

2023

## Access to Higher Education: A Comparative Law Analysis of the Institutional & Societal Barriers Refugees Must Overcome

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### Recommended Citation

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# ACCESS TO HIGHER EDUCATION: A COMPARATIVE LAW ANALYSIS OF THE INSTITUTIONAL AND SOCIETAL BARRIERS REFUGEES MUST OVERCOME

IRENE RIZZOLATTI\*

I.	INTRODUCTION .....	738
II.	BACKGROUND .....	742
	A. Global View on the Right to Higher Education .....	744
	1. International Laws Protecting the Right to Higher Education .....	746
	2. Women Refugee's Access to Higher Education .....	748
	B. Global Issues Faced by Refugees Generally .....	750
	1. Missing Qualifications .....	751
	2. Detainment Period .....	753
	3. Language Access .....	754
	4. Cost of Higher Education .....	755
III.	ANALYSIS .....	756
	A. International Laws Furthering Refugees' Access to Higher Education .....	756
	1. UNESCO's and the European Union's Qualification Passports .....	757
	2. Educational Opportunities in Detainment and/or Refugee Camps .....	762
	3. Language Access through International Initiatives .....	763
	4. International Financing Solutions to Reduce the Cost of Higher Education .....	765
	B. Access to Higher Education for Refugees in the United States .....	768
	1. Qualification Recognition .....	768
	2. Detainment Period .....	770
	3. Language Access .....	771
	4. Cost of Higher Education .....	772
IV.	PROPOSAL .....	773
	A. Recognizing Education as a Fundamental Right .....	774
	B. Lowering the Barriers Through Concrete Efforts .....	777
V.	CONCLUSION .....	781

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\* Irene Rizzolatti, Juris Doctor Candidate 2023, University of Illinois at Chicago Law School. First, I would like to thank my family, my partner, and my friends, for encouraging and supporting me throughout this journey: I would not have made it without you. I would also like to thank the Law Review Editorial Board for the meaningful feedback provided while writing this Comment, and Professor Karen Halverson Cross, faculty member at the University of Illinois at Chicago, for her invaluable insights on the right to education in the U.S. Finally, but most importantly, I dedicate this Comment to Najma, and all the educated refugees around the world seeking to continue their studies, in the hope that you can all achieve your dreams.

## I. INTRODUCTION

At 19 years old, Najma fled her home country of Afghanistan, just as she began to work towards her dream of becoming a writer by studying literature and English at an Afghan university.<sup>1</sup> In 2018, together with her mother and two siblings, Najma left Afghanistan as military operations by international and government forces intensified, along with the sharp increase of insurgent attacks.<sup>2</sup> After escaping the war zones, Najma and her family spent years in refugee camps: first, they stayed in Iran, then in Lesbos, Greece, where the camp's lack of educational programs prevented Najma and her siblings from continuing their education.<sup>3</sup>

Najma's family was finally relocated to Italy in May 2021, after being granted refugee status.<sup>4</sup> While in Italy, Najma was interviewed by social workers as part of the program, "...*DimiCome*."<sup>5</sup> During her interview, she expressed the desire to

1. Najma's story is from a real-life conversation which took place in Milan, Italy, during the summer of 2021. The conversation was part of the European-funded program "...*DimiCome*," aimed at interviewing refugees who had just been relocated in Italy. Interview with Najma, Refugee, Francesco Realmonte ONLUS, in Milan, It. (June 2021) [hereinafter *Najma Interview*].

2. HUM. RTS. WATCH, WORLD REPORT 2019: EVENTS OF 2018, 17 (2019).

3. Najma Interview, *supra* note 1. See Maysa Jalbout, *Finding Solutions to Greece's Refugee Education Crisis*, THEIRWORLD 10 (2020), [www.theirworld.org/wp-content/uploads/2020/05/FINAL-RefugeeEducation-Report-050520-1.pdf](http://www.theirworld.org/wp-content/uploads/2020/05/FINAL-RefugeeEducation-Report-050520-1.pdf) [perma.cc/5TKB-8AAU] (explaining that although education is essential for the welfare of school age-refugee children, less than a third were receiving any schooling prior to the Covid-19 outbreak in Greece.).

4. Najma Interview, *supra* note 1. See Memorandum from U.N. High Comm'r for Refugees on The Refugee Concept Under International Law (Mar. 12, 2018) (on file with author) (noting that, "[u]nder international law, refugees are persons outside their countries of origin who are in need of international protection because of a serious threat to their life, physical integrity or freedom in their country of origin as a result of persecution, armed conflict, violence or serious public disorder"); see also U.N. Conference of Plenipotentiaries on the Status of Refugees & Stateless Persons, *Final Act & Convention Relating to the Status of Refugees*, art. 1, § A(2), U.N. Doc. A/CONF.2/108 (July 28, 1951) [hereinafter *1951 Convention*] (defining refugee as "a person who, . . . as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."); see also 8 U.S.C. § 1101(a)(42) (2022) (defining "refugee" in the U.S. as "any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.").

5. Najma Interview, *supra* note 1. *DimiCome* is a project co-funded by the

pursue her education again and fulfill her dream.<sup>6</sup> Unfortunately, due to institutional and societal barriers, including a lack of prior educational documents, Italian fluency, information on how to enroll in higher educational programs as a refugee, and funds, her dreams were instantly shattered.<sup>7</sup>

Najma's story is not unique. There are numerous refugees around the world suffering from lack of education, more specifically higher education, due to institutional obstacles and situational barriers.<sup>8</sup> For example, Mohammed, a 25-year-old refugee from Lebanon, who studied to become a pilot in his home country, was unable to finish his studies because he lost all documentation proving his educational qualifications prior to relocating as a refugee in Italy.<sup>9</sup>

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Italian Ministry of Internal Affairs and the European Union, which aims to promote migrants' economic integration within the Italian territory by assessing soft skills and fostering a positive impact on the competitiveness of companies. *Project "DimiCome - Diversity Management e Integrazione. Le Competenze dei Migranti nel Mercato del Lavoro"*, [www.ismu.org/en/project-dimicome](http://www.ismu.org/en/project-dimicome) [perma.cc/V5PF-QZTG] (last visited Mar. 25, 2023) [hereinafter *DimiCome*].

6. Najma Interview, *supra* note 1. See Elisabeth Mangrio, et al., *Refugee Women's Experience of The Resettlement Process: A Qualitative Study*, 19 BMC WOMEN'S HEALTH 147, 149 (2019) (reporting how "[a] well-educated [refugee] had high[er] hopes of finding a job matching her educational level."). However, she was only able to secure a job as a nanny. *Id.* Others expresses their intent to continue their studies from their home country. *Id.* One refugee woman stated: "When I am done with my Swedish studies, I will continue to university studies; and I want to become a teacher of geography." *Id.*

7. Najma Interview, *supra* note 1. See Agata A. Lambrechts, *The Super-Disadvantaged in Higher Education: Barriers to Access for Refugee Background Students in England*, 80 HIGHER EDUC.: INT'L J. HIGHER EDUC. RSCH. 803, 809 n. 6 (2020) (describing institutional barriers as "the limitations inherent to the way institutions design, deliver, and administer learning activities, biased or ignorant of the needs of the disadvantaged groups." (citing K. PATRICIA CROSS, ADULTS AS LEARNERS: INCREASING PARTICIPATION AND FACILITATING LEARNING (1st ed. 1981))). Barriers for refugees include lack of information, inflexibility related to admission and enrollment procedures, language requirements, access to documentation of previous schooling, and lack of financial support. *Id.* at 809-10, 811-12, 813-15.

8. See U.N. High Comm'r for Refugees, *Stepping Up: Refugee Education in Crisis*, U.N. REFUGEE AGENCY 46 (2019), [www.unhcr.org/steppingup/wp-content/uploads/sites/76/2019/09/Education-Report-2019-Final-web-9.pdf](http://www.unhcr.org/steppingup/wp-content/uploads/sites/76/2019/09/Education-Report-2019-Final-web-9.pdf) [perma.cc/V2NT-66JB] [hereinafter *Stepping Up*] (showing that, just like Najma, Daniela Puente "dreamed of becoming a doctor" and was four years into medical school when Venezuela's crisis hit). When meals became too scarce, Daniela knew she had to flee Venezuela to provide for her younger brother, which meant dropping out of medical school. *Id.* She was able to flee to Bogotá, Colombia where she tried to re-enroll in university to complete her studies. *Id.* However, "public universities required student visa[s] and notarized copies of her high-school diploma and her medical school transcripts," all of which were "impossible to obtain in Venezuela." *Id.* at 47. Private universities had more flexible requirements but, due to the costs, they were out of her reach. *Id.* Daniela is currently working as a waitress. *Id.* at 46.

9. Interview with Mohammed, Refugee, Francesco Realmonte ONLUS, in

Both Najma and Mohammed are educated refugees, who could enroll and attain a higher education, but are not able to do so due to institutional and societal obstacles.<sup>10</sup> Many refugees globally, including in the United States (“U.S.”), face the same obstacles as Najma, preventing them from accessing higher education.<sup>11</sup> Refugee women in particular are the most at risk of being denied access to higher education while also substantially likelier to experience human rights abuses.<sup>12</sup> For women, this lack of access to higher education may, in many cases, even result in forced marriage.<sup>13</sup>

The obstacle of accessing higher education for refugees is not a legal barrier since, neither in the U.S., nor globally, is there a law that *per se* prevents people like Najma from attending university or any other higher educational institution.<sup>14</sup> However, systemic and

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Milan, It. (June 2021).

10. See Alastair Ager & Alison Strang, *Understanding Integration: A Conceptual Framework*, 21 J. OF REFUGEE STUD. 166, 170 (2008) (noting that refugees are often highly educated in comparison with other groups of immigrants); see also Andee Brown Gershenberg, *Difficulties for Refugee Women in Accessing Higher Education in the Region Ile-de-France*, ROUTED: MIGRATION & (IM)MOBILITY MAG. (May 29, 2020), [www.routedmagazine.com/omc2020-4-ref-women-higher-ed](http://www.routedmagazine.com/omc2020-4-ref-women-higher-ed) [perma.cc/TYF4-5L53] (emphasizing that marginalization and oppression are stronger against people who fit in the category of being women, refugees, and students). Specifically, a study conducted in France shows how the “weight of gender dynamics” affected women’s migration journeys and daily lives. *Id.*

11. See Lambrechts, *supra* note 7, at 819 (defining situational barriers as “barriers related to the individual’s broad circumstantial conditions.”).

12. See *Vakeesan v. Holder*, 343 F. App’x 117, 119 (6th Cir. 2009) (noting that the International Crisis Group and the U.S. Department of State agree that women are particularly vulnerable to human rights abuses). “Women refugees in conflict areas and camps struggle with increased sexual violence and forced sex work from soldiers and armed men.” *Id.*; see also *5 Facts About What Refugee Women Face*, WOMEN FOR WOMEN INT’L (June 14, 2021), [www.womenforwomen.org/blogs/5-facts-about-what-refugee-women-face](http://www.womenforwomen.org/blogs/5-facts-about-what-refugee-women-face) [perma.cc/ZLN8-T4F5] (noting fifty percent of the refugee, internally displaced, or stateless populations are women and girls).

13. See *COVID-19: A Threat to Progress Against Child Marriage*, UNICEF (Mar. 2021), [data.unicef.org/resources/covid-19-a-threat-to-progress-against-child-marriage/](http://data.unicef.org/resources/covid-19-a-threat-to-progress-against-child-marriage/) [perma.cc/P6XN-RDMM] (noting that, due to the pandemic, one of the major factors pushing girls and women towards marriage is school closures and inaccessibility). Figures show that 10 million additional girls (to the already 100 million at risk) will get married instead of continuing their education. *Id.*; see also *From Where I Stand: Zaad Al-khair*, UN WOMEN NEWS (May 20, 2016), [www.unwomen.org/en/news/stories/2016/5/from-where-i-stand-zaad-al-khair](http://www.unwomen.org/en/news/stories/2016/5/from-where-i-stand-zaad-al-khair) [perma.cc/RD8K-6J56] (sharing the story of Zaad Al-Khair, a seventeen year old refugee girl in Jordan, and how most of her friends were married by 15 and already have children). However, her dream was to complete her studies and ultimately attend university. *Id.*

14. See Section Educ. Pol’y UNESCO, *Enforcing the Right to Education of Refugees: A Policy Perspective* 12 (UNESCO, Working Paper No. 8, 2019) (noting that in “64 out of 81 refugee-hosting countries analyzed by UNHCR,” there are no “formal legal or administrative barriers to refugees accessing the national education systems”) [hereinafter *Enforcing the Right to Education For Refugees*]; see, e.g., 20 U.S.C. § 1681 (2022) (guaranteeing the right to education

institutional discrimination against refugees prevents access to this basic right.<sup>15</sup> Thus, to follow the example of more successful nations, the U.S. should implement federal laws facilitating refugee access to higher education.<sup>16</sup> Today, however, the U.S. educational system is so fragmented that it leaves refugees in a precarious situation with regards to access to higher education, as well as in other aspects of everyday life.<sup>17</sup>

This Comment focuses on the barriers and obstacles faced by displaced persons, particularly refugees, in accessing higher education globally, and compares foreign higher education systems to the higher education system in the U.S. Part II describes the global situation, referring to international treaties and conventions protecting refugees and their right to education.<sup>18</sup> It further illustrates the most common barriers in access to higher education for refugees globally and within the U.S.<sup>19</sup> Part III compares the U.S. higher education system to a sample of countries around the

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free from sex discrimination); *see contra* *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 34-35 (1973) (holding that education is not a right recognized in the U.S. Constitution, nor implicitly protected in the penumbras of the 14th Amendment).

15. *See* Robert F. Graboyes, *Tampering Systemic Racism in Healthcare*, 10 LIBERTY MATTERS 1, 2 (2022) (explaining systemic racism *is* “the notion that overt racial discrimination in the past ... has left a residue on the structure of American institutions that yields ongoing inertial patterns of discrimination.”).

16. *See* Julia González Fernández, *International Legal Protection of the Right to Education for Refugees and Asylum Seekers: Developments and Challenges* 51 (2017), (Master’s Degree Thesis, KU Leuven University), repository.gchumanrights.org/server/api/core/bitstreams/a5a10f9c-52ca-43be-b367-3ce83fc1b68e/content [perma.cc/JH7C-S78G] (noting that “the primary obligation or responsibility for all [nations] is making real and effective the realization of the right to education for all individuals living in their territory and subject to their jurisdiction, independently of their administrative or legal situation.”). These obligations are derived from international human rights law in the field of the right to education. *Id.* at 9; *see also* *Brown v. Bd. of Educ. Of Topeka, Shawnee Cty., Kan.*, 347 U.S. 483, 493 (1954) (explaining that providing public schools ranks at the very apex of the function of a State, and education is perhaps the most important function of State and local governments).

17. *See England’s Most Disadvantaged Groups: Migrants, Refugees and Asylum Seekers*, EQUAL. & HUM. RTS. COMM’N 3 (2016), www.equalityhumanrights.com/sites/default/files/is-england-fairer-2016-most-disadvantaged-groups-migrants-refugees-asylum-seekers.pdf [perma.cc/EMZ5-87NF] (noting that refugees are a “diverse group and experience a range of distinct problems and inequalities due to their immigration status,” including socio-economic discrimination among other kinds of discrimination); *see also* UNESCO INST. STAT., *Glossary*, uis.unesco.org/en/glossary [perma.cc/AR53-9TBP] (last visited Apr. 20, 2023) (navigate to “Enter a Search Term” and search “disadvantaged populations”) (defining disadvantaged populations as a “population group at risk of education exclusion as a result of sex, location poverty, disability, ethnicity, language, migration, displacement or other characteristics.”).

18. *See* discussion *infra* Part II.A.

19. *See* discussion *infra* Part II.B.

world, where access to higher education for refugees is facilitated by national and international programs.<sup>20</sup> Part IV proposes that the U.S. find a constitutional right to higher education. It also suggests improvements to the educational system which would help guarantee refugees' right to access higher education, and overcome the institutional obstacles faced by them, such as the adoption of international instruments and treaties.<sup>21</sup>

## II. BACKGROUND

This Section first provides an overview of the right to education for refugees, with a special eye on higher education. Section II.B discusses specific international efforts implemented to better promote higher education for refugees and describes the institutional and societal barriers faced by refugees when attempting to access higher education both globally and in the U.S.

In discussing the right to education for refugees, the conversation mainly focuses on access to primary and secondary schooling.<sup>22</sup> However, access to post-secondary education is a pressing issue, not only for those able to live safely in their home country, but especially for refugees and displaced people.<sup>23</sup> A quality higher education plays a critical role in improving the situations for those facing forced displacement. It provides young refugees a path to develop their independence and create a future aligned with their goals.<sup>24</sup>

Unfortunately, "education for refugees is rarely a smooth continuum from one level of schooling to another, and opportunities narrow each step of the way."<sup>25</sup> Like Najma or Mohammed, many refugees, asylees, and displaced persons, complete their high school education in their native country.<sup>26</sup> Among those who do complete secondary education, the desire to access university is nearly

20. See discussion *infra* Part III.

21. See discussion *infra* Part IV.

22. See, e.g., UNESCO Inst. Stat. & UNHCR, *Refugee Education Statistics: Issues and Recommendations*, UNESCO-UIS (2021), [www.unhcr.org/61e18c7b4](http://www.unhcr.org/61e18c7b4) [perma.cc/MD2X-S2JQ] (focusing its analysis on children's enrollment in primary and secondary school).

