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PEIC

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

PROTECTING EDUCATION IN THE MIDDLE EAST AND NORTH AFRICA REGION

Executive Summary

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Foreword

The present Study on *Protecting Education in the Middle East and North Africa Region* builds on previous research published by Protect Education in Insecurity and Conflict (PEIC) and the British Institute of International and Comparative Law (BIICL). The first key publication consisted of an *International Law Handbook on the Protection of Education in Insecurity and Armed Conflict* (the Handbook), a practical and comprehensive guide to the relevant provisions of international law that protect education in situations of insecurity and armed conflict, as well as accompanying teaching materials. As there have been international legal developments in the protection of education in insecurity and armed conflict since the publication of the Handbook in 2012, BIICL and PEIC have also published yearly briefs containing the relevant updates in that area. A Report on *Education and the Law of Reparations in Insecurity and Armed Conflict* (the Reparations Report) was also published in 2013.

All of the above mentioned documents are available at:

<http://www.biicl.org/protectingeducation>

<http://www.biicl.org/research-reparations>

<http://educationandconflict.org/publications>

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1. INTRODUCTION

The aim of the present Study, authored by Majida Rasul, Kristin Hausler and Robert McCorquodale, is to examine how and to what extent education-related violations are being addressed (and may be addressed) through domestic law in States within the Middle East and North Africa (MENA) region.¹ It analyses the extent to which MENA States have incorporated and currently implement the international legal frameworks for the protection of education in insecurity and armed conflict. This Study applies a broad view of education and its protection under international law, as conceived in the Handbook, allowing for a comprehensive analysis of the protection of education in situations of insecurity and armed conflict in the MENA Region.

This Study focuses on the protection of education in insecurity and armed conflict.

- **Insecurity** refers to situations that disrupt the normal functioning of key political, social and legal institutions within a State, including those that facilitate education. Situations of insecurity may include the use of armed violence, but not such that it meets the threshold of an armed conflict. The applicable legal frameworks are the general international legal obligations of the State (including human rights obligations), as well the domestic laws of the State.
- **Armed conflict** includes both international and non-international armed conflicts. An **international armed conflict** exists when armed violence occurs between States, regardless of the scale, intensity or duration of such violence. An international armed conflict ends when there is a general conclusion of peace. Alien occupation is also included within the category of international armed conflict; a territory is considered occupied when part or whole of it is actually placed under the authority of the army of another State. A **non-international armed conflict** exists when there is protracted armed violence within the territory of a State between the armed forces of that State and organized non-State armed groups, or between such armed groups. A non-international armed conflict ends when a peaceful settlement is achieved. The applicable international legal frameworks in situations of armed conflict are derived from international humanitarian law (IHL). International human rights law continues to apply alongside IHL, although parts of it may be reduced or suspended.

1.1. The Protection of Education under International Law

The **protection of education** encompasses all the legal norms which must be respected in order for education to continue be provided and received in situations of insecurity and armed conflict. Those key norms stem from international human rights law (IHRL),

¹ MENA States are here meant to include Algeria, Bahrain, Egypt, Iraq, Iran, Israel, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Palestine/Occupied Palestinian Territories (OPT), Oman, Qatar, Saudi Arabia, the Syrian Arab Republic, Tunisia, the United Arab Emirates, and Yemen. When relevant, examples from neighbouring States, which are sometimes considered as being part of the wider MENA region, such as Djibouti or Sudan, for example, are included for comparative and complementary purposes.

international humanitarian law (IHL), and international criminal law (ICL). The sources of international law relevant to the protection of education consist of treaties and customary international law. They include both positive and negative obligations on the State, such as a duty to enact legal provisions that prohibit conduct that interferes with education but also the obligation to provide redress for any violations of those norms. They must be implemented at the domestic level.

The protection of education can be divided as follows:

- the protection of education itself, including the human right to education,
- the protection of students and education staff,
- the protection of educational facilities, and
- the remedies and reparations for education-related violations, which must be available and accessible to the victims.

Education includes formal, informal, technical and vocational education in all its stages. This means that it also includes continuing or adult education and is not limited to education provided to children. The right to education, as a human right, contains several components, including its availability, accessibility, acceptability, and adaptability. The protection of education also consists of the right to legal recourse in the event that these provisions are not applied, including human rights mechanisms, as well as the duty to prosecute any education-related violation which amounts to a violation of criminal law.

A **student** is a person receiving education at any level, regardless of his or her age and of the form of education. **Education staff** means all persons involved in the provision of education: teachers, professors, and all staff working within education facilities, as well as those involved in research. IHRL contains a number of rights which are relevant for the protection of students and education staff, including the right to life and the right to freedom of torture, among others. Thus States must ensure that those rights are respected, protected, and fulfilled with regard to students and education staff. IHL protects students and education as civilians, who may not be the object of attacks in armed conflict. ICL also contains a number of provisions which may be relevant to punish the perpetrators of crimes against students and education staff, including the prohibition of unlawful killing, torture, or sexual violence. Therefore this protection may take several forms, for example, preventing and punishing attacks against students and education staff, or providing compensation for harm suffered.

