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Comparative Law**



PEIC

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

PROTECTING EDUCATION IN THE MIDDLE EAST AND NORTH AFRICA REGION

Report

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Foreword

The present Study on *Protecting Education in the Middle East and North Africa (MENA) 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. This Handbook filled a gap in the legal literature by examining how international human rights law, international humanitarian law, and international criminal law protect education in those situations where the protection of education is most at risk and when relevant international law provisions require increased attention, focus, accessibility, and implementation. In order to facilitate the dissemination of the content of our research on the protection of education, BIICL has developed, in cooperation with PEIC, teaching materials which may be used freely by law professors and lecturers.

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.

Following the publication of the Handbook, BIICL also undertook a Report on *Education and the Law of Reparations in Insecurity and Armed Conflict* (the Reparations Report), which was published in 2013.

All of the material produced by BIICL on the protection of education, including the Handbook are available at:

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

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

<http://educationandconflict.org/publications>

Given that one of the findings of the Handbook was the lack of implementation of the relevant international norms at the domestic level, as well as at the regional level, the present Study considers the domestic implementation of international law obligations pertaining to the protection of education through country case studies, as well as a thematic analysis.

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All websites cited as references were last accessed in June 2016, the date of publication of this Report.

Acronyms

ACHPR	African Charter on Human and Peoples' Rights
ACHR	Arab Charter on Human Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AU	African Union
AYC	African Youth Charter
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	International Convention on the Elimination of all forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CPA	Coalition Provisional Authority (Iraq)
CRC	Convention on the Rights of the Child
CRCI	Convention on the Rights of the Child in Islam
HRC	Human Rights Council
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICL	International Criminal Law
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
IDPs	Internally displaced persons
IHCHR	Iraqi High Commission for Human Rights
IHCT	Iraqi High Criminal Tribunal

IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILO	International Labour Organization
INEE	Inter-Agency Network for Education in Emergencies
ISF	Internal Security Forces (Lebanon)
ISIL	Islamic State of Iraq and the Levant
LAS	League of Arab States
MEHE	Ministry of Education and Higher Education (Lebanon)
MENA	Middle East and North Africa
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIC	Organisation of Islamic Cooperation
OP	Optional Protocol
OPT	Occupied Palestinian Territories
PKK	Kurdistan Workers' Party
PLO	Palestine Liberation Organization
RACE	Reaching All Children with Education in Lebanon
SPLM	Sudan People's Liberation Movement
STL	Special Tribunal for Lebanon
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAMI	UN Assistance Mission for Iraq
UNHCR	UN High Commissioner for Refugees
UNRWA	UN Relief and Works Agency
UPR	Universal Periodic Review

1. INTRODUCTION

The purpose of the Study is to examine how and to what extent education-related violations are being addressed (and may be addressed) through domestic law in MENA States. 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. In so doing, it builds upon BIICL's previous work in this area, including *Protecting Education in Insecurity and Armed Conflict - an International Law Handbook* (the Handbook),¹ and *Education and the Law of Reparations in Insecurity and Armed Conflict* (the Reparations Report),² which were both prepared in close partnership with PEIC.

Although studies on education in the MENA Region are available, they are often focused on specific issues such as the education of young children, their attendance at school, and the improvement of literacy rates, and do not consider all aspects of education or the obligation attached to the right to education. This Study fills this gap by applying 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.

1.1. Key Terms and Preliminary Issues

1.1.1. MENA Region

Different sources classify the region under study as, for example, 'the Middle East and North Africa', 'Arab States', 'West Asian States', 'West Asian North African States'. This study uses 'Middle East and North Africa' ('MENA') States to denote a broad geopolitical area consisting of 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.³

When relevant, examples from neighbouring States, which are sometimes considered as being part of the wider MENA Region, such as Djibouti, Sudan, or South Sudan, for example, are included for comparative and complementary purposes.

¹ The Handbook, published in 2012, its yearly Updates, and associated teaching materials, are available at: <http://www.biicl.org/protectingeducation>

² The Reparations Report is available at: <http://www.biicl.org/research-reparations>

³ This grouping is mostly in line with the one adopted by the United Nations, see: <http://www.ohchr.org/EN/Countries/MenaRegion/Pages/MenaRegionIndex.aspx>

Note that the Sahrawi Arab Democratic Republic is only taken into account in this Study as a member State of the AU.

1.1.2. Insecurity

Although not a legal term, 'insecurity' is used to refer to situations occurring within a State that disrupt the normal functioning of key political, social and legal institutions, 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 (see below). 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.

There are two types of insecurity relevant for this Study:

- insecurity prior to armed conflict or when armed conflict does not arise, which includes the popular uprisings that started to sweep the region starting in 2010, and
- insecurity in post-conflict and transitional situations, being when an armed conflict has ended. There is no agreed timeframe on the length of 'post-conflict' or 'transition' periods; this is largely context-specific.

1.1.3. Armed Conflict

Armed conflict is a legally defined term and includes both international and non-international armed conflicts.⁴

An **international armed conflict** exists when armed violence occurs between States, regardless of the scale, intensity or duration of such violence.⁵ An international armed conflict ends when there is a general conclusion of peace. The applicable international legal frameworks in situations of international armed conflict are derived from international humanitarian law (IHL). International human rights law (IHRL) continues to apply alongside IHL, although parts of it may be reduced or suspended.

Also included within the category of international armed conflict are armed struggles against colonial domination, alien occupation, and struggles against racist regimes.⁶ A territory is considered occupied when part or whole of it is actually placed under the authority of the army of another State. Occupation exists up until the time that the occupying power's armed forces withdraw from the occupied territory. Alien occupation is considered in international law to constitute an international armed conflict but is important to separate as, in addition to the rules of IHL applicable in international armed conflict, the law of occupation governs the behaviour of the occupying power and its treatment of the population in occupied territory. International human rights continue to apply alongside IHL and the law of occupation, although parts of it may be reduced or suspended.

Over the past couple of years, there was several international armed conflicts within the MENA Region, including an armed conflict between Israel and Palestine/OPT, as well

⁴ See the Handbook, p. 8.

⁵ *Prosecutor v Tadić*, Interlocutory Appeal on Jurisdiction, Appeals Chamber Decision, (2 October 1995), IT-94-1-AR72 ('*Tadić* Interlocutory Appeal on Jurisdiction'), para. 70.

⁶ Common Article 2 to the Four 1949 Geneva Conventions.

as military occupations of Lebanon by Israel, of Palestine/OPT by Israel, of Syria by Israel, and of Western Sahara by Morocco.⁷

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. Armed conflicts can transform from non-international to international armed conflicts, and vice versa, in certain circumstances. The applicable international legal frameworks in armed conflicts are derived from IHL. IHRL continues to apply alongside IHL, although parts of it may be reduced or suspended.

Over the past couple of years, there were several non-international armed conflicts within the MENA Region, including in Egypt, Iraq, Libya, Syria, and Yemen,⁸ several of which are ongoing.

1.1.4. State of Emergency

Situations of insecurity and armed conflict may amount to a public emergency which threatens the life of the nation. In those circumstances, a State may impose restrictions or suspend certain of its legal obligations after having officially declared a state of emergency. Certain human rights treaties specifically allow their State parties to derogate from some of their obligations in such situation. However, not all treaties allow for such derogations and some human rights can never be the object of a derogation. In order for a derogation to be valid, a State must not only have officially proclaimed a situation of emergency but also notified which rights it is derogating from. In addition, derogations must abide by the principle of proportionality, in that they must be strictly necessary; they must also be temporary and consistent with other international obligations. In particular, they must not be discriminatory.

In 2016, several MENA States declared a state of emergency, including Egypt and Tunisia, among others.

1.1.5. Protection of Education in Insecurity and Armed Conflict

The protection of education is a broad legal concept drawn from the Handbook, which applies in situations of insecurity and armed conflict. It 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), international humanitarian law (IHL), and international criminal law (ICL). 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.

⁷ See A Bellal (ed), *The War Report 2014* (OUP, 2015).

⁸ *Ibid.*

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 as already mentioned.⁹ 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.¹⁰ The rules of ICL provide for individual criminal responsibility for international crimes (such as war crimes and crimes against humanity). The governing statutes of the ICC and ad hoc tribunals contain specific provisions setting out their jurisdiction, which is generally limited to a specific period or geographical area.¹¹

These obligations broadly fall under four heads:

- the protection of education *per se*, 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.

The Protection of Education

In accordance with the definition of education adopted in Chapter 3 of the Handbook, this Study also understands education broadly, including formal, informal, technical and vocational education in all its stages.¹² 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.¹³ Therefore, the protection of education *per se* includes the legal provisions ensuring that education is, at a minimum, available, accessible, acceptable and adaptable.¹⁴ In addition to IHRL, IHL also contains a number of relevant rules which support the provision of education. 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.

The Protection of Students and Education Staff

As mentioned in Chapter 4 of the Handbook, a 'student' is any person receiving education at any level, regardless of his or her age and of the form of education (e.g. formal, informal, or technical). 'Education staff' means all persons involved in the

⁹ See the Handbook, p. 18 *et seq.*

¹⁰ See, further, on the personal application of IHL, the Handbook, p. 43 *et seq.*

¹¹ See, further, on the application of ICL, the Handbook, p. 55 *et seq.*

¹² For all definitions regarding education, students and education staff, educational facilities, and education-related violations, see the Handbook, pp. 4-6.

¹³ See the Handbook, p. 72 *et seq.*

¹⁴ Known as 'the 4A Framework'; see the Handbook, p. 72 *et seq.*

provision of education; the term is not limited to teachers or professors but also includes staff working within educational facilities, including those working as maintenance and technical staff. In respect of higher education and other academic institutions, the term 'education staff' includes not only teaching staff but also those involved in research and scholarship more broadly.

'Protection of students and education staff' includes the legal provisions ensuring that students and education staff are able to receive and provide education. 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.

The Protection of Educational Facilities

According to Chapter 5 of the Handbook, educational facilities are any publicly- or privately-owned structure or installation used by an education institution in furtherance of its mission.¹⁵ This includes both permanent and temporary places of learning. It does not include private dwellings that are also the location of familial education.¹⁶

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 educational facilities, and redress for any damage caused by attacks or for interference with the status of educational 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

The Handbook adopted the term 'education-related violation' to 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

¹⁵ The question of whether partial use of a building or structure for educational purposes renders the whole an 'education facility' is settled differently in the several areas of international law considered in this Study and the Handbook; see in particular Chapter 5.2.

¹⁶ See the Handbook, p. 5.

staff, and educational institutions, which interfere with the provision of education. Education-related violations considers the legal implications of such attacks, in particular the violations of the provisions of IHRL, IHL, and ICL, which protect education.¹⁷ 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.¹⁸ Both States and non-State armed groups may commit education-related 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 and Reparations

As explained in both Chapter 6 of the Handbook and in the Reparations Report, 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, whether in the form of a violation of IHRL or IHL, or a violation of some other rule of international law applicable to a state, an ‘immediate corollary of that act is the obligation to make reparation.’¹⁹ 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. While the Handbook focussed on the mechanisms available at the international level, 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.

1.1.6. International Legal Framework

As set out in the Handbook, the international legal framework for the protection of education includes IHRL at both the universal and regional levels, IHL, and ICL, as well as the relevant international Islamic law. The sources of international law relevant to the protection of education are treaty and customary international law.

The regional law, which applies to certain MENA States, arises from two regional organisations:

- the League of Arab States (LAS),²⁰ and
- the African Union (AU).²¹

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).

¹⁷ Under IHRL, education-related violations can be attributed to States

¹⁸ See the Handbook, pp. 26-30.

¹⁹ See the Handbook, p. 223.

²⁰ 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.

²¹ 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.

Regional standards refers to non-binding regional instruments as well as the provisions of regional instruments that are not binding on a particular State because it is not party to them or because it has entered an effective reservation or declaration in accordance with the law of treaties.

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. The exact content of those rules varies between schools of thought within Islamic law, known as *madhahib*,²² and at times between the opinions of scholars within the *madhahib*. Differences are based on what are accepted sources of Islamic legal rules within each of the *madhahib*. Accordingly, there is no single agreed body of rules constituting 'Islamic law', although there is parity between the rules of the *madhahib* on the basis of fundamental principles of Islam and Islamic law.²³ 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. International standards denote any standards contained in non-binding international instruments as well as the provisions of international instruments that are not binding on a particular State because it is not party to them or because it has entered an effective reservation or declaration in accordance with the law of treaties.

1.1.7. Arabic Terminology for Education

There are two major Arabic terms for education. The most commonly used, and least controversial, is *al-ta'leem*.²⁴ Although the second, *al-tarbiyyah*,²⁵ may also be translated as 'education' and is, in some States, the preferred term for education, those States that do not use it as the primary term for education employ *al-tarbiyyah* in connection with, but not interchangeably, with *al-ta'leem*, suggesting a conceptual difference between the two. An understanding of the connotations of *al-tarbiyyah* is aided by the context in which it is employed: in contexts where *al-ta'leem* is the primary term for education, domestic legislation and regional legal instruments use *al-tarbiyyah* in the context of familial education. This would be an unusual expression in English and so this Study employs the English term, 'upbringing' in respect of *al-tarbiyyah* used in the context of familial education, but retains the term, 'education' where the State in

²² 'madhab' in the singular.

²³ see, broadly, M Hashim Kamali, 'Shari'ah Law: An Introduction' (Oxford, Oneworld, 2010), Chapters 1 and 2.

²⁴ التعليم

²⁵ التربية

question uses *al-tarbiyyah* as its primary term for education.²⁶ It is relevant that the English version of the CRCI uses the distinction described above.²⁷

The term *al-ta'leem al-isaasiyy* can directly be translated to 'primary education'. It is used in MENA States to refer to a period of nine years' education usually beginning at the age of six and consisting of two parts: *al-halaqa al-ibtidaaiyy* and *al-halaqa al-thanawiyy*. The term *al-ta'leem al-thanawiyy* which can directly be translated to 'secondary education' refers to education for a period of three years, usually beginning around the age of 15. Higher education is articulated in Arabic as *al-ta'leem al-'aliyy*.

The general practice within the MENA Region, with primary education running for children from age 6 to 15, is not universal. Primary education age often differs in other States; for example, in the United Kingdom, it runs for children from age 4 to 11. However, neither the international legal frameworks nor the accompanying interpretive guidance of Committee on Economic, Social and Cultural Rights (CESCR) specify what constitutes primary education.²⁸

Therefore, considering the compliance of domestic laws with the international legal frameworks in relation to the various levels of education may appear problematic. With regard to the obligation to provide free and compulsory primary education, for example, States party to the ICESCR may thus believe to have various obligations depending on the length of primary education on their territory. However, reference can be made to UNESCO's *International Standard Classification of Education*, as approved by UNESCO's General Conference in 1997, which considers the age to start primary education as between 5 and 7 and lasting a total of six years of full-time schooling. Therefore, even if MENA States consider primary education as lasting up to age 15, their international obligations with regard to primary education should be considered as limited to age 12, if children enter primary education at age 6.

1.2. 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 bear 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, as set out in the Handbook. As such, the unit of analysis is the individual State and the framework for analysis is the international legal framework for the protection of education. This allows an assessment of the extent to which the protection of education in the territory of MENA States is compliant with international law. While the acts of certain non-State actors and individuals are also

²⁶ This is usually informed by the name given to the ministry responsible for the education system. In Iraq, for example it is called *Al-Wazarat al-tarbiyyah*, whereas in Egypt it is called *Al-Wazarat al-tarbiyyah wa al-ta'leem*.

²⁷ See the English and Arabic texts of Articles 11 and 12, 2004 OIC CRCI, both of which are equally authentic by virtue of Article 26 of the same.

²⁸ CESCR, General Comments 11 and 13.

considered, they are analysed through the State's compliance with its obligations to enforce the rules applicable to them.

The Study offers both a case study and a thematic approach, each highlighting State practice in implementing international legal obligations. Review of the literature provided the factual information used to describe the scale of a particular threat to the protection of education, primary legal research revealed the States' specific obligations and the content of relevant domestic law, and a compliance analysis yields the conclusions in respect of each element of the protection of education. While most of the research was desk-based, with regard to the case studies it was supplemented through consultation with legal experts from the relevant jurisdictions.

1.2.1. Case Study Approach

In the absence of existing comprehensive analyses of the protection of education in insecurity and armed conflict in the MENA Region, a 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 in such contexts 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. Combined, these three criteria identified three States in which a detailed analysis of the domestic protection of education would be of immediate relevance and of sufficient longevity so as to inform practice.

Egypt is among three States categorised as being in a state of insecurity following the 2011 popular uprising.²⁹ Students were actively involved in the popular uprisings from January 2011 in Egypt, in large part propelled by the persistent and prolonged curtailment of their rights under a continuing state of emergency. They led many protests in Egypt, both on Cairo's Tahrir Square and on their campuses. Students at the American University of Cairo launched a campaign for the removal of their president, Hossam Kamel, a representative of the old regime, and students at the German University of Cairo protested for their right to a union. The student movement became widespread with the general strike of 11 February 2012 asking for the end of the military regime. It is not only students but also education staff who has been active in the protests in Egypt; for example, professors at Ain Shams University conducted a strike. In addition to the uprisings, the ongoing insurgency in the Sinai province, in response to which it launched anti-terror military operations,³⁰ has been considered to amount to a non-international armed conflict.³¹ Egypt can also be considered to have been in an insecurity context for decades with its long-term state of emergency.

²⁹ The other two MENA States in a similar context of insecurity following popular uprisings being Tunisia and Bahrain.

³⁰ See 3.2.1. (Egypt – introduction).

³¹ See the A Bellal (ed), *The War Report 2014* (OUP, 2015), p. 170. However, this conflict was not considered to have reached the threshold for the applicability of the 1977 Additional Protocol II.

Following the uprisings, Egypt went through fundamental legal changes, in particular with the adoption of a new constitution in 2014, as well as implementing legislation, which contain detailed and specific provisions on the right to education. Furthermore, its domestic legislation tend to recognise and protect the rights of all persons within its jurisdiction, in contrast to other MENA States that emphasise the rights of citizens only. Although Egypt continues to experience insecurity in 2016, it seems unlikely that this will impact the legal infrastructure that was calibrated by the 2014 constitution and which the national courts are already interpreting and applying. It was thus deemed to have a sufficient level of stability of the legal system to render an in-depth analysis of its current domestic laws a useful exercise. Finally, Egypt was also selected because of its influence in the MENA Region, including its legal influence; many of the legal systems of MENA States are based on the Egyptian system.

Iraq is in a situation of ongoing armed conflict.³² The Government of Iraq has accrued significant practice in respect of the protection of education not only in terms of transitional justice and reconciliation measures following the end of the Ba'ath Party rule and the occupation by the Coalition Provisional Authority but also in the protection of students and staff in the course of armed hostilities. The stability of Iraq's legal system was established on the basis that the constitutional framework upon which the protection of education depends was adopted in 2005.

Lebanon is in a situation which can be qualified as a situation of ongoing post-conflict insecurity or a period of transition, post-conflict. Lebanon has developed a combination of legal and policy practice of the protection of education specifically in relation to the displaced population on its territory, which constitutes one of the highest of such populations in the world. The constitution in place, which informs the political and legal infrastructure of the State, was adopted in 1926. Legal reform generally has been slow in Lebanon and, as a result, there is a sufficient degree of stability of the legal system for analysis of the currently applicable domestic law to make a valuable contribution.

In accordance with the approach taken in the Handbook, the protection of education within each case study is analysed under the following four elements:

- the protection of education,
- the protection of students and education staff,
- the protection of educational facilities, and
- the remedies and reparations for education-related violations.

A comparative analysis across the three case studies is offered to aid their generalisation.³³

³² The other States with an ongoing armed conflict are Israel, Palestine/OPT, Libya, Syria, and Yemen. Armed conflict also continues in Western Sahara but States were prioritised for the purposes of a comprehensive analysis of the operation of the protection of education.

³³ An analytic generalisation is offered. See R Yin, 'Case Study Methods' (2004), available at: <http://www.cosmoscorp.com/Docs/AERAdraft.pdf>

1.2.2. Thematic Approach

To complete the case study approach and add examples from other MENA jurisdictions, a thematic part was added to the Study. It highlights specific challenges to the protection of education observed across several MENA States, in order to identify regional trends, which may serve to inform recommendations as to the implementation of the protection of education with regard to those particular issues.

Among these challenges, three situations stood out because the primacy of the State, as an education-provider, was rendered complex. Therefore, these situations deserved further analysis, 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 the right to education in the legal and policy frameworks 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 along longer-term reconciliation and peace-building efforts.

Those three key issues were selected, based on a regional analysis and the findings of the case studies, which highlighted a number of challenges associated with the protection of education in insecurity and armed conflict and the domestic implementation of applicable international obligations in Egypt, Iraq, and Lebanon.

1.2.3. Sources

The national constitution and practice of constitutional and administrative courts, national legislation, executive decrees and the practice of mechanisms and courts within the jurisdiction of the relevant State form the primary sources from which analysis is drawn. The observations and reports of international mechanisms specifically relevant to the domestic legal implementation of the protection of education are also consulted in respect of international law compliance. Subsidiary sources are literature and the practice of non-State actors, including humanitarian and development actors, and non-State armed groups that perform regulatory functions are reviewed where relevant.

The texts of the above sources were consulted in the original language. Where quotations in English appear in this Study they are based on unofficial, but verified, translations of the text. Where specific words are quoted in the original language they appear in italics and, for Arabic words, they are transliterated to the Roman alphabet for accessibility.³⁴

The factual information is based upon the work carried out by PEIC and its partners, including *Education Under Attack* and the MENA Region Scoping Study on *Education-*

³⁴ The standard system for transliteration of Arabic to English is used throughout the Study where relevant.

related Violations in Conflict-Affected Countries, among others.³⁵ It is supplemented by the most recent information contained in the UN Secretary General's 2015 Reports on the Protection of Civilians in Armed Conflict,³⁶ and on Children and Armed Conflict, among others.³⁷

1.3. Structure of the Study

After this Introduction (Part 1), Part 2 of the Study presents a regional overview. It first presents some of the challenges posed to the protection of education in insecurity and armed conflict and trends in respect of compliance with international law observed across the MENA Region.

Part 3, the core of the Study, contains the three case studies. These analyse in depth the domestic implementation in Egypt, Iraq, and Lebanon, of the protection of education. Taking the international obligations of each State as a framework for analysis, the case studies examine the extent to which education is protected. These are the protection of the right to education/ protection of education *per se*; the protection of students and education staff; the protection of educational facilities; and mechanisms and remedies to address education-related violations. Part 3 concludes with a comparative analysis of the case studies.

Part 4 of the Study contains the thematic analysis, which focuses on three key issues that affect the protection of education across the MENA Region. The first issue is the protection of education of refugees and internally displaced persons (IDPs) in insecurity and armed conflict. The second issue regards the place of education attributed in immediate post-insecurity and post-conflict contexts, in particular in peace agreements. The third issue is the provision of education in insecurity and armed conflict by non-State actors, including both international governmental and non-governmental organisations and other non-State actors, in particular those that amount to a non-State armed group or that are supported by one.

Part 5 presents some conclusions on the extent to which education is protected in insecurity and armed conflict in the MENA Region, including broad recommendations.

³⁵ M Richmond *et al*, *Education Under Attack* (GCPEA, 2014), and N Aboueldahab and S Kettler *Education-related Violations in Conflict-affected Countries, Scoping Study MENA Region* (PEIC / OHCHR Doha Centre, 2013).

³⁶ 18 June 2015, UN Doc. No. S/2015/453.

³⁷ 5 June 2015, UN Doc. No. A/69/926–S/2015/409.

2. MENA: A REGIONAL OVERVIEW

Except for Israel and Iran, MENA States, as defined in Part 1, are all members of the LAS.³⁸ Except for Israel, MENA States are also part of the OIC. The following MENA States are part of the AU: Algeria, Egypt, Libya, and Tunisia.³⁹ The other States, which are sometimes considered part of the MENA Region and are considered in this Study for a comparative purpose, which are also part of the AU include Djibouti, South Sudan and Sudan.

Many Member States of the LAS (the 'Arab States') affirm that Islam is the main source of legislation, implemented into national laws to varying degrees,⁴⁰ and the religion of the State.⁴¹ While, the Charter of the Arab League does not refer to Islam, other Arab League instruments refer to Islam for guidance. The preamble of the ACHR provides that member states adopt the Charter "[i]n furtherance of the eternal principles of fraternity, equality and tolerance among human beings consecrated by the noble Islamic religion".⁴² Many of the rights and guarantees that are provided in the Model Law for the Rights of Arab Child of the Arab League are largely framed within Islamic law concepts. Sharia law refers to 'the comprehensive and detailed corpus of law'⁴³ of which the fundamental sources are the Quran and the Sunnah.⁴⁴ The implementation of those Islamic norms can be reflected in the jurisprudence, interpreted in accordance with the principles of each *madhhab* (school of legal thought).⁴⁵

³⁸ The LAS includes 22 Arab States. In addition to most of the MENA States mentioned above, the LAS also includes Comoros, Mauritania, and Somalia. Note that Comoros, Qatar, Oman, Saudi Arabia and the UAE have not ratified the ICESCR.

³⁹ Note that the Sahrawi Arab Democratic Republic, not universally recognised as a State, is also a member of the AU.

⁴⁰ Islamic Sharia does constitute the main or chief source of legislation in some States, as reflected in the constitutions of Qatar and UAE, and the current constitution of Egypt which clearly provide that the Islamic Sharia is 'a main source of legislation'.

⁴¹ Some States have a predominately Muslim population but also have a large Christian population, as is the case with Egypt, Iraq, Jordan, Lebanon, Palestine and Sudan. Islam generally remains 'the religion of the State,' in several Arab States as attested in the constitutional provisions of, for example, Algeria, Egypt, Jordan, Morocco, Qatar, Palestine, Tunisia and UAE. The Constitution of Lebanon of 1926 is one of the very few exceptions, where there is no constitutionally enshrined official State religion. On the other hand, the Constitution of Syria does not define the religion of the State but specifies that the "religion of the President of the Republic has to be Islam".

⁴² See the preamble of the ACHR, available at: <http://www1.umn.edu/humanrts/instate/loas2005.html>

⁴³ M K Masud, B Messick, D S Powers, 'Muftis, Fatwas, and Islamic legal Interpretation', in M K Masud, B Messick, D S Powers (eds), *Islamic Legal Interpretations, Muftis and their fatwas* (Harvard University Press, Cambridge Massachusetts, London England, 1996), p. 4.

⁴⁴ The latter is the compilation of the traditions and sayings of the Prophet Mohammed.

⁴⁵ Within Sunni Islam there are four main schools of legal thought—*Hanafi*, *Maliki*, *Hanbali* and *Shafi'i*. Within Shia Islam there are a number of different schools of legal thought; however, most Shia follow the *Jaafari* legal school of thought. The *Jaafari* legal school recognises the Quran and various Sunnah as sources of law but add to it the practices of the 12 imams. See N Abiad, *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study* (BIICL, 2008), pp. xviii-xix.

2.1. Education in Insecurity and Armed Conflict in the MENA Region

According to the Special Rapporteur on the Right to Education, who first considered the right to education in emergency situations in his 2004 annual report, “security in schools forms part of the human right to education”.⁴⁶ He condemned the role of armed conflicts, highlighting those in Iraq and Sudan, as “extreme situations in which schools also pay the price of bloodlust and ordinary people lose their children”.⁴⁷ The Special Rapporteur highlighted the obligation of States to respect, protect and fulfil the right to education “whether or not an emergency situation prevails” and for all persons “regardless of legal status”.⁴⁸ Despite this, education is “frequently found to be interrupted, delayed or even denied during... emergencies”,⁴⁹ in particular with regard to traditionally marginalized groups, such as refugees, IDPs, women and girls, adolescents, children associated with armed forces and groups, and persons with disabilities.

The Special Rapporteurs on the Right to Education has neither conducted a visit to any of our case study States (Egypt, Iraq or Lebanon), nor made any direct reference to them in their reports. They have conducted visits in other MENA States, including Algeria,⁵⁰ Morocco,⁵¹ and Tunisia.⁵² However, none of these reports discusses the protection of education in insecurity and armed conflict. They are focussed on other issues, such as ensuring the quality of education, and access to education (such as equality and non-discrimination in education).⁵³

The United Nations (UN) Security Council has issued a number of thematic resolutions that were concerned with education,⁵⁴ including a number concerned directly with the situation in the MENA Region. For example, in resolution S/RES/2165 (2014) on the Middle East, the Security Council reiterated “its demand that all parties demilitarize medical facilities, schools and other civilian facilities and avoid establishing military positions in populated areas and desist from attacks directed against civilian objects”.⁵⁵ More precisely, in resolution S/RES/2191 (2014) on the Middle East, it called on all

⁴⁶ Commission on Human Rights, Report submitted by the Special Rapporteur on the right to education, V Muñoz (17 December 2004), para 119, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/171/40/PDF/G0417140.pdf?OpenElement>

⁴⁷ Ibid, para. 123

⁴⁸ Human Rights Council, Report of the Special Rapporteur on the Right to Education, V Muñoz, ‘Right to Education in Emergency Situations’ (20 May 2008), para 37, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/135/33/PDF/G0813533.pdf?OpenElement>

⁴⁹ Ibid, para. 12

⁵⁰ Human Rights Council, Report of the Special Rapporteur on the Right to Education, K Singh, Mission to Algeria (29 June 2015), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/135/58/PDF/G1513558.pdf?OpenElement>

⁵¹ Human Rights Council, Report of the Special Rapporteur on the Right to Education, V Muñoz, Mission to Morocco (6 May 2008), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/132/64/PDF/G0813264.pdf?OpenElement>

⁵² Human Rights Council, Report of the Special Rapporteur on the right to education, K Singh, Mission to Tunisia (24 May 2013), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/141/13/PDF/G1314113.pdf?OpenElement>

⁵³ See the Report on Tunisia for example.

⁵⁴ See, for example, S/RES/2225 (2015) on Children and Armed Conflict, para. 7; S/RES/2143 (2014) on Children and Armed Conflict, para 17; S/RES/2242 (2015) on Women and Peace and Security, para. 15

⁵⁵ S/RES/2165 (2014).

parties to the Syrian conflict to abide by IHL and IHRL by “ceasing all attacks against civilians and civilian objects, including those involving attacks on schools”.⁵⁶ With regard to Iraq, the Security Council expressed concern at the use and recruitment of child soldiers by ISIL and other armed groups.⁵⁷ Also, with regard to ‘threats to international peace and security caused by terrorist acts’, it strongly condemned “attacks on schools and hospitals, destruction of cultural and religious sites and obstructing the exercise of economic, social and cultural rights, including the right to education, especially in the Syrian governorates of Ar-Raqqah, Deir ez-Zor, Aleppo and Idlib, and in northern Iraq, especially in Tamim, Salaheddine and Niniveh provinces”.⁵⁸

Education faces many obstacles as a result of situations of insecurity and armed conflict, which are present in many States within the MENA Region. At the time of writing this Study, Bahrain, Egypt and Tunisia have a situation of insecurity on their respective territory, while Iraq, Israel, Libya, Syria, Yemen, and Palestine/OPT, all have situations of armed conflict on their respective territory. In addition, Morocco is militarily occupying Western Sahara/Sahrawi Arab Democratic Republic.

2.2. Regional and Islamic Legal Framework

In addition to the global legal instruments, States are also bound by the regional instruments of which they are a party, as well as those stemming from international Islamic law. This section looks at the relevant regional instruments from the LAS and the AU, as well as the relevant instruments adopted by the OIC. Although the OIC is an international rather than a regional organisation, its instruments are also presented in this section as they apply to most States within the MENA Region. Finally, the relevant remedy and monitoring mechanisms associated with these respective frameworks are also included here.

2.2.1. LAS Instruments

Arab Charter on Human Rights

The ACHR, adopted in 2004, affirms international instruments as positive applicable norms by providing in its Article 43 that “[N]othing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the States parties or those set forth in the international and regional human rights instruments which the States parties have adopted or ratified, including the rights of women, the rights of the child and the rights of persons belonging to minorities”.⁵⁹ Nevertheless, the Charter has been criticised for risking to be interpreted as falling short

⁵⁶ S/RES/2191 (2014).

⁵⁷ S/RES/2169 (2014).

⁵⁸ S/RES/2170 (2014), para. 2

⁵⁹ The ACHR entered into force on 15 March 2008, two months following the ratification by seven States. The first States to ratify were Jordan, Bahrain, Algeria, Palestine, Syria, Libya and UAE, followed by Saudi Arabia, Yemen, Qatar and Lebanon, and Iraq. For background information about the revision process of the Charter, see M Rishmawi, ‘The Revised ACHR: A Step Forward?’, *Human Rights Law Review* (2005) 5(2), pp. 361-376.

of international human rights standards. While Article 3(3) states that “[M]en and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Shariah”, this provision can be deemed ambiguous, given the status of women’s rights in Sharia.⁶⁰

The ACHR recognizes the right to education by providing that the “eradication of illiteracy is a binding obligation upon the State and everyone has the right to education”.⁶¹ In the Charter’s words, it is also the responsibility of the State to “guarantee their citizens free education, at least throughout the primary and basic levels.”⁶² It is important to note this protection is not provided to all persons but is limited to the *citizens* of Member States. Thus non-citizens, such as refugees, asylum seekers, or children of migrant workers, may be excluded from the protection contained in this provision. There are no other specific provisions in the Charter which recognize the rights of these groups to education.

The Charter also provides that “all forms and levels of primary education shall be compulsory and accessible to all without discrimination of any kind”. The education provided by the State should be “directed to the full development of the human person”.⁶³ The Charter also requires States parties to “guarantee the establishment of the mechanisms necessary to provide ongoing education for every citizen and shall develop national plans for adult education”.⁶⁴ States are also required to “provide full educational services suited to persons with disabilities, taking into account the importance of integrating these persons in the educational system and the importance of vocational training and apprenticeship and the creation of suitable job opportunities in the public or private sectors”.⁶⁵

The protection conceived by the Charter is broad in scope and requires that education should be provided without discrimination of any kind, including political discrimination. This broad formulation could be used as a legal basis to accommodate a large array of situations including the State parties’ obligations to guarantee education at all times, including in insecurity and armed conflict situations. However, this does not apply to non-citizens of State parties, which means that refugees, asylum-seekers and children of migrant workers may be excluded from it.

The Charter does not specifically prohibit the recruitment of child soldiers below the age of 15; however, its Article 10(2) prohibits the exploitation of children in armed conflict. In addition, the Charter requires States to recognize the right of the child “to be

⁶⁰ See J Rehman, *International Human Rights Law* (Pearson, 2n ed, 2010), p. 380.

⁶¹ See Art 41 of the ACHR.

⁶² Note that in the OIC Covenant on the rights of the child the secondary level has also to be made free and compulsory but progressively, with the aim to have free secondary education provided within a period of 10 years. Thus the protection of the right to education in the OIC Covenant has the potential of being stronger than the one provided for by the Arab League.

⁶³ Art 41 (2).

⁶⁴ Art 14 (6).

⁶⁵ Art 40 (4).

protected from economic exploitation and from being forced to perform any work that is likely to be hazardous or to interfere with the child's education".⁶⁶

Other LAS Instruments

The Arab Convention on the Status of Refugees in the Arab Countries, adopted in 1994, does not include any specific provisions relating to the right to education. A separate protocol was adopted in 1965 within the Arab League, the Casablanca Protocol on the Treatment of Palestinian Refugees, but it does not include any provisions on the right to education or related rights.⁶⁷

The Arab League has adopted a Model Law and Plan of Action on the Rights of the Arab Child. This model law includes provisions on education, health care, child care, culture, child labour, protection from violence, protection against trafficking, protection in armed conflict, juvenile justice, and children in conflict with the law. The model law provides that a child is any person below the age of 18, unless national legislation provides that majority is attained earlier. Many of the provisions of the model law are written in rights language, and actually echo, or are similar to, provisions in the Convention on the Rights of the Child (CRC). For example, it provides that basic education should be free and compulsory.

2.2.2. OIC Instruments

The OIC Charter, adopted in 2008, states that the objectives of the OIC include "[t]o promote and to protect human rights and fundamental freedoms including the rights of women, children, youth, elderly and people with special needs as well as the preservation of Islamic family values".⁶⁸ The provision establishing the Independent Commission on Human Rights, one of the OIC organs, asserts that the purpose of the Commission is to promote the civil, political, social and economic rights enshrined in the OIC covenants and declarations and in universally agreed human rights instruments,⁶⁹ in conformity with Islamic values, the specific national and regional characteristics and various historical and cultural backgrounds of the member states.⁷⁰

The Organization of Islamic Conference, the OIC's predecessor, adopted the 1990 Cairo Declaration and the 2004 CRCI. Given the non-binding nature of the Cairo Declaration, it will not be considered further here.⁷¹

⁶⁶ Art 34 (3).

⁶⁷ The text of the Casablanca Protocol and the reservations expressed by States are available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=460a2b252&skip=0&category=LEGAL&coi=SYR&searchin=title&display=50&sort=date>

⁶⁸ Art 1 (14).

⁶⁹ See Art 15 Chapter X of the OIC revised Charter, available at: http://www.oic-oci.org/page_detail.asp?p_id=53

⁷⁰ See Resolution OIC Resolution No 2/38-Leg on the Establishment of the OIC Independent Permanent Human Rights Commission (June 2011).

⁷¹ Note that Article 9(1) of the Declaration asserts that the seeking of knowledge is obligatory in Islam, and that the provision of education is the duty of society and the state. Education is mentioned several times in the Declaration. Article 7 provides in its first paragraph that "as of the moment of birth, every child has rights due

Covenant on the Rights of the Child in Islam

The CRCI, adopted in 2005, stipulates the protections afforded to children in accordance with the spirit of Islam, and provides for the establishment of an Islamic Committee on the Rights of the Child to monitor its implementation.⁷² This instrument will enter into force following 20 ratifications. The CRCI does not identify a specific age to be considered a child but provides that a child is “every human being who, according to the law applicable to him/ her, has not attained maturity”.⁷³ The CRCI itself provides a list of rights, such as the right to life (Article 6), the right to education and culture (Article 12 – see below in more detail), the right to social security (Article 14), and the right to health (Article 15). The CRCI reserves a special protection for children who are particularly at risk, such as children with disabilities and those with special needs (Article 16). The CRCI provides for the equality of all children to enjoy their rights and freedoms without discrimination on the basis of sex, birth, race, religion, language and political affiliation.⁷⁴

The right to education is directly addressed in the CRCI, which provides for the right to education at all times, and thus also during armed conflict or periods of insecurity. The CRCI sets the implementation of the right to education in all its facets as one of its main objectives. Article 2(4) stipulates that the Covenant aims to “provide free, compulsory and secondary education for all children irrespective of gender, colour, nationality, religion, birth or any other consideration, to develop education through enhancement of school curricula, training of teachers and providing opportunities for vocational training.” It is the obligation of the States to respect the rights stipulated in the CRCI,⁷⁵ and to take the necessary steps to enforce it in accordance with their national legislation. Article 12 provides that it is the duty of the State to provide compulsory and free primary education for children on an equal footing, and free and compulsory secondary education on a progressive basis aiming to provide it for all within a 10 year period. The States’ duties concerning the right to education include provision of higher education, use of the mass media for educational purposes, publication of books for children, and the establishment of special libraries for children. The States should seek to ensure education, rehabilitation and training for disabled children and those with special needs.⁷⁶ Article 18 prohibits child labour that may obstruct the education of the child or is exercised at the expense of the child’s health or physical and spiritual growth. The CRCI refers to the national legislation of each member State to set a minimum working age, working conditions, and hours.

from the parents, the society and the state to be accorded (...) education”. Article 9 confirms that the “seeking of knowledge is an obligation” and that the “provision of education is the duty of society and the state”.

⁷² See Art 24 of the Covenant, available at: <http://www.oic-oci.org/english/convention/Rights%20of%20the%20Child%20In%20Islam%20E.pdf>

⁷³ Art 1.

⁷⁴ However this protection may be limited as it is put under the requirements of national legislation or Sharia law. See A Smagadi, *Sourcebook of International Human Rights Materials* (BIICL, London, 2008), p. 74.

⁷⁵ See Art 4(1) CRCI, available at: <http://www.oic-oci.org/english/convention/Rights%20of%20the%20Child%20In%20Islam%20E.pdf>

⁷⁶ Art 16(2).

The CRCI frames education and other rights directly within Sharia law. Article 3(1) clearly states that to achieve its objectives, it is incumbent to “[r]espect the provision of Islamic Shari’a, and observe the domestic legislations of Member States”. The CRCI provides in Article 12(1) that every child should have free compulsory basic education “by learning the principles of Islamic education (as well as belief and Islamic Shari’a according to the situation)”. This provision relates to the specific education in Islamic Sharia as opposed to education in general.⁷⁷

Some of the violations of the right to education in armed conflict, such as the recruitment of child soldiers or attacks on education for religious or ethnic reasons, are addressed by the CRCI. These include the obligation of the State to “protect children by not involving them in armed conflict and wars”.⁷⁸ By using the vague term ‘involvement’, it does not expressly prohibit the recruitment of children during armed conflict. It also requires States to ensure, as much as possible within its domestic legal framework, that refugee children enjoy all the rights included in the CRCI, including the right to education.⁷⁹ Note that the link with national legislation means that if a national law does not provide non-citizens with the right to education, the right is thus limited. This provision should be read in conjunction with the prohibition of discrimination on the basis of “gender, colour, nationality, birth, religion and ‘any other consideration’”⁸⁰.

The CRCI further protects children by prohibiting the exercise of torture or humiliating treatment in all circumstances and conditions.⁸¹ It stresses that a child, when deprived from liberty, should always be treated with dignity, respect for human rights and basic freedoms.⁸² Article 17 protects children from torture or inhumane or humiliating treatment but the CRCI does not prohibit capital punishment or life imprisonment of children, as provided in Article 37 of the CRC.⁸³ While it does not clearly prohibit the use of the death penalty for children, it provides clearly that the punishment of child offenders “should be considered as a means of reform and care in order to rehabilitate the child and reintegrate him/her into the society”.⁸⁴

As provided by Article 25, member States have the right to make reservations on “some sections of the Covenant”. Although this formulation is vague, under international law, a reservation must be compatible with the object and purpose of the treaty in question.⁸⁵ As it refers in many provisions to Sharia and the considerations of domestic legislations, it appears that possible limitations to the rights and freedoms addressed in the CRCI may occur when they do not reconcile with Islamic considerations applicable within a

⁷⁷ Note that Article 12(2)(iv) contains a gendered provision as it stipulates that States shall provide “the right of every child to wear clothes “compatible with her beliefs”, while complying with Islamic Sharia, public etiquette, and modesty”.

⁷⁸ See Art 17 (5) CRCI.

⁷⁹ Ibid see Art 21.

⁸⁰ Ibid Art 2(4).

⁸¹ Art 17 (2).

⁸² Art 19 (2).

⁸³ Article 40 (a) CRC provides that “[N]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age”.

⁸⁴ Art 19 (3)(f).

⁸⁵ See United Nations, Report of the International Law Commission, sixty-third session (2011), at 3.1.5. which refers to Article 19 (c) of the Vienna Convention on the Law of Treaties.

State or with national regulations. Although the CRCI is legally binding, the formulation of its provisions remain vague, such as the use of terms such as 'as much as possible',⁸⁶ and 'in accordance with the national legislations',⁸⁷ which gives a very large degree of discretionary power to the States in implementing the rights and freedoms mentioned within the CRCI.

2.2.3. LAS and OIC Remedy and Supervisory Mechanisms

There is no remedy mechanism in place for individuals to allege a violation of their rights contained within either the LAS or OIC instruments. However, there are supervisory mechanisms to monitor the implementation of the relevant instruments by State parties.

The Arab Charter established the Arab Human Rights Committee in 2009,⁸⁸ the first independent treaty body in the Arab League, a supervisory mechanism which aims at monitoring the implementation of the Arab Charter by the member States. Formed in 2009, its main task is to monitor the implementation of the Charter by State parties through the consideration of national reports (which State parties have to submit every three years) and through the issuance of annual reports containing key comments and recommendations. The Charter also gives the Committee the possibility to issue recommendations of a general nature. So far, the Committee appears to have received four State reports (Algeria, Bahrain, Jordan, and Qatar) but the Committee is yet to consider these and issue its concluding observations. The Arab Human Rights Committee and the Standing Commission on Human Rights repeatedly call on State parties to submit their initial reports and on additional States to ratify the Charter.⁸⁹ While the Committee has held several sessions since its formation,⁹⁰ published documents of its sessions or findings do not appear to be available.

The Arab League has also established several human rights bodies carrying out work on issues related to the protection of education, including the Arab Commission on Human Rights (also known as the Arab Standing Committee for Human Rights or the Permanent Arab Commission on Human Rights).⁹¹ In 1998, the Commission elaborated what it called Guidelines on Universality of Human Rights.⁹² The Guidelines mainly affirm cultural specificity, national sovereignty and reject the use of human rights if they interfere with this sovereignty, and makes many references to Islam as the reference point for defining rights. More recently, the Commission has played a role in the adoption of the ACHR.

⁸⁶ See for example Articles 16 and 21 of the Covenant.

⁸⁷ Or other similar formulations, see for example Arts 4, 7, 8, 10, 12, 14 and 20 of the Covenant.

⁸⁸ See Article 45 of the 2004 ACHR.

⁸⁹ See for example, H Hawari, 'Arab Human Rights Committee Urge Members to send Human Rights Reports', (Arab News, 16 August 2010), available at: <http://arabnews.com/saudiArabia/article103494.ece>

⁹⁰ See M Rishmawi, 'The ACHR and the League of Arab States: An Update', 10 *Human Rights Law Review* 1 (2010), pp. 169-178, available at: <http://hrilr.oxfordjournals.org/content/10/1/169.extract>

⁹¹ Resolution 2443 of the LAS Council of 3 September 1968.

⁹² Adopted by Arab Commission on Human Rights session 14, on 23-24 February 1998, item 1.

With regard to the CRCI, its Article 24 establishes the Islamic Committee on the Rights of the Child. However, information on the ratification of the Covenant by member States, and information on the establishment and the work of the Committee, are not published by the OIC.⁹³

2.2.4. African Union Instruments

Over the last two decades, the AU (preceded by the Organisation of African Unity or 'OAU'), has developed several key human rights instruments.⁹⁴ Education features prominently in all of them, whether it be the right to education *per se* or the recognition of the importance of education for the realisation of other human rights.

African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights ('ACHPR'),⁹⁵ adopted in 1981, has been ratified by all 54 member States of the AU.⁹⁶ It incorporates in one text all civil, political, economic, social and cultural rights present in the major international human rights instruments, conceptualising these rights and obligations through a distinctly regional lens. A novel aspect of the Charter is the elaboration of individual duties that are incumbent upon the people.⁹⁷ The ACHPR's rejection of the bifurcated structure of IHRL (between civil and political rights on one hand, and economic, social and cultural rights on the other) has been described as "a truly indivisible and interdependent normative framework, addressing all rights equally in the same coherent text".⁹⁸ As such, the right to education enjoys the same status as any other right in the ACHPR.

⁹³ Art 23 (1) of the Covenant provides that: "The present Covenant shall enter into force on the thirtieth day following the date of deposit with the Secretary General of the Organization of the Islamic Conference of the twentieth instrument of ratification".

⁹⁴ These instruments recognize the particular experiences and challenges faced by African States and their peoples. See, for instance, paragraphs 3, 4, 5, and 8 of the Preamble to the ACHPR; paragraph 3 and 5 of the Preamble to the African Charter on the Rights and Welfare of the Child (1990). The OAU focused on the process of decolonisation and liberation, and the defence of newly acquired African sovereignty, see G J Naldi, 'Future Trends in Human Rights in Africa: The Increased Role of the OAU' in M D Evans and R Murray (Eds), *African Charter on Human and Peoples' Rights: The System in Practice: 1986-2000* (CUP, New York, 2002), 2. Since the end of the decolonisation process, African States have started to engage in the human rights dialogue, making good governance, the rule of law and human rights central to the AU's objectives. See G J Naldi, *ibid*, 3 and 35.

⁹⁵ African Charter on Human and Peoples' Rights (also known as the Banjul Charter), adopted 27th June 1981, entered into force 21st October 1986, OAU Doc. CAB/LEG/67/3, (1982) 21 *ILM* 58, available at:

<http://www.african-court.org/fileadmin/documents/Sources%20of%20Law/Banjul%20Charta/charteang.pdf>

⁹⁶ For the list of states which have signed or ratified the ACHPR, see:

http://au.int/en/sites/default/files/African_Charter_on_Human_and_Peoples_Rights.pdf

⁹⁷ Found in Chapter II of the Charter. Discussed at M W Mutua, 'The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties' (1995) 35 *Virginia Journal of International Law* 339.

⁹⁸ C Anselm Odinkalu, 'Implementing Economic, Social and Cultural Rights Under the African Charter on Human and Peoples' Rights' in M D Evans and R Murray (Eds), *African Charter on Human and Peoples' Rights: The System in Practice: 1986-2000* (CUP, New York, 2002), 192. For a comparative analysis of regional human rights regimes and their either adoption or rejection of the bifurcated structure of human rights discourse, see J Mouangue Kobila, 'Comparative Practice on Human Rights: North-South' in J-M Coicaud, M W Doyle, and A-M Gardener (eds), *Globalization of Human Rights* (United Nations Publications, New York 2002), 93.

Article 17, which simply provides that “[E]very individual shall have the right to education”, leaves open to interpretation the content of the right, both in terms of its scope and the duties upon the State to ensure the realisation of the right. For example, it does not expressly guarantee the protection of compulsory and free education. However, the non-binding Pretoria Declaration on Economic, Social and Cultural Rights in Africa interprets Article 17 as including the “provision of free and compulsory basic education that will also include a programme in psycho-social education for orphans and vulnerable children.”⁹⁹ This Declaration also states that special schools and facilities must be provided for children with disabilities. It further provides that secondary and higher education, as well as vocational training and adult education, must be accessible and thus affordable. The need to address obstacles to girls’ access to education is also highlighted.

African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child (ACRWC), adopted in 1990,¹⁰⁰ was designed to complement the CRC by addressing the specificities of the rights of children in the African context.¹⁰¹ Adopted in 1990, it entered into force in 1999,¹⁰² and is applicable to children, i.e. individuals under the age of 18, being the same age threshold as provided for in the CRC.¹⁰³ The right to education is more extensive in the ACRWC than it is in the ACHPR. Its Article 11 provides for “free and compulsory basic education”,¹⁰⁴ the need to take specific measures for “female, gifted and disadvantaged children to ensure equal access to education”,¹⁰⁵ and the protection of parental liberty in choosing their children’s education.¹⁰⁶

The ACRWC defines the functions of education rather differently from the CRC, highlighting the regional perspective of this instrument, as it states that education shall preserve and strengthen, for example, “African morals, traditional values and cultures, ... national independence and territorial integrity, ... African Unity and Solidarity”.¹⁰⁷ With regard to matters such as literacy and equipping children with the skills necessary for life and work, the ACRWC is not as clear as the CRC. Article 11(2)(b) and (d) underline the role of education in the understanding and advancement of human rights.

⁹⁹ Pretoria Declaration on Economic, Social and Cultural Rights in Africa (2004), available here:

<http://www.achpr.org/instruments/pretoria-declaration/>.

¹⁰⁰ The African Charter on the Rights and Welfare of the Child entered into force 29 November 1999; OAU Doc CAB/LEG/24.9/49, available at: <http://www.acerwc.org/wp-content/uploads/2011/04/ACRWC-EN.pdf>

¹⁰¹ Para 8 of the Preamble of the ACRWC; J Naldi, ‘Future Trends in Human Rights in Africa: The Increased Role of the OAU’ in M D Evans and R Murray (Eds), *African Charter on Human and Peoples’ Rights: The System in Practice: 1986-2000* (New York: CUP: 2002), 14-17; D Olowu, ‘Protecting Children’s Rights in Africa: A Critique of the African Charter on the Rights and Welfare of the Child’ (2002) *International Journal Children’s Rights* 127, at 128.

¹⁰² For the current number of members of the AU having ratified the Convention, see the African Union, ‘List of Countries Which Have Signed, Ratified/Acceded to the African Charter on the Rights and Welfare of the Child’, available at http://www.au.int/en/sites/default/files/96Welfare_of_the_Child.pdf

¹⁰³ Art 2 of the ACRWC.

¹⁰⁴ Ibid, Art 11(3)(a).

¹⁰⁵ Ibid, Art 11(3)(e).

¹⁰⁶ Ibid, Art 11(4).

¹⁰⁷ Ibid, Art 11 (2).

In contrast to the ACHPR, the ACRWC provides a more practical standard to assess the realisation or violation of the right to education. As the ACRWC is intended to complement, rather than supersede, the obligations set forth in CRC, Article 11 ACRWC should be read alongside Article 28 of the CRC in order to assess the regional right to education contained within the African human rights' framework.

Other relevant provisions of the ACRWC include Article 3 on the principle of non-discrimination; Article 12 on leisure, recreation and cultural activities; and Article 13(2) on the rights of children with disabilities, which obliges States Parties, subject to available resources, to "ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development".

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, adopted in 2003 and also known as the Maputo Protocol,¹⁰⁸ consolidates the rights of women of all ages, including female children, building upon the existing African provisions found in the ACHPR and the ACRWC. It entered into force in November 2005.¹⁰⁹ Education has a prominent place in the Protocol, which includes the negative impact of behaviour, attitudes and practices upon the right of women and girls to education. Such behaviour, attitudes and practices are clearly defined as 'harmful practices' and there is an obligation on States to commit themselves to modifying "cultural patterns of conduct of women and men" through education.¹¹⁰ The key provision on the right to education and training can be found in Article 12. Among other measures, this Article highlights the principle of non-discrimination against women, which must also apply to the content of educational material which shall not perpetuate stereotypes.¹¹¹ It also reiterates the prohibition of all forms of abuses, including "sexual harassment in schools and other education institutions".¹¹²

African Youth Charter

The African Youth Charter (AYC), adopted in July 2006,¹¹³ classifies 'youths' as persons between the age of 15 and 35 years of age. The Charter recognises the importance of quality education and the value of all educational formats including non-formal, informal, distance learning, and life-long learning.¹¹⁴ It also expresses particular concerns at the issues of "illiteracy and poor quality educational systems".¹¹⁵ Other relevant provisions include Article 15 on sustainable livelihoods and youth employment, which limits the kind of work that a young person can perform to work that is not hazardous to their education, and which recognises the importance of the realisation of the right to education as a requisite to the realisation of the right to gainful employment. Article 23 on girls and young women builds on the Maputo Protocol by addressing the need to eliminate discrimination against women and emphasising the role of education in eradicating discrimination.

¹⁰⁸ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11th July 2003, entered into force 25th November 2005), available at: <http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf>

¹⁰⁹ The Maputo Protocol has been ratified by 36 Member States of the AU, with three states having neither signed nor ratified the Protocol (including Egypt and Tunisia), see the website of the African Commission on Human and Peoples' Rights, available at: <http://www.achpr.org/instruments/women-protocol/>.

¹¹⁰ Art 1(g) and Art 2(2) of the Maputo Protocol.

¹¹¹ Ibid, Art 12 (1)(b).

¹¹² Ibid, Art 12 (1)(c).

¹¹³ It entered into force in August 2009; as of April 2014, it had been ratified by 36 member States of the AU, see the website of the Youth and the African Union Commission, available at <http://africa-youth.org/ratification>. The Charter is available at:

http://www.africa-union.org/root/au/Documents/Treaties/Text/African_Youth_Charter.pdf

¹¹⁴ Art 13 of the AYC on Education and Skills Development, in particular paras 1 and 2.

¹¹⁵ See paragraph 11 of the Preamble to the AYC.

Despite the rather low number of ratifications of the AYC in comparison with the number of ratification of other African human rights treaties, this instrument is particularly relevant as it contains precise and comprehensive provisions with regard to the right to education. However, unlike the ACRWC and the ACHPR, the AYC does not provide for the establishment of a mechanism through which compliance can be monitored and advanced.

Convention for the Protection and Assistance of Internally Displaced Persons in Africa

Adopted in 2009, this Convention, also known as the Kampala Convention, entered into force in 2012. Its State parties shall “provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities.”¹¹⁶

2.2.5. African Remedy and Supervisory Mechanisms

The African system for the protection of human rights has a less developed body of jurisprudence than either its Inter-American or European counterparts. This is, in part, because the African Court of Human and Peoples Rights was only established in 2004 by means of the Optional Protocol to the ACHPR.¹¹⁷ The Optional Protocol empowers the Court to make an order for reparation where it finds a violation.¹¹⁸ However, in order for NGOs and individuals to be able to complain to the Court of an alleged human right violation, the State party in question must be a party to the Optional Protocol and must have accepted the competence of the Court to receive such cases. Among the MENA States which are also part of the AU, Algeria, Libya, and Tunisia (as well as the Saharawi Arab Democratic Republic) have become members of the Optional Protocol; however, none of these State parties have accepted the Court’s competence to hear individual complaints.

African Commission of Human Rights

Established in 1986, the African Commission of Human Rights is a quasi-judicial body, which can receive complaints regarding alleged violations of the ACHPR and issue non-legally binding views to the State in question. The Commission may undertake

¹¹⁶ Art 9(2)(b) of the Kampala Convention.

¹¹⁷ This Court will be merged into a new African Court of Justice and Human Rights, as agreed during the 2008 African Union Summit.

¹¹⁸ Art 27 of the Protocol provides that “[i]f the Court finds that there has been violation of a human or peoples’ right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation”. See Protocol to the African Charter on Human and People’s Rights on the Establishment of an African Court on Human and People’s Rights, 9 June 1998, entry into force 25 January 2004, OAU/LEG/MIN/AFCHPR/PROT.1 rev.2 (1997). The African Court of Human Rights issued its first judgment in December 2009.

investigations,¹¹⁹ and address situations of alleged rights violations through a communications procedure,¹²⁰ which can be initiated either by State parties to the Charter or by non-State entities.¹²¹ The Commission can hear cases regarding MENA States which are party to the ACHPR, namely Algeria, Egypt, Libya, Tunisia (and the Sahrawi Arab Democratic Republic). A few cases pertaining to education are listed in the case study on Egypt.¹²² For a communication to be considered by the Commission, the applicant must have exhausted all domestic remedies, or such procedure must have been unduly prolonged.¹²³ In addition, all State parties to the AU, including those that also fall within the MENA Region, are obliged to submit every two years a report to the African Commission,¹²⁴ detailing all the measures, including those of a legislative character, adopted with the view to giving effect to the rights set forth in the ACHPR.¹²⁵

When considering communications, the Commission may mediate between affected parties to arrive at an amicable solution and prepare a report on the facts and findings, which is communicated to the State concerned and the Assembly of the Heads of State and Government.¹²⁶ It may also make recommendations to the Assembly as it deems appropriate.¹²⁷ Where the communications relate to a situation of 'serious or massive violations', the Commission draws these to the attention of the Assembly, which can request the Commission to undertake an in-depth study of the situation. The Commission may draw upon relevant regional and international conventions and standards, and, as subsidiary means of consideration, customary international law, general principles of law recognised by African States, African practice that conforms to regional and international law, as well as legal precedent and doctrine.¹²⁸

The ACHRP does not, like other major modern human rights treaties, make specific provision for an obligation to remedy harm caused by a violation. In its views the African Commission has recognized that "the main goal of the communications procedure before the Commission is to initiate a positive dialogue, resulting in an amicable resolution between the complainant and the State concerned, which remedies the

¹¹⁹ Art 46, ACHRP.

¹²⁰ Arts 47-59, ACHRP.

¹²¹Note that inter-State communications are also possible. Under Art 47, where a State Party ('A') to the Charter has good reason to believe that another State Party ('B') has violated the provisions of the Charter, State A may first submit in writing a communication to State B outlining in depth the details of the alleged rights violation. This communication should also be addressed to the Secretary General of the OAU and the Chairman of the Commission. State B has three months upon receipt of the Communication to respond, providing an explanation for the matter, and giving details as to the laws and procedure applicable. Should three months elapse and the situation has not been adequately addressed or resolved, either State may submit the matter to the Commission (Art 48). In the alternative, State A may also submit the matter directly to the Commission (Art 49). The Commission is also empowered to consider communications submitted by entities that are not States Parties (Art 55). Such communications must abide by the conditions set forth in Art 56. By simple majority, the Commission can consider which of such submitted communications the Commission will consider.

¹²² See also the Handbook, p. 236.

¹²³ Art 50 and Art 56(5), ACHRP.

¹²⁴ Ibid, Art 45.

¹²⁵ Ibid, Art 62.

¹²⁶ Ibid, Art 52.

¹²⁷ Ibid, Art 53.

¹²⁸ Ibid, Arts 60-61.

prejudice complained of.”¹²⁹ Over time the Commission has recommended that States which it viewed as having violated the ACHPR take a range of measures to remedy the harm caused by the violation in question. The forms of reparation recommended have included declarations of wrongfulness,¹³⁰ restitution,¹³¹ and compensation.¹³²

African Committee of Experts on the Rights and Welfare of the Child

States parties to the ACRWC are obliged to submit a periodic report to outline the steps that they have taken to give effect to the provisions of the Convention and the advances made in the realisation of the rights contained therein. The African Committee of Experts on the Rights and Welfare of the Child, established in 2001, can respond to these periodic reports with comments and recommendations.¹³³ It may also investigate situations and the steps taken by States to implement the Convention. The Committee has issued a number of observations and recommendations on matters relating to the right to education or access to education in general.

The ACRWC also provides for a complaints procedure which enables any individual, group, State party, or the UN, to petition the Committee relating to any matter covered by the Charter.¹³⁴ To date, the Committee has received four communications, three of which have been finalised by the Committee.¹³⁵ However, none regarded a MENA State.

¹²⁹ *Free Legal Assistance Group v. Zaire*, Communication No. 25/89, 4 *International Human Rights Reports* (1997) 89, para. 39.

¹³⁰ See *Alhassan Abubakar v. Ghana* Communication No. 103/93, 6 *IHRR* 832 (1999), at 833.

¹³¹ *Constitutional Rights Project (in respect of Zamani Lakwot and 6 others) v. Nigeria* Communication No. 60/91, 3 *IHRR* 132(1996), at 133.

¹³² *Union Inter Africaine des Droits de l'Homme, Fédération Internationale des Ligues des Droits de l'Homme, Rencontre Africaine des Droits de l'Homme, Organisation Nationale des Droits de l'Homme au Sénégal and Association Malienne des Droits de l'Homme c. Angola*, Communication No. 159/96, 6 *IHRR* 1139(1999), at 1141.

¹³³ Art 43, ACRWC.

¹³⁴ In contrast to the CRC.

¹³⁵ See the Handbook, pp. 237-8.

3. DOMESTIC IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS

The question of how far education is protected in MENA States presents a conundrum. While norms and trends are observable across the MENA Region, there is also significant disparity amongst those States. The three case-studies presented in this Part – Egypt, Iraq and Lebanon – were selected on the basis that they are exemplary of the challenges to the protection of education in three situations. These situations are i) insecurity prior to, or in the absence of, armed conflict; ii) armed conflict (both international and non-international); iii) insecurity following armed conflict. On first glance, these appear to arise out of several factors including the varying levels of armed violence in situations of insecurity and armed conflict, as well as the underlying tensions that led to, or resulted from, those periods of armed violence; the demographic and political makeup of the population including the influx of displaced populations and their impact upon them; and the stability of the State in view of these.

The purpose of this Part is to examine the extent to which specific MENA States protect education in insecurity and armed conflict for the purposes of contributing to an overall understanding of the protection of education in the MENA Region. In order to do this, and in view of the differing legal frameworks applicable in insecurity and armed conflict, each State case study represents one of three security contexts.¹³⁶ Egypt, Iraq and Lebanon were selected to represent three security contexts, as explained in the introduction. Egypt was selected because it was in a clear situation of insecurity as a result of the 2011 uprisings; Iraq is, in 2016, in a continuing situation of armed conflict; and Lebanon can be considered to be in a situation of insecurity following an armed conflict. Specific types of education-related violations are discussed within the case studies to show how domestic law operates to protect education, students and education staff, facilities and offer remedies and mechanisms.

Compliance with international legal obligations, one of the rule of law principles, is a key element of this Study, which considers how international legal obligations pertaining to the protection of education have been implemented at the domestic level. Accordingly, each section begins with an outline of the relevant domestic context and the respective State's international legal obligations and their source. It then reveals primary research on the relevant domestic laws and concludes each section with an analysis of the domestic laws' compliance with the State's international legal obligations, whether they arise from treaty law or customary international law.

To aid an analytic generalisation of the case studies, this Part concludes with a comparative analysis between Egypt, Iraq, and Lebanon.

¹³⁶ The categories of security contexts used in this Study are justified in Part I.

3.1. EGYPT

3.1.1. Introduction

Egypt's security context is changeable and complex. In the majority of the territory, there is, at the time of writing, a state of insecurity that has persisted since the popular uprisings beginning in Cairo in January 2011. Following the removal of former President Morsi from power, armed conflict has also arisen in the northern Sinai region.¹³⁷ In the Sinai, an area subject to a state of emergency, there have been violent clashes between armed groups and the Egyptian State Security Forces, now amounting to a non-international armed conflict.¹³⁸ The armed groups operating in the Sinai have pledged allegiance to the so-called Islamic State of Iraq and the Levant (ISIL).¹³⁹

Egypt occupies a peculiar position, regionally, both in terms of its influence on the legal systems in the MENA Region and in respect of widespread educational reform. In the 1950s, education was prioritised with the phased introduction of free primary education for all Egyptian citizens followed by the same for higher education.¹⁴⁰ The influence of educational reform in Egypt was such that the Egyptian curriculum became a model for other education systems in the MENA Region and even led to the employment of Egyptian-trained teachers in these systems.¹⁴¹ Its regional significance was also evidenced in the way in which the uprisings starting in January 2011 in Egypt (and following those in Tunisia) fed into and inspired similar movements across the MENA Region. The 2011 uprisings are of particular significance when considering education-related violations, owing to the scale and force with which students and education staff participated. Even in the midst of continuing insecurity and now armed conflict in Egypt, the State and its people remain a focus of international and regional attention alike, with the State's action in the protection of education presenting a number of examples of challenges of dealing with education-related violations.

Political developments have consistently influenced the evolution of the Egyptian education system.¹⁴² Egypt has a long history of rule under emergency powers.¹⁴³ A continuous state of emergency beginning in 1981 was one of the major driving forces for the 2011 uprisings in Egypt. It was also highlighted by human rights treaty bodies as, "one of the main difficulties impeding the full implementation" of the State's

¹³⁷ Despite the armed conflict being confined, geographically, to the northern Sinai, IHL applies throughout the territory of Egypt but is only triggered by acts directly connected to the hostilities, see the Handbook, Section 2.3.3.

¹³⁸ Human Rights Watch, 'World Report 2015: Egypt' (2015).

¹³⁹ The exact name of this armed group has been the subject of some confusion; it is sometimes referred to as the 'Islamic State of Iraq and Syria' or 'the Islamic State of Iraq and the *Shaam*', or simply 'the so-called Islamic State'; see Tharoor, I., 'ISIS or ISIL? The debate over what to call Iraq's terror group' (The Washington Post, 18 June 2014). ISIL is the name used by the UN; see UNAMI/OHCHR, 'Report on the Protection of Civilians in the Armed Conflict in Iraq: 11 December 2014 – 30 April 2015' (2015). This study will follow suit and refer to the 'Islamic State of Iraq and the Levant' or 'ISIL'.

¹⁴⁰ L Loveluck, 'Education in Egypt: Key Challenges', Chatham House Background Paper, March 2012, p. 4.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ International Federation for Human Rights (FIDH) 'The Emergency Law in Egypt' (2001), at: <https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/egypt/THE-EMERGENCY-LAW-IN-EGYPT>

international legal obligations.¹⁴⁴ Following the 2011 uprisings, Egypt lifted its state of emergency, with its accompanying emergency law expiring on 31 May 2012. However, martial law was imposed *de facto* until the adoption of the new Constitution in 2014. There were various amendments, declarations and cancellations of states of emergency up until the adoption by referendum of the new Constitution of the Arab Republic of Egypt in 2014. Legislation dating from the 1950s remains in force; the declaration of a state of emergency by Interim President, Adly Mansour, in 2013 was pursuant to powers contained in 1958 legislation, but with restrictions placed on the duration of such a state provided for in the 2014 Constitution.

Insecurity Context

In 2013, the Interim President declared a state of emergency in the whole of Egypt.¹⁴⁵ The legal basis for the declaration was stated to be the provisions of the constitutional declaration, which served as the interim constitution, the 1937 Penal Code and the amended 1958 State of Emergency Law and the Council of Ministers had given their assent.¹⁴⁶ The factual basis for the declaration was stated only to be “the serious security conditions in the country”.¹⁴⁷ The measures imposed within the 2013 decision of the Interim President included the assignment to the armed forces of the authority to assist the police in taking necessary measures to, “maintain security and order and protect public and private property, and save the lives of citizens”.¹⁴⁸ The threshold for the authorised use of force within this provision appears to be relatively high as it extends, in respect of persons, only to life-saving action rather than prevention of other harm. By contrast, there is a broader authorisation in respect of the protection of public and private property.

Although its duration was limited, the powers invoked in the 2013 Declaration were as broad as they had been previously, with the powers contained in the 1958 State of Emergency Law being incorporated in their entirety.¹⁴⁹

Armed Conflict in the Sinai

In addition to an insecurity context, the situation in the Sinai governorate has been considered as amounting to a non-international armed conflict.¹⁵⁰ From 2011 until the 2013 coup, the Egyptian government has taken both military and political measures to improve the security situation in the Sinai within the remit of emergency measures. However, since then, and as negotiations have not been particularly successful, central

¹⁴⁴ See, for example, Comments of the Human Rights Committee, 9 August 1993, UN Doc. No. CCPR/C/79/Add.23, para. 7.

¹⁴⁵ Art 1, Presidential Decision No. 532 of 2013.

¹⁴⁶ *Ibid.*, Preamble.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*, Art 2.

¹⁴⁹ *Ibid.*, Art 3. These powers were, however, vested in both the President and the Prime Minister. Violation of any orders of the President or the Prime Minister was required to be punished by imprisonment only. The 2013 Declaration was extended for a further two months at its expiration in September 2013 owing to the continuing serious security conditions: Presidential Decision No. 587 of 2013.

¹⁵⁰ A Bellal (ed), *The War Report: Armed Conflict in 2014*, (OUP, 2015).

authorities have taken a more aggressive route to tackling the issues by imposing a state of emergency and a curfew, as well as conducting mass arrests.¹⁵¹

In October 2014, Egypt imposed a state of emergency on certain parts of North Sinai, renewing it for three months in January, April, and July 2015.¹⁵² A state of emergency was again declared for three months in 2015 for some of Egypt's border regions within the Sinai governorate by President Decision No. 189 of 2015 (2015 Declaration).¹⁵³ The legal basis for the 2015 Declaration, like that in 2013, was the Constitution (but not a specific provision thereof), the 1937 Penal Code and the amended 1958 State of Emergency Law.¹⁵⁴ The factual basis was the continuing dangerous security conditions in Sinai governorate and the decision was approved by the Council of Ministers.¹⁵⁵ The measures imposed were clearly limited to specific geographical areas, including curfews and limited or prohibited movement on named roads.¹⁵⁶ Unauthorised movement was also prohibited in all specified areas for the duration of the state of emergency.¹⁵⁷ Compared with the pre-2011 practice and the 2013 Declaration, the limited nature of the state of emergency provided for in the 2015 Declaration suggests a degree of restraint exercised by the President and the Government of Egypt. The 2015 Declaration also authorises the armed forces and the police to "take all [measures that are] necessary to combat threats of terrorism and its financing, to maintain security within the area, to protect public and private property and to save the lives of citizens".¹⁵⁸

Non-State Armed Groups Operating in Egypt

Since the fall of the Mubarak regime in 2011, the Sinai region, which used to be occupied by Israel and was later envisioned as a buffer zone in the 1979 Egyptian-Israeli treaty, has been prone to increased armed violence due to the State's alienation of the local population, elements of which have joined or sympathise with Islamist groups.¹⁵⁹

In November 2014, Ansar Bayt al-Maqdis, a Salafi jihadist group, pledged allegiance to ISIS and re-branded itself as the 'Sinai Province'.¹⁶⁰ Initially, they attacked Israeli targets, such as the pipeline transferring natural gas from Sinai to Israel. Following the 2013 Egyptian coup, they have also attacked Egyptian State forces.¹⁶¹ The Mujahideen

¹⁵¹ L Watanabe, 'Sinai Peninsula – from Buffer Zone to Battlefield', CSS Analyses in Security Policy (February 2015), available at: <http://www.css.ethz.ch/publications/pdfs/CSSAnalyse168-EN.pdf>

¹⁵² 'Egypt extends state of emergency in North Sinai by three months' (Reuters, 25 July 2015), at: <http://www.reuters.com/article/2015/07/25/us-egypt-sinai-idUSKCN0PZ0QW20150725>

¹⁵³ Art 1, 2015 Declaration.

¹⁵⁴ Ibid, Preamble.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid, Art 2.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid, Art 3.

¹⁵⁹ Z Laub, 'Egypt's Sinai Peninsula and Security' (Council on Foreign Relations, 12 December 2013), available at: <http://www.cfr.org/egypt/egypts-sinai-peninsula-security/p32055>

¹⁶⁰ BBC, 'Islamic State: Egyptian militants pledge loyalty' (10 November 2014), available at: <http://www.bbc.co.uk/news/world-middle-east-25882504>; BBC, 'Sinai Province: Egypt's most dangerous group' (10 August 2015), available at: <http://www.bbc.co.uk/news/world-middle-east-25882504>

¹⁶¹ C Nünlist, 'Sinai Peninsula – from Buffer Zone to Battlefield', CSS Analyses in Security Policy No. 168, February 2015, p. 2, available at: <http://www.css.ethz.ch/publications/pdfs/CSSAnalyse168-EN.pdf>

Shura Council in the Environs of Jerusalem, another Salafi jihadist group comprised of several Gaza-based groups mainly opposed to the 1979 Egyptian-Israeli Peace Treaty, also operates on Egyptian territory. For example, it has claimed responsibility for a cross-border explosive device attack in 2012, as well as two other attacks in 2013. It also declared its support for ISIS in February 2014,¹⁶² and, in 2006, it reportedly changed its name to the Islamic State of Iraq.¹⁶³

Moreover, Ansar al-Jihad, an Al Qaeda affiliate, which operates in the Sinai Peninsula, claimed responsibility for several attacks, including one against the natural gas pipeline between Sinai and Jordan. Another al-Qaida affiliated group is the Mohammad Jamal Network which has established training camps in Egypt and Libya, which have reportedly been used by those carrying out attacks on the US embassy in Benghazi.¹⁶⁴

3.1.2. Egypt and International Law Protecting Education

International treaties ratified by Egypt acquire the force of domestic law and become applicable before the national courts upon publication in the official gazette. While the President is constitutionally empowered to ratify treaties, he or she is required to obtain approval of the House of Representatives and the text of the treaty must be published in the official gazette.¹⁶⁵ The Egyptian Court of Cassation has additionally held that the requirement to publish treaties is not limited to their inclusion in the official gazette but also includes their actual distribution to ensure that their content and import is made public knowledge and that this requirement applies to supplementary attachments and protocols.¹⁶⁶

In the absence of an express hierarchy of constitutional and international laws in the text of the 2014 Constitution of Egypt, it may be inferred from its Article 151 that the stipulation that international treaties acquire “the force of law” places such treaties below the text of the Constitution, as laws are subordinate to the Constitution. The Court of Cassation has consistently held that provisions of international treaties published in the prescribed manner take precedence over the provisions of domestic legislation enacted by Parliament.¹⁶⁷

Since the removal of the government of Hosni Mubarak, several legal reforms have taken place and suggest a concerted effort by the Egyptian State to bring its domestic laws into compliance with international law and standards, at least in some areas.

¹⁶² Ibid.

¹⁶³ ‘Mujahideen Shura Council (Islamic State of Iraq)’, Tracking Terrorism, available at: <http://www.trackingterrorism.org/group/mujahideen-shura-council-islamic-state-iraq>

¹⁶⁴ C Nünlist, ‘Sinai Peninsula – from Buffer Zone to Battlefield’, CSS Analyses in Security Policy No. 168, February 2015, p. 2.

¹⁶⁵ Arts 151 and 226, 2014 Constitution of Egypt; see also Court of Cassation Judgement on 8 May 2012, Case No. 2345 of the Judicial Year No. 75.

¹⁶⁶ Court of Cassation Judgement on 8 May 2012, Case No. 2345 of the Judicial Year No. 75.

¹⁶⁷ See, for example, Court of Cassation Judgement on 6 April 2015, Case No. 15912 of the Judicial Year No. 76 related to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; Court of Cassation Judgement on 24 May 2001, Case No. 539 of the Judicial Year No. 70 related to the 1924 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading.

Egypt is a member of several international organisations including the UN, the LAS, the AU and the OIC. As such, it is bound by the charters of each.

International Human Rights Obligations

Egypt has acceded to eight of the nine core UN human rights treaties, with the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) being the only one it is not a party to.¹⁶⁸ It does not appear to have made any derogation from any of the human rights treaties to which it is party, including the ACHR,¹⁶⁹ and the International Covenant on Civil and Political Rights (ICCPR),¹⁷⁰ which both make derogations of certain human rights explicitly possible. As a consequence, Egypt remains at all times bound by the full range of its international human rights obligations as enshrined in those treaties, as well as those stemming from customary international law.

Egypt is a party to:

- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1967, with a reservation against Article 22, rejecting the jurisdiction of the ICJ over disputes under the treaty.¹⁷¹ It has not recognised its Committee's competence, under Article 14, to hear individual complaints.
- the ICESCR in 1982,¹⁷² but not its Optional Protocol on a communications procedure. It has submitted only two reports to the CESCR, in four reporting periods: in 1998,¹⁷³ and in 2011.¹⁷⁴ The latest Concluding Observations of the CESCR were issued in 2013.¹⁷⁵
- the ICCPR in 1982, having signed it in 1967.¹⁷⁶ It is not party to its Optional Protocol relating to individual complaints or its Second Optional Protocol aimed at the abolition of the death penalty. The State has submitted three reports to the Human Rights Committee, the ICCPR treaty body, in 1963, 1992,¹⁷⁷ and 2002.¹⁷⁸ Its latest Concluding Observations were published in 2002.¹⁷⁹
- the International Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).¹⁸⁰ It is not party to its Optional Protocol relating to individual complaints.

¹⁶⁸ Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, para. 89.

¹⁶⁹ Art. 4 ACHR.

¹⁷⁰ Art. 4 ICCPR.

¹⁷¹ UN Treaty Collection, MTDSG, Chapter VI.2.

¹⁷² Ibid.

¹⁷³ Egypt Initial State Report to the CESCR Committee, 18 November 1997, UN Doc. No. E/1990/5/Add.38; see also Concluding Observations of the CESCR Committee, 23 May 2000, UN Doc. No. E/C.12/1/Add.44.

¹⁷⁴ Egypt State Report to the CESCR Committee, 22 December 2011, UN Doc. No. E/C.12/EGY/2-4.

¹⁷⁵ Concluding Observations of the CESCR Committee, 13 December 2013, UN Doc. No. E/C.12/EGY/CO/2-4.

¹⁷⁶ Ratification on 14 January 1982, UN Treaty Collection, MTDSG, Chapter VI.

¹⁷⁷ Egypt State Report to the Human Rights Committee, 2 September 1992, UN Doc. No. CCPR/C/51/Add.7; see also Comments of the HRC, 9 August 1993, UN Doc. No. CCPR/C/79/Add.23.

¹⁷⁸ Egypt combined Third and Fourth State Report to the HRC, 15 April 2002, UN Doc. No. CCPR/C/EGY/2001/3.

¹⁷⁹ Concluding Observations of the HRC, 28 November 2002, UN Doc. No. CCPR/CO/76/EGY.

¹⁸⁰ Ratification 18 September 1998: UN Treaty Collection, MTDSG, Chapter IV.8.

- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).¹⁸¹ It has not signed its Optional Protocol to the CAT which establishes a preventive system of regular visits to places of detention. It has submitted reports to the CAT Committee in 1988,¹⁸² 1993,¹⁸³ 1999,¹⁸⁴ and 2001.¹⁸⁵ The latest Conclusions and Recommendations of the CAT Committee were issued in 2002.¹⁸⁶ Egypt has also accepted the Article 20 inquiry procedure under the CAT and a confidential inquiry was carried out by the CAT Committee between 1991 and 1994.¹⁸⁷
- the CRC,¹⁸⁸ as well as the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict,¹⁸⁹ the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography.¹⁹⁰ It has not signed the third Optional Protocol to the CRC on a communications procedure. Egypt provided a first report to the CRC Committee in 1992,¹⁹¹ a second report in 1999,¹⁹² and a combined third and fourth report in 2010.¹⁹³ The latest Concluding Observations of the CRC Committee in relation to Egypt were issued in 2011.¹⁹⁴
- the Convention on the Rights of Persons with Disabilities (CRPD),¹⁹⁵ but it is not party to its Optional Protocol on a communications procedure.
- the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW).¹⁹⁶

¹⁸¹ Accession 25 June 1986: UN Treaty Collection, MTDSG, Chapter IV.9.

¹⁸² Egypt Initial State Report to the CAT Committee, [1988], UN Doc. No. CAT/C/5/Add.5; see also Concluding Observations of the CAT Committee, 1 January 1989, UN Doc. No. A/44/46, paras. 123-144.

¹⁸³ Egypt State Report to the CAT Committee due in 1992, 30 July 1993, UN Doc. No. CAT/C/17/Add.11; see also Concluding Observations of the CAT Committee, 12 July 1994, UN Doc. No. A/49/44(SUPP), paras. 74-96.

¹⁸⁴ Egypt State Report to the CAT Committee due in 1996, 28 January 1999, UN Doc. No. CAT/C/34/Add.11; see also Concluding Observations of the CAT Committee, 26 June 1999, UN Doc. No. A/54/44.

¹⁸⁵ Egypt State Report to the CAT Committee due in 2000, 18 Oct 2001, UN Doc. No. CAT/C/55/Add.6.

¹⁸⁶ Conclusions and recommendations of the Committee against Torture, 23 December 2002, UN Doc. No. CAT/C/CR/29/4.

¹⁸⁷ Summary Account of the Results of the Proceedings Concerning the Inquiry on Egypt, 9 July 1996, UN Doc. No. A/51/44, paras. 180-222.

¹⁸⁸ Ratified on 6 July 1990, see: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en

¹⁸⁹ Acceded to on 6 February 2007, see: https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-b&chapter=4&lang=en

¹⁹⁰ Acceded to on 12 July 2002, see: https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-c&chapter=4&lang=en

¹⁹¹ Egypt State Report to the Committee on the Rights of the Child, 11 December 1992, UN Doc. No. CRC/C/3/Add.6; see also the Concluding Observations of the Committee on the Rights of the Child, 18 February 1993, UN Doc. No. CRC/C/15/Add.5.

¹⁹² The 1999 State Report was due in 1997. Egypt State Report to the Committee on the Rights of the Child, 11 November 1999, UN Doc. No. CRC/C/65/Add.9; see also the Concluding Observations of the Committee on the Rights of the Child, 21 February 2001, UN Doc. No. CRC/C/15/Add.145.

¹⁹³ Egypt State Report to the Committee on the Rights of the Child, 3 September 2010, UN Doc. No. CRC/C/EGY/3-4.

¹⁹⁴ Concluding Observations of the Committee on the Rights of the Child, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4.

¹⁹⁵ Ratification 14 April 2008, UN Treaty Collection, MTDSG, Chapter IV. 15.

¹⁹⁶ Egypt entered a reservation regarding Article 4 to state that ‘members of the family’ refers to persons with a legally recognised familial relationship with a migrant worker, UN Treaty Collection, MTDSG, Chapter IV.13.

As a member of the African Union, Egypt is party to the African Charter on Human and People's Rights (ACHPR) but it has not ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, which means that it has not accepted the jurisdiction of the African Court on Human and Peoples' Rights; individuals under Egypt's jurisdiction are subsequently not able to make complaints against the State through this mechanism. Egypt has ratified the African Charter on the Rights and Welfare of the Child.¹⁹⁷

Egypt is a member of the OIC, which adopted the Covenant on the Rights of the Child in Islam (CRCI) in 2005, but this instrument is not yet in force. In addition, Egypt has signed, but not ratified, the AYC and the ACHR. According to Article 18 of the Vienna Convention on the Law of Treaties (1969), a State which has signed a treaty must "refrain from acts which would defeat the object and purpose of a treaty".

Egypt has thus several international human rights obligations that require it to respect, protect and fulfil the human right to education. These arise from Articles 13 and 14 of the ICESCR, Article 28 and 29 of the CRC, Article 17 of the ACHPR, Article 11 of the ACRWC, Article 41 of the ACHR and Article 12 of the OIC CRCI. International standards relevant to education are contained in Article 13 of the AYC. According to these international legal obligations, the State bears the primary responsibility for the provision of education; primary education is free and compulsory for all; second, technical and vocation and higher education are equally available and accessible; fundamental education is available; and education is inclusive of all.¹⁹⁸ In addition, these treaties contain other obligations, which are not directly related to education, but which must also be fulfilled in order for the right to education to be fully realised. Egypt is also party to the 1960 Convention against Discrimination in Education, which prohibits inequality of treatment in education for any particular person or group of persons.

Egypt has so far participated in two Universal Periodic Review (UPR) cycles; the first was in 2010,¹⁹⁹ the second in 2014.²⁰⁰ While its statements were at times aspirational in respect of the practical implementation of its international human rights obligations,²⁰¹ there is evidence of the State's cooperation not only with the UPR procedure but also in terms of its implementing some of the Working Group's recommendations. This may be connected with the vice-presidency of Egypt's Hisham Badr's of the HRC for the fourth cycle (2009-10).

Egypt's reservations to international human rights treaties fall within two categories. The first is a general rejection of international dispute settlement. The second category is

¹⁹⁷ Ratified on 20 March 1984 and 9 May 2001 respectively, see:

<http://www.achpr.org/states/egypt/ratifications/>

¹⁹⁸ For more on the content of the obligations attached to the right to education under international law, see the Handbook, pp. 72-100.

¹⁹⁹ See, 'Draft Report of the Working Group on the Universal Periodic Review: Egypt', 19 February 2010, UN Doc. No. A/HRC/WG.6/7/L.16.

²⁰⁰ See 'Report of the Working Group on the Universal Periodic Review: Egypt', 24 December 2014, UN Doc. No. A/HRC/28/16.

²⁰¹ See, for example, the statements of the Egyptian delegation to the Working Group on the Universal Periodic Review, UN Doc. No. A/HRC/28/16, para. 119.

framed on the basis of the supremacy, in Egypt, of Islamic law. Unlike other MENA States that invoke the supremacy of Islamic law within their domestic jurisdictions as the justification for their reservations to international human rights treaties, for example Sudan and Saudi Arabia, Egypt's Islamic law reservations are made in a manner that specifies the rules of domestic law and the provisions of the relevant IHRL treaty that it considers incompatible. An example of this practice is Egypt's reservation against Article 16 of the CEDAW (prohibiting "discrimination against women in all matters relating to marriage and family relations"), which contrasts with its general reservation against Article 2 of the CEDAW (requiring States to provide for gender equality in domestic legislation) that, "[T]he Arab Republic of Egypt is willing to comply with the content of this article, provided that such compliance does not run counter to the Islamic Sharia".²⁰² However, both Articles 2 and 16 are considered core provisions of the Convention by the CEDAW Committee. Therefore, it deems such reservations impermissible and has called for them to be withdrawn. According to Article 19 of the Vienna Convention on the Law of Treaties, reservations must not be "incompatible with the object and purpose of the treaty". In addition, reservations referring to Islamic Sharia in general may be seen as overly vague and thus may also be seen as incompatible with the object of the treaty.

