



# General Assembly

Distr.: General  
16 April 2010

Original: English

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## Human Rights Council

### Fourteenth session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **The right to education of migrants, refugees and asylum-seekers**

### **Report of the Special Rapporteur on the right to education, Vernor Muñoz\***

#### *Summary*

This report is submitted in accordance with Human Rights Council resolution 8/4. The current Special Rapporteur decided to devote his sixth and last annual report to the question of the right to education of migrants, refugees and asylum-seekers. The focus is on those who have crossed national borders, who generally are at risk of marginalization and specifically to discrimination in the provision of education. The report aims to inform and assist Governments and interested parties in their efforts to address these matters and develop best practices so as to ensure the enjoyment of the currently unfulfilled right to education for migrants, refugees and asylum-seekers.

The report addresses six core issues, the consideration of which follows an analysis of the contextual background. Attention to these issues is viewed by the Special Rapporteur as indispensable in meeting the educational challenges and opportunities related to migration. These core, but inevitably interrelated, themes are: the legal and normative framework; social and cultural issues; language and curriculum; teachers; accreditation; and learning for life.

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\* This document is submitted late in order to include up-to-date information.

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## I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 8/4. Since presenting his previous report to the Council, the Special Rapporteur has undertaken missions to Paraguay (April 2009), Mongolia (October 2009) and Mexico (February 2010). The reports of these missions are contained in addenda to this report (A/HRC/14/25/Add.2 to 4). He has participated in working meetings with Governments, United Nations and other specialized agencies, non-governmental organizations, universities, students, children and adolescents and national human rights institutions globally. At the invitation of the Office of the United Nations High Commissioner for Refugees (UNHCR), he undertook a visit to refugee camps in Uganda (January 2010). The Special Rapporteur also presented a report to the sixty-fourth session of the General Assembly (A/64/273) that focused on the issue of lifelong learning. He underlined its mutual interdependence with human rights learning and drew attention to a number of concepts and initiatives concerning human rights learning that he has seen in practice.

2. Building upon the Special Rapporteur's sustained focus on groups traditionally marginalized and vulnerable to discrimination in education, this report considers the situation of those who have crossed national borders — migrants, refugees and asylum-seekers — and what this means for the enjoyment of their right to education and as learners over their lifetime.

3. Preparations for this report repeatedly raised issues of definition and the associated categorization of groups with "particular concerns". Common definitions and particular concerns are frequently reflected in legal and political frameworks and the educational programming of Governments, intergovernmental agencies and civil society. They do not, however, adequately reflect the complexities associated with movement and migration of people across national borders, the histories of these movements and the social reality of those living this situation today. These complexities contribute to the processes of educational marginalization.

4. While the report, by necessity, draws on current definitions and programmes, a recurrent challenge runs throughout: in order to formulate adequate educational legislation, policy and programmes, how can the limitations of existing categories, typologies and legal status be worked with and gone beyond. Furthermore, in order to utilize existing expertise, capacities and experience, the focus should, on the one hand, be on augmenting and strengthening educational opportunities where they exist and, on the other hand, directly responding to the needs of individuals and institutions that are the result of cross-border movements and migrations and associated challenges of equity in diversity.

5. The Special Rapporteur has benefited greatly from the significant engagement of numerous relevant actors in the report process which has generated a wealth of different perspectives from which lessons can be learned and which form the basis of a number of recommendations. The Special Rapporteur extends his thanks to those who engaged in this context.

6. He extends his thanks to those who contributed to the international dissemination and completion of a questionnaire addressed to Governments,<sup>1</sup> interested stakeholders and

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<sup>1</sup> At the time of finalizing the report, the following Governments had responded: Albania, Australia, Bolivia (Plurinational State of), Bulgaria, Cambodia, Canada, Colombia, Costa Rica, Cyprus, Czech Republic, Denmark, Estonia, Germany, Greece, Guyana, Iraq, Japan, Jordan, Kazakhstan, Latvia, Lebanon, Mexico, Moldova, Monaco, Montenegro, Myanmar, Nicaragua, Portugal, Qatar, Republic

organizations.<sup>2</sup> The questionnaire invited addressees to share a broad range of practices, experiences and expertise with the Special Rapporteur on the following: the demographic and sociological characteristics of cross-border migrants; the educational needs and challenges faced by migrant students and providers; the impact of the migrant presence on education services, provision and demand; and the relevant legal frameworks and their methods of application.

7. A specific aim of the questionnaire was to provide an opportunity for those in communities and geographical regions currently underrepresented in the local, national, regional and international systems to raise their concerns and issues in respect of the right to education for migrants, refugees and asylum-seekers. The Special Rapporteur considers that such opportunities should continue to be provided.

8. In order to accommodate the reporting requirements of the Human Rights Council, only those responses received at the time of finalizing the report could be reflected in the report. Nevertheless, the Special Rapporteur welcomes further responses.

9. Given the length constraints on the report, the Special Rapporteur felt that it was necessary to focus on some issues at the expense of others<sup>3</sup> and to raise some other concerns only briefly. This report should therefore be read in the context of other thematic reports on the right to education; most specifically, those on gender, disability and education in emergencies<sup>4</sup> or relevant peer-reviewed literature. It should also be viewed as a contribution towards an ongoing dialogue on the right to education for migrants, refugees and asylum-seekers.

10. An understanding of the contextual background is indispensable to meeting the educational challenges and opportunities of migration. This background is provided below and is followed by an analysis of the associated legal and normative framework. An examination of distinct but interrelated themes — social and cultural issues, language and curriculum, teachers, accreditation and learning for life — comprises the bulk of the report, which is followed by a number of recommendations.

## II. The contextual background

11. Historically, movement has defined ancient and modern societies. There are multiple reasons for these movements or migrations. They are the outcome of complex social,

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of Korea, Russian Federation, Serbia, Spain, Suriname, Switzerland, Syria, Thailand, Trinidad and Tobago, Turkmenistan, Uganda, United Kingdom, Ukraine and Venezuela (Bolivarian Republic of). Due to limited capacity for translation, the full content of some replies could not be reflected in the report.

<sup>2</sup> The following national human rights institutions also provided replies: Egypt, France, India, Mexico, Panama and South Africa. In addition, the Special Rapporteur also received replies from the following international organizations: UNHCR, United Nations Educational, Scientific and Cultural Organization (UNESCO), International Organization for Migration (IOM) and from the following NGOs: Amnesty International, Asociación de Derechos Civiles de Argentina, Asylum Access, Bertelsmann Foundation, Bureau International Catholique de l'Enfance (et al.), Children on the Edge, Defense for Children International, Dutch Refugee Council, Fe y Alegria, Foundation for the Refugee Education Trust, Gewerschaft Erziehung und Wissenschaft, Human Rights Watch, Hungarian Helsinki Committee, Joint Committee with Migrants in Korea, Jesuit Refugee Service, Platform for International Cooperation on Undocumented Migrants and Save the Children. Numerous individuals also responded.

<sup>3</sup> The issue of State responsibility for its nationals who have crossed national borders. This issue is inadequately considered in normative frameworks, research focus and State practice.