Education facilities are any publicly- or privately-owned structure or installation used by an education institution in furtherance of its mission. The protection of educational facilities within the protection of education as defined above consists of the preservation of the legal status of education facility, the legal prevention and punishment of attacks against education facilities, and redress for any damage caused by attacks or for interference with the status of education facilities. Under IHRL, it is only individuals who are the rights-holders, and not objects. However, certain human rights, such as the right to education, the right to freedom from discrimination, and the right to private property, may provide indirect protection to educational facilities. IHL protects educational facilities from attacks

as civilian objects. ICL contains specific provisions protecting educational facilities but also protects them through the prohibition on attacking civilian facilities as a war crime and a crime against humanity.

Education-related violations refer to the legal aspects of actions attacking education during situations of insecurity or armed conflict. An attack on education refers to an act against education, students and educational staff, and educational institutions, which interfere with the provision of education. States may be held accountable for education-related violations under IHRL; they may also be held accountable for the actions of non-State actors in certain circumstances. Both States and non-State armed groups may commit education-relations violations under IHL. Under ICL, individuals may be held accountable for education-related violations amounting to international crimes, which include a number of IHRL and IHL violations.

Remedies are the mechanisms available to victims of education-related violations to seek reparations for the harm they have suffered as a result of a violation of the law. Under international law, where an internationally wrongful act occurs, there is an obligation to make reparation. **Reparations** can take several forms, including restitutions, compensation, rehabilitation, satisfaction and guarantees of non-repetition (or a combination thereof). They must be adequate and effective to repair the harm suffered. All available domestic remedies must have been exhausted in order for victims to be able to seek reparations at the international level, when such remedies are available to them. Therefore, States must ensure that remedies are available to victims of education-related violations.

1.2. International Legal Framework

The **IHRL** treaties provide their State parties with obligations to respect, protect and fulfil the rights contained therein in relation to all individuals under their jurisdiction, both in situations of insecurity and armed conflict. The scope and application of some human rights may be restricted in certain circumstances, in particular in situations of emergency which threaten the life of the nation. The key rules of **IHL** are binding on all participants to an armed conflict, including both States and non-state armed groups, as well as individual participants in hostilities, for the duration of an armed conflict and throughout the territories of (or under the control of) parties to an armed conflict. The rules of **ICL** provide for individual criminal responsibility for international crimes (such as war crimes and crimes against humanity). Importantly, international criminal courts acts as complementary mechanisms to domestic courts, which are the primary bodies responsible for prosecuting alleged criminals.

In addition to international law applicable universally, there is **regional law** instruments, which apply to certain MENA States. They arise from two regional organisations:

- the League of Arab States (LAS),² and
- the African Union (AU).³

It includes obligations contained in instruments such as the Arab Charter on Human Rights (ACHR) and the African Charter on Human and People's Rights (ACHPR).

International Islamic law is part of international law, and consists of the collection of treaties which are based on Islamic principles. These are usually promulgated by the Organisation of Islamic Cooperation (the OIC) and include, for example, the Convention on the Rights of the Child in Islam (CRCI) and the Cairo Declaration on Human Rights in Islam. In addition to international Islamic law, Islamic principles or Islamic law denote sets of legal rules developed on the basis of Islamic scripture and Prophetic teachings. Islamic principles are incorporated, to varying degrees, content, scope and application in the domestic laws of MENA States.

This Study uses the term 'international legal obligations', to denote the binding obligations of a particular State arising out of any of the above-mentioned areas of law. While a State's international legal obligations form the primary framework for analysis, reference is also made to international standards, including any standards contained in non-binding international instruments.

1.3. Scope and Methodology of the Study

The Study focuses on the implementation of international legal obligations protecting education in insecurity and armed conflict by MENA States. Given that States bears the primary responsibility to implement those obligations at the domestic level, the analysis focuses on the extent to which domestic law complies with the international legal framework for the protection of education.

The Study offers both a case study (Part 3) and a thematic approach (Part 4), each highlighting State practice in implementing international legal obligations. The case-study approach was adopted to allow for a detailed legal research and analysis across a selection of States deemed representative of various contexts, challenges, and trends in the protection of education across the region. Egypt, Iraq and Lebanon were selected on the basis of three criteria: i) the existence of a relevant security context (insecurity or armed conflict); ii) sufficient evidence of the State's practice in respect of the protection of education; and iii) a reasonable degree of stability of the legal system.

² The following MENA States are Member States of the LAS: Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen. The LAS recognises the State of Palestine.