In addition to the eight core UN human rights treaties and the AU and OIC instruments mentioned above, Egypt is also party to the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention),²⁰³ the ILO Minimum Age Convention (with a minimum age of 15 specified),²⁰⁴ and the ILO Convention on the Worst Forms of Child Labour.²⁰⁵ All of these treaties contain provisions that are relevant for the realisation of the right to education. Egypt is also party to the 1951 Refugee Convention and its 1967 Protocol; but not to the 1954 and 1961 Statelessness Conventions, which are poorly ratified within the MENA Region. Egypt made several reservations to the Refugee Convention, including one regarding Article 22 of the Refugee Convention, thus denying refugees the right to be admitted to public schools. However, the Minister of Education issued Ministerial Decree No. 24 in 1992, which allows the children of certain recognized refugees to attend public schools.²⁰⁶ As a member of the African Union, Egypt could ratify the Kampala Convention protecting internally displaced persons, which came into force in 2012, but it has not yet done so. The Arab Convention on the Status of Refugees in the Arab Countries could also be of relevance, but it is not in force.

International Humanitarian Law Obligations

Egypt is party to the Four Geneva Conventions (1949) and their Additional Protocols I and II (1977), which regulate the conduct of armed conflict and protect those not (or no longer) taking part in international and non-international armed conflicts,

²⁰² UN Treaty Collection, MTDSG, Chapter IV.8.

²⁰³ Ratification 8 February 1952, UN Treaty Collection, MTDSG, Chapter IV.1.

²⁰⁴ Ratified on 9 June 1999, see:

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::p11300_instrument_id:312283

²⁰⁵ Ratified on 6 May 2002, see:

http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327

²⁰⁶ This is discussed further in the thematic section of the Study.

respectively.²⁰⁷ It is not a party to Additional Protocol III relating to the adoption of an additional distinctive emblem. Egypt has not ratified any of the weapon-specific treaties. It has signed, but not ratified, the Convention on the Prohibition of Biological Weapons and the Convention on Certain Conventional Weapons, but not any of its Protocols.

Egypt has not signed the Safe Schools Declaration, a non-binding instrument through which States can endorse and commit to implement the Guidelines for Protecting Schools and Universities from Military use during Armed Conflict.²⁰⁸

There does not appear to be any relevant Geneva Call Deed of Commitment applicable to the non-State armed groups operating in Egypt. However, organised non-State armed groups conducting hostilities in Egypt are bound to the same obligations under the Common Article 3 of the Geneva Conventions and its Additional Protocol II, which protects the victims of non-international armed conflicts, as the State's armed forces. For Additional Protocol II to apply, the non-State armed group(s) in question must exercise control of a portion of the territory of a State party.

Applicable International Remedy and Monitoring Mechanisms

In relation to the UN Treaty Bodies, Egypt has not accepted the inquiry procedures in respect of any of the human rights treaties to which it is party, except for the one established under the CAT. Egypt has accepted seven out of twenty requests for Special Procedures inquiries under the Human Rights Council (HRC), of which four have been completed. Egypt has not issued a standing invitation to all thematic special procedures but has accepted and cooperated in the completion of *ad hoc* inquiries in respect of the right to development (2003), on the promotion and protection of human rights while countering terrorism (2009), trafficking in persons, especially women and children (2010). It has additionally accepted inquiries in respect of the situation of human rights in Palestinian territories since 1967 (2012), the right to safe drinking water and sanitation (2012), violence against women, and the impact of foreign debt on economic, social and cultural rights.

As already mentioned, Egypt has not accepted the individual complaints procedure before any of the UN Treaty Bodies. In 2011, the Egyptian Ministry of Foreign Affairs informed an OHCHR mission that the Government of Egypt was considering the ratification of the First Optional Protocol to the ICCPR, the Optional Protocol to the ICESCR, the Optional Protocol to the CAT, and the Optional Protocol to the CEDAW relating to the communications procedure for the respective treaties.²⁰⁹

With regard to regional human rights enforcement mechanisms, Egypt has signed, but not ratified, the Optional Protocol to the ACHPR on the Establishment of the African Court on Human and People's Rights. It has, however, by virtue of the ACHPR, accepted the competence African Commission on Human and People's Rights to receive

²⁰⁷ Geneva Conventions ratified 10 November 1952; Additional Protocols ratified 9 October 1992, see: http://www.geneva-academy.ch/RULAC/international_treaties.php?id_state=58)

²⁰⁸ For more on the Safe Schools Declaration endorsements, see the website of the Global Coalition to Protect Education from Attack at: <http://www.protectingeducation.org/guidelines/support>

²⁰⁹ In addition to the Rome Statute and the ICPED.

complaints. The African Commission has heard several cases against Egypt regarding students or education staff. In *Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt*,²¹⁰ several women, one on her way to an English course, were attacked by protesters but the riot police present did not intervene. The African Commission decided that Egypt had violated several articles of the African Charter, including the prohibition of discrimination (both in general and against women in particular), the right to equality before the law and equal protection of the law, the prohibition of torture and cruel inhuman and degrading treatment, the right to freedom of expression and opinion, and the right to health. In addition to urging to bring the perpetrators to justice, the Commission also called on Egypt to ratify the Maputo Protocol, which it has not yet done although this recommendation was made in 2011.

The other communications concerned with an education-related violation which were brought to the African Commission were either withdrawn by the complainants or closed by the Commission itself. In *INTERIGHTS and the Egyptian Initiative for Personal Rights v Egypt*,²¹¹ the African Commission considered the case of an Egyptian graduate of Al-Azhar University in Cairo, who continuously sought to challenge the legality of his arrest, which appeared to have been based on his religious beliefs. The Court struck out this communication following its withdrawal by the alleged victim, who had been released in the meantime. In *Arab Organisation for Human Rights v Egypt*,²¹² the complaint regarded the trial and conviction by the Supreme Security Court, in May 2001, of Professor Saadeddin Ibrahim, Director and Chair of the Board of Directors of the Ibn Khaldun Center for Development Studies, along with 27 other individuals. The complainant alleged that Egypt violated pre-trial and trial rights, as well as other rights, including freedom of expression. Following the acquittal of Professor Saadeddin Ibrahim, the complaint was also withdrawn. In *Bob Ngozi Njoku v Egypt*,²¹³ a Nigerian student, who was transiting through Egypt, was allegedly stamped a false entry visa for Egypt and, as a consequence, was searched and eventually given a life sentence for having brought a suitcase containing drugs, which he claimed was not his. The Commission closed the communication because it deemed that no provision of the ACHPR had been violated during the process from the arrest to the conviction of this student.

With regard to the prosecution of international crimes, Egypt has signed, but has not ratified, the Rome Statute of the International Criminal Court (ICC Statute). Finally, Egypt has accepted the compulsory jurisdiction of the International Court of Justice for the resolution of inter-State disputes.²¹⁴

²¹⁰ *Egyptian Initiative for Personal Rights & INTERIGHTS v Egypt*, Communication 323/06 ACmHPR (16 December 2011); its summary is available at: <http://caselaw.ihrda.org/doc/323.06/view/en/#facts>

²¹¹ *Interights and the Egyptian Initiative for Personal Rights v Egypt*, Communication 312/05, ACmHPR (25 May 2006); its summary is available at: <http://caselaw.ihrda.org/doc/312.05/view/en/#summary>

²¹² *Arab Organisation for Human Rights v Egypt*, Communication 244/01, ACmHPR (29 May 2003); its summary is available at: <http://caselaw.ihrda.org/doc/244.01/view/en/#facts>

²¹³ *Bob Ngozi Njoku v Egypt*, Communication 40/90, ACmHPR (11 November 1997); its summary is available at: <http://caselaw.ihrda.org/doc/40.90/view/en/#facts>

²¹⁴ Accepted on 22 July 1957, see: <http://www.icj-cij.org/jurisdiction/?p1=5&p2=1&p3=1&sp3=a>

3.1.3. The Protection of Education within the Domestic Legal System

Introduction to the Egyptian Legal System

Egypt is an Islamic constitutional democracy based on the separation of powers between the judiciary, executive, and legislature.²¹⁵ While its legal system has roots in the Napoleonic civil and penal code,²¹⁶ Islamic law principles are expressly stated to be the main source of legislation: Article 2 of the 2014 Constitution, the 2012 Constitution of Egypt and the 1971 Constitution of Egypt consistently stated that Islamic Shari'a is the main source of legislation. In practice, this means that domestic law should not conflict with principles (rather than specific rules) of Shari'a. The legislature is under no obligation to adhere consistently with the opinion of Islamic law jurists but is empowered to choose legislative solutions that are not contradictory with principles of Shari'a.²¹⁷ The Egyptian legal system relies on a series of codified laws, at the top of which lies the Egyptian Constitution, the most recent of which was ratified by referendum in 2014. Although the Constitution does not specifically provide for a hierarchy of laws, the Statute of the Supreme Constitutional Court empowers it to declare invalid any law (or judicial ruling) that is not consistent or compliant with the Constitution.²¹⁸

As in many other MENA States, the Constitution of Egypt was redrafted almost in its entirety in 2012 as a result of popular uprisings. A revised version was presented following a popular referendum and was, as a result, adopted in 2014.²¹⁹ The 2014 Constitution contains almost 250 Articles dealing with a range of issues from general rights and freedoms to the proportionate budgetary allocation to education. A notable strength of the 2014 Constitution of Egypt is that it departs from what appears to be a regional trend to limit rights protections to citizens, by expressly stating that the State's obligations in respect of protecting a range of rights extends to all persons within its territory. In addition to the direct obligations on specific bodies or personalities to implement the provisions of the 2014 Constitution through the establishment of institutions or through legislation, there appears to be a broad framework for putting the provisions of the Constitution into practice.

Protection of the Right to Education in Egyptian Law

The right to education appears in several domestic legal instruments, mainly being the 2014 Constitution of Egypt, Law No. 12 of 1996 concerning the issue of the Egyptian Child Law²²⁰ (the 1996 amended Child Law), Law No. 139 of 1981 issuing the Education Law (the 1981 Education Law), and several Ministerial Decisions issued under Article 2 of the Education Law, which are discussed in detail in this section.

²¹⁵ 2014 Constitution of Egypt.

²¹⁶ Library of Congress, 'Legal Research Guide: Egypt', available at: <<http://www.loc.gov/law/help/legal-research-guide/egypt.php>>

²¹⁷ See Judgement of the Court of Cassation, Criminal Circuit, 14 June 2010, Case No. 48117 of the Judicial Year 74.

²¹⁸ See Part II, Law No. 48 of 1979, Issuing the Law of the Supreme Constitutional Court, as amended by Law No. 168 of 1998 (the amended 1979 Statute of the Supreme Constitutional Court).

²¹⁹ See Nathan Brown, *Egypt: An Constitutional Court in an Unconstitutional Setting*, (New York: New York University, 2013).

²²⁰ As amended by Law No. 126 of 2008.

The State's Obligation to Provide a School System

The Egyptian State bears the primary responsibility to fulfil the right to education and thus to develop and provide an education system, including providing for appropriate conditions for education staff.²²¹ It is required that this operates without prejudice to the right of parents and children to choose private educational institutions.²²² However, the CRC Committee also noted in the past the scale of the provision by non-State providers in Egypt and reminded the State of its obligation to ensure that they operate in compliance with the CRC.²²³

Education in Egypt falls under the purview of the Ministry of Education and Welfare and is centrally regulated. The Minister of Education and Welfare (the Minister of Education) is responsible for issuing binding decisions to implement the 1981 Education Law.²²⁴ The Minister is required to obtain approval of the Higher Council for Education before issuing decisions regulating studies, education plans, curricula, examinations, or other related matters.²²⁵ There are several decision-making structures for decisions issued in this respect: in some cases, the Minister may act alone in issuing decisions,²²⁶ in others the Minister must obtain the approval of the Supreme Council for Education,²²⁷ or the Council for Higher Education, and in others still the Minister must obtain the opinion of (or consult with) local governors.²²⁸ It is not clear that in the case of consultation with local governors, the Minister of Education is bound by their opinion; the duty of the Minister appears to be limited to consulting local governors on select issues that impact the practical implementation of the national legal framework for education in the primary and secondary stages. Although local governors have some powers to vary centrally-issued regulations, these are limited by statute. As an example, local governors may increase class sizes in their governorates by up to 10 percent.²²⁹ The implementation of both education-related legislation and executive decisions from the Minister of Education is the responsibility of the local governors. This may give rise to discrepancies in the quality of teaching between governorates.

In its 2011 Concluding Observations, the CRC Committee attributed obstacles to school attendance in part to low public spending, and also noted gender, rural-urban, and income gaps, in respect of enrolment of children in schools.²³⁰ The CRC Committee recommended the intensification and increase of measures to ensure free and compulsory education for all children, to increase its budgetary allocation to education

²²¹ Art 13(2)(e), ICESCR; Arts 34(4) and 41(6), ACHR.

²²² Arts 13(3) and 13(4), ICESCR; Art 29(2), CRC; Art 30(3), ACHR ; Art 12(4), OIC CRCI.

²²³ Concluding Observations of the CRC Committee, 18 February 1993, UN Doc. No. CRC/C/15/Add.5, para. 28; see also CRC Committee General Comment No. 5, (2003), 27 November 2003, CRC/GC/2003/5.

²²⁴ Art 2, 1981 Education Law.

²²⁵ *Ibid.*

²²⁶ For example in respect of the circumstances and conditions of admission in all stages of education, Art 10, 1981 Education Law.

²²⁷ For example in respect of deciding the duration of the school year, weekly number of lessons in each stage and grade as well as the modules of study (amongst other similar issues), Art 5, 1981 Education Law.

²²⁸ For example in respect of the beginning and end of the school year, Art 7, 1981 Education Law; and in respect of establishing kindergartens, Art 8, 1981 Education Law.

²²⁹ Art 7, 1981 Education Law.

²³⁰ Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, para. 74.

and ensure that early childhood education was incorporated into compulsory stages.²³¹ A similar recommendation was made in 2013 by the CESCR, which expressed concern at the reduction in allocated public spending on education.²³² Article 80 of the 2014 Constitution of Egypt partially implemented this recommendation, but fell short of full compliance as it does not provide for free early childhood education. The CRC Committee also highlighted a number of positive developments between 2001 and 2011, welcoming the adoption of a Strategic Plan to Improve the Quality of Education (2007/8-2011/12), and the initiation of the National Illiteracy Eradication Project in 2003, as well as other child rights mechanisms.²³³

Aims, Objectives and Content of Education

Egypt's international legal obligations require education within its territory to be directed toward the full development of the human personality and the strengthening of respect for human rights, as well as enable all persons to participate effectively in a free society.²³⁴ There are, accordingly, two elements to Egypt's international legal obligations in this respect: first, it must ensure that education is aimed at the student's holistic development, including towards his or her participation in society; second, it must ensure that the content of education within its territory is not only compatible with, but also promotes respect for, human rights among students.

The contemporary domestic law of Egypt provides for a range of aims and objectives of education. Article 19 of the 2014 Constitution provides that every citizen has the right to education with the aim of "building the Egyptian character, maintaining national identity, planting the roots of scientific thinking, developing talents, promoting innovation and establishing civilizational and spiritual values and the concepts of citizenship, tolerance and non-discrimination".²³⁵ These aims may be supplemented by Article 25 of the Constitution, which commits the Egyptian State to the eradication of "alphabetical and numerical illiteracy" (illiteracy and innumeracy) among citizens of all ages. Article 1 of the 1981 Education Law states that pre-university education (i.e. primary and secondary education) is aimed at the cultural and scientific development of the student, their formation of an Arab identity, which is a prominent feature of Egyptian education-related legislation, and other developmental aspects (emotional, intellectual, social, behavioural, and physical). While these provisions are more detailed than in international law, in terms of the modalities of the development of the student, they are not incompatible. A provision requiring pre-university education to be directed toward the respect of human rights and human dignity was added to the 1981 Education Law with a 2008 Amendment.²³⁶

²³¹ Ibid, para. 75.

²³² Concluding Observations of the CESCR, 13 December 2013, UN Doc. No. E/C.12/EGY/CO/2-4, paras. 21-22.

²³³ Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, para. 6.

²³⁴ The exact formulation varies, but the content of the obligation contained in the following is consistent:; Art 13(1) ICESCR; Arts 28(1) and 29(1) CRC; Art 41(4), ACHR; Art 11 ACRWC; Art 12(1) OIC CRCI; see also Art 26(2), UDHR.

²³⁵ Art 19(1), 2014 Constitution of Egypt.

²³⁶ Art 1, 1981 Education Law; Art 53 (2008 amendment) of 1981 Education Law.

Secondary education has additional aims to those stated above for 'pre-university education' as a whole.²³⁷ The aims of secondary education, which is for a duration of three years, are stated in Article 22 of the 1981 Education Law. They are the preparation of students for life, alongside their preparation for higher or university education and for participation in public life.

In addition, the 2014 Constitution commits the Egyptian State to providing education "in accordance with global quality criteria".²³⁸ It may be inferred that, where the expressly stated aims of education in domestic law fall short, reference may be made to globally agreed aims and objectives such as those contained in Article 13(1) of the ICESCR and Article 28 of the CRC. In this regard, domestic legislation evidences the State's willingness to incorporate international standards into its education-related legislation.

In Egyptian law, the promotion of the Arab identity and of Islamic principles is an immutable element of education in many if not all its stages. Article 24 of the 2014 Constitution is almost entirely dedicated to establishing the Arabic language (the official State language), religious education, and national history, as core subjects of primary and secondary education.²³⁹ The view of the CESCR Committee is that incorporation of religious education into the national curriculum is not incompatible with the requirements of Article 13(3) of the ICESCR guaranteeing the freedom of parents and guardians to exercise choice over the religious education of their children. This is subject to the condition that religion and ethics are taught in a general and unbiased manner and that there is a degree of flexibility in respect of parents or guardians electing alternatives or exemptions for their children.²⁴⁰ Since Article 24 of the 2014 Constitution does not stipulate that one religion must be taught over another, it is not incompatible with the requirements of Article 13(3) of the ICESCR. Similarly, although the 1981 Education Law provides for religious education, it does not stipulate one particular religion.

Although there is nothing in the 2014 Constitution or the 1981 Education Law specifically protecting the rights of minority groups to establish schools for particular religious education or instruction in a particular language, one of the purposes for which a private school may be established is for instruction in another language alongside Arabic.²⁴¹ It is also a well-established rule in Islamic Sharia that followers of Abrahamic religions are free to practice their religion as well as educate it among themselves by whatever means available, including having schools dedicated to religious education, and it falls upon the State to ensure their ability to enjoy these rights and to protect them in so doing. Thus, it is Article (2) of the 2014 Constitution, which specifies the principles of Islamic Sharia as the main source of legislation, that guarantees religious minorities' rights to religious education. Religious minority rights,

²³⁷ Again, primary education in Egyptian law relates to a period of education between the ages of six and fifteen and secondary education encompasses a three year period of education prior to university, which may be substituted by technical or vocational training.

²³⁸ Art 19(1), 2014 Constitution of Egypt.

²³⁹ Other articles of the 2014 Constitution deal with Arabic as the official language and Islam the State religion of Egypt (Article 2) and the promulgation of Arabic through al-Azhar University (Article 7).

²⁴⁰ CESCR General Comment No. 13 (1999), para 28.

²⁴¹ Art 55, 1981 Education Law.

including religious education, were explicitly granted in Article (3) of the 2012 Constitution which stated that “[T]he principles of Christian and Jewish laws are the main source of legislation for followers of Christianity and Judaism in matters pertaining to personal status, religious affairs and nomination of spiritual leaders”. Religious education is within the meaning of “Religious Affairs”. This text was not incorporated in the 2014 Constitution. Additionally, the religious identity of the child (amongst other aspects of his development) is a consistently stated aim of education in the amended Child Law.²⁴²

The CRC Committee noted, in respect of the State’s obligations under the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, the role of human rights education.²⁴³ Human rights education is beginning to be integrated within the Egyptian education system.²⁴⁴ Treaty bodies have both welcomed and encouraged further incorporation of human rights into the Egyptian education system.²⁴⁵ The CRC Committee, has, however, recommended that Egypt more fully incorporate human rights education into the curricula of primary and secondary schools.²⁴⁶

The above aims are largely compliant with the requirements of Article 13(1) of the ICESCR, to which Egypt is party. However, the express reference to the development of the Egyptian character and the express reference to ‘citizens’ in Articles 19 and 25 of the 2014 Constitution appear to fail to meet the requirement contained Article 13(1) to ensure that education “enable *all persons* to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups [emphasis added]”.

The Right to Primary Education

In 2014, approximately 89 percent of all primary school-aged children in Egypt were attending primary school, with boys’ and girls’ attendance rates being almost exactly equal.²⁴⁷ Attendance is lower, however, in the following stages of education in Egypt; in the same year, approximately 72.5 percent of secondary school aged children were attending secondary school, which had risen from 51.9 percent in 2005 and 70.1 percent in 2009.²⁴⁸ The 2010 report of the CEDAW Committee on Egypt was written before the 2011 uprising and thus there is no reference to the impact of the insecurity

²⁴² See Chapter 4, amended Child Law.

²⁴³ Concluding Observations of the CRC Committee on Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, 18 July 2011, UN Doc. No. CRC/C/OPAC/EGY/CO/1, paras. 9-10.

²⁴⁴ Report of the Working Group on the Universal Periodic Review, Egypt, UN Doc. No. A/HRC/28/16, 24 December 2014, para. 33: Education curricula include information on human rights and freedoms. International human rights law has become a standing subject in university curricula. The Government provides financial support to civil society organizations that work in the field of human rights on awareness-raising, and a new department on human rights and social communication has been established at the Ministry of the Interior.

²⁴⁵ Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, para. 76.

²⁴⁶ CRC Committee on Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, Concluding Observations, 18 July 2011, UN Doc. No. CRC/C/OPAC/EGY/CO/1, para. 22.

²⁴⁷ The Gender Parity Index (GPI) of the net attendance of this group is 0.9931: UNESCO Institute of Statistics, available at: <http://data.uis.unesco.org/>

²⁴⁸ UNESCO Institute of Statistics, available at: <http://data.uis.unesco.org/>

of the uprisings on the rights protected by the Convention.²⁴⁹ However, the report does make reference to education in Egypt, noting with particular concern the decline in enrolment of girls at both primary and secondary school age,²⁵⁰ coupled with a high drop-out rate at secondary school and university.²⁵¹ The report urges Egypt to ensure equal access to education and take steps to “overcome traditional attitudes that in some rural areas may constitute obstacles to the education of women and girls and to keep girls in school”²⁵².

Egypt is obliged, at a minimum, to provide compulsory and free primary education.²⁵³ Whereas the relevant provisions of the ICESCR and CRC operate on the general principle that the State’s obligation applies to all persons within its territory, the ACHR limits the State’s obligation to citizens.

In Egyptian domestic law, pre-university education is compulsory and is recognised as a right.²⁵⁴ The mandatory nature of primary education is constitutionally enshrined in Article 19 of the 2014 Constitution. Article 19(2) of the 2014 Constitution provides that education is compulsory until the end of the secondary stage (pre-university education) and that the State provides free education in its different stages in State educational facilities, as provided for in law. In contrast to Article 19(1) and Article 25 of the 2014 Constitution on the eradication of illiteracy and innumeracy of citizens of all ages, this provision is not expressly limited to citizens. Article 80 of the 2014 Constitution specifically provides that “every child has the right to early education in a centre for childhood until the age of six [emphasis added]”. Implementation of compulsory free education to the secondary stage is constitutionally required to have been completed by the school year 2016/17.²⁵⁵ Article 54 of the 1996 Child Law, Law No. 12 of 1996, as amended by Law No. 126 of 2008 (the Amended Child Law), which was a new addition to the Child Law in 2008, contains a clearer and more inclusive provision in respect of free education as compared with those relating to primary education. It states that education is a right of “all children” in state schools, free of charge. The compulsory nature of primary education is enforceable through criminal sanctions.²⁵⁶

Article 3 of Part I of the 1981 Education Law provides that pre-university education is a right of all citizens in state schools, free of charge. It goes on to expressly state that

²⁴⁹ Committee on the Elimination of Discrimination against Women (CEDAW), Concluding observations on the combined fourth and fifth periodic reports of Egypt (5th February 2010), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fEGY%2fCO%2f7&Lang=en

²⁵⁰ Ibid, para. 31.

²⁵¹ Ibid.

²⁵² Ibid, para. 32.

²⁵³ Art 13(2)(a), ICESCR; Art 28(1)(e), CRC ; Arts 41(1), 41(2), ACHR. The ACHPR (Art 17(1)) and the ACRWC (Art 11) contains a broad guarantee of the right to education for all.

²⁵⁴ According to Article 4 of the 1981 Education law, compulsory education ends after 9 years of education. This comprises two stages. In Egypt they are named: Primary stage/instalment المرحلة الابتدائية and preparatory stage/instalment المرحلة الإعدادية. The 2012 Constitution, extended compulsory education to include the secondary stage/instalment المرحلة الثانوية. The same is stipulated in Article 19 of the 2014 Constitution. Therefore, what is labelled as primary education, in Egypt, according to the Constitution presently in force in Egypt, covers all pre-university education.

²⁵⁵ Art 238, 2014 Constitution of Egypt

²⁵⁶ See Art 19, 1981 Education Law.

students may not be charged any fee for educational or welfare services. It is permissible to charge for additional services or to take a deposit for the loan of school equipment, but these issues fall to be regulated by decision of the Minister of Education.²⁵⁷ Amendments to the 1981 Education Law proposed by the Minister of Education in 2015 would allow for the free provision of school uniforms and for monthly allowances to help avoid absences.

Admission into primary education, which lasts for six years from the age of six until 12, is regulated by rules issued by the Education Directorate and distributed to schools for implementation. Enrolment procedures for the beginning instalment of primary education are governed by Decision No. 154 of 1989 issued by the Minister of Education. It provides that applications for enrolment in the beginning instalment must be accompanied by the child's original birth certificate or an official copy. In addition, the child's medical card must be presented alongside the enrolment papers, in accordance with Article 29 of the amended Child Law.²⁵⁸ The online registration form for the first grade of elementary school provided by the Ministry of Education also requires the child's national number.

Admission into preparatory education (the three years following primary education and until the age of 15) is conditional upon passing the beginning instalment. In the event that a student has failed a certain number of exams they are transferred to a vocational stream. Students may also elect to transfer to that vocational stream.

The Right to Secondary, Technical and Vocational Education

Egypt is obliged, at a minimum, to make secondary education available and accessible,²⁵⁹ and in accordance with the OIC CRCI, is obliged to provide free and compulsory education on a progressive basis so that it is available to all children within ten years.²⁶⁰ Secondary education is compulsory in Egypt and is available free of charge in State educational facilities.²⁶¹ Included within 'secondary education' are two parallel and alternative stages both of a duration of three years, being 'general secondary education' and 'technical secondary education'.²⁶² It aims to "prepare students for life", alongside preparing them for higher and university education.²⁶³

Absence from secondary education is dealt with differently from absence from primary education. Attendance at secondary school is given great importance in the 1981 Education Law; absence for any part of a school day is deemed to be an absence for the whole day and entry into examinations is conditional upon the student's presence for at least 80% of school days.²⁶⁴

²⁵⁷ Art 3, Part I, 1981 Education Law.

²⁵⁸ The school is responsible for checking the medical card, see also Art 27 of the amended Child Law.

²⁵⁹ Art 13(2)(b), ICESCR; Art 28(1)(b), CRC. Art 13(4) of the AYC, to which Egypt is not party, also contains a similar standard.

²⁶⁰ Art 12(2)(ii).

²⁶¹ Art 19, 2014 Constitution of Egypt.

²⁶² Technical secondary education is discussed in the following section of this Study.

²⁶³ Art 22, 1981 Education Law.

²⁶⁴ Art 25, 1981 Education Law. Proposed amendments to the 1981 Education Law would increase the required attendance rate to 85%.

Secondary education lasts three years, and usually runs from the age of 15.²⁶⁵ Admission into the first grade of secondary education is conditional upon possession of a certificate of completion of preparatory education, and upon the student being not more than 18 years of age at the start of the school year.²⁶⁶

Egypt is also obliged to make technical and vocational education available, with a progressive obligation to make it freely available.²⁶⁷ Technical and vocational education is available in Egypt and the first stage runs concurrently, and as an alternative, to secondary education as described in the preceding section. In its 2013 Concluding Observations, the CESCR recommended that Egypt address imbalances between education and labour markets by improving the quality of technical and vocational training and education.²⁶⁸ The Egyptian State has committed, with Article 20 of the 2014 Constitution, to “encourage and develop” technical education and professional training, in keeping with the needs of the labour market. Technical education is available in specialised schools in Egypt, which are required to operate in accordance with decisions of the Minister of Education.²⁶⁹ There are two types of technical education: the first is technical secondary education which is an alternative track from general secondary education, the second is advanced technical education.

Technical secondary education, which lasts three years,²⁷⁰ is aimed at “the technical preparation of the class in the areas of industry, agriculture, commerce and services and to develop the technical abilities of the students”.²⁷¹ In contrast to the aims of primary and (general) secondary education which focus on the individual student and his or her development, the aims of technical education are stated in respect of the group as a whole (class, students). Technical schools are subject to regulation by the Ministry of Education, including in respect of examinations and other matters.²⁷² At the end of the third grade of technical secondary education, students are required to pass an examination.²⁷³ Entry into the final examination is conditional upon the student having been present for 80 percent of classes for professional training, regardless of the reason for absence.²⁷⁴

Advanced technical education, which lasts five years,²⁷⁵ is aimed at providing preparation in respect of the basics of the technical area and training.²⁷⁶ In addition to

²⁶⁵ Ibid, Art 23; see also its Art 4.

²⁶⁶ Ibid, Art 23. The Minister of Education is empowered to issue decisions regulating exceptions to the age requirement for secondary education.

²⁶⁷ Art 13(2)(b), ICESCR; Art 28(1)(b), CRC. The AYC, to which Egypt is not party, also contains a similar standard in its Art 13(4).

²⁶⁸ Concluding Observations of the CESCR Committee, 13 December 2013, UN Doc. No. E/C.12/EGY/CO/2-4, para. 10.

²⁶⁹ Art 31, 1981 Education Law.

²⁷⁰ Art 4, 1981 Education Law;

²⁷¹ Art 30, 1981 Education Law

²⁷² Art 30, 1981 Education Law.

²⁷³ Diploma of Technical Secondary Schools, Three Year System, which specifies the area of specialisation, see Art 36, 1981 Education Law.

²⁷⁴ Art 37, 1981 Education Law.

²⁷⁵ Art 4, 1981 Education Law; Chapter 4, 1981 Education Law.

²⁷⁶ Art 38, 1981 Education Law.

the areas of technical education available at the secondary level, management is also included/available in advanced technical education. Admission to advanced technical education is conditional upon possession of a certificate of completion of primary education and fulfilment of any other conditions specified by the Minister of Education by ministerial decision.²⁷⁷ The 1981 Education Law also provides for the development of advanced technical education.²⁷⁸

Admission to technical secondary education and advanced technical education is conditional upon possession of a certificate of completion of primary education, and any additional conditions specified by ministerial decision.²⁷⁹

²⁷⁷ Art 38, 1981 Education Law.

²⁷⁸ Art 39, 1981 Education Law.

²⁷⁹ Art 30, 1981 Education Law.

The Right to Higher Education

Egypt is obliged to ensure that higher education is made equally accessible to all, on the basis of capacity.²⁸⁰ Domestic law governing higher education largely dates from the 1970s. Egyptian higher education is aimed to promote advanced understanding in areas of specialisation, as well as to contribute to the nurturing of the national and pan-Arab identity.²⁸¹ Higher education falls within the remit of the Ministry of Higher Education. It is free for citizens,²⁸² although students may be charged for services additional to the core education services.²⁸³

Universities are governed by the Higher Council of Universities, which was established by Article 18 of Law No.49 of 1972. The competences of the Higher Council include admissions and examinations procedure, the training and requirements of teaching staff, and the provision of materials amongst other issues.²⁸⁴ In addition, the Council may decide the number of non-Egyptian national students admitted into an academic year.²⁸⁵ In the event of a dispute or a disciplinary matter, the Principal of the University is required by statute to hear complaints and make a finding.²⁸⁶

The Right to Basic Education

Basic (or fundamental) education is aimed at individuals “who have not received or completed the whole period of their primary education” or have otherwise not yet satisfied their “basic learning needs”.²⁸⁷ The CRC Committee has emphasised that, “enjoyment of the right to fundamental education is not limited by age or gender; it extends to children, youth and adults, including older persons” and that it is “an integral component of adult education and life-long learning”.²⁸⁸ The required form of such encouragement or intensification varies between the legal frameworks. The CRC requires State parties to cooperate to contribute to the elimination of ignorance and illiteracy throughout the world.²⁸⁹ African and international Islamic law go further, creating a positive obligation on States to eradicate, or provide “effective treatment” of, illiteracy.²⁹⁰

Egypt is obliged, at a minimum to encourage or intensify basic education, as far as possible for persons who have not completed their primary education.²⁹¹ While Article

²⁸⁰ Art 13(3)(c), ICESCR; Art 28(1)(c), CRC.

²⁸¹ Art 1, Law No.49 of 1972.

²⁸² *Ibid*, Art 169.

²⁸³ Art 65 of Presidential Decision of the Law No.809 of 1975 for the executive regulation of Law No.49 of 1972

²⁸⁴ Art 19, Law No.49 of 1972.

²⁸⁵ Art 74 of Presidential Decision of the Law No.809 of 1975 for the executive regulation of Law No.49 of 1972.

²⁸⁶ Art 74 of Presidential Decision of the Law No.809 of 1975 for the executive regulation of Law No.49 of 1972

²⁸⁷ CRC Committee, General Comment No. 13 (1999), contained in UN Doc. No. E/C.12/1999/10, paras. 22, 23.

²⁸⁸ CRC Committee, General Comment No. 13 (1999), contained in UN Doc. No. E/C.12/1999/10.

²⁸⁹ Art 28(3), CRC.

²⁹⁰ Art 41(1), ACHR and Art 12(2)(v), OIC CRCI, respectively.

²⁹¹ Art 13(2)(d), ICESCR.

80 of the 2014 Constitution of Egypt enshrines the right to basic education, it limits it to children. It provides, *inter alia*, that “[E]very child is entitled to early education in a childhood centre until the age of six.”²⁹² Since the 1981 Education Law provision does not say that free education is *only* available to citizens, it is not strictly incompatible with the broader guarantee of the 1996 Child Law with amendments, and could bring the domestic framework for basic education into compliance with Article 13(2)(e) of the ICESCR. This is dependent upon implementation in practice.

The Right to Non-Discrimination in Education

Domestic efforts to strengthen domestic legal protection, including the integration in the national plan for educational reform of inclusive education for persons with disabilities have been welcomed by the UN Treaty Bodies.²⁹³ The CRC Committee noted, however, the limited number of schools adapted to provide inclusive education for persons with disabilities and that only 1.1 percent of children with disabilities were recorded as enjoying their right to education.²⁹⁴ It recommended ensuring closer compliance of domestic law with the CRPD, as well strengthening the availability and accessibility of community-based educational services for children with disabilities.²⁹⁵

In respect of refugee and asylum-seeking children, Egypt was commended for having adopted such measures as provision of scholarships and educational grants for refugee children. It was criticised, however, for retaining legal and factual obstacles to equal and effective access to education for all refugee and asylum-seeking children.²⁹⁶ To this end, the CRC Committee called upon Egypt to amend domestic law governing access for refugee and asylum-seeking children to education and by enacting comprehensive legislation on the status and rights of refugees.²⁹⁷ The CRC Committee called upon Egypt to ensure access to free public education for all asylum-seeking and refugee children on an equal basis with Egyptian children, particularly through the implementation of Articles 7*bis* and 54 of the amended 1996 Child Law to more closely comply with Article 22 of the CRC.²⁹⁸

The CESCR Committee expressed concern, in its 2013 Concluding Observations, at the failure of domestic legislation to provide full protection against discrimination and urged the State to eliminate formal and substantive discrimination, including by prohibitions and providing sanctions for discrimination in all fields of economic, social, and cultural rights.

The CESCR felt that the aforementioned lack of educational spending in Egypt disproportionately impacted on disadvantaged and marginalized groups,²⁹⁹ in

²⁹² Art 80, 2014 Constitution of Egypt.

²⁹³ Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, para. 60.

²⁹⁴ *Ibid.*

²⁹⁵ *Ibid.*, para. 61.

²⁹⁶ *Ibid.*, para. 76.

²⁹⁷ *Ibid.*, para. 77.

²⁹⁸ *Ibid.*

²⁹⁹ Concluding Observations of the CESCR Committee, para. 6.

particular those from rural areas and those from poorer socioeconomic backgrounds.³⁰⁰ The CRC expresses similar concerns, highlighting continued discrimination in the enjoyment of education against young girls,³⁰¹ children in poverty,³⁰² refugee and asylum-seeking children,³⁰³ and children with disabilities.³⁰⁴ Those affected by dual-discrimination are particularly disadvantaged, for example females from rural areas had an illiteracy rate of 69%³⁰⁵.

Specific Obstacles to Inclusive Education

In 2011, an estimate of 1 to 4 percent of children in Egypt lacked birth certificates.³⁰⁶ The CRC Committee welcomed changes to domestic nationality laws that allowed for universal birth registration of children born in Egypt.³⁰⁷ It noted, however, that registration was not uniform across Egypt and was subject to fees and recommended that the domestic laws on birth registration be better implemented by the State.³⁰⁸ The CRC Committee also noted the need to extend birth registration and identification documentation to children in street situations for the purposes of securing, *inter alia*, education opportunities.³⁰⁹

The conditions for admission in the primary and secondary stages of education discussed above may present an obstacle to access for a number of groups in Egypt. New students wishing to enrol in primary school are required to present their birth certificate and medical card, and students wishing to enrol in secondary school (both general and technical) are required to present their certificate of completion of primary education. The first and most numerous population at risk of being unable to access education in view of these requirements are refugees and asylum seekers. Next are stateless persons.

Obstacles Specific to Refugees

Egypt has been criticised for the lack of a coherent national asylum system.³¹⁰ It is host to over 260,000 refugees and asylum-seekers from Sudan, Ethiopia, Somalia, the Occupied Palestinian Territories, Syria, and others.³¹¹ Although Egypt is party to the 1951 Refugee Convention, it entered a reservation against Article 22(1), refusing to accord refugees the same treatment as Egyptian nationals in respect of primary education.³¹² Nevertheless, the Minister of Education issued Ministerial Decree No. 24

³⁰⁰ Ibid, para. 22

³⁰¹ 2011 Concluding Observations of the CRC Committee, para. 34.

³⁰² Ibid, para. 34.

³⁰³ Ibid, paras. 76-77.

³⁰⁴ Ibid, para. 60.

³⁰⁵ Ibid, para. 74(d).

³⁰⁶ 2011 Concluding Observations of the CRC Committee, para. 42.

³⁰⁷ Ibid.

³⁰⁸ Ibid. para. 43.

³⁰⁹ Ibid. para. 81.

³¹⁰ Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, para. 76.

³¹¹ UNHCR Statistics, available at: <http://www.unhcr.org/cgi-bin/tehis/vtx/page?page=49e486356&submit=GO>

³¹² Egypt also entered reservations against Articles 12(1) (personal status), 23 (public relief and assistance) and 24 (labour legislation and social security) of the 1951 Refugee Convention.

in 1992, allowing certain groups of refugees or asylum seekers access to public education within Egypt.³¹³ The Egyptian State also specifically allowed Syrian refugees to enter into Egyptian state schools by a Ministerial Circular in 2013.³¹⁴ However, Syrian refugees are reported to encounter difficulties in registering in Egyptian public schools, in part because of their lack of required documentation.³¹⁵ UNHCR negotiated an agreement with the Egyptian Ministry of Education whereby children may sit standardised national exams without required documentation and a valid residency permit, on the condition that results of these exams would be withheld until the child's parents have acquired a valid residency.³¹⁶ A pre-existing bilateral agreement between Syria and Egypt allows for the mutual recognition of school-leaving certificates.³¹⁷

Those refugees groups that are admitted into public schools must follow the Egyptian curriculum; other groups are provided education in community-run or NGO-run schools and follow the curriculum of their country of origin.³¹⁸ A further obstacle for refugee children in Egypt is difference in dialect and curricula. Syrian refugees have attempted to circumvent this by establishing community schools, but these are not supported and the Egyptian government closes them down.³¹⁹

The State's power to grant political asylum is enshrined in Article 91 of the 2014 Constitution. Although it prohibits extradition, this and the right to asylum are limited, to "any foreigner who has been persecuted for *defending the interests of peoples, human rights, peace or justice* [emphasis added]". This definition of persons entitled to asylum does not match that contained in Article 1(1) of the 1951 Refugee Convention, to which Egypt is party. By contrast, Article 57 of the 2012 Constitution established a much wider general right to asylum, not necessarily political, to "individuals who are deprived, in their countries, from the general rights and freedoms granted by the present constitution". In this regard the 2014 is a retrogression in the legal regulation of the right to asylum.

Although there is a constitutionally enshrined protection against extra-judicial and extra-legal detention (save during a declared state of emergency), this does not extend to non-nationals. Refugees and asylum-seekers are vulnerable to non-penal (or administrative) detention on several grounds. Law No. 89 of 1960 on the Entry and Residence of Aliens in Territories of the United Arab Republic and their Departure Therefrom (the amended 1960 Entry, Residence and Exit Law) deals with the treatment of refugees and asylum seekers within Egyptian territory. Article 27 of the amended 1960 Entry, Residence and Exit Law authorises the detention of non-nationals of Egypt to be detained pending deportation in the event that they have completed service of a custodial sentence for a criminal offence. Irregular entry into Egypt is an actionable offence which may result in the deportation of a non-national. Article 33 of the 1960 Entry, Residence and Exit Law provides for the supply of documentation to refugees,

³¹³ Ministerial Decree 24 of 1992, 22 Jan. 1992.

³¹⁴ see OOSCI, 'Curriculum, Accreditation and Certification for Syrian Children in Syria, Turkey, Lebanon, Jordan, Iraq and Egypt' (2015), Section 7.3.

³¹⁵ Ibid.

³¹⁶ Ibid, Section 7.4.

³¹⁷ Ibid.

³¹⁸ Ibid, Section 7.3.

³¹⁹ Plan International, 'Refugee Rights Assessment in Egypt' (May 2015).

including Palestinian refugees, and fulfils the State's obligation to do so, contained in Articles 25 and 28 of the 1951 Refugee Convention.

Obstacles Specific to Stateless Persons

Although several UN Treaty Bodies have welcomed amendments to domestic law allowing for the acquisition of nationality by operations of both maternal and paternal *ius sanguinis*, they have also urged Egypt to ratify the 1954 Convention on the Status of Stateless Persons and the 1961 Reduction of Statelessness Convention.³²⁰ It is, however, bound by the provisions of the ICCPR, the CRC and the CEDAW relevant to the right to a nationality.

The access to education of stateless persons is affected by the documentation requirements for admission into the various stages of education discussed above. The 1996 Child Law with amendments provides that all children have the right to acquire a nationality in accordance with the relevant law on Egyptian nationality (Article 2). Nationality in Egypt is acquired primarily by operation of *ius sanguinis* and, to a lesser extent, *ius soli*. By a 2004 amendment to the Egyptian Nationality Law, Law No 26 of 1975, children of either an Egyptian national mother or father are considered nationals of Egypt.³²¹ Until 2004, only children of Egyptian national fathers were automatically considered Egyptian nationals themselves. The 2004 amendment was given retroactive effect,³²² but any person born to an Egyptian mother and a non-Egyptian father before the date of entry into force of the 2004 amendment is required to notify the Minister of Interior and is considered an Egyptian national upon issue of a decision from the Minister to this effect.³²³ Foundlings are considered to be Egyptian, having been born to unknown parents and deemed to have been born in Egypt, in the absence of any proof to the contrary.³²⁴

The 2004 amendment to Egyptian nationality legislation has reduced the number of groups previously at risk of statelessness, and therefore without the requisite documentation to access public services. Although the strict legal position in Egypt aligns broadly with international standards on the right to acquire a nationality, the practical implementation of the 2004 amendment falls short. Despite the retroactive effect of this amendment, a written application is required in person at the single central office in Tahrir, which is often found to be difficult to access owing to extensive security controls by the State. This may mean that persons otherwise eligible for Egyptian nationality fail to acquire it.³²⁵

³²⁰ Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, paras. 44, 45;

³²¹ Article 2(2), Egyptian Nationality Law, Law No. 26 of 1975, as amended by Article 1, Law relating to issues of Egyptian Nationality, Law No. 154 of 2004.

³²² Art 3 of Law No 154 of 2004

³²³ See below on nationality and Palestinian refugees.

³²⁴ Art 2(2), Egyptian Nationality Law, Law No. 26 of 1975, as amended by Art 1, Law relating to issues of Egyptian Nationality, Law No. 154 of 2004.

³²⁵ However, exact numbers are not known, see Women's Refugee Commission, 'Our Motherland Our Country: Gender discrimination and statelessness in the Middle East and North Africa' (June 2013), p. 29.

Protection of Students and Education Staff

Students and education staff are protected in circumstances of insecurity and armed conflict in several areas of domestic law. The following are analysed in this section: the protection of life, the protection of liberty and security of the person, and the protection from torture and ill-treatment. There are additional protections for specific groups of students and education staff as children and displaced persons. The right to work of education staff is additionally protected in domestic law.

The Protection of Life of Students and Education Staff

The life of students and education staff has been at risk in Egypt in recent years, in particular with regard to incidents related to the uprisings, which began on 25 January 2011 and which many of them joined. Although the total number of deaths resulting from the uprisings is not certain, the number of killings in specific incidents is easier to gauge. As an example, two sit-ins (in Rabaa' Al-Adawiyia and Al-Nahda Square) were reported to have resulted in over 1,000 casualties.³²⁶

The Egyptian State's obligations in respect of the right to life in insecurity and armed conflict are contained in Article 6 of the ICCPR, Article 4 of the ACPHR, as well as in Articles 5, 6 and 7 of the ACHR, among others. They require the State to, *inter alia*, i) conceive broadly of the right to life and respect its non-derogable nature even in a state of emergency;³²⁷ ii) prevent mass violence and war;³²⁸ iii) prevent and punish arbitrary killing.³²⁹

Several areas of Egyptian domestic law have the compound effect of recognising and protecting the right to life. The closest provision to a recognition of the right to life is contained in Article 59 of the 2014 Constitution, which provides that "[A] secure life is the right of all humans. The State is obliged to provide security and reassurance for citizens and those residing within its territory." In this way, the State appears to assume the responsibility for threats to security occurring within its territory. In contrast to many other provisions imposing an obligation on the State, Article 59 of the 2014 Constitution places the responsibility of ensuring security squarely with the State and emphasises the obligatory nature of the provision.³³⁰

³²⁶ International Commission of Jurists, 'Egypt: Impunity Prevails Two Years After Rabaa' Al-Adawiyia and Al-Nahda Square Killings', (August 2015), available at:

<http://www.icj.org/egypt-impunity-prevails-two-years-after-rabaa-and-nahda-square-killings/>

³²⁷ Art 4, ICCPR; Art 4, ACHR; see also Human Rights Committee, 'CCPR General Comment No. 6: Article 6 (Right to Life)', (1982), para. 1.

³²⁸ Human Rights Committee, 'CCPR General Comment No. 6: Article 6 (Right to Life)', (1982), para. 2;

³²⁹ Art 6(1), ICCPR; Art 5, ACHR; see also Human Rights Committee, 'CCPR General Comment No. 6: Article 6 (Right to Life)', (1982), para. 3.

³³⁰ This arises from a difference in the expression of obligation in Arabic and English. The phrase in Article 59 of the 2014 Constitution is "تلتزم الدولة بتوفير" translating to "the State is obliged to provide", whereas often such an obligation would appear as توفر الدولة which translates directly to "the State provides". The language employed in Article 59 emphasises the obligatory nature of the State's provision of life-protection measures.

Other constitutional provisions relevant to the protection of the life of students and education staff include the right to human dignity,³³¹ the right to freedom from torture (insofar as torture results in death),³³² the right to a secure life,³³³ the enshrinement of the inviolability of the human body,³³⁴ the right to adequate housing,³³⁵ and the right to adequate food and water.³³⁶ That the right to life does not exist in a single place does not detract from the validity of the various components of the recognition of the right to life and the State's obligations in this respect, neither does the absence of a single provision containing the exact terminology of Article 6(1) of the ICCPR or Article 5(1) of the ACHR.³³⁷

The protection of life in Egyptian law also appears to be one of the underlying justifications for the Government's anti-terror and other security measures: the articulation in Article 59 of the Constitution incorporates the State's obligation to protect life and this recurrently appears throughout the Constitution and legal texts providing for emergency measures. The structure of such emergency provisions within Egyptian domestic law frames the parameters of the right to life by the powers available to the State; the right to life appears to be derivative from the State's security and emergency powers. During a declared state of emergency, the President may withdraw licenses for weapons and explosive materials and take control of or shut down weapon stores,³³⁸ and evacuate or isolate certain areas of territory.³³⁹ Therefore the State's power to prevent and protect against explosive violence causing death positively impacts the right to life of students and education staff as part of the general population.³⁴⁰

The protection of the civilian population is articulated largely as part of Egypt's counter-terror efforts, although domestic criminal law also provides protections against the use of explosive violence and weapons. Article 237 of the 2014 Constitution commits the State to "fighting all types and forms of terrorism and tracking its sources and funding within a specific time frame in light of the threat it represents to the national and citizens, with guarantees for public rights and freedoms." Crimes of terror are defined briefly in Law No. 94 of 2015 on Combatting Terrorism (2015 Anti-Terror Law) as

"every offence under [the 2015 Anti-Terrorism Law] as well as all felonies and misdemeanours committed by using of the means of terrorism or in order to achieve or implement a terroristic purpose or whose purpose is to incite commission or threaten of any of the above offences, without prejudice to the provisions of the [amended 1937 Penal Code]."³⁴¹

³³¹ Art 51, 2014 Constitution of Egypt.

³³² Ibid, Art 52.

³³³ Ibid, Art 59.

³³⁴ Ibid, Art 60.

³³⁵ Ibid, Art 78.

³³⁶ Ibid, Art 79.

³³⁷ Art 5 of the ACHR provides that "[E]very human being has an inherent right to life" and that "[T]his right shall be protected by law. No one shall be arbitrarily deprived of his life."

³³⁸ Art 3(5), amended 1958 State of Emergency Law.

³³⁹ Ibid, Art 3(6).

³⁴⁰ Art 1(4), Law No. 94 of 2015 Issuing the Law on the Combatting of Terrorism (the 2015 Anti-Terror Law).

³⁴¹ Art 1(3), 2015 Anti-Terrorism Law.

The definition is vague and open to interpretation, especially when read against Article 3 of the 2015 Anti-Terror Law, which defines what constitutes an 'act of terror'. It provides that an act of terror is:

"Any act intended for the purposes of financing terrorist financing collection or receipt, possession, supply or transfer or provision of funds for weapons or ammunition or explosives or equipment or data or information or materials or other, directly or indirectly and by whatever means, including in digital format or by mail with the intent to use all or some of them in the commission of any act of terror or knowing that it will be used in, or providing safe haven for one or more terrorists or those funded by any of the aforementioned methods."

Terrorism is additionally defined in the 1937 Penal Code.³⁴² Although the form of violence employed by perpetrators is not conclusive as to whether an act constitutes the crime of terrorism, the use of conventional or unconventional weapons aggravates the basic offence.³⁴³ Domestic criminal law also contains offences relating to the use and possession of weapons. In particular, the use of weapons in a way that is "liable to expose people's lives to danger" is a specific offence at all times.³⁴⁴ There are criminal provisions to contribute to the control of arms within Egypt in both the 1937 Penal Code and the 2015 Anti-Terror Law.

There is no evidence of an attempt by the Egyptian State to formally derogate from its obligation to respect and protect life, even in states of emergency, although the non-implementation of the legal protections may be found to result in a factual violation. The extent to which the State meets its obligations to prevent and punish arbitrary killing is discussed in the following sections. In view of the foregoing, the Egyptian legal protection of life is broadly in compliance with international and regional standards contained in Article 6(1) of the ICCPR, Article 4 of the ACHPR, and Article 5 of the ACHR.

Preventing and Punishing Arbitrary or Unlawful Killing

The right to life, as a human right, requires States to prevent and punish arbitrary deprivations of life caused by its agents.³⁴⁵ In Egypt, high profile accused persons have been investigated for their role in unlawful killings; former President Hosni Mubarak and his Minister of Interior were convicted of aiding and abetting and attempted murder,³⁴⁶ amongst other things, for their failure to prevent the killing of protestors.³⁴⁷ This conviction was overturned, however, and all the defendants in this case were acquitted on all counts, including the Minister of the Interior and his assistants. Only

³⁴² Arts 86 *et seq*, 1937 Penal Code.

³⁴³ See, for example, Article 15, 2015 Anti-Terror Law. Weapons are defined in Article 1(4)(5), 2015 Anti-Terrorism Law, with unconventional weapons being "nuclear, chemical, biological, or radiological weapons; biological or any other natural or artificial solid, liquid, gas or steam materials, whatever their origin or method of production, that have the ability to cause death or serious physical or mental harm or damage to the environment or to buildings and facilities".

³⁴⁴ Art 102 C, 1937 Penal Code.

³⁴⁵ In accordance with the exposition of the right to life provided by the Human Rights Committee in its 2015 General Comment No. 36, UN Doc. No. CCPR/C/GC/R.36.

³⁴⁶ Under the modes of participation giving rise to criminal liability provided for in Article 40(3), 45(1), 46 (1937 Penal Code), in respect of the offence of intention killing contained in Article 234 and 235 (1937 Penal Code). See Case No. 5334/82, Judgement of the Court of Cassation (Criminal), 2012, p. 12.

³⁴⁷ Case No. 5334/82, Judgement of the Court of Cassation (Criminal), 2012, p. 12.

Hosni Mubarak currently stands trial in 2016, for the second and last time, in respect of charges arising out of the killing of protesters in 2011 but he was acquitted of all other charges in this case in June 2015.³⁴⁸ There are also several reports of the Egyptian State's failure to investigate thousands of killings by State security forces (namely the police).³⁴⁹ Legislation governing the armed forces³⁵⁰ incorporates only offences against the State, for which members of the armed forces may be held accountable.³⁵¹ The law governing the intelligence services makes minimal provision for accountability for violations altogether.³⁵² In respect of killings of non-nationals in September 2015, only after pressure was placed on the Government of Egypt was a statement issued that it will "carry out a prompt, thorough and transparent investigation" into killings believed to be attributable to the armed forces.³⁵³

Egyptian criminal law also provides for the prevention (insofar as criminal deterrence constitutes a preventative measure against education-related violations) and punishment of unlawful killing. It is an offence to kill, intentionally and with premeditation, that is punishable by the death penalty,³⁵⁴ as well as killing by ambush,³⁵⁵ and by poison.³⁵⁶ Various modes of participation in an act giving rise to criminal liability for a death are also recognised and criminalised in domestic law, including incitement to kill.³⁵⁷ It is a constitutionally enshrined offence to deny medical care in a life-threatening situation.³⁵⁸ Intentional killing, which is not pre-meditated is also an offence, punishable by temporary hard labour.³⁵⁹ Non-intentional killing is placed next on the hierarchy of homicide offences and occurs when intentional wounding or beating leads unintentionally to death of the victim.³⁶⁰ The prohibition of deprivation of life is broad; it is an offence where death of the victim results from torture.³⁶¹

Insofar as Egyptian domestic law contains offences of killing by criminal act and there is evidence of investigations by the State into such killings, it is compliant with Article 6(1) of the ICCPR, Article 4 ACHPR, and Article 5(2) of the ACHR. The absence of a systematic and transparent process of investigation of killings carried out by State

³⁴⁸ See, for example, 'Egyptian court re-trial of Mubarak in the case of the killing of demonstrators' (Reuters, 4 June 2015), in Arabic, at: <http://ara.reuters.com/article/topNews/idARAKBN00K0KO20150604>

³⁴⁹ See, for example, Human Rights Watch, 'Egypt: Investigate Police, Military Killings of 51 – Accountability Essential to Break Cycle of Impunity' (July 2013), available at: <https://www.hrw.org/news/2013/07/14/egypt-investigate-police-military-killings-51>

³⁵⁰ Law No. 25 of 1966 (1966 Military Justice Law).

³⁵¹ Ibid, Art 5.

³⁵² Law No. 100 of 1971.

³⁵³ See 'Call for investigation into post-revolution deaths in Egypt' (IRIN, 2013) available at: <http://www.irinnews.org/report/97448/call-for-investigation-into-post-revolution-deaths-in-egypt>; 'Egypt says will investigate accidental killing of Mexico tourists', (DW, September 2015), available at: <http://www.dw.com/en/egypt-says-will-investigate-accidental-killing-of-mexico-tourists/a-18718854>

³⁵⁴ Art 230, 1937 Penal Code.

³⁵⁵ Ibid, Art 232.

³⁵⁶ Ibid, Art 233.

³⁵⁷ Ibid, Art 172.

³⁵⁸ Art 18, 2014 Constitution of Egypt.

³⁵⁹ Art 234, 1937 Penal Code.

³⁶⁰ Ibid, Art 236.

³⁶¹ Ibid, Art 126.

security forces, however, prevents full compliance in practice. This is not least in view of the numbers of killings believed to be attributable to the State security forces.³⁶²

In light of the foregoing, the strict legal framework protecting life in Egypt is broadly compliant with international law; the right to life is recognised, it is non-derogable even during a state of emergency; unlawful killing is a criminal offence and although the death penalty is available, it meets the minimum requirements in respect of its scope and application. That arbitrary killing, including of students and education staff continue in Egypt, with limited evidence of State actions to prevent and punish these acts in practice suggests that the actual protection of life in Egypt falls short of the State's obligations contained in the ICCPR, the ACHPR, and the ACHR.

The Protection of Liberty and Security of Students and Education Staff

Deprivation of liberty of both students and education staff resulted from the widespread uprisings in Egypt beginning in 2011, in part because protests and clashes between State security forces and protestors frequently occurred on university campuses.³⁶³ There is evidence of education staff – in particular school teachers – being arrested for their views of the education curriculum which were construed as the domestic law crime of blasphemy. However, it is difficult to verify the exact facts of these cases as there are conflicting accounts, including with regard to whether these arrests led to convictions and further deprivations of liberty.³⁶⁴ Nevertheless, the arrest of 55 students arising out of one incident amidst prolonged violent protests within the campuses of universities in Cairo, is illustrative of the use of arrests of students by State security forces to combat insecurity in Egypt.³⁶⁵ The Nadeem Centre for the Rehabilitation of Victims of Violence and Torture reported 155 cases of enforced disappearance in February 2016.³⁶⁶

Egypt is bound by several international legal instruments requirement the protection of the liberty of students and education staff, including the ICCPR,³⁶⁷ and the ACHR.³⁶⁸ The combined effect of these are to require the State, *inter alia*, to i) prevent arbitrary and unlawful detention; ii) ensure judicial control of detention in connection with criminal charges; and iii) provide for a system whereby a person deprived of their liberty is able to challenge such detention and seek compensation.

The right to liberty is constitutionally enshrined in Article 54 as a protection of 'personal freedom' defined as,

"a natural right which is safeguarded and cannot be infringed upon. Save in cases of *in flagrante delicto* citizens may only be apprehended, searched, arrested or

³⁶² See, for example, Amnesty International, 'Egypt: State-sanctioned pattern of excessive use of force by security forces' (14 October 2013), available at: <https://www.amnesty.org/en/latest/news/2013/10/egypt-state-sanctioned-pattern-excessive-use-force-security-forces/>

³⁶³ GCPEA, 'Education Under Attack 2014' (New York: GCPEA, 2014), p. 135.

³⁶⁴ *Ibid.*

³⁶⁵ *Ibid.*, p. 136.

³⁶⁶ Nadeem Centre, 'Oppression Archive' (February 2016).

³⁶⁷ Arts 9 and 10, ICCPR.

³⁶⁸ Art 14, ACHR; see also Art 17, ACHR.

have their freedoms restricted by a causal judicial warrant necessitated by an investigation."³⁶⁹

While the prohibition of deprivation of liberty except with a warrant is compliant with Article 9(1) of the ICCPR in respect of nationals, it fails to protect non-nationals within Egyptian territory from arbitrary deprivation of liberty, especially but not only, refugees and asylum seekers.³⁷⁰ Article 54 of the 2014 Constitution goes on to provide safeguards for persons deprived of their liberty including written notice of the reasons for arrest or detention and notification of their rights, access to a lawyer and contact with family, and a 24-hour charging deadline.³⁷¹ There are, additionally, due process safeguards for detained persons and places of detention are expressly subject to judicial oversight.³⁷²

Although detention without warrant is permissible during a state of emergency,³⁷³ a number of safeguards were added to the 1958 State of Emergency Law by an amendment in Law No. 164 of 1981 adding Article 3*bis*. These include the prompt notification in writing of the reasons for arrest and detention and the right to communicate and to consult legal counsel as well as minimum standards of treatment during detention. In the event that a detainee is not released within 30 days from arrest or detention, there is a right to appeal to the Supreme State Security Court without fee.³⁷⁴ The Supreme State Security Court is required to issue a reasoned decision within 15 days of the filing date of the appeal after a hearing and to release the detained or arrested person immediately.³⁷⁵ The Minister of the Interior may appeal against the decision to release the individual.³⁷⁶ Article 55 provides that:

"All those who are apprehended, detained or have their freedom restricted shall be treated in a way that preserves their dignity. They may not be tortured, terrorised or coerced. They may be physically or mentally harmed, and may only be arrested and confined in designated locations that are appropriate according to humanitarian and health standards. The State shall provide means of access for those with disabilities.

Any violation of the above is a crime and the perpetrator shall be punished under the law."³⁷⁷

Articles 280 to 282 of the 1937 Penal Code criminalise the extra-judicial and extra-legal arrest, confinement or detention of a person,³⁷⁸ the assistance of such false imprisonment by provision of a location in which to hold a person,³⁷⁹ the impersonation of an official or production of a forged warrant and the use of threats to kill or torment

³⁶⁹ Art 54, 2014 Constitution of Egypt.

³⁷⁰ The treatment of refugees and asylum-seekers is discussed below in 'Protection of Students and Education Staff'.

³⁷¹ Art 54(2), 2014 Constitution of Egypt.

³⁷² Ibid, Arts 55- 56.

³⁷³ Art 3(1), amended 1958 State of Emergency Law.

³⁷⁴ Ibid, Art 3*bis*. The judicial system of State Security courts was abolished by the law no 95 of the year 2003. All cases which were within the jurisdiction of these courts are to be referred to the courts having jurisdiction according to the law of criminal proceedings and the penal law.

³⁷⁵ Art 3*bis*, amended 1958 State of Emergency Law.

³⁷⁶ Ibid.

³⁷⁷ Art 55, 2014 Constitution of Egypt.

³⁷⁸ Art 280, 1937 Penal Code.

³⁷⁹ Ibid, Art 281.

with torture, in the course of such false imprisonment.³⁸⁰ Abduction, by deceit or coercion, of a child is a separate offence and is considered aggravated when sexual offences are committed in the course of the abduction.³⁸¹ The CRC Committee expressed concern at the discriminatory punishments of abductions of girls (10 years imprisonment) and boys (5 years imprisonment).³⁸² However, the aggravation in punishment may be justified by several elements, including the occurrence of sexual assault.

During a declared state of emergency, the President may place restrictions on the freedom of assembly or movement, in specific places or for specific times.³⁸³ The Code of Criminal Procedure may be suspended allowing for the arrest or suspects of persons “dangerous to security or public order” without warrant.³⁸⁴ Monitoring and censoring of all forms of communications is also permitted.³⁸⁵ Violation of any provisions stipulated by order of the President or his representative during a state of emergency attracts criminal sanction derived from either the amended 1958 State of Emergency Law or the ordinarily applicable 1937 Penal Code.³⁸⁶ The sanctions provided for in the 1958 State of Emergency Law are without prejudice to more severe penalties provided for in ordinary laws.³⁸⁷ The decision to arrest and detain a person for violation of emergency measures is subject to appeal to the Supreme State Security Court by the detained person and by the Minister of Interior and the Court is empowered to provisionally release the detained person.³⁸⁸

While the domestic legal provisions outlined above provide for an international law-compliance protection of the liberty and security of the general population, reports of violations persist. For example, in a single incident at the Menouf University School of Engineering in 2010, it is reported that eleven students were arrested, without sight of a warrant or notification of the reasons for arrest and were subsequently subject to torture and sexual violence in the police station.³⁸⁹ Similarly, in 2015, the Nadeem Centre for the Rehabilitation of Victims of Violence and Torture recorded 49 cases of alleged torture, including nine deaths in police custody in November 2015 alone.³⁹⁰ Although such reports are not always officially verified, they are numerous and raise

³⁸⁰ Ibid, Art 282.

³⁸¹ Ibid, Arts 288-290.

³⁸² Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, para. 55.

³⁸³ Art 3(1), amended 1958 State of Emergency Law.

³⁸⁴ Ibid.

³⁸⁵ Ibid, Art 3(2).

³⁸⁶ Ibid, Art 5.

³⁸⁷ Article 5, amended 1958 State of Emergency Law, provides for punishment by imprisonment and fines between 4,000 and 40,000 Egyptian pounds but if violation of an order does not simultaneously constitute a pre-existing offence, it is punishable by imprisonment for up to six months and a smaller fine.

³⁸⁸ Art 6, amended 1958 State of Emergency Law. The Supreme State Security Court’s decision in this respect is expressly stated to be final, unless the Minister of Interior lodges an appeal against it and it is established by the detained person had committed crimes against the internal or external security of the State.

³⁸⁹ ‘Egypt: Kidnapping, torture and sexual assault against students of the Faculty of Engineering, Menouf’ (Al Karama, 7 April 2010), available at: <http://ar.alkarama.org/item/3796-2014-08-03-16-04-57>.

³⁹⁰ The Nadeem Centre also recorded two additional deaths among 54 cases of torture in the month of September and 4 deaths in custody cases out of 57 torture cases in August: Cairo Institute for Human Rights Studies, ‘On Human Rights Day: Torture – not an isolated incident’, Statement (10 December 2015), available at: <http://www.cihrs.org/?p=17734&lang=en>

the issue of whether the domestic legal frameworks are respected, especially in relation to students.

A significant threat to the liberty and security of students and education staff in Egypt is the domestic legal framework for the freedom of expression, assembly, association and opinion and its operation in light of anti-terror laws. Law No. 107 of 2013, Regulating the Right to Public Assembly, Parades and Peaceful Demonstrations (the 2013 Assembly Law) is a large part of this framework. Its Article 1 enshrines the right of citizens to “organise and join peaceful public meetings, processions and protests” as long as they are in accordance with the provisions of the 2013 Assembly Law. It goes on to prohibit public meetings for political purposes in places of worship or in their vicinity.³⁹¹ There are procedural requirements of notification for organising public meetings, processions and protests,³⁹² and the Director of Security may issue a reasoned decree to prohibit such assembly, “if serious information or evidence is found before the scheduled time”.³⁹³ This decision is, according to Article 10 of the 2013 Assembly Law, appealable to the Urgent Matters Judge, who is obliged to issue a swift judgement. Article 11 requires security forces to take “the necessary measures” to secure the assembly without obstructing its purpose, and it appears that only uniformed security forces personnel may break up an assembly if participants take any action that constitutes an offence or “violate the peaceful nature of expressing opinions”. The Court of Cassation has held that criminal accountability extends to participants in an assembly if an offence takes place during the course of the meeting.³⁹⁴ The national courts have, however, evidenced a willingness to interpret and apply the laws relating to students with some leniency. The Criminal Court of second instance, in Nasr City, allowed the appeal of 32 students of Al-Azhar University and reduced their sentences from four years’ imprisonment to one year’s imprisonment for demonstrating without permission.³⁹⁵ The reasoning of this decision was reported to be that such a reduced sentence reflect time already served and they were released to allow them to continue their educational pursuits.³⁹⁶

The 2013 Assembly Law provides for a complex and somewhat onerous registration procedure for public assemblies. While the 2013 legislation contains some safeguards, arrest and detention— often without charge – of students, especially, continue in Egypt.³⁹⁷ Estimates of numbers of people detained by security forces by the middle of 2014 ranged from 22,000 to 41,000.³⁹⁸

³⁹¹ Art 5, 2013 Assembly Law.

³⁹² See, generally, *ibid*, Chapter 2.

³⁹³ *Ibid*, Art 10.

³⁹⁴ Court of Cassation, Criminal Circuit, Judgement on 27 January 2015, Case No. 18572 of the Judicial Year No. 84.

³⁹⁵ Youm 7 Report, ‘Defence in Student Demonstrators at Al-Azhar’, 2 March 2015, available at: <http://m2.youm7.com/story/2015/3/2/2089122>.

³⁹⁶ *Ibid*.

³⁹⁷ See Amnesty International, ‘Generation Jail: Egypt’s youth go from protest to prison’ (June 2015).

³⁹⁸ *Ibid*, p. 4.

Protection of Students and Education Staff from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

In its latest report to the CRC Committee, Egypt acknowledged that torture and other forms of ill-treatment against children continued.³⁹⁹ The CRC Committee welcomed human rights training provided to the police but recommended that reliable data be collected as part of efforts to eliminate torture and ill-treatment against children.⁴⁰⁰ Patterns of torture have been observed in Egypt, not least enabled by the continuous state of emergency up to 2011.⁴⁰¹ Reports of a resurgence of torture practised by the internal security forces have emerged since 2014, including against students and education staff.⁴⁰² An example is the arrest of a student in February 2014, who was held for 47 days and reported that he was tortured and raped during his investigation, as well as an 18 year old student who was arrested on his way home from the third anniversary of the 2011 uprising in Cairo, before being blindfolded and coerced, by beating and electric shocks to his genital areas, into confessing to possession of explosives and membership of the Muslim Brotherhood.⁴⁰³ In February 2016 alone, the Al-Nadeem Centre for the Rehabilitation of Victims of Violence and Torture listed, in its 'Oppression Archive', 88 cases of torture, of which 26 were group torture, 43 incidents of police violence and one case of assault by a public prosecutor.⁴⁰⁴

Egypt has an obligation to criminalise torture,⁴⁰⁵ ensure that evidence obtained by the use of torture or other forms of ill-treatment are not admissible in legal proceedings, to refrain from *refoulement* of persons in respect of whom there are substantial grounds for believing that he or she would be in danger of being subjected to torture,⁴⁰⁶ protect persons within its territory from torture and investigate allegations of torture,⁴⁰⁷ ensure access to an effective remedy for torture including an enforceable right to fair and adequate compensation and rehabilitation as soon as possible,⁴⁰⁸ and protect persons within its territory from torture and investigate allegations of torture. These arise from the CAT, the ICCPR, ACHR, the ACHPR, and the ACRWC, and customary international law.

In Egyptian domestic law, the prohibition of torture is absolute and protects all persons within its territory. The CAT was incorporated into domestic law by Presidential Decree No. 154 of 1986.⁴⁰⁹ As such, all of the self-executing provisions are incorporated into domestic laws, including the definition of torture in Article 1. Torture is also prohibited

³⁹⁹ See Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, para. 48.

⁴⁰⁰ Ibid, para. 49.

⁴⁰¹ See generally Human Rights Watch, 'Behind Closed Doors: Torture and Detention in Egypt' (July 1992).

⁴⁰² Amnesty International, 'Egypt: Rampant torture, arbitrary arrests and detentions signal catastrophic decline in human rights one year after ousting of Morsi' (July 2014).

⁴⁰³ Ibid.

⁴⁰⁴ Nadeem Centre, 'Oppression Archive' (February 2016).

⁴⁰⁵ Art 4, CAT; see also the definition of torture contained in Art 1, CAT.

⁴⁰⁶ Ibid, Art 3.

⁴⁰⁷ Ibid, Art 7.

⁴⁰⁸ Ibid, Art 14; see also CAT Committee, General Comment No. 3 (2012), UN Doc. No. CAT/C/GC/3. Access to remedies is discussed more fully in 'Mechanisms and Remedies', below.

⁴⁰⁹ Article 93 of the 2014 Constitution states that international treaties have the force of law following publication in the official gazette.

by Article 52 of the 2014 Constitution and is exempt from the statute of limitations, so historic cases of torture may be prosecuted. Article 55 of the same specifically prohibits torture and coercion of persons whose liberty has been restricted, providing that “[T]he accused possesses the right to remain silent. Any statement that is proven to have been given by the detainee under pressure of any of that which is stated above, or the threat of such, shall be considered null and void.” In this respect, Egyptian domestic law complies with the international obligation to criminalise torture and to provide for the nullification of any evidence extracted by the use of torture.

Criminal law also contains protections against torture, cruel and inhuman treatment or punishment, in a number of offences which have a chapeau requirement of being committed by officials against individuals,⁴¹⁰ and the victim already being accused or under investigation by state authorities for having committed an offence by state authorities.⁴¹¹ All of the offences relating to coercion by a public official conceive this personality broadly and include not only those holding a public post but also any person carrying out a public function. However, the offence of torture, as defined in Chapter II, Part 6 of the 1937 Penal Code, is not operative when a detainee is tortured in relation to no specific crime, or if he is already convicted and is imprisoned in state facilities. This article does not apply either if the public official tortures, assaults, or rapes, other members of the family of the detainee to coerce the latter to confess. It is an offence for a public official or public employee to commit (or order to) torture a suspect in order to force the victim to confess; thus if torture does not aim at acquiring a confession, the elements of this offence are not met.⁴¹² In the event that the victim dies, the public official is constructively responsible for murder.⁴¹³ The ordering of extra-judicial punishments, including punishments that are more severe than that judicially warranted, is an offence attracting a mandatory custodial sentence.⁴¹⁴ It is a separate but connected offence for a public official, in abuse of position, to impose cruelty on individuals such that he or she “breaches the honour of the victim”,⁴¹⁵ or causes “bodily pain”.⁴¹⁶ In this way, crimes of ill-treatment go beyond the international standard of “severe pain and suffering” and includes temporary and less severe forms of pain. The Court of Cassation (Criminal) has held that even evidence of transient harm was sufficient to uphold a conviction of the offence of cruelty and abuse of position, occasioning a breach of the victim’s honour or bodily pain.⁴¹⁷

There is evidence of the State’s investigation of allegations of torture. The CAT has been directly applied by the Egyptian Court of Cassation. In its judgement in a 2002 case, the Court relied only upon the text of the CAT as incorporated in domestic law by virtue

⁴¹⁰ Chapter II, Part 6, 1937 Penal Code, ‘Coercion and ill-treatment by public officials of individuals of the people’.

⁴¹¹ Court of Cassation, Criminal Circuit, Judgement, 17 February 2004, Case No 36562 of Judicial Year No 73, and Judgement, 8 January 2003, Case No 44817 of Judicial Year No 72.

⁴¹² Art 126, 1937 Penal Code.

⁴¹³ *Ibid*, para 2.

⁴¹⁴ *Ibid*, Art 127.

⁴¹⁵ Which connotes, *inter alia*, sexual offences.

⁴¹⁶ Art 129, 1937 Penal Code.

⁴¹⁷ *Ibid*, see Case No. 264, Judgement of Court of Cassation, 14 April 1952, which involved a woman who had been kicked by a public official and, as a consequence, lost consciousness.

of Presidential Decree No. 154 of 1986,⁴¹⁸ to hold that responsibility for acts of torture extended beyond the individual perpetrator and his or her employer to the State.⁴¹⁹ It concluded that the President is therefore responsible for representing the State in cases involving allegations of torture and claims for compensation.⁴²⁰ While the domestic provisions appear consistent with Egypt's international legal obligations, their full implementation is required for the State's response to torture and ill-treatment, beyond the requirement of legislative measures, to be met.⁴²¹

Sexual and Gender-based Violence

There has been a chronic problem of widespread sexual and gender-based violence, particularly against women (including students), in Egypt, with the violent protests beginning in 2011 bringing an increase in frequency and severity of attacks, which has continued even after Constitutional reform in 2014.⁴²² In the context of insecurity in Egypt, reports link the incidence of sexual violence with detention and policy custody against not only women and girls but also men and boys.⁴²³ During demonstrations following the fall of former President Hosni Mubarak, in 2011, the incidence of sexual violence increased dramatically and, between February 2011 and January 2014, more than 500 women were reported to have been victims of mob rape and sexual assault.⁴²⁴ Sexual violence is also reported to have "surged" under the Sisi government, with impunity, as well as the targeting of members of NGOs, students, women and those perceived to be endangering the moral order.⁴²⁵ Sexual and gender-based violence is believed to be attributable to State actors as well as civilians.⁴²⁶

The 2014 Constitution guarantees equal protection of the rights of men and women and requires the State to protect women from all forms of violence.⁴²⁷ Following the adoption of the 2014 Constitution of Egypt, amendments were made, by Presidential Decree, to the Penal Code to include an offence of 'sexual harassment'.⁴²⁸

The challenge in addressing sexual and gender-based violence against students and education staff in the Egyptian context is that victims are often targeted by groups in a mob setting. This has been borne out in cases brought before the domestic criminal courts. In a case originating in 2005, women protestors, who had joined a

⁴¹⁸ In combination with the 1971 Constitution of Egypt, which was the operative constitutional text in 2002.

⁴¹⁹ Court of Cassation Judgement of 7 March 2002, Case No. 3619 of the Judicial Year No. 63.

⁴²⁰ Ibid.

⁴²¹ In cases where State agents have been accused of torture, there have been reports of the defendants being released on bail, see, for example, 'Egypt jails two police officers for beating lawyer to death' (Middle East Eye, 12 December 2015).

⁴²² HRW, 'Egypt: Epidemic of Sexual Violence' (2013), available at <http://www.hrw.org/news/2013/07/03/egypt-epidemic-sexual-violence>

⁴²³ See, for example, Amnesty International, 'Egypt: Child 'Raped with wooden stick by police officers' must be released', Statement (11 December 2015), available at: <https://www.amnesty.nl/nieuwsportaal/pers/egypt-child-raped-wooden-stick-police-officers-must-be-released>.

⁴²⁴ FIDH, 'Exposing State Hypocrisy: Sexual Violence by Security Forces in Egypt' (May 2015).

⁴²⁵ Ibid.

⁴²⁶ See FIDH and others 'Egypt: Keeping Women Out – Sexual Violence Against Women in the Public Sphere' April 2014; FIDH, 'Exposing State Hypocrisy: Sexual Violence by Security Forces in Egypt' (May 2015).

⁴²⁷ Art 11, 2014 Constitution of Egypt.

⁴²⁸ Presidential Decree No. 50 of 2014.

demonstration asking for the boycott of a referendum called for by Hosni Mubarak, were subsequently sexually assaulted by other protestors in the presence of State agents.⁴²⁹ The national courts dismissed the case on the basis that the exact perpetrators could not be identified, in the circumstances.⁴³⁰ However, this case, *Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt*,⁴³¹ was brought before the African Commission on Human and People's Rights as already mentioned. The Commission held that violations had occurred, that these sexual assaults were acts of gender-based violence, and that the State was responsible for failing to protect them and failing to bring the perpetrators to justice.

By April 2015, there appears to have been only one set of convictions for mob-related sexual violence. It was decided in July 2014 by the South Cairo Criminal Court, which convicted seven men of sexual offences taking place in Tahrir square during the inauguration of President el-Sisi in June 2014.⁴³² It has also been reported that sexual violence has become, since the take-over by the Egyptian armed forces in July 2013, an element of systematic response to civil society and opponents.⁴³³ This has included sexual violence against students who are detained.⁴³⁴

Specific Protection of Children as Students

In its latest Concluding Observations, the CRC Committee welcomed Egypt's 2008 review of its 1996 Child Law as an important step toward implementation of the CRC.⁴³⁵ It noted with concern, however, the impact of Egypt's reservations against the CEDAW and the limited use of the CRC by the national courts, despite its incorporation and direct effect in domestic constitutional law.⁴³⁶ The CRC Committee strongly recommended that Egypt continue to review domestic legislation to ensure its full compliance with the CRC and ensure that its provisions are invoked directly before, and applied by, national courts.⁴³⁷ It also noted a lack of domestic legal protection for refugee and asylum-seeking children in Egyptian territory.⁴³⁸

Egypt is progressively incorporating international law on the protection of children in armed conflict, for example by becoming party to the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, to protect children in armed conflict. This overarching duty is enshrined in Article 7*bis* (B) of the amended 1996 Child Law,

⁴²⁹ FIDH, 'Exposing State Hypocrisy: Sexual Violence by Security Forces in Egypt', May 2015, p. 5.

⁴³⁰ *Ibid.*

⁴³¹ *Egyptian Initiative for Personal Rights & INTERIGHTS v Egypt*, Communication, 323/06 ACmHPR (16 December 2011).

⁴³² FIDH, 'Exposing State Hypocrisy: Sexual Violence by Security Forces in Egypt' (May 2015), p. 6.

⁴³³ *Ibid.*, p. 7.

⁴³⁴ International Coalition for Freedom and Rights, 'Detainees are subjected to the violation of the human and sexual assault in military prisons', Comment (18 April 2014).

⁴³⁵ Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, paras. 4, 11.

⁴³⁶ *Ibid.*, para. 11.

⁴³⁷ *Ibid.*

⁴³⁸ *Ibid.*, para. 76.

which states that the State guarantees the child's rights in emergency situations, disasters, wars and armed conflicts.⁴³⁹

Violence against Children

In its latest Concluding Observations, the CRC Committee noted its concern at reports of the use of excessive force against persons partaking in peaceful demonstrations, including that resulting in the deaths and injury of children.⁴⁴⁰ It also noted with deep concern that children were in close proximity of, and were affected by, tear gas, rubber and live bullets during demonstrations, and were denied access to health care on the basis of their lack of identification; the CRC Committee urged Egypt to investigate these deaths and provide compensation to all children who suffered injuries and ensure their full physical and psychological recovery and social integration.⁴⁴¹

The CRC Committee also raised the issue of corporal punishment noting that, despite being prohibited since 1999 by ministerial decision,⁴⁴² its use in schools "remains common practice".⁴⁴³ The amended 1996 Child Law provides that every child has the right to protection against all forms of violence and that, "[W]ith due consideration to the duties and rights of the person who is responsible for the care of the child, and his right to discipline him through legitimate means, it is prohibited to intentionally expose the child to any illegitimate physical abuse or harmful practice".⁴⁴⁴ Thus the domestic legal protections aims to balance the rights and duties of care-givers with the interests of the child. Nevertheless, the Sub-Committee for Child Protection may undertake legal procedures in case of violation.⁴⁴⁵ However, the CRC Committee noted that any protection mechanisms, including complaints procedures for children who are abused at home or at school, relied heavily upon civil society organisations and recommended that a formalised system be put in place supported by a comprehensive legislative prohibition of violence against children.⁴⁴⁶ In addition to corporal punishment in schools, there are several reports of sexual harassment and violence in schools, which have also led to students and education staff, alike, being charged.⁴⁴⁷

Involvement of Children in Armed Conflict

As a party to the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict since 2007, Egypt is obliged to prevent direct participation in hostilities of

⁴³⁹ The Child Law was amended by Law No. 126 of 2008 following Egypt's ratification of the Optional Protocol on Children in Armed Conflict.

⁴⁴⁰ Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, paras. 38.

⁴⁴¹ Ibid, paras. 38-39.

⁴⁴² Ibid, para. 57.

⁴⁴³ Ibid.

⁴⁴⁴ Arts 3(a) and 7bis(a), amended 1996 Child Law.

⁴⁴⁵ Ibid, Art 7bis(a).

⁴⁴⁶ Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, paras. 58-59.

⁴⁴⁷ See, for example, L Iaccino, 'Cairo University Sexual Harassment: Are Egyptian Women Safe?' (IBTimes, 26 March 2014), available at: <http://www.ibtimes.co.uk/cairo-university-sexual-harassment-are-egyptian-women-safe-1441851>

members of its armed forces under the age of 18,⁴⁴⁸ and to prevent conscription of persons under the age of 18.⁴⁴⁹ In respect of non-State armed groups, the State is also obliged to prevent and punish recruitment and use in hostilities of persons under the age of 18 years.⁴⁵⁰ The State is also required to ensure awareness of the provisions of the Optional Protocol.⁴⁵¹

The CRC Committee has expressed concern that Egypt has not fully implemented the Optional Protocol into domestic law,⁴⁵² despite the fact that it has been incorporated directly into Egyptian law by virtue of Presidential Decree No. 105 of 2002.⁴⁵³ In domestic law, there is no express offence of recruitment or use in hostilities of persons under the age of 15. However, Article 96(1) of the amended 1996 Child Law, which criminalises any person who puts at risk a child's safety, morals, or health, may be invoked against a person who recruits or uses children in hostilities.

Egypt has a positive obligation under Article 3(2) of the Additional Protocol to deposit a declaration setting forth the minimum age at which it permits voluntary recruitment into its national armed forces and "a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced". When it became a party to the Optional Protocol, Egypt declared that,

"In accordance with its current laws the minimum age for conscription into the armed forces of Egypt is 18 years and the minimum age for voluntary recruitment into the armed forces is 16 years."⁴⁵⁴

The Arab Republic of Egypt is committed to ensuring that voluntary recruitment is genuine and entirely willing, with the informed consent of the parents or legal guardians after the volunteers have been fully informed of the duties included in such voluntary military service and based on reliable evidence of the age of volunteers."⁴⁵⁵

While the minimum age for voluntary recruitment was clearly stated in this declaration, Egypt failed to set out a description of the safeguards adopted to ensure that voluntary recruitment is not forced or coerced. The State was criticised on this basis, by the CRC Committee in 2013, and was called upon to inform the UN Secretary General, without undue delay, of new provisions in domestic law to substantiate its declaration.⁴⁵⁶ The CRC Committee also mentioned its concern with respect to Egypt's obligation to ensure that the members of its armed forces who have not attained the age of 18 do not take direct part in hostilities.⁴⁵⁷

⁴⁴⁸ Art 1, Optional Protocol to the CRC on the Involvement of Children in Armed Conflict.

⁴⁴⁹ *Ibid.*, Art 2.

⁴⁵⁰ *Ibid.*, Art 4(2).

⁴⁵¹ *Ibid.*, Art 6(2).

⁴⁵² CRC Committee on the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict Concluding Observations, 18 July 2011, UN Doc. No. CRC/C/OPAC/EGY/CO/1, paras. 5-6.

⁴⁵³ Published in the Official Gazette on 2 August 2007.

⁴⁵⁴ UN Treaty Collection, MTDSG, Chapter IV, 11.b.

⁴⁵⁵ *Ibid.*

⁴⁵⁶ CRC Committee on the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict Concluding Observations, 18 July 2011, UN Doc. No. CRC/C/OPAC/EGY/CO/1, para. 18.

⁴⁵⁷ *Ibid.*, paras. 15, 17.

In addition to this declaration, Egypt also added Article 7bis(b) to the amended 1996 Child Law in 2008. The addition brought several elements previously absent: i) commitment to protect the life of children; ii) continued respect of children's rights in situations of emergency and armed conflict (among others); iii) commitment to ensure that children have a safe upbringing away from armed conflicts and do not take part in hostilities; and iv) adoption of measures to prosecute and punish anyone who commits against the child any acts of war crimes, crimes against humanity, or genocide.⁴⁵⁸ Article 80 of the 2014 Constitution of Egypt is also of relevance as it provides that "it is prohibited to employ children before the age of completing their preparatory education or in jobs which subject them to danger".

