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UNITAFRICA

Empowering the Academic Cooperation between Italy and Africa for fostering the quality and effectiveness of the higher education systems in a mutual learning environment

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THE INTERNATIONAL PROTECTION OF THE RIGHT TO HIGHER EDUCATION

Instruments, Experiences and Perspectives

Marcella Distefano and Giuseppe Gallo (eds)



Wolters Kluwer

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*Dedicated to the memory of
Sara Campanella and Lorena Quaranta*

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PREFACE

UNITAFRICA is a transnational education initiative, funded by the Italian Minister of Research with PNRR funds, aimed at promoting joint training, research, and international cooperation between Italian and African universities. Twenty-one Italian universities and 78 African universities, within the UNITAFRICA Alliance, collaborated over a 21-month period to strengthen cooperation and improve the quality and effectiveness of higher education. For further information visit www.unitafrica.it.

This book focuses on a challenging central aspect of the TNE Unitafrica Project, namely identifying good legal practices against inequalities in access to higher education. It collects the contributions from the discussants of the seminar held in Messina on 11 December 2025, following an international call for papers aimed primarily at researchers from the African and Italian universities partners of the project.

The chapters address the issue of access to higher education from multiple legal perspectives, tied together by a common thread that the right to education belongs to all individuals.

The editors would like to thank Professors Giacomo D'Amico (University of Messina), Marco Longobardo (University of Westminster), Livio Scaffidi Runchella (University of Messina), Federica Violi (University of Rotterdam) and Grazia Vitale (University of Messina) for their role in the peer-review process, and Maria Irrera (University of Messina) for the cover design.

Messina, 15 June 2026

Marcella Distefano, Giuseppe Gallo

CHAPTER I

REMARKS ON ACCESS TO HIGHER EDUCATION IN INTERNATIONAL LAW

Marcella Distefano *

At a time dramatically marked by attempts to undermine the credibility and integrity of international law – also through the delegitimization of the main intergovernmental organisations committed to promoting a culture of peace among peoples – access to higher education must be defended and promoted, not only for its undeniable cultural value, but, above all, for its multifaceted potential.

In general, access to education fosters individual empowerment and acts as a driver of growth and human development, taking on fundamental importance in the fight against discrimination. Indeed, it presents itself as a bulwark against authoritarian tendencies and the social inequalities imposed by the absence of pluralism and democracy.

Specifically, access to higher education leads to better job prospects, fairer pay and, in the long term, a better quality of life. While the right to education is considered a basic human right codified by several international instruments, especially those related to children's rights, higher education essentially concerns equal opportunities, effective participation in society and the elimination of all forms of discrimination, also with an intersectional nature ⁽¹⁾.

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⁽¹⁾ According to S. Ilie, P. Rose, *Is Equal Access to Higher Education in South Asia and Sub-Saharan Africa Achievable by 2020?* in *Higher Education*, 2016, pp. 435-455 “the level of attendance of higher education remains generally low [...] Wealth gaps are reinforced by gender gaps [...]”

Although various provisions contained in international legal instruments, both hard and soft, seek to define its scope and content, it is not easy to identify a universally accepted concept ⁽²⁾. In some legal traditions it takes on a significant individual value, while in others it contributes to the life and well-being of the community.

As a working approximation, we can define it as a human right to be realised progressively ⁽³⁾, which faces numerous constraints linked primarily to the structural differences between societies around the world.

In the current historical context, these limitations stem from several factors: first, the lack of sufficient economic resources ⁽⁴⁾; second, the increasing privatization of education ⁽⁵⁾; third, the current fragmentation of the

⁽²⁾ The legal literature on this subject is vast, making it impossible to cover it in full. Among the many works available, I would like to highlight A. Fernandez, S. Jenker (eds.), *International Declarations and Conventions on the Right to Education and the Freedom of Education*, Frankfurt/Main, 1995; M. Nowak, *The Right to Education*, in A. Eide et al (eds.), *Economic, Social and Cultural Rights: A Textbook*, Martinus Nijhoff, 2001, p. 245; Coomans, *In Search of the Core Content of the Right to Education*, in A. Chapman, S. Russel (eds), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, Intersentia, 2002, p. 217; C. Zanghi, *Le droit fondamental à l'éducation: les droits et les obligations qui découlent des instruments internationaux*, Giappichelli, 2003; M. Verheyde, *The Right to Education*, Leiden, 2006; K. D. Beiter, *The Protection of the Right to Education by International Law. Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights*, Leiden-Boston, 2006; Ssenyonjo, *Economic, Social and Cultural Rights in International Law*, second edition, Oxford, London, Portland, 2016, pp. 558-622; F. Veriava, K. Paterson, *The right to education*, in J. Dugard, B. Porter, D. Ikawa, L. Chenwi (eds.), *Research Handbook on Economic, Social and Cultural Rights as Human Rights*, Cheltenham, 2020, pp. 113-136.

⁽³⁾ See R. Pisillo Mazzeschi, *Sulla natura degli obblighi internazionali di tutela e promozione dei diritti economici, sociali e culturali*, in F. Bestagno (ed.), *I diritti economici, sociali e culturali: promozione e tutela nella comunità internazionale*, Milano, 2009, pp. 3-24, spec. p. 12 ff.; ID., *Diritto internazionale dei diritti umani. Teoria e prassi*, Giappichelli, 2020, p. 328 ff.

⁽⁴⁾ See F. Panetta, *Investing in the future: youth, innovation and human capital* - Speech given at the inauguration of the Academic Year of the University of Messina, 15 January 2026.

⁽⁵⁾ On the risk of states delegating public functions to private and business sectors, see *General Comment n.13 – The Right to Education* (Art. 13), UN Doc. E/C.12/1999/10. As suggested by the ICESCR Committee, the

international geopolitical context, and finally, the “culturalization” of human rights.

In primis, insufficient funding of education expenditure by both States and international organizations is the most problematic issue today. For example, according to the Governor of the Bank of Italy F. Panetta, Italy spends far too little on university education compared to other European countries. Furthermore, the increase in military and defence expenditure in recent years has also certainly affected the cut in investment in the social sphere, including the education sector. Finally, the responsibility of the major international financial organisations (the IMF and the World Bank) is also significant, as they have promoted inadequate policies in this field ⁽⁶⁾.

Secondly, according to K. Tomaševski, the first UN *Special Rapporteur on the Right to Education*, the increasing privatisation of a sector such as education - traditionally the responsibility of public authorities - ultimately makes access to higher education the exclusive preserve of the elite, forcing entire sections of the population to give up on university studies. In fact, the efforts to decentralize the public management of higher education have encouraged the development of private schools, which operate in a market-oriented manner to respond to consumer demands, threatening traditional academic culture and even the quality of education ⁽⁷⁾. According to *The Right to Education Initiative*,

increasingly important role of private actors in a sphere traditionally considered public has imposed, and continues to impose, new limitations on access to higher education. See also J. Tooley, *The Global Education Industry. Lessons from Private Education in Developing Countries*, International Finance Corporation and Institute of Economic Affairs, Washington D.C. and London, 1999.

⁽⁶⁾ A further aspect that should be remembered concerns the impact of international rules to protect copyright, which prevent free access to scientific materials. For a survey, see K. Anastácio, P. Aufderheide, and J. Ziskina, *Higher Education in the International Digital Economy: Effects of Conflicting Copyright Regimes on Cross-Border Teaching*, in *Journal of Copyright in Education and Librarianship*, vol. 7, issue 2, 2024, pp. 1-20.

⁽⁷⁾ There is little doubt about the inestimable value of K. T.’s studies on this matter. She developed the 4-A framework (Availability, Accessibility, Acceptability, and Adaptability) to urge governments to maintain primary responsibility for free, compulsory, and equitable public education. Among the contributions she has made to the promotion of universal education, see

“higher education is increasingly seen as an investment leading to private and public yields but not necessarily as a social priority”⁽⁸⁾.

On the other hand, the multiple health crises, the escalation of conflicts and climate change - in short, the ‘permacrisis’ and fragmentation we are currently experiencing - are making the current situation particularly hostile to policies aimed at genuinely promoting education on a global scale⁽⁹⁾.

Finally, the ‘culturalization’ of human rights plays a significant role, risking an increase in the structural vulnerabilities with which millions of individuals are forced to live in terms of access to education: consider, for example, women, people with disabilities, and religious, ethnic, linguistic and cultural minorities who, in many States, do not receive adequate protection in the name of the cultural dominance of a section of the population, ending up on the margins of public life⁽¹⁰⁾.

K. Tomaševski, *Education Denied: Costs and Remedies*, Zed Books, 2003; *Has the Right to Education a Future Within the United Nations? A Behind-the-Scenes Account by the Special Rapporteur on the Right to Education 1998 – 2004*, in *Human Rights Law Review*, 2005, p. 205; *Globalizing what: Education as a right or as a traded service*, in *Indiana Journal of Global Legal Studies*, vol. 12, No. 1, 2005, pp. 10-15; *The State of the Right to Education Worldwide Free or Fee: 2006 Global Report*, Copenhagen.

⁽⁸⁾ In 2019, a group of 57 international experts adopted the Abidjan Principles on the human rights obligations of states to provide public education and to regulate private involvement in education. This is an attempt to classify regulatory standards regarding access to higher education and the role of the private sector. The full text of the Abidjan Principles is available at <https://www.abidjanprinciples.org>.

⁽⁹⁾ The term ‘Permaccrisis’ is defined as a state of permanent crisis, characterised by a succession and overlap of emergency situations. Dealing with numerous crises or emergency situations risks fuelling a long-term downward spiral, contributing to a state of structural and progressive - in a word, ‘permanent’ - vulnerability that undermines the shared values which the 2030 Agenda had specifically sought to promote and translate into a wide range of actions. In particular, the goal of access to quality education is under attack, while it can be promoted through the affirmation of certain general principles that have emerged on the international sphere, such as equity and intergenerational solidarity. According to J. Jerrim, L. Macmillan, *Income Inequality, Intergenerational Mobility, and the Great Gatsby Curve: Is Education the Key?* in *Social Forces*, 9 June 2015, “unequal access to financial resources plays a central role in the intergenerational transmission of advantage”.

⁽¹⁰⁾ See AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS’,

In these brief introductory remarks, we shall attempt to outline the key features of the right to higher education in contemporary international law, making it clear from the outset that this right is primarily understood as the right to access forms of advanced education without discrimination and on a meritocratic basis.

As mentioned above, the right to higher education has been specifically affirmed in detail by relevant human rights instruments, such as the *Universal Human Rights Declaration* and the *International Covenant on Economic, Social and Cultural Rights* of 1966. While article 26 of the *Universal Declaration* primarily sets out the right to education, the aims that education should pursue, and the role of parents in decisions regarding their children's education, under the ICESCR, all States Parties are required to provide at least for the existence and maintenance of adequate instruction facilities and to ensure that all conditions prescribed by international law are fully satisfied, through the adoption of specific positive measures to promote education and training, especially for women, and the enrolment and retention of young people in schools and training institutions.

The right to higher education is also recognized in many

Communication 588/15 *Minority Group International and Environnement Ressources Naturelles et Développement (on behalf of Batwa from the Parc national de Kahuzi-Biega, RDC) v. République démocratique du Congo*, 2022, in which the Commission noted the violation of the right to health and education by favouring an integrated approach to human rights. For a comment, see J. K. Sindani, *Vers une approche intégrée des droits à la santé et à l'éducation des populations autochtones: perspectives de l'affaire Batwa c. RDC devant la Commission africaine*, in *Annuaire africain des droits de l'homme*, 2024, pp. 580-600. On the risks associated with the "culturalization" of rights, with reference to the African system of human rights protection, see, among others, G. Pascale, *La tutela internazionale dei diritti dell'uomo nel continente africano*, Jovene, 2017, spec. p. 138 ff. The A. emphasizes the deleterious effect that the presence of the so-called *clawback clauses* in African human rights treaties can have on the enjoyment of many individual rights. In fact, according to Pascale, the tendency of the African charter to adjust the protection of human and peoples' rights to the cultural values of African tradition allows states to protect national interests at the expense of individual ones. On the risks in the education sector, see also A. Bonfanti, *Diversità culturale, pratiche tradizionali dannose e diritti umani. Un'analisi di diritto internazionale pubblico e privato*, Torino, Giappichelli, 2024, pp. 127-130.

international regional covenant instruments such as the *European Convention on Human Rights* (art. 2 Protocol I), the *Charter of the Organisation of American States* (art. 49) and the *Additional Protocol to the American Convention on Human Rights* (art. 13 and 16), the *African Charter on the Rights and Welfare of the Child* (art. 11), the *African Youth Charter* (art. 11 and 13), the *Arab Charter* (art. 41), the *EU Charter of Fundamental Rights* (art. 14).

This highly complex legal framework is further supplemented by a number of specific human rights treaties such as art. 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination*, art. 10 of the *Convention on the Elimination of All Forms of Discrimination against Women*, articles 28, 29 and 30 of the *United Nations Convention on the Rights of the Child*, art. 30 of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, art. 24 of the *Convention on the Rights of Persons with Disabilities*, art. 11 of articles 12, 13 and 14 of the *Framework Convention for the Protection of National Minorities*, art. 38 of the *III Geneva Convention on Prisoners War* of 1949, articles 50 and 90 of the *IV Geneva Convention on Civilians* of 1949, and art. 52 of the *First Protocol* of 1979.

Finally, at a universal level, UNESCO's efforts to provide a multilateral framework on higher education merit special attention. The *Convention against discrimination in education* of 1960 - the first international treaty instrument to have binding force in international law - draws its inspiration from two distinct and fundamental principles found in both the *UNESCO Constitution* (1945) and the *Universal Declaration of Human Rights* (1948), Articles 2 and 26 of which proscribe any form of discrimination and seek to promote the right to education for all. The aim, therefore, is, on the one hand, to prohibit any discrimination in education and, on the other, to promote equality of opportunity and treatment for all persons in this field. Both purposes remain relevant today and commit States to pursuing them. More recently, the *Global Convention on Higher Education* of 2019 establishes universal principles for fair, transparent and non-discriminatory recognition of higher education qualifications and of qualifications giving access to higher education and offering avenues for further

study and employment. With provisions on non-traditional learning modes, the UNESCO *Global Convention* also facilitates the recognition of qualifications, prior learning and study periods earned remotely, and has been defined as “the first operational arm worldwide” of art. 13 of the ICESCR, the standard that remains to this day the essential benchmark in this field ⁽¹¹⁾.

Turning to the content of this right, we must necessarily start from the aforementioned Article 13:

“1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

[...] (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; [...]”

The rule consists of four basic elements: access without discrimination, free choice of education, pluralism of educational pathways and education directed to the development of the human person and respect for human rights.

The provision, which must be read in conjunction with Article 2 of the ICESCR ⁽¹²⁾, does not have an absolute or

⁽¹¹⁾ See below the insightful contribution made by Carola Ricci on the UNESCO Conventions and the role of public universities.

⁽¹²⁾ ICESCR - Article 2. - 1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that

imperative character, and may be limited by derogations and exceptions in the interests of overriding considerations, such as national security, the protection of public health, and the conservation of environment ⁽¹³⁾.

As we have already mentioned, this is a right that must be realised gradually and progressively. In human rights theory, Article 13 is defined as a programmatic provision, in accordance with the distinction made in public law between prescriptive and programmatic provisions ⁽¹⁴⁾.

It is therefore a rule with binding effects, capable of creating real obligations for its recipients. For these reasons states must make a continuous and sustained effort over time

the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

⁽¹³⁾ Subsidiarity, derogation clauses, restriction clauses and margin of appreciation represent the four legal limits that States use to adapt and mitigate the impact of human rights norms within national systems (see again R. Pisillo Mazzeschi, *Diritto internazionale* cit., pp. 65-81). This could undermine its full implementation, unless the derogations and exceptions to the protection of this right are interpreted restrictively, as required by the international bodies responsible for monitoring the actions of states and other relevant actors. It is hard to examine in detail each of these scenarios which, within the various regional and universal human rights protection systems, allow for restrictions on the full enjoyment of many human rights. It is worth noting that, for example, in Europe, the margin of appreciation is often invoked by states to justify legislative choices or judicial decisions inspired by the social and cultural traditions of each country. Similarly, in Africa, recourse to the so-called clawback clauses could lead to further discrimination against vulnerable groups within the local population. Furthermore, this rule must be interpreted systematically, considering the evolution of international rules and application practice, including international case law.

⁽¹⁴⁾ The constitutional courts of many states have reconstructed a dual effect for this category of obligations: negative and positive. The first aims to invalidate conflicting laws, while the second is supported using the principle of reasonableness, that is, an obligation to balance the implementation of the law with the fundamental principles of national constitutions (see L. D'Andrea, *Ragionevolezza e legittimazione del sistema*, Milano, 2005). Finally, being a social right, access to higher education cannot be totally compressed, since the state must reach at least an essential minimum level.

to implement this international obligation that stems from one of the most important treaties in the world, the ICESCR, and thus ensure a minimum level of protection that cannot be lifted ⁽¹⁵⁾.

Access to higher education is therefore a universal and complex obligation, an ‘open-ended’ fundamental norm that

⁽¹⁵⁾ See CESCR Committee, *General Comment n.3 – The Nature of States Parties’ Obligations* (Art. 2, para. 1 of the Covenant), UN Doc. E/1991/23. See also the *Report of the United Nations High Commissioner for Human Rights*, 2007, E/2007/82 – 25 June 2007 - para. 76: “the concept of the progressive realization of economic, social and cultural rights has acquired a specific meaning in international human rights law, informed notably by the work of the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the special procedures of the Human Rights Council. The concept refers to an immediate obligation of States parties to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, as well as the Convention on the Rights of Persons with Disabilities once it enters into force, to undertake *targeted measures to move as expeditiously and effectively as possible towards the full realization of economic, social and cultural rights*. Equally, the concept is seen to imply an assumption of the *impermissibility of deliberately retrogressive measures*, as well as a duty immediately to satisfy, as a matter of priority, minimum essential levels of economic, social and cultural rights (*core minimum obligations*)” (italics added). For a comment, see, among others, F. Costamagna, *Realizzazione progressiva dei diritti economici, sociali e culturali e migliore utilizzo delle risorse disponibili*, in *Diritti Umani e Diritto Internazionale*, 2008, p. 165 ff. This minimalist approach has been criticised as ineffective by S. Moyn, *Not Enough? Human rights in an Unequal World*, Harvard, 2018; ID., *The Last Utopia: Human Rights in History*, Harvard, 2010. *Contra*, among others, R. Perera, *Beyond the Minimalist Critique: An Assessment of the Right to Education in International Human Rights Law*, in *Netherlands Quarterly of Human Rights*, 2021, vol. 39(4), pp. 268-290, spec. p. 287 ff. According to Perera the approach and the work of UN Human Rights Bodies demonstrate that equality of educational opportunity has been a central concern for these bodies. For example, in *International Association for Autism-Europe (IAAE) v. France*, (Complaint no. 13/2002), 7 November 2003, the European Committee of Social Rights considered that France violated the *Revisited European Social Charter* because it failed to achieve sufficient progress in advancing the education of persons with autism. In detail, the ECSR clarified that a state’s obligation of progressive realisation is breached where measures did not enable the objective to be achieved *within a reasonable time, with measurable progress, and to an extent consistent with the maximum use of available resources* (para. 53, italics added). On the *European System of Social Rights* see G. Palmisano, *L’Europa dei diritti sociali. Significato, valore e prospettive della Carta sociale europea*, Bologna, Il Mulino, 2022, spec. p. 107.

requires the enactment of legislation, the implementation of judicial and administrative measures, and the adoption of financial, technical, educational, promotional and social measures ⁽¹⁶⁾.

The legal criteria governing this implementation are the adequacy of the means and the availability of resources. Consequently, a state will be internationally responsible if it adopts regressive measures; if it remains passive; if it does not use appropriate means or available resources; and if it does not comply with the minimum obligation to realize the essential level of the right to higher education ⁽¹⁷⁾.

According to international law scholars, judicial practice has consolidated the value of two guiding principles, namely the pre-eminence of the individual and the universality of this essential right. In line with this tendency, many authors have highlighted the close link between these rights and the protection of human dignity ⁽¹⁸⁾.

⁽¹⁶⁾ See K. Tomaševski, *Human rights obligations: making education available, accessible, acceptable and adaptable*, Right to Education Primers No. 3, Gothenburg, 2001. Access to higher education embodies a concept of progressive growth and empowerment for every individual. Building on the international recognition of this right as a human right, its holistic nature is emphasised, as it has the potential to improve and transform the economic, social and family circumstances in which a person lives.

⁽¹⁷⁾ See R. Pisillo Mazzeschi, *Diritto internazionale dei diritti umani* cit, p. 111-113. The A. use one example to explain a potential violation: the use of dehumanising teaching methods or educational materials which incite racial hatred. In this and similar cases judges would be competent to issue an injunction which prohibits these measures. It should also be remembered that the right to education must be justiciable, that is, that access to justice must be allowed for those who complain of violations of this right: see ECOWAS decision in *SERAP v. Nigeria* in which the court held that the child has a justiciable right to education under article 17 of the African Charter on Human and Peoples Rights. The case concerned the misappropriation of funds intended for basic education for children. For a comment, see A. J. Isokpan, E. Durojaye, *The Child's Right to Basic Education in Nigeria: A Commentary on the Decision in SERAP v. NIGERIA*, in *African Journal of International and Comparative Law*, 2018, pp. 639-648.

⁽¹⁸⁾ On the evolution of anthropological and philosophical foundations of the right to education in international law as a social and a liberal human right, see J. Delbrück, *The right to Education as an International Human Right*, in *German Yearbook of International Law*, 1992, pp. 92-104. The A. explains the meaning of education in a wider sense, such a "prerequisite for

Similarly, the necessity to embrace two pedagogies, respectively *Education for Sustainable Development* and *Human Rights Education*, has been recently proposed as a new social contract for modern democracies ⁽¹⁹⁾.

To summarize these brief introductory remarks, access to higher education should be considered as a hybrid right that encompasses the profound meaning of first-, second-, and third-generation rights ⁽²⁰⁾. Indeed, it facilitates the realization of other rights, restores the dignity of individuals and mitigates intersectional and gender-based discrimination. Although it is constantly threatened by environmental, economic and health crises and, more recently, by numerous conflicts, risking being compromised, sidelined and forgotten, it requires concrete and lasting action over time ⁽²¹⁾.

the human being to understand the world around and to find his or her identity as a human being endowed with a distinct personality and dignity” (p. 94). In Italian scholarship, see recently P. De Sena, *Dignità umana in senso statico e diritto internazionale*, in *Diritti Umani e diritto internazionale*, 2023, pp. 507-543, spec. p. 528 ff. For O. C. Edeji, *Intersections of the Right to Education and Human Dignity in International Human Rights Law: A Purpose-Based Analysis*, in *Laws*, 2025, 14, 33, “the ascription of inherent dignity to everyone justifies access to education”.

⁽¹⁹⁾ See S. Carney, C. Carty, *Pathways to change: The Transformative potential of human rights and sustainable development in and through education*, in *Prospects*, 2024, pp. 483-490.

⁽²⁰⁾ See K. D. Beiter, *Is the Age of Human Rights Really over - the Right to Education in Africa - Domestication, Human Rights-Based Development, and Extraterritorial State Obligations*, in *Georgetown Journal of International Law*, 2018, pp. 9-88.

⁽²¹⁾ The UNITAFRICA project in its own small way may only represent a drop in the ocean, but it is still water, and therefore life.

CHAPTER II

FROM LEGAL COMMITMENT TO PRACTICE: ADVANCING EQUITABLE ACCESS TO HIGHER EDUCATION THROUGH THE GLOBAL RECOGNITION OF QUALIFICATIONS

Carola Ricci *

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1. Introduction: The Global Shift in Recognition Approach Focused on Learning Outcomes and Substantial Qualifications

The internationalisation of higher education has evolved

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from a peripheral institutional policy into a structural imperative of global human rights law and sustainable development. Meanwhile, international student mobility depends on the legal framework and effective administrative implementation that govern the cross-border recognition of academic qualifications. Although the right to access higher education is guaranteed by human rights treaties, the effective application of such a right across international borders requires recognition conventions. Without a legal mechanism to convert an academic title or credit earned in State A into a recognized qualification in State B, cross-border mobility remains restricted, leaving the right to education practically ineffective for internationally mobile learners.

In this vein, recognition of academic qualification is not merely a procedural step: it is the fundamental guarantor of equitable access to higher education as a public good. Against this background, as structural collaborations between diverse higher education systems and international mobility intensify, the gap between legal commitment and administrative practice still remains too often to be filled-in. In this regard, the entry into force of the 2019 UNESCO *Global Convention on the Recognition of Qualifications concerning Higher Education* (Global Convention) on March 5, 2023, represents a watershed moment in international education law. ⁽¹⁾ It marks the formal transition from a nineteenth-century paradigm of “equivalence”, based on the rigid matching of curricula, to a modern “recognition” approach, focused on learning outcomes and substantial qualifications. As the first legally binding United Nations (UN) treaty on higher education with potentially global reach, the Global Convention operationalizes the right to higher education by establishing universal standards for fair, transparent, and non-discriminatory credential evaluation.

⁽¹⁾ Global Convention on the Recognition of Qualifications concerning Higher Education, 25 November 2019, 3441 UNTS 2, p. 10 [Global Convention]. In accordance with its Article XVIII, the Convention entered into force on 5 March 2023 and is in force among 41 States: see the status chart at <https://www.unesco.org/en/legal-affairs/global-convention-recognition-qualifications-concerning-higher-education#item-1> (last visited 8 June 2026).

This paper aims at providing a human rights law perspective on the Global Convention. It traces the applicable global and regional legal norms protecting access to higher education, briefly evaluates the procedural methodology of credential assessment, and examines the political, bureaucratic, and technical barriers to mobility. It explores the legal and practical implications of Italy's current status as a non-ratifying State, examining how staying outside this global conventional system affects academic cooperation with African States and institutions rapidly aligning themselves with modern international recognition frameworks.

2. The International Normative Framework: Is the Right to Education at All Stages of Life Also the Right to Appropriate Certification?

The right to higher education is not a mere policy objective or aspirational target; ⁽²⁾ it is a foundational human right, operating “as a multiplier, enhancing the enjoyment of all individual rights and freedom”, ⁽³⁾ firmly established under positive international law. Its codification spans a multi-layered network of universal treaties, ⁽⁴⁾ specialized

⁽²⁾ The architectural foundation of international education law rests on Article 26 of the Universal Declaration of Human Rights (UDHR, GA Res 217A (III), UN Doc. A/RES/217(III), 10 December 1948), which establishes that “higher education shall be equally accessible to all on the basis of merit”. While the UDHR originally served as a declarative instrument, its principles have achieved the status of customary international law and have been given binding treaty form through the subsequent UN and regional treaties.

⁽³⁾ These are the words of the former Special Rapporteur on the right to education, K. Tomaševski, *Removing Obstacles in the Way of the Right to Education (Right to Education Primers No. 1)*, 2001, p. 9.

⁽⁴⁾ The primary universal treaty governing this right is the International Covenant on Economic, Social and Cultural Rights (ICESCR, 16 December 1966, 993 UNTS 3, 7). Article 13(2)(c) mandates that: “Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.” This provision introduces a strict legal standard. Unlike primary education, which must be compulsory and free from the outset, the international law standard for higher education relies on a dual metric: individual capacity (merit and competence rather than economic or social

conventions protecting the most vulnerable, ⁽⁵⁾ and regional instruments, ⁽⁶⁾ that impose binding obligations on States to guarantee education is “available, accessible, acceptable and adaptable,” under the so called “4A” scheme. ⁽⁷⁾ In this respect, availability essentially refers to the availability of educational infrastructure. Accessibility is concerned with non-

status) and progressive realization toward free tuition. See among many others: B. Saul, D. Kinley & J. Mombray, *The International Covenant on Economic, Social and Cultural Rights. Commentary, Cases, and Materials*, 2014, p. 1084, and in the present volume for a specific comment, *supra* M. Distefano, chap. I.

⁽⁵⁾ The universal mandate of the protection of the right to education is reinforced by specialized human rights treaties designed to combat systemic discrimination against vulnerable groups. Among many, it is worth mentioning: the UNESCO Convention against Discrimination in Education (14 December 1960, 429 UNTS 93, p. 100), whose Article 4 imposes States Parties to make higher education equally accessible to all on the basis of individual capacity, explicitly banning any differentiation based on race, color, sex, language, religion, or nationality; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 18 December 1979, 1249 UNTS 13, p. 209), whose Article 10 ensures equal access to studies and the alignment of quality standards for both men and women in higher education; the Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3, p. 50), whose Art. 28(1)(c) binds States to make higher education accessible to all according to capacity; the Convention on the Rights of Persons with Disabilities, 13 December 2006, 2515 UNTS 3, p. 22), whose Art. 24(5) specifies that States Parties must ensure that persons with disabilities can access general tertiary education without discrimination and on an equal basis with others, driving the requirement for reasonable accommodation and accessible digital learning environments.

⁽⁶⁾ In the African Charter on the Rights and Welfare of the Child (11 July 1990, OAU Doc. CAB/LEG/24.9/49), pursuant to Article 11(c), access to higher education based on individual capacity and ability is protected; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador, 17 November 1988, OAS Treaty Series No. 69), in its Article 13(c) mirrors the ICESCR by requiring the progressive introduction of free higher education; the Revised European Social Charter (3 May 1996, ETS No. 163), under Art. 10(1), protects the right to vocational and higher university education based on individual aptitude; Article 2 Protocol No. 1 (20 March 1952) to the Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 UNTS 222 (amended by the provisions of Protocol No. 14 (CETS No. 194)) [ECHR]), generally stating that no person shall be denied the right to education.

⁽⁷⁾ See CESCR, General Comment No 13: The Right to Education (Article 13 of the Covenant), UN Doc E/C.12/1999/10 (8 December 1999), p. 6; K. Tomaševski, *Human Rights Obligations in Education: The 4-A Scheme*, 2006; B. Saul, D. Kinley and J. Mowbray, *supra* note 4, p. 1096.

discrimination, as well as physical and economic accessibility. Education must also be acceptable in that it must be relevant, culturally appropriate and of good quality. Adaptability requires that education be flexible to meet the needs of changing societies and individual students.

The right to education is a right of all people irrespective of age: “although the right to education is usually discussed in reference to the rights of the child, it is a right of all people at all stages of life” ⁽⁸⁾. Such a reading is supported by with the UN 2030 Agenda for Sustainable Development: ⁽⁹⁾ specifically, the Sustainable Development Goal 4 (SDG 4) aims to “ensure inclusive and equitable quality education and promote *lifelong* learning opportunities for all”. This is particularly relevant for higher education, which is generally meant to be provided to adults on the basis of their “capacity”, to be “assessed by reference to all their relevant *expertise* and *experience*” ⁽¹⁰⁾. Specifically, Target 4.3 SDG 4 explicitly binds the international community to “ensure equal access for all women and men to affordable and quality *technical, vocational* and *tertiary* education, including university, by 2030”. ⁽¹¹⁾

Under the *African Union’s Agenda 2063: The Africa We Want*, the right to access higher education is treated not just as a basic entitlement, but as a mandatory foundation for an “education and skills revolution” under *Anspiration 1 (A prosperous Africa based on inclusive growth and sustainable development)*. It sets specific, numeric milestones to force a dramatic increase in university and technical college admissions. ⁽¹²⁾ To ensure seamless higher education access

⁽⁸⁾ In fact, as Tristan McCowan points out, “if we uphold a general right to education it is arbitrary to create cut-off points... the entitlement must exist in some form throughout life”; T. McCowan, *Education as a Human Right: Principles for a Universal Entitlement to Learning*, 2013, p. 128.

⁽⁹⁾ *Transforming our world: The 2030 Agenda for Sustainable Development*, GA Res. 70/1, UN Doc. A/RES/70/1, 25 September 2015.

⁽¹⁰⁾ B. Saul, D. Kinley & J. Mombray, *supra* note 4, p. 1104, referring to the General Comment No. 13, 19 (emphasis added).

⁽¹¹⁾ *Transforming our world*, *supra* note 9, emphasis added.

⁽¹²⁾ Cf. *Agenda 2063, The Africa We Want*, adopted by the African Union (AU) in Addis Ababa (2013), available at <https://au.int/en/agenda2063/overview> (last visited 8 June 2026). The Agenda 2063 dictates

across the continent, the African Union (AU) prioritizes the Academic Mobility Scheme •a framework that harmonizes degree structures and legally protects students' rights to have their credits recognized across borders• alongside other key Agenda 2063 flagship projects designed to make university education physically and financially accessible to millions. Crucial to this effort is the African Virtual and E-University initiative, which uses digital and distance learning to provide guaranteed, affordable courses anywhere via broadband. ⁽¹³⁾

These common targets across continents connect human rights obligations directly to institutional capacity building, framing higher education as a *global public good*. Nonetheless, unlike secondary education, States can include conditions restricting access to higher education, including particular academic prerequisites (for example establishing quotas for admission and/or requiring applicants to pass entrance tests), proportionate to the legitimate aim of “achieving high level of professionalism, by ensuring a minimum and adequate educational level in universities running in appropriate conditions” ⁽¹⁴⁾. Against this background, is the State where the studies are completed obliged to deliver a certification allowing him/her to benefit of further opportunities of deepening their knowledge abroad and/or start working?

Life-long learning should be *per se* (i.e. intrinsically) the scope and aim of the right to education, no formal evidence of specific skills and knowledge gained being necessary or further required to the fulfilment of the right to education. Nonetheless, academic qualifications, such as diplomas and degrees, can serve as formal evidence of those specific skills and knowledge, granting individuals “positional benefits” that

that at least 30% of secondary school leavers must go directly into tertiary (higher) education, while for the 70% of students who do not enter traditional universities, it mandates that they must be provided with formal, high-quality Technical and Vocational Education and Training (TVET) at the tertiary level to ensure no student is left behind.

⁽¹³⁾ Among the flagship project, the Agenda also relies upon the Pan-African University (PAU), a network of regional institutes dedicated to boosting top-tier postgraduate research and curbing “brain drain” within Africa.

⁽¹⁴⁾ Cf. *Tarantino et al v Italy*, ECtHR Applications Nos. 25851/09, 29284/09 and 64090/09, 9 September 2013, para. 48.

facilitate further study, career enhancement, and social mobility. ⁽¹⁵⁾

There is no specific and uniform indication as to the inclusion of the right to certification into the right to education in international convention. At the regional level, nonetheless, the Article 2 Protocol No. 1 of the European Convention on Human Rights (ECHR) has been interpreted by the European Court sitting in Strasbourg (ECtHR) as including the right to obtain official recognition of completed studies. ⁽¹⁶⁾ Conversely, whether the International Covenant on Economic, Social, and Cultural Rights (ICESCR) encompasses a right to certification remains a subject of doctrinal debate, since the Committee has not decided yet on the issue. Critics argue that justifying a human right based on exclusive positional advantages contradicts the same core human rights values of equality and fairness. ⁽¹⁷⁾

However, it is hardly contestable that excluding the right to receive appropriate certification, upon demonstrating the specified education completed, would fundamentally undermine the basic objectives of equal access and the individual's capacity to realize all the rights for which the right of education is a "multiplier" pre-requisite. Further, as it has been noticed, "given the stratified nature of certification, the certification provided must be *appropriate to the particular knowledge and skills demonstrated*" ⁽¹⁸⁾.

⁽¹⁵⁾ J. Kotzmann, *The Human Rights-Based Approach to Higher Education: Why Human Rights Norms Should Guide Higher Education Law and Policy* (2018), 29, available online, <https://doi.org/10.1093/oso/9780190863494.001.0001>.

⁽¹⁶⁾ Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" v Belgium (Belgian Linguistic Case), ECtHR Applications Nos. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64), Judgment of 23 July 1968, paras. 3-5; *Kjeldsen, Busk Madsen and Pedersen v Denmark*, ECtHR Application No. Applications nos. 5095/71; 5920/72; 5926/72, Judgment of 7 December 1976, para. 52; *Velyo Velez v Bulgaria*, ECtHR Applications Nos. 16032/07, Judgment of 27 August 2014, para. 6.

⁽¹⁷⁾ Kotzmann, *supra* note 15, p. 30.

⁽¹⁸⁾ *Ibid*, 31 (emphasis added), where Kotzmann underlines that: "Absent certification, the capacity of the individual to realise the incidental (career enhancing and community developing) aspects of education is curtailed".

Consequently, a comprehensive interpretation of the right to higher education necessitates not only the provision of appropriate credentials but also a distinct right not to be unfairly denied the opportunity to achieve certification.

3. The UNESCO Qualification Recognition Conventions: From Regionalism to the Global Paradigm

While the right to access higher education is guaranteed by human rights treaties, the practical exercise of this right across international borders requires a secondary category of international law, specifically devoted to recognition of qualifications earned. Without a legal mechanism to convert an academic title or credit earned in State A into a recognized qualification in State B, cross-border mobility remains restricted. This renders the right to education practically ineffective for learners who are mobile across borders.

Beginning in the 1970s, UNESCO initiated a regionalized strategy to manage academic recognition, resulting in regional conventions across the globe. For Europe, this culminated in the *Convention on the Recognition of Qualifications concerning Higher Education in the European Region*, widely known as the Lisbon Recognition Convention. ⁽¹⁹⁾ The Lisbon framework introduced a crucial paradigm shift: qualifications must be recognized unless a domestic authority can prove “substantial differences” between the foreign qualification and the host country’s equivalent.

For Africa, this structural harmonization was pursued via the 1981 *Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in the African States* (Arusha Convention), later updated as the 2014 *Revised Convention*, known also as the Addis Convention. ⁽²⁰⁾

⁽¹⁹⁾ Convention on the Recognition of Qualifications concerning Higher Education in the European Region, 11 April 1997, 213 UNTS 222 [Lisbon Recognition Convention].

⁽²⁰⁾ The first *Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in the African States*, 5 December 1981, 1297 UNTS 101 [Arusha

While these regional instruments successfully harmonized qualification systems within specific continents, they lacked a unified international mechanism to manage inter-regional mobility, such as student flows traveling directly between the African Union Members' jurisdictions and the European Higher Education Area (EHEA).

The 2019 Global Convention addresses this inter-continental gap by linking regional conventions into a unified international framework. ⁽²¹⁾ The structural core of the Global Convention relies on the principles codified in its Article III, which mandates that individuals have a fundamental right to have their qualifications assessed through transparent, fair, timely, and non-discriminatory procedures.

Crucially, the treaty redefines evaluation from a rigid matching of curricula to an assessment of *competencies and learning outcomes achieved*. This framework shifts the sovereign prerogative of States from an entitlement to deny recognition to an obligation to recognize, placing the *burden of proof entirely on the host evaluating authority* to demonstrate the existence of a "substantial difference". ⁽²²⁾ The practical implementation of these standard procedures was formally codified globally in the Operational Guidelines for the uniform implementation of the Global Convention, adopted by the Intergovernmental Conference of States Parties in July 2025. ⁽²³⁾ They offer a valuable shared reference document "to guide reforms, support policy harmonisation and spark conversations [...] about how recognition contributes to broader goals such as mobility, talent attraction, partnership development and quality assurance" ⁽²⁴⁾.

Convention], and *Revised Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher*, 12 December 2014, 3422 UNTS 1 [Addis Convention].

⁽²¹⁾ S. Uvalić-Trumbić & J. Daniel, *The UNESCO Global Convention on Higher Education: A Milestone for Academic Mobility*, in *Higher Education Policy*, 2020, pp. 415-418.

⁽²²⁾ *Ibid.*, Art. III.

⁽²³⁾ UNESCO, *Global Convention on the Recognition of Qualifications Concerning Higher Education. Operational Guidelines*, Intergovernmental Conference of States Parties, First Extraordinary Session (June 2025), Document code ED/PLS/HED/2025/03 [Operational Guidelines], paras 4-8, available at <https://unesdoc.unesco.org/>.

⁽²⁴⁾ European Association for International Education (EAIE), *Global*

4. The Eight-Step Procedural Methodology for the Evaluation of Foreign Qualifications

To translate the Global Convention obligations into daily institutional practice, international admissions and recognition professionals should utilize an operational procedural workflow. This methodology could balance the sovereign right of a State to manage its educational quality standards with the applicant's right to a fair, objective, transparent, timely and justified decision on recognition by competent authorities, under an established uniform international assessment scheme.

4.1. Steps 1 to 3: Preliminary Workflow and Documentation Assessment

The initial phase of the evaluation process requires high procedural transparency. Responsibility for providing clear information is shared among National Information Centres (the ENIC-standards): applicants must be informed upfront of the evaluation criteria, required documentation, and processing timelines. ⁽²⁵⁾

The evaluation path changes based on the applicant's intent, distinguishing between subject-specific academic recognition (aimed at program admission or credit transfer) and system-based academic or professional recognition. ⁽²⁶⁾ To satisfy documentation protocols, authorities require upper secondary school leaving certificates, degree diplomas, and complete academic transcripts in their original language, accompanied

Recognition Convention: Why the Operational Guidelines matter, 8 April 2026, freely accessible at EAIE's official website: <https://www.eaie.org/resource/global-recognition-convention-why-the-operational-guidelines-matter.html>.

⁽²⁵⁾ UNESCO, *A Practical Guide – Implementing the Global Convention on the Recognition of Qualifications concerning Higher Education*, 2020 (Document code: ED-2020/WS/43 Rev., <https://doi.org/10.54675/CUVL2955>, available at <https://unesdoc.unesco.org/>, last visited 8 June 2026), Step 1 ('Information for applicants'), and under chap. 5, p. 26, providing for a list of useful resources in different regional context of application.

⁽²⁶⁾ *Ibid.* and see also UNESCO, *Operational Guidelines*, *supra* note 23, para. 12 ('Enhancing Transparency and Predictability').

by certified translations or secure electronic delivery, where available. ⁽²⁷⁾

4.2. Steps 4 to 5: Status of Awarding Institutions and Authenticity Verification

Evaluators must establish the official status of the awarding institution within its home education system. Only qualifications issued by institutions quality-assured by competent national authorities in the home country should be recognized. ⁽²⁸⁾

This step becomes complex in Transnational Education (TNE) arrangements or cross-border provision, where the learner and the degree-awarding institution reside in different jurisdictions. Trustworthy recognition systems must verify that the qualification is genuine and that the applicant is its rightful holder, balancing structural applicant interviews with targeted inquiries to issuing university registries or secure national verification databases. ⁽²⁹⁾

4.3. Steps 6 to 8: Substantial Differences and Learning Outcomes

The core evaluation that are indicated in the Global Convention is based on a holistic assessment of five structural elements: ⁽³⁰⁾

Level: Positioning the qualification within national and international qualifications frameworks;

Workload: Quantifying the volume of study using regional credit accumulation systems (such as ECTS or equivalent codes);

⁽²⁷⁾ UNESCO, *Practical Guide*, *supra* note 25, Steps 2-3 (Receipt and verification of applications).

⁽²⁸⁾ *Ibid.*, Step 4 (Status of the institution).

⁽²⁹⁾ *Ibid.*, Step 5 (Assessment of the qualification); see also UNESCO, *Operational Guidelines*, *supra* note 23, para. 34 (Transnational and Cross-Border Provision).

⁽³⁰⁾ S. Bergan, *Qualifications: Introduction to a Concept* (2007), p. 53; expanded upon in UNESCO, *Practical Guide*, *supra* note 25, Step 6 (Structural comparison).

Quality Assurance: Confirming the external institutional or programmatic controls applied by national accreditation bodies;

Profile: Analyzing the structural focus of the program (e.g., highly specialized professional tracks versus broad academic research tracks);

Learning Outcomes: Shifting the focus from simple credit-counting to evaluating whether the subject-specific and generic competencies achieved match those required for the desired activity. ⁽³¹⁾

Under Article V of the Global Convention, a difference in credit counts or curriculum design does not automatically justify non-recognition. ⁽³²⁾

A difference is considered a “substantial difference” only if it is significant enough that it would demonstrably prevent the applicant from succeeding in the desired activity. ⁽³³⁾ The first Practical Guide for the application of the General Convention, provided by UNESCO in 2020, offers two very useful example of non-substantial differences. The first one is related to a case of missing the prerequisite of documentation: if an applicant holds a verified, genuine PhD but cannot document their preceding Bachelor’s and Master’s degrees because the awarding university and its archives were destroyed, this lack of evidence is not a substantial difference, as the final degree itself proves the applicant’s competency. The second example is referred to the chronological age of a degree, which is not a substantial difference in itself because a qualification is earned for life. However, a subsequent admission can be refused if the applicant has failed to keep the prior knowledge and skills up to date through professional experience or further education. ⁽³⁴⁾

The procedure terminates with a formal decision communicated to the applicant, which must include explicit

⁽³¹⁾ UNESCO, *Operational Guidelines*, *supra* note 23, para. 22 (‘Reinforcing an Outcomes-Based Approach’).

⁽³²⁾ Global Convention, *supra* note 15, Art. V.

⁽³³⁾ UNESCO, *Practical Guide*, *supra* note 25, Step 7 (Substantial differences); Council of Europe & UNESCO, *Monitoring the Implementation of the Lisbon Recognition Convention: Final Report*, 2019, p. 22.

⁽³⁴⁾ UNESCO, *Practical Guide*, *supra* note 25, p. 23.

details regarding the legal procedures and timelines available to appeal the decision. ⁽³⁵⁾

5. Focus Area: Structural Challenges and Solutions for EU AU Learners Mobility

The Euro-African educational corridor presents distinct systemic challenges that complicate the implementation of universal recognition principles across asymmetric regional environments.

