

CLIMATE-DISPLACED CHILDREN AND THE PROTECTION OF THEIR EDUCATION RIGHTS IN MALAYSIA

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ABSTRACT

The mobility crisis caused by climate change jeopardises the development rights of children, including their education. In 2019, approximately 23.9 million people were forcibly displaced by weather-related disasters, surpassing the 8.5 million people forcibly displaced by the most prevalent causes of migration and displacement, namely conflict and violence. Climate-displaced children in Malaysia face education barriers due to exclusion policies. Relocation brings procedural, financial, and linguistic hurdles, risking dropout. Thus, governments must examine the implications of climate change on the right to education and devise solutions to address this problem in order to achieve SDG 4 which aims to ensure inclusive and equitable quality education. This study will investigate the education rights of climate-displaced children under international and Malaysian law. In addition, the practises of Thailand and the United Kingdom will be observed, as these two countries with many climate-displaced children, have robust laws protecting their educational rights, warranting scrutiny. The work is based on doctrinal and comparative legal research, as related legal concepts, principles, and selected statutory materials are reviewed and compared to implement applicable practises in our country. The data were obtained via library research and analysed using content analysis. The preeminent factors are the child's best interests and the principle of equality. The results demonstrate that Malaysian legislation needs to adhere to international legal standards that recognise children relocated due to climate change as having a right to an education. To ensure every child's developmental potential, the government must adjust for inclusive, quality education.

Keywords: Climate Change, Development Rights, Displaced Children, Education Rights, Children's Rights

INTRODUCTION

The issue of climate change is alarming and requires immediate attention and action from all global citizens. Human activities, particularly the combustion of fossil fuels such as coal, oil, and gas, have been the

primary cause of climate change since the 1800s (United Nations). Across the globe, millions of people are already enduring dire consequences from global warming and environmental change. Changes to our climate system significantly impact living conditions, including flooding, rising sea

levels, droughts, glacier erosion, decreasing or expanding deserts, and altered rainfall patterns. Scientists rang the alarm that severe environmental deterioration and climate change could render certain regions of the planet uninhabitable. Climate change affects every individual on the planet in unique ways. For instance, conflicts over limited natural resources such as water or fertile land can result in violence; droughts can displace populations and force them to flee; seepage from cliffs and fertile land can cause coastal regions to flood; etc. (Manou & A.Mihr, 2017).

It has become increasingly clear that the impact of climate change on human mobility is one of its major effects. This mobility is anticipated to manifest in various ways, including spontaneous and planned travel, movement across and within national borders, or voluntary and forced migration. People who move due to climate change are called "climate displaced". In contrast, "climate displacement" is a phenomenon that impacts all forms of international or domestic, partially voluntary or forced human mobility. A slow-onset or rapid-onset environmental hazard may precipitate climate change, and the resulting movement may be temporary or permanent (Simperingham, 2017). According to research conducted by Groundswell, approximately 216 million people from East Asia, the Pacific, South Asia, Sub-Saharan Africa, North Africa, Eastern Europe, Central Asia, and Latin America are expected to migrate domestically by 2050 due to the effects of climate change. In addition, 40 million East Asians and Pacific Islanders are expected to be forced to relocate for the same reason. However, the report indicated that urgent action by all stakeholders could reduce the number of migrations caused by climate change by 80 per cent. Defining the term 'children displaced by climate change' poses challenges, but dissecting the terms can bring clarity. 'Displacement' denotes the movement of people between locations,

regardless of circumstances, often referred to as human mobility or population movement. While, 'migration' typically signifies voluntary relocation, 'displacement' implies forced or involuntary movement. According to the Convention on the Rights of the Child (CRC), children are individuals under 18 years old. Lastly, the term 'climate change', refers to alterations directly or indirectly caused by human activities, which change the composition of the global atmosphere and contribute to observed climate variability over comparable time spans (The United Nations Framework Convention on Climate Change, 2016). In sum, children who live in the impacted region are also relocated as a result of climate change, and they are known as "children *displaced by climate change*". Due to their vulnerability to numerous climatic events, such as wildfires, flooding, droughts, and hurricanes, the rights and well-being of children are already directly impacted by climate change. Children displaced by climate change are among the most susceptible to these effects. However, they are not included in programs promoting resilience, participatory planning, and decision-making, compromising their developmental rights. In 2020, 9.8 million children have been relocated due to climate change-related disasters, according to UNICEF. This figure reflects one-third of all those relocated due to climate change-related incidents. By 2050, it is estimated that roughly 70 million children worldwide will be internally displaced by climate change, not counting children who are forced to relocate to foreign countries (Clement et al., 2021).

MALAYSIA AND CLIMATE CHANGE

Malaysia requires assurances that it will be protected from the effects of climate change, as the effects are becoming increasingly evident in the country, which has lately experienced extreme weather events. The National Hydraulic Research Institute of Malaysia (NAHRIM) has warned that Malaysia might encounter an extreme

drought between 2025 and 2035 due to climate change (Zahratulhayat Mat Arif, 2020). The representative of one of Malaysia's state administrations has also confirmed the validity of the NAHRIM report, which predicts a decrease in precipitation ranging from 0.1% to 36.3%. In addition, NAHRIM also mentioned that oil palm production yield will decrease if rainfall decreases by 10% and temperatures rise by 2% above the optimal level. Consequently, if the reduction during the extreme drought reaches 30%, oil palm production is anticipated to decline by approximately 90 percent. Such a situation could result in the loss of palm oil production, contribute to the escalation of poverty, and ultimately lead to the migration of people. In addition, rice production will decrease by 80 percent if a drought or flood occurs during the early growing season. If this situation persists for an extended period, it will cause famine and food shortages in the country. Besides that, climate change will also cause a decrease in rubber yield, floods vast areas, endangers animals and aquatic life, and has an endless list of other negative effects. Based on these, it is apparent that climate change is not mythical in Malaysia, as numerous effects of climate change can be observed. According to the World Bank Group and Asian Development Bank's Climate Risk Country Profile for Malaysia, under the worst-case scenario of climate change, average temperatures in this country are projected to rise by 3.11 degrees Celsius by the year 2090. The Malaysian government is fully aware of the implications and is taking the necessary steps to prepare the nation for the unfortunate event without causing societal panic (NAHRIM, 2010).