³ The following MENA States are Member States of the AU: Algeria, Egypt, Libya, Sudan, South Sudan, Tunisia. Although the recognition of the Sahrawi Arab Democratic Republic (SADR) by States in Africa has been controversial, the AU lists SADR as a Member State. In addition, Morocco which would otherwise be eligible for AU membership was excluded from the organisation in 1984 because of its occupation of SADR.

2. CASE STUDY ANALYSIS

Despite socio-legal and political distinctions between Egypt, Iraq and Lebanon and the great variation in contexts of insecurity and armed conflict in these States, their domestic laws incorporating international law on protection of education in insecurity and armed conflict provides lessons that may inform the protection of education in the MENA Region more generally. Below are some of the key issues worthy of consideration.

2.1. Adherence to International Treaties

While Egypt, Iraq and Lebanon have ratified most of the core international human rights treaties, their general lack of submission to international oversight, in particular through complaints procedures to United Nations (UN) treaty bodies, is consistent with trends observed across the MENA Region. Reservations to some human rights treaties may also be problematic when they appear to defeat the aim of the treaty or when they are overly broad.

Non-State actors have been observed as playing a prominent role in the protection of education in the broad sense, such as in Lebanon. Such actors include businesses, civil society, international organisations and non-State armed groups. While it is to be welcomed that some of these actors contribute to the protection of education in insecurity and armed conflict, commentators note that it allows the State to fall short in implementing its international legal obligations, for which it bears the primary responsibility.

With regard to international humanitarian law treaties, all three States are party to the Geneva Conventions, the four international treaties governing the treatment of soldiers and civilians during conflict. Egypt and Lebanon being party to Additional Protocols I and II relating to the protection of victims of international and non-international armed conflicts (respectively), but Iraq being only party to Additional Protocol I. However, Egypt, Iraq and Lebanon diverge significantly in respect of ratification of international humanitarian law treaties and particularly weapon-specific treaties, with Egypt having ratified no weapon-specific treaties while Iraq has ratified most of them. Across all three States, and in addition to the wholesale incorporation into domestic law of the texts of weapon-specific treaties to which they are party upon ratification, the locus of express and positive prohibitions of the use of specific weapons appears to be focused in anti-terror legislation.

With regard to international crimes, the domestic laws of the case study States recognise at least some of the substantive offences within the ICC Statute but none is party to the ICC Statute. What precise factors contribute to the domestic legitimacy of criminal accountability mechanisms, especially for education-related violations occurring in situations of insecurity or armed conflict, vary between the three case study States. Across the three case study States, there is a trend of selective prosecutions political and high profile violations, such that education-related violations tend to receive little if any attention in practice. The concept of complementarity within the ICC Statute contemplates, alongside the operation of the ICC, the strengthening of national criminal accountability for crimes and this is an

important consideration in ensuring accountability for education-related violations in the MENA Region.

2.2. Emergency Law

The invocation of a state of emergency has clear implications for the protection of education; the protections guaranteed by the domestic laws ordinarily applicable within the territory of States are suspended and can, in some circumstances, contribute to education-related violations. Within the MENA Region, the use of emergency measures and even military courts for civilians is well documented. Following the 2011 uprisings across the MENA Region, there were renewed calls for limits on the use of emergency powers, most especially in north African States.

All three case study States have declared states of emergency at various stages but none of them has made a derogation under the International Covenant on Civil and Political Rights. Egypt stands out amongst the three case studies as having the greatest body of practice in the area of emergency measures. Prior to, and during the 2011 uprisings, emergency powers were frequently used to arrest and detain students and education staff who were major players in the development of the movement against the government of the time. The uprisings were motivated in large part by the persistent state of emergency for approximately 30 years until that date. The 2014 Constitution of Egypt (following its 2012 predecessor) introduced safeguards on the use of emergency powers and the declaration of a state of emergency. In this way, Egypt appears willing to curb its powers in contrast to the government prior to the 2011 uprisings. This is somewhat undermined, however, by the wide-reaching anti-terror legislation, which appears to allow for the application of similar measures available during a state of emergency under the 1958 Emergency Law (Egypt), which is often invoked in respect of what are likely to constitute violations against students and education staff, by the State and its agents.

By contrast, Iraq and Lebanon have a much more limited use of emergency powers. This may be at least in part because of the form of insecurity and armed conflict in these two States. Whereas in Egypt, the state of emergency prior to 2011 was used predominantly to prevent opposition to the government in place, Iraq and Lebanon have, in addition to threats to the State's sovereignty from within, faced significant threats from external forces.

2.3. The Protection of Education

The constitutional reforms of both Iraq and Egypt brought with them systematic incorporation of international human rights law and standards into domestic law, including the right to education. Although the right to education had previously been present in both jurisdictions to a limited extent, the reforms following insecurity and armed conflict expanded the right to education in a way that, in terms of law, substantiate to a notably greater extent, the content of the right. The most significant advancement in this regard is contained in the 2014 Constitution of Egypt. Whereas Egypt had previously attracted criticism from the Committee on the Rights of the Child in respect of inadequate budgetary

allocation, the 2014 Constitution provides for a gradually increasing proportion of the national budget. As a further example, the 2014 Constitution of Egypt provides for institutions such as early childhood centres, where education services are to be provided.