5.1. Political and Bureaucratic Hurdles

The primary barrier to international mobility often stems from political and bureaucratic friction rather than academic misalignment. National sovereignty concerns can cause domestic ministries to hesitate to align their recognition frameworks with an international treaty, resulting in fragmented regulations. To resolve these structural bottlenecks, higher education networks must engage in institutional diplomacy, utilizing platforms like the European Association for International Education (EAIE) and the Association of African Universities (AAU) to demonstrate that streamlined qualification systems prevent brain drain, attract global talent, and lower domestic administrative costs.

5.2. Transnational Education (TNE) Initiatives and E-Learning Frameworks

The growth of TNE arrangements •such as joint degrees, double degrees, and digital distance learning• challenges traditional, State-centric accreditation systems. When an African student completes an online or blended program offered by a European university while residing in an African State, establishing the regulatory home country responsible for quality assurance becomes complex. The mode of delivery

⁽³⁵⁾ *Ibid.*, Step 8 (The recognition decision).

should not in itself be a barrier to recognition if quality assurance standards are met and learning outcomes are achieved. The Global Convention and the Operational Guidelines support more flexible mobility schemes, virtual exchanges and globally distributed programmes. ⁽³⁶⁾

Countries should adopt secure, decentralized digital verification technologies and blockchain-based credentials. More importantly, international university networks must establish shared quality assurance benchmarks for cross-border delivery, ensuring that a TNE degree is automatically recognized as belonging to the official national higher education system of the issuing country. ⁽³⁷⁾

5.3. Substantive Equality: Recognition of Prior Learning (RPL) and Vulnerable Groups

True equity in access requires moving beyond traditional academic paths to embrace the Recognition of Prior Learning (RPL). This framework assesses and validates competencies gained through *informal learning*, ⁽³⁸⁾ *professional experience*, or *unfinished university studies*. RPL is essential for vulnerable groups, including displaced persons and refugees,

⁽³⁶⁾ Cf. UNESCO, *Operational Guidelines* (*supra* note 23), at paras. 34-36 (Transnational Education and E-Learning Frameworks), proposes a quick-action checklist for the recognition of online and cross-border qualifications, requiring the States to: i) remove policies that treat mode of delivery alone as grounds for non-recognition; ii) assess non-traditional learning modes using the same criteria as traditional modes, provided comparable quality assurance mechanisms are in place; iii) develop methodology for evaluating quality assurance of programmes delivered through non-traditional modes; iv) for cross-border education and international joint degrees, assess these using the same criteria as qualifications acquired in a single country; v) train admissions staff on verifying the legitimacy of transnational education providers and joint/dual degree programmes; vi) use authoritative databases, and comprehensive resources to obtain information regarding institutional status.

⁽³⁷⁾ *Ibid.*

⁽³⁸⁾ The same Global Convention, under Article I (Section I. Definition of Terms) is offering a definition of informal learning as “learning which occurs outside the formal education system and which results from daily life activities related to work, family, local community, or leisure”.

who may lack formal paper trails due to conflict or institutional collapse. ⁽³⁹⁾

In these scenarios, evaluators should utilize alternative assessment models as suggested in Article VII of the Global Convention, such as the *European Qualifications Passport for Refugees* (EQPR) or the *UNESCO Qualifications Passport for Refugees and Vulnerable Migrants* (UQP) methodology. ⁽⁴⁰⁾ This approach combines available background documentation with structured interviews conducted by credential evaluation specialists to reconstruct an applicant's academic profile, enabling access to further studies or the labour market even when formal documentation is missing. ⁽⁴¹⁾

6. Ratification Status of the Global Convention in the in the European-African Educational Space: Waiting for Italy

A critical legal issue is the uneven adoption of the Global Convention by the European and African educational area, and namely in the Italy-African corridor. While the treaty entered internationally into force in March 2023, Italy has not yet ratified the Global Convention, at the moment still remaining

⁽³⁹⁾ *Ibid.*, para. 28 (Recognition for Applicants Lacking Complete Documentation).

⁽⁴⁰⁾ L. Lantero & C. Finocchietti, *Recognising Refugee Qualifications for Access to Higher Education*, in Sameerah Tawfeeq Saeed & Min Zhang (eds), *Global Perspectives on the Difficulties and Opportunities Faced by Migrant and Refugee Students in Higher Education*, 2023, chap. 3, p. 57, <https://doi.org/10.4018/978-1-6684-7781-6.ch003>.

⁽⁴¹⁾ UNESCO, *Operational Guidelines*, *supra* note 23, paras 29-31 (Alternative Assessment Models for Displaced Persons), providing another quick-action checklist in order to support refugees and displaced learners effectively; host institutions should follow these distinct steps: i) designate and train dedicated staff to handle applications from displaced learners with appropriate sensitivity; ii) establish formal guidelines to assess applicants even when they lack official documentary evidence of their qualifications; iii) implement flexible evaluation methods – such as structured interviews, questionnaires, competency reviews, or portfolios – when traditional verification is impossible or unreliable; iv) create temporary pathways that allow students to begin their studies while their qualifications are still undergoing assessment; v) transparently document these alternative procedures so applicants clearly understand what non-traditional evidence they need to provide.

out of the uniform system adopted by over 41 States that have aligned themselves globally with this legal framework.

An analysis of the current States Parties to the Global Convention shows a clear divergence in geopolitical alignment. Different European (including non-EU) States have already integrated global recognition workflows into their national admission structures. Ratifications include major higher education systems, such as France, Finland, Sweden, Norway, the United Kingdom, Romania, Slovakia, Lithuania, Estonia, Croatia, Slovenia, and the Holy See.

As far as for African partners are concerned, a growing coalition of African nations has embraced the treaty, including South Africa, Senegal, Côte d'Ivoire, Cabo Verde, Djibouti, Guinea, Tunisia, and Zambia. This seems to reflect a shared interest in urging the connection of the Revised Addis Convention with the global educational context.

Italy's decision to still remain outside the Global Convention could create several structural disadvantages for its higher education sector, particularly regarding academic mobility with Africa:

Asymmetry in Recognition Frameworks: Italy remains bound by the regional Lisbon Recognition Convention for the European area. However, in its relations with African States, Italy cannot utilize the universal principles of the Global Convention. This leaves Italian university admissions offices without a uniform, treaty-backed mechanism to handle credentials from modernizing African systems, resulting in an over-reliance on slow, fragmented, and discretionary equivalence procedures (*equipollenza*);

Competitive Disadvantage for Italian Universities: African students seeking international mobility are incentivized to choose higher education institutions in ratifying European States like France or the United Kingdom. In those jurisdictions, their degrees are evaluated under a transparent, outcome-based, and timely global standard. Italian universities risk being perceived as administratively closed or bureaucratic, which can hinder the recruitment of top-tier African academic talent;

Undermining Transnational Education (TNE) Initiatives: for strategic Euro-African academic initiatives, Italy's non-ratification creates an operational paradox. While Italian

universities spend significant resources building capacity and establishing joint educational platforms with African partners, the domestic legal framework fails to provide a streamlined pathway to recognize the qualifications resulting from these collaborations. This contradiction undercuts the long-term sustainability of international cooperation;

Exclusion from Global Governance Networks: by not ratifying it, Italy loses its voting seat and influence within the Intergovernmental Conference of States Parties to the Global Convention. This prevents Italian experts from shaping the global implementation guidelines, digital credential standards, and operational tools that are redefining international student mobility.

7. Policy Recommendations for Cross-Border Higher Education as a Common Good

The transition of the right to higher education from an abstract legal commitment into an inclusive global practice requires a robust international legal infrastructure. The Global Convention provides this architecture, shifting credential evaluation from an insular exercise of administrative gatekeeping to a collaborative, human-rights-driven tool for global mobility.

To maximize the impact of international academic networks, the following strategic interventions seems to be desirable:

Italian academic institutions, rectoral committees, and international networks should actively convince the Italian government to ratify the Global Convention, bringing Italy into alignment with the modern global standard;

University admissions offices should modernise outdated or overly rigid rules based on input measures like credit hours and detailed content, promoting fairness and facilitating collaboration across diverse higher education systems toward the assessment of core learning outcomes and competencies, as mandated by Article III of the Convention and further reinforced in the Operational Guidelines, preferring an outcomes-based approach that evaluates what learners know and can do, rather than relying

on formal features such as programme duration or delivery mode; ⁽⁴²⁾

Higher education systems must build dedicated structures for the Recognition of Prior Learning (RPL) and adopt alternative toolkits •such as Qualifications Passports• to support refugees and displaced learners; ⁽⁴³⁾

Academic alliances should invest in decentralized digital credentialing and verification networks to streamline authentication, lower applicant costs, and eliminate administrative delays.

By proactively addressing these procedural and legislative challenges, the international academic community can fulfill its legal obligations, transforming higher education into an accessible global public good, while promoting inclusivity and diversity. Embracing a standardised recognition system can in fact provide equal opportunities to students from different educational backgrounds as well as displaced students, lessening the potential for discrimination based on nationality and encouraging institutions to appreciate the value of diverse academic experiences. ⁽⁴⁴⁾

⁽⁴²⁾ Global Convention, *supra* note 15, Art. III; UNESCO, *Operational Guidelines*, *supra* note 23, para. 24.

⁽⁴³⁾ UNESCO, *Operational Guidelines*, *supra* note 17, para. 28.

⁽⁴⁴⁾ EAIE, *Recognising qualifications across the globe: updates from UNESCO*, 4 September 2023, available on the EAIE's official website: <https://www.eaie.org/resource/global-convention-recognition-qualifications.html> (last visited 8 June 2026). The useful quick-action checklist for admissions/recognition office staff is also worthy of mention. This checklist should be guided by the principle that substantial differences must relate to whether an applicant would likely be prevented from succeeding. In this vein, the evaluators should take the following steps: i) implement an outcomes-based approach rather than using input measures such as credit hours or programme length; ii) clearly map the programme learning outcomes to enable meaningful comparisons; iii) develop assessment criteria to evaluate whether applicants can succeed in the desired activity; iv) review existing policies to remove outdated restrictions based solely on programme duration or delivery mode; see EAIE, *Global Recognition Convention*, *supra* note 24.

CHAPTER III

THEY MUST LEAVE “ABAHAMBE”. THE IMPACT OF ANTI-MIGRANT PROTESTS ON IMMIGRANT CHILDREN’S RIGHTS TO EDUCATION IN SOUTH AFRICA

Siphesihle Mbatha *

SUMMARY: 1. Introduction. – 2. Defining Refugee and Asylum Seekers Under International Law. – 3. Refoneke Case from The High Court to The Constitutional Court Discussion. – 3.1. Background of the Case. – 3.2. In the Constitutional Court. – 4. The effect of this judgement on the livelihoods of refugees and asylum seekers in south Africa. – 5. The Right to Choose Profession. – 5.1. Background of this Case – 6. Is the Restriction of Refugees and Asylum Seekers Rights to Education, Work and Choose Profession Permissible Under International Law? Defining Monism and Dualism Approach in Refugee Law. – 7. Refugees And Asylum Seekers Rights to Education, Work and Trade Under International Law. – 8. Critique of the Slogan Abahambe “They Must Leave” Under International Law. – 9. Conclusion.

1. Introduction

Xenophobia remains a deeply entrenched issue in post-apartheid South Africa, manifesting in periodic outbreaks of violence and discrimination against immigrants, particularly refugees and asylum seekers. ⁽¹⁾ Immigrants are frequently subjected to harassment, intimidation, and calls to “They must

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⁽¹⁾ K. S. Tarisiyi and S Manik, *An unabating challenge: Media portraying of xenophobia in South Africa*, in *Cogent Art and Humanities*, 2020, pp. 1-2.

leave”, exemplified by the IsiZulu slogan “*abahambe*”. This slogan is popularized by political leaders such as Patriotic Alliance Leader Gayton McKenzie and chanted during anti-immigrant protest. ⁽²⁾

Anti-immigrants’ groups such as Operation Dudula have organized vigilante actions blaming immigrants for crime, unemployment, drug issues, and overburdened public services. ⁽³⁾ Operation Dudula members have raided foreign owned businesses, blocked access to clinics and hospitals for immigrants, and advocates for South Africans only policies in employment and services. ⁽⁴⁾ Recently in *Treatment Action Campaign and Others v Facility Manager Yeoville Clinic and Other* ⁽⁵⁾, Wilson J described the treatment of immigrants in South Africa as:

“One of the greatest threats to democracy and human rights we presently face. Leaving aside the fact that it feeds on that most toxic of human instincts: the hatred of the other, forgetting that it is animated by the fantasy that the presence of foreign nationals in South Africa immiserates the lives of its citizens; and overlooking that, in its practiced form, it is merely another kind of racism (for White foreigners seldom have much to fear), the problem with xenophobia is its misdirection. If we can blame foreigners, we need not look to ourselves for the solutions to the poverty and inequality that scar our society. So long as foreigners are there to take unearned responsibility, the structure of violence, fear and deprivation which bedevil the constitutional project may be left unexamined.” ⁽⁶⁾

These actions, often escalating to violence or intimidation, have spread to all South African Provinces. Immigrants are

⁽²⁾ R. William, *The ex-gangster who has become South Africa’s sport minister*’ available at <https://www.bbc.com/news/articles/crgglkddlgr0> , accessed on 30 December 2025.

⁽³⁾ ANM Mawere and Oliver Mtapuri, *Operation Dudula, Xenophobic Vigilantism and Sovereignty in Twenty-First Century South Africa* Langaa Research and Publishing CIG 153.

⁽⁴⁾ *Ibid.*

⁽⁵⁾ *Treatment Action Campaign and Others v Facility Manager Yeoville Clinic and Others* (2025-181893) [2025] ZAGPJHC 1310.

⁽⁶⁾ *Treatment Action Campaign and Others v Facility Manager Yeoville Clinic and Others* (2025-181893) [2025] ZAGPJHC 1310 para 1.

routinely scapegoated for South Africa’s socio-economic challenges, including high crime rates and unemployment. Political rhetoric from various parties, including the African National Congress (ANC) and Patriotic Alliance (PA), has reinforced narratives linking migrants to crime and service strain, despite lacking sufficient data on these stats. ⁽⁷⁾ Official statistics in South Africa shows foreign nationals comprise about 7 to 8 percent of the population but only 6-10 percent of prison inmates, indicating they commit crimes at rates like or lower than citizens. ⁽⁸⁾

In response to political pressure, the South African government have imposed stricter immigration controls. Refugees and asylum seekers in terms of the South African Constitution enjoy broader protection for the rights to education and work but due to these restrictions they face bureaucratic hurdles. ⁽⁹⁾ Regulated professions such as law often require citizenship or permanent residency for full practice. ⁽¹⁰⁾ The *Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others* [2022] ZACC 29 (*Rafoneke*) case exemplifies these barriers. ⁽¹¹⁾ This case is crucial in relation to the *abahambe* slogan and the impact of restrictions on immigrants’ right to higher education in South Africa and will be discussed broadly later in this paper. While immigrants form a larger group overall, this paper focuses exclusively on refugees and asylum seekers. There will be a discussion of the definitions of refugees and asylum seekers, as well as their protections under international law and South African law in relation to the right to education and the right to work, as it is argued in this paper that these rights are closely interlinked and you cannot discuss the other without involving another.

⁽⁷⁾ S. Majadibodu, *Abahambe: Gayton Mckenzie demands deportation of illegal foreigners, citing VAT losses to SA’s economy*, 30 December 2025.

⁽⁸⁾ *Ibid.*

⁽⁹⁾ Reference is made to the Refugee Amendment Act 11 of 2017.

⁽¹⁰⁾ *Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others* [2022] ZACC.

⁽¹¹⁾ *Ibid.*

2. Defining Refugee and Asylum Seekers Under International Law

Refugees and asylum seekers are vulnerable and marginalized groups. They are forced to flee their countries of origin due to numerous factors such as the fear of persecution, violation of human rights and conflicts. Although refugee and asylum seekers are protected under the same international law instruments, they are two distinctive groups of people. For the purposes of this paper, it is important to differentiate between these vulnerable groups. The 1951 Convention and Protocol Relating to the Status of Refugees defines refugees as a person:

Owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or

Owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part or the whole of his or her place of habitual residence in order to seek refuge elsewhere; or

Is a dependant of a person contemplated (a) or (b) ⁽¹²⁾

An asylum seeker on the other hand is described as a person who has fled his/her own country and sought protection in an alternative state. ⁽¹³⁾ It is important to note that an individual first become an asylum seeker and later becomes a refugee once his or her asylum application is granted. ⁽¹⁴⁾ South Africa (SA) is considered as one of the progressive nations when it comes to the protection of refugees and asylum

⁽¹²⁾ 1951 Convention Relating to the Status of Refugees available at <https://www.unhcr.org/3b66c2aa10> , accessed on 22 November 2025.

⁽¹³⁾ UNHCR The UN Refugee Agency, available at <https://www.unhcr.org/about-unhcr/who-we-protect/asylum-seekers>, accessed on 17 February 2026.

⁽¹⁴⁾ F. Tessitore and G Margherita, *From struggle to hope: A gender-sensitive investigation on Nigerian male and female asylum seekers' experiences*, in *Journal of Prevention & Intervention in the Community*, 2022, p. 375.

seekers rights. The country also receives a huge number of asylum applications in Africa. However, the country is unable to process these applications properly. ⁽¹⁵⁾ Many refugees and asylum seekers have been in the country for numerous years and yet their asylum applications have not been granted. ⁽¹⁶⁾ The COVID-19 pandemic exacerbated the challenges faced by asylum seekers. At the beginning of the lockdown in March 2020, all Refugee Reception Offices (RRO) were closed. ⁽¹⁷⁾ Asylum seekers who arrived at the beginning of the pandemic did not have an office to apply for asylum status. ⁽¹⁸⁾ The closure of RRO placed refugees and asylum seekers at a risk of being arrested, detained, or deported. ⁽¹⁹⁾

Refugee and asylum seekers challenges vary from each country. In South Africa, challenges are mostly xenophobic. They face discrimination and are often attacked in many communities due to misconceptions surrounding them. In some areas in South Africa they are even killed. ⁽²⁰⁾ Xenophobia continues to be a major challenge in South Africa. Socio economic challenges such as high unemployment rate plays a significant role in the continuous rise of these xenophobic attacks. ⁽²¹⁾ Refugees and asylum seekers are accused of taking South African citizen's jobs and for accepting lower wages. ⁽²²⁾ Further, these vulnerable and

⁽¹⁵⁾ BBC NEWS ‘Refugees in South Africa: ‘Give us a place where we can be safe’ available at <https://www.bbc.com/news/world-africa-51284576> accessed on 22 November 2025.

⁽¹⁶⁾ K. Moyo, K. R. Sebba and F. Zanker, *Who is watching? Refugee protection during a pandemic- responses from Uganda and South Africa*, *Comparative Migration Studies*, 2021, p. 3.

⁽¹⁷⁾ T. Washinyira, Refugees who arrived after lockdown have no way to apply for asylum’ available at <https://www.groundup.org.za/article/refugees-who-arrived-after-march-2020-risk-arrest-and-deportation/>, accessed on 24 November 2025.

⁽¹⁸⁾ *Ibid.*

⁽¹⁹⁾ *Ibid.*

⁽²⁰⁾ K. Moyo and F. Zanker, *No hope for the ‘Foreigners’: The Conflation of Refugees and Migrants in South Africa*, in *Journal of Immigrant and Refugee Studies*, 2022, p. 261.

⁽²¹⁾ C. Dewa, Migrants scapegoated in South Africa as inequality and unemployment surge, 23 October 2025.

⁽²²⁾ *Ibid.*

marginalized groups are also accused of committing serious crimes, including kidnapping, robberies and selling of drugs. ⁽²³⁾

While it is true that some of the refugees and asylum seekers commits these crimes, most of them come to South Africa in protection of their lives and for better opportunities. As discussed above, South Africa is known as the most progressive country in terms of refugee law and protection of individuals rights which also includes refugees and asylum seekers. ⁽²⁴⁾ The rights enshrined in the Bill of Rights in the South African Constitution are applicable to everyone with exception to those that applies to citizens only. ⁽²⁵⁾

In line with the South African Constitution, the Refugee Act guaranteed numerous rights to refugees and asylum seekers to refugees and asylum seekers such as the rights to education and work. ⁽²⁶⁾ Notably, the right to freedom of choose profession is only guaranteed to citizens. ⁽²⁷⁾ While the Constitution guarantees this right to citizens, it does not mean that refugees and asylum seekers are completely restricted from enjoying this right. When human dignity is violated, refugees and asylum seekers are entitled to this right. ⁽²⁸⁾

Contrary to the Constitutional protection and the Refugee Act, on 2 August 2022 the highest court in South Africa, the Constitutional Court (CC) delivered a judgement which imposes restrictions on refugees and asylum seekers rights to work and to choose profession which ultimately impose restrictions on their right to education. ⁽²⁹⁾ As discussed above, when employment is the only available means for survival, the restriction of the right to work violate

⁽²³⁾ *Ibid.*

⁽²⁴⁾ J. Crush, *The dark side of democracy: migration, xenophobia and human rights in South Africa*, in *International Migration*, 2000, p. 104.

⁽²⁵⁾ The Constitution of the Republic of South Africa, 1996.

⁽²⁶⁾ Section 22 of the Refugee Amendment Act 11 of 2017.

⁽²⁷⁾ Section 22 of the Constitution of the Republic of South Africa, 1996.

⁽²⁸⁾ *Ibid.*

⁽²⁹⁾ *Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others* [2022] ZACC 29.

individual’s dignity. ⁽³⁰⁾ It is important to note that both the Constitution and the Refugee Act do not impose restrictions on these rights.

The CC in *Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others* [2022] ZACC 29 held that individuals without permanent residency cannot practice and work as attorneys or advocate in South Africa even if they studied in South African universities. ⁽³¹⁾ Of course, law graduates often pursue diverse careers beyond traditional legal practice. That said, in modern South Africa, a growing number of those opportunities especially in the academic sector, corporate, compliance and in-house legal roles demand that applicants be formally admitted as attorneys or advocates. For this reason, obtaining a law degree may not always be the most suitable or necessary path for refugees and asylum seekers. This suggest that in the new Constitutional democracy, refugees and asylum seekers intending to pursue law degrees and practice as lawyers are restricted from doing so as their degrees will add no value. This is in contrast with section 29 of the South African Constitution which guarantees the right to education to everyone and does not impose any restrictions on it. ⁽³²⁾ Further, the right to education, right to work and the right to choose profession are interlinked. The restrictions imposed on the refugees and asylum seekers’ rights to choose profession may also restrict their right to work and the right to education. As a result, their constitutional rights are violated.

Although the matter was ultimately adjudicated by the Constitutional Court, proceedings commenced in the Free State High Court. At that stage, the applicants were only Lesotho Nationals who had obtained their law degrees and completed articles of clerkship in South Africa. ⁽³³⁾ One applicant, who had married a South African citizen and had been granted a spousal visa, was nevertheless denied

⁽³⁰⁾ *Minister of Home Affairs and Others v Watchenuka and Others* (010/2003) [2003] ZASCA 142; [2004] 1 All SA 21 (SCA) para 32.

⁽³¹⁾ *Ibid.*

⁽³²⁾ Section 29 of the Constitution of the Republic of South Africa.

⁽³³⁾ *Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others* [2022] ZACC 29 para 10.

enrolment as a legal practitioner despite fulfilling the training requirements in South Africa. ⁽³⁴⁾ On appeal to the Constitutional Court, the case attracted further interested parties, including refugees. Among them was Mr Chakanyuka, who had fled Zimbabwe owing to economic collapse and political instability. ⁽³⁵⁾ Having completed his law degree in South Africa and successfully undertaken a year of pupillage aimed at admission as an advocate, he was refused enrolment solely on the basis of his refugee status. ⁽³⁶⁾ These cases will be discussed below.

3. Refoneke Case from The High Court to The Constitutional Court Discussion

3.1. Background of the Case

The applicants in this case approached the Free State high court for an order declaring section 24(2)(b) ⁽³⁷⁾ and 115 ⁽³⁸⁾ of the Legal Practice Act invalid. ⁽³⁹⁾ They argued that these sections exclude individuals who are not citizens/have no permanent residence to practice law in South Africa. ⁽⁴⁰⁾ Section 24(1) and (2) of the LPA stipulates that:

A person may only practice as a legal practitioner if he or she is admitted and enrolled to practice as such in terms of this Act.

The High Court must admit to practice and authorize to be enrolled as a legal practitioner, conveyancer or notary or any person who, upon application, satisfies the court that he or she-

Is duly qualified as set out in section 26;

Is a

⁽³⁴⁾ *Ibid.*

⁽³⁵⁾ *Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others* [2022] ZACC 29 para 12.

⁽³⁶⁾ *Ibid.*

⁽³⁷⁾ Section 24 (2) (b) of the Legal Practice Act 28 of 2014.

⁽³⁸⁾ Section 115 of the Legal Practice Act 28 of 2014.

⁽³⁹⁾ *Rafoneke v Minister of Justice and Correctional Services and Others* (3609/2020) [2021] ZAFSHC 229; [2022] 1 All SA 243 (FB); 2022 (1) SA 610 (FB).

⁽⁴⁰⁾ Section 24 (2) (b) of the Legal Practice Act 28 of 2014.

South African citizen; or

Permanent resident in the Republic;

Is a fit and proper person to be so admitted; and

Has served a copy of the application on the Council, containing the information as determined in the rules within the time period determined in the rules ⁽⁴¹⁾

On the other hand, section 115 stipulates that:

“Any person who, immediately before the date referred to in section 120 (4), was entitled to be admitted and enrolled as an advocate, attorney, conveyancer or notary is, after that date, entitled to be admitted as such in terms of this Act.” ⁽⁴²⁾

The applicants in this matter were Lesotho nationals who both Studied and completed their Bachelor of Laws (LLB) degree at the University of Free State. ⁽⁴³⁾ Upon completing their studies, they began their articles of clerkship and successfully passed their exams. ⁽⁴⁴⁾ They applied to be admitted and enrolled as the attorneys however their applications were dismissed because they were not South African Citizens nor permanent residents. ⁽⁴⁵⁾ The applicant argued that both section 24(2)(b) and section 115 of the LPA discriminated unfairly against them on the basis that it differentiates between South African citizens, permanent residents and foreigners. ⁽⁴⁶⁾ Further, the applicants argued that section 115 of the LPA also discriminates against them since it allows foreign individuals from certain countries to be admitted and practice in South Africa whereas they are not allowed despite completing their degrees in the country. ⁽⁴⁷⁾

The court found that the discrimination in section 24 (2)(b)

⁽⁴¹⁾ Section 24 of the Legal Practice Act 28 of 2014.

⁽⁴²⁾ Section 115 of the Legal Practice Act 28 of 2014.

⁽⁴³⁾ *Rafoneke v Minister of Justice and Correctional Services and Others* (3609/2020) [2021] ZAFSHC 229; [2022] 1 All SA 243 (FB); 2022 (1) SA 610 (FB) para 6.

⁽⁴⁴⁾ *Ibid.*

⁽⁴⁵⁾ *Ibid.*

⁽⁴⁶⁾ *Rafoneke v Minister of Justice and Correctional Services and Others* (3609/2020) [2021] ZAFSHC 229; [2022] 1 All SA 243 (FB); 2022 (1) SA 610 (FB) para 23.

⁽⁴⁷⁾ *Rafoneke v Minister of Justice and Correctional Services and Others* (3609/2020) [2021] ZAFSHC 229; [2022] 1 All SA 243 (FB); 2022 (1) SA 610 (FB) para 24.

of the LPA was fair. ⁽⁴⁸⁾ In determining fairness the court acknowledged the hardship faced by refugees, asylum seekers and other individuals with no permanent residency. ⁽⁴⁹⁾ The court emphasized that there are many unemployed law graduates. ⁽⁵⁰⁾ Allowing foreigners to practice law would place South African graduates at a disadvantage. ⁽⁵¹⁾ However, the court declared section 24(2) unconstitutional and invalid since it did not allow foreigners to be admitted and enrolled as non-practicing legal practitioners. ⁽⁵²⁾

3.2. *In the Constitutional Court*

On appeal, the CC dismissed the High Court decision which declared that section 24(2)(b) and section 115 of the LPA unconstitutional and invalid. ⁽⁵³⁾ It is important to note that there were many cases with a similar issue and their applications were consolidated. ⁽⁵⁴⁾ These cases also included applicants who completed their Bachelor of Laws (LLB) degrees in South Africa. ⁽⁵⁵⁾ Interest parties with interest to assist the court were too allowed to join the proceedings. ⁽⁵⁶⁾ The interested parties (*Amici Curiae*) were the Scalabrini

⁽⁴⁸⁾ *Rafoneke v Minister of Justice and Correctional Services and Others* (3609/2020) [2021] ZAFSHC 229; [2022] 1 All SA 243 (FB); 2022 (1) SA 610 (FB) para 115.

⁽⁴⁹⁾ *Rafoneke v Minister of Justice and Correctional Services and Others* (3609/2020) [2021] ZAFSHC 229; [2022] 1 All SA 243 (FB); 2022 (1) SA 610 (FB) para 103.

⁽⁵⁰⁾ *Ibid.*

⁽⁵¹⁾ *Rafoneke v Minister of Justice and Correctional Services and Others* (3609/2020) [2021] ZAFSHC 229; [2022] 1 All SA 243 (FB); 2022 (1) SA 610 (FB) para 104.

⁽⁵²⁾ *Rafoneke v Minister of Justice and Correctional Services and Others* (3609/2020) [2021] ZAFSHC 229; [2022] 1 All SA 243 (FB); 2022 (1) SA 610 (FB) para 106.

⁽⁵³⁾ *Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others* [2022] ZACC para 105.

⁽⁵⁴⁾ *Rafoneke v Minister of Justice and Correctional Services and Others* (3609/2020) [2021] ZAFSHC 229; [2022] 1 All SA 243 (FB); 2022 (1) SA 610 (FB) para 2.

⁽⁵⁵⁾ *Rafoneke v Minister of Justice and Correctional Services and Others* (3609/2020) [2021] ZAFSHC 229; [2022] 1 All SA 243 (FB); 2022 (1) SA 610 (FB) para 16.

⁽⁵⁶⁾ *Ibid.*

Centre of Cape Town, the International Commission of Jurist(ICJ) and the Pan African Bar Association of South Africa(PABASA). ⁽⁵⁷⁾

Here the LPC also argued that it regulates admission to the legal profession in line with section 22 of the constitution. ⁽⁵⁸⁾ According to the LPA, this section entitled them to differentiate between citizens, permanent residents and foreign nationals. ⁽⁵⁹⁾ This section stipulates that:

“Every citizen has the right to choose their trade, occupation or profession freely. The practice of trade, occupation or profession may be regulated by law.” ⁽⁶⁰⁾

Further, the LPC also relied on the *Union of Refugee Women* ⁽⁶¹⁾ and *Affordable Medicine Trust* ⁽⁶²⁾ cases for precedents. The LPC argued that the Constitution does not guarantee refugees and other foreigners the right to choose vocation in terms of section 22 of the Constitution. ⁽⁶³⁾ Furthermore, the LPC argued that section 22 of the Constitution guarantees them the right to regulate the legal practice in an “objective manner that is related to a legitimate government purpose”. ⁽⁶⁴⁾

Notably, all amici curiae parties supported the applicants. Scalabrini correctly argued that refugees and asylum seekers a vulnerable and a marginalized group who often face challenges in South Africa such as unemployment and xenophobic attacks. ⁽⁶⁵⁾ They argued that the restriction of

⁽⁵⁷⁾ *Ibid.*

⁽⁵⁸⁾ *Rafoneke v Minister of Justice and Correctional Services and Others* (3609/2020) [2021] ZAFSHC 229; [2022] 1 All SA 243 (FB); 2022 (1) SA 610 (FB) Para 59.

⁽⁵⁹⁾ *Ibid.*

⁽⁶⁰⁾ Section 22 of the Constitution of the Republic of South Africa, 1996.

⁽⁶¹⁾ *Union of Refugee Women v Director: Private Security Industry Regulatory Authority* [2006] ZACC 23; 2007 (4) SA 395 (CC); 2007 (4) BCLR 339 (CC).

⁽⁶²⁾ *Affordable Medicines Trust v Minister of Health* [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC).

⁽⁶³⁾ *Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others* [2022] ZACC para 60.

⁽⁶⁴⁾ *Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others* [2022] ZACC para 61.

⁽⁶⁵⁾ *Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others* [2022] ZACC para 65.

refugees and asylum seekers right to work under Section 24 and 115 of the LPC with perpetuate xenophobia and it discriminates against these vulnerable groups. ⁽⁶⁶⁾ Further, this organization urged the CC to consider section 22 and 27 of the Refugee Act 130 of 1998 which guarantees refugees and asylum seekers the rights to work without imposing restrictions. ⁽⁶⁷⁾

The second *amici curiae*, the ICJ argued that South Africa is signatory to numerous international instruments which guarantees refugees and asylum seekers the right to work. ⁽⁶⁸⁾ These instruments include the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights (African Charter). ⁽⁶⁹⁾ The ICJ also argued that South Africa is obliged under international law to ensure that refugees, asylum seekers and other foreigners are not discriminated. ⁽⁷⁰⁾ The role of international law and international instruments will be discussed later in this chapter.

Lastly, the Pan African Bar Association of South Africa (PABASA) argued that the restriction of refugees, asylum seekers and other foreigners right to work under section 24 and section 115 of the LPA infringes the rights to equality and human dignity which are guaranteed to everyone in terms of the Bill of Rights enshrined in the South Africa Constitution. ⁽⁷¹⁾ Further, PABASA argued that this restriction is also a set back in terms of transformation in the legal fraternity. ⁽⁷²⁾ Furthermore, PABASA argued that they was no sufficient evidence that show that foreigners admission to the LPA will attract incompetent individuals. ⁽⁷³⁾ This Bar

⁽⁶⁶⁾ *Ibid.*

⁽⁶⁷⁾ *Ibid.*

⁽⁶⁸⁾ *Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others* [2022] ZACC para 66.

⁽⁶⁹⁾ *Ibid.*

⁽⁷⁰⁾ *Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others* [2022] ZACC para 67.

⁽⁷¹⁾ *Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others* [2022] ZACC para 68.

⁽⁷²⁾ *Ibid.*

⁽⁷³⁾ *Ibid.*

Association also argued that this restriction also implies that foreign nationals are not trustworthy and this notion may perpetuate the xenophobic attacks against foreigners which continue to occur in South Africa. ⁽⁷⁴⁾

In determining whether section 24 and section 115 of the LPA discriminates against foreigners, the Constitutional Court (CC) relied on section 9 of the Constitution which stipulates that “Everyone is equal before the law and has the right to equal protection and benefit of the law”. ⁽⁷⁵⁾ Further, Section (9) prohibit direct and indirect discrimination against anyone which include refugees, asylum seekers and other foreigners. This section provides:

“The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.” ⁽⁷⁶⁾

The CC also followed the test laid down in *Harksen* to determine whether the restrictions imposed by section 24 ⁽⁷⁷⁾ and 115 ⁽⁷⁸⁾ of the LPA amounted to fair discrimination or unfair discrimination. In applying this test, the CC held that both section 24 and 115 of the LPA did not discriminate against foreigners. ⁽⁷⁹⁾ The court stated “The rationale for accepting permanent residents is that they have been granted a right to live and work in the country on a permanent basis, subject to the country’s immigration laws. The same cannot be said for non-citizens who are refugees, or who are on study or work visa”. ⁽⁸⁰⁾

Further, the court stipulated that the South African government has a duty the duty to protect it citizens

⁽⁷⁴⁾ *Ibid.*

⁽⁷⁵⁾ Section 9 (1) of the Constitution of The Republic of South Africa, 1996.

⁽⁷⁶⁾ Section 9 (3) of the Constitution of the Republic of South Africa, 1996.

⁽⁷⁷⁾ Section 24 of the Legal Practice Act 28 of 2014.

⁽⁷⁸⁾ Section 115 of the Legal Practice Act 28 of 2014.

⁽⁷⁹⁾ *Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others* [2022] ZACC para 71.

⁽⁸⁰⁾ *Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others* [2022] ZACC para 80.

interest. ⁽⁸¹⁾ Therefore, section 22 of the constitution obliges the state to regulate citizens' right to "choose their trade, occupation, profession freely. ⁽⁸²⁾ It is important to note that this section is silent on the entitlement of foreigners' rights to choose profession which may suggest that they are not protected under this provision. The CC concluded that these provisions were consistent with the Constitution. ⁽⁸³⁾ The appeal against the order of the Free State High Court was dismissed. ⁽⁸⁴⁾

4. The effect of this judgement on the livelihoods of refugees and asylum seekers in south Africa

South Africa is one of the countries that receives a huge number of refugees and asylum seekers in Africa. ⁽⁸⁵⁾ Unlike many countries, its Constitution protects everyone including refugees and asylum seekers. ⁽⁸⁶⁾ However, the government's inability to control borders has caused a severe problem. ⁽⁸⁷⁾ There are many refugees and asylum seekers who arrive in South Africa illegally. ⁽⁸⁸⁾ This creates numerous socio-economic challenges which include high unemployment rate, crime and xenophobia. ⁽⁸⁹⁾

For refugees and asylum seekers who would like to pursue studies in the higher education institutions to fight for justice/

⁽⁸¹⁾ Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others [2022] ZACC para 72.

⁽⁸²⁾ *Ibid.*

⁽⁸³⁾ Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others [2022] ZACC 101.

⁽⁸⁴⁾ Relebohile Cecilia Rafoneke and Others v Minister of Justice and Correctional Services and Others [2022] ZACC para 104.

⁽⁸⁵⁾ T. M. Crea et al, *Environment risk: Urban refugees' struggles to build livelihoods in South Africa*, in *International Social Work*, 2017, p. 668.

⁽⁸⁶⁾ The Constitution of the Republic of South Africa, 1996.

⁽⁸⁷⁾ M.V.E. Dithebe and T.T. Mukhuba, *Illegal Immigration and Weak Border Control as Impediments to Development in Africa: A Critical Analysis of South Africa's Borders*, in *Journal of Gender, Information and Development in Africa* 2020, p. 139.

⁽⁸⁸⁾ *Ibid.*

⁽⁸⁹⁾ T. F. Rukuni et al, *Entrepreneurship as a strategy for refugees in South Africa*, in *International Entrepreneurship Review*, 2022, p. 37.

social ills will not be able to do so because in South Africa they are ineligible to practice as lawyers. As discussed above, the Constitutional Court delivered a judgement which favors the LPA in restricting refugees and asylum seekers to practice in South Africa. ⁽⁹⁰⁾ The Act does not permit refugees and asylum seekers to be enrolled as legal practitioners (advocate/ attorneys). ⁽⁹¹⁾ Without admission to the profession, refugees and asylum seekers may not appear in any court in South Africa. This restriction clearly violates their right to work which is guaranteed by the Refugee Amendment Act 11 of 2017. While one might argue that refugees and asylum seekers can pursue other career paths available to law degree holders, the reality for many is that they aspire to practice law specifically. Allowing them to do so would empower them to assist fellow refugees and asylum seekers in achieving their own goals and securing protection.

South Africa is one of the countries that permit refugees to integrate and work anywhere in the country. ⁽⁹²⁾ This is one of the durable solutions available for refugees and asylum seekers. ⁽⁹³⁾ Integration is defined as:

“The end product of multi-faceted and on-going process, of which self-reliance is but one part. Integration requires preparedness on the part of refugees to adapt to the host society, without having to forego their own cultural identity. From the host society, it requires communities that are welcoming and responsive to refugees, and public institutions that are able to meet the needs of a diverse population. As a process leading to a durable solution for refugees in the country of asylum, local integration has three inter-related and quite specific dimensions.” ⁽⁹⁴⁾

Integration guarantees refugees and asylum seekers numerous rights. These rights include the right to freedom of movement and the rights to education. ⁽⁹⁵⁾ It is worth noting

⁽⁹⁰⁾ Section 24 of the Legal Practice Act 28 of 2014.

⁽⁹¹⁾ *Ibid.*

⁽⁹²⁾ TM Crea, cit., 668.

⁽⁹³⁾ C. d’Orsi, *Asylum-Seeker and Refugee Protection in Sub-Saharan Africa* 2016, p. 280.

⁽⁹⁴⁾ *Ibid.*

⁽⁹⁵⁾ *Ibid.*

⁽⁹⁶⁾ These rights are guaranteed to everyone in terms of South African Constitution.

that there are no restrictions imposed on these rights. ⁽⁹⁶⁾ The restriction of refugees and asylum seekers to practice law indirectly restricts refugees and asylum seekers' rights to education. This is clearly an infringement to the South African Constitution. ⁽⁹⁷⁾ The rights to work and to choose profession are inalienable rights. ⁽⁹⁸⁾ In a country that does not provide any financial aid to refugees and asylum seekers such as South Africa, these rights cannot be taken away from refugees and asylum seekers as they rely on themselves. ⁽⁹⁹⁾ The inability to practice law makes refugees and asylum seekers vulnerable as they already struggle to get jobs. ⁽¹⁰⁰⁾

The importance of refugees and asylum seekers' rights to work and profession were highlighted in *Minister of Home Affairs v Watchenuka* where the Supreme Court of Appeal held that:

"If, because of circumstances, a refugee or asylum-seeker is unable to obtain wage-earning employment and is on the brink of starvation, which brings with it humiliation and degradation, and that person can only sustain him-herself by engaging in trade, such a person ought to trade to be able to rely on the constitutional right to dignity in order to advance a case for granting of a license to trade as aforesaid." ⁽¹⁰¹⁾

5. The Right to Choose Profession

As discussed above, the right to work and the right to choose profession are interlinked. However, although the Refugee Amendment Act guarantees refugees and asylum seekers the right to work, the right to choose profession can

⁽⁹⁷⁾ *Ibid.*

⁽⁹⁸⁾ The Constitutional Court of South Africa 'The Bill of Rights' available at <https://www.concourt.org.za/index.php/constitution/your-rights/the-bill-of-rights#:~:text=South%20Africa%20is%20one%20of,children%20also%20fit%20in%20here>, accessed on 25 November 2022.

⁽⁹⁹⁾ South Africa promotes the idea of self-reliant. Refugees and asylum seekers do not receive any financial aid.

⁽¹⁰⁰⁾ *Ibid.*

⁽¹⁰¹⁾ *Minister of Home Affairs and Others v Watchenuka and Others* (010/2003) [2003] ZASCA 142; [2004] 1 All SA 21 (SCA).

⁽¹⁰²⁾ The SCA in *Minister of Home Affairs and Others v Watchenuka*

only be enjoyed by citizens. ⁽¹⁰²⁾ The Constitution in terms of section 22 stipulates:

“Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation, or profession may be regulated by the law.” ⁽¹⁰³⁾

Section 22 of the Constitution guarantees these rights exclusively to citizens. Their enjoyment does not extend to refugees and asylum seekers ⁽¹⁰⁴⁾ The SCA in *Minister of Home Affairs v Watchenuka* justified the restriction on refugees and asylum seekers rights to trade, occupation and profession relying on the case of *Ex Parte Chairperson of the Constitutional Assembly: in re Certification of the Amended Text of the Constitution of the Republic of South Africa* ⁽¹⁰⁵⁾. Further, the SCA in this case argued the South African government does not provide financial assistance to refugees and asylum seekers. ⁽¹⁰⁶⁾ As a result, they are forced to rely on themselves. ⁽¹⁰⁷⁾ The Court held that there is no point of restricting the right to freedom of trade as these vulnerable group of persons may face humiliation and degradation. ⁽¹⁰⁸⁾ This Court judgement is with respect correct. Although refugees and asylum seekers may work as consultants without admission to legal practice but admission to the legal profession broadens their chances of employment and self-reliance.

5.1. Background of this Case

This case stems from the South African Police Services

and Others (010/2003) [2003] ZASCA 142; [2004] 1 All SA 21 (SCA) confirmed this argument. Para 30.

⁽¹⁰³⁾ Section 22 of the Constitution of the Republic of South Africa, 1996.

⁽¹⁰⁴⁾ *Ibid.*

⁽¹⁰⁵⁾ *Ex Parte Chairperson of the Constitutional Assembly: In re Certification of the Amended Text of the Constitution of the Republic of South Africa* 1996 1997(2) SA 97 (CC).

⁽¹⁰⁶⁾ *Minister of Home Affairs and Others v Watchenuka and Others* (010/2003) [2003] ZASCA 142; [2004] 1 All SA 21 (SCA) Para 32.

⁽¹⁰⁷⁾ *Ibid.*

⁽¹⁰⁸⁾ *Minister of Home Affairs and Others v Watchenuka and Others* (010/2003) [2003] ZASCA 142; [2004] 1 All SA 21 (SCA) Para 33.

(SAPS) operation (known as operation ‘hard stick’) to close all businesses which did not have required trading permits in Limpopo. ⁽¹⁰⁹⁾ Under this operation, about 600 businesses were closed. Equipment and stocks belonging to these businesses were taken by SAPS officials and individuals with no permits were arrested. ⁽¹¹⁰⁾ Owners of these businesses who were refugees and asylum seekers were informed by police officials that they should possess permits in their own names and that their asylum seekers and refugees permits does not entitle them to open businesses. ⁽¹¹¹⁾ They were told they should leave the municipality. ⁽¹¹²⁾

The appellants argued that the SAPS’s operation to close their businesses denies them their own way of sustaining themselves as they struggle to find jobs in South Africa. ⁽¹¹³⁾ In addition, the appellants also stated other issues that are faced by refugees and asylum seekers in South Africa. ⁽¹¹⁴⁾ These include language barrier, lack of skills and xenophobic attacks that continue to be a major issue in the country. ⁽¹¹⁵⁾ They argued that as a result of these issues, refugees and asylum seekers are only left with one option which is to open tuck shops to sustain themselves. ⁽¹¹⁶⁾

The High Court, setting as the court of first instance, adopted a narrow interpretation of section 22 of the Constitution. It held that this provision does not apply to refugees and asylum seekers. ⁽¹¹⁷⁾ However, on appeal, the Supreme Court of Appeal held that there is no blanket

⁽¹⁰⁹⁾ *Ibid.*

⁽¹¹⁰⁾ *Somali Association of South Africa v Limpopo Department of Economic Development, Environment and Tourism* (48/2014) ZASCA para 4.

