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Human Rights III: Contemporary Issues

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THE RIGHT TO EDUCATION: THE CASE OF SYRIAN CHILD REFUGEES IN TURKEY

INTRODUCTION

In human rights emergencies, education of child refugees is often seen as a luxury. Confronted with the immediate needs of food, shelter and access to medicinal resources, host states become overwhelmed with the task of providing for their new residents. However, simply fulfilling (or attempting to fulfill) the surface level, physical needs of refugees within their borders does not mean that the host states have satisfied their human rights obligations. The host state must also be considerate of the specialized needs of the subgroups of the refugees that they must provide for. Particularly, the needs of child refugees require provisions that take into account their special needs and rights.

In this paper, I will begin by justifying the right to education for children in general, and then apply this reasoning to the case of refugee children. I will attempt to justify education as a right by showing that it is necessary to live because of its unique position as a socioeconomic right that presupposes the fulfilment of certain rights while helping ensure access to others. I will then consider the legal complexities of this right for refugees, especially in the context of host states which are still developing countries. I will then transition into examining what type of education needs to be provided to refugee children in order to claim their right to education is being fulfilled. I will focus particularly on the extent language and cultural sensitivity concerns can be considered as part of the human right to education for refugees. I will do so by exploring how these concerns are viewed by two competing frameworks in refugee education: education for repatriation versus education for integration, and the educational policies they influence.
The case study of Syrian refugee children in Turkey will provide an interesting example of the discussion on what rights are guaranteed to refugees, especially in the context of a developing country with conflicting legal statutes. It will also prove important when discussing how implementation of the two frameworks can shape the refugee experience in a host state, particularly the fulfilment of their human rights.

A THEORETICAL JUSTIFICATION FOR THE RIGHT TO EDUCATION

The right to education is well established in a number of legal and human rights documents, both binding and nonbinding. However, to understand how this right applies to the special case of refugees, it must be understood why education should be considered a right at all. A theoretical justification for this right that applies universally will simplify the task of justifying the right to education for refugees in the face of complexities concerning the host state in legal documents like the ICESR and the CRC.

A right is derived from its necessity to live as a human being. As Joel Spring, a prominent American education academic, points out, colonial and postcolonial events shaped the world in such a way that it would be easy to take advantage of someone not educated properly in ways that violate their human rights (Spring, 2000). In order to seek political or economic control of people (much like colonial powers did), people in power may use abuses such as religious indoctrination, coercion through political propaganda, and denial of the freedom of expression, amongst many others. Methods such as these can be combated by a proper education. Therefore, Spring asserts, education of the mind is necessary to life because it enables people to understand how the ‘global and cultural economy…affect their lives, and what benefit or harms might result from them’ (Spring, 2000). This link between education and the ability to understand effectively is further reinforced by Tristan McCowan, who recognizes that ‘the ability to understand is a fundamental human characteristic…both intrinsically valuable…and having instrumental value’ (McCowan, 2013). McCowan advocates that education, as a means of ‘pursuing enhanced understanding’, therefore
justifies it as a right. In addition to the analyses provided, it should be noted that capacity of understanding is required for exercising civil and political rights, often considered a separate category from socioeconomic rights (Articles 18 and 21 of the UNDHR). As Justice Albie Sachs writes, ‘freedom and bread [are] interrelated and interdependent...[the link between the two] was the fundamental right of all human beings to have their basic human dignity respected’ (Sachs, 2009). His assertion of the interdependence and equality between the two categories reinforces the uniqueness and necessity of education for fulfilment of both socioeconomic and civil/political rights. Because of this unique quality, education serves as a gateway right. However, if education is not available so that the mental capacity to understand cannot be developed fully and properly, then logically, these other rights cannot be fully exercised by a human being. Thus, one sees the first justification of education as a right: by fulfilling and improving upon basic capacities needed for life and survival in a colonial/postcolonial world, it also helps to guarantee the ability to exercise other human rights.

