to social security benefits in the reception state it might result in inhuman or degrading treatment. This view is in line with a wide range of jurisprudence which is growing progressively.⁵⁹⁶ Accordingly, refugees who are at the same time denied from working and from social security benefits in the receiving state can be considered as victims of an inhuman and degrading treatment as well.

Besides, this kind of treatment by the host state which violates dignity of refugees is in clear contrast with state's Constitutional guarantees regarding the human dignity.⁵⁹⁷ Denial of the right of refugees to work could under some circumstances amount to violation of Art. 31 of the Refugee Convention regarding non-penalization of illegal asylum seekers.⁵⁹⁸ Art. 6 is basically about refugees lawfully staying in the destination country while Art. 31 covers those asylum applicants who unlawfully entered and are present in the reception state. Nevertheless, when the status of such asylum seekers is regularized, they should be protected by Art. 6 as well. Therefore, denying the recognized refugees from access to work merely based on their previous illegal entrance or presence would amount to penalizing refugees which is prohibited by Art. 31.⁵⁹⁹

In addition, the denial of the right to work for refugees might lead to constructive refoulement. Under this scenario the only path for a denied refugee is to return to his/her country of origin

596 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.962.

597 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.962.

598 Art. 31(1): "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

599 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p. 962.

where his/her life or freedom is threatened yet which will infringe Art. 33 (prohibition of refoulement)⁶⁰⁰ of the Refugee Convention.⁶⁰¹

3.1.5.3 The Duty of Technical and Vocational Training Under Para 2 of Art. 6 of the ICESCR

Before discussing the responsibility of Signatory States under Art. 6.2 of the ICESCR in terms of provision of technical and vocational education and training (TVET), it is necessary to mention that as demonstrated already in previous chapter, TVET can be placed under the umbrella of Art. 22.2 of the Refugee Convention (the right to post-elementary education) which gives refugees treatment on an equal footing to aliens generally in the same circumstances.⁶⁰²

As it happens, holding a lower standard than elementary education (the same treatment as accorded to nationals) provokes the receiving states to give elementary education a central position so that they must dedicate a large proportion of their resources to this level of schooling in order to make it available to more refugees. As a result, the post-elementary education including TVET will be put in lower place which can make it less available to refugees.⁶⁰³

However, the second paragraph of Art. 6⁶⁰⁴ regulates Member States obligations toward the full realization of the right to work. It determines that states should arrange technical and vocational guidance and training programmes, policies, and techniques to achieve steady economic, social, and cultural development and full and productive employment.

Actually, the legislation recognizes the vital role of technical and vocational training as an effective instrument to help refugees get into the labour market as well as having them

600 Art. 33: “1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

601 Zimmermann, (Ed.), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, p.963.

602 It can be also referred to Art. 13.2 (b) of the ICESCR which states: “Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.” This Article was already discussed in depth in the second chapter.

603 Williams, A., *Inclusion of Refugees in Technical and Vocational Education and Training: An Exploration into Funding, Planning and Delivery*, (2018), p.17.

604 Art. 6.2: “The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”

contribute to the prosperity and productivity of their asylum country's economy.⁶⁰⁵ In accordance with UNESCO-UNEVOC (International Centre for Technical and Vocational Education and Training), the impacts of TVET makes it the best instrument to raise the sense of belonging among refugee populations and increase their chances to be socially and economically integrated into the host state's labour market by boosting their skills and engaging them in reskills opportunities and local work experience. It clearly certifies the purpose of Art. 6.2 claiming that TVET helps migrants and refugees to positively contribute to the economy of their new country which can result in more inclusive society, considerable economic development, inequality reduction and ultimately socio-economic integration of refugees.⁶⁰⁶

In this regard, UNESCO-UNEVOC launched a project called "the Bridging Innovation and Learning in TVET" (BILT) to a global audience on 2 December 2019. This project receives support from the Federal Institute for Vocational Education and Training (BIBB) and is sponsored by the German Federal Ministry of Education and Research (BMBF). The BILT project concentrates on four different work streams namely digitalization and TVET, greening TVET, entrepreneurship in TVET and migration and TVET. It intends to exchange advanced and innovative practices in how TVET systems address their integration, identifying, formalizing and implementing new qualifications and competencies by virtue of creating practically oriented guides which are required for modern and competitive TVET systems and attractive career paths, to activate the EU cluster of the UNEVOC Network via synergies in innovation and learning bridges, to provide opportunities and explore possible ways to bridge innovation and learning experiences between Europe, Africa, Asia and the Pacific.⁶⁰⁷

In terms of importance of technical and vocational training and its crucial role in combatting unemployment and preventing socio-economic exclusion, Art. 26.1 of the 1948 UDHR emphasizes general availability of technical and professional training:⁶⁰⁸

"Everyone has the right to education... Technical and professional education shall be made generally available...."

605 Williams, A., Inclusion of Refugees in Technical and Vocational Education and Training: An Exploration into Funding, Planning and Delivery, p.17.

606 UNESCO-UNEVOC, *The Impact of Migration on TVET*, (n.d.), <https://unevoc.unesco.org/home/Migration+and+TVET>.

607 UNESCO-UNEVOC, *Built Project Kick-Off Conference*, (2019), https://unevoc.unesco.org/bilt/BILT_Kickoff.

608 Aferiat, Y., *Good Practice Guide on Vocational Training Good Practice Guide on Vocational Training for Refugees in the European Union*, (1999), p.9.

Moreover, Sustainable Development Goal 4.4 (Increase the number of people with relevant skills for financial success) emphasizes substantially increasing the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs, and entrepreneurship by 2030.⁶⁰⁹ Now, the question is that:

What is the definition of technical and vocational training in the context of refugee?

For replying to this question, reference can be made to the CESCER which elaborates a definition from the UNESCO Convention on Technical and Vocational Education (1989): “TVE consists of all forms of the educational process involving, in addition to general knowledge, the study of technologies and related sciences and the acquisition of practical skills, know-how, attitudes and understanding related to occupations in the various sectors of economic and social life.”⁶¹⁰

In addition, in accordance with UNHCR, “TVET encompasses education, training and skills development relating to a wide range of occupational fields, production, services and livelihoods. In many countries, TVET is an integral part of the national education architecture and supports economic development by facilitating skilled workforce development linked to labour market needs. TVET, as part of lifelong learning, can take place at secondary, post-secondary and tertiary levels and includes work-based learning.”⁶¹¹

The traditional definition of vocational training describes it as a process of learning new skills and knowledge in the sake of attaining employment (this contains obtaining essential linguistic skills required for the relevant occupation).⁶¹²

Nevertheless, in the context of refugees and in the light of specific needs of refugees, definition of vocational training takes broader approach. Refugee vocational training includes all activities which are meant to assist refugees to take part in the vocational training programme (including language training courses and vocational guidance programmes usually known as

609 In terms of the right to technical and vocational training for women, the reference can be made to Art. 11.1 (c) of the 1979 CEDAW which regulates: “1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women... (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.”

610 King, J., *An Activist’s Manual on the International Covenant on Economic, Social and Cultural Rights*, (2003), p.59.

611 UNHCR, *Key Considerations on Technical and Vocational Education and Training (TVET)*, (2019), p.1.

612 Aferiat, *Good Practice Guide on Vocational Training Good Practice Guide on Vocational Training for Refugees in the European Union*, p.8.

pre-vocational training) plus follow-up preparation of refugees to enter the labour market which is called post-vocational training (including job-seeking skills development, intercultural interactions in the workplace as well as confidence building training).⁶¹³

In line with this definition, further to actual training programmes, Art. 6.2 refers also to pre-vocational training. The term “technical and vocational guidance” refers to pre-vocational training which aim to prepare refugees to enter technical and vocational training courses (such as how to provide a CV, how to validate prior credentials/diplomas or traineeships, guidance on the requirements of the labour market, etc.).

It speaks about training programmes as well as policies and techniques to achieve steady economic, social, and cultural development and full and productive employment. Therefore, though post-vocational training is not explicitly covered by Art. 6.2, the terms “policies” and “techniques” implicitly refer to this sort of training. In other words, post-vocational training is arranged to reinforce those refugee’s skills which eventually lead them to gain access to the host country’s labour market.

Therefore, both post-vocational training and those of policies and techniques referred to in Art. 6.2 seek the same outcomes, namely boosting employment opportunities. Again, such similarity strengthens this hypothesis that the wording “policies and techniques” under Art. 6.2 refers to post-vocational training.

Furthermore, Art. 6.2 highlights that such technical and vocational training policies and techniques should lead to stable economic, social, and cultural development plus full and productive employment. Therefore, it takes a very comprehensive view toward development thereby furthering economic growth, and other aspects of development such as social and cultural dimensions. It truly confirms the connection between these three dimensions of development.

In addition to economic growth, TVET initiatives should care about socio-cultural development of country as well. However, it is necessary to mention that, as Art. 6.2 says the purpose of TVET initiatives is to reach a sustainable and durable economic, social, and cultural development. Therefore, such TVET plans must contain long-term socio-economic and cultural advancement policies.

In the context of refugees, ensuring the right to work for them should also facilitate their socio-cultural advancement and integration in the host society. Essentially, through technical and

613 Aferiat, Good Practice Guide on Vocational Training Good Practice Guide on Vocational Training for Refugees in the European Union, p.8.

vocational training opportunities refugees can obtain deeper insight into the social and cultural values of the asylum country and take greater steps toward adjusting themselves to new circumstances and ultimate integration into the reception society. Through employment refugees obtain opportunity to share their culture, thoughts, and beliefs with their native colleagues at the workplace, Hence, promotion of an inclusive and cohesive society should be followed alongside the economic growth by the host country.

Attaining full and productive employment is another significant goal which should be followed by technical and vocational training initiatives. Currently, in many countries technical and vocational training are used as crucial tools to boost the economy through providing skilled workforce aligned with labour market needs as well as creating new job opportunities.⁶¹⁴ In other words, the role of TVET in both general education for training life-skills as well as for unfettering and mobilizing the capacity of workers cannot be forgotten. Hence, it seems crucial for addressing the unemployment of refugees and the promotion of the policy goal of full and productive employment as well.⁶¹⁵

In the context of refugees, TVET programmes and policies should enable refugees to have early access to the labour market of the host country. When designing TVET initiatives, the police makers should have holistic view toward both skills and experiences of refugees and the requirements and conditions of the job market so that refugees can be matched with the needs of labour market. This issue will be discussed in the next parts.

Finally, as Art. 6.2 holds, achieving steady economic, social and cultural progress and full and productive employment must not compromise fundamental political and economic freedoms to individuals who are safeguarded by the core international human rights instruments such as the right to just and favourable conditions of work,⁶¹⁶ the right to protection against unemployment,⁶¹⁷ the right to peaceful assembly and association (including to form or join

614 UNHCR, Key Considerations on Technical and Vocational Education and Training (TVET), p.1.

615 King, An Activist's Manual on the International Covenant on Economic, Social and Cultural Rights, p.59.

616 In addition to Art. 23.1 of the UDHR, the reference might be, for example, also made to Art. 7 of the ICESCR that articulates: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays." At the European level, it might be referred to Art. 2 of the 1961 European Social Charter as well as Art. 31 of the Charter of Fundamental Rights of the European Union.

617 For instance, the reference can be made to Art. 23.1 of the UDHR which says: "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against

associations and trade unions),⁶¹⁸the right to strike,⁶¹⁹the right to freedom of speech and expression⁶²⁰and so on. Now, an important question is that:

How can refugees have better access to technical and vocational training services?

Before speaking about factors which play important roles in the access of refugees to the TVET schemes, it is necessary to mention that refugees' poor socio-economic conditions as well as their daily hardships regarding housing and health problems frequently impede refugees getting access to such services. Therefore, states should pay extra attention to set policies which aim to improve their existing social welfare frameworks to allow refugees have greater access to TVET programmes.⁶²¹

The first step to enable refugees to have effective access to TVET is to establish information services such as national agencies of Member States that provide refugees with easily accessible information on both public and refugee-specific vocational training programmes.⁶²² Lack of access to information concerning vocational training programmes will extremely limit the access of refugees to TVET services. Thus, by virtue of general application of Art. 6.2 to all groups of people (whether nationals or non-nationals), Signatory States should develop national policies which promote access to information on vocational training schemes on an equal basis for both refugees and nationals.⁶²³

unemployment." The attention can be also paid to Art. 54 of the 1990 International Convention on the Protection of the rights of All Migrant workers and their Families.

618 In this regard, further to Art. 23.4 of the UDHR, it can be, for example, also referred to Art. 8.1 (a) of the ICESCR which stipulates: "1. The States Parties to the present Covenant undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others." At the European level, it can be also referred to Art. 12 of the Charter of Fundamental Rights of the European Union, Art. 11 of the ECHR as well as Art. 11 of the 1989 Community charter of the Fundamental Social Rights of workers.

619 In this respect, the attention may be paid to Art. 8.1 (d): "1. The States Parties to the present Covenant undertake to ensure: (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country." It can be also referred to ILO conventions such as the 1948 Convention No. 87 (Freedom of Association and Protection of the Right to Organize Convention), the 1949 Convention No. 98 (Right to Organize and Collective Bargaining). In addition, at the European level, the reference can be made to Art. 13 & 14 of the 1989 European Charter of Fundamental Social Rights of workers, Art. 6.4 of the 1961 European Social Charter.

620 Regarding this right, see Art. 19 of the UDHR, Art. 19 of the ICCPR, Art. 5 (d) (viii) of the ICERD, Art. 7 (c) of the CEDAW as well as the 1971 ILO Convention No. 135 (Workers Representatives Convention).

621 Aferiat, Good Practice Guide on Vocational Training Good Practice Guide on Vocational Training for Refugees in the European Union, p.12.

622 ECRE, *ECRE Position on the Integration of Refugees in Europe (appendix 2)*, (1999), p.54.

623 Aferiat, Good Practice Guide on Vocational Training Good Practice Guide on Vocational Training for Refugees in the European Union, p.12.

In addition, there is also a strong link between access to TVET and vocational or career guidance. Given that, vocational guidance provides all information and advice which a refugee needs to choose a field of work or vocational training, the situation and development of the labour market, funding facilities for vocational training, how to find employment or vocational training and so on. Thus, as referred in Art. 6.2 it is important for enabling refugees to obtain access to vocational training and consequently employment.⁶²⁴ However, vocational guidance can be challenged by the lack of validation of refugee's educational and work qualifications by official authorities of the host country.⁶²⁵ In many countries it is a problem for many refugees that vocational guidance counsellors must deal with.⁶²⁶

Another important factor which is a major driver in labour market integration of refugees is refugee early (initial) skills assessment. It provides a chance to matching refugees' skills with the labour market requirements and facilitates potential relocation.⁶²⁷ Furthermore, early skills assessment helps the reception state get an initial insight into the spectrum of new comers' skills and knowledge. Therefore, through initial skills assessment the host state can identify refugee expertise and make informed decisions on required guidance materials, training frameworks and other educational services.⁶²⁸ A question which may arise is:

Who is responsible for refugee's early skills assessment?

In many countries, different institutions can be engaged in refugee early skills assessment. This may include reception and vocation centres and public employment organizations, education and integration programme providers, NGOs and/or employers. However, each of these institutions has its own framework, priorities, and agenda. Clearly, these various service providers for performing their responsibilities regarding refugee skills assessment must be trained and equipped to accomplish this task. Moreover, they should provide refugees with

624 Aferiat, Good Practice Guide on Vocational Training Good Practice Guide on Vocational Training for Refugees in the European Union, p.12.

625 Aferiat, Good Practice Guide on Vocational Training Good Practice Guide on Vocational Training for Refugees in the European Union, p.13.

626 This problem will be debated later.

627 European Centre for the Development of Vocational Training (Cedefop), *Vocational Education and Training: Bridging Refugees and Employer needs*, (2017), p.2.

628 Jeon, S., *Getting Informed: Understanding the Potential of Migrants and Refugees and Vocational Education and Training*, (2019), p.5.

information on where they can apply for recognition of their skills and how these skills can be enhanced and matched with the host country's labour market demands.⁶²⁹

Many European countries have developed modern and effective skills assessment services integrated with their employment systems to facilitate labour market entry of refugees. These are combined with fast-track asylum procedures, automated self-assessment, and/or local community-based training with mentoring.⁶³⁰ For example, using a mobile phone app to do an initial self-assessment using a web-based assessment is becoming common in refugee crises having a massive number of asylum seekers simultaneously.

Some countries have employed more developed tools for refugee skills assessment to facilitate early integration of refugees. For instance, in Sweden the government in collaboration with social partners has established a comprehensive scheme which contains a variety of services such as vocational guidance, skills assessment, recognition of prior credentials and certificates, work placements and internships as well as language and vocational training.⁶³¹

At the European level, an example is a programme called "The EU Skills Profile Tool" which is a multilingual, online project to identify and document skills, credentials and experiences of migrants and refugees for their economic integration into the labour market. A wide range of European states have implemented it whether as part of pilot schemes or other programmes. For instance, in Italy it has been experienced at the national level through the INSIDE project and is determined to be also endorsed as part of the POUI project and in the Piedmont Region by the FORWORK project (Fostering Opportunities of Refugee WORKers). However, while this programme has had positive impacts on examination and documentation of refugee skills and knowledge, still its implementations in some countries is not pursued very actively.⁶³²

Currently, refugee entrepreneurship is increasingly recognized by many receiving countries as a crucial tool to boost socio-economic integration of refugees. The entrepreneurial activity of refugees is also in line with the 2016 New York Declaration for Refugees and Migrants that advocates long-term and sustainable national policies which create an environment for migrants and refugees to have positive contributions to the socio-economic development of

629 Jeon, *Getting Informed: Understanding the Potential of Migrants and Refugees and Vocational Education and Training*, p.5.

630 European Centre for the Development of Vocational Training (Cedefop), *Vocational Education and Training: Bridging Refugees and Employer needs*, p.2.

631 European Centre for the Development of Vocational Training (Cedefop), *Vocational Education and Training: Bridging Refugees and Employer needs*, p.2.

632 Jeon, *Getting Informed: Understanding the Potential of Migrants and Refugees and Vocational Education and Training*, p.6.

both countries of origin and destination.⁶³³ Furthermore, entrepreneurship plays a significant role in facilitation of integration of refugees by providing them with a source of income plus employment for those who face limitations for entering the host country's labour market.⁶³⁴ Though there is a shortage of reliable data on the scale of refugee entrepreneurship, nonetheless, some reports in OECD countries indicate a fairly good records of migrant and refugee engagement in entrepreneurial activity.⁶³⁵

As can be seen in many host countries, a main barrier which refugees face is lack of knowledge about business conditions in country of refuge. Thus, entrepreneurship training and education helps refugees to learn those skills and abilities which are needed in order to set up and manage a business in the reception country. It can also teach refugees how to form an entrepreneurial mindset which will help them to use their maximum potential, expertise, knowledge, and networks, to start more gainful business activities.⁶³⁶

To have successful results, it must be ensured that education and training programmes connect refugee entrepreneurs to mainstream entrepreneurship schemes. Teaching staffs must be selected from entrepreneurs and mentors who have a broad social network and are highly experienced. Importantly, entrepreneurship education and training should be used as a complementary tool to TVET so that refugee entrepreneurs can more easily connect to the private sector.⁶³⁷ However, refugees often encounter various linguistic, cultural, and financial problems when accessing entrepreneurship programmes which can restrict their access. Therefore, it is imperative to make harmony between entrepreneurship training schemes and general integration policies for refugees which support provision of basic needs of refugees.⁶³⁸ Decision makers and stakeholders when creating entrepreneurial education initiatives should carefully determine the target groups they want to support. Refugees with different skills and experiences have varied needs and demands, thus entrepreneurship schemes should be designed to align with the specific skills and needs of refugees. For example, entrepreneurship training initiatives might target specific local contexts, refugee camps, and identifiable community groups of refugees and consider their phase of business development.⁶³⁹

633 Bolwijn et al. *Policy Guide on Entrepreneurship for Migrants and Refugees*, (2018), p.4.

634 Bolwijn et al. *Policy Guide on Entrepreneurship for Migrants and Refugees*, p.4.

635 Bolwijn et al. *Policy Guide on Entrepreneurship for Migrants and Refugees*, p.4.

636 Bolwijn et al. *Policy Guide on Entrepreneurship for Migrants and Refugees*, p.44.

637 Bolwijn et al. *Policy Guide on Entrepreneurship for Migrants and Refugees*, p.44.

638 Bolwijn et al. *Policy Guide on Entrepreneurship for Migrants and Refugees*, p.44.

639 Bolwijn et al. *Policy Guide on Entrepreneurship for Migrants and Refugees*, p.46.

As regards specific group of refugees, for instance, in Germany the Jumpp project targets particularly female migrant and refugee entrepreneurs to enable them to become successful role models in the host society. The most important goals of the Jumpp programme are: (i) strengthening entrepreneurial skills of female migrants and refugees (ii) enabling them to start their own businesses (iii) presenting women migrant and refugee entrepreneurs as role models to people in the host state (iv) directing stakeholders' attention to women migrant and refugee entrepreneurs and their capabilities and interests.⁶⁴⁰

In terms of business development, an example is the Inkomoko Refugee Entrepreneurship Programme in Rwanda which provides refugee entrepreneurs with diverse training services according to the phase of their business development. There is a light programme for micro-entrepreneurs as well as aspiring entrepreneurs who are going to establish their business and a full programme for those refugee entrepreneurs who own an enterprise with high-growth potential.

The first group of refugees (micro-entrepreneurs and aspiring entrepreneurs) are given 40 hours business skills training (including business planning, local business registration and regulation training, accounting, and cash flow management) plus being supported through easy-to-use bookkeeping, cash flow and inventory management tool. The owners of businesses with high-growth potential comprise nearly 25 per cent of all participants who are given access to these training services and individual business assessments dedicated to recognize areas of improvement as well as receiving face to face counselling services for business growth policies, raising job opportunities and the management of finance, operations, and sales.⁶⁴¹

A notable gap in many entrepreneurship education initiatives is to concentrate too narrowly on business plan development rather than full entrepreneurship training programmes. These initiatives frequently see entrepreneurship as several functional business skills rather than teaching participants how entrepreneurs think and act. Therefore, relevant stakeholders especially in developing states could promote more active training methods rather than their traditional focus emphasizing writing business plans. This requires a practical and experiential curriculum which invests in skills such as problem-based learning and learning by doing.⁶⁴²

Now, a crucial question which might arise is that:

640 Bolwijn

n et al. Policy Guide on Entrepreneurship for Migrants and Refugees, p.48.

641 Bolwijn et al. Policy Guide on Entrepreneurship for Migrants and Refugees, p.49.

642 Bolwijn et al. Policy Guide on Entrepreneurship for Migrants and Refugees, p.53.

How can entrepreneurship education initiatives increase the chances of refugees for employment?

Importantly, entrepreneurship education programmes should not be implemented apart from other integration schemes, because these programmes cannot effectively achieve their goals alone.⁶⁴³ Such disconnection can hamper refugees from accessing self-employment. For instance, respecting special administrative requirements such as giving up social security benefits due to registration of business might deter refugees from engaging in self-employment activities. Integration policies which focus on gradual transitioning to self-employment activities would better protect refugees. Thus, decision makers and stakeholders should support those initiatives which invest in boosting partnerships between entrepreneurship education plans and integration policies such as linguistic and occupational training programmes.⁶⁴⁴

In addition, while a wide range of integration initiatives undertake technical and vocational training, however, they rarely pay appropriate attention to the skills and experiences of refugees. Moreover, though such TVETs provide refugees with useful skills and knowledge, nonetheless, these programmes do not immediately lead refugees to employment. Vocational training programmes are also not matched with training on entrepreneurship. Hence, policy makers when developing initiatives should pay due attention to strengthen the synergies between these two interconnected types of training to facilitate access of refugees to employment opportunities.

In other words, entrepreneurship education schemes must be implemented as a complementary tool to TVETs projects since they can enable refugee entrepreneurs to use their skills and competence immediately in self-employment-related activities. Entrepreneurship training initiatives can also be coordinated with internships or other complementary opportunities linking refugees to employment.⁶⁴⁵

For example, in Uganda, the Norwegian Refugee Council (NRC) is offering a six-month “Vocational Skills Training” (VST) project for the youth with a refugee background. The focus is on training refugees who live in camps but it also intends to expand its activities to those refugees who are out of camps and have difficulties for commuting through a mobile training unit. Refugees are offered training in eight vocations plus in business development skills. This project aims to mix vocational training (such as bakery, bricklaying and concrete practice,

643 Bolwijn et al. Policy Guide on Entrepreneurship for Migrants and Refugees, p.55.

644 Bolwijn et al. Policy Guide on Entrepreneurship for Migrants and Refugees, p.57.

645 Bolwijn et al. Policy Guide on Entrepreneurship for Migrants and Refugees, p.56.

carpentry, electronics, hair dressing, horticulture, poultry, and tailoring) with entrepreneurship skills education. The later contains training on business planning, business management, group dynamics, bookkeeping and agronomic practices (for people who are trained in poultry and horticulture). This training is provided on-site by knowledgeable Ugandan experts and is free of charge. Additionally, those mothers who have small children can enjoy a free on-site childcare. NRC means to set up a mobile training unit and open a student house for those refugees who are far from refugee camps and have challenges to commute to such settlements for joining training courses.⁶⁴⁶ Also, cash-based assistances plays a crucial role in developing local entrepreneurship especially during crisis periods.⁶⁴⁷

3.1.6 The Right to Just and Favourable Conditions of Work Under Art. 7 of the ICESCR for Refugees

Before speaking about Art. 7 of the ICESCR, it seems necessary to discuss Art. 24 of the Refugee Convention and some of its key features briefly. There are several areas overlapped by these two articles which are illustrated in the following.

Though the 1951 Geneva Convention does not refer to the term “the right to just and favourable conditions”, nevertheless, its Art. 24 deals with it and stipulates that refugees lawfully staying in the host country should be equally treated as nationals in terms of labour legislations and social security benefits.⁶⁴⁸ It articulates that:

“1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on homework, minimum age of employment, apprenticeship and training, women’s work and the work of young persons, and the enjoyment of the benefits of collective bargaining;(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

646 Up to 2018 this project supported more than 1000 refugee students to complete their training. See Bolwijn et al. Policy Guide on Entrepreneurship for Migrants and Refugees, p.56.

647 Bolwijn et al. Policy Guide on Entrepreneurship for Migrants and Refugees, p.57.

648 In this regard, it can be also referred to Art. 9 of the ICESCR concerning the right to social security which states: “The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.”

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition; (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and noncontracting States.”

Importantly, Art. 24 regulates similar legal standard for refugees as nationals with regard to the listed forms of labour protection only if they are arranged by laws, regulations or are subject to the control of administrative authorities. In other words, those particular labour protection standards which are regulated by private agreements between employers and national employees will not be extended to refugees. In line with this interpretation, Member States only must provide refugees with publicly regulated labour protections, thus those specific protection measures ruling nationals which are privately concluded through agreements between employers and employees will not be covered by this provision.⁶⁴⁹

Article 24.1 (a) is of great importance as it contains several labour protections which are not covered by Art. 7 of the ICESCR. It obliges States Parties to place refugees on the same footing as nationals in respect of rights to enjoy overtime arrangements, restrictions on homework, minimum age of employment, access to apprenticeship and training and the work of young persons.⁶⁵⁰ This is important for refugees who live in developing countries where have ratified both treaties. In other words, if a developing country is member of both treaties it cannot justify its failure to respect Art. 7 simply due to its duty of progressive implementation or financial

649 Hathaway, *the Rights of Refugees Under International Law*, p.767.

650 Hathaway, *the Rights of Refugees Under International Law*, p.768.

limitations that are authorised by the ICESCR since under Art. 24.1 (a) it has an immediate obligation to meet its commitments.

Therefore, Art. 24.1 (a) provides crucial supportive tool for those refugees who otherwise might not be protected by Art. 7 in developing countries.⁶⁵¹ In addition, while Art. 24.1 (a) requires states to grant refugees the same treatment as nationals in relation to the enjoyment of benefits of collective bargaining, however, Art. 15 of the same instrument will be applicable to refugees as regards their right to join and participate in the work of trade unions.⁶⁵² However, other crucial labour protections within Art. 24.1 (a) including remunerations, hours of work, holidays with pay and women's work are also covered by Art. 7 of the ICESCR.⁶⁵³

Moreover, there are some crucial points under Art. 24.1 (b) in relation to the right to all forms of social security benefits for refugees which must be discussed. Although according to this provision refugees lawfully staying in a Member State must have access to social security entitlements on the same level as nationals, nonetheless, there are several limitations for refugees in this connection.

First, clauses (i) & (ii) of Art. 24.1 (b) should be read in conjunction with paragraphs 3 & 4 of Article 24. As a general rule refugees should obtain the benefit of any bilateral or other arrangements between the host state and other states in order to maintain their acquired rights or rights in course of acquisition as regards social security. However, as clause (i) indicates when there is not such an arrangement between the host country and the other place(s) where refugee has worked or contributed to as well, then refugee's asylum state cannot be obliged to pay the share of social benefit which has been accrued abroad.⁶⁵⁴

Second, clause (ii) refers to a limitation when the asylum state adopts a special arrangement for its own nationals to top up their social benefit entitlements. However, in order to refuse refugees' access to such extra benefit states should pay it totally through public funds, thus it cannot be even partially financed by employers' or workers' contributions.⁶⁵⁵

Furthermore, as mentioned above paragraph 3 of Art. 24 requires States Parties to extend the benefits of social security agreements that are concluded between them or may be come into force in the future to refugees. It reflects a situation when a refugee has worked in one or more asylum countries prior to move to his/her current host country. Therefore, like citizens such

651 Hathaway, *the Rights of Refugees Under International Law*, p.769.

652 Hathaway, *the Rights of Refugees Under International Law*, p.768.

653 Hathaway, *the Rights of Refugees Under International Law*, p.769.

654 Hathaway, *the Rights of Refugees Under International Law*, p.780.

655 Hathaway, *the Rights of Refugees Under International Law*, p.780.

refugees spontaneously enjoy social security benefits to such arrangements which are made between States Parties to the 1951 Geneva Convention in order to retain acquired rights or rights in the process of acquisition.⁶⁵⁶

Paragraph 4 recommends Member States to give sympathetic efforts to extend such protection also to refugees who their previous asylum or original countries are not member of the Refugee Convention. According to this paragraph States Parties have not any legal obligation (they are only recommended) toward extension of the benefit of social security agreements to refugees who their first country of asylum or country of origin where they have already worked in is not a party to the Refugee Convention (even though there is a bilateral social security cooperation contract between it and the refugee's host country).⁶⁵⁷

In terms of the right to just and favourable conditions of work, it should be also referred to Art. 7 of the ICESCR that by virtue of its broad applicability can be used in the context of refugees which will be discussed in the following.

Essentially, one of the negative effects of lack of economic integration of refugees in the labour market is their engagement in the informal market. Working in the risky and degrading informal sector will expose refugees to the risk of exploitation, harassment, gender-based violation and other human rights infringements.⁶⁵⁸ As highlighted by the CESCR in paragraph 13 of the 2017 The Duties of States Towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights, these problems will be exacerbated when refugees do not speak host-country language(s) well or are afraid of employer's retaliation and possible expulsion if they complain about inappropriate working conditions.⁶⁵⁹ Thus, respecting the right to just and favourable conditions of work under Art. 7 will protect workers against the threats mentioned above. Indeed, Art. 7 stipulates that:

“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:“(a) Remuneration which provides all workers, as a minimum, with:(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in

656 Hathaway, the Rights of Refugees Under International Law, p.782.

657 Hathaway, the Rights of Refugees Under International Law, p.785.

658 Refugee Work Rights Coalition and Asylum Access, *Submission by Asylum Access and the Refugee Work Rights Coalition to the Committee on Economic, Social and Cultural Rights on Draft General Comment to Article 7: The Right to Just and Favourable Conditions of Work*, (n.d.), p.1.

659 Committee on Economic, Social and Cultural Rights (CESCR), *The Duties of States Towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights*, (2017), p.5.

accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”

As can be seen from the text of Art. 7, it includes everyone including non-nationals regardless of their legal status and documentation. It contains all workers including male and female, young and older, persons in the informal market, domestic workers, disabled workers, self-employed people, migrants, and refugees.⁶⁶⁰ Now, a crucial question which might arise is that:

What are obligations of states with regard to remuneration in which they must follow as minimum requirements in accordance with Art. 7 of the ICESCR?

Generally, there are three requirements which states should consider as minimum obligations in terms of worker’s remuneration. First, states must protect the right of workers (refugees) to fair wages. For determining the rate of fair wage for each profession, the attention should be given to the nature and circumstances of that work.⁶⁶¹ Thus, in keeping with this argument, it can be considered as violation of Art. 7 if a (refugee) worker receives a lower wage than the value of his/her work though it is higher than minimum subsistence income. For example, it can be relevant in case of domestic workers that the host family often supplies their necessary and basic items.