Egypt also undertook to "make principles and provisions of the [Optional Protocol] widely known and promoted by appropriate means, to adults and children alike".⁴⁵⁹ In this respect, the CRC Committee noted as positive in 2013 that human and child rights were included in training at military and police colleges, including in pre-deployment training for peacekeeping troops, but viewed Egypt's implementation of training on the protection and rights of children in armed conflict, including the Optional Protocol, as inadequate.⁴⁶⁰ It recommended that Egypt introduce the Optional Protocol into training modules for members of the armed forces and for law enforcement personnel, as well as providing systematic training for all professionals coming into contact with children.⁴⁶¹ The CRC Committee also expressly mentioned the importance of training on the Optional Protocol for persons involved in the determination of refugee status.⁴⁶²

Early and Forced Marriage

The CRC Committee welcomed the domestic legal obstacles contained in the Civil Status Law to registration of marriages of persons under the age of 18.⁴⁶³ It noted with dissatisfaction, however, the lack of criminalisation or express prohibition of early marriage and recommended that Egypt enact such prohibitions.⁴⁶⁴

Although the CRC Committee was satisfied with the proscription of registration of early marriages, it held that it failed to consider the impact of non-registration of marriages upon the children of an early marriage, their subsequent lack of birth registration and documentation, and thus their threatened access to education. The CRC Committee noted with concern the high number of early marriages of girls and the practice of 'tourist' or 'temporary' marriages of young Egyptian girls to foreign men that may disguise as legitimate prostitution and trafficking of children.⁴⁶⁵ It urged Egypt to increase its measures to comprehensively target the phenomenon of temporary

⁴⁵⁸ Art 7bis B, amended 1996 Child Law (by Law no. 126 of 2008).

⁴⁵⁹ Article 6(2), CRC Optional Protocol to the CRC on the Involvement of Children in Armed Conflict.

⁴⁶⁰ CRC Committee Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, Concluding Observations, 18 July 2011, UN Doc. No. CRC/C/OPAC/EGY/CO/1, para. 11.

⁴⁶¹ Ibid, para. 12.

⁴⁶² Ibid; see also para. 13.

⁴⁶³ Art 31bis, Law No. 143 of 1994; Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, para. 32.

⁴⁶⁴ Ibid, paras. 32-33.

⁴⁶⁵ Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, para. 70.

marriages through a multi-agency approach involving the Anti-Trafficking Unit of the National Council for Childhood and Motherhood (NCCM), law enforcement agencies, the office of the public prosecutor, the judiciary and civil society; it recommended that Egypt intensify efforts to prevent and eliminate all forms of child marriage and to identify and punish individuals both performing and facilitating child marriages.⁴⁶⁶

Child Labour

As a party to the 1999 International Labour Organization (ILO) Convention No. 182 on the Worst Forms of Child Labour (Worst Forms of Child Labour Convention) and to the 1973 ILO Convention No. 138 concerning Minimum Age for Admission to Employment (the Minimum Age Convention), Egypt is bound (amongst other things) to prohibit child labour. The Minimum Age Convention leaves the exact minimum age for admission into employment to be determined by States party in national legislation, but does require State parties to take all measures to implement their obligations, including the use of penal or other sanctions. While the exact age is not mentioned, Article 2(3) of the Minimum Age Convention states that parties are required to establish a minimum age not less than the age of completion of compulsory education because labour divert children from education and deprive them of the opportunities that completion of education offers. Considering that the primary limit on the minimum age is set by clause one of this subparagraph, the function of the second clause of Article 2(3), stating that “in any event” the minimum age shall not be lower than 15 must simply be to set a lower limit on the minimum age in case education is not compulsory in a State party to the Convention up to the age of 15. While Article 7 of the Worst Forms of Child Labour Convention conceives of education as a means of eliminating child labour, Article 7 of the Minimum Age Convention acknowledges that labour can prejudice a child’s education and training. Read alongside other elements of the international labour law framework, the standards related to child labour are based on a mutually reinforcing relationship between the prohibition of child labour and the protection of the right of education;⁴⁶⁷ both are an end unto themselves as well as means for the realisation of the other.

In Egypt, children are prohibited from being employed before they reach the age of having completed their preparatory education (six years of primary education and three years of preparatory education),⁴⁶⁸ or before the age of 15.⁴⁶⁹ It is not clear that a child has to have *in fact* completed preparatory education in order to be lawfully admitted into employment, since the prohibition refers only to “the age of having completed” such education.⁴⁷⁰ Nevertheless, the ILO Committee of Experts on the Application of Conventions and Recommendations noted “with satisfaction” that the minimum age for admission to employment or work in Egypt was raised to 15 by Law No. 126 of 2008 amending the 1996 Child Law.⁴⁷¹ In addition, the State has a responsibility to, “care for children and protect them from all forms of violence, abuse, mistreatment and

⁴⁶⁶ Ibid, paras. 70, 71.

⁴⁶⁷ See N Rubin, *Code of International Labour Law* (2005) Vol 1, p. 640 *et seq.*

⁴⁶⁸ Art 80, 2014 Constitution of Egypt.

⁴⁶⁹ Art 64 of the amended 1996 Child Law, providing a minimum age of employment of 15 years.

⁴⁷⁰ Art 80(4), 2014 Constitution of Egypt.

⁴⁷¹ Observation (CEACR) adopted 2010, published 100th ILC Session (2011).

commercial and sexual exploitation".⁴⁷² In light of the foregoing, the domestic treatment of child labour is broadly compatible with Egypt's international legal obligations.

However, over one million children between the ages of 5 and 14 (7%) were estimated to be engaged in child labour in Egypt in 2005.⁴⁷³ The CESCR attributed the "persistently high number" of children engaged in child labour to poor enforcement of existing laws and prevailing societal acceptance as contributing factors.⁴⁷⁴ Noting the prevalence of child labour, particularly in rural areas, it recommended closer labour inspection, accountability for violating employees, and rehabilitation for the victims.⁴⁷⁵ The CRC Committee also recommended the abolition of work permit restrictions for refugee adults,⁴⁷⁶ the strengthening of monitoring mechanisms to guarantee enforcement of domestic labour and criminal law, as well as the amendment of Article 4 of the 2003 Labour Code and the updating of executive regulations of the amended 1996 Child Law to ensure that it is consistent with Ministerial Decree No. 118 of 2003.⁴⁷⁷

Furthermore, both the CRC Committee and the CESCR have considered domestic legislation to fall short of prohibiting child labour to the extent required by international law and standards.⁴⁷⁸ Domestic legislation implementing the constitutional protection against forced labour has not been enacted, for example.⁴⁷⁹ Nevertheless, it is a criminal offence to traffic children and force them into labour;⁴⁸⁰ in 2013, there were ten ongoing investigations in this respect.⁴⁸¹

Treaty bodies welcomed the alignment of the Egyptian Labour Code with the ILO Minimum Age Convention, as well as the development of a national strategy on child labour.⁴⁸² The CRC Committee also highlighted that a gap remains in respect of children engaged in agricultural or domestic work, noted that the implementing regulations for the minimum age were contradictory to the Labour Code and the Child

⁴⁷² Article 80, 2014 Constitution of Egypt; see also Article 12, 2014 Constitution of Egypt, which prohibits forced labour "except in accordance with the law and for the purpose of performing a public services for a defined period of time and in return for fair wage, without prejudice to the basic rights of those assigned to the work".

⁴⁷³ CIA World Factbook, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html>

⁴⁷⁴ Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, para. 78.

⁴⁷⁵ Concluding Observations of the CESCR Committee, 13 December 2013, UN Doc. No. E/C.12/EGY/CO/2-4, para. 17.

⁴⁷⁶ Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, para. 77.

⁴⁷⁷ Ibid, para. 79.

⁴⁷⁸ Ibid, para. 78.

⁴⁷⁹ United States Department of Labor, 2013 Findings on the Worst Forms of Child Labor - Egypt , 7 October 2014, available at: <http://www.refworld.org/docid/5448a5fc0.html>

⁴⁸⁰ Article 291 Child Protection Law, Penal Code, Civil Status Law; Law regarding Combating Human Trafficking of 2010; see also National Plan of Action Against Human Trafficking for the period January 2011 – January 2013 (2010), issued by the National Coordinating Committee on Preventing and Combating Human Trafficking.

⁴⁸¹ United States Department of Labor, 2013 Findings on the Worst Forms of Child Labor - Egypt , 7 October 2014.

⁴⁸² Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, para. 78; Concluding Observations of the CESCR, 13 December 2013, UN Doc. No. E/C.12/EGY/CO/2-4, para. 17.

Law still allowed seasonal employment of children aged 12-14.⁴⁸³ However, the adoption of the minimum age of 18 for hazardous work was deemed as having achieved 'moderate advancement' to eliminate the worst forms of child labour.⁴⁸⁴

Protection of Educational Facilities

The Right to Property

Under IHRL, educational facilities *per se* are not protected but the right of individuals to own property is guaranteed. In Egypt, the right to property is constitutionally enshrined.⁴⁸⁵ Expropriation of property is permissible by decision of the President during a state of emergency, for appropriate compensation.⁴⁸⁶ Additional emergency powers specified in the 1958 State of Emergency Law include requisition of shops but there is no provision within the same article for compensation.⁴⁸⁷ In its 2013 Concluding Observations, the CESCR noted with concern the lack of formal registration of property and the resulting insecurity of tenure, and recommended that victims of expropriation of property have adequate access to remedies including restitution and compensation.⁴⁸⁸

Protection from Direct Attacks

Under IHL, schools are protected from attacks under the principle of distinction, as civilian objects, a rule of customary IHL also applicable in non-international armed conflicts and thus to both the State and to non-State armed groups. However, civilian objects may be the object of legitimate attacks if they are turned into legitimate military objectives, for example if it is used for military purposes. Educational facilities do not benefit from any additional protection regime, unless they also amount to an object falling under the regime applicable to cultural monuments. Nevertheless, any attack on a military object must abide by the principles of military necessity and proportionality.⁴⁸⁹ In addition, under ICL, attacking an education facility may also constitute a war crime or a crime against humanity;⁴⁹⁰ however, for now, Egypt has only signed and not ratified the ICC Statute.

Egypt has evidenced, consistently, acceptance of the principle of distinction. In its declarations upon ratification of Additional Protocols I and II, it made a plea for the absolute application of the principle of distinction, stating that,

⁴⁸³ Concluding Observations of the CRC Committee, 15 July 2011, UN Doc. No. CRC/C/EGY/CO/3-4, para. 78.

⁴⁸⁴ United States Department of Labor, 2013 Findings on the Worst Forms of Child Labor - Egypt, 7 October 2014.

⁴⁸⁵ Art 35, 2014 Constitution of Egypt.

⁴⁸⁶ Art 3(4), 1958 State of Emergency Law.

⁴⁸⁷ *Ibid*, Art 3(6).

⁴⁸⁸ Concluding Observations of the CESCR Committee, 13 December 2013, UN Doc. No. E/C.12/EGY/CO/2-4, para.

⁴⁸⁹ Handbook, pp. 192-213.

⁴⁹⁰ *Ibid*, pp. 213-220.

On the basis of its strong conviction of the principles of the great Islamic Sharia, the Arab Republic of Egypt wishes [...] to emphasize that it is the duties of all nations alike to refrain from the involvement of innocent civilians in armed conflict; furthermore they should make all efforts, to the maximum extent possible, to that end as this is indispensable for the survival of humanity and the cultural heritage and civilization of all countries and nations [...].

Domestic military law contains a limited offence of deliberate damage or destruction of property, or an attack on a house or another place for the purposes of looting during the time of service, during combat or in the battlefield.⁴⁹¹ The elements of the offence require that such action was not on the order of a superior officer, however, creating an accountability gap where orders in contravention of the principle of distinction remain outside this offence. Personal criminal liability is additionally available by virtue of Article 167 of the Military Penal Code, which states that any persons subject to the provisions of the Military Penal Code who commit an offence contained in the general laws shall be punished for those crimes.

The unpredictable and indiscriminate nature of the armed conflict in the Sinai may not only prevent attendance but also present a risk of damage to educational facilities. IHL applies to acts which are directly related to such an armed conflict and which are launched "against an adversary".⁴⁹² In Egypt, there have been a number of attacks in recent years damaging educational facilities, including one causing a fire in Al-Howeyaty Secondary School for Girls, leaving its contents destroyed in 2013, the School of the Holy Shepherd being attacked in Minya, Upper Egypt in 2013, and the burning of a Franciscan church and school in Suez believed to be attributable to the Muslim Brotherhood in 2013.⁴⁹³ However, if the attack takes place in an insecurity context, which does not reach the threshold of armed conflict, and is not linked to an armed conflict, IHL is not applicable.

In 2013, the CESCR expressed concern at the destruction of places of worship by rioters; it urged Egypt to protect places of worship and facilitate their reconstruction.⁴⁹⁴ In 2014, Egypt adopted a Presidential Decree on the Protection of Public and Indispensable Facilities provided the military with the responsibilities to coordinate with, and support, the police to protect public and vital facilities.⁴⁹⁵ While educational facilities are not expressly included, it is likely that this responsibility extends to at least public schools and universities and that it may thus support the State's obligation to provide a functioning education system. The assignment of responsibility to the armed forces is for a duration of two years and any crimes committed against protected facilities falls within the jurisdiction of the military courts.⁴⁹⁶ There is additionally a power for security forces to dispel public assemblies in order to protect "public and private properties", within the 2013 Protests Law.⁴⁹⁷

⁴⁹¹ Article 141, Military Penal Code, Law No. 25 of 1966, (the Military Penal Code).

⁴⁹² Ibid.

⁴⁹³ GCPEA, 'Education Under Attack', (New York: GCPEA, 2014), p. 135.

⁴⁹⁴ Concluding Observations of the CESCR Committee, 18 July, UN Doc. No. E/C.12/EGY/CO/2-4, para. 23.

⁴⁹⁵ Presidential Decree No. 136 of 2014 (2014 Protection of Facilities Decree).

⁴⁹⁶ Art 2, 2014 Protection of Facilities Law.

⁴⁹⁷ Art 11, 2013 Protests Law.

The Egyptian Organisation for Human Rights has argued that referral of civilians to military tribunals for violations against public facilities, under this Presidential Decree, would be unconstitutional.⁴⁹⁸ While Article 204 of the 2014 Constitution of Egypt provides that, “civilians cannot stand trial before military courts except for crimes that represent a direct assault against military facilities, military barracks, or whatever falls under their authority...or for crimes that represent an assault against its officers or personnel because of the performance of their duties”, this Presidential Decree provides the military with the responsibility to coordinate the protection of public facilities, thus subjecting civilians to martial law if they attack such facility.

In addition to the risk of being tried under martial law, domestic criminal law also punishes anyone who “deliberately demolishes or damages something of the buildings, property, or installations provided for utility”, by a fine or imprisonment, or both.⁴⁹⁹ Damage to both public and private property by arson is also criminalised.⁵⁰⁰ In addition, a court may order the perpetrator to pay the value of the objects destroyed or damaged. Educational facilities fall within this prohibition and the entitlement of restitution in kind; although there appears not to have been a reported case in which this provision applied in respect of educational facilities, the Court of Cassation has held that compensation for the value should correspond directly to the property (in this case it was moveable property) which was damaged, in addition to the criminal fines.⁵⁰¹

In the event that a contravention of the above provision is carried out in execution of a terrorist purpose, the sentences are to be doubled. Article 86, 1937 Penal Code expressly protects educational facilities by including attack on educational facilities and their occupation and possession in the definition of terrorism:

Terrorism, in applying the provisions of this law, shall mean all use of force, violence, threatening, or frightening, to which a felon resorts in execution of an individual or collective criminal scheme, with the aim of disturbing public order, or exposing the safety and security of society to danger, if this is liable to harm persons or throw horror among them, expose to danger their life, freedom or security, damage the environment, cause detriments to communications, transport, property and funds, buildings, public or private properties, occupying or taking possession of them, preventing or obstructing the work of public authorities, worship houses or educational institutions, or interrupting the application of the Constitution, the laws or statutes.

As a response to the continuing insecurity within its territory, Egypt is also developing specific anti-terrorism legislation, which has been criticized; the content, implementation and use of the draft bill remains to be seen.⁵⁰²

⁴⁹⁸ ‘Presidential Decree to Pass Crimes on ‘Vital’ Facilities to Military Court’ (Daily News Egypt, 27 October 2014), available at: <http://www.dailynewsegypt.com/2014/10/27/presidential-decree-pass-crimes-vital-facilities-military-court/>

⁴⁹⁹ Art 162, Law No. 58 01 The Year 1937 Promulgating the Penal Code, with amendments.

⁵⁰⁰ Book 3, Part 2, 1937 Penal Code.

⁵⁰¹ Case No. 987 of the Judicial Year 42, Judgement of the Court of Cassation, Criminal Circuit (12 October 1972).

⁵⁰² Amnesty International, ‘Egypt: Draconian counterterrorism law latest tool to muzzle peaceful activists’, (2015), available at <https://www.amnesty.org/en/latest/news/2015/07/egypt-draconian-counterterrorism-law/>

Remedies and Mechanisms

In Egypt, there are several remedies and mechanisms available to victims of education-related violations.⁵⁰³ An underlying issue with the practical realisation of the right to remedy is the general functioning of the rule of law in Egypt, in particular the political influence in judicial decision making.⁵⁰⁴ The limited availability of remedies for education-related violations is exacerbated by an apparent lack of political interest in prosecuting or otherwise holding to account perpetrators of such violations.

Human Rights Remedies and Mechanisms

Since Egypt has not yet ratified any of the Optional Protocols to the core human rights treaties relating to individual communications procedures, individuals subject to Egyptian jurisdiction have no recourse to UN Treaty Bodies in respect of education-related violations, in case they do not obtain reparation at the domestic level. At the regional level, as already mentioned under the 'Applicable International Remedy and Monitoring Mechanisms' section above, Egypt has signed, but not ratified, the Optional Protocol to the ACHPR on the Establishment of the African Court on Human and People's Rights. It has, however, by virtue of the ACHPR, accepted the competence African Commission on Human and People's Rights to receive complaints. The African Commission has heard several cases against Egypt regarding students or education staff, which have already been summarised. In order for a complainant to have his or her case heard by the Commission, all available domestic remedies must have been exhausted.

Domestic Human Rights Mechanisms

The 2014 Constitution makes any assault on the personal freedoms or sanctity of the life of citizens, along with other general rights and freedoms guaranteed by the Constitution and the law, a criminal offence with no statute of limitations for both civil and criminal proceedings.⁵⁰⁵ An injured party may file criminal proceedings directly (presumably meaning that an individual has the right of complaint).⁵⁰⁶ In addition, the State guarantees just compensation for those whose personal freedoms/human rights have been violated.⁵⁰⁷

In 2003, a National Human Rights Council (NHRC) was established, which performs a supervisory, but not adjudicatory, function over human rights matters within Egypt.⁵⁰⁸ It is responsible for investigating human rights violations, and findings of abuse are reinforced by criminal prosecution. In order to achieve the goals of protecting human

⁵⁰³ For more on the issue of redressing education-related violations, see *Education and the Law of Reparations in Insecurity and Armed Conflict* (BIICL/PEIC, 2013), available at: <http://www.biicl.org/research-reparations>

⁵⁰⁴ IBAHRI, 'Separating Law and Politics: Challenges to the Independence of Judges and Prosecutors in Egypt' (February 2014).

⁵⁰⁵ Art 99, 2014 Constitution of Egypt.

⁵⁰⁶ Ibid.

⁵⁰⁷ Ibid.

⁵⁰⁸ Law No. 93 of 2003, Concerning the Creation of the National Human Rights Council (the Statute of the NHRC). The competence of the NHRC is also recognized in Article 214 of the 2014 Constitution of Egypt.

rights in Egypt, the NHRC is empowered to receive and examine complaints concerning protection of human rights and refer, at its discretion, any such complaints to competent bodies to follow up.⁵⁰⁹ The NHRC is also required to advise parties of the appropriate legal procedures to be pursued and assist them in reaching settlement with the relevant bodies.⁵¹⁰ In addition, the NHRC is required to inform the prosecutor of any violation of a wide range of human rights and appears to have standing to represent or intervene in ancillary civil proceedings on the part of the complainant.⁵¹¹ Although the NHRC has a centralised structure, it has an embedded complaints office as well as decentralised offices in various governorates across the State. It additionally has representative offices which are aimed toward mainstreaming protection of human rights within the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of the Interior and the Department of the Public Prosecutor.⁵¹²

There are specific and several provisions in respect of the right to judicial recourse and the right to a remedy for persons who have been deprived of their liberty. Article 54 of the 2014 Constitution guarantees the right to approach the judiciary of a person deprived of his liberty with a deadline for judgment within one week or otherwise immediate release one week after the petition was filed. In addition, the Constitution at least envisages situations in which compensation from the State is available in respect of preventive detention and penalties which have been partly served but overturned upon appeal.⁵¹³ Although this provision was first introduced into the 2012 Constitution, there appears to be no implementing legislation regulating the right to compensation for preventive/provisional detention. In addition, Law No. 83 of 2013, amending the last paragraph of Article 143 of the Law of Criminal Proceedings, authorises the Court of Cassation or the court to which the Court of Cassation refers the case (2nd trial), after annulling the judgement, to extend the preventive detention period without a maximum limit in respect of crimes punishable by the death penalty or 25 years of imprisonment. There is a trend in applying this new provision such that some criminal courts hearing cases for the first time illegally assume this authority, which is contrary to the wording of the law and against reason.⁵¹⁴

Guaranteeing the non-repetition of violations, such as through the provision of human rights education, can also be considered as a form of reparation. In Egypt, the Ministry of the Interior reports that human rights studies is a module taught in the first, fourth and final years of the Police Academy.⁵¹⁵ Several NGOs also provide human rights awareness programmes, including the Cairo Institute for Human Rights Studies, the National Community for Human Rights and Law, which provides training for junior lawyers and students in their last year of study on defence of civilians before military

⁵⁰⁹ Art 4, Statute of the NHRC.

⁵¹⁰ Ibid.

⁵¹¹ Art 99, 2014 Constitution of Egypt.

⁵¹² Egypt State Report to CESCR, UN Doc. No. E/C.12/EGY/2-4, para. 42.

⁵¹³ Penultimate paragraph of Article 54, 2014 Constitution of Egypt.

⁵¹⁴ S Omar, 'Egypt: Two years of 'preventive detention' ... legal crisis has not been resolved' (Al-Akhbar, 4 September 2015), available at: <http://www.al-akhbar.com/node/241409>

⁵¹⁵ See the website of the Ministry of Interior:

http://www.moiegypt.gov.eg/Arabic/Departments+Sites/Police+Academy/police_academy/Education/development/EducationalDevelopment/EducationalDevelopment.htm.

courts, the Egyptian Centre for Human Rights, and the Egyptian Association for Training and Human Rights.

Judicial Review of Administrative Decisions

The Constitution prohibits the grant of immunity of any act or administrative decision from judicial oversight. However, as was seen in the discussion of the law regarding the state of emergency, above, this is not implemented in all circumstances. Judicial review of national administrative decisions appears to be available by petition to the State Council, although the 2014 Constitution is silent on which persons have standing in this forum (which is likely to be contained in implementation legislation and regulations).⁵¹⁶

Based on the rule of supremacy of constitutional provisions, any law provision granting immunity to administrative acts or decisions is unconstitutional. Article 68 of the 1971 Constitution already prohibited stipulating such immunity in any law, and Article 75 of the 2012 Constitution, which has the same wording as the relevant part of Article 97 of the 2014 Constitution, prohibits immunizing the said acts and decisions at large. Hence, even court decisions upholding or granting such immunity are unconstitutional, and capable of being annulled by higher courts in case of appeal.

The Supreme Constitutional Court is competent to “decide on the constitutionality of laws and regulations, interpret legislative texts, and adjudicate in disputes pertaining to the affairs of its members, in disputes between judicial bodies and entities that have judicial mandate, in disputes pertaining to the implementation of two final contradictory rulings, one of which is issued by any judicial body or an agency with judicial mandate and the other issued by another body, and in disputes pertaining to the implementation of its rulings and decisions”.⁵¹⁷ Its independence is guaranteed by Article 191 of the 2014 Constitution. Read together with the implied incorporation of international law and standards into specific provisions of the 2014 Constitution, this may allow for the invocation of international law before the Supreme Constitutional Court. There is a good body of practice of the Supreme Constitutional Court expanding upon enacted rights and freedoms as well as lending interpretation to their content.

The right to litigate is constitutionally enshrined in Article 97 of the 2014 Constitution of Egypt and accompanied by due process guarantees both in constitutional provisions protecting specific rights, as well as procedural law relating to criminal and civil matters. The Supreme Constitutional Court has upheld the right to litigate in respect of all persons on Egyptian territory,⁵¹⁸ in finding that all claims (both civil and criminal) must be heard by a court, although the right to litigate, in itself, cannot be considered to be a sufficient safeguard to rights and freedoms guaranteed by law.⁵¹⁹ In this case, the judgement considered two matters: the first was the imperative that the judicial system be free from any influence or connection with both legislative and executive authorities because it is the sole competent authority to make a final decision in respect of individuals’ rights, duties and freedoms. The second element of the Court’s judgement

⁵¹⁶ Art 190, 2014 Constitution of Egypt.

⁵¹⁷ Ibid, Art 192.

⁵¹⁸ Constitutional Appeal No. 8/8, Judgment of the Supreme Constitutional Court, 7 March 1992.

⁵¹⁹ Constitutional Appeal No. 34/16, Judgment of the Supreme Constitutional Court, 15 June 1996.

established the need for a simple procedural system to ensure the efficacy of the judicial system, the foundation of which, it held, was the neutrality and independence of the judiciary. The Court held that this was necessary for the purposes of giving meaning to the right to access to justice enshrined in the 2014 Constitution of Egypt. Additional guarantees, such as the presumption of innocence,⁵²⁰ protection of victims and witnesses,⁵²¹ the right to a defence and the “guarantee by the State of means to resort to justice and defence of rights”,⁵²² amongst others, are also contained in the 2014 Constitution.

However, a major challenge to the rule of law in Egypt, after the adoption of the 2014 Constitution, is the lack of independence enjoyed by the judiciary. Although its independence is constitutionally guaranteed in Article 186 of the 2014 Constitution,⁵²³ and the highest national courts often find against the government, the judiciary is subject to undue control by the Ministry of Justice (MoJ). The MoJ has wide powers in respect of the geographical area of assignment for judges, initiation of disciplinary proceedings and secondment of judges, which allows for an informal reward/punishment system.⁵²⁴ The right to counsel is constitutionally enshrined for both adults and children.⁵²⁵ Although the rules relating to the declaration and cessation of a domestic state of emergency have limited the powers of the President (Article 154), the Constitution does not absolutely outlaw the use of military or special courts for the trial of civilians. Article 204 of the 2014 Constitution of Egypt provides an account of the cases in which civilians may be referred to military courts. By contrast, Article 198 of the 2012 Constitution provided a lesser scope for cases in which civilians may stand trial before military courts, it read as follows “Civilians cannot stand trial before military courts except for crimes that harm the armed forces. The law defines such crimes and determines the other competencies of the Military Judiciary”.

State Security Courts

The operation of the State Security Courts, which hear of specific crimes (such as political crimes or terrorism), were abolished by Law No. 95 of 2003 and all cases of which it was seized were to be transferred to the competent courts pursuant to the law of criminal proceedings.⁵²⁶ However, this has not yet been implemented.

In addition, an Emergency State Security Court, which has jurisdiction over the violation of decrees issued in emergency situations, is also still in operation and no appeal is possible with regard to its decisions. The President has extensive powers over cases before it,⁵²⁷ and in case of conviction, the power to suspend, reduce or otherwise alter the sanction (except with regard to felony murder), withdraw the sanction altogether,

⁵²⁰ Art 96, 2014 Constitution of Egypt.

⁵²¹ Ibid.

⁵²² Ibid, Art 98.

⁵²³ See also Art 191, 2014 Constitution of Egypt, in respect of the Supreme Constitutional Court.

⁵²⁴ IBAHRI, ‘Separating Law and Politics: Challenges to the Independence of Judges and Prosecutors in Egypt’ (2014), p. 6.

⁵²⁵ Arts 54 and 80, 2014 Constitution of Egypt.

⁵²⁶ Art 1, Law No. 95 of 2003.

⁵²⁷ Art 13, amended 1958 Emergency Law.

declare invalid the judgement of the Court or order a retrial.⁵²⁸ Under the 1958 Emergency Law, arrest, detention and transfer to military courts of children were permissible on the sole basis of suspicion of association with armed groups and Article 122 of the amended 1996 Child Law granted the Court jurisdiction, in exceptional cases, over cases against children above the age of 15.

Accordingly, there are extremely wide-reaching grounds for the declaration of a state of emergency. The unchecked powers of the President in circumstances of a state of emergency, stripping the process of any fair trial guarantees, are not compliant with the rule of law and international norms. In respect of the right to a fair trial even in times of emergency, the President is required to delegate the decision to a variety of legal advisors drawn from the Court of Appeal or from public defenders to be assisted by a legal and judicial staff to verify the decisions of the State Security Court and recommend a decision to the President as to ratification.⁵²⁹ This allows, superficially, legal or judicial oversight of criminal measures and judgments of the State Security Court but the reviewing person is not required to hear evidence or accept submissions from the parties. Because the State Security Court is fully subject to executive control, it is unlikely to meet the criteria of an “independent and impartial tribunal” as required by Article 14 of the ICCPR or of Article 13 of the ACHR. Moreover, that review of decisions taken by the State Security Court are only reviewed by individuals placed within State agencies, the provisions in respect of review do not meet the requirement in Article 15(5) of the ICCPR providing that, “everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law”.

The imperative to ensure review of convictions to establish the soundness of any conviction during a state of emergency is more pronounced than in general criminal proceedings for several reasons. The first is that the State Security Court is a politically influenced tribunal in itself with cases being referred on the basis of Presidential (and now Prime Ministerial) discretion. This measure is justified in Egyptian law on the basis of the exigencies of the state of emergency. However, both Article 14 of the ICCPR and Article 13 of the Arab Charter are non-derogable, even in times of emergency.

⁵²⁸ Ibid, which requires a decision to order a retrial is to be ‘justified’, without further explanation of what this entails.

⁵²⁹ Ibid, Art 16.

Criminal and Civil Law Remedies and Mechanisms

In Egypt, criminal and civil aspects arising out of the same facts may be considered simultaneously by the domestic criminal courts. The distinction between the two is articulated as private rights, giving rise to a civil claim, and the public right to pursue criminal accountability for an offence. Law No. 150 of 1950 issuing the Code of Criminal Procedure (the 1950 Code of Criminal Procedure), establishes the concurrent settlement of civil and criminal claims. Whereas the initiation of a criminal case is generally within the competence of the Public Prosecutor,⁵³⁰ or within the rights of an aggrieved party in an alleged criminal act,⁵³¹ a complainant must initiate the concurrent civil case in writing.⁵³² There is an exception to this rule regarding cases concerning violations of the public rights set out in the constitution. In the event that a civil claim has been filed in the civil court, the proceedings must be stayed until there is a final decision in the corresponding criminal proceedings before the criminal court, at which stage the finding of the criminal court are binding upon the civil court.⁵³³

There are specific provisions made, in the 2014 Constitution and in 2015 anti-terror legislation in respect of compensation for acts of terrorism. The Egyptian State expressly assumes responsibility for harm suffered as a result of acts of terrorism. Article 237 of the 2014 Constitution states that:

The State commits to fighting all types and forms of terrorism and tracking its sources of funding within a specific timeframe in light of the threat it represents to the nation and citizens, within guarantees for public rights and freedoms.

The law organises the provisions and procedures of fighting terrorism, and fair compensation for the damages resulting from it and because of it.

The State also clearly operates a framework of joint responsibility for harm suffered as a result of acts of terrorism. Article 13 of the 2015 Anti-Terrorism Law provides for the confiscation or seizure of assets, including monetary assets, and fines for terrorist groups of between 100,000 and 3 million Egyptian Pounds and joint responsibility of such groups for the payment of compensation.⁵³⁴ This article deals with the legal consequences of a finding that there exists a 'terrorist group' within the meaning of Article 1 of the 2015 Anti-Terrorism Law. The joint responsibility framework for compensation for acts of terror is limited to those acts carried out by legal persons.⁵³⁵ Considering that the provisions of the 2015 Anti-Terror Law apply, *inter alia*, to terrorist groups defined broadly and "irrespective of their legal status",⁵³⁶ there is a gap in

⁵³⁰ Art 1, 1950 Code of Criminal Procedure.

⁵³¹ Art 99, 2014 Constitution of Egypt.

⁵³² Art 28, 1950 Code of Criminal Procedure.

⁵³³ Court of Cassation judgement 548/69, 26 October 1999; see also Arts 265, 266, 1950 Code of Criminal Procedure.

⁵³⁴ The same provision in respect of a terrorist group's joint responsibility for compensation and economic sanctions is also contained in Article 19, dealing with criminal liability for command responsibility and Article 35, dealing with the spread of false reports of terror attacks that are contrary to the communications of the Ministry of Defence (2015 Anti-Terrorism Law).

⁵³⁵ Arts 13, 19, and 35, 2015 Anti-Terrorism Law.

⁵³⁶ *Ibid*, Art 1(1), where 'terrorist group' is defined as: "Every group, association, body or entity, organisation or group of at least three persons or anything other, irrespective of their legal or factual status, whether inside or outside the country and regardless of the nationality or citizenship of its members, that aims to commit one or

compensation available for acts of terror, which may include attacks on places of education.

Transitional Justice Mechanisms and Reparations

The 2014 Constitution contains a duty on the House of Representatives to issue, immediately upon adoption of the Constitution, a transitional justice law, which ensures truth-telling, accountability, proposed frameworks for national reconciliation and compensating victims in accordance with international standards. Article 237 of the Constitution commits the State to fighting terrorism as well as legislating for the fair compensation for the damages caused by terrorism. No such implementing legislation has so far been enacted, however.⁵³⁷

Three official fact-finding commissions were established in 2011, 2012, and 2013, to investigate incidents of killing since the uprisings beginning in 2011.⁵³⁸ None of these commissions made their reports publicly available and they were criticised for having acquiesced to political influence and for appearing to simply be a disingenuous response to public pressure for accountability for deaths occurring during the period of insecurity.⁵³⁹

Concluding Remarks

The adoption of a new rights-focused Constitution in 2014 has contributed to the development of a strong legal framework for the protection of the right to education. Egypt's education system is fairly well established and the domestic laws on the right to education are inclusive even of non-nationals. However, the protection of education within Egypt is often considered narrowly and limited to the rules surrounding access to education. While the protections for the right of education *per se* are numerous, they are dispersed across several pieces of legislation, which makes promulgation amongst practitioners, and dissemination amongst the general public, a cumbersome undertaking. While the 2014 Constitution of Egypt goes some way in enumerating and substantiating a large number of rights, including the right to education, a dedicated piece of legislation codifying all the human rights obligations, protections and mechanisms may contribute to greater protection of education in Egypt.

The protection of students and education staff continues to flail, however, in light of national security measures. The State's response to threats to security and its position, through the treatment of protesters, is a significant source of violations against students and education staff. Not only are their lives, liberty and security at risk, because they

more of the crimes of terrorism or uses terrorism as a means of achieving or implementing its [a] criminal purpose”.

⁵³⁷ ICTJ, ‘State Repression and Polarized Politics Thwart Hopes for Justice in Egypt’ (28 September 2015), available at: <https://www.ictj.org/news/state-repression-polarized-politics-thwart-hopes-justice-egypt>

⁵³⁸ Moataz El-Fegiery, ‘Truth and Reconciliation? Transitional Justice in Egypt, Libya and Tunisia’, FRIDE Policy Brief, No. 177, (March 2014), p. 3.

⁵³⁹ Ibid.

are often participants in public demonstrations, but the persistent use of torture and other forms of ill-treatment by both State and non-State actors pervades. The national courts have evidenced some willingness to interpret the strict provisions of, for example, the 2013 Protests Law, in a manner that allows for the protection of the right to education of students arrested for their participation in public demonstrations, but this appears to be aside from – or even despite – the strict legal frameworks for non-authorised public meetings. A significant challenge in Egypt is the fact that a large number of allegations of education-related violations, especially violations against students and education staff, are levelled against the State itself and its agents. While the domestic legal frameworks contemplate accountability for such actions and the domestic courts have made decisions that tend toward compliance with Egypt's international legal obligations and international standards, the implementation of court decisions and the domestic laws in practice is problematic.

In respect of child students, Egypt has a comprehensive domestic legal framework for their protection. By amending in 2008 the 1996 Child Law, which codified several existing protections for children, the State has undertaken significant legal reforms to provide protections not only for children's right to education but also to supporting rights that contribute to child students' protection at all times including in insecurity and armed conflict. However, the operation of security-related laws, such as the 2013 Protests Law and the 2015 Anti-Terror Law, operate outside these protections and expose child students to education-related violations.

The protection of educational facilities, especially publicly owned facilities, is more consistent with international law in terms of the strict domestic legal provisions. Across all areas of the protection of education in insecurity and armed conflict, however, the implementation of the legal frameworks would bring the State into closer compliance with its international legal obligations and international standards.

With the use of military courts, there is a general lack of transparency of legal proceedings. Greater transparency measures may assist in public perception and use of the legal system in the protection of education and seeking remedies for education-related violations in Egypt. More in general, the continuing efforts of the State, international and non-governmental organisations to improve the rule of law within Egypt are indispensable to the full and effective protection of education in insecurity and armed conflict.

3.2. IRAQ

3.2.1. Introduction

The several cycles of armed conflict in Iraq have resulted in widespread violations of international law, including education-related violations. The ongoing armed conflict in April 2016, between the Islamic State of Iraq and the Levant (ISIL)⁵⁴⁰ and associated armed groups, the State armed forces and affiliated forces, has been punctuated by violations directed against civilians and civilian objects, including students and educational facilities constituting education-related violations.⁵⁴¹

The education system in Iraq has been shaped by insecurity and armed conflict. So, too, has the domestic legal framework governing the protection of education in peacetime, including in times of insecurity, and during armed conflict. Although it is clear that insecurity and armed conflict in Iraq have had an impact upon the protection of education, the reverse also appears to be true; commentators have suggested that part of the driving force for continuing insecurity and, now, armed conflict, is the population's dissatisfaction with the delivery of public services, including education.⁵⁴²

The provision of education is explained in further detail under the following three phases of insecurity and armed conflict:

- i) Ba'ath Party rule 1968 – 2003 (within which is a 13-year period of international sanctions);
- ii) US-led invasion and occupation of Iraq by the Coalition Provisional Authority 2003 – 2004, amounting to an international armed conflict;
- iii) insecurity during period of transition and resurgence of armed conflict (2004-2016).

Education during the Ba'ath Party (1968-2003)

The Iraq branch of the Arab Socialist Ba'ath Party (the Ba'ath Party) came to power in Iraq in 1963 following a coup.⁵⁴³ It remained in power until 2003 with Saddam Hussein as leader from 1979 to 2003, when he was removed from power following intervention by a US-led multi-national force. It is relevant to note that the Ba'ath Party in Iraq was part of a larger pan-Arab movement which splintered across borders and contributed to both allegiances and animosities leading to armed conflict and insecurity within the

⁵⁴⁰ The exact name of this armed group has been the subject of some confusion; it is sometimes referred to as the 'Islamic State of Iraq and Syria' or 'the Islamic State of Iraq and the *Shaam*', or simply 'the so-called Islamic State'; see I Tharoor, 'ISIS or ISIL? The debate over what to call Iraq's terror group', *The Washington Post*, (18 June 2014). ISIL is the name used by the UN; see UNAMI/OHCHR, "Report on the Protection of Civilians in the Armed Conflict in Iraq: 11 December 2014 – 30 April 2015" (2015). This Study will follow suit and refer to the 'Islamic State of Iraq and the Levant' or 'ISIL'.

⁵⁴¹ GCPEA, 'Education Under Attack 2014: Country Profile for Iraq' (2015).

⁵⁴² See S Rawaf *et al*, "Living Conditions in Iraq: 10 years after the US-led invasion", *Journal of the Royal Society of Medicine*; 2014, Vol. 107(5), p. 187. A similar assessment arises in respect of education-provision in Lebanon and is linked with territorial control exercised by armed non-State actors such as Hezbollah. See further, Sections 3.3 and 4.

⁵⁴³ J Galvani, 'The Baathi Revolution in Iraq', *MERIP Reports*, No. 12 (Sept-Oct 1972), p. 9.

MENA Region.⁵⁴⁴ The Arabic term, *ba'ath*, translates to renaissance or resurrection and this manifested in much of the Ba'ath Party's policies. This was not least in respect of its education policy, which was stated to be aimed at the promulgation of socialism, promoting equality between men and women, and galvanising a pan-Arab identity against imperial or colonial influences.⁵⁴⁵ Education was a cornerstone of the Ba'ath Party's administration of Iraq. The aims of education under Ba'ath Rule were enshrined in the 1990 Draft Constitution of Iraq as follows:

Education has the objective of raising and developing the general education level, promoting scientific thinking, animating the research spirit, responding the exigencies of economic and social evolution and development programs, creating a national, liberal and progressive generation, strong physically and morally, proud of his people, his homeland and heritage, aware of all his national rights, and who struggles against the capitalistic ideology, exploitation, reaction, Zionism, and imperialism for the purpose of realising Arab unity, liberty and socialism.⁵⁴⁶

To achieve these aims, education was centrally planned and locally implemented.⁵⁴⁷ The Ba'athist government established a right (for Iraqi citizens) to free education in all stages, although only primary education was compulsory,⁵⁴⁸ and established measures to combat illiteracy.⁵⁴⁹ Iraq achieved high levels of enrolment, literacy and advancement amongst males and females; in the 1980s, female enrolment in primary education was almost equal to that of males (47 and 53 percent, respectively), although there was greater disparity between female and male enrolment in non-compulsory secondary education in the same period (40 and 60 percent, respectively).⁵⁵⁰ Higher education in Iraq during the rule of the Ba'ath Party was similarly lauded.⁵⁵¹ Arabic was the only language of instruction.⁵⁵²

Like other public employees, teachers, lecturers and university-staff were compelled to join the Ba'ath Party during the 1970s, regardless of their own ideological opinion or beliefs.⁵⁵³ Membership had its benefits. For example, a primary school teacher would ordinarily receive a monthly salary equivalent to £2, but a Ba'ath Party member in the

⁵⁴⁴ See J Devlin, 'The Baath Party: Rise and Metamorphosis', *The American Historical Review* 96.5 (1991): 1396–1407.

⁵⁴⁵ See *al-asbab al-mujiba*, Law No. 118 of 1976, on Compulsory Education. The *asbab al-mujiba* are the justificatory reasons for enacted legislation. They usually invoke constitutional provisions and principles as the basis for the legislation and are an integral part of the text of the legislation.

⁵⁴⁶ Art 28, 1990 Constitution of Iraq (translation taken from A Velloso De Santisteban, 'War, Occupation and the De-Development of Education in Iraq', *International Review of Education*, Vol. 51, No. 1 (January 2005)), p. 61. Several similar statements of objectives appeared in education-related legislation from the time of Ba'ath Party rule, including the Compulsory Education Law, Law No. 118 of 1976, and the Eradication of Illiteracy Law, Law No. 92 of 1976, both of which are discussed below, 'Protection of Education'.

⁵⁴⁷ A Velloso De Santisteban, *op cit.*, p. 61.

⁵⁴⁸ 1976 Compulsory Education Law, see further, below Section 3.2.1.

⁵⁴⁹ 1976 Eradication of Illiteracy Law, see further, below Section 3.2.1.

⁵⁵⁰ A Velloso De Santisteban, *op cit.*, p. 61.

⁵⁵¹ Office of the UN Humanitarian Coordinator for Iraq, 'Background Paper: Education in Iraq' (2003), cited in A Velloso De Santisteban, *op cit.*, p. 63.

⁵⁵² See M Hayden *et al* (Eds), *The Sage Handbook of Research in International Education* (London: Sage, 2nd ed, 2015).

⁵⁵³ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers (April, 2009), p.39; A Velloso De Santisteban, *op cit.*, p. 63.

same position would receive £100 per month.⁵⁵⁴ Membership also had an impact on students' educational advancement, including bonus points for children's results in their secondary school examinations.⁵⁵⁵ Some individuals used their Party membership to advance through the ranks.⁵⁵⁶ The party also used school curricula, which remained almost unchanged for 20 years up to 2002, to spread Ba'athist ideology, especially through history, geography, and literature.⁵⁵⁷

Although Iraq had consistently been engaged in armed conflicts for much of the period of rule of the Ba'ath Party, beginning with the Iran-Iraq War in the 1980s, the 1991 international armed conflict with Kuwait and thereafter with multi-national forces up to the imposition of sanctions by the UN Security Council in 1995, the provision of education, and increasing literacy rates remained relatively consistent.⁵⁵⁸

Education during International Sanctions (1991 – 2003)

International sanctions imposed under Chapter VII of the 1945 UN Charter following the Iraqi invasion of Kuwait in 1991,⁵⁵⁹ and lasting for 13 years, reduced exponentially the resources available to the education system. This resulted in fewer and significantly less-well equipped educational facilities, producing an impact on the education system that has persisted to the present.⁵⁶⁰

Following a mission deployed by the UN Secretary-General to assess the "urgent humanitarian needs arising in Iraq and in Kuwait in the immediate post-crisis environment",⁵⁶¹ efforts were made to implement measures to reduce the humanitarian impact on the general population of Iraq. These eventually culminated in the Security Council's decision to institute the 'oil for food' programme, whereby UN Member States were authorised to import Iraqi petroleum and petroleum products in order to generate revenue within Iraq to provide for the needs of the civilian population.⁵⁶² The first export implementing this programme occurred in December 1996.

The 'oil for food' programme initially limited spending to medical and health supplies, foodstuffs, and other essential supplies necessary to the civilian population.⁵⁶³ Although

⁵⁵⁴ A Allawi, *The Occupation of Iraq: Winning the War, Losing the Peace* (London: Yale University Press, 2007), pp. 149-150.

⁵⁵⁵ M Sissons and A Al-Saiedi, 'A Bitter Legacy: Lessons of De-Baathification in Iraq', International Centre for Transitional Justice, (March 2013), p. 5.

⁵⁵⁶ A Velloso De Santisteban, *op cit.*, p. 63.

⁵⁵⁷ Ibid; see also K Watenpaugh *et al.*, 'Opening the Doors: Intellectual Life and Academic Conditions in Post-War Baghdad, A Report of the Iraqi Observatory' (July 2003), available at: https://www.h-net.org/about/press/opening_doors/opening_doors.pdf

See also UNICEF, 'Iraq Situation Analysis' (2002), p. 41.

⁵⁵⁸ It is relevant to note, however, that the Human Development Index of Iraq, which had previously been climbing, came to a halt in 1990. This is attributable to the Iran-Iraq armed conflict. See A Velloso De Santisteban, *op cit.*, p. 67.

⁵⁵⁹ UN Security Council Resolution 661 (1990).

⁵⁶⁰ See, generally, UNESCO, 'Iraq, Education in Transition: Needs and Challenges' (2004).

⁵⁶¹ See the Report to the Secretary-General on humanitarian needs in Kuwait and Iraq in the immediate post-crisis environment, transmitted to the Security Council by the Secretary-General by letter dated 20 March 1991, UN Doc No. S/22366.

⁵⁶² UN Security Council Resolution 986 (1995).

⁵⁶³ Ibid, para. 8.

this has been explained by reference to the urgency of need at the time justifying emphasis on supplies necessary for the survival of the civilian population, it was also a reflection of the time; only in 2006 was education added as a distinct and essential sector of humanitarian response in emergencies.⁵⁶⁴ Adjustments by the Security Council to the programme eventually expanded to include education as an area of spending to aid the recovery of the population in Iraq.⁵⁶⁵ Until then, some basic educational supplies were not exempt from the lengthy approvals procedure for imports into Iraq and, in any event, a aggregated average of 3.6 percent of all available resources were allocated to education between 1996 and 2000.⁵⁶⁶ Still, the report of the Secretary-General to the Security Council on the implementation of the expanded 'oil-for-food' programme emphasised the distribution of supplies and limited the repair and reconstruction of primary and secondary educational facilities.⁵⁶⁷ As a result, educational facilities in Iraq were in disrepair and ill-equipped owing to the lack of funding resulting from the sanctions regime.⁵⁶⁸

There were several deteriorations in the education system in Iraq under the sanctions regime. Enrolment fell across all levels of schooling in 2002: 23.7 percent of primary school-aged children were out of school, with almost twice as many girls as boys not enrolled and greater non-enrolment rates in rural than urban areas of Iraq; drop-out rates increased at the intermediate and preparatory levels amongst both boys and girls; there was a sharp decline in adult female literacy from 87 percent in 1985 to 45 percent in 1995.⁵⁶⁹ There was inadequate supply of material resources required for the provision of education in 2002: the Iraqi Ministry of Education estimated that approximately 53 percent of all buildings in central and southern governorates were in a state of extreme deterioration and did not provide a safe learning and teaching environment for students and teachers; as a result schools were double-shifted.⁵⁷⁰ The poor material conditions of teaching also meant that fewer teaching staff attended work regularly and aggravated an already poor situation.⁵⁷¹

The sanctions regime imposed by the Security Council not only impacted the material resources available in educational facilities but also on the school-attending populations and education staff; student enrolment rates were affected by an increased incidence of poverty and there was a lack of teaching staff as a result of a sharp fall in salaries.⁵⁷² Nevertheless, education in Iraq remained free at all levels, in accordance with the 1970 Provisional Constitution, throughout the 13 year period during which sanctions were in effect.⁵⁷³ The 'oil for food' programme was formally terminated in 2003, before the US-led invasion, by the Security Council Resolution 1483 (2003).

⁵⁶⁴ See Global Education Cluster, 'Education: An essential component of a humanitarian response' (2012).

⁵⁶⁵ See Report of the Secretary-General pursuant to paragraphs 7 and 8 of Security Council resolution 1409 (2002), UN Doc No. S/2002/1239; see also UN Security Council Resolution 1409 (2002).

⁵⁶⁶ Phases I to VIII; see UNESCO, 'Situation Analysis of Education in Iraq' (April 2003), p. 6.

⁵⁶⁷ Report of the Secretary-General pursuant to paragraphs 7 and 8 of Security Council resolution 1409 (2002), UN Doc No. S/2002/1239.

⁵⁶⁸ See UNICEF, 'Iraq Situation Analysis', (2002).

⁵⁶⁹ Ibid, p. 39.

⁵⁷⁰ Ibid, pp. 40-41.

⁵⁷¹ Ibid, p. 40.

⁵⁷² UNESCO, 'Iraq, Education in Transition: Needs and Challenges' (2004), pp. v-vi, 19.

⁵⁷³ UNESCO, 'Iraq: Final Report: 'Oil for Food Programme' 1996-2003', p. 11.

Education during the Coalition Provisional Authority (2003 – 2004)

With the US-led invasion of Iraq beginning in 2003, Iraq fell into widespread disorder and armed violence. This included military action targeted against educational facilities, students and teachers,⁵⁷⁴ and looting of public (including educational) facilities, and extensive breakdown of educational infrastructure.⁵⁷⁵ From May 2003, Iraq was occupied by a US-led multinational armed forces and,⁵⁷⁶ as a consequence, was in a situation of international armed conflict.⁵⁷⁷ The Coalition Provisional Authority (CPA) instituted several legal changes during the 13 months in which it exercised authority over Iraq, between April 2003 and June 2004. These changes were far-reaching, from the creation of new national ministries,⁵⁷⁸ a special tribunal with jurisdiction over international crimes,⁵⁷⁹ amending criminal law and procedure,⁵⁸⁰ and amending the structure and governance of the judiciary.⁵⁸¹

In July 2003, the CPA also abolished the national curriculum,⁵⁸² removed pictures of the former President, Saddam Hussein, from all school buildings and his statements from textbooks, as well as any content that was connected with Ba'athist ideology.⁵⁸³ A significant proportion of the CPA's reform was in the context of 'De-Ba'athification', which was instituted by the first order passed by the CPA.⁵⁸⁴ The motivation for the 'disestablishment' of the Ba'ath Party was expressly stated as the recognition of large scale human rights abuses and depravations over many years at the hands of the Ba'ath Party and to help thwart the threat of continuing violations by the residual network of the party.⁵⁸⁵

The widespread and obligatory nature of Ba'ath Party membership meant that mere membership is generally not considered, internationally, to constitute an offence or a threat in itself,⁵⁸⁶ although the issue of whether mere membership of a group reported, or known, to be involved in violations or abuses properly gives rise to criminal liability

⁵⁷⁴ A Velloso De Santisteban, *op cit.*, p. 61.

⁵⁷⁵ UNESCO, 'UNESCO Country Programming Document for the Republic of Iraq 2011-2014', Doc No. BSP/UCPD/2, p. 18.

⁵⁷⁶ A territory is considered occupied when it is placed under the authority of the armed forces of another State; see the Handbook, p. 45.

⁵⁷⁷ Ibid; see also Common Article 2, 1949 Geneva Conventions.

⁵⁷⁸ See, for example, CPA Order No. 60 of 2004, creating the Ministry of Human Rights; CPA Order No. 50 of 2004, creating the Ministry of Displacement and Migration

⁵⁷⁹ CPA Order No. 48 of 2003.

⁵⁸⁰ See, for example, CPA Order No. 7 of 2003, revoking the death penalty in all cases; CPA Memorandum No. 2 of 2003, amending the law governing arrest and detention; CPA Memorandum No. 3 of 2004, amending Iraqi criminal procedure.

⁵⁸¹ CPA Order No. 35 of 2003; CPA Memorandum No. 12 of 2004, amending the Judicial Organisation Law, Law No. 160 of 1979 and the Public Prosecution Law, Law No. 159 of 1979.

⁵⁸² See J Dobbins, S Jones, B Runkle, S Mohandas, 'Occupying Iraq: A History of the Coalition Provisional Authority' (New York: RAND, 2009).

⁵⁸³ A Velloso De Santisteban, *op cit.*, p. 68.

⁵⁸⁴ CPA Order No. 1 of 2003.

⁵⁸⁵ Ibid, Preamble.

⁵⁸⁶ See UNHCR (2009), *op cit.* p. 39.

is subject to some debate.⁵⁸⁷ Although the subsequent constitutional enshrinement of the guarantee that mere membership of Ba'ath party is not a ground for referral to court,⁵⁸⁸ the CPA's De-Ba'athification process encompassed all persons associated with the party, with dismissals focusing on the top three tiers of party members. This included education staff:

Individuals holding positions in the top three layers of management in every national government ministry, affiliated corporations and other government institutions (e.g., universities and hospitals) shall be interviewed for possible affiliation with the Ba'ath Party, and subject to investigation for criminal conduct and risk to security. Any such persons [...] determined to be full members of the Ba'ath Party shall be removed from their employment. This includes those holding the more junior ranks of 'Udw (Member) and 'Udw 'Amil (Active Member), as well as those determined to be Senior Party Members.⁵⁸⁹

As a result of implementation of the CPA's de-Ba'athification of Iraq, school heads, faculty deans and officials of the Ministry of Education with links to the Ba'ath Party were dismissed and redesign and reconstruction of the Iraq education system was signed over to non-Iraqi contractors.⁵⁹⁰ The CPA's approach to de-Ba'athification has been criticised for having failed to take into account the need to maintain a functioning civil service, "unleashing significant disruption in ministries, such as education and finance, as skilled workers were removed from their jobs".⁵⁹¹

De-Ba'athification was initially carried out by the CPA in respect of what were determined to be 'clear cut' cases.⁵⁹² Responsibility for investigating and identifying party members then passed to the Iraqi De-Ba'athification Council.⁵⁹³ The procedures for implementing de-Ba'athification were set out in CPA Memorandum No.1 of 2003. Broadly, they included investigators collecting information and making a factual finding about the individual's affiliation to the Ba'ath Party.⁵⁹⁴ Investigators were expected to advise individuals in respect of whom a finding of membership had been made that they had a right to appeal.⁵⁹⁵ Appeal was to an Accreditation Review Committee, which was established and administered by the Coalition Provisional Administrator, and comprising of one military and two civilian members (one of whom was Iraqi).⁵⁹⁶ Section 4(1)(a) of CPA Memorandum 1 of 2003 specifies that:

The ARCs will hear the appeals of Iraqis who believe they were wrongly found to be ba'atheists [sic.]. These appeals will be conducted in a manner that comports as nearly as practicable to tribunals convened by Coalition Forces under Article 5 of the 1949 Geneva Convention.

⁵⁸⁷ See A Clapham, 'Extending International Criminal Law Beyond the Individual to Corporations and Armed Opposition Groups', *Journal of International Criminal Justice*, 6 (2008), pp. 899 – 926; see further *International Criminal Law* (3rd ed.), Volume I, Sources, Subjects and Contents (Leiden: Brill, 2008)

⁵⁸⁸ Art 135(5), 2005 Constitution of Iraq.

⁵⁸⁹ Section 1(3), CPA Order No. 1 of 2003.

⁵⁹⁰ A Velloso De Santisteban, *op cit.*, p. 68.

⁵⁹¹ M Sisson and A Al-Saiedi, *op cit.* (2003)p. 11.

⁵⁹² A Allawi, (2007), *op cit.* p. 150.

⁵⁹³ In accordance with Section 3(1), CPA Memorandum No. 1 of 2003. The Iraqi De-Ba'athification Council was established

⁵⁹⁴ The list of methods of investigation is a guide, rather than a procedural requirement for investigators, see Section 2(1)(a) of CPA Memorandum No. 1 of 2003.

⁵⁹⁵ *Ibid*, Section 2(2)(b).

⁵⁹⁶ *Ibid*, Section 4(1).

The education sector was particularly affected by the wide reach of de-Ba'athification as provided for in CPA Order No. 1 and Memorandum No. 1 of 2003. Of 18,064 senior party members previously in office in the Ministry of Education, 16,149 were dismissed before June 2004, with a further 1,355 dismissed in the following 16 months.⁵⁹⁷ The Ministry of Higher Education had the second highest number of dismissals (4,361) notwithstanding that there were reports that party membership was a prerequisite to employment in the Ministry in the 1980s.⁵⁹⁸ In response, the Administrator attempted to reverse dismissals and expedite appeals of thousands of teachers in April 2004,⁵⁹⁹ although it is not clear how many were, in fact, reinstated. The high proportion of Iraqi women working in the education sector is believed to have led to a higher impact of de-Ba'athification on female than male government employees.⁶⁰⁰

A process of reinstatement, described as 'haphazard', began in around March 2004.⁶⁰¹ Dismissed persons were required to submit an application for reinstatement, but the criteria for successful applications was unclear, and notification of successful applications occurred between seven to fifteen months after submission of application.⁶⁰² In October 2003, approximately six million Iraqi students returned to school but, by the end of the month, the CPA closed schools again owing to continuing insecurity.⁶⁰³ Families also reportedly felt insecure about sending children to schools.⁶⁰⁴

Education during Insecurity in Transition and Armed Conflict (2004-2016)

Following the dissolution of the CPA in June 2004, power was transferred to the Iraq Interim Government, which was itself replaced by the Iraqi Transitional Government in May 2005. It is during this transitional period that the current Constitution was adopted, providing for the right to free education for all Iraqis at all stages (Article 34 (2)) and for a framework for the opening of schools that teach both Arabic and Kurdish, the two official languages of Iraq (Article 4 (d)). In May 2006, the first permanent government took office, following multi-party elections held in 2005. In the years following the dissolution of the CPA, violence and insecurity remained prominent in Iraq, with the education system needing to be rebuilt to overcome the negative impacts of the conflict.⁶⁰⁵

⁵⁹⁷ M Sisson and A Al-Saiedi, *op cit.* (2003) p. 22.

⁵⁹⁸ *Ibid.*, fn. 114.

⁵⁹⁹ P Bremer, 'Turning the Page', 23 April 2004, cited in M Sisson and A Al-Saiedi, *op cit.* (2013), pp. 21-22.

⁶⁰⁰ It should be noted that this is inference, in the absence of gender-disaggregated data on dismissals; see M Sisson and A Al-Saiedi, *op cit.* (2003)p. 11; see also World Bank, Economic and Development Unit, 'Rebuilding Iraq: Education Reform and Transition', p. 35, cited in M Sisson and A Al-Saiedi, *op cit.* (2003).

⁶⁰¹ M Sisson and A Al-Saiedi, *op cit.* (2013), p. 28.

⁶⁰² *Ibid.*

⁶⁰³ A Velloso de Santisteban, *op cit.* (2005), p. 68.

⁶⁰⁴ *Ibid.*

⁶⁰⁵ UNESCO, Education in Transition – Needs and Challenges' (2004), available at: http://www.unesco.org/education/iraq/na_13jan2005.pdf

The situation in Iraq in 2016 is one of non-international armed conflict.⁶⁰⁶ There are several actors operating within Iraq but the major belligerents in the armed conflict are ISIL and the Iraqi State Security forces. ISIL has obtained control of areas within Iraqi territory and certainly meets the criteria of being organised within the meaning of IHL.⁶⁰⁷ The Iraqi State Security Forces, the *Peshmerga* forces from the Kurdish Region of Iraq, the Popular Mobilisation Units, as well as other militia, tribal fighters, and members of the international community, have been opposing the armed attacks of ISIL.⁶⁰⁸ Violations of IHL and IHRL may allegedly be attributed to all parties in the armed conflict, with ISIL likely responsible for the largest proportion.⁶⁰⁹ The methods of warfare employed by armed groups in Iraq include vehicle-borne and non-vehicle-borne improvised explosive devices, with explosive violence in populated areas being a particular feature of the armed conflict. Between December 2014 and April 2015, there were at least 10,700 civilian casualties, and Baghdad was the worst affected governorate with at least 5,700 casualties.⁶¹⁰ From January 2014 to April 2015, an approximate total of 2.8 million people had become internally displaced, of whom 1.3 million were children.⁶¹¹

Non-State Armed Groups Operating in Iraq

In addition to ISIL, which has gained the control of areas within Iraqi territory, there are several other non-State armed groups operating in Iraq, including the Kurdistan Workers' Party (PKK) and affiliated Sinjar Resistance Units. The PKK is a left-wing Kurdish nationalist organisation based in Iraqi Kurdistan and Turkey, where it has opposed the Turkish government for over 30 years.⁶¹² In 2013, the PKK agreed to renew the ceasefire and withdraw their troops from northern Iraq, an area where it is now also fighting ISIL since 2014. Breaking the ceasefire agreement, Turkey, in its fights against ISIL, conducted air strikes against PKK targets in July 2015. The PKK states in its internal rules and regulations that it will abide by the 'UN Geneva Convention'.⁶¹³ The Sinjar Resistance Units, formerly called *Malik al-Tawus*, are a Yazidi self-defence militia. They formed in 2007 to protect the Yazidi community in Iraq against attacks by Islamist insurgents.

While they can no longer be considered to be non-State actors, it may be noted that the Regional Kurdistan Government-Erbil and the Regional Kurdistan Government-

⁶⁰⁶ See UNAMI/OHCHR, 'Report on the Protection of Civilians in the Armed Conflict in Iraq: 11 December 2014 – 30 April 2015' (2015) (UNAMI/OHCHR 2015 PoC Report).

⁶⁰⁷ Namely those aspects of IHL relating to the classification of a situation as a non-international armed conflict. See the Handbook, p. 46.

⁶⁰⁸ UNAMI/OHCHR 2015 PoC Report.

⁶⁰⁹ Ibid.

⁶¹⁰ Ibid.

⁶¹¹ Ibid.

⁶¹² Note that the PKK has complained to the Turkish government in relation to the construction of dams in the Kurdish region, which threaten Kurdish villages as well as the historic town of Hasankeyf, see: 'PKK, Turkey squabble over same dam issue' (Al Monitor, 17 July 2015), at:

<http://www.al-monitor.com/pulse/originals/2015/07/turkey-kurds-threat-to-attack-construction-of-dams.html>

⁶¹³ Kurdistan Workers' Party/People's Defence Forces (PKK/HPG), Document concerning the rules to be obeyed by HPG forces in war (2010).

Sulaimaniya have both formally committed to adhere to a total ban on anti-personnel mines and to cooperate in mine action.⁶¹⁴

3.2.2. Iraq and International Law Protecting Education

Domestic law has several provisions relevant to the ratification and incorporation of international agreements that the executive has accepted at the international level. The Law of Treaties, Law No. 111 of 1970 was recently replaced by the Law of Treaties, Law No. 35 of 2015 (2015 Law of Treaties). Article 17 of the 2015 Law of Treaties provide that the State is bound by treaties that have obtained an absolute majority vote in their favour by the Council of Ministers. Article 73 of the 2015 Constitution of Iraq vests the power to ratify international treaties in the President, after approval by the Council of Representatives, and provides that this is then authenticated within 15 days of receipt of notice of ratification. Accordingly, international treaties ratified by Iraq and published in the Official Gazette are incorporated into domestic law and may be invoked before national courts. The Iraqi legal system is accordingly monist, and national courts are able to apply the provisions of treaties.⁶¹⁵

Iraq is a member of several international organisations including the UN, the LAS, and the OIC. As such, it is bound by the charters of each.

International Human Rights Obligations

Iraq has ratified eight of the nine core international human rights treaties, with the CMW being the only one it is not a party to. Iraq's international human rights obligations have remained in force in their entirety, as the State has never entered a valid notification of derogation against either the ICCPR or the ACHR.⁶¹⁶

Iraq is a party to:

- the ICCPR.⁶¹⁷ It is not party to its Optional Protocol relating to individual complaints or its Second Optional Protocol aimed at the abolition of the death penalty. Iraq has had variable cooperation with the Human Rights Committee, having submitted reports in 1991,⁶¹⁸ 1997,⁶¹⁹ and 2013.⁶²⁰ The latest

⁶¹⁴ Those Deeds of Commitment are available at: <http://www.genevacall.org/country-page/iraq/>

⁶¹⁵ Article 17 also provides for an exception to this rule in respect of treaties relating to border issues and the territorial integrity of the State, conciliation and peace treaties, treaties of political, security and military alliance and treaties establishing or acceding to regional organisations. These types of treaties require a two-thirds majority of the Council of Ministers; see also Iraq State Report to the Human Rights Committee, 12 December 2013, UN Doc. No. CCPR/C/IRQ/5, para. 1; see also Article 61 of the 2005 Constitution of Iraq.

⁶¹⁶ Under Article 4, ICCPR; Article 4, ACHR.

⁶¹⁷ Ratified on 25 January 1971, with a reservation to the effect that ratification in no way signifies recognition of Israel; see UN Treaty Collection, MTDSG, Chapter IV, 2.

⁶¹⁸ Iraq State Report to the Human Rights Committee, 24 June 1991, UN Doc. No. CCPR/C/64/Add.6; see also Concluding Observations of the Human Rights Committee, 13 March 1993, UN Doc. No. CCPR/47/40(SUPP), paras. 182-218.

⁶¹⁹ Iraq State Report to the Human Rights Committee, 28 November 1997, UN Doc. No. CCPR/C/103/Add.2; see also Concluding Observations of the Human Rights Committee, 19 November 1997, UN Doc. No. CCPR/C/79/Add.84.

⁶²⁰ Iraq State Report to the Human Rights Committee, 11 December 2013, UN Doc. No. CCPR/C/IRQ/5.

Concluding Observations of the Human Rights Committee were made in 2015.⁶²¹

- the ICESCR,⁶²² but not its Optional Protocol on a communications procedure. Its compliance with reporting requirements under the ICESCR has been better than under the ICCPR; it submitted a report to the CESCR in 1981,⁶²³ 1986,⁶²⁴ 1993,⁶²⁵ 1996,⁶²⁶ and finally in 2013.⁶²⁷ The CESCR issued its latest Concluding Observations in respect of Iraq in 2015.⁶²⁸
- the CRC,⁶²⁹ the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict,⁶³⁰ and the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography.⁶³¹ It entered a reservation in respect of the CRC, against the provisions guaranteeing the child the right to change religion.⁶³² Iraq is not a party to the third Optional Protocol to the CRC on a communications procedure. Its compliance with the reporting requirements under the CRC and its Optional Protocols has been poor, with only two reports submitted, in 1996,⁶³³ and in 2014.⁶³⁴ In respect of the two Optional Protocols it is a party to, Iraq has submitted only one report each to the CRC Committee, in 2013.⁶³⁵ The latest Concluding Observations of the CRC Committee in relation to Iraq were issued in 2015.⁶³⁶
- the CAT,⁶³⁷ but it has not signed its Optional Protocol which establishes a preventive system of regular visits to places of detention.

⁶²¹ Concluding Observations of the Human Rights Committee, 3 December 2015, UN Doc. No. CCPR/C/IRQ/CO/5.

⁶²² Ratified on 25 January 1971. Ratification was subject to the same reservation made in respect of the ICCPR; see UN Treaty Collection, MTDSG, Chapter IV, 2.

⁶²³ Iraq State Report to the CESCR Committee, 27 January 1981, UN Doc. No. E/1980/6/Add.14; see also Consideration of State Reports by CESCR Working Group, 11 September 1981, UN Doc. No. E/1981/WG.1/SR.12.

⁶²⁴ Iraq State Report to the CESCR Committee, 12 February 1986, UN Doc. No. E/1986/4/Add.3; see also Consideration of State Reports by CESCR Working Group, 23 and 25 April 1986, UN Doc. Nos. E/1986/WG.1/SR.8 and E/1986/WG.1/SR.11.

⁶²⁵ Iraq State Report to the CESCR Committee, 2 July 1993, UN Doc. No. E/1990/7/Add.15; see also Concluding Observations of the CESCR Committee, 30 May 1994, UN Doc. No. E/C.12/1994/6.

⁶²⁶ Iraq State Report to the CESCR Committee, 6 March 1996, UN Doc. No. E/1994/104/Add.9; see also Concluding Observations of the CESCR Committee, 12 December 1997, UN Doc. No. E/C.12/1/Add.17.

⁶²⁷ Iraq State Report to the CESCR Committee, 19 November 2013, UN Doc. No. E/C.12/IRQ/4.

⁶²⁸ Concluding Observations of the CESCR Committee, 26 October 2015, UN Doc. No. E/C.12/IRQ/CO/4.

⁶²⁹ Acceded to on 15 June 1994, see: UN Treaty Collection, MTDSG, Chapter IV, 11.

⁶³⁰ Acceded to on 24 June 2008, UN Treaty Collection, MTDSG, Chapter IV, 11.a

⁶³¹ Acceded to on 24 June 2008, UN Treaty Collection, MTDSG, Chapter IV, 11.c.

⁶³² Article 14(1), CRC; see UN Treaty Collection, MTDSG, Chapter IV, 11.

⁶³³ Iraq State Report to the CRC Committee, 9 December 1996, UN Doc. No. CRC/C/41/Add.3; see also Concluding Observations of the CRC Committee, 26 October 1998, UN Doc. No. CRC/C/15/Add.94.

⁶³⁴ Iraq State Report to the CRC Committee, 16 March 2014, UN Doc. No. CRC/C/IRQ/2-4.

⁶³⁵ Iraq State Report on OPAC to the CRC Committee, 17 October 2013, UN Doc. No. CRC/C/OPAC/IRQ/1, and Iraq State Report on OPSC to the CRC Committee, 20 December 2013, UN Doc. No. CRC/C/OPSC/IRQ/1; see also Concluding Observations on OPAC of the CRC Committee, 5 March 2015, UN Doc. No. CRC/C/OPAC/IRQ/CO/1; Concluding Observations on OPSC of the CRC Committee, 04 March 2014, UN Doc. No. CRC/C/OPSC/IRQ/CO/1.

⁶³⁶ Concluding Observations of the CRC, 2 March 2015, UN Doc. No. CRC/C/IRQ/CO/2-4.

⁶³⁷ Acceded to on 7 July 2011, UN Treaty Collection, MTDSG, Chapter IV, 9.

- the CERD, but has entered a reservation against the ICJ's jurisdiction over disputes under the CERD.⁶³⁸ It has submitted a total of three reports to the CERD Committee, in 1996,⁶³⁹ 1999,⁶⁴⁰ and 2013.⁶⁴¹ The latest Concluding Observations of the CERD Committee in relation to Iraq were issued in 2014.⁶⁴²
- the CEDAW;⁶⁴³ at the time of accession, Iraq entered reservations against Article 2(f) and 2(g) relevant to the modification, abolition or repeal of existing discriminatory domestic laws; against Article 9 relevant to equality of nationality rights; and against Article 16 relevant to elimination of discrimination against women in all matters relating to marriage and the family.⁶⁴⁴ In 2014, Iraq withdrew its reservation against Article 9, such that it became bound by the requirement to ensure gender parity in respect of nationality rights.⁶⁴⁵
- the CRPD, but not its optional protocol relevant to individual complaints.⁶⁴⁶ It has not submitted any reports to the CRPD Committee.
- the ICPED,⁶⁴⁷ and although Iraq has not recognised the CPED Committee's competence to receive individual and inter-State complaints under Articles 31 and 32 of the ICPED, it has cooperated with urgent action procedures under Article 30.⁶⁴⁸ It has, otherwise, submitted one report to the CPED Committee,⁶⁴⁹ and the CPED Committee issued its Concluding Observations in 2015.⁶⁵⁰
- the ACHR.⁶⁵¹

Iraq is a member of the OIC, which adopted the CRCI in 2005, but this instrument is not yet in force.

Iraq has made reservations to international human rights treaties to ensure that ratification does not signify recognition of other parties,⁶⁵² to declare that the provisions of those treaties do not abrogate provisions of Islamic law, or to avoid international dispute settlement. Like in the case of Egypt, Iraq does not invoke the supremacy of Islamic law within its domestic jurisdiction as the justification for its reservations to international human rights treaties, but rather makes reservations in a manner that

⁶³⁸ Iraq ratified the CERD on 14 January 1970, UN Treaty Collection, MTDSG, Chapter IV, 2. The text of Iraq's reservation against Article 22 specified that the State "deems it necessary that in all cases the approval of all parties to the dispute be secured before the case is referred to the International Court of Justice".

⁶³⁹ Iraq State Report to the CERD Committee, 14 June 1996, UN Doc. No. CERD/C/240/Add.3; see also Concluding Observations of the CERD Committee, CERD/C/304/Add.28, UN Doc. No.

⁶⁴⁰ Iraq State Report to the CERD Committee, 11 February 1999, UN Doc. No. CERD/C/320/Add.3; see also Concluding Observations of the CERD Committee, CERD/C/304/Add.80, UN Doc. No.

⁶⁴¹ Iraq State Report to the CERD Committee, 1 October 2013, UN Doc. No. CERD/C/IRQ/15-21.

⁶⁴² Concluding Observations of the CERD Committee, 21 September 2014, UN Doc. No. CERD/C/IRQ/CO/15-21.

⁶⁴³ Ratified on 13 August 1986, UN Treaty Collection, MTDSG, Chapter IV, 8.

⁶⁴⁴ UN Treaty Collection, MTDSG, Chapter IV, 8.

⁶⁴⁵ Ibid.

⁶⁴⁶ Acceded to on 20 March 2013, UN Treaty Collection, MTDSG, Chapter IV, 15.

⁶⁴⁷ Acceded to on 23 November 2010, UN Treaty Collection, MTDSG, Chapter IV, 16.

⁶⁴⁸ See Concluding Observations of the CPED Committee, 13 October 2015, UN Doc. No. CERD/C/IRQ/CO/1.

⁶⁴⁹ Iraq State Report to the CPED Committee, 25 July 2014, UN Doc. No. CERD/C/IRQ/1.

⁶⁵⁰ Concluding Observations of the CPED Committee, 13 October 2015, UN Doc. No. CERD/C/IRQ/CO/1

⁶⁵¹ Ratified on 4 April 2013, see:

<http://www.lasportal.org/ar/humanrights/Committee/Pages/MemberCountries.aspx>

⁶⁵² Namely Israel; see Iraq's reservations to the UNESCO Convention against Discrimination in Education, ICCPR, ICESCR, CEDAW, and CERD.

specifies the rules of domestic law and the provisions of the relevant IHRL treaty that it considers incompatible. As already mentioned in the case of Egypt, reservations to some core treaty provisions, such as the one Iraq made in relation to Article 16 of the CEDAW, are deemed impermissible by the UN Treaty Bodies.⁶⁵³

In addition to the eight core UN human rights treaties and the LAS instrument mentioned above, Iraq is also party to the Convention on the Prevention and Punishment of the Crime of Genocide,⁶⁵⁴ the ILO Minimum Age Convention (with the minimum age specified at 15),⁶⁵⁵ and the ILO Convention on the Worst Forms of Child Labour.⁶⁵⁶ Iraq is not party to the 1951 Refugee Convention and its 1967 Protocol; and the 1954 and 1961 Statelessness Conventions. The Arab Convention on the Status of Refugees in the Arab Countries could also be of relevance, but it is not in force. Finally, Iraq is also party to the 1960 Convention against Discrimination in Education, which prohibits inequality of treatment in education for any particular person or group of persons.

International Humanitarian Law Obligations

Iraq is party to the Four Geneva Conventions (1949) and its Additional Protocols I (1977), which regulate the conduct of armed conflict and protect those not (or no longer) taking part in hostilities.⁶⁵⁷ It is not a party to Additional Protocol II which regulate the conduct of non-international armed conflicts and protects its victims. It is also not a party to Additional Protocol III relating to the adoption of an additional distinctive emblem.

With regard to the methods and means of warfare, Iraq is bound by the following treaties: it is party to the Geneva Protocol on Asphyxiating or Poisonous Gases and of Bacteriological Methods,⁶⁵⁸ the Convention on the Prohibition of Biological Weapons,⁶⁵⁹ the Convention prohibiting Certain Conventional Weapons and its five Protocols,⁶⁶⁰ the Chemical Weapons Convention,⁶⁶¹ the Anti-Personnel Mine Ban Convention,⁶⁶² and the Convention on Cluster Munitions.⁶⁶³

Iraq has made a reservation to the Geneva Protocol on Asphyxiating or Poisonous Gases and of Bacteriological Methods providing that “the Government of Iraq is bound by the said Protocol only towards those Powers and States which have both signed and ratified the Protocol or have acceded thereto, and that the Government of Iraq shall

⁶⁵³ See Art 19 of the Vienna Convention on the Law of Treaties, according to which reservations must not be “incompatible with the object and purpose of the treaty”.

⁶⁵⁴ Acceded to on 20 January 1959, see: UN Treaty Collection, MTDSG, Chapter IV.1.

⁶⁵⁵ Ratified on 13 February 1985.

⁶⁵⁶ Ratified on 9 July 2001.

⁶⁵⁷ Geneva Conventions ratified 14 February 1956; Additional Protocol I ratified 1 April 2010.

⁶⁵⁸ Acceded to on 8 September 1931.

⁶⁵⁹ Ratified on 19 June 1991.

⁶⁶⁰ All ratified on 19 June 2014.

⁶⁶¹ And is, subsequently, a member of the Organisation for the Prohibition of Chemical Weapons (OPCW). The CCW was ratified by Iraq on 13 January 2009.

⁶⁶² Ratified on 15 August 2007.

⁶⁶³ Ratified on 14 May 2013.

cease to be bound by the Protocol towards any Power at enmity with him whose armed forces, or the armed forces of whose allies, do not respect the Protocol".⁶⁶⁴

Iraq has not signed the Safe Schools Declaration, a non-binding instrument through which States can endorse and commit to implement the Guidelines for Protecting Schools and Universities from Military use during Armed Conflict.⁶⁶⁵

The Kurdistan Regional Government in both Erbil and Sulaimaniya have signed a Geneva Call Deed of Commitment for adherence to a total ban on anti-personnel mines and for cooperation in mine action.⁶⁶⁶

Applicable International Remedy and Monitoring Mechanisms

In relation to the UN Treaty Bodies, Iraq has accepted the inquiry procedure under the CAT and the ICPEP. Iraq has also made a standing invitation to the thematic special procedures of the Human Rights Council.⁶⁶⁷ However, it has not accepted individual complaints procedures under any of the human rights treaties to which it is a party. In addition, as there is no available regional mechanism in case of human rights' violations, individuals under the jurisdiction of Iraq do not have any recourse at the supra-national level.

Iraq's reporting practice to the human rights treaty bodies has been variable, with relatively frequent reporting through the 1980s that slowed down toward the end of the 1990s. There is a consistent pattern of non-reporting from the early 2000s for a period of 13 to 15 years, which may be connected with the US-led invasion and occupation and the process of stabilising the State that occurred during this period.

With regard to the prosecution of international crimes, Iraq has not signed the ICC Statute. Finally, Iraq has not accepted compulsory jurisdiction of the International Court of Justice.

3.2.3. The Protection of Education within the Domestic Legal System

Introduction to the Iraqi Legal System

Iraq has had several constitutions and draft constitutional texts during the Ba'ath Party rule. Although there was a 1990 version of the Constitution, it remained a draft text, and did not enter into force. The 1970 Constitution remained the provisional Constitution of Iraq until the fall of Saddam Hussein in 2003. Thereafter, the US-led Coalition Provisional Authority requested that the interim Iraqi Governing Council draft

⁶⁶⁴ See the webpage of the ICRC on Treaties, States Parties and Commentaries, at:

https://www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=IQ

⁶⁶⁵ For more on the Safe Schools Declaration endorsements, see the website of the Global Coalition to Protect Education from Attack at: <http://www.protectingeducation.org/guidelines/support>

⁶⁶⁶ See 'Their Words', the Directory of Armed Non-State Actor Humanitarian Commitments, at:

<http://theirwords.org/pages/geneva-call>

⁶⁶⁷ Issued on 16 February 2010.

a constitutional text, which became the Law for the Administration of the State of for the Transitional Period (the Transitional Administration Law, or TAL). After a complex and disputed process of elections for a drafting committee and a rushed drafting process, the 2005 Constitution of Iraq was adopted and entered into force the same year. Its genesis was directly shaped by the occupation of Iraq between 2003 and 2004, and its provisions reflect the influence of outside actors, most notably, the United States.⁶⁶⁸ This influence is manifest in the number and articulation as absolute of personal rights and freedoms, echoing the structure of the United States Bill of Rights.⁶⁶⁹ While the drafting committee was initially to be selected and appointed by the CPA, international pressure through the Security Council required a more democratic approach but continuing sectarian tensions frustrated such a collaborative approach.⁶⁷⁰ Thus its text, while approved by popular referendum, continues to be considered as the result an imperfect process.⁶⁷¹

Although there is a continuing armed conflict in 2016, the contemporary domestic legal landscape within Iraq has been in transition following the 2003 international armed conflict with Coalition forces and the transitional administration of Iraq by the Coalition Provisional Authority.⁶⁷²

The Iraqi legal system is organised federally with some powers distributed regionally and an autonomous authority governing and legislating for the Kurdistan Region, the Kurdistan Regional Government. The Iraqi federal judiciary is governed by the Judicial Organisation Law,⁶⁷³ the Law of Public Prosecution,⁶⁷⁴ which were amended by CPA Order No. 100 and the 2004 Transitional Administration Law for the State of Iraq for the Transitional Period enacted by the Iraqi Interim Government.⁶⁷⁵

Protection of the Right to Education in Iraqi Law

In its 2015 Concluding Observations, the CESCR noted with concern a decrease in rates of school enrolment and attendance and an increase in illiteracy rates and school drop outs.⁶⁷⁶ It recommended that Iraq take “all measures necessary”, in order to ensure access to education for children affected by the conflict into education, including internally displaced children, and provision of non-formal educational mechanisms.⁶⁷⁷

Iraq has several international legal obligations in terms of respecting, protecting, and fulfilling the right to education. These arise from Articles 13 and 14 of the ICESCR,

⁶⁶⁸ P Dann and Z Al-Ali, ‘The Internationalized Pouvoir Constituant’, 10 UNYB 2006.

⁶⁶⁹ Ibid.

⁶⁷⁰ See UNSC, ‘The Political Transition in Iraq: Report of the Fact-Finding Mission’, 23 February 2004, UN Doc. No. S/2004/140.

⁶⁷¹ P Dann and Z Al-Ali, (2006), *op cit*.

⁶⁷² B McGurk, ‘Revisiting the Law of Nation-Building: Iraq in Transition’, 45 Va. J. Int'l L. 451 (2004-2005).

⁶⁷³ Law No. 160 of 1979.

⁶⁷⁴ Law No. 159 of 1979.

⁶⁷⁵ The TAL served as the interim constitution, during the period of transition between the rule of the CPA and the complete transfer of power to the interim government. It was abrogated by the 2005 Constitution of Iraq, which was approved by referendum on 15 October 2005.

⁶⁷⁶ Concluding Observations of the CESCR Committee, 27th October 2015, UN Doc. No. E/C.12/IRQ/CO/4, para. 55.

⁶⁷⁷ Ibid, para. 56.

Article 28 of the CRC, Article 41 of the ACHR, and possibly of Article 12 of the OIC CRCI, when this latter instrument comes into force. The combined effect of Iraq's international legal obligations and international standards is to require several elements of the protection of education, which are discussed in this section.

The right to education appears in several domestic legal instruments, including the 2005 Constitution, the 1976 Compulsory Education Law, and the 2011 Eradication of Illiteracy Law, Law No. 23 of 2011, as well as the 2011 Statute of the Ministry of Education.

The State's Obligation to Provide a School System

The Iraqi State bears the primary responsibility to develop and provide an education system, including providing for appropriate conditions for education staff.⁶⁷⁸ It is required that this operates without prejudice to the right of parents and children to choose private educational institutions.⁶⁷⁹ The responsibility of formulating educational policy is classified as a shared competency under the Iraqi Constitution.⁶⁸⁰ The education system is largely centrally regulated, but a key feature of the 2005 Constitution was to expand the shared competencies between federal and regional authorities. Although Iraq has experienced several varying levels of insecurity and armed conflict, the provision of education has remained relatively consistent; schools have remained free and compulsory, at least in theory.

The Ministry of Education is responsible for the development of policy and planning for a compulsory primary education system, in cooperation with other State bodies;⁶⁸¹ it is also responsible for inspection of schools within its remit.⁶⁸² The relationship between the delivery of a state education system, the protection of the child, and their legal enforcement is expressly stated in Article 15 of the 1976 Compulsory Education Law, requiring cooperation between the Ministry of Education and the Ministry of Justice to ensure the application of rules relating to the prevention of child labour.⁶⁸³

The 2005 Constitution provides specific protections for the participation of regional administrative authorities within Iraq in decision making. By Article 114 of the 2005 Constitution, the federal and regional authorities in Iraq have shared competencies over the public educational and instructional policy, in consultation with the regions and governorates that are not organised in a region.⁶⁸⁴ This tendency toward decentralisation of decision-making and empowerment of the regions is in line with the general legal and administrative order instituted by the 2005 Constitution.

Treaty bodies have noted with concern a low budgetary allocation to education within Iraq contributing to low literacy rates. In its 2015 Concluding Observations, the CESCR

⁶⁷⁸ Art 13(2)(e), ICESCR; Arts 34(4) and 41(6), ACHR.

⁶⁷⁹ Arts 13(3) and 13(4), ICESCR; Article 29(2), CRC; Article 30(3), ACHR ; Art 12(4), OIC CRCI.

⁶⁸⁰ Art 114, 2005 Constitution of Iraq.

⁶⁸¹ Art 2, 2011 Statute of the Ministry of Education; see also Art 2, 1976 Compulsory Education Law.

⁶⁸² Art 6, 2011 Statute of the Ministry of Education.

⁶⁸³ Art 15, 1976 Compulsory Education Law.

⁶⁸⁴ Art 114(6), 2005 Constitution of Iraq.

recommended that Iraq gradually increase its national spending on education, so as to achieve the progressive realization of this right in line with Articles 2(1) and 13 of the ICESCR.