However, to guarantee the right to education itself requires the fulfillment of other human rights, especially for children. Spring again states what seems like common sense: in order to exercise and fully benefit from their right to education, a person must be provided with adequate amounts of food, clothing, housing and access to medical care (Spring, 2000). This, in and of itself, shows how the right to education justifies many socioeconomic rights, particularly in the case of children. If a state is willing to guarantee a child’s right to education, they must be willing to guarantee other socioeconomic rights such as nutrition, healthcare, etc. as prerequisites. While fulfilling at least some of the requirements for the exercise of political and civil rights (i.e., the mental capacity to understand oneself and the political and economic surroundings), education also presupposes the fulfillment of other socioeconomic rights.

Education serves as an intermediary stepping stone between civil/political rights and socioeconomic rights. This is because education presupposes what is necessary for physical human
survival while serving as a gateway—by providing the mental capacity required—to assist with the guarantee of political/civil rights. Education facilitates living fully as a human being physically and mentally. By doing so, it renders itself something necessary for human beings, especially children, to live. It renders itself a human right.

LEGAL JUSTIFICATION AND COMPLEXITIES FOR REFUGEES

A theoretical justification of the right to education applies to all human beings. This theoretical foundation is the underlying philosophy (or plays into the more general philosophy) of the legal documents that dictate that states have the obligation to provide at least primary education to children. Furthermore, this theoretical justification is key to understanding how to interpret the gaps in the legal justification to the right of education with regards to refugee children.

The Republic of Turkey is a signatory of documents that acknowledge and provide protections for refugees on the international level. Turkey has ratified the 1951 Refugee Convention. This document guarantees the right to public education in Article 22, which states:

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.

(UNHCR, 1951).

In addition, Turkey itself has enacted national legislation to clarify the legal position of refugees in response to the influx of refugees in response to conflicts including the Syrian Civil War and increasing political tensions in Iraq and Afghanistan. In 2013, they enacted the Law on
Foreigners and International Protection, which designated measures such as Stateless Persons Identification Documents, which, when acquired, ensured the legal right to reside in Turkey, and provisions for refugees under International Protection Status (Republic of Turkey Ministry of Interior, 2013). Under the rights and obligations of those who are granted international protection status is the mandate of Article 89 (i), that they shall have access to primary and secondary education. It should be noted, however, that receiving International Protection status itself can take up to six months, with provisions made within the legislation for keeping applicants in detention if they have nowhere else, as well as procedural guidance for those whose applications have been rejected and seek judicial review (Republic of Turkey Ministry of Interior, 2013). The law itself anticipates that, despite its best intentions, not everyone who enters Turkey’s borders and applies for refugee status will get the coveted International Protection Status immediately or even at all; consequently, not everyone will be able to access the rights guaranteed to them under human rights law.

This could be problematic for Turkey, since it also has obligations to provide for children on the international level. Turkey is legally bound by Article 13 of the ICESCR, which mandates free and public education for ‘all’. Turkey is in fact also a signatory of the Convention of the Rights of the Child, which guarantees in Article 2 that:

“All the rights in the Conventions of the Rights of the Child must apply to all children in the State, including visitors, refugees, children or migrant workers, or are in the State illegally...irrespective of the child’s...birth or other status.” (Pobjoy, 2013)

The ICESCR was signed in 1966, and the CRC was signed nearly 40 years after the Refugee Convention, and signaled a shift away from considering children as the wards of their parents/guardians and instead as their own beings. The CRC provides for access to primary and secondary education in Article 28, which it also mandates to be free. What is even more interesting is that the rights of refugee children are guaranteed even earlier, in Article 22 (UNICEF). Yet, as scholar Jason Pobjoy points out, ‘the provision provides no substantive guidance...of whether or
not...a child qualifies for refugee status’ (Pobjoy, 2013). Thus, even the CRC, with its seemingly stronger legal force and emphasis on the status of refugee children as ‘child first, refugee second’ (Pobjoy, 2013), is still subject to definitions that are left up to the host state. This puts Turkey in a difficult position; although it is a signatory of both the 1951 Refugee Convention and its 1967 Optional Protocol, its definition of ‘refugee’ hinges on the asylum seeker’s origination in Europe, understandable because of the post-WWII context, but outdated in the face of the Syrian refugee crisis (Human Rights Watch, 2015). It is left to navigate its own stricter definitions against the declarations of equality it has made on the international stage.

