



**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

## An International Law Handbook

New Developments

2014

# INTRODUCTION

*The sanctity of learning is being violated daily.*<sup>1</sup>

Her Highness Sheikha Moza bint Nasser  
UNESCO Special Envoy for Basic and Higher Education

## *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* in 2012.<sup>2</sup> 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’.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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 mean that they must ensure that this right is respected, 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. As soon as a conflict reaches the threshold of ‘armed conflict’, international humanitarian norms apply as well as international human rights law. Students and education staff cannot 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, both human rights and humanitarian norms may be violated during armed conflict, such as in Gaza or Syria. Furthermore, while States are the ones 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

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<sup>1</sup> Financial Times, ‘A plea to protect schools in conflict zones’, by Her Highness Sheikha Moza bint Nasser, 25 September 2014, available at: <http://www.protectingeducation.org/news/plea-protect-schools-conflict-zones>

<sup>2</sup> The Handbook and its Summary can both be downloaded at:  
<http://www.biicl.org/research/education/>  
<http://www.educationandconflict.org>

This Update was prepared by Kristin Hausler and Robert McCorquodale. The authors thank Paul Stokes for his research assistance.

<sup>3</sup> 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.

<sup>4</sup> See Handbook, 1.3.3.

<sup>5</sup> 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>

be respected by both States and non-State actors in armed conflict. In addition, international criminal law 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 crime.<sup>6</sup>

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*.<sup>7</sup>

## Handbook Update 2014

In 2014, education-related violations have continued to be perpetrated in insecurity and armed conflict situations throughout the world. For example, in India, ahead of the national elections, Maoist insurgents attacked schools in the state of Jharkhand in March 2014.<sup>8</sup> In Nigeria, numerous attacks were conducted by Boko Haram, including their abduction of 276 schoolgirls in Chibok in April 2014.<sup>9</sup> In July and August 2014, Gaza schools were bombed by Israel, resulting in the death of civilians.<sup>10</sup> The ongoing conflict in Syria has led to education-related violations, with many schoolchildren having had their education discontinued as a result of the conflict.<sup>11</sup> For example, it was reported that 153 children had been abducted by ISIS in the northern part of Syria in May 2014, as they were on their way back from taking exams in the

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<sup>6</sup> For more on the general application of international human rights law, international humanitarian law and international criminal law, see Chapter 2 of the Handbook.

<sup>7</sup> *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>

<sup>8</sup> See, for example, Human Rights Watch, 'India: Keep Schools Conflict-Free Before Elections', 26 March 2014, available at: <http://www.hrw.org/news/2014/03/25/india-keep-schools-conflict-free-elections>

<sup>9</sup> See, for example, Human Rights Watch, 'Nigeria: Victims of Abductions Tell Their Stories', 27 October 2014, available at: <http://www.hrw.org/news/2014/10/27/nigeria-victims-abductions-tell-their-stories>

<sup>10</sup> See, for example, K Hausler and R McCorquodale, 'Attacks on Schools – What about International Law?', *Opinio Juris*, 13 August 2014, available at: <http://opiniojuris.org/2014/08/13/guest-post-attacks-schools-international-law/>

See also the Report of the Special Rapporteur on the *Situation of human rights in the Palestinian territories occupied since 1967*, A/69/301, 11 August 2014, para 19, which mentions the shelling of schools and the death of civilians, including children (para 19).

<sup>11</sup> See, for example, *Future under threat: The impact of the education crisis on Syria's children* (Save the Children, 18 September 2014).

See also the Report of the independent international commission of inquiry on the Syrian Arab republic to the Human Rights Council, Twenty-seventh session, 13 August 2014, A/HRC/27/60, which says that more than 2.8 million children in Syria are out of school because of the occupation of their schools by government armed forces or irregular armed groups, or the destruction and general insecurity of their schools.

For more examples of recent education-related violations, see *Education Under Attack 2014* (GCPEA, 2014),

city of Aleppo.<sup>12</sup> On 16 December, 132 children and nine education personnel in Pakistan lost their lives when the Taliban attacked their school.<sup>13</sup>

As the sanctity of learning continues to be violated daily around the world, it is imperative that intensified attention is paid to the protection of education in times of insecurity and armed conflict and by a range of actors globally, including the legal community. This Update, the second since the publication of the Handbook in 2012, is an example of such attention from the legal community.<sup>14</sup> Its purpose is to provide detail and accompanying analysis of any legal developments of international law in the year 2014. 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 adding to it.

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.

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<sup>12</sup> See, for example, Human Rights Watch, ‘Syria: ISIS Holds 130 Kurdish Children’, 1 July 2014, available at: <http://www.hrw.org/news/2014/06/30/syria-isis-holds-130-kurdish-children>

<sup>13</sup> See, for example, ‘How Pakistan school massacre unfolded’, BBC news (16 December 2014), at: <http://www.bbc.co.uk/news/world-asia-30502873>

<sup>14</sup> The 2013 Update is available at: <http://www.biicl.org/protectingeducation>

# 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.<sup>15</sup> 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 its implementation, non-binding texts, such as Security Council resolutions or Human Rights Council reports, were published in 2014, 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, adopted by UN bodies, which are applicable to States, before noting some relevant developments which concern non-State actors.