<sup>4</sup> See E/CN.4/2006/45, A/HRC/4/29 and A/HRC/8/10.

political, economic and cultural phenomena that include political and economic projects aimed at searching beyond territorial boundaries and opening new markets, economic failure, social conflict, unpopular political regimes, persecution, natural or man-made catastrophes, or simply decisions of individuals and families to seek a better life elsewhere. Migrations always involve individuals and their rights and raise challenges as to how to build new ways of ensuring communities that acknowledge respect for diversity (cultural and linguistic), anchored in equity and solidarity.

12. Movements are often not one way, nor do they take one form. Some families and groups develop complex, embedded relations in multiple locations, with the result that they move between often quite distant, and distinctly different, communities with various social and cultural milieux. Other communities have a permanent orientation to moving, reflected by their deeply engrained way of life. Such longer-standing traditions challenge more modern ways of thinking about citizens and their rights as tied to nation States and realized as a result of the rights acquired at birth or by naturalization.

13. Movements also include movements of money, ideas, languages and other kinds of resources. Remittances, for instance, constitute a significant component of some countries' gross domestic product (GDP), although in the current financial climate they are a highly unstable flow of resources. Such resources are also difficult to access for the purpose of local and national development, and therefore unavailable as a means of securing social justice through redistribution. Resources, like language and cultural and social ties, do not always move easily; they have value, and can be culturally and socially leveraged to secure social mobility and social justice in one community, but not in another. Such differently valued linguistic and cultural knowledge and resources make it difficult for those who move over borders — in this case migrants, refugees and asylum-seekers — to easily integrate into new communities. As a result, their contribution to the community as a whole is hindered. Indeed, in many cases, the presence (and in some cases size) of migrant, refugee and asylum-seeker populations are viewed as a threat to existing communities, generating xenophobic and racist reactions.

14. At particular points in time, unprecedented numbers of individuals, families or large populations move either willingly or unwillingly across territorial borders. Current processes associated with economic, political, technological and cultural globalization — the result of changes in the organization of the global economy and new threats to world order and security — have resulted in major upheavals and the fracturing of existing communities and family relations. Many developed economies, themselves facing major demographic declines and new economic competitiveness challenges, are also favouring policies that seek to attract highly skilled labour and talented students. Yet, with around half of the world's refugees residing in cities and towns,<sup>5</sup> how might these populations gain access to relevant education and training programmes that enable them to contribute in more meaningful ways to local economic and community development?

15. Despite considerable challenges in collecting accurate data because of the very nature of (often forced) migration and challenges presented by immigration laws forcing people into illegality, a rapid increase in the number of migrants can be observed – from 82 million persons in the early 1970s living outside their country of origin for more than one year<sup>6</sup> to nearly 200 million in 2007 (3 per cent of the world's population of 6.5 billion). UNHCR places the number higher than this; it argues that there are 214 million

<sup>5</sup> See UNHCR "Refugee Education in Urban Settings: Case Studies from Nairobi, Kampala, Amman, Damascus" (Geneva, OSTS/DPSM, 2009).

<sup>6</sup> Stephen Castles and Mark J. Miller, *The Age of Migration*, 4th ed., (Basingstoke, Palgrave Macmillan, 2008), p. 5.

international migrants in the world in 2010, or about 3.1 per cent of the world's population. Almost half (47 per cent) are women, and 44 per cent are children under the age of 18.<sup>7</sup> UNHCR estimates the number of refugees and asylum-seekers to be 16 million.<sup>8</sup>

16. Today, some 60 per cent of the world's migrants live in the developed world, yet they do not always share the wealth of those societies and, in many cases, enjoyment of their basic rights as citizens is highly problematic. Conversely, 80 per cent of all refugees are hosted by countries of the South, which shows that a disproportionate burden is carried by those least able to afford it.<sup>9</sup> About 10–15 per cent of migration involves migration under irregular conditions.<sup>10</sup> For 2008, remittance flows were estimated at US\$ 444 billion worldwide, of which US\$ 338 billion went to developing countries.<sup>11</sup> The International Labour Organization indicates that the US\$ 250 billion of remittances effected in 2005 exceeds the sum of all official development assistance and foreign direct investment.<sup>12</sup> Compounding this issue is the fact that developing countries lose around 10–30 per cent of skilled workers and professionals through a constant “brain drain”,<sup>13</sup> with the result that their knowledge and skills are not available for economic development projects.

17. Whatever the reasons behind these forced movements and migrations, new challenges are faced, including how individuals (children and adults alone), families and communities can realize their fundamental human rights, in particular the right to protection, education and dignity, and how best to enhance the many dimensions and opportunities inherent in diversity. Women, men, boys and girls of all ages and backgrounds — whether migrants, refugees, asylum-seekers, stateless persons, returnees or internally displaced persons — have the right to education, and particularly those forms of education which are most likely to contribute to realizing individual capabilities, on the one hand, and shared norms of respect and social justice, on the other. This report shows that the international community too easily tolerates the many violations of this right.

18. The Special Rapporteur is particularly concerned by the forced movement or migration of populations over national borders. Such vulnerable population groups<sup>14</sup> need the full attention of the international community and should fall into the target group of the objectives set by Education for All goals for 2015, in the realization of the national and international education obligations.

<sup>7</sup> UNHCR, “2008 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons”, Country Data Sheets (UNHCR, 2009), p. 2.

<sup>8</sup> See UNHCR press release, 16 June 2009. Available from <http://www.unhcr.org/print/4a2fd52412d.html>.

<sup>9</sup> “2008 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons”, p. 2.

<sup>10</sup> See International Labour Organization (ILO), “Facts on labour migration” (Geneva, 2006). Available from [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_067570.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_067570.pdf).

<sup>11</sup> See Dilip Ratha, Sanket Mohapatra and Ani Silwal, “Migration and Remittance Trends 2009”, *Migration and Development Brief*, No. 11 (November 2009). Available from <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/MigrationAndDevelopmentBrief11.pdf>.

<sup>12</sup> See “Facts on labour migration”.

<sup>13</sup> Ibid.

<sup>14</sup> Of equal concern, but not reviewed in this report as they warrant separate and detailed consideration, are internally displaced persons and children “left behind” by parents/guardians who have crossed territorial boundaries.

### III. The legal and normative framework

19. The Special Rapporteur on the right to education associates the fundamental right to education with the non-discriminatory right to free education, which includes direct (fees, transport, textbooks, etc.) and indirect (opportunity) costs (foregone earnings and work-related learning).

20. The Special Rapporteur also draws attention to the 1948 Universal Declaration of Human Rights (art. 26), which views the right to education as comprising: (a) fundamental education, which refers to free, often non-formal education for illiterate people, with a strong collective and cultural emphasis for human development (“community education”); and (b) elementary education, i.e., free compulsory formal education which, while not specifying any particular level(s) or stage(s), normatively integrated free post-primary education.<sup>15</sup> Article 26 of the Declaration, and subsequent international human rights law,<sup>16</sup> also guarantee the right of parents and legal guardians to choose their children’s education in conformity with their religious, moral or philosophical convictions. States, however, are not legally obliged to provide instruction in line with such choices.<sup>17</sup>

21. The right to education has subsequently been enshrined in a range of international conventions, including the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Rights of the Child (1989) and, more recently, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). Specific to refugee concerns are the Convention relating to the Status of Refugees (Refugee Convention, 1951) and its 1967 Protocol (arts. 4 and 22), and the Convention against Discrimination in Education (1960, art. 4).