Nevertheless, as the concept of “value of work” can be debated, refugees may be requested to submit convincing proof in this connection. One can claim that the drafters meant to defend equality or non-discriminatory payments between all workers in the society. Unfortunately, this perspective does not protect (refugee) workers against cases in which they are all paid equal but exceptionally low pay. Hence this view is not defensible.⁶⁶²

The second obligation of states contains two segments. First, they should guarantee equal remuneration for work of equal value without any discrimination and secondly states are

660 Refugee Work Rights Coalition and Asylum Access, Submission by Asylum Access and the Refugee Work Rights Coalition to the Committee on Economic, Social and Cultural Rights on Draft General Comment to Article 7: The Right to Just and Favourable Conditions of Work, (n.d.), p.3.

661 King, An Activist’s Manual on the International Covenant on Economic, Social and Cultural Rights, p.62.

662 King, An Activist’s Manual on the International Covenant on Economic, Social and Cultural Rights, p.63.

obliged to ensure that women workers enjoy similar working conditions as men with equal pay for equal work.⁶⁶³

Regarding the first aspect, though jobs can come under different titles and administrative sub-categories, nonetheless, they might have similar social values. For example, in a car manufacturing company while the work of electronic workers and welders contain a similar value, they might receive different wages. Thus, such practices could violate Art. 7 (a) (i) even in cases where jobs title and the type of work can be different but contain comparable social value.⁶⁶⁴ Moreover, at the European level, the reference can be given to Art. 4.3 of the European Social Charter under the heading “The right to a fair remuneration” which holds the same context. It stipulates that:

“to recognise the right of men and women workers to equal pay for work of equal value.”

Art. 7 (a) (i) regulates the standard of equal remuneration for work of equal value must be performed without discrimination of any kind. Thus, this general prohibition of discrimination proves that non-nationals including refugees should enjoy equal protection as nationals with respect of fair wages and equality of payment for work of similar value. The obligation of states to grant refugees the same protections as nationals with regard to remuneration under Art. 24.1 (a) makes this claim more enhanced.

The second part focuses on the right of equal working conditions for women as men, with equal pay for equal work. This obligation is quite different from the right to equal pay for work of equal value. Equal pay for equal work includes a situation which two persons have similar work but receive different wages.⁶⁶⁵ Another difference is where Signatory States have an immediate obligation in respect of equal pay for equal work for women while they have a progressive commitment toward the right to equal pay for work of equal value. In other words, the wordings “being guaranteed” indicates that contrary to the right to equal pay for work of equal value, the ICESCR means to impose immediate obligations on Member States as regards the right to equal pay for equal work. In this regard, an example is Art. 11.1 (d) of the 1979 CEDAW which says:

663 King, An Activist’s Manual on the International Covenant on Economic, Social and Cultural Rights, p.63.

664 King, An Activist’s Manual on the International Covenant on Economic, Social and Cultural Rights, p.63.

665 King, An Activist’s Manual on the International Covenant on Economic, Social and Cultural Rights, p.64.

“1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment to ensure, on a basis of equality of men and women, (d) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.”

However, to effectively protect the rights under Art. 7 (a) (i) states should establish efficient judicial mechanisms for preventing discriminatory employment practices. In addition, States Parties must set up adequate remedies in favour of victims in case of occurrence such discriminations.⁶⁶⁶

Having appropriate access to justice which ensures protection of enforcement of the rights under Art. 7 (a) (i) is crucial factor which Member States should consider seriously. To this end, the imposition of rule and regulations alone does not seem sufficient, thus it must be coupled with enforcement policies such as professional training plans which enable lawyers and judges to implement these rights. In this sense, it is of great importance to make private actors including employers accountable toward violation of rights of workers in Art. 7 (a) (i).⁶⁶⁷ In terms of provision of legal protection, it might be referred to Art. 6 of the 2019 ILO Violence and Harassment Convention (No. 190) that articulates:

“Each Member shall adopt laws, regulations and policies ensuring the right to equality and non-discrimination in employment and occupation, including for women workers, as well as for workers and other persons belonging to one or more vulnerable groups or groups in situations of vulnerability that are disproportionately affected by violence and harassment in the world of work.”

The third obligation of states is to protect the right to a decent living for worker and his/her family. In keeping with Art. 7 (a) (ii), the rate of remuneration should adequately enable refugees to maintain a decent living for themselves and their families. For determination of

⁶⁶⁶ King, An Activist’s Manual on the International Covenant on Economic, Social and Cultural Rights, p.64.

⁶⁶⁷ King, An Activist’s Manual on the International Covenant on Economic, Social and Cultural Rights, p.64.

what can be considered as a decent living, refer to Arts. 11,⁶⁶⁸12⁶⁶⁹and⁶⁷⁰13 of the ICESCR.⁶⁷¹ However, Member States should establish mechanisms by which to determine, monitor and implement equitable minimum wage levels which are based on the cost-of-living index, numerical guidance that indicates the minimum requirements for a decent standard of living.⁶⁷² Paragraph (b) of Art. 7 discusses safe and healthy working conditions. In this respect, the reference can be given to Art. 12.2 (b)⁶⁷³& (c)⁶⁷⁴of the same Covenant which intend to improve environmental and industrial hygiene and prevent, treat, and control occupational diseases. The protection of workers against occupational injuries and diseases is a fundamental dimension of the right to just and favourable working conditions.⁶⁷⁵ Moreover, the reference can be made to Art. 24.1 (b) regarding refugees' right to social security benefits in the host country on equal terms with nationals. In accordance with this provision, refugees should be compensated in case of employment injury, occupational disease, or death. Regarding the later, Art. 24.2 holds even a higher standard for refugees than citizens of the host country in terms of the right to compensation for refugee's death occasioned by employment injury or occupational disease.⁶⁷⁶ It articulates that regardless of whatever the host country's national law is, the refugee's survivor (beneficiary) might live outside the receiving country while s/he still has access to death compensation. Therefore, even though nationals can be

668 Art. 11: "1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need."

669 Art. 12: "1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness."

670 This Article focuses on the right to education which was discussed in depth in the previous chapter.

671 King, *An Activist's Manual on the International Covenant on Economic, Social and Cultural Rights*, p.65.

672 King, *An Activist's Manual on the International Covenant on Economic, Social and Cultural Rights*, p.65.

673 Art. 12.2 (b): "The improvement of all aspects of environmental and industrial hygiene."

674 Art. 12.2 (c): "The prevention, treatment and control of epidemic, endemic, occupational and other diseases."

675 CESCR, *General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)*, (2016), p.7.

676 Hathaway, *The Rights of Refugees Under International Law*, p.785.

required to be resided inside the country in order to become eligible for death compensation, however Member States have an absolute duty to revoke this condition for refugees due to their commitments under Art. 24.2.⁶⁷⁷

States must set up national policies to prevent work-related health impairment and accidents through adopting measures which focus on reducing risks in the working employment. Such national strategies should contain all types of economic activity in both the formal and informal sectors as well as in all groups of employees like irregular workers, apprentices, and trainees.⁶⁷⁸ In addition, these policies should incorporate key obligations of employers to prevent and respond to work-related health injuries and diseases. It also must include an effective review mechanism which evaluates policy implementation and potential reforms.⁶⁷⁹ Importantly, State Parties must employ efficient monitoring and administration measures including workplace investigations to detect unhealthy and unsafe occupational practices.⁶⁸⁰

These measures should contain punishment in case of infraction, for example, allowing investigators to shut down unsafe workplaces. Moreover, workers who suffer from preventable occupational accidents or diseases should have the right to a remedy such as access to courts for settling conflicts. Such people must be entitled to compensation for costs of treatment, loss of incomes and other expenses as well as access to rehabilitation services. Whenever required the ILO can be consulted by states in respect of these issues.⁶⁸¹

It is also essential to mention that, paid sick leave for those workers who have serious medical problems and/or disease plays a vital role in obtaining treatment as well as avoiding spreading infections especially to colleagues.⁶⁸²

In addition, the ILO has established conventions such as the 1981 ILO Occupational Safety and Health Convention (No. 155) which contain significant standards on safe and healthy working conditions. The regulations under Convention No. 155 are of great importance to use when considering the obligations of States parties under Art. 7 (b) in regard to safe and healthy conditions of work.

677 Hathaway, *The Rights of Refugees Under International Law*, p.777.

678 CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), p.7.

679 CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), p.7.

680 CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), p.8.

681 King, *An Activist's Manual on the International Covenant on Economic, Social and Cultural Rights*, p.67.

682 CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), p.8.

Refugees by virtue of their uncertain status as well as the challenges that lie ahead of them in their new country may be more exposed to unsafe and unhealthy work environment, especially in the informal labour sector.⁶⁸³ For instance, one common problem which occurs with refugee women is sexual harassment.⁶⁸⁴ There are many reports of female or children refugees being sexually abused at work due to their fragile situation. Being traumatized has very adverse impacts on both the mental and physical well-being of the victims and can overwhelmingly impair the process of socio-economic integration of refugees.

The right to be free from sexual harassment at work can be considered as part of broader right of safe and healthy working conditions. In this regard, the reference might be given to Art. 11.1 (f) of the 1979 CEDAW⁶⁸⁵ and even to the 2019 ILO Violence and Harassment Convention (No. 190) particularly its Art. 7 which says:

“...each Member shall adopt laws and regulations to define and prohibit violence and harassment in the world of work, including gender-based violence and harassment.”

Essentially, states have an important duty to adopt and enforce laws and policies to guarantee the right of workers to safe and healthy conditions of work. In this sense, training programmes for both workers and employers play a crucial role in preventing and reducing occupational diseases.

An interesting programme called “Say No to Sexual Misconduct” undertaken by UNHCR in collaboration with other organizations including UNICEF, OCHA, NRC, ICVA and CHS contains a learning package on protection from sexual misconduct for UN partner organizations. It is in fact an interactive and innovative learning package which has as its main purpose to raise awareness among IASC partner staff and provide them with the skills and tools to define, detect and react to sexual misconduct. This programme is done in one-day-in-person training. It employs diverse instruments including case studies, testimony hearings, group discussions, creative teams, interesting videos, challenging questions, and role-play activities

683 ILO, *the Access of Refugees and Other Forcibly Displaced Persons to the Labour Market*, (2016), p.17. In this sense, it can be also referred to the 2015 ILO Recommendation concerning the Transition from the Informal to the Formal Economy (No.204) which focuses on provision of strategies and practical guidance on standards and policies which facilitate the transition from the informal to the formal labour market as well as helping countries to adopt required measures and policies in order to produce decent job opportunities and sustainable enterprises.

684 King, *An Activist’s Manual on the International Covenant on Economic, Social and Cultural Rights*, p.65.

685 Art. 11.1 (f): “The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.”

in order to strengthen conversation and learning. This learning tool is in fact derived from an IOM learning package on protection from sexual exploitation and abuse which has been modified by IOM to include sexual harassment as well.⁶⁸⁶

Paragraph (c) of Art. 7 deals with equal opportunity for promotion in employment and requires Signatory States to undertake substantive equality rather than formal equality. For this reason, states should adopt and enforce measures and policies which consider the existing diversities and inequalities between different groups of society particularly the most disadvantaged ones.⁶⁸⁷ For instance, if a refugee lacks language proficiency which is required for a position at a higher level, it is essential to help this refugee employee improve his/her language skills to attain substantive equality. A question which might arise is that:

Does Art. 7 (c) regulate to reserve places or quotas for marginalized or disadvantaged individuals or groups in society?

Quotas or reserved places seems are not offered by Art. 7 (c) since this provision states that promotional decisions cannot be limited other than those based on seniority and/or competence. Nevertheless, States parties can apply particular measures such as training schemes or even modification of general requirements which seem likely to achieve the duty of substantive equality.⁶⁸⁸

Paragraph (d) of Art. 7 deals with three aspects of working conditions including (i) rest, leisure, and reasonable limitation of working hours (ii) periodic holidays with pay (iii) remuneration for public holidays. As a matter of fact, rest, leisure, and reasonable limitation of working hours as well as periodic holidays with pay give workers an opportunity to achieve balance between their occupational, family, and personal duties.

These factors also assist workers to get temporarily away from their stressful work environment as well as protecting them against occupational accidents and diseases.⁶⁸⁹ Therefore, while states have some freedom according to their specific circumstances, they are obliged to adopt minimum measures and policies which cannot be annulled or compromised due to economic

686 Inter-Agency Standing Committee (IASC), *IASC Learning Package on Protection from Sexual Misconduct for UN Partner Organizations*, (2020), <https://interagencystandingcommittee.org/iasc-learning-package-protection-sexual-misconduct-un-partner-organizations>.

687 King, *An Activist's Manual on the International Covenant on Economic, Social and Cultural Rights*, p.65.

688 King, *An Activist's Manual on the International Covenant on Economic, Social and Cultural Rights*, p.65.

689 CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), p.9.

or productivity considerations and must be observed. These regulations and polices should contain the elements which are discussed in the following.⁶⁹⁰

Regarding first part, legislation must recognize and provide workers with daily and weekly rest periods to ensure their health and safety. For example, daily rest periods should be obligatory when workers work with machinery or perform tasks which are risky for the health of themselves or others.⁶⁹¹ Furthermore, states should adopt specific regulations on rest periods for night shift workers, workers with special needs such as those who have medical problems, disabled workers, pregnant women, and breastfeeding mothers who need rest periods in order to feed their children.⁶⁹²

Although, there is no a definition by the CESCR of what can be considered as a reasonable work week, in many countries it does not go beyond 40 hours per week.⁶⁹³ This limitation of working hours can be varied from country to country (usually between 40 and 44 hours) and states might establish various methods to progressively reduce average weekly working hours especially for hard jobs.⁶⁹⁴

In terms of periodic holidays with pay, Art. 7 (d) does not offer any particular number of holiday hours. Nevertheless, as the CESCR mentions all workers should be granted a rest period of not less than 24 uninterrupted hours during each period of seven days.⁶⁹⁵ In this regard, the reference can be also made to Art. 6.1 of the 1956 ILO Weekly Rest (Commerce and Offices) Convention (No. 106) that says:

“All persons to whom this Convention applies shall, except as otherwise provided by the following Articles, be entitled to an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days.”

Article 7 (d) provides that workers are entitled to benefit from paid public holidays. As the CESCR mentions workers should be given several paid public holidays with wages identical

690 CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), p.9.

691 CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), p.10.

692 CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), p.10.

693 CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), p.9.

694 King, *An Activist’s Manual on the International Covenant on Economic, Social and Cultural Rights*, p.66.

695 CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), p.11. See also King, J., *An Activist’s Manual on the International Covenant on Economic, Social and Cultural Rights*, (2003), p.66.

to those they receive for a normal working day.⁶⁹⁶ Moreover, states should take legal steps to prohibit decisions that put minimum work requirements for workers in order to become eligible for paid public holidays. Paid public holidays must not be counted as part of paid annual leave.⁶⁹⁷ Also, according to the CESCR all workers should benefit from a minimum annual holiday of two uninterrupted weeks with pay.⁶⁹⁸

Finally, it is important to consider two points to which states must pay special attention. First, when speaking about safe and healthy working conditions enshrined by paragraph (b) of Art. 7, states should create effective monitoring mechanisms which include adequate inspection services as well as penalties to minimize violations of Art. 7 of the ICESCR.⁶⁹⁹

Secondly, employers or state labour competent bodies or labour inspectorates, when reporting on working conditions should disaggregate data by region, gender, group, and other helpful considerations like ethnicity.⁷⁰⁰ Disaggregation is performed in the sake of separating data for identifying variances between diverse regions and groups of workers. Thus, specific conditions of disadvantaged and marginalized groups such as refugees should be considered by authorities when their working conditions are reported or/and assessed.⁷⁰¹ For example, many refugee workers due to their vulnerable situations often neglect going to court to complain about their employers.⁷⁰² In these situations, they should be given special attention to meet their rights like receiving their unpaid wages or other entitlements. In the next section, the two most important barriers which refugees encounter in entering the host country's labour market are discussed. These two are the recognition of skills and qualifications and achieving language skills. They are discussed with methods of facilitation plus good practices.

696 CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), p.11.

697 CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), p.11.

698 King, *An Activist's Manual on the International Covenant on Economic, Social and Cultural Rights*, p.66. See also CESCR, *General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)*, (2016), p.11.

699 King, *An Activist's Manual on the International Covenant on Economic, Social and Cultural Rights*, p.66.

700 King, *An Activist's Manual on the International Covenant on Economic, Social and Cultural Rights*, p.66.

701 King, *An Activist's Manual on the International Covenant on Economic, Social and Cultural Rights*, p.66.

702 Committee on Economic, Social and Cultural Rights (CESCR), *The Duties of States Towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights*, p.5.

3.2 The Two Most Important Barriers to Economic Integration of Refugees into the Host Society

3.2.1 The Recognition of Skills and Qualifications of Refugees

One of the most common hurdles which refugees encounter when entering the labour market of the reception country is the lack of recognition of their prior skills and qualifications.⁷⁰³ This problem was discussed in the previous chapter when speaking about educational integration of refugees. Here emphasis is on validation of professional credentials.

Generally speaking, a wide range of refugees flee overnight and leave many of their possessions such as academic and professional documentation behind. While some refugees bring all their documents, even original copies with them, not having them can cause great difficulties.⁷⁰⁴

Even when refugees manage to bring all or part of their academic or professional credentials, it is expected that relevant authorities will still ask for verification of official documents directly from their home institutions. Many academic institutions and/or employers in many host countries have strict procedures and policies to accept skills and credentials of refugees. For example, in many reception countries the most common strategy for certifying the validity of key documents such as transcripts, certificates and diplomas is either sending official documents or official copies of them directly by the institution requesting them.⁷⁰⁵

As explained about educational integration of refugees in the previous chapter, Art. 22.2 identifies the right to the recognition of foreign school certificates, diplomas and degrees stating that:

*“The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, **the recognition of foreign school certificates, diplomas and degrees**, the remission of fees and charges and the award of scholarships.”*

The 1997 Convention on the Recognition of Qualifications concerning Higher Education in the European Region, known as the Lisbon Convention expects that even those who lack verified

703 Loo, B., *Recognizing Refugees Qualifications: Practical Tips for Credential Assessment*, (2016), p.1.

704 Loo, *Recognizing Refugees Qualifications: Practical Tips for Credential Assessment*, p.2.

705 Loo, *Recognizing Refugees Qualifications: Practical Tips for Credential Assessment*, p.2.

documentations should benefit from fair qualifications evaluation. In addition, in terms of significance for skills recognition for migrant (refugee) workers, attention should be given to Art. 12 of the 2004 ILO Human Resources Development Recommendation (No. 195) which articulates:⁷⁰⁶

“Special provisions should be designed to ensure recognition and certification of skills and qualifications for migrant workers.”

More specifically, Art. 33 of the 2017 the Employment and Decent Work for Peace and Resilience Recommendation (No. 205)⁷⁰⁷ also stipulates that:⁷⁰⁸

“Members should include refugees in the actions taken with respect to employment, training and labour market access, as appropriate, and in particular:...(c) facilitate the recognition, certification, accreditation and use of skills and qualifications of refugees through appropriate mechanisms, and provide access to tailored training and retraining opportunities, including intensive language training; (d) enhance the capacity of public employment services and improve cooperation with other providers of services, including private employment agencies, to support the access of refugees to the labour market” A crucial question which might arise is:

What does the recognition of prior learning (RPL) mean?

(RPL) is not a new concept but the terms employed to describe it vary from country to country and among institutions and experts working in this area.⁷⁰⁹ However, recognition of prior learning can be defined as: “a process of identifying, documenting, assessing and certifying formal, informal and non-formal learning outcomes against standards used in formal education and training”.⁷¹⁰

Recognition of prior learning assists refugees to obtain qualification, or credits for a qualification, or facilitates exemption entirely or partially from the curriculum or from pre-requisites courses for entering a formal academic programme. Refugees may therefore not be obliged to undertake a full formal education or training programme to achieve their

706 Popova, N. and Panzica, F., *How to Facilitate the Recognition of Skills of Migrant Workers*, (2020), p.6.

707 This recommendation was created by ILO Member States at the International Labour Conference in 2017.

708 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.6.

709 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.23.

710 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.23.

employment.⁷¹¹ Through RPL, skills and qualifications of refugees are evaluated and credited whether these capabilities are obtained inside or outside the refugee's home country. The RPL procedure enables the recognition of skills and qualifications which refugees have obtained in their country of origin, the certification of documents of formal learning outcomes, assessment of individual evidence (outcomes of non-formal and informal learning, professional background, and continuing training) as well as competency examinations.⁷¹²

Regarding other significant international systems for the recognition of foreign qualifications, see the Bologna Process; the Lisbon Convention 1997, the Arusha and Addis Ababa Conventions on the Recognition of Studies, Diplomas and Degrees; and the Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Asia and the Pacific.⁷¹³

In many host countries, there is a recognition body to certify competencies, provide information or communicate with other stakeholders engaged in RPL process. Refugees seeking recognition of their qualifications must first contact such bodies. However, according to an OECD report in 2014 many refugees consider recognition procedures in reception countries to be complicated and burdensome. They may be confused and discouraged about applying for recognition of their skills and credentials which adversely impacts their potential for employment and ultimately their integration into society in any new country.⁷¹⁴

As mentioned above, refugees due to their special circumstance often lack required documents to prove their level of previous education, skills, and training. Thus, recognition of their prior learning can remove such shortages and facilitate refugee's early access to the labour market. For example, A new coronavirus crisis has caused many refugee health professionals can obtain a chance to get involved in medical activities in the EU and other regions.⁷¹⁵

Furthermore, refugees in comparison with other migrant groups encounter additional problems such as poor language proficiency, lack of high educational degrees or transferrable professional skills. The prolonged asylum process can slow down economic integration of refugees since in many countries, asylum seekers are often prohibited from working. Asylum applicants may have to wait until their refugee status is officially recognized in order to be allowed to work in the host country legally. Other specific challenges consist of limited social

711 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.23.

712 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.26.

713 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.27.

714 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.24.

715 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.39.

connections, housing restrictions, traumatization and health problems occurred during escaping and cultural barriers which all impact negatively on labour integration of refugees in the receiving country.⁷¹⁶

In many host countries there is a crucial gap between the legal right to work for refugees and their effective economic integration into the reception country's labour market. Therefore, it is highly recommended to reinforce those policies and projects which invest effectively in recognition of skills and qualifications of refugees. Now, an important question which might arise is that:

How can the recognition of skills and competencies of refugees facilitate their integration into the host society?

The benefits from the skills recognition process vary from country to country. Refugees without formal certificates who live in countries with highly structured VET system like Germany and Austria might face more restrictions regarding access to a large number of job opportunities than countries which do not have fully developed VET systems.⁷¹⁷

There are many ways that recognition of skills and competencies of refugees can lead to better integration in the reception society. First, it enables refugees to access those jobs that match their skills and competencies thereby keeping them from taking low-skilled jobs in the informal sector. As a result, broader access to employment opportunities facilitates socio-economic integration of refugees into the receiving country.

Secondly, it minimizes costs and time required for duplication of training and certification. Lack of validation of skills and qualifications of refugees may oblige refugees to take part in redundant training courses in the host country which are time-consuming and unlikely to be free of charge. Thus, RPL processes give refugees earlier and cheaper access to the labour market of the country of asylum.⁷¹⁸

Thirdly, it helps employers to identify refugee's skills and uses their knowledge, ideas and experiences for their advancement and organizing their lives which ultimately provides good opportunities for integration into the receiving society.⁷¹⁹

716 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.39.

717 Konle-Seidl, R., *Public Employment Services (PES) Initiatives Around Skills, Competencies and Qualifications of Refugees and Asylum Seekers*, (2017), p.18.

718 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.25.

719 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.26.

Fourthly, it helps refugees to gain access to appropriate educational and/or training opportunities in order to complete and develop their skills and qualities in the reception country. Employers in order to use refugees' recognized skills and competencies in the labour market sometimes must update and adjust skills of refugees with the market demands of the host country.⁷²⁰ To this end, they might have to participate in the required skills development programmes and classes. Lastly, mentally the recognition of skills and competencies increases refugees' sense of self-esteem and self-worth which can assist them to be integrated into their new country more successfully.⁷²¹

For example, since 2017 The National Training Service in Colombia (SENA) has been assisting Venezuelan refugees and migrants through skills evaluation and certification services. Through adoption of a tailored policy to recognize refugees' skills, knowledge, and qualifications, this strategy has found a central place in the national action policy for integration of refugees and migrants into the Colombian labour market. There are several fields where the Venezuelan refugees apply frequently for recognition of their skills and qualifications including administration, food processing, personal services, mining, horticulture, and tourism. This programme is financed by the SENA's regular budget.

The services of skills assessment and certification are available free of charge for both Colombians and the Venezuelan refugees. In order to cover a greater number of refugees, the SENA has extended its services to Cúcuta (a border area) where a large number of the Venezuelan refugees live or transit. The process of assessment is divided into two parts. The first stage contains a primary interview and the second phase focuses on practical skills examination and technical knowledge of participant refugees.

Since the beginning of the project roughly 3,140 refugees have succeeded in receiving their certifications. Nonetheless, the rate of employability has experienced a downward trend from 67% in 2017 to 43% in 2019. This results from increasing numbers of refugees and migrants plus shrinking available job opportunities in the labour market. In addition, unfortunately a stock of limitations such as shortfall of enough financial resources for urban transport and nutrition have limited access of refugees to this project.⁷²² Another crucial question is that:

How can access to skills recognition process be facilitated?

720 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.26.

721 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.25.

722 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.44.

One of the initial steps to reinforce facilitation of access to skills recognition process for refugees is raising awareness among potential users. Employment agencies and other support groups can play a significant role in making refugees aware of the assessment process and its outcomes and benefits. Such awareness raising and information services have undeniably affirmative impacts on participation of refugees in the recognition processes. Reaching out to potential applicants is essential in order to provide them with appropriate information, guidance, and support for accessing the skills recognition process.⁷²³

In this regard, the information provided to them should address the most typical questions which might arise for refugee applicants and include those support items which can be used during the skills recognition process for refugees. Furthermore, it must be acknowledged that information should overarch the whole process of skills recognition, not solely the stages which are normally addressed by employment agencies. For instance, it should include the screening of refugee users, submission of application, primary evaluation, determination of gaps, final evaluation, and certification.⁷²⁴

Establishing specific fairness offices to ensure that regulatory bodies do not discriminate between refugees and native applicants can assure fair treatment in regard to the recognition of refugee's skills and qualifications since countries have different approaches to recognition of refugees' skills and competencies. For example, some states use the same recognition system for both refugees and native applicants while other countries have arranged alternative assessment procedures for refugees for those who cannot support their foreign qualifications through submission of full documentation.⁷²⁵

Another important factor is to involve employers in the recognition process of refugees' skills.⁷²⁶ Indeed many employers are not aware of the advantages of the RPL process or of recruiting refugees whose skills have been recognized. For instance, in Denmark, employers are highly active in developing industry-specific practical guidelines for the RPL process throughout vocational trade committees. Moreover, they are in contact with VET schools and training institutions for validation of RPL as part of continuing training for workers in their

723 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.50.

724 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.51.

725 Konle-Seidl, *Public Employment Services (PES) Initiatives Around Skills, Competencies and Qualifications of Refugees and Asylum Seekers*, p.58.

726 Popova and Panzica, *How to Facilitate the Recognition of Skills of Migrant Workers*, p.48.

organizations. Employers can also help their employees to develop their competency portfolios by using a digital tool known as “My competence portfolio.”⁷²⁷

Marketing and communication efforts are important in order to inform employers about the RPL process and their potential for intervention in this regard.⁷²⁸ For example, in Ghana the RPL processes are promoted through a range of marketing and communication activities including meetings, stakeholder consultations, workshops, exhibitions, trade fairs and holding graduation events to present its value in certifying the skills and competencies of successful trainees and apprentices.⁷²⁹

Finally, to achieve the best possible outcome all core stakeholders and organizations should be involved during both of design and implementation stages. Such an inclusive approach will strengthen coordination and synergy among all relevant actors for⁷³⁰ facilitating of refugees’ access to the skills recognition process. In the following section, the crucial obstacle of language which refugees often face in their receiving country will be discussed.

3.2.2 Impact of Language Skill on the Employment Prospect of Refugees

Prior to discussing the importance of language knowledge in the economic integration of refugees, the previous chapter dealt with its implications on educational integration of refugees. In this section the economic aspect of language proficiency will be discussed.

Knowing the language of the host country for integration has become central to the public policy of an increasing number of asylum countries which emphasize the need for language learning. Language proficiency is not only a crucial factor for reinforcing the economic capability of refugees but it is also a gateway which improves their integration into the host society.⁷³¹ Language command is perceived as a “dual key” that plays an important role in integration of refugees by enabling them to communicate using the main language of the host country. Language proficiency equips refugees with a crucial instrument necessary to contribute to the host country’s labour market and to integration through employment.⁷³²

727 Konle-Seidl, Public Employment Services (PES) Initiatives Around Skills, Competencies and Qualifications of Refugees and Asylum Seekers, p.67.

728 Popova and Panzica, How to Facilitate the Recognition of Skills of Migrant Workers, p.49.

729 Popova and Panzica, How to Facilitate the Recognition of Skills of Migrant Workers, p.50.

730 Popova and Panzica, How to Facilitate the Recognition of Skills of Migrant Workers, p.51.

731 Zorlu, A. and Hartog, J., *the Impact of Language on Socioeconomic Integration of Immigrants*, (2018), p.2.

732 Extramiana, C., *Learning the Language of the Host Country for Professional Purposes Outline of Issues and Educational Approaches*, (2011), p.5.

Language skills levels are connected to both individual's and the host country's characteristics. Good language skill might reveal some unknown features of an individual such as motivation, talent, economic and/or cultural resources or circumstances useful to the receiving country. These could include the quantity and quality of existing language training courses and the extent of interpersonal communication between foreigners (refugees) with national people.⁷³³ When refugee spends more time in country of asylum, then his/her tendency to learn the host country language will increase. Those refugees who have strong desire to return to their home country invest less time and effort in learning the new language.⁷³⁴ As language proficiency increases the chance of higher employability and higher income for refugees also increases while the expenses of job seeking are reduced.⁷³⁵

In many countries, language proficiency is considered as an occupational competency.⁷³⁶ Therefore, to enter the labour market, refugees need a sufficient command of the local language. Due to lack of language skills many refugees have difficulty finding appropriate work in many asylum countries. For example, in the EU more than 20% (one in five) of immigrants (mostly refugees) face language barrier when applying for job opportunities in the host country's labour market.⁷³⁷

This requirement can be intensified for some industries or professions such as highly skilled jobs so that language proficiency functions as a criterion for prioritizing refugee employees with acceptable language command over those with lower linguistic skills. For this reason, some countries have developed diverse language training programmes for employment-associated aims.

For example, in the UK the Commission of English and Skills supports teaching English as a foreign or second language for occupational objectives. To this end, English to Speakers of Other Languages (ESOL) is frequently taught in workplaces or in work-concentrated classes which has produced positive outcomes. These ESOL training efforts have helped workers

733 Zorlu and Hartog, the Impact of Language on Socioeconomic Integration of Immigrants, p.3.

734 Zorlu and Hartog, the Impact of Language on Socioeconomic Integration of Immigrants, p.4.

735 Chiswick, B. R., *"Tongue Tide": The Economics of Language Offers Important Lessons for How Europe Can Best Integrate Migrants*, (2016), p.7.

736 Extramiana, Learning the Language of the Host Country for Professional Purposes Outline of Issues and Educational Approaches, p.5.

737 OECD, ILO, World Bank and IMF, *Towards a Framework for Fair and Effective Integration of Migrants into the Labour Market*, (2016), p.12. Another report demonstrates that roughly 45% of refugees in the EU hold at least an advanced level of language of the host country while it proves 75% for other groups of non-EU migrants. See also Dumont, J. C., Liebig, T., Peschner, J., Tanay, F. and Xenogiani, T., *How Are Refugees Faring on the Labour Market in Europe? a First Evaluation Based on the 2014 EU Labour Force Survey Ad Hoc Module*, (2016), p.15.

through enhancement of communication skills, reduction in dependency on language agents and improvement of economic protection and employment opportunities for both employees and new learners. The benefits of ESOL programmes also extended to employers and include reduction in expenses, more flexibility and coordination and synergy between employees.⁷³⁸

The crucial question which might arise is that:

How does poor language knowledge restrict access of refugees to employment opportunities in the receiving country?

In general, lack of sufficient competence in the host country's language affects economic integration of refugees in various ways. Its impact on the three important elements namely job-searching, job-keeping (occupational mobility) and wage rate is significant for economic integration of refugees into the host country's labour market.