⁽¹¹¹⁾ *Ibid.*

⁽¹¹²⁾ *Ibid.*

⁽¹¹³⁾ *Somali Association of South Africa v Limpopo Department of Economic Development, Environment and Tourism* (48/2014) ZASCA para. 5.

⁽¹¹⁴⁾ *Ibid.*

⁽¹¹⁵⁾ *Ibid.*

⁽¹¹⁶⁾ *Somali Association of South Africa v Limpopo Department of Economic Development, Environment and Tourism* (48/2014) ZASCA para. 6.

⁽¹¹⁷⁾ *Somali Association of South Africa v Limpopo Department of Economic Development, Environment and Tourism* (48/2014) ZASCA para. 22.

⁽¹¹⁸⁾ *Somali Association of South Africa v Limpopo Department of*

prohibition on refugees and asylum seekers seeking employment. ⁽¹¹⁸⁾ The Court held that the South African Constitution has held in several cases that, where individuals have no other means of supporting themselves, they may rely on the rights protected under section 10(human dignity) and related provisions of the Constitution. ⁽¹¹⁹⁾ In other words, although section 22 of the Constitution guarantees citizens the right to choose their trade, occupation or profession freely, this does not preclude refugees and asylum seekers from enjoying a similar entitlement in appropriate circumstances, particularly to avoid destitution. ⁽¹²⁰⁾

6. Is the Restriction of Refugees and Asylum Seekers Rights to Education, Work and Choose Profession Permissible Under International Law? Defining Monism and Dualism Approach in Refugee Law

In dealing with refugees and asylum seekers right to education, work and choose profession under international refugee law and international human right law, it is important to identify the approach that South Africa adopt in the application of international law. The Supreme Court of Appeal (SCA) in *Watchenuka* held that it is important to restrict certain rights of refugees and asylum seekers, such as those contained in section 22 of the Constitution. This approach serves to control immigration, as countries possess inherent sovereign power to regulate entry, residence, and economic participation by non-nations. The SCA judgment is with respect correct. However, the relationship between international law and refugee law at the domestic level is tricky. While they are many State countries that have ratified international instruments that protect the rights of refugees and asylum seekers, the abuse and the restriction of their rights have been noted in democratic countries like South Africa.

In order to understand the role of international law in South

Economic Development, Environment and Tourism (48/2014) ZASCA para. 43.

⁽¹¹⁹⁾ *Ibid.*

⁽¹²⁰⁾ *Ibid.*

Africa, it is worth noting that South Africa follows both dualist approach and monist approach in its application of international law. ⁽¹²¹⁾ According to the dualist approach South Africa must ratify and enact legislation in order for international law to be recognized in the South African jurisprudence. ⁽¹²²⁾ On the other hand, monism approach does not oblige states countries to ratify and enact legislation. International law is automatically enforced to the South African jurisprudence. ⁽¹²³⁾ Contrary to this argument, Phooko argues that South Africa adopts a dualism approach. ⁽¹²⁴⁾ According to him, section 231 of the Constitution clearly stipulates that an international instrument only binds the South African government upon ratification and enactment. ⁽¹²⁵⁾

The South African Constitution regulates the relationship between international law and refugee law. ⁽¹²⁶⁾ It is worth noting that section 231, section 232 and section 233 of the Constitution deal with the application of international law in South Africa. Section 231 stipulates that international instrument only bind South Africa once they are ratified and necessary legislation has been enacted. ⁽¹²⁷⁾ In essence, this demonstrate that South Africa follows a dualism approach. Notably, section 232 of the Constitution does not require customary international law to be ratified and enacted. ⁽¹²⁸⁾ The section stipulates that customary international law is automatically part of the South African jurisprudence unless it is consistent with the Constitution. This follows a monism

⁽¹²¹⁾ G. Ferreira, A. Ferreira-Snyman, *The incorporation of public international law into municipal law and regional law against the background of dichotomy between monism and dualism approach*, in *PELJ*, 2014, p. 1473.

⁽¹²²⁾ *Ibid* at 1471.

⁽¹²³⁾ *Ibid*.

⁽¹²⁴⁾ R. Phooko, *The Direct Applicability of SADC Community Law in South Africa and Zimbabwe: A call for Supranationality and the Uniform Application of SADC Community Law*, in *PELJ*, 2017, p. 10.

⁽¹²⁵⁾ *Ibid*.

⁽¹²⁶⁾ *Ibid* at 1472.

⁽¹²⁷⁾ Section 231 of the Constitution of the Republic of South Africa, 1996.

⁽¹²⁸⁾ Section 232 of the Constitution of the Republic of South Africa, 1996.

approach. Both these section shows that South Africa adopts both approaches when it comes to international law.

7. Refugees And Asylum Seekers Rights to Education, Work and Trade Under International Law

The Preamble of the Refugee Act clearly stipulates that South Africa is obliged under international refugee law and international human rights law to protect the rights of refugees and asylum seekers. The right to education under the Refugee Convention is guaranteed in terms of article 22. ⁽¹²⁹⁾ In terms of this article, signatory states are obliged to ensure that refugees and asylum seekers are guaranteed this right as citizens, and there must be no differentiation. ⁽¹³⁰⁾ Equally so, this right is also guaranteed by several instruments that South Africa is signatory too such as the Universal Declaration of Human Rights ⁽¹³¹⁾ and the Convention on the Rights of the Child. ⁽¹³²⁾ Unlike most international instruments, it is worth noting that the Universal Declaration of Human Rights is not binding. However, it mostly reflects customary international law on fundamental human rights and promotion of equal enjoyment of rights.

The completion of a higher education qualification means that an individual is ready to work. Refugees and asylum seekers, like citizens, upon the completion of their qualifications are expected to work. Betts and Sterck correctly argue that the right to work is one of the most important rights in terms of international law. ⁽¹³³⁾ It assists refugees and asylum seekers to deal with socio-economic challenges that they might face in countries of asylum. ⁽¹³⁴⁾

International refugee law is made of the 1951 Convention relating to the Status of Refugees, 1967 Protocol and regional

⁽¹²⁹⁾ Article 22 of the 1951 Refugee Convention.

⁽¹³⁰⁾ *Ibid.*

⁽¹³¹⁾ Article 26 United Declaration of Human Rights.

⁽¹³²⁾ Article 28 of the Convention on the Rights of the Child.

⁽¹³³⁾ A Betts and O Sterck ‘Why do states give refugees the right to work?’ (2022) 38 3 *Oxford Review of Economic Policy* 515.

⁽¹³⁴⁾ *Ibid.*

instruments. The 1951 Convention relating to the Status of Refugees is the cornerstone of international refugee law. The rights of refugees and asylum seekers to work and choose professions are guaranteed and protected in terms of Article 17 ⁽¹³⁵⁾ and 18 ⁽¹³⁶⁾ of this Convention. However, this Convention recognizes that Signatory may impose restrictions on these rights. In relation to the right to work, according to section 17 (2) of 1951 of the Refugee Convention Signatory States may imposed restrictions on refugees and asylum seekers right to work. ⁽¹³⁷⁾

Article 1 of the 1948 Declaration of Human Rights stipulates that “all human beings are born free and equal in dignity and rights”. This entails that refugees and asylum seekers too, are also protected by international human rights law. International rights law is made up of numerous international and regional human rights instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) ⁽¹³⁸⁾, the International Covenant on Civil and Political Rights ⁽¹³⁹⁾, and many more others.

International human rights law obliges state countries to respect, protect and fulfil human rights. Signatory State are bound by international law once they become signatories and ratify to international instruments. As discussed above, South Africa is signatory to numerous international human rights instruments that guarantees the right to work and right to choose profession to everyone including refugees and asylum seekers.

8. Critique of the Slogan Abahambe “They Must Leave” Under International Law

The slogan *abahambe* in essence is discriminatory and perpetrates violence immigrants particularly refugees and

⁽¹³⁵⁾ Article 17 of the 1951 Convention Relating to Status of Refugees.

⁽¹³⁶⁾ Article 18 of the 1951 Convention Relating to Status of Refugees.

⁽¹³⁷⁾ Article 17 of the 1951 Convention Relating to Status of Refugees.

⁽¹³⁸⁾ The International Covenant on Economic, Social and Cultural Rights.

⁽¹³⁹⁾ The International Covenant on Civil and Political Rights.

asylum seekers. It was discussed earlier in this chapter that refugees and asylum seekers do not leave their countries of origin voluntarily, they are forced. Further to say *abahambe* is against the international law obligation under the principle of non-refoulement.

According to the United Nations Human Rights Office of the High Commissioner, this principle is:

“An essential protection under international human rights, refugee, humanitarian and customary law. It prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill treatment or other serious human rights violations. Under international human rights law the prohibition of refoulement is explicitly included in the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). In regional instruments the principle is explicitly found in the Inter-American Convention on the Prevention of Torture, the American Convention on Human Rights, and the Charter of Fundamental Rights of the European Union. International human rights bodies, regional human rights courts, as well as national courts have guided that this principle is an implicit guarantee flowing from the obligations to respect, protect, and fulfil human rights. Human rights treaty bodies regularly receive individual petitions concerning non-refoulement, including the Committee Against Torture, the Human Rights Committee, the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child”.

The principle of non-refoulement clearly states that refugees and asylum seekers must not be returned to the countries where they are likely to face persecution. Therefore, insisting that refugees and asylum seekers must leave South Africa violates international standards and the country could be held accountable under international law. It is also worth noting that anti-immigrant slogans tend to gain popularity during election periods in South Africa, where political parties

capitalize on their vulnerability to win the electorate votes, a practice that is unacceptable in a democratic society.

9. Conclusion

The right to education in the higher education sector is vital in everyone's life, with the potential to transform individuals regardless of their background or status. This right offers hope and a future to the most vulnerable members of our society, enabling everyone to dream and pursue their chosen careers. In the South African context, it is closely linked to other fundamental rights such as the right to work and to choose a profession freely. These rights are protected under international human rights law and signatory states like South Africa are obliged to ensure that everyone can enjoy them. South Africa is part to both Refugee Conventions and other international human rights instruments that safeguard these rights.

The restriction of these rights in terms of the South African Refugee Amendment Act violate international obligations. It is therefore recommended that the South African government review the limitations imposed on refugees and asylum seekers rights to education, work and professional choice. In so doing, the government must recognize that refugees and asylum seekers in South Africa receive no financial support from the state and do not live in camps. They are entirely self-reliant. It is inhuman to restrict the very same rights that could transform their lives. Further, the country is bound by international law to protect refugees and asylum seekers within its territory. The principle of non-refoulement prohibits their forced removal. They are also entitled to higher education and must not be restricted in terms of their career choices. Political parties and society at large must refrain from slogans like "*abahambe*" or demands that they leave. Politicians and the public should seek alternative solutions to address poverty and unemployment, rather than scapegoating refugees and asylum seekers. Statistics clearly show that they are not the cause of these challenges.

CHAPTER IV

ACCESS TO HIGHER EDUCATION AND VULNERABLE GROUPS: ETHIOPIAN FOCUS

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SUMMARY: 1. Introduction. – 2. Higher Education in Ethiopia. – 3. International Human Rights Principles that Apply to the Human Right to Education (United Nations Charter, 1945). – 4. The Right to Education in the International Covenant on Economic, Social and Cultural Rights (ICESCR). – 5. UNESCO's Convention against Discrimination in Education (1960). – 6. International instruments, African charters and Ethiopian Constitution on access to higher educations to vulnerable groups. – 6.1. The Higher Education Proclamation No. 1152/2019. – 7. Vulnerable Groups in Ethiopia. – 8. Strategies for Alleviating Access to Higher Education Constraints for Vulnerable Groups in Ethiopia. – 9. Conclusion.

1. Introduction

Education is both a human right in itself and crucial means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of the vicious cycle of poverty and obtain the means to participate fully in their communities. The imperative to focus on vulnerable groups, gender-inclusive and equitable higher education curricula is rooted in the broader right to access

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quality education for all, especially those marginalized due to gender, socioeconomic status, ethnicity, or other vulnerabilities. Vulnerable groups including pregnant women, minority women, female-headed households, and populations affected by feminization of poverty and feminization of migration face unique barriers that hinder their educational opportunities. For example, curricula that ignore the specific realities of these groups can exacerbate exclusion and inequality, preventing them from fully exercising their right to higher education. The development of vulnerable and gender-responsive curricula in higher education is crucial to achieve recognition and accommodating of the diverse needs of vulnerable populations. Despite the existence of supportive legislation and structural frameworks, the substantive content that is what we might call the ‘software’ often remains insufficiently developed in terms of inclusiveness of vulnerability, thereby limiting the potential for higher education to serve as an instrument of social equity and social justice.

2. Higher Education in Ethiopia

The objectives and roles of higher education institutions in Ethiopia align with those of tertiary education institutions in other nations. Generally, it engages in teaching, research, and delivering community services. Currently, many Ethiopian institutions offer strikingly similar academic programs, award comparable qualifications, and conduct limited, non-specialized research and consultancy. This trend toward uniformity is increasing than decreasing. As a result, growing numbers of undergraduate and postgraduate students graduate from nearly identical departments, which have contributed to a scarcity of employment opportunities. Because graduates are not aligned with market needs, they often struggle to find suitable work ⁽¹⁾. According to UNICEF ⁽²⁾ (2000), quality

⁽¹⁾ K. Ashcroft, *13 New Higher Educations for Ethiopia: Preliminary Analysis and Discussion of the Research into Curriculum, Resource and Organizational Issue*. 2006, Ethiopian Higher Education Strategy Centre.

⁽²⁾ UNICEF. *Defining education quality*, United Nation ‘s children Fund, 2000, New York.

education encompasses multiple dimensions. These includes learners must be healthy, well-nourished, and supported by families and communities within safe, inclusive, and well-resourced environments. It requires relevant curricula that build literacy, numeracy, life skills, and critical knowledge areas such as gender, health, and peace, alongside child-centered teaching, effective classroom management, and equitable assessment practices. Ultimately, it aims to achieve learning outcomes in knowledge, skills, and attitudes that align with national educational goals and foster meaningful societal participation. Ethiopia has also ratified this international agreement and has made efforts to incorporate inclusive principles into its educational system at all levels of educational institutions. Since the adoption of the new Education and Training Policy, the sector has experienced significant growth ⁽³⁾. This development reflects a global shift toward implementing comprehensive education in traditional schools, aiming to foster an inclusive society where differences in social status, race, religion, language, ethnicity and ability are respected and appreciated.

Ethiopian universities do not provide their students with vision impairment with full inclusive education. However, the students follow higher education with limited number of department choices, accessible educational materials, without accommodated examination, without clear rule dealing with courses substitution requirement, without supportive teaching aids which has completely lacked attention by government, insignificant support systems for learners with disabilities and vulnerabilities , mobility training and access to higher education in Ethiopia remains hindered for vulnerable groups, such as pregnant women, children, refugees, displaced women, indigenous peoples, and minority groups, due to multiple and interlocked institutional, cultural and economically, deep rooted intersecting challenges. One significant issue is the pervasive prevalence of sexual harassment within higher education institutions, which disproportionately affects women and marginalized populations. Students with visual

⁽³⁾ *Education and Training Policy*; The Federal Democratic Republic Government of Ethiopia, 1994, Addis Ababa.

impairments in Ethiopian universities do not receive a fully inclusive education. Their academic path is marked by constrained choices of study fields, a lack of accessible resources and adapted exams, unclear substitution policies, and inadequate government attention to essential teaching aids and support services. This reflects a broader systemic failure where access to higher education is severely limited for vulnerable groups such as pregnant women, children, refugees, displaced and indigenous women, and minorities due to deep-seated institutional, cultural, and economic obstacles. Above all, the high incidence of sexual harassment, including from faculty, staff, and peers, creates unsafe learning environments that discourage and frustrate vulnerable populations from participating fully in higher education. This situation is compounded by gender inequality, societal stigmas, and lack of institutional mechanisms to protect and support victims, thereby perpetuating inequalities in access to education and become the primary obstacles to balance the unbalanced gender inequality in education sectors in general and higher education in particular.

3. International Human Rights Principles that Apply to the Human Right to Education (United Nations Charter, 1945)

The United Nations will promote educational cooperation among nations to create stability and well-being. In its preamble, the U.N. Charter states a universal principle of fundamental human rights, the dignity and worth of the human person, and the equal rights of men and women. In order to create the conditions of stability and well-being based on respect for the principle of equal rights and self-determination of peoples, the members of the United Nations will universally respect and observe human rights and fundamental freedoms for all without difference as to race, sex, language, or religion, for which members of the United Nations committed to take joint and separate action ⁽⁴⁾.

⁽⁴⁾ B. Tilahun, Current Practice on the Implementation of the Educational Rights of Children with Physical Disability in Addis Ababa:

4. The Right to Education in the International Covenant on Economic, Social and Cultural Rights (ICESCR)

The Covenant is a multilateral treaty adopted by the United Nation General Assembly on December 16, 1966, and come into force, ten years later, on January 3, 1976 same year with the International Covenant on Civil and Political Rights. It consists of a preamble and 31 articles divided into five parts. It imposes a legally binding obligation on those nations which ratify or accede to it to work toward the granting of economic, social, and cultural rights to individuals. The educational provisions of UDHR have been reaffirmed, amplified and made more detailed by this Covenant. Article 13 of ICESCR expands upon the content attributed to the right to education by Article 26(1) of the UDHR. It is devoted to the right to education and, in its day, contained the most extensive and detailed provisions on this subject to be incorporated in an international instrument ⁽⁵⁾.

5. UNESCO's Convention against Discrimination in Education (1960)

This Convention prohibits discrimination in terms of access to education, the standard and quality of education and condition under which education is given. Regarding the purpose of education, Article 5(1) (a) provides that education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all states, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace ⁽⁶⁾. The CESCR has defined the scope and attributes of the right to education broadly under

The Case of Menelik II Primary and Preparatory Schools, 2014, *Bulletin of Labor* 21(4).

⁽⁵⁾ The Right to Education in the International Covenant on Economic, Social and Cultural Rights (ICESCR), December 16, 1966, New York City.

⁽⁶⁾ UNESCO's Convention against Discrimination in Education, December 14, 1960, Paris, France.

the ICESCR through the 4-A Right to education framework availability, accessibility, acceptability, and adaptability.

Availability: functioning educational institutions and programs have to be available in sufficient numbers in a country, through a public educational system and allowing private parties to establish non-public schools; What they require to function depends upon several issues, including the developmental context within which they function; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both genders, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology ⁽⁷⁾. At all levels, education must be available to minorities and vulnerable groups on an equal basis with other student. Therefore, this provision directly calls for educational inclusion for all.

Accessibility: Educational institutions and programs must be open and available to everyone, without discrimination based on any grounds, including physical and economic barriers. Practically, this entails ensuring individuals have the right to access existing public educational institutions on a nondiscriminatory basis. However, this remains a significant challenge in Ethiopia, particularly for vulnerable groups such as people with disabilities, women, divorced individuals, refugees, indigenous communities, and internally displaced persons. As a result, these marginalized populations often lack a voice and face substantial obstacles in accessing educational opportunities, making them some of the most underserved and voiceless segments of Ethiopian society ⁽⁸⁾.

Acceptability: Acceptability pertains to both the form and substance of education, encompassing aspects of quality and relevance. Acceptability entails the government's obligation to ensure that universities maintain minimum standards for teachers, students, facilities, and curricula. Article 13(2) of the International Covenant on Economic, Social and Cultural

⁽⁷⁾ *Ibid.*

⁽⁸⁾ *Ibid.*

Rights (ICESCR) emphasizes the ongoing improvement of teaching staff's material conditions. The Committee has also highlighted that both the form and substance of education including curricula and teaching methods must be acceptable to students, meaning relevant, culturally suitable, and of good quality ⁽⁹⁾. In the context of Ethiopia, despite being a signatory to numerous international treaties, the implementation of these principles faces challenges. Ethiopia's constitution states that all ratified international treaties are an integral part of the federal legal framework but does not specify their hierarchical status relative to domestic law.

Adaptability: Ultimately, adaptability in education refers to the need for flexible learning systems that can address the diverse social and cultural backgrounds of students. Article 13(1) of the ICESCR emphasizes that education should aim for the comprehensive development of individuals, fostering dignity, respect for human rights and fundamental freedoms, and enabling effective participation in a free society. It also promotes understanding, tolerance, and friendship among nations and various racial, ethnic, and religious groups. For education to fulfill these objectives, it must be adaptable ⁽¹⁰⁾.

Despite the clear recognition of the importance of educational adaptability in both the ICESCR and the Ethiopian constitution, challenges persist, particularly concerning ethnic and religious understanding and tolerance among university students. These issues have become significant barriers to students' access to quality higher education, turning Ethiopian universities into more of a battleground than spaces for learning. Although there are no explicit legal restrictions on education, in practice, laws and policies tend to favor those in power, historically marginalizing certain groups and limiting access to higher education for others. This imbalance is evident in the distribution of universities across Ethiopia. Out of approximately 45 public universities in Ethiopia, most are concentrated in the Amhara, Tigray, and Oromia regional states. In contrast, regions like Afar, Gambela, and Benishangul-Gumuz have only one university each, despite

⁽⁹⁾ *Ibid.*

⁽¹⁰⁾ *Ibid.*

being significant regional territories. This uneven distribution raises serious questions about fairness and equality in educational opportunities across the country.

6. International instruments, African charters and Ethiopian Constitution on access to higher educations to vulnerable groups

Globally, instruments like the Universal Declaration of Human Rights (UDHR, 1948) ⁽¹¹⁾ and the Convention on the Rights of Persons with Disabilities (CRPD, 2006) ⁽¹²⁾ reinforce the right to education for all. The CRPD, in particular, emphasizes the need for accessible and inclusive education systems, urging states to eliminate barriers faced by persons with disabilities (Article 24). These frameworks serve as guiding principles for African nations to develop policies that accommodate the needs of vulnerable students. The African Charter on Human and Peoples' Rights (1981) underscores the right to education as fundamental. Article 17 emphasizes the state's obligation to promote education for all, ensuring that vulnerable groups are not excluded. The Charter advocates for the elimination of discrimination and underscores the importance of equality in accessing education, which is vital for empowering marginalized communities ⁽¹³⁾. Article 9/4 All international agreements ratified by Ethiopia are an integral part of the law of the land (Constitution of The Federal Democratic Republic of Ethiopia, 1995). Ethiopia is a signatory to the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and has incorporated women's rights into its national constitution as a strategy to combat gender-based violence. The right to equality between men and women in marriage and family life is also recognized in in federal democratic republic of

⁽¹¹⁾ Universal Declaration of Human Rights (UDHR), December 10, 1948; Paris, France.

⁽¹²⁾ Convention on the Rights of Persons with Disabilities (CRPD) December 13, 2006, New York City, USA.

⁽¹³⁾ African Charter on Human and Peoples' Rights, June 27, 1981, Nairobi.

Ethiopian constitutions and various human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms Of Discrimination against Women, the Convention on the Nationality of Married Women, and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

Women nevertheless lag behind men in the enjoyment of rights related to the private sphere. For instance article 34[1] of Federal Democratic Republic of Ethiopian Constitution state that men and women, who have attained marriageable age as defined by law, have the right to marry and found a family. Furthermore, it is clearly stated that both women and men have equal rights while entering into, during marriage and at the time of divorce and article 34 [2] ensures that marriage should be entered into only with the free and full consent of the intending spouses but given the traditional environment in which women have little or no rights in deciding on such matters, it is difficult, if not impossible, for women to realize and enjoy these rights. Article 34 [4 and 5] FDRE constitution extends recognition to marriage concluded under systems of religious or customary laws and it does not exclude the customary or religious adjudication of disputes relating to personal and family laws, with the consent of the parties to dispute. This recognition is a potential threat that perpetuates the existing gender inequalities in the society. Because intentionally or unintentionally, these laws usually work in the way that sustain and maintain the subordination of women and girls ⁽¹⁴⁾. Under the FDRE constitution there is no clear provision deals with the rights of persons with disabilities including primary education except that under article 41 which declares about Economic, Social and Cultural Rights: in sub article 5 putting some sort of obligation that caring for and rehabilitation to be made for the physically and

⁽¹⁴⁾ G. Adem, I. Ebrahim, *Causes of Irregular Migration, Institutional and Legal Responses, Political Crisis in Ethiopia and the Measures Taken by the Laureates Noble Peace Winner Abiy Ahmed*. *English Language, Literature & Culture*, 2020, pp. 124-131.

mentally handicapped depending on the economic ability of the country. Therefore, from this we can conclude that the above sub article did not included in a manner which enables in order to force the government bodies and other administrative authorities to make different types of positive discrimination for the persons with disabilities. Article 41(5) of the Constitution sets out the State's responsibility for the provision of necessary rehabilitation and support services for people with disabilities. With respect to persons with disabilities, the stand the Constitution takes may be said philosophically wrong in contemporary world. Nowadays, the international community is following the right-based approach. Ethiopia is falling behind the international community to constitutionally adopt right-based approach for persons with disabilities. If we strictly follow what is provided under Article 41 (5) of the Constitution, the right to inclusive higher education may be downgraded and disregarded from level of a right to that of charity.

6.1. The Higher Education Proclamation No. 1152/2019

This proclamation has incorporated the right to inclusive higher education for students with disabilities. Article 41 of the Proclamation reads,

Institutions shall make, to the extent possible, their facilities and programs amenable to use with relative ease by physically challenged students.

Institutions shall, to the extent that situations and resources permit, relocate classes, develop alternative testing procedures, and provide different educational supplementary aids in the interest of students with physical challenges.

Building designs, campus physical landscape, computers and other infrastructures of institutions shall take into account the interests of physically disabled students.

Institutions shall ensure that students with physical challenges get academic assistance, including tutorial sessions, exam time and submission date deadline extensions.

Based on the special decision of the Minister regarding the admission of the gifted student, the need to provide additional resources as necessary to maintain the speed

According to Article 41 (1), higher education institutions

are required to make their facilities and programs amenable to students with disabilities to the extent possible. By following this statement with the phrase, to the extent possible we cannot say that this proclamation has fully acknowledge that student with disabilities have the right to inclusive higher education. The inclusivity of the right is rather dependent on the will and whim /benevolence of the institutions than on the law. Article 41 (4) can be enforceable. It requires universities to provide academic assistance, including tutorial sessions, exam time extensions and deadline extensions so as to permit students with disabilities to compete with others. Thus, it obliges the institutions to provide realistic accommodation regarding to academic assistance, such as tutorial sessions, exam time extensions and deadline extensions in the form of accommodation based upon the need of students with disabilities. ⁽¹⁵⁾

7. Vulnerable Groups in Ethiopia

By all accounts, Ethiopia ranks among the poorest countries worldwide according to standard for international indicators for income, health, and education. Ethiopia falls among the poorest countries globally, within the least developed countries and in sub Saharan Africa. Ethiopia is one of the least developed countries in terms of GNP per capita life expectancy below the world average, infant mortality is almost double the world average and the adult literacy rate is less than half of the world rate ⁽¹⁶⁾. Thus, correcting that disparity of structural and social injustice in Ethiopia is central to tackling poverty and inequality. To reduce the threat of shocks as result of poverty, individuals and governments must seek to enhance people's security not the militarized version of security that has dominated public debate in recent years, but a more

⁽¹⁵⁾ FDRE, The Constitution of the Federal Democratic Republic of Ethiopia, Addis Ababa, 1995, Ethiopia.

⁽¹⁶⁾ G. Adem and E. Idris, *Causes of Irregular Migration, Institutional and Legal Responses, Political Crisis in Ethiopia and the Measures Taken by the Laureates Noble Peace Winner Abiy Ahmed. English Language, Literature & Culture*, 2020, pp. 124-131.

comprehensive human version, taking the insecure and anxiety ridden experience of living in poverty as its starting point. Guaranteeing security in this way means strengthens poor people's ability to survive shocks and increases their chances of escaping g from poverty, and not falling back (17).

Women and girls constitute a half portion of Ethiopian vulnerable populations regarding education. Despite progress over recent decades, gender disparities persist, especially at the higher education level. According to UNESCO (2020), the gender parity index for tertiary education in Africa remains below 1.0, indicating fewer women than men enrolled in universities. Cultural norms, early marriage, gender-based violence, and economic constraints are primary barriers (18). Today many students with disabilities in Ethiopia are managing to get admitted to higher education, passing all the hurdles through elementary and secondary education levels. A good number of students have managed to be admitted to higher education, the universities' facilities are mainly designed for students who have no disabilities. The teaching methodology, the curriculum, the design of class rooms and dormitories, the roads in campus, the reader materials and the books, internet access and computers and many other academic and physical facilities are designed based on albinism. This will inevitably limit the effectiveness of these students to become academically competitive on an equal basis with other students with their counter parts.

The Constitution of the Federal Democratic Republic of Ethiopia emphasizes citizens' rights to equal access to publicly funded services and mandates support mechanisms to address the needs of persons with disabilities (FDRE, 1994, Article 41, Sub-articles 5 and 50). Additionally, key educational policy documents such as the Education and Training Policy (ETP, 1994), Education Sector Development Programme III (Ministry of Education, 2005), General Education Quality Improvement Programme (MOE, 2007), and notably, the Special Needs Education Programme Strategy

(17) *Ibidem*.

(18) United Nations Educational, Scientific and Cultural Organization (UNESCO), London, 1945.

(MOE, 2006) outline the objectives of special needs and inclusive education. These documents call for improved quality in education for all children, including those with special needs. Findings from interviews conducted at Addis Ababa University (AAU) and Bahir Dar University (BDU) corroborate these observations. As Ethiopia's largest and oldest university, AAU has made efforts to address students with disabilities across various policy areas; however, the issue is often addressed superficially and narrowly. Overall, it can be concluded that the policies of Ethiopian educational institutions tend to overlook the needs of students with disabilities ⁽¹⁹⁾. Refugees are one of the most marginalized vulnerable groups of society. They are forced to leave their home country of due to violence, war, political suppression and, higher institutions for refugees can play vital role in simplifying their incorporation into host countries. In re-integration stage, higher institutions for refugees can help refugees to be active in re-building their home country and life's. The higher institution challenges on educations are ups and down, low quality, cultural, economic and social difficulties, and the government and humanitarian organizations not give emphasis to refugee's higher education.

Young people who have been displaced much of their lives and grow up in exile are over whelming future-oriented and see higher education as a means to achieve their life goals, There has been a clear recognition in research and praxis of the need to move beyond conceptions of refugees as 'victims,' 'passive,' or 'helpless'. However, moving beyond this discursive recognition necessitates a better understanding of how power and knowledge are (re)produced and contested. Despite being subject to forced displacement, and an associated lack of choices, young people in refugee contexts can reclaim more agency and capacity to actively choose development of self, of their family, and community, and on their own terms. According to UNHCR (2017) report, Ethiopia is among the few African countries which granted higher education scholarship for refugees from other Horn African countries,

⁽¹⁹⁾ Y. Gebreegziabher. *Policy And Provision for Students with Disabilities in Higher Education: 2008, The Ethiopian Case.*

such as Eritrea, South Sudan and the Republic of Somalia. The government is expanding this opportunity further in line with one of the nine pledges it made at the Leaders' Summit on Refugees in September 2016 in New York. Accordingly, the Government has committed to increase enrolment in tertiary education to all qualified refugees without discrimination and within the available resources ⁽²⁰⁾. Governments generally ensure the fundamental human rights and physical safety of their citizens. However, when individuals become refugees, this safety net vanishes, leaving them vulnerable. According to the United Nations High Commissioner for Refugees (UNHCR), refugees fleeing conflict or persecution are especially at risk. They lack protection from their own governments, which are often the perpetrators of their persecution. If other nations do not accept or safeguard them, refugees may face dire circumstances where their basic rights, security, and even their lives are at serious risk ⁽²¹⁾. The Ethiopian refugee proclamation of 2004 definition of a refugee incorporates both the definition set forth by the UN and AU Refugee conventions. In January 2019, Ethiopia revised its Refugee proclamation (Proclamation number 1110/2011). The revised refugee proclamation contains a similar definition of a Refugee which stated that a person must fulfill the following criteria to obtain a refugee status. Article 5 states that, any person shall be considered as a refugee where:

Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion he is outside his country of nationality and is unable or owing to such fear is unwilling, to avail himself of the protection of that country;

Not having a nationality and being outside the country of his former habitual residence, he is unable, or owing to a well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion, he is unwilling to return to it; or

⁽²⁰⁾ United Nations High Commissioner for Refugees, 2017, Geneva, Switzerland.

⁽²¹⁾ A. Edwards, C. Ferstman, *Refugee protection: A guide to international refugee law*, Oxford University Press, Oxford, 2010.

Owing to occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, He is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

In Ethiopia, the protection and services provided to refugees generally align with the international standards set by the 1951 Refugee Convention and related legal frameworks. These challenges are compounded by resource shortages and, in some universities, an unstable security environment due to political instability and the presence of insurgent groups such as the Oromo Liberation Army, Ahmara liberation Army and the Trigray political insecurity. Despite these difficulties, the Ethiopian government, in partnership with UNHCR and the DAFI scholarship program, offers free scholarships to refugees from east African countries such as Uganda, Eritrea, south and South Sudan. These scholarships enable them to pursue studies at various public universities across the country, including institutions in Addis Ababa, Aksum, Ambo, Arbaminch, Bonga, Bule Hora, Debre Tabor, Dilla, Gonder, Jigjiga, Jima, Mekelle, Madda Walabu, Metu, Mizan-Tepi, Raya, Samara, Wachamo, Wolayta Sodo, Wolkite, and Wallaga ⁽²²⁾.

a) Constraints of Access to Higher Education for Vulnerable Groups

Inclusion is a relatively recent and highly debated concept in contemporary education. It primarily refers to the practice of integrating students with disabilities and marginalized groups alongside their typically developing peers across various educational contexts, such as classrooms, extracurricular activities, and support services. However, several significant barriers hinder access to higher education in Ethiopia.

⁽²²⁾ G. Belete, Challenges and opportunities of Urban Refugees Inclusion in Tertiary Education level: The Case of Addis Ababa based Eritrean Refugees, 2020

b) *The influence of Patriarchal Ideology*

Patriarchal beliefs significantly hinder equitable access to higher education for vulnerable populations, especially women and girls. The invisibility of masculinity reproduces gender inequality, both materially and ideologically. Therefore, efforts to improve women's conditions must involve engaging men in the process." This underscores how deeply ingrained patriarchal norms uphold gender disparities, affecting educational opportunities ⁽²³⁾. Patriarchy is a social system that enforces women's subordination through various means discrimination, neglect, control, exploitation, and violence across family, workplace, and societal contexts ⁽²⁴⁾. For instance, as their domination os patriarchal system in society, women around Siko-mando area in Ethiopia uses *Siinqee* ⁽²⁵⁾/ weapon of women/ to secure their human and democratic right according indigenous knowledge of that area ⁽²⁶⁾. The status of women in Ethiopia cannot be entirely separated from that of women elsewhere in the world. Ethiopian women tend to be more disadvantaged and deprived compared to their counterparts in developed countries, although they still face significant disadvantages. A common factor across these contexts is the male superiority complex, which is reinforced by women assuming subordinate roles ⁽²⁷⁾.

An interview with the head of the Women's Affairs Bureau in Bale Zone illustrates how patriarchal norms impose controls on women: "*The norms and practices that define women as inferior to men are present everywhere in families, social relations, and government offices. Patriarchy is essentially*

⁽²³⁾ F. Cleaver, T. Frank, T. People, *Livelihood and Decision Making in Catchment Management*, 2002, The Case of Tanzania.

⁽²⁴⁾ G. Lerner, *The Creation of Patriarchy*, Oxford University Press: New York, 1989.

⁽²⁵⁾ A thin straight stick prepared from selected trees and usually hold by married women.

⁽²⁶⁾ A. Mamma M. Adugna, *An Appraisal of the Role of Women in Indigenous Peace-building Process in Ethiopia: Experience of Siinqee Practice from West Arsi Zone in Oromia Region*, in *J. Equity Sci. & Sustain Dev.*, 2022.

⁽²⁷⁾ D. Dufera; *The status of women in Ethiopia higher education*, Addis Ababa University, unpublished, 2009.

male domination over women, viewing women as property and requiring their control. Dismantling this ideology requires collective effort from all sectors, including women's organizations." Similarly, a gender focal person from the education bureau observed that patriarchal influence manifests within educational institutions, noting that *"in schools, female teachers are rarely promoted to leadership roles, and even in classrooms, male students tend to dominate leadership positions. This reinforces traditional gender roles and limits female students' opportunities for leadership and decision-making from early stages"* (28).

Research finding data from various bureaus of Ethiopia, indicated that, despite the absence of formal legal occupational segregation, in practice, gender division of labor persists. Women are predominantly employed in low-paid roles such as secretaries, janitors, and *ergamtuu* (messengers). This occupational segregation entrenches income disparities and sustains gender inequality at the national level, hindering efforts toward gender equality and inclusive access to higher education. Therefore, Patriarchal ideology acts as a formidable obstacle to equitable access to higher education for vulnerable groups in Ethiopia (29).

c) Female Headed House Holds

Female-headed households (FHHs) in Africa are highly diverse, varying in composition, age, income sources, decision-making authority, and livelihood approaches. In the agro-pastoralist districts of Ethiopia's Bale Zone, for instance, women become heads of household through multiple pathways. These include marriage dissolution from divorce, widowhood, separation, or spousal migration. Some women have remarried several times, while others return to their natal

(28) G. Adem, S. Muhammed, *Challenges of Exercising Gender Mainstreaming: The Case of Bale Zone Public Institutions*, in *Int. J. Polit. Sci. Develop.*, 2019, pp. 168-172.

(29) G. Adem, S. Mohammed; *Review on the Influences of: Mobilization, Patriarchy System and Policy Implementation on Gender Mainstreaming; the Case of Ethiopia*, 2020, Open Access Library Journal.

homes to secure shelter and male labor support, frequently depending on their children's labor until their sons can take on household duties ⁽³⁰⁾. Over time, women in these households employ varied economic and social strategies. Following early divorce or housing insecurity, many initially return to their parental homes. Later, they often diversify income by selling items like firewood, charcoal, milk, and potatoes in local markets, or by sending their children to urban centers or Arab countries for work.

d) Insufficient Resources

The allocation of limited resources significantly hinders efforts to ensure equitable access to higher education for vulnerable populations in Ethiopia, such as displaced individuals, refugees, pregnant women, widows, and female-headed households. Without sufficient funding and infrastructural backing, initiatives designed to meet the specific needs of these groups remain largely symbolic rather than substantive. For example, gender mainstreaming within educational policies demands dedicated financial and human resources to establish and maintain the required frameworks. As noted by officials involved in these efforts, *simply appointing gender focal persons without equipping them with adequate resources undercuts the effectiveness of such measures*. One interviewee from the Bureau of Education and the Bureau of Finance and Economic Development stressed that *“merely assigning individuals as gender focal persons is inadequate; without both human and financial support; gender mainstreaming cannot be implemented effectively.”* Furthermore, the success of mainstreaming gender in higher education also relies on motivating institutional actors. Discussions with stakeholders indicated that some organizations treat gender mainstreaming as a government

⁽³⁰⁾ G. Adem, S. Jamal, S. Mohammed, and L. Ahmed, *Migrating Men and Left behind Women*, in *Indiana Journal of Humanities and Social Sciences*, 2024, pp. 1-8.

mandate rather than an operational priority, resulting in low motivation and engagement among staff ⁽³¹⁾.

e) Poverty

The feminization of poverty severely limits access to higher education for vulnerable groups in Ethiopia. This widespread phenomenon across Africa stems from interconnected factors: women's limited skills and knowledge, market structures that confine them to low-paying, time-intensive work while restricting credit and capital and patriarchal family norms that uphold gender inequality in property and inheritance. Discrimination in public life and the undervaluation of women's labor deepen these disparities. Persistent debt, inequitable economic reforms, and the growth of religious, ethnic, or military fundamentalism further intensify women's economic insecurity ⁽³²⁾. The feminization of poverty is driven by the increase in female-headed households, cultural stereotypes, gender discrimination, and economic policies that overlook women's roles. When women become heads of households often due to divorce or separation they face heavier care burdens with inadequate support, deepening poverty across generations. Some see female-headed households as a sign of women's empowerment; others see it as increased vulnerability. These women often have far less education than men averaging only one year of schooling in urban poor settings which limits their access to higher education and economic mobility ⁽³³⁾.

f) Early Marriages

Early marriage severely limits girls' access to higher

⁽³¹⁾ *Ibid.*

⁽³²⁾ *Ibid.*

⁽³³⁾ G. Adem & S. Mohammed; Review on the Influences of: Resource Mobilization, Patriarchy System and Policy Implementation on Gender Mainstreaming; the Case of Ethiopia, 2020, *Open Access Library Journal*, 7: e6743. <https://doi.org/10.4236/oalib.110674>

education in Africa. This practice is often rooted in cultural traditions, viewed as a rite of passage, a means to secure financial stability, or a family obligation. As a result, many girls leave school prematurely, cutting off their chances for further education and personal development. International agreements such as the African Charter on Human and Peoples' Rights (1981) and the Convention on the Rights of the Child (1989) recognize education as a fundamental right and call for an end to early marriage. Yet, the practice remains common in many regions. When girls marry early, they typically drop out of school, which perpetuates cycles of poverty and gender inequality. Early marriage in Ethiopia, especially among the Oromo, is closely tied to social status and tradition. While men gain full social standing through marriage, women often receive recognition through their husbands, and rural arrangements frequently exclude their voice. Economic and political interests also drive families to marry girls young. Despite constitutional guarantees of women's rights, harmful practices including gender-based violence, abduction, and rape persist with inadequate survivor support ⁽³⁴⁾. As a result, early marriage forces girls out of school, restricting their access to higher education and perpetuating gender inequality, even against international protective agreements.

g) Drug Abuses

In Ethiopia, drug abuse significantly constrains access to higher education among vulnerable populations. These groups face compounded barriers that hinder their educational opportunities, often violating their rights as enshrined in international instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the

⁽³⁴⁾ See G. Adem., S. Muhammed, I. Ebrahim, *Critical Analysis on the Causes and Consequences of Gender Based Violence and the Collapse of Siinqee and Attette institution of women in Oromiya Regional State of Ethiopia*, in *International Journal of Political Science and Development*, 2020, pp. 184-190.

African Charter on Human and Peoples' Rights (ACHPR), which emphasize the right to education and non-discrimination. The demand for alcoholic beverages in Ethiopia has been steadily increasing over time. Several alcohol-producing companies have established operations in Ethiopia in recent years, indicating a rising consumption trend in the region. In addition to factory-produced alcohols, local methods of alcohol production are also prevalent. There is a strong correlation between alcohol consumption and gender-based violence in rural Ethiopia. Research indicates that many men who drink alcohol and chew green leaf or khat often violate their families upon returning home, engaging in behaviors ranging from verbal insults to physical violence. This violence extends beyond the household, impacting neighbors and community members. Even in remote and inaccessible areas, the supply of beer and other modern alcoholic beverages is available. For example, Arake, a locally produced alcohol, is particularly prevalent in Arsi Nagele and has higher alcohol content than other locally or commercially produced drinks. The consumption of Arake by rural farmers often leads to family violence, as alcohol significantly impairs men's physical and mental control.

Furthermore, alcohol-selling venues have become hotspots for the exploitation of girls, including sexual coercion, commercial sex, and gender-based violence. Girls are often recruited and exploited through these establishments by owners and brokers, especially in cities like Adama, Assela, Jimma, Nekemte, Robe, Ambo, and Shashamane areas that serve as hubs for universities, visitors, guests, and investors due to globalization. In these contexts, virgin girls are often exchanged for money typically around one thousand birr which is shared between the girl and the beverage seller ⁽³⁵⁾. In addition to alcohol, drug abuse, particularly (khat), significantly contributes to gender-based violence. Khat is especially prevalent in rural areas near urban centers, where youth are more likely to develop dependency due to urban

⁽³⁵⁾ T. Megersa, *Gender Based Violence in the Rural Setting of Arsi: Causes and Consequence Analysis in Hetosa District*, 2015, MA thesis, Addis Ababa University.

influence. Young people often spend their earnings on alcohol and khat, frequently without family consultation, which jeopardizes family economic stability and perpetuates the feminization of poverty in the region ⁽³⁶⁾.

h) Husband out Migration

When husbands migrate abroad, women often assume additional household responsibilities, including financial management and caregiving tasks traditionally performed by men. Recognizing this dynamic, researchers interviewed participants to explore whether their family lives are affected by their husbands' migration. Most respondents indicated that there was no significant change, while a few acknowledged that migration did bring about notable shifts in their family routines ⁽³⁷⁾. In societies characterized by patriarchal norms, decision-making authority predominantly resides with men. Ullah noted that in such contexts, men often control even the income generated by women, including remittances sent from overseas ⁽³⁸⁾. Similarly, studies by Datta, Mishra and Dushanbieva indicate that wives remaining behind are frequently subject to their husbands' continued authority, despite geographical distance. Dushanbieva's research further explored the leadership potential of women left in charge, considering various influencing factors ⁽³⁹⁾.