22. The Special Rapporteur also draws attention to a number of regional conventions which also make provision for the right to education, in particular Protocol 1 (1952, art. 2) of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms which follows the Universal Declaration of Human Rights in normatively integrating all educational types and levels in the right to education; the 1996 European Social Charter (revised) (art. 17.2); the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (arts. 13 and 16); and the African Charter on the Rights and Welfare of the Child (art. 11).

23. A number of notable declarations and plans of action are also worth mentioning, although these do not carry the same binding obligations on States. The Special Rapporteur wishes to refer to the 1990 World Declaration on Education for All; the 2000 Dakar Framework for Action; the 2000 United Nations Millennium Declaration; and the 2005 World Summit Outcome (paras. 34, 43 and 44).<sup>18</sup>

24. The Special Rapporteur notes that, over the decades, the formerly more comprehensive notion of the right to education has been reconceptualized. This reconceptualization has a particular geography to it. In the global developing world, this right has come to be normatively restricted to literacy and primary schooling (4–6 years), while in developed countries, it refers to compulsory primary and secondary schooling.

<sup>15</sup> See John Smyth, ed., *World Education Report 2000: The right to education – towards education for all throughout life* (Paris, UNESCO, 2000).

<sup>16</sup> Katarina Tomasevski, *Human rights obligations in education: the 4-A scheme*, (Nijmegen, Wolf Legal Publishers, 2006), pp. 29–30.

<sup>17</sup> Jacqueline Bhabha, “Children, migration and international norms”, in *Migration and International Legal Norms*, T. Alexander Aleinikoff and Vincent Chetail, eds., (The Hague, T.M.C. Asser Press, 2002), pp. 203–223.

<sup>18</sup> General Assembly resolution 60/1.

Milestones in this process have been the Convention against Discrimination in Education and the declarations mentioned above. This progressive reduction in scope of the right to education in the South has been criticized for serving as a largely functional, basic-skill acquisition for low value-added routine work within the global division of labour.<sup>19</sup>

25. The Special Rapporteur also observes with concern that increasingly, especially since the adoption of the World Declaration on Education for All, goodwill has become a substitute for entitlement. Frequently, the right to education has been replaced by legally non-binding terms such as “access to education”.<sup>20</sup> This coincides with a general shift from a teacher-centred to a learner-centred approach, on one hand, and the redefinition of education, on the other. Here, education, for whose provision the State is primarily responsible, is being redefined as a commodity rather than a societal good, with the learner made responsible for this – portrayed as a consumer with choices. For the Special Rapporteur, this approach to education, particularly in the face of wider global challenges (sustainability, security and equality) is problematic.

26. The Special Rapporteur also notes that the international norms and instruments listed earlier pay little attention to the particular situation of the educational rights of migrants, refugees and asylum-seekers. The same is the case with many other instruments, such as the Convention concerning Migration for Employment (Revised 1949), the Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1992), and the European Charter for Regional or Minority Languages (1992).

27. However, the Special Rapporteur observes that the Convention relating to the Status of Refugees and its 1967 Protocol (arts. 4 and 22) and the Migrant Workers Convention reiterate the right to educational choice and the obligation of the contracting States to accord to refugees the same treatment as is accorded to nationals with respect to “elementary education”<sup>21</sup> and to ensure “equal opportunities” with respect to non-elementary education. This includes access, the recognition of certificates and diplomas, the remission of fees and charges and the award of scholarships. Moreover, in accordance with article 28.1 of the Convention on the Rights of the Child “equal opportunity” in terms of the “best interest” principle may justify differential treatment of migrant, refugee and asylum-seekers’ children, such as mother-tongue teaching, provided that non-discrimination measures are in place,<sup>22</sup> although in article 45.4 of the Migrant Workers Convention, there is no obligation for receiving States to provide special mother-tongue instruction schemes.

28. Furthermore, according to the Committee on the Rights of the Child, in its general comment No. 6 (2005), equality of treatment irrespective of nationality, immigration status or statelessness should also be guaranteed to unaccompanied and separated children. The Special Rapporteur notes, however, that, for some authors writing on education, the international legislation applicable to the situation of independent child migrants remains

<sup>19</sup> See Colin Lankshear, “Language and the new capitalism”, *International Journal of Inclusive Education*, vol. 1, No. 4 (October 1998), pp. 309–321; Rosa María Torres, “One decade of education for all: the challenge ahead”, (Buenos Aires, IIEP-UNESCO, 1999).

<sup>20</sup> See *Human rights obligations in education: the 4-A scheme*, pp. 28, 49 and 64.

<sup>21</sup> Elementary education has been variously interpreted: see, further, *World Education Report 2000: The right to education – towards education for all throughout life*.

<sup>22</sup> “Children, migration and international norms”, p. 210.



incomplete, as it fails to specifically and systematically address the circumstances of most unaccompanied child migrants.<sup>23</sup>

29. The Special Rapporteur is also concerned by the incomplete realization of the right to education of migrants, refugees and asylum-seekers (or children thereof) of irregular status. The Special Rapporteur thus welcomes the increasing recognition of equality of treatment irrespective of legal status, as expressed in the International Labour Organization (ILO) Migrant Workers Convention No. 143 (Supplementary Provisions) (arts. 1 and 9), the United Nations Migrant Workers Convention, the final report of the 1994 International Conference on Population and Development (principle 12) and the 2000 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (para. 12). The Special Rapporteur, however, views the lack of ratification of, in particular, the United Nations Migrant Workers Convention (which by February 2010 had been signed by only 31 of the 192 United Nations Members, of which virtually all are countries of emigration)<sup>24</sup> as indicative of State apathy in this area.

30. The Special Rapporteur further notes that child migrants and refugees, often in search of education and work opportunities, are particularly vulnerable to forced, compulsory and exploitative labour and sexual abuse. International instruments, such as the ILO Minimum Age Convention No. 138 and the European Social Charter (revised) (art. 7.2), establish 15 as the minimum age for both the completion of compulsory schooling and entry into employment. Consequently, the increased reduction of the right to education in elementary schooling undermines the protection of child migrants and refugees from hazardous work. This is related to the understanding that education can, and should, serve as an important tool to protect children from sexual and gender-based violence, HIV/AIDS, military recruitment, crime and drugs, inter alia.

31. Equally, restricted access to education jeopardizes entitlements to the knowledge and skills and values that might directly contribute to societal development (democracy, non-violent conflict resolution, mutual respect, tolerance and respect for the natural environment) and full human development (personality, talents, mental and physical abilities, the respect for migrants' and refugees' own culture, language and values), as expressed in the Convention on the Rights of the Child (arts. 29, 31 and 32) and the 1993 Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights.

