



**British Institute of
International and
Comparative Law**



PEIC

PROTECT EDUCATION IN INSECURITY AND CONFLICT
حماية التعليم في ظروف النزاع وانعدام الأمن

Protecting Education in Insecurity and Armed Conflict

New Developments 2015

"When you have schools that are destroyed, it is not just about today; it's about the future".¹

Leila Zerrougui

Special Representative of the Secretary-General (SRSG)
for Children and Armed Conflict

An International Law Handbook

The British Institute of International and Comparative Law (BIICL) and Protect Education in Insecurity and Conflict (PEIC) published *Protecting Education in Insecurity and Armed Conflict: An International Law Handbook* (Handbook) in 2012.¹ This Handbook focuses on the ways international human rights law (IHRL), international humanitarian law (IHL) and international criminal law (ICL) protect education in times of insecurity and armed conflict. In those situations, education, students and education staff, as well as educational facilities, are often the objects of attacks, which amount to violations of international law, defined in the Handbook as 'education-related violations'.² The Handbook analyses in detail the way the three regimes operate and protect education, an analysis which can be applied to every situation in which education is attacked, whether in times of insecurity or armed conflict. The Handbook defines insecurity as situations of disturbance or tension that disrupt the functioning of governmental institutions but that do not reach the threshold of armed conflict.³ The use of certain weapons, such as armed drones, can instill fear in communities where they operate and thus contribute to establish a context of insecurity.⁴

As explained in the Handbook, IHRL protects the rights of individuals, including their right to education and other human rights that enable them to exercise their right to education. Almost all States have ratified international or regional treaties containing the right to education, which means that they must ensure that this right is respected,

¹ The Handbook and its Summary can both be downloaded at:

<http://www.biicl.org/research/education/>

<http://www.educationandconflict.org>

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² See Handbook, 1.3.2., where it says that the term 'education-related violation' refers to the legal consequences of an attack on education, which may amount to a violation of international human rights law, international humanitarian law and/or international criminal law.

³ See Handbook, 1.3.3.

⁴ See, for example, the Depute High Commissioner in 'Armed drones: calls for greater transparency and accountability', UN OHCHR, 20 October 2014, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/ArmedDrones.aspx>

protected and fulfilled with regard to all individuals over whom they have jurisdiction. These human rights obligations apply in all contexts, even in times of armed conflict.⁵ As soon as a conflict reaches the threshold of 'armed conflict', international humanitarian norms apply as well as IHRL. Students and education staff should not be targeted as long as they do not take an active part in the armed conflict because of their civilian status, a key principle of IHL. Similarly, civilian objects, such as schools, cannot be a legitimate military target, unless their uses have been changed to support the military effort. Therefore, while human rights may be violated by a State in situations of insecurity, such as in parts of Pakistan, both human rights and humanitarian norms may be violated during armed conflict, such as in Iraq or Syria. Furthermore, while States are the entities that can be held responsible for human rights violations, including those committed by non-state actors which can be attributed to the State, the key humanitarian norms must be respected by both States and non-State actors in armed conflict. In addition, ICL provides for individual criminal responsibility, which allows the prosecution of individuals who have committed international crimes, such as war crimes or crimes against humanity, by courts that have jurisdiction over such individuals. International crimes may include the unlawful killing or torture of students or their enforced disappearances. The deliberate targeting of schools may also amount to an international war crime or a crime against humanity.⁶

In order to complement the analysis of the Handbook, PEIC commissioned two additional research studies: *Education and the Law of Reparations in Insecurity and Armed Conflict* and *United Nations Human Rights Mechanisms and the Right to Education in Insecurity and Armed Conflict*.⁷

Handbook Update 2015

This Update is the third, following the 2013 and 2014 Updates.⁸ In 2015, education-related violations have continued to be perpetrated in situations of insecurity

⁵ Note that reservations and derogations can place limitations on the State's legal obligation to protect human rights under treaties: see Handbook at 2.2.2.

⁶ For more on the general application of international human rights law, international humanitarian law and international criminal law, see Chapter 2 of the Handbook. For an explanation of how attacking educational facilities may amount to a war crime or a crime against humanity, see the Handbook at 5.3.2. and 5.3.3.

⁷ *Education and the Law of Reparations in Insecurity and Armed Conflict* was prepared by BIICL and *United Nations Human Rights Mechanisms and the Right to Education in Insecurity and Armed Conflict* was prepared by the Geneva Academy of International Humanitarian Law and Human Rights. Both were published in 2013 and can be downloaded at: <http://educationandconflict.org/publications>

⁸ All are available on <http://www.biicl.org/protectingeducation>

throughout the world.⁹ On 2 April 2015, 147 individuals were killed and at least 79 injured in the attack at Garissa University College, Kenya, conducted by Al-Shabaab militants. Following this attack, Christian teachers walked out, fearing similar attacks, which led to the closure of numerous schools in the region. In June 2015, a school was attacked by a grenade in Bujumbura, the capital of Burundi, leading to the injury of a young boy. In Honduras, four student leaders were killed in March 2015, as they participated in protests against the lack of teaching resources in schools.

Education-related violations have also continued to be perpetrated in armed conflict situations.¹⁰ For example, in South Sudan, at least 89 children, some as young as 13, were abducted in February 2015 in Malakal by an armed group, while they were doing exams. It is also reported that armed soldiers searched the community and took boys over 12 years of age by force.¹¹ In Yemen, an attack on a teachers' office left 13 educators and 4 children dead in August 2015. It has been reported that nearly 400 Yemeni schools have already been damaged, with 95 completely destroyed by airstrikes or shelling, including by the Saudi-led coalition's airstrikes.¹² A further 663 schools have been reported unusable, because they were used to house internally displaced persons or were occupied by armed groups. A total of 3,600 schools were shut between June - August 2015, resulting in the interruption of over 1.8 million Yemeni children's education.¹³

Following numerous attacks against schools and the abduction of 276 schoolgirls in Nigeria in 2014,¹⁴ Boko Haram – which pledged allegiance to the Islamic State of Iraq and the Levant (ISIS)¹⁵ – has continued to conduct its insurgency in the region and schools have now been closed in the Borno State for over a year.¹⁶ According to the National President of the Nigeria Union of Teachers, more than 600 Nigerian teachers have been allegedly killed by Boko Haram militants and 19,000 teachers have been

⁹ For the definition of 'insecurity', see above and Handbook at 1.3.3.

¹⁰ For the definition of armed conflict, see Handbook at 1.3.3.

¹¹ Sean Coughlan, 'South Sudan's struggle for schools hit by abductions' (BBC News, 25 February 2015), at: <http://www.bbc.co.uk/news/business-31587963>; UNICEF, 'UNICEF condemns new child abductions by armed group in South Sudan' (UNICEF, 21 February 2015), at: http://www.unicef.org/media/media_80205.html

¹² For protection of students, teachers and educational facilities in armed conflict, see, in particular, the Handbook at 4.2 (4.2.4. and 4.2.9. in particular) and 5.2.

¹³ Education International, 'Yemen: Teachers and children killed in attack' (21 August 2015), at: http://www.ei-ie.org/en/news/news_details/3679

¹⁴ 200 of those girls are still missing.