By contrast, Lebanon refrained from wholesale legal and constitutional reform following its non-international armed conflict. This, against a broader context of reticence observed in respect of enacting laws that extend protections of individuals in Lebanon, may explain in part why Lebanon's protection of education in insecurity compares so poorly with the other two States. This failure to revise and strengthen national human rights protections, especially in respect of a constitutional enshrinement of the right to education for all persons in Lebanon in line with its international legal obligations, has allowed for the endurance of discriminatory provisions that, strictly as a matter of law, limit the right to education and access to schools to citizens notwithstanding the presence in Lebanese territory of a large refugee and asylum-seeking population. Indeed, this is evidenced by the Lebanese State appearing to circumvent its strict legal framework by providing education for non-nationals on the basis of policies that have not been enshrined in law.

2.4. The Protection of Students and Education Staff

Across all three case study States, there is poor official recording and monitoring of violations against students and education staff. The statistics presented throughout this Study largely come from UN agencies, civil society organisations and international NGOs. There are specific provisions within some of the treaties to which the case study States are party, for example the Convention on Cluster Munitions, requiring parties to record and monitor the number of victims or persons in need of assistance.

Overall, the protection of students and education staff carries an emphasis upon the criminalisation and deterrence in this way. While part of protection within the human rights framework and the implementation of IHL requires States to ensure that violations against students and education are punished, this is only part of international legal obligations of Egypt, Iraq and Lebanon alike. In addition, the reliance upon the operation of domestic criminal law, is significantly undermined first by a broad non-application of the general criminal law to members of the armed forces, and second by the non-prosecution of offences, particularly in Lebanon. Lebanon's amnesty legislation is one of the most-wide reaching of the three States, providing amnesty for a wide range of offences that would include education-related violations. The effect of this is exacerbated by highly selective prosecutorial practice. Failure to punish, *inter alia*, education-related violations has been noted as contributing to continuing insecurity resulting from ongoing sectarian tensions within Lebanon. Egypt's failure to punish education-related violations persists in respect of those committed by the State and its agents, in particular with regard to killings believed to be attributable to the State security forces occurring in the course of demonstrations.

By contrast, accountability for past violations in Iraq was a significant aspect of the transitional period. The blanket approach taken by the Coalition Provisional Authority, in particular through the process of de-Ba'athification, had devastating effects not only on the

rights of educational staff, but also on the education system and was required to be almost entirely reversed by reinstatement of education staff. The comparison between Egypt and Lebanon, on the one hand, and Iraq on the other provides a useful lesson: neither highly selective criminal accountability nor blanket policies can realistically be sustained. The selective nature of criminal accountability is a particular in those three States, where strong and enforceable human rights-based protections are absent.

Protection of Children as Students

In Egypt, Iraq and Lebanon alike, the child, is considered to be the subject of special protection. While this is in part consistent with the Convention on the Rights of the Child, the domestic provisions relating to children often neglect the right of the child to participate in decisions in affecting their lives, which is also required by this Convention. Only in Egypt has a dedicated children's law been enacted, codifying the various areas of law relevant to children in one statute. The enactment of the 1996 Child Law (Egypt), and its 2008 amendments, provide examples of the process by which domestic law relevant to the protection of students, especially, may be brought into fuller compliance with the Convention on the Rights of the Child. Other States in the MENA Region often have a patchwork of provisions in their constitutions, the labour law and the penal code that have specific provisions related to children, but do not have a comprehensive approach. Codification in this way also allows for line ministry responsibility for protection across sectors of State activities, which allows for accountability.

Child labour is generally an obstacle to the provision of education. All three case study States are party to the International Labour Organization Minimum Age Convention, which requires a minimum age of employment that is consistent with the end of compulsory education. Although both Egypt and Iraq contain constitutional prohibitions of forced labour and child labour, implementing legislation has been slower to come. Only in Egypt is the prohibition of child labour expressly connected with the age of compulsory education, such that labour is prohibited for anyone who has not reached the age at which compulsory education ends. It should be noted that in Lebanon, in respect of the worst forms of child labour, the prohibition is framed in terms of its impact on children's education; those forms of labour that may limit the education of children are prohibited. In 2015, Iraq took steps to harmonise its domestic labour laws with international standards, but the minimum age for entry into labour remains much higher than the age at which compulsory education ends. State parties to the Minimum Age Convention are also required to take all necessary measures, including the provision of appropriate penalties, to implement it. Only Egypt and Iraq have enacted criminal provisions to enforce the prohibition of child labour.