#### **IV. Culture and social issues**

32. Prominent among the questionnaire responses was the perception that the cultural diversity which follows as a result of migration ought to be valued as a resource, rather than being conceived as an instrument of division. The Special Rapporteur found the repeated statement that the migrant, refugee and asylum-seekers' presence in national education systems could be drawn upon more systematically to enrich and enhance non-formal and formal learning environments, and thus the learning experience of all students.

33. However, there continue to be tensions between national and migrant, refugee and asylum-seeker communities. These tensions often reach levels of xenophobia, as both

<sup>23</sup> See Jacqueline Bhabha, "Independent children, inconsistent adults: International child migration and the legal framework", Innocenti Discussion Papers, No. 2008-02 (Florence, UNICEF, 2008).

<sup>24</sup> From [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en).

experience unfamiliar languages, cultural practices and expectations. These can be exacerbated when finite resources are perceived to be focused upon one community at the expense of the other. One contributor from Liberia noted: “if education is not equitably distributed ... there are bound to be pockets of dissatisfaction and escalation of crime”.

34. There is also ample evidence that migrant, refugee and asylum-seeking students in many countries face a far higher risk of marginalization with regard to education systems and opportunities when compared with native students.<sup>25</sup> Movement across national borders is only one of the many causal factors and mechanisms (social, economic, cultural, physical and psychological) that impact upon migrants, refugees and asylum-seekers in the exercise of their right to education. Early marriage and pregnancy, cultural expectations requiring girls and women to attend to childcare and household duties, and insecurity when travelling to school are examples of others. An assumption of linear causality should therefore be avoided.

35. Many of these factors combine and are reflected in low socio-economic status, class-based residential patterns and consequent school composition. Research suggests that a concentration of non-native students in any one school can be detrimental to education outcomes.<sup>26</sup> Many low-income families and migrants, refugees and asylum-seekers do not have access to good-quality education.<sup>27</sup>

36. The Special Rapporteur highlights the issues facing families in conflict-affected areas, especially those on precarious incomes. Pertinent is the comment of a refugee who stated that: “shortage of food forces parents to use their children to work”; and another who stated that: “an empty stomach does not have ears”. In such contexts, food and shelter are prioritized over payment of education fees (where imposed) and indirect costs to quality education.

37. States, civil society and global international agencies have, in their own ways, sought to address some of the issues noted above. The Special Rapporteur points to three examples of how to strengthen educational opportunity and quality across all groups in disadvantaged communities.<sup>28</sup> First, a number of European States have weighted additional funding according to the socio-demographic characteristics of the student population. Switzerland, aiming to halt native middle-class “flight” from inner city districts with a high proportion of ethnically-diverse populations, has focused on raising the quality of existing multi-ethnic schools by introducing an area-wide model of quality assurance.<sup>29</sup> In Ecuador, human rights organizations and international non-governmental organizations (NGOs) have collaborated to organize inclusive workshops to design and implement “codes of living together” based upon respect for diversity, solidarity, equity and justice.

<sup>25</sup> UNESCO, *EFA Global Monitoring Report 2010: Reaching the Marginalized* (Paris and Oxford, UNESCO and Oxford University Press, 2010), p. 157.

<sup>26</sup> See in particular Deborah Nusche, “What Works in Migrant Education? A Review of Evidence and Policy Options”, OECD Education Working Papers, No. 22 (OECD, 2009), p. 9.

<sup>27</sup> See, inter alia, David Arnold and Greta Doctoroff, “The early education of socio-economically disadvantaged children”, *Annual Review of Psychology*, No. 54 (2003), pp. 517–545; “What works in Migrant Education? A Review of Evidence and Policy Options”; and also *EFA Global Monitoring Report 2010*, p. 52.

<sup>28</sup> See Stephen McNair, “Migration, Communities and Lifelong Learning”, IFLL Thematic Paper, No. 3 (Leicester, National Institute of Adult Continuing Education, 2009), p. 49. <http://www.niace.org.uk/lifelonglearninginquiry/docs/IFLL-migration.pdf>.

<sup>29</sup> See *EFA Global Monitoring Report 2010*, pp. 10–12.

38. Segregation can take many forms, but invariably results in discrimination and thus impedes social mobility through education.<sup>30</sup> In this respect, the Special Rapporteur notes that “ability” grouping (and tracking) within learning environments may be based on a variety of factors, including socio-economic background, ethnic origin and migrant status. Early-ability grouping and tracking has been shown to impact negatively on the school achievement of migrant students and students of migrant origin.<sup>31</sup> In particular, migrants are more likely than their native peers to be diagnosed as having “special needs” resulting in their placement in separate institutions providing “special” education.<sup>32</sup>

39. Some replies to the questionnaire indicated that there is a lack of information and awareness among migrant, refugee and asylum-seeker populations about their rights, specifically those that safeguard their right to education. Implicit in this is what it means to make informed school and educational decisions. It is essential, therefore, to provide information and logistical support to migrant, refugee and asylum-seeking populations to strengthen their capacity in this regard. Activities might include, for example, home visits to low-income and migrant, refugee and asylum-seeking families, “education booths” in shopping malls, information fairs and hotlines in relevant migrant languages.

40. The Special Rapporteur notes the invisibility<sup>33</sup> of migrants, refugees and asylum-seekers with disabilities. They are neither visible in current research, nor were they a focus of attention in the replies to the questionnaire. In the relevant comment that does exist, there is little recognition of their specific, in many cases discriminatory, experiences, let alone steps that might be taken to address them.

41. While the main focus of this report is on those “first-generation” migrants, refugees and asylum-seekers who are marginalized, the Special Rapporteur takes note of the recent research which confirms the Organization for Economic Cooperation and Development (OECD) Programme for International Student Assessment (PISA) findings concerning the structural discrimination (social, political and institutional) of “second-generation” immigrants in education. However, research into the educational concerns of second-generation immigrants is regrettably scarce. This lacunae demands attention.<sup>34</sup>

42. The Special Rapporteur thus believes that the basis for positive social interaction is grounded in intercultural education. This intercultural dimension of education confirms the interdependence between education and other social systems, particularly those at the community level and, as such, is the means for advancing and embedding the principles of diversity, respect and solidarity.<sup>35</sup>

## V. Language and curricula concerns

43. The Special Rapporteur observes that social and cultural issues are intrinsically entwined with language and curricula. Much has been written, particularly in Europe and more widely across the OECD countries, on issues of language acquisition for migrants.

<sup>30</sup> See Maurice Crul and Jens Schneider, “The Second Generation in Europe: Education and the transition to the labour market”, TIES Policy Brief (Institute for Migration and Ethnic Studies, Universiteit van Amsterdam, 2009), pp. 11–12.

<sup>31</sup> See A/HRC/4/29/Add.3.

<sup>32</sup> See *EFA Global Monitoring Report 2010*.

<sup>33</sup> See further Inter-Agency Network for Education in Emergencies (INEE), Inclusive Education and Disability Task Team at: <http://www.ineesite.org/index.php/post/disability/>.

<sup>34</sup> See *EFA Global Monitoring Report 2010*.