The Security Council adopted a number of resolutions regarding country-specific situations, in which it expressed its concern about education-related violations of international law. For example, in its Resolution on Mali, it condemned the “killing, maiming, recruitment and use of children” and “attacks against schools”.<sup>16</sup> In a Resolution on Afghanistan, it reiterated “its strong condemnation of the recruitment and use of child soldiers [...] attacks against schools [...] including the burning and forced closure of schools, and the intimidation, abduction and killing of education personnel, particularly those attacks targeting girls’ education by illegal armed groups, including the Taliban”.<sup>17</sup> In a Resolution on Syria, it strongly condemned the violations and abuses committed against children, as well as the attacks on schools, committed by the Syrian authorities and by armed groups.<sup>18</sup> It also demanded that all parties demilitarize schools.<sup>19</sup>

In Resolutions referring to international peace and security in general, the Security Council called all States to take all necessary measures to prevent the subversion of educational institutions by terrorists and their supporters.<sup>20</sup> This is in line with the obligation to *protect* the right to education as enshrined under IHRL.<sup>21</sup> Finally, it emphasized the importance of all forms of education to prevent the commission of future genocides.<sup>22</sup> As a result, those providing or claiming reparations should consider the potential role of education in reparations awards, in particular in guarantees of non-repetition in transitional and post-conflict contexts.<sup>23</sup>

The Human Rights Council reiterated that the right to education can be negatively impacted by attacks against students, education staff and educational facilities. With regard to the protection of educational facilities, it recognized the importance of efforts undertaken to develop guidelines to protect schools and universities from military use during armed conflict.<sup>24</sup> It highlighted the particularly negative impact that attacks on education have on the realization of the right to education of girls. It strongly condemned all

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<sup>15</sup> Handbook, Chapter 3.

<sup>16</sup> UNSC Resolution 2164 (2014) of 25 June 2014, p. 3.

<sup>17</sup> UNSC Resolution 2145 (2014) of 17 March 2014, para 32.

<sup>18</sup> UNSC Resolution 2139 (2014) of 22 February 2014, para 1.

<sup>19</sup> *Ibid*, para 10.

<sup>20</sup> UNSC Resolution 2170 (2014), para 6.

<sup>21</sup> See Handbook, 2.2.1.

<sup>22</sup> UNSC Resolution 2150 (2014) of 16 April 2014, p. 3.

<sup>23</sup> For more on the role of education in the reparations discourse and how it can be used to prevent conflicts from re-occurring, see *Education and the Law of Reparations in Insecurity and Armed Conflict* (BIICL/PEIC, 2013), available at: <http://www.biicl.org/research-reparations>

<sup>24</sup> See below under Section 3.

forms of attacks against education perpetrated by terrorists.<sup>25</sup> The Human Rights Council also expressed its concern with regard to the use of remotely piloted aircraft or armed drones in counterterrorism and the way they impact “individuals, children, families and communities, including the interruption of education”.<sup>26</sup>

Several of the Special Rapporteurs, the independent experts mandated by the Human Rights Council, have also expressed their concerns with regard to education-related violations. The Special Rapporteur on violence against women, its causes and consequences reported that the right to education is particularly affected “by violence, including family violence and abuse, sexual violence at school, early and forced marriage, human trafficking and harmful traditional practices — which all prevent women and girls from realizing their right to education.”<sup>27</sup>

With regard to Special Mandates, the Human Rights Council decided to extend the mandate of several relevant Special Rapporteurs, including the one on the right to education for a period of three years.<sup>28</sup> This Special Rapporteur, with the assistance of the OHCHR, is currently seeking the views of States, UN agencies, international organizations and civil society organizations on norms and standards for quality of education in order to promote equality of opportunity in education.<sup>29</sup> While the questionnaire does not include a query regarding the provision of education in insecurity and armed conflict, it is important that the education provided in such contexts remains of quality.

Within the United Nations system, 2014 has been a year of discussion towards the adoption of the Sustainable Development Goals (SDGs),<sup>30</sup> which will replace the Millennium Development Goals (MDGs) in 2015. These goals are aimed at supporting development efforts with the establishment of clear targets for States, including regarding the fulfilment of universal primary education.<sup>31</sup> While the adoption of such goals do not legally bind the States that agree to them, they may contain rights that are binding under IHRL, as well as norms that have customary international law status, such as that concerning universal primary education. Therefore, they can assist states in fulfilling these rights by creating a basis to provide

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<sup>25</sup> UN HRC Resolution 26/17, of 11 July 2014, p. 3.

On the link between terrorism and educational exclusion in particular, see also UN HRC, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson – Addendum, Mission to Burkina Faso*, of 4 February 2014, A/HRC/25/59/Add.1, paras 31, 34 and 53, where the Special Rapporteur also highlights the importance of human rights education. On the same issue, see also UN HRC, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson – Addendum, Mission to Chile*, of 14 April 2014, A/HRC/25/59/Add.2, para 24.

<sup>26</sup> UN HRC Resolution 25/22, of 15 April 2014, pp. 1-2.

<sup>27</sup> *Special Rapporteur on violence against women, its causes and consequences*, A/69/368, 1 September 2014, para 31.

<sup>28</sup> Report of the Human Rights Council, A/69/53, p. 177.

<sup>29</sup> Responses to the questionnaire, as well as the questionnaire itself, are available at: <http://www.ohchr.org/EN/Issues/Education/SREducation/Pages/Questionnaire.aspx>

<sup>30</sup> The draft SDGs for the period 2015-2030 and their targets are available at: <http://sustainabledevelopment.un.org/focussdgs.html>

<sup>31</sup> Note that the SR 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](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/68/294)

financial assistance to States that require it,<sup>32</sup> and possibly provide evidence of developments in customary international law.<sup>33</sup>

At present, Goal 4 of the SDGs focuses on education as it seeks to “[E]nsure inclusive and equitable quality education and promote life-long learning opportunities for all”. In addition, a number of other draft goals are also relevant for the protection of education in insecurity and armed conflict, such as Goal 5 on gender equality, and Goal 11 and Goal 16, which upholds, among other issues, the provision of a safe and peaceful environment. Access to justice for all is noted (Goal 16) and is thus relevant in case of education-related violations; victims must receive adequate and prompt reparations in order to redress the educational harm they suffered as a result of these violations.<sup>34</sup> Each goal is accompanied by specific 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.”