Regarding job-searching, many job opportunities are offered through employment-related websites, public or private agencies and institutions which are frequently provided only in the host country language. Refugees who are selected for a profession must go through pre-selection procedures including interviews with potential employers, answering questionnaires, and taking technical examinations. Thus, refugees who have a good command of the host country language are most likely to succeed.⁷³⁹

In addition, refugees are often unfamiliar with the job searching technics in the host country. For instance, in some countries having ties and professional networks are crucial factors to help someone finding a job by social providing references. Language deficiency poses a formidable barrier to improve refugee's professional and social relationships with native people.⁷⁴⁰

In terms of retaining one's profession, refugees who have a good language command are more likely to keep their previous occupational status and find a job which matches their skills. This often happens that when a refugee has expertise in a field which demands high qualifications and skills.⁷⁴¹ For example, in industries which frequently deal with new technologies and

738 Extramiana, Learning the Language of the Host Country for Professional Purposes Outline of Issues and Educational Approaches, p.6.

739 Barker, C., *Barriers to Employment and Overcoming Economic Integration Challenges for Foreign-Born Workers in Maine*, (2018), p.9.

740 Barker, *Barriers to Employment and Overcoming Economic Integration Challenges for Foreign-Born Workers in Maine*, p.10.

741 Barker, *Barriers to Employment and Overcoming Economic Integration Challenges for Foreign-Born Workers in Maine*, p.15.

technical information, refugee employees must hold very high language proficiency in order to regain their occupational status.

Lastly, refugees who hold advanced or higher knowledge of the reception country language obtain a greater chance to find well-paid jobs.⁷⁴² Refugees who lack sufficient language skills lose many job opportunities for which they would otherwise be selected due to their special expertise.⁷⁴³ As a result, many of these refugees due to their poor language ability are obliged to work in low-skilled jobs with very meagre wages and may even be exploited by employers.⁷⁴⁴ Some of these refugees complain that they are rejected by employers based on their being overqualified which can result in their further isolation and marginalization.⁷⁴⁵

Furthermore, language proficiency strengthens communication competencies. There is a growing linguistic share of work so that occupations are progressively depending on linguistic and communicative skills.⁷⁴⁶ Language proficiency assists refugees to build broader relationships with their employers and colleagues in the workplace. Thus, it will provide greater opportunities for refugees being advanced to a higher position with better pay.

Currently to overcome low employability due to the language barrier, many asylum countries have adopted effective policies to fill this gap. One strategy issue is to develop language training services across the country.⁷⁴⁷ The following are a number of good practices and initiatives performed by the host countries.

Many studies suggest that language training schemes are more effective when combined with workplace practices. Although this form of language training is not new, it is stressed by an increasing number of host countries.⁷⁴⁸ On-the-job language training courses to improve

742 A survey in England in 2001 indicated that refugee without language proficiency had lower chance to take up employment and those who were already working were employed in low paid jobs like catering, cleaning and firm works. See Bloch, A., *Refugee's Opportunity and Barriers in Employment and Training*, (2002), p.4.

743 Barker, *Barriers to Employment and Overcoming Economic Integration Challenges for Foreign-Born Workers in Maine*, p.8.

744 Barker, *Barriers to Employment and Overcoming Economic Integration Challenges for Foreign-Born Workers in Maine*, p.8.

745 Barker, *Barriers to Employment and Overcoming Economic Integration Challenges for Foreign-Born Workers in Maine*, p.16.

746 Extramiana, *Learning the Language of the Host Country for Professional Purposes Outline of Issues and Educational Approaches*, p.8.

747 OECD, ILO, World Bank and IMF, *Towards a Framework for Fair and Effective Integration of Migrants into the Labour Market*, p.12.

748 Martín et al. *From Refugees to Workers Mapping Labour-Market Integration Support Measures for Asylum Seekers and Refugees in EU Member States*, (2016), p.18.

language knowledge also enable refugees to obtain missing skills which are required to meet the country's standards for practicing a profession.⁷⁴⁹

For example, the Norwegian Agency for Lifelong Learning has launched a pilot project in Lillehammer which provides refugees with job opportunities even though they have only basic knowledge of the national language. The newly arrived refugees learn the Norwegian language when they are working. This strategy helps refugee workers improve their language skills alongside their professional knowledge, build relationships and make friends with their colleagues in the workplace, feel satisfied and useful as well as get integrated into the host community more quickly.⁷⁵⁰

Another relevant initiative is the Fast-Track Program arranged in Sweden in December 2015. This project means to rapidly bring skilled refugees into those professions that need additional workers while respecting industry and employment standards. There is a close collaboration between the Public Employment Service (PES) and other relevant organizations including education and training centres, trade unions and employer confederations.

Fast tracks services will be available to all skilled refugees who have already enrolled in the introduction program. These facilities are provided in sectors which suffer from skills shortfalls and are prepared to assist refugees through training and employment matching support. The Public Employment Service will first evaluate the qualifications of refugee applicants who have obtained their skills outside the country and want to work as chef, butcher, teacher (including pre-school teacher), health care providers (in 21 professions). Then if eligible they may be provided with tailored bridging packages. This project mixes training programmes with vocational-specific Swedish language courses and mentoring in the workplace with work placement and other employment matching services.⁷⁵¹

However, while on-the job language training has undeniable positive outcomes, due to budget limitations and lack of employers' cooperation it is seldomly undertaken in reality.⁷⁵²

However, a wide range of regular language programmes in the host countries focus more on

749 Martín et al. From Refugees to Workers Mapping Labour-Market Integration Support Measures for Asylum Seekers and Refugees in EU Member States, p.18. See also International Coaching Federation (ICF), *Peer Review on "Integration of Refugees into the Labour Market"*, (2018), p.9.

750 Hanemann, U., *Language and Literacy Programmes for Migrants and Refugees: Challenges and Ways Forwards*, (2018), p.47.

751 Vicenza Desiderio, M., *Integrating Refugees into Host Country Labour Markets: Challenges and Policy Options*, (2016), p.26.

752 Martín et al. From Refugees to Workers Mapping Labour-Market Integration Support Measures for Asylum Seekers and Refugees in EU Member States, p.18.

general language skills than vocation-specific language competencies.⁷⁵³ Specialized professional language courses especially for highly skilled refugees such as healthcare providers, teachers, engineers and even craftsmen are essential. These vocational language training programs will enable refugees to pass their occupational examinations as well as practise their professions in the receiving country.⁷⁵⁴

In addition, they help refugees obtain insight into a workplace in a fairly short time as well as become able to gradually boost their language skill on the job.⁷⁵⁵ Through vocational language training refugees learn special vocabulary and grammar and discuss work issues which occur in their occupations. For instance, they learn how to communicate with their colleagues or write job-related letters/emails. According to a survey by OECD, many employers stress the key role of vocational language training in labour market integration of refugees.⁷⁵⁶

One of the countries which holds a good record in provision of vocational language training to refugees is Germany. Since 2008 refugees living in Germany have been entitled to receive this sort of language courses with a budget of 410 million in 2017 alone. In accordance to the German new integration policy, refugees receive direct follow-up vocational language training once they complete the general integration course which contains a basic level of non-vocation-specific German. These vocational language courses⁷⁵⁷ are fully financed by the German government and run by the Federal Agency of Migration and Refugees (BAMF).⁷⁵⁸ In addition, other actors such as employer organizations in collaboration with the BAMF have launched a set of labour market projects containing vocational language courses for the sake of integration of refugees including Perspectives for Refugees (PerF), kompAS and kommit.⁷⁵⁹

753 International Coaching Federation (ICF), Peer Review on “Integration of Refugees into the Labour Market”, p.9.

754 Barker, Barriers to Employment and Overcoming Economic Integration Challenges for Foreign-Born Workers in Maine, p.9.

755 International Coaching Federation (ICF), Peer Review on “Integration of Refugees into the Labour Market”, p.9.

756 International Coaching Federation (ICF), Peer Review on “Integration of Refugees into the Labour Market”, p.9.

757 There are different vocational language courses including “Vocational Language Courses” for A2, B1, B2 and C1 that offer 400 to 500 lessons of 45 minutes for each as well as Specialist Vocational Language Courses.” See Migrations-Beratung, *Vocational Language Training*, <https://www.mbeon.de/en/information/learning-german/vocational-language-courses/>.

758 International Coaching Federation (ICF), Peer Review on “Integration of Refugees into the Labour Market”, p.10.

759 The later which is a joint programme cooperated by PES, the BAMF, employers and trade unions tries to assist young refugees to participate in dual apprenticeship courses. See International Coaching Federation (ICF), *Peer Review on “Integration of Refugees into the Labour Market”*, (2018), p.10.

Another interesting programme known as “Chance Plus” introduced in 2016 in Berlin by Deutsche Bahn DB (German railway) concentrates on preparing refugees to enter vocational training which is supplemented with vocational language courses. Refugees after finishing the normal vocational training programme which last nearly 10 months should reach the B1 level of German language. This project is currently done in more than 10 locations across the country. Refugees who can pass this training course successfully will be granted a vocational training place at Deutsche Bahn (DB). In addition to vocational training refugees can also have access to social and educational support.⁷⁶⁰

In some countries vocational language education is provided by both NGOs and private companies and organizations.⁷⁶¹ For example, in France a large number of vocational language training projects and initiatives are undertaken by NGOs such as the ACCELAIR project conducted by the Forum Réfugiés association in cooperation with other stakeholders and supported by the EU Equal Programme in 2002.⁷⁶² Furthermore, in 2017 the Public Service Agency for Vocational Training (AFPA) launched a pilot scheme for a target group of 1000 people. This project is financed by branch-level budgets dedicated to vocational education. It targets young refugees under 25 years old with an A1 French level and mix accommodation, vocational and language training. The programme contains two phases so that in the first phase refugees will be provided with 400 hours vocational training and in the second stage employers can also participate when refugees register in a training scheme. During the second phase refugees will have access to the vocational language courses and at the end of the programme they will receive an employment certificate.⁷⁶³

There are many points which should be considered when designing language training programmes for refugees. First, general language training must be followed by vocational language courses to accelerate socio-economic integration of refugees. Secondly, on-the-job language training for some occupations is essential to effectively prepare refugees to work in the relevant profession.

760 International Coaching Federation (ICF), Peer Review on “Integration of Refugees into the Labour Market”, p.10.

761 International Coaching Federation (ICF), Peer Review on “Integration of Refugees into the Labour Market”, p.11.

762 International Coaching Federation (ICF), Peer Review on “Integration of Refugees into the Labour Market”, p.11.

763 International Coaching Federation (ICF), Peer Review on “Integration of Refugees into the Labour Market”, p.11.

Thirdly, governments should provide financial resources through subsidies to employers. These subsidies will help employers to linguistically mentor refugees in the workplace and improve their vocational terminology. The quality of this vocational language education should be monitored by the relevant authorities. For example, the Government of Slovenia grants a sum of financial support of 250 Euros per month to employers who hire refugees to provide them with vocational training for a maximum period of 6 months. Vocational language courses are included in such vocational training.⁷⁶⁴

Fourthly, the receiving states should provide refugees with different facilities and services which motivate them to enhance their language knowledge such as financial assistance (loans), transportation and accommodation.⁷⁶⁵ Lastly, language proficiency programmes, both general and vocation-specific will effectively improve linguistic skills of refugees and assist their socio-economic integration into the society. To this end, states when designing language training schemes should consider all the diverse circumstances of different refugees, for example women with small children, illiterates or low-educated people, and handicapped persons as well as highly-educated ones.⁷⁶⁶

764 International Coaching Federation (ICF), Peer Review on “Integration of Refugees into the Labour Market”, p.11.

765 International Coaching Federation (ICF), Peer Review on “Integration of Refugees into the Labour Market”, p.12.

766 OECD et al. Towards a Framework for Fair and Effective Integration of Migrants into the Labour Market, p.12.

3.3 Conclusion

Economic inclusion of refugees into the labour market of the host society is crucial to their integration course. Refugees due to their personal, economic, and social vulnerabilities resulting from their refugee flight must cope with many problems to find a decent job in their host countries. Employment rates and job availability are influenced by factors such as age, sex, education level, length of residence and language proficiency and various combinations of these. For example, refugees with longer residency in the host countries have higher chance to be employed because they have a better command of the language and have broader local social networks.⁷⁶⁷ However, employers are often reluctant to hire refugees due to poor language proficiency, lack of relevant qualifications and skills, and complicated employment procedures, or unconscious discrimination.

Nevertheless, states must provide equal opportunities for all people who are legally permitted to work in their territory without any discrimination as required by their international obligations. One of the key international instruments which discusses refugees' right to employment is the 1951 Geneva Convention as described above, especially in Arts. 17, 18 and 19 on the right to employment of refugees.

The Convention adopts various legal standards for different groups of refugees including lawfully staying in the host country (recognized refugees) and lawfully in the host country (asylum seekers). In line with Art. 17 only holders of refugee status (lawfully staying in) can be engaged in wage-earning employment and will receive the most favourable treatment accorded to nationals of a foreign country in the same circumstances. Thus, as Art. 18 highlights those asylum applicants who have not yet received their refugee status are only allowed to undertake self-employment activity and will be treated as aliens generally in the same circumstances.

Article 19 which addresses the right to practice liberal professions is in fact a combination of both of its previous provisions namely Arts. 17 & 18. While it allows only lawfully recognized refugees who hold a validated diploma to practice their professions in the receiving state, it applies the identical protection as aliens generally in the same circumstances to refugees who are interested in pursuing a liberal job in their new country.

In addition, under international human rights regimes there is a number of articles and regulations that can be used in the context of refugees. For example, Arts. 6 & 7 of the ICESCR

⁷⁶⁷ Dumont et al. How Are Refugees Faring on the Labour Market in Europe? A First Evaluation Based on the 2014 EU Labour Force Survey Ad Hoc Module, p.6.

oblige Member States to provide all persons (including refugees) with the right to an opportunity to obtain their living by work which they choose or accept freely. One advantage of Art. 6 in comparison with work-related provisions under the Refugee Convention is that it requires Member States to undertake technical and vocational policies and training to reach full realisation of the right to work.

One of the pivotal channels for boosting socio-economic integration of refugees into the reception society is provision of technical and vocational training and entrepreneurship opportunities for them. To improve refugee's skills and competencies TVETs reinforce social networks and communication capabilities of refugees. Also, through TVETs and similar programmes refugees can extend their social ties and make new friends in the workplace while they improve their language proficiency. These key factors help refugee's successful integration into the host country communities. Reference should also be made to paragraphs 70⁷⁶⁸ & 71⁷⁶⁹ of the 2018 Global Compact on Refugees. Under these paragraphs it requires that states should mobilize their resources and expertise to create inclusive economic growth for both receiving and refugee communities.

Depending on the context, states should use their resources and expertise to support activities which invest in discovering labour market gaps and opportunities for job creation and income generation through a detailed market analysis, giving due attention to map and identify skills and qualifications of refugees and native people as well as reinforcing these skills and qualifications through particular training policies and schemes especially language and vocational education which are in line with labour market needs. Special attention should be paid to provide language and vocational training opportunities to women, disabled people, and

768 Paragraph 70: "To foster inclusive economic growth for host communities and refugees, in support of host countries and subject to relevant national laws and policies, States and relevant stakeholders will contribute resources and expertise to promote economic opportunities, decent work, job creation and entrepreneurship programmes for host community members and refugees, including women, young adults, older persons and persons with disabilities."

769 Paragraph 71: "Depending on the context, resources and expertise could be contributed to support: labour market analysis to identify gaps and opportunities for employment creation and income generation; mapping and recognition of skills and qualifications among refugees and host communities; and strengthening of these skills and qualifications through training programmes, including language and vocational training, linked to market opportunities, in particular for women, persons with disabilities, and youth. Particular attention will be paid to closing the technology gap and building capacities (particularly of developing and least-developed refugee host countries), including to facilitate online livelihood opportunities. Efforts will be made to support access to affordable financial products and services for women and men in host and refugee communities, including by reducing associated risks and enabling low-cost mobile and internet access to these services where possible; as well as to support the transfer of remittances. In some contexts, where appropriate, preferential trade arrangements could be discussed in line with relevant international obligations, especially for goods and sectors with high refugee participation in the labour force; as could instruments to attract private sector and infrastructure investment and support the capacity of local businesses."

youth. In addition, industrialized states must assist less-developed countries through technological and financial support such as online resources to provide income opportunities. It is also highly recommended whenever possible, to organise preferential trade opportunities in line with international regulations particularly for those fields and productions which attract high numbers of workers with refugee backgrounds. This strategy can attract investment from the private sector to improve labour market infrastructure as well as develop local businesses. Public employment services (PES) are important in facilitation of refugees' access to the labour market. They can provide career counselling, job placement, training, and apprenticeship opportunities as well as quality social integration services to refugee job seekers and employers.⁷⁷⁰

There is an international consensus that early access to language training classes and skills and qualifications assessment services will strengthen both individual and collective integration policy. This can also help developing effective mechanisms for validation of foreign competencies such as alternative schemes to evaluate informal learning and undocumented work experiences which must be considered to achieve integration of refugees with poorly documented educational history into the host society.⁷⁷¹

To this end, the role of governments, humanitarian, and development partners, including national and international organizations, private sector, NGOs, and civil society must be combined and integrated. The international community particularly international organizations such as UNHCR, IOM and ILO provide, especially in developing countries, considerable supports to governments. It is used to facilitate refugees' socio-economic integration. Such international institutions, by addressing financial, technological and expertise shortfalls in the receiving countries, try to partner to achieve constructive resolutions for them. Such collaborations with the host states have undeniable benefits for improving socio-economic conditions of refugees in their new country.

Yet, as reported by UNHCR nearly 85% of refugees live in developing countries; and roughly 27% of the total in the least developed countries, which already suffer from high unemployment rates. Provision of employment opportunities for both nationals and refugees remains a challenging issue for government of these countries.

770 Konle-Seidl, R. and Bolits, G., *Labour Market Integration of Refugees: Strategies and Good Practices*, (2016), p.47.

771 Konle-Seidl and Bolits, *Labour Market Integration of Refugees: Strategies and Good Practices*, p.45.

Even in developed countries refugees have a high rate of unemployment. Only 56% of refugees are employed in European countries. One in five though economically active is unemployed and one in eight has been unemployed for one year or more.⁷⁷² In addition, many who have a job are working in the informal sector where they receive exceptionally low wages. Many are overqualified for their work. Finally, despite all progress made in recent years, there is still a long road ahead for states and the international community to achieve full realization of refugees' right to work.

⁷⁷² Dumont et al. How Are Refugees Faring on the Labour Market in Europe? A First Evaluation Based on the 2014 EU Labour Force Survey Ad Hoc Module, p.5.

4 Chapter IV: Socio-Economic Integration of Afghan Refugees in Iran

Until the middle of the 19th century, a vast part of Afghanistan particularly Herat was under the sovereignty of Iran.⁷⁷³ The movements in this region had been highly active for hundreds of years. Many of those people who migrated to Iran and integrated into the host society during the 19th and early 20th century, were mostly from Hazaras and fled the country due to Abd-al-Rahmān's domination in the region.⁷⁷⁴ This group of Afghan known as a particular ethnic group (Kavarim or Barbari) has been granted citizenship by the Iranian government. However, hundred thousand of Afghan migrants were living in Iran when the 1978 coup was happened in Kabul by the People's Democratic Party of Afghanistan (PDPA). Later, they called themselves Mahajerin (refugees) and of course continued to live in Iran.⁷⁷⁵

Two major Afghan migrations to Iran can be identified. Firstly, around 40% happened during 1978 -1985 in the period of early years of the Soviet occupations. The second wave with 36% was started from 1996 to September 2001 when Taliban regime was dominated in Afghanistan.⁷⁷⁶ As a matter of fact, during roughly 4 decades since the coup in 1978, around 3.5 million people from Afghanistan moved to Iran due to various reasons.⁷⁷⁷ For example, in the early 1980s the PDPA tortured, arrested, and killed many of religious people from both Shiite and Sunni fractions. In 1978, several uprisings happened in Herat and by the Hazaras in Kabul. In turn, the Afghan government cruelly replied these revolts because most of the protestors were Shiites and the authority blamed them as agents of Iranian regime.

These massacres by Afghan government forced many Hazaras and Herati populations to seek refuge in Iran.⁷⁷⁸ Other relevant factors include: fears of missile attacks, persecution and torture resulted from political activities, high risk of losing homes and livelihoods due to the civil

773 Olszewska, Z., *Afghanistan xvi. Afghan Refugees in Iran*, (2011), <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

774 Olszewska, Afghanistan xvi. Afghan Refugees in Iran, <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

775 Olszewska, Afghanistan xvi. Afghan Refugees in Iran, <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

776 Olszewska, Afghanistan xvi. Afghan Refugees in Iran, <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

777 Around 951,000 of them are legally registered in Iran through Amayesh scheme (refugees) who can move freely within the province where they have already been registered. In addition, 620,000 are passport holders with temporary visas and there are approximately 1.5 to 2 million undocumented Afghan migrants who live in Iran without a legal status.

778 Olszewska, Afghanistan xvi. Afghan Refugees in Iran, <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

conflict, forced conscription and struggling to protect the honour of wives and daughters which was happened by presenting the new family law and obligatory education by the communist regime.⁷⁷⁹ The story of the Hazaras was quite different. They fled to Iran and Pakistan in large groups of people because of ethnic discrimination, destitution, and war.⁷⁸⁰

Intergroup conflict between different Shiites “Mujahedin” groups during 1980s caused many Afghans to move to Iran as well. Furthermore, in the period of Taliban’s ruling and after 1996, many Hazaras who had Shiite background were tortured and massacred. Thus, they found Iranian territory the best place in which to be protected, as it is the mainland for Shiite Muslim.⁷⁸¹

However, it is essential to mention that during Taliban’s period smuggling network was extensively grown so that many Afghans who were not refugees in the legal sense also moved to Iran illegally. These appeared as labour migrants who were brought to Iran by human traffickers to benefit from job opportunities and finding better life there. In addition to employment element other crucial reasons which served as pull factors to encourage Afghan migrants to come to Iran are geographical proximity as well as language and religious resemblances.⁷⁸²

Notably, most of Afghan populations who migrated to Iran were from Hazaras ethnic group (39%) followed by Tajiks (22%) and Pashtuns (9%) respectively.⁷⁸³ Anyhow, these ethnicities have been self-declared thereby the actual numbers can hold the higher rates.⁷⁸⁴ The huge numbers of Afghan refugees live in the capital city of Tehran (nearly 31%) followed by Khorasan (15%, including Mashhad), Esfahan (13%), Sistan and Baluchestan (8%, including Zahedan) and Kerman, Qom and Fars including Shiraz (6% each).⁷⁸⁵ In addition, according to

779 Olszewska, Afghanistan xvi. Afghan Refugees in Iran, <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

780 Olszewska, Afghanistan xvi. Afghan Refugees in Iran, <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

781 Olszewska, Afghanistan xvi. Afghan Refugees in Iran, <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

782 Songhori, N., Maarefvand, M., Fekr-Azad, H., and Khubchandani, J., *Facilitators and Barriers of Afghan Refugee Adolescents’ Integration in Iran: A Grounded Theory Study*, (2017), p.243.

783 The rest of the population included Sadat, Baluch, Turkmen, Uzbeks, and others. See also Olszewska, Z., *Afghanistan xvi. Afghan Refugees in Iran*, (2011), <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

784 For example, around 10% of sub-tribes, which only proclaimed their names, could be included among the main ethnicities. See also: The rest of the population included Sadat, Baluch, Turkmen, Uzbeks, and others. See also Olszewska, Z. *Afghanistan xvi. Afghan Refugees in Iran*, (2011), <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

785 Olszewska, Afghanistan xvi. Afghan Refugees in Iran, <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

the UNHCR and BAFIA, men hold a number of 56% in compare with female population with 44%. As statistics indicate approximately 46% or quite half of these Afghan refugees are 17 years old⁷⁸⁶ or even younger children.⁷⁸⁷

4.1 Status of Integration of Afghan Refugees in Iran

Since 1976 Iran has been part of the 1951 Geneva Convention and its 1967 protocol.⁷⁸⁸ However, it holds a set of reservations toward some Articles including Art. 17 (wage-earning employment), Art. 23 (public relief), Art. 24 (labour legislation and social security) and Art. 26 (freedom of movement).⁷⁸⁹ It has also ratified the ICESCR and the ICCPR both in year of 1975 as well as the CRC in 1994.

Generally speaking, due to the difficult economic situation in Iran, local integration is not a case for many refugees and has a limited availability so that since 2011 voluntary repatriation of Afghan refugees has increased as a primary solution.⁷⁹⁰ As a matter of fact, due to economic sanctions which have severely affected economy of Iran during the recent years, since 2011 a wide range of Afghan refugees seek other durable solutions including resettlement and voluntary repatriation.⁷⁹¹ For example, in May 2012, the governments of Iran, Afghanistan, and Pakistan plus UNHCR have signed a joint agreement known as “Solutions Strategy for Afghan Refugees” (SSAR). The SSAR concentrates on enhancing voluntary repatriation and active resettlement as a means of international responsibility sharing, assistance to refugee affected and hosting areas (RAH) and other stay alternatives for refugees in Pakistan. Resettlement plays a crucial role as a strategic instrument within the SSAR agreement while it also carries out a duty to maintain sufficient space for refugee protection.⁷⁹² From a societal

786 For example, around 500.000 refugees are living in Tehran that approximately more than a fifth of them are aged 10-19. See also Songhori et al. *Facilitators and Barriers of Afghan Refugee Adolescents' Integration in Iran: A Grounded Theory Study*, (2017), p.243.

787 Olszewska, Afghanistan xvi. Afghan Refugees in Iran, <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

788 Abbasi-Shavazi, M. J., Glazebrook, D., Jamshidiha, GH., Mahmoudian, H. and Sadeghi, R., *Second-Generation Afghans in Iran: Integration, Identity and Return*, (2008), p.5.

789 Abbasi-Shavazi et al. *Second-Generation Afghans in Iran: Integration, Identity and Return*, p.5.

790 Azizi, Sh., Hosseini, B. S. and Basavaraju, C., *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, (2017), p.81.

791 Azizi, Hosseini and Basavaraju, *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, p.81.

792 In 2011 “Refugee Contact Group on Iran” was established geared toward improving the ongoing process of resettlement of Afghans from Iran to other countries. Indeed, in addition to heighten the number of available resettlement places for Afghan refugees in other reception states, the Refugee Contact Group on Iran also persuaded the relevant resettlement countries to undertake multi-year commitments toward Afghan refugees. Given that, creating a system of multi-year promises could increase the predictability and reliability of

standpoint, many Afghan migrants who came to Iran 40 years ago have not been integrated appropriately into Iranian society.

As Ali Kadkhodazadeh an Iranian social scientist says, this is partly due to the extent of economic exclusion and social status of Afghan refugees in Iran. In other words, he believes that the first wave of Afghan immigrants in Iran were from a low social class and had to work in occupations that did not require qualifications.⁷⁹³

They lived mostly on the outskirts and in small towns which slowed down their integration into Iranian society. However, the second generation of Afghan refugees had more acceptance by Iranian society which was friendlier to them than their parents.⁷⁹⁴ “This resulted from immigration of large numbers of Iranians to foreign countries where they experienced the problems of life in another country, and thereby increased sympathy for Afghan refugees in Iran.”⁷⁹⁵ Furthermore, he also thinks that the younger generation of Iranian people have more understanding, patience and a broader perception of human dignity compared to previous generations.⁷⁹⁶

Mostafa Eghlima, an Iranian sociologist who is also the head of Association of Scientific Social Work of Iran, believes that there are many problems which Afghan refugees encounter in Iran that the Government of Iran has not been able to mitigate. He says that one of the major problems that Afghan families face in Iran is the lack of identity documents. This causes many problems such as keeping Afghan students out of school or leaves them without public insurance coverage.⁷⁹⁷ As a result, they cannot present themselves with documents to Iranian society. Thus, their integration process is delayed. One of the landmark decisions taken in Iran since 1979 for integration of Afghan refugees is to introduce the Comprehensive Regularization Plan for Foreign Nationals in July-August 2010. This regularization scheme was a reaction to the crisis of increasing undocumented Afghan migrants in Iran in recent years.

resettlement process for all parties engaged in. Furthermore, apart from the resettlement the Refugee Contact group also helped refugees through providing humanitarian assistance to them. See also Azizi, Sh., Hosseini, B. S. and Basavaraju, C., *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, (2017), p.81.

793 Rezai, N., *Afghan Refugees in Iran Do not Receive Special Privileges as They Do in Other Countries*, (2019), <https://www.aa.com.tr/fa/>.

794 Rezai, N., *Afghan Refugees in Iran Do not Receive Special Privileges as They Do in Other Countries*, <https://www.aa.com.tr/fa/>.

795 Rezai, N., *Afghan Refugees in Iran Do not Receive Special Privileges as They Do in Other Countries*, <https://www.aa.com.tr/fa/>.

796 Rezai, N., *Afghan Refugees in Iran Do not Receive Special Privileges as They Do in Other Countries*, <https://www.aa.com.tr/fa/>.

797 Rezai, N., *Afghan Refugees in Iran Do not Receive Special Privileges as They Do in Other Countries*, <https://www.aa.com.tr/fa/>.

The main reason for creating this regularization project was to enhance policies on facilitation of people movement in the region.⁷⁹⁸ It was also intended to address security consideration. The focus was on blocking human trafficking and smuggling into the territory of Iran.⁷⁹⁹ This programme requires both formerly registered Afghan refugees and unregistered ones to present themselves at one of the 146 registration centres in 17 provinces to legalize their stay in Iran. Furthermore, they can request employment assistance at a “surety institute” when their registration has been processed.⁸⁰⁰ BAFIA reported to UNHCR that 2 million undocumented Afghan migrants have applied for registration through the Comprehensive Regularization Plan.⁸⁰¹

4.2 Iranian Legal Frameworks for Protection of Refugees

As previously mentioned, since 28th of July 1976 Iran has been part of the 1951 Geneva Convention and its 1967 protocol. However, it holds reservations toward some articles including Art. 17 (wage-earning employment), Art. 23 (public relief), Art. 24 (labour legislation and social security), and Art. 26 (freedom of movement).⁸⁰² According to the national legislation for refugees, the Iranian government grants the same rights to refugees as nationals in terms of medical, cultural, and social services.⁸⁰³ In the next parts, we will discuss various regulations and policies on refugees which have been imposed till now under the Iran’s domestic law.

4.2.1 Regulations of 1963 Relating to Refugees

The Regulations of 1963 relating to Refugees known as the Refugee By-Law is the first Iran’s regulation regarding the rights and obligations of refugees in Iran.⁸⁰⁴ This law was adopted by the Council of Ministers on 16 December 1963. The first Article of the 1963 Regulation relating to Refugees states that:

798 UNHCR, *Solutions for Refugees*, (2017), p.195.

799 UNHCR, *Solutions for Refugees*, p.195.

800 UNHCR, *Solutions for Refugees*, p.195.

801 UNHCR, *Solutions for Refugees*, p.196.

802 Abbasi-Shavazi et al. *Second-Generation Afghans in Iran: Integration, Identity and Return*, p.5.

803 See Article 7 of the Regulations of 1963 relating to Refugees.

804 Azizi, Hosseini and Basavaraju, *Evaluating Performance of Iran’s Domestic Laws on Effective Protection of Refugees*, p.72.

*“A refugee is a person who for political, religious or racial reasons or for membership of a particular social group fears persecution or a threat to his life or that of his family members supported by him and seeks asylum in Iran.”*⁸⁰⁵

Thus, as it can be seen this article has been derived from Art. 1 of the 1951 Geneva Convention. According to Art. 2 of the 1963 Regulation relating to Refugees, refugees in Iran can be identified through following ways:

1. *Crossing the border into Iran and inform the first border guard station or competent government officials upon entry into the Iranian territory.*
2. *Submission of an application while residing outside Iran.*
3. *Denoting request for asylum and entry into Iran.*
4. *Submission of an application while residing in Iran.*

Notably, there is a Permanent Committee (currently Standing Committee on Foreign Nationals) for refugees within the Ministry of Interior which deals with the refugee-related affairs. The Standing Committee on Foreign Nationals which is established in 2001 is in charge of refugee status determination process and decide about asylum application of foreign nationals.⁸⁰⁶ As a matter of fact, according to existing Iranian law once the asylum request is received by police will be firstly processed by BAFIA and then presented to the Standing Committee in order to make decision on it.⁸⁰⁷ Notably, the asylum request would be processed if the relevant applicant meets the following conditions: (i) s/he is subject to one of the grounds enshrined within Art. 1 of the 1951 Geneva Convention and has not any criminal record (ii) has not committed war crimes or crimes against humanity or severe infringement of public rights (iii) has applied for refugees status by respecting the required procedures (iv) must give guarantee to comply with the Iranian domestic laws up to whenever s/he is living in Iran.⁸⁰⁸

805 Article 2 of the 1963 Refugee By-Law demonstrates the different ways which a refugee can be identified in Iran: “A refugee is identified by the following ways: 1. crossing the border into Iran; 2. submission of an application while residing outside Iran; 3. denoting request for asylum and entry into Iran; 4. submission of an application while residing in Iran requesting asylum.”

