



**British Institute of
International and
Comparative Law**



PEIC

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

Protecting Education in Insecurity and Armed Conflict

An International Law Handbook

New Developments
2013

Introduction

In September 2012, the British Institute of International and Comparative Law ('BIICL') and Protect Education in Insecurity and Conflict ('PEIC') published *Protecting Education in Insecurity and Armed Conflict: An International Law Handbook*.¹ This Handbook focuses on the ways international human rights law, international humanitarian law and international criminal law protect education in times of insecurity and armed conflict. In those situations, education, students and education staff, as well as educational facilities, are often the objects of attacks, which amount to violations of international law. Given the continued attacks on education committed worldwide, the protection of education in insecurity and conflict continues to deserve attention from the global community, including from the legal community.² Therefore, it is important to assess regularly the international law developments that are relevant to this topic not only to keep the Handbook up-to-date, but, more importantly, to support the advancement of the protection of education in insecurity and conflict by international law.

Since the publication of the Handbook, attacks on education have continued worldwide. For example, the conflict in Syria has led to numerous forms of attacks on education, including ill treatment of students and military use of schools.³ These attacks have generated a number of reports from non-governmental and international organisations among others.⁴ Given the need to make education a priority, including in contexts of insecurity and armed conflict, the United Nations ('UN') Secretary-General introduced in 2012 'Education First', a new global initiative which assists progress towards the

¹ The Handbook and its Summary are both available for download at:

<http://www.biicl.org/research/education/>
<http://www.educationandconflict.org>

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² An attack on education refers to an act against education, students and education staff, and educational institutions. The Handbook uses the term 'education-related violation' which refers to the legal consequences of an attack on education, which may amount to a violation of international human rights law, international humanitarian law and/or international criminal law. For more on this concept, see the Handbook at 1.3.2.

³ See, for example, 'Safe No More: Schools and Students Under Attack in Syria' (Human Rights Watch, June 2013), where it is reported that student and education staff have been the object of attacks and that education facilities have been used by the military. This report is available at:

<http://www.hrw.org/sites/default/files/reports/syria0613webwcover.pdf>.

For a map of States affected by attacks on education, consult the website of the Global Coalition to Protect Education from Attack (GCPEA) at:

<http://www.protectingeducation.org/country/afghanistan>

⁴ See, for example, Save the Children, 'Attacks on Education, The Impact of Conflict and Grave Violations on Children's Futures' (2013), available at:

http://www.savethechildren.org/atf/cf/%7B9def2ebe-10ae-432c-9bd0-df91d2eba74a%7D/ATTACKS_ON_EDUCATION_FINAL.PDF

As another example, the UN Security Council Working Group on Children and Armed Conflict adopted conclusions regarding the on-going recruitment and retention of child soldiers in Burma on 16 August 2013. They are available at:

http://www.un.org/ga/search/view_doc.asp?symbol=S/AC.51/2013/2. The Working Group is now considering the situation in the Philippines, Yemen and Syria following reports of the Secretary-General.

Millennium Goal on Education.⁵ This initiative includes businesses and private foundations that pledged over \$1.5 billion towards educating children.⁶ Other important financial commitments have also been made over the past year to support the right to education.⁷

This initiative also enabled the address by Malala Yousafzai at the UN General Assembly on 12 July 2013. Less than a month after the publication of the Handbook, the Taliban attempted to kill this Pakistani student (aged 15 at the time), an activist for the right to education and for women's rights in general. In her address, she called for free, compulsory education for all children.⁸ As noted in the Handbook, the right to free and compulsory primary education is part of the core content of a legally binding right, which is enshrined in international treaties that have been widely ratified, namely the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child.

In order to ensure that the full content of the right to education and other associated rights and provisions are respected, protected and fulfilled, a number of legal developments (both binding and non-binding) occurred in late 2012 and 2013. They are summarised below.

1. PROTECTION OF EDUCATION

As mentioned in the Handbook, education itself is protected by international law, including through the human right to education, which is enshrined in several international and regional human rights treaties.⁹ Nevertheless, in order to improve its implementation, non-binding resolutions have been adopted to encourage States to strengthen the right to education.

On 28 November 2012, the UN General Assembly adopted a resolution encouraging States

to integrate education for democracy, along with civic education and human rights education, into national education standards and to develop and strengthen...educational activities aimed at the promotion and consolidation of democratic values and democratic governance and human rights...¹⁰

As highlighted in the Handbook, situations of insecurity and armed conflict render the occurrences of education-related violations more likely.¹¹ In order to minimise the chance

⁵ The brochure of the Global Education First Initiative is available at:

http://www.globaleducationfirst.org/files/GEFI_Brochure_ENG.pdf.

⁶ For more on the Commitments, see: <http://www.globaleducationfirst.org/commitments.html>.

⁷ For example, on 23 March 2013, the Saudi Committee for the Relief of Palestinian People and UNESCO concluded an agreement of US\$2.9 million to support the right to education for Palestinian university students.

⁸ Her address can be watched and read in full here:

<http://www.globaleducationfirst.org/malaladay.html>

⁹ See Chapter 3 of the Handbook.

¹⁰ The UN General Assembly Resolution on Education for Democracy (A/RES/67/18) is available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/18.

¹¹ For more on the scope of the Handbook.

of conflicts occurring, and therefore the likelihood of education-related violations, it is crucial that peace education, education for democracy, and human rights education, are part of national curriculums.¹² It is especially needed in post-conflict settings, where such education courses can be developed as part of a reparations programme (as a way to guarantee the non-repetition of the conflict in question), and it is also important in States which suffer from situations of insecurity and may, as a result, be at risk of falling into a situation of armed conflict.¹³

At the same time, the UN General Assembly also adopted a Resolution on 'Sport as a means to promote education, health, development and peace', highlighting the potential of sport as a tool for education and as a vehicle to facilitate conflict prevention and peace-building.¹⁴ As a tool for education, sport should be part of national education programmes. As a vehicle for conflict prevention and peace-building, the potential role of sport in minimising the chance of situations of insecurity and armed conflict occurring should be seen as one tool against education-related violations.¹⁵

On 6 June 2013, the Human Rights Council ('HRC') issued a follow-up to its Resolution 8/4 on the right to education.¹⁶ It called all States to take the necessary measures to implement its resolutions on the right to education so that this right is fully realised for all. In particular, it urged States to promote the justiciability of the right to education by adopting adequate legislation and creating (or strengthening) *independent* mechanisms that address violations of the right to education.¹⁷ The HRC highlighted that access to justice may require the adoption of specific provisions regarding legal standing and legal aid. It also called for judges and others responsible for addressing education-related violations to be provided adequate training. Human rights education was also noted as an important tool to achieve the enforceability of the right to education. Finally, by discussing the role of indicators, the HRC highlighted the importance of monitoring the right to education.

A number of general recommendations assisting with the interpretation and the implementation of the right to education and other associated rights were also adopted by the various UN Treaty Bodies in 2013. For example, the Committee on the Elimination of Racial Discrimination ('CERD Committee') General Recommendation No 35 on

¹² See the Handbook at 1.1.

¹³ While the Handbook briefly mentions the role of guarantees of non-repetition (at 6.1), this concept is further developed in the Report entitled 'Education and the Law of Reparations' (BIICL/PEIC, 2013) which is available at:

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

Note that within its recommendations, this Report highlights the introduction of human rights education in school curriculum as a form of reparations.