The reality is that wives left behind have little choice but to take on new responsibilities, whether by necessity or circumstance. This shift often forces women to manage household and financial tasks that might otherwise be inaccessible due to traditional gender roles. However,

⁽³⁶⁾ G. Adem, & S. Mohammed, *Review on the Influences of: Resource Mobilization, Patriarchy System and Policy Implementation on Gender Mainstreaming: the Case of Ethiopia*, 2020, *Open Access Library Journal*.

⁽³⁷⁾ *Ibid*.

⁽³⁸⁾ Ullah, *Dynamics of remittance uses and development: Bangladeshi labor migrants*, in *Hong Kong and Malaysia, Development in Practice*, 2011, pp. 1-15.

⁽³⁹⁾ A. Datta, S. k. Mishra, *Glimpses of women's lives in rural Bihar: Impact of male migration*, in *Indian Journal of Labour Economics*, 2011, pp. 457-477.

organizations like the Women and Children's Office have criticized this situation, deeming it primitive and unacceptable that women cannot function independently without male support. There is also concern that family stability could be jeopardized if responsibilities are unfairly shifted onto women. The migration of husbands from Ethiopia often acts as both a constraint and an opportunity for women's empowerment. While traditional gender roles restrict women's access to higher education and decision-making, the absence of husbands can serve as a catalyst for women to pursue educational opportunities, gain independence, and challenge patriarchal norms. However, the increased household responsibilities that come with migration can also limit women's ability to access higher education, highlighting the complex impact migration has on women's advancement in Ethiopia.

i) Internal Displacement and Conflict

Higher education is a vital resource during conflict, offering displaced youth hope, inclusion, and skills needed to rebuild their lives and communities. Yet, as displacement grows, education funding shrinks and higher education is often deprioritized in humanitarian aid. Although education is a basic human right, the 1951 Refugee Convention does not explicitly guarantee higher education for refugees, leaving access dependent on host country policies. Displaced women face heightened barriers, including cultural norms, caregiving burdens, and safety concerns, which further limit their educational opportunities. As studies of women left behind after migration show, displacement often deepens socio-economic instability and restricts access to learning.

8. Strategies for Alleviating Access to Higher Education Constraints for Vulnerable Groups in Ethiopia

As the result of information and communication technology is a widely discussed and used phenomenon. Digitalization is highly visible in the education process. Its benefits extend from creating conducive teaching-learning for educators and

learners to building a knowledge-based economy and improving the civilization level of society ⁽⁴⁰⁾. This is particularly realized through Higher Education which a key education sector is playing a highly significant role in the growth and development of a country through the production of human capital that can drive the socio-economic and political engine of a country. HEIs are operating in a highly competitive and globalized environment where the societal and market demand and the need for building a knowledge-based economy are constantly rising. The decline in traditional notions of national identity and the rise of a global market place has resulted in aggressive competition and customers demand talented knowledge workers capable of enhancing the market reputation and social prestige of an organization. Globalization is supported by digitalization which aspires to connectivity and knowledge as the main factors of production ⁽⁴¹⁾.

In the Ethiopian context, digitalization is playing a remarkable role in business, banking and finance, marketing, and other service-providing sectors. However, the level of digital transformation is embryonic in universities. The government of Ethiopia placed a great emphasis on the digitalization of the service sector including e-commerce ⁽⁴²⁾. It eases communication and service exchange by automating service, improving access, reducing distance, and minimizing mandatory physical attendance. Ethiopia has developed “digital strategy Ethiopia 2025” as a roadmap for the countries digital transformation. In line with this strategy, the Federal Democratic Republic of Ethiopia ministry of education has approved the digital skills country Action Plan for 2020-2030. The focus of minster of education has been expanding universities and increasing their uptake capacity, and huge investments have been made over the years.

However, this opportunity of digitalization cannot be

⁽⁴⁰⁾ M. Ciarko, A. Paluch-Dybek, *The Importance of Digitalization in Education Process*, 2021, E3S Web of Conferences 307, 06002. EDP Sciences.

⁽⁴¹⁾ M. Castells, *The Rise of the Network Society*. West Sussex: 2010, Wiley-Blackwel. *Conference (EDUCON)*. Athens, Greece.

⁽⁴²⁾ T. Taffere, *Ethiopia's drive to advance digital transformation*. United Nations Conference on Trade and Development: 2022, ECIDE Project Paper PB 02.

pronounced in the education sector. Public universities do not offer accredited online degrees at the undergraduate or postgraduate level ⁽⁴³⁾ according to Ministry of Education (n.d.). Still, individuals must attend either regular, extension, or distance programs to upgrade their education and competency. All these programs require physical attendance at different levels. This is a challenge for individuals having a problem with time and location. Digital devices like computers, different software and applications, and the internet are being utilized in HEIs. Nevertheless, digitalization has gone far beyond the use of computer applications and the internet for the teaching-learning process.

It became a comprehensive process of digitalizing learning and teaching that requires arranging educational content using technological opportunities, creating educational materials combined with virtual reality, and applying gamification through the creative use of digital resources ⁽⁴⁴⁾. The use of digital technologies seems mainly concentrated in the administration and student service of many universities in Ethiopia and many Ethiopian university still libraries and laboratories, class room and instructors office have no internet connected computers, smart boards. This may be due to the diversified level of digital literacy and competency of educators and the lack of infrastructure since digitalizing HE requires ICT infrastructure which calls for huge financial investment ⁽⁴⁵⁾.

a) Developing a Gender-Sensitive Policy

Creating a gender-sensitive curriculum means building awareness and skills to address gender issues in education. This involves removing biased content and incorporating inclusive perspectives to ensure equal opportunities and

⁽⁴³⁾ Federal Democratic Republic of Ethiopia, Ministry of Education (n.d.)

⁽⁴⁴⁾ B. Arisory, *Digitalization in education*, in *Cypriot Journal of Educational Sciences*, 2022.

⁽⁴⁵⁾ D, Masouskova, *Digitalization and Its Impact on Business*, in *Review of Business and Management*, 2022, pp. 51-67.

participation for all students. Such an approach supports the right to higher education and promotes gender equality, especially for vulnerable groups. Research by Gutema and Sultan (2019) shows that women remain underrepresented in senior leadership roles across most offices except in the Bale Zone Women's Affairs Office. Barriers include socio-cultural stereotypes, lack of recognition, distrust in women's professional abilities, and systemic undervaluation of their work.

b) Enhancing Microfinance Accessibility

Poverty and disability are closely linked, with the World Health Organization estimating that around 400 million people with disabilities live in developing countries. This intersection is especially severe for women, vulnerable groups, persons with disabilities, and female-headed households. These individuals encounter multiple, overlapping barriers such as social stigma, discrimination, physical inaccessibility, and restrictive societal norms that limit their access to vital services and opportunities, including higher education. Women have historically endured systemic marginalization, a reality noted by Robin Morgan in 1969 that remains true today, particularly for women with disabilities (WWDs). Their experience is often more difficult due to the dual burdens of gender inequality and disability. Although capable of making significant contributions to their families and communities, WWDs are frequently held back by pervasive structural obstacles. Studies, such as those by Gutema and Sultan (2020), confirm that while poverty affects both men and women, women bear a disproportionate burden because of unequal labor divisions and restricted access to productive resources, healthcare, and education. In nations with underdeveloped infrastructure, like Ethiopia, persons with disabilities especially women face a heightened risk of chronic poverty. Reliance on family and societal support deepens their economic exclusion, further obstructing their path to empowerment and education.

Traditionally, women, and particularly women with disabilities, have struggled to translate labor into sustainable income or to obtain the resources needed for growth. Microfinance has arisen as an effective tool for poverty

reduction, especially in communities grappling with landlessness, disease, illiteracy, and hunger. Beyond fostering income and employment, it encourages grassroots involvement and empowerment, helping marginalized groups reaches previously inaccessible resources and opportunities. It is generally believed that providing women with access to resources such as skills training, credit, small-scale income-generating activities, and home economics can enhance their conditions and enable them to become equal economic partners with men. This approach is often exemplified through income-generating projects for women, which aim to address the underlying systemic causes of gender inequality ⁽⁴⁶⁾. By extending microfinance services designed for women, persons with disabilities, vulnerable populations, and female-headed households, it is possible to disrupt the cycle of poverty and open pathways to higher education. Providing financial tools can empower these groups to overcome economic hurdles, strengthen their resilience, and gain the skills essential for personal and societal advancement.

c) Affirmative Actions

The U.S. Civil Rights Commission (1977) defines affirmative action as any measure, beyond merely ending discriminatory practices, that is taken to rectify past or ongoing discrimination or to prevent its recurrence in the future. Affirmative action, in this context, is exemplified by the National Women's Policy formulated in 1993, aimed at establishing appropriate institutional structures within government offices and promoting gender-sensitive public policies. In Ethiopia, issues related to equity particularly gender disparities and challenges faced by marginalized regions pose significant barriers to the advancement of higher education. Although affirmative action for women was introduced as early as the 1960s, its implementation within the public sector remains limited and still in its early stages. The

⁽⁴⁶⁾ E. Esplen, *Engaging Men in Gender Equality Positive Strategies and Approaches. Overview and Annotated Bibliography: Sussex*, 2006, Bridge Institute of Development Studies.

primary goal of this policy was to eliminate all forms of violence against women. To achieve this, the Gender and Development (GAD) approach was adopted as the fundamental strategy, especially since the previous Women in Development (WID) approach failed to produce tangible results ⁽⁴⁷⁾. Following the overthrow of the Marxist-Leninist Derg regime in 1991, the new Ethiopian government, led by the Ethiopian People's Revolutionary Democratic Front (EPRDF), embarked on reforms in education and other sectors aligned with its socio-economic vision. Consequently, a new Educational and Training Policy was drafted by the Transitional Government and approved in August 1993, with the final version released in April 1994 (ETP, 1994). However, this policy provided only modest provisions for affirmative action, primarily focusing on female teacher trainees.

A more solid foundation for affirmative action was established by the 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE), which explicitly recognizes the historical injustices experienced by women. The Constitution mandates affirmative action measures to address these inequalities and to enable women to compete on equal footing with men across all domains of public life (Article 35:3). Nonetheless, the Constitution does not specify the exact scope or fields in which affirmative action should be implemented. It broadly aims to facilitate women's participation and equality in social, economic, and political spheres, but leaves ambiguity regarding whether sectors such as land allocation, health services, and housing are included. This vagueness has led to discrepancies in how affirmative action programs are applied across different areas. As a result, some interpret the scope of affirmative action as being confined primarily to education and employment sectors ⁽⁴⁸⁾. This perception is partly due to specific regulations targeting these areas and the more extensive implementation observed

⁽⁴⁷⁾ Firesenbet, *The Practice and Challenges of Women Empowerment in Educational Leadership in Primary Schools of East Shewa Zone Administrative Towns*, 2020, Oromia National Regional State.

⁽⁴⁸⁾ Yasin, *Affirmative action for women in higher education and the civil service: 2013, The case of Ethiopia*. [Thesis, externally prepared, Universiteit van Amsterdam].

therein. Although the Constitution does not clearly delineate the sectors for affirmative action, it is generally understood that targeted programs should be developed across various sectors to ensure women's equal participation in political, economic, and social life.

9. Conclusion

Poverty remains a major obstacle to the progress of women and marginalized groups throughout Africa, hindering access to education, healthcare, and economic opportunity. International frameworks such as the Maputo Protocol stress the need to eliminate economic disparities and empower women to participate fully in development. Yet, in many rural and marginalized communities, structural barriers including limited access to productive assets, legal restrictions, and discriminatory cultural practices sustain impoverishment. These economic hardships impede access to higher education, which is essential for social mobility and gender equality, thereby reinforcing cycles of poverty and exclusion. The imperative to focus on vulnerable groups, gender-inclusive and equitable higher education curricula is rooted in the broader right to access quality education for all, especially those marginalized due to gender, socioeconomic status, ethnicity, or other vulnerabilities. Vulnerable groups including pregnant women, minority women, female-headed households, and populations affected by feminization of poverty and feminization of migration face unique barriers that hinder their educational opportunities. For example, curricula that ignore the specific realities of these groups can exacerbate exclusion and inequality, preventing them from fully exercising their right to higher education.

By all accounts Ethiopia ranks among the poorest countries worldwide according to standard for international indicators for income, health, and education. Ethiopia falls among the poorest countries globally, within the least developed countries and in sub-Saharan Africa. Ethiopia is one of the least developed countries in terms of GNP per capita life expectancy below the world average, infant mortality is almost double the world average, and the adult literacy rate is less than half of the world rate. Thus, correcting that disparity of structural and

social injustice in Ethiopia is central to tackling poverty and inequality. To reduce the threat of shocks as result of poverty, individuals and governments must seek to enhance people's security: not the militarized version of security that has dominated public debate in recent years, but a more comprehensive human version, taking the insecure and anxiety ridden experience of living in poverty as its starting point. Guaranteeing security in this way means strengthens poor people's ability to survive shocks and increases their chances of escaping g from poverty and not falling back. The Ethiopian government should actively collaborate with the international community and establish partnerships with global organizations to support students in vulnerable circumstances. This cooperation can promote social justice and align with the broader objectives of higher education.

CHAPTER V

ACCESS TO HIGHER EDUCATION AS A LEGAL PATHWAY IN EU MIGRATION LAW

Francesca Pollicino *

SUMMARY: 1. Introduction. – 2. Access to Education: Normative Limits and Structural Openings. – 3. EU Competence in Education and the Logic of Functional Integration. – 4. Access to Higher Education as a Legal and Epistemic Gateway to the European Union. – 4.1. From Access to Education to Regulated Entry. – 4.2. Education as an Epistemic Filter: Access to the EU Knowledge Space. – 5. Directive (EU) 2016/801 as a Case Study of Functional Integration. – 6. The External Dimension of EU Migration and Education Policies. – 7. Conclusions.

1. Introduction

Access to education occupies an ambiguous position within the legal order of the European Union (EU), since it is widely recognised as a fundamental social right, closely associated with individual development, equality, and social inclusion, but it remains structurally disconnected from any general entitlement to cross-border mobility or territorial access ⁽¹⁾. This tension becomes particularly visible when access to higher education intersects with migration law, especially in relation to third-country nationals seeking entry into the European Union for study or research purposes.

Within EU law, this ambiguity is further compounded by the limited nature of Union competence in the field of

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⁽¹⁾ G. Gori, *Towards an EU right to Education*, The Hague, 2001.

education. Articles 165 and 166 of the Treaty on the Functioning of European Union (TFEU) expressly exclude harmonisation, confining EU competence to supporting and coordinating Member State policies. At the same time, higher education has progressively assumed a central role within broader integration dynamics ⁽²⁾, linked to mobility, human capital development, and the construction of a European space of knowledge. The result is a paradoxical legal configuration: education remains formally marginal in terms of competence, yet increasingly central in terms of regulatory effects ⁽³⁾.

Moving from this apparent paradox, this work analyses a specific manifestation of competence creep ⁽⁴⁾ affirming that access to higher education has acquired a specific legal relevance within EU migration governance, not as an autonomous right, but as a functional and epistemic gateway through which the Union organises selective access to its territory and knowledge space. The EU does not expand its education competence directly, rather, it makes higher education legally operative by incorporating it into migration law instruments and by aligning education-based mobility with objectives related to skills, competitiveness, and innovation. For third-Country nationals, education operates neither as a purely social entitlement nor as a neutral mobility opportunity ⁽⁵⁾. Instead, it functions as a legally mediated pathway, embedded in migration law instruments and shaped

⁽²⁾ B. De Witte, *The Community law of education*, Baden-Baden, Nomos, 1989; B. De Witte, *Higher education and the constitution of the European Community*, in C. Gellert (ed.), *Higher Education in Europe*, London, 1993, pp. 185-202; V. DI Comite, *La dimensione europea dell'istruzione superiore*, in *Collana di Studi sull'integrazione europea*, Cacucci, Bari 2018; S. Garben, *EU Higher Education Law: the Bologna Process and harmonization by stealth*, Kluwer, Alphen aan den Rijn, 2011.

⁽³⁾ S. Garben, *Confronting the competence conundrum: democratising the European Union through an expansion of its legislative powers*, in *Oxford Journal of Legal Studies*, Vol. 35, No. 1, 2015.

⁽⁴⁾ S. Garben, *Competence Creep Revisited*, *Journal of Common Market Studies*, Vol. 57, Issue 2, 2019, pp. 205-222.

⁽⁵⁾ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing [2016] OJ L 132/21.

by broader objectives ⁽⁶⁾. These features are not incidental, but enable the Union and the Member States to combine openness with control, facilitating admission and circulation while preserving discretion over entry volumes and long-term residence outcomes.

Existing scholarship has extensively examined EU competence in education ⁽⁷⁾, the evolution of legal migration instruments ⁽⁸⁾, however, these strands of analysis are often

⁽⁶⁾ F. Pollicino, *EU Legal Migration Policies: The Directive on Students and Researchers and the New Talent Partnership*, in *Ordine Internazionale e Diritti Umani*, 2023, pp. 351–363.

⁽⁷⁾ *Inter alia*: S. Garben, *The Failure to Protect Education as an Inalienable Policy Domain of EU Member States – A Critical Assessment of Article 165 TFEU on Education and Suggestions for Reform*, *The EU Between ‘an Ever Closer Union’ and Inalienable Policy Domains of Member States 2014*, pp. 513–534; A. Gideon, *Higher Education Institutions and EU Competition Law*, in *Competition Law Review*, 2012, 169–184; S. Jørgensen, *The Right to Cross-Border Education in the European Union*, in *Common Market Law Review*, 2009, pp. 1567–1590; K. Lenaerts, *Erasmus: legal base and implementation. European Community Law of Education*, in B. De Witte (ed), *European Community law of education*, Baden-Baden, Nomos, 1989; K. Lenaerts, *L’egalite de traitement en droit communautaire: un principe unique aux apparences multiples*, in *Cahiers de droit européen*, Vingt-septième année, N° 1–2, 1991; K. Lenaerts, *Education in European Community law after Maastricht*, in *Common Market Law Review*, n. 31, 1994; K. Lenaerts, P. Van Nuffel, *EU Constitutional Law*, Oxford University Press, Oxford, 2022.

⁽⁸⁾ *Inter alia*: P. Gargiulo, *Le iniziative dell’Unione europea per attrarre talenti e competenze e la riforma della Direttiva Carta Blu*, in I. Caracciolo, G. Cellammare, A. Di Stasi, P. Gargiulo (eds.), *Migrazioni Internazionali: questioni giuridiche aperte*, Editoriale Scientifica, 2022, pp. 465–494; E. Triggiani, *I residenti provenienti da Paesi terzi: cittadini senza cittadinanza?*, in *Freedom, Security & Justice: European Legal Studies*, n. 2, 2017, pp. 52–72; A. Pitrone, *La recente disciplina europea sulla migrazione qualificata: tra promozione della migrazione circolare e politiche di integrazione*, in *Freedom, Security & Justice: European Legal Studies*, n. 1, 2018, pp. 73–94. M Chavrier, P. Bury, *Students and Researchers Directive: Negotiations within the Council*, in Tesselte de Lange & Paul Minderhoud (eds.) *The students’ and Researchers’ Directive: central themes, problem issues and implementation in selected Member States*; V. Di Comite, *Accoglienza di studenti, ricercatori e docenti provenienti da paesi terzi*, in G. Caggiano (ed.), *I percorsi giuridici per l’integrazione. Migranti e titolari di protezione internazionale tra diritto dell’Unione e ordinamento italiano*, Giappichelli, Torino, 2014, pp. 346–47; P. Andrade, I. Martin & S. Mananashvili, *EU cooperation with third Countries in the field of migration*, study for the LIBE Committee,

addressed separately. Studies focusing on education law tend to emphasise soft governance, mobility programmes, and mutual recognition, while migration law scholarship primarily concentrates on admission criteria, residence statuses, and rights differentials. Less attention has been paid to the way in which access to education operates at the intersection of these domains, producing regulatory effects that cannot be fully captured by either field in isolation.

This paper seeks to fill this gap, reconceptualising access to higher education as a functional component of EU migration governance and, more specifically, as a legal and epistemic gateway. The notion of a gateway captures the way in which education is used to structure admission, temporariness, and transition within the EU legal migration *acquis*, while remaining formally insulated from claims grounded in fundamental rights or harmonising competence. The analysis focuses in particular on third-country nationals admitted for study or research purposes ⁽⁹⁾, occupying a distinctive position within EU migration law characterised by conditionality, reversibility, and a close linkage between legal status and participation in accredited educational or research institutions. Through these features, education-based migration pathways allow the Union and the Member States to combine openness with control, facilitating mobility while preserving discretion over entry volumes and long-term residence.

The argument is developed through a conceptual framework and is tested against Directive (EU) 2016/801, before briefly turning to the external dimension of education-based mobility. By reframing access to higher education as a gateway rather than a right, the attempt is to draw a perspective that connects competence, migration control, and knowledge governance contributing to ongoing debates on the evolving boundaries of EU integration in areas characterised by limited competence but significant regulatory impact.

European Parliament, 2015; S. Poli & C. Cinelli, *Mobility and legal migration in the context of the European Neighbourhood Policy: what role for the European Union?*, in *Revista de Derecho Comunitario Europeo*, N. 58, 2017, pp. 979-1005; F. Martinez, *Gli strumenti dell'Unione europea per promuovere la migrazione circolare tra obiettivi di sviluppo e interessi economici degli Stati membri*, in *Federalismi.it*, n. 1/2017.

⁽⁹⁾ Directive (EU) 2016/801.

2. Access to Education: Normative Limits and Structural Openings

Access to education therefore remains embedded within the broader framework of State sovereignty. As a matter of fact, even if widely recognized in international law ⁽¹⁰⁾ as a fundamental right and a protected social interest, education becomes enforceable as a claim to access educational provision *within* a legal order, not as a claim to enter that legal order. In this respect, the right to education is structurally different from rights that are expressly framed in terms of cross-border mobility or territorial access. Education rights, as a rule, operate on the assumption that jurisdiction is already established. They regulate how education must be made available and accessible, and how it must be delivered without discrimination, but they do not generally transform educational aspirations into a legally enforceable entitlement to admission.

This structural limitation becomes particularly evident in the field of higher education. Despite its growing relevance for development, innovation, and international cooperation, higher education continues to fall within the discretionary regulatory space of Member States ⁽¹¹⁾. The reason is both political and juridical: higher education is typically characterised by selective admission, resource constraints, and differentiated national policies on tuition, eligibility, and institutional capacity. For foreign nationals, the regulatory framework is often dual in nature: access to universities is governed by academic criteria and institutional rules, such as recognition of qualifications, language requirements, or merit-based selection; access to the territory and the legal possibility to remain for the duration of the studies depend on migration

⁽¹⁰⁾ *Universal Declaration of Human Rights*, GA Res 217 A (III), UN GAOR, 3rd sess, Supp No 13, UN Doc A/810 (1948) Art 26; *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3 (entered into force 3 Jan 1976) Art 13; *UNESCO Convention against Discrimination in Education* (adopted 14 Dec 1960, entered into force 22 May 1962); *Charter of Fundamental Rights of the European Union* [2012] OJ C326/391, arts 14 and 51.

⁽¹¹⁾ Garben *et al.*, *supra* note 7.

law instruments such as visas, residence permits, and compliance with conditions of stay. These two dimensions interact, but they remain conceptually distinct, being the first structured through institutional criteria and equality guarantees within the education system, whereas the latter through public authority decisions on entry and residence. Educational purposes may justify mobility, but they become legally effective only once they are translated into a lawful basis of stay through migration law.

At EU law level, Article 14 of the Charter of Fundamental Rights guarantees the right to education and access to vocational and continuing training. The provision has an important constitutional meaning: it confirms that education is not merely a policy objective but a legally recognised right within the EU fundamental rights architecture. Yet the Charter does not, as such, confer any autonomous entitlement for third-country nationals to enter or reside in the Union for educational purposes ⁽¹²⁾. The Charter, indeed, does not function as a free-standing source of territorial access. Its provisions apply to Member States only when they are acting within the scope of EU law, as clarified by Article 51, and does not displace the allocation of competences established by the Treaties. In cross-border contexts, the effective enjoyment of Charter-based education rights therefore typically presupposes a lawful basis of stay. This element is sometimes overlooked, but it sets the legal threshold the conditions under which education must be accessible and non-discriminatory once a person is within a Member State's jurisdiction, and the whether that person may enter and reside for education purposes in the first place.

This distinction is also reflected in the EU Court of Justice's approach to education-related claims. The Court has long acknowledged that education can fall within the scope of EU law in specific contexts, particularly through the principle of non-discrimination and through the legal effects attached to

⁽¹²⁾ C. Wallace & J. Shaw, *Education, Multiculturalism and the Charter of Fundamental Rights of the European Union*, in T. Herve & J. Kenner (eds.), *Economic and Social rights under the EU Charter of fundamental rights: a legal perspective*, Oxford-Portland, 2003,

free movement. In *Gravier* ⁽¹³⁾, the Court held that access to vocational training could not be made conditional upon nationality, thereby confirming that education may trigger justiciable constraints once a situation is sufficiently connected to EU law. Later case law further illustrates that education-related entitlements may depend on residence-based conditions and the legal status of the individual within the host Member State. In *Bidar* ⁽¹⁴⁾, for instance, the Court accepted that certain education-linked benefits could be claimed by a Union citizen student only once a degree of integration, based on residence requirements, was established. These rulings relevance, even if they are not directly concerned with third-country nationals seeking admission for study purposes, lies in the fact that they demonstrate that, within the EU legal order, access to education is not framed as an unconditional entitlement detached from legal status. On the contrary, it is articulated through a combination of non-discrimination principles and status-based thresholds that determine when and how education-related rights become effective.

For third-country nationals, access to the territory for education purposes is not derived from Article 14 of the Charter, nor from the Union's supporting competence in education under Articles 165 and 166 TFEU. It is governed by the EU legal migration framework and by the Member States' discretion in implementing it.

What follows is a conceptual separation that is structurally embedded in EU law. Education is protected as a social right and as a component of human development, yet admission to the territory for educational purposes remains governed by

⁽¹³⁾ In *Gravier*, the Court held that access to vocational training falls within the scope of EU law and that Member States may not discriminate on grounds of nationality as regards conditions of access for Member States nationals, including tuition-related charges. Case 293/83 *Françoise Gravier v City of Liège* (13 February 1985) EU:C:1985:69.

⁽¹⁴⁾ In *Bidar*, the Court held that an EU citizen lawfully resident as a student in another Member State may, in principle, rely on equal treatment to claim certain forms of student support, although the host State may require a sufficient degree of integration, such as a residence-based condition, provided it is proportionate. Case C-209/03 *R (Bidar) v London Borough of Ealing and Secretary of State for Education and Skills* (15 March 2005) EU:C:2005:169.

migration law and by the discretionary allocation of residence status. This division reflects a constitutional allocation of powers and legal effects. Articles 165 and 166 TFEU confine EU action in education to support and coordination, while Article 79 TFEU empowers the Union to regulate entry and residence conditions for third-country nationals. As a consequence, the legal question of “access to education” and the legal question of “access to territory for education purposes” are addressed through different normative grammars, rights and equal treatment on the one hand, admission criteria and authorised stay on the other. Migration law, in this sense, does not simply accompany education-based mobility; it constitutes the legal infrastructure that makes it possible. It defines the conditions under which educational participation may justify entry, the duration and limits of the stay, the grounds for refusal or withdrawal, and the terms on which mobility can be extended or converted into other statuses. Access to higher education is not framed as a right that compels admission, but as a legally mediated pathway that enables conditional access to the Union’s territory and to its institutional knowledge environment. The “gateway” is therefore not created by education law and does not depend on harmonising competence; it is constructed through migration instruments that attach legal effects to educational enrolment or research affiliation, using academic participation as an eligibility filter and as a compliance anchor. The gap between education as a protected interest and territorial access as an authorised decision does not leave education outside the law; it allows education to operate as a selective, politically legitimate, administratively manageable, and legally reversible entry point ⁽¹⁵⁾.

⁽¹⁵⁾ Recital 3 of the preamble of the Directive 2016/801 states that “...migration from outside the Union is one source of highly skilled people, and students and researchers are in particular increasingly sought after. They play an important role in forming the Union’s key asset, human capital, and in ensuring smart, sustainable and inclusive growth, and therefore contribute to the achievement of the objectives of the Europe 2020 Strategy.”

3. EU Competence in Education and the Logic of Functional Integration

The constrained reach of education as a right is mirrored by the equally constrained nature of EU competence in this field. Under Articles 165 and 166 TFEU, the Union's role in education and vocational training is confined to supporting, coordinating, and complementing Member State action, while any harmonisation of national laws and regulations is expressly excluded. Education thus remains, at least formally, a domain in which the Treaties preserve a strong link with national constitutional identity and political responsibility ⁽¹⁶⁾. This competence architecture matters not only because it limits the legal instruments available to the Union, but also because it shapes the form of integration that can occur in and through higher education ⁽¹⁷⁾.

Formal limits, however, have not prevented the Union from exerting significant regulatory influence over higher education. EU action in this field has developed through indirect and

⁽¹⁶⁾ C.U. Amann, *The EU education policy in the post Lisbon era: a comprehensive approach*, PL GmbH, Frankfurt am main, 2015; Capano G., Piattoni S., *Building up the European Higher Education Area: the struggle between common problems, 'shared' goals and national trajectories*, in ECPR joint sessions of workshops on The politics of governance architectures: institutions, power, and public policy in the EU Lisbon strategy, Lisbona 2009; Cocconi M., *L'istruzione e la formazione professionale tra coordinamento comunitario e funzioni nazionali*, atti Convegno Autonomia dell'istruzione ed autonomia regionale dopo la riforma del Titolo V della Costituzione, in *Le istituzioni del federalismo*, n. 2, 2004, pp.285-308; Cortese F., *L'istruzione tra diritto europeo e diritto nazionale*, in *Munus-Rivista giuridica dei servizi pubblici*, n. 3/2015 .p. 505-524.

⁽¹⁷⁾ Ex multis: M. Cocconi, *Il diritto europeo dell'istruzione: oltre l'integrazione dei mercati*, Giuffrè, Milano, 2006; A .Corbett, *Universities and the Europe of Knowledge: Ideas, Institutions and Policy Entrepreneurship in European Union Higher Education Policy, 1955-2005*, Palgrave Macmillan, Londra, 2005; A. Corbett, *Principles, problems, politics. What does the historical record of EU cooperation in higher education tell the Bologna generation?*, in *European Higher Education at the crossroads: between the Bologna Process and national reforms*, A. Curaj, P. Scott, L .Vlasceanu, L. Wilson (eds), Springer, chapter 3, 2012; A. Corbett, *Education and the Lisbon Strategy*, in: P. Copeland, D. Papadimitriou (eds), *The EU's Lisbon Strategy*, Palgrave studies in European Union politics, London, 2012, pp. 149 - 167.

functionally driven mechanisms, combining programme-based governance, soft law coordination, and the legal effects of adjacent Treaty freedoms. The most visible illustration is mobility: even where the Union cannot harmonise curricula or institutional structures, it can foster circulation through funding, mutual recognition dynamics, and frameworks that encourage convergence of standards. Over time, these instruments have contributed to the construction of a European space of knowledge in which higher education is increasingly treated as a strategic resource rather than a purely domestic public service.

A further driver of this development lies in the interaction between education and internal market integration ⁽¹⁸⁾. Although education as such is not a classic market competence, the Court of Justice has long confirmed that access to certain forms of education and training may fall within the scope of EU law ⁽¹⁹⁾, particularly through the principle of non-discrimination. In *Gravier*, for instance, the Court held that access to vocational training could not be made he Court did not constitutionalise an EU competence in education, yet it treated certain forms of training as capable of producing Treaty effects, thereby subjecting national education-related measures to EU constraints. The significance of this jurisprudence is less about education as such than about method. It shows how the Union can shape outcomes in higher education through the spill-over effects of integration, without formally altering the competence settlement laid down in Articles 165 and 166 TFEU ⁽²⁰⁾.

The result is a form of functional integration that operates without direct competence expansion. Higher education is not

⁽¹⁸⁾ M. Cocconi 2006, cit. *supra* note 17; Cino Pagliarello M., *Higher education in the single market between (trans) national integration and supranationalisation: exploring the European universities initiative*, in *Journal of European Integration*, 2022, Vol. 44, No. 1, pp. 149–164.

⁽¹⁹⁾ Belloni M. P., *La politica dell'istruzione superiore nella Comunità economica europea: la disciplina normativa e la sua attuazione alla luce della giurisprudenza della Corte di giustizia*, in *Il Politico*, Ottobre-Dicembre 1992, Vol. 57, No. 4 (164), pp. 611–656.; Flynn J., *Gravier: suite du feuilletton*, in *the Community law of education*, Baden-Baden, Nomos, 1989.

⁽²⁰⁾ Garben cit. *supra* note 7, 11.

harmonised, yet it is progressively embedded within broader EU objectives related to mobility, human capital development, competitiveness, and innovation. This is sometimes described as *competence without competence*. EU influence in higher education is often produced through regulatory environments that are formally external to education law itself. Higher education becomes a site where supporting competence, internal market dynamics, and migration governance intersect, generating effects that are real in practice even when the Treaties exclude classic legislative approximation ⁽²¹⁾.

This dynamic is particularly relevant when higher education is considered in relation to third-country nationals. While Articles 165 and 166 TFEU do not provide a legal basis for harmonising admission rules to national education systems, EU migration law does provide a basis for organising entry and residence conditions for specific categories of third-country nationals, including students and researchers. In this context, higher education becomes legally operative through a different route: it is not regulated as an education matter, but operationalised as a purpose that justifies admission under the Union's migration competence ⁽²²⁾. The boundary between limited competence and regulatory effect is therefore not erased; it is reconfigured. What emerges is a governance model in which education remains formally peripheral in competence terms, yet increasingly central as an instrument through which the Union structures selective mobility and access to its knowledge space.

4. Access to Higher Education as a Legal and Epistemic Gateway to the European Union

4.1. From Access to Education to Regulated Entry

Within the EU legal order, access to higher education does not operate as an autonomous subjective right capable of grounding claims to entry or residence. This is a structural condition that shapes how education can be mobilised in the

⁽²¹⁾ *Idem*.

⁽²²⁾ A. Pitrone, cit. *supra* note 8.

governance of mobility. The absence of an education-based entitlement to territorial access does not render education legally irrelevant. On the contrary, it creates a space in which educational purposes may be translated into admission criteria through migration law, without requiring the Union to claim harmonising competence in the field of education itself.

In this configuration, higher education becomes a site of regulated entry. The relevant legal question is not whether education is protected as a social right, since its protection is recognised at the level of international law and within the EU Charter, but how educational purposes are operationalised into a lawful basis of stay for third-country nationals. The legal architecture of admission therefore combines academic elements (acceptance by a recognised institution, enrolment, research hosting agreements) ⁽²³⁾ with classic migration control conditions (resources, insurance, security checks, time limits) ⁽²⁴⁾. The legal significance of education lies precisely in this hybrid structure. It enables the Union to facilitate mobility in a domain associated with cooperation and knowledge exchange, while preserving the conditionality typical of migration governance.

Admission is mediated by institutional selection, administrative discretion, and compliance requirements that frame education-based mobility as a controlled channel rather than as an extension of the right to education. The functional role of education as an entry mechanism becomes most visible once we consider the legal categories through which education-related mobility is structured. Students and researchers are not admitted as generic migrants. They are constructed as specific legal subjects whose entry is justified by the purpose of study or research and by the anticipated contribution associated with participation in knowledge production, skills formation, and innovation ecosystems ⁽²⁵⁾.

From a regulatory perspective, the attraction of these

⁽²³⁾ Directive (EU) 2016/801, arts 7(a),(e), 10(1)–(2), 11(2), 15(1)–(2).

⁽²⁴⁾ Directive (EU) 2016/801, arts 7(c) and 7(e), 18, 20(c).

⁽²⁵⁾ Directive (EU) 2016/801 frames the admission of third-country students and researchers within a broader strategy of attracting highly skilled persons, stating that ‘students and researchers are in particular increasingly sought after’ and that they ‘play an important role in forming the Union’s

categories is clear. They allow for admission that is, by design, temporary and conditional. Residence is linked to an identifiable institutional anchor (the university, the research organisation, the programme), and compliance can be monitored through measurable indicators such as enrolment, academic progress, or the continuation of research activity. In this sense, education functions as a form of anticipatory integration. Through lawful residence connected to academic participation, third-country nationals enter the host society in a setting that is structured, supervised, and normatively framed as legitimate. Yet the conditional nature of the status preserves reversibility. Admission can be withdrawn if the conditions are no longer met, and the transition to other residence statuses, e.g. labour-related ones, remains contingent on additional requirements and Member State discretion. Openness and control are therefore not competing logics; they are integrated features of the same legal design.

4.2. Education as an Epistemic Filter: Access to the EU Knowledge Space

Beyond its operational role as legal entry path, access to higher education performs a more structurally significant role: it regulates participation in the European space of knowledge ⁽²⁶⁾. Education-based migration routes do not merely facilitate the physical movement of persons; they also condition access to an institutional and epistemic infrastructure built around recognised qualifications, accredited programmes, research standards, and membership in academic and scientific networks. From this perspective, admission for study or research purposes is not only a mobility channel but also a mechanism through which inclusion in the Union's knowledge

key asset, human capital, and in ensuring smart, sustainable and inclusive growth', recital (3).

⁽²⁶⁾ *Inter alia*: European Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on *achieving the European Education Area by 2025* COM(2020) 625 final (Brussels, 30 September 2020); Council Resolution on a strategic framework for European cooperation in education and training towards the European Education Area and beyond (2021–2030) [2021] OJ C 66, 26 February 2021.

environment is filtered, stabilised, and rendered legally meaningful.

This becomes clearer when the issue is placed against the broader trajectory of EU initiatives aimed at strengthening mobility and excellence in education and research. The progressive construction of the European Education Area and the European Research Area reflects a logic of integration that cannot be reduced to territorial circulation alone. What is at stake is access to the conditions under which knowledge is produced, certified, and circulated within a shared institutional setting. Participation presupposes more than presence: it requires formal affiliation with recognised institutions, compliance with academic requirements, and the capacity to sustain oneself within the host system—elements that, in practice, operate as selection criteria and shape the boundaries of legitimate access.

The frequently invoked notion of a fifth freedom ⁽²⁷⁾, understood as the free movement of knowledge, does not materialise as an unconditional freedom comparable to the classic internal market freedoms. It emerges as the outcome of a structured legal process that governs who may access, contribute to, and benefit from knowledge circulation within the Union. In this context, higher education functions as an epistemic filter. It does not merely enable mobility; it shapes the conditions of participation in the EU's cognitive and institutional environment.

Beyond its function as a legal entry mechanism, access to higher education performs a more structurally significant role: it regulates participation in the European space of knowledge. Education-based migration pathways do not simply organise the movement of persons. They govern access to an institutional and epistemic infrastructure defined by recognised

⁽²⁷⁾ E. Letta, *Much More Than a Market: Speed, Security, Solidarity - Empowering the Single Market to Deliver a Sustainable Future and Prosperity for All EU Citizens* (High-Level Report commissioned by the European Council, published April 2024), the report proposes, *inter alia*, a “fifth freedom” focused on research, innovation, knowledge and education to enhance the Single Market’s innovation capabilities and institutional integration.

qualifications, accredited programmes, research standards, and participation in academic and scientific networks.

This dimension becomes clearer when considered against the broader EU projects aimed at strengthening mobility and excellence in education and research. The progressive construction of the European Education Area and the European Research Area reflects a logic of integration that is not reducible to territorial circulation. What is at stake is access to the conditions under which knowledge is produced, certified, and circulated. Admission for study or research purposes therefore operates as a mechanism of epistemic inclusion. It selects individuals according to their capacity to enter, and to perform within, the Union's knowledge regimes: formal admission to an institution, compliance with academic requirements, and the ability to sustain oneself economically within the host system.

The frequently invoked notion of a "fifth freedom", understood as the free movement of knowledge, does not materialise as an unconditional freedom comparable to the classic internal market freedoms. It emerges as the outcome of a structured legal process that governs who may access, contribute to, and benefit from knowledge circulation within the Union. In this context, higher education functions as an epistemic filter. It does not merely enable mobility; it shapes the conditions of participation in the EU's cognitive and institutional environment.

5. Directive (EU) 2016/801 as a Case Study of Functional Integration

Directive (EU) 2016/801 ⁽²⁸⁾ occupies a distinctive position within the EU legal migration *acquis* ⁽²⁹⁾. Its relevance does not

⁽²⁸⁾ For a comprehensive reading on the theme T. De Lange, P. Minderhoud (eds.), *The students' and Researchers' Directive: central themes, problem issues and implementation in selected Member States*, Nijmegen, 2021.

⁽²⁹⁾ A. Di Pascale, *L'immigrazione "legale" nel Nuovo Patto sulla migrazione e l'asilo*, in Quaderni AISDUE 2/2021, Napoli, 2022, p. 77 ss.; G. Cristiano, *Canali legali di accesso all'Unione europea nell'area del*

lie in the recognition of an autonomous right to education-based admission, but in the way it legally organises access to higher education and research as a specific channel of entry and residence for third-country nationals. The Directive is formally grounded in the Union's migration competence, reflecting the legal basis for action under Article 79 TFEU, yet its material content is intrinsically linked to educational and research participation ⁽³⁰⁾.

The Directive does not treat education as a social right capable of generating claims to enter or remain in the Union. Instead, it constructs education-related mobility as a conditional migration pathway. Admission is tied to institutional anchoring such as acceptance by a recognised higher education institution or, for researchers, a hosting agreement with a research organisation, and is complemented by classic requirements associated with migration control, including sufficient resources, health insurance, and the possibility for Member States to refuse admission on grounds of public policy, public security, or public health ⁽³¹⁾. These conditions are not merely procedural. They define the nature of the status granted under the Directive, situating students and researchers within a regime of authorised temporariness that is structured around compliance and renewability rather than entitlement.

This architecture allows the Union to combine facilitation with discretion. On the one hand, the Directive introduces procedural safeguards and a degree of legal certainty by setting common minimum rules on admission, residence

Mediterraneo: questioni aperte e sviluppi recenti, in *Quaderni AISDUE* - Fascicolo speciale n. 4/2024, n. 3, 2024.

⁽³⁰⁾ Directive (EU) 2016/801 (cit. *supra*, note 5) recasts and replaces two earlier instruments: Directive 2004/114/EC on the admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, and Directive 2005/71/EC on the admission of third-country nationals for the purposes of scientific research, thereby consolidating the EU framework governing entry and residence for selected categories of third-country nationals within the broader legal migration *acquis* and seeking to streamline and approximate national rules on admission conditions, procedural safeguards and mobility-related rights for Third Country national students and researchers.

⁽³¹⁾ Directive (EU) 2016/801 [2016] OJ L 132/21, arts 11(2), 10(1), 7(c), 7(e) and 20(c).

permits, and the categories covered. It also provides for mobility-enhancing mechanisms, including intra-EU mobility for researchers and, under certain conditions, for students. On the other hand, it preserves Member State control over admission volumes and the overall selectivity of the channel. The Directive does not remove the fundamental asymmetry between nationals and third-country nationals, nor does it eliminate the discretionary margins that remain inherent to migration governance ⁽³²⁾. What it does is to stabilise an education-based route to lawful presence, making it administratively manageable and legally recognisable within the Union framework.

Directive 2016/801 transforms education into a form of anticipatory integration. During the authorised period of stay, students and researchers may be granted access to the labour market under defined conditions ⁽³³⁾, and the Directive facilitates, at least to a limited extent, the possibility of remaining in the host Member State in order to seek employment or set up a business after completing studies or research ⁽³⁴⁾. These provisions do not collapse the distinction between study-based residence and labour migration; they preserve the conditionality of the status and leave the transition dependent on additional requirements ⁽³⁵⁾. Yet they do signal a functional continuity between education and the

⁽³²⁾ As a matter of fact Directive (EU) 2016/801 requires transposition into national law, thereby leaving its practical operation dependent on domestic administrative and legal settings governing the admission of third-country nationals. While the instrument aims to consolidate and rationalise the regulatory framework for entry and residence for study and research purposes, its implementation is inevitably shaped by Member States' differing policy preferences and institutional practices in the field of migration control. This structural openness is reinforced by the drafting technique adopted in the Directive itself, which combines binding obligations expressed through "shall" clauses with optional provisions framed in "may" terms. As a result, the Directive establishes a common legal architecture, but allows significant room for differentiated national choices.

⁽³³⁾ Directive (EU) 2016/801 [2016] OJ L 132/21, arts 24(1)–(2) and 19(2).

⁽³⁴⁾ Directive (EU) 2016/801 [2016] OJ L 132/21, art 25.

⁽³⁵⁾ On EU labour migration frameworks, see in particular Directive 2021/1883 on the EU Blue Card [2021] OJ L 382/1; Directive 2011/98/EU

Union's broader objectives relating to skills, competitiveness, and innovation. Education-based admission thus operates not only as a temporary mobility tool, but also as a preparatory stage through which certain third-country nationals may become eligible for longer-term forms of residence and economic participation.

At the same time, the Directive reveals the normative limits of this pathway. The legal status it creates is reversible and purpose-bound. Residence is linked to the continuation of studies or research activity, and renewal remains contingent on ongoing compliance ⁽³⁶⁾. The Directive therefore confirms that education-based mobility is governed through a logic of controlled openness: it enables entry and circulation in a domain framed as socially legitimate and strategically valuable, while maintaining a structure of conditionality that preserves Member State authority over long-term outcomes ⁽³⁷⁾. In this sense, Directive 2016/801 provides a concrete illustration of the gateway logic. It does not constitutionalise a right to enter for education purposes but uses higher education as a legally mediated route to the Union's territory and knowledge space. Recent case law usefully illustrates the extent to which education-based admission under Directive (EU) 2016/801 operates through legally framed decision-making rather than through an automatic entitlement to enter or remain. In Case C-14/23 (judgment of 29 July 2024) ⁽³⁸⁾, the Court of Justice was asked to interpret aspects of the Directive in the context of a refusal of admission for study purposes, and the judgment sheds light on the relationship between Member States' assessment powers and the procedural standards attached to

on a single permit for third-country nationals [2011] OJ L 343/1; Directive 2009/50/EC (repealed by Directive 2021/1883) [2009] OJ L 155/17.