### Non-State Actors

As mentioned in the Handbook,<sup>35</sup> States that are party to human rights treaties must respect, protect and fulfil the rights contained therein, such as the right to education. In accordance with the obligation to protect, States parties to human rights treaties have an obligation of due diligence in protecting those human rights from the actions of non-State actors when they impact negatively the enjoyment of those rights. In addition, the Handbook also pointed out that both States and non-State armed groups have to respect the IHL norms that specifically apply to non-international armed conflicts and all those that are considered customary international law.<sup>36</sup>

In addition to being bound by those key norms of IHL, a number of non-state armed groups have pledged to respect Geneva Call’s deeds of commitments, including on protecting children in armed conflict and on prohibiting sexual violence and gender discrimination.<sup>37</sup> Over the past year, for example, such pledges have been made by groups in India<sup>38</sup> and in Burma/Myanmar,<sup>39</sup> and by Kurdish armed groups in Syria.<sup>40</sup> Although these deeds are not legally binding, Geneva Call monitors their implementation and considers

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<sup>32</sup> For example, leaders of industrialised states have in the past decided to direct funds to global financial institutions in order to cancel the debt of heavily indebted states, which can in turn allocate their resources to the fulfilment of these goals, see the Multilateral Debt Relief Initiative (MDRI) which supplements the Heavily Indebted Poor Countries (HIPC) Initiative, on which more information can be accessed at: <https://www.imf.org/external/np/exr/facts/hipc.htm>

<sup>33</sup> For more on customary international law, see Handbook 2.1.2.

<sup>34</sup> Handbook, Chapter 6.

<sup>35</sup> Handbook, pp. 26-30 and 77.

<sup>36</sup> See, in particular, Common Article 3 of the Geneva Conventions and the Second Additional Protocol of 1977, as well as the Handbook, pp. 43-44. Note that the Handbook also explains how ICL may be used to prosecute individuals, such as leaders of non-State armed groups, who commit grave breaches of international law, see Handbook, p. 54 *et seq.*

<sup>37</sup> Note that, for example, the Deed of Commitment protecting children in armed conflict specifically provides for concrete measures to be taken in order to ensure that children have access to education (Article 7(i)).

<sup>38</sup> The Government of the Peoples’ Republic of Nagaland/National Socialist Council of Nagaland (GPRN/NSCN)-Khole-Kitovi.

<sup>39</sup> The Chin National Front (CNF) and its armed wing the Chin National Army (CNA).

<sup>40</sup> The People’s Protection Units (YPG), the Women’s Protection Units (YPJ), and the ‘Democratic Self-Administration in Rojava’.

that the non-State actors can be held publicly accountable in case of a violation of the commitments they contain.

With regard to Syria, in August 2014 the Special Representative of the Secretary-General for Children and Armed Conflict welcomed the commitment by the National Coalition of Syrian Revolution and Opposition Forces and the Supreme Military Council of the Free Syrian Army (FSA) to end and prevent the recruitment of children under 18.

On 12 March 2014, the European Parliament unanimously passed a recommendation to the European Council to support the engagement of armed non-State actors on protecting children in armed conflict.<sup>41</sup> This text includes a non-binding set of recommendations addressed to the Commissioner for Development and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy. While there is no direct reference made to education, these recommendations include a number of relevant points, such as encouraging the signing of actions plans to protect children in armed conflict by states and armed non-state actors, as well as including the issue of child labour in political dialogue with third States.

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<sup>41</sup> European Parliament recommendation to the Council of 12 March 2014 on humanitarian engagement of armed non-state actors in child protection (2014/2012(INI)).

## 2. 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.<sup>42</sup> Certain categories of individuals, in particular children and women, are particularly at risk of education-related violations, like Malala Yousafzai, the Pakistani education activist whom the Taliban attempted to assassinate in 2012. In 2014, she became the youngest (joint) recipient of the Nobel Peace Prize for her fight for the right of all to education. In order to highlight the specific vulnerability of children and women and the need to strengthen their protection, a number of reports and other non-binding documents were adopted in 2014.

### *Children in Armed Conflict*

Several UN bodies expressed their particular concern regarding the impact of armed conflicts on the education of children. For example, the Committee on the Rights of the Child urged India to “take all necessary measures to prevent the occupation and use of, and attacks on, places with a significant presence of children, such as schools, in line with international humanitarian law, expedite the vacation of schools as appropriate and take concrete measures to ensure that cases of unlawful attacks and/or occupation of schools are promptly investigated, and that perpetrators are prosecuted and punished.”<sup>43</sup> On 24 July 2014, the Committee also expressed its concern on the lasting impact of the Israeli military operation in occupied Gaza, noting its devastating effects, including the death of at least 147 children so far.<sup>44</sup> In its statement, it noted that the targeting of schools is gravely affecting children, as it can deprive them of their right to education. Thus it called for a cease-fire and an investigation into allegations of violations of the rights contained in the Convention on the Rights of the Child.

The annual report of the UN Secretary-General on children in armed conflict, published in May 2014, highlights an increased number of killing and maiming of children in several armed conflicts during the year 2013 (in comparison with previous years).<sup>45</sup> In this report, attacks (or threats of attacks) against schools and their military use are described as common in at least 15 of the 23 situations it analyses.<sup>46</sup> Such education-related incidents were reported in Afghanistan,<sup>47</sup> the Central African Republic,<sup>48</sup> Iraq,<sup>49</sup> Palestine,<sup>50</sup> Libya,<sup>51</sup> for example.<sup>52</sup> The report also contains an Annex that lists the parties that recruit or use

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<sup>42</sup> Handbook, Chapter 4.

<sup>43</sup> Committee on the Rights of the Child, *Concluding observations on the report submitted by India under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, 13 June 2014, paras 28 and 29.

<sup>44</sup> This Statement is available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14905&LangID=E>

<sup>45</sup> See the UN Secretary-General’s Report on Children in Armed Conflict, A/68/878-S/2014/339 of 15 May 2014, para 6, which is available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=a/68/878](http://www.un.org/ga/search/view_doc.asp?symbol=a/68/878). This Report analysed 23 armed conflict situations (para 9).

<sup>46</sup> *Ibid*, para 18.

<sup>47</sup> *Ibid*, para 28.

<sup>48</sup> *Ibid*, para 42.