Turkey’s legislation, fortunately, has had the foresight to predict this gap between the legal status of child refugees and the universality of their rights, and has done its best to work around restrictions placed upon its action by definitions of status. For example, if they have not received residency permits or refugee status within/outside a camp, children are able to register in schools under guest status, or go without registration completely (Bircan, Sunata 2015). The clear and forceful language of both of these documents, as well as their legally binding status for their signatories, indicates that Turkey is thus still obligated to provide education for those children who fail to complete or succeed in the application process for refugee status.

Yet legal acknowledgement of its obligations is only one part of Turkey’s role as a host state. Actually implementing its own policies raises the issue of feasibility and strain on host state resources, especially in the context of Turkey as a developing country. Although far more developed than some of its neighbors in the region (it’s GDP per capita is approximately $9,000 USD, compared to around $3000 for Jordan and $7000 for Lebanon (Trading Economics, 2014)), there is a serious strain put upon Turkish educational infrastructure when providing for Syrian refugee children. According to Human Rights Watch, only 20% of the required $624 million needed for refugee assistance in Turkey has been pooled by a number of international bodies, and the UNHCR allocates only around 4% of its annual budget towards providing and improving upon existing education
resources for refugees (most of it is dedicated to providing and maintaining refugee camps). Turkey’s current policies and legislation exhibit resourcefulness in accommodating Syrian refugee children. Upon entering Turkey, children have three options for education, depending upon legal status: state sponsored schools intended for refugees, enrolment in Turkish public education, or NGO-run schools in Arabic (Human Rights Watch, 2015). Despite their inclusive legislation, the reality of the task of providing for refugee education has led to less than ideal arrangements—overcrowding and misinformation are common phenomena. With this in mind, a closer examination of documents such as the ICESCR and CRC yields a much less forceful demand upon host states. In Turkey’s ratification of the ICESCR, for example, they qualified that the right to education would be provided ‘in accordance to the provisions…of the Republic of Turkey’ (O’ Rourke, 2015). Even the CRC, despite its clear language, makes room for the ‘progressive realization’ of the rights on the part of its signatories. This has concerning ramifications for the Syrian refugee children, as it could be interpreted to mean that

“...the fact that Iraq, Jordan, Lebanon, and Turkey have affirmatively attempted to provide educational opportunities, even where it is beyond their financial means, illustrates that the obligations under ICESCR and CRC are being satisfied” (O’Rourke, 2015).

This analysis clearly points out the potential loophole that Turkey could use: these documents make no mandates on the effectiveness of host states’ policies in actually developing ‘each child’s...talent and abilities’ (Article 29 of the CRC). Applying this philosophy means that Turkey is a model actor when it comes to ensuring the right to education. Not only does it fully acknowledge its obligation to Syrian refugee children as both refugees and children, but it has made concrete actions towards satisfying this right. It seems to be an almost Arendt-like situation: refugee children only have the right to education to the extent that it is guaranteed by the host state government. However, especially in the case of refugee children, a host state that takes measures like opening up public schools for enrolment without special considerations for their precarious situation might not
be sufficient to claim that their right to education is being satisfied. This raises the question of what is needed to ensure that the right to education is being fulfilled in the case of refugee children, discussed further in the next sections.