⁽³⁶⁾ Directive (EU) 2016/801 [2016] OJ L 132/21, arts 18 (duration of the authorisation), 21 (renewal and extension of the authorisation) and 20(a) (grounds for rejection or withdrawal where admission conditions are not or are no longer met).

⁽³⁷⁾ V. Di Comite, *Accoglienza di studenti, ricercatori e docenti provenienti da paesi terzi*, in G. CAGGIANO (ed.), *I percorsi giuridici per l'integrazione. Migranti e titolari di protezione internazionale tra diritto dell'Unione e ordinamento italiano*, Torino, 2014, p. 346 ff.

⁽³⁸⁾ Case C-14/23, Judgment of the Court (Fifth Chamber) 29 July 2024, ECLI:EU:C:2024:647

the EU framework. Without removing the discretion that Member States retain in processing applications, the case confirms that decisions adopted under this Directive may be subject to EU-law constraints, including those stemming from fundamental rights requirements such as the right to an effective remedy under Article 47 of the Charter. Read in this light, the judgment supports a central feature of the “gateway” logic: access remains conditional and purpose-bound, but the conditions and the procedure through which admission is granted or refused cannot be treated as purely internal matters once the relevant EU instrument applies.

6. The External Dimension of EU Migration and Education Policies

The logic identified in the internal dimension of EU law is neither confined to the Union’s territory nor exhausted by binding legislation. It extends, and in some respects intensifies, in the external dimension of EU migration and education policies, where education-based mobility increasingly operates as a privileged channel through which the Union seeks to reconcile multiple objectives. In this context, education functions as a legally and politically legitimate entry point: it enables the EU to promote legal pathways for mobility, to strengthen cooperation with partner countries, and to address labour and skills needs, while avoiding the more contentious framing associated with labour migration or border enforcement. The external dimension therefore offers a particularly clear illustration of how education can be mobilised as a gateway not only to the EU territory, but also to the Union’s broader knowledge space and policy priorities.

Unlike the internal *acquis*, however, the external dimension is characterised by fragmentation and heterogeneity. It relies on a composite set of instruments, combining soft law frameworks, funding programmes, mobility schemes, and cooperation arrangements with third countries. These instruments do not establish new migration statuses or directly enforceable individual rights, but display their regulatory effect is instead produced through coordination and conditionality. By aligning training and mobility opportunities with existing legal

migration instruments, and by structuring access around profiles and trajectories that correspond to EU-defined priorities. This is where the gateway logic becomes particularly visible. Education is not framed as a right capable of grounding a claim to entry, but as a policy-mediated opportunity that can be activated within a broader governance architecture.

Talent Partnerships provide a useful illustration. Conceived as flexible mechanisms of cooperation, they are designed to connect training, mobility, and labour market needs through tailored pathways developed with partner Countries as a tool to «...increase the pool of expertise available to European universities and research institutions[...]and to promote the circulation of knowledge by moving between Member States» ⁽³⁹⁾. Education and training frequently operate as preparatory stages within these frameworks, allowing the Union to identify, support, and potentially attract individuals whose skills are considered relevant for the EU economy. Yet the legal structure remains selective. Access is conditioned not only by individual merit and institutional sponsorship, but also by strategic considerations relating to the Union's external priorities, the availability of cooperation frameworks, and the extent to which partner countries are positioned as reliable counterparts in migration management. The result is a model of mobility that can be presented as mutually beneficial, but which is also shaped by asymmetries in bargaining power and in the distribution of long-term benefits.

This selectivity raises a number of normative questions that are particularly salient in the context of higher education and research mobility. Education-based pathways are frequently associated with the language of “brain circulation” and capacity-building, suggesting that mobility may generate positive effects for both the Union and partner countries. However, the risk of reinforcing unequal patterns of extraction

⁽³⁹⁾ The European Commission defines Talent Partnerships as a soft-law cooperation tool “based on dialogues between EU Member States, the European Commission and other relevant services or agencies and partner countries, with the objective of providing a framework for cooperation to better match labour and skills needs Communication of the European Commission on a *New pact on migration and asylum*, Brussels, 23 September 2020 COM(2020) 609 final, p. 25.

of human capital remains present, especially where return conditions, recognition mechanisms, and reintegration opportunities are weak or uneven. The external dimension thus reveals the ambivalence of education as a gateway: it can enable opportunities for mobility and participation in transnational knowledge networks, but it may also contribute to reproducing structural inequalities in the global knowledge economy.

From the perspective of EU law, what is most significant is that the external dimension reinforces the functional nature of education-based mobility. The Union's limited competence in education does not prevent it from using education as a strategic vector within external migration governance. Instead, education is embedded in a governance model that privileges functionality over rights, and programmability over entitlement. Access is facilitated through pathways that remain reversible and contingent, often depending on project-based instruments and policy coordination rather than on stable legal guarantees.

7. Conclusions

This chapter has examined access to higher education as a central, yet often under-theorised, component of EU migration governance. Moving beyond a purely rights-based reading, it has argued that higher education functions within EU law as a legal and epistemic gateway through which selective access to the Union's territory and knowledge space is organised. The gateway logic captures a specific configuration in which education becomes operative as a purpose that justifies admission and lawful presence, while remaining structurally disconnected from any autonomous entitlement to enter or reside.

The analysis has tried to show that in EU law, the right to education is primarily framed as a right of access within a jurisdiction rather than a right to cross borders in order to pursue education. This structural feature is particularly significant for third-country nationals, for whom territorial admission remains governed by migration law. Within the EU legal order, the CFR confirms the legal value of education as a fundamental right, but it does not transform educational

aspirations into a title of entry. Instead, education becomes legally effective for mobility purposes through the Union's legal migration instruments and the residence statuses they create.

Despite the formal constraints imposed by Articles 165 and 166 TFEU, higher education acquires regulatory relevance through functional integration in adjacent domains. The resulting framework illustrates a specific manifestation of competence creep: not a direct expansion of EU education competence, but the capacity of the Union to generate substantive effects by operationalising education through migration governance. Directive (EU) 2016/801 provides a concrete example. It consolidates education and research as conditional pathways of entry and residence, combining facilitation with discretion and structuring lawful presence through institutional anchoring, compliance requirements, and time-limited authorisation. The Directive stabilises a channel of regulated openness that aligns education-based mobility with broader objectives relating to skills, competitiveness, and innovation.

The conceptual contribution of the chapter lies in framing higher education as both a legal and an epistemic gateway. Legally, education-based migration pathways organise admission, temporariness, and controlled transition within the EU migration *acquis*. They regulate participation in the Union's knowledge infrastructure by linking lawful presence to recognised institutions, qualifications, and standards of academic engagement. In this sense, the often-invoked idea of knowledge circulation does not operate as an unconditional freedom. It is mediated by legal categories and selection mechanisms that determine who may access, contribute to, and benefit from the European space of knowledge.

The external dimension of EU migration and education policies reinforces this interpretation. Education-based mobility schemes and cooperation frameworks extend the gateway logic beyond the Union's territory, embedding access to higher education within flexible and often fragmented arrangements. While these instruments may generate opportunities for mobility and cooperation, they also raise questions of asymmetry and uneven legal protection. Education is mobilised as a legitimate and strategically

valuable channel, yet it remains embedded in a governance model that prioritises programmability and selectivity over entitlement and universality.

Taken together, these findings invite a broader reflection on the implications of governing mobility through access to higher education. Education-based pathways may appear less contentious than other forms of migration, but their legal structure reveals underlying choices about inclusion, exclusion, and the distribution of opportunities within the global knowledge economy. Understanding higher education as a gateway rather than a neutral good therefore provides a sharper lens through which to assess the evolving boundaries of EU integration and the role of migration law in shaping access to the Union's territory and knowledge space.

CHAPTER VI

FROM FORMAL TO SUBSTANTIVE EQUALITY: RETHINKING THE PHILOSOPHY OF QUALITY LEGAL EDUCATION FOR PERSONS WITH DISABILITIES IN NIGERIAN UNIVERSITIES

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SUMMARY: 1. Introduction. – 2. Evolution of the International and Regional Right to Inclusive Education. – 3. Nigeria's Legal and Policy Framework: From Paper to Practice in 2025. – 4. Empirical Findings: Barriers to Quality Legal Education for Persons with Disabilities in Nigerian Universities. – 5. From Formal to Substantive Equality: Proposals for a New Philosophy of Nigerian Legal Education. – 6. Conclusion And Recommendations.

1. Introduction.

Education is the powerful tool that drives individual empowerment, social development, and economic development. It is fundamental as it is the base for garnering knowledge and promoting critical thinking. It equips an individual competency for living and working effectively within an increasingly complex world, education not only prepares people for a job but also nurtures active citizenship and personal growth; its impact extends beyond individual achievements.

According to Yibakuro citing Obasi and Agbaje (2023),

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education helps to shape communities and enable them to participate in nation-building or development. ⁽¹⁾ Despite the importance of education stated above, the situation of higher education in Nigeria continues to leave so much to be desired. It is estimated that 35 million persons with disabilities living in Nigeria, or about 15 to 18 percent of the population, fewer than 2 percent of students in universities report a disability. ⁽²⁾ In professional programs, such as law, medicine, and engineering, dropout rates among students with disabilities now exceed 65 percent. ⁽³⁾ These figures present a reality: admission is possible, but completion and genuine participation remain elusive. ⁽⁴⁾

On paper, Nigeria has built an impressive legal architecture: it ratified the United Nations Convention on the Rights of Persons with Disabilities in 2010 (CRPD), ⁽⁵⁾ enacted the Discrimination Against Persons with Disabilities (Prohibition) Act in 2018, and established the National Commission for Persons with Disabilities.

A decade and a half after ratification of the CRPD and seven years after the 2018 Act, higher education for students with disabilities continues to be defined by exclusion rather than inclusion. ⁽⁶⁾ Formal equality, the mere removal of

⁽¹⁾ E.A. Yibakuro, *The Role of Education Law in Supporting Special Needs Students in Nigerian Tertiary Institutions*, in *International Journal of Educational Management*, 2025, pp. 372-385.

⁽²⁾ World Health Organization & World Bank, *World Report on Disability* (2011), 27, 29; Federal Ministry of Humanitarian Affairs, Disaster Management and Social Development, *Nigeria to Host 2025 National Disability Summit: A Step Towards Inclusive Development for Persons with Disabilities* (2025); Federal Ministry of Education, *Percentage of Special Needs Students* (2019).

⁽³⁾ See generally, Rußmann, Netz, and Lörz. *Dropout intent of students with disabilities*, in *Higher Education*, no. 1, 2024, pp. 183-208.; UNESCO Institute for Statistics, *Out-of-School Children and Youth with Disabilities in Nigeria: A Situational Analysis*, 2022, p. 28; Situation of Lawyers with disability in Nigeria, prepared by Onuora-Oguno A.C for the Nigerian Bar Association Lawyers with Disabilities Forum (NBA-LWDF), 2025.

⁽⁴⁾ A. Onuora-Oguno & B. Onuora-Oguno, *The Law as a Tool to Guarantee the Inclusive Education of the Nigerian Child*, in *Educator Multidisciplinary Journal*, 2018, p. 38.

⁽⁵⁾ *Convention on the Rights of Persons with Disabilities* 12 December 2006 GA Res. 3485 () UN Doc. A/RES/61/106, 2 December 2006.

⁽⁶⁾ *Convention on the Rights of Persons with Disabilities*, 13 December

explicit legal barriers to admission has been superficially attained: the door stands ajar. Substantive equality, which requires the active transformation of infrastructure, curricula, pedagogy, and institutional culture to secure genuinely equal outcomes, remains a far off, unfulfilled promise.

This article argues that the persisting marginalization of students with disabilities within the law school is a product of an underlying philosophy of formal equality grounded in both the medical and charity models of disability. It draws on the social and human rights models of disability, together with Sandra Fredman's four-dimensional framework of substantive equality (redistributive, precognitive, participative, and transformative), ⁽⁷⁾ in support of a paradigmatic shift: from access as charity and reasonable accommodation as exception to the rule, to inclusion as right and universal design as institutional norm. ⁽⁸⁾

The article proceeds in six parts. Part II contrasts the medical/charity paradigm with the social and human rights models and unpacks the distinction between formal and substantive equality. Part III traces the evolution of the right to inclusive education in international and African human rights law, with particular attention to Article 24 of the CRPD and Article 12 of the African Disability Rights Protocol. Part

2006, 2515 UNTS 3 [CRPD]; *Discrimination Against Persons with Disabilities (Prohibition) Act* 2018; National Commission for Persons with Disabilities & Project Enable Africa, *State of Disability Inclusion Report* 2024: Disability Inclusion Landscape in Nigeria (2024), p. 12; J. Biermann, *Translating Human Rights in Education: The Influence of Article 24 UN CRPD in Nigeria and Germany*, Brill Nijhoff, 2022, p. 145; UN Partnership on the Rights of Persons with Disabilities & UNCT Nigeria, *Situational Analysis on the Rights of Persons with Disabilities in Nigeria* (2024), p. 22; A.C. Onuora-Oguno, *Development and the Right to Education in Africa*, Springer, 2018, p. 89.

⁽⁷⁾ M. Oliver, *The Politics of Disablement*, Macmillan, 1990, p. 34; T. Degener, *Disability in a Human Rights Context*, in *Laws*, 2016, p. 40; S. Fredman, *Substantive Equality Revisited*, in *International Journal of Constitutional Law*, 2016, p. 718; S. Fredman, *Human Rights Transformed: Positive Rights and Positive Duties*, Oxford, 2008), p. 165; S. Fredman, *Discrimination Law*, Oxford, 2022, p. 92.

⁽⁸⁾ J. Biermann, cit., 156; H.B. Ojibara, A. Onuora-Oguno & O. Olatoke, *Masking and Unmasking Child Rights Through Inclusive Education*, in *Inclusive Education Developments in Africa*, Springer Nature Switzerland 2024, pp. 73-78.

IV examines Nigeria's legal and policy framework and its manifest implementation failures in 2025. Part V presents original empirical findings on the barriers faced by law students with disabilities. Part VI proposes concrete; enforceable reforms rooted in substantive equality and universal design principles. The conclusion calls for a philosophical reorientation that recognizes the training of lawyers with disabilities not as an act of benevolence but as an indispensable step toward a more just legal system.

2. Evolution of the International and Regional Right to Inclusive Education

The right to education first appeared as a universal entitlement in Article 26 of the Universal Declaration of Human Rights (UDHR)), which declared education to be "directed to the full development of the human personality" and guaranteed free and compulsory elementary education. Yet the UDHR remained silent on disability and on higher education, reflecting the post-war era's medical/charity assumptions. The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) advanced the discourse in Article 13 by recognizing higher education "shall be made equally accessible to all, on the basis of capacity, by every appropriate means." General Comment No. 13 (1999) clarified that "equally accessible" includes physical and economic accessibility and introduced the duty of progressive realization. However, it still treated disability largely through a nondiscrimination lens rather than through positive inclusion obligations. Regionally, the African Charter on Human and Peoples' Rights states in Article 17 that "every individual may freely take part in the cultural life of his community" and education shall be encouraged. Since then, the African Commission has interpreted this more expansively, but this remains arguably one of the weakest regional formulations of the right to education.

A decisive normative breakthrough came with the Convention on the Rights of Persons with Disabilities, CRPD (2006). Article 24(1) obliges States Parties to "recognize the right of persons with disabilities to education ... without discrimination and on the basis of equal opportunity" and to

ensure "an inclusive education system at all levels." Article 24(2) lists concrete duties: accessibility of the physical environment; provision of reasonable accommodation; individualized support measures; training of teachers. General Comment No. 4 (2016) is unequivocal: segregated education is incompatible with the Convention; higher education institutions must be included in the inclusive system; states must adopt universal design and provide reasonable accommodation as immediate obligations, not subject to progressive realization. This trajectory is further reinforced by the Sustainable Development Goal 4 of 2015, which commits states to "ensure inclusive and equitable quality education and promote lifelong learning opportunities for all," with specific indicators on accessibility and participation of persons with disabilities. ⁽⁹⁾

The African Disability Protocol (ADP), adopted in 2018 and entering into force in 2023, serves as a pivotal regional framework that amplifies the article's call for substantive equality in legal education for persons with disabilities (PWDs) in Nigeria. With Nigeria and Malawi ratification, the ADP now binds the country to its provisions, including article 9, which mandates inclusive, quality education at all levels, reasonable accommodations, and the elimination of barriers in tertiary institutions. ⁽¹⁰⁾ This directly aligns with the article's empirical findings in Part V, such as inaccessible moot courts and high dropout rates, by requiring states to adopt Universal Design for Learning (UDL) and train educators' elements echoed in the article's reform proposals in Part VI. However, as the article highlights Nigeria's implementation failures under the CRPD, the ADP's non-ratification until 2025 delayed its potential to address attitudinal and infrastructural barriers in law faculties, reinforcing the critique of formal equality's inadequacy.

The Nigeria Discrimination Against Persons with

⁽⁹⁾ Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all available at <https://sdgs.un.org/goals/goal4> (last visited January 10, 2026).

⁽¹⁰⁾ <https://achpr.au.int/en/news/press-releases/2024-02-08/press-release-effective-deposit-malawi-and-nigeria-instrument> (last visited January 9, 2026).

Disabilities (Prohibition) Act 2018 forms the domestic backbone of the article's analysis, particularly in Part IV, where it exposes the "legal paradox" of strong provisions on paper but weak enforcement in practice. Sections 17–20 of the Act mandate accessible higher education, assistive devices, and non-discrimination, mirroring the article's advocacy for transformative inclusion beyond mere admission. Recent 2025 developments, including a renewed governmental commitment on International Day of Persons with Disabilities, could bolster the article's recommendations, like establishing Disability Support Units, but underscore the need for substantive enforcement to realize equitable outcomes in legal education.

Linking these instruments to the article's paradigm shift from formal to substantive equality, both the ADP and the 2018 Act provide normative tools for reform, yet their delayed or incomplete implementation exemplifies the philosophical inertia critiqued throughout. Nigeria's 2025 ADP ratification offers a timely opportunity to integrate regional standards into domestic policy, potentially addressing intersectional barriers (e.g., gender and regional disparities) highlighted in the article. Ultimately, as the conclusion urges, full domestication and resourcing of these laws could transform Nigerian legal education, producing diverse lawyers empowered to advance disability rights as a vision that remains aspirational without urgent action. From the foregoing jurisprudence, global and African human rights architecture has shifted from a formal, non-discrimination approach to a substantive, transformative model of inclusive education that explicitly encompasses tertiary and professional education, including legal training.

3. Nigeria's Legal and Policy Framework: From Paper to Practice in 2025

The right to education was not expressly mentioned in the 1951 Constitution of Nigeria but rather placed responsibility on the regional governments to make policy and decisions on education (The Nigeria Constitution Order in Council, 1951, No 1172, Foreign Jurisdiction, 3rd Schedule). In 1954, the administration of education was provided under part II with specifics on concurrent decision making on issues pertaining

to education in Nigeria (The Nigeria Constitution Order in Council, 1954, No 1146, Part II, No 30).

In 1979, education was stated as a mere aspiration Constitution of the Federal Republic of Nigeria (CFRN, Section 18). This position remains the same to date in the CFRN 1999 as amended with the Federal Government having more responsibility on education. The above provision, notwithstanding, the Local Government has the responsibility of managing elementary schools within its council areas (Fourth Schedule Functions 2(a) of a Local Government Council).

In understanding the concept of basic education, we have opined that it covers the learning space from the home through social groups until formal schools setting or what we now call western education. We underscore and note the interchange in use of basic education and universal primary education within the Nigerian space. The free and compulsory nature of basic education in Nigeria is clearly captured in the Universal Basic Education Act (UBE Act 2004). Key aspects of the goals of the Act include, but not limited to:

(a) “ensure that every child of school going age in Nigeria has access to basic education”;

(b) “ensure that the style of education employed meet the need of everyone in need of basic education”; and;

(c) “improve the general literacy and numeric ability of every child and lay a foundation for a worthy life beyond the basics” ⁽¹¹⁾

In 2010, Nigeria ratified the Convention on the Rights of Persons with Disabilities (CRPD) without any reservations, which meant they took on immediate responsibilities under Article 24. However, the first State Report, which was submitted a staggering nine years late in 2021, acknowledged that there was only “limited inclusion” in higher education and promised some reform measures. ⁽¹²⁾

⁽¹¹⁾ A.C. Onuora-Oguno, *Disorder in the Order of the Economic and Social Rights Jurisprudence in Nigeria: The Two Hundred and Sixty-Fourth (264th) Inaugural Lecture* (University of Ilorin 2024), available at: <https://www.unilorin.edu.ng/lectureseries/264th-Inaugural-Lecture.pdf> (last visited 9 December 2025)

⁽¹²⁾ Convention on the Rights of Persons with Disabilities, 13 December

The Discrimination Against Persons with Disabilities (Prohibition) Act 2018 is Nigeria's most significant domestic legislation. Sections 17–20 prohibit denial of admission on grounds of disability, mandate physical and communication accessibility in educational institutions, require the provision of teaching aids and assistive devices, and oblige the training of educators. ⁽¹³⁾

Section 1 gave a five-year grace for public buildings from the date of coming into force to become accessible, a grace that expired at the beginning of January 2024. This Act also set up the National Commission for Persons with Disabilities (NCPWD) with powers to enforce the law. The National Policy on Inclusive Education 2023 commits the Federal Ministry of Education to universal design for learning, teacher training, and data collection but is still largely unimplemented in universities.

The State of Disability Inclusion Report 2024 reported that only 23 out of 36 states had domesticated the 2018 Act, while only 15 have functional state disability agencies. ⁽¹⁴⁾ The five-year accessibility grace period expired in January 2024; independent audits and National Council of Persons with Disability (NCPWD) inspections confirm fewer than 12 percent of public university buildings (including law faculties) meet minimum accessibility standards. ⁽¹⁵⁾ No law faculty has yet set up a dedicated Disability Support Unit, and the Council of Legal Education has not issued inclusive-education guidelines for the Nigerian Law School. ⁽¹⁶⁾

2006, Art. 24, 2515 UNTS 3 [CRPD]; Federal Republic of Nigeria, Initial Report Submitted to the UN Committee on the Rights of Persons with Disabilities in Accordance with Article 35 of the Convention on the Rights of Persons with Disabilities (CRPD), UN Doc CRPD/C/NGA/1 (2021), paras 145–150.

⁽¹³⁾ Discrimination Against Persons with Disabilities (Prohibition) Act 2018 (Nigeria), pp. 17–20.

⁽¹⁴⁾ National Commission for Persons with Disabilities & Project Enable Africa, State of Disability Inclusion Report 2024: Disability Inclusion Landscape in Nigeria (2024), pp. 12–15.

⁽¹⁵⁾ Discrimination Against Persons with Disabilities (Prohibition) Act 2018, p. 29; National Commission for Persons with Disabilities, Accessibility Compliance Audit Report: Public Institutions in Nigeria (2025), p. 22.

⁽¹⁶⁾ Council of Legal Education, Accredited Law Faculties and Guidelines (2025); National Commission for Persons with Disabilities,

Funding has remained a chronic excuse the NCPWD's capital allocation for 2024–2025 was less than 0.03 percent of the federal budget, ⁽¹⁷⁾ while Tertiary Education Trust Fund (TETFUND's) accessibility intervention fund has so far disbursed less than 8 percent of its earmarked resources to universities since 2019. ⁽¹⁸⁾ Enforcement is almost nonexistent, as of November 2025, the NCPWD still struggles at compelling universities to install ramps and provide sign-language interpreters; neither has the Nigerian Law School fully complied with support for inclusive learning environment. Consequently, despite a robust legal and policy framework on paper, Nigeria continues to operate a higher education system, and particularly a legal education system, that is overwhelmingly segregated in practice, in clear violation of its CRPD obligations and its own 2018 Act.

The Nigerian Education Loan Fund (NELFUND), established under the Access to Higher Education Act 2023 and launched in 2024, is a federal initiative providing interest-free loans and grants to indigent students in Nigerian tertiary institutions, aiming to enhance access to quality education. ⁽¹⁹⁾ As of December 2025, NELFUND has disbursed over ₦35 billion to more than 300,000 beneficiaries, focusing on tuition, maintenance allowances, and institutional support for public universities, polytechnics, and colleges of education. ⁽²⁰⁾ In relation to the article "From Formal to Substantive Equality: Rethinking the Philosophy of Quality Legal Education for

Situational Analysis on the Rights of Persons with Disabilities in Nigeria (UNCT Nigeria 2024), p. 45; UN Partnership on the Rights of Persons with Disabilities & UNCT Nigeria, Situational Analysis on the Rights of Persons with Disabilities in Nigeria (2024), p. 50.

⁽¹⁷⁾ Nigerian Institute of Social and Economic Research, Analysis of 2025 Federal Government Budget (2025), p. 14; BudGIT Foundation, 2025 FG Proposed Budget Framework (2024).

⁽¹⁸⁾ Tertiary Education Trust Fund, N320 Billion Intervention Budget Fully Allocated to Beneficiary Institutions (2023); TETFund allocates ₦6.452bn to 271 tertiary institutions for 2026 available at <https://punchng.com/tetfund-allocates-n6-452bn-to-271-tertiary-institutions-for-2026/> (last visited January 14, 2026).

⁽¹⁹⁾ Students Loans (Access to Higher Education) Act 2023; State House Abuja, In Detail: The Student Loan (Access to Higher Education) Act, 2024.

⁽²⁰⁾ Nigerian Education Loan Fund, NELFUND Announces Total Applications, Disbursements to Date (2025).

Persons with Disabilities in Nigerian Universities," NELFUND represents a potential tool for advancing substantive equality by alleviating financial barriers that exacerbate dropout rates (over 65% for PWDs in professional programs like law, as noted in the article's empirical findings. ⁽²¹⁾ By funding adaptive technologies and inclusive programs, it could support the article's calls for redistributive reforms, such as assistive devices and teacher training in law faculties.

NELFUND has shown a specific focus on students with disabilities (SWDs), announcing in March 2025 plans to introduce specialized software to facilitate loan applications and access for PWDs, addressing barriers like digital inaccessibility and stigma. ⁽²²⁾ This initiative, highlighted by NELFUND's Managing Director during outreach, includes provisions for SWDs in the 2025/2026 application portal, such as simplified interfaces and priority processing. Linking to the article, this focus aligns with its advocacy for substantive equality under frameworks like the CRPD and Nigeria's Disability Act 2018, potentially reducing attitudinal and infrastructural hurdles in legal education. However, as the article critiques implementation gaps, NELFUND's effectiveness for SWDs will depend on integration with broader reforms, such as the proposed Disability Support Units, to ensure equitable outcomes beyond formal access.

4. Empirical Findings: Barriers to Quality Legal Education for Persons with Disabilities in Nigerian Universities

The Situational Analysis on the Rights of Persons with Disabilities in Nigeria presents findings from a mixed-methods study carried out between October 2024 and June 2025 that reflects the poor situation of persons with disability in

⁽²¹⁾ Ajuwon, Paul M. *Inclusive Education for Students with Disabilities in Nigeria: Benefits, challenges and policy implications*, in *International Journal of Special Education*, Vol 23, No 3, 2008, pp. 11-16.

⁽²²⁾ A. Yusuf, *NELFUND to Roll Out Disability-Friendly Loan Portal in 2025*, Punch (Lagos, 15 March 2025); National Commission for Persons with Disabilities, *Inclusive Education Funding Review* (2025), para. 22.

Nigeria. ⁽²³⁾ In a survey conducted by the Lawyers with Disability Forum of the Nigerian Bar Association, it was established that Nigerian legal education remain functionally exclusive despite formal admissions. ⁽²⁴⁾ Physical and infrastructural inaccessibility remains the most immediate obstacle. Several respondents reported that their faculty of law building was either partially or completely inaccessible; only a few could reach their regular lecture theaters without assistance. Moot courtrooms fared worse: 84 percent were located on upper floors without functioning lifts or ramps. One blind graduate from a leading federal university recalled being carried up two flights of stairs by classmates to participate in a compulsory moot an experience described as “humiliating and dangerous.” The expiration of the five-year grace period under the 2018 Disability Act in January 2024 has produced almost no visible change: fewer than one in eight law faculties surveyed had installed even basic ramps or accessible toilets by mid-2025.

Informational and communication barriers compound physical exclusion. Blind or low-vision respondents reported that core textbooks and law reports were never provided in Braille or accessible electronic formats at the start of semester and were instead forced to rely upon overstretched volunteers or expensive private conversion. During field interactions, deaf and hard-of-hearing students reported all but a complete absence of professional sign language interpreters: only one university - a private institution - employed interpreters for regular lectures, and even their coverage was less than 40 percent. Real-time captioning was available in precisely zero law faculties. A deaf final-year student at a northern federal university explained, “I lip-read when I can, guess when I cannot, and pray the examiner understands my written English is weaker because I never fully heard the lecture.” ⁽²⁵⁾ These

⁽²³⁾ United Nations Global Disability Funds, *Situational Analysis on the Rights of Persons with Disabilities in Nigeria Country Brief*, available at <https://globaldisabilityfund.org/new/wp-content/uploads/2025/07/SITAN-Nigeria-Brief.pdf> (last visited January 10, 2026).

⁽²⁴⁾ Situation of Lawyers with disability in Nigeria, prepared by Onuora-Oguno A.C for the Nigerian Bar Association Lawyers with Disabilities Forum (NBA-LWDF), 2025.

⁽²⁵⁾ Abdulrasheed Hammad Excluded: How hearing-impaired students

albeit assumptions of legal competence remain embedded within both institutional and pedagogical practices.

Oral advocacy retains near-sacred status as respondents said moot court performance contributed at least 30 percent of the final grade in relevant courses, yet only a few faculties offered alternative assessment pathways for students unable to participate physically or orally. Such as written submissions or simulated online hearings. Reasonable accommodation, though legally mandated, is treated as an exceptional favor rather than a right. A few lecturers interviewed openly expressed the view that “certain disabilities are incompatible with the practice of law,” citing courtroom advocacy and client interaction and explicitly naming blindness and deafness. ⁽²⁶⁾

These barriers and stigma cut across all levels. Sixty-two percent of respondents reported being advised by academic staff, either explicitly or implicitly, to “consider a less demanding course.” Female students with disabilities faced compounded discrimination: one wheelchair-using respondent reported that a senior professor stated that “a woman in a wheelchair cannot command respect in a Nigerian courtroom.” Intersectional disadvantage was stark in northern universities where cultural attitudes toward disability and gender combined to produce near-total exclusion of deaf female students. In short, Nigerian legal education in 2025 remains a system where students with disabilities are admitted physically but systematically denied participation, success, and qualification as lawyers. These empirical realities expose the hollowness of formal equality and the urgent need for the substantive, transformative reforms proposed below.

The medical model, until lately dominant in many societies, including Nigeria, perceives disability as an individual’s medical condition or impairment that necessitates treatment, rehabilitation, or cure to “normalize” the person. In this scenario, challenges in the legal education faced by PWDs, such as inaccessible moot courts or Braille materials, are

are left behind available at <https://www.universityworldnews.com/post.php?story=20250914154009263> (last visited December 30, 2025)

⁽²⁶⁾ Situation of Lawyers with disability in Nigeria, prepared by Onuora-Oguno A.C for the Nigerian Bar Association Lawyers with Disabilities Forum (NBA-LWDF), 2025.

blamed on the student's "deficit," and therefore interventions take the form of charity, where concessions may be granted from time to time but there is no need for systemic change. In contrast, the social model pioneered by scholars such as Mike Oliver ⁽²⁷⁾ places the emergence of disability at the door of societal barriers, attitudes, and environmental exclusions and demands responsibility from institutions and policies to remove these obstacles. This model befits the human rights approach of the CRPD, emphasizing dignity and participation over medicalization. It criticizes the ongoing reliance on the medical model at universities in Nigeria, where PWDs are perceived as "unfit" to practice law, resulting in the reported high dropout rates and exclusion.

The foundational lens adopted in the article is the social model, since it explains both the infrastructural inaccessibility and attitudinal stigma as manifestations of systemic failures in Nigerian legal education rather than any individual impairments. This is so because the model conforms with international human rights standards; for instance, the CRPD-inspired shift from charity to rights-based inclusion demands transformative reforms like Universal Design for Learning, which this article proceeds upon by giving priority to the social model over the paternalistic regard of a medical model that perpetuates the historical marginalization of PWDs in professional fields like law. Instead, substantive equality is called for under Fredman's four-dimensional framework. This is particularly fitting for Nigeria, where empirical data suggests societal barriers translate into over dropout rates, hence the need for institutional accountability rather than individual "fixes."

Reasonable accommodation, defined in Article 2 of the CRPD as necessary and appropriate modifications not imposing disproportionate burden to ensure PWDs enjoy rights on an equal basis, operates as a legal doctrine that connects formal nondiscrimination with substantive inclusion. Its implications in Nigerian legal education are immense; under the Discrimination Against Persons with Disabilities (Prohibition) Act 2018, it demands individualized

⁽²⁷⁾ M. Oliver, *The social model of disability in social work*, London, Routledge, 20223, pp. 137-140.

accommodations like alternative assessments or assistive technologies in the faculties of law, responding to the barriers raised by this article, which includes inaccessible curricula. This, however, has been critiqued in the article as amounting to a denial of these accommodations, leaving CRPD obligations unfulfilled and entrenching a legacy of inequality; were they implemented properly, this could transform outcomes, with PWDs able to engage fully in moot courts and professional training, thereby driving forward the paradigm shift toward equitable legal education. ⁽²⁸⁾

In addition to the academic and policy evidence reviewed in this article, the findings of the research we conducted for the Lawyers with Disabilities Forum of the Nigerian Bar Association (LDF-NBA) further illuminate the continuum of exclusion faced by disabled persons within the legal profession. The study showed that law graduates with disabilities encounter significant challenges transitioning into legal employment due to discriminatory recruitment practices, inaccessible courtrooms, and the absence of reasonable accommodation in law firms and public agencies. Politically, the research revealed that lawyers with disabilities are substantially under-represented in NBA leadership structures and often excluded from decision-making processes due to attitudinal and environmental barriers. These findings underscore that without addressing both educational and post-qualification barriers, Nigeria cannot achieve substantive equality within the legal profession. ⁽²⁹⁾

5. From Formal to Substantive Equality: Proposals for a New Philosophy of Nigerian Legal Education

The evidence presented here demonstrates that piecemeal interventions will not suffice. Rather, what is called for is a

⁽²⁸⁾ Goodey, *Changing the Medical Model of Disability to the Normalization Model: Implications for Society*, in *Disability & Society*, 2024, pp. 567-569.

⁽²⁹⁾ Lawyers With Disabilities Forum of the Nigerian Bar Association, *Study on the Employment and Political Inclusion of Lawyers with Disabilities in Nigeria* (Unpublished Report, 2025)

conscious philosophical and structural reorientation underpinned by the human rights model of disability and Sandra Fredman's four-dimensional substantive equality framework. The following measures, costed where possible and sequenced by priority, are advanced as concrete, legally enforceable steps toward genuine inclusion.

By the 2027/2028 session, a fully resourced Disability Student Unit (DSU) shall be established in every faculty of law and the Nigerian Law School. Each DSU shall be staffed by qualified professionals with expertise in disability and led by a person with a disability. In turn, the DSU shall take charge of universal design, reasonable accommodation queries to be addressed within 48 hours, and act as the faculty's monitoring agent on CRPD and the 2018 Act. Estimated annual cost per faculty: ₦48–65 million - approximately US\$30,000–40,000 at November 2025 rates, easily financed through a mandated 0.5 percent reallocation of internally generated revenue and TETFUND accessibility grants. ⁽³⁰⁾

The Nigerian University Commission (NUC) and Council of Legal Education (CLE) should jointly publish binding Inclusive Legal Education Guidelines no later than December 2026. Such guidelines would require: (a) Universal Design for Learning as the default approach to teaching and learning; (b) a required first-year course on Disability Rights and the Legal Profession; (c) alternative advocacy assessment pathways contributing to at least 40 percent of moot court grades; and (d) minimum accessibility standards for all new or renovated law faculty buildings.

Third, there should be a statutory admission target of 7-10 percent of students with disabilities in law programs introduced by 2030, coupled with comprehensive pre-entry and ongoing support-the so-called South African model. ⁽³¹⁾ This is not a "quota" in the pejorative sense but rather a redistributive measure to reverse decades of exclusion and to

⁽³⁰⁾ National Commission for Persons with Disabilities & Project Enable Africa, *State of Disability Inclusion Report 2024: Disability Inclusion Landscape in Nigeria* (2024), p. 45.

⁽³¹⁾ Department of Basic Education, *Education White Paper 6: Special Needs Education – Building an Inclusive Education and Training System* (2001), pp. 20–22 (targeting 7–10% progression/enrollment for disabled students via quotas and bridging programs)

enrich the profession with lived experience of justice system failures. What of JAMB initiatives?

Fourth, lecturer training needs an overhaul: All new law teachers should undergo a certified 30-hour module on inclusive pedagogy, while existing staff are put through mandatory annual refresher training. The Nigerian Bar Association and the Body of Senior Advocates should co-sponsor these programs as a signal of professional commitment.

Fifth, enforcement mechanisms need teeth: the NCPWD needs explicit power to impose daily fines on universities that do not comply, as already permitted by the 2018 Act but never invoked, as well as seeking mandatory injunctions. An annual public "Accessibility Scorecard" for law faculties, published jointly by NCPWD and JONAPWD, would harness reputational pressure.

Furthermore, to ensure the effective implementation of substantive equality in legal education, the Nigerian Bar Association (NBA) should play a pivotal role by collaborating with the Council of Legal Education (CLE) and the National Commission for Persons with Disabilities (NCPWD) to integrate disability rights training into continuous legal education programs for practicing lawyers and judges. This would involve sponsoring mandatory workshops on inclusive advocacy techniques, such as accommodating PWDs in courtrooms and legal chambers, and advocating for a 5–10 percent quota for lawyers with disabilities in NBA leadership positions by 2030. By leveraging its influence, the NBA can foster a professional culture that values diversity, thereby supporting the article's paradigm shift and ensuring that graduates with disabilities are not only educated but also empowered to thrive in the legal profession.

Finally, funding is not the insurmountable barrier it is often made out to be. A modest 2 percent ring-fencing of TETFUND's annual Higher Institution Intervention Fund would yield over ₦18 billion (US\$11 million) per annum enough to retrofit every law faculty and the Nigerian Law School within six years while sustaining ongoing support. ⁽³²⁾

⁽³²⁾ TETFund unveils 2026 intervention, approves ₦6.5bn for tertiary institutions available at <https://www.vanguardngr.com/2026/01/tetfund->

These reforms are neither utopian nor optional; they represent the minimum necessary to discharge Nigeria's immediate obligations under Article 24 CRPD and the 2018 Disability Act. More profoundly, they represent the philosophical shift this article has advocated: from treating law students with disabilities as objects of charity to recognizing them as rights-holding subjects whose presence will strengthen, diversify, and humanize the Nigerian legal profession.

The following conclusion represents a call to urgent action by all stakeholders while reflecting on the larger transformational potential of an inclusive system of legal education.

6. Conclusion And Recommendations

Fifteen years after the ratification of the CRPD and seven years after the enactment of the Disability Act, Nigeria's legal education system continues to fail its students with disabilities. Formal equality may have opened the gate, but the path remains obstructed by infrastructural barriers, inaccessible materials, pedagogy, and entrenched stigma. The findings from our research for the Lawyers with Disabilities Forum of the Nigerian Bar Association reinforce that this exclusion does not end at graduation. Instead, it extends into legal employment and the political spaces of the legal profession, where lawyers with disabilities continue to face discrimination, underrepresentation, and structural exclusion.

The LWDF-NBA study reveals that even after overcoming extensive educational obstacles, lawyers with disabilities struggle to obtain employment, access courtrooms, and meaningfully participate in the governance structures of the Nigerian Bar Association. These post-qualification barriers demonstrate that the failure of Nigeria's legal system is not confined to academia; it is systemic and affects the entire professional pipeline. As long as the structures governing legal

[unveils-2026-intervention-approves-n6-5bn-for-tertiary-institutions/](#) (last visited January 10, 2026).

practice remain inaccessible and unresponsive, the legal profession cannot claim to uphold justice or equality.

Therefore, the paradigm shifts this article advocates moving from charity to rights, from accommodation as exception to universal design as norm must extend beyond the university and into the legal profession itself. Reform must be holistic: legal education, professional employment, courtroom practice, and NBA governance must all become sites of inclusive transformation. Implementing the reforms proposed in this article, alongside the recommendations arising from the LWDF-NBA study, would set Nigeria on the path toward producing not just law graduates with disabilities, but empowered lawyers who participate fully in legal and political life.

Ultimately, genuine inclusion is not an act of benevolence; it is a constitutional, legal, and moral imperative. By integrating substantive equality principles into legal education and professional practice, Nigeria can build a legal system that reflects the diversity, dignity, and rights of all its citizens. This transformation is not optional. It is essential for a just, competent, and representative legal profession. ⁽³³⁾

⁽³³⁾ NBA-LWDF demand national reforms for inclusion in justice sector available at <https://www.vanguardngr.com/2026/02/nba-lwdf-demand-national-reforms-for-inclusion-in-justice-sector/> (accessed January 7, 2026).

CHAPTER VII

THE PROTECTION OF THE RIGHT TO EDUCATION IN AFRICA: A GENDER PERSPECTIVE

Giuseppe Gallo *

SUMMARY: 1. Introduction. – 2. The special nature of the right to education. – II. The special nature of the right to education. – 3. The safeguard of higher education in the international human rights treaties. – 4. The protection of the right to higher education in the African human rights system. – 5. The discrimination against women in the sphere of higher education in the African continent. – 6. Conclusion.

1. Introduction

When we discuss the “right to education”, we generally refer to a primary education level ⁽¹⁾. However, the term “education” is utilized in international human rights legal instruments, in its narrower sense, to include every formal institutional instruction imparted within a national or local education system – whether public or private – at the primary, secondary, and tertiary levels ⁽²⁾.

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⁽¹⁾ On the right to education, in general, see: A. Fernandez, S. Jenker (eds.), *International Declarations and Conventions on the Right to Education and the Freedom of Education*, Frankfurt/Main, 1995; C. Zanghì, *Le droit fondamental à l'éducation: les droits et les obligations qui découlent des instruments internationaux*, Torino, 2003; M. Verheyde, *The Right to Education*, Leiden, 2006; F. Veriava, K. Paterson, *The right to education*, in J. Dugard, B. Porter, D. Ikawa, L. Chenwi (eds.), *Research Handbook on Economic, Social and Cultural Rights as Human Rights*, Cheltenham, 2020, pp. 113-136.

⁽²⁾ On the essential right to primary education, in particular, see: G. van

Although children are, undoubtedly, the main beneficiaries ⁽³⁾, the right to education belongs to all individuals. In proclaiming that «everyone has the right to education», indeed, art. 26(1) of the Universal Declaration of Human Rights (1948) implicitly recognizes that education is a life-long and continuous process ⁽⁴⁾.

To clarify the exact meaning of “higher education”, reference should be made to UNESCO’s International Standard Classification of Education (ISCED) ⁽⁵⁾. In terms of UNESCO’s ISCED, “higher education” involves any type of education (academic, professional, technical, artistic, pedagogical), provided by universities and training colleges, which is normally intended for those students that having successfully completed the secondary education, and whose educational objective is the acquisition of a title, a grade, a certificate, or a diploma of higher education ⁽⁶⁾.

As affirmed in the World Declaration on Higher Education for the Twenty-first Century adopted by UNESCO in October 1998, higher education is an essential cultural and scientific asset, which permits personal and professional development and entitles economic, technological and social change ⁽⁷⁾. It promotes the exchange of knowledge, research and innovation, and equips students with the skills needed to meet every changing labour market.

In the African context, apart from local communities, national institutions play a central role in the sector of higher education. Governments accept the value of higher education,

Bueren, *The International Law on the Rights of the Child*, Dordrecht, 1995, pp. 232-262; G. Betcherman, J. Farès, A. Luinstra, R. Proutyand, *Child Labour, Education, and Children’s Rights*, in P. Alston, M. Robinson (eds.), *Human Rights and Development*, Oxford, 2005, pp. 173-200.

⁽³⁾ D. Hodgson, *Education, right to, International Protection*, in *MPEPIL*, Oxford, January 2006.

⁽⁴⁾ According to art. 26(2) of the Universal Declaration of Human Rights of 1948 education must *inter alia* be directed to the full development of the human personality.

⁽⁵⁾ The UNESCO’s International Standard Classification of Education (2011) provides a framework for categorising the education programmes and the related qualifications by levels and fields.

⁽⁶⁾ See: <https://www.unesco.org/en/right-education>.

⁽⁷⁾ UNESCO’s World Conference on Higher Education, *World Declaration on Higher Education for the Twenty-First Century: Vision and Action*, Paris, 1998.

which is viewed as an indispensable instrument for promoting economic development, eradicating illiteracy, and advancing nation-building ⁽⁸⁾.

Moreover, African countries are committed to guarantee equality between men and women in the exercise of the right to higher education ⁽⁹⁾. However, women do not always enjoy equal opportunity, nor equal treatment, in the field of higher education. Inevitably, as will be seen, this accord women a subordinate position in society.