¹⁴ The UN General Assembly Resolution on 'Sport as a means to promote education, health, development and peace' (A/RES/67/17) is available at:

http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/17

¹⁵ The role of sport as underlined here may also be considered when adopting a reparations programme that include peace education, see n 12.

¹⁶ This Resolution (A/HRC/23/L.7) is available at:

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session23/Pages/23RegularSession.aspx>

¹⁷ See para 4.

Combating Racist Hate Speech discusses the obligations of State parties under Article 7, including the crucial role of “teaching, education, culture and information” in the promotion of inter-ethnic understanding and tolerance.¹⁸ The CERD Committee states that the educational approach to eliminating racial discrimination is an indispensable complement to other approaches to combating racial discrimination.¹⁹ Appropriate educational strategies must be inter-cultural (bilingual where appropriate) and represent a genuine balance of interests (and not lead to cultural assimilation).²⁰ Therefore, States must include teaching about the history, cultures and traditions of their minority groups, including Indigenous peoples.²¹ This General Recommendation is in line with the Handbook, which also highlighted the importance of the appropriate content of education, including its cultural acceptability.²² It is worth reiterating that General Recommendations are not directly legally binding but that they are nevertheless authoritative as the relevant Committee will interpret States’ obligations under the treaty in accordance with them.

By highlighting what education should contain, both the UN General Assembly and the CERD Committee have given more guidance to States in providing an education which will itself be a tool to avoid education-related violations. As highlighted in Chapter 3 of the Handbook, the content of the right to education includes acceptability and adaptability components.²³ These core elements of the right to education include the quality of education and its relevance to particular contexts. All States must develop curriculums which include all the tools that can serve to minimise the chance of conflicts (and therefore education-related violations) occurring. This is of course particularly important for States that suffer situations of insecurity or armed conflict, as well as for States that are in a post-conflict period.

2. PROTECTION OF STUDENTS AND EDUCATION STAFF

In addition to the right to education, the rights of students, including both children and adult learners, and education staff, must be respected.

In Chapter 4 of the Handbook,²⁴ it was recognised that in many situations of insecurity and armed conflict, students and education staff can be victims of sexual violence. In this context sexual violence is an education-related violation. Rape and other forms of sexual violence amount to human right violations. In armed conflict, serious forms of sexual violence, such as rape, are war crimes and also violations of the Geneva Conventions and their Additional Protocols.

¹⁸See para 30 of the CERD Committee General recommendation No 35 (2013) on combating racist hate speech (of 26 Sep 2013), which is available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=11

¹⁹ See para 31.

²⁰ See para 33.

²¹ See para 34.

²² See Chapter 3.1.1. of the Handbook.

²³ See Handbook at 75 *et seq.*

²⁴ See, in particular, the Handbook at 132-136 where the special protection for children and women is presented.

While the victims of sexual violence are most often women and girls, men and boys can also be affected, either as the direct victims of such violence or as the relatives of women and girls who suffer sexual violence.²⁵ Several non-binding instruments that seek to prevent this type of violation were adopted in 2013. On 11 April 2013, the G8 Foreign Ministers adopted a 'Declaration on Preventing Sexual Violence in Conflict'.²⁶ On 24 June 2013, the UN Security Council recognised the G8 Declaration and adopted a resolution on the same issue.²⁷ On 24 September 2013, a 'Declaration of Commitment to end Sexual Violence in Conflict' was endorsed by 113 States.²⁸

In addition to the work done to prevent sexual violence in conflict, which can affect all students and education staff no matter their age or gender, there have been a number of other initiatives to attempt to increase the protection of specific categories of persons. This includes children, women, victims of enforced disappearances, persons with disabilities, migrants and displaced persons. All of the initiatives below can be relevant for the protection of students and education staff who find themselves in situations of insecurity or armed conflict and fall within one of the categories mentioned.

Children

The Committee on the Rights of the Child, which monitors the implementation of the Convention on the Rights of the Child ('CRC') has issued four General Comments over the past year to interpret some of the rights enshrined in the CRC and assist with their implementation. All of these comments relate education to other children's human rights issues, therefore highlighting the interdependency of all human rights.²⁹

The Committee on the Rights of the Child issued General Comment 15 (2013) on the 'Right of the Child to the Enjoyment of the Highest Attainable Standard of Health',³⁰ in

²⁵ See for example S Sivakumaran, 'UN response to sexual violence against men and boys in situations of armed conflict', 92 *International Review of the Red Cross* 877 (March 2010), available at: <http://www.icrc.org/eng/assets/files/other/irrc-877-sivakumaran.pdf>

²⁶ The G8 Declaration on Preventing Sexual Violence in Conflict is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185008/G8_PSVI_Declaration_-_FINAL.pdf

²⁷ The UN Security Council Resolution 2106 (2013) is available at: [http://peacemaker.un.org/sites/peacemaker.un.org/files/SC_ResolutionWomen_SRES2106\(2013\)\(English\).pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/SC_ResolutionWomen_SRES2106(2013)(English).pdf)

²⁸ The Declaration of Commitment to End Sexual Violence in Conflict is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/244849/A_DECLARATION_OF_COMMITMENT_TO_END_SEXUAL_VIOLENCE_IN_CONFLICT_TO_PRINT....pdf

²⁹ The Committee on the Rights of the Child has long been concerned with the protection of education in situations of insecurity and armed conflict. For example, in 2008, it hosted a Day of General Discussion on 'The right of the child to education in emergency situations' leading to a set of recommendations, which are available at: <http://www2.ohchr.org/english/bodies/crc/discussion2008.htm>.

³⁰ The Committee on the Rights of the Child, General Comment 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) of 17 April 2013 is available at: http://www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-15_en.doc. The right to attain the highest standard of health and the right adequate standard of living, including the right to

which it underlined the need to take into account the best interests of the child, including its educational needs, when making a health-related decision regarding the child.³¹ This General Comment provides additional guidance for States and supplements General Comment 14 issued by the Committee of Economic, Social and Cultural Rights, which is discussed in Chapter 4 of the Handbook.³² It is particularly important in situations of insecurity and armed conflict to consider the educational needs of children who may have been injured as a result of the context of the insecurity or armed conflict in which they live. Educational attainment is also noted as a factor for the realisation of children's right to health.³³ Health itself, and the prevention of illnesses, must be part of education programmes.³⁴ It must be appropriate to children's age and educational level.³⁵ The provision of health education also includes teaching parents about children's health (including hygiene and breastfeeding and also the risks associated with substance abuse, for example),³⁶ as well as informing children about sexual and reproductive health.³⁷ Health education is particularly important in situations of insecurity and armed conflict as children often live in precarious conditions, where diseases are likely to spread rapidly.