According to the Global Climate Risk Index (CRI), weather events between 1999 and 2018 also significantly impacted Malaysia's neighbouring countries, including Myanmar, the Philippines, Vietnam, and Thailand. According to the Asian Development Bank, of the 200 million estimated international

migrants globally, around 80 million live in Asia and the Pacific. According to the estimations, between 40 and 50 million Chinese have immigrated internationally, compared to 20 million Indians who have left their homeland. The region is simultaneously marked by significant global migration movements and increased intra-Asian mobility. Regarding migration within Asia, the leading countries of origin are Indonesia, the Philippines, and Sri Lanka, while the top countries of destination are Brunei Darussalam, Japan, the Republic of Korea, Singapore, Taiwan, China, and Thailand. Even though, there is no official statistics are available, it appears that internal migration due to numerous reasons, including labour mobility and the diversification of revenues, family reunification, expectations and environmental changes. There is a significant chance that the region will continue to see migration pushed by climate change occasionally since the phenomenon is expected to significantly amplify the importance of environmental change. According to Wheeler 2011, the top ten countries in terms of population at risk from sea level rise in 2050 are India (37.2 million), Bangladesh (27 million), China (22.3 million), Indonesia (20.9 million), Philippines (13.6 million), Nigeria (9.7 million), Vietnam (9.5 million), Japan (9.1 million), United States of America (8.2 million), and Egypt (6.3 million). Besides that, Thailand (20 million), Malaysia (16 million), Korea (12 million) and Myanmar (13 million), are also on the list of the top 20 countries with the highest risk. In addition, a study conducted by Rutgers University and reported by the Centre for Governance and Political Studies, eight states in Malaysia are expected to be submerged by 2050 due to climate change-induced sea level rise. The Malaysian United Democratic Alliance echoes this concern in its platform with pledges to take the necessary steps to confront the impending situation.

In light of the climate change crisis that the world is experiencing, particularly in Asia and the Pacific, Malaysia must prepare

the necessary actions on laws and policies to be implemented in response to foreseen events, such as the possible migration of displaced people, including children (UN News, 2022). Humanitarian issues and the possibility of deprivation of fundamental human rights are confronted by migrants and those who reside in ecologically devastated areas. The United Nations Office of the High Commissioner for Human Rights has identified climate change as one of the most significant challenges to exercising human rights, including the right to education, the fundamental essential right of children guaranteed by the United Nations. Therefore, investigating how climate-related displacement could deprive and ways to protect children's rights is of the utmost significance (Mayer, 2013).

METHODOLOGY

The study, based on doctrinal and comparative legal research, uses reasoning to assess specific legal provisions and precedents. The information was gathered via library research, and content analysis was used to assess it. The primary goal is to compare similar legal principles, ideas, and legislative provisions in selected countries. In the research, the principle of the child's best interests is applied to assess whether existing laws and policies adequately safeguard the educational rights of climate-displaced children, considering their unique vulnerabilities and needs. Factors such as access to education, its quality, language barriers, and socio-economic challenges hindering their educational opportunities are considered. Similarly, the principle of equality is examined to determine whether legal frameworks treat climate-displaced children fairly and without discrimination in accessing education. This involves scrutinizing policies related to enrollment, school fees, transportation, and language support to ensure they do not disproportionately disadvantage climate-displaced children compared to their non-displaced peers. While, the equality principle

and the child's best interests are the primary focuses of this research, the content analysis methodology is used to evaluate all of the information critically. The prime goal is to align Malaysian laws and practices with international legal standards to uphold the educational rights of all children, regardless of their displacement status.

ANALYSIS AND DISCUSSION

IMPACTS OF CLIMATE CHANGE ON THE RIGHTS OF CHILDREN TO EDUCATION

In the meantime, climate change is the biggest global threat causing an average of more than 20 million people to leave their homes and move to other areas in their countries each year (UNCHR, 2020). Besides women, the elderly, indigenous and disabled people, children are the poorest of the poor and the most vulnerable. Climate change effects on water, food security, health, and human settlements, as it will put the lives and well-being of people at increased risk especially children and thus need them internally and cross border displaced (Katharina Ruppel-Schlichting, et al., 2013). In 2019, extreme weather events displaced approximately 23.9 million people, surpassing the 8.5 million forcibly displaced by the most prevalent causes of migration and displacement, namely conflict and violence. The number has increased to 30.7 million in 2020 (UNESCO, 2021). Meanwhile, the UNICEF had reported in 2022 that half of the world's 2.2 billion children are at "extremely high risk" for climate change, including its impact on education in 2022.

