

# THE RIGHT TO EDUCATION FOR CHILDREN ON THE MOVE: A STATUS-BASED REALITY?

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### A. INTRODUCTION

#### (1) Setting the Scene

The value and importance of education are not novel nor revolutionary. George Danton is cited to have declared, in the midst of the French revolution, “après le pain, l’éducation est le premier besoin du peuple.”<sup>1</sup> This fundamental significance of education is reflected not only in international law,<sup>2</sup> but also shared moral values; education *should* be universal, all children *should* go to school. With nearly all states having signed and ratified the UNCRC and the ICESCR, as well as numerous other international instruments that promise universal education, the right has come to be applicable to all children, regardless of nationality, socio-economic background, race, gender, legal status, or other dividing characteristics.<sup>3</sup> While the concept of “Education for All” has near-universal appreciation and acknowledgement,<sup>4</sup> its application falls short of its universal character. One group that faces difficulties in accessing this right, are children on the move, a term deliberately chosen through its inclusive nature. This paper will examine how states have limited children on the move from the accessibility

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<sup>1</sup> “After bread, education is the primary need of the people.”, (author translation) George Danton, at the National Convention (1793), quoted in Allison Anderson, Peter Hyll-Larsen and Jennifer Hofmann, “The Right to Education for Children in Emergencies”, (2011), *Journal of International Humanitarian Legal Studies*, Vol. 2(1), p85.

<sup>2</sup> United Nations Convention on the Rights of the Child, (adopted 20 November 1989, entered into force 2 September 1990) 1577 U.N.T.S 3, (hereafter UNCRC), art 28-29; International Covenant on Economic, Social and Cultural Rights, (adopted 16 December 1966, entered into force 3 January 1976) 999 U.N.T.S 171, (hereafter ICESCR), art 13; Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), (hereafter UDHR), art 26.

<sup>3</sup> See *ibid.*

<sup>4</sup> UNESCO, “World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs”, (adopted by World Conference on Education for All Meeting Basic Learning Needs), Jomtien, 1990, (ED-90/COF.205), (hereafter Jomtien Declaration on Education).

of the right to education through a *de facto* nexus to legal status. By creating legislation around access to education, states, in effect, exclude children on the move from their educational institutions. This article will examine this phenomenon through an in-depth analysis of sub-Saharan migrants in Morocco and Syrian refugees in Lebanon. These two states were chosen specifically due to their presence of children on the move and the depth of discussion surrounding their educational opportunities.

The underlying tension surrounding this discussion rests on two competing state interests: on the one hand there is the international legal obligation to provide education for all children. On the other however, is the desire to limit and control migration. Refugees and migrants pose unique challenges to the state due to their lack of third-state protection. As James Hathaway articulates, “when the bond of protection between citizen and state is severed, no international entity may be held accountable for the individual’s actions. The result is that states are reluctant to admit to their territory individuals who are not the legal responsibility of another state.”<sup>5</sup> This breakdown of state protection gives rise to xenophobia and the often exaggerated, fear of potential terrorists. By asserting that “people want the boy in Queen Rania’s story, not in the Charlie Hebdo’s”, this explanation suggests that it is this fear of educating potential terrorists that keeps states from fulfilling their international obligations.<sup>6</sup> Resolving these two competing interests is the tension field in which refugee and migration law lies.

This article will firstly examine the current international law surrounding the international right to education to analyse and justify the term “children on the move”. Then the focus will shift to the two case studies in Morocco and Lebanon, where both the domestic frameworks surrounding children on the move, as well as the barriers within these frameworks will be considered. The case studies of Morocco and Lebanon will be used in a comparative analysis to illustrate how the different legal statuses attributed to children can lead to exclusion and how the migration-control theory provides for an ideological justification.

For the present purposes, “children” will be defined as “every human being below the age of eighteen years”.<sup>7</sup> The focus will remain on states’ obligations to provide for the right to education, rather on potential for derogation. Similarly, the emphasis of this article is primary and secondary education, tertiary and higher education as well as vocational or other training will be largely set aside. While it is acknowledged that universal education encompasses more challenges than accommodating for children on the move, such as cultural, gender, transport, financial, etc., the focus will remain with children on the move.

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<sup>5</sup> James Hathaway, “The Evolution of Refugee Status in International Law: 1920-1950”, (1984), *International and Comparative Law Quarterly*, Vol. 33(2), p358.

<sup>6</sup> Jana Tabak and Leticia Carvalho, “Responsibility to Protect the Future: Children on the Move and the Politics of Becoming”, (2018), *Global Responsibility to Protect*, Vol. 10(1-2), p140-144; see also Rachel Humphris and Nando Sigona, “The Bureaucratic Capture of Child Migrants: Effects of In/visibility on Children on the Move”, (2019), *Antipode*, Vol. 51(5), p1496-1497; Roberto G. Gonzales, “On the Rights on Undocumented Children”, (2009), *Society* (New Brunswick), Vol. 46(5), p419; Marcelo M. Suárez-Orozco, *Humanism and Mass Migration: Confronting the World Crisis*, (2018, California Scholarship Online), p85-87+105+268.

<sup>7</sup> UNCRF, n2, art 1.

## (2) Terminological Framework

One of the major issues surrounding the application of the right to education in the context of children on the move, is its placement within refugee and migration law more broadly. As mentioned, the difficulty arises from the precarious nature of refugees and migrants due to the lack of state protection coupled with the international obligation on states to provide certain rights to *all*. States have, as a response, created various groupings of people based on clear and established definitions (e.g. “refugees”, “irregular migration”, “migrant worker”, “internally displaced people (IDPs)”, “unaccompanied and separated children (UASC)”). On the basis of this, international instruments have come to apply selectively to those people falling within those specific definitions.

For example, the Convention Relating to Refugees protects the rights of those who fall within the definition of ‘refugee’ contained in article 1.<sup>8</sup> A 2005 CRC General Comment on UASC ensures that “every UASC, irrespective of status, shall have full access to education in the country that they have entered”.<sup>9</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides protection to children of migrant workers.<sup>10</sup> And the Kampala Convention guarantees the right to education for IDPs within the AU.<sup>11</sup>

This fragmentation on the basis of definition has created a system in which universal rights, such as the right to education, is protected and promoted on the basis of legal status. The extent of this uneven treatment is most acutely seen in the New York Declaration for Refugees and Migrants in which states: “will consider developing *non-binding guiding principles* and voluntary guidelines [...] on the treatment of *migrants* in vulnerable situations”,<sup>12</sup> yet are “*determined* to provide quality primary and secondary education in safe learning environments for all *refugee children*”.<sup>13</sup> In their opening phases they proclaim that the protection of the two groups have “separate legal frameworks” with equal “universal human rights and fundamental freedoms.”<sup>14</sup> It is precisely due to this unequal treatment towards a right that international law promises to be universal that the international community moved towards more

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<sup>8</sup> Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 U.N.T.S 137, (hereafter Refugee Convention), art 1(2); UNICEF, *In Search for Opportunities: Voices of Children on the Move in West and Central Africa*, (July 2017), p19; Consulting&Development, *Mineur-e-s non accompagné-e-s, en recherche d’avenir*, (réalisée pour Caritas au Maroc et Médecins du Monde Belgique), (April 2016), p81.

<sup>9</sup> UN Committee on the Rights of the Child (CRC), “General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin”, (1 September 2005), CRC/GC/2005/6, para 41-43.

<sup>10</sup> International Convention on the Protection of the Rights of All migrant Workers and Members of Their Families, (adopted 18 December 1990, entered into force 1 July 2003), 2220 U.N.T.S 3, art 2(1)+30.

<sup>11</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), (adoption 23 October 2009, entry into force 06 December 2012), art 1(l) + 9.

<sup>12</sup> UNGA Resolution, “New York Declaration for Refugees and Migrants”, (3 October 2016), A/RES/71/1, para 52.

<sup>13</sup> *Ibid*, para 81, (emphasis added).