As explained in the Handbook,³⁸ the CRC requires States to take measures to protect children from all kinds of abuses. In this General Comment, the Committee explicitly calls for educational measures to eliminate corporal punishment and other forms of cruel or degrading types of punishment whether at school or at home.³⁹ The Committee also states that there must be no discrimination towards pregnant adolescents, such as through expulsion from schools and states that "opportunities for continuous education should be ensured."⁴⁰ This is important in areas affected by conflict, where girls may be the targets of sexual violence and become pregnant as a result. Mental health is also given special attention as the Committee mentions the obligation of States to "provide adequate treatment and rehabilitation for children with mental health and psychosocial disorders while abstaining from unnecessary medication."⁴¹ Again, children who have grown up in areas affected by insecurity and armed conflict are often suffering from mental health issues as a result.⁴² Therefore, the obligation of mental health rehabilitation highlighted in this General Comment also applies to reparations programmes set up to remedy the harm suffered by students who were the victims of education-related violations.⁴³

food, were recognized as relevant human rights to protect against education-related violations in the Handbook, at 130-1.

³¹ See para 12.

³² See the Handbook at 130-1.

³³ See para 17.

³⁴ See paras 26, 31 and 46, which specifically mention 'health education'.

³⁵ See para 58.

³⁶ See para 59.

³⁷ Para 57 highlights the importance of educating men and boys as well given their role in family planning. See also para 60.

³⁸ See Handbook at 123.

³⁹ See para 68.

⁴⁰ See para 56.

⁴¹ See para 39.

⁴² See, for example, V Attanayake *et al*, 'Prevalence of mental disorders among children exposed to war: as systematic review of 7,920 children', 25 *Medicine, Conflict and Survival* 1 (Jan-Mar 2009) at 4-19.

⁴³ For more on rehabilitation programmes to remedy education-related violations, see F Capone, K Hausler, D Fairgrieve and C McCarthy, *Education and the Law of Reparations in Insecurity and*

In this General Comment, the Committee also highlights the nexus between the provision of school meals and children's health – as ensuring that pupils have access to a full meal every day increases their attention – as well increasing school enrolment in general.⁴⁴ The Committee recommends teaching children about nutrition and healthy eating habits in addition to health education in general. Sport must also be part of children's education as it increases their overall health.

In addition, in situations of insecurity and armed conflict, when access to subsistence resources may be scarce, schools that provide daily meals to children may become a crucial place to fulfil their vital needs whilst at the same time ensuring that students remain on their educational track. If this is not the case, there is a high risk that students will drop out of schools, either because they fall ill or because they have to find alternative means to sustain themselves. Although insecurity and armed conflict are likely to generate economic difficulties, schools should nevertheless endeavour to offer nutritious meals to their students and not micronutrient-poor meals which may in the long term be a cause of illnesses in children. Therefore, in this General Comment, the Committee recognises the role of schools (and education in general) as a factor for children to attain the highest standards of health, not only through teaching (nutrition, disease prevention, sexual and reproductive health, etc.), but also through the actual provision of daily access to nutritional meals.⁴⁵ This is recognised as a means to ensure the fulfilment of the right to education.

The Committee on the Rights of the Child also issued General Comment 14 (2013) on the 'Right of a Child to have His or Her Best Interests taken as a Primary Consideration'. This General Comment provides guidance with regard to the interpretation of the concept of 'the best interests of the child' as enshrined in Article 3(1) of the CRC. This cross-cutting provision seeks to ensure "both the full and effective enjoyment of all the rights recognized in the Convention and the holistic developments of the child."⁴⁶ As there is no hierarchy of rights in the CRC, the right of a child to education, as noted in Chapter 3 of the Handbook,⁴⁷ must be respected when assessing his or her best interests: "no right could be compromised by a negative interpretation of the child's best interests."⁴⁸ In addition to reiterating that free education falls within the scope of 'child's best interests', the Committee on the Rights of the Child also highlights that the content of education must be of 'quality'.⁴⁹ It states that the children's well-being includes their educational needs and that these needs must be balanced with others when assessing the elements that are in a child's best interests.⁵⁰ This General Comment also highlights the duty of

Armed Conflict (BIICL/PEIC, London/Doha, 2013) at 33 *et seq.* The Report is available at:

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

<http://www.educationandconflict.org>

⁴⁴ See para 46.

⁴⁵ For more on preventative health care, see para 62.

⁴⁶ The Committee on the Rights of the Child General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para 1) of 29 May 2013 is available at:

http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf

⁴⁷ See the Handbook at 70.

⁴⁸ See para 4.

⁴⁹ See para 79.

⁵⁰ See paras 71 and 80.

States in ensuring that education staff are well-trained, the teaching environment must be child-friendly, and the teaching and learning methods must be appropriate. Finally, in addition to being an investment for the future of children, the Committee recognises that education is “also an opportunity for joyful activities, respect, participation and fulfilment of ambitions.”⁵¹ When providing education to children, whether in time of peace or armed conflict, States must ensure that the education provided respects the best interests of the child as detailed in this General Comment. Therefore, even in situations of insecurity or armed conflict, the best interests of the child must remain the primary consideration when providing for his or her education. This General Comment supports the analysis of the adaptability of education contained in the Handbook.⁵²

The need of children to have ‘joyful activities’ is further affirmed in the Committee on the Rights of the Child’s General Comment 17 (2013) on the ‘Right of the Child to Rest, Leisure, Play, Recreational Activities, Cultural Life and the Arts’.⁵³ This General Comment applies to all children, including those in “situations of conflict” or other difficult situations.⁵⁴ It affirms that special attention must be given to particular groups of children, including refugees, displaced children, and those of minority groups whose rights to their own cultures must be recognised.⁵⁵

With regard to education, this Comment recognises that ‘increasing educational demands’ can reduce the enjoyment of these rights.⁵⁶ The Committee underlines the risks associated with pressuring children for educational achievement and denying their rights under Article 31 (the right to leisure activities and relaxation),⁵⁷ including through the imposition of “overly structured and programmed schedules”.⁵⁸ The right to rest from education (among others), as well as adequate sleep, is specifically mentioned to ensure children’s optimum health and well-being.⁵⁹ As these rights are in the child’s best interests (a general overarching principle of the CRC), the Committee on the Rights of the Child affirmed that these ‘best interests’ would apply, for example, to education legislation which impacts on the rights provided for in Article 31.⁶⁰ In addition, the Committee states that Article 12, which provides for the right of children to participation, could include their consultation when drafting education legislation or developing educational facilities; as children could then make suggestions with regard to their desired recreational activities within a school.⁶¹

General Comment 17 also establishes a direct link between Article 31 and Articles 28 and 29 of the CRC on the right to education as it states that:

⁵¹ See para 79.

⁵² See, for example, the Handbook at 77 on adapted programmes following attacks on schools.

⁵³ General Comment 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31) of 17 April 2013 is available at:

<http://www.refworld.org/publisher,CRC,GENERAL,,51ef9bcc4,0.html>

⁵⁴ See para 16.

⁵⁵ See para 28.

⁵⁶ See paras 4 and 13.

⁵⁷ See para 41.

⁵⁸ See para 42.

⁵⁹ See para 14 (a).

⁶⁰ See para 17.

⁶¹ See para 19.