806 According to the Entry and Residence of Foreign Nationals Act 1931, a foreign national must ask for permission from the Iranian authorities to enter, reside in and depart from Iran. See Azizi, Sh., Hosseini, B. S. and Basavaraju, C., *Evaluating performance of Iran's Domestic Laws on Effective Protection of Refugees*, (2017), p.73.

807 Zetter, R., *Protection for Forcibly Displaced Afghan Populations in Pakistan and Iran*, (2018), p.60.

808 Abraham, R., *The Afghanistan's Refugee Crisis: Implications for Pakistan and Iran*, (2013), p.14.

All asylum seekers are sent to the refugee camps to perform background checks. Once background check is done those refugees who are physically and mentally healthy and have no contagious disease can be released from refugee camps waiting for final decision on their refugee applications.⁸⁰⁹ However, those refugees who are registered and receive Amayesh card (pink card) can enjoy basic services and may apply for a work permit and receive rationed food and goods.⁸¹⁰

Although, some “Iranian officials do not consider Amayesh card holders as refugees but UNHCR and BAFIA accept them as de facto refugees.”⁸¹¹

Those Afghan refugees who hold white refugee documents known as “Panahandegan” enjoy more rights than other refugees. In other words, white card holders have a wider range of rights than blue card holders who were known as “Mohajerin”.⁸¹² For example, Panahandegan holders benefit from the right to tax exemptions, the right to work and the right to acquire travel documents. However, this group of Afghan refugees must renew their cards every three months and inform competent authorities of their movements and residence.

On the other hand, as Mohajerin (previous blue card holders) were granted an indefinite permission to stay in Iran, thus there was no expiration date on their cards so that it could be withdrawn at any time.⁸¹³

However, generally speaking in line with the Iran’s domestic laws and regulation, the recognized refugees have a number of rights which include: 1- Residency permits and freedom

809 Azizi, Hosseini and Basavaraju, *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, p.73.

810 The first Amayesh registration scheme was performed in 2003 and has been run regularly. See Azizi, Sh., Hosseini, B. S. and Basavaraju, C., *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, (2017), p.73.

811 The official recognition of Amayesh card holders as refugees by UNHCR is significant, since when their refugee status is finished by the Iranian government then UNHCR can protect them without good cause. See Barr, H. and Sanei, F., *Unwelcomed Guests, Iran's Violation of Afghan Refugees and Migrant Rights*, (2013), p.5.

812 Although, this category of Afghan refugees enjoyed free primary and secondary school plus subsidized health care and food, they were not allowed to own their businesses or work as street vendors and most of them included low wage workers who were doing manual works. See Azizi, Sh., Hosseini, B. S. and Basavaraju, C., *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, (2017), p.73.

813 Azizi, Hosseini and Basavaraju, *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, p.73.

to travel,⁸¹⁴2- Marriage⁸¹⁵3- Birth registration 4- Right to property⁸¹⁶5- Intellectual rights 6- Access to court 7- Refugee employment⁸¹⁷8- Social security⁸¹⁸9- Freedom of religion 10- Travel document⁸¹⁹11- Naturalization⁸²⁰12- Public education.⁸²¹ In the following parts, the attention will be paid to the rights to public education and refugee employment under the Iran's legal frameworks which enhance integration of Afghan refugees into the Iranian society.

4.3 Educational Integration of Afghan Refugees in Iran

Within this section, the focus will be on the facts regarding educational integration of Afghan refugees in Iran. We will discuss the most important issues pertaining to the integration of

814 Although, refugees in Iran are banned from moving to a certain number of areas (No-Go Areas) due to political, economic, and social reasons.

815 In accordance with Iranian laws, refugees can marry with the nationals of Iran provided that the main aim of marriage should be establishing a family than applying for residence or work permits, becoming a citizen or obtaining other rights. See also Azizi, Sh., Hosseini, B. S. and Basavaraju, C., *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, (2017), p.74.

816 Refugees in Iran can acquire immovable and moveable properties and refugees can buy moveable properties to any value. See also Azizi, Sh., Hosseini, B. S. and Basavaraju, C., *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, (2017), p.74.

817 In line with Iranian laws, refugees who want to work in Iran must hold a valid work permit. They are treated as other foreign nationals and their work permits can be valid for a maximum one year. According to Art. 120 of the 1990 Iran Labour Code, foreign nationals are banned from being employed in Iran unless they own a valid work visa and acquire a work permit based on the relevant laws and regulations. However, those refugees who lack a work permit or do not inform the Ministry of Cooperatives, Labour and Social Welfare within 15 days of a job termination can be deported from Iran since according to Iran's law they have committed a crime. See also Azizi, Sh., Hosseini, B. S. and Basavaraju, C., *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, (2017), p.75.

818 According to the amended Art. 5 of the 1979 Law on Social Security, all foreigners who are employed in Iran are eligible for full social security benefits in line with existing regulations and without any prejudice to their nationalities. Thus, foreign migrants and refugees who are working in Iran and hold a valid work permit can benefit from same treatment as Iranian nationals with respect to social security benefits. See also Azizi, Sh., Hosseini, B. S. and Basavaraju, C., *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, (2017), p.76.

819 As Art. 1 of the 1963 Refugee By-Law stipulates refugees will be able to travel abroad and their travel document is valid for one year once it is issued and it can be renewed for five extra one-year periods. See also Azizi, Sh., Hosseini, B. S. and Basavaraju, C., *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, (2017), p.76.

820 Article 13 of the Regulations of 1963 relating to Refugees holds that: "Granting citizenship to those refugees who in the course of their stay in country have fully observed the country's rules and regulations shall be considered favourably." Furthermore, Art. 979 of the Iranian Civil Code also requires several conditions to grant citizenship to foreign nationals which include: 1- reaching age of 18 years old 2- living in Iran for five years whether continuously or intermittently 3- not being deserters from military services 4- have not been convicted in any country to any serious non-political misdemeanours or felonies. See also Azizi, Sh., Hosseini, B. S. and Basavaraju, C., *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, (2017), p.76-77.

821 As Art. 7.1 of the 1963 Refugee By-Law regulates: "Upon approval of the application, a refugee shall benefit from the rights accorded to Iranian nationals in the following areas: 1. use of medical, cultural and social services..." Thus, this covers also access to education and other education-related issues such as registration fees, books as well as stationery. See also Azizi, Sh., Hosseini, B. S. and Basavaraju, C., *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, (2017), p.77.

refugees through education which were described in the second chapter of this study. Before discussing legal aspects of the right of Afghan refugees in Iran to education, an overview of educational inclusion of Afghan refugees in Iran is provided.

Iranian educational policy has frequently been affected by changes of general policy of the government toward migration of Afghan refugees.⁸²² Iranian society has a considerable influence on the attitudes of Afghan people toward literacy and education. Before civil war in Afghanistan, educational facilities were mainly concentrated in the urban areas and to a much lesser extent available to the men living in rural regions.⁸²³ For example, after 1978 when the communist government in Afghanistan ordered mandatory education for women, it was not still acceptable for many men who found it a nightmare which ruins their honour. This attitude came from this fact that they felt great responsibility toward protection of their female relatives.⁸²⁴

However, with inspiration of Iranian culture many Afghan refugees recognized that education is a crucial means to social mobility, a religious virtue, and a value in itself.⁸²⁵ Importantly, since the 2015 decree⁸²⁶ all Afghan refugees including those who have no legal status (undocumented migrants) can attend school in Iran. Before that time children without refugee cards were not able to enrol in state schools.⁸²⁷ This prevention of attendance at educational centres by the Iranian government led to establishment of several informal Afghan schools known as *Madrasesha-ye-Khodgardan* (self-run schools) especially in big cities such as Tehran and Mashhad by Afghans for Afghan students. This issue will be discussed in the following sections.⁸²⁸

As a matter of fact, according to UNHCR approximately 348,000 Afghan refugee children and 72,000 undocumented Afghan children are currently enrolled in primary and secondary

822 Hugo, G., Abbasi-Shavazi, M. J. and Sadeghi, R., *Refugee Movement and Development-Afghan Refugees in Iran*, (2012), p.267.

823 Olszewska, Afghanistan xvi. Afghan Refugees in Iran, <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

824 Olszewska, Afghanistan xvi. Afghan Refugees in Iran, <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

825 According to a study, 90% of the heads of families in Mashhad were literate and there is not any evidence of illiteracy among those Afghan children who were born in Iran. See also Olszewska, Z., *Afghanistan xvi. Afghan Refugees in Iran*, (2011), <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

826 In May 2015, Iran's Supreme Leader, Khamenei issued a decree opening school registration for all undocumented Afghan children. See also Olszewska, Z., *Afghanistan xvi. Afghan Refugees in Iran*, (2011), <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

827 This issue will be discussed within the next sections.

828 As a matter of fact, The Iranian government had no a same view toward this informal Afghan schools. For instance, the relevant official authorities in Iran periodically closed these schools and even arrested the teachers while at other times they allow Afghans to manage their own informal schools.

education of Iranian schools.⁸²⁹ This indicates that three out of four Afghans from both groups of recognized and unregistered refugees are in school. However, according to the UNESCO, it is still lower than national rate which reached 99% for net primary enrolment for the academic year ending in 2015.⁸³⁰ As claimed by the Iranian government, the educational involvement of Afghan refugees has an increasing trend so that their literacy rate has jumped from 6% to 65% since their immigration to Iran in around 40 years ago.⁸³¹ For example, in 1998 only 113,000 Afghan students were enrolled in both primary and secondary schools with 52,000 boys and 61,000 girls while the number of refugees was much higher than today.⁸³² Unfortunately, there is no a separated data on the number of Afghan refugees enrolled in secondary schools in Iran.⁸³³

In addition, the Islamic republic of Iran because of its religious identity offers a potential opportunity for many young Afghan refugees. Another available and much easier way of educational integration for Afghan refugees is religious seminaries known as Howzah-Ilmiyah especially in holy cities of Qom and Mashhad.⁸³⁴

Iran has many preeminent seminary centres for training Shiite clergymen so that a vast number of Afghan Shiite refugees who found it quite hard to be admitted into the schools and universities were encouraged to enrol in these religious seminaries. By enrolment in these institutions, they not only get free education but also receive stipend. More importantly, these seminaries laid a path for Afghan Shiite talabas (religious students) to be politically and culturally engaged in Iranian society.⁸³⁵

4.3.1 From Inclusion Strategy to Exclusion Policy

During the 1980s and the early 1990s many Afghan refugees were influenced by common public opinion toward education at that time. During this period, the Iranian government was strongly encouraging people to send their children to the schools. This policy was coupled with

829 Herve, N., *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, (2018), p.4.

830 Herve, *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, p.4.

831 UNHCR, *An Overview of How the Global Compact on Refugees is Being Turned into Action in the Islamic Republic of Iran*, (2021), <https://globalcompactrefugees.org/article/iran>.

832 Herve, *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, p.4.

833 Herve, *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, p.5.

834 For example, a lot of poets during the resistance era were talabas (clergymen) that helped many well-educated Afghan Shiite talabas to be involved in political activities in Iran. See also Olszewska, Z., *Afghanistan xvi. Afghan Refugees in Iran*, (2011), <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

835 Olszewska, *Afghanistan xvi. Afghan Refugees in Iran*, <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

a social movement toward educational achievements which values education as a right and obligation.⁸³⁶ Up to 2004 recognized Afghan refugees were entitled to attend all levels of primary, secondary, and higher education for free.⁸³⁷

After the Soviet occupation in 1979 that coincided with the Islamic revolution in Iran, a lot of Afghan refugees moved to Iran. The government of time undertook an “open door” policy which was in line with Islamic values within the Quran to welcome these Afghan migrants as religious migrants. Consequently, while going to school was not obligatory for these Afghan refugees but they had a same right as their Iranian fellows in terms of educational access.⁸³⁸

Later, in the first years of 1990s while vast number of Afghan refugees due to civil war fled their country and applied for asylum in Iran, the Government of Iran imposed restrictive regulation toward education of Afghan students.⁸³⁹

This was meant to discourage Afghans who were leaving their homeland because of Taliban’s domination (in the mid of 1990s).⁸⁴⁰ In line with this new policy, on the one hand, the issuance of indefinite residence permissions was cancelled and only a small group of Afghan refugees could ask for temporary residence cards.⁸⁴¹

On the other hand, this situation sharply increased the number of undocumented Afghan refugees who found Iran safer and economically more stable than their own country. However, while this group of Afghan refugees was officially denied public educational, in practice many national schools opened their doors to them.⁸⁴² There were many policy changes between the late 1990s and 2004.

In the last years of 1990s, the Government of Iran decided to implement stricter policies over Afghans’ participation in the governmental schools.⁸⁴³ Between 2001-2004⁸⁴⁴ Afghan refugees had a chance to be enrolled in public schools but then this opportunity was taken away from them again.⁸⁴⁵ These stringent regulations led Afghans to establish their own informal schools.

836 Herve, Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan, p.8.

837 Herve, Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan, p.8.

838 Hugo, Abbasi-shavazi and Sadeghi, Refugee Movement and Development-Afghan Refugees in Iran, p.267.

839 As Rajae points out: “In the 1990s, refugee policy toward Afghans shifted to emphasise prevention of illegal entry and repatriation of Afghan refugees because of domestic, economic and social concerns.” See also Hugo, G., Abbasi-shavazi, M. J. And Sadeghi, R., *Refugee Movement and Development-Afghan Refugees in Iran*, (2012), p.267.

840 Herve, Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan, p.8.

841 Herve, Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan, p.8.

842 Herve, Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan, p.8.

843 This policy fluctuation affected not only education sector but also other areas such as medical services. See Hugo, G., Abbasi-Shavazi, M. J. and Sadeghi, R., *Refugee Movement and Development-Afghan Refugees in Iran*, p.267.

844 This special period will be discussed in the next sections.

845 Herve, Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan, p.8.

These schools were totally funded by Afghan community and assisted by volunteer Afghan teachers.⁸⁴⁶ While the quality of education was low, it helped many Afghan refugees particularly undocumented ones who were out of state-run schools.⁸⁴⁷ For example, in 2006-2007 there were approximately 100,000 Afghan students studying in 350 informal schools in Tehran.⁸⁴⁸ These schools will be described in the next parts.

Initially the Iranian authorities tolerated these informal schools in sympathy with Afghan parents for education of their children but then shut down many of these informal schools.⁸⁴⁹

These tough regulations targeted the registered refugees as well. Given that, since the mid 1990 Afghan refugees were permitted to be enrolled in primary and secondary schools only in the cities where they received their refugee documentation. This policy caused problems for those Afghan refugees who had already lived in various parts of Iran.⁸⁵⁰

In 1997, a new regulation required all foreign students to pay high fees for their university education. It also obliged them to only study in six cities of Iran while the cities of Kerman and Zahedan which had many Afghan refugees were not among the selected cities.⁸⁵¹ Importantly, in 2004 the strictest government directive regarding education of Afghan was introduced. The undocumented Afghan migrants were prohibited from enrolling in state schools. Furthermore, in line with this new directive the Ministry of Education was entitled to ask Afghan refugee children who were interested in continuing their education in state schools to pay tuition.⁸⁵² More severely, it also barred Afghan refugees from enrolling in pre-university institutions (Pish-Daneshgahi), vocational schools as well as boarding schools.⁸⁵³

This ban made an unmovable obstacle against Afghan students entering universities since studying at the pre-university was a prerequisite for university entrance examination (Konkour).⁸⁵⁴ Consequently, having access to higher education became impossible for Afghan refugees in Iran. In 2012, the Iranian government made university access still harder for Afghan refugees. Given that, Afghan refugees had to renounce their refugee status and apply for

846 Herve, *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, p.9.

847 The tuition fees of these schools were very low. See also Herve, N., *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, (2019), p.9.

848 In 2006 nearly 8% of all Afghan refugees were studying in Afghan informal schools. See also Herve, N., *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, (2019), p.9.

849 See also Herve, N., *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, (2019), p.9.

850 Herve, *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, p.8.

851 Herve, *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, p.8.

852 Herve, *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, p.9.

853 Herve, *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, p.9.

854 Herve, *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, p.9.

Afghan passport and visa. Moreover, the Iranian government proclaimed that international students (including Afghans) are not allowed to study a total number of 30 subjects.⁸⁵⁵ These special policies and regulations will be discussed within the next parts.

4.3.2 The Creation of Self-Regulated Afghan Schools (SRAS)

In reaction to the restrictive view of Iranian law toward education of undocumented Afghans which strongly prohibited them to attend state-run schools, Afghan community tried to establish their own informal education centres.⁸⁵⁶ These self-regulated schools created by the Afghan community primarily appeared to exist in the suburb of Golshahr in the city of the Mashhad between 1983 and 1984.⁸⁵⁷ Then, in 1990s because of prohibiting undocumented Afghan students from attending the Iranian schools, this sort of informal schools became more common between Afghans.⁸⁵⁸

However, though these Afghan self-regulated schools benefit from similar curriculum and resource materials, but they had some substantial shortfalls in comparison with the Iranian schools. For example, they had only basic facilities and many of teachers were refugees who were not frequently trained for this purpose. Moreover, these schools suffer from low quality administration and students with a variety of ages were placed in the same classes.⁸⁵⁹ These above-mentioned problems were partly associated to the budget limitations which these schools had, as they did not receive any fund neither from the Government of Iran nor international NGOs.⁸⁶⁰ However, an interesting question which is raised is:

Which Afghan students were studying within these informal schools?

As a matter of fact, different categories of Afghan students attended these informal schools. These students included these groups: (i) those Afghan children who their parents were undocumented and were prohibited to go to state-run schools (ii) that group of children who had the required ID, but their parents were not in Iran (iii) those Afghan children who live in a

855 Herve, Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan, p.10.

856 Hugo, Abbasi-Shavazi and Sadeghi, Refugee Movement and Development-Afghan Refugees in Iran, p.268.

857 These first informal Afghan schools and their creators were financially assisted by the Iranian government. See also Hugo, G., Abbasi-Shavazi and M. J. and Sadeghi, R., *Refugee Movement and Development-Afghan Refugees in Iran*, (2012), p.268.

858 Hugo, Abbasi-Shavazi and Sadeghi, Refugee Movement and Development-Afghan Refugees in Iran, p.268.

859 Hugo, Abbasi-Shavazi and Sadeghi, Refugee Movement and Development-Afghan Refugees in Iran, p.268.

860 Hugo, Abbasi-Shavazi and Sadeghi, Refugee Movement and Development-Afghan Refugees in Iran, p.268.

poor family and had problems with state-run school fees (US \$167),⁸⁶¹(iv) those Afghan students who their previous educational qualifications were not recognized in the Iranian educational system.⁸⁶²

In 2002, the Ministry of Education of Iran asked the embassy of Afghanistan in Tehran to intervene in directing and improving the quality of these informal schools. This request was a reaction to the sharp spread of SRAS schools across the country.⁸⁶³ Accordingly, new rules put a particular constitution in force for SRASs which requires teachers to have pedagogical background, deliver standardized resources as well as creating a monitoring and reporting system for school examinations.

Furthermore, it recognized that previous education qualifications of Afghan students are acceptable up to the second grade of secondary schools so that for next levels they must take a special test to become qualified for higher education. Although, in practice these previously obtained educational credentials were not officially recognized but they were accepted in a wide range of contexts in Iran.⁸⁶⁴

However, shockingly in the same year (2002) in contrast to this request the Iranian government imposed a new order forcing to shut down SRAS centres in Iran. Indeed, the Government of Iran believed that these schools act as a pull factor and induce Afghans to come or stay in Iran. In some areas they were completely shut down while in other regions they resumed their educational activities. Their closures depended on the relationship between local authorities and Afghan community. However, many of Afghans tried to invest in strategies which could help them keep their own schools. Some Afghan communities moved to other regions and replaced bigger schools with smaller ones to maintain their activities.⁸⁶⁵ Another important question is:

Has the SRAS initiative had positive impacts on the educational achievements of Afghan refugees in Iran?

To respond to this question, it is necessary to compare the educational attainment of native students and first and second generations of Afghan settlers in Iran. It is also necessary to

861 While these Afghan students had to pay only US \$28 in order to study in their self-regulated schools.

862 Hugo, Abbasi-Shavazi and Sadeghi, *Refugee Movement and Development-Afghan Refugees in Iran*, p.268.

863 Hugo, Abbasi-Shavazi and Sadeghi, *Refugee Movement and Development-Afghan Refugees in Iran*, p.268.

864 Hugo, Abbasi-Shavazi and Sadeghi, *Refugee Movement and Development-Afghan Refugees in Iran*, p.268.

865 Hugo, Abbasi-Shavazi and Sadeghi, *Refugee Movement and Development-Afghan Refugees in Iran*, p.268.

compare these two generations with each other. According to a survey⁸⁶⁶ based on the Iranian 2006 census, Iranian pupils occupied the highest educational achievement levels while the second generations of Afghan students held an intermediate place, and the first generation of Afghans had the lowest educational attainments. For example, more than 80% of native children and youth were studying in primary, secondary, and tertiary educational centres while this number is reduced to around 71% for second generation of Afghans and roughly 36% for first generation. However, both first and second generation of Afghans in Iran hold the higher education attainment in comparison with their compatriots in Afghanistan.⁸⁶⁷

In terms of evaluation of educational success of both first and second generations, those Afghans who have been born or raised for a long time in Iran (second generation) keep a higher position of educational accomplishment than the first generation. This educational gap is sharply heightened as age-specific patterns are reflected on assessment.⁸⁶⁸ For instance, the educational gap sharpened between the first and second generations of younger Afghan settlers. Though both groups of first and second generations experienced upward educational mobility, this trend is greater for the second group. Interestingly, among the second generation, SRAS had more impact on education of female Afghans who improved their education attainment more than their males.⁸⁶⁹

To sum up, Afghan families in Iran were strongly influenced by Iranian culture and their deep-rooted attitude toward the value of education. In other words, Afghans in Iran tried to align their educational level with their Iranian counterparts. While Afghan refugees have been continuously struggling with diverse traumas and hardships a long time that have been created by both forced migration and the Iranian government, they have tried to maintain upward educational mobility. For example, once they were denied attending Iranian public schools, they established their own informal educational centres to fill this gap.⁸⁷⁰

Some of them achieved high levels of education and even took the top occupational positions. The educational achievements of Afghans who are living in Iran cannot be comparable with those in Afghanistan. Hence, in general their educational performance indicates positive results despite of all difficulties they have faced during their time in Iran. Within the next part, the

866 This survey has been conducted by Hugo, G., Abbasi-Shavazi, M. J. and Sadeghi, R. in 2012. See also Hugo, G., Abbasi-Shavazi, M. J. and Sadeghi, R., *Refugee Movement and Development-Afghan Refugees in Iran*, (2012), p.269.

867 Hugo, Abbasi-Shavazi and Sadeghi, *Refugee Movement and Development-Afghan Refugees in Iran*, p.271.

868 Hugo, Abbasi-Shavazi and Sadeghi, *Refugee Movement and Development-Afghan Refugees in Iran*, p.269.

869 Hugo, Abbasi-Shavazi and Sadeghi, *Refugee Movement and Development-Afghan Refugees in Iran*, p.270.

870 Hugo, Abbasi-Shavazi and Sadeghi, *Refugee Movement and Development-Afghan Refugees in Iran*, p.272.

discussion will focus on the Iranian legal frameworks toward education of Afghan refugees in Iran.

4.3.3 Legal Frameworks on Education of Afghan Refugees in Iran

The main legislation for refugees in Iran is “Regulations of 1963 relating to Refugees” (the Refugee By-Law). This legal instrument contains 14 articles which deals with various refugee’s rights and obligations in Iran. But there is no an explicit provision to the right to education for refugees. However, Art. 7 which speaks about right to medical, cultural, and social services stipulates that:

“Upon approval of the application, a refugee shall benefit from the rights accorded to Iranian nationals in the following areas: 1. use of medical, cultural and social services; 2. employment in the fields authorized for foreign nationals and those fields deemed appropriate by the Permanent Committee.”

In accordance with the first part of Art. 7, once refugees are approved, they should be granted the same rights as Iranian nationals regarding use of medical, cultural, and social services. Thus, educational services (access to education, books and stationery and schooling fees) are covered by this provision.⁸⁷¹

It is worth noting that while the Refugee By-Law within the same article (Note 3 of Art. 7)⁸⁷² says that refugees should be treated as other foreign nationals living in Iran, this provision sets higher protection standard for use of cultural and social services including education of refugees. Therefore, according to Art. 7.1 it means that if primary and secondary education is free in Iran for native students then it should be the same for refugees as well. However, until the 2015 supreme leader’s decree Afghan refugees usually had to pay for their education in Iranian schools. This forced some Afghan communities to establish their own self-run schools to help poor students who were not able to attend Iranian schools.

From 2016 onwards, Afghan refugees due to the supreme leader’s decree of May 2015 enjoy free education at both primary and secondary levels. According to the statistics approximately 338,276 refugee children attended Iranian schools in the 2013-2014 academic year. Around 53% of these students were girls and the rest of 47 % included male pupils. In 2019 this number

871 Azizi, Hosseini and Basavaraju, Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees, p.77.

872 Note 3 of Art. 7: “Refugees shall be accorded same treatment granted to foreign nationals residing in the country.”

increased to 480,000 students enjoying this inclusive education strategy including 30,000 undocumented migrants. Interestingly, 60,000 new Afghan students entered public schools in Iran in the year 2019 alone.⁸⁷³ Afghan students are taught in Farsi which has a close relation to Dari and follow the national curriculum in Iranian schools.⁸⁷⁴

Regarding higher education, Afghan refugees can also take part in university entrance exam (Konkour) and in case of being qualified can resume their education in tertiary level. According to a report by the Iranian government in 2017 approximately 19,000 Afghan refugees study in university.⁸⁷⁵ Since studying at university is not free, they pay university tuition. However, Afghan students at universities may also struggle with high university fees, student insurance costs, extension of residence permit, lack of dedicated budgets for cultural activities, etc. Moreover, Afghan students can only study in disciplines which are allowed by the Government of Iran. In other words, they cannot enrol in programme which will end up in government-sponsored occupations.⁸⁷⁶

Although, the 2015 supreme leader's mandate is considered as breakthrough progress toward education of refugees in Iran there are still policy and government budget difficulties especially in area of construction, infrastructure and equipment which must be overcome. For example, opening the doors of public schools to all refugees (registered and undocumented ones) has put additional pressure on already overstretched classrooms within many regions.

Further, hefty financial sanctions which have been imposed on Iran during the recent years impacted severely Iranian economy and development plans of government. However, the international community in collaboration with the Government of Iran has tried to overcome economic pressures and expand existing educational spaces for both refugee and local communities. For instance, in 2019 UNHCR in collaboration with the Iranian government constructed three new schools in refugee-dominated areas where combine both native and

873 UNHCR, *Afghan Children Learn Side By Side with Iranian Peers*, (2019), <https://www.unhcr.org/news/stories/2019/12/5defcb6f4/afghan-children-learn-side-side-iranian-peers.html>. See also UNHCR, *More Support Needed for Refugee Education in Iran*, (2019), <https://www.unhcr.org/news/briefing/2019/12/5dea18ac4/support-needed-refugee-education-iran.html>.

874 UNHCR, *More Support Needed for Refugee Education in Iran*, <https://www.unhcr.org/news/briefing/2019/12/5dea18ac4/support-needed-refugee-education-iran.html>.

875 Watt, E., (Ed.), *Untold Story' of Iran Giving Education to 350,000 Afghan Refugee Children*, (2017), <https://theirworld.org/news/un-praises-iran-for-educating-afghan-refugees>.

876 The university disciplines that are prohibited by the Iranian government consist: Atomic physics, Nuclear physics, Molecular physics (plasma), Particle physics, Plasma engineering, Safety Engineering (Technical, Inspection and Aircraft Protection), Maintenance Engineering (Helicopter and Aircraft), Aerospace engineering, Aeronautical Engineering (Piloting, Aircraft Navigation, Aircraft Maintenance, Helicopter Piloting and Flight Care), Military Sciences, Airline Electronics, Aircraft Maintenance, Airplane Contacts, Air traffic control, IT (Secure Telecommunication Orienting), Satellite technology engineering, Computer Engineering (Secure Computing Orienting).

Afghan students together. Each school costs around US \$650,000 and includes 12 classrooms.⁸⁷⁷ However, there is still a real shortage in terms of enough education spaces across country especially in the most deprived cities such as Kerman with few facilities that accommodate Afghan refugees. In some cities schools still use a two-shift system to accommodate refugee students.⁸⁷⁸ In the following parts, the most important regulations, and policies in terms of right to education for refugees which have been introduced by the Iranian government after the 1963 Refugee By-Law will be discussed.

4.3.3.1 The 2000 Restrictive Regulation Within the First Year of the Third Five-year Economic, Social and Cultural Development Plan

In April 2000, all immigrants who had no valid work permits were asked to leave territory of Iran by March 2001. This decision was regulated by Art. 48 under the third Five-year Development Plan imposed by the Iranian Parliament.⁸⁷⁹ It stipulates that:

“Ministry of the Interior is required to take appropriate measures to identify within the first year of the Third Five-year Economic, Social and Cultural Development Plan of the Islamic Republic of Iran all foreign nationals who do not possess the permit to work in Iran and deport them to their country of origin, provided that their lives will not be jeopardized. Otherwise, they should be confined in live in the refugee camps.”

According to this provision, the Ministry of Interior had the main responsibility to identify and deport those foreigners who did not hold work permits within the first year of the Third Five-year Development Plan. This provision was not applicable to those refugees who would have persecuted in their country of origin after deportation. Thus, this group of foreigners (refugees) are placed in the refugee camps. Accordingly, in line with this regulation in 2001 the Ministry of Labour and Social Affairs committed to close those small businesses where had illegal labourers and left guilty employers with hefty fines and imprisonment.⁸⁸⁰

877 UNHCR, More Support Needed for Refugee Education in Iran, <https://www.unhcr.org/news/briefing/2019/12/5dea18ac4/support-needed-refugee-education-iran.html>.

878 UNHCR, More Support Needed for Refugee Education in Iran, <https://www.unhcr.org/news/briefing/2019/12/5dea18ac4/support-needed-refugee-education-iran.html>.

879 Abbasi-Shavazi et al. *Second-Generation Afghans in Iran: Integration, Identity and Return*, p.5.

880 Azizi, Hosseini and Basavaraju, *Evaluating Performance of Iran’s Domestic Laws on Effective Protection of Refugees*, p.74. See also Abbasi-Shavazi et al. *Second-Generation Afghans in Iran: Integration, Identity and Return*, (2008), p.5.

Moreover, some Afghans lost their work permits and those who own residence cards were basically permitted to work in 16 categories of jobs which typically required manual skills.⁸⁸¹ At the same time, in year of 2000 the Bureau of Aliens and Foreign Immigrants Affairs (BAFIA) and UNHCR arranged a joint agreement which focused on voluntary repatriation of Afghan refugees (voluntary campaigns).⁸⁸²

As a matter of fact, this joint repatriation scheme obliged both registered and undocumented Afghans in Iran to present their cases to take decision toward their return or stay in Iran without any prejudice to their time of arrival.⁸⁸³ Accordingly, the Iranian government helped those Afghan refugees who were identified to be qualified for international protection with providing three-month temporary residence permits to them. These temporary residence permits were renewable for four times and their owners were required to stay in the province where the residence document has been issued. However, these refugees had to return to their home country once the circumstances in Afghanistan allowed them to do so.⁸⁸⁴

In the following years, the repatriation policy had accelerated thereby the government increased the living costs for foreign migrants to encourage them to return to their original country. For example, in 2003 under Art. 138⁸⁸⁵ of the Constitution of the Islamic Republic of Iran, the member of the Executive Co-ordination Council for Foreign Nationals imposed 11 articles to scale up the repatriation of Afghan migrants.⁸⁸⁶

These new articles targeted different aspects of life of Afghans in Iran namely reducing access of undocumented Afghans (those without residence permit, valid passport, and visa) to the

881 Abbasi-Shavazi et al. *Second-Generation Afghans in Iran: Integration, Identity and Return*, p.5.

882 However, by the end of 2000 approximately 130,000 Afghans returned to their home country and nearly 8000 were granted refugee status and stayed in Iran. See Azizi, Sh., Hosseini, B. S. and Basavaraju, C., *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, (2017), p.74.