<sup>14</sup> *Ibid*, para 6.

inclusive terminology, 'children on the move'.<sup>15</sup> This new term was sought after as an umbrella term to include refugees, asylum seekers, migrants, IDPs, UAWC, and any other "children who have left their place of habitual residence and are either on the way towards a new destination or have already reached such a destination."<sup>16</sup> Though the biggest categories within the group are refugees, asylum seekers, IDPs, and migrants, the definition centres around the *inclusion* of any child who has left their habitual residence, rather than the *exclusion* via status definition.<sup>17</sup> The term 'children on the move' acknowledges that different statuses lead to exclusion,<sup>18</sup> that legal status can alter and fluctuate,<sup>19</sup> that these children all face similar challenges,<sup>20</sup> and mostly that children are first and foremost children.<sup>21</sup> As UNICEF proclaims; "regardless of whether they are migrants, refugees, or internally displaced, children are children. They have a right to education."<sup>22</sup> The "gaps in the systems" can only be combatted with inclusive-based terminology, that encompasses all 65 million children estimated to be on the move.<sup>23</sup>

### (3) International Legal Protection

As early as 1924, the League of Nations adopted the Geneva Declaration of the Rights of the Child as the first international children's rights declaration.<sup>24</sup> After WWII, the UDHR articulates the right to education specifically,<sup>25</sup> and it is later formulated as a legal obligation on states in the ICESCR; "state Parties [...] recognise the right of everyone to education."<sup>26</sup> The protection of children's rights however, finds its most concrete footing in 1989 within the UN Convention on the Rights of the Child (UNCRC).<sup>27</sup> The Convention devotes articles 28 and 29 to the right to education, reaffirming the universality of this right, "on the basis of equal opportunity", making "primary education compulsory and available free to all". Moreover, in that same article the duty to provide this "equal", "compulsory" and "free" education is placed squarely

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<sup>15</sup> See Daniela Reale, *Away from Home – Protecting and Supporting Children on the Move*, (2008, Save the Children UK), p3-4; Kyle Vella, "Power, paternalism and children on the move", (2016), *Journal of International Humanitarian Action*, Vol. 1(1), p6; Tabak and Carvalho, "Responsibility to Protect the Future", n6, p122+130-131; Suárez-Orozco, *Humanism and Mass Migration*, n6 p83-84 + 186-7.

<sup>16</sup> Mike Dottridge, *What can YOU do to protect children on the move*, (2012, Terre des Hommes International Federation), p22.

<sup>17</sup> Tabak and Carvalho, "Responsibility to Protect the Future", n6, p122; Anderson, Hyll-Larsen and Hofmann, "The Right to Education for Children in Emergencies", n1, p90-93; Rachel Marcus, et al, *What Works to Protect Children on the Move: Rapid Evidence Assessment*, (July 2020, UNICEF), p20 + 25.

<sup>18</sup> Suárez-Orozco, *Humanism and Mass Migration*, n6 p186; Aysen Üstübici, *The Governance of International Migration: Irregular Migrants' Access to Right to Stay in Turkey and Morocco*, (2018, Amsterdam University Press), p26.

<sup>19</sup> *Ibid*, p19-20.

<sup>20</sup> Marcus, *What Works to Protect Children on the Move: Rapid Evidence Assessment*, n17, p7.

<sup>21</sup> OHCHR, *Recommended Principles to Guide Actions Concerning Children on the Move and Other Children Affected by Migration*, (June 2016).

<sup>22</sup> UNICEF, *Education Uprooted: For every migrant, refugee and displaced child, education*, (September 2017), p5.

<sup>23</sup> UNICEF, *In Search for Opportunities*, n8, p2 + 19.

<sup>24</sup> Geneva Declaration of the Rights of the Child, (adopted 26 September 1924), League of Nations.

<sup>25</sup> UDHR, n2, art 26.

<sup>26</sup> ICESCR, n2, art 13.

<sup>27</sup> UNCRC, n2.

on the shoulders of states; “they shall” provide education for all.<sup>28</sup> It is the duty of state parties to make education free and compulsory, encourage regular attendance, ensure disciplinary actions follow “the child’s human dignity” and promote international cooperation.<sup>29</sup> With most states, including Morocco and Lebanon, having signed and ratified the UNCRC, the duty on states to provide universal primary education is firmly rooted within their international law obligations.<sup>30</sup> On a regional level, this protection is ensured within the African Charter on Human and Peoples’ Rights,<sup>31</sup> the Charter of OAS,<sup>32</sup> the ASEAN Human Rights Declaration,<sup>33</sup> and the ECHR.<sup>34</sup> The picture that emerges is simple; the right to education is universal, firmly embedded in international law and is to be ensured and provided for by states.<sup>35</sup>

While this right is entrenched in international instruments, its application often falls short.<sup>36</sup> Worldwide, at least 258.4 million children are estimated to be out of school, 23% of which are primary school aged.<sup>37</sup> In reality, this number may be much higher as children on the move are typically excluded from national data as many find themselves in “irregular” migration situations.

As a result of the failure of the international community to realise the right they had confirmed,<sup>38</sup> a number of international conferences took place in the 1990s, starting with the World Conference on Education in Jomtien in 1990,<sup>39</sup> and leading to the formulation of the Education for All agenda in 2000.<sup>40</sup> In the Framework for Action, appropriately named *Education for All: Meeting our Collective Commitments*, world leaders acknowledged that it was “unacceptable in the year 2000 [...] more than 113 million children have no access to primary education”, and pledged six goals towards the achievement of universal education by 2015.<sup>41</sup> This was reflected in the MDGs

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<sup>28</sup> Ibid, art 28 + art 29.

<sup>29</sup> Ibid, art 28.

<sup>30</sup> Ibid, ratifications.

<sup>31</sup> African (Banjul) Charter on Human and Peoples’ Rights, (adopted 27 June 1981, entry into force 21 October 1986), 21 I.L.M. 58, art 17(1).

<sup>32</sup> Charter of the Organisation of American States, (adopted 30 April 1948, entry into force 13 December 1951), 119 U.N.T.S 3, art 34.

<sup>33</sup> ASEAN Human Rights Declaration and the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration (AHRD), (adopted February 2013) ASEAN Secretariat, (hereafter ASEAN Human Rights Declaration), art 31(h)+49.

<sup>34</sup> Convention for the protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended), (adopted 4 November 1950), (hereafter ECHR), protocol 1, art 2.

<sup>35</sup> Anderson, Hyll-Larsen and Hofmann, “The Right to Education for Children in Emergencies”, n1, p86-92+97-98; for further discussion see Isolde Quadranti, “The Right to Education of Unaccompanied Minors and the Persistence of an Education Gap in their Transition to Adulthood”, in Yvonne Vissing and Sofia Leitão, *The Rights of Unaccompanied Minors: Perspectives and Case Studies on Migrant Children*, (2021, Springer International Publishing), p165.

<sup>36</sup> see Jomtien Declaration on Education, n4, preamble; as well as UNESCO, “The Dakar Framework for Action, Education for All: Meeting our Collective Commitments”, (adopted by World Education Forum), Dakar, 2000, (ED.2000/WS/27), (hereafter Dakar Framework for Action), art 5.

<sup>37</sup> UNESCO, *New Methodology Shows that 258 Million Children, Adolescents and Youth are Out of School*, (September 2019), UIS/2019/ED/FS/56; UNESCO, *Global Education Monitoring Report 2020 – Inclusion and Education: All means all*, (2020), ED/306/19, p4.

<sup>38</sup> Kai-Ming Cheng, “Education for All, but for What”, in Joel E. Cohen and Martin B. Malin, *International perspectives on the Goals of Universal Basic and Secondary Education*, (2010, Routledge), p43.

<sup>39</sup> Jomtien Declaration on Education, n4.

<sup>40</sup> Dakar Framework for Action, n36.

<sup>41</sup> Ibid, art 5 + 7, (emphasis added).

established in that same year in goal 2: “achieve universal primary education” by 2015,<sup>42</sup> and then again in 2015 in SDG 4 to “ensure that all girls and boys complete free, equitable and quality primary and secondary education” by 2030.<sup>43</sup>

Regardless how much these soft law instruments have fleshed out the right, it crucially however, is a fundamental and core human right first and foremost and not a “tool or a non-binding development goal”.<sup>44</sup> The right to education is a crucial right spelled out in major human rights instruments, both internationally and on a regional level. States have an international obligation to ensure and provide for compulsory, free, and universal education for all. This obligation is not constructed through the soft law instruments emerging in the 1990s but was established with the development of international human rights instruments.