There are numerous ways in which climate change may impact education. In the most immediate sense, severe weather conditions such as tropical cyclones may destroy the school buildings, or the buildings may be utilised for sheltering displaced people. As a result, children cannot attend school temporarily, and some may never be able to return. In 2013, Typhoon Haiyan

demolished the Philippines, leaving 800,000 people homeless and affecting an additional 11.3 million people. Women, infants, adolescents, and people with disabilities are at greatest risk among them. It had destroyed 3,200 schools and nursery facilities, and many others were immediately converted into evacuation centres. More than a million school-age and preschool students and approximately 31,600 instructors were forced to stay home due to the hurricane (UNICEF, 2014). Hundreds, if not thousands, of students were affected by the typhoon and had to stop schooling for at least three months. Consequently, teachers may find it difficult to keep up with students absent from school for an extended period, jeopardising the quality of education. Colleges and universities in Puerto Rico were closed for an average of thirty days in 2017 due to Hurricane Maria's devastation, and ten percent of the 140,000 Puerto Ricans who fled the island to the United States after the devastating storm were students (Gurney & Herald, 2018; Coto, 2017). In addition, recovering from an illness, injury, or the trauma children endure after surviving a natural calamity can make it challenging for teachers and students to keep up. As the frequency and extent of climate events increase each year, it is anticipated that these direct interruptions to education will ultimately impact children's development rights.

In addition, due to their physical and mental immaturity, children are disproportionately affected by extreme climate and weather events and have varying capacities to cope with deprivation and stress during disasters. For example, children are more susceptible to contracting communicable diseases and drowning during flooding. In addition, children with mobility and cognitive impairments may be at a greater risk for injury and death. Extreme events can also hinder the ability of parents to provide education for their children, particularly girls. Due to income and food security losses, agricultural households

impacted by droughts or heat waves may be unable to pay school fees or be forced to ask their children to withdraw from school to earn additional income. Families searching for food, water, and work may migrate as a unit, pulling their children out of school. During migration, displaced children may have been exposed to traumatic events, reducing their likelihood of school engagement.

Most climate-displaced people remain within their home country, but some may cross international borders to attain safety or seek refuge in another state. As a result of limited resources in countries harbouring or receiving large numbers of refugees and migrants, it can be challenging to ensure that everyone has access to education. In Uganda, home to the most significant number of African refugees, schools in or near refugee settlements are frequently understaffed and congested and have limited facilities and supplies. Moreover, administrative obstacles are a problem for displaced persons, particularly minors. In this regard, pupils may require birth certificates or school transcripts, which can impede enrolment. In addition, climate change-related cross-border migration creates a linguistic barrier. It could take some time for a displaced child to overcome a language barrier. It is also essential to note that the trauma of displacement may be in the educational performance. The disruption of the journey and the insecurity of living arrangements in a new environment can make schooling difficult for them. Mental health may not be a priority in the education system, and teachers might not receive the training or allocate the time to support children coping with trauma and stress.

On top of that, climate change may indirectly influence educational outcomes. Extreme weather experienced during gestation and early childhood may affect a child's education years later by impacting birth outcomes and child health and nutrition.

The perinatal period and the first few years of the child's life are when the brain develops most swiftly; thus, adequate nutrition is crucial to their health during these stages. Both low birth weight and early childhood malnutrition are associated with impaired cognitive development and inferior educational attainment later in life, according to studies.

Importantly, no international human right is founded on a normative instrument that allows climate refugees to access or reside in another state. Although those displaced by climate change are commonly referred to as “*climate change refugees*”, international asylum law does not apply in a significant manner. The 1951 Convention Relating to the Status of Refugees (Refugee Convention) defines a refugee as an individual who has crossed an international border “*due to a well-founded fear of being persecuted on account of their race, religion, nationality, membership in a particular social group, or political opinion.*” The term ‘climate change refugee’ is deceptive, as climate migrants have failed to demonstrate a well-founded fear of persecution or a connection to one of the five grounds for refugee status. Therefore, climate refugees who cross international borders will likely be classified as irregular migrants unless they have effectively utilised a bilateral agreement or visa and do not have specific protection. Therefore, it is evident that the rights of minors displaced by climate change have not been protected under international law. The former Special Rapporteur on the Right to Education for the United Nations stated, “*Migrants, refugees, asylum-seekers, stateless persons, returnees, and internally displaced persons of all ages and backgrounds have the right to education.*” This should also apply to those fleeing climate change's effects. The Guiding Principles on Internal Displacement of the United Nations Human Rights Council outline the rights of the internally displaced, including Principle 23, which affirms the right to education. Unlike the Refugee

Convention, these Guiding Principles apply to natural disasters. However, these principles are not legally binding, and there is a significant legal void concerning cross-border movement in light of climate change's effects. In most instances, they do not qualify as refugees under international human rights law and have been denied their rights, including admission, stay, and other fundamental rights, such as education.

In a nutshell, the right to education for displaced children effected by climate change must be protected, respected, and fulfilled systematically and comprehensively. Urgent and effective action must be taken to ensure the provision of education in these disrupted circumstances and that education systems are able to withstand the pressures of displacement and heightened mobility. International organisations, policymakers, civil society, and other stakeholders must work together to limit the irreversible damage that will be inflicted if children's rights to education are not upheld in all displacement settings.

CLIMATE-DISPLACED CHILDREN'S RIGHTS TO EDUCATION AS PRESCRIBED BY LAW

1. International Law

Children's rights to education are one of the most critical issues discussed under international law. In 1994, the United Nations General Assembly, among others, urged all parties, including State Parties, international organizations, and non-governmental organizations, to promote human rights education, which should be a holistic, lifelong process beyond merely imparting information. In addition, the Resolution urges all parties to contribute to implementing the World Plan of Action on Education for Human Rights and Democracy, as adopted by the 1993 International Congress on Education for Human Rights and Democracy in Montreal. The World Bank is one of the foremost

organizations profoundly concerned with education and climate change. It believes that education is crucial to eradicating poverty and expanding shared prosperity. In addition to assisting the 57 million children not enrolled in primary school to complete their education, the World Bank collaborates with global partners to help them acquire and develop the skills they will need for life and the workplace. Besides that, education also reduces the likelihood of children being subjected to discriminatory practices such as child marriage and forced labour. The right of children, to receive an education is enshrined in numerous international agreements and policies.