[E]ducation must be directed to the development of the child's personality, talents and mental and physical abilities to the fullest potential. Implementation of the rights under article 31 is essential to achieving compliance with the right provided for in article 29...the rights under article 31 are of positive benefit to children's educational development; inclusive education and inclusive play are mutually reinforcing ... play is an important means through which children learn.⁶²

The Committee underlines the role of schools in fulfilling the obligations under Article 31.⁶³ This must include adequate indoor and outdoor space (the 'physical environment of settings'), adequate (and not overly heavy) schedules, a school curriculum including cultural and artistic activities, and active learning environments which encourage the participation of children. The Committee also takes the opportunity to mention human rights training and the fact that education staff must be informed about the human rights of children.⁶⁴

General Comment 17 also specifically addresses violence committed against children and their forced service in armed conflicts as an obstacle to the fulfilment of Article 31.⁶⁵ The Committee mentions the risks of violations of Article 31 for certain particular categories of children, including girls, children living in poverty, children with disabilities, children in institutions (hospitals, refugee centres, detention facilities, etc.), and children from Indigenous and minority communities.⁶⁶ If these children are excluded from schools because they belong to one of these categories, it is an obstacle to the fulfilment of their rights under Article 31. In addition, the Committee also underlines the situation of children in situations of conflict and humanitarian disasters.⁶⁷ While it recognises that opportunity for play, recreation and cultural activity is often given a low priority in those situations, it states that they "can play a significant therapeutic and rehabilitative role in helping children recover a sense of normality and joy after their experience of loss, dislocation and trauma."⁶⁸ This is further stressed with regard to post-conflict settings specifically, where, in addition to promoting resilience and healing, investment must be made to clear landmines and cluster bombs as they threaten the safety of children in their recreational activities.⁶⁹

The issue of child labour is the object of the Committee on the Rights of the Child's General Comment 16 (2013) on 'State Obligations regarding the Impact of the Business Sector on Children's Rights'.⁷⁰ The Committee recalls that business enterprises that provide education for children, such as private schools, must also consider the best

⁶² See para 27.

⁶³ See para 58 (g).

⁶⁴ See para 58 (h).

⁶⁵ See para 30.

⁶⁶ See paras 48-52.

⁶⁷ See para 53.

⁶⁸ See para 53.

⁶⁹ See para 57 (e). See also, in general, para 35.

⁷⁰ The Committee on the Rights of the Child General Comment 16 (2013) on State obligations regarding the impact of the business sector on children's rights of 17 April 2013 is available at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.16.doc>

interests of the child.⁷¹ While business enterprises may play an important role in the provision of education, the Committee mentions that States are not exempted from their obligation to provide for the right of children to education when this task is outsourced to a private body.⁷² Therefore, States must set standards that are to be followed by business enterprises delivering educational services. They must also invest in education and vocational training so that children can transition to the 'world of work'.⁷³ This is consistent with the analysis regarding non-State actors present in the Handbook, where it is explained that States are responsible for the acts of non-State actors if those actors are exercising a public duty.⁷⁴

In addition to the work done on the topic by the Committee on the Rights of the Child, a set of Children's Rights and Business Principles were also developed.⁷⁵ These Principles do not protect the right to education *per se*.⁷⁶ In fact, Principle 3 (c) refers to education and vocational training in the context of the promotion of "decent work opportunities for young workers". However, they also state that businesses must promote education to address the root causes of child labour and consider a child's best interests, including his or her education.⁷⁷ They also mention the need to provide education for the children of parents and caregivers in the workforce,⁷⁸ as well as the need to respect children's right to education when they are being resettled because a business is using their land for its operations.⁷⁹ With regard to situations of insecurity and armed conflict in particular, the principles recognise the role of business enterprises in supporting the rights of children affected by emergencies by raising awareness among communities of the risks of abuse and exploitation of children in such contexts.⁸⁰ It also calls for business enterprises to support "authorities and humanitarian agencies in emergency response" and "make a positive contribution to sustainable peace and development".⁸¹ Finally, business enterprises should support government efforts in (and even contribute to) protecting and fulfilling children's rights and that includes their right to education.⁸²

Finally, with regard to the protection of children, the Human Rights Committee issued a draft General Comment on Article 9 (Liberty and Security of the Person) which is also

⁷¹As enshrined in Article 3 para 1 CRC; see above and para 16.

⁷² See para 33.

⁷³ See para 57.

⁷⁴ See the Handbook at 26-27.

⁷⁵ See the 'Children's Rights and Business Principles' (2012) developed by UNICEF, the Global Compact and Save the Children, available at:

http://www.unicef.org/csr/css/PRINCIPLES_23_02_12_FINAL_FOR_PRINTER.pdf.

⁷⁶ See the paper given by Robert McCorquodale on 'Business, Human Rights and Education', at 'Redressing Violations of International Law: The Role of Non-State Actors in Relation to Education', Seminar of 22 May 2013, of which a Report is available at:

http://www.biicl.org/files/6523_redressing_violations_of_international_law_-_event_report_2013_-_final_with_logos.pdf.

⁷⁷ See Principle 2(c).

⁷⁸ See Principle 3(d).

⁷⁹ See Principle 7(b).

⁸⁰ See Principle 9(b)(i).

⁸¹ See Principle 9(b)(ii) and (iii).

⁸² See Principle 10(b) and (c).

relevant.⁸³ It states that the right to take proceedings for the release from unlawful or arbitrary detention applies also to children detained for educational purposes.⁸⁴ It notes that, while there must be a judicial remedy for unlawful detention, a court, such as a family court, may also be given the power to release a child from such detention, on the basis that it is not in the child's best interests.⁸⁵ Given the heightened risks of unlawful or arbitrary detention in insecurity and armed conflict, it is important that the rights of the child in such situations are taken into account.⁸⁶

Women

The prohibition of sexual violence committed during armed conflict (in particular against women and girls) has led to the adoption of several non-binding instruments over the past year. In addition to UN Security Council Resolution 2106 (2013) on sexual violence in armed conflict mentioned above, the Security Council also adopted Resolution 2122 (2013),⁸⁷ which specifically addresses women. This resolution reaffirms that "women's and girls' empowerment ... [is] critical to efforts to maintain international peace and security". Thus education of women and girls is one of the factors that may contribute to minimise the risks of situations of insecurity and armed conflict occurring. Resolution 2122 also notes the importance of educating armed forces and police personnel on preventing sexual and gender-based violence.⁸⁸

The Committee on the Elimination of Discrimination Against Women ('CEDAW Committee') issued a General Recommendation on 'Women in Conflict Prevention, Conflict and Post-Conflict Situations'.⁸⁹ In this General Recommendation, the Committee places education at the centre of its analysis and highlights the post-conflict breakdown of State services, such as education infrastructure, and educational facilities, and considers its effects on women and girls:

In conflict-affected areas, schools are closed owing to insecurity, occupied by State and non-State armed groups or destroyed, all of which impede girls' access to school. Other factors preventing girls' access to education include targeted attacks and threats to them and their teachers by non-State actors, as well as the additional caregiving and household responsibilities which they are obliged to take on.⁹⁰

⁸³ Human Rights Committee, Draft General Comment No 35, Article 9: Liberty and security of person (2013), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f107%2fR.3&Lang=en.

⁸⁴ Such as for the supervision of education, see para V (42).

⁸⁵ See para V (45).

⁸⁶ See also the Handbook at 117 *et seq* on the human right to liberty and security of the person, as well 160 *et seq* on the internment of civilians in armed conflict.

⁸⁷ UN Security Council Resolution 2122 on women and peace and security, S/RES/2122 (2013), is available at: http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2122.pdf

⁸⁸ At para 9.