## B. BARRIERS TO EDUCATION: MOROCCO

### (1) Contextualising the Right to Education

Due to its geographic location on the border of the EU, Morocco provides for an excellent example to contextualise the right to education for children on the move. Starting in the late 1990s, Morocco became a transition state for people on the move, often irregular sub-Saharan migrants with the dream to go to Europe.<sup>45</sup> With the hope of crossing either the land borders to the Spanish enclaves, Ceuta and Melilla, the Mediterranean to the Spanish mainland, or the Atlantic to the Canary Islands, the influx of migrants has brought several challenges, including the right to education for the children involved.<sup>46</sup>

The classic tale goes as follows: nationals from sub-Saharan Africa, most often from Cameroon, Ivory Coast, Guinea Conakry or Senegal, leave their homes, often overcome horrific events to reach the border of Europe in Morocco, and then wait for the right opportunity to cross.<sup>47</sup> This waiting period can last a long time, with accounts ranging from a few days to years.<sup>48</sup> Their legal status during this waiting period is often precarious; most often they find themselves in the situation of “irregular migrant”; that is, “in a given territory without authorization by the sovereign state”.<sup>49</sup> As a result of this, access to public services, including educational institutions become “one of the

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<sup>42</sup> UNGA “United Nations Millennium Declaration, Resolution Adopted by the General Assembly”, (18 September 2000), UN Doc A/RES/55/2, goal 2.

<sup>43</sup> UNGA “Transforming our world: the 2030 Agenda for Sustainable Development”, (21 October 2015), UN Doc A/RES/70/1, goal 4.

<sup>44</sup> Anderson, Hyll-Larsen and Hofmann, “The Right to Education for Children in Emergencies”, n1, p121.

<sup>45</sup> Halima Qassemy, *Les enfants migrants et l'école marocaine: État des lieux sur l'accès à l'éducation des enfants migrants subsahariens au Maroc*, (April 2014, Tamkine Migrants), p5; UNICEF, *Situation des Enfants au Maroc: Module 4 – Les Enfants Migrants*, (November 2019), p9; Üstübici, *The Governance of International Migration*, n18, p56; Ministère délégué auprès du Ministre des Affaires Étrangères et de la Coopération Internationale, Chargé des Marocains Résident à l'Étranger et les Affaires de la Migrations, *Politique Nationale d'Immigration et d'Asile – Rapport 2018*, (2018), p11.

<sup>46</sup> Consulting&Development, *Mineur-e-s non accompagné-e-s, en recherche d'avenir*, n8, p77.

<sup>47</sup> See Üstübici, *The Governance of International Migration*, n18, p15; but also Consulting&Development, *Mineur-e-s non accompagné-e-s, en recherche d'avenir*, n8, p77; UNICEF, *In Search for Opportunities*, n8, p4.

<sup>48</sup> Qassemy, *Les enfants migrants et l'école marocaine*, n45, p5; UNICEF, *Situation des Enfants au Maroc: Module 4 – Les Enfants Migrants*, n45, p9.

<sup>49</sup> Üstübici, *The Governance of International Migration*, n18, p19.

main sites of exclusion”.<sup>50</sup> The children impacted by this exclusion from public services fall broadly into two categories; those born on the move who have reached school age, and those who have travelled either independently or with family members with the dream of achieving *Boza*, the term used by the community to mean having made it to Europe.<sup>51</sup>

To comply with their international obligation and strengthen the protection of children on the move, the government of Morocco has implemented various tools including signing and ratifying the UNCRC, incorporating the universal right to education within the Moroccan Constitution of 2011,<sup>52</sup> and establishing two domestic instruments. In October 2013 the Ministry of Education launched a circular “on the access to education for sub-Saharan and Sahel migrant children”.<sup>53</sup> This was widely regarded as a crucial step in the right direction and welcomed warmly.<sup>54</sup> In the 2015-16 academic year it was reported that over “7500 [...] children were enrolled in public schools”.<sup>55</sup> However, this figure includes all foreign children, including children of expats in international schools and is an overestimation of the number of *migrant* children in schools. Additionally, conditions of access enclosed within circular continue to be difficult to achieve for many migrant families, making it challenging for them to profit from the new policy.<sup>56</sup>

As a more general approach to the challenges faced by the flow of irregular migrants, Morocco released a new “Stratégie Nationale d’Immigration et d’Asile” (National Strategy for Immigration and Asylum, SNIA) in 2014.<sup>57</sup> The new strategy aimed at “ensuring a better integration of immigrants and management of migratory

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<sup>50</sup> Ibid, p26.

<sup>51</sup> Consulting&Development, *Mineur-e-s non accompagné-e-s, en recherche d’avenir*, n8, p50-53 + 77.

<sup>52</sup> La Constitution, Royaume du Maroc: Secrétariat Général du Gouvernement, (edition 2011), art 31; see also Üstübici, *The Governance of International Migration*, n18, p108; UNESCO, *Global Education Monitoring Report 2019 – Migration, Displacement and Education: Building Bridges, Not Walls*, (2019), ED/306/15, p44; Qassemy, *Les enfants migrants et l’école marocaine*, n45, p12; Consulting&Development, *Mineur-e-s non accompagné-e-s, en recherche d’avenir*, n8, p32.

<sup>53</sup> Circulaire nr. 13-487 du 9 October 2013 sur l’Accès à l’Éducation des Enfants Migrants Subsahariens et du Sahel, (9 October 2013), 13-487, Morocco, (author translation); see also Üstübici, *The Governance of International Migration*, n18, p110; UNESCO, *Global Education Monitoring Report 2019*, n52, p44; Caritas Maroc, *L’Intégration Scolaire Des Élèves Primo-Arrivants Allophones dans le Système Scolaire Public Marocain: Observations et recommandations de Caritas*, (June 2015), p4; Qassemy, *Les enfants migrants et l’école marocaine*, n45, p12; UNICEF, *Situation des Enfants au Maroc: Analyse selon l’approche équité*, (November 2019), p91; Consulting&Development, *Mineur-e-s non accompagné-e-s, en recherche d’avenir*, n8, p32.

<sup>54</sup> Qassemy, *Les enfants migrants et l’école marocaine*, n45, p8-9 + 17, (author translation); UNESCO, *Global Education Monitoring Report 2019*, n52, p44.

<sup>55</sup> UNESCO, *Global Education Monitoring Report 2019*, n52, p44.

<sup>56</sup> Qassemy, *Les enfants migrants et l’école marocaine*, n45, p10 + 17; Caritas Maroc, *L’Intégration Scolaire Des Élèves Primo-Arrivants Allophones dans le Système Scolaire Public Marocain*, n53, p8; Üstübici, *The Governance of International Migration*, n18, p110.

<sup>57</sup> Ministère Chargé des Marocains Résidant à l’Étranger et des Affaires de la Migration, *Stratégie Nationale d’Immigration et d’Asile*, (December 2014), (author translation); see also Ministère délégué auprès du Ministre des Affaires Étrangères et de la Coopération International, *Politique Nationale d’Immigration et d’Asile – Rapport 2018*, n45; Ministère délégué auprès du Ministre des Affaires Étrangères et de la Coopération International, Chargé des Marocains Résident à l’Étranger et les Affaires de la Migrations, *Politique Nationale d’Immigration et d’Asile – Rapport 2020*, (2020).

flows within the framework of a coherent, global, humanist and responsible policy.”<sup>58</sup> In its educational section, SNIA recognises education as a fundamental right and articulates programs to encourage the enrolment of all, regardless of their legal status.<sup>59</sup> While these policies have made progress,<sup>60</sup> the education framework surrounding children on the move still leaves out many. Both the circular and SNIA have been successful to a certain degree to include children on the move in education, yet they also have created some fundamental barriers discussed below.

