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PROTECT EDUCATION IN INSECURITY AND CONFLICT

حماية التعليم في ظروف النزاع وانعدام الأمن

United Nations Human Rights Mechanisms and the Right to Education in Insecurity and Armed Conflict

A Policy Summary

Geneva Academy of International Humanitarian Law and Human Rights
Académie de droit international humanitaire et de droits humains à Genève

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PREFACE

This publication, *United Nations Human Rights Mechanisms and the Right to Education in Insecurity and Armed Conflict: A Policy Summary*, responds to the acute need to identify trends in the practice, and contribution of, UN human rights mechanisms in the protection of education in times of insecurity and conflict. It is the result of a one-year research project carried out by researchers at the Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy). The policy summary accompanies a detailed study report, *United Nations Human Rights Mechanisms and the Right to Education in Insecurity and Armed Conflict*, which is the second in a legal research series commissioned by Protect Education in Insecurity and Conflict (PEIC) on the protection of education during insecurity and armed conflict. An electronic version of each publication is available at http://www.geneva-academy.ch/ and http://www.educationandconflict.org.

PEIC is a programme of the Education Above All Foundation, an independent organization chaired by Her Highness Sheikha Moza Bint Nasser of Qatar, UNESCO Special Envoy for Basic and Higher Education. A policy, research, and advocacy organization, PEIC is concerned with the protection of education during insecurity and armed conflict. PEIC's Legal Programme contributes to such protection through the strategic use of international and national law. Its legal research papers are authored by academics and/or practicing lawyers. They are aimed at a varied audience, including international and national lawyers; non-legally trained education experts and policy-makers within governments; political, social, and cultural bodies; and civil society.

The Geneva Academy aims to provide instruction of a high academic standard, conduct and promote scientific research, organize training courses and expert meetings, and provide legal expertise in the branches of international law relating to situations of armed conflict. Founded in 2007, the Academy replaces the University Centre for International Humanitarian Law created in 2002 by the Faculty of Law of the University of Geneva and the Graduate Institute of International Studies, now the Graduate Institute of International and Development Studies (IHEID).

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A SUMMARY OF KEY POLICY

This section summarizes the key policy issues relating to the protection of the right to education in insecurity and armed conflict that are discussed in this policy summary.

1. The ability of the treaty bodies to address effectively threats to education depends on a number of factors, particularly the extent to which human rights treaty bodies are proactive in collecting information about the incidence of attacks against the right to education. This depends in large part on the extent to which states, United Nations (UN) agencies, and non-governmental organizations (NGOs) emphasize the importance of promoting and protecting the right to education.

2. The precise extent of the application of the right to education in armed conflict has not yet been tested, but it is clear that the customary core of the right continues to apply in situations of insecurity and of armed conflict. Customary international law elements of the right to education include not only obligations of respect (what not to do, i.e. not to impede enjoyment of the right) but also require positive obligations of fulfilment, namely to provide compulsory primary education free for all. Accordingly, states must continue to allocate significant resources to provide and ensure education. In addition, states should elaborate, and report on, plans to overcome, to the extent possible, the predictable challenges to physical access to education in times of insecurity and armed conflict.

3. The fact-finding missions and commissions of inquiry are a new and valuable mechanism for identifying the responsibility of states and individuals for violations of international law. Providing high quality information to these mechanisms should be a priority for concerned UN agencies and NGOs in particular. In the absence of a compulsory adjudicatory body at the universal level, these missions perform the important function of determining whether violations of international human rights and humanitarian law norms have taken place, and who are suspected to have been the perpetrators.

4. Far greater attention needs to be paid to the impact of disability on access to education in situations of insecurity and armed conflict. Recourse should be made to the individual complaints mechanism of relevant treaty bodies, in particular the one established under the 2006 Convention on the Rights of Persons with Disabilities. In addition, organizations could usefully advocate for a General Comment or Statement on protection of education by, among others, the Committee on the Rights of Persons with Disabilities.

5. In determining the scope of human rights obligations upon armed non-state actors it can be argued that, as a minimum, the armed group should refrain from interfering directly or indirectly with the enjoyment of rights by every individual under its control (i.e., an obligation to respect). Given the extent of the impact of acts by armed non-state actors on the right to education, a Statement or General Comment by, in particular, the Committee on the Rights of the Child on the obligations of such actors to respect children's rights, including the right to education, should be considered.

6. In protecting the right to education in insecurity and armed conflict, greater attention needs to be paid to all levels of education, not merely primary and secondary, and the rights of adults to education generally should be accorded greater consideration. Many people, particularly in situations of prolonged insecurity or armed conflict, reach adulthood without receiving even a fundamental education. More generally, tertiary education students and facilities are often targeted by governments. Accordingly, in line with the requirements of numerous international human rights treaties, it is important to recognize that the right to education exists for adults and should be protected and promoted within state policy.

7. Finally, while promoting access to education remains a primary challenge and objective, the importance of quality of education in situations of insecurity and armed conflict should not be forgotten. It is true that the issue of quality of education is receiving increasing attention generally. However, despite important work by the Special Rapporteur on the right to education, more needs to be done to ensure high quality education in situations of insecurity and armed conflict. This includes elaborating guidance to states on how best to operationalize high quality of education despite the prevailing constraints. Overall, meeting demands for quality education is a gap that educational practitioners can help to fill.

THE PROTECTION CHALLENGE

This summary of key policy issues aims to support enhanced efforts to promote and protect the right to education in situations of insecurity and armed conflict. As such, its intended audience includes states, UN, NGOs, and academia. For despite the fact that greater attention is being paid to promoting and protecting education, significant challenges remain to its provision to both children and adults, especially in situations of insecurity and armed conflict. In her 1996 Report on the Impact of Armed Conflict on Children, Ms Graça Machel, the UN Secretary-General's nominated expert, highlighted the impact of armed conflict on education in the following terms:

> Schools are targeted during war, in part because they have such high profiles. In rural areas, the school building may be the only substantial permanent structure, making it highly susceptible to shelling, closure or looting.... Often, local teachers are also prime targets because they are important community members and tend to be more than usually politicized…. The destruction of educational infrastructures represents one of the greatest developmental setbacks for countries affected by conflict. Years of lost schooling and vocational skills will take equivalent years to replace and their absence imposes a greater vulnerability on the ability of societies to recover after war.[1]

Since then, research has suggested that attacks resulting in death or injury to children and educators and the destruction or occupation of educational facilities are almost routine during times of insecurity or armed conflict. A 2007 report commissioned by the UN Educational, Scientific and Cultural Organization (UNESCO) noted that the number of reported killings and injuries to students, educational staff, and bombings and burnings of school buildings, had risen in the preceding three years.[2] Three years later, an update of the report

1 'Report of the expert of the Secretary-General, Ms Graça Machel, submitted pursuant to General Assembly resolution 48/157', UN doc. A/51/306, 26 August 1996, §186.

2 *Education under Attack*: 2007, UNESCO, Paris, 2007, p. 13.

found that reported targeting of students, teachers, academics, and educational institutions had occurred in an even greater number of countries.[3] The effects of these attacks are felt through the loss of students, teachers and intellectuals; the flight of students and staff; fear of turning up to class; damage to buildings, materials, and resources; staff recruitment difficulties; shelving of investment; and generalized degradation of the education system.[4] A report published by UNESCO in 2011 noted that more than 40% of out-of-school children live in conflict-affected countries, where economic disruption and insecurity impact negatively on children's and young people's access to education.[5]

In 2010, a number of concerned international organizations and NGOs established the Global Coalition to Protect Education from Attack (GCPEA) in order to promote efforts to prevent, monitor, and respond to 'attacks' on education. This coalition along with others advocated successfully for such attacks to become a trigger for listing of armed forces or armed groups by the UN Secretary-General in his annual report on children and armed conflict and for inclusion of the concerned forces or groups in the Security Council's Monitoring and Reporting Mechanism on Children and Armed Conflict.[6]

In his 2012 report on children and armed conflict, the UN Secretary-General affirmed that schools as conflict battlegrounds are a common feature of many armed conflicts. He stated that attacks targeting or impacting on schools, students, and educational staff, whether by state armed forces or by non-state armed groups, are widespread in conflicts in Afghanistan, the Central African Republic, Chad, Colombia, the Democratic Republic of Congo (DR Congo), Iraq, Libya, Myanmar, Pakistan, Palestine, Somalia, South Sudan, and Syria, as well as in India, the Philippines, Thailand, and Yemen.[7] Excessive use of force

3 *Education under Attack*: 2010, UNESCO, Paris, 2010, p. 21.

4 B. O'Malley, 'Education under Attack 2010: A Summary', *Protecting Education from Attack: A State-of-the-Art Review,* UNESCO, 2010, p. 37.

5 EFA Global Monitoring Report Team, *The Hidden Crisis: Armed Conflict and Education*, EFA Global Monitoring Report 2011, UNESCO, Paris, 2011.

6 *Ibid*.

7 See generally, UN Secretary-General, Children and Armed Conflict, UN doc. A/66/782–S/2012/261, 26 April 2012, and also UN Assistance Mission in Afghanistan and the Office of the UN High Commissioner for Human Rights, *Annual Report 2012: Protection of Civilians in Armed Conflict*, Kabul, Afghanistan, February 2013, p. 12; 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', UN doc. A/HRC/22/59, 5 February 2013, p. 18, §116; and pp. 82–3, §18.

and the fact that hostilities often take place in urban areas make educational facilities frequent casualties of warfare. At the same time, evidence suggests that education 'as such' is not simply the victim of collateral damage but that it has itself become a specific target of attacks.