According to the 2014 UPR Working Group report, since 2010, Iraq and the Kurdistan Region have enacted a strategic plan to support education.⁶⁸⁵ While challenges in the area of children's rights were acknowledged, the relevant authorities were said to enact legislation to tackle these issues. For example, the Ministry of Education offers special support to gifted students and a law was enacted in 2001 to provide for the creation of schools for gifted students in various governorates.⁶⁸⁶ Insecurity was recognized as a threat to education, as a rise in terrorist acts called for the adoption of an emergency action plan, in particular to deal with displacement, noting that displaced persons require educational facilities.⁶⁸⁷ The Ministry of Migration and Displacement has been in charge of working with governmental and NGOs to alleviate their issues.

During the dialogue with other States, the Iraqi delegation stated its education plan for the period focuses on five priorities relating to the institutional framework, legal framework, quality education, and funding of the education sector. Thus, in 2011, Iraq adopted an act on illiteracy and literacy centres were established in various areas. Human rights training was also provided in various levels of education.⁶⁸⁸

Aims, Objectives and Content of Education

Iraq's international legal obligations require education within its territory to be directed toward the full development of the human personality and the strengthening of respect for human rights.⁶⁸⁹ There are, accordingly, two required elements: first, the State must ensure that education is aimed at the student's holistic development; second, it must ensure that the content of education within its territory is not only compatible with, but also promotes respect for, human rights among students.

The aims and objectives of education in Iraq are dealt with in the Law of Compulsory Education, No. 118 of 1976 (the 1976 Compulsory Education Law), the 2005 Constitution of Iraq and the 2011 and the Eradication of Illiteracy Law, Law No. 23 of 2011 (the 2011 Illiteracy law). Taking them in chronological order, the stated rationale for the 1976 Compulsory Education Law aligns with the purpose of the Ba'ath Party;⁶⁹⁰ it emphasises the role of education in consolidating the pan-Arab consciousness.⁶⁹¹ Although Ba'ath principles are directly invoked in this law, it presently remains in force in its entirety. It recognises education as a fundamental and inherent right of the human

⁶⁸⁵ Iraq UPR Working Group (WG) Report, A/HRC/28/14, 12 December 2014, para. 9.

⁶⁸⁶ Ibid, para. 11.

⁶⁸⁷ Ibid, para. 20.

⁶⁸⁸ Iraq UPR WG Report, 2014 para. 78.

⁶⁸⁹ The exact formulation varies, but the content of the obligation contained in the following is consistent: Article 13(1) ICESCR; Articles 28(1) and 29(1) CRC; Article 41(4), ACHR; see also Article 26(2), UDHR

⁶⁹⁰ In Iraqi legislation, a preamble-like statement of reasons for the legislation is included after the text of the legislation, sometimes invoking constitutional provisions from which the legislative intent derives. The Arabic term to describe this text is *al-asbab al-mujiba*, which translates roughly to justificatory reasons; it is an integral part of legislation and reference is made to them to aid interpretation of legislative text.

⁶⁹¹ *Al-asbab al-mujiba*, 1976 Compulsory Education Law.

and the centrality of education to the development of the child. Part of the intention behind the enactment of the 1976 Compulsory Education Law is also to “speed up the process of development of a socialist society, achieve democracy and affirm the right of all citizens to benefit from equal opportunities therein”.⁶⁹² An additional stated aim of making education compulsory is to support the social advancement of women, especially those in rural areas.⁶⁹³

The 2005 Constitution of Iraq states that education is aimed at the progress of society.⁶⁹⁴ A significant aspect of the 2005 Constitution’s innovation was the protection it afforded to minority groups; although the official languages of Iraq are Arabic and Kurdish, minority groups including Turkmen, Assyrians and Armenians have, amongst other rights, the right to educate their children in their mother tongue.⁶⁹⁵ This right and the express statement in Article 4(2) of the 2005 Constitution that it be implemented in part by opening schools that teach in more than one language closely tie education in Iraq with the promotion of equality, particularly in respect of minority groups.

Two statutes were enacted consecutively in 2011, relating to the Minister of Education,⁶⁹⁶ and the eradication of illiteracy.⁶⁹⁷ The aims and objectives of education are incorporated into the aims of the Ministry of Education in its statute; Article 2 of the 2011 Statute of the Ministry of Education states that the purpose of the Ministry is to nurture a conscious generation that believes in God, is faithful to religious, moral and national values, values of democracy, and the freedoms of expression and thought.⁶⁹⁸ The Statute of the Ministry of Education is specifically intended to give effect to the relevant provisions of the 2005 Constitution of Iraq, in particular those in respect of non-discrimination and tolerance.⁶⁹⁹

In respect of the individual student, the Ministry of Education aims to develop the talents of the student in a way that guarantees the integrity of his or her physical, mental, spiritual character.⁷⁰⁰ In addition, primary education is specifically aimed to enable “all the children of Iraq” to develop their physical, intellectual, moral and spiritual characters and become active and valuable citizens.⁷⁰¹

There is an additional text that is informative, although not binding, in respect of the aims and objectives of education in Iraq. The 2010 Draft Iraqi Child Protection Law, which has not been adopted, was directed at, amongst things, the preparation of children for a free and responsible life in society and to the various protective measures of a social, educational and health-related nature.⁷⁰² Intermediate education has

⁶⁹² Ibid.

⁶⁹³ Ibid.

⁶⁹⁴ Art 34, 2005 Constitution of Iraq.

⁶⁹⁵ Ibid, Art 4(1).

⁶⁹⁶ The Statute of the Ministry of Education, Law No. 22 of 2011 (the 2011 Statute of the Ministry of Education).

⁶⁹⁷ See the 2011 Illiteracy Law.

⁶⁹⁸ Article 2(1), 2011 Statute of the Ministry of Education.

⁶⁹⁹ See *Al-asbab al-mujiba* Article 2(2), 2011 Statute of the Ministry of Education.

⁷⁰⁰ Art 2(4), 2011 Statute of the Ministry of Education.

⁷⁰¹ Art 2, Order No. 30 of 1978, as amended by Orders No. 36 of 1981 and No. 14 of 1982.

⁷⁰² Art 1, 2010 Draft Child Law (not in force).

specific aims within Iraqi domestic law. Article 11 of the 2011 Statute of the Ministry of Education states that the intermediate level is general and aims to explore and develop students' abilities and interests, as well as to provide them with the knowledge and experience to enable them to continue their study and exercise the rights and responsibilities of citizenship.

In respect of promoting respect for human rights, the CEDAW Committee has additionally praised the State's attempts to integrate human rights principles into school curricula.⁷⁰³ In 2004, materials teaching Ba'athist ideology in universities were replaced by the CPA with those for the teaching of human rights. However, there is no unified approach to human rights education, and it remains within the discretion of the teaching staff as to the content of any human rights-related education. In 2009, the Ministry of Education established a department for human rights to develop a human rights curriculum for primary and secondary stages of education in Iraq. However, since the Ministry of Human Rights has been abolished, such curricula have not materialised. Article 4(6) of the Law of the High Commissioner for Human Rights provides for the dissemination of a culture of human rights through inclusion of human rights into educational curricula.⁷⁰⁴ In cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Iraqi High Commissioner for Human Rights has adopted a strategy for the period 2015-2018 for the incorporation of human rights concepts into education curricula. This has been in cooperation with the Parliamentary Committee on Education, the Ministry of Education, and a number of civil society organisations, with funding from UN Office for Project Services. The implementation of this strategy, which includes the development of guidelines on human rights and citizenship, is yet to be implemented.

Read together, the foregoing covers many of the required aims of Article 13(1) of the ICESCR. Only the 2011 Illiteracy law is limited to the right to education of citizens in contrast to the 2005 Constitution of Iraq, the 1976 Compulsory Education Law, and the 2011 Statute of the Ministry of Education, which are, at least in theory, applicable to all persons in Iraq regardless of citizenship. Accordingly, the expressly stated aims and objectives of education in Iraq are compliant with Article 13(1) in so far as they, broadly, "enable all persons to participate effectively in a free society", strengthen respect for human rights and are directed toward the full development of the human personality. They are additionally compliant with Article 41(2) of the Arab Charter of Human Rights requiring, *inter alia*, that education is "directed to the full development of the human person".

⁷⁰³ Committee on the Elimination of Discrimination against Women (CEDAW), Concluding observations on the combined fourth to sixth periodic reports of Iraq, UN Doc. No. 10 March 2014, CEDAW/C/IRQ/CO/4-6, para. 38.

⁷⁰⁴ Law No. 53 of 2008.

The Right to Primary Education

Iraq is obliged, at a minimum, to provide compulsory and free primary education.⁷⁰⁵ Whereas the relevant provisions of the ICESCR and CRC operate on the general principle that the State's obligation applies to all persons within its territory, the ACHR limits the right to education to citizens but its Article 2 enshrines a similar principle that States bear an obligation to all persons within their territory or otherwise subject to their jurisdiction.

Primary education is a right "guaranteed by the State" in Iraq and is compulsory,⁷⁰⁶ free,⁷⁰⁷ and runs from the age of 6 for a period of six years.⁷⁰⁸ Although the primary obligation to adhere to the mandatory nature of primary education lies with a child's guardian,⁷⁰⁹ the school shares the responsibility to ensure a child's attendance. A child's guardian is, for the purposes of the 1976 Compulsory Education Law, a person who "actually ensures his care", and is therefore not limited to parents or legal guardians.⁷¹⁰ The shared responsibility for ensuring a child's attendance is realised through a process of notification and encouragement by the school of the guardian of children who have not enrolled or who have dropped out of primary school.⁷¹¹ Repeated truancy is punishable by imprisonment of parents but mitigating circumstances may be considered,⁷¹² including cases of disability and diseases that prevent the child from attending school regularly.⁷¹³ This appears to be inconsistent with the requirement under the CRPD and the principle of non-discrimination by which Iraq is bound, that education services are inclusive of persons with disabilities.

Free education in its various stages is a constitutionally guaranteed right of all Iraqi citizens by Article 34(2) of the Constitution of Iraq. In addition to a right vis-à-vis the State, children have the right to education from their parents.⁷¹⁴ Article 1(1) of the 1976 Compulsory Education Law states that education in the elementary stage of study is free for "all children who are over the age of 6". In addition to education in primary schools being free, the Ministry of Education is required to provide students with books and education materials free of charge, with additional powers for the local administration to take measures to provide clothing and food to students in need.⁷¹⁵

⁷⁰⁵ Art 13(2)(a), ICESCR; Art 28(1)(e), CRC ; Arts 41(1), 41(2), ACHR. The ACHPR (Article 17(1)) and the ACRWC (Article 11) contains a broad guarantee of the right to education for all.

⁷⁰⁶ Art 34(1), 2005 Constitution of Iraq; see also Art 1(1) 1976 Compulsory Education Law.

⁷⁰⁷ Art 7(1)(a) 2011 Statute of Ministry of Education; Article 1(1), 1976 Compulsory Education Law.

⁷⁰⁸ Art 8(1), 2011 Statute of the Ministry of Education; Art 1(1) 1976 Compulsory Education Law. Although primary education is considered in Iraqi domestic law to consist of nine years' education (like in Egypt for example), domestic legislation re-categorises the final three years as 'intermediate level', and is included in secondary education, see Art 8, 2011 Statute of the Ministry of Education. This is accompanied by an express statement that the Ministry of Education is required to work to progressively implement compulsory secondary education (thus including the intermediate) and suggests the drafters' intent was to bring the provision of compulsory primary education into compliance with international standards.

⁷⁰⁹ By Art 1(3), 1976 Compulsory Education Law, the guardian of a child is obliged to enrol the child in primary school until he completes that level of education or until he reaches the age of 15.

⁷¹⁰ *Ibid.*

⁷¹¹ *Ibid.*, Art 8.

⁷¹² *Ibid.*, Art 13(2).

⁷¹³ *Ibid.*, Art 14.

⁷¹⁴ Art 29, 2005 Constitution of Iraq.

⁷¹⁵ Art 6 of Order No. 30 of 1978, as amended by Orders No. 36 of 1981 and No. 14 of 1982.

That primary education is both compulsory and free in Iraq brings the domestic law in this respect into compliance with Article 13(2)(a) of the ICESCR, Article 41(2) of the ACHR and Article 2(4) of the CRCI.

Admission into the first grade of elementary school is regulated by executive order and is conditional upon a number of factors. First, the child must have reached the age of 6,⁷¹⁶ but be no older than 9 years of age.⁷¹⁷ Second, the Ministry of Education admission form must be submitted, along with a certificate in respect of any infectious diseases and a smallpox vaccination certificated, as well as any official documents that establish the child's age.⁷¹⁸ In the event that an official document proving the child's age is not available in rural areas, the age must be determined by a committee consisting of the school principal, the first grade teacher, the local mayor and a doctor, by estimate.⁷¹⁹

The Right to Secondary, Technical and Vocational Education

Iraq is obliged, at a minimum, to make secondary education available and accessible,⁷²⁰ and in accordance with the OIC CRCI may be obliged to provide free and compulsory education on a progressive basis so that it is available to all children within ten years.⁷²¹ Secondary education is available in Iraq but is neither compulsory nor free, although there are measures in place to develop a free and compulsory secondary stage of education. Secondary education in Iraq consists of an intermediate stage for a duration of three years and a secondary stage for another three years.⁷²² Although neither of these stages is expressly compulsory, the 2011 Statute of the Ministry of Education makes provision for the implementation of compulsory education on the basis of availability of resources.⁷²³

In view of the fact that Iraq has legislatively enshrined commitments to expand free and compulsory education beyond elementary school, the foregoing is compliant with the obligation to progressively implement free and compulsory secondary education contained in Article 13(2)(b) of the ICESCR. The foregoing is also compliant with Article 41 of the ACHR.

Iraq is also obliged to make technical and vocation education available, with a progressive obligation to make it freely available.⁷²⁴

⁷¹⁶ Or will turn six on 31 December of the school year into which they are entering; Article 16, Order No. 30 of 1978, as amended by Orders No. 36 of 1981 and No. 14 of 1982.

⁷¹⁷ Ibid, Art 16.

⁷¹⁸ Ibid, Art 17.

⁷¹⁹ Ibid, Art 17(2).

⁷²⁰ Arts 13(2)(b), ICESCR and 28(1)(b), CRC.

⁷²¹ Art 12(2)(ii), OIC CRCI.

⁷²² Art 8, 2011 Statute of the Ministry of Education.

⁷²³ Ibid, Art 11.

⁷²⁴ Arts 13(2)(b), ICESCR and 28(1)(b), CRC.

Vocational⁷²⁵ education is available in Iraq and recognised as an alternative route to general secondary education. It is neither free nor compulsory. Vocational education, which is governed by Order of the Council of Ministers,⁷²⁶ is aimed to prepare students with the necessary skills and practical training to fulfil the needs of labour market or to continue study in vocational areas.⁷²⁷ It is for a duration of three years after completion of intermediate school.⁷²⁸ Admission into vocational schools is conditional upon completion of intermediate education and a certificate to attest to this must be submitted upon registration for vocational education.⁷²⁹

The foregoing is compliant with the State's progressive obligations contained in international law.

The Right to Higher Education

Iraq is obliged to ensure that higher education is made equally accessible to all, on the basis of capacity.⁷³⁰

Higher education is available in Iraq and, for citizens, it is free of charge. Domestic legislation relevant to higher education dates from the period of rule of the Ba'ath Party and its provisions reflect this. The objectives of colleges and universities are expressly stated to be the achievement of scientific, cultural and educational development as well as the instilment of nationalism and an appreciation for Arab Islamic heritage.⁷³¹ The realisation of these objectives fall within the remit of the Ministry of Higher Education.⁷³² The Ministry's tasks include the supervision of the quality of the universities and national colleges performance to ensure the safety of the fundamental aspects of national education.⁷³³ The official language of universities in Iraq is Arabic but Kurdish may, in autonomous regions of Iraq and by election, also be the language of instruction for certain subjects.⁷³⁴

The above is broadly compliant with international law.

⁷²⁵ The term used in domestic legislation to refer to non-formal education is *al-ta'leem al-mehniyy*, which would translate directly to 'professional education'. On the basis of the content of this form of education in Iraqi domestic law and the fact that there is no indication in domestic legislation that there exists another form that better fits the description of 'technical' or 'vocational' education, the term 'vocational education' is used in this Study.

⁷²⁶ Order No.3 of the Council of Ministers of 2002.

⁷²⁷ Ibid, Art 1.

⁷²⁸ Ibid, Art 2.

⁷²⁹ Ibid, Art 6(1).

⁷³⁰ Arts 13(3)(c), ICESCR and 28(1)(c), CRC.

⁷³¹ Art 2, Law No. 13 of 1996.

⁷³² *al-asbab al-mujiba*, Law No. 57 of 2002.

⁷³³ Ibid.

⁷³⁴ Art 7 of the Law No.13 of 1996

The Right to Basic Education

Iraq is obliged, at a minimum to encourage or intensify basic education, also referred to as fundamental education, as far as possible for persons who have not completed their primary education.⁷³⁵ The form of such encouragement or intensification varies between the legal frameworks. The CRC requires parties to promote and encourage international cooperation to contribute to the elimination of ignorance and illiteracy throughout the world.⁷³⁶ Regional and international Islamic law go further, creating a positive obligation on States to eradicate, or provide “effective treatment” of, illiteracy.⁷³⁷

Basic education is provided for in Iraqi domestic law.⁷³⁸ The 2011 Illiteracy Law ties the eradication of illiteracy to the rights guaranteed by the 2005 Constitution of Iraq. In addition to having a lack of reading, writing and numerical skills, an illiterate person (for the purposes of benefiting from the measures for eradication of illiteracy) is defined in domestic law as a person unable to enjoy his or her social, economic and cultural rights and to enable them to exercise their rights.⁷³⁹ Centres for the Eradication of Illiteracy, which are the main vehicle for the combat of illiteracy envisaged by the 2011 Illiteracy Law, are aimed toward the individual’s acquisition of reading, writing and numeracy skills. These skills enable the development of individuals’ work lives and raise their standard of living and enables them to exercise their citizenship rights and perform their duties, including through community participation.⁷⁴⁰ Iraq has also adopted a National Strategy to Eradicate Illiteracy for the years 2015 to 2024.

In addition, a form of ‘catch-up’ education is provided for in legislation. Article 14 of the Statute of the Ministry of Education empowers the Minister to establish primary schools with shorter durations of study for youths between the ages of 10 and 15, who have not completed their primary education.

While the mechanisms for the eradication of illiteracy provided for in Iraqi domestic law are consistent with the State’s international legal obligations, there arises a problem with the objects of these mechanisms. Persons who are ‘illiterate’ within the meaning of Article 1 of the 2011 Illiteracy Law are entitled to basic education services. This definition is, however, limited to citizens.⁷⁴¹ Accordingly, the provisions of the 2011 Illiteracy Law fail to comply with the general principle of international law that States are obliged to ensure the realisation of rights of all persons under their jurisdiction. Notwithstanding that the ACHR specifies only that citizens have a right to education, its illiteracy provisions are broad and relate to the complete “eradication of illiteracy”.⁷⁴² The provision, contained in Article 13(1)(d) of the ICESCR, that basic education be

⁷³⁵ Art 13(2)(d), ICESCR.

⁷³⁶ Art 28(3), CRC.

⁷³⁷ Arts 41(1), ACHR and 12(2)(v), OIC CRCI, respectively.

⁷³⁸ Art 13(2)(d) of the ICESCR; see also CESCR General Comment 13 (1999).

⁷³⁹ *Al-asbab al-mujibah*, 2011 Illiteracy Law.

⁷⁴⁰ *Ibid*, Art 1(6).

⁷⁴¹ *Ibid*, Art 1(4).

⁷⁴² Art 41(1), ACHR.

encouraged and intensified, “as far as possible”, may be relied upon by the Iraqi State to justify its focus on literacy of citizens.

Accordingly, the Iraqi domestic system for basic education tends toward compliance with Article 13(2)(d) of the ICESCR, although the limitation of the measures of the Illiteracy Law to citizens may render it discriminatory. It is also consistent with the more cumbersome positive obligation contained in Article 41 of the ACHR of the eradication of illiteracy and, since the latter requires only that States party provide fundamental education for their citizens, the domestic limitation of counter-illiteracy measures to citizens is compliant.

The Right to Non-Discrimination in Education

The Iraqi Constitution guarantees non-discrimination, which is a cross-cutting provision which applies to education. However, in its 2015 Concluding Observations, the CESCR expressed concern that this constitutional guarantee of non-discrimination had not been given effect through comprehensive non-discrimination legislation.⁷⁴³

The CRC Committee expressed concern at the perceived discrimination in the enjoyment of the right to education. The report highlights the “extreme gender-based discrimination which girls experience from the earliest stages of their lives”,⁷⁴⁴ which particularly hampers their access to education resulting in a disproportionately high rate of illiteracy.⁷⁴⁵ However, it is not just females who experience discrimination in respect of the right to education but also children with disabilities,⁷⁴⁶ children from impoverished families,⁷⁴⁷ as well as children from minority ethnic groups who experience legislative and cultural obstacles to education. In respect of ethnic and religious minorities, the CESCR Committee criticised the State for failing to enact implementing legislation for Article 125 of the 2005 Constitution of Iraq.⁷⁴⁸ The consequence of this failure is the lack of legal protection for the administrative, political, cultural and education rights of religious and ethnic minority group rights. With regard to students with disabilities, Iraq acceded to the CRPD in 2013, without reservation. Accordingly, it is bound to provide education that is inclusive of persons with disabilities.⁷⁴⁹

Specific Obstacles to Inclusive Education

Persons within Iraqi territory without nationality or documentation may be prevented from access to education. Iraq is obliged to ensure that every child in its territory is registered at birth and acquires a nationality.⁷⁵⁰ This requires that children are able to acquire the nationality of both their mothers and fathers as required by Article 9 of the CEDAW.⁷⁵¹ It is party to the ICCPR and has not entered any relevant reservation to its obligation under Article 24(3) to ensure that every child acquires a nationality. It is also party to the CEDAW but has entered a reservation against Articles 2(f) and 2(g), in respect of implementing legislative and executive measures to meet its obligations under the CEDAW and to repeal any national penal provisions that are discriminatory to women, respectively. It is not clear that Iraq’s reservation against Article 2(f) remains

⁷⁴³ Concluding Observations of the CESCR, 27 October 2015, UN Doc. No. E/C.12/IRQ/CO/4, paras. 19 and 20.

⁷⁴⁴ Concluding Observations of the CRC Committee (2015), *op cit.*, para. 17

⁷⁴⁵ *Ibid*, para. 72(d)

⁷⁴⁶ *Ibid*, para. 58

⁷⁴⁷ *Ibid*, para. 73(d)

⁷⁴⁸ Concluding Observations of the CESCR (2015), *op cit.*, para. 25.

⁷⁴⁹ Art 24, CRPD.

⁷⁵⁰ Art 24, ICCPR; Art 7, CRC; Art 29 ACHR. Note that Iraq is party to neither the 1954 Statelessness Convention nor the 1961 Convention on the Reduction of Statelessness.

⁷⁵¹ See also the non-discrimination provisions contained in Art 2, ICCPR; Art 2, CRC; Art 3, ACHR. Although Iraq had, at the time of ratification, entered a reservation against Article 9 of the CEDAW it withdrew this in 2014; it is therefore required to ensure equal nationality rights to men and women, see UN Treaty Collection, MTDSG, Chapter IV, 8.

valid, considering that it strikes at the very purpose of the CEDAW, which is a criteria for the invalidation of a reservation under the international law of treaties.⁷⁵²

Iraqi nationality is conferred primarily by operation of both paternal and maternal *ius sanguinis*.⁷⁵³ However, the recognition of acquisition of nationality by birth to an Iraqi mother was a new addition in 2006, and previous legislation allowing this in limited circumstances has not been repealed.⁷⁵⁴ Acquisition of Iraqi nationality at birth is also possible by operation of *ius soli*. However, this is what has been termed 'double *ius soli*', and requires that the person's father was also born in Iraqi territory.⁷⁵⁵ It is not automatic and is subject to a discretionary decision by the Minister of Interior following application.⁷⁵⁶ Palestinians are explicitly excluded from acquiring Iraqi nationality, as a "guarantee to their right to return to their homeland".⁷⁵⁷ The Administrative Court may hear cases relating to the application of the Iraqi Nationality Law and there is a right to appeal against decisions to the Federal Court.

While the 2006 amendments bring domestic law into compliance with the non-discrimination requirements of Iraq's obligations in respect of the right to nationality, the exclusion of groups of persons and non-automatic nature of nationality on the basis of *ius soli* prevents full compliance with international law. The practical implication of the foregoing is that persons within Iraqi territory may remain without nationality or documentation, presenting an obstacle to access to education.

Specific Obstacles for Displaced Persons

As IDPs have faced issues accessing education,⁷⁵⁸ the CRC Committee recommended that Iraq take all necessary steps to reintegrate children affected by the armed conflict into the education system, through non-formal mechanism and by prioritizing the restoration of school buildings and facilities.⁷⁵⁹ The CESCR similarly noted the inadequacy of the legal framework relevant to the protection of asylum-seekers and refugees and recommended that Iraq accede to the Refugee Convention and its 1967 Protocol.⁷⁶⁰

Refugee children are admitted into public schools in Iraq upon production of documentation from their former school showing their registration and class level. If this is not available, the Iraqi Ministry of Education will allow a child, on a case-by-case basis, to attend class and sit examinations but will not provide a written record of results

⁷⁵² Art 19(c) of the Vienna Convention on the Law of Treaties provides that States may make reservations unless, "the reservation is incompatible with the object and purpose of the treaty".

⁷⁵³ Art 3(a), Iraqi Nationality Law, Law No. 26 of 2006.

⁷⁵⁴ See L Van Waas, 'A comparative analysis of nationality laws in the MENA Region', Report of the Middle East and North Africa Nationality and Statelessness Research Project, Tilburg University Statelessness Programme (September 2014).

⁷⁵⁵ Art 5, Iraqi Nationality Law, Law No. 26 of 2006.

⁷⁵⁶ *Ibid.*

⁷⁵⁷ *Ibid.*, Article 6(ii).

⁷⁵⁸ Concluding Observations of the CRC Committee (2015), *op cit.*, para. 74(c)

⁷⁵⁹ *Ibid.*, para. 73

⁷⁶⁰ Concluding Observations of the CESCR, (2015), *op cit.*, paras. 21 and 23.

unless the requisite documentation can be produced.⁷⁶¹ It appears that in practice, in the Kurdistan Region, a public notary provides notarised statements attesting to the child's age and grade or the legal department in the Directorate of Education will do the same. This documentation enables refugee children to enrol in schools. These procedures, however, have not been clarified by the Iraqi Ministry of Education. There are, as yet, no official agreements between the Kurdistan Regional Government and Syria.

Protection of Students and Education Staff

Students and education staff have been directly targeted and suffered incidental harm as a result of insecurity and armed conflict in Iraq, although limited access to conflict-affected areas of Iraq, and fear of reporting, has impeded the documentation of cases of education-related violations.⁷⁶² According to UN Assistance Mission for Iraq (UNAMI), which holds some responsibilities for tracking of violations, 880 incidents of grave violations against children were reported in 2014, of which 711 were verified, which contributed to the sharp increase in persons requiring humanitarian assistance to more than 8.2 million people the same year.⁷⁶³ In 2014, almost 3 million people, half of them children, had been internally displaced since the armed conflict began in Anbar in January 2014.⁷⁶⁴

Students and education staff are protected in circumstances of insecurity and armed conflict by the provisions of several areas of Iraqi law. The following are analysed in this section: the protection of life; the protection of liberty; the protection from torture and ill-treatment. There are additional protections for specific groups of students and education staff as children; displaced persons; stateless persons; persons with disabilities and minority groups.

The Protection of Life of Students and Education Staff

The right to life of students and education staff has been consistently under threat in Iraq. 2014 was the deadliest year since 2007, with systematic and widespread violations of international law with many of them directed against children. Between 2005 and 2007 armed groups killed an estimated total of 340 university professors and 446 students.⁷⁶⁵ From 2009 to 2012, 106 school students were killed, 200 injured and 22 abducted; however, the number of attacks on education had fallen, compared with earlier years.⁷⁶⁶ In all these cases, armed groups were believed to be responsible.⁷⁶⁷ In 2014, the UN in Iraq recorded the killing of 679 children (121 girls and 304 boys and

⁷⁶¹ See OOSCI, 'Curriculum, Accreditation and Certification for Syrian Children in Syria, Turkey, Lebanon, Jordan, Iraq and Egypt' (2015), Section 4.4.

⁷⁶² Report of the UNSG to the Security Council on Children and Armed Conflict, 5 June 2015, UN Doc. No. A/69/926-S/2015/409, (2015 UNSG CAC Report), para. 77

⁷⁶³ United Nations Security Council, Report of the Secretary General on the protection of Civilians in Armed Conflict, S/2015/453, (2015 UNSG PoC Report) paras. 14, 71.

⁷⁶⁴ 2015 UNSG PoC Report, para. 14; UNHCR Statistics in June 2015 placed the number of IDPs in Iraq at 3,962,142.

⁷⁶⁵ Scoping Study, p. 26.

⁷⁶⁶ GCPEA, (2015) *op cit.*, p. 2.

⁷⁶⁷ *Ibid.*, p. 2.

254 of unknown gender) in almost 500 incidents.⁷⁶⁸ In 2011, 27 school staff were killed or injured in attacks and in 2012, 19 were killed or injured.⁷⁶⁹ Although most of the killings of education staff took place before the fall of the Saddam Hussein's regime, attacks on higher education are ongoing in 2016, albeit at a lower rate. In 2010 and 2011, teachers who were returning to Iraq from exile were killed because they "were contradicting the higher education ministry's claims".⁷⁷⁰ In 2013, multiple attacks were launched against teachers individually.⁷⁷¹ In addition to that, 10 incidents of attacks or threats of attacks on teachers were reported.⁷⁷² In the same year, there were ten reports of threats or attacks against teachers by ISIL in the MRM Reporting Period 2014-15.⁷⁷³ Such attacks against teachers is understood to be aimed to disrupt the education system and increase the opportunity to seize power, or for sectarian reasons.⁷⁷⁴ Reported causes of deaths and injury of students and education staff in Iraq include improvised explosive devices, suicide attacks and indiscriminate shelling of civilian areas.

As several actors are engaged in documenting killings in Iraq, there are conflicting figures in respect of the total number of deaths of students and education staff. According to UNAMI, there have been at least 44,136 civilian casualties recorded, including 14,947 deaths and 29,189 wounded persons as a direct result of the continuing non-international armed conflict in Iraq in 2015.⁷⁷⁵ The greatest number of civilian casualties occurred in Baghdad and, thereafter, in Anbar and Diyala governorates.⁷⁷⁶

The Iraqi State's international obligations in respect of the right to life in these circumstances are contained in Articles 5, 6 and 7 of the ACHR, as well as Article 6 of the ICCPR. Their compound effect requires, *inter alia*, the State to, i) conceive broadly of the right to life and respect its non-derogable nature even in a state of emergency;⁷⁷⁷ ii) prevent mass violence and war;⁷⁷⁸ iii) prevent and punish arbitrary killing.⁷⁷⁹

The right to life, security and liberty is constitutionally guaranteed in Article 15 of the 2005 Constitution of Iraq. It is not, however, absolute; it may be curtailed in circumstances provided for in law and if a judicial body has issued a decision to that effect.⁷⁸⁰ During a state of emergency, the Prime Minister is empowered to authorise the arrest, detention and charge of individuals without warrant in "extremely urgent

⁷⁶⁸ 2015 UNSG CAC Report, para. 74.

⁷⁶⁹ GCPEA, (2015), *op cit.*, p. 3

⁷⁷⁰ *Ibid.*

⁷⁷¹ *Ibid.*, p. 4.

⁷⁷² 2015 UNSG CAC Report, para. 75

⁷⁷³ *Ibid.*

⁷⁷⁴ Scoping Study, p. 26.

⁷⁷⁵ UNAMI/OHCHR, 'Report on the protection of Civilians in the Armed Conflict in Iraq: December 2014 – April 2015', (2015) (2015 UNAMI/OHCHR PoC Report) p. 6.

⁷⁷⁶ 2015 UNAMI/OHCHR PoC Report, p. 6.

⁷⁷⁷ Art 4, ICCPR; Art 4, ACHR; see also Human Rights Committee, 'CCPR General Comment No. 6: Article 6 (Right to Life)', (1982), para. 1.

⁷⁷⁸ Human Rights Committee, 'CCPR General Comment No. 6: Article 6 (Right to Life)', (1982), para. 2;

⁷⁷⁹ Art 6(1), ICCPR; Art 5, ACHR; see also Human Rights Committee, 'CCPR General Comment No. 6: Article 6 (Right to Life)', (1982), para. 3.

⁷⁸⁰ Art 15, 2005 Constitution.

cases".⁷⁸¹ The death penalty remains available during a state of emergency but violations of emergency measures are punishable only by imprisonment and a fine.⁷⁸²

Preventing and Punishing Arbitrary or Unlawful Killing

The right to life, as a human right, requires States to prevent and punish arbitrary deprivations of life caused by its agents.⁷⁸³ There is evidence of the Iraqi State investigating cases of arbitrary deprivation of life including killings by public officials. There are two major examples of state investigations into killings, in situations of insecurity and armed conflict, for which former high-level public officials were found by the Iraqi High Criminal Tribunal (IHCT) to bear criminal responsibility. One example of state investigation of killing was in respect of the *Al-Anfal* campaign,⁷⁸⁴ which was a sustained campaign of attack which resulted in the deaths of approximately 182,000 Kurds in 1988.⁷⁸⁵ The second example of state investigation was in respect of *Dujail*, where a village was destroyed as reprisal for an alleged attempted assassination of the then President, Saddam Hussein.⁷⁸⁶ Both of these cases involved targeted attacks against youths and students and the military use of civilian objects, specifically schools, not only as military bases from which to launch attacks, but also as the location for torture, as well direct targeting of educational facilities. In the *Al-Anfal* case, which concerned a wider campaign of attack than did the *Dujail* case, the IHCT found that more than 1,344 primary and secondary (preparatory) schools were destroyed.

Iraqi criminal law provides for the punishment of unlawful killing, more in general, making it an offence, punishable by a term of up to life imprisonment.⁷⁸⁷ Aggravating circumstances, which increase the sentence to a mandatory death penalty, include premeditation, abuse of position, use of toxic substances or explosives, the death of more than one person, the commission of a murder in the course of a felony and commission of murder during a sentence of life in prison.⁷⁸⁸ The 2007 Military Penal Code also criminalises the deliberate death or murder of both military and civilian persons, with a penalty of death.⁷⁸⁹ This is, however, limited to deliberate deaths resulting from acts of sabotage by a member of Iraqi armed forces.

The IHCT was established by the CPA against some consternation that due process could not be ensured in Iraq.⁷⁹⁰ It authorised the Iraqi Interim Government to establish an Iraqi Special Tribunal, "to try Iraqi nationals or residents of Iraq accused of genocide, crimes against humanity, war crimes or violations of certain Iraqi Laws". The Iraqi

⁷⁸¹ Art 4, 2004 National Security Order.

⁷⁸² Ibid.

⁷⁸³ In accordance with the exposition of the right to life provided by the Human Rights Committee in its 2015 General Comment No. 36, UN Doc. No. CCPR/C/GC/R.36.

⁷⁸⁴ IHCT Case No. 1/ (C) 2nd/ 2006 (the *Al-Anfal* case).

⁷⁸⁵ J Trahan, 'A Critical Guide to the Iraqi High Tribunal's Anfal Judgement: Genocide against the Kurds', 30 Michigan Journal of international Law, 305 (2008-2009), p. 306.

⁷⁸⁶ Case No. 1/C 1/2005 (the *Dujail* case).

⁷⁸⁷ Art 405, 1969 Penal Code, as amended.

⁷⁸⁸ Art 406, 1969 Penal Code, as amended.

⁷⁸⁹ Art 29, 2007 Military Penal Code.

⁷⁹⁰ CPA Order No. 48 of 2003.

Interim Government subsequently enacted Law No. 10 of 2005, the Statute of the IHCT (the IHCT Statute), which granted jurisdiction to the tribunal over “every natural person whether Iraqi or non-Iraqi resident of Iraq and accused of [genocide, crimes against humanity, war crimes and violations of certain Iraqi domestic law crimes], committed during the period from July 17, 1968 and until May 1, 2003, in the Republic of Iraq”.⁷⁹¹

Genocide is recognised as a crime in Iraqi criminal law, under Article 11 of the Statute of the IHCT. It recognised all the modes of participation (commission, conspiracy, direct and public incitement, attempt and complicity) set down in international criminal law.⁷⁹² Genocide, within the meaning of the Statute of the IHCT, also required the same elements to be shown as in international criminal to establish guilt as well as the same constitutive acts of genocide (killing, causing serious harm, inflicting conditions calculated to bring about destruction of a group, preventing births and forcible transfer of children).⁷⁹³ The IHCT entered convictions for several persons in respect of genocide of Kurds in the *Al-Anfal* case,⁷⁹⁴ and applied the death penalty.⁷⁹⁵ The *Al-Anfal* case related to a military campaign consisting of eight operations from February to September of 1988, in which conventional and chemical weapons were deployed against citizens in Kurdish villages. Seven persons were accused of a range of violations of international humanitarian and human rights law, including Saddam Hussein.⁷⁹⁶

It is important to note, however, that the 2005 IHCT Statute had a temporal limitation to violations occurring during the period of rule of the Ba’ath Party in Iraq, between 1968 and 2003.⁷⁹⁷ Both the operation of the IHCT and its statute were, moreover, suspended in 2012. Although ordinary Iraqi criminal law recognises several crimes of killing, there is no specific crime of genocide contained in the 1969 Penal Code as amended including all the *chapeau* elements that the Genocide Convention requires of State parties to it.⁷⁹⁸ Accordingly, although Iraq was in compliance with its international obligation for the duration of the period in force of the 2005 Statute of the IHCT (i.e. between 2005 and 2012), it is no longer complying with its obligation to prevent genocide specifically through the enactment of legislation criminalising genocide and requiring state investigation of genocide allegations.

Iraqi domestic law places notable emphasis on the prevention of war and mass violence, through weapons control, as a method for protecting life and in this way gives effect to the State’s obligation to protect life. The means of attack causing the greatest number of civilian deaths in the course of the continuing non-international armed conflict in Iraq at the beginning of 2015 were improvised explosive devices (IEDs), which resulted in half of all casualties verified by UNAMI and OHCHR (a total of 1,167 deaths

⁷⁹¹ Art 1, Statute of the IHCT. The IHCT is discussed in further detail below, in ‘Mechanisms and Remedies’.

⁷⁹² Art 11(2), 2005 Statute of the IHCT; see also Art 15, 2005 Statute of the IHCT; *cp.* Art 6, 1998 Statute of the International Criminal Court (the ICC Statute).

⁷⁹³ Art 11(1), 2005 Statute of the IHCT; *cp.* Art 6, 1998 ICC Statute.

⁷⁹⁴ IHCT Case No. 1/ (C) 2nd/ 2006 (the *Al-Anfal* case).

⁷⁹⁵ *Ibid.*

⁷⁹⁶ Charges against Saddam Hussein were dropped following his execution upon conviction in separate proceeding, see Asser Institute, ‘Anfal Case Information’, available at:

http://www.asser.nl/upload/documents/DomCLIC/Docs/Miscellaneous/Anfal_CaseInformation_En.pdf.

⁷⁹⁷ Art 1(2), 2005 Statute of the IHCT.

⁷⁹⁸ See the Handbook, Chapters 2 and 4.

and 4,236 injured persons).⁷⁹⁹ In this respect, Iraq has enacted several provisions relating to the prevention of explosive violence and the use of weapons occasioning death as well as to the prevention of incitement to violence. The Constitution enshrines the State's international obligations in respect of arms control with particular focus on its obligations regarding "non-proliferation, non-development, non-production, and non-use of nuclear, chemical, and biological weapons" as well prohibiting associated equipment, materiel, technologies and delivery systems for use in the development, manufacture, production and use of such weapons.⁸⁰⁰ Article 192 of the Penal Code 111 of 1969 (with amendments up to 2010) makes it a crime punishable by death to organize, direct or assume command of an armed group that attacks any sector of the population.⁸⁰¹

As Iraqi domestic law contains offences of killing by criminal act and there is some evidence of investigations by the State into arbitrary deprivation of life by its own agents, the State is at least partly compliant with Article 6(1) of the ICCPR and Article 5(2) of the ACHR. The more limited criminalisation and investigation of killing by State security forces tends toward compliance, but a more systematic process of investigation that is not limited only to high profile perpetrators and that is not temporally limited to violations of the right to life under Ba'ath Party rule would bring the domestic framework into alignment with international standards.

The Protection of Liberty and Security of Students and Education Staff

The liberty and security of both students and education staff has consistently been under threat in the course of insecurity and armed conflict in Iraq, through detention by State agents.⁸⁰² At least 1,297 children (685 girls and 612 boys) were abducted in 320 incidents almost exclusively by ISIL and targeted against the Yezidi community.⁸⁰³ There is significant underreporting, in part because of fears of reprisals held by families, but by and large girls are forced into sexual slavery and boys are forced to convert and fight for ISIL.⁸⁰⁴ By December 2014, at least 391 children detained by State authorities, including 16 girls, were indicted or convicted of terrorism-related charges for their alleged association with armed groups under the 2005 Anti-Terrorism Law.⁸⁰⁵ The overall detention period of children associated with armed forces and groups ranged between two months to more than three years.⁸⁰⁶ There are additionally reports of raids against police stations where children are detained, such as that by a Shi'ite militia on

⁷⁹⁹ These include body-borne IEDs, vehicle-borne IEDs and suicide vehicle-borne IEDs. Statistical information in respect of civilian casualties is subject to some uncertainty as a result of difficulties in verifying cases. The figures presented here represent the minimum number, although the reality is likely to be higher. See UNAMI/OHCHR, 'Report on the Protection of Civilians in the Armed Conflict in Iraq: December 2014- April 2015' (2015), p. 6.

⁸⁰⁰ Art 9(E), 2005 Constitution of Iraq.

⁸⁰¹ Involvement in groups that aim to prevent the rule of law, to invade territory or to appropriate by force property belonging to the State or a group of people are also included within this offence. Persons without command responsibility but who are members of such groups are also guilty of an offence which is punishable by imprisonment (from an unspecified term to life), see Art 192, The Penal Code 111 of 1969.

⁸⁰² See Concluding Observations of the CRC Committee, 15 March 2015, para. 73(b).

⁸⁰³ 2015 UNSG CAC Report, para. 75.

⁸⁰⁴ Ibid.

⁸⁰⁵ Ibid, para. 73.

⁸⁰⁶ Ibid.

Mafrag police station, killing 52 detainees, including four boys.⁸⁰⁷ There are additionally reports of arrest and detention of high profile education-staff including leaders of the Iraqi Teacher's Union and targeted killing of Ministry of Education personnel.⁸⁰⁸ These constitute violations of IHRL, IHL and may also falls within categories of international crimes, although the State's response is framed more in terms of human rights protection and criminal law provisions of interference (both by official and non-State actors) with the liberty of students and education staff.

Iraq is bound by several international legal instruments requirement the protection of the liberty of students and education staff, including the ICCPR and the ICPEP. The standards contained in the ACHR are also of relevance. The combined effect of these are to require the State, *inter alia*, to i) prevent arbitrary and unlawful detention; ii) ensure judicial control of detention in connection with criminal charges; and iii) provide for a system whereby a person deprived of their liberty is able to challenge such detention and seek compensation.

The right to liberty is provided for in the 2005 Constitution, which provides that, "false imprisonment is prohibited" and,

Imprisonment or detention is not permitted in places not designed for these purposes, pursuant to prison laws covering health and social care, and subject to the authorities of the State.⁸⁰⁹

Article 37 of the 2005 Constitution prohibits the detention or investigation of any person except in accordance with a judicial decision. Where an investigation does occur within the appropriate deadline and results in arrest there is a 24 hour charging deadline, which may be extended for a maximum of a further 24 hours.⁸¹⁰

Iraqi domestic law also contains offences allowing for the prevention and punishment of interference with the right to liberty and security by criminal act. The Statute of the IHCT recognised an offence of enforced disappearance in accordance with the provisions of the ICPEP, to which Iraq is a party.⁸¹¹ This is the only place in domestic law in which an ICPEP compliant offence appears, however, and the Statute of the IHCT was temporally limited to acts between 1968 and 2003, thus creating an impunity gap for enforced disappearances after 2003.⁸¹²

In addition to being at risk of having their right to liberty and security violated, abductions of civilians, specifically students on their way to and from school, have been increasingly the targets of abduction in Iraq, as in other States in the MENA Region, and globally.⁸¹³ In 2014, UNAMI reported that at least 1,297 children were abducted in 320 incidents, almost all of which targeted Yezidi communities and resulted in detention in

⁸⁰⁷ Ibid, para. 74.

⁸⁰⁸ GCPEA, 'Education Under Attack 2014' (New York: GCPEA, 2014), p. 148.

⁸⁰⁹ Arts 19(12)(A) and 19(12)(B), 2005 Constitution of Iraq.

⁸¹⁰ Art 19(13), 2005 Constitution of Iraq.

⁸¹¹ Statute of the IHCT.

⁸¹² See the Concluding Observations of the CPED Committee, 13 October 2015, UN Doc. No.

CED/C/IRQ/CO/1, paras. 13-14.

⁸¹³ 2015 UNSG CAC Report, paras. 6-7.

prisons and other locations, including schools.⁸¹⁴ Throughout 2009-2012, teachers and teacher trade unionists were also the object of arbitrary arrests and warrants. For example, the leader of the Iraqi trade union was arrested and detained for his union-related activities.⁸¹⁵ In many cases, abductions are for the purposes of recruitment by ISIL of children for various purposes. The recruitment of 67 boys by ISIL in nine incidents was reported by the UN in Iraq, but the use of children in hostilities is also reported in self-defence groups established by Iraq's minority and community groups supporting the Iraqi State armed forces.⁸¹⁶ As a consequence of their association with armed forces and armed groups, in 2014, at least 3,391 children were held in detention, indicted or convicted under anti-terror law.⁸¹⁷

Abduction and detention is a criminal offence attracting the death sentence when accompanied by an abuse of power, the threat and use of force.⁸¹⁸ The sentence was, under the CPA's amendments,⁸¹⁹ higher for cases of abduction of a minor or of a female, but this was standardised to the death sentence by the IIG.⁸²⁰ The death sentence has been upheld in respect of an abduction for ransom of a 14 year old child who was on her way to school.⁸²¹ By Article 13 of the Penal Code 111 of 1969, as amended to 14 March 2010, the criminal courts of Iraq may exercise universal jurisdiction in respect of crimes of trading women, children or slaves committed by all those who enter Iraq, prior to entry.

The domestic law provisions described above are broadly compliant with international legal standards. Their implementation, however, continues to present obstacles to the State's compliance with its obligations and, to this end, the Human Rights Committee in its 2015 Concluding Observations recommended that Iraq take practical measures to give effect to their content.

Protection of Students and Education Staff from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

Torture, or cruel, inhuman or degrading treatment or punishment of students and education staff persists in Iraq, in particular in places of detention.⁸²² Thus the protection against torture and ill-treatment is directly relevant to the protection of education. As a party to the ICCPR, and having acceded to the CAT without reservation, Iraq has several human rights obligations in respect of torture. The most comprehensive obligations in this regard arise from the CAT and include the duty to investigate allegations of torture,⁸²³ the duty to ensure that evidence obtained through torture is inadmissible in

⁸¹⁴ Ibid, para. 77

⁸¹⁵ GCPEA, (2015), *op cit.*, p. 3

⁸¹⁶ 2015 UNSG CAC Report, para. 72.

⁸¹⁷ Ibid, para. 73.

⁸¹⁸ Art 421, 1969 Penal Code, as amended.

⁸¹⁹ Section 2(1), CPA Order No. 31.

⁸²⁰ Decree No. 3 of 2004, reinstating the death penalty in Arts 421- 422, 1969 Penal Code.

⁸²¹ Criminal Court of Cassation, Appeal No. 162 (2007).

⁸²² See, generally, UNAMI/OHCHR, 'Report on the Judicial Response to Allegations of Torture in Iraq' (February 2015).

⁸²³ Art 12, CAT.

any proceedings,⁸²⁴ and the duty to provide redress and “fair and adequate compensation”, including means of rehabilitation, for victims of torture.⁸²⁵

The prevention and investigation of and remedies for torture and ill-treatments are dealt with in limited places in Iraqi domestic law. Torture is expressly prohibited in the 2005 Constitution of Iraq but there is no clear definition of torture. Article 37(c) provides that, All forms of psychological and physical torture and inhumane treatment are prohibited. Any confession made under force, threat or torture shall not be relied upon and the victim shall have right to seek compensation for material and moral damages incurred in accordance with the law.

The definition of torture contained in Article 1 of the CAT was incorporated into domestic law in 2008.⁸²⁶ Beyond this, and although the term ‘torture’ is not conclusively defined in one single domestic legislative instrument, the compound effect of several legislative mentions, as well as the case law of the IHCT, is to give the term meaning that bend toward the relevant international standards. It is defined in the judgement issued by the IHCT in the *Dujail* case,⁸²⁷ in which one of the defendants was Saddam Hussein.⁸²⁸ The definition given is that ‘torture’ means, “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising from, or related to legal punishments”.⁸²⁹ As a matter of strict law, confessions obtained under force or threat or torture may not be relied upon,⁸³⁰ and the use of any “illegal method to influence the accused and extract an admission” is prohibited.⁸³¹

Despite the foregoing, there is evidence of persistent use of torture by a range of actors.⁸³² For example, in 17 non-capital trials monitored by UNAMI, 28 defendants alleged the use of torture and other serious mistreatment to extract confessions and in all instances, the presiding judges failed to order investigations into the allegations in accordance with the domestic legal provisions and the State’s international legal obligations.⁸³³ Discontent with the State’s lack of response to allegations of torture and other forms of ill-treatment are considered to have been exploited by non-State armed groups to garner support of affected populations.⁸³⁴ Accordingly, State investigation, prevention and punishment of torture and ill treatment is crucial not only for the purposes of implementing Iraq’s international legal obligations but also as part of its counter-insurgency efforts.

⁸²⁴ Ibid, Art 15.

⁸²⁵ Ibid, Art 14.

⁸²⁶ Law No. 30 of 2008.

⁸²⁷ On the Iraqi High Criminal Tribunal, see further ‘Protection of Students and Education Staff’ below; see also

⁸²⁸ Case No. 1/C 1/2005, full text of the Judgement in English is available at:

http://www.asser.nl/upload/documents/3272012_3403305-11-2006%20-%C2%A0Iraqi%20High%20Tribunal%20Judgement%C2%A0Saddam%20Hussein.pdf

⁸²⁹ *Dujail case*, Case No. 1/C 1/2005, p. 6.

⁸³⁰ Art 37(c), 2005 Constitution of Iraq.

⁸³¹ Art 127, Criminal Procedure Core, Law No. 23 of 1971, as amended to 14 March 2010.

⁸³² UNAMI/OHCHR, ‘Report on the Judicial Response to Allegations of Torture in Iraq’, February 2015.

⁸³³ Ibid, p. ii.

⁸³⁴ Ibid, p. i.

Sexual and Gender-Based Violence

A notable form of such inhuman or degrading treatment is sexual violence against female, as well as male, students who have been abducted. For girls over the age of 12, abduction by ISIL leads to separation from their families and trafficking to ISIL-controlled areas in Iraq and Syria, or retention for sexual slavery.⁸³⁵ Girls, especially, are vulnerable to prostitution and the judicial response to such acts is reported by UNAMI to be inadequate.⁸³⁶ For instance, a 19 year-old woman reported to UNAMI that, despite the fact that her father had sold her for prostitution while she was under-aged and that the brothel manager was arrested, no further legal action nor investigation had been taken.⁸³⁷ Similarly, after the family of a 14 year-old victim of kidnapping refused the marriage proposal emanating from the defendant as an arrangement, the judge dropped the kidnapping charge against him.⁸³⁸

In its 2015 Concluding Observations, the CESCR expressed concern at the prevalence of sexual and gender-based violence and the lack of support available for survivors of such violence.⁸³⁹ It recommended that Articles 128, 130, 131, 398 and 409 of the Penal Code be repealed and that the State effectively and diligently investigate all acts of sexual and gender-based violence, bring perpetrators to justice, punish them if convicted and compensate victims.⁸⁴⁰ The CRC Committee also stressed that security on the way to school represents a key barrier to education for girls and recommended that the State enhances “security on the roads to schools and ensuring that schools are protected by law enforcement officials”.⁸⁴¹

The 1969 Iraqi Penal Code, with amendments, provides for prohibitions of sexual violence including sexual abuse of adults and sexual abuse of a minor.⁸⁴² Despite the prohibition of various forms of sexual violence, Iraqi criminal law retains problematic provisions that diminish the effect and scope of these prohibitions. Article 128 of the 1969 Penal Code remains in force and Article 398 of the 1969 Penal Code exempts the defendant in cases of rape and sexual assault in the event that he marries the victim, but he is punished if he divorces the victim without a legal excuse. This provision is in violation of international law, including Article 16 CEDAW, which guarantees to women the right to freely choose a spouse and to enter into marriage with free and full consent.⁸⁴³

⁸³⁵ 2015 UNSG CAC Report, para. 77.

⁸³⁶ UNAMI Human Rights Office/OHCHR, Baghdad; Report on Human Rights in Iraq: January - June 2014, (2014 UNAMI/OHCHR HR Report), p. 15.

⁸³⁷ Ibid.

⁸³⁸ Ibid.

⁸³⁹ Concluding Observations of the CESCR, 27 October 2015, UN Doc. No. E/C.12/IRQ/CO/4, para. 39.

⁸⁴⁰ Ibid, para. 40.

⁸⁴¹ Ibid, para. 39.

⁸⁴² Arts 396 and 385, amended 1969 Penal Code.

⁸⁴³ See also the 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (noting however that neither Iraq, nor Egypt or Lebanon are party to this Convention). Note that, while the CRC does not prohibit marriage, the African Charter on Rights of Child does and is thus also applicable to MENA States which are party to it.

Specific Protection of Children as Students in Insecurity or Armed Conflict

In 2015, the Committee on the Rights of the Child recognised the grave consequences of the current situation of insecurity in Iraq for education, noting that “only half of secondary school-age children [were] attending school, as a consequence of schools being attacked and schoolchildren kidnapped on their way to school, and that a very high number of internally displaced and refugee children have no access to school”.⁸⁴⁴ It noted with concern, however, restrictions placed on the activities of NGOs operating in Iraq and recommended that the State lift any such unnecessary restrictions and provide increased humanitarian assistance, especially to internally displaced populations.⁸⁴⁵

In addition to benefiting from the protections discussed above (life, liberty, security, freedom from torture and inhuman treatment), children are the objects of special protections. Select protections for children in Iraqi law that are particularly relevant in situations of insecurity and armed conflict, are discussed in this section.

Violence Against Children

The CRC Committee noted with concern that corporal punishment is still lawful in schools,⁸⁴⁶ and that the Iraqi State fails to allocate a sufficient proportion of the state budget to education.⁸⁴⁷

Article 35(3) of the 2005 Constitution of Iraq prohibits “bonded labour and slavery, the slave trade, trafficking in women and children” and Article 29(1) prohibits all forms of violence and abuse in the family, school and society. These provisions form the legal basis for the enactment of a prohibition of child labour. Article 383 of the 1969 Iraqi Penal Code, as amended, stipulates that, “anyone who first endangers either by himself or by others, a person who has not reached 15 years of age or a person incapable of protecting himself because of his or psychological or mental health”, is guilty of an offence. Further, it is an offence to expose a child or person with diminished capacity to danger. However, under article 41 of the Iraqi Penal Law No. 111 of 1969 parental discipline and discipline by teachers is permissible.

Involvement of Children in Armed Conflict

Recruitment of boys and girls is practised by several actors in Iraq. By the end of 2014, at least 67 boys have been recruited by ISIL in nine incidents and, on one occasion, ISIL forcibly recruited 40 boys during Friday prayers.⁸⁴⁸ The pro-Government Popular

⁸⁴⁴ CRC Committee, Concluding observations on the combined second to fourth periodic reports of Iraq (3 March 2015), para. 72, available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsnrFI8dyx5m6sTXXozprc%2fjQJzAkU4K0IVyzZaHpcN%2bYZgISt4C%2b5OvEWGfs0%2f2%2f3LwQr69Ix2M43DRgn4kBdQnCdCWuhcKy1v8lwo%2fUmyit>

⁸⁴⁵ 2015 Concluding Observations of the CRC Committee, *op cit.*, paras. 74, 75.

⁸⁴⁶ *Ibid*, para. 38.

⁸⁴⁷ *Ibid*, para. 72(e)

⁸⁴⁸ 2015 UNSG CAC Report, para. 72.

Mobilisation Unit also recruited an unknown number of children in all conflict areas.⁸⁴⁹ In addition to the major parties to the armed conflict in Iraq, the creation of smaller community self-defence units working in support of Iraqi security forces has also contributed to the increase in recruitment of boys and girls.⁸⁵⁰ The Working Group on Children and Armed Conflict noted the practice of recruitment of children for armed groups and even, in some cases, the use of children with mental disabilities as suicide bombers.⁸⁵¹

As a party to the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, Iraq is obliged to ensure that the minimum age for compulsory recruitment into State armed forces is not lower than 18 years; to prevent the direct participation of children in hostilities of children between 15-18 years old, who have been voluntarily recruited.⁸⁵² It has been recommended that Iraq also take urgent steps to ensure the rehabilitation of children formerly associated with armed forces and armed groups.⁸⁵³ Iraq is also required to prohibit the forced or compulsory recruitment of children for use in armed conflict,⁸⁵⁴ as well as to prohibit and criminalise the recruitment and use in hostilities of persons under the age of 18 years.⁸⁵⁵

The domestic legal minimum age for voluntary recruitment into the military is 18,⁸⁵⁶ however vocational military training is available from the age of 15.⁸⁵⁷ Iraqi authorities have been criticized for having unclear recruitment procedures, including age verification and disciplinary measures.⁸⁵⁸ In 2015, a law on amnesties for people detained for sectarian reasons was adopted as well as one on the establishment of a National Guard, which will not prohibit the use and recruitment of minors. While the strict position in domestic law is that children may not be recruited by State armed forces, a difficulty arises in respect of irregular armed groups that have been established to support the State armed forces, particularly in defence against ISIL.⁸⁵⁹ There is currently no legislative regulation of the recruitment or use of children in hostilities by non-State groups in Iraqi law that tends toward compliance of Article 4 of the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict.

International best practice and policy requires States to ensure that children associated with armed groups and armed forces are not treated as perpetrators, but are provided

⁸⁴⁹ Ibid.

⁸⁵⁰ Ibid.

⁸⁵¹ UN SC Working Group on Children and Armed Conflict, Conclusions on children and armed conflict in Iraq, UN doc. S/ AC.51/2011/6, 3 October 2011, §6. In its report on the right to education in insecurity and armed conflict, the Geneva Academy noted that attacks impacting educational facilities and schools appear “widespread” in Iraq, many of which have targeted students, teachers, aid workers and educational officials directly, Geneva Academy of International Humanitarian Law and Human Rights, United Nations Human Rights Mechanisms and the Right to Education in Insecurity and Armed Conflict (2013), pp. XXIV and 95.

⁸⁵² See the Handbook, p. 133.

⁸⁵³ 2015 UNSG CAC Report, para. 78.

⁸⁵⁴ Art 3(a), ILO Worst Forms of Child Labour Convention.

⁸⁵⁵ Art 4(2), Optional Protocol to the CRC on the Involvement of Children in Armed Conflict.

⁸⁵⁶ Section 6(2), Coalition Provisional Authority Order No. 22 on the Creation of a New Iraqi Army of 2003, Doc No. CPA/ORD/7 August 2003/22.

⁸⁵⁷ Article 2, Regulation No. 14 of 1962, the Vocational Training for the Air Force Regulation.

⁸⁵⁸ Report of the UNSG to the Security Council on Children and Armed Conflict, 5 June 2015, UN Doc. No. A/69/926-S/2015/409, para. 72.

⁸⁵⁹ 2015 UNSG CAC Report, para. 77.

support as victims of a violation. Iraqi law sets the minimum age of criminal responsibility at seven years and provides for some procedural safeguards in respect of verification of the age of suspected child in conflict with the law and for alternatives to punishment.⁸⁶⁰ However, many children who have been co-opted by armed groups in Iraq have also been arrested, detained, charged or convicted of terror-related offences under the 2005 Anti-Terror Law; at the end of 2015, at least 391 children had been indicted or convicted in this way.⁸⁶¹ This is not inconsistent with the domestic minimal age of criminal responsibility,⁸⁶² but is inconsistent with the State's obligation to ensure that children associated with armed forces and armed groups are offered rehabilitation as survivors of violations rather than as perpetrators.

Accordingly, the State is in compliance with its international legal obligations under the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, in respect of the recruitment of children into the State armed forces. In the absence of an express prohibition for non-State armed groups to recruit and use children in armed hostilities, however, Iraq is in breach of its international legal obligations.

Early and Forced Marriage

As in other States, early and forced marriage in Iraq is closely linked to the right to education; it is not only a cause for infringement of this right but also a consequence of a child not having had, or not completing, an education.⁸⁶³ Early and forced marriage is also more prevalent where, *inter alia*, there is a "greater incidence of conflict and civil strife".⁸⁶⁴ The revival of early, temporary and forced marriages in Iraq has been noted with concern by UN Treaty Bodies.⁸⁶⁵ The CESCR recommended that the State ensure implementation of existing legal protection against such practices, and provide for deterrent punishments for forced marriages.⁸⁶⁶ The CRC Committee noted that refugee and internally displaced girls in Iraq are particularly exposed to domestic violence, forced, temporary and early marriages and other forms of sexual exploitation.

Iraq has entered a reservation against Article 16 of the CEDAW, which requires, *inter alia*, the protection of the same right of men and women to enter into marriage, the same right freely to choose a spouse and to enter into marriage only with their free and full consent, and the requirement not to recognise betrothal and marriage of children.⁸⁶⁷ However, this Article is a core provision of CEDAW and thus the validity of this reservation may be questioned.

Nevertheless, some domestic provisions perform the same function as Article 16 CEDAW. Articles 7 and 8 of the Personal Status Law, Law No. 188 of 1959, stipulate

⁸⁶⁰ Arts 64-79, amended 1969 Penal Code.

⁸⁶¹ 2015 UNSG CAC Report, para. 73

⁸⁶² Art 64, amended 1969 Penal Code.

⁸⁶³ F Roudi-Fahimi, 'Child Marriage in the Middle East and North Africa', Population Reference Bureau (April 2010).

⁸⁶⁴ See generally, Plan UK, 'Breaking Vows: Early and Forced Marriage and Girls' Education' (2011).

⁸⁶⁵ See 2015 Concluding Observations of the CESCR, para. 41; 2015 Concluding Observations of the CRC Committee, para. 17.

⁸⁶⁶ 2015 Concluding Observations of the CESCR, para. 42.

⁸⁶⁷ UN Treaty Collection, MTDSG, Chapter IV.8.

that, “in order to be a full-fledged marriage, the parties must be of sound mind and of 18 years of age”. Children between the ages of 15 and 18 years are entitled to marry subject to the approval of the legal guardian and a judge. In addition to formal, legal marriages, there are also ‘out of court’ marriages, some of which may include children under the age of 18 years. Marriage outside the court does not carry guarantees of status and protection as formal marriage.

Child Labour

Although lower than global estimates,⁸⁶⁸ the incidence of child labour in Iraq has increased, including in hazardous conditions.⁸⁶⁹ In this respect, the CRC Committee recommended in 2015 that the State strengthen the implementation of labour laws and that it ensure that anyone violating legislation on child labour be held accountable.⁸⁷⁰ The CRC Committee recommended in 2015 that the State take legislative steps, “to ensure that child labour, including in the informal economy and family businesses, is in full compliance with international standards in terms of age, working hours, working conditions, education and health, as well as to ensure the full protection of children against all forms of sexual, physical and psychological harassment”.⁸⁷¹

As a party to the 1999 ILO Worst Forms of Child Labour Convention and to the 1973 ILO Minimum Age Convention, Iraq is bound (amongst other things) to prohibit child labour. The Minimum Age Convention leaves the exact minimum age for admission into employment to be determined by States party in national legislation, but does require them to take all measures to implement their obligations, including the use of penal or other sanctions against persons employing children.

In domestic law, the prohibition of “economic exploitation of children in all of its forms” is constitutionally enshrined, as is the State’s obligation to take the necessary measures for children’s protection.⁸⁷² While acknowledging that domestic law contains prohibitions of child labour, the CRC Committee has criticised its implementation as “weak and insufficient”, especially in view of reports that children between the ages of 3 and 16 are engaged in labour in Iraq and are vulnerable to violence and sexual abuse.⁸⁷³

Iraqi labour law also provides some protections against child labour. Article 6 of the Labour Code prohibits the employment of persons under the age of 18, and Article 94(1) states that, “it is prohibited to employ juveniles, or allow them to enter a workplace that affects their health or safety or morals”.⁸⁷⁴ The third paragraph of the same Article prohibits the employment of young persons in night work and mixed day and night work. The Labour Code also imposes penalties on employers who violate provisions of the law. Article 104 states that an employer acting contrary to the provisions of the

⁸⁶⁸ 11.8 percent: ILO, ‘The Twin Challenges of Child Labour and Youth Employment in the Arab States: An Overview’ (July 2014), p. 1.

⁸⁶⁹ 2015 Concluding Observations of the CRC Committee, *op cit.*, paras. 80-81.

⁸⁷⁰ *Ibid.*

⁸⁷¹ *Ibid.*, para. 81.

⁸⁷² Arts 29(3) and 35(3), 2005 Constitution of Iraq.

⁸⁷³ 2015 Concluding Observations of the CRC Committee, *op cit.*, para. 80.

⁸⁷⁴ Law No. 37 of 2015.

above provisions is liable to pay a fine of between 100,000 to 500,000 dinars. Recalling that the age of compulsory education runs until the age of 12 in Iraq, the State is in compliance with the strict obligation contained in Article 2(3) of the Minimum Age Convention requiring that State parties establish a minimum age not less than the age of completion of compulsory education.

Iraqi domestic law does not reflect, however, the relationship between the prohibition of child labour and the right to education of children that is contemplated in Article 7 of the Minimum Age Convention.⁸⁷⁵ By retaining a relatively low compulsory education age even despite the prohibition of employment under the age of 18, Iraqi law does not offer lawful alternatives to education for children between the ages of 12 and 18. This is borne out in the statistics, with around one third of youth in Iraq being both inactive and out of education, with the figures much higher for girls.⁸⁷⁶ A risk of this weakness in the domestic framework is that children falling in this age bracket are vulnerable to exploitation in the informal labour market and this risk is exacerbated by the non-application of domestic labour law to persons under the age of 15 employed in family enterprises.⁸⁷⁷ As an illustration, only one fifth of employed youth in Iraq work on the basis of written contracts and formal sector employment is much higher for educated youth.⁸⁷⁸ In addition, children engaged in the informal market are also vulnerable to sexual and physical abuse, without accountability for such violations.⁸⁷⁹ In 2011, UNICEF reported that 500,000 children between the ages of 5 and 14 were engaged in child labour, with most of them in rural areas.⁸⁸⁰ In 2015, the ILO reported that Iraq has the second highest primary school attendance gap between working and non-working children at 22 percentage points, and working children in Iraq are almost a full grade behind others.⁸⁸¹ It has additionally reported that vulnerable youth, with little or no education should be a particular focus of policy efforts.⁸⁸²

In order to reaffirm the rights of the Child, the Committee also recommended that national authorities establish programmes aimed at the reintegration of children previously involved in child labour into mainstream education and set labour inspections to progressively eradicate increasing poverty as the main cause of child labour.

⁸⁷⁵ For a fuller discussion of this relationship in ILO law and standards, see above, 'Child Labour' in Egypt Case Study.

⁸⁷⁶ ILO, 'The Twin Challenges of Child Labour and Youth Employment in the Arab States', *op cit.*, p. 4.

⁸⁷⁷ *Ibid.*, p. 6.

⁸⁷⁸ Compared with 73 percent of adult workers who enjoy written contracts: ILO, 'The Twin Challenges of Child Labour and Youth Employment in the Arab States: An Overview', July 2014, pp. 5, 6.

⁸⁷⁹ *Ibid.*

⁸⁸⁰ UNICEF Iraq, 'The Situation of Children and Women in Iraq: Highlights from the Multiple Indicator Cluster Survey 4 (MICS 4), (2011), p. 14.

⁸⁸¹ ILO, 'The Twin Challenges of Child Labour and Youth Employment in the Arab States: An Overview', July 2014, pp. 2-3.

⁸⁸² *Ibid.*, p. 6.

Protection of Displaced Populations

Iraq is host to approximately 270,000 refugees and 8,500 asylum seekers and just under 4 million people are internally displaced within its territory.⁸⁸³ Although Iraq is party to neither the 1951 Refugee Convention nor its 1967 Protocol, it has enacted domestic legislation on the protection of political refugees and constitutionally enshrined the principle of *non-refoulement*.⁸⁸⁴ A 2004 order by the CPA created the Ministry of Displacement and Migration,⁸⁸⁵ which was recognised by Law No. 21 of 2010. In addition, the Political Refugee Act, Law No. 51 of 1971, guarantees the right to education of political refugees on the same terms as Iraqi citizens. However there are several gaps in the framework contained in this act and, as a result, the treatment of refugees and asylum seekers often falls to be determined on an *ad hoc* basis.⁸⁸⁶

At the end of 2014, 3.6 million people were internally displaced in Iraq. Since they are not stripped of the protections of their State of nationality (or the States of their habitual residence) there is an issue as to the practicalities of how education is delivered to IDPs.

There were almost 11,000 returnees in Iraq at the end of 2014.⁸⁸⁷ As a State from which individuals have sought refuge, Iraq has responsibilities toward returning populations. A 2008 Decree of the Council of Ministers provides for money grants for various classes of returnees, including IDPs and refugees.⁸⁸⁸ In addition, Executive Order 101/S (dated 3 August 2008) makes displacement of any person from their home an offence within domestic anti-terrorism law, and provides certain administrative and legal protections for returnees. However, upon initial searches, there appears to be no provision for the recognition of educational certificates from States of asylum or, indeed, 'catch up' education for children who have been out of school during their displacement. This may be subject to policy directives or documents other than legislation, including the policies and programmes of non-governmental or international organisations working with returnees in Iraq.

The stateless population in Iraq is large and diverse. It is estimated that 5 percent of Syrian refugees in the Iraqi Kurdish Region are stateless,⁸⁸⁹ with an overall estimated population of 120,000 persons who are stateless.⁸⁹⁰ Displaced Palestinians are the longest-standing stateless population in Iraq, and many currently stateless persons were Iraqi citizens who were stripped of their nationality in Ba'athist Iraq on the basis of their political opinion, national identity, and other such factors.⁸⁹¹ Almost half of the stateless

⁸⁸³ UNHCR statistics, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486426&submit=GO>

⁸⁸⁴ Art 21(2), 2005 Constitution of Iraq.

⁸⁸⁵ CPA Order No. 50, CPA/ORD/10 Jan 2004/50.

⁸⁸⁶ Submission by the UNHCR For the OHCHR Compilation Report – Universal Periodic Review: THE STATE OF IRAQ, (2013).

⁸⁸⁷ UNHCR Statistics, available at <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486426&submit=GO>

⁸⁸⁸ Council of Ministers Decree No. 262 of 2008.

⁸⁸⁹ United States Department of State, '2014 Country Reports on Human Rights Practices – Iraq' (25 June 2015), available at: <http://www.refworld.org/docid/559bd56128.html>

⁸⁹⁰ UNHCR statistics, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486426&submit=GO>

⁸⁹¹ United States Department of State, '2014 Country Reports on Human Rights Practices – Iraq', 25 June 2015, available at: <http://www.refworld.org/docid/559bd56128.html>

population in Iraq is from nomadic groups living in rural areas and reportedly face difficulties in accessing public education.⁸⁹²

Since the right to *free* education is tied to citizenship within the 2005 Constitution of Iraq, statelessness has ramifications for education. Although Iraq is not party to the Statelessness Convention or its Protocol, some safeguards against statelessness are contained in domestic legislation: Article 3 of the Iraqi Nationality Law No. 26, dated 7 March 2006, provides that a person is considered an Iraqi citizen if he or she is born to at least one Iraqi parent, or is born in Iraq to unknown parents, with a foundling being deemed to have been born in Iraq. The Minister of the Interior can decide whether certain classes of persons may obtain Iraqi nationality.⁸⁹³ However, Palestinians are denied the right to naturalization in Iraq on the basis of their right to return.⁸⁹⁴ In addition, Law No. 26 of 2006 allows women to pass their nationality to their children. This would reduce, at least in theory, the risk of further statelessness of children in Iraq. However, there are several conditions to this power: the nationality of the father must be unknown or he must be stateless and obtaining the nationality remains subject to the discretion of the Minister of the Interior.⁸⁹⁵

Protection of Educational Facilities

During 2009-2012, 56 documented attacks on educational facilities have been recorded; with a significant increase in 2011 and 2012.⁸⁹⁶ The methods used for these attacks vary from suicide bombings to the use of explosive devices and gunfire. In September 2012, a car laden with explosives caused severe damages to a primary school building, killed five children and injured others.⁸⁹⁷ In 2011 alone, 54 incidents involving improvised explosive devices were aimed at damaging schools and their premises. Most of them were hidden outside the facilities. However, some militia groups also stored explosives inside the school premises.⁸⁹⁸

Militia groups also stored explosives at schools. In 2009, six schoolchildren were killed and 28 students and teachers were wounded by a cache of explosives stored in a school.⁸⁹⁹ Schools were also attacked at night by armed groups who had left threatening messages.⁹⁰⁰ In some incidents, schools were targeted because of the ethnicity or religious affiliation of the majority of the students.⁹⁰¹ In 2014, there were 42 attacks on 6 educational facilities in Iraq, with an increase of such attacks in the lead up to the

⁸⁹² Ibid.

⁸⁹³ Arts 4-5, the Iraqi Nationality Law, No. 26 dated 7 March 2006.

⁸⁹⁴ Ibid, Article 6(II).

⁸⁹⁵ 2015 Concluding Observations of the CRC Committee.

⁸⁹⁶ GCPEA, 'Education under Attacks 2014', p. 4.

⁸⁹⁷ Ibid.

⁸⁹⁸ Ibid.

⁸⁹⁹ Ibid.

⁹⁰⁰ Ibid.

⁹⁰¹ Ibid.

parliamentary election.⁹⁰² In the same year, 28 schools were the target of improvised explosive device attacks.⁹⁰³

The CESCR, in its 2015 Concluding Observations, noted the adverse impact of ongoing armed conflict in Iraq on educational facilities and recommended that the State ensure restoration of school facilities.⁹⁰⁴ The current insecurity has also manifested itself through the poor state of school buildings which have been bombed or destroyed,⁹⁰⁵ with insufficient school resources and sanitation facilities at schools.⁹⁰⁶

The Right to Property

Under IHRL, educational facilities *per se* are not protected but the right of individuals to own property is guaranteed. The protection of Iraqi human rights law offered to educational facilities appears to be limited in the same manner to those that are privately owned, by virtue of the protection of property rights. Article 23(1) of the 2005 Constitution of Iraq provides that “[P]rivate property is inviolable. The owner is entitled to benefit, exploit and dispose of private property within the limits of the law.” Article 23(1) of the 2005 Constitution further provides that “[E]xpropriation is not permissible except for the purposes of public benefit in return for just compensation, and this shall be regulated by law.” In addition, the 2007 Military Penal Code criminalises the misuse of military power for the unlawful or coercive seizure of possessions belonging to another.

Although Article 27(1) of the 2005 Constitution of Iraq provides that public assets are “sacrosanct”, and all citizens bear a duty in respect of their protection, this does not appear to constitute a human rights protection extendable to educational facilities similar to those that are privately owned.

Protection from Direct Attacks

In 2014, a total of 67 attacks on schools and personnel protected under IHL were reported, which, along with attacks on hospitals and protected personnel, resulted in the killing of 56 children and injury of 42.⁹⁰⁷ In the Anbar province (Iraq’s largest), over 1,500 schools have been damaged or destroyed and a large majority of those are owed to being situated on the ‘frontline’ of the conflict – these schools have in some cases been directly targeted by the criminal gangs of Daesh or coalition airstrikes.⁹⁰⁸ There have been several incidents of direct attacks against educational facilities, most especially schools.⁹⁰⁹ ISIL and other armed groups have specifically targeted

⁹⁰² 2015 UNSG PoC Report, para. 17.

⁹⁰³ 2015 UNSG CAC Report, para. 75.

⁹⁰⁴ 2015 Concluding Observations of the CESCR, para. 56.

⁹⁰⁵ *Ibid.*, para. 72(a).

⁹⁰⁶ 2015 Concluding Observations of the CESCR, para. 72(b).

⁹⁰⁷ 2015 UNSG CAC Report, para. 75.

⁹⁰⁸ Reliefweb, ‘1,500 schools damaged or destroyed in Iraq’s Anbar’ (3 August 2015), available at: <http://reliefweb.int/report/iraq/1500-schools-damaged-or-destroyed-iraqs-anbar>

⁹⁰⁹ See, the Report of the UN Secretary General on Children in Armed Conflict, submitted to the UN Security Council on 5 June 2015, UN Doc No. A/69/926–S/2015/409.

educational facilities often on the basis of an ideological objection to the curricula covered or the access to education of girls and women.⁹¹⁰ In 2014, 28 schools were the targets of attack by improvised explosive devices including when they were being used as polling stations for the parliamentary elections in April 2014.⁹¹¹

Under IHL, schools are protected from attacks under the principle of distinction, as civilian objects, a rule of customary IHL also applicable in non-international armed conflicts and thus to both the State and to non-State armed groups. However, civilian objects may be the object of legitimate attacks if they are turned into legitimate military objectives, for example if it is used for military purposes. Educational facilities do not benefit from any additional protection regime, unless they also amount to an object falling under the regime applicable to cultural monuments. Nevertheless, any attack on a military object must abide by the principles of military necessity and proportionality.⁹¹² In addition, under ICL, attacking an education facility may also constitute a war crime or a crime against humanity;⁹¹³ however, for now, Iraq has not signed the ICC Statute.

It is an offence within Iraqi criminal law to wilfully destroy, spoil or seriously damage a public property, punishable by life imprisonment.⁹¹⁴ In addition, intentionally directing attacks against buildings that are dedicated to educational purposes, provided they are not military objectives, is recognised as a war crime and falls within the jurisdiction of the IHCT, which includes in the definition of 'war crimes' committed in the course of both international and non-international armed conflicts:⁹¹⁵ "[I]ntentionally directing attacks against buildings that are dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided that they are not military objects."

The IHCT has convicted persons for ordering and participating in the destruction of over 1,300 primary and secondary schools, as the war crime of intentionally directing attacks against buildings dedicated to educational purposes.⁹¹⁶ It appeared to also find that the buildings were not military objects at the time of attack.⁹¹⁷ The elements of the crime considered by the IHCT in the *Al-Anfal* case were that: i) an attack caused damage or destruction to protected property; ii) the damages or destroyed property was not used for military purposes at the time that they were attacked; and iii) the act was carried out with the intent to damage or destroy such property.⁹¹⁸ The above application of the prohibition of destruction of primary and secondary schools is consistent with the principle of distinction within IHL.

⁹¹⁰ Scoping Study, p. 26.

⁹¹¹ 2015 UNSG CAC Report, para. 75.

⁹¹² Handbook, pp. 192-213.

⁹¹³ Ibid, pp. 213-220.

⁹¹⁴ Art 197(1), The Penal Code 111, of 1969, as amended up to 2010.

⁹¹⁵ Art 13(4)(D), The Law of the Iraqi Higher Criminal Court, Law No. 10 of 2005.

⁹¹⁶ *Al-Anfal* Verdict, IHCT Case No. Number/ 1/ 2nd Criminal / 2006, p. 963 (of English translation); see also J Trahan, 'A Critical Guide to the Iraqi High Tribunal's Anfal Judgement: Genocide against the Kurds', 30 Michigan Journal of International Law, 305 (2008-2009), p. 353.

⁹¹⁷ *Al-Anfal* Verdict, IHCT Case No. Number/ 1/ 2nd Criminal / 2006, p. 591.

⁹¹⁸ Ibid, p. 434.

The protection against destruction or damage to educational facilities in Iraqi military law is wider than in domestic criminal law. Article 61 of the 2007 Military Penal Code provides that “[W]hosoever, without military necessity, destroys or vandalises moveable or immovable assets or cuts trees, or destroys agricultural crops, or orders the same to be executed, is punishable with imprisonment.” Furthermore, Art 61(8) 2007 Military Penal Code prohibits instigating, leading and participating in looting, which are punishable by varying terms of imprisonment.⁹¹⁹

In contrast to the ordinary criminal offence of property damage, the preceding provision imposes no limit on the type of building that is protected, and so both privately- and publicly- owned educational facilities are protected from attack. The prohibition is not absolute, however, and educational facilities would not be protected in the event that they have been transformed into a legitimate military target and their destruction or damage would constitute a military necessity. This is in line with the extent of protection guaranteed to educational facilities under IHL.

Fighting between the Iraq Security Forces, including its associated militia and the Kurdish *Peshmerga* forces, and with air support from the international coalition led by the United States, and ISIL and its affiliates/associated groups, included indiscriminate shelling of civilian areas by all parties.⁹²⁰ The use of explosives or causing death in the commission of the offence of wilful destruction, spoiling or damage of public property is an aggravating feature that attracts the death penalty.⁹²¹

At least 87 children were killed and 211 injured in improvised explosive device and suicide attacks.⁹²² As an example, a vacated high school building in Salah al-Din, was demolished by an improvised explosive device allegedly planted by ISIL because it had previously been used as a military base by the Iraqi Security Forces.⁹²³

A reported total of 23 schools in various provinces of Iraq were “affected by military use” by both Iraqi Security Forces and ISIL.⁹²⁴ Three schools were converted to military use by ISIL, two by the Iraqi State Security Forces, and one by the Kurdish *Peshmerga* forces.⁹²⁵

Remedies and Mechanisms

Access to justice is generally protected within Iraq. Article 19(3) of the 2005 Constitution of Iraq provides that litigation is “a protected and guaranteed right for all” and Article 19(6) states that, “it is the right of every individual to be treated with justice in judicial and administrative proceedings”.

⁹¹⁹ Arts 61(8) – 61(9), 2007 Military Penal Code.

⁹²⁰ 2015 UNSG CAC Report, para. 71.

⁹²¹ Art 197(1), The Penal Code 111, of 1969, as amended up to 2010.

⁹²² 2015 UNSG CAC Report, para. 74.

⁹²³ *Ibid.* para. 75.

⁹²⁴ 2015 UNSG CAC Report, para. 75.

⁹²⁵ *Ibid.*

Human Rights Remedies and Mechanisms

Since Iraq has ratified none of the Optional Protocols to the core human rights treaties relating to individual communications procedures, individuals subject to Iraq's jurisdiction have no recourse to UN Treaty Bodies in respect of education-related violations, in case they do not obtain reparation at the domestic level. The absence of a regional court of human rights is another limitation to supra-national remedies for victims of education-related violations in Iraq.

Domestic Human Rights Mechanisms

At the domestic level, there are several national human rights institutions in Iraq, some of which are competent to adjudicate human rights claims.

By Order No. 60 of 2004, the CPA created the Iraqi Ministry of Human Rights.⁹²⁶ It envisaged the creation and operation of institutions "to address the atrocities committed by the Ba'athist regime" as well as ensuring that the Iraqi people are educated and knowledgeable on human rights, including the standards and norms of IHRL.⁹²⁷ The responsibilities of the Ministry were to develop suitable programmes to establish services, initiatives and studies that create an environment that leads to the protection of human rights in Iraq and to work to halt human rights violations in Iraq. It also had an advisory function in respect of legislation proposed by other ministries and had to cooperate with judicial institutions. CPA Order No. 60 of 2004 also provided for a transitional minister whose main focus was to contribute to the development and implementation of de-Ba'athification.

In 2015, the Ministry of Human Rights was removed through a reduction of the number of cabinet ministers. Some of its tasks were taken over by the independent Iraqi High Commission for Human Rights (IHCHR), which had been created by Law No. 53 of 2008.⁹²⁸ The IHCHR has the duty to receive complaints from individuals, groups, and civil society institutions, in respect of violations occurring both before and after the enactment of the law.⁹²⁹ It is obliged to undertake initiative investigations regarding human rights violations, verify the received complaint and undertake further investigations if necessary.⁹³⁰ It is also required to refer allegations of human rights violations to the Public Prosecutor for the purposes of investigation, who is then required to inform the IHCHR of the outcome of the investigation.⁹³¹ In respect of detention centres, the IHCHR is empowered to conduct visit, without warrant, to document any human rights violations and inform specialised bodies in case legal procedures must be instigated. The work of the IHCHR is supervised by a Council of Commissioners, which is accountable to the Council of Representatives.⁹³²

⁹²⁶ CPA Order No. 60 is available at: www.iraqcoalition.org/regulations/20040220_CPAORD60.pdf

⁹²⁷ Section 3(1), CPA Order No. 60 of 2004, Doc. No. CPA/ORD/19 Feb 2004/60.

⁹²⁸ Art 4, Law No. 53 of the Iraqi High Commission of Human Rights of 2008 (the 2008 IHCHR Law); Art 102 Constitution of Iraq.

⁹²⁹ Ibid, Art 5.

⁹³⁰ Ibid.

⁹³¹ Art 5, 2008 IHCHR Law.

⁹³² Ibid, Part 3 and Art 12.

Although the IHCHR is centrally located, a Notice of 1 January 2008 established representation offices of the IHCHR at the governorate level.⁹³³ In addition, a human rights division was established within the Iraqi Ministry of Justice in 2013.⁹³⁴ In 2014, an office mandated to receive and investigate complaints received from the IHCHR was established within the office of the Head of the General Prosecutor. The office, created by the Iraqi High Judicial Council, is competent to investigate allegations of human rights violations and is under a duty to report to the IHCHR on development, ensure proper documentation and follow up of cases.⁹³⁵

While the independence of commissions, including the IHCHR, is constitutionally enshrined, their work is subject to the monitoring of the Council of Representatives.⁹³⁶ Its independence in practice has thus been subject to criticism, highlighting its lack of independence from political factions (due to the political affiliation of its members and external interferences such as governmental authorities), as not conform with the Principles relating to the Status of National Institutions (the Paris Principles).⁹³⁷ In addition, the work of the IHCHR has been deemed particularly opaque, which hinders any assessment of its work.⁹³⁸ It has been suggested that a code of conduct and ethics should be developed to foster a culture of “independence, transparency, and accountability”.⁹³⁹

Judicial Review of Administrative Decisions

The 2005 Constitution of Iraq prohibits the stipulation in law that any administrative action or decision is immune from appeal.⁹⁴⁰

The right to higher education is statute barred from adjudication by the courts.⁹⁴¹ Disputes arising in respect of admission, transfer, examinations, disciplinary sanctions, or objections relating to bestowing titles, fall strictly within the remit of the Ministry of Education, which is the only competent body to hear claims of this sort.⁹⁴² The absence of judicial review of such disputes has been found by the Federal Supreme Court not to

⁹³³ Notice, ‘Opening Offices of the Ministry of Human Rights in the Governorates’, of 1 January 2008.

⁹³⁴ Regulation No. 4 of 2013.