## (2) Barriers in Morocco

This framework, the circular and SNIA, has not gone far enough and has failed to take regard of significant barriers facing a large proportion of irregular migrants in Morocco. This section will outline the following barriers: the lack and difficulty in obtaining the documents necessary for enrolment in schools, the constant fear of deportation and violence, the racism and hatred experienced, the language and cultural difficulties surrounding the integration of children into the school system, and finally the mobility of migrants. These difficulties have continued to make access to education difficult for many.<sup>61</sup>

The first barrier is the difficulty in obtaining the necessary documents to enrol in schools.<sup>62</sup> These, per the 2013 circular, are fivefold: a formal request signed by the father or guardian of the child, a school certificate for each completed school year, a copy of the father or guardian’s passport or ID, a copy of the residence card, and a copy of the birth certificate or equivalent of the child.<sup>63</sup> These documents are difficult for many to obtain, birth certificates especially are rare; “the lack of access to a birth certificate has led to the transmission of illegality from one generation to the next and has deprived children of public education.”<sup>64</sup> However, this is not the only document needed for enrolment. The need for a formal paternal request has as systematically excluding unaccompanied minors.<sup>65</sup> The requirement for a residency card, further provides for a limitation as irregular migrants lack legal standing for a residency card.<sup>66</sup>

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<sup>58</sup> Consulting&Development, *Mineur-e-s non accompagné-e-s, en recherche d’avenir*, n8, p40, (author translation).

<sup>59</sup> Ministère Chargé des Marocains Résidant à l’Étranger et des Affaires de la Migration, *Stratégie Nationale d’Immigration et d’Asile*, n57, p10-12; see also Ministère délégué auprès du Ministre des Affaires Etrangères et de la Coopération International, *Politique Nationale d’Immigration et d’Asile – Rapport 2020*, n57, p3; Consulting&Development, *Mineur-e-s non accompagné-e-s, en recherche d’avenir*, n8, p40.

<sup>60</sup> See Ministère délégué auprès du Ministre des Affaires Etrangères et de la Coopération International, *Politique Nationale d’Immigration et d’Asile – Rapport 2018*, n45; Ministère délégué auprès du Ministre des Affaires Etrangères et de la Coopération International, *Politique Nationale d’Immigration et d’Asile – Rapport 2020*, n57.

<sup>61</sup> Plateforme Nationale Protection Migrants, *État des Lieux de l’accès aux services pour les Personnes Migrantes au Maroc: Bilan, perspectives et recommandations de la société civile*, (2017), p20.

<sup>62</sup> Üstübici, *The Governance of International Migration*, n18, p109; Qassemy, *Les enfants migrants et l’école marocaine*, n45, p9+17+40; UNICEF, *Situation des Enfants au Maroc: Module 4 – Les Enfants Migrants*, n45, p27; UNICEF, *Situation des Enfants au Maroc: Analyse selon l’approche équité*, n53, p91; Consulting&Development, *Mineur-e-s non accompagné-e-s, en recherche d’avenir*, n8, p88.

<sup>63</sup> Circulaire nr. 13-487 du 9 October 2013, n53.

<sup>64</sup> Üstübici, *The Governance of International Migration*, n18, p109; see also Qassemy, *Les enfants migrants et l’école marocaine*, n45, p40.

<sup>65</sup> UNICEF, *Situation des Enfants au Maroc: Analyse selon l’approche équité*, n53, p91.

<sup>66</sup> Circulaire nr. 13-487 du 9 October 2013, n53; see also Qassemy, *Les enfants migrants et l’école marocaine*, n45, p40-41.

While the 2013 circular therefore in theory opened education opportunities up to sub-Saharan migrants in Morocco, the conditions attached on the enrolment of children “constitutes an administrative barrier which restricts their effective access to educational establishments.”<sup>67</sup> The attached conditions make the situation *de facto* excludes children on the move.<sup>68</sup>

In a similar fashion, the illegality of their stay brings about fears of violence and deportation.<sup>69</sup> While many migrants enter Morocco legally, often due to no-visa regimes with their country of origin, many do so without having their passport stamped or overstay their visa-free period. The fragmented definitional approach of refugee and migration law has led to many migrants in Morocco being classified as “irregular”. This results in a situation where many are afraid to access public services in fear of deportation; “migrants also consciously choose not to send their children to school, [...] because these are ways that they can be identified and targeted by the authorities.”<sup>70</sup> This “criminalization of irregular migration at the policy level, and at the level of public opinion” has led to a situation where exclusion and hiding become daily realities.<sup>71</sup> The marginalisation of irregular migrants and the fear of deportation has not been addressed within the Moroccan policy and continues to be a major difficulty surrounding education for all in Morocco.

Racism and hatred are widespread realities for Sub-Saharan migrants in Morocco.<sup>72</sup> Racism, “marked by a lack of respect and humiliation”, is often cited as a reason why parents are hesitant to send their children to school.<sup>73</sup> Parents are quoted to express that “frankly it hurts my heart to see my children cry every day. Other students take their belongings and destroy them. I choose to keep them at home instead of watching them suffer.”<sup>74</sup> This hostility toward migrant communities is not only at the hands of other children, but also at the hands of adults and teachers, both in schools and within day-to-day life; “people here are very racists with the blacks.”<sup>75</sup> In their newsletter, the Délégation Diocésaine des Migrations, a church run organisation in northern Morocco, published a poem by “M.K. A Black Stranger”; “In this ruthless forest, I no longer am a human being. / I no longer am a being with rights. / I no longer am a being of love. / I no longer am a being respected and

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<sup>67</sup> Consulting&Development, *Mineur-e-s non accompagné-e-s, en recherche d’avenir*, n8, p88, (author translation).

<sup>68</sup> Qassemy, *Les enfants migrants et l’école marocaine*, n45, p9+17; UNICEF, *Situation des Enfants au Maroc: Module 4 – Les Enfants Migrants*, n45, p27.

<sup>69</sup> Üstübici, *The Governance of International Migration*, n18, p21-22+30+47+58+207-14; Consulting&Development, *Mineur-e-s non accompagné-e-s, en recherche d’avenir*, n8, p77+100.

<sup>70</sup> Üstübici, *The Governance of International Migration*, n18, p30 also 22+47+211.

<sup>71</sup> Ibid, p212-214.

<sup>72</sup> Caritas Maroc, *L’Intégration Scolaire Des Élèves Primo-Arrivants Allophones dans le Système Scolaire Public Marocain*, n53, p6; Qassemy, *Les enfants migrants et l’école marocaine*, n45, p24+37; Caritas au Maroc, *Perceptions & Expériences de l’accès des personnes migrantes aux services publics marocains – Une étude menée à Casablanca, Fès, Meknès, Rabat & Tanger*, (April 2017), p45.

<sup>73</sup> Qassemy, *Les enfants migrants et l’école marocaine*, n45, p24, (author translation) + 37; Caritas Maroc, *L’Intégration Scolaire Des Élèves Primo-Arrivants Allophones dans le Système Scolaire Public Marocain*, n53, p6.

<sup>74</sup> Qassemy, *Les enfants migrants et l’école marocaine*, n45, p37, (author translation).

<sup>75</sup> Caritas au Maroc, *Perceptions & Expériences de l’accès des personnes migrantes aux services publics marocains*, n72, p45, (author translation); Caritas Maroc, *L’Intégration Scolaire Des Élèves Primo-Arrivants Allophones dans le Système Scolaire Public Marocain*, n53, p6; Qassemy, *Les enfants migrants et l’école marocaine*, n45, p37.

considered. / I no longer am a free being. / In this ruthless forest, I am just a stranger who one needs to chase – seize – strike – steal – or often injure.”<sup>76</sup>  
In this reality, access to education becomes characterised by exclusion, racism and hatred.