23. Allan Goodman, *Mending the Pipeline to Postsecondary Education for Refugees*, INST. OF INT'L EDUC. (Dec. 5, 2017), [www.iie.org/blog/2017-dec-5-education-for-refugees/](http://www.iie.org/blog/2017-dec-5-education-for-refugees/) [perma.cc/YEE4-HPWT].

24. Caroline Schmidt & U.N. High Comm'r for Refugees, *Student Scholarships For Refugees: Expanding Complementary Pathways of Admission to Europe*, EUR. RESETTLEMENT NETWORK+ 7 (2018), [icmc.embox.be/sites/icmc/files/ERN%2B%20Student%20Scholarships%20for%20Refugees%20-%20Expanding%20complementary%20pathways%20of%20admission%20to%20Europe\\_0.pdf](http://icmc.embox.be/sites/icmc/files/ERN%2B%20Student%20Scholarships%20for%20Refugees%20-%20Expanding%20complementary%20pathways%20of%20admission%20to%20Europe_0.pdf) [perma.cc/V4ND-E2P8].

25. Sara Dryden-Peterson & Wenona Giles, *Introduction: Higher Education for Refugees*, 27 REFUGEE: CAN.'S J. ON REFUGEES 4 (2012), [refuge.journals.yorku.ca/index.php/refuge/article/view/34717/31547](http://refuge.journals.yorku.ca/index.php/refuge/article/view/34717/31547) [perma.cc/BAP5-2YNA].

26. *Id.*

universal.<sup>27</sup> But, due to events outside their control, refugees and women like Najma are forced to flee and are prevented from continuing their studies.<sup>28</sup> The result is that only one out of one hundred refugees eventually makes it to college.<sup>29</sup>

In the U.S., the laws implemented at the federal level aimed at furthering access to higher education for refugees and other immigrants, often have the effect of imposing additional barriers.<sup>30</sup> For example, the emphasis of “quickly” obtaining economic “self-sufficiency” bestowed on refugees when resettled in a new country typically discourages pursuit of higher education in the name of making ends meet fast.<sup>31</sup> Only a handful of U.S. states, such as California, Connecticut, and Washington, explicitly recognize education as a fundamental right, entitling all students to the same quality of education.<sup>32</sup> At the same time, the Supreme Court has repeatedly held that public education, even at primary and secondary levels, “is not among the fundamental rights afforded explicit protection” by the U.S. Constitution.<sup>33</sup>

27. *Id.*

28. See U.N. HIGH COMM’R FOR REFUGEES & DAFI, THE OTHER ONE PER CENT – REFUGEE STUDENTS IN HIGHER EDUCATION 3 (2018) [hereinafter THE OTHER ONE PER CENT] (noting that just over one-third of young people of university age around the world are in higher education and that despite their potential, young refugees are greatly disadvantaged in accessing university education as well as technical and vocational training).

29. *Id.*

30. See *Federal Policies*, HIGHER ED IMMIGRATION PORTAL, [www.higheredimmigrationportal.org/national/federal-policies/](http://www.higheredimmigrationportal.org/national/federal-policies/) [perma.cc/A6NB-UZJH] (last visited Apr. 24, 2023) (listing and highlighting the negative impacts of policies implemented at the federal level to further access to higher education for immigrants and refugees).

31. See 8 U.S.C. § 1522(a)(1)(A) (2022) (allowing the federal government to give money to states to assist refugees’ integration in the American society, more specifically (1) giving “sufficient resources for refugee employment training to achieve economic self-sufficiency as quickly as possible,” and (2) “provid[ing] refugees with opportunity to acquire . . . language training to . . . become resettled as quickly as possible.”). Further, states are required to submit to the federal Office of Refugee Resettlement a plan and contract with private resettlement agencies to implement such plan. *Id.* at § 1522(a)(6)-(7).

32. See Trish Brennan-Gac, *Education Rights in the States*, AM. BAR ASS’N HUM. RTS. MAG. (Apr. 1, 2014), [www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/2014\\_vol\\_40/vol\\_40\\_no\\_2\\_civil\\_rights/educational\\_rights\\_states/](http://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_2_civil_rights/educational_rights_states/) [perma.cc/N2PE-XTTV] (noting that before *Brown v. Board of Education*, only Wyoming and North Carolina embraced education as a fundamental right). Following the Supreme Court decision, other courts around the country started holding education is a fundamental right under state constitutions. *Id.* More specifically, California, Connecticut, Washington, and West Virginia recognized this right under their constitutions in the 1970s, while Mississippi, Oklahoma, Wisconsin, Kentucky, Alabama, Arkansas, Kansas, Massachusetts, New Hampshire, South Carolina, and Texas recognized it in the 1980s and 1990s. *Id.* See also Gary B. v. Whitmer, 957 F.3d 616 (6th Cir.), *reh’g en banc granted*, *op. vacated*, 958 F.3d 1216 (6th Cir. 2020) (acknowledging for the first time in federal court a fundamental right to education).

33. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973);



### A. *Global View on the Right to Higher Education*

Access to higher education in international law is defined as “the right provided to any individual holding a qualification to apply and be considered for admission to a level of higher education.”<sup>34</sup> In 2016, 215.6 million people were enrolled in higher education.<sup>35</sup> According to UNESCO, today there are approximately 235 million students enrolled in higher education globally.<sup>36</sup> However, only five percent of eligible enrolled students are refugees.<sup>37</sup> These figures show a disproportionate gap between the number of students enrolled in higher education compared to the number of refugee students, who are only 87,833 among the 235 million accessing higher education.<sup>38</sup> An even smaller percentage of all the students

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*see also* Plyler v. Doe, 457 U.S. 202 (1982) (noting education has a fundamental role in maintaining the fabric of American society but that it is not a fundamental right recognized by the Constitution).

34. UNESCO, GLOBAL CONVENTION ON RECOGNITION OF QUALIFICATIONS CONCERNING HIGHER EDUCATION, art. 1 (Nov. 25, 2019) [hereinafter *UNESCO Qualifications Convention*]. This is the first U.N. Convention on a global scale binding all member states in relation to higher education. UNESCO Director-General, Letter dated Nov. 25, 2019 from UNESCO Director-General addressed to All Ministers Responsible for Relations with UNESCO, U.N. Doc. CL/4318 (Nov. 25, 2019), [www.unesco.org/en/legal-affairs/global-convention-recognition-qualifications-concerning-higher-education#item-3](http://www.unesco.org/en/legal-affairs/global-convention-recognition-qualifications-concerning-higher-education#item-3) [perma.cc/9HYW-KCRR]. It was adopted in November 2019, by the 40th Session of the UNESCO General Conference. *Id.* The Convention’s purpose was the facilitation of global academic mobility and the promotion of the rights of individuals to have their higher education qualifications accredited through fair, and non-discriminatory manners. *Id.* This Convention aims to expand the access of higher education around the world, and to strengthen the cooperation among U.N. member states in the realm of higher education. *Id.* The Convention is an important step towards the facilitation of refugees’ access to higher education. *Id.*

35. *See* Angel J. Calderon, *Massification of Higher Education Revisited*, RMIT UNIV. ANALYTICS & INSIGHTS 9 (2018), [cdn02.pucp.education/academico/2018/08/23165810/na\\_mass\\_revis\\_230818.pdf](https://cdn02.pucp.education/academico/2018/08/23165810/na_mass_revis_230818.pdf) [perma.cc/WG4G-2RDU] (noting North America and Western Europe had a higher education enrollment of 37.5 million people whereas, East Asia and the Pacific had an enrollment of 70.9 million).

36. *What you need to know about higher education*, U.N. EDUC., SCI. & CULTURAL ORG., [www.unesco.org/en/higher-education/need-know](http://www.unesco.org/en/higher-education/need-know) [perma.cc/V4AE-763F] (last updated Jan. 27, 2023).

37. World Bank Grp., *Higher Education*, THE WORLD BANK (Oct. 22, 2021), [www.worldbank.org/en/topic/tertiaryeducation](http://www.worldbank.org/en/topic/tertiaryeducation) [perma.cc/2C23-2GWC] [hereinafter *Learning for All*]; *see also* *Stepping Up*, *supra* note 8, at 37 (noting that the gap in secondary education opportunities for refugees compared to non-refugees is so wide that the knock-off effect on higher education continues to be dramatic); *see also* U.N. HIGH COMM’R FOR REFUGEES, *STAYING THE COURSE: THE CHALLENGES FACING REFUGEE EDUCATION* 9 (2021), [www.reporting.unhcr.org/document/2826](http://www.reporting.unhcr.org/document/2826) [perma.cc/KL3A-AUYY] (showing that there was a two percent increase in refugee higher education enrollment compared to 2020).

38. *Stepping Up*, *supra* note 8, at 37.

in higher education are women refugees.<sup>39</sup> There is no conclusive number of how many refugees would qualify for higher education because nations do not regularly analyze nor report refugees' higher education enrollment data.<sup>40</sup> As of November 2020, only 58 countries around the world had reported the refugee enrollment in higher education, and the U.S. was not one of them.<sup>41</sup>

In 2020 the Secretary General of the United Nations, Antonio Gutierrez, launched the "Education in the time of COVID-19 and Beyond" Policy Brief, warning the COVID-19 pandemic created the most severe disruption in the world's education systems in history.<sup>42</sup> In the midst of the crisis, it became even more difficult "to keep up with the pace of displacement" and the pressure of "children born into long-term displacement."<sup>43</sup> Further, the disparity in accessing education in general, and higher education, more specifically, was exacerbated by the disproportion between richer and poorer refugee-hosting countries.<sup>44</sup> In fact, low-income countries – hosting almost a quarter of the world's refugees – are more likely to be disproportionately affected by socio-economic challenges, which will in turn affect refugees and displaced populations in those countries.<sup>45</sup> Therefore, there is a need to include policies for refugee-hosting countries, as their displacement becomes more

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39. See THE OTHER ONE PER CENT, *supra* note 28, at 9 (explaining that young women only accounted for forty-one percent of DAFI scholars, reflecting the "additional obstacles young refugee women must overcome to qualify for and obtain higher education.").

40. UNHCR *Tertiary Education Strategy*, U.N. HIGH COMM'R FOR REFUGEES, [www.unhcr.org/tertiary-education.html](http://www.unhcr.org/tertiary-education.html) [perma.cc/5FMB-L9Q6] (last visited Feb. 18, 2023) [hereinafter *UNHCR Tertiary Education*].

41. *Id.*

42. See *Secretary General Warns Education Catastrophe Pointing to UNESCO Estimate of 24 Million Learners to Drop Out*, U.N. EDUC., SCI. & CULTURAL ORG. (June 8, 2020), [en.unesco.org/news/secretary-general-warns-education-catastrophe-pointing-unesco-estimate-24-million-learners-0](https://en.unesco.org/news/secretary-general-warns-education-catastrophe-pointing-unesco-estimate-24-million-learners-0) [perma.cc/H7Z9-VY7Q] (noting the Policy Brief points to UNESCO's projections whereby 24 million learners from pre-primary to higher education risk not finding their way back to their studies in 2020 following the COVID-19-induced closures). "The largest share of learners at risk, 5.9 million, live in South and West Asia. Another 5.3 million students at risk are in sub-Saharan Africa. Both regions faced severe educational challenges even before the pandemic, which is likely to worsen their situation considerably." *Id.*

43. U.N. HIGH COMM'R FOR REFUGEES, GLOBAL TRENDS IN FORCED DISPLACEMENT IN 2020 11 (2021), [www.unhcr.org/60b638e37.pdf](http://www.unhcr.org/60b638e37.pdf) [perma.cc/TXS2-2GBP] [hereinafter *GLOBAL TRENDS 2020*].

44. *Id.* at 19 (noting The Global Compact on Refugees "emphasizes the importance of greater responsibility- and burden-sharing" by host countries). However, when hosting refugees, the burden is not equally shared: high income countries only host seventeen percent of displaced people across borders, while low-income countries host twenty-two percent of displaced people, leaving the majority to middle income countries. *Id.*

45. U.N. HIGH COMM'R FOR REFUGEES, GLOBAL TRENDS IN FORCED DISPLACEMENT IN 2021 7 (2022), [www.unhcr.org/media/40152](http://www.unhcr.org/media/40152) [perma.cc/4PFL-WAMG] [hereinafter *GLOBAL TRENDS 2021*].

permanent.<sup>46</sup>

### 1. *International Laws Protecting the Right to Higher Education*

Education, in general, is a recognized fundamental right around the world.<sup>47</sup> Since the end of World War II, many international articles, treaties, national laws, and court decisions have recognized a fundamental human right to education.<sup>48</sup> This right is enshrined in one of the most important instruments of international human rights law, the United Nations Universal Declaration of Human Rights (“UDHR”).<sup>49</sup> Both the preamble and Article 26 of the UDHR state that “everyone has the right to education.”<sup>50</sup>

The right to education is primarily an economic and welfare right, forcing state governments “to direct resources such that the right can be enjoyed” by “all human beings,” including refugees.<sup>51</sup> The United Nations High Commissioner for Refugees (“UNHCR”)

46. Michaela Martin & Manal Stuglaitis, *Refugees’ Access to higher Education in their Host Countries: Overcoming the “super-disadvantage,”* INT’L INST. EDUC. PLANNING 28 (2022), [www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UNHCR\\_Refugees%20Access%20to%20Higher%20Education%20in%20their%20Host%20Countries\\_Policy%20Paper\\_2022\\_EN.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UNHCR_Refugees%20Access%20to%20Higher%20Education%20in%20their%20Host%20Countries_Policy%20Paper_2022_EN.pdf) [perma.cc/3SDC-AWYH].

47. See generally *Constitutional Right to an Education In Selected Countries*, U.S. GLOB. LEGAL RSCH. DIRECTORATE (2016), [tile.loc.gov/storage-services/service/l1/l1glrd/2016479002/2016479002.pdf](http://tile.loc.gov/storage-services/service/l1/l1glrd/2016479002/2016479002.pdf) [perma.cc/H84C-SWJT] (specifying that countries such as South Africa, India, the Russian Federation, Argentina, Brazil, the People’s Republic of China, Egypt, France, Germany, Greece, Italy, Japan, Mexico, Nicaragua, and Turkey recognize the right to education explicitly in their constitutions).

48. Jootaek Lee, *The Human Right to Education: Definition, Research and Annotated Bibliography*, 34 EMORY INT’L L. REV. 757, 762 (2020); see also Int’l Covenant on Econ., Soc. & Cultural Rts., art. 13, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]; *Goal No. 4, Ensure Inclusive & Equitable Quality Educ. & Promote Lifelong Learning Opportunities for All*, U.N., DEPT. OF ECON. & SOC. AFFAIRS, SUSTAINABLE DEV. (2022), [www.sdgs.un.org/goals/goal4](http://www.sdgs.un.org/goals/goal4) [perma.cc/JUB7-6ZPP] [hereinafter *SDG4*].

49. Heidi R. Gilchrist, *Higher Education Is a Human Right*, 17 WASH. U. GLOB. STUD. L. REV. 645, 649 (noting that although the Universal Declaration of Human Rights is not a binding document, it has strong moral authority which serves as a foundation for international human rights law, and acquired the status of customary international law).

50. Universal Declaration of Human Rights, art. 26, U.N. Doc. A/RES/217 A (III) (Dec. 10, 1948) [hereinafter *UDHR*].

51. See Jane Kotzmann, *Lifting the Cloak of Conceptual Confusion: Exploring the Meaning of the Human Right to Higher Education*, AUSTL. J. OF HUM. RTS. 74, 74-75 (2015) (noting that the right to education is a right “all human beings are equally entitled to, starting from childhood until the end of life.”). Essentially, all people must have the same opportunities to access education “regardless of their race, sex, nationality, or any other differentiating characteristic.” *Id.* at 75. “The non-discriminatory nature of the right to education is inherent within international documentation.” *Id.*

and the United Nations Educational, Scientific and Cultural Organization (“UNESCO”) have actively worked to promote the fundamental human right to education and ensure refugees’ access to basic and, more specifically, higher, education at higher rates by 2030.<sup>52</sup> Since refugee education is often restricted in lower income countries, such as Bangladesh, “Quality Education” was made by the United Nations the fourth Sustainable Development Goal (“SDG”) to be achieved by 2030.<sup>53</sup>

Even though the right to higher education is protected by the Convention on the Rights of the Child (“CRC”), signed but never ratified by the U.S., accessible higher education remains extremely constrained for refugee youth.<sup>54</sup> The CRC is an international treaty which recognizes education as a legal right for every child under eighteen on the basis of equal opportunity.<sup>55</sup> It was adopted in 1989 and ratified by 196 countries, excluding the U.S.<sup>56</sup>

In addition to the UDHR and the CRC, other international treaties and documents recognize the fundamental right to education in various regions of the world. For example, the very first international human rights treaty was adopted in the Americas.<sup>57</sup> Article 12 of the American Declaration of the Rights and Duties of

52. See U.N. HIGH COMM’R FOR REFUGEES, REFUGEE EDUCATION 2030: A STRATEGY FOR REFUGEE INCLUSION 6-7 (2019), [www.unhcr.org/media/38077/perma.cc/7CWQ-AGA4](http://www.unhcr.org/media/38077/perma.cc/7CWQ-AGA4) (describing the “15by30 target,” the goal UNHCR and partners are committed to achieve the enrollment of fifteen percent of college refugees, women and men, accounting for half a million refugees, by the year 2030).

53. See GLOB. EDUC. MONITORING REP. TEAM, GENDER REVIEW: CREATING SUSTAINABLE FUTURES FOR ALL 6 (2016) [hereinafter GENDER REVIEW] (noting that education is one of the key tools in the advancement of the SDGs and that education for women leads to improved health, less violence, and more gender equality).