⁹³⁵ UNAMI/OHCHR, Human Rights Report, p. 28.

⁹³⁶ Art 102, 2005 Constitution of Iraq.

⁹³⁷ See Alkarama Foundation, Association of Human Rights Defenders in Iraq, General Federation of Iraqi Women, Human Rights Division at the Association of Muslims Scholars in Iraq, Iraqi Commission for Human Rights (Iraqi-CHR) and Organisation for Justice & Democracy in Iraq (OJDI), ‘Iraq: High Commission for Human Rights, The Iraq’s National Human Rights Institution before the International Coordinating Committee of NHRIs’ (19 December 2014), available at:

en.alkarama.org/documents/Alk_IRQ_NHRI_19122014_EN_Final.pdf

The Principles relating to the Status of National Institutions (the Paris Principles) were adopted by UN General Assembly resolution 48/134 of 20 December 1993.

⁹³⁸ Ibid.

⁹³⁹ Institute for International Law and Human Rights, ‘Iraq’s High Commission for Human Rights: Bylaws, Regulations and Legal Framework’ (June, 2012), p. 217, available at: lawandhumanrights.org/documents/ihchr_EN.pdf

⁹⁴⁰ Art 100, 2005 Constitution of Iraq.

⁹⁴¹ Art 13 of the Law No.57 of 2002, amending Law No.13 of 1996.

⁹⁴² Ibid.

be a failure to allow appeal, since the decisions issued by anybody subsidiary to the Ministry of Higher Education and Scientific Research may be appealed before the Minister.⁹⁴³ Specific instances of the courts' interference with issues within the remit of the Ministry of Higher Education and Scientific Research that have been found to be outside the jurisdiction of the courts include cancellation of certificates issued by the Minister.⁹⁴⁴

Article 89 of the 2005 Constitution of Iraq provides for the establishment of a Supreme Constitutional court. However, this has not yet been established, owing to political differences on the composition of the Court; in particular, there are differences as to the inclusion of Islamic jurisprudence experts among its members. The current Court holding supervisory jurisdiction of the 2005 Constitution of Iraq was formed on the basis of the Transitional Administrative Law, and has yet to be re-formed on the basis of the Iraqi constitutional law currently in force.

Criminal and Civil Law Remedies and Mechanisms

A number of the education-related violations reported and analysed in this case study may also constitute international crimes, such as genocide, war crimes and crimes against humanity. Although Iraq is not party to the ICC Statute, the prohibition of genocide, war crimes, and crimes against humanity, are incorporated into domestic legislation. The relevant domestic provisions reproduce, almost exactly, the corresponding articles of the ICC Statute. Law No. 10 of 2005 created the IHCT, which has jurisdiction over these categories of crime, as well as select crimes in Iraqi domestic law, committed between 17 July 1968 and 1 May 2003 in Iraq or elsewhere by an Iraqi or non-Iraqi resident of Iraq. The crime of genocide is also recognised within Iraqi domestic legislation, with express reference to Iraq's obligations as a party to the Genocide Convention. The crime of genocide falls within the jurisdiction of the IHCT in the same circumstances as war crimes and crimes against humanity. Immunity may not be invoked against prosecution for the crime of genocide, war crimes, and crimes against humanity.

Two major cases emerged from the IHCT before the suspension of its operation in 2012: the *Dujail* case and the *Al-Anfal* case. In both of these, the tribunal applied international criminal law and Iraqi domestic criminal procedure.⁹⁴⁵ International criminal law was expressly incorporated, in addition to the setting out of international crimes within the jurisdiction of the tribunal through the jurisprudence of international courts,⁹⁴⁶ and available defences.⁹⁴⁷ While the judgments were noted for their application of both substantive international criminal law and procedural domestic law, including findings of violations of both domestic and international criminal law as bases,⁹⁴⁸ they were widely criticised for not fully and consistently examining the factual

⁹⁴³ Decision of the Federal Supreme Court, Decision No. 1, 2015.

⁹⁴⁴ Decision of the Federal Court of Cassation, Decision No. 108, 2013.

⁹⁴⁵ Art 16, 2005 Statute of the IHCT.

⁹⁴⁶ *Ibid*, Art 17(2).

⁹⁴⁷ *Ibid*, Art 17(3).

⁹⁴⁸ See M Newton, 'Iraq Special Tribunal', in *Max Planck Encyclopaedia of Public International Law*, Vol. VI, 371 (Oxford: OUP, 2012), p. 373.

and legal bases of individual criminal responsibility when leading to a finding of guilt and insufficient fair trial guarantees.⁹⁴⁹ Unlike similar special tribunals, the IHCT did not conduct trials in absentia.⁹⁵⁰

It is clear, from the *asbab al-mujiba* of the 2005 Statute of the IHCT that establishing a proven record of violations committed during the period of rule of the Ba'ath Party in Iraq was the primary motivation for the tribunal.⁹⁵¹ It provides that,

In order to expose the crimes committed in Iraq from July 17, 1968 until May 1, 2005, against the Iraqi people and the peoples of the region and the subsequent savage massacres, and for laying down the rules and punishments to condemn after a fair trial the perpetrators of such crimes for waging wars, mass extermination and crimes against humanity, and for the purpose of forming an Iraqi national high criminal court from among Iraqi judges with high experience, competence and integrity to specialise in trying these criminals,

And in order to reveal the trust and the agonies and injustice caused by the perpetrators of such crimes, and for protecting the rights of many Iraqis and alleviating injustice and for demonstrating heaven's justice as envisaged by the Almighty God,

This law has been enacted.

The punitive and retributive powers of the IHCT include the imposition of sentences, taking into account such factors as, "the gravity of the crime, the individual circumstances of the convicted person, guided by judicial precedents and relevant sentences issued by international criminal [tribunals]".⁹⁵² The IHCT is also competent to seize any material or goods prohibited by law,⁹⁵³ as well as order the forfeiture of proceeds, property or assets derived directly or indirectly from a crime, without prejudice to any third party claims.⁹⁵⁴

The 2005 Statute of the IHCT also provided for remedies beyond criminal accountability, as it provides for the adjudication of civil claims in respect of harm suffered as a result of actions constituting a crime within the jurisdiction of the tribunal. Article 22 provides that,

Families of victims and Iraqi persons harmed may file a civil suit before this court against the accused for the harm they suffered through their actions constituting crimes according to the provisions of this Statute. The court shall have the power to adjudicate these claims in accordance with Iraqi Criminal Procedure Code No. 23 for the year 1971, and other relevant laws.

In the *Anfal* case, the IHCT made reference to the case of Germany, in which the new government assumed responsibility (as a State) for the wrongful acts of its predecessors, allowing for civil claims to be filed by victims in local courts.⁹⁵⁵ It accordingly expressly

⁹⁴⁹ See J Trahan, 'A Critical Guide to the Iraqi High Tribunal's *Anfal* Judgement: Genocide against the Kurds', 30 Michigan Journal of International Law, 305 (2008-2009).

⁹⁵⁰ See the discussion on the Special Tribunal for Lebanon, discussed in the case Study on Lebanon.

⁹⁵¹ The *asbab al-mujiba* are the justificatory reasons for enacted legislation. They usually invoke constitutional provisions and principles as the basis for the legislation and are an integral part of the text of the legislation.

⁹⁵² Art 24(5), 2005 Statute of the IHCT.

⁹⁵³ Ibid, Art 24(7).

⁹⁵⁴ Ibid, Art 24(6).

⁹⁵⁵ IHCT, *Al-Anfal* Case, Ref. No: 1/ (C) 2nd/ 2006, pp. 419-420.

preserved the right of compensation, for all aggrieved by the Al-Anfal operations beginning 10 March 1987, before civil courts within their administrative districts of residence.⁹⁵⁶ Compensation was expressly stated to cover “all physical and moral damages”.⁹⁵⁷

Other ‘ordinary’ offences also exist in Iraqi domestic law, into which may fall education-related violations including killing or injuring students and education staff, torture and ill-treatment, deprivation of liberty including abduction, expropriation of property, denial of medical assistance, targeting of educational facilities as well as targeting of students and education staff *per se*.⁹⁵⁸

The domestic criminal courts of Iraq are competent to hear prosecutions of any person in respect of an offence committed within Iraqi territory. Although the 1969 Penal Code, as amended, provides for the exercise of universal jurisdiction, it appears to be a limited form of extended (*non rationae personae*) jurisdiction, namely that the domestic criminal courts have competence over certain offences committed by individuals prior to their entry into Iraqi territory.⁹⁵⁹ The domestic criminal justice system has been found to be under-funded and lacking sufficient trained personnel and capacity to implement international standards, especially in respect of due process and detention.⁹⁶⁰

In Iraq, criminal offences automatically give rise to concurrent criminal and legal proceedings.⁹⁶¹ Since criminal proceedings must be initiated by a victim, a relative, or a witness, concurrent civil proceedings are initiated at the same time. In the event that the claimant withdraws his criminal charges, he may file the civil claim before the civil court unless he declares his renunciation of that right.⁹⁶² Notably, the withdrawal of a civil claim does not impact the criminal case.⁹⁶³ In the event that a general amnesty is declared, and the proceedings against an accused are stayed, the victim of an offence has the right to refer to the Civil Court.⁹⁶⁴

Any person who has “suffered direct damage from any crime has the right to bring a civil case against the accused and the person responsible under civil law for the actions of the accused”.⁹⁶⁵ Civil proceedings in Iraq are governed by the Iraqi Civil Code.⁹⁶⁶ The Iraqi Civil Code also sets out a hierarchy of sources of law to be applied: if the text of the Civil Code does not contain applicable rules, the court shall make a ruling upon the rules of custom, then principles of Islamic law (without distinguishing between the rulings of the *madhahib*), and then by the principles of justice.⁹⁶⁷ Courts must be guided

⁹⁵⁶ IHCT *Al-Anfal* Case, Ref. No: 1/ (C) 2nd/ 2006, p. 963.

⁹⁵⁷ *Ibid*, pp. 806, 962.

⁹⁵⁸ See above, on the relevant sections in, ‘Protection of Students and Staff’ and ‘Protection of Educational facilities’.

⁹⁵⁹ Art 13, 1969 Penal Code, as amended.

⁹⁶⁰ 2014 UNAMI/OHCHR HR Report, p. 2.

⁹⁶¹ Art 9(1), Law No. 23 of 1971 on Criminal Procedure.

⁹⁶² *Ibid*, Art 23.

⁹⁶³ *Ibid*, Art 9(6).

⁹⁶⁴ *Ibid*, Art 304.

⁹⁶⁵ *Ibid*, Art 10.

⁹⁶⁶ Art 1(1), Law No. 40 of 1951 (the Iraqi Civil Code).

⁹⁶⁷ *Ibid*, Art 1(2).

by Iraqi judicial decisions and Iraqi jurisprudence and may also make reference to those in any other jurisdiction, “whose laws converge with Iraqi laws”.⁹⁶⁸

There are also provisions specific for damages for education-related violations occasioned in the course of military operations and acts of terror. The 2009 Compensation Law for Military Operations and Military Mistakes and Terrorist Operations (the 2009 Compensation Law) provides for the compensation of “every persons that has been harmed as a result of military operations and military errors and terrorist operations”,⁹⁶⁹ with retroactive effect from 2003.⁹⁷⁰ The scope of the 2009 Compensation Law is limited to those affected by operations and errors (both military and terrorist) which took place in Iraq, during and after the fall of the Ba’athist regime.⁹⁷¹ In addition to setting down the quantum of damages available in cases of death, total or partial disability, injury requiring temporary treatment and damage to property, there is a specific head to compensate students and education staff who suffered harm. Article 14 defines, broadly, those eligible for compensation as,

Students who have been deprived of study in school, in accordance with the guidelines set by the relevant authorities, for reasons related to the subject of this law;⁹⁷² and

Staff who were forced to leave their jobs for reasons related to the subject of this law.⁹⁷³

The decision making authority lies with a Central Committee, which has representation in local governorates. The Central Committee is a multi-disciplinary panel, which is presided over by a judge appointed by the Higher Judicial Council (HJC). While the form of damages is largely monetary, Article 13 provides for the transfer of a parcel of residential land to beneficiaries in cases of death or total or partial disability. It is noteworthy that beneficiaries of any settlement include issues, parents and siblings of a person who has suffered harm. A decision by the Central Committee is subject to appeal, within 30 days of the decision.⁹⁷⁴ Appeal of such decisions is to a multi-disciplinary committee presided over by a judge.⁹⁷⁵

This law has been amended 2015 has included amendment law to compensation act becomes affected by hostilities, military also included the amendment of article I to limit compensation to an aggrieved citizen only.

It appears that the Iraqi State puts more emphasis on punitive measures against perpetrators rather than fully addressing the needs and entitlements of victims of violations, except with regard to certain crimes. As an example, the Government of Iraq has persistently defended its continuing use and implementation of death sentences – particularly in respect of terror-related offences – as, *inter alia*, a form of justice for the

⁹⁶⁸ Ibid, Art 1(3).

⁹⁶⁹ Law No. 20 of 2009.

⁹⁷⁰ Art 1, 2009 Compensation Law.

⁹⁷¹ Ibid, *al-asbab al-mujiba*.

⁹⁷² Ibid, Art 14(1).

⁹⁷³ Ibid, Art 14(2).

⁹⁷⁴ Ibid, Art 7.

⁹⁷⁵ Ibid, Art 6.

victims of armed violence and terrorism.⁹⁷⁶ In addition, compensation and the restitution of property appear to be the only considered means of reparation, which may not provide entire satisfaction to a victim who may require rehabilitation measures, for example, nor support the non-repetition of violations.

Transitional Justice Mechanisms and Reparations

A significant element of the process of transitional justice in Iraq was that of de-Ba'athification established by the CPA.⁹⁷⁷ By the 2008 Law of the Supreme National Commission for Accountability and Justice (the 2008 Accountability Law), the responsibility for concluding the process of de-Ba'athification was passed to a newly established Supreme National Commission for Accountability and Justice (the Accountability Commission).⁹⁷⁸ Article 3 of the 2008 Accountability Law specifies that the Commission's aim is to prevent the return to power of the Ba'ath Party, cleanse the state (including its various institutions) of the party, refer any former members for criminal investigation, enable victims to secure compensations for violations attributable to the party through referral to competent authorities, participate in restitution of public assets falsely seized by the party and contribute to truth-telling by "documenting all of the crimes and illegal practices committed by members of the Ba'ath Party and its repressive agencies [...] in order to strengthen the future generations against falling into oppression, tyranny and repression".⁹⁷⁹

An important development, brought about by the 2008 Accountability Law, is to transfer persons who have been identified as former Ba'ath Party members, and dismissed for the same, to retirement procedures.⁹⁸⁰ This goes a long way in countering the violation of the right to work experienced by many education staff during de-Ba'athification under the CPA. The 2008 Accountability Law thus redirected de-Ba'athification toward a procedure which could be sensitive to the motivations of persons under investigation for joining the Ba'ath Party, the contrary of which was one of the major criticisms of de-Ba'athification under the CPA.

⁹⁷⁶ See UNAMI/OHCHR, 'Report on the Death Penalty in Iraq' (2014), p. 1.

⁹⁷⁷ See above, 'Education under the CPA'.

⁹⁷⁸ Art 2(1), 2008 Accountability Law.

⁹⁷⁹ Ibid, Art 3.

⁹⁸⁰ Ibid, Chapter 4. According to Article 15, any decision by the Accountability Commission is subject to appeal to the Cassation Chamber.

Concluding Remarks

The adoption of a new rights-focused Constitution in 2005 has contributed to the development of a strengthened legal framework for the protection of the right to education. Ongoing insecurity and armed conflict have not only resulted in education-related violations in Iraq but also frustrate, to a significant extent, the implementation of the domestic protection of education in all its facets. The presence, operations and actions of non-State armed groups pose a significant threat to the protection of education, even where the State's domestic legal system is compliant with its international legal obligations.

The protection of students and education staff continues to flail, however, in light of the continuing armed conflict in Iraq and the strength, territorial control and number of non-State armed groups in the territory. In particular, abductions of students by non-State armed groups, the co-opting of students into such groups, and the torture and ill-treatment (especially through sexual and gender-based violence) constitute some of the most serious violations against students. While the domestic legal system appropriately protects against such violations by State actors, there is a protection gap in respect of the acts of non-State armed groups. This is not least owing to the nature and force of non-State armed groups in Iraq, including ISIL.

In respect of the protection of educational facilities, the State faces significant challenges not only in light of the number and nature of non-State armed groups, but also the severity of continuing hostilities in April 2016. While the right to property and public property are translated through to criminal prohibitions of damage and destruction to property, these offences are of limited application. There are opportunities to increase the State's protection of educational facilities by increased efforts to restore damaged educational facilities.

The continuing efforts of the State, international and non-governmental organisations to improve the rule of law within Iraq are indispensable to the full and effective protection of education in insecurity and armed conflict. The national human rights institution, the IHCHR, may also play an important role in upholding the right to education, by providing recommendations to the government with regard to the protection of education and drawing its attention to education-related violations. It may also support the effective implementation of legislation protecting education and encourage the ratification of international instruments, such as the Optional Protocol to the ICESCR, which allows for remedies to victims of education-related violations at the international level. However, in order to be effective, the IHCHR must ensure that it abides by the Paris Principles, in particular that it works in an independent and transparent manner.

3.3. LEBANON

3.3.1. Introduction

Longstanding sectarian tension resulting in armed conflict and sustained insecurity has shaped the structure of education in Lebanon. While public schools suffered greatly during the non-international armed conflict between 1975 and 1990 in Lebanon, private and confessional (religious) schools have thrived and have served to perpetuate segregation along sectarian lines. The impact of the international armed conflict with Israel in 2006, too, has left many marks on the education system in Lebanon. Education has not only been adversely impacted by armed hostilities and insecurity occurring within Lebanese territory but is understood to contribute to latent conflict in the State; the normalcy of confessional schools has been suggested to exacerbate sectarian tension, which still underpins the state of continuing insecurity.⁹⁸¹

Education during the Armed Conflict in Lebanon (1975 – 1990)

The armed conflict in Lebanon was complex both in terms of parties and causes, with an estimated total of 25 to 30 different belligerent groups.⁹⁸² As with much of public infrastructure in Lebanon, the education system suffered significantly during the 15 year non-international armed conflict between 1975 and 1990. Public education collapsed.⁹⁸³ Although private schools replaced these, and some remained operative during hostilities, they were directly targeted, occupied by parties to the conflict, and used for the purposes of promulgating propaganda and forced recruitment of children and young persons.⁹⁸⁴ Education-related violations punctuated the 15 years of armed fighting, with a significant toll on life (71,328 people were killed, of which 98 percent were civilians), and on education (156 public schools and 272 private schools were destroyed).⁹⁸⁵ Hostilities came to an end in 1990, following the adoption of the 1989 National Reconciliation Charter of Lebanon, in Ta'if, Saudi Arabia (the Ta'if Accord), which brought some education-related commitments.⁹⁸⁶

Education during the Hostilities with Israel (1993, 2006)

In 1993, Israel conducted military strikes over the south of Lebanon, in response to rocket attacks from non-State armed groups. Hostilities lasted for seven days. It has been reported that these strikes targeted civilians and included education-related violations; 118 Lebanese civilians were killed and 500 wounded and Israeli forces cut

⁹⁸¹ UNICEF, 'The Role of Education in Peacebuilding: Lebanon' (2011), p. 36; see also N Freyha, 'The Negative Face of the Lebanese Education System', (2009).

⁹⁸² A Assal, and E. Farrell, 'Attempts to make meaning from terror: Family, play, and school in time of civil war', *Anthropology and Education Quarterly* (1992), 23(4), p. 276.

⁹⁸³ Z Zakharia, 'How Schools Cope with War: A Case Study of Lebanon', in D Burde *et al* (eds) *Education in Emergencies and Post-Conflict Situations: Problems, Responses and Possibilities* (New York: Society for International Education, 2004), p. 108.

⁹⁸⁴ *Ibid.*

⁹⁸⁵ ICTJ, 'Lebanon's Legacy of Political Violence' (2013), p. 70.

⁹⁸⁶ See further, 'Transitional Justice Mechanisms and Reparations', below.

water and electricity supply, as well as destroying schools and other civilian infrastructure.⁹⁸⁷

In 2006, armed hostilities broke out between Hezbollah, a non-State armed group operating in the south of Lebanon, and Israel. The impact of hostilities, which lasted for 34 days, were mostly acutely felt in southern Lebanon, close to the international border with Israel. It was reported that approximately 50 schools were completely destroyed and almost 300 partially damaged, owing to unexploded ordnances.⁹⁸⁸

Education during Insecurity in Contemporary Lebanon

In 2016, the situation in Lebanon is one of insecurity, characterised by the use of improvised explosive devices, urban clashes, and cross-border shelling from Syria.⁹⁸⁹ This is in addition to ongoing clashes between Lebanese State Security Forces and armed groups, especially in the north of the country.⁹⁹⁰ Border security continues to pose problems, not only with respect to Syria, but also the Lebanese-Israeli border.⁹⁹¹ Despite instances of armed violence between Lebanese State Security Forces and armed groups, these have not reached the threshold of an armed conflict within the meaning of IHL. Contemporary insecurity in Lebanon has given rise to several education related violations and disruptions to education including the use of 97 schools, in 2014, for shelter in the north of Lebanon, depriving 20,000 students of education.⁹⁹² There was additionally an increased number of children identified to be associated with armed groups and armed forces including armed factions in Palestinian camps and armed parties operating in Syria.⁹⁹³ Sporadic armed clashes amongst armed groups in Lebanon, especially in urban areas, remain of particular concern.⁹⁹⁴

Non-State Armed Groups Operating in Lebanon

The provision of education is complicated by the activities of non-State armed groups such as Hezbollah, as well as Palestinian factions such as the Palestine Liberation Organization (PLO) like Fatah, the Democratic Front for the Liberation of Palestine, or the Popular Front for the Liberation of Palestine.⁹⁹⁵ Tensions involving these groups have contributed to continued insecurity, which has been exacerbated by the ongoing armed conflict in neighbouring Syria.

⁹⁸⁷ ICTJ, 'Lebanon's Legacy of Political Violence' (2013), p. 73.

⁹⁸⁸ UNICEF, 'The Role of Education in Peacebuilding: Lebanon' (2011), p. 36.

⁹⁸⁹ Report of the UNSG to the Security Council on Children and Armed Conflict, 5 June 2015, UN Doc. No. A/69/926-S/2015/409, para. 112.

⁹⁹⁰ Ibid.

⁹⁹¹ For example, in January 2015, Israel launched air strikes on Syrian side of the Golan, killing Hezbollah fighters and an Iranian general. Several clashes ensued across the Israeli-Lebanese border.

⁹⁹² Report of the UNSG to the Security Council on Children and Armed Conflict, 5 June 2015, UN Doc. No. A/69/926-S/2015/409, para. 113.

⁹⁹³ Ibid, para. 112.

⁹⁹⁴ Ibid, para. 113.

⁹⁹⁵ *United Nations Human Rights Mechanisms and the Right to Education in Insecurity and Armed Conflict*, (Geneva Academy/PEIC, 2013), p. 104, where the report advocates "greater engagement on the protection of education" with ANSAs rather than simply disregarding such entities for lacking legitimacy.

While the presence of non-State armed groups present serious threats of education-related violations in Lebanon, through their armed activities, they may also represent opportunities to enhance the protection of education; some of these armed groups evidence a willingness to abide by international legal standards and engage on protection matters. In 2013, the PLO Lebanon and the Forces of the Palestinian National Coalition pledged not to use children in hostilities, in a declaration on the protection of children in armed conflict.⁹⁹⁶ Other examples may be found in relation to the Palestinian refugee camps established in Lebanon.⁹⁹⁷ For example, a legal training centre was established in such a camp, which operates as a base for PLO Legal Support Unit experts and is responsible for training members of armed groups on these matters. Following a separate request from a partner organisation, Geneva Call has also contributed to the development of a centre for young girls at one of the Palestinian refugee camps.⁹⁹⁸

Nevertheless, the conditions in the Palestinian refugee camps are challenging for the provision of education, given that they are overcrowded and subject to tensions among various armed groups, as well as tensions between armed groups and the Lebanese Armed Forces. Camps are generally understood to be subject to contested jurisdiction; the Lebanese Armed Forces are not permitted to enter Palestinian camps and, as a result, Palestinian factions hold *de facto* authority over these self-confined areas within Lebanese territory.⁹⁹⁹ Persistent socio-economic deprivation in camps is also a challenge for both the Lebanese and Palestinian authorities and a major factor for radicalisation.

3.3.2. Lebanon and International Law Protecting Education

Upon ratification, international treaties are incorporated into domestic law by operation of Article 2 of the Code of Civil Procedure. International law and treaties become effective once signed by the President and ratified by the Council of Ministers.¹⁰⁰⁰ National courts are required to give priority to provisions of international law when national provisions are inconsistent or incompatible with it. The only exception is when a treaty provision is not self-executing and requires the Lebanese Parliament to designate a domestic organ responsible for its implementation.¹⁰⁰¹ The question of whether self-executing provisions of international law may be given direct effect by

⁹⁹⁶ This Declaration can be found on Their Words, the database of Geneva Call, at: <http://theirwords.org/?country=LBN>

⁹⁹⁷ There are over 450,000 Palestinian refugees with an influx of approximately 50,000 more also due to the conflict in Syria. The Lebanese Armed Forces and Internal Security Forces (ISF) had refrained from entering Palestinian camps until May 2007, when clashes erupted between the Lebanese Army and the so-called Islamist armed group 'Fateh El Islam' in Nahr El Bared Camp (NBC) and turned into a five-month battle that resulted in the total destruction of NBC and its infrastructure, see ICTJ, 'Failing to Deal with the Past: What cost to Lebanon?' (2014).

⁹⁹⁸ Geneva Call, 'Annual Report 2014: Protecting Civilians in Armed Conflict' (May 2015), p. 29.

⁹⁹⁹ They are controlled by non-State armed group-led 'Popular Committees', with internal security for the camps being provided by the Palestinian National Security Forces (PNSF), which are controlled by the PLO.

¹⁰⁰⁰ Art 52, 1926 Constitution of Lebanon.

¹⁰⁰¹ See *STL Interlocutory Decision on Applicable Law*, STL Appeals Chamber (2011), para. 71 *et seq.*

Lebanese national courts, has been the subject of some debate in domestic litigation.¹⁰⁰² The Special Tribunal for Lebanon (STL), which was set up to investigate and prosecute those responsible for the assassination of former Prime Minister Rafic Hariri and 22 other individuals, has held, however, that Article 2 of the Code of Civil Procedure is conclusive on this matter and that self-executing provisions are automatically “binding upon all individuals and officials of the State”.¹⁰⁰³ In addition, the 1926 Constitution of Lebanon commits the Lebanese State to the Universal Declaration of Human Rights.¹⁰⁰⁴

Lebanon is a member of several international organisations including the UN, the LAS, and the OIC. As such, it is bound by the charters of each.

International Human Rights Obligations

Lebanon has ratified six out of the nine core international human rights treaties. It is not a party to the ICPED, which it has only signed, the CRPD, which it has also only signed, and the CMW, which it has neither signed nor ratified.¹⁰⁰⁵

Lebanon is a party to:

- the ICCPR.¹⁰⁰⁶ It is not party to its Optional Protocol relating to individual complaints or its Second Optional Protocol aimed at the abolition of the death penalty. It has had poor compliance with the reporting requirements of the ICCPR, having only submitted one report to the Human Rights Committee in 1996, which issued its latest Concluding Observations in 1997.¹⁰⁰⁷
- the ICESCR,¹⁰⁰⁸ but not its Optional Protocol on a communications procedure. It has had poor compliance with the reporting requirements of the ICESCR, having submitted reports to the CESCR in 1993,¹⁰⁰⁹ 1999, and 2015.¹⁰¹⁰ The latest Concluding Observations of the CESCR were issued in 1999,¹⁰¹¹ with 2015 State report being considered in 2016.
- the CRC,¹⁰¹² and the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography.¹⁰¹³ It has signed but not ratified the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict.¹⁰¹⁴

¹⁰⁰² See, for example, Decision No. 684 of 1952 of the Court of Appeals of Beirut, Civil Section, in *Judicial Report*, pp. 537-539.

¹⁰⁰³ See *STL Interlocutory Decision on Applicable Law*, para. 71 *et seq.*

¹⁰⁰⁴ Preamble, 1926 Constitution of Lebanon.

¹⁰⁰⁵ Signature on 6 February 2007, UN Treaty Collection, MTDSG, Chapter IV.16.

¹⁰⁰⁶ Ratification on 25 January 1971: UN Treaty Collection, MTDSG, Chapter IV, 4.

¹⁰⁰⁷ Lebanon State Report to the Human Rights Committee, 22 November 1996, UN Doc. No. CCPR/C/42/Add.14.; Concluding Observations of the Human Rights Committee, 5 May 1997, UN Doc. No. CCPR/C/79/Add.78

¹⁰⁰⁸ Accession on 3 November 1972, UN Treaty Collection, MTDSG, Chapter IV, 3.

¹⁰⁰⁹ Lebanon State Report to the CESCR, 6 July 1993, UN Doc. No. E/1990/5/Add.16.

¹⁰¹⁰ Lebanon State Report to the CESCR, 12 August 2015, UN Doc. No. E/C.12/LBN/2.

¹⁰¹¹ Concluding Observations of the CESCR, 8 December 1999, UN Doc. No. E/C.12/1993/10.

¹⁰¹² Ratification on 14 May 1991, UN Treaty Collection, MTDSG, Chapter IV, 11.

¹⁰¹³ Ratification on 8 November 2004, UN Treaty Collection, MTDSG, Chapter IV, 11.c.

¹⁰¹⁴ Signature on 11 February 2002, UN Treaty Collection, MTDSG, Chapter IV, 11.b.

Lebanon's has submitted reports in 1995,¹⁰¹⁵ 2000,¹⁰¹⁶ 2005,¹⁰¹⁷ and 2014.¹⁰¹⁸ The latest Concluding Observations of the CRC Committee in relation to Lebanon were issued in 2006.¹⁰¹⁹

- the CAT, as well as its Optional Protocol which establishes a preventive system of regular visits to places of detention.¹⁰²⁰
- the CERD,¹⁰²¹ but it has entered a reservation against the ICJ's jurisdiction over disputes under it. Lebanon has submitted a report on its implementation to the CERD Committee in 2015.
- the CEDAW, but not its Optional Protocol on a communications procedure.¹⁰²² Lebanon made reservations to Article 9 (2), and Article 16 (1) (c) (d) (f) and (g) (regarding the right to choose a family name). It has submitted reports to the CEDAW Committee in 2004,¹⁰²³ 2005,¹⁰²⁴ 2006,¹⁰²⁵ and 2014.¹⁰²⁶ The latest Concluding Observations of the CEDAW Committee in relation to Lebanon were issued in 2015.¹⁰²⁷

As a member of the Arab League, Lebanon is party to the ACHR.¹⁰²⁸ It is also a member of the OIC, which adopted the CRCI in 2005, but this instrument is not yet in force.

Lebanon has generally accepted international human rights treaties without substantive reservation, except for the ones made to CEDAW.¹⁰²⁹ As already mentioned in the case of Egypt and Iraq, reservations to core treaty provisions, such as the one Lebanon made in relation to Article 16 of the CEDAW, are deemed impermissible by the UN Treaty Bodies.¹⁰³⁰

In addition to the six core UN human rights treaties and the LAS instrument mentioned above, Lebanon is also party to the Convention on the Prevention and Punishment of the Crime of Genocide,¹⁰³¹ the ILO Minimum Age Convention (with the minimum age

¹⁰¹⁵ Lebanon State Report to the CRC Committee, 3 February 1995, UN Doc. No. CRC/C/8/Add.23.

¹⁰¹⁶ Lebanon State Report to the CRC Committee, 26 September 2000, UN Doc. No. CRC/C/70/Add.8.

¹⁰¹⁷ Lebanon State Report to the CRC Committee, 25 October 2005, UN Doc. No. CRC/C/129/Add.7

¹⁰¹⁸ Lebanon State Report to the CRC Committee, 2014, UN Doc. No. CRC/C/LBN/4-5

¹⁰¹⁹ Concluding Observations of the CRC Committee, 8 June 2006, UN Doc. No. CRC/C/LBN/CO/3.

¹⁰²⁰ Accession on 5 October 2000, see UN Treaty Collection, MTSDG, Chapter IV. 9. Accession to the CAT OP on 22 December 2008, see UN Treaty Collection, MTSDG, Chapter IV, 9.b.

¹⁰²¹ Accession on 12 November 1971, UN Treaty Collection, MTSDG, Chapter IV, 2.

¹⁰²² Accession on 16 April 1997, UN Treaty Collection, MTSDG, Chapter IV.8 – 8b.

¹⁰²³ Lebanon State Report to the CEDAW Committee, 2 September 2004, UN Doc. No. CEDAW/C/LBN/1.

¹⁰²⁴ Lebanon State Report to the CEDAW Committee, 11 February 2005, UN Doc. No. CEDAW/C/LBN/2.

¹⁰²⁵ Lebanon State Report to the CEDAW Committee, 7 July 2006, UN Doc. No. CEDAW/C/LBN/3.

¹⁰²⁶ Lebanon State Report to the CEDAW Committee, 20 May 2014, UN Doc. No. CEDAW/C/LBN/4-5.

¹⁰²⁷ Concluding Observations of the CEDAW Committee, 24 November 2015, UN Doc. No. CEDAW/C/LBN/CO/4-5.

¹⁰²⁸ Ratification on 8 May 2011, see:

<http://www.lasportal.org/ar/humanrights/Committee/Pages/MemberCountries.aspx>

¹⁰²⁹ UN Treaty Collection, MTSDG, Chapter IV. 8. Note also that Lebanon entered a reservation against the Article 22, CERD provision for international dispute settlement by the ICJ: UN Treaty Collection, MTSDG, Chapter IV.2.

¹⁰³⁰ See Art 19 of the Vienna Convention on the Law of Treaties, according to which reservations must not be “incompatible with the object and purpose of the treaty”.

¹⁰³¹ Accession on 17 December 1953, UN Treaty Collection, MTSDG, Chapter IV. 1.

specified at 14),¹⁰³² and the ILO Convention on the Worst Forms of Child Labour.¹⁰³³ Lebanon is neither party to the 1951 Refugee Convention and its 1967 Protocol, nor the 1954 and 1961 Statelessness Conventions. The Arab Convention on the Status of Refugees in the Arab Countries could also be of relevance, but it is not in force. Finally, Lebanon is also party to the 1960 Convention against Discrimination in Education, which prohibits inequality of treatment in education for any particular person or group of persons.

International Humanitarian Law Obligations

Lebanon is party to the Four Geneva Conventions (1949),¹⁰³⁴ and their Additional Protocols I and II (1977).¹⁰³⁵ It is not a party to Additional Protocol III relating to the adoption of an additional distinctive emblem.

With regard to the methods and means of warfare, Lebanon is bound by the following treaties: it is party to the Geneva Protocol on Asphyxiating or Poisonous Gases and of Bacteriological Methods,¹⁰³⁶ the Convention on the Prohibition of Biological Weapons,¹⁰³⁷ the Chemical Weapons Convention,¹⁰³⁸ and the Convention on Cluster Munitions. It has not signed the Convention prohibiting Certain Conventional Weapons nor the Anti-Personnel Mine Ban Convention.¹⁰³⁹

Among our three case studies, Lebanon is the only one which has signed the Safe Schools Declaration, a non-binding instrument through which States can endorse and commit to implement the Guidelines for Protecting Schools and Universities from Military use during Armed Conflict.¹⁰⁴⁰

With regard to non-State armed groups, as already mentioned, the Palestine Liberation Organization in Lebanon (PLO Lebanon) and the Forces of the Palestinian National Council in Lebanon, two umbrella organizations of Palestinian non-State armed groups in Lebanon, have issued a declaration which covers the protection of children from the effects of armed conflict and violence.¹⁰⁴¹ According to this declaration, they commit “to the efforts to prohibit and criminalize the use of arms in the streets of Palestinian refugee camps for resolving internal differences among national and Islamic factions and forces” and pledge to the essence of the ‘Deed of Commitment under Geneva Call for the Protection of Children from the Effects of Armed Conflict’, including the respect of all relevant human rights treaties, the condemnation of the recruitment of children in

¹⁰³² Ratification on 10 June 2003.

¹⁰³³ Ratification on 11 September 2001.

¹⁰³⁴ Ratification on 10 April 1951, see ICRC, ‘State Parties to International Humanitarian Law and other Related Treaties’, 20 April 2016.

¹⁰³⁵ Ratification on 23 July 1997.

¹⁰³⁶ Ratification on 17 April 1969.

¹⁰³⁷ Ratification on 26 March 1975.

¹⁰³⁸ Ratification on 20 December 2008.

¹⁰³⁹ Ratification on 5 November 2010.

¹⁰⁴⁰ For more on the Safe Schools Declaration endorsements, see the website of the Global Coalition to Protect Education from Attack at: <http://www.protectingeducation.org/guidelines/support>

¹⁰⁴¹ See ‘Their Words’, the Directory of Armed Non-State Actor Humanitarian Commitments of Geneva Call.

armed forces and the involvement in direct military participation of all children under 18 years of age.¹⁰⁴²

Applicable International Remedy and Monitoring Mechanisms

In relation to the UN Treaty Bodies, Lebanon has accepted the inquiry procedure under the CAT. Lebanon has also made a standing invitation to the thematic special procedures of the Human Rights Council.¹⁰⁴³ However, Lebanon has not accepted the individual complaints procedures under any of the human treaties to which it is a party. In addition, as there is no available regional mechanism in case of human rights' violations, individuals under the jurisdiction of Lebanon do not have any recourse at the supra-national level.

Lebanon has regularly avoided the scrutiny of the UN Treaty Bodies by failing to submit reports, for example with regard to the ICCPR in relation to which it has only submitted one report in 1996. It has submitted reports on a more regular basis to the CRC Committee and the CEDAW Committee. This lack of consistent reporting has contributed to a dearth of information in respect of the domestic implementation of certain treaties.

With regard to the prosecution of international crimes, Lebanon is not a party to the ICC Statute. The STL is an international tribunal which operates under Lebanese criminal law but its jurisdiction is limited to the investigation and prosecution related to the assassination of Rafic Hariri and 22 other individuals. Finally, Lebanon has not accepted compulsory jurisdiction of the International Court of Justice.

3.3.3. The Protection of Education within the Domestic Legal System

Introduction to the Lebanese Legal System

Lebanon is a parliamentary democracy which adopted a civil law system influenced primarily by the French Civil Code. The 1926 Constitution of Lebanon was amended following the end of the non-international armed conflict with the adoption of the 1989 Ta'if Accord, and again in 2004. The 1926 Constitution is the highest source of law, guaranteeing a range of rights and freedoms, as well as elucidating the separation of powers between the executive, legislature, and judiciary.¹⁰⁴⁴ The legal system itself is governed according to a series of specialised codes of law, such as the 1932 Code of Obligations and Contracts, the 1983 Code of Civil Procedure, the 1943 Penal Code, and the 2001 Code of Criminal Procedure.

The Lebanese legal system is heavily influenced by the French legal system, with a similar split between civil, criminal, and administrative courts. The Constitutional

¹⁰⁴² See the Declaration by the Factions of the Palestine Liberation Organization (PLO and the Forces of the Palestinian National Coalition in Lebanon), available on Their Words.

¹⁰⁴³ Issued on 17 March 2011.

¹⁰⁴⁴ Preamble, 1926 Constitution of Lebanon.

Council is primarily responsible for deciding the conformity of domestic laws with the Constitution and adjudicating disputes arising from presidential and parliamentary elections. Although the Ta'if Accord included the task of interpreting the 1926 Constitution of Lebanon as falling within the competence of the Constitutional Council, 1990 amendments to the text of the Constitution removed this from its mandate. This has left conflicting constitutional interpretations to be settled politically by parliamentarians representing political parties or through negotiation mechanisms, rather than final settlements by a judicial body.¹⁰⁴⁵ As a result, it is not clear if, how and to what extent the lower courts are required or able to apply the rulings of the Constitutional Council.¹⁰⁴⁶

Military courts in Lebanon have a specialised criminal jurisdiction that is restricted to arms and ammunitions, crimes against national security, crimes committed in a military facility, or certain specific crimes involving members of the military forces. So civilians may be tried on security charges, and military personnel may be tried on civilian charges. In respect of the implementation of IHL, the Lebanese Military does not have a military manual but IHL is taught in Military College. In addition, personnel of the Lebanese armed forces also undergo training with the ICRC and other organisations.¹⁰⁴⁷ On this basis, the compliance of domestic military regulations with IHL is limited in this case study, although where domestic law in other areas gives effect to rules of IHL, it is discussed and analysed as appropriate.

The Lebanese State Council (*majlis shoura al-dawla*) has supervisory jurisdiction over emergency measures. It monitors the legality of the declaration of a state of emergency and validates the existence of exceptional circumstances that justify such a declaration.¹⁰⁴⁸ It also ensures adherence to the time limitation for emergency and to the principle of proportionality in administrative decisions issued during a state of emergency.¹⁰⁴⁹

The application of the rule of law in Lebanon has been characterised by inconsistency and disparity between law and practice.¹⁰⁵⁰

Protection of the Right to Education in Lebanese Law

According to the OHCHR, “significant progress had been achieved in the light of the amendment of Law No. 686 increasing the age of compulsory education from 12 to 15 years or to grade 9” but there is a need “to ensure that the law was implemented

¹⁰⁴⁵ V Hamd, ‘Overview of the Rule of Law in Lebanon’, in M Koetter and G Folke Schuppert, ‘Understandings of the Rule of Law in various legal orders of the World’, Rule of Law Working Paper Series No. 21 (2012).

¹⁰⁴⁶ The issue of binding precedent is a complex one in Lebanese domestic law. It has been observed that, prior to the operation of the Special Tribunal for Lebanon, the concept of binding precedent had rarely, if ever, been found in domestic law. Interlocutory Decision of the Appeals Chamber of the STL, STL-11-01/1/AC/R176bis, para. 142; see also H van der Wilt, ‘The Legal of the Special Tribunal for Lebanon’, in A Alamuddin, N Jurdi and D Tolbert (eds), *The Special Tribunal for Lebanon: Law and Practice* (Oxford: OUP, 2014), p. 274.

¹⁰⁴⁷ High-ranking officers say that they instruct their subordinates in accordance with IHL.

¹⁰⁴⁸ Y S Al-Khoury, ‘Public Administrative Law’, Part One, Sader Publications (2002), p. 282.

¹⁰⁴⁹ Ibid.

¹⁰⁵⁰ V Hamd, ‘Overview of the Rule of Law in Lebanon’, in M Koetter and G Folke Schuppert, ‘Understandings of the Rule of Law in various legal orders of the World’, Rule of Law Working Paper Series No. 21 (2012).

for all children".¹⁰⁵¹ Lebanon has not yet submitted its three pending reports under the Convention against Discrimination in Education and was thus encouraged to do so.¹⁰⁵²

Lebanon has several international legal obligations in terms of respecting, protecting, and fulfilling the right to education. These arise from Articles 13 and 14 of the ICESCR, Article 28 of the CRC, Article 41 of the ACHR and possibly of Article 12 of the OIC CRCI, when this latter instrument comes into force. The combined effect of Lebanon's international legal obligations and international standards is to require several elements of the protection of education, which are discussed in this section.

The emphasis of domestic law lies upon the educational freedom of religious sects and groups, which is constitutionally guaranteed (as long as it does not disrupt public order, violate moral, or offend any religion or creed),¹⁰⁵³ as well as promoting gender equality in access to education and the inclusion of persons with disabilities. Domestic law relating to the right to education is supplemented by a series of Ministerial Decisions and executive Circulars, providing for exceptions from the general stance in domestic law that appears to prioritise the right to education of citizens over non-citizens. Attempts by the Government of Lebanon to address the discriminatory aspects to its domestic education legislation are contained in two major policy documents: the Lebanon Crisis Response Plan for the academic year 2015-16, developed in collaboration with UNHCR, and the 2014 Minister of Education and Higher Education Policy Document, 'Reaching All Children with Education in Lebanon' (RACE).

The State's Obligation to Provide a School System

The Ministry of Education and Higher Education (MEHE) is responsible for education at all stages and oversees the adherence of private educational institutions with national policies.¹⁰⁵⁴

Rules for enrolment into the various stages of education (both compulsory and elective) falls within the remit of the MEHE.¹⁰⁵⁵ Ministerial decrees or decisions deal with a wide range of issues including plans to develop education, the restructuring of education, and revised curricula.¹⁰⁵⁶ The lack of laws and regulations in respect of education appears to have led to an achievement gap between private and public education.¹⁰⁵⁷

There are several projects and measures in place in Lebanon to aid the State's delivery of an education system. For example, a joint project with the Government of the United States to restore public schools, develop the professional skills of teaching staff, and improve the learning environment, teacher training, and education governance,

¹⁰⁵¹ Compilation prepared by the OHCHR, 31 August 2015, UN Doc. No. A/HRC/WG.6/23/LBN/2, para. 19.

¹⁰⁵² Ibid, para. 24.

¹⁰⁵³ Art 10, 1926 Constitution of Lebanon.

¹⁰⁵⁴ Decree No. 247 of 14 August 2000.

¹⁰⁵⁵ Art 9, 2014 Higher Education Law.

¹⁰⁵⁶ See, for example, Decision No.407/M/ 2000; Decree No.10227 of 1997 Determining education curriculum for pre-university public education and its goals; Decree No.2151 of 1971 Determining education curriculum in the elementary level; Decree No.8924 Determining the general and specific goals and methods of implementing the project; serving the society in the secondary education level.

¹⁰⁵⁷ UNICEF, 'The Role of Education in Peacebuilding: Lebanon' (2011), p. 31.

appears to be intended to bring the domestic provision of education to international legal standards.¹⁰⁵⁸ Similarly, in 2003, the MEHE collaborated with UNESCO to develop a national plan for education, including the expansion and improvement of care, the provision of high quality and compulsory education free of charge for all, and the eradication of illiteracy.¹⁰⁵⁹ In Lebanon, civil society organisations play an indispensable role in providing and funding education services, as well as enhancing access to disadvantaged groups, due to the State's capacity deficit from the civil war onwards.¹⁰⁶⁰ Even prior to the influx of Syrian refugees to Lebanon, the public education system accommodated only 30 percent of school-aged children.¹⁰⁶¹ It has additionally been reported that public spending on education has consistently decreased from 2 percent of the national budget in 2008 to 1.6 percent in 2011.¹⁰⁶²

Two issues arise. The first is that the majority of projects intended to develop the national education system and bring it into line with international standards are not independently carried out by the State itself. This is true of the education component of the Lebanon Crisis Response Plan, as well as RACE, which are led by UN agencies and other humanitarian and development actors. While it is compatible with Lebanon's international obligations to seek and receive international assistance and cooperation in meeting them, it may offer an indication of the functioning of the responsible Ministry and the domestic socio-political landscape in respect of rights protection. The second issue is that, as discussed in the section on refugees below, the implementation of these projects often yield changes in practice without amending the relevant legal or policy instruments.

Aims, Objectives and Content of Education

Lebanon's international legal obligations require education within its territory to be directed toward the full development of the human personality and the strengthening of respect for human rights.¹⁰⁶³ There are, accordingly, two required elements: first, the State must ensure that education is aimed at the student's holistic development; second, it must ensure that the content of education within its territory is not only compatible with, but also promotes respect for, human rights among students.

The principal objective of elementary education in Lebanon is to provide moral, intellectual, and physical development through study.¹⁰⁶⁴ That of the intermediate level is to enable the student to develop his or her abilities and personal preference for specialisations and prepare for more studies accordingly.¹⁰⁶⁵ Finally, the main objective

¹⁰⁵⁸ Lebanon State Report to the CESCR Committee, Doc. No. E/C.12/LBN/2 (2015), para. 117.

¹⁰⁵⁹ *Ibid.* para. 116.

¹⁰⁶⁰ Economic and Social Commission for Western Africa, 'Provision of Education by Non-State Actors in Arab Countries: Benefits and Risks', 1 September 2015, p. 12.

¹⁰⁶¹ UNICEF, 'Education Under Fire', (2015), p. 11.

¹⁰⁶² BankMed, 'Analysis of Lebanon's education sector' (June 2014), p.4.

¹⁰⁶³ The exact formulation varies, but the content of the obligation contained in the following is consistent: Art 13(1) ICESCR; Arts 28(1) and 29(1) CRC; Art 41(4), ACHR; see also Art 26(2), UDHR.

¹⁰⁶⁴ Art 3, Decree No. 9099 of 1968.

¹⁰⁶⁵ *Ibid.*, Art 4.

of secondary education is to enable students to achieve intellectual maturation and gain the necessary fundamental knowledge to choose an area of further study.¹⁰⁶⁶

The foregoing is broadly in line with international law requirements as to the aims and objectives of education, contained in Article 13(1) of the ICESCR but do not appear to meet the identity- and faith- based aims and objectives of education contained in the Arab Charter. The failure of the State to provide an educational content in accordance with the inclusive and reconciliatory requirements of the Ta'if Accord, too, somewhat frustrate the State's compliance with its international legal obligations.

In its 2006 Concluding Observations, the CRC Committee noted that, despite the legal guarantee of free education for all, parents were still charged for some educational costs.¹⁰⁶⁷ While some positive steps have been made, for example the improvement in pre-school enrolment, the report also noted the decrease in enrolment for secondary level education,¹⁰⁶⁸ and the decreasing quality of technical and vocational education.¹⁰⁶⁹ Other concerns raised by the report include the inadequate level of teacher training,¹⁰⁷⁰ the quality gap between public and private institutions,¹⁰⁷¹ and the poor condition of both equipment and schools.¹⁰⁷²

The Right to Primary Education

Lebanon is obliged, at a minimum, to provide compulsory and free primary education.¹⁰⁷³ Whereas the relevant provisions of the ICESCR and CRC operate on the general principle that the State's obligation applies to all persons within its territory, the ACHR limits the right to education to citizens but its Article 2 enshrines a similar principle that States bear an obligation to all persons within their territory or otherwise subject to their jurisdiction.

The right to (at least primary) education was the subject of negotiations leading to the conclusion of the Ta'if Accord, which provided that, "education shall be provided to all and shall be made obligatory for the elementary stage at least".¹⁰⁷⁴ Primary education is compulsory and free for Lebanese citizens and lasts for a period of six years, followed by 3 years of intermediary (middle) school.¹⁰⁷⁵ Historically, education has not been expressly provided for in domestic law as compulsory.¹⁰⁷⁶ Although a 1998 amendment is widely reported,¹⁰⁷⁷ including in Lebanon's report to the CESC, to have made primary education compulsory, it appears that it was not until 2011 that this occurred. Article 1 of Law No. 150 of 2011 added the following elements to primary education

¹⁰⁶⁶ Ibid, Art 5.

¹⁰⁶⁷ Concluding Observations of the CRC Committee, 8 June 2006, UN Doc. No. CRC/C/LBN/CO/3.

¹⁰⁶⁸ Ibid, para. 63

¹⁰⁶⁹ Ibid, para. 63

¹⁰⁷⁰ Ibid, para. 67

¹⁰⁷¹ Ibid, para. 67

¹⁰⁷² Ibid, para. 67

¹⁰⁷³ Art 13(2)(a), ICESCR; Art 28(1)(e), CRC ; Arts 41(1), 41(2), ACHR.

¹⁰⁷⁴ Section III.D.1, 1989 Ta'if Accord.

¹⁰⁷⁵ Art 2, Decree No. 2494 of 2000, Ministry of National Welfare, Youth and Sport.

¹⁰⁷⁶ See original Article 49, Law No. 134 of 1959.

¹⁰⁷⁷ Law No. 686 of 1998.

in domestic law: it is compulsory at the primary level and is available for free in public schools.¹⁰⁷⁸ The free nature of primary education (and pre-primary education in kindergartens) is maintained by additional measures such as the power of the MEHE to distribute free materials to students in public kindergartens and primary schools.¹⁰⁷⁹

A student is admitted into the first grade of elementary school if he or she has reached the age of 6 or has completed kindergarten. Applicants are required to submit an identification card, or individual extract of the civil registry to prove their age, a statement from the school in which they spent the year prior to application and a compulsory health certificate to prove that they are free of contagious diseases.¹⁰⁸⁰ In addition they must have passed the admissions exam.¹⁰⁸¹

Another condition for entry into primary school (and kindergarten) is that the applicant is a Lebanese national.¹⁰⁸² The 2011 amendment retained the limitation of the right to education to Lebanese citizens contained both in 1959 legislation relating to education, as well as the limited provisions of the 1926 Constitution of Lebanon. Although the State has in practice made concessions in respect of specific groups of non-nationals, domestic law protections of the right to education (as opposed to policy) remains restricted to Lebanese citizens.¹⁰⁸³ Article 90 of Decision No. 407 of 2000 provides that public schools are for Lebanese nationals but, in the event that there are additional places available in a school, it is possible to accept non-Lebanese students.¹⁰⁸⁴ It is important to note that this is simply a permissive provision rather than an obligation and has been implemented as such; there are reports of principals requiring arduous examinations of non-nationals in order to present obstacles to their admission into public schools.¹⁰⁸⁵

Although international standards are met in respect of citizens, the fact that the right to free and primary education is limited on the basis of nationality renders the domestic legal framework that applies in all circumstances discriminatory and therefore not fully compliant with international law. This is notwithstanding that the Government of Lebanon has instituted policy and practice in respect of access to education for non-nationals as the relevant documents are not enshrined in law.¹⁰⁸⁶ Although executive circulars,¹⁰⁸⁷ which have the force of law, have afforded access to non-nationals in Lebanon, the position in domestic law applicable at all times remains such that the right to education is only fully protected by law for Lebanese nationals. Enshrinement of policy documents would contribute to closer compliance of domestic law with international

¹⁰⁷⁸ Art 1 of Law No. 150 of 2011

¹⁰⁷⁹ Law No. 211 of 2012.

¹⁰⁸⁰ Art 3(2), Decision No. 407 of the Ministry of Education and Higher Education of 2000.

¹⁰⁸¹ Ibid, Art 3(3).

¹⁰⁸² Ibid, Art 3.

¹⁰⁸³ This is discussed in detail below.

¹⁰⁸⁴ Decision of the Ministry of Education and Higher Education.

¹⁰⁸⁵ UNESCO, Out of School Initiative, 'Curriculum, Accreditation and Certification for Syrian Children in Syria, Turkey, Lebanon, Jordan, Iraq and Egypt' (2015), p. 56 *et seq.*

¹⁰⁸⁶ Namely the 'Lebanon Crisis Response Plan' and the 2014 Ministry of Education policy document, 'Reaching All Children with Education in Lebanon'. Both of these documents are discussed below, in 'Inclusive Education' for refugees.

¹⁰⁸⁷ Namely Decision of the Minister of Education of 2004 and Circular No. 18 of 2012, which are discussed in detail below.

standards and Lebanon's international legal obligations. The international law requirement contained in Article 13(2)(a) that primary education be free and compulsory applies to all persons within the jurisdiction of a State party. Lebanon's domestic law clearly fails to meet this standard, by omission of consistent and general inclusion of non-nationals into public schools. It is, however, compliant with the more restricted obligations contained in regional law (the ACHR). That said, targeted measures for specific groups or classes of persons tend toward, but do not reach, a comprehensive level of compliance with international law.

The Right to Secondary, Technical and Vocational Education

Lebanon is obliged to make secondary, technical and vocation education available, with a progressive obligation to make it freely available.¹⁰⁸⁸ Secondary education lasts for a period of 3 years, following middle school which students complete at 15. As an alternative, technical and vocational education are also available but are neither free nor compulsory. Admission to technical and vocational schools is conditional upon good character, which is proven by a statement from the previous school administration, and the applicant being physically fit and free of any disability or diseases that would prevent the student from practising in the area in question.¹⁰⁸⁹ Lebanese applicants are prioritised over non-Lebanese applicants.¹⁰⁹⁰ Although the rules of admission to technical and vocational education are centrally regulated, this is changeable by decision of the MEHE on a yearly basis.¹⁰⁹¹

The availability of technical and vocational education in Lebanon is in line with international law. The fact that it is again limited to citizens renders the domestic framework discriminatory, however, and frustrates its compliance with non-discrimination principles contained in international law. It is not inconsistent, however, with regional law which requires only that States provide education for their citizens.

The Right to Higher Education

Lebanon is obliged to ensure that higher education is made equally accessible to all, on the basis of capacity.¹⁰⁹²

Higher education is available in both public and private institutions in Lebanon. It is not inconsistent with international law, in respect of its not being free but there is little sign of the State's action in respect of progressive implementation of free university education.

Admission into higher education institutions is conditional upon possession of a Lebanese General Secondary Education Certificate or a Lebanese Technical Secondary Certificate, or an officially recognised equivalent.¹⁰⁹³ Higher education is provided in a

¹⁰⁸⁸ Art 13(2)(b), ICESCR; Art 28(1)(b), CRC.

¹⁰⁸⁹ Art 19(1), Decree No. 8590 of 2012.

¹⁰⁹⁰ Ibid, Art 19(3).

¹⁰⁹¹ Ibid, Arts 12(2) and 20.

¹⁰⁹² Art 13(3)(c), ICESCR; Art 28(1)(c), CRC.

¹⁰⁹³ See Art 1(6), the Higher Education Law, Law No. 285 of 2014 (2014 Higher Education Law).

number of institutions including universities, university colleges, higher technical institutes.¹⁰⁹⁴ The types of certificates available in Lebanese universities are provided for in legislation.¹⁰⁹⁵ The available fields of study in higher education are determined centrally by the Council of Ministers.¹⁰⁹⁶ There are several bodies involved in decision making in respect of higher education, namely the Council of Ministers, the MEHE, the Higher Education Council, and the Technical Academic Committee.¹⁰⁹⁷ The Higher Education Council, in particular, contributes to developing national higher education policy, including with regard to private higher education, and oversees the quality assurance of private higher education; it can issue an opinion to the MEHE on any matter.¹⁰⁹⁸

The above is broadly compliant with the State's international legal obligations with regard to higher education.

The Right to Basic Education

Lebanon is obliged, at a minimum to encourage or intensify fundamental education, also referred to as fundamental education, as far as possible for persons who have not completed their primary education.¹⁰⁹⁹ The form of such encouragement or intensification varies between the legal frameworks. The CRC requires parties to promote and encourage international cooperation to contribute to the elimination of ignorance and illiteracy throughout the world, in accordance with Article 13(2)(d) of the ICESCR.¹¹⁰⁰ Regional and international Islamic law go further, creating a positive obligation on States to eradicate, or provide "effective treatment" of, illiteracy.¹¹⁰¹

Basic education is dealt with in Lebanon by the National Committee on Adult Education and Eradication of Illiteracy, which was established by the Council of Ministers in 1995.¹¹⁰² The eradication of illiteracy is incorporated into the national plan for education, by virtue of Ministerial Decision.¹¹⁰³ Gender is reported to be mainstreamed across the eradication of illiteracy measures, including awareness and promotion of non-formal methods of teaching that may be suitable for women and girls.

Education and training is specifically provided for in respect of detained persons in Lebanese domestic law. Law No. 998 of 1965 provides the right to education for prisoners and the appointment of teachers for education and guidance inside prisons by the Ministry of Education. The State reports that detained and convicted juveniles participate in educational and vocational rehabilitation activities and programmes, including literacy, academic support, and technical training.¹¹⁰⁴ In what appears to be

¹⁰⁹⁴ Ibid, Art 5.

¹⁰⁹⁵ Ibid, Art 6.

¹⁰⁹⁶ Ibid, Art 10.

¹⁰⁹⁷ Ibid, Art 10.

¹⁰⁹⁸ Ibid, Art 16.

¹⁰⁹⁹ Art 13(2)(d), ICESCR.

¹¹⁰⁰ Art 28(3), CRC.

¹¹⁰¹ Art 41(1), ACHR and Art 12(2)(v), OIC CRCI, respectively.

¹¹⁰² By Decision No. 26 of the Council of Ministers, 1995.

¹¹⁰³ Decision No. 246/1 of the Minister of Social Affairs of 2011.

¹¹⁰⁴ Lebanon State Report to the CESCR, Doc. No. E/C.12/LBN/2 (2015), para. 86.

a targeted implementation drive of these provisions, a 2013 Circular of the Director General of Education established a centre for holding official examinations inside Roumieh Prison, the largest Lebanese detention facility where a number of high profile are interned.

The Right to Non-Discrimination in Education

The CRC Committee has highlighted ongoing discrimination in the realisation of the right to education in Lebanon, noting that “the Constitution and domestic laws guarantee equal status only to Lebanese children, but leave, for example, foreign children and refugee and asylum-seeking children without such protection” and was concerned at the “persistent de facto discrimination faced by children with disabilities, the aforementioned foreign, refugee and asylum-seeking children, Palestinian children, children living in poverty, children in conflict with the law, and children living in rural areas, especially with regard to their access to adequate social and health services and educational facilities”.¹¹⁰⁵

The CEDAW Committee highlighted its concern with regard to the continuing prevalence of negative gender stereotypes in school curricula, insufficient teacher training on women’s rights, and a distinct lack of careers guidance for Lebanese females.¹¹⁰⁶ The Committee also noted it is “deeply aware of the devastating impact of the combined economic, demographic and security challenges, facing Lebanon as a consequence of the on-going conflict in Syria”.¹¹⁰⁷ It argued that the ongoing conflict in Syria and the subsequent mass influx of refugees has come at a severe “economic and social cost” to Lebanon,¹¹⁰⁸ resulting in overstretched education systems.¹¹⁰⁹

Lebanon’s major efforts to address inclusive education are contained in two policy documents: the Lebanon Crisis Response Plan and RACE, both based on the UNHCR Regional Response Plan, which takes a human rights-based approach. Although neither of these documents has the force of domestic law, they are attached to monitoring and evaluation mechanisms under the Regional Response Plan. This is a good example of how the role of non-State humanitarian (and development) actors can provide frameworks for the practical implementation of States’ international legal obligations in respect of the protection of education, in the absence of, or despite, the strict domestic law position.¹¹¹⁰

Specific Obstacles to Inclusive Education

Like in Egypt and Iraq, the lack of nationality or documentation may prevent access to education in Lebanon. However, Lebanon is obliged to ensure that every child in its territory is registered at birth and acquires a nationality.¹¹¹¹ It has entered a reservation,

¹¹⁰⁵ Concluding Observations of the CRC Committee, 8 June 2006, UN Doc. No. CRC/C/LBN/CO/3, para. 27.

¹¹⁰⁶ Concluding Observations of the CEDAW Committee, (2015), *op cit.* para. 33.

¹¹⁰⁷ *Ibid*, para. 7

¹¹⁰⁸ *Ibid*, para 7(a), 7(b)

¹¹⁰⁹ *Ibid*, para. 7(b)

¹¹¹⁰ On the role of international organisations, see further below, Part 4.

¹¹¹¹ Art 24, ICCPR; Art 7, CRC; Art 29 ACHR.

however, against Article 9(2) of the CEDAW, which requires that domestic law allow for the equal transmission of nationality by men and women to their children.¹¹¹² While international standards contained in the 1954 Statelessness Convention and the 1961 Reduction of Statelessness Convention require States to provide safeguards against statelessness,¹¹¹³ Lebanon is not a party to these treaties.

Discourse on eligibility for Lebanese nationality is heavily influenced by the recorded demography in a 1932 census, which continues to be the basis for the confessional balance in government;¹¹¹⁴ a restrictive approach to granting Lebanese nationality is at least in part designed to maintain this balance in government.¹¹¹⁵ The impact of this is more pronounced in large refugee influxes that have been protractedly displaced in Lebanon but is also relevant to the Kurdish population and others born in Lebanon. As a result, there is a larger group of persons, beyond refugees, who are not considered nationals within Lebanese law, and whose access to education may be undermined because of their legal status (or lack thereof) in Lebanon.

Specific Obstacles for Displaced Persons

Lebanon has one of the highest refugee populations in the world as it is currently host to approximately 1.16 million refugees and asylum seekers.¹¹¹⁶ Lebanon is not a State Party to the 1951 Refugee Convention or its 1967 Protocol. The capacity of the public education system was recognized as being overstretched due to the refugee crisis. It was noted that their overall enrolments of Syrian refugee children remained critically low, with over 200,000 school-aged refugee children lacking access to age-appropriate education and most Syrian youth of secondary school age being out of school.

In practice, the State has opened up public schools and semi-public schools to Syrian refugees for free; as part of the UNICEF-led 'No Lost Generation Initiative' the Government of Lebanon committed to providing education to an average of 413,000 Syrian children and vulnerable Lebanese children every year, up to 2017.¹¹¹⁷

Although the domestic law applicable in all circumstances remains discriminatory in respect of the right to education of non-national, the State has implemented specific and limited exceptions to this rule. In 2004, the Minister of Education issued a Decision to accept registration of resident non-nationals in Lebanese public schools, which had previously been restricted to nationals. By Circular No. 18 of 2012 of 29 March 2012, the MEHE allowed the accommodation of Syrian students on the condition that they submit registration documents approved by the Syrian embassy in Beirut or by the UNHCR. This was amended by a further circular on 8 September 2012 simplifying the

¹¹¹² See also the non-discrimination provisions contained in Art 2, ICCPR; Art 2, CRC; Art 3, ACHR.

¹¹¹³ To which Lebanon is not party.

¹¹¹⁴ R Maktabi, 'The Lebanese Census of 1932 revisited. Who are the Lebanese?', *British Journal of Middle Eastern Studies*, Vol. 26, Issue 2, 1999.

¹¹¹⁵ L Van Waas, 'A comparative analysis of nationality laws in the MENA Region', Report of the Middle East and North Africa Nationality and Statelessness Research Project, Tilburg University Statelessness Programme (September 2014), p. 26.

¹¹¹⁶ UNHCR Statistics, available at <http://www.unhcr.org/cgi-bin/txis/vtx/page?page=49e486676&submit=GO>

¹¹¹⁷ UNICEF, 'Education Under Fire' (2015), p. 12.

procedure for registration, which requires only proof of identity and not original certification from Syrian schools and official accreditation. In respect of the curriculum, there has been no formal legal recognition of a revised Syrian curriculum taught in some non-formal education settings for Syrian refugees.¹¹¹⁸ However, there is a bilateral agreement between Lebanon and Syria for mutual recognition of education certification, but it is not clear how far this can be implemented given the ongoing armed conflict in Syria and the factional nature of the crisis and its impact in Lebanon.¹¹¹⁹ To overcome the difficulties encountered due to the discrepancies between Syrian and Lebanese curricula, Syrian refugees undertake 'Accelerated Learning Programs' and then sit for exams before they are fully integrated in a public school.

Dropout rate is high due to various factors such as security checkpoints, child labour, language difficulties, discrimination and bullying in schools, preference of some families to teach their children the Syrian curriculum, etc. RACE 2016 focuses on more outreach activities to get the children to formal schools and psychosocial support to avoid dropout.

Lebanon should now capture the Lebanon Crisis Response Plan and RACE good practice (of providing free education to all children in Lebanon and relaxing legal documents requirements) in new legislation/law amendments.

Specific Obstacles for Palestinian Refugees

The politicised nature of exile and the much-invoked right to return of Palestinians justifies the separate consideration of the access to education of Palestine refugees, in addition to the fact that they are entitled to protection and assistance from the UN Relief and Works Agency (UNRWA), as opposed to UNHCR. There are approximately 450,000 Palestine refugees registered with UNRWA in Lebanon.¹¹²⁰ Another 42,000 Palestinians fled the Syrian conflict to Lebanon,¹¹²¹ where they reside mainly in existing Palestinian camps. UNRWA remains their main relief provider and currently administers 69 schools across Lebanon.¹¹²²

Palestinian refugee camps are scattered throughout the country, with four camps in the capital, six in the south of Lebanon, and two in the north of the country. Following the end of the 15-year armed conflict in Lebanon, Palestinian camps were kept outside the State's sovereignty as Lebanon lacked the political authority and means to intervene in the camps, especially to disarm militias as stipulated by the Ta'if Accord. As such the principle of camp self-management, as stipulated by the 1969 Cairo Agreement, persisted despite Lebanon's withdrawal from the Agreement in 1987.¹¹²³ The PLO assumed leadership with the assistance of other Palestinian factions, albeit partially and irregularly. Palestinian Security Committees police the camps, while Popular

¹¹¹⁸ See OOSCI, 'Curriculum, Accreditation and Certification for Syrian Children' (2015), Section 6.2.

¹¹¹⁹ Ibid, Section 4.4.

¹¹²⁰ UNRWA Statistics, available at <http://www.unrwa.org/where-we-work/lebanon>

¹¹²¹ 'UNRWA launches 2016 Syria appeal (critical Palestinians not forgotten)', UNRWA press release (2 February 2016), available at: <http://www.unrwa.org/newsroom/press-releases/unrwa-launches-2016-syria-appeal-critical-palestinians-not-forgotten>

¹¹²² UNRWA Statistics, available at: <http://www.unrwa.org/where-we-work/lebanon>

¹¹²³ By a decision of the Lebanese Chamber of Deputies on 21 May 1987.

Committees, semi-official organisations, control the camp politically.¹¹²⁴ The latter provide some services like water and electricity and collect contributions from camp residents for such services, coordinate UNRWA activities, and manage security incidents in cases of theft and personal disputes. Popular Committee members are appointed by Palestinian factions, according to political criteria and influence, and are as such highly challenged by rivalries and divisions.¹¹²⁵ Following the withdrawal of Syrian troops from Lebanon in 2005, relations between the Government of Lebanon and the Palestinians assumed more structure with the creation of the Lebanese-Palestinian Dialogue Committee, an inter-ministerial consultative body, mandated with addressing outstanding socio-economic, legal and security issues.¹¹²⁶

The 2006 armed conflict between Hezbollah and Israel in 2006 had a significant impact in the south of Lebanon, where the majority of Palestine refugees in the State live in three refugee camps near Tyre (Al-Rashidiye, El-Buss, and Borj Shemali). Palestinian refugees lost their means for livelihood and were unable to leave the camp to access supplies. Those who are reliant on remittances were also unable to access them due to bank closure. Many refugees fled Tyre to nearby camps in Saida. On 9 August 2016, Israeli airstrikes targeted Ain El Helweh camp in Saida. UNRWA estimates 16,000 Palestinians were displaced in the 2006 war on Lebanon.¹¹²⁷

In addition, the risk and incidence of statelessness amongst Palestinians is higher. Approximately 3,000 to 5,000 Palestinian refugees were not registered with UNRWA or the Government of Lebanon. Also known as undocumented Palestinians, most of these individuals moved to Lebanon after the expulsion of the PLO from Jordan in 1971.¹¹²⁸ Although Lebanon recognises the State of Palestine, and perhaps because of this and its insistence on the Palestinians' right of return, its domestic laws prevent the recognition of the full range of refugee rights for Palestinians, who are then treated like stateless persons within Lebanese domestic law.¹¹²⁹ Palestinian children born in Lebanon, who are not holding any identity papers, cannot take the Lebanese official exam, known as the 'brevet', for an intermediate education certificate, henceforth closing the door to further education. Palestinian refugees from Syria, whose children are born in Lebanon, are facing problems related to the registration of children because they are treated like Syrian nationals and required to present valid documents from Syria. This is contrary to the procedure applicable to Palestinian refugees from Lebanon who are able to obtain child birth certificates by presenting UNRWA registration card or other documentation.

¹¹²⁴ See M Rasul, 'No Place Like Home' (Oslo: NRC, 2014).

¹¹²⁵ International Crisis Group, 'Nurturing Instability: Lebanon's Palestinian Refugee Camps', Middle East Report No. 84, (2009), p. 27.

¹¹²⁶ Decision No 41/2005.

¹¹²⁷ S Shafie, 'Palestinian Refugees in Lebanon', Forced Migration Research Guide, p. 3.

¹¹²⁸ US Department of State, '2014 Human Rights Report: Lebanon' (June 2015).

¹¹²⁹ See, for example, the former application of the prohibition of acquisition of rights in property by stateless persons to Palestinians in Lebanon: Presidential Decree No. 11614 of 1969, as amended by Law No. 296 of 2001, which provides: "No real right of any kind may be acquired by a person who does not carry citizenship issued by a recognised State or by a person, if such acquisition contradicts the provisions of the Constitution relating to the prohibition of permanent settlement (tawteen)".

Specific Obstacles for Stateless Persons

While Lebanon is not party to the 1954 Statelessness Convention or the 1961 Convention on the Reduction of Statelessness, it is bound by Article 24(3) of the ICCPR which provides for the right of every child to acquire a nationality. Similarly, it is bound to Article 7 of the CRC guaranteeing the right of every child to acquire a nationality. With regard to Article 9(2) of the CEDAW, which guarantees women equal rights, with men, with respect to the nationality of their children, Lebanon has made a reservation, which has not been highlighted as impermissible by the CEDAW Committee, but which may be an obstacle to children obtaining a nationality if only their mother is Lebanese.

Lebanon participates in the Asian-African Legal Consultative Organization, which adopted a resolution on statelessness in 2006, and in the LAS, which stipulates in its Charter that one of its statutory purposes is the close cooperation of Member States on nationality matters.

Acquisition at birth of Lebanese nationality is based on paternal *ius sanguinis*, which means that any person born to a Lebanese national father is automatically considered a Lebanese national.¹¹³⁰ Persons born in Lebanon to unknown parents or to parents of unknown nationality are considered to be Lebanese nationals. Persons born in Lebanon with no proof of acquiring foreign nationality through filiation are considered Lebanese.¹¹³¹ Persons born to a Lebanese national mother and a non-national father may not acquire her nationality under any circumstances. A connected issue is birth registration. Non registration of a birth within 30 days incurs a fine,¹¹³² and registration after 30 days, but before one year after birth, can only take place through a court ruling based upon a request by the Public Prosecutor and the concerned party.¹¹³³ In practice, this process of late registration is lengthy and costly and, as a consequence, rarely attempted.

The legal definition of stateless persons in Lebanon is complicated by ambiguous terminology. Generally speaking, stateless persons are described as belonging to one of two categories: Kayd al dars ('nationality under study') or Maktoum al kayd ('unregistered').¹¹³⁴ Kayd al dars is enjoyed by those who have applied for naturalization and by those who belong to 'historic' cases of statelessness in Lebanon and have been attributed this status pending a solution, but were not granted nationality under the 1994 Naturalization Decree.¹¹³⁵ Maktoum al kayd, used to describe persons who are not registered in the civil register, can refer to stateless persons who are without any formal civil registration documents, such as children who were abandoned at orphanages.

¹¹³⁰ Art 1(1) Decree No. 15 of 1925.

¹¹³¹ Ibid, Art 1(3).

¹¹³² Art 11, Law on Documenting Personal Status of 1951.

¹¹³³ Ibid, Art 12.

¹¹³⁴ See R Maktabi, (1999), *op cit*.

¹¹³⁵ Ibid.

Although Lebanon is one of only two MENA States with an explicit statelessness prevention provision within its nationality laws, several groups, including Palestinians, Kurds and Bedouins, continue to be undocumented.¹¹³⁶

Specific Obstacles for Persons with Disabilities

As a signatory to the CRPD, and in view of its non-discrimination obligations, Lebanon is obliged to ensure that persons with disabilities have access to appropriately adapted educational services. The last two governments of Hariri and Mikati prioritised the ratification of the CRPD but both governments collapsed before this was completed and the current Council of Ministers is paralysed, preventing any further progress on its ratification and implementation.

Although the right to education of persons with disabilities is enshrined in domestic legislation, Lebanon does not appear to have implemented any additional measures to improve the integration of children with disabilities in mainstream education or to further promote their vocational training.¹¹³⁷ Two domestic laws are of relevance to the protection of persons with disabilities. Law No. 212 of 1993 designates the Ministry of Social Affairs as the responsible body for developing a national social development plan and monitoring its implementation as well as “addressing the social and physical consequences of war including the welfare of families of victims, the wounded and the disabled”.¹¹³⁸ Law No. 220 of 2000 deals with the full range of rights of persons with disabilities in Lebanon, including the adaptation of facilities to facilitate access for persons with disabilities. It allows some time for public and private educational facilities to make them accessible to persons with disabilities but also imposes an obligation to rehabilitate school facilities in accordance with the needs of persons with disabilities. Article 42 Law of Law No. 220 of 2000 provides for fines for failure to make adjustments to structures to make them accessible in accordance with the standards contained therein.

Prior to 2000, when Law No. 220 on the Rights of Disabled Persons was enacted, children with disabilities or special needs were placed in specialised institutions under the control of the Ministry of Social Affairs.¹¹³⁹ Law No. 220 calls for the integration of children with disabilities into the regular system, as far as possible.¹¹⁴⁰ It also created a National Council for Disability Affairs.¹¹⁴¹ Law No. 220 has not yet been fully implemented, to the exception of a few executive decrees such as Decree No. 16417, which provides certain exemptions for persons with learning difficulties from official examinations, or Decree No. 2214 of 2009, which facilitates the participation of

¹¹³⁶ L Van Waas, (2014), *op cit*.

¹¹³⁷ Arts. 59-60, Law No. 220 of 29 May 2000.

¹¹³⁸ Arts 2(1), 2(5), 1993 Statute of the Ministry of Social Affairs.

¹¹³⁹ International Bureau of Education/UNESCO, *Données Mondiales de l'éducation*, VII Ed. 2010/11.

¹¹⁴⁰ *Ibid*.

¹¹⁴¹ Art 19, 'Lebanon: Disability and Access to Information', Country Reports (2015).

persons with special needs in municipal and parliamentary elections.¹¹⁴² The implementation of Law No. 220 is meant to be carried out by State and municipal institutions,¹¹⁴³ but is still in need of further executive decrees to be fully implemented. For example, a decree is still needed to rehabilitate infrastructures, such as schools, to facilitate their access.¹¹⁴⁴

Nevertheless, there has been a concerted effort in Lebanon to raise awareness of the rights of persons with disabilities, in particular students with disabilities. For example a national day for students with learning difficulties was created in 2013.¹¹⁴⁵ In addition, an agreement was renewed with the Lebanese Centre for Special Education for a further 10 years to equip 200 public schools for students with special needs.¹¹⁴⁶ In addition, in 2013, the MEHE launched the “model integrated public schools” project (involving 70 schools) and issued a handbook on common learning difficulties at schools within the framework of the national plan for the educational integration of persons with special needs.¹¹⁴⁷

As a State party to the Convention on Cluster Munitions, Lebanon is obliged to provide assistance to victims of cluster munitions in a manner non-discriminatory to those who have suffered injuries or disabilities by other causes, and consistent with IHRL, including the CRPD. Article 5 of the Convention on Cluster Munitions makes specific mention of medical care, rehabilitation and psychological support as well as parties’ obligation to provide for the social and economic inclusion of victims of cluster munitions.¹¹⁴⁸ The institution responsible for coordinating its implementation is the Lebanese Mine Action Centre, which sits within the Ministry of Defence, although several agencies (national and international) are involved in service delivery. The monitoring mechanism of the Convention on Cluster Munitions requires regular reporting and, under the transparency measures provided for in Article 7(1)(k), States party are required to report on the implementation of the victim assistance package contained in Article 5. In its latest report in 2014, Lebanon stated that it was in need of international assistance within the meaning of Article 6 of the Convention on Cluster Munitions in respect of vocational, agricultural, computer and language training for victims of cluster munitions.¹¹⁴⁹

While it is the subject of considerable debate whether the positive obligation of States party to the Convention on Cluster Munitions require them to implement targeted assistance measures for victims of cluster munitions (distinguished from persons with

¹¹⁴² Although the former Minister of the Interior issued nine circulars to facilitate voting processes for persons with disabilities, many polling stations remained unequipped, see M. Chaya, Law on Disabled Person without implementation for 15 years, *Al-Nahar* newspaper, 4 July 2015.

¹¹⁴³ ICTJ, ‘Failing to Deal with the Past’ (2014), p. 24.

¹¹⁴⁴ M Chaya (2015), *op cit*.

¹¹⁴⁵ By Ministerial Decision: Decision No. 777/M/2013 of 2013.

¹¹⁴⁶ Lebanon State Report to the CESCR Committee (2015), para. 118.

¹¹⁴⁷ *Ibid*.

¹¹⁴⁸ It should be noted that ‘cluster munition victim’ is defined broadly in Article 2(1), CCM, which states that “‘Cluster munition victims’ means all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights caused by the use of cluster munitions. They include those persons directly impacted by cluster munitions as well as their affected families and communities.”

¹¹⁴⁹ Lebanon, Annual Article 7 Report for the year 2013, UN Doc. No. GE.10-62936, p. 25.

disabilities), especially in light of the fact that there is an express obligation on States party contained in Article 5(2)(c) to develop a plan for the incorporation of victim assistance into the general framework for persons with disabilities, its relevance to the protection of education for persons with disabilities is clear.

Protection of Students and Education Staff

Students and education staff have been directly targeted and suffered incidental harm as a result of the armed conflict, both international and non-international, and continuing insecurity, in Lebanon.¹¹⁵⁰ The most common forms of armed violence affecting students and education staff have been vehicle borne bomb blasts, targeted assassinations, shelling, and abduction.¹¹⁵¹ Violent clashes occurred regularly since 1975, with many children having been killed as a consequence of armed attacks.¹¹⁵² In July and August 2006, one million civilians were forced to be displaced as a result of hostilities; among them, one third were children.¹¹⁵³ As an example of abductions, in 1982, after a militia group attacked a funeral ceremony in a Christian village, nine civilians, including two children, were abducted.¹¹⁵⁴

As a country affected by civil war, Lebanon has been heavily affected by attacks conducted by non-State armed groups. Children as young as fourteen were reported to join “armed factions in Palestinian camps and armed parties operating in the Syrian Arab Republic”.¹¹⁵⁵ The Lebanese armed forces arrested at least 25 boys for that reason, initially detaining them with adults in military jurisdiction before transferring them to a juvenile detention area.¹¹⁵⁶ Despite the an increase in the identification of children associated with armed groups, Lebanon has so far only signed (and not ratified) the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.¹¹⁵⁷

Education-related violations suffered by students in Lebanon are not all directly related to conflicts. For example, according to a UN Population Fund report, between 2000 and 2011, 11 percent of Lebanese girls were subject to forced or early marriage.¹¹⁵⁸

Students and education staff are protected in circumstances of insecurity and armed conflict in several areas of domestic law. The following are analysed in this section: the protection of life; the protection of liberty; the protection from torture and ill-treatment. There are additional protections for specific groups of students and education staff as children; displaced persons; stateless persons; persons with disabilities; and minority groups. The right to work of education staff is additionally protected in domestic law.

¹¹⁵⁰ See, generally, ICTJ, ‘Lebanon’s Legacy of Political Violence: A mapping of serious violations of international human rights and humanitarian law in Lebanon, 1975 – 2008’, (September 2013).

¹¹⁵¹ *Ibid.*

¹¹⁵² *Ibid.*, pp. 8, 15, 22-23, 25, 29, 32, 45, 51, 53, 73, 86, 105.

¹¹⁵³ *Ibid.*, p. 83.

¹¹⁵⁴ *Ibid.*, p. 8.

¹¹⁵⁵ Report of the Secretary General on Children and Armed Conflicts, (2015) UN Doc. No. A/69/926 - S/2015/409, para. 112.

¹¹⁵⁶ *Ibid.*

¹¹⁵⁷ *Ibid.*, para.115.

¹¹⁵⁸ UNFPA, ‘Marrying too Young’ (2012) p. 73.

The Protection of Life of Students and Education Staff

The life of students and education staff, like the rest of the population of Lebanon, continues to be threatened by ongoing armed violence, including cross-border shelling attacks from Syria into northern Lebanon and the Beka'a Valley.¹¹⁵⁹ Ongoing vehicle-borne explosive attacks have both targeted civilians and caused incidental civilian casualties.¹¹⁶⁰ These attacks have been attributed to ISIL, and other armed groups.¹¹⁶¹ There are additionally several reports of killings of students and education staff, alike, which occurred throughout the armed conflict in Lebanon between 1975 and 1990.¹¹⁶² These were both targeted attacks against students and education staff as well as a result of cross-fire between armed groups.¹¹⁶³

The Lebanese State's international obligations in respect of the right to life in these circumstances are contained in Articles 5, 6 and 7 of the ACHR, as well as Article 6 of the ICCPR. Their compound effect requires, *inter alia*, the State to: i) conceive broadly of the right to life and respect its non-derogable nature even in a state of emergency;¹¹⁶⁴ ii) prevent mass violence and war;¹¹⁶⁵ iii) prevent and punish arbitrary killing.¹¹⁶⁶

There is no constitutional provision or otherwise human rights-specific legislation that enshrines the right to life in domestic law. However, Lebanon's international obligations are automatically incorporated into domestic law upon ratification and may be applied with direct effect by national courts. It is worthy of note that Lebanon's domestic system appears to place considerable weight upon the Universal Declaration of Human Rights (UDHR), which is only binding to the extent it reflects customary international law. First instance courts have even recognised and given effect to the right to seek asylum contained in Article 14 of the UDHR, which does not appear in the binding ICCPR or ICESCR. This suggests that the domestic courts of Lebanon are capable of applying the right to life as provided for in Article 3 of the UDHR, Article 6 of the ICCPR, and Article 5 of the ACHR.

With regard to the prevention of war and mass violence, Lebanon has enacted provisions relating to the prevention of explosive violence and the use of weapons occasioning death as well as to the prevention of incitement to violence. In its last report to the Human Rights Committee in 1996, the Government of Lebanon considered measures to prevent resumption of armed hostilities or end the internal armed conflict as part of its implementation of the right to life.¹¹⁶⁷ Several articles of the 1943 Penal Code are also specifically dedicated to offences involving explosive violence. Article 314 defines terrorist acts as "all acts intended to cause a state of terror and committed by

¹¹⁵⁹ Human Rights Watch, 'World Report 2015: Lebanon'.

¹¹⁶⁰ *Ibid.*

¹¹⁶¹ *Ibid.*

¹¹⁶² See ICTJ, 'Lebanon's Legacy of Political Violence' (2013).

¹¹⁶³ *Ibid.*

¹¹⁶⁴ Art 4, ICCPR; Art 4, ACHR; see also Human Rights Committee, 'CCPR General Comment No. 6: Article 6 (Right to Life)' (1982), para. 1.

¹¹⁶⁵ Human Rights Committee, 'CCPR General Comment No. 6: Article 6 (Right to Life)' (1982), para. 2.

¹¹⁶⁶ Art 6(1), ICCPR; Art 5, ACHR; see also Human Rights Committee, 'CCPR General Comment No. 6: Article 6 (Right to Life)' (1982), para. 3.