The exclusion of otherness poses further difficulties when it comes to language and religion, which in Morocco are established as being Arabic and Islam. Children from sub-Saharan families often do not speak Arabic and parents from non-Muslim backgrounds oppose Islamic teachings.<sup>77</sup> Migrant children often come from English or French speaking backgrounds and face challenges with the curriculum taught in Arabic.<sup>78</sup> This is particularly pronounced as many do not plan to stay in Morocco; their goal is to reach Europe, with Morocco being a State of transition.<sup>79</sup> “Some parents are not convinced of the usefulness of learning Arabic for their children, especially for those whose main goal remains going to Europe.”<sup>80</sup>

Additionally, many migrants often do not stay in one city for a prolonged time due to the violence and racism. The movement often occurs between cities of rest and work, where issues around deportation and racism are less severe, such as Fes, Meknes, Casablanca or Rabat, and the cities closer to the borders of Europe, where there is the potential for *Boza* yet fear of violence, such as Tangier or Nador.<sup>81</sup> This inter-state mobility does not go well with educational opportunities, with schools being stationary in one place; “the constant mobility of their parents has a negative influence on the school process of the child”.<sup>82</sup> While this is a self-inflicted barrier, the mobility of children on the move continues to present a challenge to their education.

Due to its geographic location Morocco has faced an influx of migrants and has taken various legislative steps to incorporate the right to education for the irregular migrants within their jurisdiction through the implementation of the 2013 circular and the 2014 SNIA. However, children on the move continue to face difficulty accessing education, due to several hurdles including the lack of documentation, the fear of deportation, the daily racism and hatred, the language barrier in schools, and the mobility of migrant communities. This has created a framework that *de facto* excludes children on the move from accessing a right that promises to be universal.

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<sup>76</sup> M.K. Un étranger noir, *Dans la forêt impitoyable*, as quoted in Délégation Diocésaine des Migrations – Zone Orientale, “Novembre-Décembre 2020: Newsletter 6”, *Délégation Diocésaine des Migrations Newsletters*, (December 2020), p7, (author translation).

<sup>77</sup> Qassemy, *Les enfants migrants et l'école marocaine*, n45, p24; UNICEF, *Situation des Enfants au Maroc: Module 4 – Les Enfants Migrants*, n45, p3 +34; UNICEF, *Situation des Enfants au Maroc: Analyse selon l'approche équité*, n53, p97; Consulting&Development, *Mineur-e-s non accompagné-e-s, en recherche d'avenir*, n8, p88.

<sup>78</sup> UNICEF, *Situation des Enfants au Maroc: Module 4 – Les Enfants Migrants*, n45, p30.

<sup>79</sup> Ibid, p43; UNICEF, *Situation des Enfants au Maroc: Analyse selon l'approche équité*, n53, p97; Consulting&Development, *Mineur-e-s non accompagné-e-s, en recherche d'avenir*, n8, p88; Qassemy, *Les enfants migrants et l'école marocaine*, n45, p24.

<sup>80</sup> Qassemy, *Les enfants migrants et l'école marocaine*, n45, p24, (author translation); see also Consulting&Development, *Mineur-e-s non accompagné-e-s, en recherche d'avenir*, n8, p88.

<sup>81</sup> Consulting&Development, *Mineur-e-s non accompagné-e-s, en recherche d'avenir*, n8, p79-80.

<sup>82</sup> Qassemy, *Les enfants migrants et l'école marocaine*, n45, p41, (author translation); see also Vijitha Rajan, “The Ontological Crisis of Schooling: Situating Migrant Childhoods and Educational Exclusion”, (2021), *Contemporary Education Dialogue*, Vol. 18(1), p163.

## C. BARRIERS TO EDUCATION: LEBANON

### (1) Contextualising the Right to Education

Lebanon too is also confronted with the inclusion of many non-nationals into their national education system yet, contrary to Morocco, this is not a new phenomenon. “Housing a large percentage of refugees is far from a foreign concept to the Lebanese”, seeing first Armenians refugees following the collapse of the Ottoman Empire and later Palestinians following the Palestinian war, 1948-1967.<sup>83</sup> The large flow of recent Syrian refugees has created new challenges due to the highly sectarian nature of the Lebanese State, coupled with its complicated history with Syria.<sup>84</sup> Lebanese society is a collection of more than 18 religious sects that largely dominate one’s “identity, social position and political power”.<sup>85</sup> Tensions between those groups have led to periodic unrest and a civil war from 1965 to 1989 which saw the entering of the Syrian army in 1976.<sup>86</sup> The Taif Agreement, ending the civil war, assigned equal numbers of parliamentary seats to religious groups and determined the religious affiliations “of the positions of president, prime minister and speaker of the chamber of deputies to a Maronite, Sunni and Shia, respectively.”<sup>87</sup> It further established a “special relationship” between Lebanon and Syria, constituting itself as Syrian occupation over a major part of Lebanon and interference in domestic politics. This did not end until 2005 with the assassination of the Lebanese prime minister.<sup>88</sup>

These communal tensions also impacted the Lebanese educational system, with difficult debates on the history curriculum, citizenship education and multilingualism marking the post-war era.<sup>89</sup> The only agreement that emerged is on multilingualism, with various subjects being taught in either English or French, as well as Arabic.<sup>90</sup> As a result of the ongoing curriculum debate, the majority of Lebanese

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<sup>83</sup> Shereen Hamadeh, “A critical analysis of the Syrian refugee education policies in Lebanon using a policy analysis framework”, (2019), *Journal of Education Policy*, Vol. 34(3), p377-378.

<sup>84</sup> *Ibid*, p378-380; Elizabeth Buckner, Dominique Spencer and Jihae Cha, “Between Policy and Practice: The Education of Syrian Refugees in Lebanon”, (2018), *Journal of Refugee Studies*, Vol. 31(4), p447-448; Sarah Dryden-Peterson, et al, *Inclusion of Refugees in National Education Systems*, (Background paper from Global Educational Monitoring Report 2019), (2018), ED/GEMR/MRT/2018/P1/6, p31-32; World Bank, *Lebanon: Economic and Social Impact Assessment of the Syrian Conflict*, (September 2013), No. 81098-LB, p5; Giuditta Fontana, *Education Policy and Power-Sharing in Post-Conflict Societies: Lebanon, Northern Ireland, and Macedonia*, (2017, Springer International Publishing), p5 + 62-77.

<sup>85</sup> Fontana, *Education Policy and Power-Sharing in Post-Conflict Societies*, n84, p5.

<sup>86</sup> *Ibid*, p73-75; Hamadeh, “A critical analysis of the Syrian refugee education policies in Lebanon using a policy analysis framework”, n83, p378; Buckner, Spencer and Cha, “Between Policy and Practice: The Education of Syrian Refugees in Lebanon”, n84, p447.

<sup>87</sup> Fontana, *Education Policy and Power-Sharing in Post-Conflict Societies*, n84, p74; see also Hamadeh, “A critical analysis of the Syrian refugee education policies in Lebanon using a policy analysis framework”, n83, p378.

<sup>88</sup> Fontana, *Education Policy and Power-Sharing in Post-Conflict Societies*, n84, p74; Hamadeh, “A critical analysis of the Syrian refugee education policies in Lebanon using a policy analysis framework”, n83, p378; Dryden-Peterson, et al., *Inclusion of Refugees in National Education Systems*, n84, p31.

<sup>89</sup> Fontana, *Education Policy and Power-Sharing in Post-Conflict Societies*, n84, p127-133+163+198-199; see also Buckner, Spencer and Cha, “Between Policy and Practice: The Education of Syrian Refugees in Lebanon”, n84, p448.