Although the rates of child labour in all three case study States are lower than global rates, refugee influxes and limited labour rights of refugees in all three States have contributed to a higher rate of child labour amongst displaced populations. The issue of child labour has additionally been noted, in all three case study States, to expose children to further violations including sexual and physical violence, in addition to their economic exploitation by the very fact of being engaged in labour.

The recruitment and use of children by armed groups and armed forces is another serious education-related violation. All three States are compliant with the international legal requirement to refrain from conscription of children and from the use of children in hostilities through their own armed forces. These are strengthened, in the case of Egypt, by a provision in the amended 1996 Child Law that incorporates the State's ultimate obligation to protect children from the effects of armed conflict. All three case study States face a real challenge, however, in the protection children from recruitment and use by non-State armed groups. While the **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed** conflict does not impose a strict obligation on States party to ensure that children are not used hostilities by non-State armed groups, it does issue guidance and, read together with the international human rights obligations of all three States, they do hold responsibility to prevent this. The position and status of non-State armed groups in Lebanon presents an interesting example of addressing the effects of armed conflict on children, generally. While it cannot be argued that Lebanon exercises control, in the technical sense, over the actions of non-State armed groups in its territory, Lebanon's collaborative approach with some of these groups may be of value in combating child recruitment and use in hostilities. However, that the situation of non-State armed groups in Lebanon is extremely particular to that territory and is in stark contrast with that in Egypt, for example.

2.5. The Protection of Education Facilities

In the domestic laws of the three case study States, the greatest protection of education facilities from direct attack is contained in the law relating to terrorism. Accountability for damage or destruction of education facilities thus appear to require the classification of the acts causing such damage or destruction as a 'terrorist' act. While this may provide a facilitative framework for the State to protect education facilities, for example through preventive measures, the impact of anti-terror legislation and measures may be extremely prejudicial to the protection of students and education staff.

With regard to the right to own or control property, it is tied to the empowerment of religious and ethnic minorities to direct the education of their school in their own languages and in accordance with their religious and ethical codes in Iraq and Lebanon. While it is to be welcomed that sectarian tensions are addressed through conciliatory measures such as this, there has been criticism of the Lebanese State's acquiescence in – and even encouragement of – sectarianism through separate schools. It is clear that there is a balance to be struck between ensuring equal rights in respect of establishing schools on the one hand, in accordance with the right to educational freedom, and the need for the State to provide education that is available, accessible, adaptable and accessible.

In respect of the protection of education facilities against direct or indiscriminate attack, Lebanon has signed the Safe Schools Declaration, which is a non-binding set of commitments regarding the protection of education facilities, but not Egypt or Iraq. None of the Military Penal Codes of Egypt, Iraq or Lebanon contains provisions under which the direct attack of education facilities or civilian objects more generally is prohibited and

attracts sanction. This is consistent with practice of States globally. This sort of direction is more likely to be contained in military manuals, limited access to which is a significant limitation of this Study. Some connected offences are contained, however, in the military penal codes, which prohibit the misappropriation of property by military personnel and require restitution and compensation in certain circumstances. There are some examples, in Iraq, of individuals being held responsible for ordering direct attacks against civilian objects with a primarily education use, but this is a criminal law matter, which is distinct from the military's regulation and abidance by the rules of IHL.

2.6. Remedy and Monitoring Mechanisms

All three States have generally abstained from ratifying the optional protocols to the international human rights treaties to which they are party, that allow for individual complaints. This is consistent with practice across the MENA Region. The situation in respect of reporting obligations differs, however. Iraq and Egypt appear to have revived their commitment to reporting under international human rights treaties to which they are party, with a direct correlation between failure to report and the evolution of the security context in both States. In Lebanon, where there has not been wholesale legal or constitutional reform, even after the end of hostilities in 1989, reporting to human rights treaty bodies remains infrequent.

In respect of domestic remedies and mechanisms, Iraq's strict domestic provisions are most numerous and provide greatest opportunity for effective remedies for education-related violations. These include, for example, several commissions established to process claims of violations, although these are not specifically for education-related violations. There is additionally a dedicated executive decree governing the restitution of property or otherwise fair compensation for loss of private property for persons returning to Iraq. In addition, Iraq has dedicated legislation on compensation for military mistakes. Egypt and Lebanon have been slow to enact legislation and establish institutions that are accessible to victims of education-related violations that implement the constitutional provisions requiring the establishment of domestic mechanisms. In Egypt, this may be explained at least in part by the youth of the 2014 Constitution, although the requirement for the State to establish a transitional justice commission imposes an immediate obligation. Lebanon fares extremely poorly in respect of any evidence to provide effective remedies and mechanisms for education-related violations and violations occurring during its non-international armed conflict. By contrast, it has made several attempts to secure remedies for violations occurring in the course of the international armed conflict with Israel in 2006.