The United Nations Convention on the Rights of the Child (CRC), which was adopted on November 20, 1989 is considered the most significant international treaty regulating children's rights, including the right to education. The Malaysian government ratified the CRC in 1995. Malaysia has however, as of this date, made reservations regarding Articles 2, 7, 14, 28(1)(a), and 37. The most important article of the CRC on education is Article 28, which, among other things, obligates State Parties to ensure that children have access to education based on equal opportunity. In the Canadian case of *Re:X (Immigration and Refugee Board (Canada))*, it was determined that the indefinite suspension of two children from their school violates Article 28 of the CRC. Article 28(1)(a) stipulates that all children shall receive a free primary education to make it more engaging. Notably, during the formulation of the CRC, Poland initially proposed inserting the words “at least” to indicate that State Parties are obligated to provide at least free primary education. However, such language was eliminated out of concern for the varied economic conditions of the State Parties. Even though the term “primary education” is not defined anywhere in the CRC, the Committee on the Rights of the Child's General Comment No. 7 (2005) stated that it is subject to the laws

and policies of the State Parties. The CRC requires State Parties to cover all costs to ensure that primary education, including early education, is free for children and their families. In addition, Article 28(1)(d) stipulates, among other things, that State Parties should ensure that educational and vocational education is available and accessible to children by giving them options based on their interests. Additionally, they should be able to select the type of education that interests them; vocational skills or traditional academic subjects. Per Article 28(1)(e), State Parties must remove any barriers preventing children from accessing education. For instance, State Parties should ensure that schools are accessible for all children and that poverty issues are addressed accordingly. No justification shall prevent children from receiving the education they are entitled to. By looking into the provisions of CRC, one could not see any exception that is allowed under the CRC to discriminate the rights on education towards child based on any form including the nationality of child.

According to *RRT Case No. V95/03256* in Australia, the Department of Immigration and Ethnic Affairs denied an HIV-positive mother's request for refugee status. She petitioned the Tribunal to evaluate the application and asserted that there was a high likelihood of being subjected to severe discrimination if she returned to her home country. Additionally, her child, who lives with her, has not been diagnosed with HIV, so the child would likely endure the same discrimination. In its ruling, the Tribunal determined that Australia has an obligation under the Refugee Convention to defend them as the child would be subject to educational discrimination due to stigma. If her mother passes away, this discriminatory treatment's severity will only worsen. According to the Tribunal, discrimination against the education rights of children constitutes persecution. In the Canadian case of *Ali v. Minister of Citizenship and Immigration*,

which involved an Afghan family's struggle for international protection, the Canadian Refugee Board determined that the right to education is a fundamental right that children must enjoy.

Article 29 of the Convention outlines the goals of education. The aforementioned article stipulates, among other things, that the purpose of education for children is to foster the optimal development of their personalities, abilities, and talents. Respect for the child's parents, the child's own cultural identity, language, and values, the national values of the country in which the child resides, the country from which the child may have originated, and civilizations other than the child's own will also be fostered. In addition, education will prepare the child for a life of responsibility in a free society in the spirit of understanding, peace, tolerance, equality of the sexes, and friendship among all peoples, ethnic, national, and religious groups, as well as people of indigenous origin, and to develop respect for the natural environment. It also aims to educate children for society's greater welfare and benefit. In addition, Article 17 specifies that State Parties shall ensure that children have access to information and materials that promote their well-being. There shall be no local or international restrictions to children's access to the materials. For instance, all children should have access to books and the internet containing information on reading, calculating, and comprehending their rights.

Besides that, it is also important to highlight Article 24 (c) and (e) which indirectly deals with climate change issue. Article 24 (c) stipulates that states must ensure children have access to nutritious food and clean water by minimizing environmental contamination risks. While, Article 24 (e) mandates that children have access to hygiene, environmental sanitation, etc. This is vital to ensuring that children are provided with optimal development opportunities. The failure of the

State Parties to provide the child with an appropriate education is viewed as a failure on their part. Considering the current climate change issue, the Working Committee overseeing the CRC and the Member States should consider amending the CRC to include the most recent issue regarding the protection of children's rights during climate change, especially if they are displaced as a result. This is based on the non-discrimination principle outlined in Article 2 of the CRC, derived from earlier adopted human rights treaties, namely the Universal Declaration of Human Rights (UDHR) of 1948 and the International Covenant on Civil and Political Rights (ICCPR) of 1966. The UDHR states that everyone has the right to an education. The term 'everyone' is used to indicate that there will be no discrimination when it comes to education rights. In *Brown v. Board of Education*, the US Supreme Court declared that school discrimination based on race violates the Fourteenth Amendment. Article 2 of the ICCPR states the reiteration of the principle of non-discrimination, while Article 24 stipulates that children's rights must be safeguarded to the highest level possible. The duty of safeguarding children's rights is a shared responsibility that is not assigned solely to the State but to all parties, including society. Lastly, the International Covenant on Economic, Social, and Cultural Rights of 1966 (ICESCR) acknowledges education as a universal right. The Committee on Economic, Social, and Cultural Rights was tasked with monitoring the application of the ICESCR to a specific group of children, including immigrant children.