<sup>49</sup> *Ibid*, para 75.

<sup>50</sup> *Ibid*, para 83.

<sup>51</sup> *Ibid*, para 89.

<sup>52</sup> Note with regard to the Democratic Republic of the Congo, the UN Secretary-General specifically noted, in a separate report, a continuing trend of attacks on schools, recruitment and use of children by armed groups and other human rights violations against children, including sexual violence, see the Report of the

children, kill or maim children, commit sexual violence against children, or conduct attacks against schools in situations of armed conflict, which are currently on the agenda of the Security Council. It contains eight new parties in comparison with the previous yearly report.<sup>53</sup>

The report highlights the *Guidance Note* on Security Council resolution 1998 (2011) issued by the Office of the Special Representative of the Secretary-General, in cooperation with UNICEF, WHO and UNESCO, which was also published in 2014.<sup>54</sup> This Guidance Note, entitled 'Protect Schools and Hospitals – End Attacks on Education and Healthcare', clarifies the monitoring and reporting mechanism currently in place with regard to 'education-related' incidents, including by stating what incidents must be listed.<sup>55</sup> The Guidance Note provides advice on advocacy and dialogue with parties to a conflict, as well as a template for an action plan to halt and prevent attacks (and threats of attacks) against schools and education staff.<sup>56</sup> It also includes guidance on advocacy to prevent and reduce the military use of schools and advocates for the support of the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict (formerly known as the Lucens Guidelines).<sup>57</sup>

As the Security Council has decided to remain actively seized with the matter of children and armed conflict, it adopted in 2014 another Resolution on this issue, in which it expressed its "deep concern about the military use of schools by armed forces and non-State armed groups" and urged "all parties to a conflict to refrain from actions that impede children's access to education".<sup>58</sup> In its Resolution on the threats to international peace and security caused by terrorist acts, it encouraged Member States to empower education leaders in addressing the conditions that may be conducive to terrorism.<sup>59</sup>

On 22 September 2014, a cooperation agreement between the League of Arab States and the United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict was signed. Upon signature of this agreement, UN Deputy Secretary-General Jan Eliasson stated that "[I]n many situations children are denied an education because their schools have been destroyed or taken over for military purposes."<sup>60</sup> Based on this agreement, the adoption of concrete measures may now be encouraged by both the Secretary General of the Arab League and the United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict, in order to uphold and protect the rights of children living in situations of conflict in the Arab region.

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Secretary-General on children and armed conflict in the Democratic Republic of the Congo of 30 June 2014, submitted to the Security Council, S/2014/453, paras 19, 46-48.

<sup>53</sup> Ibid, paras 215-7.

<sup>54</sup> Ibid, para 19. The Guidance Note is available at:

<https://childrenandarmedconflict.un.org/.../AttacksonSchoolsHospitals.pdf>

<sup>55</sup> This terminology follows that which was adopted in the Handbook, which refers to 'education-related' violations, see Guidance Note, p. 7. Annex II of the Guidance Note contains definitions of key terms, including a wide understanding of what can be considered a 'school'. Note that, also in accordance with the Handbook, the Guidance Note highlights the effects that a general situation of insecurity may have on education, see p. 11.

<sup>56</sup> Ibid, pp. 16-8.

<sup>57</sup> Ibid, p. 20; see also below p. 11.

<sup>58</sup> UNSC Resolution of 7 March 2014, S/RES/2143 (2014), p. 2 and 5. Note that the Security Council had also requested the UN Secretary General to establish a monitoring and reporting mechanism (MRM) with Resolution 1612 (2005) in order to provide information on six grave children's rights violations, including attacks on schools.

<sup>59</sup> UNSC Resolution of 24 September 2014, S/RES/2178 (2014), para 16.

<sup>60</sup> UN Deputy Secretary –General, Media Release, DSG/SM/800, HR/5212, available at: <http://www.un.org/News/Press/docs/2014/dsgsm800.doc.htm>

## Special Protection for Women and Girls

The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) and the Committee on the Rights of the Child released a joint General Recommendation/General Comment on harmful practices, which often occur in situations of insecurity and armed conflict, noting that these practices have a negative impact on the education of women and children.<sup>61</sup> This joint General Recommendation/General Comment highlights the role of education staff in preventing harmful practices, thus underlining the importance of education in awareness-raising and in the prevention of violations of other human rights, including harmful practices such as female genital mutilation, child and/or forced marriage,<sup>62</sup> polygamy, and crimes committed in the name of so-called honour.<sup>63</sup> This joint General Recommendation/General Comment also considers the role of non-formal education, thus adopting a wide understanding of education, which does not need to be provided in a classroom to be qualified as such.<sup>64</sup>

On 7 July 2014, the CEDAW Committee held a half-day general discussion on Girls' and Women's Right to Education in order to initiate the drafting of a General Recommendation "aimed at supporting efforts by governments to bridge the remaining gaps, which continue to prevent girls from going to school and achieving the same career outcomes as their male counterparts." This discussion sought to support the implementation of Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which requires States parties to "eliminate discrimination against women in order to ensure to them equal rights with men in the field of education". It was made clear that the General Recommendation should address the "systemic and persistent challenges that hamper efforts promoting girls' education through a human rights-based approach".<sup>65</sup>

As noted in the Handbook, insecurity, including economic insecurity, may jeopardize the realisation of the right to education of children who may instead enter the workforce to support their families from an early age. The CEDAW Committee Working Group on the issue of discrimination against women underlined the need to protect families against 'economic shocks', including through incentives for parents to keep their children in school, such as through cash transfer programmes or stipends.<sup>66</sup> The Working Group also reported that the gender gap is slowly closing but that efforts must still be undertaken in order to overcome social and cultural barriers preventing girls' access to education in some countries.<sup>67</sup> Moreover, it noted that it is not just enrolment which must be tracked but also attendance as many girls do not complete their education.<sup>68</sup>

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<sup>61</sup> Joint general recommendation / general comment No 31 of the Committee on the Elimination of Discrimination against Women and No 18 of the Committee on the Rights of the Child on harmful practices, 4 November 2014, paras 14, 21 (impact of child marriage on school dropout)

<sup>62</sup> On child marriage, see also the UN OHCHR, 'Nigeria: UN and African experts call for immediate release of abducted girls and accountability of perpetrators', 8 May 2014, where the chair of the Working Group on on the issue of discrimination against women in law and in practice emphasized that child marriage destroys girls' opportunities for education and that "Nigeria has the obligation to provide redress to the victims, and prosecute and punish the perpetrators". This press release is available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14577&LangID=E>

<sup>63</sup> Ibid, para 35.