In addition to protection concerns, however, appreciation is increasing of the broader value of education for communities during times of insecurity and conflict. Education can help affected communities to cope better with the violence that may engulf them and is also an effective strategy to recover from conflict. For children, education can provide a protective environment (by installing a state of relative 'normalcy'), shielding them from some of the traumatic experiences violence brings.

THE NORMATIVE FRAMEWORK: KEY ISSUES FOR POLICY

THE RIGHT TO EDUCATION APPLIES EVEN IN ARMED CONFLICT

From the outset, it should be emphasized that fundamental international legal obligations under human rights law to respect, protect, and provide education continue to apply during situations of insecurity and of armed conflict (*see Box 1 overleaf for a discussion of these terms*). That these obligations persist during such instability has been confirmed by the Committee on the Rights of the Child (CRC Committee)[8] as well as by UN Special Procedures and other Human Rights Council mechanisms, such as fact-finding missions. Indeed, all treaty bodies and states cooperating with the mechanisms appear to agree that the core of the right to education is not to be denied throughout the entire period of an armed conflict.

THE RIGHT TO EDUCATION IS A FUNDAMENTAL HUMAN RIGHT

The right to education has been reaffirmed consistently by the UN human rights mechanisms as a 'basic' or 'fundamental' right. Moreover, the study of UN practice on which this policy summary is based suggests that customary international law elements of the right to education include not only obligations of *respect* (what not to do, i.e. not to impede enjoyment of the right) but also require positive obligations of fulfilment, namely *to provide compulsory primary education free for all*. Accordingly, states must continue to allocate significant resources to provide and ensure education. This issue is paramount since lack of access to education may be a starting point for child exploitation, including their recruitment and involvement in armed conflict.

8 See, e.g., Committee on the Rights of the Child, 'Day of General Discussion on the Right of the Child to Education in Emergency Situations: Recommendations', 49th Session, 19 September 2008.

Box 1: Insecurity and Armed Conflict

Armed conflicts and other situations of insecurity encompass a large spectrum of situations, ranging from mere civil unrest or protest (which can involve armed violence and other forms of internal disturbances and tensions) to higher levels of violence amounting to an armed conflict. From a legal point of view, the relevant factors to define armed conflict are found in international humanitarian law (IHL), which establishes a distinction between two categories: international armed conflict and non-international armed conflict. The existence of a situation amounting to an armed conflict is considered a precondition for the general application of IHL, and criteria are supposed to make it largely an objective determination, not one left to the opinion of concerned states on the matter.

The term 'armed conflict', which is not defined in detail in either the four 1949 Geneva Conventions or in their two 1977 Additional Protocols, was defined by the International Criminal Tribunal for the former Yugoslavia in the Tadic decision, which held that 'an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.' However, other situations of armed violence do not have a meaning fixed by any source of positive international law. The 1977 Additional Protocol II refers to 'internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature' as not being armed conflicts. These situations would include, for instance, large-scale arrests of people for their activities or opinions, suspension of fundamental judicial guarantees, or ill-treatment. As such, these situations are not per se a technical characterization.

THE RIGHT TO EDUCATION HAS A MINIMUM CORE CONTENT THAT APPLIES IN INSECURITY AND ARMED CONFLICT

Under the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), for instance, there is an identified *minimum core content* of the right to education protected at all times and of immediate application.[9] This provision creates a fundamental minimum level of obligations that includes the negative duty of states not to arbitrarily interfere with the exercise by individuals of their human rights. Over the years, the Committee on Economic, Social and Cultural Rights (ESCR Committee) has attempted to identify this minimum core by referring, for instance, to the most basic forms of education. Reference was made to the 'non-derogable' nature of the minimum core.[10] Scholars have argued that this covers the following: the right to receive education; the right freely to choose appropriate forms of education; and the right of equal access to education.[11] In its 1999 General Comment on education, the ESCR Committee generally endorsed these parameters, defining the core content of the right to education as follows:

> [T]his core includes an obligation: to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis; to ensure that education conforms to the objectives set out in article 13(1); to provide primary education for all…; to adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education; and to ensure free choice of education without interference from the State or third parties, subject to conformity with 'minimum educational standards'.[12]

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9 ESCR Committee, 'General Discussion Day: The Right to Education (Articles 13 and 14 of the Covenant)', UN doc. E/C.12/1998/SR.49, 2 December 1998, §54.

10 ESCR Committee, General Comment No. 14, *op. cit.*, §47; General Comment No. 15, *op. cit.*, §40; ESCR Committee, *Poverty and the ICESCR: Statement by the Committee to the Third United Nations Conference on Least Developed Countries, op. cit.*, §§16 and 18.

11 See, e.g., ESCR Committee, 'General Discussion Day: The Right to Education (Articles 13 and 14 of the Covenant)', UN doc. E/C.12/1998/SR.49, 2 December 1998.

12 Committee on the Rights of the Child, General Comment No. 13, 'The Right to Education', 1999, §57. See also Committee on the Rights of the Child, Day of General Discussion on the Right of the Child to Education in Emergency Situations: Recommendations, 49th Session, 19 September 2008, where the Committee confirmed that provision of basic education forms part of the immediate obligations.

The obligation to fulfil the right to education requires, among others, the availability of education by actively developing a system of schools, including building classrooms, delivering programmes, providing teaching materials, training teachers, and paying them reasonable salaries. The closure of educational facilities is common in situations of insecurity and armed conflict. For instance, public universities in Côte d'Ivoire were closed by the government for almost two years after the violent 2010 post-electoral unrest and the question arose as to whether such prolonged closure was reasonable. Temporary closure of educational facilities due to high security threats to children and students may be deemed reasonable under certain circumstances, but the measures should be proportionate to the legitimate aim and the state deciding on such closure has to find appropriate alternatives or arrangements within a reasonable time.[13]

ATTACKS AGAINST EDUCATIONAL STAFF, STUDENTS, AND FACILITIES VIOLATE THE RIGHT TO EDUCATION

It is also generally accepted that targeted attacks against educational staff, students, and facilities, whether by armed forces or armed non-state actors, violate the right to education. While the protection of human rights in armed conflict has long been recognized and reaffirmed in theory and practice, one of the conclusions of this study is that the targeted use of force e.g., military action) against students or teachers and educational facilities may violate the right to education. Importantly, human rights treaty bodies have largely framed the protection of education in armed conflict as a human rights issue distinct from the protections afforded by IHL, although if attacks amount to a war crime under IHL they can be considered also as a serious violation of human rights law.

13 In *Free Legal Assistance Group and others v. Zaire case*, the African Commission on Human and Peoples' Rights (AComHPR) found that the closures of universities and secondary schools for two years constituted a violation of the right to education (Art. 17, ACHPR). AComHPR, *Free Legal Assistance Group and Others v. Zaire*, Decision (Comm. Nos. 25/89, 47/90, 56/91, 100/93), October 1995, §48.

A STATE THAT ASSERTS ITS SOVEREIGNTY OVER TERRITORY MUST STILL RESPECT THE RIGHT TO EDUCATION EVEN WHERE IT HAS LOST TERRITORIAL CONTROL

Even where a state loses control over part of its national territory its human rights obligations, including under the right to education, do not cease to exist. There are situations where the state loses control of parts of its national territory and is therefore impeded from effectively fulfilling its human rights obligations. These include, in particular, situations where lack of control by a state over part of its own national territory results from foreign occupation or the actions of armed non-state actors. These issues have or have had serious practical implications in certain regions, such as South Ossetia and Abkhazia in Georgia, the north of Cyprus, Nagorno-Karabakh (Azerbaijan), and Taliban-influenced areas in Afghanistan.

Although there has been limited practice on specific measures the state should take in order to comply with its international obligations, UN mechanisms tend to assert that the territorial state has a duty to cooperate not only with the international community but also with the authorities governing the concerned territory for the benefit of the population living therein. This obligation is often politically difficult to implement for obvious reasons. Other states and other actors may also have obligations in this regard.

NON-STATE ACTORS HAVE HUMAN RIGHTS OBLIGATIONS, INCLUDING TO RESPECT THE FUNDAMENTAL RIGHT TO EDUCATION

There is a trend towards holding armed non-state actors responsible for violations of human rights, either where they exercise effective territorial control or where they violate *jus cogens* norms (peremptory norms of international law that are so fundamental and immutable to international law that they cannot be overridden by treaty). Contemporary practice of international institutions evidences an increasing political will to hold armed non-state actors accountable for human rights *violations* (not just 'abuses'). This supports the idea that human rights law and the obligation to respect the right to education could be applicable to armed non-state actors in specific circumstances, in particular, but not exclusively, when they exercise element of governmental functions and have *de facto* authority over a population, or where it concerns *jus cogens* norms.

GREATER RESTRICTIONS NEED TO BE IMPOSED ON MILITARY USE OF EDUCATIONAL FACILITIES

While there is no unequivocal international legal prohibition on the military use of educational facilities in situations of armed conflict, the trend in law and policy[14] is firmly towards greater restriction on such use. Whether on the basis of the right to education or protection of children in armed conflict, the prevailing approach of human rights treaty bodies is that states must protect school premises from use by both armed groups and armed forces. Thus, treaty bodies and special procedures have approached the question either as an infringement of the right to education or, at a minimum, as a practice to be precluded as a matter of policy.