¹⁵ 'Nigeria's Boko Haram pledges allegiance to Islamic State' (BBC News, 7 March 2015), at: <http://www.bbc.co.uk/news/world-africa-31784538>

¹⁶ A school was also attacked in northeast Yobe state in May 2015, seriously injuring 12 individuals.

displaced in the past six years.¹⁷ A total of approximately 1,100 schools were destroyed by Boko Haram in 2015.¹⁸

The ongoing conflict in Syria continues to generate education-related violations.¹⁹ In April 2015, three teachers and five Syrian children were killed in an airstrike on a school in Aleppo which forced 700 children to be evacuated, and, in May, a teacher was killed and 23 students injured in Damascus because of a mortar attack. The local authorities in Aleppo were forced to close all the city's schools in May 2015, due to an increase in airstrikes, which prevented thousands of children from undertaking their end of year exams.²⁰ In Iraq, it has been reported that over 1,500 schools have been damaged or entirely destroyed allegedly as a result of direct attacks conducted by ISIS throughout 2014 and 2015.²¹

In July 2015, a Pakistani primary school for boys was allegedly blown up by militants in Nawagai Tehsil, on the border with Afghanistan.²² Also on the border, gunmen attacked a school in May 2015, killing at least one person and several others.²³ In Afghanistan, a rocket hit a school in the East, killing a teacher and two students at the end of May 2015; on the same month, at least 18 schools were closed due to fears of further attacks.²⁴ In August 2015, over 300 girls were admitted to hospitals which were

¹⁷ Morgan Winsor, 'Boko Haram Has Killed 600 Nigerian Teachers, Displaced 19,000: Teachers Union' (IBT, 6 October 2015), at: <http://www.ibtimes.com/boko-haram-has-killed-600-nigerian-teachers-displaced-19000-teachers-union-2128622>; this was also reported by A World at School, at: <http://www.aworldatschool.org/news/entry/600-Nigerian-teachers-killed-by-Boko-Haram-says-union-2352>

For information about the mobile classroom set up in the area, see:

<http://www.premiumtimesng.com/news/more-news/191023-nigeria-launches-mobile-schools-for-displaced-boko-haram-victims.html>

¹⁸ 'Boko Haram destroyed more than 1,000 schools this year, UN says' (Al Jazeera, 16 November 2015): <http://america.aljazeera.com/articles/2015/11/16/boko-haram-destroyed-more-than-1000-schools-this-year-un.html>

¹⁹ Save the Children reports that at least 3,465 schools in Syria have been partially or completely destroyed since the armed conflict began in 2011, see Save the Children, 'Education Under Attack in Syria' (September 2015), at: https://www.savethechildren.net/sites/default/files/RSYR-SYR-cf-12_EducationUnderAttack_Sept2015.pdf

²⁰ Ibid., p. 5.

²¹ Eid Ammash, spokesman for the provincial council of Anbar, talking to the AFP, see '1,500 schools damaged or destroyed in Iraq's Anbar' (AFP, 3 August 2015), at: <http://reliefweb.int/report/iraq/1500-schools-damaged-or-destroyed-iraqs-anbar>

²² Mureeb Mohmand, 'Militants blow up another school in Bajaur Agency' (The Express Tribune, 5 July 2015), at: <http://tribune.com.pk/story/915350/school-destroyed-in-bajaur-agency/>

²³ 'Pakistan school attack 'leaves one dead'' (BBC News, 6 May 2015), at: <http://www.bbc.co.uk/news/world-asia-32614057>

²⁴ 'Rocket hits school in eastern Afghanistan, killing three' (Reuters, 31 May 2015), at: <http://www.trust.org/item/20150531111820-hs236>

poisoned from suspected Taliban poison gas attacks in the city of Herat.²⁵ By September 2015, it was reported that ISIS closed down 57 schools in Afghanistan's eastern province of Nangarhar.²⁶ In total, approximately 210 schools were closed in Afghanistan due to conflict, with girls – up to 20,500 of them – being the most severely affected. 17,000 of these female students were directly threatened by armed opposition groups, while at least 13,000 no longer attend school due to threats and closures.²⁷

In addition, situations of insecurity and armed conflict generally lead to a rise of internally displaced persons and refugees, with relocation often generating disruption of education. For example, it is estimated that approximately 708,000 Syrian refugee children are residing in Turkey, more than 400,000 of which are not attending schools.²⁸

As education continues to be attacked daily around the world, it is imperative that intensified attention is paid to the protection of education in times of insecurity and armed conflict by a range of actors globally, including the legal community. This Update, the third since the publication of the Handbook in 2012, is an example of such attention from the legal community.²⁹ Its purpose is to provide detail and accompanying analysis of any legal developments of international law in the year 2015. In so doing, two critical points are noted:

- There is in place a large body of international law pertinent to the right to, and protection of, education; although the international normative framework contains some protective gaps and weaknesses, it is nonetheless strong.
- As a consequence, notable relevant 'legal' developments since the publication of the Handbook have tended to focus on attempts to increase implementation of the international normative legal framework, rather than amending this framework.

²⁵ Vasudevan Sridharan, 'Afghanistan: 300 schoolgirls hit by suspected Taliban poison gas attacks in Herat' (IBTimes, 5 September 2015), at: <http://www.rawa.org/temp/runews/2015/09/04/afghanistan-300-schoolgirls-hit-by-suspected-taliban-poison-gas-attacks-in-herat.html>

²⁶ Edwin Mora, 'ISIS forces 57 schools to close in Afghanistan along Pakistan border' (Breitbart, 19 September 2015), at: <http://www.breitbart.com/national-security/2015/09/19/isis-forces-57-schools-close-afghanistan-along-pakistan-border/>

²⁷ Zahihullah Mossakhail, '20,500 Afghan girls out of school due to conflict in 2015' (Khaama Press, 25 November 2015), at: <https://www.khaama.com/mainly-due-to-conflict-210-schools-closed-across-afghanistan-4346>

²⁸ Human Rights Watch, 'When I Picture my Future, I See Nothing' (2015), at: <https://www.hrw.org/report/2015/11/08/when-i-picture-my-future-i-see-nothing/barriers-education-syrian-refugee-children>

²⁹ The 2013 and 2014 Updates are available at: <http://www.biicl.org/protectingeducation>

These two points determine the content of this Update, which comprises primarily non-binding instruments adopted at the international and regional levels. It follows the structure of the Handbook by presenting developments related to the protection of education itself, those pertaining to the protection of students and education staff, and then those relating to the protection of educational facilities. It concludes with a section on the remedies for education-related violations, as well as a summary of some of the relevant case law at the international level.

1. PROTECTION OF EDUCATION

Education is protected by international law, including through the human right to education, which is enshrined in several international and regional treaties, providing obligations on their State parties.³⁰ As analysed in the Handbook, the international legal framework protecting education in insecurity and armed conflict covers almost all forms of attacks on education. However, despite a profusion of international norms protecting education, the Handbook identified gaps with regard to the implementation and enforcement of these international legal obligations. In order to improve their implementation, some documents, such as Security Council resolutions and Human Rights Council reports, were published in 2015, encouraging States to strengthen their implementation of the existing legal framework protecting education in insecurity and armed conflict. Thus, this section presents some of those key developments, predominantly those adopted by UN bodies, which are applicable to States, before noting some relevant developments which concern specifically non-State actors.

