

INTERNATIONAL INSTRUMENTS

Right to Education of Migrants, Refugees and Internally Displaced Persons

Specific provisions on migrants, refugees and internally displaced persons

- **Convention Relating to the Status of Refugees, 1951** (Article 22)
- **Convention on the protection of the Rights of All Migrant Workers and Members of their families, 1990** (Articles 12.4, 30, 43, 45; General Comments 1 and 2)
- **International Covenant on Economic, Social and Cultural Rights, 1966** (Articles 2 and 13; General Comments 13)
- **Convention on the Rights of the Child, 1989** (Articles 2, 28; General Comment 6)

- **African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009** (Article 9.2)

- **European Convention on the Legal Status of Migrant Worker, 1977** (Article 14)

General provisions on non-discrimination

- **UNESCO Convention against Discrimination in Education, 1960** (Articles 1, 2, 3 and 4)
- **African Charter on Human and People's Rights, 1981** (Articles 2 and 17)
- **African Charter on the Rights and Welfare of the Child, 1990** (Article 11)
- **African Youth Charter, 2006** (Article 13)

- **European Convention for the Protection of Human Right and Fundamental Freedoms, 1948, Optional Protocol 1, 1952 and Optional Protocol 12, 2000** (Article 14 of the Convention, Article 2 of Protocol 1 and Article 1 of Protocol 12)
- **European Social Charter (revised), 1996** (Articles E, 10 and 17)
- **Charter of Fundamental Rights of the European Union, 2000** (Article 14)

- **Additional Protocol to the American Convention on Human Rights, Protocol of San Salvador, 1998** (Article 13 and 16)

- **Arab Charter on Human Rights, 2004** (Article 41)

- **ASEAN Human Rights Declaration, 2011** (Article 31)

Convention relating to the Status of Refugee, 1951

Article 22

Public education

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.

Convention on the protection of the Rights of All Migrant Workers and Members of their families, 1990

PART III: Human rights of all migrant workers and members of their families

Article 12.4

States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education, of their children in conformity with their own convictions.

Article 30

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

PART IV: Other rights of migrant workers and members of their families who are documented or in a regular situation

Article 43-1

Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to: (a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned; b) Access to vocational guidance and placement services; (c) Access to vocational training and retraining facilities and institutions;

Article 45-1

Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to: a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned; b) Access to vocational guidance and training institutions and services, provided that requirements for participation are met;

The [Committee on Migrant Workers](#) interpreted the Convention in two General Comments that both refer to the right to education: [General Comment 1](#) on Migrant Domestic Workers and [General Comment 2](#) on the rights of migrant workers in an irregular situation and members of their families

General Comment 1 on Migrant Domestic Workers

At arrival and during employment

14. The risk of abuse is heightened for child domestic workers, who make up a significant proportion of domestic workers. Their young age, isolation and separation from their families and peers, and near-total dependence on their employers exacerbate their vulnerability to violations of their rights under the Convention, including the basic right of access to education.

Special protections for children

57. States parties shall ensure that all migrant children, independently of their migration status, have access to free and compulsory primary education as well as to secondary education on the basis of equality of treatment with nationals of the State concerned (article 30), and that the domestic work carried out by children does not interfere with their education. Schools should not be required to report data on the regular or irregular status of pupils to immigration authorities.

59. States parties should eliminate discriminatory policies and practices that deny or restrict the rights of children of migrant domestic workers, notably their right to health and education (articles 28 and 30).

General Comment 2 on the rights of migrant workers in an irregular situation and members of their families

75. Article 30 of the Convention protects the “basic right of access to education” of all children of migrant workers “on the basis of equality of treatment with nationals of the State concerned.” Article 30 also provides that access to public preschool educational institutions or schools shall be without prejudice to the migration status of the child concerned or parents of the child. The Committee, in accordance with article 13 of the International Covenant on Economic, Social and Cultural Rights, is of the view that States parties must provide free and compulsory primary education for all, including children of migrant workers, regardless of their migration status. As such, States parties have an obligation to eliminate all direct costs of schooling, such as school fees, as well as alleviate the adverse impact of indirect costs, such as expenses for school materials and uniforms. Access to secondary education by children of migrant workers must be ensured on the basis of equality of treatment with nationals. Accordingly, whenever children who are nationals have access to free secondary education, States parties must ensure equal access by children of migrant workers, irrespective of their migration status. Similarly, when States parties provide different forms of secondary education, including vocational education, they should also make them accessible to children of migrant workers. The same principle applies to free preschool education or to scholarship schemes. Therefore, whenever children who are nationals have access to free preschool education or scholarships, States parties must ensure equal access by children of migrant workers, irrespective of their migration status.