In furtherance of this, the Convention against Discrimination in Education (CADE) of 1960 defines discrimination as “any distinction, exclusion, limitation, or preference which, being based on race, colour, sex, language, religion, political or other opinions, national or social origin, economic condition, or birth, has the purpose or effect of nullifying or impairing equality of treatment in education.” Article 3 of

CADE provides that States must eliminate all forms of discrimination in education, including admissions to institutions. CADE also mandated that primary education be mandatory and free for all students. Malaysia has yet to ratify CADE, despite the fact that 97 other states have committed to it. The denial of education rights would result in the inaccessibility of “many other human rights.” By granting the most essential right, it is possible to accomplish other human rights.

According to the Refugees Convention, all members must ensure that all refugees, including children, have equal access to education. There shall be no discrimination or practice of double standards. Unfortunately, children displaced by climate change in a foreign country have not been included in the definition of a refugee within the context of the Convention due to the refusal of refugee advocates and States to expand the element of 'persecution' to persons displaced to another foreign country as a result of natural disaster. Article 1 of the CRC defined children as persons who are below the age of 18 years, while Article 1 (a) (2) of the Refugee Convention, defined refugee as, who,

“... owing to a well-founded fear of being persecuted either because of race, religion, nationality, membership of a particular social group, political opinion, are outside the country of nationality or former habitual residence and are unable to or unwilling to avail themselves to the protection of the country of nationality or unable to or unwilling to return to his country of residence”.

This definition under the Refugees Convention is inadequate because it is too narrow and rigid to deal with the problems posed and the massive influxes of people fleeing to neighbouring countries due to a combination of war, political stability, internal civil strife, economic turmoil, and natural disasters. As a result, many refugees are not eligible for protection under it.

Therefore, it should be expanded to include more protection issues related to environmental threats such as droughts, flooding, etc., and economic hardships. Moreover, the definition is exclusive and discriminatory in that a refugee, even a child, must be located outside his or her country of origin to be acknowledged as a refugee. For a child to qualify as a stateless refugee, he or she must reside outside of his or her country of habitual residence and be unable or unwilling to return to the country of origin or to seek internal protection due to a well-founded fear of persecution or the reasons specifically mentioned. Climate change is not deemed to be a prosecutable reason. However, within the context of Malaysian law, the term refugee does not refer exclusively to those who meet the technical definition of the Refugees Convention. It consists of refugees who fled their country of origin for reasons not enumerated in the Refugee Convention, such as natural disasters and general violence (Supaat, 2014; Arboleda, 1991).

The United Nations Framework Convention on Climate Change (UNFCCC) is a legally binding international instrument that addresses the issue of climate change, and Malaysia is one of the countries that has ratified it. However, the UNFCCC's scope has yet to include the discussion of human rights issues during climate change, particularly the issue of climate-related displacement. The UNFCCC focuses primarily on the actions that Member States must take to combat climate change, such as reducing carbon emissions, etc. It is also observed that it would be pertinent and necessary for the Member States and the Working Committee to revisit the UNFCCC's provisions to include the issue of climate-related displacement, particularly for children's rights.

The UN developed a “*shared blueprint for peace and prosperity for people and the planet, now and into the future*” in 2015, known as the Sustainable Development Goals 2030 (SDG 2030),

which contains 17 goals. The education issue is outlined in Goal 4, which has ten education-related initiatives. These goals, among others, require States to take immediate action to ensure that quality primary education is free and accessible by 2030. This motion parallels the provisions under the CADE and CRC treaties, with the word “quality” added. It demonstrates that primary education should be provided and “quality primary education” must be guaranteed. In addition, Target 4.5 requires the State to eliminate all forms of discrimination in education and ensure that education is accessible to all without any obstacles. Action to construct and enhance educational facilities and increase qualified educators through international cooperation must be taken immediately. Notably, the climate change issue has been most emphasized under Goal 13 of the SDG 2030, which discusses the actions that States must take to combat and mitigate the effects of climate change. The section of Target 13.3 that is most relevant to the issue of children and climate change is a plea for States to raise awareness of climate change and its effects through education. On top of that, Target 13.3 encourages States to integrate climate change measures into their laws and policies. Although international treaties specify that children have the right to education, implementation of this mandate in less-developed nations has yet to reach a satisfactory level.

Based on the aforementioned findings, it is clear that international laws and policies guarantee the right to education for all children, regardless of their status or origin. Although the Refugees Convention does not include those displaced by climate change in its definition of refugee, other international instruments have clarified that education is a right guaranteed without discrimination to all children. Therefore, the question of climate-displaced children's rights to education is irrelevant. Importantly, in 2015, all UN Member States unanimously adopted SDG 2030, including Malaysia.

Although it is not legally binding, it reflects the moral obligation of a nation to take the necessary steps within 15 years to affirm, among other things, the right to education for all children without discrimination. This may entail taking all necessary steps, such as ratifying the relevant obligations under international treaties to provide education to all children without discrimination and removing any reservations made against the relevant treaties. Thus, Malaysia must strengthen its policies and laws that honour the rights to education of children displaced by climate change. The neglect of Malaysia's commitments at the UN level would tarnish the country's reputation if the necessary actions were not taken to fulfil moral obligations.

2. Malaysian Law and Position

Education is a fundamental human right, as reflected in the case *Brown v. Board of Education of Topeka* (supra), in which Justice Warren stated that denying this right could reasonably prevent a child from achieving success. Although the right to education for children, irrespective of their status, has been consistently emphasized around the globe, some children such as displaced children, continue to be denied their rights. This includes in Malaysia. Even though climate change has not displaced children in Malaysia, the country hosts thousands of refugee children. According to the United Nations High Commissioner for Refugees (UNHCR), the number of children under 18 in Malaysia increased by more than 9000 in less than three years, from 33,640 in 2016 to 42,750 in 2018. War and human rights violations compelled these refugees, particularly children, to flee their homeland. Regardless of their status, however, Malaysian law does not affect refugees' and other exiled children's right to formal education. Thus, although the term refugees are used when discussing the context of applicable domestic laws concerning the rights to formal education in Malaysia, it

should also include children displaced by climate change.

