

# ENTITLED TO EDUCATION

**Using International Human Rights Law  
to advocate for the right to education  
in the occupied Palestinian territory**

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# ACRONYMS

<b>4As</b>	Framework of Availability, Accessibility, Acceptability and Adaptability
<b>CAT</b>	Convention Against Torture
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CRC</b>	Convention on the Rights of the Child
<b>CteeRC</b>	Committee on the Rights of the Child
<b>ECCD</b>	Early Childhood Care and Development
<b>ECOSOC</b>	Economic and Social Council (United Nations)
<b>EFA</b>	Education for All
<b>EJ</b>	East Jerusalem
<b>GC13</b>	General Comment 13 of the CESCR on 'The Right to Education'
<b>HRC</b>	Human Rights Council (United Nations)
<b>IASC</b>	Inter-Agency Standing Committee (United Nations)
<b>ICC</b>	International Criminal Court
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICECSR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>ICJ</b>	International Court of Justice
<b>ICMV</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
<b>ICRC</b>	International Committee of the Red Cross and Red Crescent
<b>ICRPD</b>	International Convention on the Rights of Persons with Disabilities
<b>IDF</b>	Israeli Defence Forces
<b>IDP</b>	Internally displaced people
<b>IHL</b>	International Humanitarian Law
<b>IHRL</b>	International Human Rights Law
<b>INEE</b>	Inter-agency Network for Education in Emergencies
<b>INGO</b>	International Non-Governmental Organisations
<b>MDGs</b>	Millennium Development Goals
<b>MoE</b>	Ministry of Education (Israel)
<b>MoEHE</b>	Palestinian Ministry of Education and Higher Education, in Gaza and in Ramallah

<b>MoF</b>	Ministry of Finance
<b>MoT</b>	Ministry of Transport
<b>MRM</b>	Monitoring and Reporting Mechanism for children affected by armed conflict
<b>NGO</b>	Non-Governmental Organisations
<b>NHRI</b>	National Human Rights Institutions
<b>NRC</b>	Norwegian Refugee Council
<b>OCHA</b>	Office for Coordination of Humanitarian Affairs (United Nations)
<b>OHCHR</b>	Office for the High Commissioner for Human Rights (United Nations)
<b>oPt</b>	Occupied Palestinian Territory (comprises the West Bank, East Jerusalem, and the Gaza Strip)
<b>PA</b>	Palestinian Authority
<b>PANEL</b>	model: participation, accountability, non-discrimination, empowerment and legality
<b>PLO</b>	Palestinian Liberation Organisation
<b>RBA</b>	Rights Based Approach
<b>SAG</b>	Education Sector Area Group
<b>SC</b>	Security Council (United Nations)
<b>SRSO</b>	Office of the Special Representative of the Secretary-General
<b>TB</b>	Treaty Bodies (United Nations)
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNCT</b>	United Nations Country Team
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organisation
<b>UNGA</b>	United Nations General Assembly
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children's Fund
<b>UNRWA</b>	United Nations Relief and Works Agency for Palestine Refugees in the Near East
<b>UNSCO</b>	United Nations Special Coordinator Office for the Middle East Peace Process
<b>UNSG</b>	United Nations Secretary General
<b>UPR</b>	Universal Periodic Review

# INTRODUCTION

The vast majority of children in the occupied Palestinian territory (oPt) go to school every day, enjoying their basic right to learn, grow and be safe, thanks to the efforts of especially the Palestinian Ministry of Education and Higher Education, as well as of parents and communities, civil society and the international community, not least the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). However, in spite of the impressive indicators regarding education enrolment and attendance in the oPt, access to quality education remains significantly compromised. The educational process has been obstructed and interrupted, and the dignity and safety of students and teaching staff violated in the process. The primary responsibility for this lies with the conflicting parties that continue and prolong a situation of protracted conflict and humanitarian crisis. Chief amongst these duty-bearers is Israel, the occupying power in all areas of the oPt: the West Bank (be that areas A, B or C, as well as East Jerusalem) and Gaza. Palestinian political and armed groups also bear responsibilities. These violations do not appear as isolated incidents or the unintended consequences of policies and budgetary constraints. Rather, they are the result of systematic targeting and legal discrimination at the levels of the legislature, government, judiciary and the military.