⁸⁹ CEDAW General Recommendation No 30 on women in conflict prevention conflict and post-conflict situations is available at: http://direitoamoradia.org/wp-content/uploads/2013/11/CEDAW.C.CG_30.pdf.

⁹⁰ See para 48.

As a result, the CEDAW Committee recommends that State parties:

Develop programmes for conflict-affected girls who leave school prematurely so that they can be reintegrated into schools/universities as soon as possible; engage in the prompt repair and reconstruction of school infrastructure; take measures to prevent the occurrence of attacks and threats against girls and their teachers; and ensure that perpetrators of such acts of violence are promptly investigated, prosecuted and punished.⁹¹

In doing so, States must also coordinate the efforts of all stakeholders, including those concerned with education, to ensure that they are not duplicated and that they reach all segments of an affected population – even those living in remote areas.⁹²

In this General Recommendation, the CEDAW Committee acknowledges those who have been displaced as a result of situations of insecurity and armed conflict, including refugees and asylum-seekers. It underlines the risks faced by these women and girls of suffering from violence, including sexual violence, as well the fact that they may be recruited into armed forces or rebel groups. It also recognises that those living in conflict and post-conflict environments generally have unequal access to education, which then impacts negatively on their livelihood.⁹³ Finally, the CEDAW Committee recommends that State parties take preventive measures to protect against forced displacement and protect the human rights of those displaced. This must include that education and skill training activities are available.⁹⁴

Earlier in 2013, the CEDAW Committee issued a General Recommendation on the 'Economic Consequences of Marriage, Family Relations and their Dissolution', stating that economic advantages and disadvantages should be born equally by the partners upon separation.⁹⁵ It highlights the difficulties of women to find post-separation employment due to interrupted education.⁹⁶ This type of problem is even more prominent in post-conflict settings where employment opportunities are often scarce.

⁹¹ See para 52 (a).

⁹² See para 52 (e).

⁹³ See para 54.

⁹⁴ See para 57(d).

⁹⁵ CEDAW General Recommendation No 29 on article 16 of the Convention on the Elimination of All forms of Discrimination against Women of 26 February 2013 is available at:

http://www2.ohchr.org/english/bodies/cedaw/docs/comments/CEDAW-C-52-WP-1_en.pdf.

⁹⁶ See para 44.

Enforced Disappearances

In situations of insecurity and armed conflict, students and education staff may be abducted and murdered by the State itself or by a non-State actor. These forced (or 'enforced') disappearances also amount to violations of the right to education. This was recognised by the Working Group on Enforced or Involuntary Disappearances ('WGEID') in its General Comment on 'Women Affected by Enforced Disappearances'.⁹⁷ The WGEID acknowledges that during times of conflict, many women are targeted and forcibly disappeared, and may then suffer additional violence, including sexual violence.⁹⁸ It recognises that education is essential to ensure that women have access to legal mechanisms and public institutions when they are victims of enforced disappearance.⁹⁹ Education is a means for victims to be aware of their rights and, as a result, to seek remedies. It also highlights that education is a means of raising awareness and training law enforcement officials on issues related to enforced disappearances.¹⁰⁰

The WGEID issued a similar comment in relation to children, again highlighting the risks of education-related violations for those children whose parents have disappeared or, of course, for children who are direct victims of enforced disappearances.¹⁰¹ The legal uncertainty of disappeared parents may not only affect a child's right to identity, it may also create an obstacle to his or her enjoyment of the right to education. The WGEID recommends using education as a means to prevent children from becoming victims of enforced disappearance.¹⁰² With regard to reparations programmes, it states that rehabilitation measures should include access to education for child victims of enforced disappearances.¹⁰³ It also mentions that providing satisfaction to the victims, such as with the disclosure of the truth with regard to what happened, can be achieved through education (e.g. human rights education in the school curriculum, memorials, etc.).

Persons with Disabilities

In 2013, the Committee on the Rights of Persons with Disabilities ('CRPD') referred widely to education when considering the reports submitted by its State parties. Its approach supports the Handbook, which highlights the importance of both non-discrimination and special protection for persons with disabilities in situations of insecurity and armed conflict.¹⁰⁴ For example, the Committee recommends that each State party include explicit prohibition of disability-based discrimination in laws governing education and also

⁹⁷ See para 12 of the HRC WGEID General comment on women affected by enforced disappearances (A/HRC/WGEID/98/2) of 14 February 2013, which is available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/112/57/PDF/G1311257.pdf?OpenElement>.

⁹⁸ At paras 7-8.

⁹⁹ At para 34.

¹⁰⁰ At para 45.

¹⁰¹ See paras 7 and 33 of the HRC WGEID General comment on children and enforced disappearances (A/HRC/WGEID/98/1) of 14 February 2013, which is available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/112/64/PDF/G1311264.pdf?OpenElement>.

¹⁰² At para 11.

¹⁰³ At para 33.

¹⁰⁴ See the Handbook at 124 *et seq* and 136.

provide specific training on disabilities for education staff.¹⁰⁵ The CRPD reiterates the importance of inclusive education for children with disabilities, including through adequate structures to accommodate students with disabilities.¹⁰⁶ The accessibility of schools for students with disabilities is also stressed in the draft General Comment on Accessibility prepared by the CRPD.¹⁰⁷ The CRPD has highlighted the plight of those living with disabilities in situations of armed conflict:

Living in the midst of conflict is physically and emotionally distressing, but all the more so for persons with disabilities who face the same if not greater barriers in times of armed conflict.¹⁰⁸

This is also particularly relevant for post-conflict situations as students, as well as education staff, often suffer from disabilities as a result of those conflicts.

In the draft General Comment on Accessibility, the CRPD insists that it is not just the infrastructures but also the content of education itself which must be accessible for students with disabilities.¹⁰⁹

Migrants and Displaced Persons

With regard to the rights of children in the context of migration, the Committee on the Rights of the Child released a report resulting from their 'Day of Discussion', highlighting the challenges faced by refugee children in accessing education.¹¹⁰ It emphasises the "need for additional children's rights compliant safeguards and measures in migration situations occurring as a result of conflict" and stresses that even in such situations States must adhere to international children's rights and human rights standards and ensure the provision of education services.¹¹¹

Internationally Displaced Persons and the Kampala Convention

Since the publication of the Handbook, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, also known as the Kampala Convention, has come into force.¹¹² This is the first multilateral treaty protecting internally

¹⁰⁵ See for example paras 13, 18, 27 and 32(c) of Annex II of the Report of the Committee on the Rights of Persons with Disabilities (A/68/55) 2013, which is available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=27

¹⁰⁶ At paras 30, 31 and 32(b).

¹⁰⁷ CRPD Draft General Comment on Article 9 of the Convention – Accessibility, available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGCArticles12And9.aspx>.

¹⁰⁸ See the communication from the CRPD on 'Persons with disabilities "forgotten victims" of Syria's conflict', 17 September 2013, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13736&LangID=E>.

¹⁰⁹ At para 35.

¹¹⁰ Committee on the Rights of the Child, Rights of all Children in the Context of Migration, 28 September 2012, available at: <http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/ReportDGDChildrenAndMigration2012.pdf>.

¹¹¹ At para 55.