Security Council

In June 2015, the Security Council adopted a resolution on Children in Armed Conflict in which it acknowledges that progress has been made on protecting children in armed conflict and welcomed the progress stemming from the “Children, Not Soldiers” campaign, but nevertheless remains concerned over the lack of progress in certain situations. It invited the Special Representative of the Secretary-General for Children and Armed Conflict to provide updates on the campaign and on the progress of adopting and implementing action plans and commitments by non-State armed groups. The Security Council also recalled that all parties to armed conflict (including non-State armed groups) must comply with related obligations, including those contained in the

³⁰ Handbook, Chapter 3.

Conventions on the Rights of the Child and the relevant Optional Protocol, as well as the Geneva Conventions and their Additional Protocols.³¹

In the Report of the Security Council mission to the Central African Republic, Ethiopia and Burundi, including the African Union, education was listed amongst the main challenges facing the Central African Republic and Burundi.³²

UN Human Rights Bodies

On 1 July 2015, the Human Rights Council adopted a resolution on the right to education in which it identified certain measures which it urges States to take to give full effect to the right to education. This includes the implementation of a regulatory framework guided by international human rights obligations for education providers which incorporates minimum standards for educational institutions, expanding educational opportunities particularly for marginalised children and strengthening access to appropriate remedies and reparations for victims of violations of the right to education.³³

The Special Rapporteur on the Right to Education has identified that privatization of education can have negative effects on this right. Low-cost private schools can exacerbate inequities which, in turn, heightens instabilities and violence; it is also harder to ensure that the provision of private education complies with provided by each State. On the other hand, successful private schools risk creating a 'two-speed' education system and often, due to States' reliance on them, leads to a violation of the obligation to provide free basic education.³⁴

The Incheon Declaration and the Sustainable Development Goals

On 21 May 2015, the World Education Forum adopted the Declaration on the Future of Education (the 'Incheon Declaration'), as well as the Education 2030 Framework for Action. These provide guidance to governments on legal and policy frameworks for education, based on the principles of accountability, transparency and participatory

³¹ UN Security Council Resolution 2225 (18 June 2015) UN Doc S/Res/2225.

³² Report of the Security Council mission to the Central African Republic, Ethiopia and Burundi, including the African Union (30 June 2015) UN Doc. S/2015/503, paras 23, 44.

³³ Human Rights Council, 'The right to education' (1 July 2015) UN Doc. A/HRC/29/L.14/Rev.1, para 2.

³⁴ Kishore Singh, 'Report of the Special Rapporteur on the right to education' (10 June 2015) UN Doc. A/HRC/29/30, paras 70-72.

governance.³⁵ The Incheon Declaration extends and reiterates some of the provisions already contained in international human rights treaties, such as the obligation to provide free and compulsory education.³⁶ The Education 2030 Framework for Action also recognises the importance of regional coordination and monitoring and evaluation. It calls on States that do not provide inclusive quality education to increase their spending on education. Both the Incheon Declaration and the Education 2030 Framework for Action also call on States to set national spending targets and increase their development assistance funding to low income countries.

The Incheon Declaration supports the Sustainable Development Goals (SDGs), which were adopted at the United Nations in September 2015. The SDGs (2015-2030) replaced the Millennium Development Goals (MDGs), which included universal primary education as one of its goals.³⁷ Goal 4 of the SDGs seeks to “[E]nsure inclusive and equitable quality education and promote life-long learning opportunities for all”. In addition, a number of other goals are also relevant for education, such as Goal 5 on gender equality, and Goal 11, which include, among other issues, the provision of a safe and peaceful environment. Access to justice for all is also noted (Goal 16) and is thus also relevant in the case of education-related violations. These Goals include targets. For example, with regard to Goal 4, one target is that “by 2030, all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes.” With regard to education facilities, it also underlines the need to “build and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all.”

Oslo Summit on Education for Development

During the above July 2015 summit, where the challenges raised by the Incheon Declaration were recognised, it was unambiguously stated that education is a human right which is also “a catalyst for job creation, economic growth, healthier lives and

³⁵ The World Education Forum comprises representatives of major organisations involved in education and related activities across the world (UNESCO, World Bank, etc) and representatives from governments and education departments across the world.

³⁶ The Incheon Declaration states that this should at least be provided for nine years.

³⁷ Note that the Special Rapporteur on the Right to Education participated in several meetings regarding the education aspects of the post-2015 Development Goals over the year, including the Global Education Meeting on “Education for All and the Post-2015 Development Agenda,” organized by UNESCO in cooperation with the Sultanate of Oman in Muscat, a Briefing on Post-2015 Development Agenda organized by UNITAR. He advocates a rights-based approach to education within the SDGs, see his report of 9 August 2013 submitted to the UNGA Sixty-eight session, available at:

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/68/294

gender equality” as well as “a prerequisite for sustainable development and poverty eradication”. However, it was mentioned as a matter of concern that the benefits of education are ‘not reflected in investment’. For the SDG 4 to be reached, which “calls for inclusive and equitable quality education and lifelong learning opportunities for all”, the “global financing gap between available domestic resources and the total funding need of USD 39 billion annually” needs to be closed.

Moreover, it was noted that “[t]he number of children and youth out of school due to conflicts [...] is increasing at a chilling speed”. The neglect of their education was deemed to not only undermine their future, but also their societies’ future. It was deemed imperative that “[e]ducation must be protected from armed attack”. In this regard, it recognised as “urgent [...] to mobilise additional resources to close the financing gap of USD 4.8 billion needed to provide children and young people in crisis situations with quality education”.³⁸

In a background paper for the Oslo Summit, it was estimated that a total of 80 million children are currently “directly affected by emergencies and protracted crises and are at risk of education disruption, displacement, drop out, and poor quality, alongside other psychosocial and protection concerns”.³⁹ Annexed to this paper, the Oslo Consolidated Principles for Education in Emergencies and Protracted Crises stated that “[a]ll appropriate measures are taken to fulfil obligations under international law to protect education from attack and ensure schools are safe and secure learning environments; education must also be provided in such a way that it does not exacerbate conflict...[and that] [d]isaster risk reduction, safety and contingency considerations are factored into education sector plans and curriculum, as well as all phases of planning, design, construction and reconstruction of educational facilities in keeping with efforts to ‘build back better’”.⁴⁰

³⁸ The Oslo Declaration – Chair’s Statement, available at:

<https://www.regjeringen.no/globalassets/departementene/ud/dokumenter/oslo-summit-on-education-for-development--chairs-statement.pdf>

³⁹ Susan Nicolai, Sebastien Hine and Joseph Wales, ‘Education in Emergencies and Protracted Crises: Toward A Strengthened Response: Background paper for the Oslo Summit on Education for Development’ (Overseas Development Institute, 2015), at:

https://www.usaid.gov/sites/default/files/documents/1865/Oslo_Education_Emergencies_Protracted_Crises.pdf

⁴⁰ Ibid, Annex 1, Principles 4-5.