<sup>35</sup> See Miquel Angel Essomba, *Construir la escuela intercultural: Reflexiones y propuestas para trabajar la diversidad étnica y cultural* (Barcelona, Biblioteca de Aula, 2007), p. 11.

However, the Special Rapporteur notes that much less research exists on how migration impacts upon curriculum content. A common theme in relevant materials and the questionnaire responses is that there are three guiding principles contributing significantly to the development of quality linguistic and culturally relevant core curricula. These are:

- Curricula should be entrenched within the human rights framework
- Consultation with migrant, refugee and asylum-seeking parents/guardians and communities should be the norm in their planning, design, implementation and evaluation, and
- A focus upon inclusive, mutual and collective learning with minimal segregated adaptation groups and classes<sup>36</sup>

44. It is now widely recognized that having a home language that differs from that used in schools has a negative impact on achievement,<sup>37</sup> learning and integration into the wider community. Policy and pedagogic responses require host-language training combined with the preservation of mother tongue. This requirement was recognized in many questionnaire responses.<sup>38</sup> The Special Rapporteur concurs with those who view diversity in language within a State as a national resource and invites States to promote such diversity and accord it full recognition.

45. The Special Rapporteur notes the varied approaches to addressing this crucial matter and draws upon two as particularly illustrative. In Sweden, refugees and asylum-seekers aged from 7 to 16 are legally entitled to bilingual education, and municipalities are obliged to offer mother-tongue tuition and Swedish as a second-language course. Denmark promotes a co-education policy in which bilingual and monolingual children learn together. Migrant children receive up to two years of basic instruction in Danish as a second language in separate teams or classes until they are ready for mainstream classes. “Compulsory language stimulation” for bilingual children starts at age 3 and is supported by free materials provided at the municipal level. The Special Rapporteur notes the utility of good quality, early child education, known to play an important role in offsetting social, economic and language-based disadvantage.<sup>39</sup>

46. In reality, State, intergovernmental and civil society practices vary markedly in the age groups, gender balance, intensity and location of those targeted. Disturbingly, monitoring and evaluating practice and programmes is limited. It is also clear from evidence that their “success” is by no means consistent.<sup>40</sup> The Special Rapporteur urges more sharing of best practice and draws attention to the importance of regional answers to

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<sup>36</sup> Denmark offers an interesting example of mutual learning where bilingual and monolingual children learn together in a non-segregationist school system.

<sup>37</sup> Replies to the questionnaire of the Special Rapporteur. See also *EFA Global Monitoring Report 2010*, p. 49.

<sup>38</sup> The Government of Cyprus for instance indicates that one of the most important needs of migrants, refugees and asylum-seekers is the preservation of their mother language, customs and culture.

<sup>39</sup> Illustrative examples are seen in the United States, France, the Netherlands and New Zealand. See also *EFA Global Monitoring Report 2010*, pp. 49–50.

<sup>40</sup> The Special Rapporteur notes with interest the research, highlighted by the Government of Cyprus, into the effectiveness of the intensive training programme for bilingual students, currently implemented in 31 secondary schools. In contrast is evidence from Norway that 20 per cent of migrant students placed in special language training groups on entering school never leave them; in Switzerland, most migrant children not deemed equipped to enter mainstream classes are still in such groups after two years. Moreover, evidence from several countries shows that catching up through special classes often requires students to miss the normal curriculum. From *EFA Global Monitoring Report 2010*, p. 49.

regional needs.<sup>41</sup> Regions might also consider developing a global dimension in their curriculum; this would help develop an awareness of near neighbours in order to promote greater understanding and create the basis for mutual learning within the region.

47. In the case of refugees in camps, although the desirable language and curricula is noted as “ideally”<sup>42</sup> that of origin, education providers should engage in broad consultation and act to ensure that the most appropriate curriculum is followed.

48. The Special Rapporteur takes this opportunity to emphasize that school learning content and non-formal learning for refugees and asylum-seekers in refugee camps should aim to transmit key life-saving and life-sustaining messages (including landmine and unexploded ordinance awareness, rapid evacuation, skills-based health education, conflict resolution, humanitarian norms, child protection, etc.) in addition to preparation for local integration, repatriation or resettlement.<sup>43</sup> In this regard, the Special Rapporteur specifically draws attention to, and welcomes, the educational work of UNHCR, but encourages increased attention, intensity and breadth in its provision.

## VI. Teachers

49. Teachers and schools (meso-level) are positioned at the intersection of national and subnational policy directives and programmes (macro-level), on the one hand, and the expectations of households (micro-level) in the delivery of education, on the other. The Special Rapporteur recognizes that the meso-level processes linking the individual and society matter tremendously for student performance, and thus the right to education for migrants, refugees and asylum-seekers.<sup>44</sup>

50. The shortage of teachers is a major obstacle to access and good quality education for refugees, asylum-seekers and migrants. Overcrowded and unmanageable classes increase student dropout. Especially in developed countries, schools with a large migrant and refugee proportion are often the most disadvantaged in terms of funds and qualified and experienced staff. In refugee camps, low and/or inappropriate compensation (teachers receiving monetary or non-monetary “incentives” instead of salaries) encourage teachers to work for NGOs or for schools outside the camp rather than in a refugee school.

51. Almost universally, teachers lack the pedagogical, psychological and didactical education and training to adequately respond to the challenges posed by multilingual, multicultural and multi-ethnic learner groups. This is particularly problematic when working with traumatized learners. In the Philippines, for instance, teachers and children reportedly can receive support from specialists, such as guidance counsellors. In refugee camps, the problems are further compounded as the teacher is likely to have very little previous training and experience.

<sup>41</sup> An example here is the Managua Declaration. Available from: [http://www.hunter.cuny.edu/galci/pdfs/archives/07.14.06/Managua\\_DeclarationEng.pdf](http://www.hunter.cuny.edu/galci/pdfs/archives/07.14.06/Managua_DeclarationEng.pdf).

<sup>42</sup> UNHCR, *Education: Field guidelines* (UNHCR, 2003), p. 11.

<sup>43</sup> See in particular David Wilson, ed., *Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction* (London, INEE, 2004), pp. 58–59; see also *UNHCR Handbook for the Protection of Women and Girls* (UNHCR, 2008), p. 297. Available from: <http://www.unhcr.org/refworld/docid/47cfc2962.html>.

<sup>44</sup> See Friedrich Heckmann et al., *Education and migration: Strategies for integrating migrant children in European schools and societies* (European Commission/Network of Experts in Social Sciences of Education and Training, Brussels, 2008).

52. The issue of teacher supply remains a serious problem which must be addressed, given the consequences for those who are marginalized in the learning process; many teachers exit the profession given such tremendous challenges and frustration in their work.

53. Related to the lack of adequate education are the low expectations of teachers and the stereotypes held about a minority cultural group which often leads to discrimination. According to an education workers' union, in segregationist school systems such misjudgement may discourage and push migrant and refugee children illegitimately into special needs schools.