<sup>90</sup> *Ibid*, p198-202.

students attend private schools, often affiliated to religious institutions, where the curriculum is more flexible.<sup>91</sup>

The recent influx of Syrian refugees, the vast majority being Muslim, raised concerns about the political effects and dangers of upsetting this religious balance, with the civil war still being in “living history”.<sup>92</sup> The irony that it is the same “soldiers who left Lebanon in [2005 who] have returned to the Lebanese cities they were based at with their families as refugees” is not lost to the Lebanese, and led to a reserved response toward the Syrian civil war from the Lebanese government.<sup>93</sup> Nevertheless, the sudden and large influx of refugees could not be set aside, “the undeniable truth is that a sudden increase in population of 1.5 million of over half being school aged children comes with challenges that must be considered.”<sup>94</sup>

This “undeniable truth” however, has a second layer to it; Lebanon is not a signatory to the 1951 Refugee Convention.<sup>95</sup> While this paper, and international literature, refers to Syrians displaced due to the war as *refugees*, notable is that Lebanon has not assigned them refugee status and refers to them as “displaced” or “non-Lebanese”.<sup>96</sup> This has created a situation where people, who would be classified as refugees under international law, have no legal status and face difficulties surrounding access to public services.<sup>97</sup> The closing of their border with Syria, as well as the instruction to the UNHCR to stop the registration of Syrian refugees in 2015, added to this and increased difficulties surrounding access to humanitarian support.<sup>98</sup> This has pushed NGOs working within this field to approach the topic of Syrian refugee education in Lebanon from a “child-rights” rather than a “refugee-rights” point of view, focusing on Lebanon’s commitment to children’s rights under UNCRC, ratified in

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<sup>91</sup> Buckner, Spencer and Cha, “Between Policy and Practice: The Education of Syrian Refugees in Lebanon”, n84, p448.

<sup>92</sup> Ibid, p447; Fontana, *Education Policy and Power-Sharing in Post-Conflict Societies*, n84, p76-77; Hamadeh, “A critical analysis of the Syrian refugee education policies in Lebanon using a policy analysis framework”, n83, p379 + 383; Dryden-Peterson, et al., *Inclusion of Refugees in National Education Systems*, n84, p30; World Bank, *Lebanon: Economic and Social Impact Assessment of the Syrian Conflict*, n84, p5; Shelly Culbertson and Louay Constant, *Education of Syrian Refugee Children: Managing the Crisis in Turkey, Lebanon, and Jordan*, (2015, RAND Corporation), p52.

<sup>93</sup> Hamadeh, “A critical analysis of the Syrian refugee education policies in Lebanon using a policy analysis framework”, n83, p378; Buckner, Spencer and Cha, “Between Policy and Practice: The Education of Syrian Refugees in Lebanon”, n84, p451.

<sup>94</sup> Hamadeh, “A critical analysis of the Syrian refugee education policies in Lebanon using a policy analysis framework”, n83, p374 + 380; see also World Bank, *Lebanon: Economic and Social Impact Assessment of the Syrian Conflict*, n84, p1 + 3; Culbertson and Constant, *Education of Syrian Refugee Children*, n92, p ix-x,49.

<sup>95</sup> Refugee Convention, n8, ratifications; see also Dryden-Peterson, et al., *Inclusion of Refugees in National Education Systems*, n84, p30; Morten Greaves, Mona Nabhani and Rima Bahous, “Tales of resilience and adaptation: a case-study exploring the lived-experiences and perceptions of Syrian refugee teachers in Lebanon”, (2021), *International Journal of Qualitative Studies in Education*, Vol. 34(4), p431; Buckner, Spencer and Cha, “Between Policy and Practice: The Education of Syrian Refugees in Lebanon”, n84, p445.

<sup>96</sup> Dryden-Peterson, et al., *Inclusion of Refugees in National Education Systems*, n84, p30; Buckner, Spencer and Cha, “Between Policy and Practice: The Education of Syrian Refugees in Lebanon”, n84, p447; Greaves, Nabhani and Bahous, “Tales of resilience and adaptation”, n96, p431.

<sup>97</sup> Buckner, Spencer and Cha, “Between Policy and Practice: The Education of Syrian Refugees in Lebanon”, n84, p447.

<sup>98</sup> Dryden-Peterson, et al., *Inclusion of Refugees in National Education Systems*, n84, p30; UNESCO, *Global Education Monitoring Report 2019*, n52, p57.

1991.<sup>99</sup> “[T]hey have advocated for Lebanon’s international legal obligations to children, fully distinct from their legal obligation to refugees”.<sup>100</sup>

In 2012 public schools were opened to children regardless of their status, with the Ministry of Education and Higher Education (MEHE) first bearing the costs of the new influx of students.<sup>101</sup> There was a fundamental shift in 2014 when a new policy aimed at improving infrastructure and support for Syrian refugees and disadvantages Lebanese students in public schools was implemented, “Reaching all Children with Education” (RACE).<sup>102</sup> This framework sought to improve “access, quality and systems strengthening” and “expand the capacity of the existing school system”.<sup>103</sup> This policy has been supported financially by the international community.<sup>104</sup> While this financial support has made the implementation of the strategy possible, it has also opened up the policy to criticism and allegations that RACE was used to improve the Lebanese educational system rather than open education up to Syrian refugees; “RACE was widely viewed as an opportunity to strengthen the Lebanese education system.”<sup>105</sup> As a part of RACE, MEHE introduced afternoon “Syrian-only” school shifts in an attempt to accommodate the large increase of school aged children.<sup>106</sup> These second shifts allowed for 250,000 Syrian children to be enrolled in the Lebanese national education system, accounting for 65% of refugee children in Lebanon.<sup>107</sup> While all of these steps made progress towards integrating children on the move in Lebanon into the national education system, limitations still constraint their educational opportunities.<sup>108</sup>

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<sup>99</sup> Buckner, Spencer and Cha, “Between Policy and Practice: The Education of Syrian Refugees in Lebanon”, n84, p453.

<sup>100</sup> Ibid, p453.

<sup>101</sup> Hamadeh, “A critical analysis of the Syrian refugee education policies in Lebanon using a policy analysis framework”, n83, p381.

<sup>102</sup> Ibid, p381-382; Ministry of Education and Higher Education, *Reaching All Children with Education (RACE)*, (June 2014); Buckner, Spencer and Cha, “Between Policy and Practice: The Education of Syrian Refugees in Lebanon”, n84, p447 + 452-453; UNICEF, *Education Uprooted*, n22, p25; Culbertson and Constant, *Education of Syrian Refugee Children*, n92, p36.

<sup>103</sup> Buckner, Spencer and Cha, “Between Policy and Practice: The Education of Syrian Refugees in Lebanon”, n84, p452; Ministry of Education and Higher Education, *Reaching All Children with Education (RACE)*, (June 2014); see also Hamadeh, “A critical analysis of the Syrian refugee education policies in Lebanon using a policy analysis framework”, n83, p382; World Bank, *Lebanon: Economic and Social Impact Assessment of the Syrian Conflict*, n84, p3; UNHCR, *The Future of Syria: Refugee Children in Crisis*, (November 2013), p45.

<sup>104</sup> Buckner, Spencer and Cha, “Between Policy and Practice: The Education of Syrian Refugees in Lebanon”, n84, p453.

<sup>105</sup> Ibid, p452-3; see also Hamadeh, “A critical analysis of the Syrian refugee education policies in Lebanon using a policy analysis framework”, n83, p382.

<sup>106</sup> Ibid, p452; Dryden-Peterson, et al., *Inclusion of Refugees in National Education Systems*, n84, p32; UNESCO, *Global Education Monitoring Report 2019*, n52, p63-64; Culbertson and Constant, *Education of Syrian Refugee Children*, n92, p13.

<sup>107</sup> Greaves, Nabhani and Bahous, “Tales of resilience and adaptation”, n96, p431.

<sup>108</sup> UNICEF, *Education Uprooted*, n22, p25; Culbertson and Constant, *Education of Syrian Refugee Children*, n92, p13; World Bank, *Lebanon: Economic and Social Impact Assessment of the Syrian Conflict*, n84, p2-5; UNHCR, *The Future of Syria*, n103, p45; Dina Kiwan, “Inclusion and citizenship: Syrian and Palestinian refugees in Lebanon”, (2021), *International Journal of Inclusive Education*, Vol. 25(2), p284.

## (2) Barriers in Lebanon

The main barriers facing the inclusion of Syrian refugees into the education system are the continued lack of capacity of schools, the multilingualism, transportation and other perceived access costs, and finally hatred and discrimination.

Even though RACE has aimed at expanding capacities, the “408,000 required spaced for Syrian children” has been a large increase for any school system to handle.<sup>109</sup> The large number of Lebanese students attending private schools since the civil war has pushed the public school system into the background, making its sudden increase in students difficult.<sup>110</sup> The second shift for Syrian children in the afternoon has allowed for more students to attend school, yet has also led to the overworking and exhaustion of teachers, with many teaching both the morning and afternoon shifts.<sup>111</sup> Additionally, teachers are often not trained the psychological trauma that many Syrian children carry with them.<sup>112</sup> The need for increased space and teacher qualification therefore presents one challenge to the education of Syrian refugees in Lebanon.