With regard to domestic human rights mechanisms, in Egypt and Iraq, the independence of commissions mandated to supervise the protection, respect and fulfilment of the rights contained in the constitution is required. The constitutional regimes in both States, however, have proven to be cumbersome and resulted in non-implementation, especially in Egypt, of the duty on the legislature to create independent human rights mechanisms. In all three case study States, the rule of law is significantly impacted by continuing insecurity or armed conflict. Lebanon is in particular need of further development of the legal infrastructure,

including rule of law activities, that garner public trust and confidence in the legal system. There is evidence in all three States of political interference with the judiciary. This is of particular relevance when cases before the judiciary implicate State agents or involve acts otherwise attributable to the State.

Addressing the harm suffered by students and education staff in insecurity and armed conflict may be based on the responsibility of parties to hostilities; the practice of 'making amends' by warring parties has been observed in a number of States, whereby victims of lawful actions in armed conflict are recognized and may be afforded apologies, compensation and in-kind support. It may also be based on the violations suffered by the victims and the human rights obligations of the State in whose territory are the victims of armed violence. In Egyptian and Iraqi domestic legislation, a mistake on the part of State armed forces must be established. Domestic legal provisions enshrining the right to remedy of victims of violations and even victims of harm caused by lawful actions must be analysed alongside the actual practice of States. Organisations such as the Center for Civilians in Conflict (CIVIC), which advocates with national authorities and State armed forces to institute practice of 'making amends' are important partners in working toward greater availability of remedies for education-related violations in the three case study States and in the MENA Region more widely.

3. THEMATIC ANALYSIS

Among the challenges identified in the three case study States, three situations stood out because the primacy of the State, as an education-provider, was rendered complex. These situations are further analysed in Part 4 of the Study, bringing together various practices from the MENA region. The first situation concerns international displacement, when persons flee their country of nationality (or of habitual residence) in part because they can, or will, no longer rely on the State of that country to protect them. The second situation is where non-state actors are education providers, instead of the State, which includes humanitarian and development actors on one hand and non-state armed groups on the other. The third regards post-insecurity and post-conflict contexts; in particular, it considers the place of education in the laws adopted by the new political regimes instituted after the popular uprising of 2011, as well as the place of education in peace agreements and its consideration for longer-term reconciliation and peace-building.

3.1. Provision of Education to Displaced Persons

In the MENA Region generally, there is a general emphasis on the rights of citizens, rather than the rights of all persons within the territory or other subject to the jurisdiction of the States in question. Part of the difficulty of understanding the protection of education, in the broad sense, of displaced populations is the general trend across MENA States that actors other than the State are most heavily engaged in this. In addition, where protection of displaced populations takes place within a humanitarian operation carried out by international actors (in contrast to a development operation), there may be a less clear connection between the systems response within the State to education-related violations

and protection activities under the auspices of the humanitarian operation. An example of this is United Nations High Commissioner for Refugees activities to determine refugee status, which is often required to address the shortcomings of domestic asylum laws (if and when they exist), in accordance with the Refugee Convention and Protocol. In some instances, UNHCR has successfully advocated for the enactment of international refugee law-compliant domestic asylum laws, but this is often an additional activity to status determination.

Although individual States have responded to the issue of access to education for displaced persons in varying manners, there is a broad trend that the default position bars access to the public education. Requirements of citizenships or other documentation are often a key obstacle for displaced persons to access education. This is clearly incompatible with the obligation to provide, at a minimum, free and compulsory primary education to all persons within their jurisdiction, arising from the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, to which all MENA States are party. The broad practice of MENA States in this respect also contravenes the general principle of international law of non-discrimination, which is also contained in several of the international human rights treaties to which the majority of MENA States are party. As the Committee on Economic Social and Cultural Rights has stated, the prohibition against discrimination “is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education”.

The above practices are also clearly inconsistent with standards contained in international refugee law. The low levels of ratification of the 1951 Refugee Convention, however, have presented obstacles to the comprehensive protection of refugees and asylum-seekers in MENA States.

In addition to the general issue of access to education, three specific education-related violations constitute a barrier to the provision of education to displaced persons: early or forced marriage, child labour, and detention. Administrative detention is regularly used in relation to those fleeing insecurity and conflict situations under national security justifications. While these violations are not exclusive to displaced persons, their vulnerability make them particularly at risk of such violations, given the lack of State protection generally provided to displaced persons.

3.2. Provision of Education by Non-State Actors

Several non-State actors, throughout the MENA region, impact upon education. They may even become the sole education providers in the areas under their control. The mass displacement of Syrians in the region has led to international organisations, such as United Nations agencies or others not-for-profit non-governmental organisations to become key as education-providers. The protracted displacement of Palestine refugees across a number of MENA States has even led to the establishment of a specific United Nations agency, which also provides education services. However, the separateness of education

for Palestine refugees is problematic as it allows States to entirely circumvent their international legal obligations towards Palestine refugees under their jurisdiction.