The UN Security Council-led mechanisms and the Commissions of Inquiry generally assess cases of occupation of schools in light of applicable IHL, which contains no explicit prohibition on armed forces or groups using educational buildings for military purposes. This is despite the fact that military use of schools makes students, teachers, and their school buildings vulnerable to attack from opposition forces.[15] The Monitoring and Reporting Mechanism (MRM) set up under a Security Council mandate monitors military use of schools as 'situations of concern' but the UN Secretary-General's 2012 report on children and armed conflict clarifies that occupation of schools does not constitute a trigger for listing a state or a group as one that commits grave violations of children (which can, in theory at least, lead to sanctions being imposed).[16]

14 In this regard, the GCPEA has been drafting guidelines for protecting schools and universities from military use during armed conflict. http://protectingeducation.org/restricting-military-use-and-occupation. See 'Draft Lucens Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict', GCPEA, May 2013. Once completed, GCPEA will seek explicit endorsement of the guidelines from states and other relevant actors.

15 In accordance with IHL, the Syrian Commission of Inquiry's February 2013 report stated that '[a]nti-Government armed groups frequently use schools as barracks or offices. These occupations *are not always justified by military necessity*, and have spread the belief that schools are not safe'. 'Report of the independent international commission of inquiry on the Syrian Arab Republic', 5 February 2013, §116. Emphasis added.

16 UN Secretary-General, Children and Armed Conflict, UN doc. A/66/782–S/2012/261, 26 April 2012, §227.

THE UN HUMAN RIGHTS MECHANISMS

A range of UN human rights mechanisms can be used or invoked to protect education. The human rights treaty bodies come most readily to mind, but the mechanisms of the so-called UN Charter-based (also called 'non-conventional') human rights machinery are also important, namely the Human Rights Council, including the Universal Periodic Review, as well as the Special Procedures (country and thematic mandates for independent experts and special rapporteurs), along with Fact-Finding Missions and Commissions of Inquiry. Finally, there is the UN Security Council with its resolutions on the protection of civilians and the mechanisms that have been created to protect children in particular.

THE HUMAN RIGHTS TREATY BODIES

The basic function of the treaty bodies is to monitor the implementation of human rights instruments. There are currently ten functioning treaty bodies, each of which relates to a specific human rights treaty. Each treaty body conducts up to five types of activities, as summarized below.

The first activity, a core function that concerns all treaty bodies, is the examination of initial/periodic reports submitted by states parties. Monitoring the implementation of each treaty is primarily performed through this process of examination. Such a role, however, depends on the quality of information available to the treaty bodies. In simple terms, the treaty reporting cycle is comprised of the following stages: 1) preparation of the report by the state party; 2) pre-examination of the report and drawing up of a list of issues or questions; 3) dialogue between the relevant treaty body and the state party; 4) adoption of concluding observations; and 5) follow-up to recommendations made by the treaty body.

The second activity, which involves three treaty bodies, namely the Committee on the Elimination of Racial Discrimination (CERD Committee), the Human Rights Committee, and the Committee Against Torture (CAT Committee), are

mandated to consider inter-state complaints. To date, there has been no relevant practice regarding the right to education in inter-state complaints under these treaties.

The third type of activity of treaty bodies involves considering individual complaints, which is optional upon consent of a state party. It is when assessing an individual case that the relevant bodies can determine the existence of a violation of a right. Currently, six individual complaints procedures are active.[17] The Optional Protocol to the ICESCR entered into force on 5 May 2013 while entry into force of the Optional Protocol to the 1989 Convention on the Rights of the Child (CRC) is awaiting the tenth ratification by a state. Under the current mechanisms, to date, *no specific case has addressed protection of the right to education in times of insecurity and armed conflict*. It is to be hoped that cases involving protection of the right to education will be brought before the competent bodies as their underlying instruments provide a comprehensive framework of protection for the right to education.

The fourth type of activity is the issuing of general comments on specific rights or themes. Indeed, significant contributions to the concept of the right to education have been made by the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child through their advice in treaty implementation in this way.

Finally, the fifth type of activity is on-the-spot fact-finding. Such a possibility is envisaged in the Optional Protocol to the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); 1984 Convention Against Torture (CAT) (Art. 20); and the Optional Protocol to the ICESCR. These treaty bodies may initiate their own enquiry where they receive reliable

17 CERD Committee: Convention on the Elimination of All Forms of Racial Discrimination (CERD), Art. 14; Human Rights Committee: Optional Protocol to the International Covenant on Civil and Political Rights; Committee on the Elimination of Discrimination against Women (CEDAW Committee): Optional Protocol to the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (OP-CEDAW); CAT Committee: Convention Against Torture (CAT), Art. 22; Committee on the Rights of Persons with Disabilities (CRPD Committee): Optional Protocol to the Convention on the Rights of Persons with Disabilities; and Committee on Enforced Disappearances: International Convention for the Protection of All Persons from Enforced Disappearance, Art. 31.

information indicating grave or systematic violation of the rights guaranteed by their respective treaties.[18]

Assessment of the practice of treaty bodies

Naturally, the treaty bodies address different aspects of education around the respective legal architecture of protective regimes established by the human rights treaties. While respective provisions may differ, broadly the same issues are examined by the treaty bodies from different legal angles. Accordingly, various aspects of the right to education and/or issues related to it are examined under different normative provisions. The practice of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, and the Committee on the Elimination of Discrimination against Women (CEDAW Committee) are instructive in this regard. While attacks on schools were examined by the Human Rights Committee under the provisions on protection of children, the impact of broader policies was analyzed from the perspective of non-discrimination. Equally, the CERD Committee and the CEDAW Committee have dealt with such cases from the non-discrimination point of view.

The 1966 International Covenant on Civil and Political Rights (ICCPR), the ICESCR, CERD, the CRC, CEDAW, and the 2006 Convention on the Rights of Persons with Disabilities (CPRD) all encompass the right to education. The treaty bodies have addressed the right to education in insecurity and armed conflict, notably in their guidelines for submission of reports and their written and oral questions to reporting states. The question may be raised as to the difference in frequency of discussion on the topic between the bodies: why is the discussion of 'attacks' on education significantly more concentrated on certain reporting states than others? For example, while the issue of attacks on education came before the Committee on the Rights of the Child regarding several states, such as Afghanistan, Colombia, DR Congo, Myanmar, Nepal, Sri Lanka, and Thailand, the ESCR Committee reviewed the situation of education only with regard to Afghanistan, Colombia, and Israel.

18 For example, Art. 11(2), ICESCR, stipulates that: 'If the Committee receives reliable information indicating grave or systematic violations by a State Party of any of the economic, social and cultural rights set forth in the Covenant, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.'

The ability of the treaty bodies to address effectively threats to education depends on a number of factors.

First, it may depend on the extent to which human rights treaty bodies are proactive in collecting information about the incidence of attacks against the right to education. **This depends in large part on the extent to which states, UN agencies, and NGOs emphasize the importance of promoting and protecting the right to education.**

Second, even where treaty bodies do not refer to situations of armed conflict in their reporting guidelines this does not necessarily mean that the bodies lack the means to monitor implementation of the right to education in areas affected by insecurity and armed conflict. Treaty bodies may, on the basis of credible information, raise such an issue in its dialogue with the state party undergoing the reporting process. Four treaty bodies, namely the Human Rights Committee, the ESCR Committee, the CERD Committee, and the CEDAW Committee, which do not specifically require reporting on the incidence of attacks on schools (in contrast to the Committee on the Rights of the Child) either requested clarifications from concerned states parties on attacks on schools or attempted to diagnose the situation as precisely as possible in their concluding observations. The reason these bodies were able to act on the issues is likely the result of the high quality of information received from various sources, particularly from NGOs.

Third, the process of the treaty reporting procedure gives relatively little time to go through all substantive rights in depth. There are practical limits on the length of concluding observations as well as a need to focus on implementation of previously made recommendations which can impact the quality and degree of elaboration of legal argumentation. Periodicity of state reporting poses challenges to the timeliness of the assessment of the situation and formulation of appropriate measures to address it.

As for the determination of an existence of a violation of the right to education, such a function is generally performed only on the basis of individual communications, where all facts are duly considered, with alleged violations clearly stated, and acts qualified under an appropriate legal framework. **The precise extent of the application of the right to education in armed conflict**

has not yet been tested. Notwithstanding this limitation, however, the ESCR Committee has identified attacks on education buildings and students, restrictions of movement, and barriers to access to education (non-attendance caused by lack of registration) as a *violation of the right to education*.

The work of the treaty bodies on protecting the right to education has also resulted in a number of substantive interpretations on the way the right should be implemented and protected in armed conflict. Of course, physical attacks on students, teachers, and educational facilities are only one aspect of the challenge to the protection of education in times of armed conflict.