¹¹² See the Handbook at 4.1.5. at 139. The Kampala Convention, which was adopted in 2009 but entered into force in 2012, is available at:

displaced persons ('IDPs'). It is an important treaty for a region which hosts 40% of the worldwide internally displaced population.¹¹³ It calls for measures to combat the root causes of displacement, including armed conflicts and situations of insecurity, such as generalised violence, and address their consequences.¹¹⁴ The obligations of State parties under the Kampala Convention are to "respect and ensure respect and protection of the human rights of internally displaced persons".¹¹⁵ More specifically, State parties must "provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include...education...".¹¹⁶ This Convention reiterates the primary responsibility of national authorities in providing assistance to IDPs.

The Convention reminds State parties of the obligation to respect international humanitarian law ('IHL') with regard to internally displaced persons, including their civilian character.¹¹⁷ With regard to armed conflict, it contains a specific provision (Article 7) which states that members of armed groups are prohibited not only from "hampering the provision of protection and assistance to internally displaced persons" but also from "recruiting children or requiring or permitting them to take part in hostilities".¹¹⁸

The Kampala Convention recognises the role of non-State actors, including armed groups, with regard to the prevention of displacement and assistance to the displaced.¹¹⁹ Its provisions go beyond the obligations imposed by IHL, which are aimed at prohibiting forcible transfers. This Convention highlights the role of non-state armed groups in the *prevention* of all forms of displacement. It also provides for the obligation of State parties to "ensure the accountability of non-State actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts".¹²⁰ This provision may close an existing impunity gap with regards to the human rights violations committed by non-State actors which cannot be attributed to States.

This Convention also considers remedies for those affected by internal displacement, including compensation but also "other forms of reparations, where appropriate".¹²¹

[http://www.internaldisplacement.org/8025708F004BE3B1/%28httpInfoFiles%29/0541BB5F1E5A133BC12576B900547976/\\$file/Convention%28En%29.pdf](http://www.internaldisplacement.org/8025708F004BE3B1/%28httpInfoFiles%29/0541BB5F1E5A133BC12576B900547976/$file/Convention%28En%29.pdf).

At present, the Kampala Convention has been signed by 37 States, among which 17 have also ratified it and are therefore bound by its provisions. For the list of signatories see the website of the internal displacement monitoring centre at:

<http://www.internal-displacement.org/kampala-convention>.

¹¹³ See the website of the internal displacement monitoring centre at:

<http://www.internal-displacement.org/kampala-convention>.

¹¹⁴ Art 2(c).

¹¹⁵ Art 3(1) (d). See also Art 9 which prohibits discrimination of internally displaced persons (among other acts).

¹¹⁶ Art 9(2)(b).

¹¹⁷ Art 3(1)(e) and (f).

¹¹⁸ See Art 7 in general and Art 7(5)(b) and (e) in particular. Note that Art 9(1)(d) provides that State parties must also refrain and prevent the 'recruitment of children and their use in hostilities'.

¹¹⁹ Art 2(d).

¹²⁰ Art 3(h) and (i) underlining the role of exploration and exploitation of natural resources leading to displacement. In fact, the control of natural resources may even be a source of conflict.

¹²¹ Art 12(2).

Other forms of reparations may include rehabilitation programmes for those who missed their education as a result of the displacement.¹²²

3. PROTECTION OF EDUCATIONAL FACILITIES

Chapter 5 of the Handbook addresses the international legal protection of educational facilities under IHRL, IHL, and ICL. It recognises that the destruction of and disruption to educational facilities significantly hinders the realisation of the right to education in areas of insecurity and armed conflict.

During armed conflict, civilian educational facilities (civilian objects) benefit from protection from direct and deliberate attack under IHRL and also under IHL, by virtue of the principle of distinction. The Handbook also outlines that ICL contains specific provisions protecting educational facilities.¹²³ As already mentioned, the CEDAW Committee addressed the issue of school closures, which is frequent during situations of insecurity and armed conflict, in its General Recommendation on Women in Conflict Prevention, Conflict and Post-Conflict Situations.

Another issue of increasing concern identified by the Handbook is the military use of educational facilities during armed conflict. The Handbook outlines the relevant rules of IHL that apply to civilian educational facilities and the consequences under IHL of such use.¹²⁴ Military use of civilian educational facilities is not always unlawful under IHL, although it may result in an educational facility becoming a lawful military target (a 'military object'). Educational facilities do not benefit from special protection under IHL, in contrast to cultural property or medical facilities. IHL makes it unlawful for those latter facilities to be used in a way that makes them a 'military object' (such as, for example, using them to store munitions or house troops).

In late 2012, the Global Coalition to Protect Education from Attack ('GCPEA') published 'Lessons in War', a report which looks at the military use of schools and other education institutions during conflict around the world, explaining how educational facilities are used by armed forces and armed groups and presents the initiatives taken to address this issue.¹²⁵ The same year, Human Rights Watch published a report on the military use of educational facilities in Yemen.¹²⁶ It is one of the publications which recognises that the issue of military use of civilian educational facilities is still a serious problem in situations of insecurity and armed conflict and that international cooperation is needed to address it.

¹²² For more on reparations for education-related violations, see F Capone, K Hausler, D Fairgrieve and C McCarthy, *Education and the Law of Reparations in Insecurity and Armed Conflict* (BIICL/PEIC, London/Doha, 2013), which is available at:

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

¹²³ See the Handbook at 5.3.

¹²⁴ See the Handbook at 5.2.6 and 5.2.7.

¹²⁵ It is available at:

http://www.protectingeducation.org/sites/default/files/documents/lessons_in_war.pdf

¹²⁶ Human Rights Watch, *Classrooms in the Crosshairs* (11 September 2012) available at: <http://www.hrw.org/reports/2012/09/11/classrooms-crosshairs>.

The Handbook identifies that there can be a conflict between the right to education under IHRL and the rules of IHL in relation to the military use of educational facilities in armed conflict. Since the publication of the Handbook, the GCPEA has worked in partnership with experts in this field and has developed the draft Lucens Guidelines for Protecting Schools and Universities From Military Use in Armed Conflict.¹²⁷

These Guidelines are not legally binding – nor will they be when they are finalised. They are intended to be a guide to responsible practice for both State and non-State parties to international and non-international armed conflicts and parties to a conflict are encouraged to implement the Guidelines in their military manuals and training.¹²⁸ They can be applied in both situations of insecurity and armed conflict.

Key features of the Guidelines are:

- They are intended to complement current international law and not to alter it. They apply to a broad range of educational facilities (whether or not such a facility is recognized formally as a school or university), consistent with the definition of the term in Chapter 1 of the Handbook.¹²⁹
- They discourage any use of an educational facility in a way that supports the military effort or in a way that makes an educational facility a lawful military target.¹³⁰ This is broader than the protection of civilian educational facilities under IHL and is similar to the type of protection IHL affords cultural objects.
- Similar to the IHL protection of cultural objects, the Guidelines encourage parties to issue warnings before attacking an educational facility that has been used for a military purpose.¹³¹

These Guidelines are a helpful means of clarifying the existing international legal obligations of parties during armed conflict and clearly attempt to encourage parties to protect educational faculties, and the right to education, in a manner beyond that required by the current rules of IHL.