883 Abbasi-Shavazi et al. *Second-Generation Afghans in Iran: Integration, Identity and Return*, p.6.

884 Abbasi-Shavazi et al. *Second-Generation Afghans in Iran: Integration, Identity and Return*, p.6.

885 Art. 138: "1. In addition to instances in which the Council of Ministers or a single Minister is authorized to frame procedures for the implementation of laws, the Council of Ministers has the right to lay down rules, regulations, and procedures for performing its administrative duties, ensuring the implementation of laws, and setting up administrative bodies. Each of the Ministers also has the right to frame regulations and issue orders in matters within his jurisdiction and in conformity with the decisions of the Council of Ministers. However, the control of all such regulations must not violate the letter or the spirit of the law. 2. The government can entrust any portion of its task to commissions composed of some Ministers. The decisions of such commissions within the rules will be binding after the endorsement of the President. 3. The ratifications and the regulations of the Government and the decisions of the commissions mentioned under this article shall also be brought to the notice of the Speaker of the Islamic Consultative Assembly while being communicated for implementation so that in the event he finds them contrary to law, he may send the same stating the reason for reconsideration by the Council of Ministers."

886 Abbasi-Shavazi et al. *Second-Generation Afghans in Iran: Integration, Identity and Return*, p.6.

labour market,⁸⁸⁷ renting accommodation as well as administrative and banking services.⁸⁸⁸ This trend was followed in the next years especially 2004 and 2005. Indeed, one year later in 2004 the government increased the living costs for Afghan migrants in Iran. For instance, despite Afghans having once registered by BAFIA in 2001⁸⁸⁹ they were asked to re-register themselves and obliged all Afghan students at all educational levels to pay the relevant school fees. In 2005, Afghans living in Tehran had to pay a special fee to BAFIA to use the services for a minimum period of 18 months.⁸⁹⁰

A positive policy was introduced in 2005 toward reducing the school fees for Afghan students. Indeed, the school fees experienced a reduction from 800,000-1,200,000 Rials (USD 89-133) in academic year of 2004-2005 to 200,000-670,000 Rials (USD 22-74) in 2005-2006.⁸⁹¹

The deportation of Afghan refugees who had been illegally living in Iran sharply resumed in the following years. According to a report of US Committee on Refugees, approximately 670,000 people have been repatriated to Afghanistan between 2004 and 2007.⁸⁹² The deportation of Afghan refugees was pursued vigorously in the following years. For example, in May 2012 when Afghanistan signed a strategic security pact with the US,⁸⁹³ the Government of Iran threatened to deport all 900,000 Afghan refugees to Afghanistan.⁸⁹⁴

4.3.3.2 *The 2002 Legal Improvement*

887 The employers were heavily fined in case of hiring those Afghan workers who had no a valid passport and visa or work permit.

888 Abbasi-Shavazi et al. *Second-Generation Afghans in Iran: Integration, Identity and Return*, p.6.

889 That was the first phase of the Aliens Identification Plan (AIP) which happened on 19th of February 2001 to identify and register the regular migrants. According to official statistics total number of 2,563,827 migrants applied for registration which 2,355,427 were Afghans, 202,878 had an Iraqi nationality and 5,522 include other nationalities. See also Azizi, Sh., Hosseini, B. S. and Basavaraju, C., *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, (2017), p.78.

890 The idea behind this policy was that Afghans had increased the costs of civil services which have to be compensated by them. Notably this special fee was varied according to the size of Afghan families. See also Abbasi-Shavazi et al. *Second-Generation Afghans in Iran: Integration, Identity and Return*, (2008), p.6.

891 Abbasi-Shavazi et al. *Second-Generation Afghans in Iran: Integration, Identity and Return*, p.6.

892 Abbasi-Shavazi et al. *Second-Generation Afghans in Iran: Integration, Identity and Return*, p.7.

893 The content of the US-Afghanistan security pact concentrates to stabilize the legal status of US troops in Afghanistan plus guaranteeing US long-term financial assistances to Afghanistan and its national army once American forces quit the territory of Afghanistan. See also Christensen, J. B., *Guests or Trash, Iran's Precarious Policies Toward the Afghan Refugees in the Wake of Sanctions and Regional Wars*, (2016), p.16.

894 As a matter of fact, in November 2012 Iran imposed a new rule to get rid of nearly 1.6 million irregular migrants which facilitates deportation of 200,000 Afghan refugees and revoking the refugee status of another 700,000 (Although, finally only 400,000 Afghan refugees were deported to Afghanistan in years of 2014 and 2015). See also Christensen, J. B., *Guests or Trash, Iran's Precarious Policies Toward the Afghan Refugees in the Wake of Sanctions and Regional Wars*, (2016), p.16-17.

Afghan refugees have always had many problems staying and attending government schools. Most of these difficulties have been created by the Iranian government to discourage Afghan refugees from crossing the border to Iran. The most vulnerable refugees can be undocumented Afghans who moved to Iran after 1996 and did not find any chance of receiving formal education in Iran.⁸⁹⁵ Accordingly, Afghans and international NGOs have always criticized the Iranian government for this. As a result of these pressures, in 2002 the government changed its policy and proclaimed that all undocumented Afghan refugees can apply for free primary education in schools that are managed by the Literacy Movement Organization⁸⁹⁶(LMO).⁸⁹⁷ The certificates of these schools were officially recognized and held an equal value as credentials as those granted by state-run schools.⁸⁹⁸ However, UNICEF dedicated two health and education sub-projects to undocumented Afghan migrants that were financed by the Department for International Development (DFID).⁸⁹⁹ The education project was operated at six provinces where many Afghans live in including Khorasan, Sistan and Baluchistan, Kerman, Hormozgan, Fars and Tehran. The LMO classes contain courses of Farsi, mathematics, Quran, social studies, science and health and arts at two different basic and continuous levels.

In addition, the UNICEF added other complementary courses such as life skills and learner-to-learner training in form of participatory techniques of teaching and learning for strengthening the LMO curriculum.⁹⁰⁰ The required resources were sufficiently provided to LMO classes for refugees during the project. Furthermore, the target households were assisted financially so that they earned enough money to cover their basic life costs for food, water, clothing, and shelter.⁹⁰¹

There are two modules for those teachers who are interested in LMO teaching activities. First, the teachers take part in teaching skills classes for 232 hours; and then apply for 98 hours instruction on special teaching skills for the fifth and final grades. Generally, unless LMO teachers want to be officially employed, they will have to pass the one-year course of

895 Danaye Tousi, M. and Kiamanesh, A., *Basic Education Status of Afghan Refugees in Iran*, (2011), p.91.

896 This organization is a quasi-NGO that has a main responsibility toward education of those students who live in the regions where there are not sufficient educational facilities which are basically provided by Iranian Ministry of education. It also supports those students who do not meet those required conditions that are essential for attending the state schools.

897 Danaye Tousi and Kiamanesh, *Basic Education Status of Afghan Refugees in Iran*, p.91.

898 Danaye Tousi and Kiamanesh, *Basic Education Status of Afghan Refugees in Iran*, p.92.

899 A British Government department working in the field of sustainable development and poverty reduction. See also Danaye Tousi, M. and Kiamanesh, A., *Basic Education Status of Afghan Refugees in Iran*, (2011), p.92.

900 Danaye Tousi and Kiamanesh, *Basic Education Status of Afghan Refugees in Iran*, p.92.

901 Danaye Tousi and Kiamanesh, *Basic Education Status of Afghan Refugees in Iran*, p.92.

educational skills.⁹⁰² In terms of teaching method in the classes, LMO teachers must give priority to increasing self-confidence of Afghan students. Accordingly, teachers should allow Afghan students to practice and learn in a manner that they feel more comfortable, using their language, concepts and understanding.⁹⁰³

A major problem regarding Iranian teachers is that they are not much accustomed to the principle of learner-centred education. The formal teacher training process in Iran does not focus so much on the relevant techniques required for teaching refugee students.⁹⁰⁴ Consequently, many Iranian instructors lack skill in dealing with special needs of Afghan refugees such as providing a daily lesson scheme according to the special curriculum for Afghan students. This may cause negative effects on their capability toward helping refugees.⁹⁰⁵ For example, according to an evaluation survey by the DFID,⁹⁰⁶ both male and female Afghan refugees have problems with reading comprehension and mathematics skills. This is partly attributed to a lack of a specialized teacher education system in Iran which invests in developing teachers who are interested in working in refugee education.

It is important that teachers in training become familiar with refugees' ethnic and cultural background so that they can understand cultural differences of Afghan students.⁹⁰⁷ Another factor which may have been underestimated by Iranian authorities is focus on the social, economic, and cultural elements which play a role in Afghans' expectations for education especially at the primary level.

The Iranian educational system does emphasize teachers as a key indicator of school quality while other inputs such as management, schoolrooms, curriculum, textbooks and other learning materials, teacher guides, evaluation system and so on are not sufficiently noticed.⁹⁰⁸ However,

902 LMO teachers can be also chosen from those who obtained their diploma and are interested in teaching-related jobs or those young men who prefer to work as a teacher in remote areas for 21 months instead of serving in the military service. These both groups are considered as non-officially employed LMO teachers. See also Danaye Tousi, M. and Kiamanesh, A., *Basic Education Status of Afghan Refugees in Iran*, (2011), p.92.

902 Danaye Tousi and Kiamanesh, *Basic Education Status of Afghan Refugees in Iran*, p.92.

903 Danaye Tousi and Kiamanesh, *Basic Education Status of Afghan Refugees in Iran*, p.92. The view of allowing Afghan refugees to study in their mother tongue is in line with the CESCR's approach that recommends Iranian government take effective measures to guarantee that ethnic groups can be taught in their mother tongue, in addition to Persian language (Farsi). See CESCR, *Concluding Observations on the Second Periodic Report of the Islamic Republic of Iran, Adopted by the Committee at its Fiftieth Session (29 April-17 May 2013)*, (2013), p.7.

904 Danaye Tousi and Kiamanesh, *Basic Education Status of Afghan Refugees in Iran*, p.93.

905 Danaye Tousi and Kiamanesh, *Basic Education Status of Afghan Refugees in Iran*, p.93.

906 Danaye Tousi and Kiamanesh, *Basic Education Status of Afghan Refugees in Iran*, p.102.

907 Danaye Tousi and Kiamanesh, *Basic Education Status of Afghan Refugees in Iran*, p.102.

908 The improvement of teaching quality and physical infrastructure of Iranian schools especially in rural areas has also been addressed by the CESCR within the 2013 Concluding Observations on the Second Periodic Report of the Islamic Republic of Iran. In fact, such improvements will help Iran to meet its international commitments including Art. 13.2 (e) of the ICESCR. See CESCR, *Concluding Observations on the Second Periodic Report of*

as the main goal for educating Afghan refugee students is to reach a sustainable progress in their qualifications, therefore, these above-mentioned inputs should be proportionately respected as well.⁹⁰⁹

Another noticeable issue is the old-fashioned teaching system in Iran regarding refugees' education. Indeed, the common teaching method of "chalk and talk" should be replaced by more modern and active educational models. Many LMO teachers still are not trained to work with such methods. They may be reluctant to use learner-centred educational methods preferring to focus on traditional ways of teaching such as rote-learning methodologies.⁹¹⁰

These modern educational methods are created for decentralized and democratic educational system where teachers are trained and highly driven autonomous professionals to help refugee pupils with their education. By contrast, in Iran LMO instructors are usually selected from teachers with a low status or even civil servants who often expect an exceptionally low salary.⁹¹¹

However, the main purposes of the DFID-funded education project can be categorized as: (i) to enable Afghan refugees, especially children and women, to have access to basic education services (ii) to increase accessibility and flexibility of basic education to the needs of Afghan refugees (iii) shrinking the number of Afghan women who are out of school (iv) increasing the number of Afghan students who complete their primary education.⁹¹²

4.3.3.3 The Supreme Leader's Decree of May 2015

In May of 2015, the supreme leader of Iran Ayatollah Ali Khamenei declared that all Afghan children either documented or undocumented have a right to attend both primary and secondary schools in Iran.⁹¹³ This order was a landmark decision toward education of Afghan children in

the Islamic Republic of Iran, Adopted by the Committee at its Fiftieth Session (29 April-17 May 2013), (2013), p.7.

909 Danaye Tousi and Kiamanesh, Basic Education Status of Afghan Refugees in Iran, p.102.

910 Danaye Tousi and Kiamanesh, Basic Education Status of Afghan Refugees in Iran, p.102.

911 Danaye Tousi and Kiamanesh, Basic Education Status of Afghan Refugees in Iran, p.103.

912 Danaye Tousi and Kiamanesh, Basic Education Status of Afghan Refugees in Iran, p.93.

913 This decision is supported by the CESCR which believes "all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care". See Committee on Economic, Social and Cultural Rights (CESCR), *The Duties of States Towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights*, (2017), p.3. See also Herve, N., *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, (2018), p.10.

Iran.⁹¹⁴ After this order, on 20th of April 2016 the government issued a directive which introduced some crucial amendments regarding education of both registered and undocumented Afghan students. For example, it provided undocumented Afghan students with a specific educational support card (blue card) aiming to protect this group of Afghan students and their families from deportation during their education in Iran.⁹¹⁵

It also allowed all Afghan students to be enrolled in both primary and secondary education till they can get their secondary school diploma.⁹¹⁶ This new policy to allow undocumented Afghan students to study in Iranian schools in fact follows the CESCR's recommendations to the Iranian government with regard to education of refugees stated in the 2013 Concluding Observations on the Second Periodic Report of the Islamic Republic of Iran. Within this document the Committee asks Iran to allow those refugees who lack personal documents or whose parents are not registered with authorities to attend public schools. Legally speaking, failure to register new-borns and lack of personal documents pose significant barriers to Afghan children enrolling in Iranian schools. In addition, it also requests Iranian schools to offer free and compulsory primary education to these undocumented Afghan children.⁹¹⁷

While, the 2015 decree had great implications on the educational situation of undocumented Afghan refugees through elimination of legal/documentation barriers, many other problems are untouched, yet.⁹¹⁸ For example, it did not create new schools for these newcomers. The existing over-crowded schoolrooms had to place these extra refugee students. At the same time, many of these schools suffered from old equipment and facilities while there was a little budget dedicated to repair and refurbishment.⁹¹⁹

914 This was a great opportunity for 500,000 undocumented children who were not capable to study in Iranian schools until this time. See also Christensen, J. B., *Guests or Trash, Iran's Precarious Policies Toward the Afghan Refugees in the Wake of Sanctions and Regional Wars*, (2016), p.40.

915 Herve, Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan, p.10. See also Shammout, R. and Vandecasteele, O., *Inter-Sectoral Cooperation for Afghan Refugee Education in Iran*, (2019), p.61.

916 Herve, Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan, p.10.

917 These suggestions require Iran to fulfil its obligations under Arts. 13 & 14 of the ICESCR. See CESCR, *Concluding Observations on the Second Periodic Report of the Islamic Republic of Iran, Adopted by the Committee at its Fiftieth Session (29 April-17 May 2013)*, (2013), p.7.

918 Shammout and Vandecasteele, *Inter-Sectoral Cooperation for Afghan Refugee Education in Iran*, p.61.

919 According to media reports, around 30% of Iranian public schools must be repaired and/or rebuilt. See also Shammout, R. and Vandecasteele, O., *Inter-Sectoral Cooperation for Afghan Refugee Education in Iran*, (2019), p.61.

Moreover, while since 2016 refugees⁹²⁰ in Iran are exempted from refugee-specific school fees,⁹²¹ the 2015 decree had no relief for other educational-associated costs.⁹²² Many Afghan families do not have enough income to cover educational-related costs such as uniforms, stationery, required medical check-up and public transportation.⁹²³ The economic situation of many Afghan families can be partly attributed to the re-imposition of US sanctions against the Iranian government during the recent years.⁹²⁴ As a result, this situation obliged some Afghan families to send their children to the labour market or informal schools which require less expenses than formal ones.⁹²⁵

Only Afghan refugees who hold an Afghan passport with a valid visa can attend higher education. The 2015 decree has brought an unprecedented opportunity to Afghan refugees especially undocumented ones to study in the state schools, but it has also caused disappointment in the educational level which Afghans receive in Iran. Afghan refugees who want to attend university must forsake their refugee status and apply for a foreign student visa. This will risk their future as after graduation they will lack a valid residence permit to stay in Iran anymore.⁹²⁶ Consequently, some of these young Afghan populations pursue their educational ambitions in western countries which may offer easier options to them.⁹²⁷

Furthermore, there are few options in terms of vocational training courses for Afghan students and entrepreneurs and owners of small businesses to start jobs in the informal economy.⁹²⁸ However, the 2015 order granted a considerable chance to 51,000 undocumented Afghan children to attend the state schools in Iran in 2016.⁹²⁹ Currently, in the 2019-2020 academic

920 Prior to this exemption, Afghans must pay an amount of 70-90 USD per child as refugee-specific school fee. See also UNHCR, *Afghan Children Learn Side by Side with Iranian Peers*, (2019), <https://www.unhcr.org/news/stories/2019/12/5defcb6f4/afghan-children-learn-side-side-iranian-peers.html>.

921 UNHCR, *Afghan Children Learn Side by Side with Iranian Peers*, <https://www.unhcr.org/news/stories/2019/12/5defcb6f4/afghan-children-learn-side-side-iranian-peers.html>.

922 Herve, *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, p.10.

923 Shammout, and Vandecasteele, *Inter-Sectoral Cooperation for Afghan Refugee Education in Iran*, p.61.

924 Shammout, and Vandecasteele, *Inter-Sectoral Cooperation for Afghan Refugee Education in Iran*, p.61.

925 Shammout, and Vandecasteele, *Inter-Sectoral Cooperation for Afghan Refugee Education in Iran*, p.61.

926 Christensen, *Guests or Trash, Iran's Precarious Policies Toward the Afghan Refugees in the Wake of Sanctions and Regional Wars*, p.40.

927 However, young Afghans may still prefer to stay in Iran where they have been born and raised to apply for a foreign student visa. See Christensen, J. B., *Guests or Trash, Iran's Precarious Policies Toward the Afghan Refugees in the Wake of Sanctions and Regional Wars*, (2016), p.40.

928 Shammout, and Vandecasteele, *Inter-Sectoral Cooperation for Afghan Refugee Education in Iran*, p.61.

929 Herve, *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, p.10.

year around 450,000 Afghan students, of which 130,000 are undocumented migrants are attending Iranian schools through this inclusive policy.⁹³⁰

Indeed, this decree encouraged a lot of humanitarian agencies to identify Afghan refugees who live in very remote areas (marginalized groups) to help them attend government schools.⁹³¹

4.3.4 Intervention of Foreign Organizations for Improving the Educational Status of Afghan Refugees in Iran

However, to substantiate the 2015 decree, it was not enough only to request the blue card and allow undocumented Afghan refugees to go to state schools, but many other efforts were made. The NRC (Norwegian Refugee Council) and other foreign organizations started to collaborate with the Iranian government in a wide range of operational, in-kind, and training activities.⁹³² In the following, some of these positive interventions will be described.

NRC started its activities in Iran in 2012⁹³³ and has been regularly active in terms of educational integration of refugees during the recent years. For example, before the 2015 supreme leader's decree, it signed a contractual agreement with LEGO to present new learning methods to Afghan refugee children in rural Kerman.⁹³⁴

Indeed, after issuance of the 2015 decree it first tried to create different groups with separate responsibilities to run its activities in Iran. For example, its shelter team focused on checking the educational centres and repairing the old schools when required.⁹³⁵ The WASH (the Water, Sanitation and Hygiene) group constructed several hand-washing spots, public lavatories, and

930 Just 60,000 new Afghan pupils in 2019 alone set their feet in Iranian schools. See also UNHCR, *Afghan Children Learn Side by Side with Iranian Peers*, (2019), <https://www.unhcr.org/news/stories/2019/12/5defcb6f4/afghan-children-learn-side-side-iranian-peers.html>.

931 Shammout, and Vandecasteele, *Inter-Sectoral Cooperation for Afghan Refugee Education in Iran*, p.61.

932 Shammout, and Vandecasteele, *Inter-Sectoral Cooperation for Afghan Refugee Education in Iran*, p.61.

933 De Wild, D., *Independent Review Cash Based Programming in Iran*, (2018), p.1.

934 This agreement was implemented in a broad range of areas to help refugees to acquire opportunities for completing their secondary school as well as technical and professional trainings which could raise their employability in the Iranian labour market. Moreover, in December 2013 it also set up its occupational health and safety activity in "Mohajerin Refugee Settlement" in province of Semnan. See Azizi, Sh., Hosseini, B. S. and Basavaraju, C., *Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees*, (2017), p.81.

935 We have supported around forty schools in the country. It was supply of essential equipment and renovations to re-open some schools. This one was closed for several years. We also organized access to education programmes to help children who were out of the school system in previous years. They needed accelerated learning classes in order to integrate into school," said by Oliver Vandecasteele who is the country director for NRC in Iran. See also Euronews, *Undocumented Afghan Refugees Get a Chance at School in Iran*, (2017), <https://www.google.com/search?sxsrf=ALeKk01Ie6bJjuwfWJ13C7pdAyewGX0KUw%3A1594131600672&source=hp&ei=kIQEX>.

drinking water fountains. It also provided hygiene kits for refugee and native students and held hygiene promotion training for both Iranian and Afghan students and parents.⁹³⁶

Regarding school construction, UNHCR has been in close collaboration with the Government of Iran to refurbish the existing old educational centres and building new ones for both Afghan and Persian students. These construction activities have been frequently operated in highly refugee-settled regions.⁹³⁷ UNHCR constructed 11 school buildings in 2017, 6 schools in 2018 and 12 schools in 2019.⁹³⁸

Moreover, also under a joint project with the Ministry of Education and the Literacy Movement Organization literacy classes were delivered to over-aged refugees as well as those who have been away from schools for a long term.⁹³⁹ Notably, the operational activities above, to build and renovate educational institutions continuously by NRC and UNHCR are in fact meant to heighten chances of Afghan refugees to attend Iranian schools. Thus, it can be considered as a constructive policy to achieve the goals of the Global Compact on Refugees (GCR) in Iran.⁹⁴⁰

In 2017, the European Union (EU) provided around 10 million Euros to the Iranian government to improve the educational status of Afghan refugees. The EU is very aware of positive implications which these financial assistances can have not only on Iran but also upon Europe. Given that, making educational opportunities more available to Afghan refugees in Iran can convince Afghan families to stay in Iran and prevent their potential displacement to Europe. For example, Commissioner “Christos Stylianidis” during her two visits to Iran has stressed the positive effect which Iranian support to Afghan refugees has in Europe.⁹⁴¹

In terms of educational progresses that has been accomplished in recent years, Caroline Birch from EU Humanitarian Aid stated:

936 Other NRC teams included ICLA team (Information, Counseling and legal assistance) which focused on legal-related issues and cash assistance activities plus education group that assessed education’s needs and supplied a wide range of educational equipment such as desks and libraries and hold life skills sessions for both Iranian and Afghan teachers and parents. See also Shammout, R. and Vandecasteele, O., *Inter-Sectoral Cooperation for Afghan Refugee Education in Iran*, (2019), p.62.

937 UNHCR, Afghan Children Learn Side by Side with Iranian Peers, <https://www.unhcr.org/news/stories/2019/12/5defcb6f4/afghan-children-learn-side-side-iranian-peers.html>.

938 UNHCR, Afghan Children Learn Side by Side with Iranian Peers, <https://www.unhcr.org/news/stories/2019/12/5defcb6f4/afghan-children-learn-side-side-iranian-peers.html>.

939 UNHCR, Afghan Children Learn Side by Side with Iranian Peers, <https://www.unhcr.org/news/stories/2019/12/5defcb6f4/afghan-children-learn-side-side-iranian-peers.html>.

940 UNHCR, An Overview of How the Global Compact on Refugees is Being Turned into Action in the Islamic Republic of Iran, <https://globalcompactrefugees.org/article/iran>.

941 Euronews, Undocumented Afghan Refugees Get a Chance at School in Iran, <https://www.google.com/search?sxsrf=ALeKk01le6bJjuwfWJ13C7pdAyewGX0KUw%3A1594131600672&so=hp&ei=kIQEX>.

*“I think things have changed very much since Afghans first arrived over 30 years ago. And we are not looking at basic survival now, the idea will be very much to keep them enrolled in primary school so that they can look forward into going into secondary school and possibly even to University.”*⁹⁴²

In addition, NRC also collaborated with the Literacy Movement Organization, a government institution, to provide accelerated education and catch-up classes to refugee students who required it. Indeed, these Afghan students had to pass some courses in the organization’s literacy and numeracy classes before being placed in the formal schools. However, undocumented Afghan students are welcomed to participate in these classes.⁹⁴³ This NRC activity plays a vital role in enabling Afghan children to access quality education in Iran, one of the key areas for the execution of the Global Compact on Refugees in this country.⁹⁴⁴

Furthermore, in 2016 NRC launched a joint project with UNHCR to increase the literacy rate among Afghan families. In doing so, it invited Afghan parents to take part in literacy and numeracy classes besides their children. However, it indicated that this project had a positive impact on parents’ attitudes (especially Afghan fathers) toward girls’ education.⁹⁴⁵

NRC has followed a holistic and integrated approach in which emphasizes the family unit. Indeed, this integrated approach emphasizes the home environment as a vital place beside learning and cognitive development as schools. This attitude tries to integrate many aspects of the learning environment such as shelter, well-being, livelihood, and civil documentation. It protects families against these problems to enable them to enrol their children in school so that they can resume their education.⁹⁴⁶

In line with this view, a recent external evaluation of NRC’s programming identified two important areas. The first one is a shortage of adequate school space so that all Afghan refugees can be placed in the state schools.⁹⁴⁷ This issue will require collaboration from both donors and international community to assist Ministry of Education in its mission to create additional school space for Afghan students.⁹⁴⁸

942 Euronews, Undocumented Afghan Refugees Get a Chance at School in Iran, <https://www.google.com/search?sxsrf=ALeKk01le6bJjuwfWJ13C7pdAyewGX0KUw%3A1594131600672&source=hp&ei=kiQEX>.

943 Shammout, and Vandecasteele, Inter-Sectoral Cooperation for Afghan Refugee Education in Iran, p.62.

944 UNHCR, An Overview of How the Global Compact on Refugees is Being Turned into Action in the Islamic Republic of Iran, <https://globalcompactrefugees.org/article/iran>.

945 Shammout, and Vandecasteele, Inter-Sectoral Cooperation for Afghan Refugee Education in Iran, p.62.

946 Shammout, and Vandecasteele, Inter-Sectoral Cooperation for Afghan Refugee Education in Iran, p.62.

947 Herve, Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan, p.63.

948 Herve, Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan, p.63.

The other key issue is attributed to the mechanism of cash distribution among Afghan refugees which helps them attend schools and increases their chance to continue their education. According to the reports, there are some indications that families spend cash assistance toward education.

However, it is necessary to collect more information to determine whether these cash resources are invested in education-related costs as expected by NRC's integrated approach or not.⁹⁴⁹ Interestingly, for responding to this problem, NRC is now searching for a best possible mechanism to ensure families will spend the relevant cash assistance only on education of their children. For example, two suggestions have been introduced in respect of distributing this cash assistance. The first finds the solution through arranging a system of instalments so that a part of financial assistance is paid before registration and the second rate is granted once students are enrolled in schools successfully. An alternative pays the cash assistance at the registration places within educational centres and helps Afghan families accomplish the enrolment procedure.⁹⁵⁰

Finally, although the Iranian government has taken major steps toward improving education for Afghan children, especially undocumented ones, according to the supreme leader's decree of 2015, a lot of needs remain to be unaddressed.⁹⁵¹ For instance, due to the US financial embargos against Iran during the recent years, Iranian economy has been seriously impaired. It has had negative implications on educational section as well, so that there is a strong need to additional budgets for the existing educational gaps such as expanding the school premises and creating the new spaces for refugee students.⁹⁵² In this regard, the important role of international community and its humanitarian assistance should not be ignored.

The UN-related agencies including UNHCR and UNICEF must give further attention to the basic educational needs of Afghan refugees in Iran. In other words, while Afghan refugees are determined to join their Persian fellows at schools and continue their education besides them, the efforts of the Government of Iran seem insufficient while these existing gaps can be somehow compensated by those humanitarian assistance that is provided by international organizations. Nonetheless, it is fair to showcase the progress of the current policies of Iran

949 Herve, *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, p.63.

950 Herve, *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, p.63.

951 Herve, *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, p.64.

952 Herve, *Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan*, p.64.

with respect to education of Afghans as a good model for the sake of influencing educational policies of other reception countries toward refugees.⁹⁵³

Again, there is still a long way to fully integrate the Afghan refugees into the educational system of Iran. For instance, Many Afghan families still face discrimination and ostracism from local school authorities discouraging them to send their children to the schools.⁹⁵⁴ Furthermore, educational centres in areas where there are large numbers of Afghan school-aged children do not have sufficient capacity to accept the new entrants.⁹⁵⁵

4.4 Integration of Afghan Refugees by Employment in the Iranian Economy

Iran, with higher economic development than Afghanistan, has always attracted Afghan workers to travel there to finding better job opportunities. This has been strengthened by linguistic (Dari) and religious (Shia Islam) similarities between two countries. During the 1960s and 1970s large numbers of Afghan workers were working in Iran as seasonal workers.⁹⁵⁶ However, between 1973-1979 after the first oil shock, the Iranian government decided to bring foreign workers to fill the demand for unskilled labourers in the various sectors especially construction jobs. Subsequently, many cheap workers from Afghanistan, Pakistan, India, Korea, and Philippine came to Iran.⁹⁵⁷

According to statistics, roughly 400,000 Afghan workers were working in Iran in 1978 alone.⁹⁵⁸ They were used in areas of construction and services, food industry including poultry and dairy farms. This group of Afghan migrants frequently lived in their workplace and tried to return to their home country with their saved payments.⁹⁵⁹ In 1979 when Islamic revolution occurred in Iran many migrant labourers returned to Afghanistan, but did not stay long. Due to Soviet occupation and beginning of civil war in Afghanistan a new wave of migrants moved to Iran again.

Indeed, this new flow of immigrants was both economic migrants and asylum seekers who fled their country because of civil war and political unrest. Between 1979-1989 around 2 million

953 Herve, Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan, p.64.

954 Herve, Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan, p.10.

955 Herve, Inclusion of Afghan Refugees in the National Education Systems of Iran and Pakistan, p.10.

956 Karimi Moughari, Z., *the Effects of Afghan Immigrants on the Iranian Labour Market*, (2007), p.62.

957 Karimi Moughari, *the Effects of Afghan Immigrants on the Iranian Labour Market*, p.63.

958 Karimi Moughari, *the Effects of Afghan Immigrants on the Iranian Labour Market*, p.63.

959 Karimi Moughari, *the Effects of Afghan Immigrants on the Iranian Labour Market*, p.63.

Afghans moved to Iranian cities and villages and to work in the labour market. Many of these migrants were refugees which Iran welcomed considering them vulnerable people as were Afghan Muslim brothers who were prosecuted and tortured by the Soviet regime.⁹⁶⁰ During period of 1994-2001⁹⁶¹Iran had large numbers of Afghan workers who were generally in the Iranian labour market illegally. This period coincided with Taliban rule in Afghanistan which created a dangerous environment for many Afghans particularly Shia people.

Insecurity and civil war were not the only reasons for immigration of Afghans to Iran. The economic crisis played a crucial role as a pull factor to bring a lot of Afghan refugees to Iran. The economic development of Iran and job salaries were not comparable with Afghanistan⁹⁶²which suffered for two decades from war and political turbulence leading to severe economic stagnation. Therefore, even after the interruption of the Taliban regime, Afghan refugees were reluctant to repatriate to their fatherland. After more than 20 years of residency in another country, it was extremely hard for many Afghan refugees to interrupt their life in Iran and starting from scratch in their country of origin where there were few job opportunities, where the economy was totally collapsed, and the future was unpredictable.⁹⁶³

In 2001, when Iran in collaboration with UNHCR introduced the “Afghan Identification Program” (AIP). It was estimated that nearly 850,000 out of a total number of 2,350,000 Afghans were working in the Iranian labour market.⁹⁶⁴ As demonstrated above, within the first years of Islamic revolution (1980s), many Afghans had a chance to acquire permission for living and working within cities, towns, and villages of Iran more easily than recent years which characterizes intensive restrictions in this regard. Over recent years, the Iranian government has steadily held a conservative view on where Afghan migrants including Amayesh card holders must live and work.⁹⁶⁵ Now, the question which may arise is that:

960 Karimi Moughari, *the Effects of Afghan Immigrants on the Iranian Labour Market*, p.63.

961 Before this period and within the years of 1992 & 1993, a great number of Afghan migrants repatriated to their county as the Soviet army quitted the Afghanistan forever. This repatriation process was facilitated by a tripartite agreement between Iran, Afghanistan and UNHCR. See Karimi Moughari, Z., *the Effects of Afghan Immigrants on the Iranian Labour Market*, (2007), p.63.

962 For instance, in 2001 the average salary in the Afghanistan reduced by % 4-49 in comparison with previous year. The salary of Herat's governor was US \$ 15 (4000 Rials) per month while ordinary Afghan labourers in Iran gained more than US \$ 100 per month. See Karimi Moughari, Z., *the Effects of Afghan Immigrants on the Iranian Labour Market*, (2007), p.64.