54. Claudia Koehler & Jens Schneider, *Young Refugees in Education: The Particular Challenges of School Systems In Europe*, 7 COMPAR. MIGRATION STUD. 28 (2019); see also U.N. Convention on the Rights of the Child, art. 28, opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC] (stating “(1) States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: [...] (c) [m]ake higher education accessible to all on the basis of capacity by every appropriate means.”).

55. See generally CRC, *supra* note 54.

56. See *id.*; see also *Ratification Status for CRC*, U.N. TREATY BODY DATABASE, [tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en](http://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en) [perma.cc/9S3M-AD6P] (last visited Feb. 23, 2023); see generally CONG. RSCH. SERV., THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, [crsreports.congress.gov/product/pdf/R/R40484/25](https://crsreports.congress.gov/product/pdf/R/R40484/25) [perma.cc/4PB3-EACS] (last updated Jul. 27, 2015) (explaining why the U.S. failed to ratify the CRC).

57. Azadeh Shahshahani & Chaka Washington, *Shattered Dreams: An Analysis of the Georgia Board of Regents’ Admissions Ban from a Constitutional and International Human Rights Perspective*, 10 HASTINGS RACE & POVERTY L.J. 1, 22 (2013).

Man states “*every person* has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society.”<sup>58</sup> In Europe, on the other hand, the European Convention on Human Rights explicitly protects the right to education for every person, including refugees.<sup>59</sup>

In defining the right to education, the European Court of Human Rights (“ECtHR”) went a step further, explaining that Article 2 of the European Convention of Human Rights does not just concern elementary schooling but also higher education and specialized courses, including post-baccalaureate and vocational training courses.<sup>60</sup> Moreover, the ECtHR added that this right should not be enjoyed just by children but also by adults and anybody else wishing to benefit from it.<sup>61</sup> Various decisions by the ECtHR further support this stance.<sup>62</sup> These international regional instruments further support how principles of equally accessible education have been acknowledged in international human rights law, including customary international law.<sup>63</sup>

## 2. *Women Refugee’s Access to Higher Education*

Female refugees, such as Najma, have been highlighted as the most vulnerable group when it comes to accessing higher

58. American Declaration on the Rights and Duties of Man, art .12, O.A.S. Res XX, Final Act of the Ninth International Conference of American States, Bogota, Col., Mar. 30-May 2, 1948, OEA/Ser. L./VII.23/doc. 2 rev. 6.

59. *See* Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2, Nov. 4, 1950, 213 U.N.T.S. 222 (stating “[n]o person shall be denied the right to education . . .”). Further, “in the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.” *Id.*

60. EUR. CT. H.R., GUIDE ON ARTICLE 2 OF PROTOCOL NO. 1 TO THE EUROPEAN CONVENTION OF HUMAN RIGHTS, RIGHT TO EDUCATION 7, [www.echr.coe.int/documents/guide\\_art\\_2\\_protocol\\_1\\_eng.pdf](http://www.echr.coe.int/documents/guide_art_2_protocol_1_eng.pdf) [perma.cc/9FXN-V2NA] (last updated Aug. 31, 2022) [hereinafter ECtHR ART. 2 PROTOCOL GUIDE]; *see also* *Leyla Şahin v. Turkey* [GC] no. 44774/98 § 134 Eur. Ct. H.R. 2005-XI.

61. *Id.*

62. *See, e.g., Leyla Şahin*, 2005-XI Eur. Ct. H.R. at § 134 (noting that “[a]lthough the provision [in the European Convention of Human Rights] makes no mention of higher education, there is nothing to suggest that it does not apply to all levels of education including higher education”); *see also Mürsel Eren v. Turkey*, no. 60856/00 § 41 Eur. Ct. H.R. 2006-II (noting that “access to any institution of higher education existing at a given time is an inherent part of the right set out in the first sentence of Article 2 of Protocol No. 1.”).

63. Shahshahani & Washington, *supra* note 57, at 22 (further noting that although “not a binding international instrument, the [OAS] Declaration has served as a foundation of international human rights laws, has been highly influential in the drafting of international treaties, declarations, and covenants, and is widely considered to be part of customary international law.”).

education.<sup>64</sup> For women, sexual assault and financial insecurity can increase the barrier to access higher education both in developing countries and developed nations.<sup>65</sup> Further, young females refugee in secondary school “are only half as likely” to attend university compared to their male peers.<sup>66</sup>

Promoting higher education for women is vital for female refugee empowerment.<sup>67</sup> A study conducted by the University of Munich in Germany found that “educational gaps point to the disadvantages female refugees face in terms of education.”<sup>68</sup> Data from 2019 showed that the gap in higher education enrollment between women born and living in the European Union (“EU”) and foreign-born women living in the EU was of “7.4 percentage points.”<sup>69</sup> Therefore, “the percentage of women with [higher] education [wa]s 7.4 percentage points lower among women who were not born in an EU country than among women who were.”<sup>70</sup> Further, UNHCR notes that forty-seven percent “of all people displaced across borders are estimated to be women and girls.”<sup>71</sup> Additionally, girls and women make up fifty-two percent of the world’s internally displaced population,<sup>72</sup> and these gaps illustrate how refugee women struggle in both society and education.

The right to education for refugee women is also guaranteed by several international instruments.<sup>73</sup> For example, Article 10 of the

64. Jane Freedman, *Sexual and Gender-Based Violence Against Refugee Women: A Hidden Aspect of the Refugee “Crisis,”* 47 REPROD. HEALTH MATTERS 18, 23 (2016) (noting that refugee women are subject “to multiple forms of insecurity and violence, and that the ways in which the EU has managed th[e] ‘crisis’” is not effective in reducing the vulnerability).

65. U.N. HIGH COMM’R FOR REFUGEES, SEXUAL VIOLENCE AGAINST REFUGEES: GUIDELINES ON PREVENTION AND RESPONSE 8 (Mar. 8, 1995), [digitallibrary.un.org/record/465522?ln=en](https://digitallibrary.un.org/record/465522?ln=en) [perma.cc/NN3T-RBFN].

66. *HER TURN: It’s Time to Make Refugee Girls’ Education A Priority*, U.N. HIGH COMM’R FOR REFUGEES, [www.unhcr.org/herturn/](http://www.unhcr.org/herturn/) [perma.cc/J8GA-3ZRX] (last visited Mar. 25, 2023).

67. See generally Lisa Damaschke-Deitrick et al., *Female Refugees Transitions into Higher Education: Comparative Perspectives from Germany, Egypt, & Kyrgyzstan*, in COMPARATIVE PERSPECTIVES ON REFUGEE YOUTH EDUCATION 157 (2019) (comparing global adaptations to supporting refugee educational transition).

68. Clara Albercht et al., *The Integration Challenges of Female Refugees and Migrants: Where Do We Stand?*, 22 CESIFO F. 39, 41 (2021).

69. *Id.*

70. *Id.*

71. GLOBAL TRENDS 2020, *supra* note 43, at 16.

72. U.N. HIGH COMM’R FOR REFUGEES, GLOBAL TRENDS: FORCED DISPLACEMENT IN 2019 34 (2020), [www.unhcr.org/be/wp-content/uploads/sites/46/2020/07/Global-Trends-Report-2019.pdf](http://www.unhcr.org/be/wp-content/uploads/sites/46/2020/07/Global-Trends-Report-2019.pdf) [perma.cc/47PE-DYPK] [hereinafter GLOBAL TRENDS 2019].

73. See, e.g., Convention on the Elimination of All Forms of Discrimination Against Women, Dec 18, 1979, 1249 U.N.T.S. 221 [hereinafter CEDAW]; ICESCR, *supra* note 48, at art. 2, art. 13; CRC, *supra* note 54, art. 2, art. 28 - 29; Int’l Covenant on Civil and Political Rights, art. 2, art 26, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) is dedicated to women’s right to access education.<sup>74</sup> CEDAW’s main objective was to give women the same rights and tools to achieve the same level of education as men.<sup>75</sup> Article 10 stresses the importance of equal opportunity in employment and education, since they are the main ways women can become financially independent.<sup>76</sup> In November 2014, a CEDAW working group reiterated through Recommendation No. 32 that discrimination against women in the context of asylum, refugee status, and the like, is not permissible.<sup>77</sup> The Recommendation specifically made all the rights enumerated in CEDAW equally applicable to refugee and asylee women.<sup>78</sup>

### *B. Global Issues Faced by Refugees Generally*

Societal barriers prevent all refugees from applying or being admitted into higher education. These barriers include missing prior educational qualifications, periods of detainment in refugee camps, different languages between the host country and the country of origin, and the cost of higher education. This subsection

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[hereinafter ICCPR]; African Charter on Human and Peoples’ Rights., art. 2, art. 17, June 27, 1981, 1520 U.N.T.S. 217; Convention for the Protection Of Human Rights and Fundamental Freedoms, art. 14, Nov. 4, 1950, 213 U.N.T.S. 221.

74. See CEDAW, *supra* note 73, at art. 10 (stating “States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training; . . . (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods; (d) The same opportunities to benefit from scholarships and other study grants; (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women; . . . (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.”).

75. *Id.*

76. GENDER REVIEW, *supra* note 53, at 38 (noting how lifelong learning opportunities will facilitate access to wage employment for women, equalize pay, enhance financial autonomy and self-reliance).

77. Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women, U.N. Doc. CEDAW/C/GC/32 (Nov. 5, 2014).

78. *Id.*

will examine these barriers in turn.

### 1. *Missing Qualifications*

The first and most frequent barrier to accessing education comes in the form of missing credentials, degrees, qualifications, and evaluation documents, which would prove refugees' educational backgrounds.<sup>79</sup> In fact, refugees and displaced persons like Najma or Mohammed are often left without any documented evidence of prior learning.<sup>80</sup>

Often, the reason why refugees are left without evidentiary proof of education is because they come from conflict zones where educational institutions are looted, destroyed, and used for military purposes.<sup>81</sup> The Global Coalition to Protect Education From Attack ("GCPEA") found that attacks on schools by state forces and non-state armed groups include attacks on educational infrastructures like playgrounds and libraries.<sup>82</sup> In fact, over two-thirds of attacks between 2015 and 2019 were directed on schools.<sup>83</sup> The countries most affected were the Democratic Republic of Congo, Yemen, Palestine, Syria, and Afghanistan, Najma's home country.<sup>84</sup>

The GCPEA further found that attacks on higher education include universities, technical and vocational training institutes, as well as attacks on students and staff.<sup>85</sup> Finally, GCPEA reports

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79. See BRYCE LOO, WORLD EDUC. SERVS. RSCH., RECOGNIZING REFUGEE QUALIFICATIONS: PRACTICE TIPS FOR CREDENTIAL ASSESSMENT, at iii (2016), [glotalent.org/wp-content/uploads/2017/05/Recognizing-Refugee-Credentials-Practical-Tips-for-Credential-Assessment.pdf](https://glotalent.org/wp-content/uploads/2017/05/Recognizing-Refugee-Credentials-Practical-Tips-for-Credential-Assessment.pdf) [perma.cc/M6XP-AL7F] (noting that "[d]espite being skilled professionals or accomplished students, many refugees and asylum-seekers are suffering because their credentials are not recognized, and they cannot resume their careers or meet their academic goals.").

80. *Id.*

81. Marika Tsolakis et al., *Education Under Attack 2020*, GLOB. COAL. TO PROTECT EDUC. FROM ATTACK, [eua2020.protectingeducation.org/](https://eua2020.protectingeducation.org/) [perma.cc/4J3M-UYWC] (last visited Mar. 14, 2023).

82. *Id.* (noting that between 2015 and 2019 there were more than 11,000 reported attacks harming more than 22,000 students and educators in at least 93 countries).

83. *Id.*

84. Press Release, Statement of Geert Cappelaere, UNICEF Reg'l Dir. For the Middle East & North Africa, Attack in Afrin, Syria, Kills Three Children & Causes Significant Damage to School (July 12, 2019) (on file with author); see also Tsolakis, *supra* note 81 (noting that in Syria, "forty percent of the country's schools were damaged or destroyed by fighting between 2013 and 2019."). "In the first three-quarters of 2019 the U.N. verified 145 attacks on schools in Syria." *Id.*

85. See Tsolakis, *supra* note 81 (noting that "between 2015 and 2019 the most affected countries by attacks on educational institutions were Ethiopia, India, Pakistan, Sudan and Turkey."). See also *India: Two Killed, Several Wounded in Kashmir Grenade Attacks*, ALJAZEERA (Nov. 26, 2019), [www.aljazeera.com/news/2019/11/26/india-two-killed-several-wounded-in-kashmir-grenade-attacks](https://www.aljazeera.com/news/2019/11/26/india-two-killed-several-wounded-in-kashmir-grenade-attacks) [perma.cc/W6E4-EPTX] (specifying attacks include



stressed how, due to their gender, women and girls experience lasting repercussions effects of targeted attacks.<sup>86</sup> These repercussions include “lost education, early pregnancy, child forced marriage, and stigma associated with sexual violence.”<sup>87</sup> In some countries, threats are directly targeted to discourage families, students, and teachers from educating girls.<sup>88</sup> In many places, these threats manifest to violence, destroying girls’ schools, and causing infrastructure damage.<sup>89</sup>

Not only are documents lost due to war zones and conflicts in refugees’ home countries, but they can also be lost or stolen during migration routes, reception centers, or refugee camps.<sup>90</sup> On the other hand, if refugees do have documents, the next step is having them evaluated, recognized, and equalized in the eyes of the new country.<sup>91</sup> However, this can be problematic in certain countries, including the U.S., since credential evaluation processes are carried out by private, non-governmental entities for a fee.<sup>92</sup>

Typically, the evaluation process involves quality assurance of

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deliberate acts of violence, coercion, intimidation, threats of physical force as well as excessive force used to repress on-campus or education related protests). There, “over 1,300 university students and staff were arrested for participating in on campus or education related protests.” Tsolakis, *supra* note 81. Further, “grenade explosions happened in the University of Kashmir on November 26, 2019.” *Id.*; *see also* Najma Interview, *supra* note 1 (noting Afghanistan is Najma’s home country).

86. Tsolakis, *supra* note 81.

87. *Id.*

88. *Id.*

89. *Id.* (noting the countries with the highest numbers of targeted attacks in girls’ schools were “Afghanistan, Burundi, Colombia, the Democratic Republic of the Congo, Egypt, India, Iran, Iraq, Libya, Myanmar, Nicaragua, Nigeria, Pakistan, the Philippines, Somalia, South Sudan, Sudan, Syria, Turkey, Venezuela, and Yemen.”).

90. Martin & Stuglaitis, *supra* note 46, at 35.

91. *Enforcing the Right to Education For Refugees*, *supra* note 14, at 12 (explaining that the evaluation process varies depending on the country of reception and discrepancies in documents required by the government and those required by the school can impede enrolment).

92. U.S. NETWORK FOR EDUC. INFO., *Recognition of Foreign Qualifications*, U.S. DEPT. OF EDUC., [www2.ed.gov/about/offices/list/ous/international/usnei/us/edlite-visitus-forrecog.html](http://www2.ed.gov/about/offices/list/ous/international/usnei/us/edlite-visitus-forrecog.html) [perma.cc/NS9L-P9YV] (last visited Mar. 28, 2023) [hereinafter *U.S. Recognition of Foreign Qualifications*] (noting that the U.S. Department of Education does not evaluate foreign qualifications or degrees and that there is no federal regulation of credential evaluation services). The Department also notes that the evaluations are not free but depend on the complexity of the case and the amount of documentation provided, as well as that they are on a case-by-case basis that takes into consideration different factors. *Id.*; *see also* *Evaluation of the Foreign Credential Recognition Program*, GOV. OF CAN., [www.canada.ca/en/employment-social-development/corporate/reports/evaluations/foreign-credential-recognition-program/summary.html](http://www.canada.ca/en/employment-social-development/corporate/reports/evaluations/foreign-credential-recognition-program/summary.html) [perma.cc/56XV-YJ6R] (last visited Mar. 25, 2023) (explaining “[t]he program is a contributions based program that provides funding to the provinces and territories, regulatory bodies and organizations to support the foreign recognition” program).

the original studies and determination of the validity of incomplete studies.<sup>93</sup> This process for refugees can take time, and, even if higher education institutions are familiar with international credentials, the refugees still risk not being accepted in educational programs.<sup>94</sup> Further, evaluating academic credentials often requires human and financial resources that are either inaccessible or in short supply in host countries to refugees.<sup>95</sup>

## 2. *Detainment Period*

A second barrier to access education for all displaced persons is the period of detainment or time spent in refugee camps.<sup>96</sup> The detention of asylum-seekers and refugees has become commonplace in several countries globally, such as the U.S., the U.K., Hungary, and Bangladesh, having serious lasting effects on individuals and families.<sup>97</sup> Detention can vary from country to country.<sup>98</sup> In some cases, countries provide access to their public education system to those with recognized refugee status soon after arrival in the host country.<sup>99</sup> However, this privilege is not granted to those in the process of obtaining refugee or asylum status, who are then prevented from accessing quality education during the lengthy procedure of having their claim processed.<sup>100</sup> In countries with strict mandatory detention policies (i.e., where people seeking political asylum or who they consider being unauthorized arrivals and illegal immigrants are detained), there is very little regarding a coordinated response to meet the educational needs of those

93. *U.S. Recognition of Foreign Qualifications*, *supra* note 92.

94. *See* LOO, *supra* note 79, at 3.

95. *See* U.N. EDUC. SCI. & CULTURAL ORG., GLOBAL EDUCATION MONITORING REPORT: MIGRATION, DISPLACEMENT, AND EDUCATION: BUILDING BRIDGES NOT WALLS 103 (2019) [hereinafter BUILDING BRIDGES] (noting that recognition systems are often too underdeveloped or fragmented to meet migrants' needs). In a survey of 13 European countries, only a minority of highly educated migrants had applied for recognition due to difficulties in navigating the systems. *Id.*

96. *See id.* at 151 (noting that displaced populations have severely limited access to higher education in or around refugee camps).