54. The Special Rapporteur views the provision of intercultural training courses and awareness-raising conferences and seminars for teachers in many countries as a very positive activity and one that could be replicated elsewhere. In Denmark, for instance, teacher education includes cultural theory and research into multiculturalism. In Latvia, the "Teacher in Intercultural Environment" project has aimed to educate teachers in intercultural communication and tolerance. However, he notes also that these courses are optional (voluntary). Equally, while intercultural education may play an important role in policy documents and curricula, in practice the topic may not receive high priority in teacher education.<sup>45</sup>

55. The Special Rapporteur particularly welcomes initiatives, such as those by the Government of Portugal, whose National Plan for the Integration of Immigrants 2007–2009 contains 12 measures in the field of education, including: "Training of Teaching Staff in Interculturality".<sup>46</sup> In Finland, the teacher training programme introduced in 2001 declares training related to linguistic minorities and immigrants to be a priority area for teachers' professional development.<sup>47</sup> The Government of Korea states that multicultural education is an integral component of teacher training programmes: as of 2009, 10 teacher colleges offer the "Introduction on Multicultural Education" course.

56. Many national school systems are resistant to, or are making slow progress in, adapting teaching and learning methods to the needs of migrant, refugee and asylum-seeking students. There are also structural impediments, making national coordination difficult. Many teacher education and training programmes are decentralized, while universities seek to exercise their autonomy. Such structural impediments make concerted, coordinated national or subnational curricular and pedagogical initiatives difficult to implement.

## VII. Accreditation

57. Accreditation — the recognition of learning, skills and experiences — touches on joint past, present and future initiatives and directly affects national education and qualification systems. The Special Rapporteur is aware that some States and regions<sup>48</sup> promote the reciprocal recognition of learning. In large measure, however, the tendency is to focus on formal, certified and academic qualifications.<sup>49</sup> As such, non-formal learning is

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<sup>45</sup> See *EFA Global Monitoring Report 2010*, p. 32.

<sup>46</sup> See Portugal, *Plan for Immigrant Integration* (Lisbon, ACIDI, 2007). Available from: [http://www.acidi.gov.pt/docs/PII/PII\\_Ing.pdf](http://www.acidi.gov.pt/docs/PII/PII_Ing.pdf).

<sup>47</sup> See *EFA Global Monitoring Report 2010*, p. 32.

<sup>48</sup> See the European Parliament and Council directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications, the Andrés Bello Agreement within Latin America and the Lisbon Convention on the Recognition of Qualifications concerning Higher Education in the European Region.

<sup>49</sup> Reflected also in international law. For example, art. 22 of the Convention Relating to the Status of

overlooked. Even when recognized, equivalency is often problematic. This can lead to denial of access to schools<sup>50</sup> and/or inappropriate placement levels, as well as in unemployment or underemployment.

58. The disadvantages implicit in this situation are felt at the individual, local, community, national, regional and international levels, serving also to inhibit integration and social cohesion.<sup>51</sup>

59. Equally, inadequate attention to the quality and impact of mutual recognition systems risks further discrimination and disadvantage of already precarious, marginalized populations. For instance, the requirement for presentation of national documentation directly discriminates against refugees (who may have fled their homes) and irregular migrants when they seek opportunities for education and training.

## VIII. Learning for life

60. The legal and normative framework discussed above has led to the increased reduction of education to compulsory primary and secondary schooling in developed countries and compulsory primary schooling in the developing world. Yet, paradoxically, there is a parallel and broadening policy consensus on the value of “lifelong learning”. The Special Rapporteur welcomes this focus because of the possibilities it offers to the notion of collective learning,<sup>52</sup> while aware that critics also point to the narrowing of this ideal to economic instrumentalism and a focus upon credentials rather than learning competences. If migrant, refugee and asylum-seeker populations are excluded from opportunities for learning over their lifetime, this might add a cumulative process of marginalization. If learning is viewed in terms of formal credentials and not competences that reflect prior learning, then considerable pools of knowledge are ignored, talent is wasted and opportunities for social inclusion are jeopardized. Unless lifelong learning programmes can focus on the emancipatory potential of learning and collective learning, then they risk leaving significant populations behind.<sup>53</sup> Low socio-economic status, migration, disability and gender are key characteristics for those at risk of exclusion from lifelong learning.

61. Lifelong learning cannot be disassociated from immigration law, which often forces migrants, refugees and asylum-seekers into illegality and which may take precedence over and/or be in conflict with the right to education. Indeed, a number of questionnaire respondents supported the claims in wider literature on the issue pointing to such tensions. The attention of the Special Rapporteur has been drawn to the practice of migrant children being detained by police on the grounds of their immigration status while travelling to school and the dependence on permanent legal residence for education access and opportunity.

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Refugees states: “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 ... the recognition of foreign school certificates, diplomas, degrees”.

<sup>50</sup> Related is the lack of official accreditation from migrant and refugee-run schools, created as a response to lack of mainstream educational opportunity and access. See Marisa O’Ensor, “Education and self-reliance in Egypt”, *Forced Migration Magazine*, No. 33 (2010).

<sup>51</sup> See Gudmund Hernes and Michaela Martin, eds., *Accreditation and the global higher education market* (Paris, International Institute for Educational Planning, 2008).

<sup>52</sup> John Holford, Peter Jarvis and Colin Griffin, eds., *International perspectives on lifelong learning* (London, Kogan Page, 1998), p. ix. The attendant implication being the mutual learning of migrants, refugees and asylum-seekers and nationals of all ages.

<sup>53</sup> See, generally, John Field, *Lifelong Learning and the new educational order* (Stoke-on-Trent, Trentham Books, 2008), pp. 113–143.

62. Irregular migrants may be barred from access to formal and non-formal education, as they may face the same registration requirements as nationals or even additional ones, such as having to present authentic birth certificates or evidence of legal residence status.<sup>54</sup> Legislative, policy and practical barriers, such as to community inclusion and participation in education, teach individuals that they are unwelcome and, moreover, ought to survive without inclusion.<sup>55</sup>

63. The Special Rapporteur consequently prompts States that have not included the unconditional right to education in their Constitution to take steps to do so. Two examples are indicative of best practice in this regard. The Bolivarian Republic of Venezuela, defined by its Government as traditionally a migrant-receiving country, guarantees the unrestricted right to education at all levels through its Constitution and migrants are entitled to free education from early childhood care to higher education. Furthermore, its schools are explicitly obliged to permit the registration of undocumented children. The Government of Portugal emphasizes that national legislation also explicitly includes irregular and undocumented migrant and refugee children in the right to education with the concomitant creation of a special registry for irregular minors.

64. It is clear that in some contexts migrants, refugees and asylum-seekers have the opportunity to participate in non-formal and vocational education programmes, some of which are provided by States but also frequently by NGOs. NGO initiatives on the Thai-Myanmar border, for example, include vocational training for unskilled migrant women, health-worker education programmes and teacher training for migrants to become teachers in migrant schools. In South Africa, NGOs offer language and vocational skills training and, in Morocco, language and information technology courses and welcome orientation workshops are offered to women, again by NGOs.

65. The value of such programmes, particularly if appropriately funded, sustained, monitored and evaluated, is widely recognized. Nonetheless, such non-formal education programmes are not a legal right and are often geographically and temporally limited, with more remote refugee camp settings being particularly underserved. This suggests that universally accessible, State and intergovernmental agency-provided, non-formal (adult) education programmes (including vocational training) are necessary.

