



British Institute of
International and
Comparative Law



PEIC

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

A programme of **education above all**[™]

Protecting Education in Insecurity and Armed Conflict

The International Legal Framework

Introduction

How can Education be affected during Insecurity and Armed Conflict?



Some Recent Examples

A school is bombed and a library containing ancient manuscripts is threatened

- ❖ *United Nations Security Council Resolution on Mali (2013)*: condemns strongly all violations of human rights and of international humanitarian law, including recruitment and use of children, attacks against schools and hospitals, forced displacements, and destruction of cultural and historical heritage. Decides to send in UN peacekeepers.

Children are forced out of school in order to become soldiers and participates directly in hostilities

- ❖ *Lubanga Case (ICC, 2012)*: Conscripting children into armed groups is a war crime. In order to address the harm suffered by the victims on an individual and collective basis, providing assistance through general rehabilitation and education should be considered.

Schools attacked as teaching not in accordance with certain religious views

- ❖ Northern Nigeria, 2014: Abduction of 276 schoolgirls by Boko Haram. 200 of those girls are still missing.
- ❖ Garissa University College, Kenya, 2015: 147 killed and at least 79 injured in the attack 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.

What is Education?

Education

- Includes all types and levels of education, including schools, universities, adult education and vocational training
- Includes both private and public education

Students and Education Staff

- Students are everyone being educated regardless of age or institution, not just children
- Includes university students, adult learners and those following a practical training/vocational course.
- Education staff includes teachers and professors, as well as non-teaching staff, such as those working in an administrative role at a school.

Educational Facilities

- Includes schools, universities, classrooms and other structural facilities directly related to the provision of education, as well as libraries, computers and other information technology
- Includes the facilities at places of education, including facilities for sanitation and drinking water

Possible Effects on Education during Insecurity and Armed Conflict

Education

- The occupying State decides that all education is to be taught in one language
- Education material is used for war propaganda
- Denial of access to education of certain groups in society

Students and Education Staff

- Student protestors are detained by the police during insecurity
- Families are displaced by armed conflict
- Teachers are specifically targeted
- Children are used as labour without access to education
- Children are recruited into the armed forces

Educational Facilities

- Schools are occupied by the military
- Water diverted from educational facilities

Material Scope

What is an Education-Related Violation?

- ❖ **Education-related violations** refer to the *legal aspects* of attacks against education during situations of insecurity and armed conflict.
- ❖ An **attack on education** refers to an act against education, students and education staff, and educational facilities.
- ❖ An **education-related violation** can be:
 - a violation of international human rights law (the right to education or another human right)
 - a violation of international humanitarian law
 - a violation of international criminal law
- The rights or provisions violated must protect (directly or indirectly) education, students and education staff, or educational facilities

Temporal Scope

When is there Insecurity?

Insecurity

- ❖ It is not a legal term.
- ❖ Situations of disturbance and tension within a State that disrupt the normal functioning of political, social, and legal institutions, including those that are used to facilitate education.
- ❖ Internal disturbances,
- ❖ Tensions, and
- ❖ Situations of fragility.
- 'Insecurity' does not include situations of intense violence that reach the threshold of armed conflict.
- It is defined negatively.

Temporal Scope

When is there an Armed Conflict?

International armed conflict (IAC)

- Use of armed force between States, or
- A situation of belligerent occupation

Non-international armed conflict (NIAC)

- Use of armed force between a State and a non-State armed group on its territory, or
- Use of armed force between non-State armed groups on the territory of a State.
 - ❖ The situation of conflict must be protracted, it must reach a certain level of intensity, and the armed group(s) must be organised.
 - ❖ Otherwise it is a situation of internal disturbance or tension that amounts to *insecurity*.
- Why is this relevant? International humanitarian law does not apply to situations of insecurity.

The International Law Framework

Why is International Law Relevant?

- **It regulates the relationship between and within States**
 - ❖ Treaties bind State parties. For example, human rights treaties provide for the right to education, and other human rights that protect students and education staff
 - ❖ Customary international law (CIL) binds all States, unless they have objected to it (silence is consent)
 - It is not possible to derogate from peremptory norms (*jus cogens*) e.g. torture
- **It contains some regulation of non-State actors**
 - ❖ Individual responsibility for crimes against humanity and war crimes, such as the recruitment of child soldiers under international criminal law (ICL)
 - ❖ Non-State armed groups have some obligations under IHL
 - ❖ States may have responsibility for actions of non-State actors that violate international human rights law (IHRL)
- **It requires reparation for breaches of international obligations**
 - ❖ All States have an obligation to make reparation
 - ❖ IHRL includes a right to an effective remedy

The International Legal Framework

What are the Relevant International Legal Regimes?