Non-State Armed Groups

States' human rights obligation to protect education requires that they protect these rights from the interference of non-State armed groups.⁴¹ When involved in a non-international armed conflict, such groups must also abide by the rules established under international humanitarian law.⁴² Under certain circumstances, when the non-State armed group, under responsible command, exercises control over a territory in a situation of non-international armed conflict, it might be the direct bearer of the duty to provide children with "an education, including religious and moral education, in keeping with the wishes of their parents or, in the absence of parents, of those responsible their care".⁴³

Additionally, a number of non-state armed groups have signed the Geneva Call's Deeds of Commitment, including on protecting children in armed conflict and on prohibiting sexual violence and gender discrimination.⁴⁴ In 2015, the Kuki National Organization from India signed the Deed of Commitment protecting children in armed conflict,⁴⁵ as did the Kurdistan Freedom Party from Iran⁴⁶ and the Sudan's People's Liberation Movement.⁴⁷ Despite the non-legally binding nature of these deeds, their implementation is monitored by Geneva Call, increasing the potential for public accountability in cases of non-compliance with their commitments. Many other groups

⁴¹ See Handbook, pp. 26-30 and 77.

⁴² See Handbook, pp 43-44.

⁴³ Art. 4(3)(a) Additional Protocol II to the Geneva Conventions of 1949 (1977); Handbook, pp. 106-107; ICRC CIHL Study, Rule 150; PEIC, 'Report: PEIC/Geneva Call Workshop on Education and Armed Non-State Actors: Towards a Comprehensive Agenda' (23-25 June 2015), p 5, at: http://educationandconflict.org/sites/default/files/publication/Geneva_Call_Paper.pdf; see also PEIC and Geneva Academy, 'United Nations Human Rights Mechanisms and the Right to Education in Insecurity and Armed Conflict', pp. 93-105, at: <http://www.geneva-academy.ch/docs/reports/Protection%20of%20Education%20and%20UN%20Human%20Rights%20Mechanisms.pdf>; K. Fortin, 'Universal Declaration by Polisario under API Accepted by Swiss Federal Council', at: <http://armedgroups-internationallaw.org/2015/09/02/unilateral-declaration-by-polisario-under-api-accepted-by-swiss-federal-council/>

⁴⁴ The Deed of Commitment protecting children in armed conflict specifically provide for concrete measures to be taken in order to ensure that children have access to education (Article 7(i)).

⁴⁵ See their Deed of Commitment at: http://www.genevacall.org/wp-content/uploads/dlm_uploads/2015/07/2015-30June-SPLMN-Sudan-Children.pdf

⁴⁶ See their Deed of Commitment at: http://www.genevacall.org/wp-content/uploads/dlm_uploads/2015/07/2015-28June-PAK-Iran-children.pdf

⁴⁷ See their Deed of Commitment at: http://www.genevacall.org/wp-content/uploads/dlm_uploads/2015/07/2015-30June-SPLMN-Sudan-Children.pdf

have, in the past, voluntarily taken such commitments independently which also provide a basis for accountability.⁴⁸

⁴⁸ PEIC, 'Background Paper for the PEIC/Geneva Call Workshop: "Education and Armed Non-State Actors: Towards a comprehensive Agenda"', pp. 22-25, at: <http://educationandconflict.org/sites/default/files/publication/EAA1949-20150922.pdf>

1. PROTECTION OF STUDENTS AND EDUCATION STAFF

In addition to the right to education itself, students, including both children and adult learners, and education staff, hold other rights that must also be respected in order for the right to education to be fulfilled.⁴⁹ Certain categories of individuals, in particular children, women, as well as persons with disabilities, refugees, asylum-seekers and internally displaced persons are particularly at risk of education-related violations. In order to highlight the specific vulnerability of these groups and the need to strengthen their protection, a number of reports and other non-binding documents were adopted in 2015. During the aforementioned Oslo Summit, it was also recognised that girls are less likely to be educated than boys.⁵⁰

Children

The Committee on the Rights of the Child's Draft General Comment on Public Spending discusses the link between public spending and the implementation of children's rights. It posits that States, in relation to their budget process, should "provide an enabling environment for their active monitoring of and meaningful participation in the budget process, within transparent, response and accountable systems at national and sub-national levels". It further states that the "budget process should ensure that the rights of [children] are a primary consideration and realise necessary public spending to respect, promote and fulfil those rights". It emphasises that a "minimum core obligation"⁵¹ exists for the right to education, the non-compliance of which cannot be justified by lack of resources. The Committee also clarifies that public spending must be sufficient, effective and equitable and provides specific directions for each stage of the budget process.⁵² Finally, the Committee recommends that States raise awareness and build the capacity of public officials and review the administrative guidelines concerned with budgeting, as well as provides audit-related recommendations.⁵³

In the Secretary-General's Annual Report on Children and Armed Conflict, a trend of abduction was identified in several States and by several non-State armed groups. Among its recommendations, which include a call for the ratification of the relevant conventions and the incorporation of child protection provisions in peace agreements,

⁴⁹ See Handbook, Chapter 4.

⁵⁰ The Oslo Declaration – Chair's Statement, at:

<https://www.regjeringen.no/globalassets/departementene/ud/dokumenter/oslo-summit-on-education-for-development--chairs-statement.pdf>.

⁵¹ For a definition of "minimum core obligation" see the Handbook 3.1.1.

⁵² Committee on the Rights of the Child, 'General Comment No. 19' (Draft Version, 11 June 2015) UN Doc. CRC/C/GC/19, paras 18, 30, 37, 67.

⁵³ Ibid, paras 19, 101-101, 127, 129.

the Secretary-General also called for the respect of the civilian character of schools, as well as for participation with the "Children, Not Soldiers" campaign.⁵⁴

The Report of the Special Representative of the Secretary-General for Children and Armed Conflict identified the challenges to the protection of education as a result of extreme violence, underlining that millions of children were deprived of their right to education as a result of attacks on schools during armed conflicts. It highlighted the need to prevent such attacks by making the attackers accountable through investigation and prosecution and to adopt the necessary legislation, policies, and military procedures, where necessary. Recommendations included facilitating access to and dialogue with non-State armed groups, implementing the "Children, not Soldiers" action plan, and ensuring that the right to education is "a cornerstone of effort to protect children from conflict".⁵⁵

In its resolution on Children in Armed Conflict mentioned above, the Security Council urged States "to mainstream child protection, such as the inclusion of child protection in military training and standard operating procedures, including on the handover of children to relevant civilian child protection actors, the establishment of child protection units in national security forces, and the strengthening of effective age assessment mechanisms to prevent underage recruitment".⁵⁶ It also recognised the role of UN-led operations and missions in this regard, to mainstream child protection and to lead prevention, monitoring, and reporting efforts. Moreover, the Security Council expressed "grave concern over the abduction of children in situations of armed conflicts", which occur in schools and "often precedes or follows other abuses and violations" of international law. In this context, the Security Council noted that the Convention on the Rights of the Child requires States to "prevent the abduction of, the sale of or traffic in children for any purpose or in any form" and thus urged "the immediate, safe and unconditional release of abducted children by all Parties to conflict". In addition, States were encouraged "to consider non-judicial measures as alternatives to prosecution and detention that focus on the rehabilitation and reintegration for children for children formerly associated with armed forces and armed groups".⁵⁷ Finally, the Security Council requested that the Secretary-General include in

⁵⁴ UN Secretary-General, 'Report of the Secretary-General: Children and Armed Conflict' (5 June 2015) UN Doc. A/69/296, paras 6-12; 26-276. The Report contains information on violations committed against children in Afghanistan, the Central African Republic, Chad, Colombia, Cote d'Ivoire, the Democratic Republic of Congo, India, Iraq, Israel and Palestine, Libya, Mali, Myanmar, Nigeria, Pakistan, Philippines, Thailand, Somalia, Sudan, South Sudan, the Syrian Arab Republic, and Yemen.