¹²⁷ The Draft Guidelines are available at: <http://www.protectingeducation.org/draft-lucens-guidelines-protecting-schools-and-universities-military-use-during-armed-conflict>.

¹²⁸ See Guideline 6.

¹²⁹ See the Guidelines 'Definitions' at 4.

¹³⁰ See Guidelines 1, 2 and 5.

¹³¹ See Guideline 4.

4. REMEDIES AND CASELAW

Chapter 6 of the Handbook outlines the remedies available for education-related violations, as well as the existing mechanisms to seek them. In order to deepen this analysis, BIICL and PEIC published *Education and the Law of Reparations in Insecurity and Armed Conflict* in October 2013.¹³² The main developments regarding the international law mechanisms which have taken place since the publication of the Handbook are presented below, as well as some relevant cases.

INTERNATIONAL LEVEL

International Human Rights Mechanisms

A crucial step towards the enforcement of the right to education as an international human right has been the entry into force of the Optional Protocol to the International Covenant on Economic Social and Cultural Rights, which allows individuals to file complaints (known as ‘communications’) against violations of economic, social and cultural rights, including the right to education.¹³³ According to its Article 2, “[c]ommunications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State party”. The principle of the exhaustion of domestic remedies applies, unless “where the application of such remedies is unreasonably prolonged.”¹³⁴ Inter-State communications are also possible under this Protocol.¹³⁵ The Committee on Economic, Social and Cultural Rights, the body which would examine those communications, may also initiate its own inquiries if it is reliably informed of grave or systemic violations of rights enshrined in its Covenant.¹³⁶

Another important step is the entry into force of the Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, following the tenth ratification in January 2014. This Optional Protocol will now enter into force in April 2014, providing for an international complaints procedure for the violations of children’s rights, including their right to education.¹³⁷

¹³² This Report, is available at:

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

¹³³ The Optional Protocol to the ICESCR (A/RES/63/117) was adopted on 10 December 2008 and entered into force in May 2013, following ten ratifications. It is available at:

http://www2.ohchr.org/english/law/docs/A.RES.63.117_en.pdf.

In relation to the Optional Protocol, the Committee on Economic, Social and Cultural Rights adopted provisional rules of procedure. These provisional rules of procedure were adopted at the Committee’s forty-ninth session (12-30 November 2012). They are available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f49%2f3&Lang=en.

¹³⁴ Art 3.

¹³⁵ Art 10.

¹³⁶ For this to be possible, the relevant State party must have expressly declared to be bound by this procedure.

¹³⁷ See the news release from the CRC at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14166&LangID=E>

The UN Special Rapporteur on the Right to Education published a report on Justiciability and the Right to Education, analysing the enforcement of the right to education at the international, regional and national level in addition to the jurisprudence at these levels.¹³⁸ This report highlights relevant jurisprudence at the international, regional and national levels (including both judicial and quasi-judicial mechanisms). It also contains recommendations to make the justiciability of the right to education (and its enforcement) more effective, including through legislation, institutional strengthening, training, etc.¹³⁹

The Report reiterates that the ‘basic tenets’ of the right to education (free and compulsory primary education for all, progressive realisation of secondary and tertiary education and the immediate non-discrimination in their application) are universally recognised,¹⁴⁰ and therefore part of customary international law. Importantly, it also underlines that the right to education means a right to *quality* education.¹⁴¹

International Criminal Law Mechanisms

In the Handbook, the International Criminal Court (‘ICC’) mechanism is outlined.¹⁴² As this Court was only effectively established in 2002, it is still developing its procedures. Two issues have been the objects of developments since the publication of the Handbook: reparations and the participation of victims in the process.

The Handbook noted the conviction by Trial Chamber I of the International Criminal Court (‘ICC’) of *Thomas Lubanga Dyilo* for conscripting, enlisting and using children to actively participate in armed conflict.¹⁴³ Following this conviction, the first in the history of the ICC, a decision was issued with regard to the procedures and principles of reparations.¹⁴⁴ According to the Rome Statute, the ICC must “establish principles relating to reparation to, or in respect of, victims, including restitution, compensation and rehabilitation”.¹⁴⁵ It may also order that an award for reparations is made through the Trust Fund for Victims.

¹³⁸ Human Rights Council, Report of the Special Rapporteur on the right to education, Kishore Singh, Justiciability of the right to education (10 May 2013), available at:

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.35_en.pdf.

The Special Rapporteur also notes the publication of the Handbook in this report.

¹³⁹ See XII Conclusions and Recommendations.

¹⁴⁰ See para 13.

¹⁴¹ See paras 55 *et seq.*

¹⁴² See the Handbook at 250.

¹⁴³ See Handbook at 4.3.4. at 176. Note that the Handbook noted the conviction of Charles Taylor for the same crime (among others). This verdict was upheld by the Appeals Chamber of the Special Court for Sierra Leone on 26 September 2013.

¹⁴⁴ This decision of 7 August 2012 is available at:

<http://www.icc-cpi.int/iccdocs/doc/doc1447971.pdf>.

On 12 September 2012, BIICL hosted a seminar on this decision. A report of this seminar can be found here:

http://www.biicl.org/files/6103_icc_7_august_2012_decision_-_rapid_response_seminar_report.pdf

¹⁴⁵ Art 75 (1) ICC Statute.

In this important decision, the ICC specifically recognised educational harm as it stated that

The victims, in addition to suffering from violations of their fundamental rights, were also denied basic needs. The denial of their rights and needs can have enduring and sometimes lifelong repercussions, for example when children have lost access to education.¹⁴⁶

The ICC made explicit the importance of education as a means to redress the harm suffered by the victims of the crimes in question, including when there is a collective group of victims.¹⁴⁷

The Assembly of State Parties adopted a Resolution on the participation of victims on 27 November 2013, reiterating the “victims’ equal rights to present their views and concerns in the proceedings where their personal interests are affected, under article 68 of the Rome Statute”.¹⁴⁸ It also emphasized the importance of effective outreach to victims, which is discussed in more detail in *Education and the Law of Reparations in Insecurity and Armed Conflict*.¹⁴⁹ Recognising the issues the ICC has encountered so far in processing applications from victims, the Assembly of State Parties called for a review of the application system for victims to participate in the proceedings, in order to make this system more efficient and more effective.¹⁵⁰ It noted the importance of recruiting court officers who have the expertise to take into account the victim’s cultural background, as well as their specific needs.¹⁵¹ It also reiterated its call to State Parties to adopt and implement victim-related provisions in accordance with the relevant international guiding principles.¹⁵² State Parties should also raise awareness about victims’ rights in the concerned communities and assist the victims in their reintegration process.¹⁵³

As the liability for reparations is based on the individual criminal responsibility of a convicted person, measures must be taken in order to trace, freeze or seize the assets of that person so that they can be used for reparations.¹⁵⁴ Given the limits of the individual liability for reparations, and the fact that States cannot be required to fund reparations in relation to the criminal sentencing of an individual,¹⁵⁵ it also recalls the important role of the Trust Fund for Victims; and, thus, calls for increased voluntary donations from States,

¹⁴⁶ See *Lubanga*, ‘Submission on the Principles to be Applied and the Procedure to be Followed by the Chamber with regard to Reparations’, 10 May 2012, para 2.