963 Karimi Moughari, *the Effects of Afghan Immigrants on the Iranian Labour Market*, p.64.

964 Karimi Moughari, *the Effects of Afghan Immigrants on the Iranian Labour Market*, p.64.

965 Barr, H. and Sanei, F., *Unwelcomed Guests, Iran's Violation of Afghan Refugees and Migrant Rights*, p.70.

Which Afghan refugees can apply for work permit in Iran? What are the most common problems in this regard?

Before answering this question, it is essential to mention that undocumented Afghans are not permitted to legally work in Iran so that they predominantly are active in the informal economy with government knowledge.⁹⁶⁶ However, as this study only explores socio-economic integration of recognized refugees and not undocumented or other ones, this part will focus on Afghan refugees.

Only registered refugees can apply for a work permit in Iran, although there is no guarantee that a work permit will be given to them. The process of delivering any type of permit including temporary work permit to Afghan refugees has been unpredictable and changes unpredictably. Indeed, such common regulatory changes toward the inclusion of Afghan refugees in Iranian economy makes sometimes Afghan refugees unable to apply even for a temporary work permit. However, receiving work permit can require an expensive application fee which can prevent poor Afghan families from requesting it. This policy can sometimes be used as an impediment to discourage Afghan refugees from applying for a work permit. For example, in 2008 the Ministry of Labour issued around 300,000 temporary work permits to male Afghans aged 16-60.⁹⁶⁷

Notably, the cost for a temporary work permit for registered Afghan refugees was around US \$70 while in the following year it sharply soared to nearly US \$500 (and US \$330 for renewal).⁹⁶⁸ Given that, between 2008 and 2010 Iran pursued softer policy toward Afghan refugees and paused their repatriation to Afghanistan. Therefore, one of the reasons for raising the cost of work permits could be the friendlier policy and the resulting growth of work permit applications by Afghan refugees. Some Afghan refugees were reluctant to apply for a temporary work permit which is expensive and valid for a short period.⁹⁶⁹ Constant policy changes seriously restricts Afghan refugees' right to work in Iran and increases their insecurity and vulnerability.⁹⁷⁰ Another crucial question is:

966 Zetter, Protection for Forcibly Displaced Afghan Populations in Pakistan and Iran, p.22.

967 Garrote-Sanchez, D., *International Labour Mobility of Nationals: Experience and Evidence for Afghanistan at Macro Level*, (2017), p.7.

968 Barr, H. and Sanei, F., Unwelcomed Guests, Iran's Violation of Afghan Refugees and Migrant Rights, p.70.

969 Garrote-Sanchez, *International Labour Mobility of Nationals: Experience and Evidence for Afghanistan at Macro Level*, p.7.

970 Zetter, Protection for Forcibly Displaced Afghan Populations in Pakistan and Iran, p.22.

Could Afghan refugees enter any job of interest without any restrictions?

Before replying to this question, it must be noticed that around 97% of Afghan immigrants live in the urban and semi-urban areas whereas the rest of 3% are settled in 20 refugee camps where are managed by UNHCR and BAFIA.⁹⁷¹ However, those Afghan refugees who are out of refugee camps must work to handle their life costs in Iran. Notably, there is a set of restrictions on employment of Afghan refugees in Iran which force them to work in certain jobs.⁹⁷² Consequently, many Afghan refugees must work in hard, dirty, and low-paid occupations.

Restriction of Afghan refugees to the unskilled professions results from reservations made by Iran regarding some Articles of the 1951 Geneva Convention and its 1967 protocol such as Art. 17 regarding wage-earning employment. In other words, since there is not a formal labour migration mechanism in Iran, Afghan workers who come to Iran in search of better job opportunities are considered as irregular migrants. This group of undocumented Afghans who are prohibited to work in the formal market will be ultimately be pushed to work in menial and low skilled jobs in the informal sector.⁹⁷³ Therefore, Afghan workers are suffering from characteristics of the Iranian legal system.⁹⁷⁴

Moreover, they normally live in the workplaces or tiny rooms with basic facilities where they do not have to pay high rents. And due to constant fear of being deported from Iran, they prefer to work and live in remote areas, not close to the centres of cities.⁹⁷⁵

Interestingly, in Iran Afghans are favoured for a group of hard manual works rather than Iranian workers. For example, unskilled Afghan workers occupy a great proportion of demanded workers for a stock of jobs such as construction-related work, well-digging, and custodianship. In addition, recruiting Afghan illegal labourers is common in both private and public sectors.⁹⁷⁶ For example, during the reconstruction period (1989-2002) in Iran a great number of Afghan workers who lacked required temporary work permit were used by some governmental organizations such as municipalities and private contractors for public projects like gas line pipes, sewage system construction, subway, etc.⁹⁷⁷ As explained above, this widespread

971 UNHCR, *Refugees in Iran*, (2020), <https://www.unhcr.org/ir/refugees-in-iran/>.

972 These work sectors will be discussed within the following parts.

973 Wickramasekara, P., Sehgal, J., Mehran, F., Noroozi, L. and Eisazedah, S., *Afghan Households and Workers in the Islamic Republic of Iran: Profile and Impact*, (2009), p.39.

974 This issue will be highlighted further within the next parts.

975 Karimi Moughari, the Effects of Afghan Immigrants on the Iranian Labour Market, p.64.

976 Karimi Moughari, the Effects of Afghan Immigrants on the Iranian Labour Market, p.65.

977 Karimi Moughari, the Effects of Afghan Immigrants on the Iranian Labour Market, p.66.

recruitment of Afghan refugees was mainly based on their physical ability and low wage expectations in comparison with Iranian workers. Now a question may be raised that:

Have minimum wage rates in Iran's labour market been affected by Afghan workers?

Generally speaking, the native workers could not compete with Afghan labourers in those fields which Afghan refugees present a high proportion of workers such as construction-associated works.⁹⁷⁸ As a result, the wage rates in these areas for a long time remained low and employers benefited so much from that, while workers in other large industries experienced higher payments over the same time.⁹⁷⁹ Nevertheless, while Afghan unskilled workers receive a payment which is 8-10 times more than what they would have obtained in Afghanistan, they still could not benefit from the labour laws and regulations on insurance and other social security items.⁹⁸⁰ As a consequence, this situation is very profitable for Iranian employers who enjoy cheap Afghan workers who do not expect any form of social security.

On the other hand, for long term Iranian construction workers were really annoyed by this circumstance as their wage rate was decreasing continually. They found Afghan workers as main responsible for such payment reductions in the construction field and other sectors which Afghans are used highly. This wage situation is partly due to Iranian workers being unable to arrange demonstrations against employers as trade unions are not active in Iran.⁹⁸¹

Due to the Afghan workforce in Iran's construction labour market, there was a negative effect on the prevailing wage rate. The large numbers of Afghan workers in occupations like construction has adversely affected both the pace and amount of wage growth. For approximately 15 years, the wage rate in the construction sector remained lower than the formal minimum wage and even in 2004 when it exceeded the official minimum wage, the rate was far below payments in the large industries. The next question is:

978 According to a survey by UNHCR and International Labour Organization (ILO) in 2008 around 75% of interviewed Afghans were active in construction sector mainly as daily workers. See Zetter, R. and Ruaudel, H., *Refugees' Right to Work and Access to Labour Markets – An Assessment*, (2016), p.117. See also Karimi Moughari, Z., *the Effects of Afghan Immigrants on the Iranian Labour Market*, (2007), p.66.

979 Finally, in 2004 after a period of 15 years the income of construction labourers passed the formal minimum wage. The reason was related to repatriation of Afghan workers to their home country plus increasing construction activities in Iran. However, in general the difference between average wage of the workers in the construction sector with other labourers in the large industries has been constantly increased. See Karimi Moughari, Z., *the Effects of Afghan Immigrants on the Iranian Labour Market*, (2007), p.66.

980 Karimi Moughari, the Effects of Afghan Immigrants on the Iranian Labour Market, p.66.

981 Karimi Moughari, the Effects of Afghan Immigrants on the Iranian Labour Market, p.66.

Do Afghan refugee workers intensify the unemployment rate in the Iranian labour market?

On the one side, there is normally a high rate of unemployment and underemployment in Iran, and there are a large number of unskilled Iranian workers. Moreover, many Afghan labourers come to Iran to find a high-paying job and good living conditions. Pursuant to the statistics, Afghan workers occupy a relatively high proportion in the Iranian labour market. For example, while in 2001 there were less than 4% Afghan refugees in Iran, they had a workforce contribution of nearly 6% to the Iran's economy.⁹⁸²

As previously stated, currently this number has reached 10% while the total population (both registered and unregistered Afghans) is approximately less than 5%.⁹⁸³ There are many reasons for this high participation of Afghan workers in the Iran's labour market. First, prior to the 2015 Supreme Leader's mandate for education, a wide range of Afghan children were not allowed to attend the school and had to work in the informal sector. In addition, those Afghan students who were studying in the morning within school also were normally obliged to work in the afternoon. This led to a high number of Afghan youth in the labour market of Iran.⁹⁸⁴ Currently, due to the economic crisis in Iran from the re-imposed US sanctions in August 2018, there are still large numbers of Afghan students who must work alongside their education.

On the other hand, a lot of Afghan girls and women help their fathers and husbands in different workplaces such as dairy farms, traditional brick making factories, carpet firms and so on.

As UN DESA (2015) and UNHCR (2017) report, nearly 1.4 million Afghans are working in Iran either lawfully or unlawfully. This figure is nearly identical to the 1.5-2 million from authorities in Iran. This amount makes up by two-thirds (60%) of all Afghan people who have crossed the Iranian borders in the sake of finding better job prospects.⁹⁸⁵ Consequently, the above factors comprise the high rate of Afghan workers in both formal and informal labour markets of Iran. However, while Afghan workers present a lower unemployment rates

982 Karimi Moughari, *the Effects of Afghan Immigrants on the Iranian Labour Market*, p.69.

983 In 2010 the Iranian government estimated that nearly 2 million Afghans either documented or undocumented were working in both formal and informal labour markets. However, in accordance with the official statistics in 2017 around 207,000 Afghan refugees have been legally working in the Iranian labour market. See Zetter, R. and Ruaudel, H., *Refugees' Right to Work and Access to Labour Markets – An Assessment*, (2016), p.117. See also Afghan Voice Agency (AVA), *207,000 Afghan Refugees Are Working Legally in Iran*, (2018), <https://www.avapress.com/fa/interview/161708/207>.

984 Karimi Moughari, *the Effects of Afghan Immigrants on the Iranian Labour Market*, p.69.

985 Garrote-Sanchez, *International Labour Mobility of Nationals: Experience and Evidence for Afghanistan at Macro Level*, p.8.

compared to Iranian workforce, there is not a clear connection between their migration to Iran and existing high unemployment rate in Iran.

Indeed, the high rate of unemployed people in Iran in comparison with unemployed Afghans can have different reasons. For example, Iranians, on average, spend more years in school than Afghans. Thus, they enter the labour market at a later age. On the other hand, whereas Afghan people must often start working very young, even during their childhood, however, Iranians particularly graduate youth are able to wait to find better jobs in the formal market such as public organizations. Afghan immigrants must cope with different economic problems thereby they may be obliged to accept any kind of job in the informal and other sectors as only survival alternative.⁹⁸⁶

Around 80% of Afghan are active in three sectors namely construction, manufacturing and trade and commerce (manual work) and less than 10% work in farming-related jobs. While Iranians only present a proportion of 26% in these three sectors (construction, manufacturing and trade and commerce) that are private sector.

Indeed, most of Iranian people prefer to work in the service sector which requires fewer manual works, has higher salaries, and is offered by the public sector. This argument is certified by the 2008 UNHCR and ILO (International Labour Organization) assessment which demonstrated that Afghan refugees do not have a considerable impact on Iranian workers' unemployment rates because most Afghan refugees are working in subsectors which are not attracting for Iranian labourers.⁹⁸⁷ Therefore, the presence of Afghan workers in the labour market cannot have great implications on Iran's high unemployment rate. The other crucial question is:

Why has the number of irregular Afghan workers been increasing in Iran over the past years?

Presently, the proportion of Afghan labour migrants to refugees has changed. For example, while in 1990s more than 90% of Afghans in Iran were refugees but currently it has been reduced to roughly 40%.⁹⁸⁸ However, whereas the number of Afghan workers in Iran has been

986 Wickramasekara et al., *Afghan Households and Workers in the Islamic Republic of Iran: Profile and Impact*, p. 41.

987 Zetter and Ruaudel, *Refugees' Right to Work and Access to Labour Markets – An Assessment*, p.116.

988 The proportion of Afghan workers has been also varied globally in the recent years as in 2017 around 75% of Afghan migrants in OECD countries were labour immigrants while they represented 100% in Saudi Arabia. See Garrote-Sanchez, D., *International Labour Mobility of Nationals: Experience and Evidence for Afghanistan at Macro Level*, (2017), p.9.

increased, still there is no legal mechanism by which foreign immigrants can work temporarily.⁹⁸⁹ Hence, those Afghan immigrants who come to Iran as foreign workers and are not refugees are labelled as irregular migrants. This group of Afghans live illegally in Iran in a permanent fear of being arrested and deported by Iranian police to Afghanistan. They have no access to social security items such as Iranian Universal Health Insurance Programme (UHIP). When medical problems occur, they must go to the private hospitals on their own personal funds unless there is a life-threatening problem which in this case, they can be treated in public health centres.

Nevertheless, most of these Afghan workers are young adult men who come to Iran for a quite short term. Their main motive for coming to Iran is saving money to support their families when they return to Afghanistan. On average they work between 3.5 and 5 years as unskilled manual labourers in informal sectors. Once they have earned enough, they leave Iran.⁹⁹⁰ Therefore, this temporary stay plan often makes these working group reluctant to regularizing their stay in Iran. However, since 2010 the Government of Iran introduced a scheme to regularize the status of unregistered Afghan migrants.

This policy asks male undocumented Afghans who are alone in Iran to return to their country to apply for visa. In practice, only a very low number of undocumented Afghans respect this policy. One of the major reasons for this disobedient relates to the high costs of process of visa application. In other words, applying for Iranian visa requires Afghans firstly to obtain an Afghan passport and respect other lengthy procedures which are both time-consuming and expensive. Thus, many of Afghan workers prefer to pay half of the visa process costs to smugglers who will take them to Iran.⁹⁹¹

Further to be an expensive and very perilous journey, it is probable that Afghan workers can be abused by the smugglers sexually and financially as well. In other words, unaccompanied women and children encounter various risks on their way to Iran by human traffickers such as sexual violence and rape.

Additionally, many of young single men who choose to come to Iran through illegal ways frequently have not enough financial means at their hands, hence they compromised with traffickers to gradually pay money back once they start to work in Iran. Legally speaking, this

989 Garrote-Sanchez, *International Labour Mobility of Nationals: Experience and Evidence for Afghanistan at Macro Level*, p.10.

990 Garrote-Sanchez, *International Labour Mobility of Nationals: Experience and Evidence for Afghanistan at Macro Level*, p.10.

991 Garrote-Sanchez, *International Labour Mobility of Nationals: Experience and Evidence for Afghanistan at Macro Level*, p.11.

is a new type of slavery which has led to creation of a continually active smuggling network and migration industry between cities such as Herat and Mashhad.⁹⁹² The human traffickers charge their clients different prices and, in some cases, it can be as much as US \$1000.⁹⁹³

However, this illegal entry of Afghan workers combined with lack of a proper legal framework in Iran for temporary work of foreign workers has left a great number of Afghan labourers without any legal status in Iran.⁹⁹⁴ One of the strategies of the Iranian government to combat the rapid growth of irregular migration and smuggling services in the region is trying to legalize entry of Afghan migrants and increasing its capacity to issue additional work permits to undocumented Afghan workers. The protection of national security and public order against smuggling activities and entry of irregular Afghan migrants should lead the Iranian regime to take such precautionary actions.⁹⁹⁵ Now, an important question is:

In which sectors and professions can Afghans legally work?

In line with the Iranian Labour Code only foreign workers who hold work permit and residence permit can work in a number of occupations designated by the Ministry of Cooperatives, Labour and Social Welfare. These jobs are: brickwork and plastering (plaster and lime making, brick making), construction jobs (concrete block making and mosaic making, stonemasonry and masonry, road construction and mining), agricultural works (agricultural jobs, poultry and ranching jobs, slaughterhouse jobs, leather crafting), and other occupations including garbage disposal worker, chemical recycling worker, loading and unloading worker, furnace foundry worker, henna factory worker, compost production worker, glue factory worker, fertilizer factory worker, livestock and poultry feed producer, sewage cleaning and drainage worker, welder, shoe repairer, tailor, weaver, and commercial workers.

In addition to these jobs, there is a number of other works which can be done only in Tehran province that includes: demolishing buildings worker, mineral transportation worker, gravel and sand worker, stable and horse keeping worker, animal husbandry and animal husbandry worker, leather chemical applier, gravedigger, sewage pipe worker, waste recycling worker, coal miner, scaffolding transportation worker, waste mill worker, resin applier, worker for transporting metal and plastic scrap, garbage and waste separator, crystal creation worker,

992 Dimitriadi, A., *Migration from Afghanistan to Third Countries and Greece*, (2013), p.11.

993 Christensen, *Guests or Trash, Iran's Precarious Policies toward the Afghan Refugees in the Wake of Sanctions and Regional Wars*, p.21.

994 As previously demonstrated between 1.4 and 2 million Afghans are unregistered in Iran.

995 Abraham, R., *The Afghanistan's Refugee Crisis: Implications for Pakistan and Iran*, p.14.

press-tool worker, facility worker, gardener, mechanic worker, battery production worker and rebar worker.

It is also essential to highlight that, those refugees who hold a university degree or have a specific skill or expertise can apply for other works which perfectly fit their background. For example, doctors, engineers, professors, journalists, or people with technical and vocational skills can work in their fields even if those are not among above-mentioned job categories.⁹⁹⁶

Notably, Afghan refugee workers prefer to settle in the big cities to increase their chance for finding jobs with a sound salary. For example, around 70% of Afghan workers live in 5 Iranian provinces including Tehran, Esfahan, Khorasan, Fars as well as Sistan and Baluchestan.⁹⁹⁷ These 5 provinces produce more than 67% of Iran's GDP, hence they are appealing locations for Afghan workers so that they can have better access to job opportunities.⁹⁹⁸

Albeit many refugees are working legally within the formal sector in the authorized jobs mentioned above, there are also a wide range of Afghan workers who have illegally moved to Iran and are active in the informal sector. While the Government of Iran has banned use of undocumented migrants in both governmental and non-governmental organizations, many private employers continue to use Afghan workers.⁹⁹⁹ Again, low-wage expectations, high performance and no social protection requirements entice Iranian employers to prioritize Afghan labourers over native ones.

However, recruitment of Afghan workers who lack required residence and work permits results in harsh punishments for offenders including imprisonment and high fines. According to Iranian law those employers who break the law can be imprisoned up to 91-180 days¹⁰⁰⁰ for each single day of work and a financial punishment by five times the daily salary of an undocumented worker per day.¹⁰⁰¹ The penalty will be doubled if the employer insists to violate the law repeatedly.¹⁰⁰² The next question is:

996 Tasnim News Agency, *There Are no Job Restrictions for Foreign Citizens' Employment Cards / Description of the Process of Business License Issuance*, (2016), <https://www.tasnimnews.com/fa/news/1395/09/23/1266675/>.

997 Garrote-Sanchez, *International Labour Mobility of Nationals: Experience and Evidence for Afghanistan at Macro Level*, p.69.

998 Garrote-Sanchez, *International Labour Mobility of Nationals: Experience and Evidence for Afghanistan at Macro Level*, p.69.

999 Karimi Moughari, *the Effects of Afghan Immigrants on the Iranian Labour Market*, p.68.

1000 The period of imprisonment is based on the situation and means of the law breakers as well as the severity of offence. See Nadi, E., Sadeghi, S.H. and Ravandeh, H., *Examining the Current Legal Status of Afghan Refugees in Iran*, (2017), p.45.

1001 The financial penalty was around 1.540,000 Rial per day (US \$45) in 2017.

1002 Art. 181 of the Labour Code: "Any employer who employs a foreign citizen without a work permit or whose work permit has expired, or who employs a foreign citizen for work other than that specified in his work permit, or who fails to report the termination of an employment relationship with a foreign citizen to the Ministry of

What is the most common way which Afghan refugees use to find jobs in Iran?

According to an assessment by UNHCR and ILO in 2008, Afghan refugees frequently rely on their network of personal contacts and other Afghans who live already in Iran for finding jobs in Iranian labour market.¹⁰⁰³

A wide range of Afghan refugees who speak Persian (Farsi) well prefer to live in urban areas and in the immediate vicinity of living place of their relatives and friends. This way helps newcomers who have never come to Iran before to get initial information about Iran and its labour market especially during the first arrival days from their experienced friends and compatriots.¹⁰⁰⁴ However, there are also other ways which registered refugees can seek for jobs in Iran such as applying through NGOs and institutions that are dealing with refugees' employment problems.¹⁰⁰⁵ Another important question is:

How are working conditions for Afghan refugees in Iran?

To reply to this question accurately, each working condition is considered separately including contractual agreements, wages, working hours and insurance coverage.

Contractual agreements: Generally speaking, in accordance with an official report in 2017 around 207,000 Afghan refugees work in Iran legally who are in possession of temporary work permits.¹⁰⁰⁶ Furthermore, there are an extra 60,000 Afghan passport holders with a work visa which are obliged also to renew their permissions regularly as normal Afghan refugees (Amayesh card holders) to be able to work in Iran legally. These Afghan refugees who live in Iran legally and have valid work permit are normally employed in sectors and workplaces that provide them with contract and insurance in line with the labour law regulations.

However, there is also a huge number of Afghan refugees who are active in the Iranian labour market in illegal ways. These undocumented Afghan workers either have not applied for a work

Labour and Social Affairs shall, with due regard to his situation and means and to the degree of the offence, be subject to a term of imprisonment ranging from 91 to 180 days.”

1003 Zetter and Ruaudel, Refugees' Right to Work and Access to Labour Markets – An Assessment, p.117.

1004 Zetter and Ruaudel, Refugees' Right to Work and Access to Labour Markets – An Assessment, p.117.

1005 In comparison with some western states, civil society, and NGOs in Iran due to economic pressures are not able to provide too much support to unemployed refugees who are looking for jobs in the Iranian labour market.

1006 Voice Agency (AVA), 207,000 Afghan Refugees Are Working Legally in Iran, <https://www.avapress.com/fa/interview/161708/207>.

permit, or have not renewed their previous work permits. What is common among this group of Afghan refugees is that they are usually pay-day workers while they mostly work full time. Under such employment circumstances lack of contractual agreement between employers and workers does not seem to be a big problem. According to a survey in 2009 on a group of Afghan refugees only less than 3% had written contract while 77% of employees had made an oral contract and the remaining 20% had not spoken about any kind of work contract with their boss at all.¹⁰⁰⁷

This deprivation of such basic right by Iranian employers is resulted from existing gaps within Iranian labour law. The 1990 Labour Code only protects those Afghan refugees who possess a temporary work permit or have an Iranian work visa. Hence, those without such work documents are not its subject and it takes a silence position toward this sort of refugees. While employers are warned to be fined in case of employing such Afghan workers, some people still do so as they do not have to contract and insure them plus these refugees ask for much lower payments than work permit holders because of their illegal circumstances. This may conflict with Iran's international commitments and responsibilities such as Art. 7 of the ICESCR to which Iran is its signatory.¹⁰⁰⁸

Wages: In general, those Afghan refugees who work legally in Iran and hold required work documents must be treated in accordance with the 1990 Labour Code as Iranian workers. Therefore, they have a same right as native workers to complain before relevant national courts in case of violation of their financial rights by an Iranian employer. Nevertheless, it still can be seen that there is a clear difference between wages of Iranian and Afghan workers. "Afghan workers are often paid less than the minimum wage, or are faced with non-payment of wages", according to the UN Economic and Social Council in 2013.¹⁰⁰⁹ Accordingly, the CESCR within its Concluding Observations on the Second Periodic Report of the Islamic Republic of Iran (2013) advises Iran to take required steps to ensure that Afghan workers are not paid below the national minimum wage by their Iranian employers. In fact, such discriminatory underpayment is in clear contrast with Art. 7 (a) (ii) which guarantees the right of all workers (including

1007 Wickramasekara et al., *Afghan Households and Workers in the Islamic Republic of Iran: Profile and Impact*, p.47.

1008 Art.7: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work"

1009 Zetter and Ruadel, *Refugees' Right to Work and Access to Labour Markets – An Assessment*, p.114.

refugees) to a decent living for themselves and their families in accordance with the provisions of the ICESCR.¹⁰¹⁰

Indeed, this discrimination against Afghan refugees in respect of their remuneration frequently happens for Afghans who lack work permits and work in informal sectors.¹⁰¹¹ There is a variety of factors which might be influential in such payment distinctions. Some of these intervening elements are: firstly, educational qualifications (the level of education and the number of years of education) have a positive effect on wage rates of Afghan refugees. It is not surprising that Iranian workers frequently have higher educational attainments than Afghan workers.

Secondly, work experience (either total or current) is a major determinant in wage rates conditions. The implication of total work experience on Afghan wages is not as much as current work experience. However, Afghans who have longer current experiences gain higher payments in the Iranian labour market. Lastly, the general high unemployment level in Iran obliges Afghan refugees to accept difficult working conditions including low wages. To survive and maintain their lives in Iran, they sometimes agree to tougher working conditions for smaller amounts of money than Iranian workers would accept.

Working hours: Afghan refugees work as much as Iranian employees and, sometimes more than them. According to some case studies, average between 12 and 18 hours of work per day in Iran.¹⁰¹² A research on a group of Afghan refugees in 2009 reveals that the overall weekly work for Afghan refugees is nearly 49 hours in which male workers have a higher contribution than female Afghans (51.3 and 30 hours respectively). However, both Iranian and Afghan male employees maintain equal weekly work hours while Iranian women spend roughly 38.9 hours at their workplaces per week which indicates a higher amount than Afghan women with an average of 30 hours per week. This difference may indicate that a high proportion of Iranian female employees work in the public sector.¹⁰¹³

1010 It also recommends Iran progressively raise the national minimum wage to a level which allows all workers and their families to enjoy a decent living. See CESCR, *Concluding Observations on the Second Periodic Report of the Islamic Republic of Iran, Adopted by the Committee at its Fiftieth Session (29 April-17 May 2013)*, (2013), p.4.

1011 However, this impairs Iran's responsibility toward international provisions like Art.7(a) of the ICESCR which states: "Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work. (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant."

1012 Wickramasekara et al., *Afghan Households and Workers in the Islamic Republic of Iran: Profile and Impact*, p.47.

1013 Wickramasekara et al., *Afghan Households and Workers in the Islamic Republic of Iran: Profile and Impact*, p.43.

Despite, the maximum daily working hours in Iran is 8 hours and while Iranian Labour Code highlights that employees must not work more than 44 hours in a week,¹⁰¹⁴ some Iranian employers do not fully comply with such working hours restriction for their Afghan employees. One of the protective tools which can oblige employers to stick to the legal working hours limitations regarding their Afghan workers is having a written employment contract. In other words, Iranian Labour Code requires employers to insert¹⁰¹⁵ the precise number of working hours which their employees would spend in their workplace within the contract document. Again, working without a formal contract has come into vogue for many Afghan refugees who are unfortunately not covered by the Iranian Labour Code.

Insurance coverage: As a matter of fact, until 4 years ago a wide range of Afghan refugees who were working lawfully in Iran did not enjoy any kind of work-associated insurance. For example, a research in 2009 certified that Iranian employers did not provide their Afghan employees (around 99%) with any sort of occupational insurance (accident, unemployment, and retirement). Furthermore, it demonstrated that 95% of sampled Afghans did not benefit from paid annual or sick leave.¹⁰¹⁶

However, thanks to the new Iran's policy in the last 4 years all refugees who want to work in Iran should be insured by their employers. This new approach of the Government of Iran is in line with Art. 148 of the 1990 Labour Code¹⁰¹⁷ as well as Art. 5 of the 1975 Social Security Law of Iran.¹⁰¹⁸ Surprisingly, as previously discussed still some Iranian entrepreneurs and employers are reluctant to provide insurance to their Afghan workforce. Therefore, they are more inclined to recruit Afghans than native employees.

1014 Art. 51: "For the purposes of this Code, hours of work means the period during which a worker is at the disposal of his employer for the purpose of performing work, save as otherwise specified in this Code. A worker's hours of work shall not exceed eight hours per day. (Note 1). Subject to the agreement of the workers concerned or of their legal representatives, an employer may reduce hours of work on some days of the week and increase them on other days of the week, provided that they do not exceed 44 hours in any week."

1015 Brown, B., Ford, R. and Khoja, S., *Employment Arrangements in the Islamic Republic of Iran*, (2017), <https://www.mondaq.com/employee-rights-labour-relations/589242/employment-arrangements-in-the-islamic-republic-of-iran>.

1016 Wickramasekara et al., *Afghan households and workers in the Islamic Republic of Iran: Profile and impact*, p.47.

1017 Art. 148: "Employers whose workplaces are subject to this Code shall insure their workers under the Social Security Act."

1018 Art. 5: "Foreign nationals who are employed in Iran in accordance with the pertinent labour laws and regulations are subject to the regulations of this law, except in the cases where: (A). In case of existence of protocols and bilateral and multilateral treaties between Iran and other countries, measures will be taken according to the treaties. (B). In cases that foreign national is confirmed by the officials of their own countries that during their stay in Iran have been totally or partially insured in their countries or third country for the benefits stipulated in Art. 3 of this law, are exempted from entitlement for the same benefits of this law."

Furthermore, since 2015 Iran with support from UNHCR has generously included all registered refugees in its Universal Public Health Insurance Programme (UPHI) as well. This universal scheme covers a lot of medical services such as hospital treatment, out-patient x-rays, and medicine costs. For instance, in 2017 approximately 110,000 of the most vulnerable refugees and their families including those with critical health conditions such as haemophilia and kidney problems were financially supported by this programme. Moreover, unregistered refugees might also apply for UPHI if they pay the premium costs on their own personal budget.¹⁰¹⁹

This Iran's trailblazing health insurance scheme is in line with the 2018 Global Compact on Refugees¹⁰²⁰ as well as the 2016 New York Declaration for Refugees and Migrants and its new approaches in terms of refugees' health protection.¹⁰²¹ It also follows Iran's commitments under Art. 9 of the ICESCR¹⁰²² and relevant recommendations within the 2013 Concluding Observations on the Second Periodic Report of the Islamic Republic of Iran highlighted by the CESCR. In fact, the Committee suggests that the Iranian government make efforts to provide all individuals and families (including refugees) with universal access to health insurance offering the minimum essential benefits including health facilities, goods, and services without discrimination of any kind, procurement of essential medicines, provision of reproductive, maternal (prenatal and post-natal) as well as child health care, and protection against infectious disease.¹⁰²³

1019 UNHCR, *Trailblazing Health Scheme Benefits Refugees in Iran*, (2018), <https://www.unhcr.org/news/stories/2018/5/5ad616a44/trailblazing-health-scheme-benefits-refugees-iran.htm>.

1020 Art. 73: "Depending on the context, this could include resources and expertise to build and equip health facilities or strengthen services, including through capacity development and training opportunities for refugees and members of host communities who are or could be engaged as health care workers in line with national laws and policies (including with respect to mental health and psychosocial care). Disease prevention, immunization services, and health promotion activities, including participation in physical activity and sport, are encouraged; as are pledges to facilitate affordable and equitable access to adequate quantities of medicines, medical supplies, vaccines, diagnostics, and preventive commodities." See UNHCR, *Trailblazing Health Scheme Benefits Refugees in Iran*, (2018), <https://www.unhcr.org/news/stories/2018/5/5ad616a44/trailblazing-health-scheme-benefits-refugees-iran.htm>.

1021 Art. 83: "We will work to ensure that the basic health needs of refugee communities are met, and that women and girls have access to essential health-care services. We commit to providing host countries with support in this regard. We will also develop national strategies for the protection of refugees within the framework of national social protection systems, as appropriate." See also UNHCR, *Trailblazing Health Scheme Benefits Refugees in Iran*, (2018), <https://www.unhcr.org/news/stories/2018/5/5ad616a44/trailblazing-health-scheme-benefits-refugees-iran.htm>.

1022 Art. 9: "The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance."

1023 CESCR, *Concluding Observations on the Second Periodic Report of the Islamic Republic of Iran*, Adopted by the Committee at its Fiftieth Session (29 April-17 May 2013), p.4.

4.4.1 Legal Framework on Employment of Afghan Refugees in Iran

In this part, we will discuss the Iranian legal framework of legislation and regulations on employment of Afghan refugees. The main refugee instrument in Iran is the “Regulations of 1963 relating to Refugees” known as the Refugee By-Law. Further, a set of regulations and provisions including the 1990 Labour Code and the 1975 Social Security Law are relevant. Article 7.2 of the 1963 Refugee By-Law states that:

“Upon approval of the application, a refugee shall benefit from the rights accorded to Iranian nationals in the following areas: 1. use of medical, cultural and social services; 2. employment in the fields authorized for foreign nationals and those fields deemed appropriate by the Permanent Committee.”