- **International Human Rights Law (IHRL)**
 - ❖ Protects the rights to which all individuals are entitled, regardless of their race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
 - ❖ Applies to everyone on the territory of the State in question, including internally displaced persons and non-nationals (such as refugees).
 - ❖ Applies to all situations and at all times (i.e. in peace, in insecurity and in armed conflict).
 - ❖ Can be derogated from in very specific situation of a state of emergency for some human rights only
- **International Humanitarian Law (IHL)**
 - ❖ IHL is a body of law that regulates the conduct of parties to an armed conflict during the conflict.
 - ❖ IHL applies to all parties to a conflict, including both States and non-State armed groups.
- **International Criminal Law (ICL)**
 - ❖ ICL identifies the circumstances that attract *individual* criminal responsibility.
- **International Law on the Use of Force/Collective Security**
 - ❖ This deals with whether the commencement of the armed conflict was lawful – not relevant here

International Human Rights Law

Article 13 ICESCR

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

International Human Rights Law

Article 13 ICESCR

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this Article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.
 - Positive obligations: providing free and compulsory primary education, making secondary and higher education available (and progressively free)
 - Negative obligations: prohibition of impeding access to education in any way, prohibition of interfering with an individual's choice of school (whether public or private)
 - Immediate obligations: not to discriminate
 - Progressive obligations: States need to take immediate steps towards their full realisation.

International Human Rights Law

[The right to education] is an enabling right. Without education, it is virtually impossible to know of other entitlements in times of insecurity and armed conflict, let alone how to go about realizing them. Education is also, of course, the key to everything - Dame Rosalyn Higgins, former President of the International Court of Justice

The 4 A's Framework

- ❖ Available: States should establish schools, or allow them to be established, with basic amenities, such as shelter and water
- ❖ Accessible: States should make education affordable and physically accessible, and provided equally and without discrimination
- ❖ Acceptable: States should ensure the relevance, cultural appropriateness and quality of the curricula and teaching methods, and have oversight of them.
- ❖ Adaptable: States should ensure that education is flexible enough so it can adapt to the needs of each student, with the best interest of the child paramount.

International Human Rights Law

Other Relevant Human Rights in International Treaties

- The right to freedom from discrimination – a cross-cutting right applicable immediately
- Civil and Political Rights
 - The right to life
 - The right to liberty and security
 - The prohibition from torture and other inhuman and degrading treatment
 - The right to freedom of thought, conscience and religion
 - The right to freedom of expression
 - Immediately enforceable!
- Other Economic, Social and Cultural Rights
 - The right to work and to join trade unions
 - The right to health and the right to an adequate standard of living
 - The right to cultural life
 - States need to take *immediate* steps towards their full realisation ('progressive realisation')

Group Exercise

Scenario:

During a non-international (internal) armed conflict, the State arrests children from the minority groups and puts them in detention centres which do not have any educational facilities. Many teachers are arrested and tortured, and the provision of water to all universities is shut off.

Discuss:

- What human rights, if any, have been violated by the State?
- What justifications may the State have for its actions? Are these legitimate justifications?
- Does the situation of an armed conflict affect whether human rights should be protected?
- Where can a claim be brought by a victim of an education-related violation?

International Humanitarian Law

Principle of distinction

- An attack is lawful only on military objectives and not on civilians or civilian objects
- Civilian status accorded to those not taking part (or no longer taking part) in hostilities (e.g. students, education staff)
- Civilian status accorded to objects which are not military objectives (e.g. educational facilities)

Military Object:

- An attack on an educational facility may be lawful only if it has become a military object, e.g. it is used (or occupied) for a military purpose and its destruction offers a definite military advantage and is proportionate and necessary.

Certain objects may benefit from additional protection (cultural object or a medical facility).

IHL Application in times of armed conflict:

- International armed conflict: Geneva Conventions 1949 + Protocol I 1977
- Non-international armed conflict: common Article 3 Geneva Conventions + Protocol II 1977

Specific IHL protection for children in armed conflict:

- Optional Protocol Convention on the Rights of the Child on the involvement of children in armed conflict

International Humanitarian Law

The Geneva Conventions address education specifically in relation to four situations common in armed conflict:

- Parties to an international armed conflict must take 'the necessary measures' to ensure the education of children under 15, who have been orphaned or separated from their families as a result of armed conflict.
- In situations of civilian internment in international armed conflict, the detaining power must encourage educational pursuits among internees and provide facilities to ensure education, especially for children and young people.
- Occupying powers must cooperate with the national and local authorities to ensure facilitation of educational institutions for children.
- Parties to a non-international armed conflict must ensure that children receive the care and aid they require, including education.
- The principle of 'no adverse distinction' means that, in some cases, preferential treatment is afforded to particularly vulnerable groups, such as women and children.

International Criminal Law

➤ Individual criminal responsibility

- ❖ for serious breaches of international law: war crimes, crimes against humanity, genocide, crime of aggression, etc.
- ❖ objective: punish the perpetrators, not provide reparation for the victims!