THE HUMAN RIGHTS COUNCIL

The Human Rights Council frequently relies on IHL norms when dealing with situations of armed conflict. IHL has been addressed generally in the context of protection of civilians, with respect to country situations, and when examining thematic issues.[19] In a resolution entitled 'Protection of Human Rights of Civilians in Armed Conflict', the Council sketched broadly the relationship between human rights law and IHL. This resolution is particularly interesting, as it expressed in more explicit terms what treaty bodies have only alluded to, namely that violations of IHL would also constitute violations of human rights law. More specifically, the resolution emphasized that 'conduct that violates international humanitarian law, including grave breaches of the Geneva Conventions of 12 August 1949, or of the Protocol Additional thereto of 8 June 1977 relating to the Protection of Victims of International Armed Conflicts (Protocol I), *may also constitute a gross violation of human rights*.'[20] In addition to confirming the concomitant operation of both sets of laws in times of armed conflict and the importance of combating impunity, the Council *requested* the relevant special procedures (the Charter-based mechanisms, such as Special Rapporteurs) and *invited* human rights treaty bodies, within their respective mandates, 'to continue to address the relevant aspects of the protection of human rights of civilians in armed conflicts in their work.'

19 For the examination of thematic issues, see W. Kälin, 'Universal Human Rights Bodies and International Humanitarian Law', in R. Kolb and G. Gaggioli (eds.), *Research Handbook on Human Rights and Humanitarian Law*, Edward Elgar, UK, 2013, p. 452.

20 Human Rights Council, Resolution 9/9: 'Protection of the human rights of civilians in armed conflict', 21 September 2008. Emphasis added.

Situations of armed conflict have been dealt with by the Council mostly in special sessions. A review of Council resolutions in 2007–12 shows that the Council has consistently invoked IHL, except in a few cases. These exceptions mainly concerned the situation in Syria, where references to the relevance of IHL have been made only implicitly. The Council has discussed the human rights situation in Syria consecutively in four special sessions and in all four cases the Resolutions did not include explicit references to IHL, instead the Council has opted for a formula of '*violations of international law, including human rights law*'.[21]

Universal Periodic Review

The Universal Periodic Review (UPR) is a unique process which involves a periodic review of the human rights records of all 193 UN member states. The UPR is an innovation of the Human Rights Council which provides an opportunity for all states to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights.

The UPR is a peer-review mechanism, which includes a sharing of best human rights practices around the globe.[22] It is also a mechanism that seeks to identify needs for capacity-building and to provide technical assistance to states.[23] One of the advantages of the UPR process is that it covers a broad range of human rights and involves review of the human rights records of *all* UN member states. Human rights obligations that are reviewed comprise the 1948 Universal Declaration of Human Rights and human rights instruments to which the state under review is a party.[24]

21 See Resolutions S-19/1: 'The deteriorating situation of human rights in the Syrian Arab Republic, and the recent killings in El-Houleh', 4 June 2012; S-18/1: 'The human rights situation in the Syrian Arab Republic', 5 December 2011; and S-17/1: 'Situation of human rights in the Syrian Arab Republic', 18 October 2011. Equally, no reference to IHL was made in relation to conflict in Libya in Resolution S-15/1: 'Situation of human rights in the Libyan Arab Jamahiriya', 3 March 2011.

22 During the first cycle, which began in 2008, all UN member states were reviewed, with 48 states reviewed each year. The second cycle officially started in May 2012. The reviews take place during the sessions of the UPR Working Group, which meets three times a year.

23 See the UPR Voluntary Fund for Financial and Technical Assistance.

24 See Human Rights Council Resolution 5/1, Annex.

Three types of sources comprise the basis of the review: the state report (i.e., the state's own assessment of the situation); 'other stakeholders' reports (essentially a compilation of the views of NGOs made by the Office of the UN High Commissioner for Human Rights (the OHCHR); and the UN compilation, also compiled by the OHCHR, which draws on the work of the treaty bodies and the Special Procedures, among others.

The scope of review involves not only obligations under human rights law and but also under applicable IHL. This is mentioned specifically in the Resolution on Institution-building of the Human Rights Council, which states that 'given the complementary and mutually interrelated nature of international human rights law and international humanitarian law, the review shall take into account applicable international humanitarian law'.[25]

Accordingly, views and recommendations of states frequently include references to IHL. These references, however, remain very general. In most cases where IHL issues were raised, the main concern has been compliance and accountability. The following recommendations illustrate the type of issues concerning IHL states have raised in the review of their peers:

- Respect and promotion of IHL, as well as adopting measures aimed at guaranteeing respect for IHL;
- Halting violations of IHL, in particular deliberate and indiscriminate attacks against civilians;
- Bringing to justice those responsible for grave IHL violations;
- Compliance with IHL obligations, with a view to guaranteeing fundamental freedoms and rights to all, and ensuring (among others) the right to education;
- Independent investigation into reports of war crimes, and establishing mechanisms to deal with IHL violations committed by all parties; and
- Integration of IHL into the training programme of its armed and security forces.

25 Resolution 5/1: 'Institution-building of the United Nations Human Rights Council', 18 June 2007, Annex, §1.2.

THE SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL

Special Procedures are commissioned by the Human Rights Council to examine the human rights situation in all parts of the world (irrespective of adherence of the state to a human rights treaty). Initially they developed as *ad hoc* mechanisms but over the years have developed into a system known as 'Special Procedures'. They are intended as a prompt and flexible mechanism to respond to allegations of human rights violations and to monitor state compliance with human rights. Compared to thematic Special Procedures on civil and political rights, procedures focusing on economic, social, and cultural rights did not emerge until relatively recently.[26]

As of January 2013, there were 36 thematic and 12 country mandates.[27] The legal basis for the mandates of Special Procedures can be found in the relevant Human Rights Council resolution that establishes the mandate.[28] Mandate-holders of Special Procedures serve in their personal capacity. As a result, the quality of their outputs depends on the personal engagement of mandate-holders and the support received from the OHCHR Secretariat, as well as international organization and NGO engagement.

Methods of work

Each Special Procedure functions on the basis of specific mandate, but certain features are common to all mandates. Their basic functions can be summarized as monitoring, investigating, and reporting. The working methods of Special Procedures differ substantively from the work of the treaty bodies. Special Procedures may investigate of their own volition. Their methods of work involve communications, urgent appeals, country visits, and follow-up and

26 The first mandate that concerned economic, social, and cultural rights, the Special Rapporteur on the right to education, was established only in 1998.

27 The term 'Special Procedures' encompasses individuals variously designated as 'Special Rapporteur', or 'Independent Experts', Working Groups 'usually composed of five independent experts', 'Special Representative of the Secretary-General' and 'Representative of the Secretary-General'.

28 The Human Rights Council itself is mandated by the UN General Assembly Resolution 60/251, 15 March 2006, and the overall basis for the human rights actions of the UN organs is the UN Charter (in particular Art. 1(3)).

normative work. One description defines Special Procedures as largely fact-finding in nature.[29] Unlike treaty bodies they may avail themselves of all sources of information which they consider *credible* and *relevant*. They may thus take account of information from governments, inter-governmental organizations, international and national NGOs, national human rights institutions, academic community, the victims of alleged human rights abuses, relatives of victims, and witnesses.

Assessment of Special Procedures in promoting and protecting the right to education

Compared to the thematic Special Procedures, the country mandates have a significantly more detailed assessment of the situation on the ground with respect to education. Country mandates' reports contain more details of specific incidents or situations and contextual information, not particularly surprising given that while thematic procedures study the human rights situation from a specific angle country mandates deal with a specific context. Country mandates also have an opportunity to monitor a given situation over time and thus are in a better position to appreciate fully the situation as well as to formulate concrete and context-specific measures to the concerned government and the international community at large.

Compared to treaty bodies or the Human Rights Council's UPR, the Special Procedures have been more proactive in shaping the protection of education agenda. As discussed below, the Special Rapporteur on the right to education has played an important role in clarifying aspects of the right to education in light of insecurity and armed conflict challenges. As noted above, special procedures by their nature are flexible and responsive mechanisms capable of identifying new challenges and alerting the international community of a situation giving rise to concern.

29 'Special Rapporteurs of Human Rights Bodies', *Max Planck Encyclopedia of Public International Law*, at www.mpepil.com.

The specific contribution of the Special Rapporteur to the right to education in emergencies

The Special Rapporteur on the right to education dedicated a thematic report to the *Right to Education in Emergency Situations*.[30] The notion of emergency was defined as including international armed conflicts (including military occupation) or non-international armed conflicts, as defined by IHL. These situations 'impair or violate the right to education, impede its development and hold back its realisation' and 'put people's health and lives at risk and threaten or destroy public and private assets, limiting the capacity and resources to guarantee rights and uphold social responsibilities'. This quote is interesting as it casts the impact of armed conflict more broadly than merely disruption of the provision of, and access to, education.

The report offered a number of recommendations on how to better protect the right to education in emergencies and outlined challenges in its promotion. Significant attention was paid to the need to integrate quality education in humanitarian response, including the need to reflect the Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction developed in 2004 by the Inter-Agency Network for Education in Emergencies. In this respect, the role of coordination between 'plethora of actors … each with its own expertise, agenda and distinct priorities, mandates, capacities and spheres of influence, field presence and financial bases' was stressed. Attention, according to the Special Rapporteur, should also be paid in the curriculum and quality of teaching materials as well as through accreditation of the teaching received.