The Federal Constitution (FC), the Education Act of 1996 (Act 550), and the Child Act of 2001 (Act 611) govern education for children in Malaysia. These statutes recognize and guarantee the right of children to obtain formal education within the Malaysian education system. The FC expressly protects individuals' fundamental rights. Article 12 of the FC protects the right to education as one of the guarantees of such rights. Article 12 (1) states,

“... (1) “...without prejudice to the generality of Article 8, there shall be no discrimination against any citizen on the grounds only of religion, race, descent or place of birth—(a) in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees’ or (b) in providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside the Federation).”

Article 8 (1) of the FC is of a wider application, and asserts that, “*All persons are equal before the law and entitled to the equal protection of the law*” (*emphasis added*). In contrast, Article 12 (1) expressly declares that “*any citizen*” is the subject of non-discrimination, thereby limiting the generalization of Article 8 (1). Thus, the provision specifies that the right to education is only guaranteed to Malaysian citizens. Consequently, with this statement, such rights to education do not apply to non-Malaysian citizens, including refugee children. The FC is the supreme law in Malaysia, and so any law that conflicts with it is null and void, and any Malaysian legislations must be read in light of the articles provided in the FC. This explains why the preamble of the Malaysian Education Act of 1966 restricts education's purpose to Malaysian society. The Act's

preamble states that education aims to equip Malaysian society with the knowledge, skills, and values necessary in a highly competitive and globalised world due to the rapid development of science, technology, and information. The Act's preamble further highlights the National Education Policy that prescribe education in Malaysia as an ongoing effort to produce *Malaysian citizens* who are knowledgeable and competent. Therefore, in accordance with the ethos enshrined in Article 12 (1) of the FC declaring “*any citizen*” as the subject of non-discrimination, and the Malaysian Education Act of 1966's preamble further highlighting ‘*Malaysian citizens*’ it is safe to presume that the Act is narrowed down and limited in its scope to only applying to those who hold Malaysian citizenship. Thus, the offspring of noncitizens and exiles are exempt from the application of the Act (Federal Constitution).

The Child Act 2001 is the primary statute that regulates child-related affairs in Malaysia. In response to the ratification of the CRC, the government of Malaysia enacted this Act, which aims, among other things, to align Malaysia's child-related laws with CRC's criteria as well as international norms and practices. The Act complies with the CRC's standards by incorporating fundamental principles such as non-discrimination, children's best interests, the right to life, survival, and development, and respect for the child's point of view. These concepts have been integrated into various provisions, including children's welfare, interest, protection, guardianship, and welfare. However, a close examination of the Act reveals no provisions that specify and demonstrate children's right to education, except for children who have been charged and sentenced for perpetrating crimes. The absence of a specific provision on children's right to education in the Act is deeply regrettable, given that it is the primary Act addressing child-related issues. The preamble of the Act acknowledges that “*every child is entitled to protection and assistance in all circumstances without*

regard to any distinction, such as race, colour, sex, language, religion, social origin or physical, mental or emotional disabilities or any other status,” did not adequately address the issue of children's access to general education, except for rehabilitation purposes.

The Malaysian government still needs to ratify international instruments such as the Refugee Convention, CADE, ICCPR, and ICESCR to reflect our legal obligations. It is essential to remember that international treaties become legally binding only after ratification. Although Malaysia is a signatory to the CRC, it has not protected the right of all children to be treated equally. As Malaysia has not yet ratified the Refugee Convention, the Immigration Act of 1959/1963 (Act 155) does not differentiate between refugees, asylum-seekers, and undocumented migrants. As a result, everyone is regarded the same. Section 6 (1) of the Act states that,

“...no person other than a citizen shall enter Malaysia unless he possesses a valid entry permit to enter the country, and any person who has acted in violation of this provision shall be guilty of an offense and subject to a fine and/or imprisonment.”

In this regard, the country lacks a legal and administrative framework to safeguard refugees and asylum-seekers within its borders, denying them access to fundamental rights such as freedom of movement, legal employment, formal education, and affordable healthcare.

In Malaysia, refugee and stateless children have few educational opportunities, as only Malaysian citizens can access free primary education. For these vulnerable children, the likelihood of restricted freedom of movement, arbitrary deportations, social exclusion, susceptibility to trafficking, exploitation, exposure to criminality, juvenile delinquency, substance abuse, and even terrorism rises. Due to the denial of education, their potential will be

diminished. As a result of unemployment and the absence of economic opportunities, they frequently continue to live in poverty. Due to the denial of the right to formal education, the only way for these children to access education is through informal means, known as Alternative Learning Centres (ALCs), which present numerous obstacles, particularly financial ones. Malaysia has not yet recognized ALCs as a means of expanding the formal education system, making non-governmental organizations (NGOs) roles vital in providing them with informal education. In addition, the ALCs only provide primary and secondary education, making higher education a frequent impossibility. Most teachers in these learning centres come from refugee communities, with regular assistance from local and international volunteers. It is typically administered in apartments containing 60 to 100 children. Aside from that, most facilities are only located in specific places. The Humana Learning Centre, Stairway to Hope Learning Centre, Vision of Hope Learning Centre, Stairways to Success Learning Centre, and 'Persatuan Kanak-Kanak Pelajar Miskin,' are among ALCs which offer these vulnerable children at least a glimmer of hope if not a complete solution to the problem.