In view of the above, the aim of this article is, firstly, to explore the nature of the right to education. Secondly, it will try to determine the content of the right to education under human rights law, through the analysis of the provisions on the right to education that are found in the major international and African human rights legal instruments. Thirdly, the present research will put an emphasis on the topic of women's higher education right in the African region.

2. The special nature of the right to education

The right to education should be described as an "empowerment right" ⁽¹⁰⁾. As "empowerment right", the right to education makes it possible for individuals to maintain control over the course of their entire life. Education, indeed,

⁽⁸⁾ See: K. Singh, *Right to Education and International Law: International Obligations and Regional Normative Action in Africa*, in *African Yearbook of International Law*, 2004, pp. 437-67.

⁽⁹⁾ See: <https://www.right-to-education.org/>.

⁽¹⁰⁾ This designation originates with two authors, who distinguish between survival rights, membership rights, protection rights and empowerment rights. Survival rights, such as the rights to life, food and water, are said to guarantee individual existence. Membership rights are held to assure individuals a place in society. Family rights and the prohibition of discrimination are mentioned as examples. Protection rights are said to protect the individual against possible abuses of power by the State. The right to an independent judiciary is cited as an example. Of empowerment rights, finally, it is noted that they provide the individual with power to determine the direction of his life. Examples are commonly the right to freedom of association and the right to education. (J. Donnelly and R. Howard, *Assessing national human rights performance: A theoretical framework*, in *Human Rights Quarterly*, 1988, p. 235).

increases the opportunities to take part in political and cultural life, and facilitates economic and social integration ⁽¹¹⁾.

In other words, enjoyment of manifold civil, political, as well as economic, social and cultural rights is facilitated by the protection of the right to education ⁽¹²⁾. In this way, education is both a human right in itself and, at the same time, an indispensable means of realising other fundamental human rights ⁽¹³⁾.

Consequently, it might be affirmed that realising the right to education promotes other human rights simultaneously. ⁽¹⁴⁾ In this view, the right to education accentuates the interdependence and indivisibility of human rights ⁽¹⁵⁾.

Based on the concept of human dignity inherent in every human being, the right to education shows, moreover, a double nature ⁽¹⁶⁾. It has, indeed, a social aspect and a freedom aspect.

On the one hand, the right to education requires an effort on the part of the State to make available all forms of

⁽¹¹⁾ UNESCO, *Dakar Framework for Action*, adopted by the World Education Forum, Senegal, 28 April 2000.

⁽¹²⁾ The link between the right to education and the other cultural rights is very close. The measure of the realisation of the right to education reflects the *status* of the enjoyment of several cultural rights. For linguistic and ethnic minorities, for example, education is the most important means to preserve their cultural identity.

⁽¹³⁾ F. Coomans, *Clarifying the core elements of the right to education*, in F. Coomans (ed.), *The Right to Complain about Economic, Social and Cultural Rights*, Utrecht, 1995, pp. 11-12.

⁽¹⁴⁾ Therefore, the right to education should be considered as a prerequisite for the exercise of other human rights.

⁽¹⁵⁾ On the indivisibility and the strict interdependence of human rights see: E. U. Petersmann, *On "Indivisibility" of Human Rights*, in *European Journal of International Law*, 2003, pp. 381-385; J. W. Nickel, *Rethinking Indivisibility: Towards a Theory of Supporting Relations between Human Rights*, in *Human Rights Quarterly*, 2008, pp. 987-991; L. Minkler, S. Sweeney, *On the Indivisibility and Interdependence of Basic Rights in Developing Countries*, in *Human Rights Quarterly*, 2011, pp. 351-396; S. Soiffer, D. Rowlands, *Examining the Indivisibility of Human Rights: A Statistical Analysis*, in *Journal of Human Rights*, 2017, pp. 89-106; J. Essink, A. Quintavalla, J. Temperman, *The Indivisibility of Human Rights: An Empirical Analysis*, in *Human Rights Law Review*, 2023, pp. 1-18; D. Anthony, *The Human Rights Principle of Indivisibility*, London, 2025.

⁽¹⁶⁾ J. Delbruck, *The Right to Education as an International Human Right*, in *German Yearbook of International Law*, 1992, p. 104.

education⁽¹⁷⁾. The State must invest financial and technical resources in maintaining a quality education system. Of course, this is the social aspect of the right to education⁽¹⁸⁾.

On the other hand, the right to education entails freedom and pluralism in education⁽¹⁹⁾. Academic freedom must always prevail in educational institutions and must be protected from infringements at the hands of State authorities⁽²⁰⁾. This is the freedom aspect of the right to education and, in this sense, the right to education is a civil and political right.

This double nature of the right to education makes it a rather unique right in comparison with either the other classical liberal human rights or social rights⁽²¹⁾.

3. The safeguard of higher education in the international human rights treaties

Over the past century, the international community has recognized “higher education” as a fundamental human right. The right to quality higher education has been specifically affirmed in detail by certain major human rights legal instruments, such as the 1996 International Covenant on Economic, Social and Cultural Rights⁽²²⁾.

⁽¹⁷⁾ M. Nowak, *The Right to Education - Its Meaning, Significance and Limitations*, in *Netherlands Quarterly of Human Rights*, 1991, p. 245 ss.

⁽¹⁸⁾ M. Nowak, *The right to education*, in A. Eide, C. Krause, A. Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*, Dordrecht/Boston/London, 1995, p. 189.

⁽¹⁹⁾ Academic freedom, Report of the Special Rapporteur on the right to education, Human Rights Council, Fifty-sixth session, Geneva, 27 June 2024.

⁽²⁰⁾ In other words, the State has the negative duty to withhold itself from unduly interfering with the right to education.

⁽²¹⁾ P. M. Baderin, R. McCorquodale, *Economic, Social, and Cultural Rights in Action*, Oxford, 2007; M. Ssenyonjo, *Economic, Social and Cultural Rights in International Law*, Oxford, 2009; O. De Schutter, *Economic, Social and Cultural Rights as Human Rights*, Cheltenham, 2013; E. Riedel, G. Giacca, C. Golay (eds.), *Economic, Social, and Cultural Rights in International Law: Contemporary Issues and Challenges*, Oxford, 2014; A. Nolan (ed.), *Economic and Social Rights After the Global Financial Crisis*, Cambridge, 2014; M. Langford, K. G. Young (eds.), *The Oxford Handbook of Economic and Social Rights*, Oxford, 2022.

⁽²²⁾ On the United Nations International Covenant on Economic, Social

Article 13(2)(c) of the United Nations Covenant on Economic, Social and Cultural Rights obliges States parties to make higher education: «equally accessible to all, on the basis of capacity». Consequently, governments must plan and take the necessary steps to make higher education equally accessible to every individual, on the basis of the abilities possessed.

Within the framework of article 13(2)(c), the criterion of capacity assumes, thus, noticeable relevance. On the one hand, this criterion is applied to restrict the access to higher education to those students which possess the necessary required to complete studies at the higher level ⁽²³⁾. In this sense, the term «capacity» refers to the intellectual abilities of applicants ⁽²⁴⁾.

On the other hand, the criterion of capacity is applied where States parties wish to restrict the number of students achieving the admission to specific fields of study at the tertiary level ⁽²⁵⁾. States parties might, for example, restrict the number of students to be admitted with regard to those fields of study for which the number of seats available in institutions of higher education is very limited ⁽²⁶⁾.

In any case, as it results from the structure of article 13(2)(c), States parties should always ensure that the access to higher education is equitable ⁽²⁷⁾. This means that States

and Cultural Rights, entered into force on 3 January 1976, see: M. Craven, *The International Covenant on Economic, Social, and Cultural Rights: A Perspective on Its Development*, Oxford, 1998; B. Saul, D. Kinley, J. Mowbray (eds.), *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials*, Oxford, 2014.

⁽²³⁾ K. D. Beiter, *The Protection of the Right to Education by International Law*, The Hague, 2006, pp. 524-525.

⁽²⁴⁾ *Ibid.*

⁽²⁵⁾ Article 13(2)(c) must necessarily be read with article 2(1), which provides for the progressive realisation of the rights protected in the ICESCR. The availability and the accessibility of higher education need, therefore, not be realised immediately on becoming party to the ICESCR but may be achieved gradually in accordance with the effective resources that a State party has at its disposal.

⁽²⁶⁾ G. van Hoof (ed.), *Theory and Practice of the European Convention on Human Rights*, The Hague, 1998, p. 645.

⁽²⁷⁾ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999.

parties should remove legal and administrative provisions, which potentially discriminate on the grounds of religion, race, colour, language or gender as concerns access to higher education ⁽²⁸⁾.

Furthermore, State parties must take the necessary steps to promote equality of opportunity and treatment as regards access to higher education, in particular for more disadvantaged groups, such as minorities, migrants ⁽²⁹⁾, indigenous peoples and women.

Concerning women's higher education right, the United Nation Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has a vital role ⁽³⁰⁾. The Convention, which was adopted in 1979 by the United Nations General Assembly, devotes an entire article to the right to education (art. 10) ⁽³¹⁾.

Article 10 CEDAW states that, on a basis of equality of men and women, State parties should ensure to all women:

(a) the same conditions for career, for access to studies and, finally, for the achievement of diplomas in educational institutions of all categories, in rural as well as in urban areas;

(b) access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and premises and equipment of the same quality;

(c) the complete elimination of any stereotyped concept of the roles of men and women in society by the revision of textbooks and educational programmes and the adaptation of teaching methods;

(d) the same choice of curricula, and the same opportunities to benefit from scholarships and other study grants;

⁽²⁸⁾ UN General Assembly, *United Nations Literacy Decade: Education for All*, 16 January 2003.

⁽²⁹⁾ Regarding migrants' right to education see: A. Saccucci, *Diritto all'istruzione e discriminazione scolastica di minori stranieri alla luce delle norme internazionali sui diritti umani*, in R. Pisillo Mazzeschi, P. Pustorino, A. Viviani (a cura di), *Diritti umani degli immigrati. Tutela della famiglia e dei minori*, Napoli, 2010.

⁽³⁰⁾ UN Convention on the Elimination of All Forms of Discrimination against Women (1979), entered into force on 3 September 1981.

⁽³¹⁾ Regarding CEDAW see: M. A. Freeman, C. Chinkin, B. Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary*, Oxford, 2012.

(e) the same concrete opportunities for access to programmes of continuing education, including adult and functional literacy programmes;

(f) the organisation of programmes for girls and women who have left their studies prematurely;

(g) the equal opportunities to participate actively in any sport and physical education.

In sum up, the purport of art. 10 may be described as follows: women must have the same access to quality higher education as men. Statutory provisions and administrative instructions concerning education at all levels must necessarily be the same for women as for men ⁽³²⁾. This principle applies especially to curricula, examinations, teaching staff, scholarship, grants, as well as school premises and equipment. Co-education must be promoted and education should also be directed to changing stereotyped views of the role of men and women in society even, if necessary, through the revision of textbooks and educational programmes, and the adaptation of teaching methods. Furthermore, States should allocate adequate resources to support women's participation in male-dominated sports and physical activities.

Article 10 CEDAW essentially reaffirms as prescribed by article 9 of the Declaration on the Elimination of Discrimination against Women (DEDAW), adopted by the UN General Assembly on 7 November 1967 ⁽³³⁾. Article 9 DEDAW states that «all appropriate measures» shall be taken by national governments to guarantee to women, married or unmarried, equal rights with men in education at all levels.

⁽³²⁾ There is no reservation to article 10. However, as correctly noted, scrutiny of national legislation and policies on education must ensure that they are gender-sensitive and integrate gender equality at all levels. P. Schulz, R. Halperin-Kaddari, B. Rudolf, M. A. Freemanet (eds.), *The UN Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol: A Commentary*, Oxford, 2022, p. 413.

⁽³³⁾ UNGA Resolution 2263 (XXII) of 7 November 1967.

4. The protection of the right to higher education in the African human rights system

The right to education is widely protected by the African human rights system ⁽³⁴⁾. First of all, art. 17(1) of African Charter on Human and Peoples' Rights (ACHPR), which was adopted by the Organization of African Unity (OAU) on 27 June 1981 ⁽³⁵⁾, states that: «every individual shall have the right to education».

The Charter does not elaborate on this short formulation of the right to education ⁽³⁶⁾. However, extensive provisions on the right to education may be found in the African Charter on the Rights and Welfare of the Child (ACRWC), which was adopted by the former OAU on 11 July 1990, and came into force on 29 November 1999 ⁽³⁷⁾.

Article 11(1) ACRWC expressly provides that: «every child shall have the right to an education», while art. 11(3) ACRWC instructs States parties to take «all appropriate measures» with a view to achieve «the full realisation» of the right to education ⁽³⁸⁾.

⁽³⁴⁾ On the African human rights system see: P. Kunig, *The protection of human rights by international law in Africa*, in *German Yearbook of International Law*, 1982, pp. 138-168; V. Nmeihelle, *The African Human Rights System: Its Laws, Practice, and Institutions*, The Hague, 2001; F. Viljoen, *International Human Rights Law in Africa*, Oxford, 2007; G. Pascale, *La tutela internazionale dei diritti dell'uomo nel continente africano*, Napoli, 2017.

⁽³⁵⁾ African Charter on Human and Peoples' Rights, entered into force on 21 October 1986. On the ACHPR see: E. A. Ankumah, *The African Commission on Human and Peoples' Rights*, The Hague, 1996; U. O. Umozurike, *The African Charter on Human and Peoples' Rights*, The Hague, 1997; F. Ouguerouz, *The African Charter on Human and Peoples' Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa*, The Hague, 2003; R. Murray, *The African Charter on Human and Peoples' Rights: A Commentary*, Oxford, 2019.

⁽³⁶⁾ D. Hodgson, *The Human Right to Education*, Sydney, 1998, p. 59.

⁽³⁷⁾ OAU Doc. CAB/LEG/24.9/49.

⁽³⁸⁾ Article 11(2) ACRWC proceeds to set out the aims of education. It mentions: the full development of the child's personality and talents, the strengthening of respect for human rights and fundamental freedoms, the preparation for an effective participation in a free society, the promotion of tolerance and friendship among peoples, ethnic, and religious groups. At the same time, the ACRWC considers the right to education as an essential

These public measures include the provision of free and compulsory basic education, the development of a secondary education in its different forms, and the promotion of a quality higher education accessible to all, on the basis of individual capacity ⁽³⁹⁾.

Provisions on the right to education as it accrues to women may be found, instead, in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which was adopted on 11 July 2003 by the Assembly of the African Union (AU) ⁽⁴⁰⁾.

Article 12(1) Protocol requires States parties to guarantee to every woman equal opportunity and access in the sphere of education and training ⁽⁴¹⁾. States parties are required to take «specific positive action» to promote a) literacy among women; b) education and training for women at all levels, and in all disciplines (particularly in the fields of science and technology); c) the enrolment and the retention of girls in schools ⁽⁴²⁾.

In summary, the objective of art. 12 of the Protocol – like that of art. 10 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women – is to permanently eliminate discrimination against women in educational opportunities.

Finally, extremely important is the African Youth Charter,

instrument to preserve positive African morals and traditional African values and cultures. Article 11(2) specified, indeed, that the education shall also be directed to the conservation of African identity and culture, the preservation of national independence and territorial integrity, the promotion and achievement of African unity and solidarity, and the respect for the natural environment and natural resources.

⁽³⁹⁾ J. Sloth-Nielsen, E. Fokala, G. Odongo, *The African Charter on the Rights and Welfare of the Child: A Commentary*, Pretoria, 2024, pp. 157-179.

⁽⁴⁰⁾ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, entered into force on 25 November 2005. Concerning the Protocol, see: F. Quilleré-Mejzoub, *Le Protocole à la Charte africaine des droits de l'homme et des peuples relative aux droits de la femme en Afrique*, in *Revue trimestrielle des droits de l'homme*, 2008, pp. 127-162.

⁽⁴¹⁾ According to the abovementioned Protocol, State parties shall eliminate stereotypes, in textbooks and in media, that perpetuate such discrimination and shall integrate gender sensitisation at all levels of education curricula.

⁽⁴²⁾ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 12(2).

adopted on 2 July 2006 and entered into force on 8 August 2009 ⁽⁴³⁾. The Charter refers explicitly to the right to education in art. 13, which recognises the basic right of every person to education of good quality and promotes all forms of education, including formal, non-formal, informal, distance learning and life-long learning.

5. The discrimination against women in the sphere of higher education in the African continent

Although, as was previously seen, the text of art. 12 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa requires States parties to guarantee to each woman equal opportunity and access in the sphere of education, there is still a significant gender gap as concerns the access to education in the majority of the African continent ⁽⁴⁴⁾.

Authoritative studies prove that women's effective access to education, at all levels, continues to be hampered by several customs, particularly developed in the African region ⁽⁴⁵⁾.

The major social norms that currently serve as barriers to the education of women in Africa are: a) female genital mutilation; b) early and forced marriage; c) and the expulsion of pregnant girls from their studies ⁽⁴⁶⁾.

Female genital mutilation is a harmful practice, promoted by numerous ethnocultural groups, which directly and negatively impacts the capacity of women to attend school and university ⁽⁴⁷⁾. Reports by the World Health Organisation

⁽⁴³⁾ The text of the African Youth Charter (AYC) is available on the official website of the African Union (www.africa-union.org).

⁽⁴⁴⁾ J. M. Mbaku, *International Law and the African Girl Child's Right to Education*, in *Journal of International Law and Comparative Studies*, 2004, p. 59 ss.

⁽⁴⁵⁾ Human Rights Watch, *Leave No Girl Behind in Africa – Discrimination in education against Pregnant Girls and Adolescent Mothers*, June 2018.

⁽⁴⁶⁾ See: <https://www.unesco.org/en/articles/key-data-girls-and-womens-right-education>.

⁽⁴⁷⁾ J. G. Hombrados, E. Salgado, *Does female genital cutting curb girls' education?*, in *LSE Blogs*, 21 October 2019.

(WHO) show, indeed, that African women who are subjected to genital mutilations are at increased risk of dropping out of school, university and training college ⁽⁴⁸⁾.

A further practice which is traditionally justified in African communities and significantly reduces the possibility of remaining in educational institutions for women is forced marriage. This practice makes it impossible for women to develop, in particular, the skills that they need to start or successfully complete a higher education level ⁽⁴⁹⁾.

Lastly, another serious threat to women's access to education are national laws that deny pregnant women the basic right to education ⁽⁵⁰⁾. Are still manifold the African countries which expel married and pregnant girls and prevent them from completing their education ⁽⁵¹⁾.

In this regard, fundamental importance assume the decision pronounced, on 15 September 2022, by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), whose mandate derives from the African Charter on the Rights and Welfare of the Child, in a case brought by the Legal and Human Rights Centre for Reproductive Rights against the Republic of Tanzania ⁽⁵²⁾.

The ACERWC found that Tanzania's policy of expulsion of pregnant girls from schools violated women fundamental rights to: a) education; equality and non-discrimination; b) protection from harmful social practices and social stereotypes; c) health (including the access to information about sexual health and reproductive health services); d) privacy; e) and dignity ⁽⁵³⁾.

Furthermore, the Committee specifically found that Tanzania's practice of mandatory pregnancy testing violated

⁽⁴⁸⁾ See: <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>.

⁽⁴⁹⁾ See: <https://data.unicef.org/resources/child-marriage-and-education-data-brief/>.

⁽⁵⁰⁾ See: <https://www.unesco.org/en/articles/pregnancy-and-right-education>.

⁽⁵¹⁾ See: <https://www.right-to-education.org/girlswomen>.

⁽⁵²⁾ African Committee of Experts on the Rights and Welfare of the Child, *Legal and Human Rights Centre and the Centre for Reproductive Rights (on behalf of girls in Tanzania) v. Tanzania*, Decision No. 002/2022, (Tanzanian Schoolgirls case).

⁽⁵³⁾ *Ivi*, parr. 38, 50, 60, 75, 89, 98.

the girls' rights to freedom from torture and abuse and constituted a cruel, inhuman, and degrading treatment ⁽⁵⁴⁾.

Although ACERWC decisions are not legally binding, with this legal case the Committee called upon States members to establish the immediate cessation of mandatory pregnancy testing, review the law on which this policy is based, consider the readmission of girls who were expelled based on this policy and, finally, provide access to reproductive health information.

6. Conclusion

In the African continent, education has a collective character. It is not only regarded as an individual right, but it is also viewed as an instrument for promoting economic development, eradicating illiteracy and advancing nation-building.

Moreover, under the African perspective, education shall be directed to the preservation of national independence and territorial integrity, and the achievement of African unity and solidarity. In particular, the African Charter on the Rights and Welfare of the Child considers the right to education as a means to preserve African morals and traditional African values.

However, certain African social norms and legislation frequently serve as obstacle to the education of women.

Female genital mutilations, early and forced marriages and the policies of expulsion of married and pregnant girls from educational institutions are the major customary practices which involve discrimination against women in education in the African region.

None of these harmful practices could be justified under the African Youth Charter, the African Charter on the Rights and Welfare of the Child and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

Therefore, African countries should exercise a significant influence in the sphere of education in order to eliminate these

⁽⁵⁴⁾ *Ivi*, par. 35.

discriminatory practices and should accelerate efforts to ensure women equal opportunities and rights in education at all levels.

As highlighted by the Human Rights Council in a resolution adopted in July 2025, according to UNESCO there are still 754 million of young persons and adults who are not literate and two thirds of whom are women ⁽⁵⁵⁾.

Consequently, in accordance with the provision of art. 10 of the Convention on the Elimination of All Forms of Discrimination against Women, States should urgently take all measures necessary to eliminate gender discrimination and gender stereotypes in education of any type, through human rights education, the facilitation of learning environments that take into account a gender perspective, and the promotion of equal opportunities in any field of study, including fields such as science, engineering, mathematics, as well as information and communications technology.

Assuring the right to education without any distinction, exclusion, limitation or preference based on sex is one of the most imperative challenges of our times.

⁽⁵⁵⁾ A/HRC/RES/59/9.

CHAPTER VIII

EMPOWERING FEMALE STUDENTS AS A PATHWAY TO QUALITY HIGHER EDUCATION: A CAPABILITY APPROACH CASE STUDY OF RWANDA POLYTECHNIC

Protais Niyonshima *

SUMMARY: 1. Introduction. – 2. Literature review. – 3. Methodology. –
4. Discussion. – 5. Conclusion and recommendations.

1. Introduction

Rwanda has achieved considerable progress in promoting gender equality; however, disparities persist in higher education, particularly within Science, Technology, Engineering, and Mathematics (STEM) programmes. This study investigates the influence of gender empowerment initiatives on educational quality at Rwanda Polytechnic, drawing on Amartya Sen's Capability Approach. Using a qualitative case study design at RP Musanze College, the findings indicate that while female enrolment has increased notably, significant gaps remain in policy awareness and confidence in institutional reporting mechanisms. Although access to academic resources is largely equitable, the effective conversion of these opportunities into meaningful outcomes is constrained by inconsistencies in gender-responsive pedagogy and limited procedural trust. Importantly, the majority of participants perceive gender empowerment as a critical determinant of teaching and learning quality. The study

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concludes that Rwanda Polytechnic is transitioning from an access-oriented model to a capability-based framework, underscoring the need for stronger institutionalisation of gender-responsive practices ⁽¹⁾.

2. Literature review

Gender equality in education is widely recognized as a foundational driver of human development, social justice, and economic transformation. International frameworks, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) ⁽²⁾, the African Charter on Human and Peoples' Rights ⁽³⁾, the Beijing Platform for Action ⁽⁴⁾, and the Sustainable Development Goals, particularly SDGs 4 and 5, affirm the rights of girls and women to equitable access, participation, and achievement in education. These frameworks emphasize that gender equality is not only a moral and legal imperative but also a strategic pathway toward improved institutional performance, labour market productivity, and national competitiveness in an increasingly knowledge-based global economy ⁽⁵⁾.

Although global patterns show increased female enrolment in higher education, gender disparities persist, especially in technical and STEM disciplines. Scholars identify multiple drivers of inequity, including entrenched sociocultural norms, gendered expectations, and career guidance practices that steer girls away from engineering and technology-related fields. Institutional practices also contribute to inequality: limited mentorship access, bias in classroom discourse, limited representation of female experts, and environments that fail to

⁽¹⁾ Rwanda Polytechnic, Annual Gender and Inclusion Report, 2018–2024.

⁽²⁾ United Nations (1979) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

⁽³⁾ African Union, (1981) African Charter on Human and Peoples' Rights (Banjul Charter).

⁽⁴⁾ UN Women, (1995) Beijing Declaration and Platform for Action: Fourth World Conference on Women.

⁽⁵⁾ UNESCO, (2020) Global education monitoring report: Inclusion and education-All means all, UNESCO Publishing.

protect students from harassment or discrimination ⁽⁶⁾. These factors collectively produce what Bourdieu terms symbolic violence, where social hierarchies are reinforced through normalized cultural practices rather than explicit restriction ⁽⁷⁾.

Research indicates that gender gaps are most pronounced within Technical and Vocational Education and Training (TVET) systems, which shape pathways into engineering, construction, electronics, and ICT occupations ⁽⁸⁾. Female students remain overrepresented in fields associated with traditional gender roles, such as hospitality or business, and underrepresented in mechanical, electrical, and computing programmes ⁽⁹⁾. Constraints begin early: gendered socialization in primary and secondary schooling, lack of STEM exposure, and societal expectations about appropriate careers. However, studies demonstrate that targeted interventions, including female STEM role models, internships, and scholarship incentives, can significantly increase participation and success rates ⁽¹⁰⁾.

Rwanda is internationally recognized for its commitment to advancing gender equality, holding the world's highest percentage of women in parliament and implementing progressive gender legislation. The Revised National Gender Policy ⁽¹¹⁾ identifies education as a key sector for dismantling gender barriers and accelerating development. Still, disparities persist in higher education and TVET, particularly in STEM fields where female enrolment frequently falls below

⁽⁶⁾ S. Namy, C. Carlson, K. O'Hara, M. Contzen, *Toward a feminist understanding of safety: How power, inequality and structural constraints shape help-seeking in higher education*, in *Development and Change*, 2020, pp. 735-758.

⁽⁷⁾ P. Bourdieu, *Masculine domination*, Stanford University Press, Stanford, 2001.

⁽⁸⁾ 2018 UNESCO-UNEVOC. (2018) TVET country profile: Rwanda. Bonn, Germany.

⁽⁹⁾ K. King, *TVET and gender in Africa: Changing perspectives and practices*, in *International Journal of Training Research*, 2017, pp. 188-204.

⁽¹⁰⁾ World Bank, (2019) *Girls in STEM: Evidence and recommendations for expanding science and technology education for women and girls*. World Bank Publications.

⁽¹¹⁾ MIGEPROF, (2021), *Revised National Gender Policy*. Ministry of Gender and Family Promotion.

30% ⁽¹²⁾. Factors identified in Rwandan studies include financial barriers, cultural gender norms, lower self-confidence in STEM subjects, and insufficient visibility of female professionals ⁽¹³⁾. Initiatives by organizations such as FAWE and STEM Rwanda have demonstrated that early exposure, mentorship, and representation are essential for shifting gendered perceptions and strengthening capability.

A growing body of literature highlights the importance of gender-responsive pedagogy, defined as teaching that acknowledges and actively addresses gendered differences in experiences, expectations, and barriers ⁽¹⁴⁾. This includes inclusive language, equitable task distribution, dialogic teaching methods, and curriculum content that reflects contributions by female professionals. Feminist pedagogical theory argues that transformation requires institutional change rather than reliance on exceptional individual staff members. Without alignment of policy, infrastructure, and staff training, gender-responsive practices remain inconsistent and dependent on personal commitment rather than systemic obligation ⁽¹⁵⁾¹⁵. Scholars also emphasize that student success depends on the emotional and psychosocial climate of learning spaces. When reporting systems are unclear or untrusted, students are unlikely to disclose discrimination, harassment, or bias ⁽¹⁶⁾. Therefore, procedural safety, clear mechanisms, confidentiality, and accountability, are as important as physical safety.

Research increasingly links gender equality to institutional quality and performance. Institutions that mainstream gender demonstrate improved retention and graduation rates, higher engagement and motivation among underrepresented groups,

⁽¹²⁾ MINEDUC, (2023), Education statistics yearbook 2022/2023. Ministry of Education, Rwanda.

⁽¹³⁾ FAWE, (2020), STEM promotion programmes for girls in Rwanda. Forum for African Women Educationalists–Rwanda Chapter.

⁽¹⁴⁾ FAWE, (2006), Gender-responsive pedagogy: A toolkit for teachers and schools. Forum for African Women Educationalists.

⁽¹⁵⁾ D. Hook, *A critical psychology of the postcolonial: The mind of apartheid*, Routledge, London, 2012.

⁽¹⁶⁾ Namy, S., Carlson, C., O'Hara, K., & Contzen, M. (2020). *Toward a feminist understanding of safety: How power, inequality and structural constraints shape help-seeking*, cit.

more collaborative learning environments, and stronger academic identity formation ⁽¹⁷⁾. From a systems perspective, inclusion and educational quality are interdependent: without gender-responsive practices, institutions risk reinforcing inequity through hidden curriculum, uneven opportunity distribution, and cultural exclusion ⁽¹⁸⁾. In this view, gender equality functions as a quality assurance mechanism, not an add-on policy.

Although the relationship between gender and higher education is well documented globally, three key gaps remain. First, existing literature disproportionately focuses on universities, with limited attention to TVET-based higher education systems, despite their central role in skills development and national workforce transformation. Second, there is a lack of empirical research on Rwanda Polytechnic as a live case of gender mainstreaming, leaving a gap in understanding how policies translate into practice within Rwanda's flagship technical institution. Third, the Capability Approach is rarely applied in this context as an analytical tool for examining how institutional practices shape students' real freedoms, participation, and academic achievement. Addressing these gaps positions this study to contribute original insight to both national and international debates on gender, educational quality, and institutional transformation in technical higher education.

3. Methodology

This study adopted a qualitative case study design to examine how gender empowerment initiatives influence educational quality and female student participation at Rwanda Polytechnic (RP). Rwanda Polytechnic was selected as a single-case institution due to its central role in Rwanda's TVET ecosystem and its mandate to expand women's access

⁽¹⁷⁾ World Bank, (2019), *Girls in STEM: Evidence and recommendations for expanding science and technology education for women and girls*. World Bank Publications.

⁽¹⁸⁾ L. Morley, *Gender mainstreaming: Myths and measurement in higher education in Ghana and Tanzania*, in *Compare*, 2010, pp. 533-550.

to technical fields. Analytical framing drew on Sen's Capability Approach to understand empowerment as both access to educational resources and the ability to convert these resources into meaningful achievement.

Data were collected primarily at RP Musanze College, purposively selected for its concentration of STEM programmes where gender disparities are most visible. Semi-structured interviews, informal discussions, and a student questionnaire captured experiences of female learners, academic staff, and administrators involved in gender-focused initiatives. Findings are based primarily on one RP college namely RP Musanze College) and an analytic dataset ($n = 250$) derived from proportional patterns of 180 questionnaire respondents; therefore, the results are illustrative rather than statistically generalisable across all RP colleges.

Purposive sampling ensured that participants possessed relevant experiential knowledge across fields including civil engineering, electrical engineering, and ICT. Secondary data included RP reports of 2018–2024, internal policies, and national and international policy documents informing gender mainstreaming in education. Data were analysed using Braun and Clarke's six-phase thematic analysis ⁽¹⁹⁾19, with inductive coding guiding theme development. Ethical procedures included voluntary participation, informed consent, confidentiality, and anonymization. Credibility was enhanced through methodological triangulation and member-checking discussions with selected participants.

4. Results

The findings reveal notable progress in gender empowerment at Rwanda Polytechnic, alongside persistent structural and cultural challenges that affect the translation of policy commitments into lived reality for female students. Results are presented thematically around five areas that emerged from the data: policy awareness, access to resources

⁽¹⁹⁾ V. Braun, V. Clarke, *Using thematic analysis in psychology*, in *Qualitative Research in Psychology*, 2006 pp. 77-101.

and opportunities, classroom climate and pedagogy, safety and reporting systems, and perceptions of empowerment and institutional quality. Data reflect experiences primarily from RP Musanze College, where questionnaire and interview responses were collected, and are consistent with institutional documentation and national policy context.

Awareness of gender-related frameworks varied considerably among participants. While 81% of respondents indicated familiarity with the existence of the National Gender Policy or related institutional documents, only a minority could articulate how the policy operates, what rights it protects, or how to utilise reporting mechanisms. A significant proportion, 19% of students, reported being completely unaware of any gender policy structure at RP, despite its formal adoption. One female student explained: “I have heard that there is a policy, but I don’t know what it contains or what I am supposed to do if I face a gender issue.”

This disconnect suggests that policy commitments have not been effectively internalized or operationalized at the learner level. The gap between policy presence and policy utility indicates a critical barrier to empowerment: students cannot convert protective frameworks into capability without functional knowledge. This reflects a broader trend identified in Capability Theory, where access to resources does not guarantee agency or choice without enabling conditions.

Access to academic resources and learning opportunities was reported positively overall. Ninety-two percent (92%) of respondents affirmed that opportunities such as scholarships, internships, laboratory materials, and technical equipment are allocated on an equal basis at RP Musanze College. Respondents acknowledged improvements in institutional support, particularly in the expansion of laboratory access hours and the provision of targeted scholarship schemes for financially vulnerable students. Satisfaction with physical resources was high (95%), reinforcing that infrastructural equity is not the primary limitation.

However, several participants revealed that conversion of access into participation remains uneven due to underlying cultural and pedagogical dynamics. Some lecturers were perceived to demonstrate greater confidence in male students’

abilities during technical sessions, especially in workshop environments.

A mechanical engineering student noted: “Sometimes male students get called first to demonstrate practical tasks because they are assumed to be more confident or stronger.” These experiences highlight that structural equality does not always equate to experiential equality, reinforcing the need for gender-responsive teaching practices to complement resource allocation.

Most participants described the classroom environment as generally respectful and supportive. However, latent gender bias was identified in everyday instructional practices. Approximately 70% of students reported having access to mentorship or role model programmes; however, this access was inconsistent across departments. Students emphasized the importance of representation, noting that female instructors or guest professionals had a positive effect on confidence and academic identity.

Despite this progress, several respondents reported instances in which learning activities unintentionally reinforced gendered expectations. Examples included uneven allocation of leadership roles in group work, implicit assumptions about male competence in technical tasks, and limited facilitation of female student voice during practical demonstrations. These dynamics represent what literature defines as micro- inequities, subtle, often unintentional behaviours that accumulate to shape academic identity and belonging. The prevalence of these experiences suggests that gender- responsive pedagogy remains partially implemented and dependent on individual lecturer initiative rather than embedded institutional practice.

Safety emerged as a complex theme. On one hand, 59% of respondents reported feeling physically safe and respected within college spaces. On the other hand, there was a contrast in perceptions of procedural safety: only 41% of students indicated confidence in using formal reporting mechanisms if they experienced discrimination or harassment.

The majority of participants stated that they either did not know where to report or feared that their concerns would not be taken seriously.

One participant explained: “Even if I wanted to report

something, I wouldn't know where to start or who to trust with the information." This disparity reflects a trust deficit in safeguarding systems. While physical safety is largely secured, psychological and procedural safety remain fragile, limiting student agency, voice, and protection. From a Capability Approach perspective, this indicates the presence of opportunity structures but an absence of functional freedom.

Respondents demonstrated a strong perception of empowerment as a driver of academic success and institutional effectiveness. Ninety-five percent (95%) of participants stated that empowering female students improves teaching and learning quality, while 90% agreed that female students perform on par with male peers when given equal support and opportunities.

Many respondents described empowerment not only as a personal benefit, but as a factor that enhances college culture, peer collaboration, and professional readiness. These sentiments support the argument that gender empowerment is not merely a social priority, but an educational quality assurance mechanism.

5. Discussion

RP is progressing toward gender-inclusive education, but current implementation reflects an intermediate stage of transformation rather than systemic practice. While access and resources have improved, with 92% of respondents reporting equal opportunity distribution and 95% expressing satisfaction with facilities, empowerment remains uneven due to gaps in policy awareness, implicit classroom bias, and low confidence in reporting mechanisms. This confirms that access alone does not guarantee capability; in Sen's terms ⁽²⁰⁾, RP provides opportunities but has not fully secured the conversion factors needed for students to turn these opportunities into meaningful academic outcomes.

Implicit gender bias in instructional practices—such as

⁽²⁰⁾ A. Sen, *Development as freedom*, Oxford University Press, Oxford, 1999.

prioritizing male students during demonstrations or assigning technical tasks along gendered lines—mirrors micro-inequities ⁽²¹⁾ and symbolic violence. These patterns limit participation confidence and show that gender-responsive pedagogy is not yet institutionalised. The gap between physical safety (59%) and trust in reporting systems (41%) further signals a credibility deficit in safeguarding structures, where rights exist on paper but lack the procedural clarity and confidence required for genuine use.

Despite these challenges, 95% of respondents believe that empowerment improves teaching and learning quality, and 90% affirm that academic performance equalizes when support is equitable. This positions empowerment not only as an equity goal but as a quality assurance mechanism that strengthens participation, retention, and institutional performance. Within Rwanda's national development priorities, progress at RP carries implications beyond the institution, contributing to STEM workforce diversification and economic competitiveness. However, practices have not yet fully matched policy ambition, indicating the need for deeper institutionalization of gender-responsive systems in TVET-based higher education. While the analytic dataset enabled clearer thematic interpretation, its proportional construction means the findings should be viewed as illustrative rather than generalisable across all RP colleges. Given that data were collected at a single RP college and the analytic dataset (n = 250) was derived from proportional patterns of 180 respondents, the findings are illustrative and analytically generalisable rather than statistically representative of all RP colleges.

6. Conclusion and recommendations

This study shows that Rwanda Polytechnic has made meaningful progress in gender empowerment, reflected in rising female enrolment, improved resource access, and growing recognition of women's roles in technical education.

⁽²¹⁾ V. Braun, V. Clarke, cit., pp. 77-101.

However, empowerment remains uneven due to gaps in policy awareness, mentorship consistency, pedagogy, and trust in reporting systems. Using Sen's Capability Approach, the findings show that access alone is insufficient without the capability to participate and succeed. Gender empowerment therefore acts not only as a social equity goal, but as a driver of educational quality and institutional performance. To achieve full impact, RP must shift from policy presence to policy ownership, embedding gender responsiveness into governance, teaching, safeguarding, and college culture. Further research could expand to multiple RP campuses, compare STEM and non-STEM pathways, or examine staff perspectives to deepen institutional analysis.

Rwanda Polytechnic should establish a Gender Mainstreaming Unit and include gender targets in institutional key performance indicators to improve accountability. Policy awareness can be strengthened through mandatory orientation and simplified communication about rights and reporting pathways. Mentorship initiatives, such as Women in STEM Circles and industry-linked role models, should be institutionalized to build confidence and retention. Safeguarding should be reinforced through confidential reporting platforms and trained focal points. Finally, promoting female leadership representation and conducting annual gender climate audits will help integrate empowerment into RP's quality assurance framework and institutional identity.

CHAPTER IX

AI AND THE RIGHT TO QUALITY EDUCATION: CHALLENGES AND OPPORTUNITIES IN AFRICAN POLYTECHNICS

Joseph Uwineza *

SUMMARY: 1. Introduction. – 2. Literature Review and Legal Framework. – 2.1. The Right to Quality Education in International and Regional Law. – 2.2. Quality in Higher Education. – 2.3. Artificial Intelligence in Higher Education: Global Perspectives. – 2.4. Artificial Intelligence and Educational Transformation in the African Context. – 3. Methodological Approach and Scope of the Study. – 4. Use of Artificial Intelligence in African Polytechnics. – 4.1. Overview of Polytechnic Education in Africa. – 4.2. Artificial Intelligence Applications in Teaching and Learning. – 4.3. Artificial Intelligence in Curriculum Design and Institutional Management. – 4.4. Enhancing Access and Inclusion through Artificial Intelligence. – 4.5. Artificial Intelligence as a Catalyst for Lifelong and Skills-Based Learning. – 5. Opportunities and Structural Challenges of AI Integration in African Polytechnics. – 5.1. Key Opportunities. – 5.2. Critical Challenges – 5.3. Illustrative Institutional Experiences. – 6. Human Rights Evaluation Using the 4A Framework. – 7. Roadmap for Responsible and Rights-Based AI Integration.

1. Introduction

The Right to Quality Education is universally recognized as a cornerstone of human development, social mobility, and economic empowerment. Within Africa, the challenge of providing equitable and relevant higher education has

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intensified in the context of rapid technological change and shifting labor market demands. As the continent advances toward the objectives of the African Union's Agenda 2063 ⁽¹⁾ and the United Nations Sustainable Development Goal 4 (SDG 4) ⁽²⁾, which calls for inclusive and equitable quality education and lifelong learning opportunities for all, polytechnic institutions have assumed a central role in bridging the gap between academic knowledge and practical skills.

Among contemporary technological innovations, AI has emerged as a transformative force across multiple sectors, including education. Its capacity to automate administrative processes, personalize learning pathways, predict student outcomes, and enhance institutional efficiency is increasingly acknowledged.

However, within the African context, the integration of AI into polytechnic education remains nascent and fragmented, constrained by infrastructural limitations, financial constraints, and ethical concerns. As African states expand access to tertiary education, the critical question is no longer whether AI should be integrated, but rather how it can be adopted responsibly and effectively to advance the right to quality education.

This Article situates AI adoption within the broader discourse of human rights and educational justice. It examines the extent to which AI can serve as a catalyst for improving educational delivery in African polytechnics, while simultaneously analyzing the risks that may reinforce or exacerbate existing inequalities. Adopting an interdisciplinary approach, the study draws upon educational technology, international law, and development studies to offer a holistic assessment of how AI both enhances and complicates the realization of quality education as a fundamental human right.

Specifically, this study seeks to: map and analyze the current use of artificial intelligence in African polytechnics

⁽¹⁾ African Union, *Agenda 2063: The Africa We Want* (2015).

⁽²⁾ United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development*, GA Res. 70/1, UN Doc. A/RES/70/1, 25 September 2015.

across teaching, curriculum development, assessment, and institutional administration; identify the principal opportunities, including enhanced learning outcomes and operational efficiency, as well as the systemic challenges, such as algorithmic bias, digital inequality, and data protection risks, associated with AI integration; evaluate the impact of AI on the right to quality education through the 4A framework: accessibility, availability, acceptability, and adaptability and, finally, develop a practical roadmap and policy-oriented recommendations for the responsible, equitable, and sustainable integration of AI in African polytechnic education.

These objectives inform the structure of the Article. Following this Introduction, other paragraphs outlines the conceptual and normative foundations relating to artificial intelligence and the right to education, defines the methodology and scope of the study, examines current practices of AI use within African polytechnics, analyzes the opportunities and challenges arising from AI integration, evaluates these developments through a human rights lens, proposes a comprehensive roadmap for responsible AI integration, and concludes with policy and governance recommendations for ethical and effective implementation.

2. Literature Review and Legal Framework

2.1. The Right to Quality Education in International and Regional Law

The right to education is enshrined in multiple international legal instruments that affirm its universality, accessibility, and quality dimensions. Article 26 of the Universal Declaration of Human Rights establishes that “everyone has the right to education,” underscoring its essential role in promoting understanding, tolerance, and peace ⁽³⁾. This foundational principle is reinforced by Article 13 of the International Covenant on Economic, Social and Cultural Rights, which obliges States Parties to make higher education “equally

⁽³⁾ Universal Declaration of Human Rights, GA Res 217A (III), UN Doc. A/RES/217(III), 10 December 1948, Art. 26.

accessible to all, on the basis of capacity.”⁽⁴⁾ Collectively, these provisions establish education as a lifelong right extending beyond primary schooling to include higher and technical education.

Within the African context, regional human rights frameworks further clarify the scope and content of this right. Article 17 of the African Charter on Human and Peoples’ Rights recognizes every individual’s right to education,⁽⁵⁾ while the African Charter on the Rights and Welfare of the Child requires States to ensure universal secondary education and equitable access to higher education.⁽⁶⁾ The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa introduces a gender perspective by mandating State action to promote women’s participation in all educational disciplines, including science and technology.⁽⁷⁾ Taken together, these instruments conceptualize education not merely as a social service, but as a human right grounded in equality, dignity, and empowerment.

International normative instruments, including the Convention against Discrimination in Education, further advocate inclusive and quality education through innovation and equitable resource distribution.⁽⁸⁾ These frameworks emphasize that quality education encompasses relevance, equity, and the continuous adaptation of curricula to social and technological change.

2.2. *Quality in Higher Education*

Quality in higher education extends beyond academic excellence to include relevance, efficiency, equity, and societal

⁽⁴⁾ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3, Art. 13.

⁽⁵⁾ African Charter on Human and Peoples’ Rights, 27 June 1981, 1520 UNTS 217, Art. 17.

⁽⁶⁾ African Charter on the Rights and Welfare of the Child, 11 July 1990, OAU Doc. CAB/LEG/24.9/49, Art. 11.

⁽⁷⁾ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 11 July 2003, 213 UNTS 3, Art. 12.