The report called for political attention and financial support to guarantee protection of the right to education. Another disquieting tendency noted in the report is the focus of humanitarian response only on primary education to the prejudice of secondary and tertiary education. Topics that are rarely analysed but which were flagged by the Special Rapporteur included the interrelationship between education and conflict (particularly the contribution of education in generating conflict), disjuncture between economic and social structures from

30 Report of the Special Rapporteur on the right to education, Vernor Muñoz, 'Right to Education in Emergency Situations', UN doc. A/HRC/8/10, 20 May 2008.

the activities carried out in emergency situations, the imperative of assessing the *educational needs* in conflict situations, and the right to education of vulnerable groups.

An update to the report on the right to education in emergencies[31] reiterated the need for education to be included as an integral element of humanitarian assistance and response, for adequate funding of education within humanitarian response and post-conflict situations, for financial aid to fragile states to help them support functioning of education systems, for access to education by girls and marginalized groups, and for efforts to ensure quality at all levels of education. The updated report also discussed in some detail 'attacks on schools' and touched upon issues on the protection of the right to education provided by IHL. According to the Special Rapporteur, 'targeted efforts are also required to prevent the occurrence of attacks against schools and other education institutions and to prepare them for situations of insecurity in order to minimize the damage armed conflict may cause'.

Both reports include important statements on the obligations of the international community to provide international assistance and cooperation.[32] It was asserted that, '[g]iven the fragility of some States affected by emergencies, and the central role of international assistance and cooperation in that context, it is important to recall that the obligation to provide assistance is established in human rights law'. In this context, the political commitments reflected in the development and education agendas as set out in the Millennium Development Goals and Dakar Framework of Action on Education for All have been stressed throughout.

FACT-FINDING MISSIONS AND COMMISSIONS OF INQUIRY

The Fact-Finding Missions and Commission of Inquiry are a new and valuable mechanism for identifying the responsibility of states and individuals for violations of international law. **Providing high quality information to these**

31 Interim report of the Special Rapporteur on the right to education, Kishore Singh, UN doc. A/66/269, 5 August 2011.

32 Report of the Special Rapporteur on the right to education, Vernor Muñoz, 'Right to Education in Emergency Situations', UN doc. A/HRC/8/10, 20 May 2008, §§57–61, and addressing the role of donors in §§68–73.

mechanisms should be a priority for concerned UN agencies and NGOs in particular. They are certainly not to be equated to a proper process of adjudication. However, in the absence of a compulsory adjudicatory body at the universal level, these missions perform the important function of determining whether violations of human rights and IHL norms have taken place, and who are suspected to have been the perpetrators. These mechanisms are a means for the international community to obtain a detailed examination of legal issues, the legal classification of conduct, and a legal discussion on the scope and meaning of IHL, human rights law, and criminal responsibility, as well as the respective responsibilities of states and non-state actors. These bodies often make determinations of the applicable law with respect to the factual circumstances they are mandated to investigate. For instance, they decide on the classification of situations as being international or non-international armed conflicts in character (or not as armed conflicts at all); identify which IHL rules apply; and assess the scope of the legal norms at issue. In other words, they engage in discussion of whether particular acts amount to violations of IHL or international human rights law.

Fact-finding missions and Commissions of Inquiry have been able to conduct investigations and consequently make recommendations through on-the-spot visits. Generally, the capacity of commissions of inquiry to mobilize resources and expertise far outweighs that of other human rights enforcement mechanisms. They are the venues where the use of the relevant legal framework has been far more advanced as a response to a concrete situation, since the reports of the Commissions look at the entire corpus of international law. In addition to the detail contained in their reports, the precision and weight of the legal analysis and the consequent power of the final product tend to inform the international agenda for further action.

Some of these *ad hoc* bodies have limited themselves to making findings concerning education, including cases of military action against schools as well as the impact of a siege;[33] the arrest of teachers and university students;[34]

33 'Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, on the non-implementation of Human Rights Council resolution S-1/1', UN doc. A/HRC/4/116, 20 December 2006; and UN doc. A/HRC/5/11, 8 June 2007, §§7 and 9.

34 'Report of the High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101', UN doc. A/HRC/4/80, 9 March 2007, §41.

and disruption of schooling.[35] In other cases, investigation of facts is followed by analysis and legal findings. The International Commission of Inquiry for Côte d'Ivoire concluded the Government had failed to take specific measures to maintain and ensure enjoyment of economic, social and cultural rights, in particular in the area of education.[36] According to the Commission, the post-electoral crisis almost paralysed the education system and thus deprived children of enjoyment of their right to education.

In terms of scope and analysis on the present topic, the 2009 Report of the Mission, known also as the Goldstone Report, is significant.[37] The report provides a detailed assessment of the impact of military operations and blockade on the state of the education sector. The blockade has had a negative effect on the education sector in many different ways. The lack of construction material due to the blockade halted construction of schools and postponed repairs to educational infrastructure, and the lack of education material as well as equipment in turn hampered maintenance of the teaching standards. All in all, the situation caused deterioration of school attendance and performance. Restrictions on freedom of movement, in the form of a ban on movement of people through crossing points, hampered student's access to education abroad as well as academics and scholars' possibilities to travel on academic exchanges. The report of the Mission provided other details of the number of schools damaged and of students and teachers killed and injured during military operations, the use of schools as shelters for internally displaced persons (IDPs), closure of schools for the duration of hostilities, lack of safety on roads to schools, the human rights content of curricula, psychological trauma of students and impact on their learning capacity, as well as diverse ways insecurity caused or created an environment for student drop-outs. The Mission characterized these facts as impacting on the *right to education*.

According to the Mission, in addition to the relevant customary international law provisions, as codified in 1949 Geneva Convention IV and 1977 Additional

35 'Report of the high-level fact-finding mission to Beit Hanoun established under Council resolution S-3/1', UN doc. A/HRC/9/26, 1 September 2008, §19.

36 'Rapport de la Commission d'enquête internationale indépendante sur la Côte d'Ivoire', UN doc. A/HRC/17/48, 14 June 2011.

37 'Report of the UN Fact-Finding Mission on the Gaza Conflict', UN doc. A/HRC/12/48, 25 September 2009, §1268.

Protocol I, particularly Articles 51 and 52 (which prohibit attacks on civilians and civilian objects), human rights treaties also applied. Among the relevant provisions, references were made to the right to education as provided for by the ICESCR and the CRC. Discussing the nature of the economic, social, and cultural rights, the Mission report cautioned that deliberate retrogressive measures on these rights were permitted only under 'stringent conditions':

> Again, reference is made to the blockade and Israel's obligation to respect, protect, facilitate or provide, to the extent possible, for the enjoyment of the whole range of economic, social and cultural rights in the Gaza Strip. At the very least, Israel is 'under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities'. Israel's actions have led to a severe deterioration and regression in the levels of realization of those rights. Consequently, the Mission finds that Israel has failed to comply with those obligations.[38]

The Independent International Commission of Inquiry on the Syrian Arab Republic has received reports on the use of schools as detention facilities, on the deployment of snipers on the roofs of schools, and the fact that children were prevented from continuing their education which it discussed under the rubric of violations of children's rights.[39] The Commission has also listed looting, vandalizing, burning of schools in response to student protests, and use of schools by government forces as military staging grounds and temporary bases as violation of children's rights. The Commission, having established the facts of attacks on protected persons and objects, such as schools, recalled the provisions of IHL that 'not only prohibits attacks on civilians and civilian objects but also requires their protection'. Attacks on schools have 'disrupted' and in many cases 'curtailed' children's ability to access education.

Interestingly, in relation to the occupation of schools by government forces for various purposes enumerated above, the Commission of Inquiry on Syria did not make any reference to the relevant provision of IHL, but only noted that

38 *Ibid*., §1312.

39 'Report of the independent international commission of inquiry on the Syrian Arab Republic', UN doc. A/HRC/S-17/2/Add.1, 23 November 2011, p. 15, §74; and p. 18, §110.

'[t]he Government's occupation of … schools infringes the right to education'.[40] This is perhaps not fortuitous, as under IHL there is no general prohibition against armed forces using educational buildings for military purposes. It is in line with IHL provisions that the recent report of the Commission of Inquiry stated that '[a]nti-Government armed groups frequently use schools as barracks or offices. These occupations *are not always justified by military necessity*, and have spread the belief that schools are not safe'.[41] The most recent report of the Commission of Inquiry on Syria stated:

> Education continues to suffer in the conflict. In December 2012, the Syrian Ministry of Education reported that 1,468 schools were being used as collective centres, while another 2,362 (10 per cent of the total number of schools) had been damaged or looted.[42]

THE UN SECURITY COUNCIL MONITORING AND REPORTING MECHANISM

The protection of civilians in armed conflicts generally, as well as of women and children in particular, has been on the agenda of the UN Security Council since the end of the 1990s through a number of thematic resolutions. In 2005, the Security Council requested the UN Secretary-General in Resolution 1612 to establish a monitoring and reporting mechanism,[43] managed by country-based task forces co-led by UNICEF and the most senior UN representative in the country. The MRM provides information on six grave violations of children's rights: the killing or maiming of children; recruitment or use of children by armed forces or armed groups; attacks on schools or hospitals; rape or other sexual violence against children; abduction of children; and denial of humanitarian access to children.[44]

40 *Ibid*., p. 19, §124. See also *§116*.

41 *Ibid*.

42 *Ibid*., §33.