97. *See* U.N. HIGH COMM'R FOR REFUGEES, BEYOND DETENTION: A GLOBAL STRATEGY TO SUPPORT GOVERNMENTS TO END THE DETENTION OF ASYLUM-SEEKER AND REFUGEES: FINAL PROGRESS REPORT 16 (2020) (noting that in Hungary, unaccompanied children in transit zones are not appointed guardians and navigate the asylum process with no assistance).

98. U.N. High Comm'r for Refugees, *Report of U.N. High Comm'r for Refugees on Detention of Refugees and Asylum-Seekers*, U.N. Doc. A/41/12/Add.1 (Oct. 13, 1986) (noting "with deep concern that large numbers of refugees and asylum-seekers in different areas of the world are currently the subject of detention or similar restrictive measures by reason of their illegal entry or presence in search of asylum, pending resolution of their situation.").

99. Martin & Stulgaitis, *supra* note 46, at 10.

100. *Enforcing the Right to Education For Refugees*, *supra* note 14, at 13.

detained.<sup>101</sup> Further, remote locations of refugee camps or limited access to transportation also prevents refugees from meeting their educational needs.<sup>102</sup>

### 3. Language Access

The third largest barrier to higher education is the language proficiency of the host country.<sup>103</sup> Language proficiency is extremely important for international migrants because it ensures better integration in the host country.<sup>104</sup> However, not only does there exist little overlap between the language of the countries refugees come from and the language spoken in host countries, but there is also no data indicating what the first language of refugees is when they first arrive in host countries.<sup>105</sup> This limited data prevents nongovernmental organizations (“NGO”) and governmental organizations from effectively supporting refugees in their journey to integration, which includes access to schools and jobs.<sup>106</sup>

One of the main issues preventing refugees from bridging the gap between education and the host country language is the absence of language and literacy programs for adult refugees, especially considering advanced educational programs call for advanced language skills.<sup>107</sup> Becoming proficient in the host country’s language is particularly difficult for women refugees with children.<sup>108</sup> Most often, when integration services are offered, such

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101. *Id.*

102. See Martin & Stulgaitis, *supra* note 46, at 36.

103. *Enforcing the Right to Education For Refugees*, *supra* note 14, at 11.

104. Adserà et al., *Language and Migration*, in PALGRAVE HANDBOOK OF ECON. & LANGUAGE 342 (Palgrave Macmillan 2016).

105. *Putting Language on the Map in the European Refugee Response*, MIXED MIGRATION PLATFORM (Sept. 2017), [www.translatorswithoutborders.org/wp-content/uploads/2017/04/Putting-language-on-the-map.pdf](http://www.translatorswithoutborders.org/wp-content/uploads/2017/04/Putting-language-on-the-map.pdf) [perma.cc/3BC6-UEBQ].

106. See Aliya Sorgen, *Integration Through Participation: The Effects of Participating in an English Conversation Club on Refugee and Asylum Seeker Integration*, 6 APPLIED LINGUISTICS REV. 241, 260 (2015) (noting that “[t]he process of segregation based on linguistic competence and [one’s spoken language] can result in prolonged social exclusion and discrimination for those newly arrived in a host country.”); see also *Nongovernmental Org.*, HARV. L. SCH., [hls.harvard.edu/uropa-koteen-office-of-public-interest-advising/about-opia/what-is-public-interest-law/public-service-practice-settings/international-public-interest-law-practice-setting/nongovernmental-organizations-ngos/](https://hls.harvard.edu/uropa-koteen-office-of-public-interest-advising/about-opia/what-is-public-interest-law/public-service-practice-settings/international-public-interest-law-practice-setting/nongovernmental-organizations-ngos/) [perma.cc/VSD7-WVRA] (last visited Mar. 28, 2023) (defining NGOs as “mission-driven advocacy or service organizations in the nonprofit sector.”).

107. ULRIKE HANEMANN, UNESCO GLOB. EDUC. MONITORING REP., LANGUAGE AND LITERACY PROGRAMMES FOR MIGRANTS AND REFUGEES: CHALLENGES AND WAYS FORWARD 17 (2018).

108. Natalia Banulescu-Bogdan, *Beyond Work: Reducing Social Isolation for Refugee Women and Other Marginalized Newcomers*, MIGRATION POL’Y INST. (2020), [www.migrationpolicy.org/sites/default/files/publications/TCM-Social-Isolation\\_FINALWEB.pdf](http://www.migrationpolicy.org/sites/default/files/publications/TCM-Social-Isolation_FINALWEB.pdf) [perma.cc/9P4K-SUJD].

as traditional language or training courses, women with children are less likely to use them unless special accommodations are offered.<sup>109</sup> Other issues more specific to women are the lack of security and limited availability of appropriate courses (i.e., single-sex courses), limited family resources, and practical matters like lack of transportation and childcare.<sup>110</sup>

#### 4. *Cost of Higher Education*

The fourth largest obstacle faced by refugees is the cost of higher education.<sup>111</sup> In many circumstances, refugees are ineligible for financial assistance and the available funding opportunities for refugees are limited compared to the demand.<sup>112</sup> The cost of higher education does not only include tuition payments: it includes study materials, health insurance, and food for the duration of the studies.<sup>113</sup> For female refugees, having children involved is an added obstacle.<sup>114</sup> Female refugees are often tasked with the expectation of providing for their family, which often disrupts the ability to access or continue their education.<sup>115</sup> Some universities in the U.S. do provide scholarships and funding specifically to refugees.<sup>116</sup> However, even when tuition is covered, the cost of living

109. *Id.*

110. *Id.*

111. See Rachel Hector, *Barriers to Higher Education for Refugees in the U.S.*, MEDIUM (Sept. 5, 2021), [www.medium.com/age-of-awareness/barriers-to-higher-education-for-refugees-in-the-united-states-d43e20c41eb3](http://www.medium.com/age-of-awareness/barriers-to-higher-education-for-refugees-in-the-united-states-d43e20c41eb3) [perma.cc/MFE9-8M77] (emphasizing that refugee populations are also deterred from pursuing higher education due to its increasingly high cost).

112. Hannah Elwyn, et. al., *'I Just Want To Study': Access to Higher Education for Young Refugees and Asylum Seekers*, REFUGEE SUPPORT NETWORK (2012), [www.reuk.org/\\_files/ugd/d5aa55\\_923be52202884a7ba2e53714949f0c2b.pdf](http://www.reuk.org/_files/ugd/d5aa55_923be52202884a7ba2e53714949f0c2b.pdf) [perma.cc/6CE9-DUHZ].

113. See, e.g., *Understanding College Costs*, U.S. GOV. FED. STUDENT AID, [www.studentaid.gov/resources/prepare-for-college/students/choosing-schools/consider-costs](http://www.studentaid.gov/resources/prepare-for-college/students/choosing-schools/consider-costs) [perma.cc/MK72-4R93] (last visited Mar. 25, 2023) (listing the additional costs one must cover other than tuition and/or room and board).

114. U.N. HIGH COMM'R FOR REFUGEES, MUN REFUGEE CHALLENGE BACKGROUND GUIDE: ACCESS TO EDUC. FOR REFUGEES 2-3, [www.unhcr.org/us/media/model-un-refugee-challenge-background-guide-improving-access-education-refugees](http://www.unhcr.org/us/media/model-un-refugee-challenge-background-guide-improving-access-education-refugees) [perma.cc/J5DX-YSW9] (last accessed Apr. 20, 2023) [hereinafter MUN REFUGEE CHALLENGE] (noting that taking care of family and house chores are tasks that fall heavily on women and girls because are often seen as more valuable than continuing their education).

115. *Id.*

116. See, e.g., *Refugee Students Scholarship Program*, ACCESS CA. SERS., [www.accesscal.org/refugee-students-scholarship-program-prueba2/](http://www.accesscal.org/refugee-students-scholarship-program-prueba2/) [perma.cc/6MMH-ALTK] (last visited Feb. 23, 2023) (noting that the University of California and California State University implemented the first student-led program providing scholarships to refugees and asylum seekers who do not qualify for federal or state aid); see also *Columbia University Scholarship for Displaced Students*, COLUMBIA GLOB. CTRS., [www.globalcenters.columbia.edu/](http://www.globalcenters.columbia.edu/)

imposes an additional barrier for women that may not be provided for in assistance programs, if any are available at all.<sup>117</sup>

### III. ANALYSIS

Comparing legal systems facilitates the successful implementation of legal reforms.<sup>118</sup> The analysis portion of this Comment focuses on the comparison between laws implemented in foreign countries that successfully increased access to education for refugees and what has not been done in the U.S. to advance refugees' access to higher education. In doing so, it will demonstrate how refugees in the U.S. suffer due to a lack of legislation furthering the successful access to higher education.

#### A. *International Laws Furthering Refugees' Access to Higher Education*

On an international scale, the right to higher education afforded to refugees, as opposed to the right to education in general, is limited.<sup>119</sup> However, several international bodies have implemented programs to further such access.<sup>120</sup>

As discussed above, the barrier most often encountered by refugees when attempting to access higher education is the lack of foreign recognition of educational qualifications.<sup>121</sup> This is also the area where countries and international bodies have implemented the most legislative reform.<sup>122</sup> The second and third barriers encountered are the lack of educational opportunities in refugee camps and the lack of language programs. Finally, the last barrier is the cost of higher education in refugees' host countries. In this

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CUSDS [perma.cc/XU32-NFPH] (last visited Feb. 23, 2023) (detailing a similar scholarship at Columbia University).

117. MUN REFUGEE CHALLENGE, *supra* note 114, at 3

118. Kai Schadbach, *The Benefits of Comparative Law: A Continental European View*, 16 B.U. INT'L L.J. 331, 387 (1998).

119. Gilchrist, *supra* note 49, at 651.

120. *E.g.*, *Successful Implementation of the UNESCO Qualifications Passport: Ensuring Access to Higher Education and Employment For Refugees Under Covid-19 Pandemic*, U.N. EDUC., SCI. & CULTURAL ORG. (Mar. 31, 2021), [www.unesco.org/en/articles/successful-implementation-unesco-qualifications-passport-ensuring-access-higher-education-and](http://www.unesco.org/en/articles/successful-implementation-unesco-qualifications-passport-ensuring-access-higher-education-and) [perma.cc/8UUZ-RN7S] and; *European Qualifications Passport for Refugees to Bring New Opportunities to the Refugee Population in Serbia*, U.N. HIGH COMM'R FOR REFUGEES (Sep. 14, 2021), [www.unhcr.org/rs/en/18827-european-qualifications-passport-for-refugees-to-bring-new-opportunities-to-the-refugee-population-in-serbia.html](http://www.unhcr.org/rs/en/18827-european-qualifications-passport-for-refugees-to-bring-new-opportunities-to-the-refugee-population-in-serbia.html) [perma.cc/H34P-N54U].

121. See discussion *supra* Part II.B.1.

122. *E.g.*, UNESCO Qualifications Convention Higher Education, *supra* note 34; Convention on the Recognition of Qualifications Concerning Higher Educ. In the Eur. Region, Turk. – Switz., Apr. 11, 1997, E.T.S. No. 165 [hereinafter Lisbon Convention].

area, certain nations have implemented national measures and programs to reduce the cost for refugees.<sup>123</sup> However, most solutions are carried out by private organizations.<sup>124</sup>

### 1. *UNESCO's and the European Union's Qualification Passports*

International programs have demonstrated a proven ability to promote a more centralized and equalized manner of recognizing academic qualifications of refugees who are fleeing from their home countries.<sup>125</sup> Despite the obstacles outlined above and many others, efforts have been made in the international arena to help foster an easier and more accessible credentials evaluation process.

In 2016, Norway piloted the “Qualification Passport for Refugees,” as part of their “ordinary recognition” program.<sup>126</sup> This General Recognition program gives refugees a document that is the equivalent to a diploma.<sup>127</sup> The document compares a refugee’s foreign education with the corresponding Norwegian degree and education system.<sup>128</sup> The recognition document includes the following information: duration of the program, equivalent number of credits, and the level of higher education the former corresponds to (i.e., bachelor’s, master’s or PhD).<sup>129</sup> The Qualifications Passport

123. See WORLD BANK & U.N. HIGH COMM’R FOR REFUGEES, THE GLOBAL COST OF INCLUSIVE REFUGEE EDUCATION 22 (2021), [documents1.worldbank.org/curated/en/159281614191477048/pdf/The-Global-Cost-of-Inclusive-Refugee-Education.pdf](https://documents1.worldbank.org/curated/en/159281614191477048/pdf/The-Global-Cost-of-Inclusive-Refugee-Education.pdf) [perma.cc/XLF2-CTFG] (noting that “[i]n Lithuania, schools receive an additional [twenty] percent [of funding] for each national minority student and an additional [thirty] percent for each immigrant student in their first year.”). Further, “[i]n Zurich, schools are eligible to receive an additional CHF40,000,” which is slightly “over \$40,000,” every year “for language support, parental engagement in pre-school and writing skills at all levels.” *Id.* “In the U.K., approximately [eighteen percent] of the total school funding is based on deprivation (measured by the proportion of students whose parents receive tax credits), the proportion of students with low attainment in national assessments, and the proportion of students for whom English is a second language.” *Id.*

124. See Press Release, Roundtable on Refugee Education, Glob. Financiers Tackle Refugees’ Education (Oct. 7, 2020) (on file with author) (listing Save the Children, Education Cannot Wait, and the World Bank as some organizations aiding the implementation of refugee education).

125. See, e.g., Press Release, U.N. High Comm’r for Refugees & Eur. Council, European Qualifications Passport for Refugees: Integration Through Education And Employment (Mar. 28, 2018) (on file with author) [hereinafter Qualifications Passport for Refugees].

126. See, e.g., NOKUT, *NOKUT’s Qualifications Passport for Refugees*, NOKUT’S REPORTS & ANALYSES, [www.nokut.no/globalassets/nokut/rapporter/ua/2016/malgina\\_marina\\_skjerven\\_stig\\_arne\\_nokuts\\_qualifications\\_passport\\_for\\_refugees\\_1-2016.pdf](http://www.nokut.no/globalassets/nokut/rapporter/ua/2016/malgina_marina_skjerven_stig_arne_nokuts_qualifications_passport_for_refugees_1-2016.pdf) [perma.cc/ZD3B-5SJ9] (last visited Feb. 19, 2022) [hereinafter NOKUT Passport].

127. *Id.*

128. *Id.*

129. *Id.*

ultimately details a refugee's highest achieved qualifications, language proficiency, education, and work experience, as well as advice for the future.<sup>130</sup> The document's validity is between three to five years.<sup>131</sup> The evaluation method includes available documentation, and a structured interview in the applicant's native language by experienced case officers and credential evaluators.<sup>132</sup> This process provides newly arrived migrant applicants with a faster path towards recognition.<sup>133</sup>

Based on this model, in 2017, the EU, launched the European Qualifications Passport for Refugees ("EQPR"), after a successful pilot program in Greece.<sup>134</sup> Similarly to Norway's program, the EQPR facilitates the recognition of refugees' qualifications, even in the absence of full documentation.<sup>135</sup> This project mainly had contributions from Italy, Belgium, Georgia, Greece, and Monaco.<sup>136</sup> The passport is issued after an interview with evaluators, where their credentials are assessed.<sup>137</sup> The European Council, by adopting this scheme, had the goal of increasing the educational opportunities for refugees.<sup>138</sup> This has been a successful program which is continuing even during the surge of Afghan refugees to

130. *Id.*

131. *Id.* at 12 (noting that the aim of the document is that, "within the timeframe, applicants will have the opportunity to find employment or continue with further studies, improve their language proficiency or, if they still need to, apply for formal recognition or authorization.").

132. NOKUT Passport, *supra* note 126.

133. See *Qualifications Passport for Refugees*, NOKUT, [www.nokut.no/om-nokut/internasjonalt-samarbeid/qualifications-passport-for-refugees/](http://www.nokut.no/om-nokut/internasjonalt-samarbeid/qualifications-passport-for-refugees/) [perma.cc/4RMW-48HC] (last visited Apr. 24, 2023) (noting that after the successful implementation of Qualifications Passport in Norway, NOKUT proposed a European Qualifications Passport in collaboration with the UK-NARIC office as a centralized model for recognition procedures for refugees without sufficient documentation). In 2017, Greece piloted the European Qualifications Passport for Refugees, a project coordinated by the Council of Europe. *Id.* Norway's Qualification Passport is also being tested in Turkey and Armenia. *Id.*

134. Qualifications Passport for Refugees, *supra* note 125.

135. *Id.*

136. NOKUT Passport, *supra* note 126.

137. This process is similar to what Najma experienced through the "Dimicome" initiative, even if, in her case, the assessments were soft skills that would be used in the job market instead. Najma Interview, *supra* note 1. See e.g., Diego Boerchi et al., *Guidelines for the Identification & Assessment of the Migrants' Soft Skills*, ISMU & EUR. UNION (Sept. 2020), [www.ismu.org/wp-content/uploads/2020/09/Guidelines-migrants-soft-skills\\_Boerchi-et-al.pdf](http://www.ismu.org/wp-content/uploads/2020/09/Guidelines-migrants-soft-skills_Boerchi-et-al.pdf) [perma.cc/J56D-VPPJ] (describing the interview process to assess refugees' soft skills).