Furthermore, language barriers continue to be a hurdle difficult to overcome for many. One of the only educational debates settled after the civil war was the language of instruction.<sup>113</sup> In Syria the language of instruction in schools is entirely Arabic and many, particularly older children struggle to adjust to the English or French taught parts of the curriculum.<sup>114</sup> While this has been addressed in some schools who teach the entire curriculum in Arabic for Syrian students, other schools have not yet made an effort to overcome this language barrier.

Additionally, parents are hesitant to send their children to schools due to the transportation and perceived access costs.<sup>115</sup> As a result of RACE, international organisations and agencies “have agreed to pay for primary education up until grade nine.”<sup>116</sup> However, parents are still unaware of this and continue to be reluctant to send their children to school because of the perceived costs.<sup>117</sup> Those who are aware of this, are in turn sceptical due to the high transportation costs to schools.<sup>118</sup> This is a particular issue for those living in rural areas, where the “only way to get to school is

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<sup>109</sup> Culbertson and Constant, *Education of Syrian Refugee Children*, n92, p16.

<sup>110</sup> Ibid, p16.

<sup>111</sup> UNESCO, *Global Education Monitoring Report 2019*, n52, p64.

<sup>112</sup> Culbertson and Constant, *Education of Syrian Refugee Children*, n92, p49+52.

<sup>113</sup> UNICEF, *Education Uprooted*, n22, p25; Culbertson and Constant, *Education of Syrian Refugee Children*, n92, p17+52; UNHCR, *The Future of Syria*, n103, p49; Hamadeh, “A critical analysis of the Syrian refugee education policies in Lebanon using a policy analysis framework”, n83, p385.

<sup>114</sup> UNHCR, *The Future of Syria*, n103, p49; Culbertson and Constant, *Education of Syrian Refugee Children*, n92, p17+52.

<sup>115</sup> Culbertson and Constant, *Education of Syrian Refugee Children*, n92, p18-20; UNHCR, *The Future of Syria*, n103, p47; Dryden-Peterson, et al., *Inclusion of Refugees in National Education Systems*, n84, p33; Hamadeh, “A critical analysis of the Syrian refugee education policies in Lebanon using a policy analysis framework”, n83, p386.

<sup>116</sup> Hamadeh, “A critical analysis of the Syrian refugee education policies in Lebanon using a policy analysis framework”, n83, p386.

<sup>117</sup> Culbertson and Constant, *Education of Syrian Refugee Children*, n92, p20.

<sup>118</sup> Ibid, p18; UNHCR, *The Future of Syria*, n103, p47; Dryden-Peterson, et al., *Inclusion of Refugees in National Education Systems*, n84, p33.

by collective taxi”, a fee often too high for refugee families to bear.<sup>119</sup> Some families estimate this cost to be as high as school fees themselves.<sup>120</sup> Costs continues to be a difficult burden for Syrian refugees to attend schools, either because they are unaware of the lack of school fees or due to the high transportation fees.

The final limitation is the discrimination and hatred from Lebanese students and teachers towards Syrian refugees.<sup>121</sup> The history of the war and the Syrian occupation, raises hostilities and tensions in schools. Students are being “subjected to verbal and physical abuse by teachers, principals and other students.”<sup>122</sup> This discrimination constitutes itself as blaming Syrian children for issues such as political and economic problems in Lebanon to missing school materials.<sup>123</sup> This marks the daily experience for many and is a barrier to effective integration into the educational system.

Like Morocco, Lebanon has created a framework for the incorporation of children on the move into their educational sector. However, barriers facing Syrian refugees in Lebanon have continued, particularly in the continued lack of capacity of schools, the language of instruction, the cost (perception and transportation) and finally the discrimination and hatred.

#### **D. UNIVERSAL EDUCATION: IS IT JUST TOO DIFFICULT?**

##### **(1) Comparing Case Studies**

While some of the challenges facing Syrian children in Lebanon and sub-Saharan children in Morocco are similar, one fundamental difference comes to the foreground: Syrian refugees mostly face challenges *in* schools, while children on the move in Morocco face difficulties *getting access* to schools. The Moroccan 2013 circular’s required documents for enrolment alongside the deportation and violence, systematically excludes irregular migrants from the Moroccan school system, undermining and disrespecting their universal right to education. The Syrian refugee population in Lebanon by contrast, do not face such legal hinderances. While in Lebanon issues surrounding quality and access still are prevalent challenges to children on the move, in Morocco there is a legal barrier in the form of legal status. While SNIA includes mechanisms for informal migrants to get residency cards, it stipulates the need to prove having lived in Morocco for more than five years, a condition that many transit migrants are unable to fulfil.<sup>124</sup> The lack of documents required to enrol children in schools, has created a *de facto* legal exclusion of many children on the move in Morocco from the education system.

UNHCR registration counts as residency in Morocco and enables children to access schools. There is some irony in this situation; the Refugee Convention was

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<sup>119</sup> UNHCR, *The Future of Syria*, n103, p47.

<sup>120</sup> Culbertson and Constant, *Education of Syrian Refugee Children*, n92, p18.

<sup>121</sup> UNHCR, *The Future of Syria*, n103, p45+51; Dryden-Peterson, et al., *Inclusion of Refugees in National Education Systems*, n84, p35; Lebanese Institute for Democracy and Human Rights (LIFE), *Unprotected Refugees: The Second Legal Report of the Situation of the Syrian Refugees in Lebanon*, (June 2015), p13; Jida Khansa and Rima Bahous, “Challenges of teaching Syrian refugee children in Lebanon: Teachers’ Insights”, (2021), *Intercultural Education*, Vol. 32(3), p283.

<sup>122</sup> Khansa and Bahous, “Challenges of teaching Syrian refugee children in Lebanon: Teachers’ Insights”, n121, p283.

<sup>123</sup> Dryden-Peterson, et al., *Inclusion of Refugees in National Education Systems*, n84, p35.

<sup>124</sup> Ministère Chargé des Marocains Résidant à l’Étranger et des Affaires de la Migration, *Stratégie National d’Immigration et d’Asile*, n57.

written to protect fleeing persons; in Morocco, who has ratified the Convention, the asylum application mechanism and the resulting difference between refugees and irregular migrant status results in negation of protection of rights for one group. In Lebanon, which has not ratified the 1951 convention, there is no asylum process, but all Syrian refugees are automatically granted refugee status by UNHCR, with the UNHCR is paying for Syrian children's education opportunities. Children with refugee status are afforded international protection, while other children on the move receive significantly less to no protection or guarantee to having their rights respected. While this is a somewhat simplified version of reality, the segregation of children on the move and the respect of their universal rights based on their legal status remains.<sup>125</sup> By comparing the barriers to the right to education faced by Syrian refugees in Lebanon and sub-Saharan migrants in Morocco, one key difference emerges; refugees face access difficulties, while irregular migrants face legal obstacles.

The comparison of education opportunities of children on the move in Morocco and Lebanon has shown many similarities. These phenomenal similarities mask a major quantitative difference: in Lebanon, the majority of children on the move go to school, even though they make up a high percentage of the overall student population; in Morocco, the majority of children on the move do not go to school, even though their number is small in relation to the overall student population.<sup>126</sup> The difficulties Lebanon is mastering in striving for universal education is much higher, than what would be needed in Morocco. While it is acknowledged that resource and capacity constraints of states are difficulties for granting education to all children, the comparison shows that the argument may be weaker than it seeks.

## **(2) A Migration-Control Justification?**

The crux of the argument so far, has focused on the concept that it is the status embedded and created in law that excludes certain children from their enjoyment of the right to education. The key suggestion this paper makes is that this exclusion is a result of the fragmentation of refugee and migration law. The uneven treatment of children on the move on the basis of legal definitions of 'refugees' and 'irregular migrants' has led to the creation of different legal frameworks and allowed for a rise in xenophobia to those deemed 'undeserving'. This has led to migration-control regimes emerging mainly from the Global North as a justification for keeping the 'undeserving' out.