Art. 7 grants same rights to Afghan refugees as Iranian nationals in course of employment, however, they can only be employed in the fields which are authorized by the Iranian government or are considered appropriate by the “Permanent Committee for Refugees” within the Ministry of Interior. The permitted sectors and occupations were described previously.

There are two reasons behind this limitation on fields of work and occupations in Iran. Firstly, every country has specific policies and frameworks to improve its economy and labour market. Iran is a young country, and its youth unemployment rate is very high. In other words, every year a great number of Iranian students complete their university education and compete for existing jobs in the labour market. Therefore, the use of the Iranian workforce is preferred, particularly for specialized jobs while Afghan refugees are frequently used in those manual jobs which do not attract Iranians. This argument is explained by the meaning of Art. 121 of the 1990 Labour Code which stipulates:

“The Ministry of Labour and Social Affairs shall issue a visa authorizing the bearer to work, together with a work permit, provided that:

- (a) According to the information available to the Ministry of Labour and Social Affairs, there are no qualified Iranian citizens with similar specialization who are ready to perform the work in question.*
- (b) The foreign citizen possesses sufficient skills and specialization for the job in question.*
- (c) The expertise of the foreign citizen is used to train Iranians with a view to the eventual substitution of the foreign citizen by a trained Iranian.”*

As it can be understood from paragraph (a) Afghans can only be granted visa and work permit if there are no Iranians who have the similar expertise for the demanded job. Furthermore, according to paragraph (c) there is a clear intention toward temporary employment of foreign employees in Iran. In other words, as this paragraph highlights foreign workers who are employed in Iran not only should do their duties, but they also must use their expertise to train native workers so that they are eventually substituted with them. However, this provision is challenging as it puts the foreigners' job at risk so that their contract can be terminated with a simple claim that there are sufficient trained Iranians to do the work.

Importantly, many Afghan refugees in Iran hold a low level of education compared to Iranians. To be sure, a great number of Afghan refugees who live in Iran lack university degrees so that they cannot be used in the fields which require specific expertise. Consequently, a wide range of Afghan refugees are categorized as unprofessional workers who are assigned very ordinary and simple jobs such as farming or construction-related works.

The second reason attributes to the country's internal and political policies which emphasize measures to assure social security and public order. As a matter of fact, Iran shares a wide border of 921 km with Afghanistan which allows the massive immigration of Afghan people of working age from Afghanistan to Iran every year.

Apart from organized crimes, these annual immigration flows could damage the social security and public order in the destination country. For example, many of these Afghan refugees due to the unemployment can be absorbed to the illegal activities such as drug trafficking or illicit trade between two countries. Therefore, to prevent such a chaotic situation in the country the Iranian government has created a list of categorized jobs in which Afghan refugees are permitted to work. Another provision of the Refugee By-Law which speaks about employment of Afghan refugees in Iran is Art. 10 which states:

“Place of work and residence of refugees shall be determined in accordance with the directions given by the Permanent Committee.”

This provision is partly (in respect of place of residence) in contrast with Note. 4 of Art. 7 under the same law which formulates:

“A refugee is free to choose his place of residence subject to observance of the country's laws and security considerations.”

Indeed, according to Art. 10 refugees should comply with the Permanent Committee's directions in terms of choosing their place of residence and work. Art. 7.4 stipulates that refugees are free to choose their place of residence if it follows country's regulations and security measures.

In 2001 Iran adopted a No-Go Areas (NGAs) policy regarding movement of foreign nationals including refugees in Iran, although it was not enforced till 2007. This regulation prohibits Afghan refugees from residing in or traveling to a list of provinces and cities throughout the country due to national security and public order concerns. The NGAs policy is based on Art. 13 of the 1931 Law on the Entry and Residence of Foreign Nationals in Iran¹⁰²⁴ which permits government to restrict foreigners' movements for national security, public interest, or health considerations.¹⁰²⁵

Accordingly, there are 16 provinces entirely and 12 provinces partially (28 out of 31 provinces) where are identified as no-go areas (NGAs) for Afghan refugee which means they cannot be settled in these prohibited areas. Only three provinces including Tehran, Alborz and Qom are designated as completely unrestricted and open provinces where Afghan refugees can freely reside.¹⁰²⁶ Moreover, under NGAs policy, those Afghans who have been already living in the NGAs have to be relocated to the designated cities otherwise they would be arrested and detained or deported to Afghanistan.¹⁰²⁷

Furthermore, Afghan refugees are only allowed to work in their designated provinces or cities of residence. In other words, for traveling to other provinces and cities whether for employment or dwelling, they should apply for a Laissez-Passer (travel permit) prior to their departure. From a socio-economic point of view, such "no-go area" restriction can put Afghan refugee in a very problematic situation both socially and economically. Indeed, it limits refugees to work only within their province or city of residence which can be challenging for those areas where already suffer from limited job opportunities. On the other hand, in addition to being expensive,

1024 Art. 13 "For the protection of security or public interests or for the health considerations the Council of Ministers can make the following decisions that restrict or make condition over the entry, stay, departure and exit of foreigners A- Prevent all or part of border transactions B- Prohibition of temporary or permanent stop in some areas or passing through some areas of Iran C- Adopting special means of monitoring foreigners in extraordinary cases."

1025 Farzin, F. and Jadali, S., *Freedom of Movement of Afghan Refugees in Iran*, (2013), p.86.

1026 Christensen, Guests or Trash, *Iran's Precarious Policies toward the Afghan Refugees in the Wake of Sanctions and Regional Wars*, p.13.

1027 Farzin and Jadali, *Freedom of Movement of Afghan Refugees in Iran*, p.86. See also Christensen, J.B., *Guests or Trash, Iran's Precarious Policies toward the Afghan Refugees in the Wake of Sanctions and Regional Wars*, (2016), p.13.

obtaining a Laissez-Passer (travel permit) for Afghan refugees requires complicated procedure as well.¹⁰²⁸

Relocating to new area and abandoning the city of residence can damage the integration process of a refugee. Given that, NGAs restriction obliges the refugees to break their social, emotional as well as economic ties with their place of residence, and then requires re-integrating and establishing new networks in the new location.¹⁰²⁹ Furthermore, such limitation on the right to freedom of movement can prevent and prohibit refugees from improving their skills in order to find a job in the Iranian labour market.¹⁰³⁰ This prohibition coupled with work restrictions will weaken Afghan refugees' livelihood capacities and intensify their vulnerability and economic marginalization. It endangers their socio-economic integration in the Iranian society and reduces their ability for repatriation and reintegration in Afghanistan if it becomes necessary.¹⁰³¹ Now an important question which may arise is that:

Would Iranian NGAs law contrast to the right of refugees to free movement under international refugee regulations particularly Art. 26 of the 1951 Geneva Convention?

It is important to note that Iran has made a reservation on Art. 26¹⁰³² of the 1951 Geneva Convention which deals with the right of free movement for refugees. Thus, legally it is not mandatory for Iran to fully respect to this provision. However, Art. 26 obliges Contracting States to allow refugees to choose their place of residence and move freely within their territories subject to any regulations applicable for aliens generally in the same circumstances. In other words, refugees should not be less favourably treated than aliens in general who are in the similar circumstances in respect of the right to choose their place of residence and have free movement within the reception country.

Accordingly, when a country like Iran imposes a specific regulation or measure toward mobility of all foreigners regardless of their legal titles (migrant or refugee) which maintains a well-founded concern such as public order or any other justifiable public interest then it will not violate Art. 26 (right to free movement) of the Refugee Convention. Furthermore, although

1028 Farzin and Jadali, Freedom of Movement of Afghan Refugees in Iran, p.85.

1029 Farzin and Jadali, Freedom of Movement of Afghan Refugees in Iran, p.86.

1030 Zetter, Protection for Forcibly Displaced Afghan Populations in Pakistan and Iran, p.23.

1031 Zetter, Protection for Forcibly Displaced Afghan Populations in Pakistan and Iran, p.23.

1032 Art. 26. "Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances."

the Refugee Convention protects the rights of refugees in the reception countries, nevertheless, it must also respect regulations which are enacted in order to maintain public order in the host country.¹⁰³³

There are other relevant regulations in terms of employment of foreign nationals in Iran. In the following these regulations will be discussed.

4.4.1.1 The 1990 Labour Code of the Islamic Republic of Iran

The 1990 Iranian Labour Code contains the whole regulations which deal with rights and obligations of labourers and employers as well as their relationship. Under the Division 3 of fifth Chapter, it generally speaks about employment of foreign citizens in Iran. Art. 120 stipulates that:

“Foreign citizens shall not be employed to work in Iran unless they have an entry visa specifically entitling them to work and have obtained a work permit in accordance with the relevant statutory regulations.

Note. The following foreign citizens are not subject to the provisions of section 120:

(a) Foreign citizens exclusively employed by diplomatic and consular missions, subject to confirmation by the Ministry of Foreign Affairs.

(b) The personnel and experts of the United Nations and its specialized agencies, subject to confirmation by the Ministry of Foreign Affairs.

(c) The correspondents of foreign news agencies and press, subject to reciprocity and confirmation by the Ministry of Culture and Islamic Guidance.”

According to this provision all foreign nationals should primarily apply for an entry visa which allows them to work prior to coming to Iran. Furthermore, they must also apply for a work permit in accordance with the relevant regulations.

However, refugees (Amayesh card holders) who live in Iran and lack Afghan passport might apply for work permit. Though these Afghan refugees have not a valid Afghan passport, the

1033 UNHCR, *Iran Sets Global Precedent by Opening Refugees' Access to Healthcare: UNHCR Rep*, (2017), <https://reliefweb.int/report/iran-islamic-republic/iran-set-global-precedent-opening-refugees-access-healthcare-unhcr>.

Government of Iran allows them to obtain a temporary work permit as an exception.¹⁰³⁴ According to Iranian law all registered male refugees (Amayesh card holders) between 18-63 years old can apply for a temporary work permit¹⁰³⁵ which is issued for a maximum period of 12 months.¹⁰³⁶ However, refugees can only be employed in the job which is specified in their work permits.

Nevertheless, Iran only delivers work permits to those refugees who have employers. In other words, those refugees who are interested in engaging in business activities should follow the same procedure within Art. 120 for foreign citizens in general. Essentially, this group of refugees must firstly forsake their refugee status and return to their country of origin to obtain a passport and then apply for an Iranian visa.¹⁰³⁷

Notably, a group of aliens are exempted from the required procedure within Art. 120 including those employees who are going to work in foreign embassies and consulates and any other employees with diplomatic or consular missions. The employment of these employees should be confirmed by the Ministry of Foreign Affairs. The second group contains those people who are recruited by the United Nations (UN) and its sub-agencies in Iran which their employment should be confirmed by the Ministry of Foreign Affairs as well. The last group are reporters and staff of foreign news agencies depended on reciprocity and confirmation by the Ministry of Culture and Islamic Guidance.

Before speaking about other conditions of employment of foreign citizens in Iran, it is necessary to mention that Iranian Law does not recognize any right for aliens in general (including refugees) to work as a self-employed in Iran. This is clearly highlighted by Art. 81 of the Constitution of Iran that states:

“It is absolutely forbidden to give foreigners the right to establish companies or institutions in commercial, industrial, and agricultural fields, as well as in mines and in the service sector.”

However, since a few years ago the Ministry of Cooperatives, Labour and Social Welfare has started to issue work permits to those Afghans who are businessmen or interested in

1034 Voice Agency (AVA), 207,000 Afghan Refugees are Working Legally in Iran, <https://www.avapress.com/fa/interview/161708/207>.

1035 Zetter and Ruadel, Refugees’ Right to Work and Access to Labour Markets – An Assessment, p.113. See also UNHCR, *An Overview of How the Global Compact on Refugees is Being Turned into Action in the Islamic Republic of Iran*, (2021), <https://globalcompactrefugees.org/article/iran>.

1036 Art. 124 “In accordance with the provisions of this Code, a work permit shall be issued or extended or renewed for a maximum period of one year.”

1037 Zetter and Ruadel, Refugees’ Right to Work and Access to Labour Markets – An Assessment, p.113.

establishing their own companies or institutions but only in authorized fields.¹⁰³⁸ Again, as above, they primarily have to change their status from Amayesh card holders to Afghan passport holders (losing their refugee status).¹⁰³⁹ Then, they should submit their requests with full details to the Ministry of Cooperatives, Labour and Social Welfare and wait for the Ministry's result which could be positive or negative.

While these Afghan businessmen can no longer be considered refugees, this new approach could be identified as a step toward reaching the SSAR goal to change existing policies that impede the issuance of work permits to those Afghan refugees who are not hired by employers. Moreover, this new approach enables Iran to fulfil its commitment under Art. 2.2 of the ICESCR.

Division 3 of Chapter 5 of the 1990 Labour Code speaks about foreign citizens in general. The only provision which refers to refugees is paragraph (c) of Art. 122 stating the possibility of renewing or extending refugees' work permit. However, in line with Iranian practice and the 1951 Geneva Convention refugees should be granted the most favourable treatment accorded to nationals of any foreign country in the same circumstances, as regards the right to engage in wage-earning employment. Hence, the regulations under Division 3 of Chapter 5 can be used in refugee situations as well. A question which might arise is:

Who can apply for an entry visa and work permit in order to work in Iran?

Article 121 of the 1990 Iranian Labour Code contains all requirements which must be met by foreign citizens to be qualified to apply for entry visa and work permit. It states that:

“The Ministry of Labour and Social Affairs shall issue a visa authorizing the bearer to work, together with a work permit, provided that:

(a) According to the information available to the Ministry of Labour and Social Affairs, there are no qualified Iranian citizens with similar specialization who are ready to perform the work in question.

(b) The foreign citizen possesses sufficient skills and specialization for the job in question.

(c) The expertise of the foreign citizen is used to train Iranians with a view to the eventual substitution of the foreign citizen by a trained Iranian.”

1038 Pars Today, *All Foreign Workers in Iran Must Have an Employer, License or Work Card*, (2018), <https://parstoday.com/dari/news/uncategorised-i88952->.

1039 Zetter, *Protection for Forcibly Displaced Afghan Populations in Pakistan and Iran*, p.64.

As previously mentioned, the paragraph (c) implies that employment of foreign citizens has a temporary characteristic. The employment of Iranian nationals has priority over foreign citizens so that a foreign citizen who succeeds in getting an entry visa and work permit must use his/her expertise to train Iranian workers.

Paragraph (a) also states that the issuance of work permit to a foreign employee should be conditioned on the lack of an Iranian employee with similar specialization for the job at question. This shortage of native workforces is certified by the Ministry of Labour and Social Affairs (currently Ministry of Cooperatives, Labour and Social Welfare). It determines how many refugees can annually apply for temporary work permits and in which fields they are allowed to work. However, as stated, most Afghan refugees are employed in construction, industry, and agriculture sectors.

Another condition which Art. 122 requires aliens to satisfy is having sufficient expertise and skill regarding the offered occupation. For this, the Ministry of Cooperatives, Labour and Social Welfare will ask a foreign citizen (refugee) to submit a copy of relevant educational record or professional certificate.¹⁰⁴⁰ Now, an important question which may arise is that:

Is there any possibility for foreign employees working in Iran to extend or renew their work permits?

As stated above, the general policy in Iran is to hire foreign employees temporarily until finding qualified native applicants who can perform the job in question. Nevertheless, Art. 122 stipulates that:

“The Ministry of Labour and Social Affairs may extend or renew the work permit of:

(a) A foreign citizen who has continuously resided in Iran for at least ten years;

(b) A foreign citizen married to an Iranian;

(c) Immigrants from foreign countries, particularly Islamic countries, and political refugees, provided that they have a valid immigration or refugee card, and subject to the written agreement of the Ministry of the Interior and the Ministry of Foreign Affairs.”

1040 According to Chapter II (Art. 2.9) of “the Instruction for the Executive Procedure and the Necessary Documents for Issuing Entry Visa with the Right to Work and issuance, Extension and Renewal of Foreign Nationals’ Work Permit (2003).” (It is essential to say that there is no English text for this instruction, thus the title of this instruction has been literally translated).

From a legal perspective, this article is vague so that it must be scrutinized on several points which are relatively ambiguous. First, the Ministry of Cooperatives, Labour and Social Welfare has vast discretion over extension or renewal of foreign citizens' work permits. Therefore, as it is clear from the phrase **“may extend or renew the work permit of”**, it has considerable autonomy to decide whether or not to extend or renew work permits of aliens.

Another point of interpretation is the intention of the legislators regarding the concepts of foreign citizen and immigrant from a foreign country given that, in paragraph (a) it refers to possibility of extending or renewing work permit for those foreign nationals who have continuously lived for at least 10 years in Iran or have married to an Iranian national. While it is silent toward legal status of these foreign citizens, it cannot certainly include those people who have moved to Iran as migrants or asylum seekers since these people are specified within paragraph (c) separately.

It likely means other groups of foreign citizens who have come to Iran for other reasons such as displaced people or foreign passport holders. This argument can be enhanced by Art. 1 of the 2001 Regulations concerning the Article 180 of the Act on the Third Plan of Economic, Social and Cultural Development¹⁰⁴¹ which explains the various categories of foreign nationals who are referred in Art. 180. In accordance with Art. 1 foreign nationals include passport holders, refugees, migrants, and displaced persons who are not nationals of Iran and are applying for an entry visa to enter Iran and their foreign nationality has been accepted by the Iranian government.

However, the paragraph (c) speaks about extension or renewal of two distinct groups of immigrants and political refugees. All immigrants from foreign countries especially Islamic countries can apply for extension or renewal of their work permits, however, what still seems challenging is the use of the phrase “political refugees” within this paragraph. Given that, paragraph (c) only applies its provision to political refugees without speaking about other

1041 Art. 1: “The meaning of “Foreign Nationals”, subject of the Article 180 of the Act on the Third Plan of Economic, Social and Cultural Development, hereafter called “the Act”, is those persons (passport holders, refugees, migrants and displaced persons) who are not Iranian nationals and are applying for entry visa to enter Iran under the following titles and their foreign nationality has been accepted by the Government of the Islamic Republic of Iran. (a). Refugee: A person who owing to well-founded fear of persecution for the reason of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of the Government of Iran. (b). Displaced Person: A person who owing to outbreak of civil or international war, without any formalities, leaves or is driven from his or her country of origin but is not able to prove his well-founded fear of persecution on the basis of Geneva 1951 Convention and 1967 Protocol. (c). Migrant: A person who has applied for residence in Iran and his request has been accepted by the Government of Iran. (d). Passport-holder: A person who within the frame of domestic and international laws and regulations and under a special permit enters Iran.”

convention grounds (religion, race, nationality, and membership of specific social group). This might be attributed to the fact that most refugees in Iran are political refugees especially Afghan refugees. Hence, the legislator had possibly meant to use political refugees as an example which represent mainstream refugee group in Iran. In other words, it is not exclusively allocated to political refugees and covers refugees whose claims are based on other refugee grounds.¹⁰⁴²

However, there are two conditions which must be satisfied by immigrants and refugees to benefit from paragraph (c). Firstly, both immigrants and refugees should be in possession of valid immigration or refugee cards which means residing in Iran legally. Secondly, the Ministries of the Interior and Foreign Affairs must agree with the application for extension/renewal of their work permits. Therefore, further to the Ministry of Cooperatives, Labour and Social Welfare the approval of these two Ministries plays a vital role in extension/renewal of refugees' work permits.

Article 123 discusses the conditions for waving the fees of issuance, extension and renewal of work permits for citizens from specific countries and stateless people.¹⁰⁴³ However, as demonstrated before, those refugees who are interested in working in Iran must pay for their work permit and its renewal.

Article 124 sets the maximum validity of work permits and stipulates that temporary work permits cannot be issued, extended, or renewed for more than one year. Accordingly, refugees are also required to renew their work permits every year to be able to resume working in Iran legally.¹⁰⁴⁴

Article 125 contains the obligations of both employers and foreign employees regarding the termination of employment contract. It stipulates that:

“Where, whatever the circumstances, an employment relationship between a foreign citizen and an employer is terminated, the employer shall notify the Ministry of Labour and Social Affairs thereof within 15 days. The foreign citizen shall surrender his work permit to the said Ministry against a receipt

1042 This argument can be proved by the existing procedure in Iran as all sort of refugees enjoys this provision equally, while it is also certified by some refugee law scholars such as Roger Zetter. See Zetter, R. and Ruadel, H., *Refugees' Right to Work and Access to Labour Markets – An Assessment*, (2016), p.113.

1043 Art. 123: “The Ministry of Labour and Social Affairs may, if necessary and subject to reciprocity, exempt the citizens of certain countries and stateless persons (provided that their status is not optional and voluntary) from payment of the fee for a work permit or for the extension or renewal thereof, subject to confirmation by the Ministry of Foreign Affairs and approval by the Council of Ministers.”

1044 Art. 124: “In accordance with the provisions of this Code, a work permit shall be issued or extended or renewed for a maximum period of one year.”

within 15 days. If necessary, the Ministry shall request the appropriate authorities to expel the foreign citizen from the country.”

However, since refugees are generally treated like foreign nationals in terms of employment-associated rights and obligations, this provision will also be used when their employment contract is terminated.¹⁰⁴⁵ Therefore, in accordance with this provision, after termination of an employment contract for any reason, both employer and refugee have obligations. Once the employment relationship is terminated the employer must inform the Ministry of Cooperatives, Labour and Social Welfare within 15 days. Failing to notify the relevant authorities duly can result in imprisonment of employer. In this regard, it can be referred to Art. 181 of the Labour Code which states:

“Any employer who employs a foreign citizen without a work permit or whose work permit has expired, or who employs a foreign citizen for work other than that specified in his work permit, or who fails to report the termination of an employment relationship with a foreign citizen to the Ministry of Labour and Social Affairs shall, with due regard to his situation and means and to the degree of the offence, be subject to a term of imprisonment ranging from 91 to 180 days.”

However, the situation and the means of the offender (employer) plus the degree of the offence will affect the length of imprisonment term.¹⁰⁴⁶ For example, an employer who have too many refugees and decides to expel some of them while not intentionally inform the relevant authorities could be punished to a maximum period of prison sentence.

The obligation of refugees on termination of their employment relationships with employers is to return their work permits to the Ministry of Cooperatives, Labour and Social Welfare within 15 days. While it stipulates that whenever required the Ministry would ask the relevant authorities to deport employed lawbreaker (refugee) from Iran, it is not clear that failing to surrender the work permit to the Ministry will cause one to be deported or whether other circumstances prevail.

As can be understood from the phrase “if necessary,” everyone who fails to return the original work permit to the appropriate authorities may not be expelled. Ordering a deportation decree

1045 Azizi, Hosseini and Basavaraju, Evaluating Performance of Iran's Domestic Laws on Effective Protection of Refugees, p.75.

1046 Nadi, E., Sadeghi, S. H. and Ravandeh, H., *Examining the Current Legal Status of Afghan Refugees in Iran*, (2017), p.44.

may require other conditions. For example, insisting to stay illegally in the country for a long time or failure to apply for new work permit might be sufficient criteria.

Article 126 focuses on an exceptional circumstance in which the Iranian government wants to recruit a foreign national immediately because of the urgent needs of the country's industry. It states that:

“Where it is considered necessary to recruit a foreign citizen urgently on an exceptional basis because of the needs of the industry of the country, the minister concerned shall notify the Ministry of Labour and Social Affairs accordingly and, subject to the latter's approval, a provisional work permit shall be issued to the foreign citizen concerned, without compliance with the formalities normally required for the issue of a visa entitling the bearer to work.”

“Note of Art. 126: “A provisional work permit shall be valid for three months at the most, any extension thereof being subject to confirmation by the Technical Board for the Employment of Foreign Citizens.”

Indeed, in such a situation prior to the employment of the needed foreigner the relevant Minister must inform the Ministry of Cooperatives, Labour and Social Welfare properly. However, the concerned foreigner will receive a provisional work permit without going through required visa procedure and other formalities provided that the Ministry of Cooperatives, Labour and Social Welfare approves his/her recruitment.

This work permit is valid for three months. Any extension request must be accepted by the Technical Board for the Employment of Foreign Citizens. As a matter of fact, while this provision is genuinely created for use of expertise of those foreign experts who are outside of Iran due to the urgent needs of the country's industry, it might be also used in refugee situation. For example, those refugees who have specific expertise which is not included in the list of authorized jobs for Afghans published by the government can apply for this provisional work permit. However, the issuance of this type of work permit has an exceptional basis and is conditioned on urgent need of county's industry for the expertise of the refugee.

The next Article (127) deals with process of arranging conditions for employment of foreign technical experts and specialists in Iran. Hence, it is not applicable to refugees.¹⁰⁴⁷

1047 Art. 127: “The conditions of employment of foreign technical experts and specialists needed by the Government shall be drawn up with due regard to their nationalities, length of service, level of remuneration and the availability of domestic manpower. The said conditions shall be subject to ratification by the Islamic Consultative Assembly, following consideration and advice by the Ministry of Labour and Social Affairs and the State Organization for Administrative and Employment Affairs. In any event, a work permit for the employment of a foreign expert shall be issued by the Ministry of Labour and Social Affairs only with the approval of the Islamic Consultative Assembly.” However, according to this provision in any event the work permit of foreign

Essentially, if an employer wants to hire a foreign expert prior to signing any contract with him/her, the employer must inform the issue to the Ministry of Cooperatives, Labour and Social Welfare accordingly. In other words, the authorization of the Ministry for employment of foreign citizen is mandatory. This issue is explicitly expressed within Art. 128 as it states:

“Prior to signing any contract likely to entail the employment of foreign experts, an employer shall apply to the Ministry of Labour and Social Affairs for authorization to employ foreign citizens.”

In general, employing foreign citizens, whether foreign experts or refugees requires the authorization of the Ministry in advance. In the case of refugees, employers must obtain the approval of the Ministry of Cooperatives, Labour, Social Welfare prior to recruiting. In this regard, Art. 2 of the Executive Regulations of Article 129 of the Labour Law of the Islamic Republic of Iran (1992) which states:

“Employers who use the foreign citizen’s services are obliged to present the required documents for the issuance of work permit for the mentioned citizens to the related departments of Ministry of Labour and Social Affairs within one month of the citizen’s arrival to the country. Otherwise, the Ministry of Labour and Social Affairs would declare the issue to the judicial authorities according to the article 181 of the labour law.”

Thus, any failure to duly inform the related departments of the Ministry will lead to punishment of the offending employer, according to paragraph (c) of Art. 11 of “the Law in Adding Articles to the Law of Regulating a Part of Government Financial Regulations (2005).”¹⁰⁴⁸

This provision states that those employers who hire a foreign national without work permit will be fined up to five times more than the minimum daily wage of the concerned employee for each day of illegal work and in case of repeating the fine will be doubled.¹⁰⁴⁹ However, if

experts which is issued by the Ministry of Cooperatives, Labour and Social Welfare should be approved by the Islamic Consultative Assembly. This is provision is derived from Article 82 of the Iranian Constitution which stipulates: *“The government cannot employ foreign experts, except in urgent situations and with the approval of the Islamic Consultative Assembly.”*

1048 Paragraph (c) of Art. 11: “In order to prevent the presence of illegal foreign labour in the country’s labour market, the Ministry of Labour and Social Affairs is obliged to fine employers who employ foreign nationals without work permit for each day of illegal employment of each foreign worker equal to five times the minimum daily wage. In case of repeated violations, this fine will be doubled.” It is essential to mention that, since there is no an official English version of this provision on official websites, it was unofficially translated to English by the author.

1049 In this regard, it can be also referred to paragraph (6) of Note 7 of the 2001-2002 Budget Law that articulates: “In order to prevent the presence of illegal foreign labour in the country’s labour market, the Ministry of Labour

employer does not comply with above-mentioned fine he will be then sentenced to imprisonment in line with Art. 181 of the Labour Code (91 to 180 days).

Finally, Art. 129 states that the agency responsible for arranging the regulations on the employment of foreign nationals is the Minister of Cooperatives, Labour and Social Welfare.¹⁰⁵⁰ These regulations comprise the procedure for issuing, extending, renewing, and revoking work permits plus the selection of the members of the Technical Board for the Employment of Foreign Citizens.

In terms of employment-associated rights refugees are treated as other foreign nationals under Iranian law. In other words, while apart from Regulations of 1963 relating to Refugees there is no other specific regulation exclusively dedicated to the rights to employment for refugees, but since refugees fall under the general concept of foreign nationals they are covered by Arts. 120-129 of the 1990 Iranian Labour Code.

In the following part, attention will be paid to the policies and initiatives introduced by the Iranian government, NGOs, and international organizations in respect of bolstering the employability of Afghan refugees in Iran.

4.4.2 Policies and Initiatives of the Iranian Government in Coordination with International Organizations and NGOs in Order to Enhance Employment of Afghan Refugees in Iran

In addition to the security crisis and internal war in Afghanistan another major problem which plays an important role in forcing Afghan migrants to cross international borders and move to neighbouring countries like Iran is economic pressures and impoverishment.¹⁰⁵¹ However, as this situation has resulted from nonstop insecurity and civil war in Afghanistan, Iran has welcomingly opened its doors to a great number of Afghan refugees.

Remarkably, to curb the numbers of prospective forcibly displaced Afghans, it is necessary to invest in diverse solutions-based initiatives and policies and remove the causes of these forced

and Social Affairs is required to punish those employers who hire foreign nationals without a work permit ten times as much for each day of illegal work as any foreign worker's the minimum daily wage. In case of violation, this fine will be doubled." It is needed to mention that, since there is no an official English version of this provision on official websites, it was unofficially translated to English by the author.

1050 Art. 129: "The regulations on the employment of foreign citizens, including procedures for issuing, extending, renewing and cancelling work permits and for the selection of the members of the Technical Board for the Employment of Foreign Citizens, as referred to in section 121 of this Code, shall be drawn up by the Minister of Labour and Social Affairs, and approved by the Council of Ministers."

1051 European Union, *Action Document for "Addressing Migration and Forced Displacement Challenges in Asia and the Middle East: A Comprehensive Regional EU Response"*, (2017-2018), p.21.

displacements. Accordingly, Iran together with its international partners like UNHCR and local and international NGOs has recently taken steps to eliminate these key causes. One area is improving the socio-economic status of Afghan refugees in Iran. This has been a priority area for the last decade. Iran has taken significant steps as described in the following actions and policies.

As a matter of fact, the main regional framework for joint interventions to help Afghans in the region (Iran, Pakistan, and Afghanistan)¹⁰⁵² is Solutions Strategy for Afghan Refugees which was established in 2012.¹⁰⁵³ In other words, the SSAR focuses on identifying and implementing comprehensive and sustainable solutions for Afghan refugees in the region through joint interventions.

Generally speaking, the SSAR intends to reach five core outcomes including: “(i) support to voluntary repatriation, (ii) access to shelter and basic social services for refugees, returnees and host communities (iii) improved and diversified livelihoods opportunities and enhanced food security (iv) social and environmental protection of refugees and returnees as well as assistance and support to host communities (v) capacity development of national authorities, associations, organizations and communities concerned with refugees, returnees and host communities.”¹⁰⁵⁴

Notably, during the 2019 Global Refugee Forum (GRF), UNHCR and the three governments of Iran, Pakistan and Afghanistan established the SSAR Support Platform. This Platform was created for dedicating additional resources and enhancing partnerships to increase chances of reaching the goals mentioned above.¹⁰⁵⁵ Regarding strengthening partnerships, the 2018 Global Compact on Refugees through notifying actions has had considerable impacts on involvement of the private sector in supporting Afghan refugees and their host communities in Iran.¹⁰⁵⁶ As Afghanistan is currently in a critical and complex period of transitions and peace, the SSAR Support Platform focuses on offering new ways in which the international community should respond to the Afghan refugee situation. It emphasizes developing and promoting inclusive policies in the receiving countries for Afghan refugees through stronger international cooperation and responsibly-sharing practices.¹⁰⁵⁷

1052 This quadripartite framework has been developed by countries of the Islamic Republics of Afghanistan, Iran, Pakistan and the UNHCR.

1053 In June 2019, all the partners involved in the SSAR agreed to resume it up to 2021.

1054 UNHCR, *Solutions Strategy for Afghan Refugees (Progress Report 2014)*, (2014), p.4.

1055 UNHCR, *Outcomes of the Global Refugee Forum 2019*, (n.d.), p.35.

1056 UNHCR, An Overview of How the Global Compact on Refugees Is Being Turned into Action in the Islamic Republic of Iran, <https://globalcompactrefugees.org/article/iran>.