138. See Lisbon Convention, *supra* note 122, at art. 7 (pushing states to "take all feasible and reasonable steps" to assess "fairly and expeditiously" whether "refugees, displaced persons and persons in a refugee-like situation fulfill the relevant requirements for access to higher education, to further higher education programmes or to employment activities, even in cases in which the qualifications obtained in one of the Parties cannot be proven through documentary evidence.").

Europe.<sup>139</sup> As a result of its success, more nations in the EU have started to implement this program in their universities.<sup>140</sup>

The aim of the EQPR program is to supply “a methodology for assessing refugees’ qualifications even when these cannot be adequately documented, and to provide a format for describing the qualifications that could easily be accepted in other countries if and when the EQPR holders move.”<sup>141</sup> Both men and women have benefitted from this scheme.<sup>142</sup> More specifically, the very first recipient of the EQPR was a 29-year-old woman from Homs, Syria, who left her home country, arriving first in Greece and eventually Norway.<sup>143</sup> While she earned a Bachelor’s degree in physiotherapy from Al-Baath University, the one proof she could offer was a copy of the degree in Arabic.<sup>144</sup> Through the EQPR guidelines, she was able to interview, provide her degree in the Arabic language, and work with a team of credential evaluators to being working as a physiotherapist in Norway, her credential substantiated and her educational background recognized.<sup>145</sup> “Her professional goal was to make a meaningful contribution to her new society by working with the elderly,” which is what she has the ability to do now.<sup>146</sup>

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139. See *Focus on Afghanistan – Training Offered for Evaluating Afghan Refugees Credentials*, COUNCIL OF EUR. (Sept. 3, 2021), [www.coe.int/en/web/education/-/focus-on-afghanistan-training-offered-for-evaluating-afghan-refugee-credentials](http://www.coe.int/en/web/education/-/focus-on-afghanistan-training-offered-for-evaluating-afghan-refugee-credentials) [perma.cc/HLP7-AP65] (noting that “[t]his training constitutes the initial and essential part of capacity building among recognition professionals in order to facilitate efficient, professional and fair treatment of Afghani qualifications in the coming period.”). The EQPR specifically caters to refugees who cannot fully document their qualifications. *Id.*

140. *Italian Universities Start Accepting the European Qualification’s Passport for Refugee Scholarship Applications*, COUNCIL OF EUR. (July 20, 2020), [www.coe.int/en/web/education/-/uropa-universities-start-accepting-the-european-qualifications-passport-for-refugees-for-scholarship-applicatio-1](http://www.coe.int/en/web/education/-/uropa-universities-start-accepting-the-european-qualifications-passport-for-refugees-for-scholarship-applicatio-1) [perma.cc/YW7K-ZY9E].

141. Sjur Bergan & Stig Arne Skjerven, *Recognising Refugee Qualifications – A Virtuous Cycle*, UNIV. WORLD NEWS (July 8, 2019), [www.universityworldnews.com/post.php?story=20190708095054787](http://www.universityworldnews.com/post.php?story=20190708095054787) [perma.cc/8D59-JFFZ].

142. See, e.g., Charlotte Macdonald-Gibson, *Healthcare Workers From Refugee Backgrounds Want to Help Fight Covid-19. One Man’s Journey Shows That It Might Be Possible*, TIME MAG. (Apr. 28, 2020, 9:53AM), [www.time.com/5826166/refugees-coronavirus-healthcare/](http://www.time.com/5826166/refugees-coronavirus-healthcare/) [perma.cc/X332-FWJL] (detailing the story of Tamon Mark Andang Asongwea, refugee from Cameroon, who had his nursing degree recognized in Greece and could help in hospitals during the COVID-19 crisis).

143. Stig Arne Skjerven & Marina Malgina, *European Qualification Passport for Refugees: From Vision to Reality*, EUR. ASS’N FOR INT’L EDUC. (Apr. 24, 2017), [www.eaie.org/blog/european-qualifications-passport-refugees.html](http://www.eaie.org/blog/european-qualifications-passport-refugees.html) [perma.cc/698N-SNJQ].

144. *Id.*

145. *Id.*

146. See *id.* (showing that the interview was conducted in English because the rate of refugee women who speak English and are well educated is actually high and their language proficiency is included in the passport).



More recently, in 2019, UNESCO implemented a pilot program of the Qualifications Passport (“UQP”) in Zambia to facilitate the mobility for refugees with qualifications.<sup>147</sup> The UQP was viewed as a tool that could help the refugees in Zambia become more self-resilient.<sup>148</sup> The UQP was valued by the Zambian Commissioner for Refugee and local officers as “a tool for refugees to recommence their lives.”<sup>149</sup> The UQP could become “an apparatus supporting local authorities to create a more inclusive environment for refugees to continue their studies and/or seek for employment opportunities.”<sup>150</sup>

Inspired by the success of these programs, UNESCO adopted the Global Convention on the Recognition of Qualifications Concerning Higher Education (“Convention”) in November 2019.<sup>151</sup> This international treaty protects the right of students to have their academic qualifications evaluated in a way that is transparent, fair, and nondiscriminatory.<sup>152</sup> It was implemented to complement the already existing regional conventions on the fundamental right to higher education.<sup>153</sup> The Convention is designed “to facilitate academic mobility between . . . regions.”<sup>154</sup> It mainly benefits people “who are seeking the recognition of their qualifications” in a country other than their home country, for either accessing higher education or continuing their studies.<sup>155</sup> In this regard, the Convention will also help migrants access higher education in their new home countries.<sup>156</sup> The Convention requires nations to implement mechanisms facilitating the recognition of refugees’ academic credentials, even when refugees are unable to provide documentary evidence of their qualifications.<sup>157</sup>

Before the adoption of this UNESCO treaty, the EU adopted the Convention on the Recognition of Qualifications concerning Higher Education in the European region, known as the Lisbon Convention, which placed the burden on countries and their institutions to prove why they should not recognize an individual’s qualifications based on major differences between education and

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147. See *UNESCO Qualifications Passport for Refugees & Vulnerable Migrants Pilot Begins in Zambia*, UNESCO NEWS (Nov. 25, 2019), [www.unesco.org/en/articles/unesco-qualifications-passport-refugees-and-vulnerable-migrants-pilot-begins-zambia](http://www.unesco.org/en/articles/unesco-qualifications-passport-refugees-and-vulnerable-migrants-pilot-begins-zambia) [perma.cc/98Q3-GHHD] (noting that the candidates are specifically from the “Meheba Refugee Settlement in the North-Western Province of Zambia.”).

148. *Id.*

149. *Id.*

150. *Id.*

151. UNESCO Qualifications Convention Higher Education, *supra* note 34.

152. *What is the Global Convention on Higher Education?*, UNESCO NEWS (Nov. 7, 2019), [www.unesco.org/en/education/higher-education/global-convention/about](http://www.unesco.org/en/education/higher-education/global-convention/about) [perma.cc/FZT8-K2V9].

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

professional systems.<sup>158</sup>

Also at a regional level, in 2019 the International Conference of States convened to adopt the Regional Convention on the Recognition of Studies, Degrees and Diplomas in Higher Education in Latin American and the Caribbean (“UNESCO-IESALC”).<sup>159</sup> This regionally binding agreement, signed by twenty-three countries, had the goal of fostering “the quality assurance of [higher education] in the [r]egion,” plus “the creation of . . . mechanisms” that would “guarantee the . . . recognition of studies, degrees, and diplomas” between the Caribbean and Latin American nations.<sup>160</sup> This agreement further contributes to the promotion of the right to education, as part of the Sustainable Development Goals agenda.<sup>161</sup>

At a local level, Argentina has a system in place ensuring “access to public education at all levels,” including higher education, to refugees “under the same conditions” granted to nationals.<sup>162</sup> The National Office for Validation of Degrees and local offices cooperate in analyzing and validating the certificates given to refugees.<sup>163</sup> If refugees do not have documentation necessary to prove their qualifications, the National Office for Validation of Degrees provides them with the ability to take a “level evaluation test,” placing the individual “at the appropriate academic level.”<sup>164</sup> This program further helps refugees by providing them guidance through school authorities and professional teams allocated to local communities.<sup>165</sup>

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158. See Lisbon Convention, *supra* note 122, at art. 7 (stating that “[e]ach Party shall take all feasible and reasonable steps within the framework of its education system and in conformity with its constitutional, legal, and regulatory provisions to develop procedures designed to assess fairly and expeditiously whether refugees, displaced persons and persons in a refugee-like situation fulfil the relevant requirements for access to higher education, to further higher education programmes or to employment activities, even in cases in which the qualifications obtained in one of the Parties cannot be proven through documentary evidence.”).

159. Press Release, UNESCO Int’l Inst. For Higher Educ. in Latin Am. & the Caribbean, Latin America and the Caribbean Adopt Agreement for the Recognition of Studies in Higher Education (June 14, 2019) (on file with author).

160. *Id.*; see also *Higher Education Is Also a Fundamental Right for Migrants and Refugees*, UNESCO INT’L INST. FOR HIGHER EDUC. IN LATIN AM. & THE CARIBBEAN (Aug. 21, 2019), [www.iesalc.unesco.org/en/2019/08/21/higher-education-is-also-a-fundamental-right-for-migrants-and-refugees/](http://www.iesalc.unesco.org/en/2019/08/21/higher-education-is-also-a-fundamental-right-for-migrants-and-refugees/) [perma.cc/QGA7-JR6J] (emphasizing the need for initiatives favoring academic mobility within the Latin American region).

161. See *supra* note 160.

162. GOV’T OF ARG., COUNTRY CHAPTER ARGENTINA, UNHCR RESETTLEMENT HANDBOOK 11 (July 2011), [www.refworld.org/docid/4ecb9bfb0.html](http://www.refworld.org/docid/4ecb9bfb0.html) [perma.cc/FXJ2-WHBE].

163. *Id.*

164. *Id.*

165. *Id.*

## 2. *Educational Opportunities in Detainment and/or Refugee Camps*

The second barrier faced by refugees is accessing higher education in refugee camps and/or detention centers. On average, refugees spend five years in refugee camps.<sup>166</sup> In Australia, refugees can be detained for over ninety days.<sup>167</sup> The period in which refugees remain in resettlement camps effectively bars access to education since there are no teachers nor educational facilities available within the camps.<sup>168</sup> The main method for administering higher education in refugee camps is online education, but the quality is often lacking.<sup>169</sup> While there is potential for online education, the infrastructure in refugee camps is not where it should be.<sup>170</sup>

Generally, countries around the world have not implemented laws protecting the right to higher education for refugees while living in camps.<sup>171</sup> For example, the EU adopted a directive in 2013 protecting the educational rights of minors while in refugee camps.<sup>172</sup> However, nothing in the EU directive specifically mentions the right to higher education.<sup>173</sup> Therefore, higher education access for refugees is left to private organizations or universities who use private funds to implement higher education

166. Xavier Devictor, *2019 Update: How Long Do Refugees Stay In Exile? To Find Out, Beware of Averages*, WORLD BANK BLOG (Dec. 9, 2019), [www.blogs.worldbank.org/dev4peace/2019-update-how-long-do-refugees-stay-exile-find-out-beware-averages](http://www.blogs.worldbank.org/dev4peace/2019-update-how-long-do-refugees-stay-exile-find-out-beware-averages) [perma.cc/6SE6-DY4J].

167. See JANET PHILLIPS & HARRIET SPINKS, IMMIGRANT DETENTION IN AUSTRALIA 17-18 (Mar. 20, 2013), [parlinfo.aph.gov.au/parlInfo/download/library/prspub/1311498/upload\\_binary/1311498.pdf;uopa=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1311498/upload_binary/1311498.pdf;uopa=application%2Fpdf) [perma.cc/8XRA-PS58] (discussing Australia's detention policy).

168. See Allan Goodman, *Mending the Pipeline to Postsecondary Education For Refugees*, INST. OF INT'L EDUC. (Dec. 5, 2017), [www.iie.org/blog/2017-dec-5-education-for-refugees/](http://www.iie.org/blog/2017-dec-5-education-for-refugees/) [perma.cc/9TVS-GW28] (noting UNHRC released a 2016 report finding "that 3.7 million of the 6 million school-age children under its mandate have no school to attend."). "That means 1.75 million primary school children and 1.95 million adolescents living in refugee camps have no way to access an education." *Id.* Additionally, "[t]hese students may have completed secondary school and moved on to [higher] education before conflict or disaster prevented them from pursuing their studies further." *Id.*

169. Paul O'Keeffe & Akkari Abdeljalil, *University Education in Refugee Camps Must Meet Refugee Needs*, THE CONVERSATION (May 18, 2020), [www.theconversation.com/university-education-in-refugee-camps-must-meet-refugee-needs-137796](http://www.theconversation.com/university-education-in-refugee-camps-must-meet-refugee-needs-137796) [perma.cc/39V6-S8RN].

170. *Id.*

171. See, e.g., Martin & Stulgaitis, *supra* note 46, at 38 (stating that in Ethiopia, there are no opportunities for refugees to access higher education in refugee camps).

172. See generally Council Directive 2013/33/EU, of the European Parliament and of the Council of 26 June 2013 on Laying Down Standards for the Reception of Applicants for International Protection, 2013 O.J. (L 180) (laying down standards for receiving asylum seekers).

173. *Id.*

programs for refugees in camps.<sup>174</sup> For example, the Southern New Hampshire University instituted a refugee education initiative in the Kiziba refugee camp in Rwanda.<sup>175</sup> In 2017, the university graduated the first group of sixteen students with associate degrees.<sup>176</sup> Two years later, the Southern New Hampshire University Global Education Movement (“GEM”) reported a fifty percent male to female split in refugee enrollment in the Kigali and Kiziba camps in Rwanda.<sup>177</sup> These programs, even if not sponsored by governments, have positively impacted the overall access to education in refugee camps.<sup>178</sup>

### 3. *Language Access through International Initiatives*

In Europe, the Erasmus+ program, partnered with the Refugee Education Initiative (“REI”) to run full-time and part-time education programs designed for refugees.<sup>179</sup> The project is implemented by six European universities.<sup>180</sup> The universities in

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174. See, e.g., *The Borderless Higher Education For Refugees (BHER) Project Aims to Make Educational Programs Available Where Refugees Need Them*, BORDERLESS HIGHER EDUC. REFUGEES, [www.bher.org](http://www.bher.org) [perma.cc/2CNJ-LPF7] (last visited Mar. 14, 2023) (delivering educational programs in refugee camps and adjacent local communities); Rez Gardi, *Access to higher education for forcibly displaced persons: challenges, good practices, and suggestions for the future*, U.N. HIGH COMM’R FOR REFUGEES (Mar. 2021), [www.unhcr.org/people-forced-to-flee-book/wp-content/uploads/sites/137/2021/10/Rez-Gardi\\_Access-to-higher-education-for-forcibly-displaced-persons-challenges-good-practices-and-suggestions-for-the-future.pdf](http://www.unhcr.org/people-forced-to-flee-book/wp-content/uploads/sites/137/2021/10/Rez-Gardi_Access-to-higher-education-for-forcibly-displaced-persons-challenges-good-practices-and-suggestions-for-the-future.pdf) [perma.cc/Y9TM-LVJS] (discussing best practices for online teaching and learning for refugees and other displaced persons in the wake of Covid-19).

175. Elizabeth Redden, *Reaching Refugees*, INSIDE HIGHER ED (July 19, 2017), [www.insidehighered.com/news/2017/07/19/southern-new-hampshire-expands-refugee-education-initiative](http://www.insidehighered.com/news/2017/07/19/southern-new-hampshire-expands-refugee-education-initiative) [perma.cc/BR8V-JN22].

176. *Id.*

177. Glob. Educ. Movement, *Five Proof Points Demonstrating GEM’s Impact*, S. N.H. UNIV. FINDER’S REP. (2019), [gem.snhu.edu/wp-content/uploads/2020/06/GEM-2019-Funders-Report.pdf](http://gem.snhu.edu/wp-content/uploads/2020/06/GEM-2019-Funders-Report.pdf) [perma.cc/TZ6A-NGZW].

178. *Id.*

179. See *Erasmus+: EU Programme for education, Training, youth and Sport*, EUR. COMM’N, [erasmus-plus.ec.europa.eu/about-erasmus/what-is-erasmus](http://erasmus-plus.ec.europa.eu/about-erasmus/what-is-erasmus) [perma.cc/35SK-48VS] (last visited Apr. 2, 2023) (noting that “Erasmus is the [European Union]’s program supporting education, training, youth and sport” with the objective of “offering mobility and cooperation opportunities” for higher education and vocational trainings, including for refugees and asylees in the EU, and has an “estimated annual budget of €26,2 billion.”); see also REFUGEE EDUC. INITIATIVES, [www.refugeeeducationinitiatives.org](http://www.refugeeeducationinitiatives.org) [perma.cc/9WGR-C3UF] (last visited Mar. 23, 2022) [hereinafter REI] (stating full-time education programs are designed to transfer key academic skills to assist people with refugee status in Europe access higher education and succeed therein; these programs are designed to foster the inclusion of refugees and asylum seekers into European society).

180. See REI, *supra* note 179 (noting that the Universities implementing the REIs project are Aristotle University of Thessaloniki in Greece, Bard College Berlin in Germany, Central European University and OpEn Education Limited

Greece and Austria focus their courses on the specific challenges faced by refugee women.<sup>181</sup> REI developed its own way of assessing refugees' qualifications for university admission by allowing applicants to showcase their knowledge in front of academic adjudicators.<sup>182</sup> Further, part of REI's programs specifically focus on language access and training for refugees and asylum seekers in Austria, Greece, Hungary, and the United Kingdom.<sup>183</sup>

The Online Language Support ("OLS") has also been implemented by the EU as part of the Erasmus+ initiative.<sup>184</sup> The OLS is a free online language platform designed to test the current fluency of refugees' language skills in the host country's language.<sup>185</sup> After assessing the required level of fluency, the program provides access to a language course to further develop language skills through face-to-face teaching.<sup>186</sup> This program is available for higher education students, Vocational Education and Training learners, and other types of participants.<sup>187</sup>

Despite the presence of these programs, several countries effectively prevent refugees from accessing higher education by including difficult language requirements.<sup>188</sup> For example, to access higher education, Germany requires applicants to pass the German Language Examination for University Students with at least a C1 proficiency.<sup>189</sup> Moreover, other European countries, such as Italy, require proof of C1 language proficiency.<sup>190</sup> In some countries, there

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Budapest in Hungary, the University of East London in the United Kingdom, and the University of Vienna in Austria).