43 UN Security Council Resolution 1612, 26 July 2005, §3; see also Resolutions 1882 (2009) and 1998 (2011).

44 'Report of the Secretary-General, Children and Armed Conflict', UN doc. A/59/695-S/2005/72, 9 February 2005, §68; UN Security Council Resolution 1612, §2.

The MRM is established when parties in a conflict-affected state are listed in the annexes of the Secretary-General's annual report on children and armed conflict. The UN Country Team is then formally notified to launch monitoring and reporting efforts.[45] NGOs, both international and local, contribute information to the UN-led MRM at country level. They may be associated either as formal members to the work of the UN Country Team, or informally. However, information provided by NGOs remains confidential. The information gathered is reported to the Security Council and the parties concerned. This forms the basis of the UN Secretary-General's country and annual reports. The information can, in addition, be used and shared with other reporting mechanisms as appropriate for further advocacy action, accountability, and response, such as the Special Procedures, human rights treaty bodies, the UPR, as well as regional and sub-regional organizations. Among the treaty bodies, the Committee on the Rights of the Child, the Human Rights Committee, the Committee against Torture, and the CEDAW Committee are of particular relevance to the MRM.

Assessment of the approach of the UN Security Council-led mechanism

The Security Council has actively engaged on the issue of protection of education in armed conflict, addressing particularly the protection of children. The right to education is dealt with as part of the broader thematic areas such as 'children and armed conflict', 'protection of civilians in armed conflict', and 'women and peace and security'. Education-related references are also found when the Security Council addresses situations in states facing armed conflict and violence. Overall, it is not possible to conclude clearly that the work of the UN Security Council-led initiatives has systematically engaged with the protection of the *right to education* as opposed to a special focus on objects protected under IHL, where there is a significant presence of children, such as schools. It gives little priority to adult education or university level of education. It has, though, been asserted that 'even in cases where attacks on schools … may not result in child casualties, they may affect children through the disruption of educational and/or medical services'.

45 According to the MRM Field Manual, grave violations fall into three different categories: 1) Incident involving one child; 2) Incident involving a number of children; and 3) Impersonal violations (i.e., attack on a school or hospital). 'MRM on Grave Violations Against Children in Situations of Armed Conflict', UN doc. O/SRSG-CAAC–UNICEF–DPKO, 2010, p. 19.

THE KEY ISSUES

This section sets out some of the key issues on the protection of the right to education in situations of insecurity and armed conflict: non-discrimination and equality, the rights of persons with disabilities, the protection of education in a situation of military occupation, the military use of schools and other educational facilities, the right of IDPs to education, the right to education and armed non-state actors, the right of adults to education, and the importance of quality education.

NON-DISCRIMINATION AND EQUALITY

Non-discrimination is a fundamental human rights principle. Everyone within a state's jurisdiction is entitled to all the rights and freedoms without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[46] As such, human rights mechanisms have considered discrimination as a central concern.

Moreover, equal treatment and non-discrimination are critical components in securing for all the right to education as well as other socio-economic rights. The ESCR Committee has stated that the principle of non-discrimination mentioned in Article 2(2) of the Covenant operates immediately and is neither subject to progressive implementation nor dependent on available resources.[47] The Committee reaffirmed the importance of this fundamental principle in relation to the full realization of the right to education, which is understood as imposing an 'immediate obligation' to undertake targeted measures.[48]

46 See UDHR, Arts. 2 and 7; ICCPR, Arts. 2(1), 3, 26 and 27; ICESCR, Arts. 2(2) and 3; CERD, Arts. 2 and 5; CEDAW, Arts. 2 and 15(1); CRC, Art. 2; Refugee Convention, Art. 3; ITPC, Art. 3; and ACHPR, Arts. 2–3 and 19.

47 ESCR Committee, General Comment No. 18: The Right to Work, UN doc. E/C.12/GC/18 (2005), §33. See also, in this sense: General Comment No. 3: The nature of States parties' obligations', 1990, §1; General Comment No. 9: The domestic application of the Covenant', UN doc. E/C.12/1998/24 (1998), §9.

48 ESCR Committee, General Comment No. 13, §§31–7.

The Committee has also specifically stated that educational institutions and programmes have to be accessible to everyone, without discrimination. Access to education has three overlapping dimensions:

a) **Non-discrimination:** education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds;

b) **Physical accessibility:** education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g., a neighbourhood school) or via modern technology (e.g., access to a 'distance learning' programme);

c) **Economic accessibility:** education has to be affordable to all. This dimension of accessibility is subject to the differential wording of Article 13(2) in relation to primary, secondary, and higher education: whereas primary education shall be available 'free to all', states parties are required to progressively introduce free secondary and higher education.

In practice, all human rights bodies have addressed the question of non-discrimination and access to basic services, including education. The treaty bodies regularly require states parties to provide disaggregated information on the composition of society based by race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.[49] For instance, CERD belongs to the category of conventions that address the rights of particular groups. It deals extensively with a range of rights, including the right to education of ethnic minorities and groups who suffer discrimination. As the text of the Convention itself as well as the Reporting Guidelines indicate, states parties are to report in detail on all aspects of education. The centrality of the right to education to the protection of persons from discrimination is highlighted in Article 7, which provides that:

> States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups....

49 See, e.g., Arts. 2(1), 3, and 26, General Guidance and Requirements for Reporting on ICCPR includes the following education related question/information (Guidelines for the treaty-specific document to be submitted by States parties under Art. 40 of the ICCPR, UN doc. CCPR/C/2009/1 adopted July 2010), §§33–8.

As the UN Special Rapporteur on the right to education has noted, '[o]pportunities for education are, even in times of peace, frequently unequal and discriminatory'.[50] In times of emergency, as he points out, 'inequality and discrimination increase for marginalized groups, groups such as women and girls, persons with disabilities, persons living with HIV/AIDS, ethnic minorities, and indigenous and migrant communities'.[51]

The Committee also enquired into the enjoyment of rights in territories outside the effective control of the Republic of Moldova, and requested details of how Moldova ensured the language of instruction in those territories in accordance with specific linguistic and cultural identities.[52] In addition, the CERD Committee has discussed in detail the armed violence in Colombia and how it affected the rights of the Afro-Colombians and indigenous groups and violations of their human rights.

The question of gender and armed conflict has also been discussed. Non-discrimination in social life and with regard to the allocation of resources is crucial for inequality and impacts on women's enjoyment of a range of human rights, including education.[53] In this context, states are required to take the following steps:

- Ensure a framework for non-discrimination in national law and policy;
- Take steps to eliminate gender (and other) stereotypes and prejudice, for example with respect to appropriate access to education; and
- To provide gender disaggregated data and statistics, for example with respect to numbers of girls enrolled in and actually attending schools; or criminal justice statistics including prosecution and conviction rates for gender-based violence.[54]

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50 Report of the Special Rapporteur on the right to education, Vernor Muñoz, 'Right to Education in Emergency Situations', UN doc. A/HRC/8/10, 20 May 2008, §88.

51 *Ibid*.

52 See 'Concluding observations: Moldova', UN doc. CERD/C/MDA/CO/7, 16 May 2008, §3.

53 Discrimination is defined in Art. 1, CEDAW, as 'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'

54 See Arts. 2 and 10, CEDAW.

THE RIGHTS OF PERSONS WITH DISABILITIES

Far greater attention needs to be paid to the impact of disability on access to education in situations of insecurity and armed conflict. As the Special Rapporteur on the right to education has observed, '[p]eople with disabilities, of either sex and of all ages, and in most parts of the world suffer from a pervasive and disproportionate denial of their right to education. In emergencies, however, particularly during conflicts and the post-conflict period, their right to receive special support and care is not always recognized by communities or States'.[55]

Challenges posed by insecurity and armed conflict on the right of persons with disabilities to education are particularly serious and complex. In 1994, the ESCR Committee in its General Comment 5 on persons with disabilities stated that the 'effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services'.[56] According to the Special Rapporteur on the right to education, in times of emergency inequality and discrimination increase for marginalized groups, including persons with disabilities.[57] He also noted that '[p]eople with disabilities, of either sex and of all ages, and in most parts of the world suffer from a pervasive and disproportionate denial of their right to education' and '[i]n emergencies, however, particularly during conflicts and the post-conflict period, their right to receive special support and care is not always recognized by communities or States'.[58]

No relevant information on disabilities in armed conflict was found within the work of the Committee on the Rights of Persons with Disabilities (CRPD Committee) or the UN Special Rapporteur on persons with disabilities. The former is explained by the fact that the states parties under review were not experiencing a situation of insecurity or armed conflict. Under the Convention on the Rights of the Child, states are requested to report taking into account

55 Report of the Special Rapporteur on the right to education, Vernor Muñoz, 'Right to Education in Emergency Situations', UN doc. A/HRC/8/10, 20 May 2008, §99.

56 Committee on Economic, Social and Cultural Rights, General Comment No. 5: 'Persons with disabilities', 1994, §15.

57 Report of the Special Rapporteur on the right to education, Vernor Muñoz, 'Right to Education in Emergency Situations', UN doc. A/HRC/8/10, 20 May 2008, §88.

58 *Ibid*., §99.

the Committee's General Comment on the rights of children with disabilities.[59] Yet, aside from these and a few other references in UN human rights mechanism practice, the right to education of persons with disabilities in the context of armed conflict has received scant attention. Accordingly, **recourse should be made to the individual complaints mechanism of relevant treaty bodies, in particular the one established under the CRPD.** In addition, organizations could usefully advocate for a General Comment or Statement on the protection of education for those with disabilities by, among others, the CRPD Committee.