<sup>64</sup> Ibid, para 63.

<sup>65</sup> See the Closing Remarks by Ms Barbara Bailey, available at:

<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/OralInterventionsEducation.aspx>

<sup>66</sup> Report of the Working Group on the issue of discrimination against women in law and in practice, A/HRC/26/39, of 1 April 2014, para 5.

<sup>67</sup> Ibid, paras 2-3.

<sup>68</sup> Ibid, para 4.

## Protection from Sexual Violence

Both male and female students may be the target of rape or other forms of sexual violence, which is prohibited under IHRL, IHL, and ICL.<sup>69</sup> Despite this, it is generally acknowledged that the risk of sexual violence increases significantly in times of insecurity and conflict and, in addition, that it may impede fulfilment of the right to education at such times.

In order to address this specific issue, the UK Foreign and Commonwealth Office hosted, in June 2014, a Global Summit to End of Sexual Violence in Conflict. A statement of action was agreed by attendees committing to provide support to the victims and hold the perpetrators accountable.<sup>70</sup>

## Special Protection for Persons with Disabilities

In situations of insecurity and armed conflict, persons with disabilities are more likely than others to have their rights denied. However, under IHRL they must continue to benefit from the same rights in any circumstance. The Committee on the Rights of Persons with Disabilities opened its draft General Comments on Article 12 of the Convention on equal recognition before the law and on Article 9 of the Convention on accessibility for responses, and both Articles are relevant in times of peace and in times of armed conflict. In its draft General Comment on Article 12, the Committee underlines that the recognition of the legal capacity of persons with disabilities, which is affirmed under Article 12, is crucial for them to make decisions regarding their education (among other matters).<sup>71</sup> It also highlights the rights of persons with disabilities to a name and recognition of their birth, noting that not taking measures to ensure this lead to a denial of their citizenship, which may in turn deny them access to education.<sup>72</sup> In its draft General Comment on Article 9, the Committee reiterates that physical inaccessibility of facilities is a “major factor in the marginalization and exclusion of children with disabilities and markedly compromises their access to services, including [...] education.”<sup>73</sup> It drafted a specific paragraph on the importance of the accessibility of schools (and transport to schools) and education itself in order for persons with disabilities to be able to exercise their right to education.<sup>74</sup> Alternative means of providing inclusive education are listed, such as sign language, Braille, or alternative script.<sup>75</sup> While the draft General Comment on Article 12 does not mention armed conflict, its draft General Comment on Article 9 underlines that “[I]n situations of risk, natural disasters and armed conflict, the emergency service must be accessible to persons with disabilities, or their lives cannot be saved or their well-being protected”.<sup>76</sup>

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<sup>69</sup> See Handbook, pp. 120-125, 132-136, 148, 159, 169-175.

<sup>70</sup> Statement of Action – Global Summit to End Sexual Violence in Conflict (Foreign & Commonwealth Office and The Rt Hon William Hague MP, 13 June 2014), available at: <https://www.gov.uk/government/publications/statement-of-action-global-summit-to-end-sexual-violence-in-conflict>

For more information on sexual violence in specific countries, see Human Rights Watch’s webpage on sexual violence, at: <http://www.hrw.org/topic/womens-rights/sexual-violence>

<sup>71</sup> Committee on the Rights of Persons with Disabilities, Draft General Comment on Article 12: Equal recognition before the law (25 November 2013), para 8.

<sup>72</sup> *Ibid*, para 39.

<sup>73</sup> Committee on the Rights of Persons with Disabilities, Draft General Comment on Article 9: Accessibility (25 November 2013), para 5.

<sup>74</sup> *Ibid*, para 35.

<sup>75</sup> *Ibid*.

<sup>76</sup> *Ibid*, para 33.

### 3. 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 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 serious disruption of education, which may amount to a violation of IHRL. Therefore, such use should be strongly discouraged. As mentioned in the 2013 Handbook update,<sup>77</sup> the Global Coalition to Protect Education from Attack (GCPEA), with the support of the Norwegian government, has worked with experts in the field in order to create the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict. These non-legally binding Guidelines were finalised in December 2014.<sup>78</sup> They seek to ensure that all parties to an armed conflict, including both States and non-State actors, do not use education facilities in support of the military effort. Therefore, they go beyond the current protection given to educational facilities under IHL.

As part of its participation to the Clinton Global Initiative's commitment to protect girls' education in conflict,<sup>79</sup> the GCPEA has committed to providing technical support to at least 10 states in incorporating the Guidelines into domestic policies and military manuals.<sup>80</sup>

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<sup>77</sup> The 2013 Update is available at: <http://www.biicl.org/protectingeducation>

<sup>78</sup> 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](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)

<sup>79</sup> This global collective, named CHARGE for 'Collaborative Harnessing Ambition and Resources for Girls' Education', groups more than 30 organisations.

<sup>80</sup> See 'Global Coalition joins CHARGE, New Clinton Global Initiative Commitment to Protect Girls' Education in Conflict', GCPEA Press Release of 24 September 2014, available at:

<http://protectingeducation.org/news/global-coalition-joins-charge-new-clinton-global-initiative-commitment-protect-girls%E2%80%99-education>

## 4. REMEDIES AND CASELAW

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.<sup>81</sup> The main developments regarding the international law mechanisms which have taken place since the publication of the last Handbook Updates are presented below, as well as some relevant cases.