66. It has already been noted that lifelong learning is understood in different ways. However, when considered holistically, there are relatively few established models or traditions for implementing socially inclusive forms of lifelong learning,<sup>56</sup> particularly when viewed through the lens of migration. Such learning is perceived by the Special Rapporteur, however, as having the potential to address the individual's capacity for learning for and through life and an imperative to inclusion<sup>57</sup> and social cohesion at a time of economic recession. It must be comprised of a balance of interlocking and mutually supportive opportunities for vocational, social and individual learning.<sup>58</sup>

67. Lifelong learning transcends formal schooling and moves beyond post-compulsory education and vocational training. In this regard, the intrinsic value of culturally and linguistically appropriate early childhood learning, particularly when sustained through follow-up programmes, is well noted, as is its role in offsetting social, economic and

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<sup>54</sup> Alternatively and/or additionally, schools may be required to report the immigration status of children to local authorities.

<sup>55</sup> See "Migration, Communities and Lifelong Learning", p. 43.

<sup>56</sup> *International perspectives on lifelong learning*, p. viii.

<sup>57</sup> There is evidence to suggest that early induction programmes assist in the process of inclusion. See also "Migration, Communities and Lifelong Learning".

<sup>58</sup> See "Migration, Communities and Lifelong Learning", p. 42.



language-based disadvantage.<sup>59</sup> The Special Rapporteur notes with interest that all children in Germany from the age of 12 months will, from 2013, have the right to early childhood education.

68. Of concern, however, is the inconsistency of policy and provision, most notably in refugee camps, the result of a lack of funding in quality and quantity of early childhood education programmes. This inconsistency contributes directly and indirectly to lifelong marginalization.

69. The normative and related investment focus on primary education, directly and negatively, impacts upon the quality, accessibility and availability of post-primary and tertiary education. Two contrasting examples illustrate this point. First, and markedly visible in refugee camps dependent upon international cooperation and investment, is a lack of appropriate infrastructure, learning materials and qualified specialized teachers for post-primary education. Second, and a recurrent individual perspective offered by questionnaire respondents seeking post-primary and tertiary education, were the almost insurmountable barriers to, or lack of, individual support.

70. Systemic and individual barriers to post-primary and tertiary education contribute to the perpetuation and consolidation of disadvantage in education generally, in post-primary<sup>60</sup> and tertiary education specifically and of course in life. Correlated with this is the increasing perception that good quality post-primary and tertiary education for migrants, refugees and asylum-seekers in post-conflict States, and those who are particularly fragile, is fundamental to recovery from the aftermath of conflict and longer-term, more stable development.<sup>61</sup>

71. The Special Rapporteur consequently urges States, donors and intergovernmental agencies to look beyond the provision of primary education. Crucially, they should work collaboratively, creatively, and in participation with civil society, towards overcoming these and other barriers so as to make this possible.<sup>62</sup> In this latter respect, the Special Rapporteur draws attention to the frequent absence of tertiary education from the migration and education dialogue, which should be remedied.

## IX. Conclusions and recommendations

**72. The Special Rapporteur reminds States that their education systems should conform to the obligations set forth in the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the objectives of the Education for All programme. Critically, these systems must also be able to respect and promote diversity on the basis of a global understanding of human needs. Similarly, the Special Rapporteur acknowledges that human rights law “does not sufficiently address the question of binding obligations of States to take positive**

<sup>59</sup> See the Managua Declaration.

<sup>60</sup> There still is a significant discrepancy between refugee enrolment in secondary school — 7 per cent — and the average enrolment of nationals — 18 per cent — in the least developed countries. From Foundation for the Refugee Education Trust (RET), annual report 2002–2003 (Geneva, RET, 2003).

<sup>61</sup> Pauline Rose and Martin Greely, “Education in fragile States: Capturing lessons and identifying good practices”, prepared for the DAC Fragile States Group Service Delivery Work Stream, Sub-team for Education Services.

<sup>62</sup> For instance, through ensuring greater access to financial support including scholarships, accompanied by the establishment and implementation of clear and unambiguous policy of tertiary education inclusive of all potential learners.

measures” and “it is largely unclear which distinctions between migrants and the citizens are admissible and which are not”.<sup>63</sup>

73. However, the Special Rapporteur is convinced that the human right to education for migrants, refugees and asylum-seekers should not be contentious. Nevertheless, this right is sometimes disputed. The dispute centres upon the nature of the right itself. Despite being an “enabling right”, the right to education has become a *de facto* derivative right; just as, for instance, the right to development, economic security and the right to life *per se* are subordinated to the primary rights of private property and the profit rate.<sup>64</sup> This situation highlights the two conflicting (and irreconcilable) legal regimes for education: on the one hand, international human rights law defines education as a human right, while on the other hand, international trade law views education as a service, i.e. a commodity.<sup>65</sup> The latter regime offers little scope for advancing mechanisms for realizing the objectives of a human rights responsive education system.

74. The Special Rapporteur recognizes that governmental compliance with the obligations involved in guaranteeing the right to education depends on political will.<sup>66</sup> Resource scarcity, debt servicing or “consecutive economic crises” — generally stated as reasons for non-compliance of Governments with their responsibility to realize the right to education<sup>67</sup> — are unsatisfactory and unacceptable excuses.

75. The Special Rapporteur recalls that adaptability and acceptability are a fundamental component of the human right to education. For this reason, it is essential that all States advance the implementation of intercultural and inclusive education models that make possible the establishment of pedagogical practices which encourage respect for diversity. It is also crucial that learners understand, validate and respect diversity in culture and, in this way, form the basis for substantive change in the struggle against discrimination.

76. Fundamental also is the need for all States to foster the view in all learning settings, whether formal or non-formal, that cultural and linguistic diversity is a resource from which individuals and groups can build strong and supportive sustainable communities.

77. The mechanisms for the enforcement of the right to education are still at an embryonic and fragile stage of development. Absent in this early phase are opportunities for migrants, refugees and asylum-seekers to represent their issues and concerns in ways that might lead to changes in teaching practices and curricula content.

78. The right to education should transcend primary and/or compulsory education, especially if systematic discrimination can be measured between particular social groups in society, as the Programme for International Student Assessment (PISA) suggests, with respect to migrants.

79. The exercise by migrants, refugees and asylum-seekers of their human rights (i.e. to work, housing, and education) “is significantly limited or made impossible if the State, through its laws or administrative practices, disadvantages them in these

<sup>63</sup> Walter Kälin, “Human rights and the integration of migrants”, in *Migration and international legal norms*, p. 282.

<sup>64</sup> David Harvey, *A Brief History of Neoliberalism* (Oxford, Oxford University Press, 2005), p. 182.

<sup>65</sup> See “Children, migration and international norms”, pp. 56–57.

<sup>66</sup> See for example, “Independent children, inconsistent adults”.