This report does not in itself attempt to document and analyse these violations and systematically document discrimination. Rather, it offers a methodology for how to monitor, analyse and report on the situation. It does so by offering both concepts and tools to allow us to understand, identify and access the relevant legal frameworks and mechanisms that may serve to address violations and bring about change.

In the case of the oPt, the applicable legal frameworks are international human rights law and international humanitarian law. The first consists of international human rights law, which applies at all times and where the State, as a sovereign entity, is the prime duty-bearer vis-à-vis any person within its jurisdiction. The second category consists of international humanitarian law and related areas, and is a *lex specialis*, applicable in armed conflict, and applicable to multiple duty-bearers. While International humanitarian law (IHL) is very important, and is widely

cited in the case of the oPt, the perhaps less well known, yet far more wide-ranging human rights law and associated mechanisms will be the focus of this report.

By focusing on IHRL, the reports seeks to offer an opportunity to think more broadly and more long-term. IHRL is at all times part of the applicable law, and it recognises that the impact of violations of the right to education is equally political and civil as well as economic and social. As such, the oPt is facing as many challenges linked to development as to humanitarian issues. With this shift in emphasis also come two additional benefits. Firstly, a crucial recognition that, despite the particular context, Palestinians are rights holders like anyone else - and indeed many of the violations of the right to education experienced in the oPt are faced elsewhere and are of global concern, and we can learn from roads taken elsewhere. Secondly, IHRL provides a new and wider lens through which to view some of the pressing humanitarian issues as well as longer term impacts of the occupation on education and the protracted nature of the conflict. This is of value since IHL can tend to focus discussions and response on how to manage the instrumental use of state of emergency laws, which risks facilitating excuses for continued discrimination and war making.

Notably, this report uses the framework of the 4As (availability, accessibility, acceptability and adaptability), as it has been developed by the former UN Special Rapporteur on the Right to Education, Katarina Tomaševski, and the UN Committee on Economic, Social and Cultural Rights (CESCR):

- **Availability:** duty-bearers must ensure free and compulsory good quality education available for all children up to a defined minimum age, with safe schools and appropriate infrastructure and facilities, especially trained teachers.
- **Accessibility:** duty-bearers must eliminate any discrimination on the basis of internationally prohibited grounds: ethnicity, economic status, disability, gender etc; education must be free and physically accessible, protected from attacks.
- **Acceptability:** duty-bearers must ensure that education is acceptable to children, parents and teachers, with relevant content and methods, respecting everyone's rights; utmost attention must be paid to the needs of minorities and indigenous peoples.

- **Adaptability:** duty-bearers must ensure that education is adaptable to the child's specific situation and ability; emergencies create enhanced vulnerability to disability and maiming, and the reality of displacement, for month and years.

These four features must be met in times of peace as well as in times of war, armed conflict, and disasters. Paired with the duty to respect, protect and fulfil, they give meaning and content to the right to education as a standard for all times, ensuring that education is of the highest quality.

The 4As approach is the mainstay of the Right to Education Project, the author of this report. It is thus a general methodology, applicable to most situations and in most countries, that has, in this case, been adapted to the oPt. However, it is and will remain an outside view of the situation in the oPt, and it should be understood that it has not been written by experts on the country, the conflict, the particular legal context of the oPt or its education system. On the contrary: it is a privileged, objective and impartial offering of a methodology. The 4As approach is also congruent with other key education sector standards – most notably the Inter-Agency Network for Education in Emergencies (INEE) Minimum Standards and other tools. The INEE Minimum Standards constitute a key resource for education practitioners during emergency response, as well as across the broader spectrum of recovery, preparedness and prevention. Crucially, the standards are derived from human rights, and specifically the right to education.<sup>1</sup> As such, this report makes reference to the INEE Minimum Standards where appropriate, and education actors are encouraged to refer to the Minimum Standards handbook when considering the implications of human rights for programming and activities.<sup>2</sup>