⁵⁵ Report of the Special Representative of the Secretary-General for Children and Armed Conflict' (20 July 2015) UN Doc. A/70/162, paras 10-13, 19, 62-67.

⁵⁶ UN Security Council Resolution 2225 (18 June 2015) UN Doc S/Res/2225.

⁵⁷ Ibid.

annexes “those parties to armed conflict that engage, in contravention of applicable international law, in patterns of abduction of children in situations of armed conflict”, which results in them being reported on subsequently.⁵⁸

The Security Council expressed its concern over the protection and education of children in specific contexts, such as with regard to the use of child soldiers by various parties to the Yemeni conflict.⁵⁹ It also demanded the cessation of unlawful use of, as well as violations and abuses against, children in relation to Sudan and South Sudan.⁶⁰ In South Sudan, it found that, as a result of the armed conflict, access to education has been interrupted for more than 400,000 children.⁶¹ It also called for the inclusion of child protection measures in peace agreements, while also authorizing the relevant UN mission to afford specific protection to children, and to monitor and investigate the violation of children’s rights through strengthened mechanisms.⁶² A Security Council Working Group on Children and Armed Conflict also adopted ‘Conclusions on Children and Armed Conflict in South Sudan’, recommending measures to be implemented.⁶³ Similarly, the protection of children, including the monitoring and reporting of the violations of their rights was deemed among the priorities of the mandate of the UN missions in Darfur and in Liberia.⁶⁴ In Afghanistan, the Secretary-General highlighted the recruitment and use of children by armed forces and non-State armed groups, the killing and maiming of children, sexual violence against children, abduction of children, as well as attacks on schools and the denial of humanitarian access.⁶⁵ A substantial

⁵⁸ Ibid.

⁵⁹ UN Security Council Resolution 2201 (15 February 2015) UN Doc S/Res/2201.

⁶⁰ UN Security Council Resolution 2200 (12 February 2015) UN Doc S/Res/2200; UN Security Council Resolution 2206 (3 March 2015) UN Doc S/Res/2206; UN Security Council Resolution 2230 (14 July 2015) UN Doc S/Res/2230.

⁶¹ ‘Special report of the Secretary-General on the review of the mandate of the United Nations Missions in South Sudan’ (23 November 2015) UN Doc. S/2015/899, para 17.

⁶² UN Security Council Resolution 2223 (28 May 2015) UN Doc S/Res/2223, paras 2, 4(b)(ii); UN Security Council Resolution 2241 (9 October 2015) UN Doc S/Res/2241, paras 2, 4(b)(ii)

⁶³ UN Security Council Working Group on Children and Armed Conflict, ‘Conclusions on Children and Armed Conflict in South Sudan’ (12 May 2015) UN Doc. S/AC.51/2015/1. These measures were subsequently endorsed by the Security Council, see UN Security Council Resolution 2223 (28 May 2015) UN Doc S/Res/2223, para 22.

⁶⁴ UN Security Council Resolution 2228 (29 June 2015) UN Doc S/Res/2228, paras 4, 19; UN Security Council Resolution 2239 (17 September 2015) UN Doc S/Res/2239, para 10(c)(i).

⁶⁵ Report of the Secretary-General on children and armed conflict in Afghanistan’ (15 May 2015) UN Doc. S/2015/336.

increase in attacks against schools was also identified.⁶⁶ In this regard, it urged the cessation of the use of schools by both anti-Government and pro-Government forces.⁶⁷

Women and Girls

In the Human Rights Council's panel discussion on the equal enjoyment of the right to education by every girl, the "multiple barriers to girls' education" were recognised. It was stated that these have, in the past, become "insurmountable during emergencies and in conflict situations, and were particularly acute for marginalised and excluded populations, particularly girls with disabilities and those belonging to minority groups". It was also "pointed out that emergencies often led to disruptions in education after which many children never returned to school, while those who stayed received poor quality education as a result of an unsafe and inadequate learning environment. For girls, even a short interruption caused by an emergency situation could lead not only to missing out on education but also expose them to the risk of child marriage, trafficking and other forms of gender-based violence".⁶⁸ A particular concern regarding "the militarization of school premises in situations of conflicts, attacks against schools, and threats to the security and safety of female students" was also expressed.⁶⁹ In response, a development framework was deemed necessary, including in relation to "education for girls in conflict settings".⁷⁰

In October 2015, the Security Council adopted a resolution on Women and Peace and Security, recognising the differential impact of terrorism and violent extremism on women and girls' education-related rights. It called upon States, as well as international and regional organisations, to take into consideration the particular impact of conflict and post-conflict environments on their education.⁷¹

The Committee on the Elimination of all Forms of Discrimination Against Women, in its General Recommendation on Women's Access to Justice, adopted on 3 August 2015, reiterated the States' obligation "to ensure that all women have access to education and information about their rights and remedies available, and how to access these, and to

⁶⁶ Ibid, para 28.

⁶⁷ 'Report of the Secretary-General: The situation in Afghanistan and its implications for international peace and security' (1 September 2015) UN Doc. A/70/359, para 25.

⁶⁸ Human Rights Council 'Panel discussion on the equal enjoyment of the right to education by every girl' (20 July 2015) UN Doc. A/HRC/30/23, para 13.

⁶⁹ Ibid, para 15.

⁷⁰ Ibid, para 16.

⁷¹ UN Security Council Resolution 2242 (13 October 2015) UN Doc S/Res/2242.

competent, gender-sensitive dispute resolution systems, as well as equal access to effective and timely remedies”.⁷² It further stated that “[s]pecial consideration is to be given to girls [...] because they face specific barriers to access to justice. They often lack the social or legal capacity to make significant decisions about their lives in areas relating to education”.⁷³ Ultimately, it recommended that States parties “[t]ake measures to avoid marginalization of girls due to conflicts and disempowerment within their families and the resulting lack of support for their rights; abolish rules and practices that require parental or spousal authorisation for access to services such as education [...] as well as access to legal services and justice systems”.⁷⁴

The Report of the UN Global Compact on Investing in Education: Lessons from the Business Community stated that educating women and girls is not only beneficial for them, but also for their State’s productivity and economic growth, which is essential in post-conflict contexts. Sports could be used as a learning medium to teach useful life skills, including health, communication, rights and financial literacy. The programme, which started on a small scale (70 women in India in 2006), has now expanded significantly (more than 145,000 girls across 24 States).⁷⁵

In the Oslo Summit, the “private sector, civil society, parents and local communities [were] encouraged to establish new partnerships to ensure that girls enroll in school and complete higher levels of education”. In this regard, “the need for gender-sensitive education policies, learning environments and curricula” was also recognised.⁷⁶

Refugees, Asylum-Seekers and Internally Displaced Persons

It has been reported that many Syrian refugee children (approximately 400,000 children), for example, are not attending school because, even with a guarantee of free education, “economic hardship that has driven children into the workforce, the Turkish language barrier, and difficulties with social integration” still constitute barriers to accessing education. Insufficient information regarding registration procedures is also a

⁷² Committee on the Elimination of all Forms of Discrimination Against Women, ‘General recommendation on Women’s access to justice’ (3 August 2015) UN Doc. CEDAW/C/GC/33.