<sup>67</sup> See “Children, migration and international norms”, pp. 15–16, 42.

areas” (e.g. if certain jobs can only be held by nationals, or a legal requirement that makes access to the housing market more difficult for extended families).<sup>68</sup>

80. It is clear that the provision and exercise of inclusive education cannot alone meet the challenge to social justice inherent in migration. It is but one central component of the required national and international response. Its absence, however, ensures that social justice remains beyond our reach.

81. As such, the recommendations below must be accompanied by, and meet, the powerful need for the development and implementation of social policies to protect migrants, refugees and asylum-seekers against the adverse economic and social consequences inherent to their vulnerability in the realization of their right to education.<sup>69</sup>

82. Regarding the legal and normative framework, the Special Rapporteur is of the view that:

- To ensure the elimination of discrimination, and the successful integration and social justice for migrants, refugees and asylum-seekers, the normative boundaries of the right to education have to be shifted towards the inclusion of all types and levels of education.
- Although there may be States which grant the right to education for migrants, refugees and asylum-seekers although they have not ratified the respective international instruments discussed earlier,<sup>70</sup> the Special Rapporteur urges Governments of immigration countries in particular to sign and ratify these existing, relevant legal instruments.
- There is a need for the development of mechanisms that permit the monitoring of the implementation of binding legislation and obligations regarding the right to education for migrants, refugees and asylum-seekers.
- As the International Conference on Population and Development (1994) identified migration as a consequence of significant global economic transformations,<sup>71</sup> the Special Rapporteur is particularly concerned by the fact that half of the world’s out-of-school children — 39 million — live in conflict-affected areas.<sup>72</sup> Moreover, as 80 per cent of all refugees are hosted by countries of the developing world, which figure shows that a disproportionate burden is carried by those least able to afford it,<sup>73</sup> increased international cooperation and sharing of responsibility is required, as called for in the International Covenant of Economic, Social and Cultural Rights and the Dakar Framework for Action adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 2000. As underdevelopment is a “principal root

<sup>68</sup> See *A Brief History of Neoliberalism*, pp. 274–275.

<sup>69</sup> See Rachel Sabates-Wheeler and Myrtha Waite, “Migration and Social Protection: A Concept Paper”, Working Paper T2 (Development Research Centre on Migration, Globalisation and Poverty, Sussex, 2003), p. 12.

<sup>70</sup> See António Gutierrez, “Protection challenges for persons of concern in urban setting”, *Forced Migration Review*, No. 34 (February 2010).

<sup>71</sup> See *Report of the International Conference on Population and Development* (A/CONF.171/13), preamble 1.10.

<sup>72</sup> See Janice Dolan, *Last in Line, Last in School: How donors are failing children in conflict-affected fragile States* (Cambridge, International Save the Children Alliance, 2007).

<sup>73</sup> See “2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons”; also <http://www.alertnet.org/thenews/newsdesk/124516153829.htm>.

cause” of migration, helping Governments to realize the right to development becomes imperative.<sup>74</sup>

83. The Special Rapporteur perceives a crucial need for States, donors, international agencies and civil society to work collaboratively together, as substantial movement and migration across national borders will continue to define our globalized world. Their joint aim should be to build and sustain cohesive and resilient communities able to adapt in response to change.<sup>75</sup> To this end, the Special Rapporteur recommends that exchange of good practice is increased and, at a minimum, all should look to:

- Foster the view in all learning settings, both formal and non-formal, that cultural and linguistic diversity is a resource from which individuals and groups can build strong and supportive sustainable communities.
- Develop educational strategies which strengthen the capabilities of marginalized communities as a whole, while addressing the specific educational needs of migrants, refugees and asylum-seekers. Such strategies should look to embedded and coordinated mainstream lifelong learning which prioritizes early integration and the recognition of prior learning.
- Pay increased attention to quality linguistic and culturally appropriate early childhood, primary, post-primary and tertiary education that is responsive to the developmental needs of a region and the value of regional understanding and tolerance.
- Integrate the human rights framework (protection issues including teachers’ code of conduct)<sup>76</sup> into curricula and the learning environment.
- Establish individual curricula or tutoring programmes that support majority language acquisition and, if necessary, other subject areas, so that majority language learning and subject matters can be learned at the same time. These should be offered in mainstream schools and without creating segregated adaptation groups and classes.
- Make available and promote information/materials on education (and welfare) systems with respect to rights, opportunities and responsibilities in migrant languages and in accordance with migrant, refugee and asylum-seeker population needs.
- Improve (national) monitoring systems regarding access to and learning outcomes of migrants and refugees, including data on gender parity and disability. This should include information on the language used in the home and/or the language of instruction of previously completed education institutions in order to monitor language development and language-related drop out.
- Prompt development of regional and international qualification systems, incorporating mutual, reciprocal and automatic recognition of informal and formal learning achievements. This should be accompanied by increased research on potential and viable solutions to issues of equivalency in the learning environment and the workplace.

<sup>74</sup> B.S. Chimni, “Development and migration”, in *Migration and international legal norms*, pp. 255–268.

<sup>75</sup> See “Migration, Communities and Lifelong Learning”, p. 7.

<sup>76</sup> See INEE Minimum Standards, Section “Teachers and other Education Personnel”, pp. 65–72.

- Close the lacuna in research, advocacy and awareness of the educational experience and needs of: (i) migrants, refugees and asylum-seekers with disabilities; (ii) women from these groups; (iii) second-generation migrants; and (iv) unaccompanied asylum-seeking children.

84. The Special Rapporteur emphasizes that teachers and other personnel working with migrants, refugees and asylum-seekers are in need of strong support such as new organizational structures and new teaching forms; this requires action beyond the teacher/school meso-level, towards a more active State, and desegregationist measures at the micro- or community level (e.g. housing policies).<sup>77</sup> More specifically this will involve:

- Increased recruitment of highly competent teachers, and teachers with relevant migrant backgrounds to facilitate more effective individualized pedagogical support (individual curricula), especially at the nursery/kindergarten and primary levels with respect to language acquisition.<sup>78</sup>
- Multi- and intercultural education (awareness-raising, socio-linguistics, communication skills and intercultural competence) made integral to teacher education curricula. In-service specialist training should be obligatory and take place during working hours to avoid increasing the workload of teachers.
- Team-teaching and the support of the classroom teacher by a specialist, as well as mentoring in different forms and by different actors (e.g. higher education students or older role models of immigrant origin),<sup>79</sup> which can improve school attainment.
- In refugee contexts, training to deal with traumatized learners and psychosocial support and expert counselling for both teachers and refugees.

85. Finally, the Special Rapporteur recommends that, in refugee-specific settings, significantly increased attention should be given to adequately resourcing United Nations agencies to ensure specialized educational personnel and implementation of formal and non-formal lifelong educational strategies.

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<sup>77</sup> See *Education and migration*, esp. pp. 18, 48–52.

<sup>78</sup> See “What Works in Migrant Education? A Review of Evidence and Policy Options”, pp. 22–25. As the Government of Korea states, immigrants with higher education degrees are targeted to become bilingual teachers to teach in schools with a high immigrant ratio.

<sup>79</sup> “The Second Generation in Europe: Education and the transition to the labour market”.