➤ Sources

- ❖ Rome Statute 1998 establishing the International Criminal Court
- ❖ Security Council Resolutions e.g. International Criminal Tribunal for Rwanda
- ❖ National and international agreements e.g. the Special Criminal Courts of Lebanon and of Sierra Leone
- ❖ Customary international law

International Criminal Law

- Protect education directly through persecution and incitement to genocide (both crimes under the Rome Statute)
- Protect educational property
- ❖ Article 8(2)(b)(ix) Rome Statute criminalises acts of “intentionally directing attacks against buildings dedicated to...education...provided they are not military objectives”.
- Protects students and education staff against unlawful killings, torture, sexual violence, and against the use of students as child soldiers (under 15).
- ❖ *Prosecutor v Thomas Lubanga* (ICC)

Group Exercise

Scenario:

During a non-international (internal) armed conflict, an armed group takes over a secondary school (for students aged 12-17) and uses it to store weapons. Its leader orders the group to capture the students and compel them to join the group or be raped.

The State military use powerful bombs and chemical weapons to destroy the school. By the time that the dust clears, it is evident that the armed group had already left before the explosions began. Two neighbouring schools are also destroyed in the explosions, as is a small children's hospital.

Discuss:

- What international humanitarian laws, if any, have been violated by the armed group and by the State?
- What justifications may each of them have for its actions? Are these legitimate justifications?
- Are there any human rights violated? If so, by whom?
- Can individual perpetrators of education-related violations be prosecuted at the international level?

Reparation for Education-Related Violations

- **Obligation of reparation**

- States have an obligation to provide reparation when they violate IHRL or IHL.

- **Right to reparation of victims**

- Article 2(3) ICCPR

- Regional human rights treaties

- **Mechanisms**

- Judicial bodies

- ❖ Regional Human Rights Courts

- ❖ International criminal courts (*ad hoc* tribunals and permanent court)

- Quasi-judicial bodies:

- ❖ Complaint Mechanisms of the United Nations Treaty Bodies

- ❖ Optional Protocols to the ICESCR and to the CRC (individual communication procedures)

Reparation for Education-Related Violations

- **Restitution**

- Restoring – for example: reinstatement of student status of a victim, restoration of liberty of students or education staff, return of a school building to a community

- **Compensation**

- Financial – for example: funds for students, parents and teachers, who are victims of discrimination on grounds of language, gender, ethnicity, etc.

- **Rehabilitation**

- Support – for example education support to victims who have not completed their primary and secondary schooling, and to increase a victim's employability and reinsertion in the society

- **Satisfaction**

- Moral – for example: verification of the facts and disclosure of the truth, public apology, commemorations of the event and of victims

- **Guarantees of Non-Repetition**

- Preventative – for example provision of human rights training and education, and strengthening the rule of law
- A combination of the above

Reparation for Education-Related Violations

- **Education as Reparation**

- Inclusion in school curriculum of an accurate account of the violations that occurred

- **Transformative Reparation**

- Recognition of the structural context that led to the denial of education and the need for change this.

- ❖ *Gomez Paquiyauri Brothers v Peru* (IACtHR, 2004)

The State must officially name a school in the province of El Callao after Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri, in a public ceremony and in the presence of the next of kin of the victims. This will contribute to enhancing public awareness of the need to avoid repetition of injurious acts such as those that occurred in the instant case and to ensure remembrance of the victims. [Moreover] as a form of satisfaction, the State must establish a scholarship up to university level education, in favor of Nora Emely Gómez Peralta, which will also include educational materials, study texts, uniforms, and school utensils.

- ❖ *Lubanga case* (ICC, 2012)

‘Reparations need to address any underlying injustices and in their implementation the Court should avoid replicating discriminatory practices or structures that predated the commission of the crimes’.

Conclusions

- **Right to Education is an Important Human Right**
 - Its protection covers students and education staff of all ages, and educational facilities
 - It is an enabling right for other human rights
- **Ratification and Implementation of Treaties**
 - The treaties on IHRL, IHL and ICL provide clear universal standards on education and their application in insecurity and armed conflict
 - States and non-State armed groups must demonstrate a shared commitment to upholding IHL and recognising more fully, and giving effect to, the protection of education inherent within its rules
- **Use of Courts and Tribunals to Protect Education**
 - They provide mechanisms for supervision and access for victims of education-related violations
 - Reparations should be effective

Further Discussion / Paper Topic Ideas

- Does international law adequately protect education in insecurity and armed conflict?
- Does the content of the education provided by a State play a role in insecurity and armed conflict situations?
- To what extent is the international legal framework appropriately implemented at the domestic level?
- Does the rule of law have a role to play in the protection of education in insecurity and armed conflict?
- To what extent is education relevant in post-conflict situations?
- Do non-state actors have obligations in relation to education in insecurity and armed conflict?