**THE RIGHT TO EDUCATION IN THE CASE OF REFUGEES: LINGUISTIC ACCOMMODATIONS**

It has been made clear in the previous section that under some interpretations of clauses within the CRC and ICESCR, a host state can be considered fulfilling their responsibilities towards refugees just by implementing a policy at all. But to guarantee a right to education for a refugee child encompasses more nuances that take account of their more complicated situation. In this section, I will endeavor to trace some of the arguments made for language and cultural sensitivity when considering how best to satisfy their right to education—especially in relation to the debate over the purpose of educating refugees at all.

First, the debate over purpose must itself be framed. According to prominent refugee education researcher Margaret Sinclair, there are two philosophies concerning refugee education: ‘education for repatriation’, versus ‘education for integration’. As the names would suggest, education for repatriation advocates for educational policies that would best serve refugees once they return home. Education for integration looks to educate refugees for the purposes of living and working within the host state indefinitely. Predictably, whatever purpose the host state chooses to align itself with has significant implications for how and what it teaches refugee children. For example, a state whose policies reflect a belief in education for integration will teach refugee children in the host state’s official language and state curriculum. Currently, the UNHCR advocates for host states to take an education for repatriation approach towards refugee education (Hathaway, 2005). With this in mind, the discussions surrounding language and cultural sensitivity in refugee education can be better understood as they relate to the right to education for refugees.

The unique characteristic of the role of language in refugee education is that, no matter what framework is adopted, the importance of it is critical for refugees. Consider the framework of
education for repatriation. Clearly, ensuring education in the child’s first language is the only way to ensure the right to education in this case. If a child is to be successfully repatriated into their home state, their education must be able to facilitate such a life, physically and mentally—as established by the theoretical justification for why education is a right established earlier. There is psychological research that confirms this link between learning and speaking one’s first language and being able to survive psychosocially both as a refugee and as a repatriated citizen (Hamilton and Moore, 2003).

Education in a child’s first language in such a context serves to form an identity and prepare them for social interactions once they are repatriated. Thus, under the education for repatriation framework, to ensure a refugee child’s right to education is to ensure that it is done in their first language. This reasoning and concern is reflected in documents concerning refugee education.

According to Douglas Hodgson, a prominent refugee law scholar, Article 29 of the CRC contains in its first sub-clause language that demands a child be educated in their first language primarily, and then, depending upon their desire or host state’s philosophy, be instructed in the host state’s language.

Even when working under an education for integration framework, a child refugee’s right to education can only be satisfied by the careful integration of both their first and adopted second language into their education. The need to learn in their first language has the same justification as a child living under policies of education for repatriation: preparation for interactions with people from their home country (although the scope of people may be more limited), as well as for the formation of a psychosocial identity distinct from their classmates from the host state. The requirement to educate in the host state’s language is similarly necessary for the refugee child. If they are to be integrated into their adopted society economically and participate politically, thus actually utilizing their education, they must understand their host state’s language. Therefore, to successfully implement policies that align with education for integration and simultaneously ensure the child refugee’s right to education, instruction in both languages must be guaranteed. However, what should be emphasized in such a system is that this integration of the two languages must be
gradual and accommodating of the situation of the refugee, especially in regards to gaps in learning and other psychological stressors. Glossing over this important consideration can actually lead to violations in the child’s right to education, and consequently other human rights, as is the case in Turkey.

For Syrian refugee children in Turkey, education has become a system for integration, more out of necessity than by intent on the part of the Syrian government (Human Rights Watch, 2015). For significant portions of Syrian children in school in Turkey, the state’s well-intentioned open door policy to all schools, nearly regardless of legal status, has actually discouraged some children from attending schools. One such example of this is the access to the regular Turkish public school system. According to Human Rights Watch, these schools have little willingness or resources to deal with the language needs of the refugee children (Human Rights Watch, 2015). Access to Turkish language classes, theoretically provided by the government, remains low because of a scarcity of them in areas of urban centers where refugees are usually highly concentrated, compounded with the ignorance of the refugees that they even have access to resources—often a result of poor communication between the Turkish government with refugees who do not live in the refugee camps. Although one of the most important considerations in ensuring a refugee’s right to education, economic and, ironically language barriers hinder many refugee children from seeking language assistance, and thus, from fulfilling their right to education.