### Complaint Mechanisms within the International Human Rights Framework

A key development has been the entry into force in April 2014 of the new individual complaint procedure before the Committee on the Rights of the Child, following 10 ratifications of the CRC Third Additional Protocol on a communications procedure.<sup>82</sup> Children or their representatives can now file an individual complaint regarding a violation of a child's right to education as protected under the Convention on the Rights of the Child, if the relevant State has ratified this Protocol. In order for children to be protected and avoid possible reprisals, as well as to avoid the manipulation of children, measures are being put in place in relation to this new procedure. In addition to an individual complaint mechanism, this Protocol also provides for the possibility of inter-State communications, which means that State parties to it may recognise the competence of the Committee with regard to communications from another State party.<sup>83</sup> 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.<sup>84</sup>

The new individual complaint procedure before the Committee on the Rights of the Child followed closely the 2013 entry into force of the individual complaint procedure before the Committee on Economic Social and Cultural Rights. The latter can be brought by alleged victims of violations by States that have ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>85</sup> The latter procedure allows individuals to file complaints with regard to the right to education as enshrined under Article 13 ICESCR. At present, there are no pending cases regarding a violation of Article 13 ICESCR.

### Mechanisms within the Regional Human Rights Frameworks

#### African Human Rights Framework

At the regional level, the African Union (AU) is currently working to merge the African Court on Human and Peoples' Rights and the (not yet established) African Court of Justice. The new body, which will be called the African Court of Justice and Human Rights, will also act as a criminal court to prosecute individuals who have allegedly committed genocide, crimes against humanity, or war crimes such as the recruitment and use of child soldiers. The criminal jurisdiction of the new Court is a welcome development, given that it

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<sup>81</sup> This Report, as well as a report of its launch event, can be accessed at: <http://www.biicl.org/research-reparations>

<sup>82</sup> There are at present 14 State parties. 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](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en)

<sup>83</sup> Art. 12, Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.

<sup>84</sup> Ibid, Art. 13.

<sup>85</sup> This Optional Protocol was adopted on 10 December 2008 during the sixty-third session of the General Assembly by resolution A/RES/63/117. It currently counts 17 State parties.

supports the complementarity principle under which the International Criminal Court functions.<sup>86</sup> However, the AU has this year 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 as long as they are in office, thus granting them impunity for that period (and possibly encouraging them to remain in office in such instances).<sup>87</sup>

The African Committee of Experts on the Rights and Welfare of the Child pressed the Peace and Security Council of the AU to “hold member states to take actions that will guarantee security in schools at the time of conflict, to refugee and displaced children in all African countries so that they are not deprived from progressive learning” and to “ensure that standards are set for state parties to commit to measures that children attending schools are not subjected to any form of insecurity such as radicalism, extremism and crime of many forms including civil and war crime”.<sup>88</sup> It also recommended field missions to assess the rights of children living in conflict areas.<sup>89</sup>

### European Human Rights Framework

As described in the Handbook, IHRL and IHL both apply during armed conflict. An issue may arise when each framework deals with a particular situation differently. As a result, the way these frameworks each apply to the same situation requires greater clarity than is currently the case. As mentioned in the Handbook,<sup>90</sup> in two cases occurring in situations of armed conflict, i.e. *Al-Skeini* and *Al-Jedda*, the European Court of Human Rights (ECtHR) set out both the relevant provisions of IHRL and IHL relating to the investigation of unlawful killing and detention, respectively. However, in both cases, the ECtHR did not reach a conclusion on the relationship between the provisions of the two regimes, although these two specific issues are dealt with differently by each of the regimes.

In 2014, in *Hassan v UK*,<sup>91</sup> the ECtHR considered again the interaction between IHL and IHRL, i.e. the European Convention on Human Rights (ECHR), on the question of detention in the context of an international armed conflict. In 2003, Tarek Hassan, an Iraqi national, was arrested and detained as a prisoner of war by British forces in Camp Bucca, Iraq. In determining the arbitrariness of his detention, the ECtHR examined his right to liberty under Article 5 of the ECHR, which lists grounds for detention but does not specifically include the internment of prisoners of war as prescribed under IHL. In line with the 1969 Vienna Convention on the Law of Treaties, the ECtHR considered both the state practice and any relevant applicable rules of international law, such as those contained in the 1949 Geneva Conventions. As a result, it concluded that States consistently applied IHL detention standards during international armed conflicts and that States do not derogate from their obligations under Article 5 ECHR to do so.<sup>92</sup> Thus, in this instance, the Court’s analysis allowed for the State to apply the IHL rules on detention while still abiding with its ECHR obligations, affirming the concurrent application of both legal frameworks. Although the

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<sup>86</sup> In accordance with the complementarity principle, the ICC exercises its jurisdiction only if the relevant State Party (of which the accused is a national or where the crime occurred) is unable or unwilling to do so. The ICC acts then as a court of ‘last resort’.

<sup>87</sup> 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 23<sup>rd</sup> Ordinary Session of the Assembly of the AU.

<sup>88</sup> *African Committee of Experts on the Rights and Welfare of the Child*, 23<sup>rd</sup> Ordinary Session (9-16 April 2014), p. 7, para 3 (a) and (c).

<sup>89</sup> *Ibid*, para 3(d).

<sup>90</sup> Handbook, p. 53.

<sup>91</sup> *Case of Hassan v the UK*, Application no 29750/09, ECtHR, Judgment 16 September 2014. Note that the Grand Chamber found no violation of Tarek Hassan’s right to liberty and security of person, right to life, and right against torture and inhumane and degrading treatment.

<sup>92</sup> See *Hassan v UK*, para 101, where the ECtHR also referred to the jurisprudence of the ICJ which made clear the international human rights obligations continue to apply to States in situations of international armed conflict.