76. The Committee notes that migrant children may suffer from multiple forms of discrimination due to race, ethnicity, gender, and disability, for example. The principle of equality of treatment requires States parties to eliminate any discrimination against migrant children in their educational systems. States parties must therefore avoid segregated schooling and the application of different standards of treatment to children of migrant workers as well as eliminate any forms of discrimination against children of migrant workers in

classrooms. States parties also need to ensure that effective programmes, policies and mechanisms are in place to prevent discrimination against these children.

77. To ensure access to education, the Committee is also of the view that States parties shall not require schools to report or share data on the regular or irregular status of pupils or their parents to immigration authorities or conduct immigration enforcement operations on or near school premises, as this would limit access to education by children of migrant workers. States parties should also clearly inform school administrators, teachers and parents that they are not required to do so either and provide them with training on the educational rights of children of migrant workers.

78. While noting that the obligation of the State of employment to endeavour to facilitate the teaching of the mother tongue and culture is explicitly accorded to the children of migrant workers in a regular situation pursuant to article 45, paragraph 3, of the Convention, the Committee emphasizes that the right to respect for one's cultural identity (art. 31) belongs to all migrant workers and members of their families, including children. Considering these two provisions together, along with article 29, paragraph 1 (c), of the Convention on the Rights of the Child, which applies to all children, the Committee is of the view that States parties should also ensure access for children of migrant workers in an irregular situation to mother-tongue instruction if already available to children of migrant workers who are documented as having the same mother tongue.

79. Legal identity is often a prerequisite for access to a number of fundamental rights. Children of migrants in an irregular situation, particularly those born in a host State that does not recognize their existence, are vulnerable throughout their lives. States parties are obliged to ensure that children of migrant workers are registered soon after birth, irrespective of the migration status of their parents, and provided with birth certificates and other identity documents (art. 29). States parties shall not require migrant workers to present a residence permit in order to register a child, as this would effectively deprive migrant children in an irregular situation of their right to birth registration, which can also deny them access to education, health services, employment and other rights. Non-compliance by migrant workers with the obligation to register their children following birth should never justify their exclusion from education.

International Covenant on Economic, Social and Cultural Rights, 1966

Article 2

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.

Article 13

1. The States Parties to the present Covenant recognise the right of **everyone** to education.
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;

...

General Comment 13: the Right to Education

16. ...the right to TVE includes the following aspects:

(e) It consists, in the context of the Covenant's non-discrimination and equality provisions, of programmes which promote the TVE of women, girls, out-of-school youth, unemployed youth, the **children of migrant workers, refugees**, persons with disabilities and other disadvantaged groups.

Convention on the Right of the Child, 1989

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within 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.

Article 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**;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible **to every child**, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible **to all** on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible **to all children**;

CRC General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin

3. [Unaccompanied and separated children] are often discriminated against and denied access to ... education...

40. ... Irrespective of the care arrangements made for unaccompanied or separated children, regular supervision and assessment ought to be maintained by qualified persons in order to ensure the child's ... access to educational and vocational skills and opportunities; ...

Full access to education (arts. 28, 29 (1) (c), 30 and 32)

41. States should ensure that access to education is maintained during all phases of the displacement cycle. Every unaccompanied and separated child, irrespective of status, shall have full access to education in the

country that they have entered in line with articles 28, 29 (1) (c), 30 and 32 of the Convention and the general principles developed by the Committee. Such access should be granted without discrimination and in particular, separated and unaccompanied girls shall have equal access to formal and informal education, including vocational training at all levels. Access to quality education should also be ensured for children with special needs, in particular children with disabilities.