181. See *OLive Women*, OLIVE AT THE UNIV. OF VIENNA, olive.univie.ac.at/oliveWomen.html [perma.cc/XEW9-MY6T] (last visited Mar. 19, 2023) (noting the university's "special focus is addressing the needs of two often marginalized members of the refugee population, namely women and youth aged between 16 and 18."). Since "there is no requirement, in Austria, for young people aged 16 to 18 to attend school, the University of Vienna set up OLive-Youth designed to ensure the inclusion of this important pre-adult age group into wider societal structures including higher education." *Id.*

182. REI, *supra* note 179.

183. *OLive Weekend Program (OLive-WP)*, REFUGEE EDUC. INITIATIVES, www.refugeeeducationinitiatives.org/olive-wp [perma.cc/GFL6-2PZZ] (last visited Mar. 25, 2023).

184. *Online Language Support*, EUR. COMM'N, www.erasmus-plus.ec.europa.eu/resources-and-tools/online-language-support [perma.cc/V5C7-35HZ] (last visited Apr. 5, 2023).

185. *Id.*

186. *Id.*

187. *Id.*

188. See, e.g., Benjamin Bathke, *Explainer: The University Application Process For Refugees in Germany*, INFOMIGRANTS (June 25, 2019), www.infomigrants.net/en/post/17727/explainer-the-university-application-process-for-refugees-in-germany [perma.cc/54SH-9ZFH] (explaining that if the level of German is less than C1, the individual would only receive conditional admission to university).

189. *Id.*

190. See Council of Eur., *The CEFR Levels*, COMMON EUR. FRAMEWORK OF REFERENCE FOR LANGUAGES, www.coe.int/en/web/common-european-

are even foreign language barriers in place further obstructing access to higher education. For instance, English language requirements are especially complicated for Syrian refugees who wish to attend Jordanian universities.<sup>191</sup> Most Jordanian university courses require English knowledge, which discourages refugees from enrolling in such universities.<sup>192</sup>

#### 4. *International Financing Solutions to Reduce the Cost of Higher Education*

“Limited access to financial resources is a barrier to refugee education at nearly every step along their journey.”<sup>193</sup> On a global scale, the United Nations and other international organizations are pushing to implement centralized measures to reduce the gap between refugees and the rest of the population enrolled in higher education.<sup>194</sup> Specifically, these international bodies are expecting to achieve a fifteen percent increase in global enrollment by 2030.<sup>195</sup>

In pursuit of this goal, international efforts by the UNHCR have been made to economically support higher education for refugees.<sup>196</sup> This predominantly happens through the DAFI Programme. The German-funded and UNHCR-run DAFI program gives some indication of the availability of higher education. For over twenty-five years, DAFI has supported approximately 14,000

framework-reference-languages/level-descriptions [perma.cc/E55J-487L] (last visited Mar. 25, 2023) (noting European standard for grading individual’s language proficiency, based on six reference levels: A1, A2, B1, B2, C1, C2); see also *Italian Language Requirement and Effects on Admission to Degree Programmes*, UNIVERSITÀ DI BOLOGNA, [www.unibo.it/en/teaching/enrolment-transfer-and-final-examination/Italian-language-requirement-and-effects-on-admission-to-degree-programmes](http://www.unibo.it/en/teaching/enrolment-transfer-and-final-examination/Italian-language-requirement-and-effects-on-admission-to-degree-programmes) [perma.cc/CM5J-9L2Z] (last visited Apr. 25, 2023) (stating that to enroll in university programs taught in Italian, a level of C1 or C2 is required).

191. See *I Want To Continue To Study*, HUMAN RIGHTS WATCH (Jun. 26, 2020), [www.hrw.org/report/2020/06/26/i-want-continue-study/barriers-secondary-education-syrian-refugee-children-jordan](http://www.hrw.org/report/2020/06/26/i-want-continue-study/barriers-secondary-education-syrian-refugee-children-jordan) [perma.cc/U85E-EDDZ] (emphasizing the inaccessibility of programs available for Syrian youth, pushing them to enroll into Jordanian universities, if they wish to continue their studies, but at a much higher cost).

192. See *STUDY IN JORDAN*, [rce.mohe.gov.jo/StudyInJordan/en](http://rce.mohe.gov.jo/StudyInJordan/en) [perma.cc/C9DM-QQ9Z] (last visited Apr. 25, 2023) (noting English is the teaching language in medicine, scientific, and other disciplines).

193. Sophia Lowe, *Doubling Our Impact*, UNESCO REP. 8 (2020), [www.unhcr.org/5e5e4c614.pdf](http://www.unhcr.org/5e5e4c614.pdf) [perma.cc/TS72-33WX].

194. See *Tertiary Education*, U.N. HIGH COMM’R FOR REFUGEES, [www.unhcr.org/tertiary-education.html](http://www.unhcr.org/tertiary-education.html) [perma.cc/89L2-UBJV] (last visited Mar. 25, 2023) (emphasizing higher education is a global priority and both host and refugee communities benefit from an educated populace); see also *Higher Education*, WORLD BANK, [www.worldbank.org/en/topic/tertiaryeducation#1](http://www.worldbank.org/en/topic/tertiaryeducation#1) [perma.cc/8YQ8-8727] (last visited Mar. 25, 2023) (noting that higher education is vital for the development of human capital and innovation).

195. *Tertiary Education*, *supra* note 194.

196. *Id.*

young refugees for study at colleges and universities in host countries.<sup>197</sup> Unfortunately, the scholarships provided through the program, can only account for a small portion of the demand, which is typically “between ten and thirty applications received for each available scholarship.”<sup>198</sup> However, this program has empowered many to complete their education and fulfill their dreams.<sup>199</sup> Overall, the program supports both men and women, even though there is a ten percent gap between females and male refugees helped by the program.<sup>200</sup>

Disparities among numbers of men and women supported by the program are highlighted in the 2020 DAFI country factsheets.<sup>201</sup> For example, in Burundi, out of 142 students, only 46 are women; in Cameroon, out of 128 students supported, only 48 are women; in Ethiopia, out of 816 students supported, only 129 are women.<sup>202</sup>

In addition to the DAFI program, the German Academic Exchange Service (“DAAD”) has increased funding for academically qualified refugees and provide them access to higher education in Germany.<sup>203</sup> In other countries, the cost of attending a university was removed completely to further refugees’ access to higher education.<sup>204</sup> For example, during Mohamed Morsi’s presidency in Egypt, between 2012 and 2013, many Syrian refugees were granted the same access to higher education as Egyptian nationals free of charge.<sup>205</sup>

One main challenge faced by women refugees enrolled in university during that period in Egypt was having to work informally alongside conducting their studies, as well as the

197. THE OTHER ONE PER CENT, *supra* note 28, at 8.

198. Dryden-Peterson & Giles, *supra* note 25, at 4.

199. See *A Journey Towards Self Reliance; Making Higher Education Accessible for Refugees in Ghana*, U.N. HIGH COMM’R FOR REFUGEES (June 16, 2019), [www.unhcr.org/gh/2019/06/16/a-journey-towards-self-reliance-making-higher-education-accessible-for-refugee-students-in-ghana/](http://www.unhcr.org/gh/2019/06/16/a-journey-towards-self-reliance-making-higher-education-accessible-for-refugee-students-in-ghana/) [perma.cc/D9M6-7JQ5] (sharing that, thanks to the DAFI scholarship, Charlotte Kouame was able to earn a bachelor’s in education and that the DAFI program has made her dreams possible).

200. See U.N. HIGH COMM’R FOR REFUGEES, DAFI ANNUAL REPORT 2020: AIMING HIGHER 61 (2020) (showing 7,343 students supported in 2020, 40% of which are women and 60% of which are males) [hereinafter AIMING HIGHER].

201. *Id.*

202. *Id.* at 52-53, 75-121.

203. *How the DAAD Is Helping*, DEUTSCHER AKADEMISCHER AUSTAUSCHDIENST GER. ACAD. EXCH. SERV., [www.daad.de/en/information-services-for-higher-education-institutions/expertise-on-subjects-countries-regions/refugees-at-higher-education-institutions/how-the-daad-is-helping/](http://www.daad.de/en/information-services-for-higher-education-institutions/expertise-on-subjects-countries-regions/refugees-at-higher-education-institutions/how-the-daad-is-helping/) [perma.cc/SET8-LFCD] (last visited Apr. 19, 2023).

204. See, e.g., Martin & Stulgaitis, *supra* note 46, at 49 (noting the program at the Utrecht University in the Netherlands offering refugee students the ability to participate at no cost in any type of course while their asylum or refugee status is pending).

205. Damaschke-Deitrick et al., *supra* note 67.

expectation of supporting their family and acting as caretakers.<sup>206</sup> Further, they also faced discrimination by their classmates and professors in public universities.<sup>207</sup> Despite these obstacles, several women expressed gratitude for being able to continue their studies.<sup>208</sup> Ultimately, Egypt provided many women with the educational opportunity they would have otherwise missed out on in Yemen or Syria.<sup>209</sup> Additionally, with the skills and knowledge acquired during their studies, they expressed their hopes to help rebuild their home countries upon return.<sup>210</sup>

In December 2019, the first Global Refugee Forum took place, where nations and other actors came together to share best practices and pledge financial support, technical expertise, and policy changes to help reach the goals of the UNESCO Global Compact on Refugees.<sup>211</sup> Some of the major outcomes for the Asia-Pacific region include eight pledges, such as Afghanistan, Australia, and Indonesia expanding access to education for refugees and returnees; Japan, Malaysia, and New Zealand facilitating refugee access to higher education; and Thailand working on the recognition of educational certificates and documents for displaced children from Myanmar.<sup>212</sup> As a result of the Global Refugee Forum, Japan implemented a scholarship program, the UNHCR-Refugee Higher Education Program.<sup>213</sup> This program is used by fourteen universities in Japan supporting refugees to complete undergraduate or graduate programs through scholarships.<sup>214</sup>

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206. *Id.*

207. *Id.*

208. *Id.* (noting that a study conducted with six refugee women who accessed private and public universities in Egypt described the experience as “empowering and informative.”).

209. *Id.*

210. *Id.*

211. See *Global Refugee Forum 2023*, U.N. HIGH COMM’R FOR REFUGEES, [www.unhcr.org/en-us/global-refugee-forum.html](http://www.unhcr.org/en-us/global-refugee-forum.html) [perma.cc/EUP3-6RHZ] (choose “Education” from “Area of Focus” dropdown menu; then choose “Asia-Pacific” from the “Submitting Region” dropdown menu to view the pledges) (last visited Mar. 25, 2023) (discussing the Forum agenda).

212. See *Global Compact on Refugees: Pledges & Contributions*, U.N. HIGH COMM’R FOR REFUGEES, [www.globalcompactrefugees.org/channel/pledges-contributions](http://www.globalcompactrefugees.org/channel/pledges-contributions) [perma.cc/TWD6-FE9R] (last updated Jan. 25, 2023) (sharing contributions made to the Global Compact).

213. See *UNHRC-Refugee Higher Educ. Program*, UNHRC JAPAN, [www.rhep-japanforunhcr.org/en/](http://www.rhep-japanforunhcr.org/en/) [perma.cc/2XCF-BWGV] (last visited Mar. 25, 2023) (providing a list of partner universities).

214. See *id.* (stating that “[t]he aim of the program is to provide access to higher education for refugees in Japan who would otherwise have difficulty completing an undergraduate or graduate degree program.”). “The students’ tuition fees and other study expenses will be funded by the universities. At the discretion of the universities, additional scholarship stipends may be paid to the students on a monthly basis.” *Id.*



## *B. Access to Higher Education for Refugees in the United States*

Contrary to the efforts carried out internationally, the U.S.' biggest problem, effectively preventing refugees from accessing higher education, is the lack of uniformity within the education system.<sup>215</sup> Since the U.S. federal educational system is decentralized, “contradictory local, state, or national” laws, “procedures, and examinations make it . . . time-consuming,” confusing, and expensive for immigrants, and refugees, to integrate into U.S. society.<sup>216</sup> This subsection discusses the same barriers outlined above but with an eye to the programs implemented in the U.S. It compares the national efforts to those encountered around the world and points out the lack of uniform federal legislation which is at the heart of the problem.

### *1. Qualification Recognition*

In the U.S., the recognition of qualifications for foreigners and refugees is decentralized.<sup>217</sup> Decentralization means that there is no one single authority within the country responsible for recognizing foreign degrees and other qualifications.<sup>218</sup> Although the U.S. Department of State is the federal authority in charge of the recognition process, this fragmentation is shown through their own website.<sup>219</sup> Individuals are pointed to more than four different bodies in order to gain the big picture of whether and how it would be possible to have foreign education recognized.<sup>220</sup> Further, the Office of Personnel Management website specifically mentions that foreign education is typically not accredited by an accrediting body recognized by the U.S. Department of Education.<sup>221</sup>

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215. See MELANIE NEZER, RESETTLEMENT AT RISK: MEETING EMERGING CHALLENGES TO REFUGEE RESETTLEMENT IN LOCAL COMMUNITIES 14 (Feb. 2013) (noting “[t]he U.S. is the only major [refugee] resettlement country in the world that does not have federal integration benchmarks”); see also Megan J. Ballard, *Refugees: Rights & Responsibilities: Bridging the Integration Gap*, 39 U. PA. J. INT’L L. 185, 214 (noting that “U.S. [refugee] policy is not definitively set forth in any single statement or document.”).

216. LINDA RABBEN, CREDENTIAL RECOGNITION IN THE U.S. FOR FOREIGN PROFESSIONALS 1 (2013), [www.migrationpolicy.org/sites/default/files/publications/UScredentialrecognition.pdf](http://www.migrationpolicy.org/sites/default/files/publications/UScredentialrecognition.pdf) [perma.cc/377V-6RKT].

217. *Recognition of Foreign Qualifications*, U.S. DEP’T. OF EDUC., [www2.ed.gov/about/offices/list/ous/international/usnei/us/edlite-visit-us-forrecog.html](http://www2.ed.gov/about/offices/list/ous/international/usnei/us/edlite-visit-us-forrecog.html) [perma.cc/86G5-CV7K] (last visited Mar. 25, 2023).

218. *Id.*

219. GLOB. CMTY. LIAISON OFF., *Evaluation of Foreign Degrees*, U.S. DEP’T. OF STATE, [www.state.gov/global-community-liaison-office/family-member-employment/family-member-employment-in-the-d-c-area/evaluation-of-foreign-degrees/](http://www.state.gov/global-community-liaison-office/family-member-employment/family-member-employment-in-the-d-c-area/evaluation-of-foreign-degrees/) [perma.cc/N5UG-9ULT] (last visited Apr. 20, 2023).

220. *Id.*

221. *General Schedule Qualification Policies, General Schedule Operating*

The U.S. Department of Education points to three authorities accepted as competent to recognize degrees or other qualifications earned abroad for the purpose of education or entering in the labor market.<sup>222</sup> These authorities are: (1) “[t]he admitting school or higher education institution, for students who seek to study in the [U.S.]”; (2) “[t]he hiring employer, for individuals seeking work . . .”; and (3) “[s]tate or territorial licensing boards, for individuals seeking to practice regulated professions” within a jurisdiction.<sup>223</sup>

However, due to this separation of authorities, the recognition and evaluation processes becomes very complicated not just for refugees seeking access to higher education, but also for U.S. nationals.<sup>224</sup> For example, in the case *Torrez v. McKee*, the U.S. government refused to recognize a Puerto Rican citizen’s high school diploma because it was written in Spanish.<sup>225</sup> Nonetheless, there have been efforts by individual States to provide a more centralized recognition process within their borders. For example, governors of Illinois, Massachusetts, Washington, New Jersey, and Maryland signed executive orders to address the needs of immigrant communities and the relative need for qualification recognition.<sup>226</sup>

This decentralization differs from the programs implemented by the international community outlined in Part III.A.1 of this Comment. One way to address the issues stemming from this

*Manual*, U.S. OFF. OF PERS. MGMT (May 2022), [www.opm.gov/policy-data-oversight/classification-qualifications/general-schedule-qualification-policies/#url=e4](http://www.opm.gov/policy-data-oversight/classification-qualifications/general-schedule-qualification-policies/#url=e4) [perma.cc/9YEF-8Z2X].

222. *Recognition of Foreign Qualifications*, *supra* note 217.

223. *Id.*

224. See RABBEN, *supra* note 216, at 2-3 (noting that private accreditation institutions may receive directly or indirectly public funds and that the “vast patchwork of poorly articulated organizations requires considerable effort to understand” making “many foreign-trained professionals who want to practice in the [U.S.]” unable to attain their goal).

225. *Torres v. McKee*, No. 1:06-cv-903, 2008 U.S. Dist. LEXIS 80532, at \*8-9 (W.D. Mich., Sept. 30, 2008).

