

## **Mirjam Streng**

Mirjam Streng is a Ph.D. candidate at the Zvi Meitar Center for Advanced Legal Studies at Tel Aviv University Buchmann Faculty of Law, where she conducts her research under the supervision of Professor Eyal Benvenisti. She obtained an LL.M. at Columbia Law School (with honors) and an LL.M. as well as an LL.B. (with honors) from the University of Amsterdam, spending a semester abroad at New York University Law School during her bachelor. She is a member of the Israeli and New York State bar association and practiced as an Israeli immigration lawyer before joining the GlobalTrust Research Project in 2014, in which she was a PhD Fellow until recently. Mirjam's research topic is "Education and asylum-seekers: A legal and normative analysis of access, integration and educational content".

## **Asylum Seekers and School Integration: Analyzing Asylum Seeker Rights and State Obligations under International Law**

UNHCR recently reported that 3.7 million refugees of primary and secondary school-going age lack access to education. Approximately 50% of refugee children are enrolled in primary school, compared to nearly 90% of children globally. About 22% of refugee youth attend secondary school, compared to 84% of youth globally. Asylum seekers' and refugees' right to education and corresponding State obligations under international law, however, have received little scholarly attention, except in Hathaway's chapter on education (The Rights of Refugees (2005)).

International refugee law ('IRL') and international human rights law ('IHRL') clearly establish asylum seeker children's right to education, but norms on integration into asylum state's education systems are less clear. While UNHCR promotes refugees' inclusion in national education systems as a means to ensure and promote quality assurance, access to accredited examinations, social cohesion, existing programs and infrastructure and the achievement of Sustainable Development Goal 4, it does not argue that States are legally obligated to integrate asylum seekers and refugees into national education systems. Moreover, some UNHCR-supported programs integrate asylum seeker children into the asylum state's education system (learning its curriculum in its language), while educating in separate schools or classrooms. Article 14 of the European Union's 2013 Reception Directive 2013/33/EU provides that member states shall grant minor asylum seekers access to education "under similar conditions" as nationals, which "may be provided in accommodation centers", allowing separate education. EU Member States may furthermore "stipulate that such access must be confined to the State education system", allowing States to limit asylum seekers' choice for separate education. Such (mother tongue) education may be important if there are significant chances of repatriation or differences in moral or religious beliefs.

In part I of this article, I examine doctrinally whether asylum seekers have a right to choose between (1) integration into public school systems in separate schools/classrooms, (2) integrated classrooms and (3) separate education and whether the asylum state has positive or negative obligations to guarantee this right regarding primary and secondary education. I analyze IRL and IHRL norms and case law from different courts interpreting norms of non-discrimination, integration in education and school choice of asylum seekers and others. My analysis includes recent cases on *de jure* and *de facto* segregation of Roma children in which the European Court of Human Rights ('ECtHR') required States to take both negative and positive measures towards integrating national minority children into integrated schools and classrooms.

Part II juxtaposes the underlying rationales for the above EU/UNHCR standards and the ECtHR's and others' general insistence on integration into classrooms and school choice, analyzing whether specific characteristics of asylum seekers' situations can satisfactorily explain these differing standards. Since most asylum seekers and refugees live outside of refugee camps for long periods of time, I argue that (apart for perhaps in limited circumstances or time periods), no paradigmatic difference in their situation can

legitimize restrictive asylum-seeker-specific interpretations of norms on school integration and school choice.