In an effort to comply with the United Nations Educational, Scientific, and Cultural Organisation's (UNESCO) concept of Education for All, Malaysia's Ministry of Education (MOE) introduced a Compulsory Education Policy and circular, including Professional Circulars Entry 1/2009 of Malaysian Citizens' Children Without Documents, dated 11 March 2009. This circular allows undocumented children with at least one Malaysian citizen parent to enrol in public institutions or schools receiving government aid. A letter from the Head of the Village attesting that the child is a Malaysian must also be submitted along with the school application. Access is only granted if the guardian can provide proof of the parent's

citizenship, leaving abandoned stateless children, stateless children of irregular migrants, and stateless refugees in purgatory indefinitely. The Malaysian Education Ministry then implemented the Zero Reject Policy in 2019, guaranteeing education access for children with special needs and undocumented children. However, undocumented children can only enrol in public schools with evidence of at least one Malaysian guardian and specific procedures to follow. However, when the new administration took over the office in early 2020, this policy was discontinued for various reasons.

In a nutshell, improving the education rights of all children in this country is necessary. One of the practical steps that can be taken is to remove or withdraw the reservation to Article 28 (1) (a) of the CRC, to guarantee free access to compulsory primary schooling. Other measures include ratification of specific treaties and enacting specific legal frameworks to cover, all children including refugees and climate-displaced children.

LEGAL PROTECTION IN THAILAND AND UNITED KINGDOM

In the Southeast Asian region, Thailand has very clear implementation rights for the education of stateless children, particularly refugees. All children in Thailand have the right to education, regardless of their legal status. Thailand has signed the CRC, where they are obliged to provide facilities and fulfil the children's needs and their social welfare. This resulted in their government providing education for all children despite their nationality, which is imposed by the UN. The government has formulated and implemented a number of progressive policies. In 2005, the Royal Thai Government Cabinet Resolution for Unregistered Persons led to the availability of rights to education at all levels for children with a lack of legal status in Thailand (Thai National Commission for UNESCO, 2014).

Education programmes are open to stateless children at every level in public and private institutions, with the issuance of academic credentials upon completion. Furthermore, Section 10 of the National Education Act 1999 stated that primary education for stateless children in Thailand was also said to be compulsory, free, and universal. Apart from that, the Constitution of the Kingdom of Thailand of 1997 also stated that all children have the right to twelve years of free, quality primary education, with the first nine years being compulsory as provided by the State thoroughly, up to the quality, and without charge. Unlike Malaysia, these inclusive frameworks and legislation demonstrate the strong commitment of Thailand's government to adhere to the spirit of the CRC, especially in light of the absence of any significant reservations to the CRC.

Regarding the rights of refugee children, the United Kingdom's (UK) legal framework is substantially more significant than that of Malaysia. The UK ratified the European Convention on Human Rights and incorporated Article 2 of the Convention's First Protocol into its 1998 Human Rights Act, establishing the right to education. It includes the right to compulsory education and adequate healthcare, which is applicable throughout the UK and ensures everyone has the right to education. The Children Act 1989 and the Children Act 2004 of the United Kingdom grant refugee and migrant children the same rights as British citizens, including the right to compulsory education and adequate healthcare. Several UK statutes, such as the Education Act 1996 (England and Wales) and the Education Act 1980 (Scotland), have also codified education-related laws. Section 1 (1) of the 1980 Act states that education authorities are responsible for ensuring adequate and efficient provision of school education and further education in their jurisdiction. In addition, Section 13 (1) of the 1966 Act of 1996 states that a local education authority must ensure that the children within its population area receive an adequate primary

education that contributes to their spiritual, moral, intellectual, and physical development. In its domestic legislation, the UK has provided a legal right to education for 'all children,' which implicitly includes undocumented children.

Although the legal framework guarantees the right to education, there are obstacles for refugee children to access education. This includes the requirement to present identification upon application for school admission, the level of discretion enjoyed by schools at the local level, the migrant parents' fear of detection and possible deportation, problems with extracurricular expenses, language barriers, the lack of recognition for the children's education completion, and precarious living conditions. Despite the importance of a child's best interests, the government's need to control its immigration policy must also be taken into account, which may compromise these children's rights. Nonetheless, compared to Malaysia, British law is more advanced in guaranteeing the right to education and other child welfare-related issues.

RECOMMENDATION AND CONCLUSION

Children are compelled to traverse international borders due to climate change and other natural disasters. They may experience adverse effects on their health, sanitation, shelter, and education. Due to their displacement, they are deprived of their educational rights, which is one of its main effects. If this is not addressed, it will affect the children's future. The UN should issue an urgent call to all State Parties to immediately begin safeguarding the rights of climate-displaced children by evaluating the implementation of related laws and policies at the domestic level. In accordance with their obligation to respect, protect, and fulfil children's human rights under the CRC, in particular the child's right to education, all States Parties must adopt a child rights-based

approach, not only in their response to the crisis but also in the development of law and policy generally. Displaced children should have access to formal education in accordance with their rights, to the greatest extent practicable, in local educational institutions. Article 28 of the CRC should be adhered to strictly. This article requires States Parties to provide children with an education. In addition to that, the CRC must establish a specific legal mechanism to monitor all party states' provision of education to all children. All nations should make formal education a requirement. If the displaced children are entrusted with the government's care, it must guarantee, with very few exceptions, that they have access to the community's educational facilities. When displaced children participate in educational programmes, their education should be recognised by the general education system. The authorities should develop programmes and services to guarantee that every child has equal access to an education of sufficient quality. States Parties must also enact laws prohibiting violence and discrimination against displaced children acquiring an education.