Non-State armed groups are also providers of education in some MENA States. The status and treatment of non-state armed groups within the region differs greatly from outright criminalisation to acquiescence, tolerance and even cooperation. Egypt represents one end of the scale, and takes an overarching anti-terror approach to regulating the behaviour of non-state armed groups in its territory. By contrast, Lebanon has minimal formal provisions relevant to the acts of non-state armed groups. It has entered into some agreements with Palestinian factions, but the status of these is uncertain and it has a tacit agreement with Hezbollah in the South of Lebanon, especially. Lebanon's collaborative approach has led to Hezbollah playing a significant role in the provision of education. The proliferation of private schools usually based on confessional segregation, has been criticized for contributing to continuing sectarian tension or, at least, continuing lack of understanding between sects within Lebanon. In Iraq, some former non-State armed groups have become recognized as governmental entities, as a result of the decentralization of power following the reforms after the end of the Ba'ath Party rule. This has allowed for the culturally- and linguistically- appropriate education of minority groups. The situations in Lebanon and Iraq show that a delicate balance is required between empowering non-State actors to direct the education of their children on the one hand, and ensuring consistency of quality on the other. The obligation of all three case study States under IHRL to ensure that education is aimed at, *inter alia*, the promotion of tolerance and respect for human rights requires that even where education is culturally and linguistically adapted, these aims are not undermined.

When a non-State armed group fulfils a State function, the State in question remains responsible of human right violations committed by this non-State actor. Given that State are the primary duty-bearers of human rights obligations, rendering non-State armed groups directly accountable for human rights violations is, at present, not possible under international human rights law, unless those non-State armed groups become the State at a later stage. In some instances, non-State armed groups may provide an education to the population situation in areas they control which abides by international legal standards, whereas the education previously by the State may have amounted to a violation of the right to education. However, if the education violates international law, for example by including incitement to violence, the State on which territory this education is provided, may be held responsible. The education provided must be acceptable to students, which means that it must be culturally appropriate, including in terms of the language used for teaching.

3.3. Education in Post-Conflict Reforms

The transformative effect of insecurity and armed conflict appears evident in two of the three case study States with regard to the right to education. Whereas both Egypt and Iraq underwent wholesale constitutional, legal, political and institutional reform as a direct result of the situations of insecurity and armed conflict, Lebanon retained the constitutional and political structures in place during and prior to the armed conflicts there. Even between

Egypt and Iraq stark differences may be observed in respect of the driving force behind constitutional reform: whereas Egypt's constitutional reform was a fundamental demand of those participating in popular uprisings and the point at which the Egyptian constitution came to be reformed was determined through the popular uprisings by the population, the momentum behind the Iraqi constitutional and political reform came from external forces, namely through the Coalition Provisional Authority. In Tunisia, the educational system went through an overhaul process following its own uprising. However, education-related reforms were not prioritised and it appears that, so far, reform plans have focused on higher education.

Institutional and legal reforms are also the norm following an armed conflict. Education may thus be greatly affected through an overhaul of the entire system, as was the case following the Oslo Accords, where Palestine could develop an educational system acceptable for its population. Changes in the curriculum may also serve as guarantees of non-repetition, by teaching students about the past, but they may also be necessary simply because it may have been used by past government as a propaganda vehicle, as was the case in Libya.

Education is often but not always included in peace agreements. Within the MENA region, peace agreements have generally included some mention of education, such as in Lebanon, and, within the wider MENA region, in Sudan/South Sudan, where education was a key component of the 2005 Comprehensive Peace Agreement. Building an education system in emergency situations can support the realisation of long-term peace and recovery. The end of a conflict may thus create educational opportunities that are more inclusive and better suited to the local communities.

In post-conflict setting, education has also been included within reparations processes, such as in the Agreement between the Government of the Republic of South Sudan (GRSS) and the South Sudan Democratic Movement/Army (SSDM/A). Its value to seek the non-repetition of conflict has also been recognised, as demonstrated by the establishment of the "Badna Naaref" truth-seeking project in Lebanon, the effective implementation of which remains a challenge in practice.

4. CONCLUSION

The protection of education in insecurity and armed conflict, in its various facets, is stronger in places and weaker in others across the MENA Region. There does appear to be a correlation between compliance with international law on the protection of education and the enactment of legislation following a situation of insecurity or armed conflict, with Lebanon offering a counter-example to this thesis. The contexts in which domestic provisions relevant to the protection of education have come about are also invaluable in analysing their utility and should be borne in mind when considering the domestic implementation of the protection of education in insecurity and armed conflict.

As a region with several overlapping legal systems, there is a question of consistency between the various obligations of States with regard to the protection of education. In this regard, on occasions Islamic Law has been used as a basis for reservations, and some reservations have been made which could be deemed inadmissible.

In addition, reservations have been made by MENA States to what are considered by the treaty committees as core treaty provisions. In accordance with international law, a reservation may not be incompatible with the object and the purpose of the treaty. Another way to limit human rights obligations is through the use of derogations in situations of emergencies, which have sometimes been proclaimed for overly extended periods of time, as was the case in Egypt, which was a deciding factor in the 2011 uprisings and thus to further periods of insecurity. However, Egypt does not appear to have made any derogation in situation of emergency to the human rights treaties it is a party to.