⁷³ Ibid, para 24.

⁷⁴ Ibid, para 25(c).

⁷⁵ United Nations Global Compact, ‘Investing in Education: Lessons from the Business Community’ (2015), available at: http://gbc-education.org/wp-content/uploads/2015/05/Investing_in_Education.pdf

⁷⁶ The Oslo Declaration – Chair’s Statement, available at: <https://www.regjeringen.no/globalassets/departementene/ud/dokumenter/oslo-summit-on-education-for-development--chairs-statement.pdf>

barrier to the education of those children.⁷⁷ However, the Convention relating to the Status of Refugees (1951) states that refugees must receive the same treatment as nationals with respect to elementary education.⁷⁸ With regard to other levels of education, the treatment accorded to refugees shall be “as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships”.⁷⁹ As a result, State parties may treat refugees less favourably than nationals in relation to education other than elementary education, but not less favourably than other non-nationals.⁸⁰ The Convention relating to the Status of Stateless Persons (1954) provides the equivalent protection with regard to education.⁸¹ Despite a possibility for differentiation, the Committee on Economic, Social and Cultural Rights stated that refugees should be treated in the same way as nationals with regard to education.⁸²

The Convention on the Rights of the Child (CRC) contains a specific provision protecting refugee and asylum-seeker children,⁸³ according to which State parties must provide protective assistance (including humanitarian) measures to ensure that these children can enjoy the rights contained in the Convention on the Rights of the Child, including the right to education. Thus this Convention may provide refugee children with better protection than the Convention relating to the Status of Refugees, as it appears to protect the right of every child to both primary and secondary education as provided for under the CRC.⁸⁴

With regard to internally displaced persons (IDPs), the Commission on Human Rights (now replaced by the Human Rights Council) has stated in its non-binding Guiding

⁷⁷ Human Rights Watch, ‘When I Picture my Future, I See Nothing’ (2015):

<https://www.hrw.org/report/2015/11/08/when-i-picture-my-future-i-see-nothing/barriers-education-syrian-refugee-children>

⁷⁸ Art.22 Convention relating to the Status of Refugees (1951). Note that this Convention also protects religious freedom and freedom as to the religious education of refugees’ children (Art.4).

⁷⁹ Zambia, Zimbabwe, Ethiopia, Malawi, Monaco and Mozambique have made declarations to the effect that they consider the obligations in Art.22 and Art.22(1) of the Convention relating to the Status of Refugees to be recommendations only. Papua New Guinea and Timor Leste have declared that they do not accept the obligations in Art.22(1) or Art.22 respectively, see www.unhcr.org/3d9abe177.html. See also Handbook, pp. 139-141.

⁸⁰ KD Beiter, *The Right to Education* (Martinus Nijhoff, 2006), p. 124.

⁸¹ Art 22 Convention relating to the Status of Stateless Persons, which counts 74 State parties.

⁸² KD Beiter, *The Right to Education* (Martinus Nijhoff, 2006), p. 578.

⁸³ Art 22 CRC.

⁸⁴ KD Beiter, *The Right to Education* (Martinus Nijhoff, 2006), p. 124.

Principles on Internal Displacement that, in order to give effect to the right to education “for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion”.⁸⁵ The need to ensure full and equal participation of women and girls in education is also highlighted in these Guiding Principles. Education should also be made available for internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.⁸⁶ While this principle highlights the fact that education is to be made available as soon as possible, it also “reaffirms practice of suspending education in humanitarian programmes”.⁸⁷

The Kampala Convention, adopted by the African Union in 2009 (and entered into force in 2012) affirms that State parties must provide IDPs to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include [...] education, [...] and where appropriate, extend such assistance to local and host communities”.⁸⁸ In December 2014, a workshop was held “with the aim of fostering coordinated efforts to ratify, domesticate and implement the convention”. In 2015, State parties set goals with regard to the implementation of the Convention and the African Union reaffirmed its commitment to “capacity-building efforts and the promotion of the ratification and domestication of the Kampala Convention”.⁸⁹

2. PROTECTION OF EDUCATIONAL FACILITIES

Chapter 5 of the Handbook addresses the international legal protection of educational facilities under IHRL, IHL, and ICL. It recognises that the destruction of, and disruption to, educational facilities significantly hinders the realisation of the right to education in areas of insecurity and armed conflict. During armed conflict, civilian educational

⁸⁵ UNHCR *Report of the Representative of the Secretary-General, Mr Francis M Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement*, 11 February 1998, E/CN.4/1998/53/Add 2, Principle 23 (2), available at: www.unhcr.org/refworld/docid/3d4f95e11.html. Note that although these principles are non-binding, they are useful for interpreting binding rules, as well as to develop policies on international displacement at the national level.

⁸⁶ *Ibid.*, Principle 23 (4).

⁸⁷ KD Beiter, *The Right to Education* (Martinus Nijhoff, 2006), p. 125.

⁸⁸ Art 9(2) Kampala Convention

⁸⁹ Workshop Report: The national responsibility to protect internally displaced people: The Kampala Convention’ (8-10 December 2014), at: <http://www.internal-displacement.org/assets/publications/2015/201505-af-national-responsibility-to-protect-idps-kampala-convention-workshop-report-en.pdf>, pp. 5, 9-10

facilities (civilian objects) benefit from protection from direct and deliberate attack under IHL, by virtue of the principle of distinction. Using educational facilities to support the military effort may strip them of their civilian status and turn them into legitimate military targets.

While the military use of educational facilities is not necessarily unlawful, it might result in a disruption of education, which amounts to a violation of IHRL.⁹⁰ Therefore, such use should be strongly discouraged. As mentioned in the 2014 Handbook Update,⁹¹ the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict were finalised in December 2014.⁹² They seek to increase the better protection of educational facilities from military use, providing concreted guidance to all parties to an armed conflict, including both States and non-State armed groups, for the planning and execution of military operations. Albeit non-legally binding, they go beyond the current protection given to educational facilities under IHL.

States are encouraged to endorse and implement them by signing the Safe Schools Declaration.⁹³

Through this Declaration, States can express support for the protection of education in armed conflict, as well as endorse and commit to the implementation of the Guidelines for Protecting Schools and Universities from Military use during Armed Conflict. On 29 May 2015, the Safe Schools Declaration was first endorsed by 37 States, a development which has been welcomed by the Secretary-General's Special Representative.⁹⁴

⁹⁰ While the disruption of the provision of education is a violation of the right to education, a State may not be found to be in violation of the right if it is able to justify the breach by reference to lack of available resources or other limitations.

⁹¹ The 2013 Update is available at: <http://www.biicl.org/protectingeducation>

⁹² More information is available at:

http://www.protectingeducation.org/guidelines?utm_source=GCPEA+All&utm_campaign=f0cb5e42e0-New+International+Guidelines12+16+2014&utm_medium=email&utm_term=0_a4685a230a-f0cb5e42e0-325380989

⁹³ At present, at least 49 States have signed the Safe Schools Declaration, see:

<https://www.hrw.org/news/2015/05/29/37-countries-start-process-protecting-schools-and-universities-during-conflict>

While the Oslo Consolidated Principles for Education in Emergencies and Protracted Crises contain a general principle concerned with the protection of education facilities (“...fulfil obligations under international law to protect education from attack and ensure schools are safe and secure learning environments”), the Guidelines encourage all parties to a conflict not to turn schools into potential military objectives through military use. The Guidelines thus seek to go beyond the protection offered to educational facilities under international humanitarian law.