¹¹⁶⁷ Lebanon State Report to the HRC, (1996), UN Doc. No. CCPR/C/42/Add.14, paras. 25-26.

means liable to create a public danger such as explosive devices, inflammable materials, toxic or corrosive productions and infections or microbial agents.” The use of explosive materials is additionally an aggravating feature of intentional homicide, allowing for the application of the death sentence.¹¹⁶⁸

During a state of emergency, the 1983 National Defence Law also provides for military operations where the country has been determined to be exposed to danger.¹¹⁶⁹ In these circumstances, the maintenance of security in vulnerable areas is assigned to the armed forces,¹¹⁷⁰ and the armed forces are placed under the authority of the President, who is required to exercise his powers in accordance with the provisions of the Constitution and the law.¹¹⁷¹

Preventing and Punishing Arbitrary or Unlawful Killing

The right to life, as a human right, requires States to prevent and punish arbitrary deprivations of life caused by its agents.¹¹⁷² Lebanon has enacted the 1990 Internal Security Forces (ISF) Law,¹¹⁷³ which deals with the protection of the rights of the population in the course of the work of the ISF. In this law, the right to life is conceived as a limit on the right of the ISF to bear arms and, as such may fall short of the wide-ranging protection of the right of life under IHRL. The Code of Conduct for the ISF, adopted in 2012, requires its personnel to refrain from the use of torture, cruel, inhumane or degrading treatment, discipline to deter and punish engagement in prohibited acts, respect for the right to life in the use of force and firearms and other issues. Various security forces underwent training on the code. While civilian authorities maintain effective control over security forces, the latter reportedly enjoy a measure of implicit impunity. The government lack mechanisms to investigate and punish abuse and corruption. There are internal complaint mechanisms within the security forces, but there is no information available upon which to assess the efficacy of the mechanism.¹¹⁷⁴

Civil society members in Lebanon have noted that,

At some instances, the [Code of Conduct] was in contradiction to Lebanese laws making the [Code of Conduct] inefficient in practice. In addition to containing many ambiguities on the forms of implementation of the [Code of Conduct] while also including different terminologies that attenuate the essence promulgated by [it].¹¹⁷⁵

The Law of the ISF allows for the application of offences contained in the 1943 Penal Code,¹¹⁷⁶ which attract sanctions for the purposes of “reforming behaviour and to combat negligence and deterrence of mistakes and to strengthen discipline”.¹¹⁷⁷ There

¹¹⁶⁸ Art 549, 1943 Penal Code.

¹¹⁶⁹ Art 3, 1983 National Defence Law.

¹¹⁷⁰ Ibid, Art 4.

¹¹⁷¹ Ibid, Art 5-14.

¹¹⁷² In accordance with the exposition of the right to life provided by the Human Rights Committee in its 2015 General Comment No. 36, UN Doc. No. CCPR/C/GC/R.36.

¹¹⁷³ Law No. 17 of 1990, Regulating the Internal Security Forces (The 1990 ISF Law).

¹¹⁷⁴ See US Department of State (2014), *op cit*.

¹¹⁷⁵ Arab NGO Network for Development, ‘Civil Society Reports for the UPR for Lebanon 2015’ (2015), p. 69.

¹¹⁷⁶ Contained in Chapter VII of the 1943 Penal Code, by virtue of Article 167 of the 1990 Law of the ISF.

¹¹⁷⁷ Art 117, Law No. 17 of 1990, Regulating the Internal Security Forces (the 1990 ISF Law); see Art 118 for the sanctions.

is a defence, within the ISF sanctions procedure, on the basis of superior command.¹¹⁷⁸ Offences for which members of the ISF are legally accountable and for which they may be punished are largely offences against public decency and morals, including a number of sexual offences.¹¹⁷⁹ Members of the ISF are also included within the definition of 'armed forces' within the laws regulating states of emergency and the exercise of emergency powers and are, therefore, subject to the disciplinary provisions contained therein.

The effect of the General Amnesty Law and the limited mandate of the STL, however, diminish to a large extent the effectiveness of domestic law in respect of investigation of cases of arbitrary or unlawful deprivation of life. Both the General Amnesty Law and the Special Tribunal for Lebanon's Statute and cases limit criminal accountability to cases of intentional homicide of high profile political or community leaders. As a result, they place a hierarchy of types of violations of the right to life, with the political classes above the general population. This is contrary not only to the constitutional enshrinement of the right of all Lebanese citizens to equality before the law,¹¹⁸⁰ but also to Lebanon's international obligations contained in Article 6 of the ICCPR, and in the non-discrimination provisions of all international and regional human rights provisions. The prioritisation of high profile murders, to the neglect of deprivation of life of the general population, contravenes with the duty of States to protect all persons within their jurisdiction.

Lebanese criminal law provides for the prevention (insofar as criminal deterrence constitutes a preventative measure) and punishment of unlawful killing. Articles 547, 548, and 549, provide for offences of intentional homicide, which are punishable by a range of sentences up to and including the imposition of the death penalty. However, the 1991 General Amnesty Law has prevented the prosecution of such offences on a wide scale, except for high profile assassinations. This Law does not specify that offences to which the amnesty applies must have been committed in direct connection with the non-international armed conflict, recovery from which was one of the aims of that law. Any offence (apart from those listed as excluded and discussed above) committed before March 1991 is pardoned by the effect of this amnesty law. This prevents the investigation of several violations, including arbitrary killings. Accordingly, the Lebanese State fails to meet its obligation to investigate violations of the right to life and domestic law in this regard is not compliant with international law.

The Protection of Liberty and Security of Students and Education Staff

In 2014, at least 25 boys were arrested by the Lebanese Armed Forces in anti-terrorism raids in the north of the country between August and December 2014.¹¹⁸¹ They were kept in pre-trial detention for an extended period and were initially not separated from

¹¹⁷⁸ Art 119, 1990 ISF Law.

¹¹⁷⁹ See further, below, on sexual and gender-based violence.

¹¹⁸⁰ Art 7, 1926 Constitution of Lebanon, which, in itself contravenes the duty of the Lebanese State to protect the rights of all persons within its jurisdiction.

¹¹⁸¹ Report of the UNSG to the Security Council on Children and Armed Conflict, 5 June 2015, UN Doc. No. A/69/926-S/2015/409, para. 112.

adults who were held under military jurisdiction for national security offences, until they were transferred to the children's area of the prison in January 2015.¹¹⁸²

Lebanon is bound by several international legal instruments requirement the protection of the liberty of students and education staff, including the ICCPR, the ICPED and the ACHR. The combined effect of these are to require the State, *inter alia*, to i) prevent arbitrary and unlawful detention; ii) ensure judicial control of detention in connection with criminal charges; and iii) provide for a system whereby a person deprived of their liberty is able to challenge such detention and seek compensation. Article 8 of the 1926 Constitution of Lebanon provides that “[P]ersonal freedom is guaranteed and protected by law and cannot be arrested or detained or one stop except in according to the provisions of the law and cannot determine the guilt or penalty imposed except by law.”¹¹⁸³ The grounds provided in law for the deprivation of liberty are contained in Article 115 of the 1943 Penal Code, which deals with the hierarchy of sanctions that the judge must consider when handing down a sentence. The sanction of last resort is deprivation of liberty. This is in line with international standards on the grounds for deprivation of liberty.

In addition to being at risk of having their right to liberty and security violated, civilians have been at risk of abduction in Lebanon. Targeted abductions of education staff, including high profile individuals involved in teachers' unions, were reported to have occurred during the 1975-1990 conflict.¹¹⁸⁴ Under Lebanese domestic law, it is an offence to deprive someone from his or her personal freedom “by abduction or any other means”, punishable by hard labour for the basic offence.¹¹⁸⁵ The aggravated form of the offence attracts a punishment of hard labour for life if the victim is: detained or deprived of their liberty for a period of more than a month; “subject to physical or mental torture”;¹¹⁸⁶ targeted because of his job or because of his membership in an organisation; targeted for partisan, sectarian or revenge purposes or on the basis of collective punishment; or killed. Of particular relevance to students and education staff is the aggravated form of abduction attracting hard labour for life if the victim was taken hostage to extort institutions or the State for money or coercion.¹¹⁸⁷ Article 492 of the 1943 Penal Code criminalises specifically the abduction of children under the age of seven years and falsification of his or her identity.

Protection Against Enforced Disappearances

Enforced disappearances, defined as the “arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the

¹¹⁸² Ibid.

¹¹⁸³ (emphasis added).

¹¹⁸⁴ ICTJ, ‘Lebanon’s Legacy of Political Violence’ (2013).

¹¹⁸⁵ Art 569, 1943 Penal Code.

¹¹⁸⁶ Ibid, Art 569(2). On the definition of torture in Lebanese domestic law, see below. It is relevant to note that, although mental harm is included in the concept of torture in other places in domestic legislation, here there appear to be two distinct forms of torture – physical torture and mental torture.

¹¹⁸⁷ Ibid, Art 569(5).

law",¹¹⁸⁸ have been a particular issue in Lebanon and are thus here considered separately. Immediately following the end of the non-international armed conflict in 1991, the number of persons missing was estimated by the Government of Lebanon to be approximately 17,000.¹¹⁸⁹ This figure was revised in 2000 when the first official commission empowered to deal with the matter identified just over 2,000 persons as having disappeared between 1975 and 1990 and the shortfall has been explained, at least in part, by civil society organisations in Lebanon, as attributable to the unwillingness or inability of families to file requests for investigation with the commission.¹¹⁹⁰ In 1995, and by Law No. 434, provision was made in respect of persons who had been missing for at least four years allowing families to declare them dead.¹¹⁹¹

A 2000 Commission issued a report acknowledging, for the first time, the presence of mass graves, but stated that it was impossible to identify the remains found in these graves after the lapse of so much time and denied that Lebanese persons continued to be detained in Syria and Israel.¹¹⁹² There have been subsequent ministerial decrees promising to deal with the matter of the missing but, as yet, the Government of Lebanon has taken no legal steps to enshrine its duty to protect, investigate and ensure truth-telling with regard to missing persons. This is despite a Constitutional Council ruling in March 2014 that the relatives of missing persons have the right to truth concerning the fate of their family members.¹¹⁹³ Despite this obligation falling on the State, there is so far only evidence of non-State humanitarian actors such as the International Committee of the Red Cross, carrying out activities intended to give this right effect.¹¹⁹⁴ Although this has not been fully implemented in accordance with international standards on enforced disappearances, the Government of Lebanon shared copies of the State's investigation files into missing persons to their families in September 2014 as a gesture of good faith.¹¹⁹⁵

Civil society has developed a Draft Law for Missing and Forcibly Disappeared Persons, which is available for review and comments on the website of the Ministry of Justice of Lebanon. By April 2015, two draft laws had been reviewed and consolidated into a document referred to as the Consolidated Draft Law (CDL), which is itself under review by the Lebanese Human Rights Parliamentary Committee in 2016.¹¹⁹⁶ The main

¹¹⁸⁸ Art 2(1), ICPED.

¹¹⁸⁹ ICTJ, 'Failing to Deal with the Past: What Cost to Lebanon?' (January 2014), p. 15.

¹¹⁹⁰ Ibid.

¹¹⁹¹ Ibid, p. 16.

¹¹⁹² Ibid.

¹¹⁹³ See 'Confronting the Legacy of Political Violence in Lebanon: An agenda for change – Recommendations from Lebanese civil society' (October 2014), p. 7.

¹¹⁹⁴ The International Committee of the Red Cross (ICRC) is planning to launch its Biological Reference Samples Collection and Storage project with the Lebanese Government to collect and preserve saliva samples from relatives of the missing in order to aid a future identification process. This would be followed by the creation of a DNA Profile Bank: ICTJ, 'The Missing in Lebanon: Inputs on the Establishment of the Independent National Commission for the Missing and Forcibly Disappeared in Lebanon' (January 2016), pp. 14, 26.

¹¹⁹⁵ ICTJ 'Confronting the Legacy of Political Violence in Lebanon: An agenda for change – Recommendations from Lebanese civil society' (October 2014), p. 7.

¹¹⁹⁶ ICTJ, 'The Missing in Lebanon: Inputs on the Establishment of the Independent National Commission for the Missing and Forcibly Disappeared in Lebanon' (January 2016), p. 13.

provisions define the key terms,¹¹⁹⁷ enshrine the rights of families of the missing,¹¹⁹⁸ establish an institute for missing persons,¹¹⁹⁹ deal with the procedure for identification and exhumation of individual and mass graves,¹²⁰⁰ and data management to facilitate tracking.¹²⁰¹ It additionally creates the offence of committing, participating in or intervening in enforced disappearances, desecration of mass graves and other related acts.

There is a contradiction between the terms of the amnesty granted in 1991 on the one hand and Lebanon's signature to ICPED and the draft law on enforced disappearance on the other. Until the procedure for ratification of the ICPED has been met, the State is obliged to refrain from taking steps that are contrary to the purpose of the treaty. Given that the protection of persons from enforced disappearances has, as an essential element, providing redress for disappearances, as well as the acknowledging their occurrence, Lebanon is in direct contravention of the purpose of ICPED.

¹¹⁹⁷ Arts 1, 2, Draft Law for Missing and Forcibly Disappeared Persons.

¹¹⁹⁸ Ibid, Chapter II.

¹¹⁹⁹ Ibid, Chapter III.

¹²⁰⁰ Ibid, Chapter IV.

¹²⁰¹ Ibid, Chapter V.

Protection of Students and Education Staff from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

As a party to the ICCPR, and having acceded to the CAT without reservation, Lebanon has several international legal obligations in respect of torture or cruel, inhuman or degrading treatment or punishment. The most comprehensive obligations in this regard arise from the CAT and include the duty to investigate allegations of torture,¹²⁰² the duty to ensure that evidence obtained through torture is inadmissible in any proceedings,¹²⁰³ and the duty to provide redress and “fair and adequate compensation”, including means of rehabilitation, for victims of torture.¹²⁰⁴ In addition to the substantive provisions relating to the crime of torture, Lebanon is bound to permit inspections to ensure compliance with the CAT. Such inspections have, in fact, taken place. However, the CAT Committee found torture to be a,

“[P]ervasive practice that is routinely used by the armed forces and law enforcement agencies for the purpose of investigation, for securing confessions to be used in criminal proceedings and, in some cases for punishing acts that the victim is believed to have committed. Evidence gathered throughout the country during the course of the inquiry dictates a clear pattern of widespread torture and ill-treatment of suspects in custody, including individuals arrested for State security crimes and other serious crimes, as well as foreigners, especially Syrians and Palestinians, and individuals arrested in the course of civil policing, in particular lower-income individuals arrested for minor crimes.”¹²⁰⁵

Article 336 of the 1943 Penal Code states that subjecting the victim to “torture or acts of barbarity” is an aggravating circumstance for property offences, carried out by three or more persons, which carries the death penalty. A similar provision is included in Article 549 of the 1943 Penal Code in respect of intentional homicide,¹²⁰⁶ which is considered to be an aggravated form of the basic offence and punishable by the death penalty, “if the offender committed acts of torture or cruelty against persons”. Although the term ‘torture’ appears in the text of the 1943 Penal Code, it is not defined. Neither is it specifically and deliberately criminalised. Article 401 of Penal Code criminalizes acts of violence and duress to extract confessions, but the judiciary has rarely, if ever, investigated or prosecuted allegations of such acts.¹²⁰⁷ ‘Torture’ within the meaning of Articles 336 and 549 of the 1943 Penal Code, moreover, are not compliant with the definition of torture contained in the CAT. Both offences are outside the scope of the Military Penal Code and the 1990 ISF Law, which incorporate only Chapter VII of the 1943 Penal Code dealing with offences against public decency and morality. As a result, torture, within the meaning of the above provisions excludes acts carried out by official actors. This is an essential element of torture within the CAT and the ICCPR, which require to create a specific offence, which encompasses all acts by which physical and psychological harm are intentionally inflicted, by an official actor or someone

¹²⁰² Art 12, CAT.

¹²⁰³ *Ibid*, Art 15.

¹²⁰⁴ *Ibid*, Art 14.

¹²⁰⁵ CAT Committee, ‘Summary Account of the Result of the Proceedings concerning Inquiry on Lebanon’, UN Doc. No. A/69/44 paras. 100 – 115, and Annex XIII.

¹²⁰⁶ The basic offence of intentional homicide is contained in Article 547, 1943 Penal Code.

¹²⁰⁷ See US Department of State, ‘2014 Human Rights Report: Lebanon’ (June 2015).

acting on the instigation or with the acquiescence of an official actor, for the purposes of extracting information or a confession or for punishment, intimidation or coercion.

During the UPR in November 2010, the Lebanese delegation gave a commitment that the definition of torture in Lebanese law would synergised with the international legal definition and that domestic law sentences would be increased.¹²⁰⁸ The Government of Lebanon has since embarked on consultations to develop a draft law in compliance with its obligations under the CAT. This was submitted to the Lebanese Parliament in 2012 and remained under review since that time. In 2015, the Parliamentary Committee for Administration and Justice was seized of the matter but the consultation process has been reported to lack transparency.¹²⁰⁹ The definition of torture in the draft text of the law is more limited than that required by Article 1 of the CAT; it limits the definition to acts occurring “during the initial investigations, judicial investigation and trials”, thereby excluding torturous acts occurring in many settings, such as in detention.¹²¹⁰ Missing from the text of the draft law is a prohibition of *refoulement* of persons to States where there are substantial grounds for believing that they would be in danger of being subjected to torture.¹²¹¹ Additionally, it does not provide for appropriate rehabilitation or effective remedies to victims of torture.¹²¹²

In practice, the State has made limited attempts to address the impunity gap created by the legal frameworks. In 2010, the ISF established a Committee to Combat Torture, which was commissioned to investigate allegations of torture made by any person within the custody of the ISF, to follow up on such cases and monitor and visit places of detention, including those at police stations.¹²¹³ Although the Committee has failed to make any public information available, its chairperson, General Antoine Boustany, revealed that it had received 68 complaints of torture in 2014.¹²¹⁴

In light of the foregoing, the Lebanese State is in breach of its obligations contained in the CAT, not only to criminalise torture but also to refrain from effecting torture by its own officials as well as failing to investigate instances of torture (the latter issue arising at least in part from the absence of a definition of torture in domestic law). The non-application of the general criminal laws to the ISF and military personnel creates an impunity gap, which is exacerbated by the opacity of the work of its Committee to Combat Torture. As such, it is likely that the State is in contravention of its obligation to investigate torture by its own agents, under Article 12 of the CAT.

In respect of the obligation to refrain from sending persons back who are risk of being subject to torture, Lebanese domestic law is in direct contravention. The law relating to seeking asylum in Lebanon is based on criminal provisions rather than a specific asylum system; there is no exemption from deportation for persons who are at risk of being

¹²⁰⁸ Report of the Working Group on the UPR: Lebanon, 12 January 2011, UN Doc. No. A/HRC/16/18, p. 11.

¹²⁰⁹ Frontiers Ruwad, ‘Lebanon: Joint Submission in View of Lebanon’s Second Periodic Review by the Human Rights Council – Torture, Detention and Unfair Trials’ (2015), para. 9.

¹²¹⁰ *Ibid.*, para. 10.

¹²¹¹ Art 3, CAT.

¹²¹² Frontiers Ruwad, ‘Lebanon: Joint Submission in View of Lebanon’s Second Periodic Review by the Human Rights Council – Torture, Detention and Unfair Trials’ (2015), para. 10.

¹²¹³ Arab NGO Network for Development, ‘Civil Society Reports for the UPR for Lebanon 2015’ (2015), p. 69.

¹²¹⁴ *Ibid.*

subject to torture upon return to their country of origin. In this respect Lebanon is in direct breach of its obligation relating to *non-refoulement* as a party to the CAT.¹²¹⁵

Although efforts to reform the Lebanese Penal Code have been initiated, there is still a need for a more comprehensive framework for the criminalization of torture including in respect of sentencing, recognition of command responsibility, the abolition of the limitation period, disapplication of pardon and amnesty to torture-related offences, and the inadmissibility of confessions obtained by means of torture.¹²¹⁶

Sexual and Gender-Based Violence

A 2012 study by UNESCO found that school-related gender-based violence poses a “serious obstacles to learning” in Lebanon, causing not only physical and psychological harm, but also educational damage.¹²¹⁷ The risk is exacerbated by poverty, with examples of young girls trading sex for money to supplement family income or pay school fees.¹²¹⁸ As a party to the ICCPR, which Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, Lebanon must protect children from sexual exploitation and abuse by taking all measures possible against such violation.

Sexual and gender-based violence is not limited to schools but also occurs in universities, where violence has been attributed to political conflicts and/or different religious backgrounds, bearing the hallmark of sectarian tension that has underpinned armed conflict and insecurity in Lebanon.¹²¹⁹ Sexual and gender-based violence is also a particular risk to conflict-displaced populations in Lebanon; combined with the limited rights to work of their parents and poor access to schools, child refugees especially, are vulnerable to transactional sex.¹²²⁰ A study conducted in 2006 found that 16.1 percent of children aged between 8 and 11 had been exposed to one of several forms of sexual violence, the effects of which are exacerbated by a poor response system in Lebanon.¹²²¹

Sexual offences are dealt with generally in Chapter VII of the 1943 Penal Code, and sexual offences against a minor are dealt with specifically in Part 4 of Chapter VII. Like other MENA States, Lebanon retains a defence to rape if the perpetrator agrees to marry the victim.¹²²² This is a clear contravention of the right of victims to appropriate remedy for sexual violence and significantly undermines the State’s fulfilment of its international legal obligations in this regard. This is despite reports that the State effectively implemented its national laws on rape.¹²²³ In 2014, Lebanon enacted the Law for the Protection of Women and all Members of the Family from Family Violence (2014 Domestic Violence Law). While it includes provisions enabling women to obtain

¹²¹⁵ Art 3, CAT.

¹²¹⁶ See Lebanese Parliament, UNDP ‘National Human Rights Action Plan: background study on torture’ (2008).

¹²¹⁷ UNESCO, ‘School-Related Gender Based Violence in Lebanon’ (2012), p. 3.

¹²¹⁸ *Ibid*, p. 23.

¹²¹⁹ *Ibid*, p. 170.

¹²²⁰ Arab NGO Network for Development, ‘Civil Society Reports for the UPR for Lebanon 2015’ (2015), p. 44.

¹²²¹ *Ibid*, p. 46.

¹²²² Art 522, 1943 Penal Code.

¹²²³ Human Rights Watch, ‘2014 Human Rights Reports: Lebanon’ (June 2015).

injunctions against perpetrators, assigning a specialised prosecutor to receive and investigate domestic violence, establishing specialising units within the ISF, the scope and application of the 2014 Domestic Violence Law is limited. It defined domestic abuse as, “as act, act of omission, or threat of an act committed by any family member against one or more family members...and that results in killing, harming, or physical, psychological, sexual, or economic harm”.¹²²⁴

In respect of the State’s obligation to prevent sexual and gender-based violence by its own agents, domestic law incorporates some sexual offences into the Military Penal Code and the ISF Law. However, there remain reports of sexual abuse, especially in ISF custody, of detained persons, as well as of refugees in Lebanon (but by private individuals).¹²²⁵ There is evidence, however, of the State taking measures to address this. The Women’s Affairs Division within the Lebanese Ministry of Social Affairs provided counselling for victims and training for ISF members to combat sexual violence in prisons and in 2012, for the first time, women were commissioned as ISF officers.¹²²⁶

Sexual offences and their legal consequences are also of relevance to the documentation of any child born as a result and, subsequently, to his or her access to education. Article 493 of the 1943 Penal Code criminalises the failure to disclose the proper identity of a child left at a refuge for foundling, with a sentence of temporary hard labour. This offence expressly applies to both ‘legitimate’ and ‘illegitimate’ children and, as a consequence, appears consistent with Lebanon’s international obligations under Articles 7 and 8 of the CRC to ensure that all children, regardless of whether they are born to married or unmarried parents, are granted documentation and an identity. This analysis is only sustainable, however, when considering Article 493 in isolation. Additional sexual offences and the way in which they are conceived (socially and by the judiciary) result not only in the stigmatisation and criminalisation of perpetrators but can also lead to the same for the victims. In this instance, the mother of a child born to unmarried parents has a choice between the criminal act of failing to register, or concealing, the birth and the sanction attached to extra-marital sexual relations. This can occur even in the case of coerced sexual relations such as rape, where the evidentiary rules applying to a finding of guilt are not fully implemented by the domestic courts.

Specific Protection of Children as Students in Insecurity or Armed Conflict

In addition to benefiting from the protections discussed above (life, liberty, security, freedom from torture and inhuman treatment), children are the objects of special protections. For Lebanon, these obligations arise principally from the CRC (and its Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, as mentioned above), the ICCPR, and the ACHR. In times of armed conflict, there is additional protection for civilians, including children, arising from the Fourth Geneva Convention and Additional Protocol I or II, depending on the nature of the armed conflict. The standards contained in the Optional Protocol to the CRC on the

¹²²⁴ Art 2, 2014 Domestic Violence Law.

¹²²⁵ See Human Rights Watch, ‘2014 Human Rights Reports: Lebanon’ (June 2015).

¹²²⁶ Ibid.

Involvement of Children in Armed Conflict, which Lebanon has only signed, are also relevant. The State's obligations and international standards fall broadly into three areas of relevance: protection from violence against children; protection from child labour; and prevention of use and recruitment of children in armed forces and armed groups.

The matter of the State's obligation to protect children as students in insecurity and armed conflict is complicated by the presence and activities of non-State armed groups operating in Lebanon. There is evidence, however, of such armed groups undertaking child protection responsibilities. For example, in 2013, the PLO and the Forces of the Palestinian National Coalition have issued a common declaration on the protection of children from the effects of violence and armed conflict in refugee camps.¹²²⁷

Violence against Children

In 2016, it was documented that 16.1 percent of children between the ages of 8 and 11 were subject to one or several forms of sexual violence, with 54.1 percent of children in Lebanon exposed to physical violence, 40.8 percent to witnessing acts of domestic violence and 64.9 percent subject to psychological violence, in various settings.¹²²⁸ Syrian refugee children, especially have reported physical violence and bullying in schools in Lebanon.¹²²⁹

The Ministry of Social Affairs, in consultation with the Higher Council for Children and some international agencies, produced a draft bill on the Protection of Children from all Forms of Abuse, Neglect and Exploitation. Lebanon has also enacted a specific law on the protection of children in conflict with the law. The Lebanese Penal Code criminalises various forms of neglect,¹²³⁰ and violence against children.¹²³¹ There is additionally a centralised special investigation bureau in the office of the prosecutor of the court of cassation for child victims and witnesses.

Despite the criminalisation of serious forms of violence against children, Lebanese domestic law expressly permits "disciplinary slapping of children by their parents and teachers in the manner permitted by general custom".¹²³² On 9 April 2014, the Lebanese parliament decided to repeal this provision. On the second day, members of parliaments protested this decision claiming that this article relates to personal customs, whereby religious belief allows for some forms of child punishment. Following extensive discussions in parliament, 34 parliamentarians voted for the repeal of this provision and 36 voted against. Law 293/2014 on the Protection of Women and Other Family Members from Domestic Violence does not explicitly prohibit all corporal punishment

¹²²⁷ Declaration Issued by the Factions of the Palestine Liberation Organization and the Forces of the Palestinian National Coalition in Lebanon on the Protection of Children from the Effects of Armed Conflict and Violence (2013), unofficial translation available at: http://theirwords.org/media/transfer/doc/declaration_on_the_protection_of_children_from_the_effects_of_armed_conflict_and_violence-bec802d1b7c3f215a558f17601ac0e81.pdf

¹²²⁸ Arab NGO Network for Development, 'Civil Society Reports for the UPR for Lebanon 2015' (2015), p. 46.

¹²²⁹ UNICEF, 'Education Under Fire' (2015), p. 10.

¹²³⁰ Arts 500-501, 1943 Penal Code

¹²³¹ Ibid, Arts 505-506, 509-510, 519-520.

¹²³² Ibid, Art 186.

in childrearing, but it does define 'domestic violence' as "any act, omission, or threat by a family member against one or more family members ... that entails an offence stipulated in this law and results in homicide or physical, psychological, sexual or economic harm". Additionally, Law 422/2000 for the Protection of Juvenile Delinquents and Endangered Juveniles 2002, considers corporal punishment unlawful in penal institutions but does not explicitly prohibit it in all other circumstances.

Involvement of Children in Armed Conflict

There have been reports of an increasing problem with the recruitment and exploitation of children in political protests and militant activities in North Lebanon and some areas of Beirut and in some Palestinian camps, where children are used as armed guards.¹²³³ The UN has also collected reports of children from the age of 14 joining armed factions in Palestinian camps and armed parties operating in Syria.¹²³⁴ It is reported that the economic benefits of membership of joining armed groups encouraged students away from school during the non-international armed conflict.¹²³⁵ Tensions amongst students in schools and universities has also been connected with the incidence of children joining armed groups in Lebanon.¹²³⁶ It has been estimated that, in 1990, one percent of Lebanese children were involved in the armed conflict,¹²³⁷ and child recruitment by armed groups continues in contemporary Lebanon.

Although Lebanon has only signed, not ratified, the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict,¹²³⁸ it has agreed to a work plan to prevent and respond to the association of children with armed violence. There are no reports of children within the State armed forces and, in this way, the State's practice is consistent with international standards requiring the prohibition of use of children in their armed forces, as contained in the Optional Protocol.¹²³⁹ Compulsory recruitment in Lebanon was abrogated by Decree No. 665 of 2005 and the national minimum age for recruitment into the national armed forces is 17.¹²⁴⁰ This is consistent with the Optional Protocol which sets the voluntary age for recruitment at 15. However, there is no apparent safeguards against the direct participation in hostilities of persons under the age of 18, which is a requirement under the Optional Protocol. Ratification of this Protocol would thus contribute to the compliance of domestic law with international standards.

Child Labour

¹²³³ United States Department of Labor, *2013 Findings on the Worst Forms of Child Labor - Lebanon*, 7 October 2014, available at: <http://www.refworld.org/docid/5448a62b0.html>

¹²³⁴ Report of the UNSG to the Security Council on Children and Armed Conflict, 5 June 2015, UN Doc. No. A/69/926-S/2015/409, para. 112.

¹²³⁵ Z Zakharia, 'How Schools Cope with War: A Case Study of Lebanon', *Education in Emergencies and Post-Conflict Situations: Problems, Responses and Possibilities*, Spring 2004, p. 109.

¹²³⁶ Coalition to Stop the Use of Child Soldiers, 'Lebanon: The Vulnerability of Children to Involvement in Armed Conflict' (2007).

¹²³⁷ M. Macksoud, 'Lebanese Children and War', UNICEF Conference on Peace-building and Development of Lebanon, April 1990.

¹²³⁸ Lebanon signed the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict in 2002.

¹²³⁹ Arts 1- 2, Optional Protocol to the CRC on the Involvement of Children in Armed Conflict.

¹²⁴⁰ 1983 Lebanese National Defence Law.

In its Concluding Observations of 2006, the Committee on the Rights of the Child recommended that Lebanese authorities “effectively implement domestic labour laws and the ILO/IPEC Time-Bound Programme for the eradication of the worst forms of child labour by paying particular attention to the poor and remote areas of the country”.¹²⁴¹ It also advised the multiplication of labour inspection and the provision of recovery and educational opportunities to children who have previously been involved in child labour.¹²⁴² According to this Committee, “poverty is a major cause of child labour and the remote areas of the country have the highest rate of working children”.¹²⁴³ Children in Lebanon are engaged in a number of forms of labour including work in hazardous conditions, such as agriculture, tobacco cultivation, and metalwork.¹²⁴⁴

As a party to the 1999 Worst Forms of Child Labour Convention and to the 1973 Minimum Age Convention, Lebanon is bound (amongst other things) to prohibit child labour. The Minimum Age Convention leaves the exact minimum age for admission into employment to be determined by States party in national legislation, but does require them to take all measures to implement their obligations, including the use of penal or other sanctions against persons employing children.

In 2014, Lebanon made “a moderate advancement in efforts to eliminate the worst forms of child labour”.¹²⁴⁵ Projects which aimed to, first, improve access to education for children to first improve access to education and, second, improve their working conditions, were launched.¹²⁴⁶ Nevertheless, children in Lebanon remain engaged in the worst forms of child labour.¹²⁴⁷ Labour law enforcement was weak, and so mainly due to a lack of resources of the country.¹²⁴⁸

In domestic law, children are not allowed to work under 14 years of age. By Decree No. 8987 of 2012, the Ministry of Labour outlawed the employment of minors under the age of 18 in works that, “may harm their health, safety or morals”. Part of the criteria for such works is that they “limit their education”, and in this way domestic legislation directly links the prohibition of child labour with the continuing education of children. Decree No. 5137 of 2010 established a National Committee to Combat Child Labour, and Decree No. 700 of 1999 prohibited the employment of minors under the age of 16.

The legislation also guarantees free compulsory education for children until the age of 12 but this is not enough to eradicate child labour.¹²⁴⁹ These rules make children

¹²⁴¹ CRC Committee Concluding Observations, UN Doc. No. CRC/C/LBN/CO/3 (8 June 2006), para. 80.

¹²⁴² *Ibid.*

¹²⁴³ *Ibid.*, para 79.

¹²⁴⁴ *Ibid.*

¹²⁴⁵ United States Department of Labor’s Bureau of International Labour Affairs, 2014 Findings for Lebanon, p.1.

¹²⁴⁶ *Ibid.*

¹²⁴⁷ *Ibid.*

¹²⁴⁸ *Ibid.*

¹²⁴⁹ Law No. 686 on Education, enacted March 16, 1998, see: <http://ahdath.justice.gov.lb/law-nearby-education.htm>.

between 12-14 years of age particularly vulnerable to child labour, as they are not required to be in school but are not legally permitted to work.¹²⁵⁰ Moreover, in Lebanon, this type of domestic legislation only protects Lebanese citizens which means that foreign children are not covered under such provisions. This is particularly problematic for Syrian refugees who fled their country because of the conflict, as the children of refugee families are more vulnerable to the worst forms of child labour, with many of them being recruited by armed groups engaged in hostilities in Syria.¹²⁵¹ In 2014, only 20 percent of school-age Syrian refugee children attended schools in Lebanon.¹²⁵² The matter of child labour is of particular relevance to displaced Syrians, who are at higher risk of being street-based and therefore vulnerable to exploitation through child labour, as well as Palestinian refugee children in Lebanon, seven percent of whom are engaged in labour.¹²⁵³

Protection of Displaced Populations

Lebanon, which is not party to the 1951 Refugee Convention, has hosted several thousands of refugees from neighbouring States for an extended period, many of whom have had issues accessing education. The Lebanese asylum system is based upon the criminal provisions of the 1943 Penal Code, the 1962 Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country (1962 Foreigners' Entry and Exit Law), and regulations issued by the Ministry of Labour.

The 1962 Foreigners' Entry and Exit Law states that it is prohibited for foreigners to enter Lebanon, except through specific security centres, and that they are required to be in possession of identity documentation (including diplomatic papers) or a residency permit for Lebanon.¹²⁵⁴ Entry into Lebanon in contravention of these requirements is punishable by imprisonment and fines.¹²⁵⁵ Additionally, a person may be excluded or deported from Lebanon if he or she poses a threat to national security.¹²⁵⁶ National courts have held that Lebanon is bound by Article 14 of the UDHR, according to which everyone has the right to seek and enjoy asylum from persecution. This is a notable conclusion from the national courts and may support the view that this right is part of customary international law.

Detention of persons entering Lebanon in contravention of the provisions of the 1962 Foreigners' Entry and Exit Law amounts to administrative detention, which is not provided for in Lebanese domestic law and is practised "irregularly" by the General Security, the Lebanese intelligence agency.¹²⁵⁷ There is a report of a case decided by a

¹²⁵⁰ U.S. Embassy- Beirut, Report (8 February 2013).

¹²⁵¹ United States Department of Labor's Bureau of International Labour Affairs, 2014 Findings for Lebanon, p. 2.

¹²⁵² UNHCR, '2014 Syria Regional Response Plan: Lebanon - Mid Year Update', (2014).

¹²⁵³ See ILO, Save the Children, UNICEF, Lebanese Ministry of Labour, 'Children Living and Working on the Streets in Lebanon: Profile and Magnitude' (February 2016); ILO, 'The Twin Challenges of Child Labour and Youth Employment in the Arab States' (2015), p. 2.

¹²⁵⁴ Art 6, 1962 Entry, Residence and Exit Law.

¹²⁵⁵ Ibid, Art 32; see also Arts 33-34 of the same.

¹²⁵⁶ Ibid, Art 17.

¹²⁵⁷ Frontiers Ruwad, 'Lebanon: Joint Submission in view of Lebanon's Second Periodic Review by the Human Rights Council – Torture, Detention, and Unfair Trials' (2015), p 7.

Judge of Urgent Matters, sitting in Civil Court, requiring the General Security to release an Iraqi refugee from detention and awarding him damages for time spent in custody.¹²⁵⁸ Damages were awarded on the basis of the General Security's failure to implement a decision issued in 2010, ordering the refugee's release, as well as on the definition of arbitrary detention in international law, with specific reference to Article 9 of the ICCPR.¹²⁵⁹

Since there is no provision in domestic law under which asylum may be sought in Lebanon, asylum seekers have no special legal status to reflect their need for protection; they are considered in Lebanon to be ordinary migrants and subject, therefore, to immigration laws.¹²⁶⁰ Registration with UNHCR affords individuals no specific legal recognition within Lebanon, as the Government of Lebanon signed a limited Memorandum of Understanding with UNHCR, which prevents UNHCR from carrying out all of the functions for which it holds a mandate, including legal protection.¹²⁶¹ In addition, in January 2015, the State instructed the UNHCR to stop registering all Syrians by whom it was approached, which is in contravention of UNHCR's responsibilities and its Standard Operating Procedures on refugee registration.

Although it has shown a reluctance to allow entry to Syrians seeking asylum in Lebanon, there are several court decisions of Single Penal Judges deciding that a foreigner entering Lebanon 'illegally' may not be pursued by security forces. Prosecution in these cases were brought under Article 32 of the 1962 Foreigners' Entry and Exit Law. There are additionally instances of the court, presided over by a Single Penal Judge, applying directly the provisions of Article 14 of the UDHR. The conclusion of the Single Penal Judge in that instance was that a Syrian person, escaping violence that endangered his life and security in his country of origin, was immune from prosecution of stealthy entry into Lebanese territory under Article 32 of the 1943 Penal Code, on the basis of the exclusion contained in Article 183 of the same, that the criminal character of an act is extinguished in the event that the actions were taking in exercise of a right. Such findings are required to be based on a finding of fact in each particular case and thus the default position is to prosecute those who enter Lebanese territory unlawfully. Although Lebanon is not party to the 1951 Refugee Convention, the standards contained therein are instructive when it comes to analysing the extent of protection of students and education staff who are seeking refuge in Lebanon. Article 31 of the 1951 Refugee Convention requires the waiver of prosecution for unlawful entry into a State's territory for all persons who are refugees. As mentioned above, the general position is that such persons are guilty of a criminal offence. As such, Lebanese law does not meet international standards of refugee protection. However, the Government of Lebanon has issued decrees and circulars in August 2014, which cumulatively provide for an amnesty for all Syrian refugees who entered Lebanon irregularly or had overstayed the

¹²⁵⁸ UNHCR, 'Submission by UNHCR for the OHCHR Compilation Report Universal Periodic Review (2nd Cycle, 23rd Session): Lebanon' (2015), p. 3.

¹²⁵⁹ *Ibid.*

¹²⁶⁰ *Ibid.*, pp. 1, 3-4.

¹²⁶¹ Such Memorandum of Understanding is the country-specific legal basis for any operations or activities carried out by UNHCR. It requires the consent of the host State (in this case, Lebanon) and will usually include some provisions relating to cooperation and facilitation of UNHCR operations by the State. Although Article 35 of the 1951 Refugee Convention imposes an obligation to cooperate with UNCHR, Lebanon has deliberately remained a non-party to this Convention and therefore outside the scope of this provision.

term of their residency until 31 December 2014, in order to regularise their stay without payment of a fine or fee.

Despite the amnesty provided to certain Syrian refugees, Lebanon also began implementing measures in 2014 to reduce the number of Syrians in the country by limiting entry to “extreme humanitarian cases”.¹²⁶² The General Directorate of the General Security issued a circular in February 2015 providing that Syrian refugees already present in Lebanon may legally extend their stay if they are able to satisfy a number of onerous documentary requirements and if they undertake to return to Syria upon the Government of Lebanon’s request or upon expiry of their permit.¹²⁶³

According to UNHCR, out of a total of 5,779 Syrian new-borns present in Lebanon in 2015, approximately 70 percent are not in possession of a birth certificate.¹²⁶⁴ In addition, the State has failed to abide by the customary international law rule of *non-refoulement*, which is also contained in international treaties to which it is party, including Article 3 of the CAT: the Directorate of General Security forcibly returned 49 Palestinian refugees to Syria, after clarifying that authorities arrested them at the airport for using forged documents in an attempt to travel onward outside the country.¹²⁶⁵

Lebanon’s domestic legal protection for refugees and asylum-seekers is piecemeal and, at times, *ad hoc*. Many of its protections are targeted toward Syrian refugees, on the basis of advocacy work of refugee protection organisations, such as the UNHCR, working on the Syrian influx. The absence of a legal process for seeking asylum, legal recognition of the principle of *non-refoulement*, and comprehensive rights’ protection for non-nationals, renders Lebanon’s domestic system inconsistent with international law and standards. This is not least in part because any concessions made by Lebanon often have the character of reasoned derogations from the strict legal position in Lebanese law, rather than a deliberate protection afforded to refugees and asylum-seekers by law.

Protection of Educational Facilities

Although the north of Lebanon has been particularly affected by armed violence, sporadic explosive violence in other parts of the territory, including the capital, continues.¹²⁶⁶ During the 2006 armed conflict between Israel and Lebanon, 300 schools were partially damaged, while 40 to 50 were entirely destroyed.¹²⁶⁷ As a result, many

¹²⁶² Human Rights Watch, ‘World Report 2015: Lebanon’.

¹²⁶³ UNHCR, ‘Submission by UNHCR for the OHCHR Compilation Report Universal Periodic Review (2nd Cycle, 23rd Session): Lebanon’ (2015), p. 4.

¹²⁶⁴ UNHCR, ‘Submission by UNHCR for the OHCHR Compilation Report Universal Periodic Review (2nd Cycle, 23rd Session): Lebanon’ (2015), p. 2; see also Frontiers Ruwad, ‘Lebanon: Joint Submission in view of Lebanon’s Second Periodic Review by the Human Rights Council – Torture, Detention, and Unfair Trials’ (2015), p. 7.

¹²⁶⁵ See US Department of State, *2014 Human Rights Report: Lebanon* (June 2015).

¹²⁶⁶ Report of the UNSG to the Security Council on Children and Armed Conflict, 5 June 2015, UN Doc. No. A/69/926-S/2015/409, para. 112.

¹²⁶⁷ See, for example, S Assir, ‘Reclaiming normalcy, children in Lebanon return to school at last’ (UNICEF, 16 October 2006), available at: http://www.unicef.org/emerg/lebanon_36172.html

children had to travel longer distances to go to school because their schools were destroyed or damaged or because their homes were destroyed and they had been displaced as a consequence. In addition, teachers reported that children were often psychologically scarred by the turmoil of war, which led to a high rate of aggression and attention problems amongst students, as well as a significant drop in grades in the summer following the July 2006 conflict, according to an assessment of 45 schools in 4 rural districts in Lebanon between November 2006 and March 2007.¹²⁶⁸ During that conflict, in Tripoli and surrounding areas, 97 schools were used as shelters for displaced persons. As a consequence, 20,000 students were deprived of education.¹²⁶⁹

A delegation of Amnesty International also documented a number of incidents of destroyed or damaged educational facilities arising out of the 2006 armed conflict:

“Amnesty International delegates visited several of the destroyed and badly damaged schools in south Lebanon, southern Beirut and Ba'albek. In Ma'roub, the school was flattened. In north-western Bint Jbeil, 'Oweyna girls school was severely damaged – its desks and chairs were visible from the street as one of the main walls had been ripped off. Kawnin's government school on the main road to Tibnin suffered severe external and internal damage, including partial destruction of walls – there was little or no sign of destruction in the surrounding area, indicating that the school was the target. Three of al-Khiam's five schools were severely damaged. In Beirut's Dhahiyeh neighbourhood, al-Mustaqbal school was completely destroyed, and Ashbel Sahel primary and secondary school was badly damaged.”¹²⁷⁰

In respect of the 1975-1990 armed conflict in Lebanon, it is estimated that 120 schools were destroyed.¹²⁷¹ In addition, during the 2007 Nahr el-Bared hostilities, several buildings including UNRWA educational facilities, were destroyed or damaged. Through the mobilisation of international financial assistance, UNRWA has been working to reconstruct these.¹²⁷²

The Right to Property

Under IHRL, educational facilities *per se* are not protected but the right of individuals to own property is guaranteed. According to the 1926 Constitution of Lebanon, communities (in the context of the language of the rest of the Constitution, this is read to mean religious/sectarian groups) have an inviolable right to establish their own private schools as long as they are in compliance with State requirements for public schools.¹²⁷³ In Lebanon, the establishment of private schools is widely practised and a right protected by law. A prerequisite to establishing private schools, however, is the possession or occupation of property that form appropriate educational facilities.

¹²⁶⁸ Strategic Foresight Group, *Report on the Cost of Conflict in the Middle East* (2009), available at: http://strategicforesight.com/publication_pdf/39166Cost%20of%20Conflict%20in%20the%20Middle%20East.pdf

¹²⁶⁹ UN General Assembly, 69th Session, Children and Armed Conflicts, Report of the Secretary General, A/69/926 - S/2015/409 para 114.

¹²⁷⁰ Amnesty International, 'Israel/Lebanon: Out of all proportion – civilians bear the brunt of the war', (November 2006), AI Index: MDE 02/033/2006, p. 55.

¹²⁷¹ ICTJ, 'Lebanon's Legacy of Political Violence' (2013), p. 67.

¹²⁷² See Statement of UNSG at Nahr El-Bared camp (25 March 2016).

¹²⁷³ Art 10, 1926 Constitution of Lebanon.

The issue of property ownership in Lebanon is a contentious one and has been the subject of strict legislative limitation challenge before the Constitutional Council. It is of particular significance to the protractedly displaced Palestinians present in Lebanon, whose permanent settlement (along with any other non-Lebanese citizen) is prohibited. The preamble of the 1926 Constitution of Lebanon is invoked to conclude that Palestinians are prohibited from settling in Lebanon. It has been given effect by a 2001 amendment to Presidential Decree No. 11614 of 1969,¹²⁷⁴ providing that “[N]o real right of any kind may be acquired by a person who does not carry citizenship issued by a recognised state or by a person, if such acquisition contradicts the provisions of the Constitution relating to the prohibition of settlement”.¹²⁷⁵

The Constitutional Council has upheld this provision to be compatible with the Constitution and, included therein, Lebanon’s international obligations, in part in consideration of the principle of reciprocity.¹²⁷⁶ Although Lebanon is party to neither of the two international treaties dealing the status of stateless persons and reduction of statelessness,¹²⁷⁷ the standards are a useful benchmark. Article 7 of the 1954 Convention on the Status of Stateless Persons requires that the reciprocity requirement be waived in respect of stateless persons, such that the treatment of a stateless person in a State is not conditional upon the same treatment of the nationals of that State in the country of origin or of habitual residence of the stateless person in question. The Lebanese domestic position in respect of Palestinians’ (and other stateless persons’) right to own property is clearly inconsistent with this standard. It has been suggested that this prohibition of property ownership was specifically targeted to prevent Palestinians in Lebanon from owning property, thereby undermining the security with which they are present in the State and at least compel them to remain within the confines of UNRWA ‘camps’.¹²⁷⁸ Although the 2001 amendment to the 1969 Presidential Decree has a disproportionate impact on Palestinians, it is consistently enforced. As a consequence, this aspect of domestic law is also in contravention of the principle of non-discrimination, as enshrined, *inter alia*, in the ICESCR and the CERD.

During a state of emergency, and for the purposes of maintaining security, the army is empowered to inspect buildings with the approval of a competent public prosecutor.¹²⁷⁹ Upon review of domestic jurisprudence, there were no examples of situations in which military personnel invoked this power in respect of educational facilities, which may indicate that this is not a common practice in Lebanon. It should also be recalled that Lebanon has signed the Safe Schools Declaration, a non-binding instrument through

¹²⁷⁴ Law No. 296 of 2001.

¹²⁷⁵ The Arabic term here is *توطين*, which connotes permanency of settlement rather than temporary presence although it strictly translates to ‘settlement’. It may also be understood as integration or naturalisation but suggests a connection of the individual with Lebanese territory rather than affecting his legal status. It is relevant that this prohibition is contained in a clause dealing with the integrity and indivisibility of Lebanese territory.

¹²⁷⁶ Decision No. 2 of 2001, Constitutional Council of Lebanon, 21 May 2001.

¹²⁷⁷ 1954 Reduction of Statelessness Convention; 1961 Prevention of Statelessness Convention.

¹²⁷⁸ It is relevant to note that Lebanon has a strict policy restricting the freedom of movement of Palestinians residing in camps, with military check points at the entrance.

¹²⁷⁹ Art 4(3), 1983 National Defence Law.

which States can endorse and commit to implement the Guidelines for Protecting Schools and Universities from Military use during Armed Conflict.¹²⁸⁰

Protection from Direct Attacks

Under IHL, schools are protected from attacks under the principle of distinction, as civilian objects, a rule of customary IHL also applicable in non-international armed conflicts and thus to both the State and to non-State armed groups. However, civilian objects may be the object of legitimate attacks if they are turned into legitimate military objectives, for example if it is used for military purposes. Educational facilities do not benefit from any additional protection regime, unless they also amount to an object falling under the regime applicable to cultural monuments. Nevertheless, any attack on a military object must abide by the principles of military necessity and proportionality.¹²⁸¹ In addition, under ICL, attacking an education facility may also constitute a war crime or a crime against humanity;¹²⁸² however, for now, Lebanon is not a party to the ICC Statute.

In Lebanese domestic law, political offences are those which are committed for a political motive and those which are “committed against collective and individual political rights unless the perpetrator was prompted by a selfish motive”.¹²⁸³ The Penal Code goes on to specify that attacks on property by arson, by use of explosives and when involving the use of weapons and violence (including attempt to commit such acts) are not political offences and that “[A]t times of civil war or insurrection, complex or closely related offences shall not be deemed to be political unless they *constitute non-prohibited customs of war* and they do not constitute acts of barbarity or vandalism (emphasis added).”¹²⁸⁴ This paragraph suggests a legislative intent to plug any gaps between domestic law crimes and acts recognised as war crimes which, by inference, suggests that any acts which do constitute a war crime are adequately dealt with in the applicability of these norms and rules in Lebanese domestic law.

The risk of terrorist attacks in Lebanon poses particular risks to educational facilities. The STL, which decides cases according to Lebanese domestic law, expounded the definition of terrorism.¹²⁸⁵ In its 2011 Interlocutory Decision on the Applicable Law, found that it was appropriate for it to use international law to aid interpretation of domestic law, which does not contain a clear definition of terrorism.¹²⁸⁶ The STL found that the customary international law position on the elements of terrorism was as follows:

¹²⁸⁰ For more on the Safe Schools Declaration endorsements, see the website of the Global Coalition to Protect Education from Attack at: <http://www.protectingeducation.org/guidelines/support>

¹²⁸¹ Handbook, pp. 192-213.

¹²⁸² Ibid, pp. 213-220.

¹²⁸³ Art 196, 1943 Penal Code.

¹²⁸⁴ Ibid, Art 197.

¹²⁸⁵ M Scharf, ‘Special Tribunal for Lebanon Issues Landmark Ruling on Definition of Terrorism and Modes of Participation’, ASIL Insights, Vol. 15, Issue 6 (2011); see generally *Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Preparation, Cumulative Charging*, Case No. STL-11-01/I (16 February 2011), (*STL Interlocutory Decision on Applicable Law*). This decision resulted from a question of law referred to the Appeals Chamber of the STL by the Pre-Trial Judge in the case of *Ayyash*.

¹²⁸⁶ *STL Interlocutory Decision on Applicable Law*, 2011, paras. 19-20, 45, 62.

(i) The perpetration of a criminal act (such as murder, kidnapping, hostage-taking, arson, and so on), or threatening such an act; (ii) the intent to spread fear among the populations (which would generally entail the creation of public danger) or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it; (iii) when the act involves a transnational element.¹²⁸⁷

The elements of terrorism determined by the STL to be present in customary international law, therefore, focus on the acts and their consequence, rather than the specific form of violence employed, by reference to the weapon or agent used by a perpetrator.

By way of comparison, terrorism, as contained in Lebanese domestic legislation, places a clear emphasis on the type of weapon or agent used as almost conclusive as to whether the crime of terrorism has been established, referring to “all acts intended to cause a state of terror and committee by means liable to create a public danger such as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents.”¹²⁸⁸ The Lebanese domestic courts have interpreted this provision to require that the means employed by a person suspected of terrorism were, in themselves, likely to cause a danger to the general population.¹²⁸⁹ The facts in the case of Rachid Karami consisted of the use of explosives in a flying helicopter and the domestic court in question found that this, in itself, created a public danger and so constituted an act of terrorism within the meaning of Article 314 of the 1943 Penal Code.

In view of its findings in customary international law, the STL concluded that the proper interpretation of the offence of terrorism in Lebanese domestic law is that the particular means of attack (weapon or agent) is not conclusive in distinguishing the offence of terrorism from that of murder; acts carried out with weapons or tools that are not, in themselves, likely to cause a danger to the general population could constitute the domestic offence of terrorism, as long as the elements that it found to be contained in custom are present.¹²⁹⁰

Amendments made in 1958 to the 1943 Penal Code included the addition of an aggravated form of terrorism, which carries the death penalty in the event of partial or total destruction or damage to property:

Any act of terrorism shall be punishable by hard labour for life. Where the act results in the death of one or more individuals, the total or partial destruction of a building having one or more individuals inside it, the total or partial destruction of a public building, an industrial plant, a ship or other facilities, or disrupts the functioning of telecommunication or transport services, it shall be punishable by death.¹²⁹¹

¹²⁸⁷ *Ibid*, para. 85.

¹²⁸⁸ Art 314, 1943 Penal Code; see also Arts 315-316 and 316 *bis*, 1943 Penal Code on offences associated with the commission of terrorism.

¹²⁸⁹ *Rachid Karami*, Judgement of the Court of Justice, Decision No. 2/1999, cited in the 2011 *STL Interlocutory Decision on Applicable Law*, para. 51, fn. 70.

¹²⁹⁰ *STL Interlocutory Decision on Applicable Law*, 2011, para. 147.

¹²⁹¹ Art 6, Law of 1 January 1958, Amendment of Certain Articles of the Criminal Code (1958 Amendments to the Penal Code).

It is not clear that the STL's interpretation of the crime of terrorism will be applied by Lebanese domestic courts. This is in view of the absence of a formal doctrine of *stare decisis* in Lebanese law, as well as the binding quality of STL decisions being limited to a finding of guilt and on the persons before it.¹²⁹²

Remedies and Mechanisms

Remedies for education-related violations committed in times of armed conflict in Lebanon have largely been absent. The mechanisms that do exist have been described as highly selective and politicised,¹²⁹³ focusing on criminal accountability for high profile assassinations including that of the former Prime Minister Rafic Hariri, by the STL, as well as similar high profile assassinations, by domestic criminal courts. The general state of affairs following the conclusion of hostilities in Lebanon has been described by the International Centre for Transitional Justice as follows:

"[At] the conclusion of the war, there was no attempt to deal with its legacy. Rather, a flawed transitional process emanated from a consensus reached at Ta'if among the conflict's protagonists. This included a general amnesty, no truth seeking, mismanaged reparations, and incomplete institutional reform, all of which undermined prospects for justice and national reconciliation. Limits were placed on what matters could be brought to the public's attention, based on what former warlords viewed as unwarranted truths. This resulted in the denial of truth and justice for thousands of victims of the war."¹²⁹⁴

While the foregoing is true of all victims of the non-international and international armed conflicts and continuing insecurity, it is especially pronounced in respect of education-related violations in those circumstances. This is owing, at least in part, to the non-implementation of the legal frameworks for remedies that do exist in Lebanon, which are discussed in this section. Where victims and their families have attempted to seek reparation in the absence of prosecutions by the State, they have faced the challenges of an unwilling and politicised judiciary.¹²⁹⁵ In addition, and broadly speaking, litigation is lengthy and costly in Lebanon and is often circumvented by means of community-based mediation, which does not generally meet the rule of law requirements of the State's obligation to provide fair and impartial means of securing effective remedies.¹²⁹⁶ According to the number of cases received by courts in Lebanon, as last published by the Ministry of Justice in 2006, they show an increase in number of cases across the years.¹²⁹⁷

Human Rights Remedies and Mechanisms

The remedies for victims of human rights violations appear to fall short of international standards, with Lebanon having been criticised for making, "no serious attempts to

¹²⁹² On the significance of the STL to addressing education-related violations, see below, 'Mechanisms and Remedies'.

¹²⁹³ ICTJ, *Failing to Deal with the Past: What Cost to Lebanon?* (January 2014), v.

¹²⁹⁴ *Ibid*, pp. 1-2.

¹²⁹⁵ *Ibid*, p. 9.

¹²⁹⁶ See V Hamd, *op cit*.

¹²⁹⁷ See 'Report of the totality of courts per province', Official Website of the Ministry of Justice, available at: <http://www.justice.gov.lb/CP/viewpage.aspx?id=578&language=2>.

comply with its international legal obligations to pursue perpetrators of serious human rights violations or to address the rights and needs of victims, nor has it addressed the culture of impunity that has pervaded Lebanese society.”¹²⁹⁸ For example, while there is an independent judiciary in civil matters, civil lawsuits seeking damages for human rights violations attributable to the State have seldom submitted to it. During the 2015-16, there were no examples of a civil court awarding a person compensation for such violations.¹²⁹⁹

The Lebanese State is nevertheless constitutionally required to abide by the UDHR.¹³⁰⁰ Although express guarantees of rights are limited in the 1926 Constitution of Lebanon to freedom from arbitrary arrest,¹³⁰¹ freedom of conscience and freedom of religion,¹³⁰² educational freedom,¹³⁰³ the right of Lebanese citizens to public employment,¹³⁰⁴ freedom of opinion, expression, press, assembly and association,¹³⁰⁵ and the right to enjoyment of private property,¹³⁰⁶ there may be greater rights protections by function of the direct effect of international law in national courts, as already discussed.¹³⁰⁷

¹²⁹⁸ ICTJ, ‘Failing to Deal with the Past: What Cost to Lebanon?’ (January 2014), p. v.

¹²⁹⁹ See US Department of State, ‘2014 Human Rights Report: Lebanon’ (June 2015); see further ICTJ, ‘Failing to Deal with the Past: What Cost to Lebanon?’ (January 2014), p. 19.

¹³⁰⁰ Preamble, 1926 Constitution of Lebanon.

¹³⁰¹ *Ibid*, Art 8.

¹³⁰² *Ibid*, Art 9.

¹³⁰³ *Ibid*, Art 10.

¹³⁰⁴ *Ibid*, Art 12.

¹³⁰⁵ *Ibid*, Art 13.

¹³⁰⁶ *Ibid*, Arts 14-15.

¹³⁰⁷ By virtue of Article 2, Lebanese Civil Procedure Code.

National Human Rights Institutions and Mechanisms

There are several national human rights institutions, which mostly have a mandate over mainstreaming respect for human rights in various sectors within Lebanon. There are few opportunities for individual complaint, however, and so Lebanon's national human rights institutions fail to comply with international and regional obligations in respect of offering remedies for violations of human rights.

Lebanon does not have a Ministry specifically dedicated to human rights matters. In 1995, the Parliament created the Human Rights Committee, which is competent to consider human rights related matters, in both the legislative and oversight functions. It includes two specialised parliamentary committees. The first is the Commission on Rules and Procedure of Human Rights, within which operates the Parliamentary Commission for the Rights of the Child, is responsible to consider complains and investigate the prisons and youth rehabilitation centres and make recommendation in respect of facilities. It is important to note that the Rules and Procedure Commission may only consider complaints committed by deputies or by Lebanon's two bar associations (Beirut and Tripoli), and appears not to have the power to receive individual complaints. The second relevant commission is the Commission on the Administration of Justice.¹³⁰⁸

There is additionally a National Commission for Lebanese Women, which was established by Law No. 720 of 1998. It issues and oversees national strategies for implementing gender equality. The Commission has consultative responsibilities but has no competence to receive complaints of discrimination. It has been criticised for focusing on women of Lebanese nationality. As such, it fails to ensure the protection of the right to non-discrimination on the basis of nationality for all persons within Lebanese territory, which is contained in several international treaties to which Lebanon is party.¹³⁰⁹

The Parliamentary Human Rights Committee has cooperated with the UN agencies to develop a national strategy on human rights, which includes the establishment of a National Independent Commission on Human Rights.¹³¹⁰ Lebanon reported in 2014 to the Committee on the Elimination of all forms Discrimination Against Women (the CEDAW Committee) that, "it is expected that a national human rights commission will be formed, charged with formulating a procedural plan of action that will undoubtedly cover specific instances of [human rights violations] in the law".¹³¹¹ Following consultations with select groups (public officials, civil society representatives and "major stakeholders"),¹³¹² a draft law to establish a Lebanese National Human Rights Commission was presented to the Lebanese Parliament in 2012. The draft law is not publicly available but was shared with NGOs, according to which the Commission will co-host the National Prevention Mechanism and promote its financial and authoritative

¹³⁰⁸ Lebanon's State Report to the HRC, UN Doc. No. CCPR/C/42/Add.14, 1996, para.1.

¹³⁰⁹ See, broadly, Lebanon's State Report to the Human Rights Committee, UN Doc. No. CCPR/C/42/Add.14, 1996, para. 13.

¹³¹⁰ OHCHR, 'Lebanese human rights action plan moves closer to realization' (18 January 2011).

¹³¹¹ Lebanon State Report to the CEDAW Committee, UN Doc. No. CEDAW/C/LBN/4-5. 2014, para. 31.

¹³¹² Frontiers Ruwad, 'Lebanon: Joint submission in view of Lebanon's Second Periodic Review by the Human Rights Council – Torture, Detention and Unfair Trials' (March 2015), p. 3.

independence; this relationship has been criticised by NGOs to undermine the independence and sustainability of the National Prevention Mechanism.

By 2015, in its report to the Committee on the Elimination of all forms of Racial Discrimination (CERD Committee), Lebanon reported that a national human rights committee had still not been established.¹³¹³ Its responsibilities, however, were expanded upon to include receiving complaints related to human rights and to cooperate with a commission for protection against torture yet to be established.¹³¹⁴

However, an independent form of Ombudsman's office, the 'Mediator of the Republic', was established in 2005, to hear complaints against civil servants, including security personnel, and facilitate the resolution of disputes.¹³¹⁵ While such institution is important for the protection of human rights and the fight against public corruption, it is unclear if its work as been effective, given the ongoing political instability.

Judicial Review of Administrative Decisions

A limited form of judicial review is available in Lebanon in respect of administrative decision, generally, which must also be available for education-related decisions. The Constitutional Council, established in 1993 as an independent constitutional body with judicial capacity,¹³¹⁶ has exclusive supervisory jurisdiction over the constitutionality of "laws and all texts that have the power of law", as well as adjudicative competence over disputes and appeals arising from presidential and parliamentary elections.¹³¹⁷ There is no individual right to petition the Constitutional Council and the right to refer a matter to the Constitutional Council is reserved for the President of the Republic, the President of the Chamber of Deputies, the Prime Minister, members of the Chamber of Deputies, and the heads of legally recognised sects.¹³¹⁸

Article 19 of the 1926 Constitution of Lebanon does provide for very limited judicial review, by the Constitutional Council, of education matters. Only disputes, or requests for opinions, in respect of educational freedom,¹³¹⁹ may be referred to the Council, and only the persons listed above may make such an application.¹³²⁰

State Consultative Council

The administrative court system is composed of administrative tribunals and the State Consultative Council (*majlis shur al-dawla*). The administrative courts' jurisdiction is limited to matters involving or arising from administrative decisions issued by the State

¹³¹³ Lebanon's State Report to CERD Committee, UN Doc. No. CERD/C/LBN/18-22, para. 25; N Houry, 'Police Brutality in Lebanon' (Executive Magazine, 10 September 2015).

¹³¹⁴ Lebanon's State Report to CERD Committee, UN Doc. No. CERD/C/LBN/18-22, para. 25.

¹³¹⁵ See, for example, N Najjar, 'The Arab World', in A Ingen-Housz (ed), *ADR in Business* (Wolters & Kluwer, 2011), p. 580.

¹³¹⁶ Article 1, Law No. 250 of 1993.

¹³¹⁷ *Ibid.*

¹³¹⁸ *Ibid.*

¹³¹⁹ On which, see above, 'The Protection of Education'.

¹³²⁰ Art 19, 1926 Constitution of Lebanon.

or any of its agencies and institutions. The administrative tribunals constitute the first judicial level whose decisions may be appealed to the State Consultative Council.

In reality, 15 years after the adoption of the law establishing them, administrative tribunals have not yet been set up. The State Consultative Council functions as an appellate or Cassation level court to review judicial decisions made by a variety of administrative bodies and also acts as an original court for certain types of disputes, such as annulment requests against ministerial decrees for abuse of power. It is also consulted on the drafting of laws and decrees including those pertaining to human rights.

Criminal and Civil Law Remedies

The powers of the court in criminal proceeding include ordering damages, confiscation of assets and expenses.¹³²¹ Each offence committed against a third party gives rise to an obligation of compensation, except offences committed by a minor or a person lacking capacity.¹³²² Furthermore, with regard to education, domestic criminal law prohibits a convicted criminal to work in any school.¹³²³

Although Lebanon's domestic criminal law contains offences that encompass a number of education-related violations occurring in situations of insecurity and armed conflict, prosecution of these crimes was thwarted by the enactment in 1991 of the General Amnesty Law, granting amnesty for a wide range of offences which occurred before 28 March 1991.¹³²⁴ By Article 1 of the 1991 General Amnesty Law, the following offences were pardoned: crimes against the internal security of the state, crimes of a political nature, a large number of offences contained in the (then in force) Military Penal Code 24/68, crimes contained in the Ammunition Act provided that the perpetrator delivered any weapons and ammunitions within one month of the enactment of the 1991 General Amnesty Law, any offences of accessorial liability in respect of the above. Persons who continued to commit any offence beyond the date of the 1991 General Amnesty Law were expressly excluded from the amnesty.¹³²⁵ The perpetrators of a number of offences were expressly excluded from the granting of amnesty, including crimes against the external security of the State and assassination or murder of religious scholars, leaders, politicians and Arab and foreign diplomats, among others.¹³²⁶

A significant aspect of the 1991 General Amnesty Law was that it prioritised political expedience over accountability for violations. Political assassinations were required to always be referred to the Judicial Council, which enjoyed jurisdiction over any compensation claims arising out of such offences.¹³²⁷ The government was also granted extraordinary authority to grant pardons in specific cases.¹³²⁸ It did so in respect of two

¹³²¹ Art 129, 1943 Penal Code.

¹³²² *Ibid*, Arts 138-139.

¹³²³ *Ibid*, Art 50.

¹³²⁴ Law No. 58 of 1991, Granting a General Amnesty for Crimes Committed before the date of 28 March 1991 under Specified Conditions (the 1991 General Amnesty Law).

¹³²⁵ *Ibid*, Art 1.

¹³²⁶ *Ibid*, Art 3.

¹³²⁷ *Ibid*, Arts 8-9.

¹³²⁸ *Ibid*, Art 9.

persons (one of whom was a Maronite Christian) previously convicted of high profile assassinations under Law No. 677 of 2005 and, in order to maintain a sectarian balance, the same for a Sunni person who had been responsible for militant clashes with the Lebanese Armed Forces.¹³²⁹

Although the 1991 General Amnesty Law extinguished the 'public right' to prosecution of and punishment for offences committed before 1991, it retained the 'personal right' of victims to have their claim considered by the Criminal Court and the Civil Court, in limited circumstances.¹³³⁰ It also retained the 'personal right' of the victim to insist upon imprisonment in cases where, in the absence of the general amnesty, a custodial sentence would have been available in the particular case.¹³³¹ Nevertheless, amnesty laws have had overall dramatic negative consequences for guaranteeing victims' rights. The judiciary has been unable to provide equal access to nonpartisan justice and thus has deprived victims of meaningful routes to accountability. Therefore, a sense of impunity has prevailed across Lebanon in respect of violations occasioned during the non-international and international armed conflicts, as well as continuing insecurity, and has even contributed to the continuation of armed violence.¹³³²

The establishment of the STL in 2006 produced a hybrid internationalised tribunal to try domestic terrorism crimes relating to the assassination of former Prime Minister Rafic Hariri. It was purposely created to prevent a political and violent fallout that would have accompanied fully domesticized trials for the highly political offences within its jurisdiction. Sentences handed down by the STL may (but are not required to) be based on international practice and the practice of national courts of Lebanon.¹³³³ Its limited mandate renders it irrelevant to education-related violations during Lebanon's armed conflicts. However, it has produced some jurisprudence on the substantive domestic criminal law of Lebanon relating to terror offences, which may be relevant.

With regard to reparations to victims, the STL is empowered, but not required, to identify victims who have suffered harm as a result of the commission of crimes within its jurisdiction by Article 25 of its Statute.¹³³⁴ This is limited to cases in which the Tribunal has actually convicted an accused person. Although the STL's finding of fact and guilt is to be conclusive as to the convicted person's responsibility for a particular harm, any claim for compensation must be made by the victim or persons claiming through the victim to the national court or competent body. The STL is only required to transmit its finding of guilt to the competent national authorities. The Statute of the STL also makes provision for facilitating the participation of victims in the criminal proceedings of the Tribunal under the remit of a Victims and Witnesses Unit within its Registry.¹³³⁵

¹³²⁹ See ICTJ, 'Failing to Deal with the Past: What Cost to Lebanon?' (January 2014), p. 10.

¹³³⁰ Art 7, 1991 General Amnesty Law.

¹³³¹ Ibid.

¹³³² ICTJ, 'Lebanon's Legacy of Political Violence' (2013), p. 1.

¹³³³ Art 24, STL Statute.

¹³³⁴ 'Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon', Annexed to UN Security Council Resolution 1757 of 2006, known as 'the Statute of the Special Tribunal for Lebanon/STL'.

¹³³⁵ Art 14, Statute of the STL requires the establishment of the VWU; Article 17 deals with the rights of victims balanced against the rights of the accused; Article 28 requires the establishment of procedures and rules for the protection of victims and witnesses; see also provisions relating to reimbursement of costs incurred to attend

A number of international crimes are recognised in Lebanese domestic law.¹³³⁶ Some domestic law offences contained in the Penal Code carry an increased sentence if they occur in times of 'war'.¹³³⁷ After the Israeli invasion into Lebanon in 1982, a commission was established by "concerned public figures and jurists in the Western world",¹³³⁸ to enquire into violations of international law during that period. The commission found that Israel's actions were, "largely incompatible with the Geneva Conventions".¹³³⁹ None of these could be prosecuted domestically, however, since they fell within the remit of the 1991 General Amnesty Law.

Transitional Justice Mechanisms and Reparations

Transitional justice has generally been neglected in Lebanon. The Government of Lebanon has not undertaken a formal process of apology, although public personalities have issued individual statements for their acts during the 1975-1990 armed conflict in Lebanon.¹³⁴⁰ The situation is complicated in Lebanon as a consequence of the presence of non-State actors, which hold effective control over certain parts of the territory. Although there has been no systematic reparations programme by any of the territory-controlling armed groups in Lebanon, political parties have provided financial and other support to aid recovery to their own members.¹³⁴¹ As there has not been a coordinated and integrated response to reparations, inadequate monitoring has led to duplication and has undermined the equality of access to support of victims of violations.¹³⁴²

A specific initiative to document the violations which occurred during the non-international and international armed conflicts in Lebanon, as well as ongoing insecurity, is worth mentioning. *Bidna Na'aref*, which means 'we want to know', was established between 2011 and 2013 by the International Centre for Transitional Justice and other partners. It included 44 students from 12 public and private schools in the Greater Beirut area and collected testimonies from them about violations, which were preserved on a public website for the purposes of truth-telling.¹³⁴³

In addition, the role of education has been highlighted in respect of reconciliation and recovery and, ultimately, peace-building in Lebanon,¹³⁴⁴ in particular in the National Reconciliation Charter of Lebanon, as part of the 1989 Ta'if Accord.¹³⁴⁵ It provided that

hearings and the 'Legal Aid Policy for Victims' Participation', (2012), amended up to 2014, Doc No. STL-PL-2012-03-Rev.1-Corr.1.

¹³³⁶ On which, see above, 'Protection of Students and Education Staff' and 'Protection of Educational facilities'.

¹³³⁷ See, for example the crime of damage to military objects, Article 276, Penal Code.

¹³³⁸ S MacBride, K Asmal, B Bercusson, R Falk, G de la Pradelle and S Wild, 'Israel in Lebanon: Report of the International Commission to Enquire into Reported Violations of International Law by Israel during its Invasion of the Lebanon', *Journal of Palestinian Studies*, Vol. 12, No. 3 (Spring 1983), p. 117.

¹³³⁹ *Ibid*, p. 169.

¹³⁴⁰ See ICTJ, 'Failing to deal with the past' (2014), Section 6.4.

¹³⁴¹ *Ibid*, Section 6.5.

¹³⁴² IDMC, 'Lebanon: Displaced return amidst growing political tension' (December 2006), pp. 6-11.

¹³⁴³ See ICTJ, 'Lebanon's Legacy of Political Violence' (2013), p. 1.

¹³⁴⁴ See, generally, UNICEF, 'The Role of Education in Peacebuilding: Lebanon' (2011).

¹³⁴⁵ The Ta'if Accord.

education must be available to all, and that a curriculum be developed that accurately and fairly depicts, amongst other matters, the 15 year-long armed conflict in Lebanon

in a manner that “strengthens national belonging, fusion, spiritual and cultural openness”.¹³⁴⁶ As a response to the sectarian nature of that armed conflict, the Ta’if Accord also empowered the heads of Lebanese factions or sects to consult with the Constitutional Council on matters relating to, *inter alia*, the freedom of belief and practice of religious rites, and the freedom of religious education.¹³⁴⁷ This, and other provisions of the Ta’if Accord that maintained sectarianism as their basis, have been attributed to have produced a “key factor in institutional weaknesses that prevent the provision of impartial, efficient, and effective public services”, including education.¹³⁴⁸

Following the end of the armed conflict in Lebanon, the Government of Lebanon set an Education Reform Plan (1994-1997) that led to the publication of new curricula and relevant textbooks for all disciplines, except for history. However, the Ta’if Accord had stipulated the unification of the history curricula into one official version to ensure that students are taught a fair and accurate depiction of the armed conflict in Lebanon. It provided that “[T]he curricula shall be reviewed and developed in a manner that strengthens national belonging, fusion, spiritual and cultural openness, and that unifies textbooks on the subjects of history and national education”.¹³⁴⁹ Although four national committees have been formed since the launching of the Education Reform Plan in 1994, none has been successful in establishing a curriculum that encompasses all the conflicting contested narratives of the Civil War and that gains consensus in the Council of Ministers.¹³⁵⁰ A political impasse regarding the curriculum led to the marginalization of history education, henceforth missing a critical opportunity for truth and reconciliation through education.¹³⁵¹

Concluding Remarks

The protection of the right to education has continued to suffer under a poorly operating and discriminatory legal system in Lebanon. Even when the legislative framework is permissive, implementation is hindered by political strife and weak governance capacity. Lebanon has not had a general budget since 2005. Expenditure is increasing and Lebanon’s infrastructure is eroding with the increased pressure of hosting around 1.5 million Syrian refugees. The establishment of a national human rights commission has also been stalled as a result of the inertia of the Lebanese government, despite the submission to the Parliament in 2012 of a draft bill establishing it.

Violations against students and education staff continue, although with reduced frequency since the end of the armed conflicts, and are now fuelled by sectarian tension and characterised by sporadic attacks. By and large, the Lebanese State is faced by the

¹³⁴⁶ Sections III.D.3 and III.D.5, 1989 Ta’if Accord.

¹³⁴⁷ Section III.B(b), 1989 Ta’if Accord.

¹³⁴⁸ ICTJ, ‘Failing to Deal with the Past: What Cost to Lebanon?’ (January 2014), p. 4.

¹³⁴⁹ Section III D, 1989 Ta’if Accord.

¹³⁵⁰ See ICTJ, ‘Failing to Deal with the Past: What Cost to Lebanon?’ (January 2014), p. 15.

¹³⁵¹ *Ibid.*

arduous challenge of maintaining a hard-won peace in its territory after non-international and international armed conflicts and spill over violence from neighbouring States, while meeting an expectation that accountability for violations (including education-related violations) is delivered in a just manner. Challenges to the normative framework for the protection of human rights, including the right to education, are rooted in what is commonly known as *Nizam Al Taefi'ya*, the confessional system that governs Lebanon.

Confessionalism, or religious affiliation, has built Lebanon's laws and regulations around interests that reinforce coexistence among religious communities, instead of principles that uphold human rights. For example, the fact that private religious schools receive grants and donations from the government of Lebanon is indicative of the supremacy of confessional interests.¹³⁵² Instead of channelling scarce resources to public schools to uphold free and compulsory education, the government supports private confessional schools. The impact of confessionalism and the legacies of sectarian tensions are also seen in the Lebanese curriculum. Despite the Ta'if Accord requirement that agreed history textbooks serve as part of reconciliation efforts, this has not yet occurred and has thus undermined the peace-building potential of education in Lebanon. An example of the operation of confessionalism is the repeal of Article 186 of the 1943 Penal Code resulting in the prohibition of corporal punishment of children; the text of Article 186 was reinstated the day after it was repealed for reasons related to religious belief and customs.

The protection of educational facilities, especially publicly owned facilities, fails to meet international standards, not least because of a lack of resources that is exacerbated by Lebanon's significant burden as a host state to a large displaced population.

Despite the analysis that some of Lebanon's domestic legal provisions are not consistent with – or even breach – its international legal obligations and international standards for the protection of education, the State has evidenced willingness to find innovative ways to protect education, even when its domestic legal system does not strictly contemplate such action. A good example of this is the State's opening of public schools to refugee children. Factors contributing to this include a strong and active civil society and international cooperation and assistance, most especially financial assistance.

In this way, the domestic protection of education in insecurity and armed conflict has a complex texture in Lebanon but one that presents opportunities for strengthening. The continuing efforts of the State and of international and non-governmental organisations to improve the rule of law within Lebanon are indispensable to the full and effective protection of education in insecurity and armed conflict.

¹³⁵² Law No. 32 of 11 June 1965.

3.4. Comparative Analysis

Notwithstanding socio-legal and political distinctions between Egypt, Iraq, and Lebanon, and the great variation in nature and texture 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. This section compares the ways education is protected in the three case study States, following the various themes which were considered in each case study separately.

3.4.1. The International Legal Framework Protecting Education

International Human Rights Law

Egypt and Iraq have ratified eight of the nine of the core international human rights treaties, and Lebanon has ratified six.¹³⁵³ As parties to international human rights treaties, the three case study States exhibit some trends. Their general lack of submission to international oversight not only through complaints procedures to treaty bodies but also through acceptance of the jurisdiction of the ICJ over disputes arising out of, for example, the CERD, is consistent with trends observed across the MENA Region. For example, the Optional Protocol to the ICESCR, which specially allows individuals to complain in case of alleged violation of their right to education, has not yet been signed or ratified by any MENA State. The fact that Optional Protocols to the core human rights treaties allowing individual complaints have largely not been ratified by MENA States is particularly problematic in a region that, as a whole, lacks a regional human rights court.

While, for North African States, the African Court on Human and Peoples' Rights may hear individual complaints, the State party in question must have accepted this procedure. So far, only seven States have agreed to it but none of them in the North African region. This means that individuals in the MENA Region lack supra-national remedy mechanisms, which is particularly problematic when the State which has jurisdiction over them does not have a strong rule of law. As seen in Egypt, the African Commission on Human and Peoples' Rights has heard several cases against that State which concerned students, which demonstrates that the victims of education-related violations in the MENA Region would benefit from access to supra-national remedy mechanisms for human rights violations, whether at the regional or the UN level.

Another issue is the lack of consistent reporting practices to the UN Treaty Bodies, at least by Iraq and Egypt. There may be a connection between the strength of civil society, bolstered by the presence and support of international actors, in the State and the momentum to report; whereas in Egypt and Iraq there has been a great deal of attention and activity devoted to recovery from insecurity and armed conflict, in Lebanon the activities of external actors and national civil society has been focused on specific areas. For example, the women's rights movement in Lebanon is one of the stronger elements

¹³⁵³ It has signed, but not ratified the CPED, and it has neither signed nor ratified the CMW: UN Treaty Collection, MTDSG, Chapter IV.

of civil society and this can be seen in the submissions of NGOs to the CEDAW Committee. This is notwithstanding that Lebanon retains extensive reservations against the CEDAW.

As the case study States demonstrates, approaches to the role of Islamic law in the implementation of IHRL at the domestic level is not uniform. In Egypt, Article 2 of the 2014 Constitution of Egypt provides that “principles of Islamic Shari’a are the principal source of legislation”. While this gives a central role to Islamic principles in the formation of domestic principles, it does not place Islamic law in a hierarchy above domestically enacted law. Indeed, the Egyptian Supreme Constitutional Council has held as much.¹³⁵⁴ The 2005 Constitution of Iraq goes further in stating not only that Islam is the “foundational source of legislation”, but also that “no law may be enacted that contradicts the established rules of Islam”.¹³⁵⁵ It also places the rules of Islam on an equal footing with the principles of democracy and with the rights and basic freedoms set out in the 2005 Constitution of Iraq.

A key issue associated with the interaction of Islamic law and IHRL is the question of reservations to human rights treaties. Egypt’s reservations to the core human rights treaties specify exact provisions in domestic law that it has declared will not be abrogated by its international legal obligations. Among the three case study States, it has made the most Islamic law-based reservations against international human rights treaties, invoking specific domestic frameworks in place of those provided for in, for example, the CEDAW. Like in the case of Egypt, Iraq does not invoke the supremacy of Islamic law within its domestic jurisdiction as the justification for its reservations to international human rights treaties, but rather makes reservations in a manner that specifies the rules of domestic law and the provisions of the relevant IHRL treaty that it considers incompatible. In Lebanon, the matter is less connected with Islamic law. Its reservations against several provisions of the CEDAW are simply stated, with no justification – Islamic law-based or otherwise. Considering the complex demography in Lebanon, it seems unlikely that the determining factor in the content and scope of its reservations to human rights treaties is Islamic law.

While there is a tendency in some MENA States, particularly in the Gulf region, to frame reservations very broadly in terms of any provisions of international human rights treaties, which is problematic, Iraq and Egypt have evidenced a way in which the centrality of Shari’a principles to domestic legislation may tend toward compliance with the requirements of international human rights treaties in that they indicate more precisely the extent of the reservation in question. However, a major issue with all three States analysed is that they have made reservations to provisions that are considered as core provisions to those treaties, which is prohibited under international law. Article 19 of the Vienna Convention on the Law of Treaties states that reservations must not be “incompatible with the object and purpose of the treaty”. For example, the reservations made by all three case study States to Article 16 of the CEDAW, which provides for equality in marriage and family law, appear to go against the aim of the treaty and have been unacceptable by the CEDAW Committee. While the practice of entering

¹³⁵⁴ See Judgement of the Court of Cassation, Criminal Circuit, 14 June 2010, Case No. 48117 of the Judicial Year 74.

¹³⁵⁵ Art 2(1), 2005 Constitution of Iraq.

specific provisions is preferable to wide-reaching reservations, as seen in other MENA States, those reservations must not go against the aim of the treaty.

International Humanitarian Law

All three States are party to the Geneva Conventions, Egypt and Lebanon are party to Additional Protocols I and II, and Iraq is party to Additional Protocol I, but not Additional Protocol II. All three States are also party to the 1954 Hague Convention on the Protection of Cultural Property and Egypt and Iraq both constitutionally enshrine the State's duty to protect cultural heritage in its territory.

However, Egypt, Iraq, and Lebanon, diverge significantly in respect of ratification of international humanitarian law treaties and particularly weapon-specific treaties. Egypt represents one of the spectrum, having ratified no weapon-specific treaties. Next comes Lebanon, which ratified the Chemical Weapons and the Cluster Munitions Conventions in 2008 and the 1972 Biological Weapons Convention in 1975 (with a 1972 signature). Analysing the major weapon-specific treaties, Iraq tends to have ratified within the last ten years or so, with the exception the 1972 Biological Weapons Convention, which had a 20 year lapse before ratification in 1991. This coincides with a great deal of internationalised activity and attention during and following the US-Iraq armed conflict, as well as the CPA's specific disarmament mandate and law-making.¹³⁵⁶

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. Even acknowledging the limitation of the Study in respect of the accessibility of military manuals for all three case study States, the emphasis on specific weapons as a weapon of terror is significant and is consistent with the treatment of non-State armed groups across the MENA Region and within the remit of the prevention and punishment of terrorism. While there may be human rights-based criticisms of the breadth of definitions of terror found in all three States, but particularly in 2015 Egyptian legislation, the criminal provisions relevant to acts of terror, read in light of the three States' international obligations in respect of particular weaponry, tends toward implementation in compliance with these disarmament treaties.

Under IHL, schools are protected from attacks under the principle of distinction, as civilian objects, a rule of customary IHL, applicable in non-international armed conflicts and thus to all States, including the three case study States, and non-State armed groups party to an armed conflict. In case of military necessity, most educational facilities may be targeted or used for military purpose. However, such attack or use should be strongly discouraged given its impact on education. Lebanon is the only of the three case study States which has signed the Safe Schools Declaration, a non-binding instrument through which States can endorse and commit to implement the Guidelines for Protecting Schools and Universities from Military use during Armed Conflict.¹³⁵⁷

¹³⁵⁶ See, for example, CPA Order No. 3, 31 December 2003, CPA/ORD/31December 2003/3.

¹³⁵⁷ For more on the Safe Schools Declaration endorsements, see the website of the Global Coalition to Protect Education from Attack at: <http://www.protectingeducation.org/guidelines/support>

International Criminal Law

Treaties relevant to international crimes are implemented to varying degrees across the three case study States. None is party to the ICC Statute, but the domestic laws of all recognise at least some of the substantive offences within the ICC Statute. By contrast, Egypt, Iraq and Lebanon are all party to the Genocide Convention and the Convention Against Torture, but have entered reservations against the dispute resolution provisions. The rate of ratification of the former treaties, compared with the ICC Statute, may be explained in part by a general rejection by MENA States of internationalised judicial accountability.

Even if Iraq and Lebanon had ratified the ICC Statute, it cannot have retroactive effect and, accordingly, would be of limited relevance to significant periods of insecurity and armed conflict, in particular with regard to the Lebanese civil war which ended before the establishment of the ICC.¹³⁵⁸ Accordingly, strengthening national systems for criminal accountability is of great importance in any efforts to develop and enhance the protection of education in insecurity and armed conflict in the MENA Region. This is also in accordance with the principle of complementarity, the basis of the ICC which is meant to try crimes that States are unable or unwilling to prosecute themselves. The importance of strengthening criminal accountability at the domestic level was reiterated by the current Prosecutor of the ICC, in a 2015 'Statement on the alleged crimes of ISIS'.¹³⁵⁹ This is especially relevant to African MENA States that are AU Member States (with the exception of Morocco which is no longer an AU Member State). The stance of a number of African States on the ICC is often discussed.¹³⁶⁰ However, it should be noted that in many cases, African States have self-referred their situation to the ICC Statute and, while this undermines the argument that ICC prosecutions target African States, a perception of bias may remain. A context-sensitive and politically palatable route to strengthening accountability for education-related violations in the MENA Region should, accordingly, take into account the perceived legitimacy of any international mechanisms established or utilised for these purposes.

A major obstacle to criminal accountability is the provision of amnesties in post-conflict context. Within the three case study States, this has been particularly highlighted in Lebanon with what has been termed an 'official policy of amnesia', resulting in the enactment in 1991 of a wide reaching General Amnesty Law, symptomatic of a general practice of avoiding discussion and even accountability of the atrocities of Lebanon's successive armed conflicts, in addition to the highly selective nature of prosecutions

¹³⁵⁸ Since the ICC Statute entered into force on 1 July 2002, it became binding on signatories that had also ratified on that date, unless by virtue of the 60 day rule, a State's instrument of ratification or accession was deposited after 1 May 2002, in which the treaty would bind that State at a later date (see Article 126(2), ICC Statute).