The UN should provide security and financial aid to countries hosting climate-displaced children, as their right to education should not be abandoned. The UN is responsible for providing legal advice, guidance, and support to the international community to develop enhanced protection for children displaced due to natural disasters and climate change and to stimulate international discussions on their right to education. Principle 23 of the Guiding Principles on Internal Displacement stipulates that displaced children have the right to compulsory primary education. Therefore, all nations should pay close attention to and adopt the Guiding Principles, which provide a basis for protection and assistance during internal displacement in accordance with international human rights and humanitarian law. In addition, this principle should be extended to include

international movement. All states are urged to ratify the fundamental international human rights instruments, including the right of all children to an education regardless of their legal status. Through ratification, it undertakes the legal obligation to implement these rights. States also need to commit to submitting periodic reports to the monitoring committee established by the treaties regarding the execution of the rights.

The Malaysian Government also plays a significant role in formulating the law and national policy to address the current impacts on the educational rights of climate-displaced children and the potential dangers of future impacts. The government should guarantee equity and equality in education so that all children, documented or undocumented, can access fair and just educational opportunities. In Malaysia, all children must be required to enrol in education. This is inscribed in Article 12 of the Federal Constitution, which grants all citizens the right to an education. This privilege does not, however, extend to non-citizens. This provision creates the potential for discrimination against undocumented children regarding their right to education, causing them to stay caught up. Article 12 of the Federal Constitution is suggested to be amended to include all children, regardless of their legal status, including climate-displaced children. The word 'citizen' should be removed from Article 12, as it restricts educational access for all Malaysian students without documentation.

Section 29A (2) of the Education Act of 1996 emphasizes that primary education is mandatory and imposes on parents to ensure that their child attends primary school or faces criminal penalties. However, the provision reference to 'parents' is limited to Malaysian citizens, demonstrating that domestic law precludes the right to education for non-citizen and undocumented children, including climate-displaced children. The government of Malaysia should re-examine the legal provision mandating the right to

education for all children without discrimination. Even though the National Education Policy stated that all children aged six to twelve, including non-citizens, were required to attend primary school, many were still denied education. Therefore, effective policy implementation and dissemination are essential if the National Education Policy's ambitious objectives are to be achieved. Malaysia's efforts to realize and protect children's rights include implementing the Child Act of 2001. The legislation was enacted in accordance with the CRC's principles to protect the welfare of minors in Malaysia. Although the preamble of this act intends to protect children without discrimination, it does not sufficiently address children's access to general education. Therefore, the necessary amendment is required to protect children's access to education regardless of their legal status, as all children have a right to education.

The government should revise the enrolment guidelines and procedures for undocumented children attending public institutions especially the Professional Circulars Entry 1/2009 and Education Circular 3/2018 on Admission to School for Non-Citizen Children, dated 15 January 2018, as these two circulars, denied enrolment of undocumented children in Malaysia. The Ministry of Education is urged to replace these two circulars with new circular, which will provide formal education opportunities in the country for undocumented children, including those displaced by climate change. In addition, the government is strongly encouraged to ratify the Refugees Convention to ensure that all refugee children including those displaced by climate change to have equal access to their fundamental rights, particularly right to education. A distinct legal framework should be distinguished for refugees, irregular migrants, and asylum-seekers so that these groups can be treated according to their respective status and rights. Aside from that, it is necessary to amend laws such as the

Immigration Act 1959/1963 (Act 155) to acknowledge the legal status of refugees and asylum-seekers. All refugees and asylum-seekers are required to register under a federal system. As a result, the new registration process would reduce the number of refugee and asylum-seeker arrests, as law enforcement officers could swiftly validate their identities. This will also aid in reducing the number of undocumented immigrants who enter the country as refugees and asylum-seekers, including climate-displaced children. It is necessary to recognise the rights of refugees and asylum-seekers to safeguard their rights to survival, healthcare, and education.

The government should support and collaborate with the NGOs offering quality education for children by providing funding and facilities for learning centres so that the learning process can reach the same standard as in government schools. It will also ensure that ALCs improve and maintain the quality of their teaching and learning, increase the confidence of sponsors, and generate additional funds. The government and NGOs should also work hand in hand to educate the public about the significance of school for every child and the necessity of the right to education, particularly for children from vulnerable groups. This vulnerable group of children typically experiences feelings of humiliation, low self-esteem, and hopelessness in anticipation of receiving discriminatory treatment. The social stigma endured by them may be alleviated by campaigns that enlighten the public about the right of all children to an education. Lastly, parents of children displaced by climate change should investigate government educational policies and programs for their children's education. If Malaysia must prepare to ratify or amend existing laws, the government should establish a policy providing flexible access to undocumented children's educational rights. This measure should be taken for humanitarian reasons, as demonstrated by Malaysia's decision to join the United Nations in 1957.

Climate change is a global phenomenon that endangers human health, destabilizes environments, and may influence migration decisions. Due to their physical, psychological, and emotional immaturity, children are more susceptible to the perils of displacement than adults. Significant numbers of children displaced by climate change continue to encounter educational obstacles. Despite international and national recognition of the right to education, not all children have access to education. The article concludes that the state is responsible for providing basic education to all students, regardless of their legal status. It is hoped that the findings of this study will encourage the Malaysian government to amend existing laws and policies that will be able to protect the educational rights of climate-displaced children like in Thailand and the UK. It is envisioned that Malaysia's action will serve as a model in the future for states that still need to accept displaced children.

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CONFLICT OF INTEREST

The authors declare that they have no conflict of interest in this study.

AUTHORS' CONTRIBUTION

All authors contributed to the final version and approved the submission.

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