¹⁴⁷ See para 221 of the *Decision Establishing the Principles and Procedures to be Applied to Reparations*.

¹⁴⁸ Resolution ICC-ASP/12/Res.5 on Victims and affected communities, reparations and Trust Fund for Victims, adopted on 27 November 2013, is available at:

http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP12/ICC-ASP-12-Res5-ENG.pdf

The comments on a draft resolution on victims and reparation which were submitted on 4 September 2013 by the Victims’ Rights Working Group (VRWG) are available at:

<http://www.vrwg.org/downloads/130904vrwgcommentsondraftresolutionhighlight.pdf>.

¹⁴⁹ See Section 4.2.1.1 of the Report.

¹⁵⁰ Resolution ICC-ASP/12/Res.5, at para 3.

¹⁵¹ At para 5.

¹⁵² At para 7.

¹⁵³ At para 8.

¹⁵⁴ At para 10.

¹⁵⁵ At para 9.

international and inter-governmental organisations, individuals, and corporations amongst others.¹⁵⁶

REGIONAL LEVEL

While it is impossible to cite all of the cases relevant to education-related violations at the regional level, below is a selection of some of the most relevant regional cases which have been decided since the publication of the Handbook.

European Court of Human Rights

In *Catan and others v Moldova and Russia*,¹⁵⁷ the European Court of Human Rights ('ECtHR') found that Russia violated the right to education of ethnic Moldovans living in Transdnistria. It awarded compensation for the violation of this right. The applicants (children, parents and teachers) brought the claim as a result of the adoption of a law by the separatist administration in Transdnistria banning and criminalising the use of Latin script in schools. The case was brought against Moldova, where the territory is situated, and Russia, as Russian support is essential to the establishment and maintenance of the separatist administration in the region.

In *Eğitimve Bilim Emekçileri Sendikası v Turkey*,¹⁵⁸ the ECtHR considered a claim involving the dissolution of a trade union of education-sector employees on the ground that its statute prohibits teaching in a mother tongue other than Turkish. The union removed this provision to avoid being dissolved. The Court held that there was a violation of Article 11 (freedom of assembly and association).

In *Sampani and Others v Greece*,¹⁵⁹ the ECtHR considered for the first time the application of Article 46 (binding force and execution of judgments) in relation to a violation of the right to education. After finding that Roma children had been discriminated against, the ECtHR held that Greece should take action to provide them with schooling.

¹⁵⁶ At para 14.

¹⁵⁷ *Case of Catan and Others v Moldova and Russia* (Applications nos 43370/04, 8252/05 and 18454/06) ECtHR Grand Chamber Judgment (Merits and Just Satisfaction) 19 October 2012, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114082>

¹⁵⁸ *Eğitimve Bilim Emekçileri Sendikası v Turkey*, ECtHR (Second Section) Chamber Judgment (Merits and Just Satisfaction) 25 Sep 2012, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113410>

¹⁵⁹ *Sampani and Others v Greece*, ECtHR (First Section) Judgment (Merits and Just Satisfaction) 11 December 2012, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115493>

Court of Justice of the European Union

In its Preliminary Ruling in *Laurence Prinz v Region Hannover Philipp Seeberger v Studentenwerk Heidelberg*,¹⁶⁰ the Court of Justice of the European Union ('CJEU') considered a situation where Germany had imposed a condition that only students who had lived in Germany for at least three years prior to commencing their studies were entitled to obtain a grant for their studies in another Member State. The Court held that this condition was unnecessary to achieve the objective pursued as it excluded students sufficiently connected to German society through social and economic ties. The legislation was therefore found to be incompatible.

In its Preliminary Ruling in *Elodie Giersch and Others v Luxembourg*,¹⁶¹ the CJEU found that legislation that excluded the children of frontier workers in Luxembourg from entitlement to financial aid for higher education was contrary to the principle of free movement for workers.

In *Commission v Austria*, the European Court of Justice held that granting reduced fares on public transport only to students whose parents receive Austrian family allowances breaches the State's obligation to treat all EU citizens equally.¹⁶²

European Committee of Social Rights

In *International Federation for Human Rights v Belgium*,¹⁶³ the European Committee of Social Rights found that Belgium does not provide enough support for those with disabilities. This includes the shortages in the Personal Assistance Budget which helps people finance everyday living and education support.

¹⁶⁰ *Laurence Prinz v Region Hannover Philipp Seeberger v Studentenwerk Heidelberg*, CJEU Judgment of the Court (Third Chamber) 18 July 2013, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0523:EN:NOT>

¹⁶¹ *Elodie Giersch and Others v Luxembourg*, CJEU Judgment of the Court (Fifth Chamber) 20 June 2013, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62012CJ0020:EN:NOT>

¹⁶² *European Commission v Republic of Austria*, C-75-11, Judgment of the Court (Second Chamber) of 4 October 2012, available at:

<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-75/11>

¹⁶³ *International Federation for Human Rights v Belgium*, European Committee for Social Rights, Decision on the Merits, 18 March 2013, available at:

http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC75Merits_en.pdf

Concluding Remarks

Since the publication of the Handbook, attacks against education and resulting education-related violations have continued to occur throughout the world. As mentioned in the Handbook, international law contains provisions that protect education in times of insecurity and armed conflict, whether through the rights enshrined in international human rights law, the rules provided for in international humanitarian law, or the provisions established in international criminal law. Although the protection of education under international law is relatively strong though it has areas requiring clarification, the continuous attacks on education highlight to need for the *implementation* of international law.

The work of the UN monitoring mechanisms constitutes one step towards better implementation of the human rights protecting education, both directly and indirectly.¹⁶⁴ For example, by issuing General Comments or Recommendations, UN Treaty Bodies assist their State parties in respecting, protecting and fulfilling their obligations by clarifying what those obligations entail. These General Comments and Recommendations have highlighted the importance of the protection of education in various ways. Like all human rights obligations, this protection must continue in times of insecurity and armed conflict.

An interesting development has been the entry into force of the Kampala Convention, which turns guiding principles on displacement into legal obligations. While this Convention has been signed by a large number of African Union States, many have not yet ratified it. Another noteworthy development is the current effort to limit the military use of schools. Draft guidelines on the issue seek to discourage any use of an educational facility in a way that supports the military effort or in a way that makes an educational facility a lawful military target.

With regard to remedies, the major development in international law has been the decision on reparations of the ICC in the *Lubanga* case – the first of its kind. Importantly, the ICC recognised the victims' loss of access to education, as well as the role of education in repairing the harm caused. In clarifying how international law, including international criminal law, protects against education-related violations, the Handbook can assist the victims and their representatives in bringing a claim. If victims of education-related violations are aware of their rights, they are more likely to bring a claim to seek reparations where a mechanism is available. Despite the progress made, there is still a great deal of work to be carried out in order to achieve this and raise awareness.

¹⁶⁴ For more on this topic, see 'United Nations Human Rights Mechanisms and the Right to Education in Insecurity and Armed Conflict', authored by T Karimova, G Giacca and S Casey-Maslen (Geneva Academy/PEIC, 2013), which is available at:
<http://www.educationandconflict.org>
<http://www.geneva-academy.ch/policy-studies/ongoing/protection-of-education-in-armed-conflict-and-insecurity>

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