¹³⁵⁹ 'Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS', 8 April 2015, available at: https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-08-04-2015-1.aspx

¹³⁶⁰ See M du Plessis, T Maluwa and A O'Reilly, 'Africa and the International Criminal Court', Chatham House Research Paper International Law 2013/01 (July 2013).

before the STL.¹³⁶¹ This form of critique is not unfamiliar in the context of internationalised tribunals; both the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia were confronted with accusations of ethnic bias in respect of their prosecutions focusing on one side of hostilities. It has been observed that the International Criminal Tribunal for Rwanda fared better than the International Criminal Tribunal for the former Yugoslavia in this regard, because such allegations did not have the force of a State in the way that they did for the International Criminal Tribunal for the former Yugoslavia.¹³⁶²

Lebanon is not alone, among the three case study States, although its tendency toward impunity for education-related violations and violations of IHL and IHRL more generally is more wide-reaching than in Egypt and Iraq. 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. Prosecutorial balance is, thus, an indispensable element to accountability for education-related violations in compliance with international law.

Nevertheless, it is important to recall that internationalised criminal tribunals have as one of their purposes to ensure the objectivity of criminal proceedings where accountability in accordance with due process requirements is threatened if trials take place in locations where popular opinion and reaction may pose security risks, or if they take place in the exact location where violations occurred, and has resulted in self-referral to international mechanisms by a number of States. This was, for example, the reasoning behind the transfer of Charles Taylor to The Hague for his trial beginning in 2007, and behind the location of the International Criminal Tribunal for Rwanda Trial Chamber in Arusha, Tanzania, rather than in Kigali, in 1995.

By contrast, Iraq opted for an entirely domestic response to violations at the highest levels through criminal trials for, amongst others, former President Saddam Hussein, with the establishment of the IHCT, the Iraqi Higher Criminal Tribunal. Article 33 of the IHCT Statute precluded Ba'ath Party members from being an officer, prosecutor, investigative judge, judge, or other personnel of the tribunal. In one of the two major cases heard before it, accused persons were convicted of education-related violations, including ordering direct attack against educational facilities. The IHCT trials, and their popular reception, was again heavily influenced by the context in which they arose. The fact that the Iraqi State undertook to ensure accountability for violations occasioned by the former government of Saddam Hussein was welcomed at the time proceedings began. It was argued that the IHCT, "as an independent component of the Iraqi domestic structure is not only warranted under the existing structure of international law, but accords with the highest aspirations of those who purport to believe in the rule of law".¹³⁶³ This was not least in view of the tribunal's contribution to a translated library of decisions of *ad hoc* tribunals and domestic cases relevant to IHL, which led the judges

¹³⁶¹ M Wierda, H Nassar and Maalouf, 'Early Reflections on Local Perceptions, Legitimacy and Legacy of the Special Tribunal for Lebanon', *Journal of International Criminal Justice*, 5 (2007), pp. 1065-1081.

¹³⁶² See K Bachmann and A. Fatic, 'The UN International Criminal Tribunals: Transition without Justice?' (Abingdon: Routledge, 2015).

¹³⁶³ M Newton, 'The Iraqi High Criminal Court: controversy and contributions', *International Review of the Red Cross*, Vol. 88, No. 862 (June 2006).

of the IHCT to allude that the tribunal could expand the influence and application of IHL across the Arabic-speaking world.¹³⁶⁴ In keeping with some elements of resistance to external influence observed within Iraqi domestic law and practice, domestic lawyers working toward the establishment of the IHCT insisted that it would contribute to the rule of law in Iraq, which was preferable over selective and externalised punitive processes, as observed in Lebanon, for example.

Although the establishment of a special tribunal for violations in Iraq was part of the activities of the CPA, it was the Interim Iraqi Government that issued the 2003 Statute of the IHCT, which was then re-promulgated by the newly elected Government of Iraq in 2005, following return of full sovereignty to the Iraqi State. Unlike in Lebanon where violations were committed multi-laterally, in Iraq (at least in respect of violations prior to the US-led invasion in 2003) the focus of accountability efforts lay on violations committed by Ba'athists against the Iraqi population. This distinguishing factor may explain in part the different approaches to accountability and truth-telling in Iraq and Lebanon. The importance of home grown rule of law initiatives has become a familiar argument,¹³⁶⁵ and to this end, Iraqi officials, even during the occupation of Iraq by the CPA, insisted upon an Iraqi response. It did this not by seeking an international forum, but domestically revoking full immunity that had previously been afforded to Ba'ath Party officials by Article 40 of the 1970 Constitution of Iraq, by Article 15(3) of the Statute of the IHCT.

In the absence of a developed proposal for regionalised criminal courts, it is not clear that a regional mechanism is the best alternative. The concept of complementarity within the ICC Statute contemplates, alongside the operation of the ICC, the strengthening of national criminal accountability for crimes, which is an important consideration in ensuring criminal accountability for education-related violations in the MENA Region that is consistent with, even if not technically within, the international legal framework and mechanisms for criminal justice.

The approach to prosecution of international crimes varies across the three States. In Egyptian domestic law, there is provision for the exercise of universal jurisdiction over certain crimes. There was an attempt, by lawyers acting on behalf of the Freedom and Justice Party, in December 2013, to communicate acceptance of the ICC's jurisdiction over Egypt. The Registry and the Office of the Prosecutor found, however, that this communication could not be considered to have been transmitted on behalf of the State in accordance with Article 12(3) of the ICC Statute and was thus ineffective in triggering the ICC's jurisdiction.

Both Lebanon and Iraq exhibit a slightly different approach. Their domestic laws and procedures prioritise the prosecution of high profile political figures, such as the former President Saddam Hussein in Iraq, and those suspected of assassinating Prime Minister Rafic Hariri in Lebanon.

¹³⁶⁴ Ibid, fn. 2.

¹³⁶⁵ See, for example, the statement by the UNSG: “no rule of law reform, justice reconstruction, or transitional justice initiative imposed from outside can hope to be successful or sustainable”: Report of the UN Secretary General, ‘The Rule of Law and transitional justice in conflict and post-conflict societies’, 23 August 2004, UN Doc. No. S/2004/616, at para. 17.

3.4.2. The Domestic Legal Framework Protecting Education

All three case study States have a monist legal system, such that ratified international treaties become directly part of the domestic legal system, with some requirements of publication in an official gazette. This presents a significant opportunity for the strengthened protection of education through litigation, as litigants are capable of invoking provisions of international treaties ratified by the State in question. Indeed, in Lebanon, the national courts are obliged to apply international law above conflicting domestic provisions.

However, strengthened implementation of the protection of education through the courts preconceives that the judicial system is independent and that litigation is fully accessible for victims of education-related violations, with respect for the rule of law. The only common law jurisdiction out of the three case study States, Egypt has a judiciary system which appears to have contributed to strengthen the protection of education, in particular by upholding the rights of students and education and staff. An example of this is the Supreme Constitutional Court's practice of considering the State's international legal obligations when interpreting provisions of domestic law, such as with respect to the protection against torture.

Nevertheless, in all three case study States, the rule of law has been significantly impacted by continuing insecurity or armed conflict. While Egypt's legal system, as the most established (and regionally influential) bears several hallmarks of the rule of law, such that the judiciary is constitutionally required to be independent, its independence and access have been criticised in practice. Despite strict provisions to the contrary, there is evidence in all three States but in Egypt and Lebanon especially, 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. Access to courts is also limited for a number of victims, in particular those that would require support, including of a financial nature, to enter into proceedings. The right to litigate in Iraq and Egypt is treated separately from the issue of legal aid or free legal assistance. While Egypt's amended 1996 Child Law guarantees the right to legal aid of children, the constitutional enshrinement of the right to litigate is not substantiated, at least not in the text of the 2014 Constitution of Egypt, with State-funded legal assistance. Similarly, in Iraq, there is a constitutionally enshrined right to litigate without any associated legal assistance.

Another hurdle to the implementation of the legal framework protecting education is the existence of derogations in time of emergency, which may be officially declared in situations that threaten a nation, such as contexts of insecurity or armed conflict. The invocation of a state of emergency has clear implications for the protection of education; certain protections guaranteed by the domestic laws ordinarily applicable within the territory of States may be suspended, which can thus, 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. All three case study States have declared states of emergency at various stages, and responding to a

number of threats within their domestic systems. However, none of them has made a notification of derogation under Article 4 of the ICCPR (or Article 4 of the ACHR).

Egypt stands out amongst the three case studies as having the greatest body of practice in the area of emergency measures. Whereas prior to the removal from office of the former President in 2011 emergency rule was the norm, the 2014 Constitution of Egypt (following its 2012 interim predecessor) introduced safeguards on the use of emergency powers and the declaration of a state of emergency. 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. Indeed, the 2011 uprisings in Egypt were motivated in large part by the persistent state of emergency for approximately 30 years until that date. 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. While the domestic laws in respect of states of emergency in place before the preceding have remained in force, the function of the relevant provisions of the new constitutions in Egypt, but also in Iraq, is to limit the exercise of such power. For example, the 1958 legislation in Egypt that was the legal basis for the extended period of emergency rule remains in force. However, the State's practice following the 2014 constitutional reform exhibits restraint. For example, the latest state of emergency, renewed in 2016, is limited to the Northern Sinai Province, meaning that under domestic law, emergency measures may only be utilised in that area. There is additionally a provision for judicial supervision of the exercise of emergency measures.

In this way, Egypt appears to evidence a willingness 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 as those 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. Although the constitutional reform introduced safeguards, these do not appear to have adequately addressed the threats of education-related violations, especially by the State against students and education staff. Nevertheless, the scope of the State's use of emergency measures has reduced significantly.

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.

The Protection of the Right to Education

At the domestic level, the right to education appears to have been greatly impacted by the transformative effect of insecurity and armed conflict, at least in two of the three case study States. 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 CPA, the provisional authority led by the coalition.

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 CRC Committee 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 comparison, the 2005 Constitution of Iraq focused on the enumeration of a comprehensive range of rights, similar to the United States' Bill of Rights. This approach of enumeration rather than substantiation of rights in the Iraqi Constitution has been criticised but may be explained in part at least by the fact that, whereas the 2014 Constitution of Egypt was drafted following an internal situation of insecurity, the 2005 Constitution of Iraq followed international intervention and was shaped by the actors involved therein.

It is interesting to note the way in which constitutional provisions are invoked by the legislature. Insofar as a trend may be observed within two years of adoption of the 2014 Constitution of Egypt, constitutional provisions are referred to in preambular text of legislation and usually invoke constitutionally enshrined ministerial powers as part of the legal basis of the legislation. By comparison, and in light of the inclusion of the *asbab al-mujiba*,¹³⁶⁶ which is unique to Iraq amongst the three case study States, although the specific number of article of the Constitution is not cited as part of the legislative justification, the substantive rights are invoked. For example, the *asbab al-mujiba* for the 2011 Eradication of Illiteracy Law (Iraq), states that the justification for the legislation was enacted, "in light of the issue of illiteracy as a result of the circumstances of the preceding phase, in respect of the departure from which the constitution provides that education is essential for social development and is a right ensured by the State ...".¹³⁶⁷ In this way, the constitutional provisions relating to education are given effect in legislation in a clearer manner than in Egypt, and may

¹³⁶⁶ *الاسباب الموجبة*, which translates approximately to 'justificatory reasons', and which are integral to the text of the legislation and provide its legal and constitutional rationale.

¹³⁶⁷ *الظروف المرحلة السابقة* translates directly to 'the circumstances of the preceding phase'. The use of the term 'preceding' suggests the phases immediately preceding the enactment of the 2001 Illiteracy Law (Iraq), and so may be reference not only to armed conflict from 2003, but more likely the recovery thereafter.

contribute to the better protection of education; clearly stated rights-based legislation may be more suitable to rights-based litigation for education-related violations.

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.

While, given the youth of the 2014 Constitution of Egypt, it remains to be seen whether the comprehensive constitutional structure recognising the right to education and enabling its provision can be implemented effectively in practice, the strict domestic framework in this State far outstrips those in Iraq and Lebanon. Egypt has, additionally, evidenced the will to revise its domestic legislation, such as the 1996 Child Law that was amended in 2008, to bring it into closer compliance with its international human rights obligations.

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. Part of the difficulty of relying upon reports of the latter group is that data is often collected on a specific issue and sometimes in respect of a specific population. This is especially relevant for international NGOs working with displaced populations. There are specific provisions within some of the treaties to which the case study States are party, for example the CCM, 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 of the perpetrators of education-related violations against them, and the possible deterrence this may bring. 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 one element of the 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 certain 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 in Lebanon; whereas political assassinations and other high profile attacks attract a great deal of media attention and are litigated either domestically or through the STL, those against individuals are often left with legally justified impunity. This failure of the Lebanese State to punish, *inter alia*, education-related violations has been noted as contributing to continuing insecurity resulting from ongoing sectarian tensions within Lebanon.

Whereas in Lebanon the State has generally failed to provide accountability for violations of the right to life, the right to liberty and security, the prohibition of torture by individuals in the course of the non-international armed conflict and subsequent insecurity, Egypt's failure to punish education-related violations persists in respect of those committed by the State and its agents. A notable example is the failure of the Egypt to investigate 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. This was effected by the CPA, however, after dismantling the governmental structures in place under the Ba'ath Party. The blanket approach taken by the CPA, in particular through the process of de-Ba'athification, was seen to have 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 the reinstatement of education staff. Literature on the process of de-Ba'athification attributes its failure at least in part to the fact that it was insufficiently localised and sensitive to the realities of the reach of the Ba'ath Party, such that persons who were members of the party in name only were treated in the same manner as those who could reasonably be considered to have borne responsibility for violations.

In all three States, the selective nature of criminal accountability is particularly problematic because of their reliance upon criminal law for the protection of students and education staff and in the absence of stronger and enforceable human rights-based protections. The comparison between Egypt and Lebanon, on the one hand, and Iraq on the other, also provides a useful lesson: neither highly selective criminal accountability nor blanket policies can realistically be sustained. A middle ground is required to ensure that the population is able to continue to function, not least the education system in States where an entire former government is impugned.

The Protection of Displaced Populations

In all three case study States, as in the MENA Region generally, the issue of the protection of the right to education of displaced populations is particularly complex and sensitive. This is exhibited in the 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 (with the exception of children's rights in Egypt, on which see below). Among the three case study States, none are party to the Statelessness Conventions and only Egypt is party to the 1951 Refugee Convention and its Protocol. All of the case study States appear to restrict (or to have restricted) access to their education system to displaced populations to a certain extent; this is particularly true with regard to Lebanon

where the right to education is restricted to citizens. However, in practice, education is often provided on an *ad hoc* basis.

In Egypt, the domestic laws on the right to education appear inclusive, even of non-nationals. Egypt is party to the 1951 Refugee Convention and its 1967 Protocol but not to the 1954 and 1961 Statelessness Conventions, which are poorly ratified within the MENA Region. Egypt made several reservations to the Refugee Convention, including one regarding Article 22 of the Refugee Convention, thus denying refugees the right to be admitted to public schools. However, the Minister of Education issued Ministerial Decree No. 24 in 1992, which allows the children of certain recognised refugees to attend public schools.

In Iraq, the Political Refugee Act, Law No. 51 of 1971, guarantees the right to education of political refugees on the same terms as Iraqi citizens. However there are several gaps in the framework contained in this act and, as a result, the treatment of refugees and asylum seekers is often determined on an *ad hoc* basis. In particular, the right to free education is tied to citizenship within the 2005 Constitution of Iraq.

This *ad hoc* approach is somewhat reflected in Lebanon, where the refugee population is over a million individuals, is under an obvious strain on its resources and particular pressure on its education system. The overall enrolments of Syrian refugee children seem critically low, with over 200,000 school-aged refugee children lacking access to age-appropriate education and most Syrian youth of secondary school age being out of school. Under Lebanese domestic law, there is no legal process for seeking asylum, nor legal recognition of the principle of *non-refoulement*, and comprehensive rights' protection for non-nationals is lacking. However, in practice, the State has opened up public schools and semi-public schools to Syrian refugees for free and has committed to providing education to an average of 413,000 Syrian children and vulnerable Lebanese children every year, up to 2017.¹³⁶⁸ Although its domestic law remains discriminatory in respect of the right to education of non-national, Lebanon has implemented specific and limited exceptions to this rule. In 2004, the Minister of Education issued a Decision to accept registration of resident non-nationals in Lebanese public schools, which had previously been restricted to nationals. However, Lebanon's domestic legal protection for refugees and asylum-seekers is piecemeal and, at times, *ad hoc*. Many of its protections are targeted toward Syrian refugees, on the basis of advocacy work of refugee protection organisations, such as the UNHCR, working on the Syrian influx.

The Protection of Children

In Egypt, Iraq and Lebanon alike, the child, especially, is considered to be the subject of special protection. While this is in part consistent with the CRC, 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 the CRC and global operational frameworks for children's rights. Only in Egypt has a dedicated children's law been enacted, codifying the various areas of law relevant to children in one statute.

¹³⁶⁸ UNICEF, 'Education Under Fire' (2015), p. 12.

This presents a promising practice when considered against that of other MENA States; the dedicated children's law allows for a comprehensive review of domestic laws pertaining to children's rights.

The enactment of the 1996 Child Law (Egypt) and its 2008 amendments additionally provide examples of the process by which domestic law relevant to the protection of students, especially, may be brought into fuller compliance with the CRC. 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 the comprehensive approach exhibited by Egypt, which allows for a multi-disciplinary framework for the protection of children. Although not strictly required by the CRC, codification in this way also allows for line ministry responsibility for protection across sectors of State activities, which allows for accountability.

In all three case studies, the State exhibits a protective approach to children that also acknowledges the role and responsibilities of families and communities, which presents an opportunity for the strengthened protection of child students. The community-based protection aspect of child protection in all three case study States is also an example of good practice of culturally-sensitive child protection, in accordance with the CRC, the ACHR, the ACRWC and the (not yet in force) OIC CRCI. In Egypt and Iraq, the constitutional text enshrines the State's primary obligation to ensure that children are subject to its protection and by contrast, the Lebanese constitution contains no mention of children or their protection. Article 80 of the 2014 Constitution of Egypt is of particular note; it provides protection to all children, and not just citizens, which is in accordance with the State's obligation under international law to extend protection to all children within its territory.

Child Labour

It has persistently been noted that child labour is a matter of concern in the context of the protection of education in insecurity and armed conflict, not only in the MENA Region, but throughout the world. 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. This is exacerbated by a higher incidence of violence against children and bullying against refugee children, which has been noted to reduce school attendance rates amongst these 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 (especially unlawful) labour.

All three case study States are party to the ILO 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 only, the State framed the prohibition in terms of the impact of the worst form of child labour 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 (18) remains much higher than the age at which compulsory education ends (12), leaving a gap for children and young persons after completion of compulsory primary education before they can enter into lawful employment, if they do not wish to pursue intermediate education. The difficulty arising out of this gap is not only what is sometimes called an 'idleness gap', whereby children and young persons are left without lawful options, but also that they may be compelled into the informal labour market without appropriate protections.

As parties to the ILO Minimum Age Convention, all three case study States are required by its Article 9 to take all necessary measures, including the provision of appropriate penalties to implement the Convention. Both Egypt and Iraq have enacted criminal provisions to enforce the prohibition of child labour within their territories, leaving Lebanon with the weakest protections against child labour amongst the three case study States. Considering that Egypt has the longest period of free and compulsory education from amongst the three case study States, and it has enacted criminal sanction for the unlawful employment of children, its domestic law incorporation of the prohibition of child labour presents good practice.

Children Involvement in Armed Conflict

A significant education-related violation noted both globally and in the MENA Region is the recruitment and use of children by armed groups and armed forces. Egypt and Iraq are party to, and Lebanon has only signed, the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict. Nevertheless, all three States are compliant with the Protocol's 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 CRC on the Involvement of Children in Armed Conflict does not impose a strict obligation on States party to ensure that children are not used in hostilities by non-State armed groups, it does issue guidance and, read together with the international human rights obligations of all three States, such as the obligation to protect the right to education and the ILO Worst Forms of Child Labour Convention, to which all three are party, 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 combatting child recruitment and use in hostilities. For example, Lebanon's interaction with Hezbollah is one that tends toward partnership. At times, the Lebanese Armed Forces and Hezbollah coordinate operations, and as such, the State has the opportunity to engage Hezbollah members on the matter of child recruitment. Some of the Palestinian factions in Lebanon, too, have issued a declaration on the protection from the effects of armed conflict on children. The State's acquiescence of their presence may present an open forum for non-State armed groups to undertake such measures. It should be noted, 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.

The Protection of Educational Facilities

All MENA States are bound to the customary rules of IHL, which includes the prohibition of attacks against, and military use of, civilian properties such as schools except in limited circumstances. In the domestic laws of the three case study States, the greatest protection of educational facilities from direct attack appears to be contained in the laws relating to terrorism. This means that accountability for damage or destruction of educational facilities in the three case study States generally requires the classification of the acts causing such damage or destruction as 'terrorist' acts. While this may provide a facilitative framework for the State to protect educational facilities, for example through preventive measures, the impact of anti-terror legislation and measures may be prejudicial to the rights of students and education staff.

Part of the right to own or control property in Iraq and Lebanon 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. 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 contained in Article 13 of the ICESCR, and the obligation of the State itself to provide an education that is available, accessible, adaptable, and acceptable to all individuals within their jurisdiction.

In respect of the protection of educational facilities against direct or indiscriminate attack, the domestic legislation of all three States has been consistent. None of the military penal codes of Egypt, Iraq, or Lebanon, contains provisions under which the direct attack of educational 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. Some offences against property are enshrined in the military penal codes of these States, but they are often triggered only when acts such as looting and vandalism occur outside the command of

a superior officer. Accordingly, this Study has not discovered how, if at all, the regulations of the armed forces of the three case study States deal with violations of the principle of distinction and the prohibition of direct attack against educational facilities as civilian objects. There are some examples, from the IHCT 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.

Among our three case studies, Lebanon is the only one which has signed the Safe Schools Declaration, a non-binding instrument through which States can endorse and commit to implement the Guidelines for Protecting Schools and Universities from Military use during Armed Conflict. Within the MENA Region, only Jordan, Palestine, and Qatar, have so far also endorsed this Declaration.

The Impact of Non-State Actors on Education

The presence of non-State actors, including non-State armed groups, on the territory of the three case study States also calls for a comparative analysis, although they operate in very different contexts. With regard to non-State armed groups, their status and treatment differ greatly from outright criminalisation to acquiescence, tolerance, and even cooperation, in each of the three States. 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. Its 2015 Anti-Terror Law defines terrorist groups broadly in a way that can encompass a number of non-State armed groups operating in Egypt. In its practice of declaring and extending a state of emergency in the Northern Sinai Province, where a non-international armed conflict has been established since 2014, the justification for such declarations and measures have included the combat of terrorism.

In Iraq, on the other end of the spectrum from Egypt, some former non-State armed groups have become recognized as governmental entities. Although not separately considered within this Study, the Kurdish Regional Government was formerly a non-State actor. With the wide-reaching reforms after the end of the Ba'ath Party rule, under the administration of the CPA and with the adoption of the 2005 Constitution of Iraq, came decentralization of power. In this way, the practice of States in ensuring the protection of education in light of the operations and presence of non-State armed groups should be sensitive to the possibly changeable nature of these groups. In respect of the right to education, decentralization in Iraq has allowed for the culturally- and linguistically- appropriate education of minority groups. In light of the persistent and serious violations against minority groups in Iraq under the rule of the Ba'ath Party, this is an important development. It may not be the only way, however, to ensure that the State education system is inclusive.

Lebanon has a very particular context and it has entered into some agreements with Palestinian factions, but the status of these is uncertain, as well as into a tacit agreement with Hezbollah, in the South of Lebanon especially. There is additionally cooperation between the Lebanese Armed Forces and Hezbollah in respect of security in the southern region of Lebanon. Lebanon's collaborative approach is in stark contrast to that

employed by Egypt and appears to have led to Hezbollah playing a significant role in the provision of education and may constitute good practice in respect of non-State armed groups' role in the provision of education. However, it is not as yet clear what impact, if any, the recent LAS designation of Hezbollah as a 'terrorist group' will have on Lebanon's relationship with Hezbollah.

In Lebanon, more than in both Egypt and Iraq, it is not just non-State armed groups that play a prominent role in the protection of education in the broad sense, but also businesses, civil society, and international organisations, in particular with regard to the provision of education to displaced populations. 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. Furthermore, Lebanon also presents an example of how decentralizing education (through the increase in private education) can undermine the conciliatory value of State-provided 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.

Accordingly, and in respect of both the State's obligation to provide a public education system and to ensure non-discrimination, a delicate balance is required between empowering minority groups or various religious groups 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 contained in Article 13(1) of the ICESCR, moreover, 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.

Remedies and Mechanisms

In respect of remedies and mechanisms, Iraq's strict domestic provisions are most numerous and provide greatest opportunity for effective remedies for education-related violations. They include, for example, several commissions established for the purposes of processing 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 ('returnees'). In addition, Iraq has dedicated legislation on compensation for military mistakes.

By contrast, 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 and positive 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.

International Remedies and Mechanisms

All three States have generally abstained from ratifying optional protocols to the international human rights treaties to which they are party. This is consistent with practice across the MENA Region. It is worth noting that the Optional Protocol to the ICESCR, which allows individuals to bring complaints regarding alleged violations of the right to education has not been ratified by any MENA State. Except for the African Court on Human and Peoples' Rights, the jurisdiction of which has not been accepted by Egypt as it did not ratify the protocol establishing it, the MENA Region does not have a specific regional human rights court. The proposed Arab Court of Human Rights and International Islamic Court have both struggled to come to fruition. As a result, throughout the MENA Region, almost all individuals lack a supra-national remedy mechanism in the case of education-related violations.

The situation in respect of reporting obligations to the UN Treaty Bodies 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 Iraq, reporting fell during the 1990s until after the US-led invasion and the adoption of a new constitution, which led to relatively frequent and consistent reporting to the various Treaty Bodies. Similarly in Egypt, reporting was infrequent prior to the 2011 uprisings but has been increased under almost all of the treaties to which Egypt is party from around 2014. In Lebanon, where there has not been wholesale legal or constitutional reform, even after the end of hostilities in 1989, reporting to the UN Treaty Bodies remains infrequent. While it is difficult to argue that the cessation of hostilities or constitutional reforms led to increased compliance with the reporting obligation to the UN Treaty Bodies, it certainly seems connected.

Overall, the practice of all three States is consistent with that of other MENA States. The pattern of more frequent reporting to the UN human rights Treaty Bodies when the legal system is returning to a more stable state following a period of insecurity or armed conflict, and aided by constitutional and institutional reform, is consistent with a widely-made argument that the rule of law is indispensable to the realisation of IHRL, which may apply to other MENA States.

Domestic Remedy and Mechanisms

In all three case study States, the implementation of the right to effective remedy is required. Lebanon is in need of further development of the legal infrastructure, including rule of law activities that garner public trust and confidence in the legal system.

In Egypt and Iraq, there are strict provisions establishing and empowering domestic human rights mechanisms which is accompanied by the individual right to litigate. By contrast, and against a general background of poor rule of law protections, in Lebanon, there are fewer such provisions and where there is provision for review of rights, such as the right to education, there is no right of individual complaint. The Constitutions of Egypt and Iraq present good examples of how, at least the legal framing, of human rights mechanisms may be approached such that the States are in compliance with their international legal obligations. In both of these States, the independence of commissions mandated to supervise the protection, respect and fulfilment of the rights contained in the constitution is constitutionally required. The constitutional regimes in both States, however, have also proven to be cumbersome and resulted in non-implementation of the duty to create independent domestic human rights mechanisms.

In Egypt, the NHRC, the national human rights body, was established in 2003, which performs a supervisory, but not adjudicatory, function over human rights matters. However, the NHRC is empowered to receive and examine complaints concerning protection of human rights and refer, at its discretion, any such complaints to competent bodies to follow up. The NHRC is also required to advise parties of the appropriate legal procedures to be pursued and assist them in reaching settlement with the relevant bodies. It is also responsible for investigating human rights violations, and findings of abuse are reinforced by criminal prosecution.

Iraq also has a national human rights body. Although the Ministry of Human Rights was removed in 2015 as a result of a reduction of the number of cabinet ministers, some of its tasks were taken over by the IHCHR, an independent human rights commission, which can receive complaints from individuals, groups, and civil society institutions. The IHCHR is also obliged to undertake investigations regarding human rights violations, verify received complaints, and undertake further investigations if necessary. It is also required to refer allegations of human rights violations to the Public Prosecutor for the purposes of investigation. While the independence of commissions, including the IHCHR, is constitutionally enshrined, their work is subject to the monitoring of the Council of Representatives but independence has been subject to criticism, which highlighted its lack of independence from political factions (due to the political affiliation of its members and external interferences such as governmental authorities), as not conform with the Principles relating to the Status of National Institutions (also known as the Paris Principles). In addition, the work of the IHCHR has been deemed particularly opaque, which hinders any assessment of its work. It has been suggested that a code of conduct and ethics should be developed.

Within Lebanon, there are several national human rights institutions, which mostly have a mandate over mainstreaming respect for human rights in various sectors within Lebanon. There are few opportunities for individual complaint, however, and so

Lebanon's national human rights institutions fail to comply with international and regional obligations in respect of offering remedies for violations of human rights. In 1995, the Parliament created the Human Rights Committee, which is competent to consider human rights related matters, in both the legislative and oversight functions. The Parliamentary Human Rights Committee has cooperated with the UN agencies to develop a national strategy on human rights, which includes the establishment of a National Independent Commission on Human Rights, for which a draft law was presented to the Lebanese Parliament in 2012 but it has not yet been established. However, an independent form of Ombudsman's office, the 'Mediator of the Republic', was established in 2005, to hear complaints against civil servants, including security personnel, and facilitate the resolution of disputes. While such institution is important for the protection of human rights and the fight against public corruption, it is unclear if its work has been effective, given the ongoing political instability.

It thus seems that all three States could strengthen their national human rights commissions, and, in the case of Lebanon, formally establish one. In particular, States should ensure that such commission abide by the obligation of independence as provided for in the Paris Principles, as well as being transparent. The situation of all three States with regard to national human rights institutions is likely a reflection of the general situation in the MENA Region. Finally, with regard to judicial review, in Egypt and Iraq, the constitutions prohibit the immunization of any administrative act (or decision) from judicial review. By contrast in Lebanon, judicial review of administrative acts emphasizes the fairness and lawfulness of political processes including elections.

In terms of providing reparations to victims of education-related violations which occurred in contexts of insecurity and armed conflict, various approaches have been adopted throughout the globe.¹³⁶⁹ One dimension of relevance to the three case study States is that in respect of causation-based responsibility of parties to hostilities to victims on one hand, and human rights-based obligations to victims on the other. Within the first framework, the practice of 'making amends' by warring parties recognises victims of lawful actions in armed conflict, who may then be afforded various forms of reparations, including compensation, rehabilitation, as well as symbolic reparations such as apologies. An important element of this approach, as practiced by, for example NATO and AMISOM, is that it is without prejudice to any admission of fault. Within the second framework, the responsibility for providing reparations to the victims is based on the obligations of the State where there are victims of armed violence, whether they stem from a human rights treaty or another instrument, such as the Convention on Cluster Munitions,¹³⁷⁰ to which Iraq and Lebanon are party.

In the case study States, the approach goes beyond the 'without prejudice' practice of making amends. In Egyptian and Iraqi domestic legislation, there is provision for military mistakes. This may be a double-edged sword as it requires the establishment

¹³⁶⁹ See Education and the Law of Reparations in Insecurity and Armed Conflict and the Law of Reparations (BIICL/PEIC, 2013), available at: <http://www.biicl.org/research-reparations>
See also Action on Armed Violence and Harvard Human Rights Programme, 'Acknowledge, Amend and Assist: Addressing Civilian Harm Caused by Armed Conflict and Armed Violence' (April 2015), available at: <http://hrp.law.harvard.edu/wp-content/uploads/2015/04/AcknowledgeAmendAssist.pdf>.

¹³⁷⁰ Art 5, CCM.

of a mistake on the part of State armed forces. On the other hand, the domestic legislation contemplates that the State armed forces are capable of making mistakes and that such mistakes must be acknowledged and remedied.

A difficulty arising in all three States is how to address civilian harm caused by non-State actors, following the re-establishment of authority over territory formerly controlled by such actors. In Egypt, the legal position is clearly enshrined in the 2014 Constitution: the State is responsible for providing compensation for acts of terror. The Egyptian Supreme Council of Armed Forces issued a statement of 'regret' in 2011 in respect of the deaths of protestors.¹³⁷¹ This was done via social media and was received poorly by the population and commentators as being insufficient.

In this way, a remarkable gap is observed in the strict provisions of domestic legislation, including the 2014 Constitution of Egypt, and the practice of the State. Accordingly, while domestic legal provisions enshrining the right to remedy of victims of violations and even victims of harm caused by lawful actions is to be welcomed, they 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.¹³⁷²

Concluding Remarks

The protection of education in insecurity and armed conflict, in its various facets, is stronger in places and weaker in others across the three case study States. 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 in the MENA Region and globally, alike.

This comparative analysis of the three case study States highlight a number of key issues, which are present in all three States, although sometimes to a different extent. With regard to the implementation of the IHRL framework, the lack of ratification of the optional protocols to the human rights treaties, which allow individual complaints, is an obstacle for victims of education-relations to obtain redress, in particular in States where the rule of law has been put into question. The lack of consistent reporting to the UN Treaty Bodies is another obstacle to the implementation of IHRL at the domestic level. The fact that a national human rights commission has been not established in Lebanon and that the ones existing in both Egypt and Iraq have been criticised for not being fully

¹³⁷¹ This was reported on a number of news outlets, including Al-Jazeera:

<http://www.aljazeera.com/news/middleeast/2011/11/20111124172835763439.html>

¹³⁷² See, for example, S Muhammedally, 'Iraq: Learning Civilian Protection the Hard Way', *Stability: International Journal of Security & Development*, 4(1): 42, pp. 1–7.

independent and transparent are further hurdles to the establishment of strong human rights framework at the domestic, which is key for any victim of education-related violation who lacks access to supra-national mechanisms for redress. While there is no regional human rights court established specifically for the MENA Region, those MENA States that could provide access to the African Court on Human and Peoples' Rights should be encouraged to do so.

In practice, there are additional issues which have been highlighted as causing particular problems to the full realisation of the right to education in the three case study States. These include the issue of the provision of education to displaced populations, as well as the presence of non-State actors, and the various ways to deal with education in post-conflict and post-insecurity settings, areas which all merit further analysis. As a consequence, the next section of this Study focuses on these issues and considers how they have been dealt with in other MENA States.

4. THEMATIC ANALYSIS

The case study analysis present in Part 3 highlighted a number of challenges associated with the protection of education in insecurity and armed conflict and the domestic implementation of applicable international standards in Egypt, Iraq, and Lebanon. Among these challenges, three situations stood out because the primacy of the State, as the entity required to realise the right to education with regard to all individuals under its jurisdiction, was rendered complex because of various factors. Therefore, these situations deserved further analysis, bringing together various practices from the MENA Region.

The first situation concerns displaced populations, in particular those who have crossed borders, fleeing 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 question then regards the provision of education to displaced persons by the host State, which may not be prepared to so, in particular when there are large influxes of migrants. The second situation analysed in this thematic section is where non-State actors are the education providers, instead of the State, because the latter is somehow incapacitated to provide education services or unable to do so in parts of its territory, which could be the case if it has lost control of it. Non-State education providers may consist of humanitarian and development actors on one hand, and non-State armed groups on the other. The third situation considered in this thematic section regards post-insecurity and post-conflict contexts; in particular, it considers the place of education in the frameworks 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 potential role for longer-term reconciliation and peace-building.

4.1. EDUCATION OF DISPLACED POPULATIONS

In situations of insecurity and armed conflict, the provision of education to refugees, asylum-seekers, and IDPs, is key to ensure that they are “equipped to rebuild their lives and communities”,¹³⁷³ as well as to provide a structure to avoid conducting “illegitimate or military activities”.¹³⁷⁴ Thus, education also constitutes a ‘mobilising factor’ for people to return to their countries of origin.¹³⁷⁵ Conflict-displaced populations in MENA States are among the highest in the world and, in some instances, MENA States have hosted displaced populations for the longest periods by global comparison.¹³⁷⁶ As mentioned in Part 3, Egypt, Iraq, and Lebanon, have all hosted displaced populations, but this is also the case of Algeria, Libya, Mauritania, Tunisia, and the Western Saharan Territory, for example.¹³⁷⁷ Therefore the issue of the education of conflict-displaced persons merit further analysis within the MENA context.

For example, the ongoing armed conflict in Syria has been particularly disruptive for the provision of education, with 6.5 million Syrians having been displaced internally or across borders.¹³⁷⁸ Within Syria, it is estimated that between 2.1 and 2.4 million children cannot go to school,¹³⁷⁹ as one in five schools no longer functions because they have been destroyed or damaged or are being used to shelter internally displaced persons.¹³⁸⁰ Over 4 million Syrians have left the country, over half (2.3 million) of whom have sought refuge in either Turkey, Lebanon, or Jordan. As already mentioned in the case study section, Iraq and Egypt have also been hosting Syrian refugees and asylum-seekers. It was already observed in 2013 that “[m]ost Syrian refugees are unable to attend school (in Turkey, 63 percent; in Lebanon, 80 percent). In Iraq, 66 percent of Syrian children are not in school, a percentage that has probably risen as a result of the fighting that began in December 2013. The percentages of Syrian children who do not attend school are not much better in Jordan (45 percent) and Egypt (47 percent)”.¹³⁸¹

Not only have children been killed in playgrounds and UNICEF-supported facilities, amongst other places, but the Syrian conflict has also led to the evacuation of several schools. It has been reported that “[o]ne in four schools in the country can no longer be

¹³⁷³ UNHCR, ‘Education’, available at: <http://www.unhcr.org/pages/49c3646cda.html>

¹³⁷⁴ UNHCR, ‘Learning for a Future: Refugee Education in Developing Countries’ (UNHCR, 2001) pp. III, 14.

¹³⁷⁵ K Hosseini, ‘For refugees, education is as essential as shelter: just ask Aqeela Asifi’ (The Guardian, 21 September 2015), available at: <http://www.theguardian.com/commentisfree/2015/sep/21/refugees-education-aeela-asifi-pakistan-afghan>

¹³⁷⁶ See UNHCR, ‘The State of the World’s Refugees’ (2012).

¹³⁷⁷ According to UNHCR Data, as at December 2014.

¹³⁷⁸ B Surk, ‘Activists Say Death Toll in Syrian War Tops 160,000’ (The Boston Globe, 20 May 2014), available at: <https://www.bostonglobe.com/news/world/2014/05/20/activists-say-death-toll-syrian-war-tops/GJ9jbnlY9QKTYvS4E2Ah7H/story.html>

¹³⁷⁹ P Nicholson, ‘Getting Syria’s Lost Generation of Children into School’ (Caritas, 27 January 2014), citing 2.2 million, available at: <http://www.caritas.org/2014/01/syrias-lost-generation-of-children-back-to-school/>
See also the 2015 UNICEF Report on ‘Curriculum, Accreditation and Certification for Syrian Children’, p. 28, which cites 2.1-2.4 million, at: http://www.oosci-mena.org/uploads/1/wysiwyg/150527_CAC_for_Syrian_children_report_final.pdf

¹³⁸⁰ UNICEF, ‘Syria Conflict Depriving Children of their Education’, March 2013, available at: http://www.unicef.org/mena/education_factsheet.pdf

¹³⁸¹ UNICEF, ‘Syria Crisis: Education Interrupted: Global Action to Rescue the Schooling of a Generation’, (December 2013), available at: http://www.unicef.org/media/files/Education_Interrupted_Dec_2013.pdf

used because it is destroyed, damaged, sheltering thousands of displaced families or being used for military purposes".¹³⁸² Thus, practical, resource-related issues, as well as potential IHRL and IHL violations, impede the enjoyment of the right to education of displaced persons in Syria.

The situation of Palestinians is another prominent example of displaced population across the MENA Region, with approximately five million displaced Palestinians dispersed across several States in the region. They are, in large part, in Egypt, Lebanon, Jordan, and Syria, and under the mandate of the relief agency UNRWA, which specifically focuses on Palestine refugees in the Near East.¹³⁸³ In its five fields of operations within the MENA Region, UNRWA enters into memoranda of understanding with the authorities in the relevant territory. This forms the basis upon which UNRWA operates within these territories. It is worth noting here that the definition,¹³⁸⁴ protection, and status, of Palestine refugees, is a distinct issue in international law. According to UNRWA, Palestine refugees are those whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict.

The way the protection of education of displaced persons in MENA States is dealt with is of course influenced by a great number of considerations, including the international legal obligations of the host State, but also of other States, such as those stemming from the concept of cooperation under international law, which is mentioned in several human rights treaties. For example, all MENA States are party to the CRC, which requires them to ensure that children refugees "whether unaccompanied or accompanied by [...] any [...] person, receive appropriate protection and humanitarian assistance in the enjoyment of" their rights, including the right to education.¹³⁸⁵ The CRC recognises that international cooperation is key to the continuous provision of education of displaced children,¹³⁸⁶ both as a general principle and as a specific education-related obligation.¹³⁸⁷ Thus the CRC Committee, in its draft General Comment 19, underlines that "States that lack resources to implement the rights of the child [must] seek and accept international cooperation for that purpose" and that, "developed States are obliged to provide international cooperation to developing States, with the aim to facilitate the implementation of the rights [of children] in the recipient country".¹³⁸⁸ Although the strict legal framework for international cooperation, which is also referred to as 'burden sharing' within the field of refugee protection, is less explicit, there is a significant discourse on the responsibility of developed States to provide assistance to

¹³⁸² 'Statement to the press attributable to Mr. Kevin M. Kennedy, Regional Humanitarian Coordinator for the Syria Crisis' (20 November 2015), available at: <http://reliefweb.int/report/syrian-arab-republic/statement-press-attributable-mr-kevin-m-kennedy-regional-humanitarian>

¹³⁸³ Its specific mandate was established by UN General Assembly Resolution 302 (IV) of 8 December 1949.

¹³⁸⁴ See D Peretz, 'Who is a Refugee?', *Palestine-Israel Journal of Politics, Economics and Culture*, Vol. 2, No. 4 (1995).

¹³⁸⁵ Art 22 (1), CRC.

¹³⁸⁶ Judith Cochran, 'The Education of Syrian Refugee Children' (Middle East Institute, 20 August 2014), available at: <http://www.mei.edu/content/at/education-syrian-refugee-children>

¹³⁸⁷ Arts 4 and 28(3), CRC.

¹³⁸⁸ CRC Committee, 'General Comment No. 19' (Draft Version, 11 June 2015) UN Doc. CRC/C/GC/19, paras 43-44.

developing States that host refugees and UNHCR advocates for such arrangements.¹³⁸⁹ This is particularly the case at the regional level.¹³⁹⁰

In addition to general obligations stemming from IHRL and IHL which are relevant with regard to the provision of education to displaced populations,¹³⁹¹ there are two specific instruments to be considered in this context: the 1951 Refugee Convention and the 2009 Kampala Convention,¹³⁹² the African Union instrument concerned with the protection and assistance of internally displacement persons in Africa.¹³⁹³ In addition, the UN Guiding Principles on Internal Displacement, although non-binding, are also relevant in this context.¹³⁹⁴ Only eight MENA States are party to the 1951 Refugee Convention,¹³⁹⁵ of which four are also party to its 1967 Protocol.¹³⁹⁶ Two of the highest refugee populations (not including Palestinian refugees) are in Jordan and Lebanon, which are not party to the Refugee Convention. The Kampala Convention, has not been ratified by any African Union Member States within the MENA Region.

As mentioned in the case study section, Egypt, while a party to the Refugee Convention, has entered a reservation against its Article 22(1), among others,¹³⁹⁷ regarding the right of refugees to access public education, on the basis that “the competent Egyptian authorities has reservations because these articles consider the refugee as equal to the national”;¹³⁹⁸ although this appears to be on basis of the heightened protection of nationals over that of non-nationals in Egyptian law. It stated that this reservation was made, “to avoid any obstacle which affect the discretionary authority of Egypt in granting privileges to refugees on a case-by-case basis”.¹³⁹⁹ Although such reservation may not be conform with international law as it may not be consistent with the aim of the treaty itself, the argument of the State may be implied from the text of its reservation, according to which the requirement contained in Article 22(1) that refugees must be accorded at least the same treatment as nationals in respect of primary education could prejudice the State’s ability to offer tailored responses to the education needs of refugees falling within its jurisdiction. In practice, Egypt’s practice has provided education to refugees on an *ad hoc* basis to groups of refugees (usually grouped by their country of origin) and has hosted a large population of refugees for extended periods. In 1992, the Minister of Education also issued Ministerial Decree No. 24, which allows the children of certain recognized refugees to attend public schools. However,

¹³⁸⁹ See, for example, UNHCR, ‘The State of the World’s Refugees: In search of solidarity’, (Geneva: UNHCR, 2012).

¹³⁹⁰ See, in respect of regional cooperation in the Asia-Pacific Region, UNHCR, ‘Regional Cooperative Approach to Address Refugees, Asylum Seekers and Irregular Movement’ (Geneva: UNHCR, 2011).

¹³⁹¹ See, in particular, the Handbook at 4.1 and 4.2.

¹³⁹² See the Handbook 4.1.5., pp. 139-141, for more on the relation between the right to education as a human right and its protection under the 1951 Refugee Convention.

¹³⁹³ The Kampala Convention entered into force on 6 December 2015. It has been signed but not ratified by Tunisia. Note that it has been ratified by the Sahrawi Arab Democratic Republic.

¹³⁹⁴ See Principles 23 of the Guiding Principles on Internal Displacement, adopted in 1998, which states that that all, including internally displaced children have the right to a free and compulsory education, which respects their ‘cultural identity, language and religion’.

¹³⁹⁵ Algeria, Egypt, Iran, Israel, Morocco, Sudan, Tunisia, and Yemen.

¹³⁹⁶ Israel, Morocco, Sudan, and Tunisia.

¹³⁹⁷ These include reservations to Articles 20, 23, and 24.

¹³⁹⁸ UN Treaty Collection, MTDSG, Chapter V.2.

¹³⁹⁹ *Ibid.*

the fact that education is provided on an *ad hoc* basis may not ensure that the right to education of all individuals under the jurisdiction of Egypt, including refugees, is realised, which is an obligation under IHRL.

Similarly, both Iraq and Lebanon have hosted refugees and asylum-seekers and provided for their education, either directly or via non-State humanitarian and development actors. The provision of education to displaced populations in all three case study States appears to be the result of negotiations and advocacy by humanitarian actors, most notably UNHCR, and international influence. This may be connected with a general trend across the MENA Region of emphasising, to the detriment of other groups, the rights of citizens as was observed especially in Lebanon and is also evident in Iraq and, to a lesser extent, in Egypt. It may also be connected to the large influx of displaced persons into those States, in particular in Lebanon, and thus the need for non-State actors to support and complement the provision of education by States that suffer from resource constraints.

While the flexibility afforded by an *ad hoc* and non-legalistic approach may be beneficial, the lack of systemised education for displaced individuals across MENA States frustrates the realisation of their rights and the individual State's obligations, as is seen in the examples discussed in this section. Moreover, because MENA States broadly couch education of displaced population as part of a humanitarian response, it is often limited to the education of refugee and asylum-seeking children; the general absence of systematised and enforced legal protection of refugee and asylum-seekers' access to education neglects the breadth of the right to education discussed in the Handbook and in Part 3 of this Study, which includes education at all levels.

In practice, forced displacement leads to a number of specific issues which may negatively impact on the protection of education. These include access to education, the absorption of refugees and asylum-seekers into the education system, the provision of an education that is 'acceptable' to refugees and asylum-seekers, and other obstacles to the realisation of the right to education such as the risk of child labour and sexual violence associated with displacement, and the risk of detention for children refugees and asylum seekers.

As mentioned in Part 3, Egypt and Lebanon face several of these challenges, given the high number of children refugees and asylum seekers present on their territory. The issue of documentation has been highlighted as a significant hurdle to access education in Lebanon, which is not a State party to the 1951 Refugee Convention. The limited legal status of children who have been displaced across borders can thus be an obstacle to their enjoyment of the right to education, which must be fulfilled with regard to all individuals under a State's jurisdiction, in accordance with international human rights law. Although all Lebanese public schools have now been opened to UNHCR-registered refugee children, the increase in class sizes causes major absorption issues, therefore putting the quality of the education provided in jeopardy. Furthermore, the requirement to provide certificates from their schools of origin in order to enrol in certain programmes is yet another obstacle to their enjoyment to the right to education. In addition, refugee children have difficulty adjusting to the Lebanese school curriculum,

which includes teaching in French or English. Child labour was also noted as an issue with regard to the influx of children originating from war-torn Syria.

In Egypt, child labour was also highlighted as a key issue with regard to displaced children, despite the domestic prohibition of child labour.¹⁴⁰⁰ Another major issue, which was noted in Part 3 of the Study, is the detention of Palestinian refugees formerly in Syria, as a result of Egypt's policy which prevents refugees from seeking protection from the UNHCR, even though this is contrary to the UNHCR's mandate under the 1951 Refugee Convention.

4.1.1. Access to Education for Displaced Persons

Education must be non-discriminatory and accessible to all persons within a State's jurisdiction, including displaced persons. Positive steps must be taken by the State to include even the most marginalised under their jurisdiction. This section highlights a number of obstacles to education for displaced persons, including stringent entry requirements based on nationality or other documentation, resources constraints due to large influx of refugees, issues associated with the content of education offered, and physical limitations to accessing Educational Facilities.

Entry Requirements as an Obstacle to Education

In Egypt, Iraq and Lebanon, alike, there are a number of documentary requirements for persons wishing to enrol in various stages of education. For populations affected by insecurity and armed conflict, especially refugee and asylum-seeking populations, this can prevent enrolment. All three of these States have instituted legal provisions and exemptions to address this to varying degrees, which is discussed in Part 3. The issue of nationality, documentation and access to education acutely affects displaced, as well as stateless, populations in the MENA Region.

A trend of gender-discriminatory nationality laws, whereby acquisition of nationality is by the sole operation of paternal *ius sanguinis*, was observed in Egypt, Lebanon and Iraq, and appears consistent with the practice across the MENA Region.¹⁴⁰¹ However, in recent years, and in cooperation with UNHCR, a number of MENA States have been lauded for their growing efforts to remedy gender inequality in their citizenship laws, providing the acquisition of nationality also by operation of maternal *ius sanguinis*.¹⁴⁰²

Like in the three comparator States, in Algeria, which is host to a significant and protractedly displaced population of Sahrawi people, it has also been alleged that many

¹⁴⁰⁰ Art 80, 2014 Constitution of Egypt.

¹⁴⁰¹ See Laura van Waas, 'A comparative analysis of nationality laws in the MENA Region', Report of the Middle East and North Africa Nationality and Statelessness Research Project, Tilburg University Statelessness Programme (September 2014).

¹⁴⁰² UNHCR, 'State of the World's Refugees, 2012' (Geneva: UNHCR, 2012), p. 16.

schools require documentation that refugees and asylum seekers do not possess.¹⁴⁰³ However, the government reportedly provides refugees with free access to education and the Ministry of National Education has specifically required schools to facilitate Syrian refugees' registration to schools.¹⁴⁰⁴

In Jordan, there is also an issue with regard to documentation as refugees are not automatically granted the right to education.¹⁴⁰⁵ Parental documentation is required for children to register in public schools.¹⁴⁰⁶ Children must also have a Ministry of Interior card in order to access public services free of charge.¹⁴⁰⁷ Thus, the lack of appropriate documentation constitutes a barrier to education for refugee children in Jordan.¹⁴⁰⁸ Children can still access education without the prerequisite documentation, but they must take a particular test, which is only available once a year.¹⁴⁰⁹ Jordan also prohibits children from enrolling into the formal education system if they have been out of school for three or more years, which constitutes a barrier to education for many refugee children.¹⁴¹⁰

With regard to a number of MENA States, reliable information is missing concerning the requirement of nationality or documentation for the provision of education to displaced persons. In Bahrain, the law does not provide for the recognition of refugee status that is consistent with standards contained in international refugee law. While a few hundred refugees are reported to have moved to Bahrain, the State has not implemented a system for their protection, and information on the availability of their education is not available.¹⁴¹¹ It is reported that those without formal documentation are unable to register in schools.¹⁴¹² A paucity of relevant information in that regard has also been noted by the CRC Committee.¹⁴¹³

In some MENA States, nationality and documentation requirements appear particularly prohibitive to accessing education. In Kuwait, the government began imposing visa restrictions on citizens of a number of States facing dire political and security

¹⁴⁰³ Latefa Guemar, 'Seeking safety in Algeria: Syrian refugee women's resilience' (17 June 2014), available at: <https://www.opendemocracy.net/5050/latefa-guemar/seeking-safety-in-algeria-syrian-refugee-women%E2%80%99s-resilience>

¹⁴⁰⁴ UNHCHR, *Algeria: Operational Update* (2015), p. 3, available at: <http://www.unhcr.org/555dd69e9.html>

¹⁴⁰⁵ George Sadek, 'Legal Status of Refugees: Egypt, Jordan, Lebanon and Iraq' (US Library of Congress, 2013), available at: <https://www.loc.gov/law/help/refugees/2014-010156%20RPT.pdf>.

¹⁴⁰⁶ S Culbertson and L Constant, 'Education of Syrian Refugee Children: Managing the Crisis in Turkey, Lebanon and Jordan' (2015), p. 19, available at: <http://www.alnap.org/node/22594.aspx>

¹⁴⁰⁷ UNICEF, 'Curriculum, Accreditation and Certification for Syrian Children in Syria, Turkey, Lebanon, Jordan, Iraq and Egypt' (2015), p.72.

¹⁴⁰⁸ UNICEF, 'Access to Education for Syrian Refugee Children and Youth in Jordan Host Communities' (March 2015), pp. 3 and 47.

¹⁴⁰⁹ UNICEF, 'Curriculum, Accreditation and Certification for Syrian Children in Syria, Turkey, Lebanon, Jordan, Iraq and Egypt' (2015) p.72.

¹⁴¹⁰ S Culbertson and L Constant., 'Education of Syrian Refugee Children: Managing the Crisis in Turkey, Lebanon and Jordan' (2015), p.20, available at: <http://www.alnap.org/node/22594.aspx>

¹⁴¹¹ Education International, Bahrain (15 July 2015), available at: http://www.ei-ie.org/barometer/en/profiles_detail.php?country=bahrain.

¹⁴¹² Bahrain Center for Human Rights, *Stateless in Bahrain* (24 September 2014), p. 6, available at: <http://bahrainrights.org/sites/default/files/Stateless%20in%20Bahrain%20-%20Final.pdf>

¹⁴¹³ CRC Committee, State Party Examination of Bahrain's 2nd and 3rd Periodic Report (2011), available at: http://www.childrightsconnect.org/wp-content/uploads/2013/10/Bahrain-Report_CRC_-FINAL-57.pdf.

circumstances.¹⁴¹⁴ As a result, many of them cannot renew their residency permits, thus precluding them from access to public services, including education. This is also true for stateless persons, of which there are approximately 93,000 in Kuwait, although some limited attempts to integrate such persons, through the granting of nationality, have been made.¹⁴¹⁵ In Libya, while recent information is scarce, it was reported that in 2007 the government amended domestic legislation, imposing high fees on non-citizens wishing to enrol in both primary and secondary schools.¹⁴¹⁶

The contrary can be observed in Syria where, in order to assist displaced students, the Ministry of Education requires that all schools accept students at the beginning of the academic year, even if they were unable to present official documentation; refusals of such students are to be inspected and measures have been implemented to assist schools that have lost these documents.¹⁴¹⁷ Also, in Iran, although there were approximately 500,000 Afghan refugees who were not attending school in 2015, due to an inability to determine their identity,¹⁴¹⁸ the government ordered all schools to enrol these children in May 2015; this led to an increase in registration,¹⁴¹⁹ although the comprehensiveness of information available remains limited.

Finally, while not strictly a MENA State, it is worth noting the position of Turkey, given its relevance in the regional response to the Syrian refugee crisis. The Turkish government has lifted the requirement of a residence permit to enrol in public schools, requiring only a government-issued ID.¹⁴²⁰ However, approximately 485,000 refugee children situated in Turkey are unable to access education, mostly because of a lack of compliance, at the local level, with this legislation which seeks to grant access to education for refugees.¹⁴²¹ The practical barriers to accessing education that have been identified include “economic hardship that has driven children into the workforce, the Turkish language barrier, and difficulties with social integration”, as well as insufficient information regarding registration procedures.¹⁴²² Many schools also lack the space and the funds to cater to the Syrian children’s needs.¹⁴²³ The refugees’ lack of formal documentation remains a preventative factor for many Syrian children to attend Turkish public schools.¹⁴²⁴ Many of these children attend Syrian schools operated in Arabic by

¹⁴¹⁴ ‘Lebanon imposes visas on Syrians’ (Kuwait Times, 5 January 2015), available at:

<http://news.kuwaittimes.net/lebanon-imposes-visas-syrians/>

¹⁴¹⁵ UNHCHR, Submission by the UNHCHR for the OHCHR Complication Report – UPR: Kuwait’ (June 2014), pp. 1-2, available at: <http://www.refworld.org/pdfid/54c236a34.pdf>

¹⁴¹⁶ Save the Children ‘Child Rights Situation Analysis for Middle East and North Africa Region’ (August 2008), p.74,

¹⁴¹⁷ UNICEF, ‘Curriculum, Accreditation and Certification for Syrian Children in Syria, Turkey, Lebanon, Jordan, Iraq and Egypt’ (2015), pp. 30-31.

¹⁴¹⁸ Arash Karami, ‘Khamenei orders schooling for all Afghan children in Iran’ (2015), available at: <http://www.al-monitor.com/pulse/originals/2015/05/iran-afghan-refugees-education-discrimination.html#>.

¹⁴¹⁹ ‘Kabul hails Ayatollah Khamenei’s Order to Bring Education for Afghan Children in Iran’ (21 June 2015), available at: <http://www.tasnimnews.com/en/news/2015/06/21/776683/kabul-hails-ayatollah-khamenei-s-order-to-bring-education-for-afghan-children-in-iran>

¹⁴²⁰ Temporary Protection Regulation, 22 October 2014.

¹⁴²¹ Human Rights Watch, ‘When I Picture my Future, I See Nothing’ (2015), available at: https://www.hrw.org/sites/default/files/report_pdf/turkey1115_reportcover_web.pdf.

¹⁴²² Ibid, section II.

¹⁴²³ Ibid.

¹⁴²⁴ Stephanie Dorman, ‘Educational Needs Assessment for Urban Syrian Refugees in Turkey’ (September 2014), p. 14, available at: <https://data.unhcr.org/syrianrefugees/download.php?id=7898>

non-State actors, some of which are not officially recognised. Not only have refugees “expressed dissatisfaction with the[ir] poor quality”, but it is also of concern that many of these schools are not officially recognized nor formally accredited.¹⁴²⁵ Thus, the limited legal status of many refugee children also poses a significant barrier to the full enjoyment of their right to education in Turkey.

In Turkey and Lebanon, the *de facto* requirement of formal documentation in some schools, constitutes a barrier to refugee children’s enjoyment of the right to education. The ratification of the relevant international treaties, or lack thereof, do not justify such obstacle. While Lebanon is not a party to the 1951 Refugee Convention or its 1967 Protocol, it has passed domestic legislation to allow refugee children to attend school. The State may thus be unable or unwilling to ensure compliance with its own domestic legislation throughout its territory. With regard to Turkey, even though it is a party to the Refugee Convention, many children remain unable to access Turkish public schools. The alternative of establishing ‘Syrian schools’ in Turkey has also not been dealt with adequately by the authorities, as they have not been formally accredited. The sole ratification of the relevant treaties is thus not sufficient but must be supported with adequate implementation measures.

Resource Constraints as an Obstacle to Education

As mentioned above, the Syrian conflict has generated over 4 million refugees or asylum-seekers, with more than half having sought refuge in neighbouring States. A mass influx of refugees and asylum-seekers into one State generally creates resource issues with regard to absorbing students into the regular school system, as noted in Part 3 with regard to Lebanon.

Jordan is the other main host of those fleeing the Syrian conflict within the MENA Region and has introduced second-shifts in schools to deal with the influx of Syrian refugee children. Financial support, from Bahrain and UNICEF, was given for the amelioration of existing educational infrastructure, with tents being replaced by pre-fabricated buildings in a refugee camp in 2012, which led to higher enrolment.¹⁴²⁶ This project consisted on an entire compound with four mobile schools that can host up to 4,000 students and were reportedly built in accordance with relevant national standards.¹⁴²⁷ More schools were established in refugee camps in 2013-2014.¹⁴²⁸ In 2015, a new school, accommodating 665 students, was also built with several facilities.¹⁴²⁹ It is far from clear how many registered students actually attend classes, with many refugees

¹⁴²⁵ Ibid, Recommendation 1.

¹⁴²⁶ Ben Fittleson, ‘Syrian Refugees, Children Struggle in Jordan’ (2012), available at: <http://www.al-monitor.com/pulse/originals/2012/al-monitor/syrianrefugeesjordan.html#>.

¹⁴²⁷ Khetam Malkwai, ‘Schools to open at Zaatari camp for Syrian children’ (Jordan Times, 11 September 2012), available at: <http://www.jordantimes.com/news/local/schools-open-zaatari-camp-syrian-children>.

¹⁴²⁸ UNICEF, ‘Curriculum, Accreditation and Certification for Syrian Children in Syria, Turkey, Lebanon, Jordan, Iraq and Egypt’ (2015), p. 73, available at: http://www.oosci-mena.org/uploads/1/wysiwyg/150527_CAC_for_Syrian_children_report_final.pdf

¹⁴²⁹ ‘Bahraini school for Syrian refugees inaugurated in Irbid’ (Jordan Times, 7 October 2015), available at: <http://www.jordantimes.com/news/local/bahraini-school-syrian-refugees-inaugurated-irbid>.

needing to prioritise other basic needs.¹⁴³⁰ Nevertheless, it has been a struggle to accommodate the needs of approximately 300,000 school-age Syrian refugees in Jordan. It has been reported that “[C]hallenges include the need to construct pre-fabricated classrooms and train teachers and mental health professionals. In addition to coping with over-crowded schools, many Syrian students have found it hard to adjust to the new curriculum. Refugees lack adequate psychological support and the financial means to cover costs of books, school uniforms, and transportation to school”.¹⁴³¹ More than 90,000 refugees remain deprived of education. Organisations such as UNICEF and Save the Children support drop-in centres at refugee camps where children can obtain numeracy and literacy skills, learn a trade; approximately 80 children visit these centres each day.¹⁴³²

Syria itself has had to deal with mass influx of internally displaced children by introducing second-shifts in schools located in safe areas. However, many schools are being used as shelters and a deposit must be paid for learning materials (of which there is a shortage) in some parts of Syria, both of which make it difficult to provide displaced children with access to education.

Content of Education as an Obstacle to Education

As mentioned, access to ‘acceptable’ education, meaning an education that is relevant, non-discriminatory and culturally appropriate (including in terms of language), has been a challenge in Lebanon, where classes are offered in French or English, rather than Arabic, in certain schools.¹⁴³³ The language barrier is also an issue in Turkey, considered again here for its regional relevance with regard to Syrian refugees. In Turkey, many refugee children are unable to enjoy their right to education due to the Turkish language barrier, the lack of information regarding registration procedures, difficulties with social integration, and the non-accreditation of the aforementioned Syrian schools, which were established as a means of tackling children’s inability to access Turkish public schools.¹⁴³⁴ Some schools in Turkey use the Libyan curriculum which is in Arabic and is recognised in Turkey, but this practice is not consistent.¹⁴³⁵ In community schools, the qualifications of teachers, the facilities, and the curriculum, are not adequately monitored.¹⁴³⁶ In Syria, in some schools in the Kurdish areas, Kurdish

¹⁴³⁰ Ben Fittleson, ‘Syrian Refugees, Children Struggle in Jordan’ (2012).

¹⁴³¹ Judith Cochran, ‘The Education of Syrian Refugee Children’ (Middle East Institute, 20 August 2014), available at: <http://www.mei.edu/content/at/education-syrian-refugee-children>.

¹⁴³² Kusali Kubwalo, ‘In a refugee camp, education is the only hope’ (UNICEF, 2015), available at: http://www.unicef.org/infobycountry/jordan_82551.html.

¹⁴³³ ‘LEBANON-SYRIA: No School today - Why Syrian refugee children miss out on education’ (IRIN, 8 August 2012), available at: <http://www.irinnews.org/report/96053/lebanon-syria-no-school-today-why-syrian-refugee-children-miss-out-on-education>;

¹⁴³⁴ Human Rights Watch, ‘When I Picture my Future, I See Nothing’ (2015), pp. 8-9, available at: https://www.hrw.org/sites/default/files/report_pdf/turkey1115_reportcover_web.pdf

See also UNICEF, ‘Curriculum, Accreditation and Certification for Syrian Children in Syria, Turkey, Lebanon, Jordan, Iraq and Egypt’ (2015), p. 42, available at: http://www.oosci-mena.org/uploads/1/wysiwyg/150527_CAC_for_Syrian_children_report_final.pdf

¹⁴³⁵ S Culbertson and L Constant, ‘Education of Syrian Refugee Children: Managing the Crisis in Turkey, Lebanon and Jordan’ (2015), pp. 57-58.

¹⁴³⁶ *Ibid*, p. 67.

has become the teaching language, which prevents many displaced children from enrolling in these schools.¹⁴³⁷

Education must also be accessible in terms of subject matters. In Jordan, refugee students have difficulty adapting to the curriculum – mostly because certain subjects are introduced earlier in the Jordanian curriculum in comparison with the Syrian one – and teachers find it difficult to assist due to the large number of students in classes. However, in some areas, teachers have been able to adapt their lessons and to provide specific tests.¹⁴³⁸ The second-shift schools, put in place in Jordan to deal with the large influx of refugees are also not administered or monitored equally due to insufficient capacities.¹⁴³⁹ There are also concerns over the additional teachers hired. Their payment is lower than that of educators hired through the typical process and they often lack sufficient experience to provide an education ‘at the desired quality’.¹⁴⁴⁰ Nevertheless, Syrian certification exams are also offered alongside the Jordanian exams.¹⁴⁴¹ In the refugee camps, the curriculum is less comprehensive, due to resource limitations.¹⁴⁴²

Physical Access as an Obstacle to Education

Finally, it should be noted that education must also be physically accessible, which means that it must be accessible to all students, including those with disabilities, in accordance with the CRPD. The inability of disabled students to access schools in Libya was also noted by the CRC Committee.¹⁴⁴³ Transportation to schools must also be available and secure, which is sometimes an issue in the MENA Region and thus creates a barrier to education. In Jordan, for example, there is no public school transportation system and other transport is expensive. Moreover, transportation is often perceived as unsafe by refugee parents, as stated by refugees in Turkey, Lebanon and Jordan.¹⁴⁴⁴

In Syria, as a result of the ongoing conflict, several students are either unable to take official exams or are required to travel to another governorate in order to do so. For those students that were unable to attend official examinations, alternative arrangements have been made in order to ensure that these students are not left behind

¹⁴³⁷ UNICEF, ‘Curriculum, Accreditation and Certification for Syrian Children in Syria, Turkey, Lebanon, Jordan, Iraq and Egypt’ (2015), p. 30, available at: http://www.oosci-mena.org/uploads/1/wysiwyg/150527_CAC_for_Syrian_children_report_final.pdf

¹⁴³⁸ Ben Fittleson, ‘Syrian Refugees, Children Struggle in Jordan’ (2012).

¹⁴³⁹ Culbertson S. and Constant L., ‘Education of Syrian Refugee Children: Managing the Crisis in Turkey, Lebanon and Jordan’ (2015), p. 68.

¹⁴⁴⁰ Ibid, p. 66.

¹⁴⁴¹ Ibid, p. 58.

¹⁴⁴² UNICEF, ‘Curriculum, Accreditation and Certification for Syrian Children in Syria, Turkey, Lebanon, Jordan, Iraq and Egypt’ (2015), p. 73, available at: http://www.oosci-mena.org/uploads/1/wysiwyg/150527_CAC_for_Syrian_children_report_final.pdf

¹⁴⁴³ Save the Children ‘Child Rights Situation Analysis for Middle East and North Africa Region’ (August 2008), p.74.

¹⁴⁴⁴ S Culbertson and L Constant, ‘Education of Syrian Refugee Children: Managing the Crisis in Turkey, Lebanon and Jordan’ (2015), p. 18; ‘Lebanon-Syria: No school today – Why Syrian refugee children miss out on education’ (IRIN, 8 August 2012), available at: <http://www.irinnews.org/report/96053/lebanon-syria-no-school-today-why-syrian-refugee-children-miss-out-on-education>

as a result of inaccessible education in their place of residence. However, despite efforts by non-State actors to provide education, these courses are not recognised by the government.¹⁴⁴⁵

4.1.2. The Issue of Early or Forced Marriage

Displaced children, being more vulnerable to human rights violations, are at risk of early and forced marriage, which in turn is likely to hinder education. Not only are there clear child protection concerns arising out of early or forced marriage, the registration implications of early and forced marriage that are contrary to the domestic laws of a host State also present obstacles to proper documentation for any children born of an early marriage, and subsequently, the access of that child to education. This issue is of significance not only for the duration of displacement, especially considering the increasingly prolonged nature of displacements across the globe, but also upon return, if possible.¹⁴⁴⁶ The prevalence of this indicates ‘that survival is taking precedence over education’,¹⁴⁴⁷ and that refugees are more vulnerable in this regard.¹⁴⁴⁸

Before the conflict, approximately 17 percent of women were married by the age of 18 in Syria.¹⁴⁴⁹ This figure is likely to be higher since the onset of the conflict. Under Syrian marital law, a marriage is permitted from the age of 15, but only if authorised by guardian consent.¹⁴⁵⁰ In 2014, it was identified that child marriages accounted for 32 percent of Syrian marriages in Jordan, which is almost double the figure of child marriages in Syria before 2011.¹⁴⁵¹ Under Jordanian law, it is illegal to marry under 18, with an exception at 15 under special conditions.¹⁴⁵² Nevertheless, informal marriages are still possible and are, even in regular circumstances, commonplace due to the need – and the refugees’ inability – to provide documentation from the Syrian embassy. Testimonies show that such marriages are often the result of the parents’ inability to support their children and is seen as a better alternative than the potential other fates their daughters may face.¹⁴⁵³

¹⁴⁴⁵ UNICEF, ‘Curriculum, Accreditation and Certification for Syrian Children in Syria, Turkey, Lebanon, Jordan, Iraq and Egypt’ (2015), pp. 29-31 and 34-35.

¹⁴⁴⁶ UNHCR, ‘State of the World’s Refugees’ (Geneva: UNHCR, 2012), p. 2.

¹⁴⁴⁷ S Culbertson and L Constant, ‘Education of Syrian Refugee Children: Managing the Crisis in Turkey, Lebanon and Jordan’ (2015), p.19.

¹⁴⁴⁸ UN, ‘Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response’ (May 2003), p. 20, available at: <http://www.unhcr.org/3f696bcc4.html>

¹⁴⁴⁹ CARE, ‘Child marriage in emergencies’ (May 2015), p. 6, available at: http://insights.careinternational.org.uk/media/k2/attachments/CARE_Child-marriage-in-emergencies_2015.pdf

¹⁴⁵⁰ CEDAW Committee, Initial periodic report of Syria, CEDAW/C/SYR/1, 2005.

¹⁴⁵¹ Save the Children, ‘Too Young to Wed: The growing problem of child marriage among Syrian girls in Jordan’ (2014), available at:

https://www.savethechildren.org.uk/sites/default/files/images/Too_Young_to_Wed.pdf.

¹⁴⁵² Such as when it is deemed that it was freely chosen by the couple.

¹⁴⁵³ ‘Jordan: Early marriage –a coping mechanism for Syrian refugees?’ (Irin), available at:

<http://www.irinnews.org/report/95902/jordan-early-marriage-a-coping-mechanism-for-syrian-refugees>.

Similarly, in Lebanon, the existence of early marriages has been reported, particularly for refugees, due to the general lack of economic growth.¹⁴⁵⁴ In 2014, the rate of child marriages was higher than it was in Syria before the humanitarian crisis, at 18 percent of the Syrian refugee youth,¹⁴⁵⁵ with the percentage on the rise in 2015, at 23 percent.¹⁴⁵⁶ In Turkey, most marriages of Syrian refugee girls and women takes place when they are still children.¹⁴⁵⁷

With regard to child marriage more generally (not only among displaced persons), despite recent amelioration in the legal protection afforded to girls, an estimated 16 percent of girls are married in Morocco before the age of 18.¹⁴⁵⁸ In Egypt, 17 percent of girls are married before reaching adulthood,¹⁴⁵⁹ while in Sudan the number is even higher at 33 percent,¹⁴⁶⁰ similar to the 32 percent estimate for Yemen which may, however, be higher due to the recent conflict and the unavailability of more detailed information.¹⁴⁶¹ The estimates for Iraq and Iran are at 20,¹⁴⁶² and 17 percent,¹⁴⁶³ respectively.

4.1.2. The Issue of Child Labour

Child labour has been observed to be an obstacle to access to, and advancement through, education, particularly amongst Syrian refugees in the MENA Region.¹⁴⁶⁴ This is due to several factors, not least the status and ability to work of parents of displaced children.¹⁴⁶⁵ In addition to child labour being an important issue in Lebanon and Egypt, it has also been highlighted as a likely obstacle to education in Algeria, Bahrain, Jordan, Tunisia, and Turkey.

Algeria is party to both the Minimum Age and Worst Forms of Child Labour Conventions. However, between 2002 and 2012, approximately 5 percent of the children between the ages of 5 and 14 were engaged in child labour.¹⁴⁶⁶ In 2014, children of these ages were reportedly working in the farming, construction, and service industries.¹⁴⁶⁷ Domestically, Algeria also prohibits children under the age of 16 from

¹⁴⁵⁴ UNICEF, 'Curriculum, Accreditation and Certification for Syrian Children in Syria, Turkey, Lebanon, Jordan, Iraq and Egypt' (2015), p. 57.

¹⁴⁵⁵ 'Situation Analysis of Youth in Lebanon Affected by the Syrian Crisis' (April 2014), p. 134, available at: <http://www.unfpa.org.lb/documents/situation-analysis-of-the-youth-in-lebanon-affecte.aspx>

¹⁴⁵⁶ Saint-Joseph University, News Brief (30 June 2015), available at: <http://www.sciences-po.usj.edu.lb/pdf/News%20Brief%20Too%20Young%20To%20Wed.pdf>.

¹⁴⁵⁷ CARE, 'Child marriage in emergencies' (May 2015), p. 7.

¹⁴⁵⁸ See the webpage on Morocco of Girls Not Brides at: <http://www.girlsnotbrides.org/child-marriage/morocco/>

¹⁴⁵⁹ See the webpage on Egypt of Girls Not Brides at: <http://www.girlsnotbrides.org/child-marriage/egypt/>.

¹⁴⁶⁰ See the webpage on Sudan of Girls Not Brides at: <http://www.girlsnotbrides.org/child-marriage/sudan/>

¹⁴⁶¹ See the webpage on Yemen of Girls Not Brides at: <http://www.girlsnotbrides.org/child-marriage/yemen/>

¹⁴⁶² See the webpage on Iraq of Girls Not Brides at: <http://www.girlsnotbrides.org/child-marriage/iraq/>

¹⁴⁶³ See the webpage on Iran of Girls Not Brides at: <http://www.girlsnotbrides.org/child-marriage/iran/>

¹⁴⁶⁴ UNICEF, 'No Lost Generation' (2013), p. 12.

¹⁴⁶⁵ Ibid, p. 19.

¹⁴⁶⁶ UNICEF, Algeria: Statistics, available at: http://www.unicef.org/infobycountry/algeria_statistics.html. More recent estimates are unavailable.

¹⁴⁶⁷ United States Department of Labor, *2014 Findings on the Worst Forms of Child Labor – Algeria*, available at: <http://www.dol.gov/ilab/reports/child-labor/algeria.htm>.

working both in non-hazardous and hazardous work,¹⁴⁶⁸ which is also the age up until which education is compulsory.¹⁴⁶⁹ However, the relevant legislation does not facilitate enforcement thereof, due to the lack of a list of prohibited types of work.¹⁴⁷⁰ Forced labour and the commercial sexual exploitation of children constitute criminal offences.¹⁴⁷¹

In Bahrain, between 2002 and 2012, approximately 5 percent of the children between the ages of 5 and 14 were engaged in child labour.¹⁴⁷² More recent estimates of how many children are engaged in labour are unavailable. Nevertheless it is reported that children are employed in dangerous and exploitative conditions.¹⁴⁷³ In 2012, following Bahrain's ratification of the ILO's 1973 Minimum Age Convention, the minimum age for work was set at 15,¹⁴⁷⁴ and 18 for hazardous work.¹⁴⁷⁵ Education is also compulsory until the age of 15.¹⁴⁷⁶ Thus, the domestic prohibition on child labour seems compatible with the Minimum Age Convention.¹⁴⁷⁷ There is additional domestic legal protection for minors (define as those aged under 18),¹⁴⁷⁸ as a medical examination must be undertaken prior to employment.¹⁴⁷⁹ Bahrain is also party to the Worst Forms of Child Labour Convention. Nevertheless, the relevant provisions of the aforementioned domestic legislation do not apply to 'domestic servants and persons', which include 'agricultural workers'.¹⁴⁸⁰ There appears to be cases of children traveling to Bahrain to work as domestic workers.¹⁴⁸¹ Bahrain's visa policy acts to limit such cases as those seeking to migrate there must be at least 18, and children residing in Bahrain who are dependents of migrants are also precluded from obtaining a work visa.¹⁴⁸²

Forced labour and commercial sexual exploitation is also prohibited in Bahrain.¹⁴⁸³ Ministerial Order No. 23 of 2013 also prohibits the employment of minors in bars and

¹⁴⁶⁸ Art 15, Labour Code (Algeria), available (in French) at:

<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/9557/64805/F97DZA01.htm>

¹⁴⁶⁹ Art 12, Law on the Orientation of National Education (enacted 23 January 2008) (Algeria), available (in French) at:

http://www.africanchildforum.org/clr/Legislation%20Per%20Country/algeria/algeria_education_2008_fr.pdf

¹⁴⁷⁰ United States Department of Labor, *2014 Findings on the Worst Forms of Child Labor – Algeria*.

¹⁴⁷¹ Arts 303, 319, 333, 343 and 344, Penal Code (Algeria).

¹⁴⁷² UNICEF, Bahrain: Statistics, available at: http://www.unicef.org/infobycountry/bahrain_statistics.html.

¹⁴⁷³ United States Department of Labor, *2014 Findings on the Worst Forms of Child Labor – Bahrain*, available at: <http://www.dol.gov/ilab/reports/child-labor/findings/2014TDA/bahrain.pdf>.

¹⁴⁷⁴ Article 24, Law No. 36 on the Promulgation of the Labour Law in the Private Sector (enacted 2 August 2012), available at:

<http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91026/105342/F265276925/BHR91026%20Eng.pdf>.

¹⁴⁷⁵ *Ibid*, Art 27(a)

¹⁴⁷⁶ Art 1, Law No.27 of 2005 on Education.

¹⁴⁷⁷ Art 2(3), Minimum Age Convention.

¹⁴⁷⁸ *Ibid*, Art 23.

¹⁴⁷⁹ *Ibid*, Art 27(a).

¹⁴⁸⁰ *Ibid*, Art 2(b)(1).

¹⁴⁸¹ United States Department of Labor, *2014 Findings on the Worst Forms of Child Labor – Bahrain*, available at: <http://www.dol.gov/ilab/reports/child-labor/findings/2014TDA/bahrain.pdf>.

¹⁴⁸² *Ibid*, p. 2.

¹⁴⁸³ Art 1, Law No. 1 of 2008 on Combating Trafficking in Persons (Bahrain), available at:

http://www.unodc.org/res/cld/document/bhr/draft_law_no_1_of_2008_with_respect_to_trafficking_in_persons.html/Bahrain_TiP-Law_2008-ArEn.pdf

nightclubs, sectors which are especially vulnerable to commercial sexual exploitation.¹⁴⁸⁴ Commercial sexual exploitation also constitutes a criminal offence.¹⁴⁸⁵

In Jordan, which is party to the CRC and the Minimum Age and Worst Forms of Labour Conventions, the legal minimum age for work is 16, and 18 for hazardous work.¹⁴⁸⁶ Forced labour is prohibited, as is the commercial sexual exploitation of children.¹⁴⁸⁷ In 2011, Jordan also adopted a National Framework to Combat Child Labor (2011 – 2016) which seeks to monitor and use collective action to tackle child labour.¹⁴⁸⁸ However, almost two percent of children between the ages of 5 and 17 are child labourers, many of which are refugee children, driven into child labour due to poverty and their parents' financial insecurity.¹⁴⁸⁹ Recent estimates provide that 46 percent of Syrian refugee boys and 14 percent of girls over the age of 14 work for more than 44 hours a week.¹⁴⁹⁰ A recent report has found that, in Jordan, most Syrian child labourers are concentrated in the service industry, with some being as young as 5 (although most are of legal working age, i.e. 16), and often work in conditions that are illegal for their age group. Moreover, most child labourers are paid below minimum wage for foreign workers and at times work for a longer period time than which adults would be permitted to. Nevertheless, in 2014, Jordan was noted to have "made a moderate advancement in efforts to eliminate the worst forms of child labor", even though it "remains prevalent among Syrian refugee children, whose access to education is limited".¹⁴⁹¹

In Tunisia, approximately 50,000 (3%) children between the ages of 5 and 14 were estimated to be engaged in child labour in 2014.¹⁴⁹² Tunisia has ratified both relevant ILO Conventions. Domestically, it also sets 16 as the minimum age for work,¹⁴⁹³ the same age up until which education is compulsory,¹⁴⁹⁴ and 18 for hazardous work.¹⁴⁹⁵ Children are also explicitly prohibited from certain hazardous occupations.¹⁴⁹⁶ Both

¹⁴⁸⁴ Art 1.26 and 1.27, Ministerial Order No. 23 of 2013 (Bahrain).

¹⁴⁸⁵ Arts 324-327, Bahrain Penal Code, available at:

http://www.unodc.org/res/cld/document/bhr/1976/bahrain_penal_code_html/Bahrain_Penal_Code_1976.pdf.

¹⁴⁸⁶ Government of Jordan. *Labor Code and Amendments, No. 8 of 1996 (last amended under the interim Labor Code, Law No. 51 of 2002)*, enacted March 2, 1996. www.aproarab.org/Down/Jorddn/3amal.doc, arts.73-74; 2011 Ministerial Order, art.2.

¹⁴⁸⁷ Law on the Prevention of Human Trafficking, Art 3(a)-(b).

¹⁴⁸⁸ United States Department of Labor, *2014 Findings on the Worst Forms of Child Labor – Jordan*, available at: www.dol.gov/ilab/reports/child-labor/jordan.htm.

¹⁴⁸⁹ Tamkeen Fields for Aid, 'Syrian Refugee Child Labour in Jordan and the Risk of Exploitation' (2015), available at: http://tamkeen-jo.org/download/Syrial%20Refugee%20Child%20Labour%20in%20Jordan%20and%20The%20Risk%20of%20Expolitation%20final_Report.pdf

See also the ILO's 'Moving towards a child labour free Jordan' project, which ran from 2011-2016, and on which information is available at: http://www.ilo.org/beirut/projects/WCMS_220170/lang--en/index.htm.

¹⁴⁹⁰ Andrew Hosken, 'Syrian refugee children "being exploited in Jordan"' (BBC, 4 November 2015), available at: <http://www.bbc.co.uk/news/world-middle-east-34714021>.

¹⁴⁹¹ United States Department of Labor, *2014 Findings on the Worst Forms of Child Labor – Jordan*.

¹⁴⁹² United States Department of Labor, *2014 Findings on the Worst Forms of Child Labor – Tunisia*, available at: www.dol.gov/ilab/reports/child-labor/tunisia.htm.

¹⁴⁹³ Art 53, Labour Code (Law No. 66-27).

¹⁴⁹⁴ Section 1, Law on Education (No. 2002-80).

¹⁴⁹⁵ Art 58, Labour Code (Law No. 66-27).

¹⁴⁹⁶ Art 1, Decree No. 2000-98.

forced labour,¹⁴⁹⁷ as well as the commercial sexual exploitation of children are criminalised.¹⁴⁹⁸ However, Tunisia lacks a prohibition on human trafficking,¹⁴⁹⁹ even though it is a 'country of origin, transit and destination'.¹⁵⁰⁰

In Turkey, over 320,000 children between the ages of 6 and 14 are engaged in child labour in 2015 (2.6%). This number is likely to be a lot greater, as child labour continues to increase with the influx of refugees,¹⁵⁰¹ with recent allegations surfacing regarding the employment of children in large textile factories.¹⁵⁰² Turkey has ratified both relevant ILO Conventions. Domestically, it sets 18 as the minimum age for hazardous work,¹⁵⁰³ and 15 for regular work.¹⁵⁰⁴ Education is compulsory until the age of 17.¹⁵⁰⁵ However, the Labour Act, which sets out these limitations, does not apply to those working on small-scale agricultural enterprises, shops, or to those working in domestic service which leaves children in a vulnerable position.¹⁵⁰⁶ Nevertheless, forced labour, child trafficking, and the commercial sexual exploitation of children are all criminalised.

4.1.3. The Issue of Detention

The issue of detention of displaced persons, children in particular, was highlighted in the Egyptian context as an obstacle to their education. Standards contained in international refugee law require that persons seeking refuge in a State are not penalised for irregular entry into the territory of that State.¹⁵⁰⁷ In Egypt, Iraq, and Lebanon alike, however, the entry of asylum-seekers is governed by general immigration law, including with regard to irregular entry, with minimal (if any) concessions for the forced nature of their displacement. Such irregular entry in all three of the case study States can lead to administrative detention and can be criminalised. A violation of the right to liberty of students or education staff is likely to amount to an education-related violation as the detention of asylum-seekers raises real obstacles to their continuing education. There are several examples of these practices across the MENA Region, such as in Algeria, where cases have been reported with refugees being detained and subsequently tried and imprisoned for "entering the country with forged travel documents".¹⁵⁰⁸

¹⁴⁹⁷ Art 250, Penal Code.

¹⁴⁹⁸ Arts 226bis and 232, Penal Code; Article 25, Child Protection Code (Law No. 95-92).

¹⁴⁹⁹ United States Department of Labor, *2014 Findings on the Worst Forms of Child Labor – Tunisia*.

¹⁵⁰⁰ UNODC, 'Towards stamping out Human trafficking and Smuggling of migrants in Tunisia', available at: <https://www.unodc.org/middleeastandnorthafrica/en/web-stories/towards-stamping-out-human-trafficking-and-smuggling-of-migrants-in-tunisia.html>.

¹⁵⁰¹ D Tali, 'As refugees pour in, child labour booms in Turkey' (Al Jazeera, 4 January 2016), available at: <http://america.aljazeera.com/articles/2016/1/4/as-refugees-pour-in-child-labor-booms-in-turkey.html>.

¹⁵⁰² 'Syrian child labour found in Turkey clothes factories: charity' (Yahoo! News, 2 February 2016), available at: <http://news.yahoo.com/syrian-child-labour-found-turkey-clothes-factories-charity-214651288.html>.

¹⁵⁰³ Arts 71-73, Labour Act (enacted 22 May 2003); Annex 3, Regulation on Methods and Principles for Employment of Children and Young Workers (enacted 6 April 2004).