Yet the importance of language in the right to education for a refugee extends even further, and reinforces itself with regards to other socioeconomic rights of refugee children. Under Article 32 of the CRC, child labour that is ‘harmful and exploitative’ is prohibited. The relationship between this right and the right to education is symbiotic; each helps ensure the other. When one is violated, as is the case with Syrian children who are not taught with first language considerations in mind, the other is too—also clearly demonstrated with Syrians in Turkey. The Human Rights Watch Report, “When I Picture My Future, I See Nothing” (2015), contains anecdotes of young Syrian adolescents,
frustrated with their inability to learn as quickly as their Turkish classmates in Turkish classrooms, who gave up and went to work in factories or in other labour-based trades. Although these working conditions are often harsh and undoubtedly violate these children’s rights, the Turkish legal framework contains gaps that leave children, especially refugee children, vulnerable (Department of Labor, 2014). The importance of the right to education and the associated language accommodations is thus magnified for Syrian refugee children. Due to the lack of safeguards against the right to be protected from child labour in their precarious legal situation in Turkey, education becomes one of the most important, if not one of the only, methods through which refugee children can guarantee access to some of their most basic socioeconomic rights. The Turkish government’s obligation to provide linguistic accommodations is thus justified. Education is a right because it is necessary to develop the mental and sometimes physical capacities to live and survive in one’s surroundings. In the context of refugees, the mental and physical capacities needed to survive require proficiency in both their own and the host state’s language. It is therefore the responsibility of the host state to provide linguistic accommodations for these children, as a component of the right to education. Furthermore, the commitment to ensuring both education and freedom from child labor in international legal documents is to commit to ensuring that the right to education is fulfilled wholly, complete with linguistic accommodations.

RIGHT TO EDUCATION FOR REFUGEES: CULTURAL SENSITIVITY AND VALUES

Unlike the issue of language rights and accommodations in refugee education, what is taught to a refugee child is much more contentious when comparing the two frameworks of repatriation versus integration. The assumptions of each framework play a much larger role in determining the policies of the host state in this context. Under the repatriation framework, the assumption is that the refugees’ country will eventually be stable enough for them to return and rebuild their lives there. Consequently, the refugee’s cultural identity and values come to the forefront when it comes to civics and history, as well as in determining what practical education
might be instilled in the children (i.e. culturally specific rituals associated with national holidays, how to behave towards people of different social positions and ages, etc.). Under the integration framework, cultural sensitivity is more likely to be sacrificed in favor of acclimatizing children towards the social atmosphere and customs of their adopted home as quickly and efficiently possible. Under this framework, it would not be implausible to assume that refugee children are willing to give up at least some parts of their cultural identity in order to have the security that comes with assimilation. This would also affect the social education they receive: for example, they may be indoctrinated with how to act as a permanent foreigner and the social restrictions that comes with that status instead of a full citizen.

As aforementioned, the UNHCR advocates for host states to adopt policies that align with an education for repatriation framework. At first, this seems like an obvious choice; such policies keep with the respect due to the refugees’ culture, which is a key component of preserving their human dignity. However, this approach runs into issues when applied to real life situations. As Sean Corrigan points out in his World Bank report ‘Beyond Provision’, such idealistic approaches often do not account for ‘the long-term nature of refugee situations’ (Corrigan, 2005). On the other end of the spectrum, the examples of Burundi refugees in Tanzania and Eritrean refugees in Sudan show the determination with which refugees hold on to their desire to instill their cultural values into their children and train them for the socioeconomic realities of their home state (Hathaway, 2005).