⁹⁴ Report of the Special Representative of the Secretary-General for Children and Armed Conflict' (20 July 2015) UN Doc. A/70/162, para 20.

In addition, the Global Coalition to Protect Education from Attack (GCPEA) has published three associated documents in 2015: *Lessons in War 2015: Military Use of Schools and Universities during Armed Conflict*; *Commentary on the "Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict"*; and *Questions and Answers on the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict*.⁹⁵

The UN Secretary-General also found that schools "are an emblematic target" for several armed non-State groups and that other schools have undergone radical curriculum changes to reflect the groups' ideology.⁹⁶ The Security Council strongly condemned relevant violations involving "attacks against schools" and expressing deep concern "that the military use of schools in contravention of applicable international law may render schools legitimate targets of attack, thus endangering the safety of children". It thus encouraged States "to take concrete measures to deter such use of schools by armed forces and armed groups" and called on "all parties to conflict to respect the civilian character of schools as such in accordance with international humanitarian law".⁹⁷

The diversity of these initiatives, their separate focus and their differing legal status indicate the legal, political and practical complexity of this area. This also has an impact on the coherence of implementation by States.

3. REMEDIES AND CASE LAW

Chapter 6 of the Handbook outlines the remedies available for education-related violations, as well as the existing mechanisms to obtain them. In order to deepen this analysis, BIICL and PEIC published *Education and the Law of Reparations in Insecurity and Armed Conflict* in October 2013.⁹⁸ As explained in this Report, reparations for education-related violations can take several forms, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (or a combination thereof).⁹⁹

⁹⁵ All GCPEA publications are available at: <http://www.protectingeducation.org/resources>

⁹⁶ UN Secretary-General, 'Report of the Secretary-General: Children and Armed Conflict' (5 June 2015) UN Doc. A/69/296, para 12.

⁹⁷ UN Security Council Resolution 2225 (18 June 2015) UN Doc S/Res/2225, para 7.

⁹⁸ This Report, as well as a report of its launch event, can be accessed at: <http://www.biicl.org/research-reparations>

⁹⁹ For example, following the Peshawar school attack which killed 145 individuals, the Pakistani government decided to rename 107 schools after students who lost their lives in this massacre. This is an

Complaint Mechanisms within the International Human Rights Framework

According to the individual complaint procedure before the Committee on the Rights of the Child, which entered into force in April 2014,¹⁰⁰ children or their representatives can now file an individual complaint regarding a violation of a child's right to education as protected under the CRC, if the relevant State has ratified this Protocol. In order for children's rights to be protected from violations and avoid possible reprisals, as well as to avoid the manipulation of children, protection measures are being put in place in relation to this new procedure, including "child-sensitive procedures and safeguards".¹⁰¹ With regard to grave or systematic violations, such as the involvement of children in armed conflict, this Optional Protocol also provides for a confidential inquiry procedure, which means that the Committee shall invite the concerned State party to cooperate with its investigation, which may include a visit to its territory.¹⁰² The only complaint so far does not relate to education and has been deemed inadmissible.¹⁰³

The individual complaint procedure before the Committee on Economic, Social and Cultural Rights, which entered into force in 2013, has not so far led to any views regarding education. The only complaint heard regarded the right to adequate housing and there is no pending case regarding education, though there is a pending case which concerns the discrimination of a non-national child in participating in football tournaments.¹⁰⁴

example of a measure of satisfaction which publicly acknowledges the facts. The government also compensated the victims' families and the attackers were also identified and prosecuted.

¹⁰⁰ There are at present 21 State parties (and 50 signatories), among which only Thailand has an ongoing armed conflict on its territory. The ratification status can be found at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en

¹⁰¹ See the background release of the Committee on the Rights of the Child's sixty-ninth session (13 May 2015), available at:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15956&LangID=E>

¹⁰² Ibid, Art. 13.

¹⁰³ Communication No. 1/2014, Decision adopted by the Committee on the Rights of the Child at its sixty-ninth session (18 May – 5 June 2015).

¹⁰⁴ Committee on Economic, Social and Cultural Rights, Communication No. 3/2014.

Mechanisms within the Regional Human Rights Frameworks

African Human Rights Framework

As mentioned in the Handbook 2014 Updates, the African Union (AU) is currently conducting work in order to merge the African Court on Human and Peoples' Rights into a new body: the African Court of Justice and Human Rights. This Court, which has not yet been established, is meant to act also as a criminal court to prosecute individuals who have allegedly committed genocide, crimes against humanity, or war crimes, such as by recruiting child soldiers for example. Not enough States have ratified the Protocol establishing this Court for it to be set up.¹⁰⁵ In 2014, the AU adopted an amendment to the Protocol on the Statute of the African Court of Justice and Human Rights, which provides immunity to African heads of state or senior government officials for such crimes for as long as they are in office.¹⁰⁶

European Human Rights Framework

In 2015, the Court's Chamber issued its decision in *Memlika v Greece* on the delay in reinstating children (aged 7 and 11) excluded from school for over three months after having been wrongly diagnosed with leprosy. It found that this violated the right to education protected under Article 2 of Protocol No. 1. While the Court accepted that the exclusion of these children pursued a legitimate aim of preventing the risk of contamination, it found that the delay in setting up the panel that was to decide on the children's return was not proportionate to the aim pursued.¹⁰⁷

The Court's Grand Chamber also issued its decision in *Chiragov and Others v. Armenia*, looking again at the question of the extra-territorial application of human rights.¹⁰⁸ This stemmed from a complaint of rights violations lodged by Azerbaijani refugees who were displaced during the conflict over Nagorno-Karabakh and were unable to enjoy their rights to property, respect for private and family life, and to an effective remedy. The Court found that Armenia exercised effective control over the region in question and surrounding territories, by virtue of which Armenia had jurisdiction over the district of

¹⁰⁵ 'Challenges in creating an African Court of Justice and Human Rights – Chofor Che' (African Liberty, 26 March 2015, available at: <http://www.africanliberty.org/challenges-in-creating-an-african-court-of-justice-and-human-rights-chofor-che/>)

¹⁰⁶ See Art. 46A bis of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, adopted at the 23rd Ordinary Session of the Assembly of the AU.

¹⁰⁷ *Memlika v Greece*, European Court of Human Rights, Application no. Application No. 37991/12, Chamber Judgment (6 October 2015).

¹⁰⁸ *Case of Chiragov and Others v Armenia*, European Court of Human Rights, Application no. 13216/05, Grand Chamber Judgment (16 June 2015); see also Handbook, pp. 22-25.

Lachin in Azerbaijan. The fact that ongoing peace negotiations were taking place and that Nagorno-Karabakh had some degree of autonomy, did not change the fact that the Armenian government had a duty to take measures to protect the aforementioned rights.¹⁰⁹ There are over 1,000 applications pending before the court by other persons displaced as a result of that conflict. Thus, while the present case does not directly relate to education-related violations, it establishes that Armenia had jurisdiction over the region where these persons were displaced from, which may be of relevance if some of the other applications allege education-related violations and if the merits of these applications are considered by the Court.