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<sup>125</sup> Charlotte Goodburn "Educating Migrant Children: The Effects of Rural-Urban Migration on Access to Primary School", in Shibao Guo and Tan Guo *Spotlight on China: Changes in Education under China's Market Economy*, (2016, Springer), p365-369; Yvonne Vissing, Sofia Leitão and Jan Marie Fritz "Clinical Sociology and Its Application to Analysis of Unaccompanied Children" in Yvonne Vissing and Sofia Leitão, *The Rights of Unaccompanied Minors: Perspectives and Case Studies on Migrant Children*, (2021, Springer International Publishing), p12; UNICEF, *Education Uprooted*, n22, p14; UNESCO, *Global Education Monitoring Report 2019*, n52, p18; Marcus, *What Works to Protect Children on the Move: Rapid Evidence Assessment*, n17, p23; Titiporn Tuangratananon, et al. "Education Policy for Migrant Children in Thailand and How it Really Happens: A Case study of Ranong Province, Thailand", (2019), *International Journal of Environmental Research and Public Health*, Vol. 16(3), p430-431.

<sup>126</sup> UNICEF, *Education Uprooted*, n22, p25; Culbertson and Constant, *Education of Syrian Refugee Children*, n92, p13; World Bank, *Lebanon: Economic and Social Impact Assessment of the Syrian Conflict*, n84, p2-5; UNHCR, *The Future of Syria*, n103, p45; Kiwan, "Inclusion and citizenship: Syrian and Palestinian refugees in Lebanon", n108, p284.

The true reason behind the exclusion is the “profound ambivalence toward [children on the move] embedded in the institutional ideology of migration-control regimes”.<sup>127</sup> This is embedded within the fear that educating children on the move could result to educating future terrorists, an example of which are recent EU policies.<sup>128</sup> This has created an ideological paradox, where on the one hand the EU and Europe as a whole, present themselves as the right-bearing champions of the world, where children are first and foremost seen as children deserving of protection and education regardless of their legal status. On the other hand, however, xenophobia, the fear of terrorism, and the general ambivalence towards the ‘other’, sees the risk these children pose as their key characteristic.<sup>129</sup> “The ambivalent understanding of others, particularly of children on the move leaves us trapped between these two images”.<sup>130</sup> While the most well-known juxtaposition between these two images is documented in the United States,<sup>131</sup> over 100 states “are known to detain, arrest and deport children for migration related reasons”.<sup>132</sup>

Until this dichotomy between seeing children as being in need for international protection, yet staying ambivalent towards their rights, is resolved, the right to education and protection of children on the move will continue to be undermined by the international community. “While we remain trapped in ambivalence, our responsibility to protect is undermined by the idea that ‘not all children’ are ‘our’ future because not all children are ‘ours’ and because not all children promise or portend a desired future.”<sup>133</sup> Adherence to status-based protection, will continuously lead to short fallings of international child rights obligations, as there will be children rendered invisible as a result of their legal status.<sup>134</sup> In an effort to shift the focus to children being children, regardless of their legal status, UNICEF launched a series of videos named “Unfair Tales”.<sup>135</sup> Ending each one with the phrase “some stories were never meant for children”,<sup>136</sup> the message is very clear; these children are children, “forced

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<sup>127</sup> Suárez-Orozco, *Humanism and Mass Migration*, n6 p85-87 + 105 + 268; Humphris and Sigona, “The Bureaucratic Capture of Child Migrants: Effects of In/visibility on Children on the Move”, n6, p1496-1497; Tabak and Carvalho, “Responsibility to Protect the Future”, n6, p140-144; Gonzales, “On the Rights on Undocumented Children”, n6, p419.

<sup>128</sup> Gonzales, “On the Rights on Undocumented Children”, n6, p419; Suárez-Orozco, *Humanism and Mass Migration*, n6 p105 + 268.

<sup>129</sup> Suárez-Orozco, *Humanism and Mass Migration*, n6 p268; Humphris and Sigona, “The Bureaucratic Capture of Child Migrants: Effects of In/visibility on Children on the Move”, n6, p1496-1497; Tabak and Carvalho, “Responsibility to Protect the Future”, n6, p140-144.

<sup>130</sup> Tabak and Carvalho, “Responsibility to Protect the Future”, n6, p142.

<sup>131</sup> Suárez-Orozco, *Humanism and Mass Migration*, n6 p86.

<sup>132</sup> Tabak and Carvalho, “Responsibility to Protect the Future”, n6, p140.

<sup>133</sup> *Ibid*, p141.

<sup>134</sup> Suárez-Orozco, *Humanism and Mass Migration*, n6 p85; Humphris and Sigona, “The Bureaucratic Capture of Child Migrants: Effects of In/visibility on Children on the Move”, n6, p1501-1511; Tara Polzer and Laura Hammond, “Invisible Displacement”, (2008), *Journal of Refugee Studies*, Vol.21(4), p417-422; UNESCO, *No More Excuses: Providing Education to All Forcibly Displaced People*, (May 2016), ED/GEMR/MRT/2016/PP/26 REV, p6.

<sup>135</sup> UNICEF, “Unfair Tales: Malak and the boat”, (28 March 2016), <  
<https://www.youtube.com/watch?v=MT49ghJ7aGA>>, accessed 12 January 2022; UNICEF, “Unfair Tales: The Story of Ivine and Pillow”, (29 March 2016), <

[https://www.youtube.com/watch?v=3scOr\\_d9Dwo](https://www.youtube.com/watch?v=3scOr_d9Dwo)>, accessed 12 January 2022; UNICEF, “Unfair Tales: Mustafa goes for a walk”, (29 March 2016), <

<https://www.youtube.com/watch?v=2mfkYtZkPVQ>>, accessed 12 January 2022.

<sup>136</sup> *Ibid*.

out of childhood”, and deserving of respect towards their fundamental human rights.<sup>137</sup> Until this is achieved, the right to education for children on the move will always be undermined due to the Global North’s emphasis on exclusion.

## E. CONCLUSIONS

This paper has examined the right to education for children on the move and the extent to which it is limited and regulated by legal status. The right to education is firmly embedded in international law through the UNCRC and developed thoroughly soft law. The translation of this right for children on the move into national legislation in Morocco, has its footing within the 2013 circular and the SNIA, while Lebanon has addressed similar challenges through RACE. Nevertheless, the application of the right falls short of this protection, with many children on the move still not being able to access education. By comparing the barriers faced by sub-Saharan migrants in Morocco and Syrian refugees in Lebanon the picture emerges that it is a child’s legal status first and foremost, that determines their access to educational opportunities. By enacting conditions and regulations surrounding enrolment procedures, states *de facto*, exclude children on the move from their education system based on the legal status. The migration-control theory provides the ideological justification for this; the Global North continues to be ambivalent towards the rights of these children and instead focuses on potential risk they pose, “the *becoming* often overwhelms the *being*.”<sup>138</sup> Until the international community starts to see these children as a collective group with universal rights, the right to education for children on the move will continuously be undermined by the fixation on their legal status.

States have used international definitions as a tool to classify people into groups and categories, on the basis of which international protection and the guarantee of rights are distributed: refugees good, irregular migrants bad. Refugees are characterised by their endurance of sufferance, while irregular migrants are seen primarily as a potential risk and danger. The term “children on the move” was created to provide for inclusion, a term applicable to all children on the basis of their movement away from their habitual residence. What is needed now, is for reflection of this inclusion into national and international legislative frameworks. An approach that affords children a guarantee of the rights regardless of their legal status, explicitly naming the excluded groups by their legal statuses, and explicitly naming the rights they have despite their status; a recognition that some rights, such as the right to education, are independent of legal status. Children on the move must be seen as collective group with rights not dependent on a legal classification of their current situation but with their status as children.

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<sup>137</sup> Tabak and Carvalho, “Responsibility to Protect the Future”, n6, p126.

<sup>138</sup> Ibid, p142.