Human Rights Committee adopted this year its General Comment No 35 on Liberty and Security of Persons (Article 9 ICCPR),<sup>93</sup> it does not provide a clear guidance to those faced with this issue of applicable law.<sup>94</sup>

The ECtHR also considered, in *Velyo Velev v Bulgaria*,<sup>95</sup> the right to education of a pre-trial detainee who had been barred from attending the educational facility available within the prison. While this case occurred outside a situation of insecurity or armed conflict, the number of pre-trial detainees (and length of pre-trial detention) is often multiplied in such situations. The ECtHR noted that the right to education as enshrined in Article 2 Protocol 1 ECHR does not oblige Contracting States “to provide education in prison in all circumstances” but that, “where such a possibility is available it should not be subject to arbitrary and unreasonable restrictions,” even if the detainee had been the subject of a conviction in the past.<sup>96</sup> The ECtHR awarded compensation for non-pecuniary damages in that case, recognizing “that the applicant must have suffered frustration and anxiety as a result of the violation established in this case”. However, as the result of the violation of his right to education, the applicant was unable to find work and had difficulties in going back to school after a long period without education. As noted in the Handbook (and in greater detail in the Report on *Education and the Law of Reparations in Insecurity and Armed Conflict*),<sup>97</sup> reparations must be adequate and effective in redressing the harm caused. Thus, in addition to compensation, as indicated in our Report, other means of reparations should have been considered (in combination) in order to redress education-related violations such as the one suffered in this case.

Although many human rights, such as the right to education, may be limited in certain circumstances, this must be done in accordance with the principle of proportionality, necessity, and legality.<sup>98</sup> This case underlines that education should not be arbitrarily denied to those in pre-trial detention.

#### Inter-American Human Rights Framework

While no relevant Court judgment has been published at the time this Update was prepared, a number of situations were reported as critical by the Inter-American Commission of Human Rights during 2014. These include the armed conflict in Colombia (highlighting in particular its effect on the right to education of Afro-descendent women),<sup>99</sup> the disappearance and murder of students in Mexico,<sup>100</sup> the use of the military to provide education in Honduras,<sup>101</sup> and deaths and injuries at a youth education center in Paraguay.<sup>102</sup>

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<sup>93</sup> HRC, General Comment No 35 on Article 9: Liberty and Security of person, CCPR/C/GC/35 (28 October 2014), available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en)

<sup>94</sup> See, for example, Shaheed Fatima, ‘UN HRC’s General Comment on the Right to Liberty and Security: A Missed Opportunity? (Part Two)’, 20 November 2014, Just Security, available at:

<http://justsecurity.org/17596/human-rights-committees-general-comment-no-35-security-detention/>

<sup>95</sup> *Case of Velyo Velev v Bulgaria*, Application no 16032/07, ECtHR, Judgment 27 May 2014.

<sup>96</sup> *Ibid*, para 34.

<sup>97</sup> Handbook, pp. 221 *et seq*, and Report, p. 24 *et seq*, reparations must be adequate and effective in redressing the harm caused.

<sup>98</sup> Handbook, p. 80.

<sup>99</sup> *IACHR Chair Concludes Visit to Colombia*, Press Release of October 10, 2014, available at:

[http://www.oas.org/en/iachr/media\\_center/PReleases/2014/118.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/118.asp)

<sup>100</sup> *IACHR Makes an Urgent Call on the Mexican State Regarding the Murder and Disappearance of Students*, Press Release of October 10, 2014, available at:

[http://www.oas.org/en/iachr/media\\_center/PReleases/2014/117.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/117.asp)

<sup>101</sup> *IACHR Wraps Up its 152nd Special Session*, Press Release of August 15, 2014, available at:

[http://www.oas.org/en/iachr/media\\_center/PReleases/2014/086.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/086.asp)

<sup>102</sup> *IACHR Deplores Deaths and Injuries at Youth Education Center in Paraguay*, Press Release of 22 August 2014, available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/091.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/091.asp)

Based on its monitoring of these situations, the Commission has issued a number of recommendations to these respective states to redress these situations.

In addition, the Commission decided to bring to the Court the case of the *Residents of the Village of Chichupac and Neighboring Communities, Municipality of Rabinal v Guatemala*, which concern massacres, extrajudicial executions, torture, forced disappearances and rapes perpetrated by the National Army and its collaborators during the non-international armed conflict. The Commission noted that villagers had to flee and live in insecurity, with no access to education services (among other issues). It also highlighted the destruction of their schools as one of the most important elements aimed at destroying the communities.<sup>103</sup> This case is on-going.

### Arab Human Rights Framework

While the Handbook noted the lack of existing human rights mechanisms within the Arab League system,<sup>104</sup> a statute for a human rights court has now been drafted by the Arab League. The drafting process has lacked transparency and failed to involve all stakeholders. Therefore, there are a number of concerns with regard to the present draft, including the lack of individual access to the proposed court, as well as issues relating to the nomination of judges, for example. A key issue rests on the fact that this Arab Court would base its material jurisdiction on the Arab Charter, which is itself not fully consistent with international human rights standards. As mentioned in the Handbook,<sup>105</sup> with regard to the right to education, the Arab Charter only obliges State parties to provide free primary education to their citizens, thus excluding non-citizens, such as refugees, asylum seekers or children of migrant workers.

In order to strengthen implementation of the protection of education at the regional level, the United Nations Human Rights Training and Documentation Centre for South-West Asia and the Arab Region, in partnership with PEIC and BIICL, organized a Regional Forum on the Protection of the Right to Education during Insecurity and Armed Conflict in the Middle East and North Africa Region.<sup>106</sup> The Forum recommended the development of a legal stakeholders' network for the protection of the right to education to help to provide legal protection for students, teachers, schools, and universities.<sup>107</sup>

## **International Criminal Law Mechanisms**

### International Criminal Court

On 8 May 2014, the ICC Prosecutor issued a statement expressing concern about the alleged abduction of more than 200 schoolgirls in Borno State, Nigeria, stating that "[S]uch acts shock the conscience of humanity and could constitute crimes that fall within the jurisdiction of the International Criminal Court ("ICC")."<sup>108</sup> On 5 August 2013, the Office of the Prosecutor published its report on the situation in Nigeria, with regard to allegations of crimes occurring in the context of the armed violence between Boko Haram and the Nigerian security forces. In this report, attacks on schools are clearly mentioned as part of

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<sup>103</sup> IACommHR Report no. 6/14, case 12,788, merits, *Residents of the village of Chichupac and neighboring communities, municipality of Rabinal v Guatemala*, paras 260 and 283.