226. See Nejdán Yildiz, *Skilled Immigrants & the Recognition of Foreign Credentials in the U.S.*, WORLD EDUC. NEWS + REVS. (Dec. 1, 2009), [wenr.wes.org/2009/12/wenr-december-2009-feature](http://wenr.wes.org/2009/12/wenr-december-2009-feature) [perma.cc/32JA-FA35] (noting that governors in these states created “an advisory commission or council to conduct research into the needs of their state’s immigrant populations and to develop recommendations to improve immigrant integration in areas related ... education, and workforce development.”). Commissions in Illinois, Massachusetts, Maryland, and New Jersey published “comprehensive policy recommendations,” addressing foreign credential recognition. *Id.* These states agreed on: “[1] [c]reat[ing] clear processes for evaluating prior training, skills and education through the establishment of a specific office for foreign-trained professionals and the adoption of standards for credential review of foreign training and academic degrees for all regulated professions[;] [(2)] [d]evelop[ing] programs and online licensure resources that assist professionals in meeting licensure requirements, which will include guidance in navigating the licensing process and financial assistance for examinations[;] [(3)] [e]ncourage[ing] collaborations among public/private partnerships, credentialing agencies, employers, and state agencies.” *Id.*

decentralized system would be for the U.S. to sign and ratify the UNESCO Qualifications Convention.<sup>227</sup> While international treaties can only become effective in the U.S. through Senate ratification, customarily, international law is automatically binding upon federal and state governments.<sup>228</sup>

## 2. Detainment Period

As described in Part II.B.2, the detainment period is a huge barrier in preventing access to higher education.<sup>229</sup> In the U.S., all persons not arriving at a port of entry are to be detained until permitted to enter the country or until removed.<sup>230</sup> For asylum seekers, before they become refugees, the detainment period lasts until they have conducted a “credible fear interview” by an asylum officer and any review of that determination by an immigration judge.<sup>231</sup>

Asylum seekers are typically held in Service Processing Centers run by the U.S. Immigration and Customs Enforcement (“ICE”) where the average period of detention is one month.<sup>232</sup> Asylum seekers can also be detained in facilities other than a Service Processing Center.<sup>233</sup> In that case, public or private entities are contracted by the government to perform detainment services.<sup>234</sup> This further demonstrates the fragmentation present in the refugee admission process since there are both state and non-state actors governing the resettlement and detainment programs.<sup>235</sup> In fact, the Office of Refugee Resettlement contracts with NGOs and for-profit agencies.<sup>236</sup>

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227. UNESCO Qualifications Convention Higher Education, *supra* note 34.

228. U.S. CONST. art. II, § 2 (providing that “the President shall have Power, by and with the Advice and Consent of the Senate to make treaties . . .”); *see also* *The Paquete Habana*, 175 U.S. 677 (1900) (generally recognizing customary international law).

229. Megan Quattelbaum & Haley Glover, *Rejected*, INSIDE HIGHER ED. (Mar. 18, 2020), [www.insidehighered.com/views/2020/03/18/new-study-illuminates-why-barriers-higher-education-incarcerated-people-confront](http://www.insidehighered.com/views/2020/03/18/new-study-illuminates-why-barriers-higher-education-incarcerated-people-confront) [perma.cc/6XTP-7JEB] (explaining that higher education is unavailable not only to ICE camp detainees, but also to incarcerated people in almost every state and that the majority of higher educational institutions require disclosure of detention periods).

230. 8 C.F.R. 235.3(b)(4)(ii) (2017); *see also* 15 C.F.R. § 400.2 (2023) (defining port of entry as a “port of entry in the United States.”).

231. *See* 8 C.F.R. 235.3(b)(4)(ii) (2017).

232. *See Detention by the Numbers*, FREEDOM FOR IMMIGRANTS, [www.freedomforimmigrants.org/detention-statistics](http://www.freedomforimmigrants.org/detention-statistics) [perma.cc/A4AQ-66A3] (last visited Mar. 25, 2023) (noting that, on average, immigrant prisons and jails were “holding people for longer periods of time under the Trump administration” compared to the Obama administration).

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

During the detention period, certain facilities, through volunteer groups, have the ability to provide “recreational or educational programs” if detention center personnel is available to “to supervise [the] participating detainees” and if the facility receives sufficient notice.<sup>237</sup> In fact, when refugees and asylees are first detained in resettlement camps, they are sometimes provided with “meaningful access to programs and activities through language interpretation and translation services.”<sup>238</sup> However, it is unclear whether these programs are implemented, as contractors refuse to discuss their educational services.<sup>239</sup>

### 3. *Language Access*

Language Access is defined as “providing Limited English Proficient (LEP) people with reasonable access to the same services as English-speaking individuals.”<sup>240</sup> Language Access in the U.S. is generally governed by Title VI of the Civil Rights Act of 1964 and by Executive Order 13,166.<sup>241</sup> The U.S. Department of Justice has the biggest role in helping individual agencies determine how to provide meaningful access to activities and educational opportunities for LEPs.<sup>242</sup> Again, the fragmentation of the system is shown by the different methods and agencies who grant language access to LEPs and other migrants.<sup>243</sup>

In the higher education context, the majority of higher

237. U.S. IMMIGR. & CUSTOMS ENFT, NATIONAL DETENTION STANDARDS FOR NON-DEDICATED FACILITIES, REVISED 2019 154 (2019).

238. *Id.* at ii.

239. Diana Goldstein & Manny Fernandez, *In Migrant Shelter Classroom, 'It's Always Like the First Day of School,'* N.Y. TIMES (Jul. 6, 2018), [www.nytimes.com/2018/07/06/us/immigrants-shelters-schools-border.html](http://www.nytimes.com/2018/07/06/us/immigrants-shelters-schools-border.html) [perma.cc/3UR2-HYQQ].

240. *Frequently Asked Questions on Legal Requirements to Provide Language Access Services*, MIGRATION POL'Y INST., [www.migrationpolicy.org/programs/language%20access-translation-and-interpretation-policies-and-practices/frequently-asked](http://www.migrationpolicy.org/programs/language%20access-translation-and-interpretation-policies-and-practices/frequently-asked) [perma.cc/74QS-ERF2] (last visited Mar. 25, 2023).

241. *Id.*; 42 U.S.C. § 2000(d) (1964) (stating “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”); *see also* *Lau v. Nichols*, 414 U.S. 563, 568 (1974) (holding that in the context of Title VI, language assistance services are required to ensure that individuals have meaningful access to federally funded programs, and that the denial of such access constitutes national origin discrimination).

242. Exec. Order No. 13166, 65 Fed. Reg. 50, 121 (Aug. 11, 2000) (improving access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency).

243. JACOB HOFSTETTER ET AL., MIGRATION POL'Y INST., A FRAMEWORK FOR LANGUAGE ACCESS 1 (2021) (noting a number of states and local governments have adopted their own language access laws, ordinances, or policies that further delineate and define how the jurisdiction’s public-serving agencies).

education institutions require a test for language proficiency or completion of an English as a Second Language program prior to being admitted into college classes.<sup>244</sup> However, these tests and courses are at the expense of the applicant, which is a barrier for refugees who often do not have the necessary funds to fulfill these requirements.<sup>245</sup> On a regional scale, states like Illinois enacted legislation “provid[ing] resources for immigrants and refugees . . . to learn English in order to move towards becoming full members of the [U.S.] society.”<sup>246</sup>

#### 4. Cost of Higher Education

In terms of overcoming the cost of higher education, private organizations based in the U.S. often offer a number of scholarships specifically designated for refugees.<sup>247</sup> However, the problem still remains between the number of scholarships available and the number of refugees requesting them.<sup>248</sup>

In the U.S., the situation is a bit different compared to how higher education is promoted for refugees elsewhere. In the U.S.,

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244. See e.g., *English Language Proficiency*, UNIV. CAL. ADMISSIONS, admission.universityofcalifornia.edu/admission-requirements/freshman-requirements/english-language-proficiency.html [perma.cc/H4RN-3WJE] (last visited Mar. 29, 2023) (internal alterations omitted) (noting that “if you’ve completed all or some high school or secondary school in a country where English was not the language of instruction, you will be required to demonstrate English proficiency if you have had less than 3 years of instruction in English”); *English Language Proficiency Requirement*, UNIV. WASH. OFF. UNIV. REGISTRAR, www.registrar.washington.edu/students/elpr/ [perma.cc/JA6S-DETM] (last visited Mar. 29, 2023) (noting “[s]tudents who do not enter the UW with qualifying standardized test scores or program completion as described above, and who are not native English language speakers will be required to complete one or more required courses through the Academic English Program”). “Students with AEP course requirements must continue to register for these courses each succeeding quarter until the prescribed sequence of courses is completed.” *Id.* (internal alterations omitted). See also *International Requirements*, UNIV. OF ILL. CHI. ADMISSIONS, www.admissions.uic.edu/undergraduate/requirements-deadlines/international-requirements [perma.cc/GM56-3V5T] (last visited Apr. 6, 2023) (asking applicants to “[s]ubmit English proficiency test scores, if required, or qualify for an exemption to the English proficiency requirement.”).

245. See e.g., Deshan Mendis, *US English Level Tests Explained*, SHORELIGHT, www.shorelight.com/student-stories/english-language-tests-guide/ [perma.cc/GH6G-QPZN] (last updated Nov. 3, 2022) (explaining the English language proficiency testing requirements to access U.S. Colleges).

246. See 110 ILL. COMP. STAT. 805/2-24(a) (2019) (providing the “We Want to Learn English Initiative” aiming to aid immigrants and refugees).

247. See, e.g., *Refugee/Immigrant Scholarships*, SCHOLARSHIPS, www.scholarships.com/financial-aid/college-scholarships/scholarship-directory/special-attributes/refugee-immigrant [perma.cc/Z9Q2-MQBS] (last visited Mar. 25, 2023).

248. See AIMING HIGHER, *supra* note 200 (asking governments and private companies to donate to the DAFI program to reach a goal of \$23 million that would fund refugees in higher education).

university costs are already hard to sustain for “regular” U.S. citizens.<sup>249</sup> Those difficulties are multiplied in the context of immigrants or refugees seeking a college education.<sup>250</sup> There are several universities that implement scholarship programs for refugees; however, the availability is limited.<sup>251</sup> To overcome the tuition cost difficulties, states, like Virginia, have enacted legislation granting political refugees the opportunity to pay the in-state tuition rate.<sup>252</sup> Still, many refugees decide to forego education for work in order to provide financial stability to their families.<sup>253</sup> The immediate need of survival in a new country overtakes their ability to invest long-term and further their education.

#### IV. PROPOSAL

Although the number of resettled refugees has declined since the Trump Administration, the U.S. remains one of the countries with the highest number of refugee reception.<sup>254</sup> For this very reason, the U.S. should strive to help facilitate greater access to

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249. See Kelvisa Kovaci, *Addressing Higher Education Economics: Policy Analysis for Tuition*, 24 GEO. PUB. POL’Y REV. 38, 41 (stating that “[r]ising college tuition costs cause tremendous financial strain for students.”). For example, “[b]etween 1987 and 2010, collegiate institutions oversaw steep tuition increases.” *Id.* In 2015, students enrolled in “four-year private universities paid an average of \$18,000 per year out of pocket and financed the remainder of their tuitions (\$25,000 on average) through grants and loans.” *Id.* at 42. “The high amount of student loans has perpetuated a debt crisis with ramifications for college students and graduates.” *Id.*

250. See College Affordability Act, H.R. 4674, 116th Cong. § 4604(a)(2)(A)(iii) (2019) (awarding grants, loans, work assistance only to U.S. citizens or aliens with “temporary protected status under section 244 of the Immigration Nationality Act (8 U.S.C. 1245a)” which does not include refugees).

251. See, e.g., *Syrian Youth Empowerment Initiative: Transformation through Education*, SYE INITIATIVE, INC., [www.sye-initiative.org/about](http://www.sye-initiative.org/about) [perma.cc/E59J-CLSL] (last visited Mar. 14, 2023) (awarding at least 40 students with need-based scholarships since 2014). See also *100 Syrian Women, 100,000 Syrian Lives*, JUSOOR, [www.jusoor.ngo/our-work/100-syrian-women-10000-syrian-lives](http://www.jusoor.ngo/our-work/100-syrian-women-10000-syrian-lives) [perma.cc/UL48-8NUT] (last visited Mar. 14, 2023) (designating a scholarship fund for Syrian women to study at U.S. higher education institutions).

252. VA. CODE ANN. § 23-7.4 (West 2009).

253. U.S. DEP’T OF STATE ET AL., REPORT TO CONGRESS ON PROPOSED REFUGEE ADMISSIONS FOR FISCAL YEAR 2021 17, [www.state.gov/wp-content/uploads/2020/10/FY21-USRAP-Report-to-Congress-FINAL-for-WEBSITE-102220-508.pdf](http://www.state.gov/wp-content/uploads/2020/10/FY21-USRAP-Report-to-Congress-FINAL-for-WEBSITE-102220-508.pdf) [perma.cc/6R9C-CBVS] (noting that the U.S. requires refugees and asylee admitted into the country to find a job as soon as possible); see also Shanique C. Campbell, “*What’s A Sundial in the Shade? Brain Waste Among Refugee Professionals Who Are Denied Meaningful Opportunity For Credential Recognition*,” 68 EMORY L.J. 139, 161 (noting “ORR regulations requiring refugees to accept any ‘appropriate’ job, or else, violate the non-derogable core of any right to work.”).

254. Jens Manuel Krogstad, *Key Facts About Refugees in the U.S.*, PEW RSCH. CTR. (Oct. 7, 2019), [www.pewresearch.org/fact-tank/2019/10/07/key-facts-about-refugees-to-the-u-s/](http://www.pewresearch.org/fact-tank/2019/10/07/key-facts-about-refugees-to-the-u-s/) [perma.cc/685P-EBT3].

higher education for refugees by adopting new domestic legislation and adhering to international standards widely adopted by other countries.

The implementation of new concepts in U.S. law does not necessarily need to arise directly through borrowing from foreign laws but can also originate from “intellectually generated projections of comparative advantages.”<sup>255</sup> This final section proposes that the U.S. should domestically implement new law to reduce the disproportionality between refugees’ access to higher education and the rest of the U.S. population.

### A. *Recognizing Education as a Fundamental Right*

Education, in the different ways individuals may receive it and utilize it, “implicates the basic [principles of] liberty of choice, self-autonomy, and dignity.”<sup>256</sup> For refugees, the right to education generally, and more specifically higher education, is crucial for their ability to be free to make choices and to be autonomous.<sup>257</sup> Similar to what the lived reality of enslaved people demonstrated, “liberty and self-autonomy do not exist without some level of education and information.”<sup>258</sup> By preventing refugees from accessing higher education through institutional and societal barriers, the U.S. is effectively preventing refugees from becoming self-sufficient.<sup>259</sup>

The first step in ensuring that refugees have equal opportunities is to recognize a fundamental right to education.<sup>260</sup> Certain U.S. States’ constitutions already recognize that public education is necessary for the preservation of people’s rights and liberties.<sup>261</sup> However, the recognition of a right to public education

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255. Schadbach, *supra* note 118, at 389 (internal quotations omitted).

256. Drew W. Black, *Freedom, Democracy, and the Right to Education*, 116 NW. U.L. REV. 1031, 1060 (2022).

257. *UNHCR Tertiary Education*, *supra* note 40 (noting that higher education for refugees “is a critical link between learning and earning, allowing young people to thrive and transition to the pursuit of sustainable futures.”).

258. Black, *supra* note 256, at 1063.

259. See Ballard, *supra* note 215, at 185 (finding that “federal policy emphasizes rapid and minimal economic self-sufficiency for refugees, which is consistent with other government policies that privatize social welfare for the poor” and “that U.S. resettlement efforts fall short of an integration process.”). “To the contrary, the U.S. strategy of prioritizing immediate participation in the work force undermines the successful incorporation of many refugees into American society. This failure stands to impair the security interests of both refugees and host communities.” *Id.* at 186.

260. See generally *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

261. See, e.g., MASS. CONST., pt. 2, ch. V, § 2 (stating that “[w]isdom, and knowledge; as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties and as these depend on spreading the opportunities and advantages of education”); ARIZ. CONST., art XI., § 1; (stating that “[t]he legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public

in States' constitutions is not enough. The U.S. Supreme Court should take the next step and determine the existence of a fundamental right to education in the U.S. Constitution, found specifically in either the Thirteenth Amendment, Fourteenth Amendment, among other constitutional principles.<sup>262</sup> Not only should the right to education be recognized as a constitutional right, but the right to higher education should as well. U.S. history vividly illustrates the importance of expanding college access to broader segments of its population.<sup>263</sup> Now, it is important to bridge this gap even more and include refugees in the portion of the population who should be afforded the right to access higher education. If, however, the Supreme Court were to continue to hold that a fundamental right to education does not exist, the U.S. legislature should ensure a right to education, including for vulnerable populations such as refugees.

The U.S., through its courts and legislative bodies, must follow the example of similarly situated countries around the world where higher education is afforded not only to countries' nationals, but also to refugees and asylum seekers who come from difficult situations.<sup>264</sup> For example, the ECtHR did not merely recognize a fundamental right to education, but went a step further in recognizing a fundamental right to higher education.<sup>265</sup> It held various times that the right to education does not merely concern the right to access primary education, but also the right to access university.<sup>266</sup> In fact, in the EU, holders of the fundamental right to education are not merely elementary school children but also adults or any person wanting to benefit from this right.<sup>267</sup> This means that

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school system, which system shall include . . . universities"); *see generally* MOLLY A. HUNTER, EDUC. L. CTR., EDUCATION JUSTICE: STATE CONSTITUTION EDUCATION CLAUSE LANGUAGE 1, [www.edlawcenter.org/assets/files/pdfs/State%20Constitution%20Education%20Clause%20Language.pdf](http://www.edlawcenter.org/assets/files/pdfs/State%20Constitution%20Education%20Clause%20Language.pdf) [perma.cc/JSH9-DEKV] (last visited Feb. 22, 2022) (noting that many states mention the need for a "general diffusion of knowledge" and that many clauses introduce education as a democratic imperative).