Arab Human Rights Framework

While the Handbook noted the lack of existing human rights mechanisms within the Arab League system,¹¹⁰ a statute for a human rights court has now been drafted by the Arab League. As mentioned in the Handbook Updates 2014, the drafting process lacked transparency and failed to involve all stakeholders, leading to a number of concerns.

The Tunis Declaration on the Arab Court of Human Rights, signed in 2015 by the International Commission of Jurists and other entities, calls for the League's Member States not to ratify the Statute of the Arab Court before it is revised. It states that revisions must ensure that the international standards on the independence of the judiciary are effectively incorporated, that effective domestic remedies can be assessed, that the Court, in interpreting the Charter, can take into account the other human rights obligations of the State that is party to the case before it, and to ensure that access to the Court is extended to all individuals who claim to be victims of obligations' violations.¹¹¹

International Criminal Law Mechanisms

International Criminal Court

¹⁰⁹ See also ECHR, Press Release (16 June 2015), available at: <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-5110589-6301087&filename=003-5110589-6301087.pdf>

¹¹⁰ Handbook, p. 234.

¹¹¹International Commission of Jurists, 'Arab Court of Human Rights : the Tunis Declaration published', available at:<http://www.icj.org/arab-court-of-human-rights-the-tunis-declaration-published/>

The Handbook noted the conviction of Thomas Lubanga Dyilo,¹¹² who was found guilty of conscripting, enlisting and using children actively to participate in armed conflict. As mentioned in the 2014 Update,¹¹³ the Trial Chamber reached a decision regarding the principles applicable to reparations for victims in this case. This decision “did not limit the localities which are to be included in the reparations programmes to those mentioned in the Conviction Decision... [it] also authorised an award for reparations to localities that were not mentioned”.¹¹⁴ On appeal, the Appeals Chamber agreed with the Trial Chamber. It found that the Trial Chamber “did not err by extending Mr Lubanga’s liability for reparations to localities not mentioned in the Conviction Decision, but mentioned in the evidence of the witnesses listed in [...] the Conviction Decision”.¹¹⁵

The trial of Bosco Ntaganda, the military chief of staff of the National Congress for the Defence of the People, who allegedly enlisted and conscribed child soldiers, opened on 2 September 2015. Although evidence from over 2,000 alleged victims, including former child soldiers, has been gathered, he pleaded not guilty to all charges.¹¹⁶ The trial is still at an early stage.

Extraordinary Chambers in the Courts of Cambodia

As mentioned in last year’s Update,¹¹⁷ the Extraordinary Chambers in the Court of Cambodia (ECCC) found Nuon Chea and Khieu Samphan guilty of various inhumane acts. During the proceedings of Case 002/02, further evidence regarding their policies of “re-education of bad elements” surfaced. According to a witness, “[n]ew people would be monitored and if they were considered to be lazy when they were working they would [...] be taken away and killed, that is after they had been educated and they did not reform”. She also clarified that “[i]f people didn’t obey they would be taken for re-education, and their “food ration would be deprived”. During re-education, the persons “who would be arrested would be locked up for two days or more, depending on the necessary re-education... [and] [d]uring that person’s detention in the cage that person would be subjected to psychological testing and if through these tests he proved that

¹¹² Handbook, p.176.

¹¹³ 2014 Update, p. 18, available at: http://www.biicl.org/documents/456_biicl_education_updates_2014_final_-_13_january_2015.pdf

¹¹⁴ *The Prosecutor v Thomas Lubanga Dyilo*, Situation in the Democratic Republic of Congo, ICC-01/04-01/06, Appeals Chamber (3 March 2015), para 220.

¹¹⁵ Ibid, para 228.

¹¹⁶ ‘DR Congo’s Bosco Ntaganda pleads not guilty at ICC trial’ (BBC News, 2 September 2015), available at: <http://www.bbc.co.uk/news/world-africa-34122613>

¹¹⁷ 2014 Update, p.18.

he had been well re-educated that person would be released”.¹¹⁸ The extent to which this policy included the provision of any form of education (or re-education) is unclear, but the relevant proceedings are still ongoing.

In addition to the projects mentioned in last year’s Update relating to the awards sought on behalf of the Civil Parties,¹¹⁹ these Parties have also stated that victims “have a right to satisfaction as reparation, including [...] the inclusion of an accurate account of violations that occurred in educational materials at all levels”. Seven of the proposed projects include requests for the building of memorials and organisation of ceremonies. Moreover, they have provided that reparation awards may take the form of educational projects.¹²⁰

Conclusions

The Handbook examines in detail the three relevant key regimes of international law, namely IHRL, IHL, and ICL, resulting in a detailed assessment of the protection from education-related violations afforded under each. It provides new insights into education-related violations through the examination and analysis of relevant legal instruments. It concluded that while many of the contemporary legal rules protecting education are comprehensive, many aspects could be clarified. The Handbook makes clear that the biggest challenge is the implementation of the rules it contains. The publication of the Handbook, which is freely available,¹²¹ and used by students, lawyers, and others who are concerned about the protection of education in times of conflict and insecurity, is a step towards increased awareness of the existing legal framework protecting education in situations of insecurity and armed conflict.

The 2013, 2014 and present (2015) Updates demonstrate that education-related violations continue to occur throughout the world, despite the existence of international standards protecting education. Nevertheless, key developments, such as the entry into force of the Kampala Convention and the Convention on the Rights of the Child’s Third Optional Protocol, as well as endorsement of the Safe Schools Declaration, indicate a continued commitment to increase the protection of students, education staff, and

¹¹⁸ Extraordinary Chambers in the Courts of Cambodia, Transcript of Trial Proceedings of Case 002/19-09-2007-ECCC/TC (25 May 2015), pp. 88, 92, and 93, available at:

http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2015-08-06%2021:13/E1_304.1_TR002_20150525_Final_EN_Pub.pdf

¹¹⁹ 2014 Update, p.18.

¹²⁰ Civil Party Lead Co-Lawyers’ Interim Report on Reparations in Case 002/02 and Related Request (filed to Trial Chamber, 17 June 2015), paras 20-21, available at:

http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2015-07-17%2016:57/E352_EN.PDF

¹²¹ To obtain a copy of the Handbook, see fn 2 above.

educational facilities against all forms of education-related violations. Other developments, such as the decision on reparations in the *Lubanga* case, as well as new evidence and calls for reparations arising under the ECCC, indicate that courts and tribunals are considering education-related violations.

However, the protection of education in insecurity and armed conflict is a long-term endeavour, which requires further action from all relevant entities. Thus commitment by all actors at all levels is crucial. At State level, this includes adherence to Security Council resolutions, ratification of the relevant instruments, including the Third Optional Protocol to the Convention on the Rights of the Child, and endorsement of the Safe Schools Declaration. While the Handbook focused on the international legal framework, it is essential that the standards set by international community are implemented at the domestic level and that those who have their rights violated have access to effective remedies within their jurisdiction.

Furthermore, given the increase of non-international armed conflicts, it is important that non-State armed groups are made aware of their obligations under Security Council resolutions and generally with regard to the education of children. Thus engagement with those groups must be pursued as they may control a territory for extended periods of time. Finally, education must be considered in post-conflict measures, including in the reparations awarded to victims.