The report builds in part on a series of interviews and workshops, conducted in 2011 in both Ramallah and Gaza City under the auspices of UNESCO. These workshops and other informational meetings allowed the Right to Education Project to engage in substantial capacity building regarding the human rights approach and to set the scene for the

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1 The minimum standards are also the 'authoritative standards framework for the Education Cluster in guiding education in emergency preparedness, response and early recovery' (Education Cluster Coordinator Handbook).

2 See in particular the key actions and guidance notes for each standard which suggest ways to achieve the standards and thus present a rich framework for working towards a better achievement of the right to education.

initial stages of a constructive dialogue. The hope is that this report may contribute to renewed action in three main directions: an understanding of the importance of using IHRL to support the Palestinian education system; an inclusion of IHRL into existing advocacy strategies; and an improvement regarding the way education policies and programmes are made.

This is only possible through an open and constructive dialogue around how IHRL frameworks can be used to support (or challenge) existing frameworks – which are often themselves based on IHRL. Due to the nature of the right to education – a central, empowering and in many ways exemplary right – such a discussion has the potential to inspire related areas of rights discourse, especially with regards to economic and social rights which all too often are neglected during times of humanitarian crisis.

Through the identification of duty-bearers – for which this report seeks to provide a methodology – also comes the possibility of opening a dialogue with and empowering them through capacity building and knowledge transfer to improve their record in respecting, protecting and fulfilling the rights of Palestinians. Probably the easiest outreach that can be conducted in this regard is to the Palestinian Authority (PA) and, in particular, its Ministry of Education and Higher Education (MoEHE) which has already expressed significant interest in engaging in a human rights approach. However, ultimately the ambition should be to influence and change the behaviour of the occupying power, through policies that may include dialogue and advocacy, naming and shaming tactics, or even a more confrontational use of litigation. Such advocacy may be done directly towards Israel, as the occupying power, via the use of the International Human Rights System mechanisms (the different Treaty Bodies, the UPR and the UN Special Procedures Mandate holders) or via those international or bilateral actors that hold political or economic sway over Israel.

Applying this methodology the report makes a number of recommendations, which are fully developed in the conclusions and which can be summarized as follows:

## **1** Identifying the added benefit: using IHRL to advocate for the right to education under occupation and towards statehood and greater accountability

- Fully embrace the much broader IHRL framework, rather than limiting advocacy to IHL;
- Better understand which legal mechanisms and fora exist and have potential;
- See the right to education as an entry point to talking about rights in general and with all actors.

## **2** Broadening the scope for advocacy: focus on all elements of education and links to other rights

- Use new tools to bridge the world of education and law (i. e. enrich the INEE MS with a human rights based approach);
- IHRL provides us with a wider focus on all elements of education which can be capitalized on.

## **3** Strengthen capacities to use IHRL with all relevant actors and across all platforms

- Further capacity building of actors to understand and use IHRL and national legal mechanisms for advocacy and protection, with particular attention to:
  - The role of UNESCO and OHCHR and other parts of the international human rights system.
  - The role of the PA and de facto authorities in Gaza, as well as of national academic institutions
  - The role of existing coordination mechanisms





## CHAPTER 1 - LEGAL FRAMEWORKS (I)

# THE LAW AND WHAT EDUCATION SHOULD LOOK LIKE

Legal guarantees for the right to education in the oPt are strong and well defined, at both the international and national level. This chapter highlights some of the most important instruments and sources on the right to education included in international legislation in order to later evaluate which are applicable to the specific case of the oPt and what education should look like if the right was fully implemented.