⁽⁸⁾ Convention against Discrimination in Education, 14 December 1960, 429 UNTS 93.

impact. For African polytechnics, quality is frequently assessed by their capacity to produce skilled graduates aligned with labor market demands and national development objectives. However, empirical studies indicate that polytechnic institutions across Sub-Saharan Africa face persistent structural challenges, including chronic underfunding, inadequate infrastructure, limited faculty capacity, and outdated curricula. ⁽⁹⁾

These constraints undermine both accessibility and acceptability, two core dimensions of the right to education as articulated within the 4A framework. ⁽¹⁰⁾ Consequently, the right to quality higher education cannot be dissociated from the positive obligations of States to ensure adequate resourcing, pedagogical relevance, and technological responsiveness. As African economies pursue industrialization and digital transformation, polytechnics are increasingly expected to bridge the gap between theory and practice by equipping students with skills relevant to the Fourth Industrial Revolution. ⁽¹¹⁾

2.3. Artificial Intelligence in Higher Education: Global Perspectives

Globally, AI is reshaping educational systems through adaptive learning platforms, predictive analytics, intelligent tutoring systems, and data-driven decision-making. International organizations have characterized AI as a “double-edged sword” in education, capable of enhancing personalization and institutional efficiency while simultaneously generating ethical, legal, and equity-related concerns. ⁽¹²⁾ Empirical research demonstrates that AI-powered educational tools can improve student engagement,

⁽⁹⁾ G. Afeti, *Revitalising technical and vocational education and training in Africa*, *Journal of Vocational, Adult and Continuing Education and Training* 1(1) (2018).

⁽¹⁰⁾ K. Tomasevski, *Human Rights Obligations in Education: The 4-A Scheme* (2006).

⁽¹¹⁾ World Bank, *The Future of Work in Africa* (2020).

⁽¹²⁾ UNESCO, *Recommendation on the Ethics of Artificial Intelligence* (2021).

identify learning gaps, and support continuous assessment, thereby contributing to improved learning outcomes. ⁽¹³⁾ In higher education administration, AI facilitates resource optimization, automates routine administrative functions, and supports strategic planning through predictive modeling. Applications include student attrition prediction, admissions support, and personalized academic pathway recommendations, allowing educators to focus on higher-order pedagogical and mentoring functions. ⁽¹⁴⁾ Nevertheless, global scholarship consistently emphasizes that the effectiveness of AI in education depends on context-specific adaptation, adequate infrastructure, and robust ethical governance frameworks. ⁽¹⁵⁾

2.4. Artificial Intelligence and Educational Transformation in the African Context

Within Africa, discourse on AI in education is expanding but remains uneven and policy dependent. The Continental Education Strategy for Africa identifies innovation and technological integration as central to educational transformation. ⁽¹⁶⁾ Despite this policy recognition, AI adoption within African tertiary institutions continues to be constrained by digital divides, limited investment, and insufficient technical capacity. ⁽¹⁷⁾

Several countries, including Rwanda, Kenya, and Ghana, have emerged as early adopters of AI-enabled educational platforms and institutional data analytics. Rwanda Polytechnic, for example, has initiated digital learning innovations aligned

⁽¹³⁾ R. Luckin *et al.*, *Intelligence Unleashed: An Argument for AI in Education*, 2016.

⁽¹⁴⁾ L. Chen, P. Chen & Z. Lin, *Artificial Intelligence in Education*, 8 *IEEE Access*, 2020, p. 75270.

⁽¹⁵⁾ O. Zawacki-Richter *et al.*, *Systematic Review of AI in Higher Education*, in *International Journal of Educational Technology in Higher Education*, 2019.

⁽¹⁶⁾ African Union Commission, *Continental Education Strategy for Africa 2016–2025* (2020).

⁽¹⁷⁾ N. Ndung'u & L. Signé, *Capturing the Fourth Industrial Revolution* (2020).

with the Smart Rwanda Master Plan, which envisions the strategic use of AI for education and public sector efficiency. ⁽¹⁸⁾ These initiatives reflect growing awareness of AI's potential to enhance educational quality and inclusivity when embedded within human-centered policy frameworks.

At the same time, persistent concerns regarding algorithmic bias, data protection, and unequal access to digital infrastructure raise significant human rights implications. ⁽¹⁹⁾ Without deliberate governance safeguards, AI risks exacerbating the very educational inequalities it seeks to address. The tension between technological innovation and social justice therefore remains central to the realization of the right to quality education in African polytechnic institutions.

3. Methodological Approach and Scope of the Study

This study adopts a qualitative, exploratory research design to examine the dual role of AI in advancing and challenging the right to quality education in African polytechnics. An interdisciplinary framework integrating educational technology, international human rights law, and development studies informs the analysis, enabling examination across pedagogical, institutional, ethical, and socio-economic dimensions. Data collection relied on multiple sources to ensure triangulation and analytical rigor. Document analysis covered national AI policies, institutional strategic plans—including the Rwanda Polytechnic Smart Education Agenda—and international and regional legal instruments on education and human rights. ⁽²⁰⁾ Case studies from selected institutions in Rwanda, Kenya, and Ghana provided context-specific insights into AI implementation. A systematic review of academic literature and policy reports complemented this analysis, with emphasis on Sub-Saharan African polytechnics.

Data were analyzed through thematic content analysis,

⁽¹⁸⁾ Rwanda Ministry of ICT and Innovation, *Smart Rwanda Master Plan 2020–2025* (2022).

⁽¹⁹⁾ M. Oketch, *Education and the Impact of Artificial Intelligence in Africa*, Palgrave Macmillan, 2024, pp. 89–93.

⁽²⁰⁾ *Ibid.*, 18.

focusing on AI applications in teaching, learning, and institutional management; ethical and structural challenges such as algorithmic bias, data privacy, and infrastructure constraints; and opportunities for enhancing inclusivity, curriculum relevance, and lifelong learning. Comparative insights from case studies were integrated with scholarly literature to produce an evidence-based assessment.

The scope of the study is limited to public and semi-public polytechnic institutions in Sub-Saharan Africa, with particular focus on Rwanda, Kenya, and Ghana due to their documented AI initiatives and policy frameworks. Private institutions and primary or secondary education are excluded. The analysis concentrates on AI applications directly affecting pedagogical quality, institutional efficiency, and educational inclusion, with ethical, legal, and policy considerations forming an integral component of the study.

4. Use of Artificial Intelligence in African Polytechnics

4.1. Overview of Polytechnic Education in Africa

Polytechnic institutions constitute the applied and skills-oriented segment of Africa's higher education system, with a primary mandate to deliver technical, vocational, and industry-aligned training. Their role is closely linked to workforce development, industrialization, and youth employment strategies across the continent ⁽²¹⁾ Despite their strategic importance, many African polytechnics operate under persistent constraints, including limited funding, inadequate digital infrastructure, and uneven staff capacity ⁽²²⁾. These structural conditions significantly shape the pace, scale, and form of AI adoption, explaining why AI integration in polytechnic education remains incremental and uneven rather than systemic.

⁽²¹⁾ World Bank, *The Future of Work in Africa* (2020)

⁽²²⁾ G. Afeti, *supra* note 9, 4

4.2. Artificial Intelligence Applications in Teaching and Learning

AI applications in African polytechnics are primarily deployed as supportive tools for teaching and learning rather than as fully autonomous systems. Common uses include learning analytics embedded in learning management systems, AI-assisted tutoring in technical disciplines, automated assessment support, and simulation-based training aligned with competency-based education models ⁽²³⁾. Emerging institutional practices illustrate this trend. Rwanda Polytechnic has piloted analytics-driven student monitoring tools to support engagement and retention, while selected Kenyan technical institutions employ AI-assisted simulations in engineering and applied science programs ⁽²⁴⁾. Although limited in scale, these initiatives demonstrate AI's potential to enhance instructional efficiency and learning support when aligned with institutional capacity and pedagogical priorities.

4.3. Artificial Intelligence in Curriculum Design and Institutional Management

Beyond pedagogy, AI is reshaping curriculum design and institutional governance. AI-based labor-market analytics enable institutions to forecast emerging skills and align curricula with industry needs. ⁽²⁵⁾ In institutional management, AI automates administrative processes, supports predictive planning, and enhances evidence-based decision-making. At Rwanda Polytechnic, AI-driven dashboards are being deployed to monitor institutional performance indicators. AI also strengthens quality assurance by analyzing feedback from students, employers, and staff, thereby informing accreditation and policy reform processes. ⁽²⁶⁾

⁽²³⁾ R. Luckin *et al.*, *supra* note 13, 4.

⁽²⁴⁾ Rwanda Ministry of ICT & Innovation, *supra* note 18, 5

⁽²⁵⁾ V. Popenici & S. Kerr, *Exploring AI in Higher Education*, in *Research & Practice in Tech-Enhanced Learning*, 2017.

⁽²⁶⁾ *Ibid.*, 25.

4.4. Enhancing Access and Inclusion through Artificial Intelligence

AI technologies offer opportunities to enhance educational inclusion, particularly for learners with disabilities and those in remote areas. Tools such as speech recognition, natural-language processing, and virtual learning assistants can improve accessibility by supporting learners with visual, hearing, or learning impairments and enabling flexible access to learning resources beyond physical campuses ⁽²⁷⁾.

Pilot initiatives illustrate this potential. In Rwanda, AI-enabled learning analytics and digital assistants have been tested to support student engagement and academic advising, contributing to more personalized learning support within public technical institutions ⁽²⁸⁾. In Ghana, experimental uses of AI-supported chatbots and adaptive learning tools have improved access to student services and learning materials, including support for learners with disabilities ⁽²⁹⁾. However, these gains remain uneven. Persistent gaps in digital infrastructure, device access, and digital literacy—particularly in rural and low-income contexts—risk reinforcing existing socio-economic disparities if not addressed alongside AI deployment ⁽³⁰⁾.

4.5. Artificial Intelligence as a Catalyst for Lifelong and Skills-Based Learning

AI-enabled micro-credentialing and modular learning systems support lifelong learning and continuous upskilling, aligning polytechnic education with evolving labor-market needs. Predictive analytics further enable governments and institutions to identify skills gaps and design targeted training interventions. ⁽³¹⁾ AI is thus transforming polytechnic

⁽²⁷⁾ UNESCO, *supra* note 12,4.

⁽²⁸⁾ Rwanda Ministry of ICT & Innovation, *supra* note 18, 5

⁽²⁹⁾ G. K. Amoako, Artificial Intelligence and Digital Transformation in African Higher Education: Ethical and Policy Considerations, in *African Educational Review*, 2023, pp. 36-38.

⁽³⁰⁾ *Ibid.*, 29

⁽³¹⁾ World Bank, *supra* note 21, 6.

education through data-driven approaches to teaching, curriculum development, and institutional management. While these innovations hold promise for advancing the right to quality education, their impact depends on context-sensitive implementation, adequate investment, and robust ethical governance.

5. Opportunities and Structural Challenges of AI Integration in African Polytechnics

5.1. Key Opportunities

AI-enabled educational platforms facilitate personalized learning by adapting content, pacing, and assessment to individual learner needs. Such personalization aligns closely with competency-based polytechnic education, where mastery of practical skills is prioritized over fixed instructional timelines. Through real-time analysis of learner data, AI systems can identify students at risk of underperformance and trigger early interventions, contributing to reduced dropout rates and improved completion outcomes. ⁽³²⁾ Adaptive learning technologies enable students to progress at their own pace, moving beyond rigid credit-hour models and enhancing inclusivity. ⁽³³⁾

AI-driven predictive analytics can support curriculum alignment with evolving labor-market demands by analyzing employment trends and skill shortages. This capacity allows polytechnics to update programs proactively, strengthening graduate employability and national workforce relevance. ⁽³⁴⁾ For example, Rwanda Polytechnic employs AI-assisted learning management systems to track student performance and generate individualized recommendations consistent with national industrial priorities, ⁽³⁵⁾ In Kenya, institutions such as

⁽³²⁾ R. Luckin et al., *supra* note 13, 4.

⁽³³⁾ W. Holmes, M. Bialik & C. Fadel, *Artificial Intelligence in Education: Promises and Implications for Teaching and Learning* (Center for Curriculum Redesign), 2021.

⁽³⁴⁾ Popenici & Kerr, *supra* note 27, 7.

⁽³⁵⁾ Rwanda Ministry of ICT & Innovation, *supra* note 18, 5.

the Technical University of Kenya and the Kenya Technical Trainers College use AI-supported data mining and simulation tools to forecast skills demand and enhance industrial automation training, particularly for remote learners. ⁽³⁶⁾

AI applications can streamline administrative processes, including admissions, scheduling, and resource allocation. Predictive analytics assist institutional leaders in forecasting enrollment trends, identifying retention risks, and optimizing resource use ⁽³⁷⁾. In Rwanda, AI-supported administrative dashboards enhance transparency, performance monitoring, and accountability within polytechnic governance structures ⁽³⁸⁾.

Natural Language Processing (NLP) tools enable institutions to analyze large volumes of feedback from students, employers, and stakeholders, identifying satisfaction patterns and areas for pedagogical improvement. ⁽³⁹⁾ In Ghana, institutions such as Takoradi Technical University and Kwame Nkrumah University of Science and Technology deploy AI chatbots for student services and predictive analytics for academic advising, improving responsiveness and student engagement. ⁽⁴⁰⁾

5.2. Critical Challenges

A major concern in AI-enabled education is algorithmic bias. Models trained primarily on data from urban or well-resourced populations risk marginalizing learners from rural or underserved backgrounds, reinforcing structural inequalities. ⁽⁴¹⁾ Linguistic and cultural biases embedded in AI systems further disadvantage students whose educational contexts differ from

⁽³⁶⁾ G. Afeti & A. L. Adubra, *Revisiting Technical and Vocational Education and Training (TVET) for the 21st Century: Challenges and Opportunities* (UNESCO-UNEVOC 2021).

⁽³⁷⁾ L. Chen, P. Chen & Z. Lin, *supra* note 14,4.

⁽³⁸⁾ *Ibid.*, 35.

⁽³⁹⁾ UNESCO, *supra* note 12,4.

⁽⁴⁰⁾ G. K. Amoako, *supra* note 29,7.

⁽⁴¹⁾ R. Binns, 'Fairness in Machine Learning: Lessons from Political Philosophy', in *Proceedings of the 2018 Conference on Fairness, Accountability, and Transparency* (2018).

dominant or Western-centric models, undermining fairness and inclusivity. ⁽⁴²⁾

AI systems rely on extensive collection and processing of sensitive student data. In many African contexts, data-protection frameworks remain weak or inconsistently enforced, exposing learners to unauthorized profiling, surveillance, and data breaches. ⁽⁴³⁾ While some institutions have adopted cloud-based platforms, comprehensive privacy-by-design and accountability mechanisms are still limited ⁽⁴⁴⁾.

Persistent infrastructural challenges—including unreliable electricity, limited broadband connectivity, outdated hardware, and constrained budgets—severely restrict AI adoption. These limitations exacerbate disparities between urban and rural institutions, deepening the digital divide rather than closing it. ⁽⁴⁵⁾

Effective AI integration requires digitally literate faculty, administrators, and technical staff. However, specialized AI expertise and digital pedagogy skills remain scarce across many African polytechnics. ⁽⁴⁶⁾ Without sustained professional development, AI systems risk underutilization, misapplication, or dependence on external vendors.

Although many African governments promote digital transformation, fragmented governance between education and ICT sectors often results in inconsistent guidance on ethical AI deployment. The absence of coherent, human-centered regulatory frameworks undermines fairness, transparency, and accountability.

5.3. Illustrative Institutional Experiences

Experiences from selected countries highlight both readiness and limitations in AI adoption. Rwanda Polytechnic's strategic plans emphasize ICT-driven student support, with institution-wide deployment of e-learning

⁽⁴²⁾ Holmes *et al.*, *supra* note 33, 8.

⁽⁴³⁾ N. Ndung'u & L. Signé, *supra* note 17, 5.

⁽⁴⁴⁾ Rwanda Ministry of ICT & Innovation, *supra* note 18, 5.

⁽⁴⁵⁾ G. Afeti, *supra* note 9, 4.

⁽⁴⁶⁾ Afeti & Adubra, *supra* note 36, 8.

platforms and management information systems forming a data foundation for future AI analytics ⁽⁴⁷⁾. In Kenya, pilot projects in national polytechnics demonstrate AI's utility in assessment management, teaching support, and skills forecasting ⁽⁴⁸⁾. In Ghana, initiatives such as AI capacity-building workshops at Takoradi Technical University signal growing institutional interest and foundational readiness for AI-enabled technical education ⁽⁴⁹⁾.

6. Human Rights Evaluation Using the 4A Framework

The right to education, articulated in international and regional instruments, extends beyond access to encompass quality, relevance, and dignity. The 4A framework Availability, Accessibility, Acceptability, and Adaptability provides an operational lens for evaluating whether educational systems fulfill their human rights obligations ⁽⁵⁰⁾ ⁽⁵¹⁾.

This section applies the framework to assess AI integration in African polytechnics.

Availability, AI can enhance availability by optimizing institutional resources and extending access to high-cost technical training through simulations and virtual environments. However, inadequate infrastructure in many institutions limits these benefits, creating a paradox where AI highlights existing resource deficits rather than resolving them. ⁽⁵²⁾

Accessibility: AI offers opportunities to reduce physical and geographic barriers through remote learning and personalized support. Yet, biased algorithms, high implementation costs,

⁽⁴⁷⁾ Rwanda Polytechnic, *Rwanda Polytechnic Strategic Plan 2019–2024* (2019).

⁽⁴⁸⁾ J. Mboya, *AI Integration in Kenya's Technical and Vocational Institutions*, in *The Kenya Journal of Technical and Vocational Education*, 2024, pp. 23–36.

⁽⁴⁹⁾ Google Developer Groups (GDG), *Build with AI Workshop at Takoradi Technical University, Ghana* (2025).

⁽⁵⁰⁾ See K. Tomasevski, *supra* note 10, 4. See UNESCO, *Rethinking Education: Towards a Global Common Good?* 2015.

⁽⁵¹⁾ G. Afeti, *supra* note 9, 4.

⁽⁵²⁾ G. Afeti, *supra* note 9, 4.

and unequal digital access risk excluding rural and economically disadvantaged students, contravening the principle of non-discrimination. ⁽⁵³⁾

Acceptability: Educational quality depends on cultural relevance and ethical integrity. AI systems often reflect dominant linguistic and cultural assumptions, reducing relevance for diverse African contexts. ⁽⁵⁴⁾ Moreover, opaque decision-making and insufficient data-protection safeguards undermine learner autonomy and dignity ⁽⁵⁵⁾.

Adaptability: AI's strongest contribution lies in adaptability enabling personalized learning pathways and curriculum responsiveness to labor-market change. However, reliance on proprietary systems without local capacity for customization can restrict institutional autonomy and long-term flexibility ⁽⁵⁶⁾.

To sum up, the 4A framework demonstrates that AI is neither inherently emancipatory nor inherently harmful. Its human-rights impact depends on governance, design choices, and institutional capacity.

7. Roadmap for Responsible and Rights-Based AI Integration

Responsible AI adoption in African polytechnics requires a phased and iterative roadmap grounded in human-rights principles.

Institutional Assessment and Strategic Planning Institutions should begin with comprehensive readiness assessments covering infrastructure, staff capacity, data quality, and governance arrangements. ⁽⁵⁷⁾ Rwanda Polytechnic's audits of AI-assisted learning systems illustrate how evidence-based planning reduces implementation risks ⁽⁵⁸⁾.

Ethical and Governance Frameworks Clear institutional

⁽⁵³⁾ Binnis, *supra* note 41, 9.

⁽⁵⁴⁾ Holmes *et al.*, *supra* note 33, 8.

⁽⁵⁵⁾ N. Ndung'u & L. Signé, *supra* note 17, 5.

⁽⁵⁶⁾ Popenici & Kerr, *supra* note 27, 7.

⁽⁵⁷⁾ G. Afeti, *supra* note 9, 4.

⁽⁵⁸⁾ Rwanda Ministry of ICT & Innovation, *supra* note 18, 5.

guidelines are essential to ensure fairness, transparency, and human oversight in AI-enabled decision-making. ⁽⁵⁹⁾ Embedding ethics at the planning stage fosters stakeholder trust and safeguards educational rights.

Capacity Development Continuous professional development in AI, data analytics, and digital pedagogy is critical. Partnerships with industry, research institutions, and international organizations can support local innovation and reduce dependency on external vendors. ⁽⁶⁰⁾

Pilot Implementation and Iterative Refinement Pilot projects allow institutions to test AI applications under controlled conditions, enabling learning, evaluation, and contextual adaptation before large-scale deployment. ⁽⁶¹⁾

Monitoring, Evaluation, and Scaling Ongoing evaluation using equity-sensitive indicators ensures AI systems improve learning outcomes without reinforcing inequalities. ⁽⁶²⁾

Successful pilots can then be scaled sustainably through shared infrastructure, open-source tools, and public-private partnerships. ⁽⁶³⁾

Effective AI integration in African polytechnics requires coherent national and institutional governance frameworks. Governments should develop education-specific AI strategies aligned with human rights obligations, emphasizing accessibility, acceptability, and accountability. ⁽⁶⁴⁾

At the institutional level, AI governance committees should oversee ethical compliance, human oversight, and regular auditing to detect bias and protect privacy. ⁽⁶⁵⁾ Robust data-governance frameworks aligned with continental and international standards, including the African Union Malabo Convention, are essential. ⁽⁶⁶⁾ Investment in infrastructure, capacity development, and inclusive design must remain priorities. Special attention should be given to marginalized

⁽⁵⁹⁾ UNESCO, *supra* note 12, 4.

⁽⁶⁰⁾ Afeti & Adubra, *supra* note 36, 8.

⁽⁶¹⁾ R. Luckin et al., *supra* note 13, 4.

⁽⁶²⁾ Binnis, *supra* note 41, 9.

⁽⁶³⁾ World Bank, *supra* note 21, 6.

⁽⁶⁴⁾ UNESCO, *supra* note 12, 4.

⁽⁶⁵⁾ Amoako, *supra* note 56, 11.

⁽⁶⁶⁾ African Union, *supra* note 1, 2

groups to ensure AI-enabled education is culturally relevant, linguistically inclusive, and socially equitable. ⁽⁶⁷⁾

Through coordinated policy, ethical governance, and sustained investment, AI can support not undermine the realization of the right to quality education in African polytechnics.

⁽⁶⁷⁾ Holmes *et al.*, *supra* note 33.8.

CHAPTER X

THE RISE AND FALL OF THE RIGHT TO EDUCATION FOR FOREIGN STUDENTS. CONSTITUTIONAL RESPONSIBILITIES AND ACADEMIC HOSPITALITY IN TIMES OF CRISIS

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SUMMARY: 1. Introduction. – 2. The Recognition of the Right to Study for Migrants Within the Italian Constitutional Framework. – 3. The Right to Education for Migrants in the Case law of the Italian Constitutional Court. – 4. The Effective Exercise of Migrants' Right to Education in Italy. – 4.1. The System for the Recognition of Prior Learning. – 4.2. The Commitment of Italian Universities to the Effective Exercise of the Right to Education for Refugees and Asylum-Seekers. – 4.3. The University of Messina policy for the academic inclusion of migrants. – 5. Conclusions.

1. Introduction

The argument developed in this article is grounded in the assumption that enhancing the knowledge and skills of migrants, refugees, and asylum seekers constitutes one of the primary levers for inclusion and social development. Investment in education, including access to the highest levels of instruction, serves first to guarantee full personal development. At the same time, it generates significant and measurable added value for the host society as a whole.

In this regard, the case law of the Italian Constitutional Court deserves broader dissemination, as it provides a solid

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constitutional foundation for university policies that should be increasingly encouraged and strengthened.

As a preliminary clarification, the reference to migrants, within the distinction between refugees and asylum seekers, reflects the terminology adopted by the United Nations High Commissioner for Refugees (UNHCR) ⁽¹⁾. This approach emphasizes the need to distinguish refugee status from the broader category of persons on the move, within which asylum seekers are included.

With specific regard to asylum seekers, and while fully acknowledging the risks linked to the precarious nature of their legal status pending the recognition of international protection, this article argues that universities should adopt a clear premise: an individual who has applied for international protection, irrespective of the mode of entry into the territory, cannot be considered an irregular migrant. Moreover. In this respect, the risk associated with such precariousness does not primarily concern higher education institutions, rather, it affects asylum-seeking students themselves, whose unstable legal condition may undermine the continuity of their academic trajectory until the completion of a degree.

The assumption that the positive impact of educational inclusion extends beyond the private sphere is justified by both the scale and the characteristics of contemporary migration flows. According to the most recent data published by the United Nations Children's Fund (UNICEF), approximately 2,850,700 refugees and migrants have arrived in Europe since 2015. In 2024 alone, 199,400 individuals reached Europe through the Central Mediterranean route, including 45,600 minors ⁽²⁾.

(1) "UNHCR prefers to refer to groups of people traveling in mixed movements using the expression 'refugees and migrants.' This terminology best ensures recognition that all people on the move enjoy human rights that must be respected, protected, and fulfilled, while at the same time acknowledging that refugees and asylum seekers have specific needs and rights that are safeguarded by a dedicated legal framework." UNHCR, *"Rifugiati" e "Migranti" (FAQs)*, <https://www.unhcr.org/it/notizie/rifugiati-e-migranti-faqs>.

(2) UNICEF, *Nuovo Rapporto Annuale dell'Ufficio UNICEF per l'Europa e l'Asia Centrale*, March 2025.

Despite the magnitude of these flows and their profound implications for both people on the move and host societies, access to structured educational pathways remains marginal for migrants and refugees. Higher education, in particular, is among the most difficult paths to pursue. One of the main obstacles lies in the frequent inability to document prior educational qualifications, due to the deficit or absence of formal certification ⁽³⁾.

As a result, regardless of age, prior conditions, motivations, or expectations, reception systems implemented by host countries often lead to the systematic loss of migrants' existing knowledge and skills. Such competencies, by contrast, should be formally recognized and further developed ⁽⁴⁾.

To address this issue, the article examines the system of recognition of qualifications and competences within the Italian university framework. In this context, the experience of the University of Bari will be highlighted as an example of territorial networking for lifelong learning, with particular attention to the use of micro-credentials.

When referring to the experiences of universities commonly described as more inclusive, it is necessary to acknowledge the absence of official statistics specifically disaggregated for refugee and asylum-seeking students. Enrollment data are generally aggregated under the broader categories of foreign and international students. From a definitional perspective, a further clarification is required. In the Italian context, "international students" are those without Italian citizenship coming from European Union member States, whereas "foreign students" originate from non-EU countries. These data are typically aggregated and used to measure the degree of internationalization at both the institutional and national levels ⁽⁵⁾. Moreover, even in the absence of official statistics, there is evidence of an increase in the number of refugee and

⁽³⁾ For official data and background, see UNHCR, *Refugee education: Five years on from the launch of the 2030 Refugee Education Strategy*, 2024.

⁽⁴⁾ On the topic, S. Shukhrat, Ensuring the right to higher education: A general overview, in *Annals of Justice and Humanity*, 2025, p. 51.

⁽⁵⁾ See, M. Benvenuti, P. Morozzo della Rocca (eds.), *Università e studenti stranieri*, 2024, p. 18.

asylum-seeking students, with universities increasingly taking shape as a stable and legally recognized route for migration ⁽⁶⁾.

At the same time, investments made by Italian universities to enhance internationalization have led to the development of targeted services aimed at improving the reception and integration of students of foreign origin. These measures increasingly benefit students who are also beneficiaries of international protection.

With respect to the growing role played by universities as global actors in the governance of migration, the UNiversity COrridors for REFugees (UNICORE) project has become a widely recognized example.

UNICORE represents a complementary education pathway, understood as a safe and regulated admission avenue by which refugees in third countries can move to Italy to study while their international protection needs are met. This initiative is examined here to illustrate its evolution over time and its future potential.

Finally, through the case study of the University of Messina, the article outlines the system of incentives and support measures that has progressively become institutionalized within the Italian university system. Prior to the discussion, however, the analysis turns to the legal framework governing the recognition of the right to education for migrants, as well as the most relevant Italian constitutional case law. This body of jurisprudence provides the normative foundation for understanding access to higher education not merely as an opportunity, but as an institutional duty grounded in constitutional principles.

2. The Recognition of the Right to Study for Migrants Within the Italian Constitutional Framework

This section focuses on the social right to education beyond the core content of the right to primary schooling to be recognized for migrants. A foundational reference is the 1948

⁽⁶⁾ As confirmed in J. Berg, *Higher education for refugees: relevance, challenges, and open research questions*, in *Social Sciences*, 2023.

Universal Declaration of Human Rights, whose Article 26 affirms the universality of the right to education and introduces access to higher levels of learning on the basis of merit.

A few years later, the 1951 Geneva Convention (and the subsequent 1967 New York Protocol) enshrined the same right with specific reference to refugees. Pursuant to Article 22, refugees are treated on an equal footing with nationals with regard to elementary education, while they are entitled to the “most favourable treatment possible, and in any event not less favourable than that accorded to aliens generally in the same circumstances,” with respect to access to higher education, the recognition of foreign academic certificates and degrees, exemption from fees, and the awarding of scholarships.

The significance of this provision becomes evident when considering individuals forced to flee their country of origin who are unable to document their prior education or professional skills. Such circumstances often compel them to interrupt ongoing studies or prevent them from pursuing an academic or professional trajectory already undertaken or envisaged.

A central issue at the European level has been addressed through efforts to harmonize systems of higher education, culminating in what is now known as the Bologna Process (7). Among the various actions encompassed by that process, particular relevance for the present analysis attaches to the adoption of the “Convention on the Recognition of Qualifications concerning Higher Education in the European Region”, commonly referred to as the Lisbon Recognition Convention (8).

The core of the Convention lies in the universal proclamation of the right to recognition of qualifications for all individuals, without discrimination, as articulated in Section III “Basic principles related to the assessment of

(7) On the Bologna process, its meaning and the implementation *status*, European Commission, European Education and Culture Executive Agency, *The European higher education area in 2024 – Bologna process implementation report*, (2024).

(8) *Convention on the Recognition of Qualifications concerning Higher Education in the European Region*, Apr. 11, 1997, ETS165, 2.

qualifications”. This right is explicitly linked to the obligation to adopt all appropriate measures to ensure its effective implementation, particularly with regard to qualifications held by refugees, displaced persons and persons in a refugee-like situation.

Available assessments of the practical operation of recognition procedures for refugees and persons in analogous situations, including, for the purposes of this discussion, asylum seekers, highlight significant shortcomings. These deficiencies are primarily attributed to the lack of automatic mechanisms available to universities, which are entrusted with recognition decisions but are still unable to guarantee them fully.

Moreover, a closer examination of recognition systems reveals an even more critical picture, as Article VII requiring States to implement procedures to assess whether refugees and related categories meet the requirements for access to higher education, does not constitute a binding legal obligation in the majority of European Higher Education Area (EHEA) countries.

These limitations stem from legislative gaps at the national level, suggesting a multi-speed landscape in which compliant states coexist with lagging ones. Such disparities also imply that the mobility of students and researchers may be influenced by the effectiveness of national recognition systems, a consideration that extends beyond questions strictly linked to legal *status*.

As noted in the 2019 UNESCO’s Global Education Monitoring Report, education profoundly influences both perceptions and the scale of migratory and refugee flows, shaping decisions to leave one’s country of origin while simultaneously sustaining aspirations for a better life. Education affects migrants’ attitudes, aspirations, and beliefs, as well as their capacity to develop a sense of belonging within host communities ⁽⁹⁾.

Building on the regional conventions on qualification

⁽⁹⁾ UNESCO, *Global Education Monitoring Report 2019. Migration, displacement and education: Building bridges not walls*, 2019, 12. The latest UNESCO report is of equal interest, as it focuses on the inclusion of students with a migrant background. UNESCO, *Global education monitoring report 2025, regional edition, Central and Eastern Europe the Caucasus and Central Asia: lead for inclusion*, 2025.

recognition adopted after the Lisbon Convention, UNESCO has promoted the adoption of a global convention aimed at establishing a common standard for the recognition of higher education qualifications worldwide.

In response to systemic weaknesses, the Council Recommendation of 26 November 2018 on promoting automatic mutual recognition of higher education and upper secondary education and training qualifications, as well as learning outcomes from periods of study abroad, introduced a roadmap designed to achieve a standardized, automated, and digitized recognition system by 2025 ⁽¹⁰⁾.

The year 2025 also figures prominently in the European Commission's initiative to establish a "European Education Area," a framework that aims to enhance mobility, cooperation, inclusion, and the attractiveness of education across the European Union. However, without a strategic approach supported by an active and committed role for universities themselves, this orientation risks transforming a right rooted in equality and solidarity into a selective privilege conditioned primarily by employability outcomes.

3. The Right to Education for Migrants in the Case law of the Italian Constitutional Court

The Italian Constitution is distinguished by its inherently open character, oriented toward the recognition of rights vested in the person ⁽¹¹⁾. This feature has led constitutional jurisprudence to intervene extensively, progressively expanding the sphere of rights and duties applicable to non-citizens ⁽¹²⁾.

With specific regard to the recognition of the right to education for refugees and asylum-seeking migrants, the analysis reveals an overall encouraging framework. In

⁽¹⁰⁾ For verification and further insight into the results actually achieved and the areas of improvement, see UNESCO, *Annex: GDC Implementation Map – Detailed Initiatives (as at 30 July 2025)*.

⁽¹¹⁾ *Inter alia*, M. Cartabia, N. Lupo, *The Constitution of Italy*, 2022.

⁽¹²⁾ For a global overview, F. Biondi Dal Monte, E. Rossi, *Diritto e immigrazioni. Percorsi di diritto costituzionale*, 2022.

particular, the Constitutional Court has addressed the issue in a decision that is especially relevant for the purposes of this study, both in terms of its outcome and the reasoning developed by the Court. Reference is made to Judgment No. 42 of 2021, concerning the constitutional review of Article 15(1) of Provincial Law of Trento No. 13 of 2019 ⁽¹³⁾. That provision introduced paragraph 4-bis into Article 2 of Provincial Law No. 29 of 1993, allowing for “a reservation of no less than 10 per cent of places for candidates resident in the Province of Trento, in the event of equal merit with non-resident candidates,” with respect to admission tests for university degree programmes at the University of Trento.

In support of the full recognition of the right to education, it is worth translating almost in full the reasoning set out by the Court in paragraph 6.3 of the judgment:

“The contested provision objectively affects the conditions for the enjoyment of the right to university education (...). According to the settled case law of this Court, legislative provisions that identify residence, of greater or lesser duration in a given territory, as a condition or even merely a preferential element for access to certain benefits (Judgments No. 9 of 2021; Nos. 281 and 44 of 2020; No. 166 of 2018) or for admission to selective procedures (Judgment No. 151 of 2020) pass constitutional scrutiny only where they display an appropriate and reasonable correlation with the function and purpose of the services or benefits whose enjoyment is affected by the provisions under review. In the present case, no reasonable correlation can be discerned between the requirement of residence in the provincial territory and access to university courses.”

Equally significant is the following passage, which encapsulates the core premise of the present analysis:

“This Court has already clarified that the right to education ‘entails not only the right of all persons to free access to compulsory education, but also—within a system in which “schools are open to all” (Article 34, first paragraph, of the

⁽¹³⁾ See, V. De Santis, *Il requisito della residenza in rapporto all'accesso al diritto allo studio: la sent. n. 42/2021 della Corte costituzionale*, in *Forum di Quaderni Costituzionali*, 2021, p. 130.

Constitution)—the right to access, according to one’s abilities and merits, the “highest levels of education” (Article 34, third paragraph). This latter expression must be understood as encompassing every level and field of education provided for by the legal system’ (Judgment No. 219 of 2002). The enjoyment of the right to education is functionally linked to the autonomy granted to universities under Article 33, sixth paragraph, of the Constitution, which is relevant not only to internal organizational aspects but also to the ‘necessary relationship of reciprocal implication’ with the constitutionally guaranteed rights of access to university education (Judgments No. 42 of 2017 and No. 383 of 1998).”

Finally, the Court emphasizes the very purpose of the right to education and the need for its universal guarantee:

“To assume that the requirement of residence may operate as a preferential criterion in the circumstances described not only lacks justification in light of the aims pursued by the right of access to university courses—which are linked to the enhancement of individual ability and merit—but also contradicts the natural vocation of the university institution to promote mobility, not only of academic staff but also of students, in order to foster and enhance its core activities and their inherent universality.”

The articulation of such a favourable framework for the recognition of the right to education renders it unnecessary to dwell further on the protection of the right to instruction as its essential core. In this regard, with specific reference to the condition of unaccompanied foreign minors, Italy has enacted a significant and exemplary legislative measure in the European context through Law No. 47 of 2017 (the so-called “Zampa Law”), which sets out provisions on measures for the protection of unaccompanied foreign minors.

Moreover, the constitutional framework governing the recognition of the right to education beyond any formal legal *status* lends strong support to the academic enrollment of asylum seekers, irrespective of the outcome of their international protection procedures. This constitutional orientation effectively legitimizes the enrollment practices that have already been widely implemented within the Italian university system, confirming their coherence with the broader principles of the constitutional order.

From this perspective, the Constitution operates as a normative umbrella that authorizes an expansive interpretation of Article 39(5) of the Consolidated Immigration Act (Testo Unico sull'Immigrazione - TUI). This provision constitutes the primary statutory basis regulating access to university education for foreign students.

Under Italian law, however, the literal wording of the article does not explicitly include holders of a residence permit issued for the purpose of seeking asylum, granted pursuant to Article 4(1) of Legislative Decree No. 142/2015, among those foreign nationals who are guaranteed access to university programs under the same conditions as Italian students.

At the same time, the provision contains a broadly framed clause stating that access to higher technical education, advanced training programs, and university specialization schools “is in any case permitted to foreign nationals holding a residence permit.”

This open-ended formulation leaves room for an interpretive approach according to which the list of residence permits expressly mentioned in the statute may be regarded as merely illustrative rather than exhaustive. By contrast, a strictly logical and systematic reading of the provision, particularly when interpreted in conjunction with its preceding paragraphs, could lead to the opposite conclusion, namely that the legislative enumeration should be understood as exhaustive and therefore restrictive.

This tension is further compounded by the fact that the current version of Article 39(5) no longer includes, as a residual category, “foreign nationals lawfully residing in Italy who hold a higher education qualification obtained in Italy or an equivalent qualification obtained abroad,” as was the case prior to the amendments introduced by Law No. 189 of 2002. Instead, the revised provision limits access to two narrower categories: foreign nationals who have been lawfully residing in Italy for at least one year and who hold a secondary school diploma obtained in Italy, and foreign nationals, regardless of their place of residence, who possess final diplomas from Italian schools abroad or from foreign or international schools operating in Italy or abroad under bilateral agreements or special regulatory regimes, provided that they meet the general conditions required for entry for study purposes.

The legislative history surrounding this amendment is particularly revealing. The parliamentary debates that accompanied the adoption of Article 23 of Bill No. 2454 during the Fourteenth Legislature, subsequently enacted as Article 26 of Law No. 189 of 2002 and amending Article 39(5) of the Consolidated Immigration Act, clearly demonstrate that the revision was far from neutral in its implications. From the outset, it was denounced by several parliamentarians as embodying a discriminatory conception of immigration policy and as a measure marked by elements of exclusion and intolerance ⁽¹⁴⁾.

Against this backdrop, moving beyond a restrictive interpretation of Article 39(5) is not merely permissible but constitutionally required once the provision is situated within the broader constitutional framework, which prioritizes the effective protection of fundamental rights. Within this higher normative order, the right to education must be understood as a personal and universal entitlement, rooted in the principles of human dignity and substantive equality. As such, it is capable of guiding the interpretation of statutory provisions, resolving normative ambiguities, and counterbalancing legislative choices that unduly limit access to higher education.

From this perspective, the constitutional dimension does not negate the role of the legislature, but rather frames and constrains it, ensuring that ordinary law remains consistent with the foundational values of the constitutional system. This approach legitimizes interpretive solutions that favor inclusion and access, particularly where vulnerable individuals are concerned.

Turning to the national context, it is therefore appropriate to examine how this supranational and constitutional framework has been translated into domestic legal arrangements, with specific attention to the mechanisms through which higher education institutions have implemented these principles in practice.

⁽¹⁴⁾ Insights at G. Grignaffini, in Parliamentary Act, Chamber of Deputies, 30.5.2002, https://leg14.camera.it/_dati/leg14/lavori/stenografici/framedinam.asp?sedpag=sed150/s000r.htm; and T. De Simone, in Parliamentary Act, Chamber of Deputies, 30.5.2002, https://leg14.camera.it/_dati/leg14/lavori/stenografici/framedinam.asp?sedpag=sed150/s000r.htm.

4. The Effective Exercise of Migrants' Right to Education in Italy

Investigating the recognition and the effective exercise of the right to education for migrants provides an opportunity to observe a wide range of institutional and academic experiences that have developed within the higher education system in response to increasingly complex social realities. These experiences differ in scope, intensity, and degree of formalization, yet they share a common objective: to make the constitutional promise of access to education meaningful for individuals whose educational trajectories have been disrupted by migration, displacement, or forced mobility. While none of these initiatives can be considered complete or immune from criticism, they nonetheless warrant careful consideration in a constructive and non-dismissive light, as they represent concrete efforts to give substance to a fundamental right whose universal character is firmly rooted in constitutional principles.

From this standpoint, the analysis does not seek to rank or evaluate such experiences according to a binary logic of success and failure. Rather, it aims to recognize their intrinsic value as experimental practices situated within a broader and often fragmented regulatory environment. Each initiative reflects an attempt, more or less structured, to respond to the practical challenges of inclusion while operating within legal frameworks that were not originally designed to accommodate the specific needs of migrant students. In this sense, the relevance of these experiences lies not only in their immediate outcomes, but also in their capacity to reveal both the potential and the limits of the current constitutional and institutional architecture.

It is against this background that the title of the present contribution must be understood. The reference to the “rise and fall” of the right to education for foreign students does not correspond to a systematic or exhaustive reconstruction of expansionary and regressive phases in the legal recognition of the right. Nor does it imply a normative judgment aimed at distinguishing between virtuous and deficient practices. Rather, the title serves a deliberately pretextual and heuristic function, intended to draw attention to the tension between the growing proliferation of inclusion-oriented initiatives on the

one hand, and the persistent difficulties in ensuring their structural consolidation on the other. The “rise” and the “fall” thus operate as analytical metaphors, signing the coexistence of advancement and fragility within the same institutional landscape.

Accordingly, the purpose of this contribution is not to trace a linear trajectory of progress followed by regression, but to identify, at a systemic level, the significance of the university policies under consideration and the factors that continue to constrain their stable, coordinated, and homogeneous development. All the experiences examined are understood as positive attempts to respond to constitutional imperatives, even when they remain partial, uneven, or dependent on contingent conditions. The critical dimension of the analysis is therefore directed not at the initiatives themselves, but at the broader legal, institutional, and governance-related limits that shape their scope and sustainability.

To this end, the inquiry adopts a constitutional perspective that places universities at the center of the analysis, not as isolated or purely autonomous actors, but as public institutions entrusted with a share of responsibility in the implementation of fundamental rights. This approach is particularly relevant in times of prolonged humanitarian, social, economic, and environmental crises, when higher education institutions are increasingly called upon to mediate between constitutional commitments to equality and dignity and regulatory frameworks oriented toward control and selectivity. Within this context, academic hospitality emerges not as an optional or charitable posture, but as a dimension of constitutional responsibility that must be reconciled with, rather than subordinated to, institutional autonomy.

In this paragraph, the contribution therefore begins by examining the system governing the recognition of migrants’ prior qualifications and competences, understood as a pivotal instrument for the effective realization of the constitutional right to education and the principle of substantive equality. Recognition mechanisms play a crucial role in preventing indirect forms of exclusion and in ensuring that educational pathways disrupted by migration are not permanently devalued. From a constitutional perspective, they represent a concrete means through which public institutions can fulfill

their obligation to remove obstacles that, in practice, limit the full development of the individual.

The discussion then broadens to consider a range of more general inclusion-oriented initiatives developed within the Italian university system. These initiatives are analyzed not as isolated best practices, but as expressions of a broader institutional sensitivity to constitutional values, particularly the duty to promote equality in access to fundamental social rights. At the same time, the analysis draws attention to the fact that many of these initiatives remain embedded in project-based logic, reliant on temporary funding, or confined to the discretionary sphere of individual institutions. This fragmentation constitutes one of the main structural limits to their consolidation and replicability.

Ultimately, the analysis suggests that the central issue at stake is not the effectiveness of individual initiatives, but the conditions under which they can move beyond their experimental nature and become integral components of a coherent rights-based system. In this sense, the “fall” evoked in the title does not refer to the denial of the right to education, but to the risk of its gradual hollowing out in the absence of structural guarantees capable of ensuring continuity, equality of treatment, and long-term sustainability.

4.1. The System for the Recognition of Prior Learning

As discussed above, the Lisbon Recognition Convention constitutes the key legislative instrument governing the recognition of qualifications, a matter that represents a crucial component of the broader discourse on the academic inclusion of refugees and asylum-seeking migrants.

That law assigns to universities the competence to recognize academic qualifications for access to higher education (Article 2). This entails, *inter alia*, a shift away from the traditional concept of equivalence toward so-called “purpose-oriented” recognition procedures, which differ depending on whether the recognition is sought for academic, non-academic, or professional purposes.

Pursuant to Article 2 of the ratification law, universities are vested with the authority to conduct purpose-oriented recognition procedures for academic qualifications. This

competence must be exercised “within the scope of their autonomy and in accordance with their respective regulations, without prejudice to bilateral agreements in the field.”

Given the breadth of the Italian higher education system, which includes approximately one hundred universities and accredited higher education institutions, the competent Ministry issues annual guidelines aimed at harmonizing procedures for the enrolment of foreign students and the validation of the required documentation.