EDUCATION IN A SITUATION OF MILITARY OCCUPATION

Access to education is at particular risk when a country is under foreign military occupation. For instance, as with other bodies and mechanisms, the shadow reports accompanying Israel's treaty reporting provided the CERD Committee with details on the protection of education in the context of the occupation of Palestine. Issues related to the impact of the permit regime, restrictions on the movement of Palestinians, the 'separation barrier' (i.e., the construction of the Wall), denial of entry of foreigners working in Palestine (such as university professors or researchers) were drawn to the attention of the CERD Committee in its examination of Israel's state report. The CERD Committee's Concluding Observations called on Israel to remove the restrictions and to ensure that Palestinians enjoy their human rights, in particular the right to education.[60]

MILITARY USE OF SCHOOLS

In a situation of insecurity or armed conflict, schools and other educational facilities are often occupied by either state armed forces or non-state armed groups. **The obligation to respect the right to education means that states and non-state actors alike should abstain from acts that disrupt the process of education.** Accordingly, the Committee on the Rights of the Child has addressed the question of military use of schools by state armed forces, recommending to one state party that it '[i]mmediately discontinue military occupation and use of the schools and strictly ensure compliance with humanitarian law and the

59 Committee on the Rights of the Child, General Comment No. 9, 'The rights of children with disabilities', UN doc. CRC/C/GC/9, 27 February 2007.

60 CERD Committee, 'Concluding Observations: Israel', UN doc. CERD/C/ISR/CO/13, 14 June 2007, §§34, 37.

principle of distinction and to cease utilizing [the school] … to host separatees'.[61] **Moving towards ending the military use of schools, at least during insecurity and armed conflict, is an important means to protect children, students, and their educators in such situations.**

THE RIGHT OF INTERNALLY DISPLACED PERSONS TO EDUCATION

Insecurity and armed conflict are among the primary causes of forced displacement. Human rights bodies have often identified the internally displaced as a category of vulnerable people in need of special protection and assistance. The protection of internally IDPs has been on the radar of human rights mechanisms, especially since the adoption of the 1998 Guiding Principles on Internal Displacement, which incorporates in a single document substantive elements of IHL, human rights law, and refugee law.[62] Virtually all human rights bodies have addressed IDPs and their need to access basic services, including education. Displacement often has detrimental effects on the education of children due to the closure of schools, lack of facilities, and difficult environment in camps and settlements.

The treaty bodies regularly require states parties to provide disaggregated information on the composition of society, including on IDPs and refugees, as well as information regarding their access to education.[63] In examining a periodic report of Azerbaijan, for instance, the CERD Committee enquired about the

61 Committee on the Rights of the Child, 'Concluding Observations: Sri Lanka', UN doc. CRC/C/OPAC/LKA/CO/1, 1 October 2010, §25.

62 UN Commission on Human Rights, 'Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement', 11 February 1998, UN doc. E/CN.4/1998/53/Add.2.

63 See, for instance, Committee on the Rights of the Child, 'Guidelines on the inclusion of statistical information and data in periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention', §§22–5. On the basis of its reporting guidelines, the Human Rights Committee requires states parties to provide information on: 'The situation of internally displaced persons, if any, and in particular on steps taken to ensure adequate conditions for their return and to address the specific needs of internally displaced persons, in particular their personal security, freedom of movement, and access to personal documents enabling them to seek employment as well as enjoy access to education, health and social services.'

education of IDPs, and particularly about integrating them into mixed schools.[64] A similar question was raised in relation to IDPs in Georgia, and their access to basic services, including their access to education.[65] The CERD Committee referred to the armed conflict of 2008 in South Ossetia and military activities in Abkhazia as a main factor in difficulties impeding the implementation of the Convention. This resulted in discrimination against people of different ethnic origins, including a large number of IDPs and refugees, which was found to be in contradiction with UN Security Council Resolution 1866 (2009) that had called on the parties to the conflict to facilitate the free movement of refugees and IDPs.[66] In addition, the Committee recommended on the basis of its General Recommendation No. 22 (1996) on refugees and displaced persons, that the state party continue its efforts to improve the situation of IDPs, including those displaced after the 2008 conflict, in particular with regard to integration, and decent durable living conditions.

The Internal Displacement Monitoring Centre (IDMC) has been very important in raising awareness of the challenges faced by IDPs. Most of their reports to the treaty bodies include a section on education.[67] For instance, with regard to Azerbaijan, the IDMC raised several issues of concern, such as: free access of internally displaced children to schools; school dropouts related to poverty; and the quality of education.[68] This prompted the CEDAW Committee to raise in its Concluding Observations the following issues,

64 CERD Committee, 'List of issues: Azerbaijan', UN doc. CERD/C/AZE/Q/6, 30 June 2009, §18.

65 CERD Committee, 'List of themes to be taken up in connection with the consideration of the fourth and fifth periodic reports of Georgia', UN doc. CERD/C/GEO/Q/4-5, 2 August 2011, §5.

66 CERD Committee, 'Concluding observations: Georgia', UN doc. CERD/C/GEO/CO/4-5, 2 September 2011, §9.

67 See, e.g., Submission from IDMC of NRC to the ESCR Committee: 40th Session, Economic, Social and Cultural Rights of IDPs in India, April 2008, p. 6; Submission from IDMC to the ESCR Committee in anticipation of consideration of the combined second, third and fourth periodic report of the Philippines submitted to the Committee under Articles 16 and 17 of the ICESCR on Internal Displacement in the Philippines, October 2007, pp. 10–1; IDMC, Report by IDMC to the CERD Committee on the occasion of Israel's 14th, 15th, and 16th Periodic Reports, January 2012, p. 3.

68 Submission from IDMC for consideration at the 44th session of the CEDAW Committee (2009), 2 June 2009.

> While welcoming the State Programme on the Settlement of the Problems of Refugees and Internally Displaced Persons, the Committee notes with concern that refugee women and girls and internally displaced women and girls remain in a vulnerable and marginalized situation, in particular with regard to access to education, employment, health and housing.
>
> The Committee urges the State party to implement targeted measures for refugee women and girls and internally displaced women and girls, within specific timetables, to improve access to education, employment, health and housing and to monitor their implementation. The Committee requests the State party to report on the results achieved in improving the situation of these groups of women and girls in its next periodic report.[69]

EDUCATION AND ARMED NON-STATE ACTORS

Most situations of insecurity and armed conflict currently taking place involve, in one way or another, armed non-state actors. According to a UN Secretary-General report on children in armed conflict in 2009, the majority of 348 incidents of attacks on schools in 2008 and 613 incidents of attacks in 2009 were perpetrated by groups armed opposing the respective government. Of course, the recruitment of children by non-state actors is a reality for most contemporary conflicts. The Security Council's condemnation of acts by non-state armed actors is illustrative:

> [T]he high number of civilian casualties in Afghanistan, in particular women and children casualties, the increasingly large majority of which are caused by Taliban, Al-Qaida and other violent and extremist groups and illegal armed groups, condemning in the strongest terms the high number of attacks targeting schools, including their burning and forced closure, their use by armed groups, and the intimidation, abduction and killing of education personnel, particularly those attacks targeting girls' education by armed groups including the Taliban.[70]

69 CEDAW Committee, 'Concluding Observations: Azerbaijan', UN doc. CEDAW/C/AZE/CO/3, 2 February 2007, §§31–2.

70 UN Security Council Resolution 2069, 'Afghanistan', 9 October 2012; see also Resolution 1974, 'Afghanistan', 22 March 2011.

In Colombia, one of the reasons offered for why children do not attend school is the social problems caused by the armed conflict, including the recruitment of children by armed groups. In Nepal, the government acknowledged that the protection of human rights is 'a really challenging task for any government in times of armed conflict'. Nepal further asserted that the insurgency 'had affected the implementation' of the right to education.

The obligation to 'protect' entails the state taking appropriate measures to prevent third parties such as non-state actors, whether individuals, criminal gangs, armed groups, paramilitaries, or private companies from depriving civilians of their rights, from attacking civilians, and from depriving the population from accessing essential goods and services. For instance, the state has an obligation under the Optional Protocol of the CRC on Children in Armed Conflict to legislate for a prohibition on the forced recruitment of children by armed groups and to criminalize such behaviour, which complements the right to education provisions in the ICESCR.

Furthermore, under the right to education, there is an obligation to protect 'accessibility of education by ensuring that third parties, including parents and employers, do not stop girls from going to school.' Armed violence and attacks can affect educational buildings, but they may also render travel of students and education staff to and from school more risky. The security of students, teachers, education officials, and also humanitarian aid workers providing education has been threatened in many armed conflict situations such as Afghanistan or Iraq, especially by armed non-state actors. **States should elaborate, and report on, plans to overcome, to the extent possible, the predictable challenges to physical access to education in times of insecurity and armed conflict.**

Another major impediment to the exercise of the obligation to protect is lack of control over national territory (and some of the challenging legal issues accompanying this issue) – a subject discussed above. It suffices here to reiterate that treaty bodies seem to raise with relative consistency a) questions of how and to what extent a reporting state is implementing its human rights obligations in those parts of its national territories outside its effective control; and b) recommendations to 'take all possible measures', i.e., exercise its best efforts to enhance protection under the relevant treaty for the population outside its control.