A key issue is implementation in practice and the punishment of the perpetrators of education-related violations. A major hurdle exists when amnesty legislation are adopted in post-conflict situations. For example, Lebanon's amnesty legislation is wide reaching as it provides amnesty for a wide range of offences that would include education-related violations. The effect of this is exacerbated by highly selective prosecutorial practice; whereas political assassinations and other high profile attacks are litigated either domestically or through the Special Tribunal for Lebanon, those against individuals are often left with legally justified impunity. This failure contributes to the continuing insecurity within Lebanon. Egypt's failure to punish education-related violations persists in respect of those committed by the State and its agents, such as the killings of students allegedly committed by State security forces during protests. In Iraq, accountability for past violations was a significant aspect of the transitional period but the blanket approach taken had devastating effects on the rights of educational staff and on the education system as a whole.

In Egypt, Iraq and Lebanon alike, the child, especially, is considered to be the subject of special protection but domestic provisions relating to children often neglect the right of the child to participate in decisions in affecting their lives. Furthermore, the issue of child labour has been highlighted in this Study as an obstacle in practice to the realisation of the right to education.

Attacks against education facilities disrupt the provision of education and may endanger the lives of students and education staff. Within the MENA region, only Lebanon, Palestine and Qatar have signed the Safe Schools Declaration. Nevertheless, education facilities are protected in armed conflict under international humanitarian law in accordance with the principle of distinction. In all three case study States, the greatest protection of education facilities from direct attack appears to be contained in the law relating to terrorism, which is likely to be prejudicial to students and education staff. The right to own or control property in Iraq and Lebanon is partially tied to the right of religious and ethnic minorities to direct the education of their school in accordance with their cultures, which leads to sectarianism associated with separate schools.

With regard to reporting obligations to the United Nations Treaty Bodies, a direct correlation has been observed through the Study between failure to report and the evolution of the security context. In relation to remedy mechanisms, MENA States have generally abstained from ratifying optional protocols allowing individuals communications in relation to the international human rights treaties to which they are party. This is an issue as individuals in MENA States also lack recourse at the regional level. While Algeria, Libya, Sahrawi Arab Democratic Republic and Tunisia, as members of the African Union, have ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, they have not ratified the protocol allowing individuals to access it. The lack of international mechanisms available to victims of education-related violations is made worse by the inconsistent domestic remedies across the region and certain rule of law issues, in particular with regard to the independence of the judiciary in certain States.

The Study also highlighted three specific issues, which are associated with insecurity and/or armed conflict contexts and present important challenges to a State's responsibility to realise the right to education. First, mass displacement has resulted in States barring access to public education, through the requirements of citizenship or other documentation, which is incompatible with the obligation to provide, at a minimum, free and compulsory primary education to all persons within their jurisdiction. In addition to the general issue of access to education, displaced persons sometimes face additional barriers to the realisation of their right to education, including early or forced marriage, child labour, or detention.

Second, institutional and legal changes following insecurity and armed conflict may provide reforms that may strengthen the protection of education. However, in order for this to happen, education-related reforms must be prioritised, which is not often the case. The transformative value of insecurity and armed conflict is evident in Egypt and Iraq, with both adopting wholesale constitutional, legal, political and institutional reform as a direct result of insecurity or armed conflict. Although the right to education had previously been present in both jurisdictions to a limited extent, the reforms expanded the right to education in a way that, in terms of law, allow for the practical realisation of the right. The most significant advancement in this regard is contained in the 2014 Constitution of Egypt, which provides for a gradually increasing proportion of the national budget, institutions such as early childhood centres, and where education services are to be provided. In addition, education may be part of peace negotiations and considered early on as a tool for longer-term reconciliation and peace-building.

Third, the activities of non-State actors, including both non-governmental organisations and non-State armed groups, often become key education providers in State in situations of insecurity or armed conflict. With regard to humanitarian organisations, it is important that States consent to their operations when it is unable to fulfil its human rights obligations, such as the provision of education, which may in turn be ensured by that organisation. While non-State armed groups may provide an education which abides by international legal standards, if they do not, the State on which territory these groups operate may be

held responsible for such violations. There are difficulties in rendering non-State armed groups directly accountable for human rights violations, given that State are the primary duty-bearers of human rights obligations.

This Study on the domestic implementation of international law pertaining to the protection of education in insecurity and armed conflict in the MENA region demonstrates that there are a number of challenges which present key obstacles to the realisation of the right to education. Most of these challenges are not exclusive to the MENA region but are common to any region in situation of insecurity or armed conflict. Through both its case study and thematic analysis, the Study provides lessons learned that may inform the protection of education in the MENA region more generally and in other regions as well.