42. The unaccompanied or separated child should be registered with appropriate school authorities as soon as possible and get assistance in maximizing learning opportunities. All unaccompanied and separated children have the right to maintain their cultural identity and values, including the maintenance and development of their native language. All adolescents should be allowed to enrol in vocational/professional training or education, and early learning programmes should be made available to young children. States should ensure that unaccompanied or separated children are provided with school certificates or other documentation indicating their level of education, in particular in preparation of relocation, resettlement or return.

43. States shall, in particular where government capacity is limited, accept and facilitate the assistance offered by UNICEF, the United Nations Educational, Scientific and Cultural Organization (UNESCO), UNHCR and other United Nations agencies within their respective mandates, as well as, where appropriate, other competent intergovernmental organizations or non-governmental organizations (art. 22 (2)) in order to meet the educational needs of unaccompanied and separated children.

63. In the exceptional case of detention, conditions of detention must be governed by the best interests of the child and pay full respect to article 37 (a) and (c) of the Convention and other international obligations. ... During their period in detention, children have the right to education which ought, ideally, to take place outside the detention premises in order to facilitate the continuance of their education upon release.... In order to effectively secure the rights provided by article 37 (d) of the Convention, unaccompanied or separated children deprived of their liberty shall be provided with prompt and free access to legal and other appropriate assistance, including the assignment of a legal representative.

90. ...The separated or unaccompanied child should have the same access to rights (including to education, training, employment and health care) as enjoyed by national children. In ensuring that these rights are fully enjoyed by the unaccompanied or separated child, the host country may need to pay special attention to the extra measures required to address the child's vulnerable status, including, for example, through extra language training.

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009

Article 9.2(b)

Provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, **education**, and any other necessary social services, and where appropriate, extend such assistance to local and host communities;

European Convention on the Legal Status of Migrant Worker, 1977 (Council of Europe)

Article 14 – Pre training – Schooling – Linguistic training – Vocational training and retraining

1. Migrant workers and members of their families officially admitted to the territory of a Contracting Party shall be entitled, on the same basis and under the same conditions as national workers, to general education and vocation training and retraining and shall be granted access to higher education

according to the general regulations governing admission to respective institutions in the receiving State.

2. To promote access to general and vocational schools and to vocational training centres, the receiving State shall facilitate the teaching of its language or, if there are several, one of its languages to migrant workers and members of their families.
3. For the purpose of the application of paragraphs 1 and 2 above, the granting of scholarships shall be left to the discretion of each Contracting Party which shall make efforts to grant the children of migrant workers living with their families in the receiving State – in accordance with the provisions of Article 12 of this Convention – the same facilities in this respect as the receiving State's nationals.
4. The workers' previous attainments, as well as diplomas and vocational qualifications acquired in the State of origin, shall be recognised by each Contracting Party in accordance with arrangements laid down in bilateral and multilateral agreements.
5. The Contracting Parties concerned, acting in close co-operation shall endeavour to ensure that the vocational training and retraining schemes, within the meaning of this Article, cater as far as possible for the needs of migrant workers with a view to their return to their State of origin.

NOTE

The other international and regional instruments that generally guarantee the right to education to everyone without discrimination also apply for migrants, refugees and internally displaced persons:

- [UNESCO Convention against Discrimination in Education](#), 1960 (Articles 1, 3 and 4)
- [African Charter on Human and People's Rights](#), 1989 (Articles 2 and 17)
- [African Charter on the Rights and Welfare of the Child](#), 1990 (Article 11)
- [African Youth Charter](#), 2006 (Article 13)
- [European Convention for the Protection of Human Rights and Fundamental Freedoms](#), 1948 (Article 14, Article 2 of the [Optional Protocol 1](#) and Article 1 of the [Optional Protocol 12](#))
- [European Social Charter \(revised\)](#), 1996 (Articles E, 10 and 17)
- [Charter of Fundamental Rights of the European Union](#), 2000 (Article 14)
- [Additional Protocol to the American Convention on Human Rights](#) (Protocol of San Salvador), 1988 (Articles 13 and 16)
- [Arab Charter on Human Rights](#), 2004 (Article 41)
- [ASEAN Human Rights Declaration](#), 2012 (Article 31)