In determining the scope of obligations upon armed non-state actors themselves it can be argued that, **as a minimum, the armed group should *refrain* from interfering directly or indirectly with the enjoyment of rights by every individual under its control (i.e., an obligation to respect)**. As noted above, the UN Security Council has established an MRM through Resolution 1612 to monitor six grave violations against children, which includes attacks on education. From the period of 2007 to 2012, the UN Security Council adopted a standard formula calling all parties to conflict to cease '*all violations and abuses against children in violation of applicable international law*' including among other attacks against schools.[71] It has also, *inter alia*, urged:

- The parties to the conflict to *refrain* from actions that impede children's access to education;
- Strict compliance by parties to armed conflict with applicable IHL and human rights law relating to children affected by armed conflict;
- Those parties that have existing action plans and have since been listed for multiple violations to prepare and implement separate action plans, as appropriate, to halt recurrent attacks on schools, recurrent attacks or threats of attacks against protected persons in relation to schools, in violation of applicable international law; and
- To prepare without delay, concrete time-bound action plans to halt those violations and abuses.

Among actions that impede children's access to education, the Security Council has enumerated attacks, or threats of attack, on schoolchildren or teachers as such, the use of schools for military operations, and attacks on schools (which are prohibited by international law).

Finally, it is noteworthy that the Human Rights Council has, on a few occasions, also referred to the obligations of armed non-state actors in the context of the right to education. For example in its resolution on the right to education, it urged states and other relevant stakeholders 'to pay enhanced attention to education in emergency situations by, inter alia, enhancing the protection of schools from

71 UN Security Council Resolutions 2069, 'Afghanistan', 9 October 2012; 2041, 'Afghanistan', 22 March 2012; and 1998, 'Children and Armed Conflict', 12 July 2011.

attacks and strengthening safety and disaster risk reduction.'[72] Furthermore, the resolution addressing attacks on schoolchildren in Afghanistan, although reiterating that it is the primary obligation of the state to protect its citizens, urged, nevertheless '*all parties* in Afghanistan to take appropriate measures to protect children and uphold their rights.[73]

It is clear, however, that whatever standards are applicable or are agreed upon, monitoring will be an essential element in supporting their implementation. Such monitoring should build on the work of the UN, human rights and humanitarian NGOs, and initiatives that engage armed non-state actors actively. During his visits in Afghanistan, the former Special Rapporteur on extrajudicial, summary or arbitrary executions regretted that he did not speak with any formal representatives of the Taliban. Recognizing the political and security obstacles to engage directly with the Taliban, he emphasized that 'there is no reason to assume that the Taliban could never be persuaded to modify its conduct in ways that would improve its respect for human rights.'[74]

This approach could well be applied to more stable entities or authorities, akin to *de facto* regimes, such as Abkhazia, Hamas, Hezbollah, Nagorno-Karabakh, Puntland, Somaliland, South Ossetia, and Transnistria, to name but a few. **Greater engagement with these entities on the protection of education is needed notwithstanding a fear among many states of conferring status or legitimacy.**

Furthermore, given the extent of the impact of acts by armed non-state actors on the right to education, **a Statement or General Comment by the Committee on the Rights of the Child on the obligations of armed non-state actors to respect children's rights, including the right to education, should be considered.**

72 Human Rights Council Resolution 20/7: 'The right to education: follow-up to Human Rights Council resolution 8/4', 20th Session, 2012.

73 Resolution 14/15, Addressing attacks on schoolchildren in Afghanistan, 23 June 2010, §3.

74 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Mission to Afghanistan', UN doc. A/HRC/11/2/Add.4, §42.

EDUCATION FOR ADULTS AS WELL AS FOR CHILDREN

In protecting the right to education in insecurity and armed conflict, **greater attention needs to be paid to all levels of education, not merely primary and secondary, and the rights of adults to education generally should be accorded greater consideration.** Many people, particularly in situations of prolonged insecurity or armed conflict, reach adulthood without receiving even a fundamental education. More generally, tertiary education students and facilities are often targeted by governments. Accordingly, in line with the requirements of numerous international human rights treaties, it is important to recognize that the right to education exists for adults and should be protected and promoted within state policy.

Access to education at the university level has been the subject of concern for Special Procedures mandated with the questions concerning the rights of indigenous people and internally displaced persons.[75] On one occasion, the UN Secretary-General's report on children and armed conflict reported on the closure of universities in Somalia because of general insecurity, the presence of government forces in close proximity to education facilities, and an increasing number of deaths of students and teachers.[76]

States undergoing treaty reporting have themselves also reported on the destruction of universities and educational materials by armed non-state groups, denial of access to university due to high fees, travel restrictions, harassment in checkpoints, recognition of university certificates – all on the basis of discrimination. States have also reported on the right to education of women at the level of universities or on the conduciveness of education content to human rights and gender equality at the military universities.

75 'Conclusions and recommendations of the Expert Seminar on indigenous peoples and education (Paris, 18 to 20 October 2004)', UN doc. E/CN.4/2005/88/Add.4, 15 December 2004, §§24, 26; 'Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Mission to Azerbaijan', UN doc. A/HRC/8/6/Add. 2, 15 April 2008, §41.

76 UN Secretary-General, 'Children and Armed Conflict', UN doc. A/63/785-S/2009/158 (26 March 2009), §98.

QUALITY NOT JUST QUANTITY

Finally, while promoting access to education remains a primary challenge and objective, the importance of quality of education in situations of insecurity and armed conflict should not be forgotten. As stated by a specialized NGO on the protection of IDPs:

> Quality is the main issue regarding education of internally displaced children. Displaced children may attend separate or mixed schools…. Some separate schools are in need of repairs, heating, furniture, supplies, playgrounds and additional qualified staff.[77]

It is true that the issue of quality of education is receiving increasing attention generally. However, despite the important work of the Special Rapporteur on the right to education, more needs to be done specifically to ensure high quality education in situations of insecurity and armed conflict. This includes elaborating guidance to states on how best to operationalize high quality of education despite the prevailing constraints (*see Box 2*). Certainly, students must be given an education that is not only of quality from a universal standpoint but also respectful of their traditions, beliefs, and language(s) if minority and indigenous rights are to be respected. In this regard, there may be particular concerns in areas where a population is under occupation by another state. Thus, the notion of quality should be supplemented by the specifics of the context to a certain extent. But overall, meeting demands for quality education is a gap that educational practitioners can help to fill.

77 Submission from IDMC for consideration at the 75th session of the Committee for the Elimination of Racial Discrimination (3-28 August 2009), Azerbaijan.

Box 2: Determining compliance by states with their obligations in times of insecurity and armed conflict

A series of factors have been elaborated by the Committee on Economic, Social and Cultural Rights to assess a state's level of compliance with its obligation to take steps to the maximum of available resources to ensuring economic, social, and cultural rights when the Committee examines future communications (under the Optional Protocol) concerning this general obligation of progressive realization. These factors include:

a) The state's *level of development*;

b) The severity of the alleged breach, in particular whether the situation concerned the enjoyment of the minimum core content of the Covenant;

c) The state's *current economic situation*, in particular whether it was in a period of economic recession;

d) The existence of other serious claims on the state party's limited resources; for example, resulting from a recent natural disaster or *from recent internal or international armed conflict*;

e) Whether the state party had sought to identify low-cost options; and

f) Whether the state party had sought cooperation and assistance or rejected offers of resources from the international community for the purposes of implementing the provisions of the Covenant without sufficient reason.

ESCR Committee, Statement on 'An Evaluation of the Obligations to Take Steps to the "Maximum of Available Resources" under an Optional Protocol to the Covenant', 21 September 2007, UN doc. E/C.12/2007/1, §10. (Emphasis added.)

CONCLUDING REMARKS

In conclusion, **input by international organizations and NGOs is critical to ensuring the success of UN human rights mechanisms in the protection of education in situations of insecurity and armed conflict.** Of course, the views of civil society and advocates on the protection of children and of education do not constitute international law. However, their opinions and actions certainly contribute to shaping the content and interpretation of the law. In large part due to the activities of civil society and academia at national and international levels, the issue of attacks on education and education in emergency situations has been steadily integrated in the agenda of the international community.

Many UN human rights mechanisms have been able to formulate their views, concerns, and recommendations on the basis of NGO reporting. In the context of treaty reporting under human rights treaties, where a state party fails to provide a comprehensive assessment of its performance under the relevant treaty, credible and reliable information from NGOs and international bodies provide the treaty bodies with additional material to diagnose the situation on the ground. **Such input needs to be generally maintained but should be enhanced in certain areas. There is a pressing need to improve access to education for persons with disability, to focus more on adults than is currently the case, and to improve the quality of education that is provided to all.**

UN human rights mechanisms are dependent on high quality information to be able to act effectively. It is obviously tempting for governments to paint an overly rosy picture of the situation in their countries; thus both confidential ('shadow') and public reports by international organization and NGOs are critical to give a more balanced view of the situation on the ground. While there are normally many human rights priorities and limited time and space for their consideration by the various mechanisms, **the quantity and quality of international organization and NGO reporting on the right to education will therefore usually determine to what extent — and indeed whether — education is duly reflected in the conclusions and recommendations of the various human rights mechanisms.**

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A Policy Summary