In such situations, it seems the most logical solution would be to find some middle ground between the two frameworks that combines the best of both—a conclusion supported by evidence. In his report, Corrigan extensively praises the case of Tibetan refugees in India, who have been given enough flexibility from the Indian government to collaborate with local educators to integrate lessons on Tibetan culture and identity into what is a foundationally Indian curriculum. The effect, he says, is a policy that ‘faces both ways’, thus allowing Tibetan refugee children to retain their cultural identity as well as prime themselves for the demands of higher education and employment within
India. The significance of this case is to display that the best way to ensure that a refugee child’s right to education (and thus their ability to live in their situation) is fulfilled is by compromise on the part of the host state and collaboration with the refugee community themselves.

With this idea in mind, an examination of Syrian refugees’ treatment by the Turkish government shows a host state trying to align itself with education for repatriation, while ignoring the reality and long term needs of the refugees to be better integrated into Turkish society. One such piece of evidence is outlined above, in the Turkish government’s inability to accommodate the linguistic needs of its Syrian students. Another such piece is the ignorance of the Turkish government to the fact that many Syrian parents would be willing to enroll their children in Turkish schools if properly subsidized for the costs of school fees, uniforms and transportation (Human Rights Watch, 2015). This willingness on the part of the parents is a significant indicator that these refugees realize that their situation is long term, and now are willing to compromise so that their children can find a more stable future in their host state. Rather than providing poorly state-sponsored refugee-oriented schools or relying on independent NGO-run Arabic schools (Bircan and Sunata, 2015) that display a focus on reinforcing the Syrian refugees as purely temporary guests, Turkey would do better to follow in the footsteps of the Indian government.

The debate over education for repatriation versus integration should only serve as guidelines for the finer points of a host state’s policies towards refugee education. The foundation for the right to education, especially in the refugee context, is to guarantee that children are mentally and socially prepared for whatever situation they end up in, not any particular one. For refugees, this means that it is the host state’s responsibility to equip them with an education that prepares them mentally for both repatriation and integration. The host state is thus obligated to provide refugee children with universal standards of primary education (numeracy, literacy, etc.), language and other acclimatization tools that will ease integration into the host state, and means of education of the refugees’ culture, developed in collaboration with the refugee community. In the
case of Turkey, no one dimension has been fully guaranteed. Literacy, for refugees, is closely intertwined with linguistic accommodations; preservation of cultural identity has still not been addressed by the current policies of the Turkish government.

CONCLUSION

The Turkish government has received international praise for its generous policies with regards to accepting and accommodating refugees from the Syrian Crisis (Andalou News Agency, 2015). However, Turkey’s legislation has proved to be far too broad to be able to properly provide for the needs of Syrian refugee children, particularly with respect to their educations. Although they have developed policies that ensure universal access to education for refugee children (subject to their definitions) within their borders, these policies do little to address the multidimensional needs of what these children need from such an education. By applying the justification of the right to education developed in this paper, one sees that current Turkish policies do not do enough to ensure the mental and physical survival of Syrian refugee children in either Syrian or Turkish society. This lack of fulfilment, in and of itself, therefore constitutes a violation of their right to education. Furthermore, the effects this violation has on the fulfilment of other socioeconomic rights provides further incentive for changes in Turkish policy.

Moving forward, Turkey should seek to accommodate both possibilities of repatriation and integration for the 708,000 refugee children within their borders when concerning education. It should do this at least initially by improving access to and quality of language learning/accommodations arrangements for children and collaborating with refugee communities to develop culturally sensitive curriculums which prepare children for life in both Turkish and Syrian society. These two aspects of education are highly crucial in securing a Syrian refugee child’s full right to education—and both initiatives can fit with either a repatriation or integration framework. The social and economic boons that would result from these improvements, as evidenced by cases like Tibetan refugees in India (Corrigan, 2015) and Sudanese refugees in Eritrea (Hathaway, 2005),
would provide a much-appreciated improvement in the lives and human rights situations of Syrian refugee children and their families.


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