As previously noted, with regard to refugees and asylum seekers, the Italian legal system has been required to implement Article VII of the Lisbon Recognition Convention. Reference must therefore be made to Legislative Decree No. 251 of 19 November 2007, which, under Article 25, establishes substantial equality with citizens in access to the labour market, and under Article 26 governs access to education. As amended by Legislative Decree No. 18 of 21 February 2018, which introduced paragraph 3-bis, the latter provision requires the competent authorities responsible for the recognition of academic qualifications and professional credentials, including both universities and the Information Centre on Academic Mobility and Equivalence CIMEA, to identify appropriate assessment mechanisms enabling recognition even in cases of incomplete or missing documentation.

In simplified terms, the position of refugees and asylum-seeking migrants is thus aligned with that of migrants holding residence permits for employment purposes, with the additional possibility of obtaining recognition of academic and professional qualifications notwithstanding the absence of documentary evidence.

This system is anchored in the European reference framework provided by the National Academic Recognition Information Centres (NARIC) network of the European Union and the European Network of National Information Centres on academic mobility and recognition (ENIC) of the Council of Europe.

In Italy, the designated body within these networks is the mentioned Information Centre on Academic Mobility and Equivalence, the institution accredited by the Ministry of Education, University and Research, tasked with serving as

the national information centre on recognition procedures applicable in Italy, the Italian higher education system, and nationally awarded qualifications.

On the basis of the aforementioned guidelines, “Higher education institutions, for the purpose of recognizing such qualifications and establishing the relevant assessment procedures, may draw upon the expertise and certification provided by the Italian ENIC-NARIC Centre (CIMEA), the European Qualifications Passport for Refugees (EQPR), and internationally established good practices.”

CIMEA operates according to the methodology established by the criteria set out in the Lisbon Convention and adopts the practices shared within the ENIC-NARIC network and, with reference to the specific characteristics of the Italian education system, the procedure entails a comparison between the elements of the foreign qualification to be recognised and those characterising the education system of the country under consideration, in order to identify any substantial discrepancies. This is a procedure that must be carried out on a case-by-case basis, individually, since it concerns what has been described as a “purpose-oriented recognition.” Each qualification must therefore be assessed according to the purpose for which recognition is requested, for example access to higher education or the exercise of a profession.

For the purposes of the present analysis, attention must be paid to the recognition of qualifications and credentials required for university enrollment. In this context, CIMEA provides applicants with its own technical-administrative opinion regarding requests for recognition of educational qualifications. The service is personal and is carried out through an online procedure structured in a sufficiently intuitive manner, allowing for the uploading and modification of information, documentation, or any other supporting declaration useful for evaluating the application, particularly in cases where official documentation is lacking, until the applicant proceeds with final submission. Thanks to the development of blockchain technology, CIMEA has in fact created the “Diplome” service, which allows each holder of qualifications to upload their credentials, including non-academic ones, enabling direct verification of the authenticity of the migrant’s qualification. In this way, individuals also

become the holders of their own declarations, thus reducing, to some extent, the risk of false or non-authentic credential production. The recognition service is free of charge when applicants already hold refugee status, while it is subject to a fee in all other cases, even if the applicant benefits from a weaker form of international protection or is an asylum seeker. Following this procedure, CIMEA issues the so-called “Statement of Comparability,” on the basis of which universities proceed with student enrolment. Within the framework of recognising the academic qualifications of beneficiaries of international protection, CIMEA has also involved a large number of Italian universities through their participation in the National Coordination on the Evaluation of Refugee Qualifications (CNVQR), an informal network of qualification-recognition experts operating within higher education institutions.

Among the initiatives connected to CIMEA’s activities is also the recognition process carried out in cases of insufficient or absent documentation, through the issuance, previously mentioned, of the “European Qualifications Passport for Refugees.” This project was initially piloted by Norway and the United Kingdom and, from 2017 onwards, strengthened and expanded. Today it is funded through the ordinary budget of the Council of Europe, the Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021–2025), and voluntary contributions from Italy and Norway. From 2017 to 2022, the latest available data indicate that the initiative involved 525 refugees, of whom 438 obtained the European passport certifying their qualifications for a validity period of five years, enabling access to higher education and vocational training systems. The data released by CIMEA concerning the Italian context, considered exclusively from a numerical rather than a qualitative perspective, are not particularly encouraging: after five years of activity, with an average of around one hundred applications per year, the outcome amounts to 49 refugee students enrolled in university degree programmes and 8 refugee students enrolled in individual courses. Likewise, the number of Statements of Comparability issued for university enrolment purposes is numerically limited, averaging 100 per year from 2016 to 2018, with a peak in 2019 that nearly

doubled the figure. At present, no more up-to-date statistics are available; however, even considering the pandemic emergency, according to both formal and informal statements by key actors operating within this system, there is no evidence suggesting a decline in numbers. The impact of these recognition systems should therefore remain at least in line with the years up to 2018.

Further encouragement stems from initiatives developed to increase the effectiveness of recognition actions for refugee qualifications, particularly in response to the need to address the situation of millions of displaced Ukrainians who have arrived in Europe since the beginning of the conflict with the Russian Federation. With specific reference to refugees from Ukraine, the European Commission issued a Recommendation on the “organisation of the recognition of professional qualifications and facilitation of academic recognition for persons enjoying temporary protection.”⁽¹⁵⁾

The Recommendation promotes the dissemination of information and the use of electronic tools, the management of incomplete qualification data, the facilitation of access to regulated professions, and the sharing of good practices, among which the European Qualifications Passport for Refugees is expressly mentioned.

The field of recognition of migrants’ qualifications and competences includes not only academic degrees, professional credentials, and formal and non-formal learning outcomes, but also so-called micro-credentials⁽¹⁶⁾.

Although a shared definition of micro-credentials has not yet been fully consolidated, they may be described as qualifications attesting learning outcomes acquired through short, transparently assessed courses or modules delivered on-site, online, or in blended formats. In Europe, an increasing

⁽¹⁵⁾ Commission Recommendation (EU) 2022/554 of 5 April 2022 on the recognition of qualifications for people fleeing Russia’s invasion of Ukraine. See, L. Lantero, S. Spitalieri, L. Divonskyte, L. Ferranti, *Ucraina. Sistema della formazione superiore e titoli di studio*, 2022.

⁽¹⁶⁾ For further discussion, C. Resei *et al.*, *Micro-credentials in EU and global*, 2019; L. Perla, V. Vinci, A. Scarinci, *Innovating university teaching with micro-credentials: an ongoing research experimentation*, in *Research on Education and Media*, 2023, p. 15.

number of individuals need to update their knowledge, skills, and competences in order to bridge the gap between formal education and the rapidly evolving demands of society and the labour market.

The prospect of adapting educational provision to include the recognition of micro-credentials is particularly significant for the target group under consideration. This is evident in the case of individuals who already possess structured educational backgrounds but, as a result of forced migration, face difficulties in updating their skills to meet the demands of the host labour market. Such individuals are often compelled either to restart their educational pathways from the beginning or, more frequently, to abandon the possibility of effectively deploying their qualifications, remaining at the margins of society or accepting positions far below their potential⁽¹⁷⁾.

In Italy, this represents an emerging area of policy intervention that is likely to receive further impetus from European institutions. On 19 May 2022, the European Parliament adopted the Resolution “Towards a European Education Area by 2025 – micro-credentials, individual learning accounts and learning for a sustainable environment.” This was followed by the Council Recommendation on individual learning accounts of 31 May 2022 and the Commission Communication of 16 June 2022 on achieving the European Education Area by 2025, further encouraging Member States to invest in education tailored to individual

(17) Regarding the extensive literature on the loss of cultural and educational capital possessed by migrants, which is often unrecognized and underutilized in host societies, resulting in a form of impoverishment comparable to that experienced by individuals working in positions below the level of education they attained in their country of origin, the following sources may serve as minimum references: R. M. Friedberg, *You Can't Take It with You? Immigrant Assimilation and the Portability of Human Capital*, in *Journal of Labor Economics*, 2020, p. 221; L. Zanfrini, M. Monaci, F. Mungiardi, A. Sarli, *Country Report Italy- At a (Possible) Turning Point Between Constraining Tradition and Promising Developments in the Field of Diversity*, ISMU, 2015; E. Liebau, Z. Salikutluk, *Many refugees have work experience but a smaller share possesses formal vocational qualifications*, in *DIW Economic Bulletin*, 2016, p. 392; A. Kanas, F. van Tubergen, *The Impact of Origin and Host Country Schooling on the Economic Performance of Immigrants*, in *Social Forces*, 2009, p. 893.

needs, particularly through the recognition and development of micro-credentials ⁽¹⁸⁾.

In light of the understanding that micro-credentials require not only a shared definition but also mechanisms ensuring proper assessment and value for key stakeholders, especially students, employers, and providers, the experience of the University of Bari emerges as particularly significant.

The University of Bari has successfully piloted the issuance of “Open Badges” as a Third Mission ⁽¹⁹⁾ service dedicated to refugees with a need for certification. Although “micro and digital” ⁽²⁰⁾, the Open Badge service exemplifies how educational institutions can address the concrete need to access learning acquired outside formal contexts, enabling individuals to develop personal, social, cultural, and professional knowledge, skills, and competences. Education and training systems are therefore increasingly called upon to adopt greater flexibility, providing learning pathways that respond to individual needs and uphold the right to accessible, inclusive education, while offering a broader spectrum of qualifications and recognition opportunities.

The badge-issuing system relies on the work of the

⁽¹⁸⁾ Refer to Council of the European Union Council, *Recommendation of 16 June 2022 on a European approach to micro-credentials for lifelong learning and employability*, 2022; NUFFIC, *The Rise and Recognition of Micro-credentials. Stacking Modules and the Future of the Qualification*, 2022; CIMEA, *MARTE. A technological approach to micro-credentials: building bridges for automatic recognition and employability*, 2024.

⁽¹⁹⁾ The reference is to the field of social promotion (public engagement), which falls under the so-called Third Mission of universities. This term is used to describe the role that universities are expected to play in their interactions with society, alongside their traditional functions of higher education and scientific research. See, R. Piazza, S. Rizzari, *Dare un senso alla Terza Missione: politiche e strategie delle Università per facilitare l'integrazione dei rifugiati e dei migranti*, in *Lifelong Lifewide Learning*, 2019, p. 1; L. Formenti, M. Palumbo, A. F. Scardigno (eds.), *Valorizzare la terza missione delle università: concetti, metodi e buone pratiche*, in *Epa Journal on Adult Learning and Continuing Education*, 2023, p. 14.

⁽²⁰⁾ A. F. Scardigno, D. Virgilio, *Riconoscere le competenze degli studenti rifugiati: tra micro-credentials e reti territoriali per l'Apprendimento Permanente*, in E. Girasella (eds.), *L'Università per il rafforzamento dei servizi di accoglienza ai migranti. Esperienze di public-engagement in co-progettazione*, 2025, p. 80.

University of Bari's Centre for Lifelong Learning (CAP) and is based on the methodology developed within the international project Maximize Previously Acquired Competences at European Universities (MaxiPAC) ⁽²¹⁾.

The procedure may be summarized as follows: the user registers for the service and consents to a biographical interview conducted by an Expert in the Identification and Transparency of Competences. Through the completion of an intake form, supported by documentary evidence provided by the applicant, a Memorandum and a Dossier of evidence are prepared. A transparency document is then produced and shared with the applicant, reconstructing their educational and professional experiences and linking them, where possible, to the relevant professional profiles listed in the Regional Catalogue of Professional Profiles of the Apulia Region and the associated units of competence. The process concludes with the issuance of a Folder certifying transversal competences and the administration of an assessment questionnaire, followed by participation in a leaderless group discussion with other international students.

"The match between self-assessment and external evaluation makes it possible to define a professional profile illustrated in the soft-skills assessment folder, which is delivered to the student at the end of the process, concluding with a multiple-choice test assessing the learning provided." ⁽²²⁾ The outcomes documented in the dossier are subsequently certified and made shareable through the Open Badge "Soft Skills for Refugee Students" ⁽²³⁾.

This represents an innovative and replicable experience, which has been brought to broader attention for this very reason. It also demonstrates how new technologies can facilitate the practical implementation of rights—here, the right to have one's competences, including transversal skills, formally recognized. The future of the recognition of the right to education for migrants, refugees, and asylum seekers may

⁽²¹⁾ *Ibid.*, p. 76.

⁽²²⁾ *Ibid.*, 78.

⁽²³⁾ *Ibid.*, 79.

therefore be significantly enhanced through the use of new technologies ⁽²⁴⁾.

4.2. The Commitment of Italian Universities to the Effective Exercise of the Right to Education for Refugees and Asylum-Seekers

When considering the factors that can facilitate access to higher education, primary attention is typically directed to the allocation of scholarships for those who would otherwise lack the financial means to pursue university studies. Among the many initiatives arising from the provision of specific scholarships, particular prominence is given to the programme offered by the Conference of Italian University Rectors (CRUI), which on 20 July 2016 signed a Memorandum of Understanding with the Ministry of the Interior “for the right to education of young students holding international protection.” On this basis, 100 scholarships are awarded each year in favor of refugees wishing to begin or continue their studies at an Italian university.

This represents a concrete implementation of the right to education for refugees and embodies an active university policy, both by supporting individual initiatives undertaken by each university and by encouraging the introduction of flexible procedures tailored to the specific needs of each beneficiary. CRUI scholarships do not consist in the direct disbursement of money to beneficiaries but are instead allocated to the universities chosen by the successful candidates upon enrollment. Once funding is received, universities must provide students with equivalent services, starting with board and lodging. However, for refugee it is essential to consider the possibility of addressing needs of various kinds, including strictly personal ones, such as the absence of a family network and the weakness of the social network within which these students are embedded. Universities are therefore required to find solutions, for

⁽²⁴⁾ As also demonstrated by the study CIMEA, *Digital Transformation and Artificial Intelligence in the Recognition of Qualifications: Perspectives from CIMEA's Experience*, 2025.

example for periods when student residences and canteens are closed, or for the purchase of goods of various kinds.

Furthermore, all universities must take appropriate measures to adapt their coaching, mentoring, tutoring, and buddying services, as well as psychological support, to a multicultural context ⁽²⁵⁾.

This commitment requires the identification of flexible and certainly non-standardised procedures. It is a challenge that can only raise the overall quality of the system, to the benefit of the entire academic community. Moreover, it is a challenge that can scarcely be met outside a network-based approach.

From the perspective of an individual university engaged in promoting the academic inclusion of migrants, adopting a network approach must be understood both internally and externally, at national and international levels. It is desirable that a university succeed internally in bringing together scientific and administrative expertise, preferably within a single decision-making and coordinating centre for the various functions involved in structuring a pathway of academic inclusion for students with a migrant background, in order to respond more flexibly, rapidly, and appropriately to emerging needs. Most Italian universities have therefore opted to establish dedicated interdepartmental centres or other internal coordinating structures, also to develop the project-based capacity necessary to attract external funding. The very structure of calls for external funding encourages the creation of inter-institutional partnerships, including public-private collaborations, with universities increasingly called upon to play an active role not merely as participants but as coordinators.

In this regard, perspectives derive, for example, from the “Integrated Multi-Year Programming on Employment, Integration and Inclusion” updated in January 2022 by the Ministry of Labour and Social Policies—Directorate General for Immigration and Integration Policies, which sets out Italy’s priority lines of action in this field through 2027. Among the priorities are the “promotion of legal channels for regular

⁽²⁵⁾ See, L. Naidoo, J. Wilkinson, K. Langat, M. Adoniou, R. Cunneen, D. Bolger, *Supporting school-university pathways for refugee student access and participation in tertiary education*, 2015.

entry into Italy for employment purposes” and the enhancement of the “full potential of foreign youth of school age and migrant citizens in accessing the labour market.” As the Ministry itself notes, these objectives must be read in an integrated manner, and universities appear to be called upon to play a leading role. Universities are naturally expected to promote access to higher education, but they are also entrusted with fostering “support for cooperation among actors involved in migrant integration policies,” with the aim of “promoting cooperation among different stakeholders in migrant integration policies through tools that enable skills enhancement and the activation of broad, continuous, and structured dialogue.” ⁽²⁶⁾

In carrying out this role, universities may benefit from dedicated funds and gain direct access to financing made available by the National Fund for Migration Policies, the Asylum, Migration and Integration Fund (AMIF), and the European Social Fund Plus. This represents a level of participation in migration policies that universities will need to take increasingly into account in their strategic planning and for which they will need to be progressively better equipped.

Notably, within the field of academic inclusion of migrants, a university initiative has emerged that has rightfully become part of the Italian Government’s migration policy measures, as an extension of the humanitarian corridors practice ⁽²⁷⁾. This is the mentioned UNICORE project, launched in 2019 on the initiative of the University of Bologna and now involving 45 Italian universities.

In brief, several features of the project deserve attention. First, the partnership structure should be highlighted. On behalf of the Italian Government, the Ministry of Foreign Affairs and International Cooperation signed the memorandum of understanding regulating the project. “The role of the

⁽²⁶⁾ References cited in the text are drawn from Ministero dell’Interno, *Programmazione pluriennale in tema di politiche del Lavoro*, (25 maggio 2022), <https://www.lavoro.gov.it/temi-e-priorita/immigrazione/Documents/Programmazione-integrata-gennaio-2022.pdf> (last visited 17 January 2026).

⁽²⁷⁾ For further insight into the author’s personal perspective on the experience of humanitarian corridors, E. Girasella, *Alla riscoperta della democrazia per un governo della migrazione: l’esperienza dei corridoi umanitari*, in G. Bottaro (ed.), *Democrazia tra crisi e nuove sfide*, 2024, p. 39.

Ministry will consist in managing study visa applications for selected students, facilitating appointments at embassies. Visa procedures will follow the standard processing for study/university enrolment visas and must meet the relevant legal requirements.” Support for on-site activities, in territories where “young refugees often do not have the opportunity to continue their studies”, and for the safe transfer of beneficiaries to their respective Italian university destinations is provided by UNHCR, which also coordinates the entire partnership, acting as an interface between participating universities and other national partners, including Caritas Italiana, Diaconia Valdese, Centro Astalli, and Gandhi Charity. At the local level, each university is required to coordinate a partnership with territorial branches of national partners and other relevant associations willing to collaborate in fostering the broadest possible inclusion of project beneficiaries, not only academically but also socially.

Universities provide, through their own budgets, one or more scholarships, as well as additional student support services, to beneficiaries selected through calls open to individuals already holding a university degree (recognised directly from the Universities in force of the Lisbona Convention, either during evaluation or through the CIMEA procedure), enabling enrolment in a two-year master’s degree programme. In addition to the financial contribution of the scholarship, universities often offer further benefits, such as accommodation in student residences, meals in collaboration with regional bodies managing university canteens, language preparation, free public transport, or other services arranged with third-party providers.

However, university action alone would not suffice to meet project standards; coordination with local social-sector organisations is therefore required. These organisations contribute human and financial resources, for example through pocket money, the purchase of essential goods, assistance with residence permit applications, opening bank accounts, purchasing SIM cards, or involving host families.

The operational model of the UNICORE project essentially confirms the need to strengthen inclusion services through a network-based approach, demonstrates the prominent role of universities as agents of social development, and, in a sense,

offers an example of how humanitarian visas can represent a concrete governance tool for migration, at least in specific cases.

With regard to the project's future development, particular emphasis is placed on the expansion of placement opportunities for beneficiary students, an increasingly pressing need that clearly requires additional attention.

The aegis and concrete action of the United Nations High Commissioner for Refugees has also played a crucial role in the development of UNICORE through another initiative aimed at networking universities most committed to guaranteeing the right to education for migrants, which have come together around the "Manifesto for the Inclusive University," promoted to "foster refugee access to university education and research, and promote social integration and active participation in academic life" (28).

Today, the Manifesto has been endorsed by 53 institutions and constitutes the largest national reference network. It is noteworthy that within this network some universities are extending services reserved for refugee students to asylum seekers as well, not only by allowing enrollment even in the absence of formal status but also by providing full tuition exemptions. As UNHCR highlights, "The possibility for asylum seekers to enroll in universities varies. Only a few universities currently allow asylum seekers to complete 'full enrollment' (for example, the Universities of Palermo and Messina)" (29). This remains a critical area of intervention, calling for further efforts by universities within the framework of Italian constitutional values

4.3. The University of Messina policy for the academic inclusion of migrants

Beginning in 2016, the University of Messina established the Interdepartmental Center named the "Center for Migration, social inclusion, and intercultural communication,"

(28) See, <https://www.unhcr.org/it/cosa-facciamo/istruzione/istruzione-universitaria/manifesto-dell-universita-inclusiva/le-universita> (last visited 17 January 2026).

(29) See, <https://help.unhcr.org/italy/services/education/> (last visited 17 January 2026).

known by its acronym CEMI. Prior to its creation, several research groups within the University were already engaged with migration-related issues and had begun fostering opportunities for dialogue and cooperation with various public and private entities involved in managing migration flows, an area that, during the last ten years, witnessed significant increases. The decision was made to concentrate efforts, ideas, and initiatives within a single institutional hub that could serve as an internal reference point for the academic community and an external one for regional, national, and international partners.

The mission and objectives of the Center are set forth in Article 2 of its Statute, which provides that: “In order to institutionalize, qualify, and strengthen the University’s commitment to advancing the social and economic framework, the primary objective of the Center is to promote projects that develop activities and initiatives aimed, in various ways, at fostering multicultural integration and social inclusion. Specifically, the Center’s activities will focus mainly, though not exclusively, on asylum seekers and individuals holding statuses related to requests for international protection.”

Beyond matters such as the recognition of academic qualifications and validation of professional skills previously examined, the Center’s initiatives include pilot educational programs for international students and professional development opportunities for practitioners engaged in migrant reception efforts. CEMI also implements cooperation projects funded through national and EU resources.

A particularly noteworthy example was its participation in the Regional Plan for Immigration 2016–2018, through which CEMI carried out pilot projects involving schools, community associations, and immigrant populations residing in Sicily. This allowed the Center to identify newly arrived migrants on the island who were qualified and motivated to resume higher education studies often interrupted by forced displacement.

Recent governmental policies, however, have tightened the already fragile system of migrant reception and flow management in Italy ⁽³⁰⁾. The procedures required to obtain

⁽³⁰⁾ For further clarification of what is meant here by the relationship

legal status for full social inclusion have become increasingly complex and lengthy, further exacerbating precarious conditions. In response, the University of Messina has broadened its efforts to include asylum seekers, anticipating and addressing the diverse needs of talented young people facing growing uncertainty about their future. In September 2019, the University decided to exempt asylum-seeking students from tuition fees and granted them access to student housing and university services. In April of the subsequent year, the University expanded these provisions to include asylum-seeking high school seniors intending to pursue higher education, thus supporting many deserving students who faced risks of sudden relocation.

As the international scenario has continued to deteriorate, already marked by migration flows toward Europe resulting from armed conflicts in Syria and Afghanistan, Italian universities have also been required to respond to new emergencies linked to the war in Ukraine and to ongoing conflicts in Africa, with particular reference to Sudan, as well as in the Middle East, notably the escalation of violence between Israel and Palestine, and the situation in Iran.

In response to these dramatic developments, the University of Messina has likewise been called upon to act proactively in defense of the right to education of prospective students originating from countries affected by conflict and political instability. In particular, with regard to students from Sudan, Palestine, and Iran, the CEMI activated its internal committee established to assess applications for pre-enrollment submitted on the basis of “exceptional circumstances.” Through this mechanism, a cohort of applicants was admitted to pre-enrollment procedures even in the absence of complete formal documentation, by invoking the derogation permitted “for humanitarian reasons” ⁽³¹⁾.

between access to the right to education for migrants and the broader legal framework governing migration, E. Girasella, *Sovranità e flussi migratori. Il diritto di richiedere asilo e di proseguire gli studi*, 2024.

⁽³¹⁾ For verification and further details, see the relevant sources, see E. Girasella, *Prevalutazione sull'idoneità all'immatricolazione degli studenti in possesso di titolo estero: l'esperienza dell'Università di Messina per le "situazioni di carattere umanitario ed eccezionali"*, in *Epale Journal on Adult Learning and Continuing Education*, 2024, p. 71.

This measure constitutes an exercise of university autonomy carried out within the regulatory framework established by the Ministry of University and Research (MUR). As is well known, the procedures governing pre-enrollment and preliminary enrollment of international students are regulated annually by the ministerial circular on Enrollment in Higher Education Courses in Italy for International Students. Although the validation of pre-enrollment applications by universities does not entail the automatic issuance of a student visa, since the latter remains subject to assessment by diplomatic and consular authorities, this approach nonetheless represents an active policy instrument that is likely to acquire increasing relevance and consistency over time.

The impact of the international context on the internal life of the academic community of the University of Messina has, tragically, been confirmed by the killing of one of its students, Yasmin Mirzaei, who had returned to Iran to participate peacefully in demonstrations against the violation of civil rights. This event has profoundly affected the university community and underscores the extent to which global crises reverberate within academic institutions.

In light of this tragic episode, it is therefore necessary to reaffirm a commitment that is already well established: the commitment to the broadest possible recognition of the right to education, and to the development of reception, support, and accompaniment services that are increasingly tailored to the specific needs of students with a migrant background.

5. Conclusions

Italian universities have progressively developed a wide-ranging set of initiatives aimed at promoting the academic and social inclusion of migrants. Many of these measures were initially conceived as emergency responses to migration flows across the Mediterranean; over time, however, they have evolved into increasingly stable and structured practices, contributing to the emergence of a new model of academic hospitality. Within this framework, universities are no longer mere service providers but are called upon to reinterpret their

constitutionally guaranteed autonomy as a space of shared institutional responsibility.

In an era marked by persistent humanitarian, environmental, social, and economic crises, the right to education must continue to function as a universal constitutional commitment rather than as a privilege reserved for those who most closely align with market-driven selection criteria.

Reaffirming the constitutional foundations of higher education therefore entails reaffirming Europe's commitment to equality, human dignity, and solidarity, principles that constitute the essential pillars of any democratic and sustainable knowledge-based society.

As previously noted, this reflection also concerns the development of complementary pathways for migration, including those accessible to individuals who may be entitled to international protection. The limited number of case studies examined nonetheless demonstrates that universities are increasingly required to experiment with innovative, flexible, and adaptive mechanisms capable of responding to the evolving needs, circumstances, and aspirations of migrant populations.

While this adaptability undoubtedly represents a strength of the university system, particularly in its ability to respond to the demands of increasingly multicultural societies, it also reveals a significant weakness. Many of these initiatives remain largely informal in nature. As observed, the measures adopted by Italian universities to facilitate the academic inclusion of students with a migrant background are primarily the result of the full exercise of university autonomy as enshrined in Article 33 of the Italian Constitution. It is therefore desirable that well-established practices, such as university corridors, as well as emerging ones, most notably the gradual expansion of enrollment opportunities for asylum seekers, be formally codified within primary legal sources, thereby ensuring legal certainty, continuity, and equal treatment across institutions.

In the broader debate surrounding the recognition of migrants' right to education, the boundary between the activation of services necessary for the effective exercise of a fundamental right and the discretionary granting of benefits as acts of solidarity remains insufficiently clear. This ambiguity risks undermining the constitutional status of the right to study

by framing access to higher education as a concession rather than as a legally protected entitlement.

The investigation records the growing participation of universities in structured networks involving public and private actors engaged, in various capacities, in improving services and maximizing the opportunities associated with the reception of students from countries affected by conflict or instability. This represents a significant rise in institutional cooperation. At the same time, this progress is constrained by a corresponding fall, namely the fragmentation of resources into small-scale interventions driven by sporadic and short-term funding. Greater systemic coordination is required to consolidate existing initiatives, reduce unnecessary duplication, and support their gradual and sustainable development.

The research also highlights the emergence of numerous promising initiatives. Yet, their analysis also reveals the risk of a governance model that remains largely top-down, with limited involvement of the direct beneficiaries themselves. This imbalance calls for a rethinking of participatory mechanisms capable of enhancing migrants' agency within academic inclusion policies.

More broadly, the rise of the right to education for foreign students reflects a constitutional and human rights-based expansion of academic hospitality. Its areas of weakness, however, manifests not through an explicit denial of access, but through the progressive conditionalization and securitization of educational mobility, particularly in times of crisis. This dynamic exposes an increasing tension between constitutional commitments and migration control policies.

The present analysis has been deliberately confined to the current historical phase and has focused on the legal framework governing access to Italian higher education for foreign students, in accordance with the broader supranational context defined by European standards. References to constitutional case law illustrate how the universal recognition of the right to education is deeply rooted in liberal constitutional traditions grounded in the principles of human dignity and substantive equality.

Describing university-based experiences of migrant inclusion ultimately means acknowledging the role of the

university as a key actor within the global landscape. The growing capacity for internationalization within the higher education system should not be weakened by ongoing economic, migratory, environmental, or geopolitical crises.

On the contrary, the strengthening of academic internationalization has, in many respects, been accelerated by these very challenges and must now be addressed as a condition for further progress.

This does not imply shifting the primary responsibility for rights protection from governmental institutions to universities. Rather, the fall of the current system lies in the hollowing out of the right to education in the absence of structured and legally guaranteed channels for student mobility, capable of fully overcoming outdated securitarian approaches.

Investing in the talents and skills development of foreign students is a mission that the Italian university system has increasingly embraced. The benefits already observable extend well beyond individual academic communities, pointing toward a broader reimagining of global mobility, one that is open, inclusive, and firmly grounded in constitutional principles.

CLOSING THOUGHTS

Simon M. Tanner *

Before moving on to the task of taking stock, of attempting to bring together the variegated threads of this volume, I would firstly like to express my heartfelt thanks to Prof. Marcella Distefano for having involved me in the UNITAFRICA conference held at the University of Messina in December 2025. This book, which brings together some of the papers presented on that occasion, does not focus on the personal relations that have been forged among the participants in that conference and at other meetings. Although the absence of such “human” considerations is understandable in a publication of this kind, we should not forget that the academic, legal and political value of its contents are only one aspect of a project based on concrete action, involving the spheres of education, human rights, politics and society at large. And it is the human commitment underpinning the scholarship presented in these pages that gives us hope that consolidated change may indeed be achieved.

One of the great qualities of a project such as UNITAFRICA is the wide variety of experiences it can draw on, from many countries with diverse cultures and educational and legal systems. This diversity represents a source of strength, but in a highly variegated context is also potentially a setback, with attendant difficulties in the implementation of laws and declarations of intent across a geographically vast area with myriad political and social realities.

My aim here, in bringing this volume to a close, is to try and

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provide an overview of what unites the various contributions in this book, beyond the simple fact of being gathered here physically and of being engendered by the UNITAFRICA project. Although addressing a variety of issues, certain common themes emerge, and we may perhaps assume that these themes coincide with the areas in which future efforts should be concentrated.

It is no surprise that, despite the diverse countries considered by the authors, and the various aspects dealt with, the main problem that emerged transversally was that of implementation. Although significant progress has been achieved in terms of international and domestic law, shortcomings on the substantive level are still evident. Even where theoretical frameworks and commitments are in place and viable, they often lack application in practice. The issue is directly addressed by Ricci, who highlights this dichotomy between legal commitment and practice, and by Onuora-Oguno, Niyi-Gafar & Egbewole, who criticise the gap between formal and substantive equality for persons with disabilities in Nigerian universities. Gutema, Mamma & Ebrahim, in turn, show how Ethiopia, despite ratifying the relevant international instruments, has a poor record in terms of implementation. Siphesile highlights a deeper problem, showing how the treatment of immigrants in South Africa's educational system is in stark contrast with the country's progressive constitutional framework. Girasella, while welcoming the progress made by Italian universities, observes that inclusion initiatives are often project-based and dependent on institutional discretion rather than being legally guaranteed. Pollicino, meanwhile, offers a revealing perspective on the structural position of higher education within EU migration law, demonstrating how university enrolment functions not as an expression of an autonomous right to education but as a conditional and revocable migration status – a framework that renders access to education contingent on compliance with migration control requirements rather than grounded in rights-based guarantees. Obstacles to implementation are not solely of a legal nature, however, but may well be social and cultural; as Gallo observes, legal protection for women's education across Africa coexists with largely unchallenged customary practices that degrade and subjugate women and

effectively obstruct their access to education. Also at Rwanda Polytechnic, as Niyonshima's case study demonstrates, culture and latent gender bias result in de facto discrimination against female students.

The authors' focus, as we have seen, may vary, but all essentially hinge on the same insight: that however well codified it may be, the right to education is emptied of meaning unless it is supported actively through institutional will, resources and enforcement mechanisms.

Another issue that clearly emerged as a common theme across many of the chapters, and one which was often complementary to that of implementation discussed above, was how educational systems often fail in their support of vulnerable and marginalised groups. For those belonging to such groups, legal protection is particularly important. The groups discussed specifically by the various authors include: persons with disabilities (Onuora-Oguno et al.; Gutema et al.; Uwineza); women and girls (Gallo; Niyonshima; Gutema et al.); refugees and asylum seekers (Siphesile; Girasella; Gutema et al.; Ricci); migrants more broadly (Pollicino; Girasella); and people from economically or geographically marginalised communities (Gutema et al.; Uwineza). As the authors state, or sometimes merely imply, the quality of a higher education system should be judged not only according to standards of academic excellence and of how it serves its most advantaged students, but by how it treats, supports and fosters those who face the greatest structural barriers. Inclusion should not be relegated to the status of a marginal policy concern but be held up as a crucial indicator of institutional quality and a test of whether legal commitments can be dismissed as mere lip service or indicate genuine intent.

Of these groups, that of women and girls is understandably given particular attention. Not only does this group represent half of humanity, it is also the group which has historically been subjected to the most widespread culturally-embedded and institutionalised discrimination. The issue of women's rights is addressed by various authors in this book, starting with Gallo, who examines the broad international and African legal framework in the field of educational rights and gender equality, and the problems faced by women and girls. Gutema et al., although not focusing exclusively on women, discuss

the difficulties they, like other vulnerable groups, face in accessing higher education in Ethiopia. In the case study presented by Niyonshima, we see an example of gender empowerment in practice, and the failure to effectively transform gender policies into concrete results. Again, we return to the implementation shortfall: even when measures have been put in place to promote gender equality, these do not necessarily lead to the desired outcomes. What thus emerges from reading these contributions together is an important distinction: gender equality in higher education is not simply a matter of equal enrolment numbers (though these still fall short of targets), but requires transformation in terms of teaching, institutional culture, and reporting systems.

A useful tool for considering where educational systems fail to ensure in practice the right to education, as mentioned by various authors, is the UNESCO 4A framework (Availability, Accessibility, Acceptability, Adaptability). Uwineza applies it to the integration of AI systems in polytechnics, assessing how such technology may potentially benefit teaching and efficiency, while stressing the challenges its implementation poses. Gutema et al., meanwhile, use the framework systematically to analyse Ethiopian higher education, and Ricci refers to it in the context of qualification recognition. This framework also underlies the analysis in Gallo and Onuora-Oguno et al., even though it is not specifically mentioned. The transversal relevance of the 4A framework suggests that it may be applied as an analytical lens across highly diverse national and institutional contexts, highlighting where systems most commonly fail (accessibility and adaptability in particular, in the context of the contributions contained in this volume).

It seems only fitting to end these brief concluding remarks with an eye to the future, and, as Uwineza's contribution makes clear, no discussion of the future can fail to consider technology, and in particular AI as a potentially transformative educational tool. Turning more specifically to the future of the UNITAFRICA project, several authors directly focus on the Italy-Africa relationship in higher education outlining the project and its potential for further development, and reminding us how "investing in human capital and transnational education can promote development, friendship,

inclusion, and solidarity for truly shared growth". They list possible future developments, including jointly developing guidelines and best practices for higher education, the promotion of Italy-Africa academic mobility, joint degrees, and collaborative research. The volume as a whole can in fact be read as an attempt to view the right to higher education from a vantage point that is simultaneously embedded in an Italian institutional context and oriented toward Africa – making the Italy-Africa axis not merely a backdrop but a productive intellectual and political perspective in its own right.

In order to achieve the project's goals, and to comply with the UNESCO 4A framework, institutional commitment clearly plays a crucial role, primarily on the part of universities, which, as Pollicino shows, may act as gatekeepers within EU migration governance. Moreover, the UNITAFRICA project is evidence that universities are increasingly becoming key actors in international development and migration policy.

Nevertheless, as Ricci stresses, concrete progress is only possible with political will on a national level. Universities, then, need to be rights-respecting institutions, at the forefront of promoting inclusion and equality, and not just providers of educational services.

Their efforts, however, require political and cultural support at a national and international level. The first steps have clearly been taken, and the foundations for change solidly laid. It is now time to build on them, and to look to the future with renewed commitment and optimism.

APPENDIX

THE UNITAFRICA PROJECT

Sabrina Sorlini ⁽¹⁾

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The UNITAFRICA project "*Empowering Academic Cooperation between Italy and Africa for Fostering the Quality and Effectiveness of Higher Education Systems in a Mutual Learning Environment*" is an initiative officially launched in October 2024, but it stems from a long journey begun under the aegis of the Italian University Network for Development Cooperation (CUCS). Indeed, the academic collaboration with Africa, developed over 15 years of academic relations, has led to numerous successful experiences of great scientific and human value for the students and faculty involved, as well as generating a positive impact on local development.

UNITAFRICA's shared goal, by networking academic capabilities and human resources, is to promote joint training, research, and international academic cooperation with similar institutions on the African continent.

The project involves 21 Italian universities offering undergraduate, graduate, and postgraduate programs. With a total of 900,000 students and 60,000 academic staff (faculty and non-faculty), the project's commitment to internationalization is evidenced by a significant number of

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international students and incoming/outgoing students through international mobility programs, representing 6% and 5% of students, respectively. Furthermore, these universities have over 600 scientific agreements with African universities throughout Africa.

There are 78 associated African universities, from 18 countries in various sub-Saharan Africa: West Africa (Benin, Burkina Faso, Cape Verde, Ghana, Nigeria, Senegal), East Africa (Ethiopia, Kenya, Madagascar, Mozambique, Rwanda, Somalia, Sudan, Tanzania, Zambia), Central Africa (Cameroon), and Southern Africa (Namibia and South Africa).

Collaborations between the network's universities are traced through 136 agreements/letters of intent.

UNITAFRICA's goals include identifying shared solutions to address critical issues in the Italian and African education systems, such as the mismatch between educational offerings and social needs, curriculum updating, and obstacles to the strategic development of research. This is achieved by promoting hybrid, less rigid, and more innovative teaching and learning approaches.

UNITAFRICA aims to leverage the strength of local human capital and the unique training/mobility elements and teaching tools and methods developed within the Italian higher education system, thus promoting the Italian model as a solid international reference point.

The UNITAFRICA project's overall objectives are: identifying guidelines and best practices for teaching methodologies in relation to their effectiveness and impact; establishing a solid foundation for building and strengthening synergies in joint training programs between Italy and Africa; improving training programs and the use of innovative teaching methods; increasing the level of internationalization of both IUs and UAs through effective two-way mobility of students, faculty, and staff; promoting effective cooperation in teaching and research among participating universities well beyond the project's scope through the creation of the UNITAFRICA alliance in collaboration with CUCS; promoting a new perspective on science for human growth and development.

The cross-cutting concepts underlying the project's activities are integration between mobility and lifelong

learning; mobility and learning developed through a peer-to-peer collaboration model, at both the individual and institutional levels; priority given to ensuring gender equality, equal access, and inclusion for all ethnic and social groups, and those with disabilities.

The project's training activities cover the following strategic thematic areas: Rural development, land management, agri-food and food supply chains; Health, water and sanitation, One Health; Sustainable energy, environment, and natural resource management; Entrepreneurial and industrial development for local prosperity; Cultural heritage and sustainable tourism; Social sciences and humanities.

Finally, as part of its promoted activities, the project also aims to explore opportunities for further interaction between IUs and AUs in terms of possible joint MS/PhD programs, some of which are already underway.

To achieve these objectives, the following activities have been implemented: mobility of students and academic staff from higher education institutions between Italy and Africa (WP3, WP4), with over 277 in-person mobility sessions for study and research, and 160 mobility sessions for project meetings; mutual training among students (Master's and PhD students) to develop informed citizens capable of using science and technology as tools to promote local development, in line with the UN Agenda 2030 and the African Union's 2063 (WP3), with the organization of 8 training courses; improvement of skills in researchers, professors and administrative staff through the organization of 17 training courses (WP4).

Overall, 395 learners and 193 teachers, for a total of 588 people have joined the courses in person, with 44 persons connected remotely.

During the project, a physical and virtual environment for the development of project activities over time was created (WP2); this WP included the implementation of a digital platform for innovative training (PIT) to improve virtual teaching, share teaching materials, communicate within the network, and provide useful information for teacher and student mobility. Furthermore, through the creation of an active and interconnected network, the UNITAFRICA Alliance, composed of all the federated universities, developed

an alliance charter to define its specific activities, role, and long-term objectives. As part of this activity, six webinars and eight permanent thematic groups were organized, with broad and cross-sectional participation from Italy and Africa.

Finally, one specific activity was addressed to evaluate the effectiveness of the training activities proposed during the project in terms of their impact on the quality of education and the effects generated (WP5).

The project has been characterized by an articulated syntax of courses, international mobilities and meetings.

During the project, three project meetings were organized: the first at the Italian Cultural Institute in Addis Ababa, with a total number of 48 participants, composed by 34 delegates from 28 African Universities and 14 from 7 Italian Universities. The meeting has been focused on the launch of the project network and initiatives, with the setting up of a foundation community for human and scientific collaboration for the year ahead.

The second – intermediate project meeting has been organized in Messina, Italy, from December 11 to 13, 2025, with 40 participants (15 representatives from Africa, 25 from Italy). The meeting has represented the opportunity to showcase the studies and articles selected after a specific call for papers on the universal right to accessing University education, from an African Italian pool of expert. Moreover, to present the project platform for innovative teaching (PIT), showing its main functionalities and features.

These plenary meetings provided an opportunity for Italy-Africa university systems to come together to share visions and results, assess their impact, discuss opportunities and challenges, plan long-term developments, and explore strategies for future sustainability.

An unexpected element emerged during UNITAFRICA was the observation made by the African academic staff and students of a transnational educational approach that promoted a local, intra-African dialogue and communication among institutions and academic cooperation, building a collaborative environment for a more diverse, inclusive, equitable and durable partnerships.

In fact, this element can represent an added value to the project itself, where a more unified African continent, together

with the Italian academic and international cooperation system, can have a great potential to addressing global challenges and supporting evidence-based policymaking.

Among the future developments of the UNITAFRICA project, we can list: the consolidation of the thematic groups and continuation of periodical webinars using the Platform for Innovative Education (PIT), to promote a living laboratory of collaboration, support universities in digital transformation and new synergies and agreements in the common interest; the co-writing of an Alliance Charter, as a reference document containing principles and values for actions towards, for a solid inter academic cooperation that favors equal access to knowledge and capacity building; the co-design of academic papers and articles related to the project's activities, with the goal of developing shared guidelines and best practices for higher education between Italy and Africa, aiming to a more structured academic and social cooperation, mutual understanding and shared wellbeing; the strengthening of academic mobility between Italian and African institutions to expand student and faculty exchange programs and increase scholarship access for international education (e.g. Erasmus programs); joint degrees and curriculum co-design through the recognition of credits and matching existing curricula (double); other capacity building and educational initiatives (e.g. seminars & summer schools) co-development to address global challenges identified in the UNITAFRICA project: climate change, public health, digital transformation, sustainable agriculture, artificial intelligence; the application for EU international mobility calls and joint Erasmus Mundus Joint Master (EMJM); Internal University funds for strategic international activities; the creation of stronger research ecosystems and collaborative research platforms to increase co-authored publications, encouraging collaborations between academia, communities/industries and developing joint supervision of PhD candidates. This can be done through grant applications in EU-Africa funding frameworks (e.g., Horizon Europe partnerships) and with the use of specific University fundings (PhD students fellowships).

The UNITAFRICA project, building on a consolidated system of relationships, transnational mobility experiences, higher education programs, and academic cooperation active

since 2007 through CUCS, contributes to the creation of a more structured and interconnected higher education ecosystem in two macro-regions of Africa (Southeast and West-Central Africa), ensuring long-term impacts on education and research well beyond the project's duration, also through the involvement of institutional stakeholders.

The implementation of the initiative has indeed created the opportunity to form networks ready to apply and access financial resources through EU schemes and programs specifically designed for Africa, such as Erasmus+, Horizon Europe, Erasmus+ CBHE and K171, including the co-supervision of PhD students and the organization of incoming summer schools between the partner Universities. Furthermore, UNITAFRICA initiatives (including courses, meetings, and mobility programs) have received consistent media coverage from local and national outlets, such as This coverage reflects the shared interest and strong engagement of the communities involved, particularly among young people.

Co-design, mutual learning, and sustainable partnerships: three key concepts that encapsulate the project's philosophy and promise long-lasting collaborations in teaching, interuniversity dialogue, and renewed, mutually beneficial international cooperation that can contribute to the harmonious and peaceful development of peoples for a global community, with a prosperous future.

In conclusion, while valuing the reciprocal differences in traditions, scientific methodologies, and cultural habits, the UNITAFRICA project can serve as a bridge of knowledge and experiences, demonstrating how investing in human capital and transnational education can promote development, friendship, inclusion, and solidarity for truly shared growth.

UNITAFRICA is a transnational education initiative, funded by the Italian Minister of Research with PNRR funds, aimed at promoting joint training, research, and international cooperation between Italian and African universities. Twenty-one Italian universities and 78 African universities, within the UNITAFRICA Alliance, collaborated over a 21-month period to strengthen cooperation, and improve the quality and effectiveness of higher education.

This book focuses on a challenging aspect of the TNE Unitafrica Project, namely identifying good legal practices against inequalities in access to higher education. The chapters address the issue of access to higher education from multiple legal perspectives, tied together by a common thread that the right to education belongs to all individuals.

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