<sup>104</sup> Handbook, p. 234.

<sup>105</sup> Handbook p. 97.

<sup>106</sup> This event, which took place from 19 to 21 January 2014 in Jordan, brought together some 104 participants from 24 countries, including policymakers and legal advisers from ministries of education, justice, foreign affairs and human rights, as well as representatives of civil society, national human rights institutions, academia and legal practitioners.

<sup>107</sup> Human rights reports to the 69<sup>th</sup> session of the General Assembly, A/69/333, 21 August 2014, para 24.

<sup>108</sup> See the ICC Weekly Update No. 209 (7-9 May 2014), at: [www.icc-cpi.int/iccdocs/PIDS/wu/ED209\\_ENG.pdf](http://www.icc-cpi.int/iccdocs/PIDS/wu/ED209_ENG.pdf)

contextual elements of possible crimes against humanity (attack against civilian population).<sup>109</sup> While in this 2013 report, the ICC does not deem that the threshold of armed conflict had been met, its report to the General Assembly this year says otherwise, as it states that the elements for the existence of a non-international armed conflict had been met since at least May 2013. As a consequence, allegations into possible war crimes are being examined within the scope of Article 8(2)(c) and (e) of the ICC Statute. The determination on admissibility is pending.<sup>110</sup>

As noted in the Handbook,<sup>111</sup> the ICC Trial Chamber found Thomas Lubanga Dyilo, the former leader of rebel group Union of Congolese Patriots, guilty of conscripting, enlisting and using children actively to participate in armed conflict. His conviction and 14-year prison sentence was upheld on 1 December 2014 by the ICC Appeals Chamber.<sup>112</sup> The decision made by Trial Chamber I in 2012 with regard to the principles to be applied to reparations for the victims has also been appealed. The judgment of the Appeals Chamber on that matter is still pending.

#### Extraordinary Chambers in the Courts of Cambodia

On 7 August 2014, the Extraordinary Chambers in the Courts of Cambodia (ECCC) found Nuon Chea and Khieu Samphan, two former leaders of the Communist Party of Kampuchea (CPK), guilty of crimes against humanity, persecution on political grounds and other inhumane acts.<sup>113</sup> When assessing the development of CPK policies, the ECCC considered the reforms implemented including the “re-education of bad elements”, conducted to eliminate those opposed to the revolution.<sup>114</sup> As mentioned in the Handbook,<sup>115</sup> any provision of education must not contain propaganda for war or incitation to hatred, as this is prohibited under IHRL. With regard to this case, the exact content and implementation of the policy of “re-education of bad elements”, and its extent, will be the subject of the follow-up case, Case 002/02, which consists of the second trial (for additional charges) against these two former CPK leaders.

With regard to reparations, while the ECCC has no jurisdiction to order Cambodia to implement reparation measures, the ECCC can recognize that specific projects give appropriate effect to an award sought on behalf of the Civil Parties.<sup>116</sup> These projects can be financially supported by national or international authorities, non-governmental organizations or other donors, on a voluntary basis. Some of the projects carried out as a result are directly related to education, including an initiative exploring history and transitional justice, the inclusion of a chapter on forced population movement and executions at Tuol Po Chrey with the Cambodian school curriculum, and the construction of a peace learning centre.<sup>117</sup>

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<sup>109</sup> ICC Office of the Prosecutor, Situation in Nigeria, Article 5 Report (5 August 2013), para 79.

<sup>110</sup> Report of the International Criminal Court – UN General Assembly A/69/321, 18 September 2014, paras 12-13.

<sup>111</sup> Handbook, p. 176.

<sup>112</sup> *The Prosecutor v Thomas Lubanga Dyilo*, Situation in the Democratic Republic of the Congo, ICC-01/04-01/06, Appeals Chamber (1 December 2014).

<sup>113</sup> Extraordinary Chambers in the Courts of Cambodia (ECCC), Case 002/01 Judgement, Trial Chamber.

<sup>114</sup> *Ibid*, para 103 and 117-118, where it is stated that “Khmer who had previously studied in Vietnam and had returned to Cambodia to assist in the revolution were later suspected of being enemies, brought together and smashed.”

<sup>115</sup> Handbook, p. 76.

<sup>116</sup> Internal Rule 23 quinquies 2 and (3)(b). See also Handbook, p. 251.

<sup>117</sup> *Ibid*, paras 1135-7.

## Conclusions

One of the key developments at the international level in 2014 has been the entry into force of the CRC's Third Additional Protocol. Given that this Protocol allows children within the jurisdiction of State parties to make individual complaints concerning the right to education at the treaty body level, it is particularly important with regard to the enforcement of the right to education, in particular for those lacking appropriate routes to justice at the domestic or regional level. Therefore, States that have not yet ratified this Protocol should consider doing so. The same is true of the Optional Protocol to the ICESCR, which allows individual complaints concerning violations of the right to education. States that have not yet ratified this Protocol should also consider doing so.

This Update highlights that although the legal framework protecting education is relatively strong at the international level, these international standards of protection need to be further implemented at the regional and domestic level. A stronger implementation at the regional and domestic level, including through awareness-raising, will increase the enforcement of the right to education and other rights and norms of protection.

Finally, this Update has demonstrated a convergence of international opinion that implementation of the international legal framework pertinent to the protection of the right to education in insecurity and conflict is a current imperative at the domestic and regional level. A number of initiatives to that end, and by a wide range of actors, have been undertaken in 2014. Nonetheless, the protection of education is a long-term endeavour to which each of us should commit.

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