262. *See* Black, *supra* note 256, at 1064 (identifying an affirmative right to education based on historical experience and judicial precedents).

263. Omari Scott Simmons, *Class Dismissed: Rethinking Socio-Economic Status and Higher Education Attainment*, 46 ARIZ. ST. L.J. 231, 271 (2014).

264. *See* Koehler & Schneider, *supra* note 54, at 12 (noting that "Swedish policies aim to give refugee students the same educational opportunities as native students"; that "the Ministry of Education and Culture has started a project in 2016 to strengthen the role of Finnish higher education institutions in integrating refugees"; and that "Italy was the first EU country that adopted the 'University for Refugees,'" an "initiative that aims at creating educational corridors for higher education students and researchers who come as refugees.").

265. *See* ECtHR ART. 2 PROTOCOL GUIDE, *supra* note 60, at 7 (noting that "the access to institutions of higher education that may exist at a given time will form an integral part of the right stated in the first part of Article 2.").

266. *See, e.g., Leyla Şahin*, 2005-XI Eur. Ct. H.R. at § 141.

267. ECtHR ART. 2 PROTOCOL GUIDE, *supra* note 60, at 7.



if refugees seek to benefit from the right to higher education, they are allowed to do so.

Further, there is a strong argument for an international customary right to education: more specifically, the international right to equal opportunity of education should be used to formulate the right to education under the U.S. Constitution.<sup>268</sup> On the other hand, although customary international law has been used by the courts merely as a guiding principle for the interpretation of U.S. laws, a right to equal opportunity to education has been found to “rise to the level of customary international law.”<sup>269</sup> A recognition of a right to equal opportunity to education would not only benefit vulnerable populations native to the U.S., but would also improve the quality of rights afforded to displaced individuals such as refugees.

It is important to note that exercising a right, in this case the right to higher education, differs from a duty imposed by the state to attend primary education.<sup>270</sup> In fact, some argue that a right to education, including higher education, is just the continuation of the right to life itself.<sup>271</sup> From a right to education generally, a right to higher education would logically follow.<sup>272</sup> Higher education for vulnerable populations, like refugees, is a right that would empower them and help overcome their financial instabilities. After the imposition of the duty by the state, an individual could choose to exercise their right to education freely, in the same way they exercise freely other rights without parental consent and after reaching the age of eighteen (i.e., the right to vote or the right to marry). Thus, since access to higher education is a recognized fundamental right in most countries around the world similarly

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268. Constance de la Vega, *The Right To Equal Education: Merely A Guiding Principle or Customary International Legal Right?*, 11 HARV. BLACKLETTER L. J. 1, 20 (1994) (arguing there should be a federal right to equal opportunity in education through the application of international standards, specifically human rights law).

269. *Id.*

270. *See Government Obligations, HUM. RTS. ADVOC. & THE HIST. OF INT’L HUM. RTS. STANDARDS*, humanrightshistory.umich.edu/accountability/obligationr-of-governments/[perma.cc/SBU7-4X2L] (last visited Feb. 23, 2023) (noting that “[w]ithin the international human rights framework, individuals are right holders,” while states are duty bearers). States have therefore an obligation “to refrain from interfering with the enjoyment of human rights,” which include the right to education. *Id.*

271. Jose-Luis Gaviria, *Education: A Compulsory Right? A Fundamental Tensions within a Fundamental Right*, 70 BRITISH J. OF EDU. STUD. 653, 668 (2022) (noting that the right to education is fundamental because like the right to life “it is inalienable, cannot be waived, and it cannot be transferred.”).

272. *Id.* (clarifying that holding a right and having a duty are different when it comes to the right to education: a right holder can freely choose whether to exercise their right, in this case the fundamental right to higher education, while individuals under the age of 18, “cannot relinquish the exercise of their right because [they] are not [yet] (legally) and fully responsible.”).

situated to the U.S., it should be in the U.S. as well.<sup>273</sup>

### *B. Lowering the Barriers Through Concrete Efforts*

Regardless of whether a fundamental right to education is found by the judicial branch, the U.S., through the legislative, executive, or other federal bodies, should take concrete steps to lower barriers and improve access to education, including higher education, for refugees.

First, following the recommendations issued by the United Nations through the Global Compact on Refugees, from which the U.S. withdrew in 2017, the U.S. should start recording the number of refugees enrolled in higher education.<sup>274</sup> This would lead to a more informed picture of how much, in terms of numbers, the refugee population in university should increase.<sup>275</sup> Recording the number of refugees enrolled would not just help the U.S. nationally, but would contribute to the global goal of a fifteen percent increase of refugee enrollment in higher education around the globe by 2030.<sup>276</sup> Recording the number of refugee enrollment should be mandated at a federal level through the U.S. Department of Education.

As recently as December 17, 2021, the Biden-Harris Administration has issued a Statement in Support of the Adoption of the Global Compact for Safe, Orderly, and Regular Migration.<sup>277</sup> In their statement, the Administration specifies that they view the commitment of the compact as “not legally binding,” including the commitment in the context of “the federalist system of government related to education, the issuance of civil registry documents, and professional licensure.”<sup>278</sup> This continued view of separation within the government will not be effective in protecting vulnerable populations and their access to education.

Therefore, to concretely increase access to higher education for refugees, the U.S. should sign and ratify the UNESCO Convention on the Recognition of Educational Qualifications.<sup>279</sup> As per the U.S.

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273. *Plyler*, 457 U.S. at 243 (noting education is not a fundamental right while the dissenting opinion recognizes its potential).

274. RHODA MARGESSON, CONG. RSCH. SERV.: IN FOCUS, THE GLOBAL COMPACT ON MIGRATION AND U.S. POLICY (Mar. 27, 2020), [sgp.fas.org/crs/row/IF11003.pdf](https://sgp.fas.org/crs/row/IF11003.pdf) [perma.cc/6NB4-J3XC].

275. *UNHRC Tertiary Education*, *supra* note 40.

276. *Id.*

277. U.S. DEPT OF STATE, REVISED NATIONAL STATEMENT OF THE UNITED STATES OF AMERICA ON THE ADOPTION OF THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION 1 (Dec. 17, 2021), [www.state.gov/wp-content/uploads/2021/12/GCM.pdf](https://www.state.gov/wp-content/uploads/2021/12/GCM.pdf) [perma.cc/U2VZ-88D7].

278. *Id.* at 2.

279. See UNESCO Qualifications Convention Higher Education, *supra* note 34 (entering into force on March 5, 2023 and being ratified only by 21 countries, including Lithuania, The Holy See, Croatia, Japan, Tunisia, Australia,

Constitution, once a treaty is ratified and if there is no law contradicting such treaty, the ratification will make the treaty part of the national law.<sup>280</sup> This would facilitate refugees' ability to access higher education since it will reduce the fragmentation of recognizing foreign or missing qualifications among the states and universities, effectively creating a federal standard. Although the current Administration, similar to previous U.S. Administrations, seem to not view international law as binding, legislative efforts should push for the ratification of treaties into national law.

The U.S. should then implement federal reforms aimed at the implementation of higher education programs and English as a Second Language classes, both for students from K-12 and those seeking higher education in detention camps. These laws could be akin to the already adopted legislation in Illinois.<sup>281</sup> When refugees arrive in the U.S. and are held in detention for months at a time, they should not be prevented from exercising their fundamental right to education. At the very least, asylum-seekers who are detained should be allowed to follow language classes so that once their refugee status is approved, they can go to college or any other educational institution.

Federal standards should require detention facilities to provide asylum seekers with all information needed to understand how to proceed in the path of higher education once their status as refugees is approved. Similar to Argentina, the U.S. should implement, not just federally but at a local level, a system of counselors providing effective guidance to refugees and asylum seekers in search of educational opportunity.<sup>282</sup> These could be also supplemented by quick courses on the U.S. education system, as well as other informational materials in various languages to provide refugees for a smooth integration.

One of the problems encountered during detention is that refugees do not know what programs exist and how those programs are available to them. Therefore, ports of entry should strive to implement a more humane approach to receiving refugees and asylum-seekers by instructing them on available educational opportunities, while waiting for the approval of their petitions. The right to education should not be "forfeited upon detention."<sup>283</sup> It is

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Romania, France, Estonia, Nicaragua, Norway, and the United Kingdom).

280. See U.S. CONST. art. 2, § II (making agreements between nations binding domestic law).

281. See 110 ILL. COMP. STAT. 805/2-24 (demonstrating the Illinois initiative to improve refugee and immigrant access to education).

282. See GOV'T OF ARG., *supra* note 162 (ensuring "access to public education at all levels," including higher education, to refugees "under the same conditions" granted to nationals through the collaboration of National and local offices).

283. *Education: Key Elements*, ASS'N FOR THE PREVENTION OF TORTURE, [www.apt.ch/en/knowledge-hub/detention-focus-database/life-prison-regime-and-activities/education](http://www.apt.ch/en/knowledge-hub/detention-focus-database/life-prison-regime-and-activities/education) [perma.cc/8LNS-5BRQ] (last visited Mar. 25, 2023).

important for refugees to access educational programs even while detained in order to improve the situation for each individual and aid the resettlement process once they are able to return and integrate in society.<sup>284</sup> Educational programs in public detention centers are funded by the government through grants (i.e., Pell Grant) and money allocated to public prisons.<sup>285</sup> Similarly, educational programs for refugees who are detained in federal detention centers should be funded by federal government grants.

Finally, one of the most significant barriers for refugees is the cost of higher education. In the campaigns aimed at providing refugees with information, there should also be included financial instructions pertaining to higher education. Higher education costs in the U.S. are the most common barrier preventing refugees (and even lower income U.S. citizens) from accessing higher educational institutions.<sup>286</sup> The federal and state governments, through a joint effort with higher education institutions should provide specific grants for refugees, in order for them to be able to access higher education more easily. A possible way to achieve these goals would be to utilize the money allocated by Congress to the States by the Refugee Act. These funds would be utilized to pay for centralized credential recognition programs, language programs in detention centers, as well as using it for grants to public universities that would specifically target refugee communities.<sup>287</sup>

Another plausible solution would be creating private-public partnerships between the government and private organizations to help funding the education of refugees in the U.S.<sup>288</sup> Countries such as Ethiopia, Germany, or Turkey have implemented effective strategies to fund refugee's education with the help of private organizations.<sup>289</sup> The U.S. could model its approach to these successful countries.

The road to accessible higher education in the U.S. is a long one and there is no concrete hope for it to be achieved in the near future.<sup>290</sup> However, there is hope for a comprehensive federal law

284. *Id.*

285. *See, e.g.*, Pell Grants for Prison Education Programs, 87 Fed. Reg. 65, (Oct. 28, 2022) (to be codified at 34 C.F.R. pt. 600, 668, 690) (implementing changes to extend Pell Grant opportunities to incarcerated people).

286. Scott Simmons, *supra* note 263, at 271.

287. 8 U.S.C. § 1522(c) (2022).

288. PRESIDENTS' ALLIANCE ON HIGHER ED. IMMIGRATION, UNIVERSITY SPONSORSHIP OF REFUGEE STUDENTS: INITIATIVE ON INCREASING U.S. EDUCATION PATHWAYS FOR REFUGEE STUDENTS, 5 (2021), [www.higheredimmigrationportal.org/wp-content/uploads/2021/11/UniversitySponsorshipofRefugeeStudents\\_v1a.pdf](http://www.higheredimmigrationportal.org/wp-content/uploads/2021/11/UniversitySponsorshipofRefugeeStudents_v1a.pdf) [perma.cc/Q6H5-Y3VS] [hereinafter INCREASING U.S. EDUCATION PATHWAYS FOR REFUGEES].

289. Martin & Stulgaitis, *supra* note 46, at 40.

290. *See, e.g.*, *Issues: College for All and Cancel All Student Debt*, BERNIE, [bernieanders.com/issues/free-college-cancel-debt/](https://bernieanders.com/issues/free-college-cancel-debt/) [perma.cc/5KQJ-UEPP] (last visited Feb. 23, 2023) (describing legislation to cancel student debt and to make universities accessible for everyone); *see also* Carmen Reinicke, *Sen.*

reform which could help reduce the cost of public higher education, not just for refugees but for the population at large. Some U.S. universities have scholarships or programs designed specifically for refugees; however, the supply and demand for these programs is out of balance, as there are more applicants than are funds available.<sup>291</sup> While advocating for federal action, states could take intermediate measures to best assist the need of the refugee population; specifically, states should strive to implement programs, such as the one in Virginia, offering in-state tuition for refugees.<sup>292</sup>

One way to prevent this from happening is to expand, at both the federal and state levels, the funding for programs aimed at reducing the cost of higher education for refugees. Recently, at the end of 2021, the Biden Administration published a report where the federal government would implement the Initiative on U.S. Education Pathways for Refugee Students.<sup>293</sup> This initiative would increase refugees' opportunities to access higher education, through university sponsorship.<sup>294</sup> Currently, many scholarships offered by universities focus on a specific group of refugees (i.e., refugees from Syria), therefore excluding those from countries with minor numbers of refugees.<sup>295</sup> Hopefully, the U.S. federal government will follow through with the implementation of legislation comprehensive for all refugees, regardless of the country of origin or other features of their background. This legislation should include pathways to credential recognition for refugees, as well as financial allocation of money to help refugees ease the cost of education and integration in the country. Again, following the example of other nations in the EU, Africa, or Latin America, the U.S. should stop delegating its obligation to secure the right to

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*Bernie Sanders introduces bill to make college free and have Wall Street pay for it*, CNBC (Apr. 21, 2021), [www.cnbc.com/2021/04/21/sen-bernie-sanders-introduces-bill-to-make-college-free-and-have-wall-st-pay-for-it.html](http://www.cnbc.com/2021/04/21/sen-bernie-sanders-introduces-bill-to-make-college-free-and-have-wall-st-pay-for-it.html) [perma.cc/5HQK-WSKR] (noting how Senator Bernie Sanders has proposed legislation to provide tuition-free education for certain higher education institutions).

291. See INCREASING U.S. EDUCATION PATHWAYS FOR REFUGEES, *supra* note 288, at 10 (noting that “refugees currently depend on a very limited number of scholarships” dedicated to support their educational journey in the U.S.).

292. *E.g.*, VA. CODE ANN. § 23-7.4 (West 2009).

293. U.S. DEP'T. OF STATE, REPORT TO CONGRESS ON PROPOSED REFUGEE ADMISSIONS FOR FISCAL YEAR 2022 (Sept. 20, 2022), [www.state.gov/report-to-congress-on-proposed-refugee-admissions-for-fiscal-year-2022/](http://www.state.gov/report-to-congress-on-proposed-refugee-admissions-for-fiscal-year-2022/) [perma.cc/J5EF-MG74].

294. *Id.*

295. See INST. OF INT'L EDUC., IIE SYRIA CONSORTIUM FOR HIGHER EDUCATION IN CRISIS, [www.iie.org/programs/syria-scholarships](http://www.iie.org/programs/syria-scholarships) [perma.cc/TCM7-J6XX] (last visited Feb. 22, 2022) (noting that with the support of the U.S. Department of State and the Carnegie Corporation of New York, the Syria Consortium has “provided more than \$4.5 million” in assistance to Syrian students, including scholarships at Syrian Consortium institutions, free online test prep courses, and institutional top-up grants).

education for all only to private institutions or individuals.<sup>296</sup>

Higher education cannot be a luxury: it is a fundamental right that every individual in the U.S. should be granted.<sup>297</sup> The right to access higher education needs a federal reform to combat the institutional and societal barriers that prevent refugees from accessing higher education.

## V. CONCLUSION

“Education operates as a multiplier, enhancing . . . all . . . rights and freedoms” when it is guaranteed, while jeopardizing them all when it is violated.<sup>298</sup> What does this mean for refugees in the U.S. and globally? The realms of refugee law and higher education law are interconnected, but so fragmented in the U.S. that it becomes extremely difficult for refugees or asylees to access higher education. The goal for the U.S. should be to follow the example of other nations and implement national and international measures that would effectively lower the barriers refugees are faced with when attempting to access higher education.

“School is where refugees are given a second chance,” and “[w]e are failing refugees by not giving them the opportunity to build the skills and knowledge they need to invest in their futures.”<sup>299</sup> Without effective legislative efforts, on-the ground campaigns, and a recognition of a fundamental right to education, refugees in the U.S. will never have the same opportunities as the average U.S. citizen. The U.S. needs to be better and should strive to do better for itself and for the millions of people that, like Najma, escaped war zones. No person should be treated differently, merely because of their immigration status.

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296. ECTHR ART. 2 PROTOCOL GUIDE, *supra* note 60.

297. President Barack Obama, Remarks by the President in State of the Union Address (Jan. 24, 2012); *see also* The Obama White House, *2012 State Of The Union Address*, YOUTUBE (Jan. 24, 2012), [www.youtube.com/watch?v=FB9OUcPENL0](http://www.youtube.com/watch?v=FB9OUcPENL0) [perma.cc/BH34-AZ87].

298. Katerina Tomasevski, *Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable*, RIGHT TO EDUCATION PRIMER NO. 3 3, 10 (2006).

299. Press Release, Filippo Grandi, U.N. High Comm’n for Refugees, *Refugee Education in Crisis: More Than Half of the World’s School-Age Refugee Children Do Not Get An Education* (Aug. 30, 2019) (internal quotations omitted).