1057 In this regard, refer to EU financial contribution to the SSAR Support Platform which is a part of EU contribution to the regional support platforms in Africa, America and Asia to support burden and responsibility

However, in this section the attention is only given to the first part of third goal which deals with improvement and diversification of livelihoods opportunities for Afghan refugees.¹⁰⁵⁸

The SSAR enhances the livelihoods of Afghan refugees in Iran through two different mechanisms. Firstly, it improves Afghan refugees' financial, human, and social capital by increasing their access to direct services. Secondly, it indirectly tries to positively impact the existing policies, institutions, and systems to create an environment in which the most vulnerable refugees can achieve better economic independence. These direct and indirect supports will ultimately boost the voluntary return and sustainable reintegration of Afghan refugees to their country of origin. Given that, as it can be seen those Afghan refugees who have better economic status and own higher skills, or education will be much more successful after returning to Afghanistan.¹⁰⁵⁹

One of the key policies to consolidate the employment opportunities for Afghan refugees in Iran is to raise their access to the vocational and technical training services. This policy is in line with SSAR goal to boost Afghan refugees' access to national services (first goal). The intervention of vocational and marketable demand-driven skill training for Afghan refugees is mainly undertaken by the Government of Iran in coordination with international organizations like UNHCR, the UN agencies as well as different international and national NGOs. Through these vocational and technical training refugees will be able to financially contribute to their host country during their residency while gradually becoming self-reliant.¹⁰⁶⁰ In Accordance with the 2014 UNHCR progress report on implementation of SSAR, roughly 2,447 refugees have participated in more than 50 different vocational and technical training courses which were held in collaboration with the Technical and Vocational Training Organization (TVTO).¹⁰⁶¹

For example, the UNHCR in partnership with the Government of Iran and support of the United Nations Industrial Development Organization (UNIDO) opened a footwear training centre in Mashhad province in 2014. This project was part of the "Sustainable Livelihoods Programme: development of pro-poor footwear clusters and value chains in border regions of the Islamic

sharing practices. See UNHCR, *An Overview of How the Global Compact on Refugees is Being Turned into Action in the Islamic Republic of Iran*, (2021), <https://globalcompactrefugees.org/article/iran>. See also UNHCR, *Outcomes of the Global Refugee Forum 2019*, (n.d.), p.35.

1058 The interlinked sectors of education, health and livelihoods are three key areas of action under the SSAR.

1059 UNHCR, *Solutions Strategy for Afghan Refugees, Portfolio of Projects 2015-2016 (Islamic Republic of Iran)*, (2015), p.9.

1060 UNHCR, *UNHCR's Support to toward the Implementation of the Solutions Strategy for Afghan Refugees (Enhancing Resilience and Co-existence through Greater Responsibility-Sharing)*, (2018), p.30.

1061 UNHCR, *Solutions Strategy for Afghan Refugees (Progress Report 2014)*, p.10.

Republics of Iran and Afghanistan” funded by UNHCR and implemented by UNIDO. As intended by its founders, in addition to fostering local economy the establishment of this footwear training centre, it would facilitate the reintegration of Afghan refugees when they return home.¹⁰⁶²

Furthermore, in line with the SSAR the Government of South Korea committed to voluntarily contribute USD 6,000,000 to UNHCR project of “Protection and Humanitarian Assistance to Afghan Refugee Girls in Iran.” This generous financial assistance by South Korea to Iran in 2016 concentrates on UNHCR’s humanitarian activities toward improving the health status, educational access as well as providing sustainable livelihoods for refugee girls in Iran.

It means to achieve its goals through activities such as supplying universal insurance for refugees, procuring, and distributing health and hygienic facilities, building, and renovating educational centres, holding business training to set up home-based enterprises and providing formal vocational training. This contribution supported the project activities over the period of a year from 1 January 2016 to 31 December 2017 which was conducted by UNHCR across Iran in coordination with BAFIA, the Ministry of Health, the Ministry of Education, the Literacy Movement Organization, the Technical and Vocational Training Organization (TVTO) and national NGO partners.¹⁰⁶³

Regarding enhancing livelihood opportunities for Afghan girls, this project will invest in income-generating activities through holding vocational and technical training courses for female refugees in Iran. Furthermore, using revolving loan funds and micro credit to support refugee women establishing home-based and small enterprises is a policy to improve their self-reliance in Iran. The second phase of this contribution in coordination with BAFIA has been extended from 1 January 2018 to 31 December 2020.¹⁰⁶⁴

ARIVET is a German vocational training project for Afghan refugees in Iran in coordination with BAFIA and German organizations of Skilled Crafts. In addition to these partners, TVTO, the Instructor Training Centre (ITC) and a stock of Iranian NGOs are assisting Sequa to achieve its goals in Iran. TVTO as a key provider of short-term technical and vocational courses is running qualification courses on behalf of Sequa. In addition, ITC specialized in training TVTO

1062 UNIDO, *Footwear Training Centre Established in the Islamic Republic of Iran with UNIDO Support*, (2014), <https://www.unido.org/news/footwear-training-centre-established-islamic-republic-iran-unido-support>.

1063 United Nations Information Centres (UNIC), (2016), <http://www.unic-ir.org/index.php>.

1064 However, this new phase focuses on improving the health status and self-reliance of all refugees regardless of their gender (both female and male refugees). See UNHCR, *The Republic of Korea Continues to Support Humanitarian Assistance to Afghan Refugees in Islamic Republic of Iran*, (2018), <https://www.unhcr.org/ir/2018/10/28/the-republic-of-korea-continues-to-support-humanitarian-assistance-to-afghan-refugees-in-islamic-republic-of-i>.

teachers supports Sequa through teacher competencies. Other Iranian NGOs cooperate with Sequa over holding literacy and soft-skills training courses as well as executing market-demanded measures for targeted Afghan and Iranian populations.

Since September 2018, the Sequa organization has been engaged in technical and vocational activities to improve market-oriented competencies of Afghan refugees and Iranian target groups until 28 February 2022. The ARIVET project is sponsored by German Economic Cooperation and Development (BMZ) and targets Afghan refugees who live in the capital city of Tehran plus provinces of Kerman and Mashhad. In June 2019 it opened its project office in Tehran and recruited several Iranian staff to complete its team.

The main goals of Sequa can be divided into three categories. Firstly, improving professional skills of Afghan refugees through vocational and technical courses such as basic and advanced qualifications in crafts and trades, boosting the practical aspects of taught qualifications and supportive measures to enhance market-oriented skills of both target groups of Afghans and Iranians. Secondly, Sequa means to enhance organizational and technical capacity of its Iranian partner organizations for vocational education training (VET). For instance, it arranges study trips on subjects such as refugee integration and job trainings, holds conferences on topics related to skills development as well as expanding and equipping the training centres. Thirdly, it takes supplementary measures to enhance the business and market-demanded qualifications of Afghan refugees such as organizing financial literacy and business management courses, running start-ups, mentoring, holding entrepreneurship competitions, etc.¹⁰⁶⁵

Another joint project is a recently launched plan by the World Food Programme (WFP) and the Food and Agriculture Organization (FAO) in Semnan province. It deals with refugees' livelihoods and the enhancement of their human capital and self-reliance. It helps vulnerable refugees through income-generating activities in a greenhouse located in the Mohajerin refugee settlement. Around 15 men and women from this refugee camp have been trained to irrigate and cultivate nutritious crops in the greenhouse to sell their productions on the market.

Thankfully, this initiative has helped refugees escape the adverse outcomes of unemployment which has been made worse by the increasing Corona cases in Iran. After the spreading of the Coronavirus across Iran, many Afghan refugees who live in the camps cannot work outside of their settlement. Many of them have lost their jobs. Thus, this project acted as a lifesaving

¹⁰⁶⁵ Sequa Website, German-Iranian Qualification Project for Afghan Refugees in Iran, (2019), https://www.sequa.de/en/projects_programmes/arivet/.

solution supporting the most vulnerable refugee households who had no means to survive in this very tough time of the Corona crisis.¹⁰⁶⁶

These vocational and technical courses should include an accurate assessment of the labour market in both the host and original countries.¹⁰⁶⁷ A competent market-based analysis will improve the match between the skills refugees are learning and local job opportunities. The authorities in Iran and Afghanistan can identify the most useful skills in the labour markets of Iran and Afghanistan to teach Afghan refugees. The employability of Afghan refugees is improved by training them to provide services that are useful in Iran's labour market.

Having a cross-border job placement strategy is important in employment and reintegration of Afghan refugees who want to return to Afghanistan. Cross-border job placement seeks insight into the labour market of refugee's home country to identify skills which are useful there.

For instance, in August 2015 the UNHCR conducted a mission in Afghan cities of Kabul and Herat in coordination with governmental organizations. During the mission, the UNHCR visited different government ministries, UN agencies, private companies, and various NGOs working with employment and workforce development. The purpose of this visit was to establish partnerships to facilitate voluntary repatriation and sustainable reintegration of Afghan refugees.¹⁰⁶⁸ It is crucial to mention that, the strategy of linking skills enrichment with existing job opportunities in both Iran and Afghanistan is one of main pledges of NRC towards implementation of the 2018 Global Compact on Refugees.¹⁰⁶⁹

In addition to increasing employability of Afghan refugees, vocational and technical training provides opportunities for refugees to be further integrated into the Iranian society. This vocational training makes a bridge between local employers and Afghan refugees and assists refugees to broaden their social networks in their workplaces.

In addition to income-generating strategy which Iran's government does in partnership with international agencies such as UNHCR regarding Afghan refugees' livelihoods is the provision

1066 WFP, *Greenhouse of Hope for Afghan Refugees in the Islamic Republic of Iran*, (2020), <https://insight.wfp.org/seeds-of-hope-ec70c3cf38d2>.

1067 UNHCR, *Solutions Strategy for Afghan Refugees*, Portfolio of Projects 2015-2016 (Islamic Republic of Iran), p.9.

1068 UNHCR, *Solutions Strategy for Afghan Refugees*, Portfolio of Projects 2015-2016 (Islamic Republic of Iran), p.10.

1069 UNHCR, *An Overview of How the Global Compact on Refugees Is Being Turned into Action in the Islamic Republic of Iran*, <https://globalcompactrefugees.org/article/iran>. This policy is also in line with CESCR's strategy to achieve a lower unemployment rate in Iran which is expressly stated in the 2013 Concluding Observations on the Second Periodic Report of the Islamic Republic of Iran. See CESCR, *Concluding Observations on the Second Periodic Report of the Islamic Republic of Iran, Adopted by the Committee at its Fiftieth Session (29 April-17 May 2013)*, (2013), p.3.

of financial services for them. These services include delivery of business loans such as revolving loan funds and micro-credit to Afghan refugees particularly the most vulnerable ones like women-headed households.¹⁰⁷⁰

As a matter of fact, these revolving micro-credit loans are often given to women who are the sole or main income producer for their family to establish their home-based enterprises. Providing these financial resources to female refugees is an effective way to strengthen refugees' access to national services which is one of the core goals of SSAR. Female refugees are encouraged to take part in vocational training and entrepreneurship workshops to improve their capacity as well as acquiring required technics and skills for running their small companies.

For example, in 2014 alone 150 Afghan refugee women received technical and entrepreneurship courses enabling them to launch their own home-based companies.¹⁰⁷¹ In that same year a revolving loan fund provided micro credit and banking services to 45 Afghan refugees which facilitated their economic integration into the Iranian labour market. This assistance also gave jobs to 225 persons within their households.¹⁰⁷² These revolving loans and micro credits further integrate Afghans who are interested in economic activities other than wage-earning employment into the labour market of Iran.

For instance, in city of Shiraz a group of Afghan women are employed by a young Afghan man to help him to assemble his inventions for car manufacturing companies in Iran. The employer is a 28-year-old Afghan refugee who fled war in Afghanistan in 1996 and has been living in Iran since that time. Nour Mohammad Mohammadi (employer) worked as a mechanic in an auto shop along with his study before starting his company.

Thanks to supports from UNHCR he developed and patented a starter system for vehicles which was one of the awarded inventions in the National Inventing Festival of Iran in 2013. Then, he expanded his inventions and obtained a stock of awards which enabled him to establish his company and take an office space from the Ministry of Science in 2013. In 2014

1070 UNHCR, UNHCR's Support to toward the Implementation of the Solutions Strategy for Afghan Refugees (Enhancing Resilience and Co-existence through Greater Responsibility-Sharing), p.30.

1071 UNHCR, Solutions Strategy for Afghan Refugees (Progress Report 2014), p.10.

1072 UNHCR, Solutions Strategy for Afghan Refugees (Progress Report 2014), p.10. As previously explained, according to Iranian law work permits are only granted to those foreign citizens who are hired by employers. Nevertheless, according to the new Iranian government's approach, those Afghan refugees who are interested in businesses activities can apply for work permit as well. For this reason, they should change their status from refugee to an Afghan passport holder. In other words, these Afghan refugees must abandon their refugee status and return to Afghanistan to apply for Afghan passport (if they already lack one) and an entry visa. Then, once they completed this process, they can come to Iran again and apply for a work permit to start their business activities here.

when UNHCR and BAFIA were identifying most vulnerable Afghan families for the sake of improving their living conditions, he also approached UN refugee agency for additional supports to broaden its activities in Iran. As a result, UNHCR and BAFIA promised to support him financially if he recruits unemployed women in his company in return.

Currently around 20 people directly and 30 people indirectly work in his company from both Iranian and Afghan communities. Interestingly, he allows female workers to work from home while freely arranging their working hours. These flexible working conditions remove cultural barriers which often prevent Afghan female refugees from working. These Afghan women do their jobs at home with equipment that is supplied by Mohammad. However, their salaries depend on number of items they produce at home and can range between 100 and 200 USD per month.¹⁰⁷³

To optimize use of such financial facilities, business loans and micro-credits, refugees must have access to the national financial system including access to normal banking services such as bank accounts, bank cards, bank guarantees, cheque payments and other activities required for business.

In Iran there is no specific framework on including Afghan refugees in the country's banking services. In other words, the type of banking facilities which are served to Afghan refugees and the required documents which they must provide to apply for such services vary from bank to bank. For example, some private banks are less strict and have easier criteria for approval of refugees' applications than public ones. However, most of Iranian banks deny giving business loans, bank cards, electronic banking services, chequebook or other services to those refugees who are not in the possession of a valid Afghan passport. Thus, for many banks, having a valid Afghan passport is an obligatory condition to provide Afghan refugees with banking services, while many refugees lack this Afghan document.¹⁰⁷⁴

However, according to the most recent decision by Iranian authorities currently those Afghan refugees who have an Amayesh card but lack a valid Afghan passport can apply for bank debit or credit cards as well.¹⁰⁷⁵ Indeed, prior to this and according to Art. 4 of "the 2011 Instruction on Identification of Foreign Customers of Credit Institutions" Amayesh card holders could

1073 Leposky, T., *Sparks, Skills and New Hope for Afghan Refugee Women in Iran*, (2015), <https://www.unhcr.org/news/latest/2015/10/562f55196/sparks-skills-new-hope-afghan-refugee-women-iran.html>.

1074 Tejarat News, *Do Non-Iranian Citizens Receive Banking Services?* (2019), <https://tejaratnews.com/>.

1075 The Islamic Republic News Agency, *the Bank Cards of Foreign Nationals Who Own Valid Residence Card Are Issued and Renewed*, (2020), <https://www.irna.ir/news/>.

only open bank account and clear cheques while being hindered to enjoy electronic banking services or bank cards.¹⁰⁷⁶

Again, enabling Amayesh card holders (registered refugees) to receive bank cards is an important step toward SSAR goals to improve refugees' access to basic services and remove institutional barriers against their economic independence. Having access to basic banking services like bank cards seems inevitable in contemporary world where most financial transactions are carried through electronic banking services. Hence, denying refugees such banking facilities adversely impacts their economic integration into the host country's labour market. For example, a lot of Afghan workers who work in Iran often have difficulties receiving their monthly salaries because of lacking Iranian bank cards.

As a matter of fact, Afghan refugees regularly remit a part of their savings to their families in Afghanistan. However, existing limitations of having bank cards obliges them to trust their employers to keep and transfer these remittances to their families in Afghanistan whenever required. This situation sometimes enables Iranian employers to take advantage of their Afghan workers. For example, there is a wide range of cases that Afghan refugees have been denied by employers from receiving their unpaid wages.

Moreover, the majority of these mistreated Afghan refugees are also frequently unable to bring the case before the court against their employers. Consequently, there is no other way for Afghan refugees but to leave their jobs and be forced to return to Afghanistan or even make a second migration to other country. Furthermore, unregistered refugees are prohibited from receiving any kind of banking services in Iran.

However, despite all substantial efforts during the recent years by the Iranian government, there are still barriers to creation of a banking system for Afghan refugees. These inefficient banking services impact the employment of Afghan refugees especially those who must receive their salaries through bank transactions.

One of the strategies to foster employability and economic integration of Afghan refugees into the local economy is facilitation of obtaining a work permit. The high barrier of expensive fees for application, extension and renewal of work permits prevents refugees from applying for them.

This high-cost fee coupled with other bureaucratic problems sometimes lead refugees to choose easier ways of entering informal markets instead of going through expensive procedures to

1076 Afghan Voice Agency (AVA), *Failure to Receive Electronic Banking Services Due to Restrictions on Afghan Immigrants in Iran; Opportunities that Burn*, (2019), <https://avapress.com/fa/>.

obtain a work permit. Unfortunately, raising fees for work permit is sometimes used as a strategy to discourage Afghan refugees and forcing them to repatriate to their home country. However, although the current fee for receiving, extending, and renewing work permit in Iran is a low cost, it can be as much as eight to ten days of a normal Afghan worker's wage.¹⁰⁷⁷ Therefore, additional effort is needed by Iranian authorities to ensure that all Afghan refugees especially those without work can afford to obtain a work permit.

¹⁰⁷⁷ The cost for first-timer applicant is 5,000,000 Rial (around US \$ 20) and for those who want to extend or renew their work permits is 3,500,000 Rial (nearly US \$ 14).

4.5 Conclusion

Afghan refugees have been moving to Iran for more than two hundred years. Due to continuous civil conflict in Afghanistan, linguistic and cultural similarities, and geographic proximity Iran has been the most logical destination for Afghan refugees. More than 3 million Afghan refugees are now living in Iran. Less than one million are registered officially; the other 2 million are living in Iran unlawfully and without any legal documentation.

Describing the integration status of this huge Afghan refugee population in Iran is complicated. There may be considerable progress in some areas of education or employment rights. But situations are often temporary due to legal reinterpretation of applicable laws or regulations; or changing levels of resources available because of budgetary shortfalls at different levels of government, or fluctuating levels of support from the governments of donor countries, international agencies, and non-governmental organizations.

For example, in the area of mobility, there is a strict rule governing the free movement of Afghan refugees in Iran. As many as twenty-eight of thirty-one provinces of Iran are identified either entirely or partially as no-go areas (NGAs) for Afghan refugees which means they are prohibited from residing or working in such places. Iran has designated these NGAs under Art. 26 of the Refugee Convention and might use regulations for public order, security, or health reasons. However, this restriction negatively impacts the employment of Afghan refugees. It prevents them from seeking and/or taking jobs in cities outside their designated areas. This restriction compounds the difficulties of finding work for Afghan refugees who live in small cities where they suffer from limited job opportunities.

In addition, Afghan refugees encounter complicated and stringent regulations in opening a bank account in Iran. Without a bank account, they may be forced to ask their employers to pay their wages in cash. This can result in their receiving less than their full wages or even losing their full wages if they are withheld by their employers. In addition, restrictions on having bank accounts and credit and/or debit cards prevents Afghan refugees from engaging in business and commercial activities.

In terms of the general situation of Afghan's employment, Iranian government has made substantial progress towards general and vocational education of Afghan refugees especially since inclusion of Afghan refugees in the national education in 2015. Still a great number of Afghan refugees have a low level of education compared to Iranian nationals. As a result, many Afghan refugees can work only in low-skilled jobs which do not require specific skills or training certificates or educational degrees.

Further to Iran's reservation to Art. 17 (the right to wage-earning employment), Afghan refugees are also only allowed to work in a number of jobs which are designated by the Ministry of Cooperatives, Labour and Social Welfare. These jobs are mostly in construction, manufacturing, commerce and trade and farming industries. However, Afghans who hold university degrees or have professional skills or expertise such as doctors, engineers, professors, journalists, and similar can work in their fields without any restriction.

Another significant problem in terms of employment of Afghan refugees in Iran is instability of Iranian policy toward the issuance of work permits to refugee workers. According to Iranian law, only those refugees who hold both residence and work permits can work. Afghans who are undocumented and living unlawfully in Iran are not legally permitted to work. Therefore, in order to meet their needs, they will be obliged to take low-skilled jobs in the informal economy. Going through the grey economy exposes Afghan workers to various risks such as discrimination, financial exploitation, sexual abuse, occupational injury and so forth.

This is further complicated by work permits only being valid for a year and requiring annual renewal although holding a work permit does not guarantee that Afghan refugees can renew their work permits for subsequent years. Increasing work permit application and renewal costs can sometimes impede Afghan refugees from applying or renewing their work permits. As a result of such discouraging policies, refugees are forced to take the poorly paid jobs available in the informal market.

However, the Government of Iran in some areas such as health and education has taken positive steps. For example, from 6 years ago Iran in collaboration with UNHCR has included registered Afghan refugees within its Universal Public Health Insurance Programme (UPHI) to effectively reply to medical needs of Afghan refugees.

On the other hand, since 2015 based on the Supreme Leader's decree, Iranian government has generously provided all refugees regardless of their legal status (both registered and undocumented Afghan refugees) with free education.¹⁰⁷⁸

This unprecedented approach toward education of refugees can have crucial implications on future socio-economic integration of Afghans. Indeed, as proved in this study, apart from language improvement through education, refugees have greater chances to access job opportunities in the host country's labour market. Furthermore, they will broaden their social

1078 This new policy of Iranian government since 2015 toward inclusion of Afghan refugees in national education system is fully in line with paragraphs 68 & 69 of Global Compact on Refugees which has been created three years later in 2018.

networks with native people which ultimately leads them to further integrate into the reception community.

To sum up, despite Afghans share some similarities with Iranians in respect of language and culture which in fact can facilitate their integration into Iranian society, nevertheless, there should be more intensified efforts from both sides in this regard. In other words, the Government of Iran should give more room to private institutions, international and national NGOs, and civil society to enhance their role in Afghan refugees' integration process. Indeed, in comparison with some western countries especially European ones, private institutions and NGOs in Iran are not actively intervened in refugee-related affairs like integration process which basically has a political root due to the government tendency. In overall, Iran despite all economic pressures resulted from the US sanctions over recent years has taken however considerable steps towards protection of Afghan refugees and their socio-economic integration especially in terms of their documentation, health, and education.

Finally, as Filippo Grandi, UN High Commissioner for Refugees, during his three-day-long visit to Iran in 2016 rightly stated: "Iran continues to set a global example through its progressive and inclusive refugee policies, but the country needs more support hosting one of the largest refugee populations in the world."¹⁰⁷⁹ Thus, enhanced supports by the international community including developed states, the relevant UN agencies, international organizations and NGOs keep Iran to meet its international obligations toward protection and integration of Afghan refugees.¹⁰⁸⁰

1079 Lomax, G., (UNHCR), *Iran Needs More Help to Support Afghan Refugees – UNHCR Chief*, (2018), <https://www.unhcr.org/news/latest/2018/9/5b8e9f414/iran-needs-help-support-afghan-refugees-unhcr-chief.html>.

1080 This view is in line with Arts. 2.1, 11.2 (b), 22 and 23 of the ICESCR which promotes international cooperation and assistance as a vital tool to realize the Covenant's rights appropriately. See Committee on Economic, Social and Cultural Rights (CESCR), *The Duties of States Towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights*, (2017), p.6.

General Conclusions

Nearly twenty-six million people, now qualify as refugees. The number of refugee persons worldwide has sharply increased due to the escalation of civil wars and conflicts particularly in some Middle Eastern countries over recent years.

There are three long term solutions for refugees: voluntary repatriation, local integration into the host states, and resettlement to third countries. The number of refugees who achieve any of these outcomes to the degree that their earlier lives are restored is exceedingly small.

This paper only addresses local integration of refugees and focuses specifically on their socio-economic integration through education and employment. This research describes the educational and economic rights of refugees from the perspective of international law in order to facilitate their socio-economic integration into the host society.

The socio-economic integration of refugees occurs successfully quite rarely because of many difficulties detailed in this research. However, even with the existing impediments to their integration, it still offers a path with some opportunity for refugees determined and strong enough to persist in the attempt. This argues that even with a low chance of success, the efforts that must be made to accomplish local integration are the most prudent path for a refugee to pursue.

This research identifies the most important international laws that support the educational and economic rights of refugees. In addition to the 1951 Geneva Convention other important international human rights instruments such as the ICESCR and the ICCPR are also covered by this research. These laws are important because they have the potential to partially restore lost rights to refugees. International laws are also used to support humanitarian efforts, international development programs, and peace-making activities. Their joint efforts are necessary to reduce discrimination against refugees.

The first Chapter documented that integration is the primary method to facilitate the naturalization of refugees. The distinction between them is established as intended by the authors of Art. 34 as shown by this language: *“The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees....”* Indeed, integration is used as an instrument to facilitate and accelerate the naturalization of refugees by involving them into the social, economic, and cultural life of the reception country. It is a crucial stage in refugee’s lives before applying for citizenship in the reception country. Host countries consider integration as a significant factor when deciding on citizenship requests from refugees.

Therefore, those refugees who have the most successful integration have the highest chance of obtaining citizenship.

The second Chapter demonstrated that under the Refugee Convention and other refugee-related international laws, reception countries cannot ignore their legal obligation toward refugees' rights to education. These are found in Art. 22 of the 1951 Geneva Convention which obliges Member States to treat refugees as nationals regarding primary education but employs a lower standard for post-elementary education. Article 22 treats refugees as having the same rights as other aliens in the same circumstances with respect to education other than elementary education. Article 13 of the ICESCR offers more supportive provisions of the right to education for post-elementary education. Article 13 also obligates all states to follow the four interconnected educational requirements of availability, accessibility, acceptability, and adaptability. To meet these legal mandates, international and regional organizations collaborate with national organizations, civil society, NGOs and most importantly governments to meet educational obligations. Despite such cooperation, large numbers of refugees, experience difficulties in obtaining recognition of their prior qualifications from formal education. Their credentials may be unavailable or if available, may not be accepted. Failure to have their credentials accepted will prevent them from working at their level of their competence and can keep them from getting training to advance beyond their current skill levels.

Chapter 3 focuses on economic rights and methods for the inclusion of refugees in the labour market of the host country to support their integration. Refugees due to their personal, economic, and social vulnerabilities resulting from their refugee flight must cope with many problems to find a decent job in their host countries. Employment rates and job availability are influenced by factors such as age, sex, education level, length of residence and language ability and various combinations of these. However, employers are often reluctant to hire refugees due to poor language ability, or lack of relevant qualifications and skills. Complicated employment procedures, or unconscious discrimination are also obstacles. Nevertheless, states must provide equal opportunities for all people who are legally permitted to work in their territory without any discrimination as required by international law.

The main international instrument which discusses refugees' right to employment is the 1951 Geneva Convention, especially in Arts. 17, 18 and 19. Article 17 defines those refugees lawfully staying in the host country (recognized refugees) who are eligible in wage-earning employment and gives them the most favourable treatment accorded to nationals of a foreign country in the same circumstances.

Article 18 states that refugees lawfully in the host country as asylum seekers, who have not yet received their refugee status are only allowed to undertake self-employment activity and should be treated as favourably as aliens in the same circumstances. Article 19 assures the right to practice liberal professions for refugees holding valid diplomas who want to pursue their profession in the host country. On the one side, like Art. 17 it only allows recognized refugees (lawfully staying in) to practice a liberal profession in the host country. On the other side, like Art. 18 it treats interested refugees as other aliens generally, in the same circumstances.

In addition, there are other regulations in international human rights law which define the context of economic integration of refugees. For instance, Arts. 6 & 7 of the ICESCR require Member States to provide all persons including refugees the right to obtain their living by work which they choose and accept freely.

Art. 6 of the ICESCR considers the importance of technical and vocational policies and training programs for full realization of the right to work and successful economic integration of refugees in the host country's labour market. This is a positive point in Art. 6 which is lacking in the Refugee Convention. Technical and Vocational Training (TVETs) motivated by Art. 6 have been used to enhance refugees' skills and qualifications and broaden their social networks which results in better socio-economic integration of refugees into the host society.

Furthermore, states are obligated to mobilize their resources and expertise to establish policies and plans which effectively concentrate on socio-economic integration of refugees. For example, they should take proper steps toward enabling refugees to have prompt access to language and vocational training courses as well as qualification assessment services. Investing in activities such as identification and enhancement of refugees' skills and competencies, analysis of labour market gaps, and job creation schemes can be highly effective when implemented and well-supported by host states.

Chapter 4 describes the socio-economic integration of Afghan refugees in Iran who have been moving there intermittently for more than two hundred years. Due to linguistic and cultural similarities as well as geographic immediacy many Afghan refugees prefer to seek asylum in Iran rather than other countries. More than three million Afghan refugees are currently living in Iran, while less than one million are officially registered by the Government of Iran. The other two million are undocumented Afghans who are therefore deprived of many services and facilities. For instance, regarding employment, Iranian law allows only Afghans who hold both residence and work permits to work in Iran. Thus, two million undocumented Afghans who live unlawfully in Iran and lack such permits can only find work in the informal market. This

can expose them to various risks including financial exploitation, sexual abuse, work-related injuries, and other dangers.

The situation of those who are formally allowed to work has similar perils. For instance, regardless of Iran's reservation to Art. 17 of the 1951 Geneva Convention (the right to wage earning employment), these registered refugees are solely permitted to work in a set of jobs which are determined by the Ministry of Cooperatives, Labour and Social Welfare. This restriction does not apply to Afghan refugees such as doctors, professors, engineers, journalists, and some other professions with documented specific expertise or university credentials.

Other problems are that many refugees, due to lack of documentation, have difficulties opening a bank account in Iranian banks. This can cause problems for them in receiving full wages from their employers. Moreover, regulation defining NGAs (no-go-areas) for refugees has worsened the economic integration of Afghans into the Iranian labour market by preventing them from working in a quite large part of the country.

In terms of education, thanks to the Supreme Leaders' order in 2015, all groups of Afghan students regardless of their legal status (both registered and undocumented Afghans) can attend Iranian schools and receive free education. This decision is really a turning point in Iranian policy toward educational inclusion of Afghan refugees into Iran's public-school system and has had irrefutable positive effects on their future economic advancement. This can benefit a great number of Afghan refugees in Iran who are low-paid workers in low-skilled jobs due to their low educational attainments. This new Iranian educational approach will enable Afghan refugees to reach higher degrees of educational and economic integration.

Nonetheless, Iran needs to give further attention to strengthening the role of private stakeholders such as national and international agencies and NGOs in Iran's refugee's integration processes. There are untapped resources available from many members of the international community. Partnerships based in diplomacy, charity and international law should be developed to enable Iran to provide stronger financial and political support for the socio-economic integration of Afghan refugees.

Final Remarks

As demonstrated in this research, education and employment play a key role in responding to both refugee's short and long-term needs. Indeed, when refugees are deprived of their property, their family and friends, their motherland, and their culture, and experience diverse barriers toward their integration into the host society, one of the few useful strategies is to study and

acquire training and skills which enable them to work. This is the long-term perspective. On the other hand, pursuing work and further education can be used as a short-term tactic by refugees to find a way to satisfy the urgent needs of themselves and their families. Obtaining educational qualifications will provide refugees with better and wider job opportunities and allow them to document their knowledge and skills in a more sustainable and transferrable way. The host states provide various levels of educational and economic support to refugees based on several factors such as cultural and religious similarity, the degree of economic development and available resources as well as the labour market conditions.

However, this is an actual cost to the host states. The needs of refugees affect the availability of funds to support nationals of the host country. Thus, states must make adjustment to their spending for all human services. Due to sharp escalation in the number of refugees in recent years, the ability of host countries has been strained. Furthermore, there is growing political unwillingness in many western countries to support refugees living in their countries. Hence, the reason for cutting back on services have been both economic and political. In these circumstances, it is hard to prescribe a course of action which is sufficient to cope with the many challenges. Against this backdrop, examples of valuable attempts to execute international laws concerning refugees have been presented in this paper.

Furthermore, the significant role of external helpers such as other countries and international organizations and agencies cannot be underestimated. External assistance can be provided in many ways like cooperative agreements, or cash subsidies, or knowledge and technology training, or development projects to improve the quantity and quality of economic, educational, and social services available to refugees. Recommendations and good practices by many stakeholders have been described. When some of them are implemented in other countries, they will benefit from repeating the successful practices and strategies documented in this review of the current situation.

Finally, although there is a substantial body of research on the integration of refugees, however, further efforts and research are required to understand the changes that are necessary to sufficiently support the right to education and the right to employment for the successful socio-economic integration of refugees into their host state.

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