¹⁵⁰⁴ Art 71, Labour Act.

¹⁵⁰⁵ Art 3, Primary Education Law (enacted 1 May 1961); Education Reform Law (30 March 2012).

¹⁵⁰⁶ Art 4, Labour Act.

¹⁵⁰⁷ Art 31, 1951 Refugee Convention.

¹⁵⁰⁸ L Sirine, 'Syrian Refugees in Algeria: Out of The Fire and Into The Frying Pan', Comment Mid-East (11 December 2014), available at: <http://www.commentmid-east.com/2014/12/syrian-refugees-algeria-fire-frying-pan/>.

In Djibouti, a significant number of migrants were detained in 2013. While these people are generally afforded an opportunity to claim refugee status, the relevant body, the National Eligibility Commission, had failed to implement the relevant procedures due to a lack of communication. When it resumed its work in August 2013, there was a serious backlog of cases. There are two main detention facilities which reportedly have access to basic standards of treatment, there have been cases reported during which “hundreds of refugees were detained ... for more than five years”.¹⁵⁰⁹ Reports are not consistent in this regard, as there are reports of refugee detainees contracting tuberculosis and their living conditions being far from satisfactory, without adequate space, ventilation or medical care.¹⁵¹⁰ It seems that there is no domestic legislation limiting the number of days for which individuals can be detained. The situation for children is allegedly much worse, as they are often “placed in overcrowded cells ... receive irregular and inadequate meals, and face a lack of sanitary services. There have also been reports of abusive behaviour by officials, including sexual abuse”.¹⁵¹¹

Israel passed a law in 2012, amending the ‘anti-infiltration’ law under which authorities detained 1,700 asylum seekers. Although detainees were permitted to enter and leave the premises, they had to prove their presence several times a day and spend their nights there, which prevented them from moving far away from the detention centre (located in the desert); prison sentences were imposed on non-compliant detainees. In the same year, while the Supreme Court upheld the law generally, it overturned one of the provisions which permitted up to a 20 month period of pre-trial detention of illegal immigrants. The court also ordered the release of detainees who were held for over a year.¹⁵¹² However, even those released find it difficult to access basic goods, such as food, shelter and medical care.¹⁵¹³ Repatriation grants are, however, granted to these asylum seekers as an incentive for their relocation, which are often perceived as a coercive means to ensure their departure.¹⁵¹⁴

Libya lacks a domestic legislation governing a national asylum system. However, entry into Libya is regulated by a specific legislation,¹⁵¹⁵ which permits detention for up to three months if persons violate Libya’s entry provisions, without distinctions being drawn regarding migrants, asylum-seekers and others in need of international protection. Such period of administrative detention is often exceeded as a result of arbitrary decisions of

¹⁵⁰⁹ ‘Refugees Languish in Unknown Djibouti Detention Centre’ (2nd January 2012), available at:

<http://www.globaldetentionproject.org/countries/africa/djibouti>

¹⁵¹⁰ E Chyrum, ‘Eritrean Refugees and POWs in Djibouti – 2nd Visit’, available at: <http://hrc-eritrea.org/eritrean-refugees-and-pows-in-djibouti-2nd-visit/>

¹⁵¹¹ Global Detention Project, ‘Djibouti’ (updated October 2015), available at:

<http://www.globaldetentionproject.org/countries/africa/djibouti>

¹⁵¹² ‘Israel releases hundreds of African asylum seekers from detention center’, Al Jazeera (25 August 2015), available at: <http://america.aljazeera.com/articles/2015/8/25/israel-releases-migrants-from-detention-center.html>

¹⁵¹³ Ibid.

¹⁵¹⁴ Ibid; see also M Kay and J Kain, ‘African migrants speak out about life in Israel’s detention centres’, The Guardian (19 December 2014), available at: <http://www.theguardian.com/world/2014/dec/19/-sp-african-migrants-speak-out-about-life-in-israel-detention-centres-holot>

¹⁵¹⁵ Law No. 6 Regulating Entry, Residence and Exist of Foreign Nationals to and from Libya of 1987.

the relevant centre's administration.¹⁵¹⁶ Libyan authorities provide that, at any given moment, there are between 5,000 - 6,000 persons held in immigration detention facilities.¹⁵¹⁷ In the absence of a legal framework for asylum-seekers, diverging policies have been adopted with regard to different groups of individuals. While the ability of Syrian nationals to confirm their status is relatively simple, this is not true for those of sub-Saharan origin, who remain at risk of detention.¹⁵¹⁸ While several detention facilities exist, Libyan authorities have struggled to retain constant control and oversight over these as a result of conflict.¹⁵¹⁹ Detention facilities are also reported to be of a particularly low standard, lacking adequate sanitation and medical care.¹⁵²⁰ Moreover, there are also reports of inhumane practices, particularly for vulnerable groups, including children.¹⁵²¹

Morocco lacks a legislative and institutional framework to address asylum-seekers entering its territory. While the development of an asylum system has been announced and a relevant governmental department has been established to process relevant claims, their operations have halted in anticipation of a refugee law being implemented.¹⁵²² Many individuals have claimed that they have been arrested and denied basic rights granted under international law, such as the right to consult a lawyer, to be notified of expulsion, and the right to an appeal.¹⁵²³ While Moroccan immigration law prohibits the expulsion of certain vulnerable groups,¹⁵²⁴ children are often reportedly expelled after being detained, had their personal possession taken from them, and were forced to return to the Algerian border.¹⁵²⁵

While Tunisia frequently resorts to administrative detention with regard to migrants, it does not have specific legal provisions governing it. Nevertheless, there are conditions on entry, stay, and exit, with unauthorised entry being criminalised with prison as a potential sanction. Nevertheless, Tunisia's 2014 Constitution affords certain protections to migrants, including the need for the length of detention to be legally defined and for safeguards against arbitrary detention to be provided to all.¹⁵²⁶ Still, Tunisia criminalises illegal entry and permits imprisonment for up to a year in relation to non-nationals who enter without the prerequisite documentation or authorisation.¹⁵²⁷ Individuals, both

¹⁵¹⁶ Mixed Migration Hub, 'Detained Youth: The Fate of Young Migrants, Asylum-Seekers and Refugees in Libya Today' (July 2015), p. 50, available at: http://www.mixedmigrationhub.org/wp-content/uploads/2015/07/MHUB_2015_Detained-Youth.pdf

It is also reported that the 2010 Law on Combating Irregular Migration permits indefinite detention, see the Global Detention Project, 'Libya' (last updated February 2015), available at: <http://www.globaldetentionproject.org/countries/africa/libya>.

¹⁵¹⁷ Ibid, p. 50.

¹⁵¹⁸ Ibid, p. 46.

¹⁵¹⁹ Ibid, p.48

¹⁵²⁰ Ibid, p.50

¹⁵²¹ Ibid.

¹⁵²² Global Detention Project, 'Morocco' (updated February 2014), available at: <http://www.globaldetentionproject.org/countries/africa/morocco>.

¹⁵²³ Human Rights Watch, 'Abused and Expelled: Ill-Treatment of Sub-Saharan African Migrants in Morocco' (2014), p. 2, available at: https://www.hrw.org/sites/default/files/reports/morocco0214_ForUpload.pdf

¹⁵²⁴ Art 29, Law 02-03.

¹⁵²⁵ Human Rights Watch, 'Abused and Expelled: Ill-Treatment of Sub-Saharan African Migrants in Morocco' (2014), available at: https://www.hrw.org/sites/default/files/reports/morocco0214_ForUpload.pdf, pp. 32-33.

¹⁵²⁶ Art 29, 2014 Constitution of Tunisia.

¹⁵²⁷ Art 23, Organic Law 68-7.

nationals and non-nationals, must enter and exit Tunisia at specific designated crossing points.¹⁵²⁸ While an exception exists for those granted refugee status by the UNHCR,¹⁵²⁹ after the UNHCR shut its refugee camp in Tunisia and the State promised to supply the relevant individuals with residence permits, these were not granted for a significant period of time, which thereby made them vulnerable to arrest. They were thus in a similar position to other asylum-seekers, whose status as refugees had not been recognised.¹⁵³⁰ Many refugees were thus detained as a result of these legal and administrative shortcomings.¹⁵³¹

Turkey, following its deal with the European Union in 2015, began detaining refugees who were attempting to enter the Union.¹⁵³² Some are held in a detention centre which is financially supported by the European Union, where there have been reports of cases of mistreatment; without legal representation, those detained have not been able to challenge their detention.¹⁵³³

Concluding Remarks

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 often bars access to public education. Requirements of citizenship 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 Article 13(2)(a) ICESCR, read together with its Article 2, as well as Articles 22, 28, and 29 CRC, to which all MENA States are party. The broad practice of MENA States in this respect also contravenes the general international law principle of non-discrimination, which is also contained in several of the international human rights treaties to which the majority of MENA States are party.¹⁵³⁴ According to the CESCR, 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”.¹⁵³⁵

The above practices are also clearly inconsistent with standards contained in international refugee law, particularly Article 31 of the 1951 Refugee Convention. They also contravene the requirement that detained juveniles be separated from detained adult populations.¹⁵³⁶ However, the 1951 Refugee Convention has not been widely

¹⁵²⁸ Art 34, Organic Law 1975-40; Organic Law 2004-6; Article 4, Organic Law 68-7.

¹⁵²⁹ Art 34, Organic Law 1975-40.

¹⁵³⁰ Global Detention Project, ‘Tunisia’ (last updated July 2014), available at:

<http://www.globaldetentionproject.org/countries/africa/tunisia>.

¹⁵³¹ M Tazzioli, ‘In Tunisia, refugees caught between prison and deportation’, II Manifesto (8 October 2015), available at: <http://ilmanifesto.info/in-tunisia-refugees-caught-between-prison-and-deportation/>.

¹⁵³² ‘Turkey detains 3,000 refugees after EU deal’, The Guardian (4 December 2015), available at:

<http://www.theguardian.com/world/2015/dec/04/turkey-detains-3000-refugees-after-eu-deal>.

¹⁵³³ C Letsch, ‘Turkey putting Syrian refugees “at serious risk of human rights abuse”’, The Guardian (27 November 2015), available at: <http://www.theguardian.com/world/2015/dec/04/turkey-detains-3000-refugees-after-eu-deal>.

¹⁵³⁴ See for example, Art 2, CRC; Art 2, ICCPR; CEDAW.

¹⁵³⁵ CESCR, ‘General Comment No. 13’ UN Doc. E/C/12/1999/10, [31].

¹⁵³⁶ Art 10(2), ICCPR.

ratified in the MENA Region, which explains in part the lack of comprehensive protection for refugees and asylum-seekers in MENA States.

In addition to the general issue of access to education, this section highlights three specific education-related violations which constitute additional barriers to the realisation of the right to education for displaced persons: early or forced marriage, child labour, and detention. Early or forced marriage, as well as child labour, are both linked to the economic situation of the child's family, with migrant families generally suffering from financial hardship. Administrative detention is regularly used in relation to those fleeing insecurity and conflict situations; while national security justifications are often mentioned in such cases, such detention is often prolonged without legal basis. While these situations, which almost always amount to violations of IHRL, 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.

4.2. EDUCATION IN POST-INSECURITY AND POST-CONFLICT CONTEXTS

In post-insecurity and post-conflict situations, there is the risk that legal and institutional reforms weaken the right to education and other human rights allowing the right of education to be fully realised, instead of strengthening them. However, constitutions, as well as any implementing pieces of legislation, which may be adopted following a situation of insecurity or armed conflict, must abide by the international obligations of the State in question, including those pertaining to education. In such situations, in particular in post-conflict settings, there is also the risk that education-related violations committed during the conflict go unpunished, as a result of amnesties granted to a former government to seek a transition into peace. However, the rights of victims to seek and obtain reparations for violations of their rights, including education-related violations, must also be respected.¹⁵³⁷ Furthermore, education should be considered a key component by States emerging from situations of armed conflict in particular, as it can support reconciliation and long term peace-building efforts and reconciliation. Strengthening the protection of education must also be considered by States emerging from situations of insecurity, especially when the insecurity context resulted from education-related violations.

Many MENA States have undergone significant legal and institutional reform, following the insecurity and armed conflict resulting from region-wide popular uprisings, which began in 2011. A number of consistent themes have arisen both in the discourse and the legal reforms of such States, including the articulation of a wide range of rights contained in international law, the democratisation of political processes and the incorporation of rule of law safeguards in new constitutions, the empowerment and greater protection of minority groups, and the creation of new institutions to implement the protections and safeguards provided for in domestic constitutional law. All of these elements, when implemented, contribute to an enabling environment for the protection of education and for the provision of effective remedies in case of education-related violations.

This section considers first the education-related reforms which followed the 2011 popular uprisings throughout the MENA Region, which amounted to insecurity situations, focusing especially on Tunisia, while also recalling the Egyptian context. It then looks at the education-related reforms adopted in post-conflict settings, including in Iraq, Palestine, and Libya, as well as the role of education within peace-building and reconciliation, considering in particular the place of education in peace agreements, with examples taken from Lebanon and Sudan/South Sudan.

4.2.1. Education in Post-Insecurity Contexts

As mentioned in the case study, the Egyptian Revolution led to the adoption of a new Constitution by referendum in 2014. It enshrines the right of “[e]very citizen [...] to high quality education”. Reforms pertaining to education have included raising teachers’

¹⁵³⁷ See, in general, *Education and the Law of Reparations in Insecurity and Armed Conflict* (BIICL/PEIC, 2013).

salaries, as well as seeking to and making progress in enhancing access to education with free classes and the improvement of educational facilities, for example.¹⁵³⁸

Another major revolution began in Tunisia in 2011, following which a Constituent Assembly was elected to draft a new Constitution, which was eventually enacted in 2014; it “guarantees the impartiality of educational institutions from all partisan instrumentalization”.¹⁵³⁹ It also provides that “[e]ducation shall be mandatory up to the age of [16]” and “guarantees the right to free public education at all levels and ensures provisions of the necessary resources to achieve a high quality of education, teaching and training”; the promotion of “openness to foreign languages, human civilizations and diffusion of the culture of human rights” also forms part of the State’s duties.¹⁵⁴⁰

From its independence until recently, Tunisia tried to follow the French educational model, prioritizing technical and vocational skills “over thinking creatively and analytically”. This system which persisted for several decades was largely seen as “incapable of innovating itself”.¹⁵⁴¹ In April 2015, a process seeking to reform the education system in Tunisia was initiated. Part of a wider social dialogue on employment, it was aimed at establishing to “a new vision for the country’s school system, with the committee tasked with this process consisting of members from the Ministry of Education, the Tunisian General Labour Union, and the Arab Institute for Human Rights”.¹⁵⁴² The temporary nature of the interim governments that came into power after the revolution meant that education-related reforms were not prioritized. The end of the transitional period allowed the new government to focus on education.¹⁵⁴³ One of the outcomes of this process so far has been an agreement to make vocational training a key component of the education system.¹⁵⁴⁴

With regard to higher education, some substantive information about the reform initiative in the context of higher education was made available by the Minister for Higher Education and Scientific Research. Reportedly, “[t]he plan includes the following elements: reducing centralised government control and bureaucracy, increasing university autonomy and improving administration and the employability of graduates. Specific measures include the introduction of vocational training for graduates. Meanwhile universities will be expected to conform to international standards. There is

¹⁵³⁸ ‘Egypt embarks on long-term education reform programme’ (Al-Ahram online, 17 August 2014), available at: <http://english.ahram.org.eg/NewsContent/1/64/108621/Egypt/Politics-/Egypt-embarks-on-longterm-education-reform-program.aspx>.

¹⁵³⁹ Art 16, 2014 Constitution of Tunisia.

¹⁵⁴⁰ Ibid, Art 39.

¹⁵⁴¹ A-Hasanat Siddique, ‘Reform in Tunisia: Overhauling the Education System’ (Fair Observer, 9 September 2014), available at: http://www.fairobserver.com/region/middle_east_north_africa/reform-in-tunisia-overhauling-the-education-system-05970/; ‘Reforming Tunisia’s education sector’ (7 August 2012), available at: <https://agenda.weforum.org/2012/08/reforming-tunisias-education-sector/>

¹⁵⁴² E Guizani, ‘Education System to Face Widespread Reforms’ (TunisiaLive, 23 April 2015), available at: <http://www.tunisia-live.net/2015/04/23/education-system-in-need-of-widespread-reforms/>

A preliminary meeting was held on 5 September 2014, see the website of the Social Science Forum Tunisian NGO at: <http://www.assforum.org/ar/?p=5877&lang=en>

¹⁵⁴³ Ibid.

¹⁵⁴⁴ Z Marzouk, ‘The National Dialogue on Employment Eleven Point Plan’ (TunisiaLive, 29 March 2016), available at: <http://www.tunisia-live.net/2016/03/29/national-dialogue-employment-eleven-point-plan/>

also a program to improve private colleges, the numbers of which have increased in recent years".¹⁵⁴⁵

However, discontent remains in Tunisia, in particular within its young population, with regular demonstrations by students and education staff.¹⁵⁴⁶ Demonstrations, which started in the region of Kasserine, followed the accidental death, in January 2016, of a young man who was protesting the removal of his name from a list of candidates for public education service, which seemed arbitrary and the result of corruption in the administration, which appear to have subsisted, despite the constitutional and political reforms.¹⁵⁴⁷ It thus appears that students and education staff may not only be the motor of insecurity when their claims are not heard, but also that addressing their discontent in a substantial and comprehensive manner is key to ensuring long term stability.

4.2.2. Education within Post-Conflict Contexts

Following situations of armed conflict, institutional and legal frameworks are also often revised, including with the adoption of new constitutions and implementing legislation. Furthermore, when peace agreements and peace-building processes are adopted at the end of an armed conflict, education may also be taken into account as a tool to support long-term peace and reconciliation. The below section considers the place of education in post-conflict settings within legislative reforms and within peace agreements.

Education in Post-Conflict Legal Reform

This sub-section considers post-conflict legal reforms which took place in Iraq, Palestine, and Libya. In particular, it considers the transfer of the responsibility (or of some of its responsibility) for the provision of education from central governments to regional powers or from occupying power to occupied territories. In Iraq, there were several aspects of legal and institutional reforms, post-conflict, that impacted upon the protection of education. In addition to the domestic enshrinement of a broad range of rights contained in international treaties to which Iraq is party, a key component of the reforms entailed the de-centralisation of public services and the empowerment of religious and ethnic minorities, through provisions of the 2005 Constitution of Iraq and implementing legislation.¹⁵⁴⁸ For example, the Kurdish Regional Government, which was recognised as autonomous, now has its own government and shares a number of competencies with the central government, including with regard to education, while wielding decision-making power with regard to other matters.¹⁵⁴⁹

¹⁵⁴⁵ 'Tunisian Plan for Higher Education Reform' (23 June 2015), available at: <http://ireg-observatory.org/en/index.php/300-tunisian-plan-for-higher-education-reform>.

¹⁵⁴⁶ M Yahya, 'Great Expectations in Tunisia' (Carnegie Endowment for International Peace, 31 March 2016), available at: <http://carnegieendowment.org/2016/03/31/great-expectations-in-tunisia-pub-63138>

¹⁵⁴⁷ M Yahya, 'Great Expectations in Tunisia' (Carnegie Endowment for International Peace, 31 March 2016), available at: <http://carnegieendowment.org/2016/03/31/great-expectations-in-tunisia-pub-63138>

¹⁵⁴⁸ See the Law of Governorates no Incorporated into a Region No. 21 (2008), as amended by Law No. 15 (2010).

¹⁵⁴⁹ Ibid, Art 110.

While the situation between Israel and Palestine is not per se 'post-conflict', given that Israel continues to occupy Palestine, it is nevertheless interesting to note here the transfer of responsibility of services between the two, as part of the initiation of the peace process, despite this process being an ongoing one. The 1994 Agreement on Preparatory Transfer of Powers and Responsibilities (also known as the Oslo Accords) provides in Article II(1) that "Israel shall transfer and the Palestinian Authority shall assume powers and responsibilities from the Israeli military government and its Civil Administration in the West Bank in [...] education and culture".¹⁵⁵⁰ The transfer of responsibility for the provision of education was thus more fully transferred than in Iraq, with regard to the Kurdish Regional Government, where the responsibility remains shared. As a result of this transfer, Palestine adopted a number of laws pertaining to education, such as the Palestine Law on Higher Education No. 11 (1998), which provides that every citizen has the right to higher education (Article 2), while also creating the legal framework relating to the management and organisation of relevant institutions.¹⁵⁵¹

Furthermore, the Palestine 2005 Child Law stipulates that "every child shall have the right to free education and learning in public school until the completion of the secondary stage of schooling; education is compulsory until the completion of the stage of higher basic schooling as a minimum" (Article 37). Moreover, it is specified that children "with special needs shall have the right to education and training in the same schools and centers open for non-disabled students. In the case of exceptional disability, the State shall be committed to provide education and training in special classes, schools or centers" (Article 41).¹⁵⁵² The 1998 Law also established two frameworks for higher education (central national planning and supervision; institutional self-management/monitoring/control) with responsibility also given to the relevant Ministry for accreditation and quality assurance.¹⁵⁵³

Article 24 of the 2003 Palestine Amended Basic Law provides that "[E]very citizen shall have the right to education. It shall be compulsory until at least the end of the basic level. Education shall be free in public schools and institutions. The National Authority shall supervise all levels of education and its institutions, and shall strive to upgrade the educational system. The law shall guarantee the independence of universities, institutes of higher education, and scientific research centers in a manner that guarantees the

¹⁵⁵⁰ The Agreement on Preparatory Transfer of Powers and Responsibilities (29 August 1994), available at: http://peacemaker.un.org/sites/peacemaker.un.org/files/IsraelOPt_940829_AgreementPreparatoryTransferPowersResponsibilities.pdf

¹⁵⁵¹ UNESCO and International Bureau of Education, 'World Data on Education' 7th edn (2010-2011), p. 3, available at: http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Palestine.pdf See also, Higher Education in the Occupied Palestinian Territory (European Commission, 2012), p. 3, available at: http://eacea.ec.europa.eu/tempus/participating_countries/overview/oPt.pdf

¹⁵⁵² UNESCO and International Bureau of Education, 'World Data on Education' 7th edn (2010-2011), p. 3, available at: http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Palestine.pdf

¹⁵⁵³ *Palestine Education System and Policy Handbook* (International Business Publications, Volume 1, 2015), p. 67, available at: https://books.google.co.uk/books?id=xtuwBgAAQBAJ&pg=PA67&lpg=PA67&dq=higher+education+law+1998+palestine&source=bl&ots=FEFkXlkZu7&sig=PV77p0oSHG2Ta_Y18AJtmIJxS2U&hl=en&sa=X&ved=0ahUKewip89fOyczJAhXBjA8KHeHoBHcQ6AEIOTAD#v=onepage&q&f=true

freedom of scientific research as well as literary, artistic and cultural creativity. The National Authority shall encourage and support such creativity. Private schools and educational institutions shall comply with the curriculum approved by the National Authority and shall be subject to its supervision".¹⁵⁵⁴

The transfer of power and responsibility with regard to education provides the first opportunity in almost 500 years for Palestinians not only to control their educational system but also to control it.¹⁵⁵⁵ The opportunity for Palestinians to reform education has been seen as a key element in the peace process.¹⁵⁵⁶ Many concerns have been raised regarding the Palestinian education system following the establishment of a relevant ministry in 1994. Most of these relate to Israeli occupation and the alleged deficiency of the Ministry's policies.¹⁵⁵⁷ Disagreement over the curriculum and related matters are frequent.¹⁵⁵⁸ Nevertheless, reforms are taking place, such as the introduction of extra-curricular activities and the amendment of the end of high school exam (the 'tawjihi').¹⁵⁵⁹

In addition to the transferring responsibilities with regard to the delivery of education services, another issue associated with the change of authority in post-conflict context is the possible change in the curriculum, which has already been alluded to as a cause for concern with regard to Palestine. In Libya, during the Gaddafi regime, education was often perceived as an instrument thereof. Given its importance for the Gaddafi regime, it has been the object of a major overhaul. Since it was toppled in 2011, a National Curriculum Reform Office was formed, comprising of 160 experts tasked with amending the curriculum for Libya's public schools. However, as many of these changes will take significant time, some of the subjects (such as history) have been removed entirely from the national curriculum. This process has become more time-consuming due to the need for a new constitution to be adopted before comprehensive changes and developments can take place.¹⁵⁶⁰ The interim constitutional declaration nevertheless does contain a guarantee regarding the right to education.¹⁵⁶¹ The importance of curriculum reform in post-Gaddafi Libya highlights its potential impact on long-term peace-building, while, at the same time, recalling its potential role in a regime's propaganda.

¹⁵⁵⁴ Art 24 of the 2003 Amended Basic Law, available at: <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>

¹⁵⁵⁵ Blair G Van Dyke and E Vance Randall, 'Educational reform in Post-Accord Palestine: A synthesis of Palestinian perspectives' (2002), 28(1) Educational Studies 17.

¹⁵⁵⁶ Aaron D Pina, 'Palestinian Education and the Debate Over Textbooks' (Congressional Research Service, 3 May 2005), available at: <https://www.fas.org/sgp/crs/mideast/RL32886.pdf>

¹⁵⁵⁷ 'Educational Reform and Meaning Making in Palestinian Schools: An Ethnographic Study of Six Public Schools' (Qattan Centre for Educational Research and Development, 2011), p. 4, available at: http://issuu.com/qattan.foundation/docs/educational_reform_and_meaning_maki

¹⁵⁵⁸ See Jillian Kestler-D'Amours, 'Forced Israeli curriculum violates Palestinians' education rights' (17 October 2011), available at: <https://electronicintifada.net/content/forced-israeli-curriculum-violates-palestinians-education-rights/10497>; see also Daoud Kuttab, 'The Man Behind the Future of Education in Palestine' (Al-Monitor, February 2016), available at: <http://www.al-monitor.com/pulse/originals/2016/02/palestinian-minister-reform-education-sector.html>.

¹⁵⁵⁹ Daoud Kuttab, 'The Man Behind the Future of Education in Palestine' (Al-Monitor, February 2016).

¹⁵⁶⁰ 'Libya's schools trying to reform pro-Gadhafi curriculum' (PRI, 15 November 2011), available at: <http://www.pri.org/stories/2011-11-15/libyas-schools-trying-reform-pro-gadhafi-curriculum>.

¹⁵⁶¹ Art 8, 2011 Constitutional Declaration of Libya.

Education in Peace Agreements

As it has already been alluded to in the above sub-section with regard to the peace process between Israel and Palestine, education has a place in peace agreements, to ensure their long-term success. Education “can determine the agenda for the post-conflict period [...] Including education in a peace agreement thus makes it more likely that education will receive attention after a conflict”.¹⁵⁶² Also, “addressing education in peace agreements by, for instance, committing the state to providing wider access to education can signal that the state cares about the population and is committed to keeping and building peace by transforming the roots of conflict”.¹⁵⁶³ Finally, education possesses an inherent peace-building potential which should be recognised; engaging dialogue between former warring parties in the development of new curriculum and in the sharing of education provision may be key in long-term peace building as it may allow to integrate the culture of minorities therein, for example.

However, education has seldom been formally included in peace agreements. Among the full peace agreements (where the warring parties agreed to settle the entire underlying cause of the dispute) dating from 1989 to 2005 that are publicly available, 30 percent make no mention of education, while the remaining 70 percent mention education in some way. With regard to partial agreements (where only part of the dispute is settled), only 47 percent contain a relevant mention of education. This data applies to peace agreements throughout the world.¹⁵⁶⁴

Overall, it is found that “[t]hese agreements mandate that the state must grant the right to public education to all citizens of the state; that the right to education must be realized, promoted, protected, guaranteed, or secured by the state; and that the right to education for all must be respected by the state. Generally, the right to access formal education is [also] called for in the agreements”.¹⁵⁶⁵ Moreover, “[t]he peace agreements included in the analysis call for provision of access to all levels of schooling within the formal school system, to include primary, basic, secondary, postsecondary, and tertiary or higher education. In the agreements where education is mentioned, educational provision is almost universally viewed as a public service that the state is responsible for delivering”.¹⁵⁶⁶

Within peace agreements, education has been identified as “a security issue, a protection issue, an economic issue, and a socio-political issue”, the substance of related provisions depending on the view of education adopted.¹⁵⁶⁷ The types and degree of reform often called for are context-dependent. “However, several areas of reform are consistently called for in these agreements: reform in distribution of educational opportunities and resources (to include distribution of funding), in access, in selection functions within the education sector (particularly regarding exams), in

¹⁵⁶² Kendra E. Dupuy, ‘Education in Peace Agreements, 1989-2005’ (2009) 26(2) Conflict Resolution Quarterly, pp. 161-162.

¹⁵⁶³ Ibid.

¹⁵⁶⁴ Ibid.

¹⁵⁶⁵ Ibid, pp. 155-156.

¹⁵⁶⁶ Ibid.

¹⁵⁶⁷ Ibid, p. 157.

training and distribution of teachers, in educational governance, and in the content of the curriculum and the language in which teaching is carried out.”¹⁵⁶⁸

Whether education is incorporated into such agreements or not can depend on various factors: “education is often viewed as a developmental, rather than humanitarian, issue [...]; [s]econd [...] individuals and parties involved in peace processes may be more concerned with the immediate cessation of direct violence [...] Finally, the type of conflict [...] and whether education is perceived to have played a role in the outbreak of the conflict”.¹⁵⁶⁹

In Lebanon, the 1989 Ta’if Accord, which marked the end of the civil war, contain several provisions for educational reform, recognising that “[e]ducation shall be provided to all and shall be made obligatory for the elementary stage at least”, but its implementation remains elusive.¹⁵⁷⁰ With recent figures of those in higher education expanding, it is problematic that it has not been supported by legislative and administrative reforms.¹⁵⁷¹ While the Ta’if Accord instituted a complex power-sharing arrangement amongst sects that had been opposing belligerents during the 15-year non-international armed conflict, there was no overhaul of the legal system. As a consequence, the administrative structure has remained untouched for an extended period, and is considered by commentators to contribute to the continuing insecurity arising out of sectarian tensions in Lebanon. A truth-seeking project entitled ‘Badna Naaref’ (We Want to Know) was launched by the International Center for Transitional Justice in 2011, in consultation with the Lebanese Ministry of Education. It seeks to enhance students’ comprehension of political violence, its impact on the daily lives of the affected individuals as well as its greater impact on the future, while also developing an archive, with a view to being incorporated into a curriculum in the future.¹⁵⁷² However, the pursuit of incorporating this project into the formal education system was unsuccessful,¹⁵⁷³ which seems to demonstrate the importance of official support for educational reforms.¹⁵⁷⁴ This also demonstrated that the sole inclusion of education in peace agreements is not sufficient and that it must be supported by adequate legislative and policy instruments.

While South Sudan is not generally understood as part of the MENA Region, it is considered here because of its peace agreement with Sudan. Before becoming fully independent, South Sudan had already been a self-governed region, with some degree of autonomy, including over the schooling system. According to the 1972 Addis Ababa ‘Agreement on the Problem of South Sudan’, which provided the legal framework for regional self-government in the Southern Provinces, the People’s Regional Assembly

¹⁵⁶⁸ Ibid, pp.158-159.

¹⁵⁶⁹ Ibid, p. 161.

¹⁵⁷⁰ The Ta’if Accord, which is briefly discussed in the case study on Lebanon in Part 3 of the Study, is available at: <https://peaceaccords.nd.edu/provision/education-reform-taif-accord>; see in particular its Section III, F (1).

¹⁵⁷¹ Alain Hasrouny, ‘Lebanon: Higher education at risk without reform’ (University World News, 23 January 2011), available at: <http://www.universityworldnews.com/article.php?story=20110122084153924>.

¹⁵⁷² ICTJ and UNICEF, ‘Education and Transitional Justice: Opportunities and Challenges for Peacebuilding’ (November 2015), pp. 20 and 26, available at: <https://www.ictj.org/sites/default/files/ICTJ-UNICEF-Report-EducationTJ-2015.pdf>

¹⁵⁷³ Ibid, pp. 28 and 30.

¹⁵⁷⁴ Ibid, p. 31.

“shall legislate [for the] [e]stablishment, maintenance and administration of Public Schools at all levels in accordance with National Plans for education and economic and social development”.¹⁵⁷⁵ Moreover, it provided that “[a]ll citizens resident in the Southern Region are guaranteed equal opportunity of education” and that “[n]o law adversely affect the rights of citizens enumerated in the previous item on the basis of race, tribal origin, religion, place of birth, or sex”.¹⁵⁷⁶ Furthermore, in the Agreement’s Protocols on Interim Arrangements and specifically in the amnesty and judicial arrangements, it is stated that “[t]he Relief and Resettlement Commission shall arrange for the education of all returned who were attending primary school”.

From 1989 onwards, ‘Operation Lifeline Sudan, an initiative led by UNICEF, resulted in the multiplication of several “ad hoc basic education programmes, often led by communities, NGOs and faith-based agencies”.¹⁵⁷⁷ This initiative also allowed both education actors and the Sudan People’s Liberation Movement (SPLM), which was at the time the political movement which included the armed force fighting the Sudanese government, to assert themselves.¹⁵⁷⁸ In 1994, the SPLM established its own education system, with a Secretariat of Education, in the territories it controlled. This Secretariat drafted a policy and a curriculum for Grades 1-4, while also “supporting the initial formalization of teacher training, and preparing a five-year education plan in line with the [Education for All] goals.”¹⁵⁷⁹ Reportedly instrumental to these developments was the Sudan Basic Education Program, funded by USAID, which worked directly with the SPLM Secretariat of Education.¹⁵⁸⁰

Therefore, when the 2005 Comprehensive Peace Agreement between the Government of The Republic of Sudan and the SPLM/Sudan People’s Liberation Army was adopted, the SPLM was already mostly in charge of education in South Sudan. The Comprehensive Peace Agreement formally provided that the SPLM formed the Government of Southern Sudan with its own constitution, legislative assembly, decentralised structure; it also contains an education provision.¹⁵⁸¹ While historically education in Southern Sudan was of low quality, the most recent conflict provided an opportunity to develop a ‘home-grown’ education system. The education provision contained in the Comprehensive Peace Agreement was incorporated in Sudan’s Interim Constitution (2005).¹⁵⁸² Article 13 thereof provided that:

¹⁵⁷⁵ Art 11 of the Addis Ababa Agreement on the Problem of South Sudan (27 February 1972), available at: http://peacemaker.un.org/sites/peacemaker.un.org/files/SD_720312_Addispercent20Ababapercent20Agreementpercent20onpercent20thepercent20Problepercent20ofpercent20Southpercent20Sudan.pdf

¹⁵⁷⁶ Ibid, Art 32(a)

¹⁵⁷⁷ E Echessa, M Ayite and R Wahome, ‘No looking back: the creation of a new education system in Southern Sudan’, in S Nicolai (ed.) *Opportunities for change: Education innovation and reform during and after conflict* (UNESCO and IIEP, 2009), p. 140, available at: <http://unesdoc.unesco.org/images/0018/001838/183808e.pdf>

¹⁵⁷⁸ Ibid, p. 141.

¹⁵⁷⁹ Ibid.

¹⁵⁸⁰ Ibid, p.142.

¹⁵⁸¹ The Comprehensive Peace Agreement (CPA) between the Government of The Republic of Sudan and the Sudan People’s Liberation Movement/Sudan People’s Liberation Army of January 2005, available at: <https://unmis.unmissions.org/Portals/UNMIS/Documents/General/cpa-en.pdf>

¹⁵⁸² Art 13, Comprehensive Peace Agreement, available at: <https://peaceaccords.nd.edu/provision/education-reform-sudan-comprehensive-peace-agreement>
<http://www.refworld.org/pdfid/4ba749762.pdf>

- (1) (a) The State shall promote education at all levels all over the Sudan and shall ensure free and compulsory education at the primary level and in illiteracy eradication programmes.
- (b) Every person or group of persons shall have the right to establish and maintain private schools and other educational institutions at all levels in accordance with the conditions and standards provided by law.
- (2) The State shall mobilize public, private and popular resources and capabilities for education and development of scientific research, especially Research and Development.
- (3) The State shall encourage and promote craft and arts and foster their patronization by government institutions and citizens.
- (4) The State shall recognize the cultural diversity of the country and shall encourage such diverse cultures to harmoniously flourish and find expression, through the media and education.
- (5) The State shall protect Sudan's cultural heritage, monuments and places of national historic or religious importance, from destruction, desecration, unlawful removal or illegal export.
- (6) The State shall guarantee academic freedom in institutions of higher education and shall protect the freedom of scientific research within the ethical parameters of research.

Moreover, the Comprehensive Peace Agreement provided that “[a]dditional educational opportunities shall be created for war-affected people”,¹⁵⁸³ and devolved the administration of education to the States.¹⁵⁸⁴ As stated by the Ministry of Education, Science and Technology, the Agreement “provides for a decentralized system of governance; therefore, each State will largely be responsible for implementing education programmes in their respective locations”.¹⁵⁸⁵ Several individuals, who were actively involved in and well-accustomed to “education processes during the conflict and transition periods”, were appointed as ministers. The “devolution of education structures created an opportunity for the education sector to develop concurrently in all states. This was also an opportunity to strengthen the education system from the bottom up”; several education-related initiatives and campaigns were created during this time.¹⁵⁸⁶

The 2005 Interim Constitution of South Sudan recognised the right to education, requiring the government to provide non-discriminatory access thereto; education shall be free and compulsory at the primary level and promoted at all levels, with the addition of free programmes to eradicate illiteracy.¹⁵⁸⁷ The 2011 Transitional Constitution of South Sudan contains similar provisions.¹⁵⁸⁸ Following the adoption of the Interim Constitution, an education bill was also enacted, as well as a draft teacher's code of conduct, which was developed with the assistance of the NGO Save the Children.¹⁵⁸⁹

¹⁵⁸³ Section 2.6.1.6, Comprehensive Peace Agreement.

¹⁵⁸⁴ *Ibid*, Section 2.8.5; see also E Echessa, E Echessa *et al*, *op cit*, p. 142.

¹⁵⁸⁵ Ministry of Education, science and Technology of Southern Sudan (GOSS), *Education Sector Budget Plan: 2007-2009* (2006), p.17.

¹⁵⁸⁶ E Echessa *et al*, *op cit*, p. 143.

¹⁵⁸⁷ Art 33, Interim Constitution of Southern Sudan, 2005; see also Art 41.

¹⁵⁸⁸ Arts 29 and 38, Transitional Constitution of the Republic of South Sudan (2011).

¹⁵⁸⁹ E Echessa *et al*, *op cit*, p. 143.

Moreover, with the assistance of several stakeholders, the SPLM Secretariat of Education developed and implemented a curriculum of its own, a necessary development given that, during the conflict period, “[m]ost schools were implementing neighbouring countries’ curricula [...] with no chance of a unified examination and certification system”.¹⁵⁹⁰ The curriculum was finalised with external consultants and the allocation of UNICEF resources enabled the provision of textbooks, with other NGOs also assisting in this regard. This curriculum was subsequently adopted in all of Southern Sudan. It differs from the curriculum of northern Sudan as it contains one extra year in secondary school and the primary language of instruction is English. An illustration of an innovation in the curriculum is the created of an Accelerated Learning Programme, where four years of secondary education were condensed into two, in order “to cater for marginalized older children”.¹⁵⁹¹ Teachers were trained on the new curriculum, and gender strategies were also incorporated into education programmes.¹⁵⁹²

Education was eventually also included as a form of reparations in the 2013 the Government of the Republic of South Sudan (GRSS) and the South Sudan Democratic Movement/Army (SSDM/A), which recognised the impact of the conflict on the civilian population. It was agreed that the Government of the Republic of South Sudan “will provide compensation and reparations through social service delivery in the form of [...] education”.¹⁵⁹³ As mentioned in the Reparations Report, reparations should ensure that the victims are put back in the situation they would be in at present, if the violation of their rights never occurred. The loss of education opportunities must thus be taken into account when considering the harm suffered. Furthermore, as demonstrated by this Agreement, education may serve as a tool for rehabilitation, which is also a form of reparation.

In Sudan, the government has now signed another ceasefire agreement with an opposition group, which includes provisions aimed at strengthening access to education, in particular for underprivileged students. The 2013 Agreement between the Government of Sudan and the Justice and Equality Movement-Sudan on the Basis of the Doha Document for Peace in Darfur mentions, under Article 8, that “[b]y virtue of this Agreement, the Ministry of Higher Education shall instruct public universities to establish committees to consider exempting needy students, in particular those from Darfur states, from the payment of education fees. The DRA [Darfur Regional Authority] shall establish a follow-up mechanism in this regard”.¹⁵⁹⁴ More generally, Article 10, which incorporates the general principles for wealth sharing, provides that “[t]he development of human resources including equal opportunities to free education shall form part of the economic and social development policies”.

¹⁵⁹⁰ Ibid, pp.143-144.

¹⁵⁹¹ Ibid, p.144.

¹⁵⁹² Ibid, p.145.

¹⁵⁹³ Art 7(b)(ii), Agreement between the Government of the Republic of South Sudan (GRSS) and the South Sudan Democratic Movement/Army (SSDM/A) (27 February 2013), available at:

http://peacemaker.un.org/sites/peacemaker.un.org/files/SD-SS_120227_AgreementGRSS-SSDMA.pdf

¹⁵⁹⁴ Agreement between the Government of Sudan and the Justice and Equality Movement-Sudan on the Basis of the Doha Document for Peace in Darfur (13 April 2013), available at:

http://peacemaker.un.org/sites/peacemaker.un.org/files/SD_130406_Sudan-JEMSOonDDPD.pdf

Finally, in Yemen, there is one explicit mention of education in the 2014 Peace and National Partnership Agreement, which was signed with the Houthis, in order to establish a new government. This agreement included a provision stating that the new government shall undertake to “increase the budget for the next fiscal year for education and health, which shall be targeted toward people living in poverty and in marginalised areas”.¹⁵⁹⁵ It thus made clear that the provision of access to education for all was a key component of the peace accord.

Concluding Remarks

The popular uprisings which swept the MENA Region from 2011 onwards, and the subsequent changes in government, have led to legal reforms which have impacted on the provision of education, providing an opportunity to strengthen it. While Part 3 already detailed the situation in Egypt following the revolution, this section considers the Tunisian experience, where the educational system went through an overhaul process following its own revolution. However, as mentioned, education-related reforms were not prioritised and it appears that, so far, reform plans have focused on higher education. Discontent remains among students and education staff, who have continued to protest for their rights.

Institutional and legal reforms are also the norm following an armed conflict, a context which requires specific measures for recovery and reconciliation. The provision of education may thus also be greatly affected through an overhaul of the entire system, as was the case following the 1994 Agreement on Preparatory Transfer of Powers and Responsibilities, according to which Palestine was allowed to develop its own educational system in order to make it 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.

As mentioned in the above sub-section, education is often but not always included in peace agreements. Within the MENA Region, peace agreements have generally included some mention of education, as shown in both Lebanon and Sudan/South Sudan, where education was a key component of the 2005 Comprehensive Peace Agreement. The lessons that can be drawn from the Sudanese experience include the fact that “[b]uilding an education system in emergency situations can lay a strong foundation for the realization of long-term goals and objectives during recovery, reconstruction and development periods; [...] [r]ebel movements if committed are capable of steering the education of their people’s choice with the support of donors and international agencies; [...] [c]onflict creates a plethora of educational opportunities and offers space for innovation, creativity, inclusiveness and the transformation of an education system tailored to suit communities’ needs”.¹⁵⁹⁶ While post-conflict contexts offer opportunities for positive reforms, the concerns of all parties

¹⁵⁹⁵ Yemen, The Peace and National Partnership Agreement (21 September 2014), Art 4 (c), available at:

<http://peacemaker.un.org/yemen-national-partnership-2014>

¹⁵⁹⁶ E Echessa *et al.*, *op cit*, pp.149-150.

negotiating for peace must be taking into account, including those regarding education. A peace negotiation process that is inclusive of education does not only respect the right of all individuals on the territory in question to education, including their right to an education that is acceptable to them, but it also strengthens the peace-building and recovery process.

Finally, in a post-conflict setting, education has also been included as a means of reparations, such as in the 2013 Agreement between the Government of the Republic of South Sudan (GRSS) and the South Sudan Democratic Movement/Army (SSDM/A). While education was used there as a rehabilitation measure, it may also serve as a tool to seek the non-repetition of the past conflict. The value of education as a guarantee for non-repetition was recognised in Lebanon, as demonstrated by the development of the 'Badna Naaref' truth-seeking project, the effective implementation of which remains a challenge in practice. In addition, the harm done to education must also be recognised and redressed when establishing reparations measures; education must not just be seen as a tool for repairing past violations.¹⁵⁹⁷

¹⁵⁹⁷ On the concept of educational harm, see the Reparations Report.

4.3. PROVISION OF EDUCATION BY NON-STATE ACTORS

Throughout the MENA Region, as in other regions affected by insecurity and armed conflict, actors other than the State are generally involved in the provision of education because the government in question is incapacitated to do so. While many types of non-State actors may impact upon education, including business enterprises,¹⁵⁹⁸ the focus is here on the following two key non-State actors:

- international governmental or non-governmental organisations with a humanitarian and/or development purpose on the one hand, and
- other non-State actors, including groups that are either opposing the recognised government and which may amount to an armed group (or be supported by one), as well as those entities which have gained a level of autonomy within the borders of a recognised State.

The UN Treaty Bodies have consistently stated that the provision of public services by non-State actors does neither absolve the State of its international legal obligations to provide those services, nor of its obligation to ensure that such provisions are consistent with IHRL and other relevant international obligations.¹⁵⁹⁹ In accordance with IHRL, States have an obligation to protect the human rights, including the right to education, of those under its jurisdiction against all abuses, including those that may be committed by non-State actors.¹⁶⁰⁰

The activities of the two categories of non-State actors often converge during insecurity and armed conflict. In the midst of ongoing hostilities and protection threats, humanitarian actors especially, are often required to work alongside, or in cooperation, with non-State armed groups to obtain access to populations living under their control and which are in need of assistance, for example. This has been highlighted as a real challenge in the realisation of the relevant State's obligations as contemporary non-international armed conflicts are often dominated by a model of 'competitive state-building', such that an insurgency is defeated not only through military operations, but also through the provisions of more and better public services than the opposing non-State actor.¹⁶⁰¹ Furthermore, rebel movements often gain momentum because there is discontentment among the population as a result of a lack of adequate public services, including education, for example in case of insufficient allocated resources, on the part of the central government.

The below section considers first international organisations as providers of education in the MENA Region, considering in particular UN agencies, such as the UNICEF, UNHCR, and UNRWA, as well as some international non-governmental organisations. It then turns to other non-State actors, which mostly consist of opposition groups or not fully recognised authorities, as providers of education, with a focus on non-State armed groups or those entities that are supported by a non-State armed group.

¹⁵⁹⁸ See the Handbook, p. 26.

¹⁵⁹⁹ See, for example, CRC Committee, General Comment 16 (2013), UN Doc. No. CRC/C/GC/16, section I.

¹⁶⁰⁰ See the Handbook.

¹⁶⁰¹ PEIC/Geneva Call, 'Education and Armed Non-State Actors: Towards a Comprehensive Agenda', Report of the PEIC/Geneva Call Workshop (2015), p. 15.

4.3.1. Provision of Education by International Organisations

The international legal basis for the provision of education differs according to the type of non-State actors involved. In respect of humanitarian or development actors, the provision of education operates within the framework of international cooperation, IHL relevant to 'relief' operations, international refugee law and IHRL.

In accordance with Article 2(1) of the ICESCR, States have "to take steps, individually and through international assistance and cooperation, [...] with a view to achieving progressively the full realization of the rights recognized in the [...] Covenant", including the right to education. While States are ultimately accountable for complying with their international obligations, including to fulfil the right to education, others actors may assist them. While international assistance and cooperation may be sought from other States, it may also be sought from relevant international organisations. In order to allow for international assistance and cooperation, States are encouraged to "provide an environment which facilitates" the discharge of responsibilities to fulfil to non-State actors, including intergovernmental and non-governmental organisations, but also civil society organisations, and the private business sector.¹⁶⁰² In accordance with the obligation to respect human rights, States must ensure that they do not prevent those under their jurisdictions from exercising their right to education, even if it is fulfilled by international organisations.¹⁶⁰³

While the issue of humanitarian access is complex and goes beyond the scope of this Study, one of the key requirements for an international organisation to operate on the territory controlled by a State, where an armed conflict is taking place, is to obtain its consent, except in situations of occupation.¹⁶⁰⁴ While this may appear straightforward, it may become difficult when an international organisation would need to intervene in an area opposed to the central government with which it may have established a working relationship in the past. For example, the Justice and Equality Movement, a non-State armed group active in Sudan, has expressed its discontent with international organisations' reluctance to work with them, due to fears that their relationships with the Sudanese government will be negatively affected.¹⁶⁰⁵ In other cases, it may be the State itself which refuses to provide its consent to international organisations seeking to provide humanitarian assistance, including education services. This is for example the

¹⁶⁰² CESCR Committee, General Comment No. 14 (2000), UN Doc. No. E/C.12/2000/4, para. 42, cited with approval by the CRC Committee, General Comment No. 5 (2003), UN Doc. No. CRC/GC/2003/5, para. 56.

¹⁶⁰³ See the Handbook, p. 17.

¹⁶⁰⁴ Article 70(1) Additional Protocol I to the Geneva Conventions relating to the protection of victims of international armed conflicts and Article 18(2) Additional Protocol II to the Geneva Conventions relating to the protection of victims of non-international armed conflicts.

For a summary of the applicable legal framework and additional resources, see F Schwendimann, 'The legal framework of humanitarian access in armed conflict', 93 *International Review of the Red Cross* 884 (December 2011), available at: <https://www.icrc.org/fre/assets/files/review/2011/irrc-884-schwendimann.pdf>

¹⁶⁰⁵ Geneva Call, 'In Their Words: Perspective of Armed Non-State Actors on the Protection of Children From the Effects of Armed Conflict' (2010), pp. 18-19, available at: http://www.genevacall.org/wp-content/uploads/dlm_uploads/2014/01/2010_GC_CANSA_InTheirWords.pdf; Report of the Panel of Experts established pursuant to resolution 1591 (2005) concerning the Sudan Issued 29 October 2009 - A Response from JEM.

case in Syria or Yemen.¹⁶⁰⁶ Under international law, States cannot refuse such consent on arbitrary grounds.

Education services have traditionally been considered a development endeavour and have only recently been incorporated into the humanitarian cluster approach, which forms the structure of any humanitarian response.¹⁶⁰⁷ Clusters (or sectors) are groups of humanitarian organisations, including both international governmental and non-governmental organisations, which have been given specific responsibilities, with coordination falling to the UN Office for the Coordination of Humanitarian Affairs. Education was included as a separate cluster, led by UNICEF and Save the Children International, in 2006.¹⁶⁰⁸ Operational standards have been developed to guide the work of the education cluster, most notably by the Inter-Agency Network for Education in Emergencies (INEE), which has produced the 'Minimum Standards for Education in Emergencies: Preparedness, Response, Recovery – A Commitment to Access, Quality and Accountability'.¹⁶⁰⁹ Although the INEE Minimum Standards focus on the provision of education by international organisations, they emphasise the importance of the involvement of the State in question and contain specific guidance on the development of sustainable education responses, in order for the involvement of international organisations to be temporary. However, international organisations providing humanitarian assistance have often been criticised for neglecting the longer term needs of the populations and the need for the State in question to fulfil its obligations under IHRL; including with regard to the right to education.¹⁶¹⁰ In addition, the education provided by international organisations must also abide by the standards developed under IHRL, i.e. the standards the State itself would be bound by if it was the education provider. This means that education must be available, accessible to all, adaptable, and acceptable to the populations concerned. It must also abide by other human rights, including to be free from discrimination. For example, UNRWA educators have been reported as having taught anti-Zionist content to their students.¹⁶¹¹

With regard to education, international organisations have also sometimes focused on children's education, to the detriment of basic or vocational education, for example. However, the establishment of the education cluster may, to a certain extent, correct this issue. For example, although the education cluster (or sector) response for those displaced by the conflict in Syria operation is led by UNICEF and Save the Children International, two agencies focused on children, it also includes a number of agencies that expand the education response beyond primary and secondary education. This is

¹⁶⁰⁶ On the issue of lack of consent see, for example, C Ryngaert, 'Humanitarian Assistance and the Conundrum of Consent: A Legal Perspective', *Amsterdam Law Forum* (Spring 2013), available at: <http://amsterdamlawforum.org/article/viewFile/298/483>

¹⁶⁰⁷ The Cluster System was established as part of major reforms of the humanitarian sector and are founded on General Assembly Resolution 46/182 (1991), regarding the coordination of humanitarian responses, see the Global Cluster Project of the Inter-Agency Standing Committee.

¹⁶⁰⁸ See Global Education Cluster, 'Education: An essential component of a humanitarian response' (2012).

¹⁶⁰⁹ For an interactive version of the INEE Minimum Standards, see: <http://www.ineesite.org/en/minimum-standards>

¹⁶¹⁰ See, for example, C Calhoun, 'The Imperative to Reduce Suffering: Charity, Progress and Emergencies in the Field of Humanitarian Action', in M Barnett and T Weiss (eds), *Humanitarianism in Question: Politics, Power, Ethics* (New York: Cornell University Press, 2008).

¹⁶¹¹ See the UN Watch Report (16 October 2015), available at: <http://www.unwatch.org/report-un-officials-inciting-murder-of-jews-call-to-stab-zionist-dogs>

the case of UNHCR, which views education as a fundamental element of protection for refugees as it allows them to secure durable solutions.¹⁶¹² Thus it has advocated for and secured university scholarships for Syrian refugees, for example.

Within the MENA Region, UNRWA has been a key international organisation, since its establishment in 1949,¹⁶¹³ for providing assistance to the five million Palestine refugees under its mandate, including 493,500 students. UNRWA employs 21,924 educational staff across its five fields of operation: Jordan, Lebanon, Syria, Gaza and the West Bank.¹⁶¹⁴ For example, in Lebanon, UNRWA administers 69 schools for 32,350 Palestine refugee students.¹⁶¹⁵ The legal status of the camps in which these schools stand is complex. There is a widely-held belief that the land upon which UNRWA camps stand is leased by the Government of Lebanon to UNRWA, but there is no evidence of such an agreement.¹⁶¹⁶ Nevertheless, the Government of Lebanon, and the Lebanese Armed Forces, respect the boundaries of the UNRWA camps and, as a result have no involvement in the running of UNRWA schools. The retention of this sort of separateness of education for Palestine refugees has been a deliberate choice, not only by Lebanon but also by other States where UNRWA operates.¹⁶¹⁷ This means that those States are not involved in fulfilling the right to education of the Palestinians under their jurisdiction, although they are bound to do so under international law. While this situation is acceptable with regard to humanitarian assistance provided in situation of armed conflict, it is problematic in the long run as the involvement of non-State organisations in the fulfilment of human rights is meant to be of a temporary nature.

4.3.2. Provision of Education by Other Non-State Actors

This sub-section focuses on the provision of education by other non-State actors, which are not international organisations or private enterprises, for example. It centres on the role of those groups that are either opposing the recognised government and which may amount to an armed group (or be supported by one), as well as those entities which have gained a level of autonomy within the borders of a recognised State, either through an agreement or *de facto*. This sub-section focuses mostly on non-State armed groups, or other entities supported by a non-State armed group, as the Study is concerned with situations of armed conflict.

The provision of education by actors that do not bear any responsibility for the realisation of the right to education, as a human right, is problematic. While armed conflicts, including those of a non-international nature involving non-State armed groups, threaten the provision of education, non-State armed groups have also acted

¹⁶¹² See UNHCR, 'Education and Protection', Education Issue Brief 1 (Geneva: UNHCR, 2015).

¹⁶¹³ General Assembly Resolution 302 (IV). Its mandate has repeatedly been renewed by the UN General Assembly, usually for a period of three years at a time.

¹⁶¹⁴ Being the Gaza Strip, Jordan, Lebanon, Syria and the West Bank. UNRWA official statistics of persons registered with the agency, available at <http://www.unrwa.org/what-we-do/education>

¹⁶¹⁵ UNRWA official statistics, available at: <http://www.unrwa.org/where-we-work>

¹⁶¹⁶ See M Rasul, 'No Place Like Home', (Oslo: Norwegian Refugee Council, 2014), pp. 19-20.

¹⁶¹⁷ See J Al-Husseini, 'UNRWA and the Refugees: A Difficult but Lasting Marriage', *Journal of Palestine Studies*, Vol. 40, No. 1 (Autumn 2010), pp. 6 – 26.

as education service providers in the territories they control.¹⁶¹⁸ This raises complex legal issues, given that, under IHRL, the State bears the primary responsibility to realise the right to education, which includes an obligation to protect the exercise of this right by those under its jurisdiction from the abuses of non-State armed groups. As mentioned above, international organisations may be reluctant to work alongside non-State armed groups and thus not seek the consent of the State to do so. Involving a non-State armed group, rather than the State, in the provision of education, may also be seen as promoting the legitimacy and governance of such groups.¹⁶¹⁹

Under IHL, non-State armed groups engaged in an armed conflict are generally bound to the same rules as the State party to that conflict and thus they do bear some responsibilities as belligerents in respect of the protection of education. These include, among others, the obligation to refrain from indiscriminate attacks and from direct attacks against civilian objects including educational facilities, as well ¹⁶²⁰ As parties to a non-international armed conflict, non-State armed groups that control parts of territory are required to ensure that children therein are provided with the aid and care they require, which includes the receipt of an education that is in line with the wishes of their parents or guardians.¹⁶²¹ It is additionally considered to be a rule of customary international law that non-State armed groups without territorial control must allow access to education.¹⁶²²

As the provision of education by Hezbollah in Lebanon has already been considered in Part 3, this sub-section provides a non-exhaustive overview of certain issues and instruments associated with the provision of education by some of the non-State armed groups operating in the MENA Region, including Hamas in Palestine, the Kurdistan Workers' Party (Partiya Karkeren Kurdistan or PKK) in Turkey and Iraq, ISIL in Iraq, Syria, and Libya, the Justice and Equality Movement in Sudan and South Sudan, the Sudan People's Liberation Movement in South Sudan, the National Coalition for Syrian Revolution and Opposition Forces and the Rojava Self-Rule Administration in Syria, and the Polisario Front in Morocco/Western Sahara.

The three key issues associated with the provision of education by the non-State groups which are considered here are:

- their role as providers of education (instead of the State),
- the instruments they adopted with regard to education, and
- the content of the education provided.

¹⁶¹⁸ See PEIC/Geneva Call, 'Education and Armed Non-State Actors: Towards a Comprehensive Agenda', Report of PEIC/Geneva Call Workshop, 23-25 June 2015.

¹⁶¹⁹ Ibid, p. 5.

¹⁶²⁰ Ibid.

¹⁶²¹ Art 4(3), Additional Protocol II; see also Art 1, Additional Protocol II.

¹⁶²² Rule 135, ICRC CIHL Study.

Other Non-State Actors as Providers of Education

As mentioned in Part 3, Hezbollah is a provider of education in Lebanon, with its Education Unit providing education to approximately 14,000 students. In Iraq, the PKK provides education for Yezidi students, setting up six schools which educate 800 of those students. The PKK also provides education to its own youth members in special camps.¹⁶²³ The Kurdish Language Association announced, in September 2014, that three Kurdish schools had been opened in Turkey without governmental approval, in an attempt to provide education in the Kurdish children's mother tongue. Article 42 of the Turkish Constitution provides that "[n]o language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institution for training or education". These schools have been described "as an alternative to schools that offer education in Turkish."¹⁶²⁴ In September 2014, when these schools were due to open, they were all reportedly shut following inspections, as they were found to violate Turkish education regulations and for being built illegally without permission".¹⁶²⁵

The Justice and Equality Movement claims to have established 13 schools in Sudan and South-Sudan. It issued a Proposal for Change in 2008 in which it incorporates a number of objectives and principles, including uniformity in the delivery of education services throughout the country and the provision of free education for all citizens up to the college level, with primary education being also compulsory for all citizens.¹⁶²⁶

In South Sudan, early on in its insurgency, the Sudan People's Liberation Movement formed an education system, through a foundation under its control. It focused on organising schools, often using demobilised soldiers as teachers, who received no formal pay. This education system had to be discontinued, as it was deemed to use Educational Facilities as recruiting grounds; instead, the Sudan People's Liberation Movement established the Secretariat of Education to oversee the provision of education by international organisations. Since the 2005 Comprehensive Peace Agreement, the educational system has been the object of an extensive transformation.¹⁶²⁷ The Sudan People's Liberation Movement has co-operated with several organisations, including the Jesuit Refugee Service, International Aid Sweden, Across, and UNICEF. Its joint programme with the Jesuit Refugee Service, for example, led to ensuring the education of 40,000 children in primary and secondary school.¹⁶²⁸

¹⁶²³ Geneva Call, 'Annual Report' (2014), p. 31, available at: http://www.genevacall.org/wp-content/uploads/dlm_uploads/2015/05/2014-Geneva-Call-Annual-Report-Short-version.pdf

¹⁶²⁴ A Aslan Kilic, 'PKK widens 'parallel structure' in Southeast by opening own schools' (Today's Zaman, 11 September 2014), available at: http://www.todayszaman.com/anasayfa_pkk-widens-parallel-structure-in-southeast-by-opening-own-schools_358460.html

¹⁶²⁵ 'Kurdish education falls victim to PKK propaganda' (Daily Sabah, 16 September 2014), available at: <http://www.dailysabah.com/nation/2014/09/16/kurdish-education-falls-victim-to-pkk-propaganda>

¹⁶²⁶ Sudanese Justice and Equality Movement, 'Proposal for Change: Towards a Sudan of Justice and Equality' (June 2008), pp. 7-8, available at: <http://www.cmi.no/sudan/doc/?id=1017>

¹⁶²⁷ World Bank, 'Education in the Republic of South Sudan: Status and Challenges for a New System' (2012), p. 26.

¹⁶²⁸ Z Mampilly, *Rebel Rulers: Insurgent Governance and Civilian Life During War* (Cornell University Press, 2011), p.160.

In Syria, the National Coalition for Syrian Revolution and Opposition Forces, which has the support of the Free Syrian Army and has been recognised by many States has the legitimate representative of the Syrian population, has reportedly provided four million USD to repair 72 schools and provide equipment, including stationery, desks, blackboards, and computers. It also reported that its Ministry of Education, in cooperation with Qatar, has printed two million textbooks to be distributed.¹⁶²⁹ In the Kurdish region of Northern Syria, the *de facto* autonomous region of Rojava, which is supported by the armed People's Protection Units (YPJ), has recently taking over the provision of education. It has constructed schools for displaced persons. For example, 5,000 children displaced from Kobane are attending schools in tent cities in Suruc. Also, after Kobane was liberated from the control of ISIL, the YPJ re-opened in this town a primary school, which consists of eight classes for children up to 15 years of age.¹⁶³⁰

The Polisario Front in Morocco and Western Sahara proclaimed the Sahrawi Arab Democratic Republic, which now constitutes a partially recognized State. The Polisario Front administers free primary and secondary schools in its self-administered refugee camps; it also provide dedicated schools for about 200 students with special educational needs.¹⁶³¹ It also offers opportunity for higher education and university, as well as for scholarships to study abroad, mainly in Algeria, Libya, Spain, and Cuba. However, the Polisario Front claims that it is finding difficult to secure funding for their educational programmes.¹⁶³²

The above examples show that non-State armed groups are active throughout the MENA Region as providers of education. In situations of armed conflicts, in particular where non-State armed groups are in control of a portion of territory, they becomes the primary provider of education, instead of the State. This raises a number of issues, such as with regard to the accountability of non-State armed groups, which are not party to the treaties providing for the right to education and which are thus not required to fulfil this right in accordance with international standards.

Education in Instruments Adopted by Other Non-State Actors

Non-State actors have adopted a number of education-related instruments. A few examples are presented in this sub-section.

In April 2013, the Gaza-based Palestinian Legislative Council, which is the self-government in the Occupied Territories, issued Education Law 1/2013 which came into

¹⁶²⁹ National Coalition of Syrian Revolution and Opposition Forces Daily Newsletter (28 February 2014), available at: <http://en.etilaf.org/daily-newsletter/daily-newsletter-28-02-2014.html>

¹⁶³⁰ R Coles, 'Education for Liberation in Rojava' (8 January 2015), available at: <http://www.teachersolidarity.com/blog/education-for-liberation-in-rojava>; 'Kobane reopens first school Since Liberation from Isis' (Rudaw, 10 March 2015), available at: <http://rudaw.net/english/middleeast/syria/100320151>

¹⁶³¹ J Julio, 'Desert schools bloom in Sahrawi refugee camps' (The Guardian, 21 November 2015), available at: <https://www.theguardian.com/global-development/gallery/2015/nov/21/desert-schools-sahrawi-refugee-camps-morocco-western-sahara-in-pictures>

¹⁶³² Geneva Call, "In Their Words: Perspective of Armed Non-State Actors on the Protection of Children from the Effects of Armed Conflict" (2010), p. 29, available at: http://www.genevacall.org/wp-content/uploads/dlm_uploads/2014/01/2010_GC_CANSA_InTheirWords.pdf

force in September 2013.¹⁶³³ This law seeks to ensure a gender-based separation in schools that appears more rigid than the general public school system in other parts of Occupied Palestinian Territories as it provides for separate classes for boys and girls from the age 9 and prohibits men from teaching at girls' schools. However, schools appear to be already following a gender separation, which means that this law will mostly impact certain private and Christian schools.¹⁶³⁴ The freedom of Christian schools to teach non-Muslim students subjects related to their education is nevertheless maintained.

This new law also provides for sanctions in case an educational institution receives aid meant to encourage or promote the normalisation of ties with Israel. Specifically, its Article 43 prohibits private schools and internationally run ones (such as those under UNRWA, which educates 225,000 of Gaza's students) from "receiving donations or aid aimed at normalization with the Zionist occupation or propagating any Zionist activity".¹⁶³⁵ Due to Israel's restriction on movement for Palestinians, the provisions prohibiting certain Israel-related affiliations is not perceived as affecting many institutions in practical terms.¹⁶³⁶

In Syria, the Constitution of the Rojava Cantons, which relates to the three Kurdish areas in which the *de facto* autonomous Rojava Self-Rule Administration operates, provides that "[a]ll persons have the right [...] to free and compulsory primary and secondary education".¹⁶³⁷ It also provides that "[a]ll communities have the right to teach and be taught in their native language".¹⁶³⁸ It is worth noting that the *de facto* autonomous administration in Rojava is not recognised by the Syrian government.

Content of Education Provided by Other Non-State Actors

As already mentioned in Part 3, in Lebanon, schools run by Hezbollah are not monitored by the State and a uniform curriculum is not required; this has led to concerns as to the content of the education provided by Hezbollah. Other non-State armed groups have also modified the curriculum to suit the culture and language of those living on the territory they control but also to support their policy objectives.

The new Education law passed by the Gaza-based Palestinian Legislative Council (PLC) in 2013, already mentioned above, also led to the alteration of a subject titled 'patriotic education' (taught between grades 8-10) and new books have been introduced which highlight the Palestinian armed struggle with Israel, through the mentioning of recent

¹⁶³³ C Spocci and Eleanora Vio, 'Under Hamas, No More Coed Classes', The Atlantic (23 May 2013), available at: <http://www.theatlantic.com/international/archive/2013/05/under-hamas-no-more-coed-classes-in-gaza/276163/>

¹⁶³⁴ Ibid.

¹⁶³⁵ F Akram, 'Hamas Adds Restrictions on Schools and Israelis' (NY Times, 1 April 2013), available at: <http://www.nytimes.com/2013/04/02/world/middleeast/hamas-imposes-new-restrictions-on-schools-in-gaza.html>.

¹⁶³⁶ Ibid.

¹⁶³⁷ Art 30 (2), Constitution of the Rojava Cantons, available at: <http://civiroglu.net/the-constitution-of-the-rojava-cantons/>

¹⁶³⁸ Ibid, Art.9.

events in Gaza's history, such as Operation Pillar of Defense of November 2012. The books are used by 55,000 children. Furthermore, they do not recognize modern Israel, or mention the Oslo Peace Accords signed with the Palestine Liberation Organization in the 1990s. Thus, this law has been severely criticized by the Palestinian Authority. Indicatively, a chapter in a book for the eighth grade is titled 'The Palestinian liberation project', which includes among its objectives "the strengthening of faith and love of resistance as a means to regain rights" and "uniting efforts to liberate all of Palestine". Article 5 of the law stipulates that the role of Gaza's education system is to "prepare students to develop a patriotic personality and adhere to the Palestinian, Arab and Islamic culture. [The education system] will foster in the student faith in God and pride in his religion and his homeland Palestine, within its historic borders." Also, the time devoted to this subject has been doubled (to two hours per week), due to a belief that the Palestinian Authority was pressured by Israel to change its curriculum.¹⁶³⁹

In February 2014, it was reported that Hamas blocked a UN-led attempt to introduce textbooks promoting human rights, on the grounds that they insufficiently addressed the Palestinian plight and failed to acknowledge the 'right' to battle Israel.¹⁶⁴⁰ Hamas also appears to have also objected to the inclusion of the UDHR due to a view of alleged incompatibility of certain parts thereof with Islamic law, such as the right of people of different faiths to marry or the right to change one's religion. Hamas offered to jointly revise the book.¹⁶⁴¹

ISIL, which is active in Iraq, Syria, and Libya, has created a Diwan (a governmental entity) of Education, which has issued reformatory regulations, by seeking to eliminate or replace existing education materials on the territories it controls.¹⁶⁴² Under these regulations, males are prohibited from teaching in girls' schools, classes are to be interrupted during prayer times, and students mandated to wear Islamic clothing. In addition, the names of the Republic of Iraq and the Syrian Republic were both changed to become the 'Islamic State'. All topics related to the values of citizenship and patriotism have been removed, as well as "chants and anthems that might be in contradiction with the religious views of the caliphate state".¹⁶⁴³ Lessons in music and art, courses of

¹⁶³⁹ E Miller, 'PA blasts Hamas's belligerent new school curriculum' (Times of Israel, 20 November 2013), available at: <http://www.timesofisrael.com/pa-blasts-hamass-belligerent-new-school-curriculum/>; F Akram and J Rudoren, 'To Shape Young Palestinians, Hamas Creates Own Textbooks' (NY Times, 3 November 2013), available at: http://www.nytimes.com/2013/11/04/world/middleeast/to-shape-young-palestinians-hamas-creates-its-own-textbooks.html?_r=0.

¹⁶⁴⁰ 'Hamas Rejects UN Textbooks in Gaza Schools' (Haaretz, 13 February 2014), available at: <http://www.haaretz.com/middle-east-news/1.574208>

'Hamas objects to U.N. human rights book in schools' (Al Arabiya, 13 February 2014), available at: <http://english.alarabiya.net/en/News/middle-east/2014/02/13/Hamas-objects-to-UN-human-rights-book-in-schools.html>

See also, 'Hamas condemns Holocaust lessons' (BBC, 31 August 2009), available at: <http://news.bbc.co.uk/1/hi/8230483.stm>

¹⁶⁴¹ Ibid.

¹⁶⁴² 'ISIS and the sectarian conflict in the Middle East', House of Commons Research Paper 15/16 (19 March 2015), p. 12.

¹⁶⁴³ 'IS Imposes new rules on education in Syria, Iraq' (Al Monitor, 21 October 2014), available at: <http://www.al-monitor.com/pulse/originals/2014/10/islamic-state-impose-education-program-iraq-syria.html>; 'Islamic State Imposes Strict New Order in Mosul, and Deprivation Is a result' (New York Times, 13 December 2014), available at: <http://www.nytimes.com/2014/12/14/world/islamic-state-imposes-strict-new-order-in-mosul-and-deprivation-is-a-result.htm>.

philosophy, sociology and psychology, and the teaching of history and religious education on religious minorities are also prohibited due to their perceived contradiction with their perspective of Islam. The religious curriculum reportedly mirrors that of Saudi Arabia. However, courses of physics, chemistry, mathematics, English and Arabic languages were largely retained, although certain aspects, such as Darwin's theory, have been removed (again for non-compatibility with their religious beliefs). Education staff has been ordered to continue to teach their classes, under the threat of dismissal and other sanctions to themselves and their families.¹⁶⁴⁴

Reportedly, ISIL also removed the faculties of archaeology, fine arts, law, philosophy, political science, sports, tourism and hotel administration at the University of Mosul and imposed gender segregation. The Diwan also cancelled classes involving human rights, non-Islamic culture, and democracy. Other studies, such as that of drama, novels, and money lending, as well as ethnic and geographical divisions contradicting ISIL's revisionism are forbidden. While students are permitted to travel outside of ISIL-controlled territory to take their final exams, they must pledge before a religious court that they will return to Mosul and not join the Kurdish Peshmerga or the Iraqi Army forces, which are fighting ISIL.¹⁶⁴⁵

In July 2014, one of the three cantons under the Rojava Self-Rule Administration in the Kurdish regions of Syria adapted its curriculum, with the changes occurring particularly in the subjects of history and geography, in order to be suitable to the nature of the region.¹⁶⁴⁶ Texts on national education were replaced with the 'Democratic Nation', a document representing the scientific and democratic culture consistent with the thoughts of Abdullah Ocalan, the historic Kurdish leader. It reportedly replaces the embodiment of beliefs of the Ba'ath party and reflects the region's intellectual and cultural diversity. A curriculum in the Kurdish language was also introduced.¹⁶⁴⁷ The Constitution of the Rojava Cantons, mentioned above, also states that "[t]he education system of the Autonomous Regions shall be based upon the values of reconciliation, dignity, and pluralism. It is a marked departure from prior education policies founded upon racist and chauvinistic principles [...] The new educational curriculum of the cantons shall recognize the rich history, culture and heritage of the peoples of the Autonomous Regions [and] [t]he education system, public service channels and academic institutions shall promote human rights and democracy".¹⁶⁴⁸

The Rojava Self-Rule Administration has also opened a university with three departments (law, sociology, and history), where education is to be provided in both Arabic and Kurdish. According to its director, the principal goal is to "build the foundation of an educational system based on the Democratic Nation model that is the model for

¹⁶⁴⁴ Ibid.

¹⁶⁴⁵ 'The Islamic State's Plan for Universities' (Al-Fanar Media, 25 November 2014), available at: <http://www.al-fanarmedia.org/2014/11/islamic-states-plan-universities>

¹⁶⁴⁶ 'Kurds introduce own curriculum at schools of Rojava' (ARA News, 2 October 2015), available at: <http://aranews.net/2015/10/kurds-introduce-own-curriculum-at-schools-of-rojava-2/>

¹⁶⁴⁷ 'The Thoughts of Ocalan in the Schools of Al-Jazeera' (The Syrian Observer, 3 July 2014), available at: <http://www.syrianobserver.com/EN/News/27480/The+Thoughts+Of+Ocalan+in+the+Schools+Of+AlJazeera>.

¹⁶⁴⁸ Art 91, Constitution of the Rojava Cantons, available at: <http://civiroglu.net/the-constitution-of-the-rojava-cantons/>

democracy for the Kurdish people in the 21st Century".¹⁶⁴⁹ Facilities include a library, dormitory, sports facilities, internet and computer.¹⁶⁵⁰

Concluding Remarks

Throughout the MENA Region, several types of non-State actors impact upon education, sometimes by becoming the sole education providers, either when the State is unable to provide for it or in the areas under their control. The mass displacement of Syrians in the region has led to international governmental and non-governmental organisations, such as United Nations agencies (including UNICEF and UNHCR) or other not-for-profit non-governmental organisations, such as Save the Children, becoming key education-providers. The protracted displacement of Palestine refugees across a number of MENA States has even led to the establishment of a specific UN agency, UNRWA, which also provides education services. As mentioned, the separateness of education for Palestine refugees in a number of MENA States can be problematic in the long run as the State remain the duty bearer of the right to education with regard to all those under its jurisdiction. More in general, the operation of separate schools may not be sufficiently inclusive and may lead to discrimination.

The above section also demonstrates that, throughout the MENA Region, other non-State actors may become providers of education throughout the MENA Region, either in areas under their *de facto* control or in agreement with the relevant recognised government. In Lebanon, while Hezbollah appears to fill the gap left by a State which does not fulfil its obligation with regard to the right to education, the content of the education it provides is of concern. States have to provide an education, which is in accordance with international law. This means that, for example, the education provided must be acceptable to the local population by being culturally appropriate, including in terms of the language used for teaching. The education provided must also not violate other human rights' principles, such as the freedom from discrimination or the prohibition of propaganda. Curriculum which include war propaganda and incite national, racial or religious hatred violate Article 20 ICCPR. As underlined by the Human Rights Committee, the prohibition of war propaganda and incitation to hatred is compatible with the right of freedom of expression, as this right carries intrinsic duties and responsibilities.¹⁶⁵¹

Non-State actors do not have the same obligation under IHRL as they are not party to the treaty in question. However, when a non-State armed group fulfils a State function, the State on the territory of which they operate remains responsible in case of human right violations, under the law of State responsibility.¹⁶⁵² The non-State actor in question may also become responsible for such violation if it becomes the State. However, non-

¹⁶⁴⁹ 'First New University to be opened in Rojava' (The Rojava Report, 31 August 2014), available at:

<https://rojavareport.wordpress.com/2014/08/31/first-new-university-to-open-in-rojava>

¹⁶⁵⁰ Ibid.

See also, W Enzina, 'A Dream of Secular Utopia in ISIS' Backyard' (New York Times, 24 November 2015), available at: http://www.nytimes.com/2015/11/29/magazine/a-dream-of-utopia-in-hell.html?_r=1

¹⁶⁵¹ HRC, General Comment 11 Prohibition of propaganda for war and inciting national, racial or religious hatred (Art 20), 29 September 1983, para 2.

¹⁶⁵² See the Handbook, pp. 27-30.

State actors are not under the scrutiny that States are with regard to human rights violations, which, for example, have to take part in the UPR process at the UN Human Rights Council. The provision of the right to education is also specifically monitored by a number of UN Committees, including the CESCR, the CEDAW Committee and CRC Committee, among others. Therefore, while the provision of education by non-State actors may fill a gap in the provision of education, in particular in situations of insecurity and armed conflict, when the responsible State may not be able to fulfil its obligations, it also raises a number of questions under international law.

CONCLUSION

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 full realisation of the right to education. While most of these challenges are not exclusive to the MENA Region but may be present in any region in a situation of insecurity or armed conflict, this Study provides an understanding of how they are dealt with in the MENA Region, and thus to eventually serve as a basis to form recommendations to overcome them. The case studies of Egypt, Iraq, and Lebanon, in particular though the analysis of their domestic laws in respect of the protection of education in insecurity and armed conflict, provide lessons learned that may inform the protection of education in other States situated within the MENA Region, as well as in other regions of the world.

As a region with several overlapping legal systems, there is of course a question of consistency between the various obligations of States with regard to the protection of education. For example, Islamic law has been used by certain MENA States as a basis to make reservations to human rights treaties, which may be problematic, for example to prohibit an individual to change religion, as was the case with Iraq and its reservation to Article 14(1) of the CRC, which concerns the right of the child to freedom of religion. Such reservations should not be deemed admissible. In addition, reservations have been made by MENA States to what are considered by the treaty committees as core treaty provisions by the UN Treaty Body overseeing the treaty in question. This has, for example, been the case with regard to reservations to the CEDAW. However, 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 in some MENA States, such as in Egypt. The declaration of a prolonged state of emergency which was a decisive factor in the uprisings initiated in 2011 in Egypt and thus, in turn, led to further periods of insecurity. However, in a situation of emergency, Egypt does not appear to have made any derogation to the human rights treaties to which it is a party. It has however adopted some particularly stringent emergency law, which has had a negative impact on the civil population, including students and education staff, by suspending some of their constitutional rights.

In order for education to be protected in insecurity and armed conflict, the legal and institutional system of a State must be robust and respect the rule of law. Situations of insecurity and armed conflict may generate changes that may eventually strengthen the framework necessary for the protection of education. The transformative value of insecurity and armed conflict appears to be evident in two of the three case study States. Both Egypt and Iraq underwent extensive constitutional, legal, political, and institutional reforms, as a direct result of the situations of insecurity and armed conflict. Although the right to education was already enshrined in both jurisdictions to a limited extent, the reforms adopted in both of those States expanded the obligations associated with the fulfilment of the right to education in order to guarantee its practical realisation. The

most significant advancement in this regard is contained in the 2014 Constitution of Egypt. Whereas Egypt had previously attracted criticism from the CRC Committee in respect of inadequate budgetary allocation, its new Constitution provides for a gradually increasing proportion of the national budget to be dedicated to education, as well as for the establishment of specific educational facilities such as early childhood centres. While MENA States, in general, all appear to provide for the right to education, a key issue remains its implementation in practice.

As mentioned in the Handbook, there are many forms of education-related violations. When education-related violations are committed in insecurity and armed conflict, the punishment of the perpetrators of such violations is not often a challenge. As mentioned in Part 3 of the Study, a major hurdle exists when amnesty legislation is 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 in Lebanon; whereas political assassinations and other high profile attacks attract a great deal of media attention and are litigated either domestically or through the STL, those against individuals are often left with legally justified impunity. This failure of the Lebanese State to punish, *inter alia*, education-related violations is a contributing factor to the continuing insecurity within Lebanon. Egypt's failure to punish education-related violations persists particularly in respect of those committed by the State and its agents. A notable example is the failure of the Egypt to investigate killings, including the killings of students, believed to be attributable to the State security forces occurring in the course of demonstrations. In Iraq, accountability for past violations was a significant aspect of the transitional period. However, the blanket approach taken by the CPA, in particular through the process of de-Ba'athification, was seen to have devastating effects, not only on the rights of education staff, but also on the education system as a whole.

Attacks against educational facilities disrupt the provision of education and may endanger the lives of students and education staff. Within the MENA Region, only Lebanon, Palestine, Qatar, South Sudan and Sudan, have signed the Safe Schools Declaration. Nevertheless, educational 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 educational facilities from direct attack is contained in the law relating to terrorism, which is likely to be prejudicial to students and education staff. Part of the right to own or control property in Iraq and Lebanon is tied to the right of religious and ethnic minorities to direct the education of their school in accordance with their cultures. While it is to be welcomed that sectarian tensions are addressed through measures such as this, the sectarianism associated with separate schools is problematic in itself.

The Study also discussed certain categories of students who benefit from additional protection. While the concept of education adopted by the Study covers not only the education provided to children but extends to adult education, as well as basic (or 'catch-up' education) and vocational training, many students are children. Children are at risk of missing out on their education as a result of child labour, sexual violence, early or forced marriage, and involvement in hostilities as child soldiers, for example. Like in many other States, in Egypt, Iraq, and Lebanon alike, the child is considered to

be the subject of special protection. While this approach is in part consistent with the CRC and supports the protection of children's education, 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 the CRC. In addition, Part 3 of the Study highlighted the key obstacles faced by children with regard to their education, with child labour and early or forced marriage being current for children of migrant families living in economic hardship, for example in Lebanon.

Across the MENA Region, States have generally abstained from ratifying the Optional Protocols allowing individual communications in relation to the international human rights treaties to which they are party. This is for example the case of the Optional Protocol to the ICESCR, which would allow individuals to complain to the CESCR of an alleged violation of their right to education, but which no MENA State has so far ratified. With regard to reporting obligations to the UN Treaty Bodies, a direct correlation has been observed through the Study between the failure to report and the evolution of the security context, such as in Egypt and Iraq. This is particularly regrettable given the lack of regional supervisory mechanisms, except for those States which are part of the African Union and 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, such as Algeria, Libya, Sahrawi Arab Democratic Republic and Tunisia; however, as none of them have ratified the protocol allowing individuals to access it, there is a real lack of access to supra-national mechanisms for victims of alleged education-related violations within the MENA Region when the State in question fails to provide access to remedy with regard to those violations at the domestic level.

The availability of domestic remedies across the MENA Region appears uneven. In Iraq, there appears to be strict domestic provisions allowing for effective remedies for education-related violations, with several commissions established for the purposes of processing claims. By contrast, Egypt and Lebanon have been slow to enact legislation and establish institutions that are accessible to victims of education-related violations. National human rights commissions, such as the IHCHR in Iraq, may also play an important role in upholding the right to education, by providing recommendations to the government with regard to the protection of education and drawing its attention to education-related violations. Such a commission may also support the effective implementation of legislation protecting education and encourage the ratification of relevant international instruments, such as the Optional Protocol to the ICESCR, which allows for remedies to victims of education-related violations at the international level. However, in order to be effective, national human rights commissions must ensure that it abides by the Paris Principles, in particular that it works in an independent manner.

Part 4 of the Study also highlights that there are three specific issues, which are associated with insecurity and/or armed conflict contexts and present challenges to a State's responsibility to realise the right to education with regard to those under its jurisdiction. First, mass displacement movements, such those resulting from civilians fleeing the Syrian conflict to neighbouring States, have led some of those States to limit access to public education, through the requirements of citizenship or other formal documentation, which is incompatible with the obligation to provide, at a minimum, free and compulsory primary education to all persons within their jurisdiction, in

accordance with IHRL, as well as refugee law. In addition to the general issue of access to education, which includes several components such as the need to be inclusive and non-discriminatory, three specific education-related violations often constitute a barrier to the provision of education to displaced persons: early or forced marriage, child labour, and detention. Part 3 demonstrates that the use of administrative detention with regard to displaced persons has been a significant hurdle for students to access education throughout the MENA Region.

The second main issue which presents challenges to a State's responsibility to realise the right to education with regard to those under its jurisdiction regards the institutional and legal changes following insecurity and armed conflict. While those transition periods may provide reforms that may strengthen the protection of education, in order for this to happen, education-related reforms must be prioritised, which is often not the case. In addition, education may be part of peace negotiations and considered early on as a tool for longer-term reconciliation and peace-building. Within the MENA Region, peace agreements have generally included some mention of education, as shown in both Lebanon and Sudan/South Sudan.

The third main issue which presents challenges to a State's responsibility to realise the right to education with regard to those under its jurisdiction regards the activities of non-State actors, including both international governmental and non-governmental organisations and other non-State actors, such as non-State armed groups or those entities that are supported by a non-State armed group. Those categories of non-State actors often become key education providers in States in situations of insecurity or armed conflict. With regard to international 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. As mentioned with the provision of separate education by UNRWA to Palestinians refugees, this raises a number of issues, including with regard to the need to provide an education that is inclusive and non-discriminatory.

Non-State armed groups may also fill the gap left by a State which does not fulfil its obligation with regard to the right to education, but the standard and the content of the education provided by them may be a source for concern. While States have to provide an education which is in accordance with international law, including an education which is acceptable to the local population by being culturally appropriate and does not violate other human rights' principles, such as the freedom from discrimination or the prohibition of propaganda, non-State actors do not have the same obligation under IHRL as they are not party to the relevant treaties. They are also not under the scrutiny that States are with regard to human rights violations, which, for example, have to take part in the UPR process at the UN Human Rights Council or may have to submit reports to relevant UN Treaties Bodies, such as the CESCR, the CEDAW Committee and CRC Committee, among others. However, when a non-State armed group fulfils a State function, the State on the territory of which they operate remains responsible in case of human right violations, under the law of State responsibility. States thus have an interest in non-State actors acting as education service providers on their territory to abide by international law standards.

The Study demonstrates that 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. As this Study focused on the compliance of MENA States with their international obligations, it highlighted the fact that MENA States are, for the most part, reluctant to accept the jurisdiction of supra-national decision-making bodies. This has been identified as a particular hurdle for victims of education-related violations who are under the jurisdiction of States where the rule of law is not (or not fully) upheld. There does appear also 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. 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 in the MENA Region and globally alike.