When speaking of education, it is always difficult to find a comprehensive definition. The first thought that comes to mind is the type of instruction delivered in schools or the teaching of basic learning needs. However, education, in a broader sense, concerns every activity of the human being. It includes learning of skills, intellectual development, non-formal activities, access to different sources of knowledge outside of schools and the transmission of social and cultural values. Education starts at home, with the family as the first source of learning, and then develops freely and thoroughly as the human being grows up, lives, studies, communicates ideas and values, participates in the life of the world around him or her. Therefore education can be considered as, "the entire process

of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge" (UNESCO).<sup>3</sup>

This also applies to the right to education. To enjoy the right to education means, for instance, to be able to receive information and instruction on basic learning tools such as literacy, numeracy and oral expression. It also means to be taught about learning contents such as knowledge, skills, attitudes, values. However, the realization of the right to education also implies other objectives such as: making sure that each individual has the freedom to choose the form and place of education which best suits him or her; guaranteeing that the rights of students, teachers and parents are respected, protected and promoted in and through education; and providing an education that is of good quality and relevant to all learners and to their full development without any discrimination.

These aspects are among the strongest and clearest core elements of education as a human right and have been affirmed internationally for decades now. Some of them have also been incorporated into national legislation, including in Israel and the oPt. Looking at the content of these legal instruments and the obstacles to their realisation is a fundamental step to ensure proper implementation and consequent accountability. When students are limited in their choice of higher education,<sup>4</sup> teachers are restricted in their movement and delayed in their travel to work,<sup>5</sup> or pupils are discriminated in terms of what they can and cannot learn,<sup>6</sup> the law is breached and the right to education is not upheld.

3 UNESCO, Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms, 1974, art. 1(a).

4 See for example, 'students from Gaza: disregarded victims of Israel's siege of the Gaza Strip' Al Mezan Centre for Human Rights, July 2010. Or, IRIN, "UN: Gaza's youth 'denied higher education' by Israeli blockade", the Guardian Development Network, available at <http://www.guardian.co.uk/global-development/2011/mar/21/gaza-higher-education-blockade?INTCMP=SRCH>.

5 See R2E Fact Sheet, Right to Education Campaign, Birzeit University, 30 April 2009, available at <http://right2edu.birzeit.edu/news/article495>.

6 See the example of Palestinian children detained in Israeli prisons only being taught Arabic, Hebrew, English and Maths (DCI-Palestine Section, Palestinian Child Prisoners, European Parliament Sub-Committee on Human Rights Hearing: 15 March 2011, p.13).

## 1.1. Setting the (legal) scene

A myriad of legal instruments exist at different levels on the right to education. Some have universal application, while others are more specific to the context.

For the sake of clarity and ease of reference, we may divide these legal instruments into five broad categories:

- A) International Human Rights Law (IHRL)
- B) International Humanitarian Law (IHL)
- C) International Criminal Law
- D) The law pertaining to refugees
- E) National laws

To know and at all times act in accordance with international law is the responsibility of States, humanitarian actors and others who temporarily take on the role of duty-bearer, or in the specific context of the oPt and in the opinion of the High Commissioner for Human Rights: “non-State actors that exercise government-like functions and control over a territory”<sup>7</sup>, thereby including authorities in both Ramallah and Gaza. Providing adequate and up-to-date human rights training to these key actors in order for them to comply with the international and national requirements of right to education is therefore of utmost importance.

### A) International human rights law

All States that have signed international human rights treaties are subject to International Human Rights Law. Under IHRL, it is the State that has the duty to respect, protect and fulfil the rights of any individual within its territory or jurisdiction. The relationship between rights-holder (individual) and duty-bearer (State or non-State actor) is the most important in human rights. Other States and the international community have a right and duty to assist if a State cannot or will not live up to its obligations. The State affirms its duties through its constitution, national laws, policies, budget allocations and the ratification of international human

rights treaties. Accountability, the rule of law and access to justice mean that there is a system in place to uphold and protect people's rights.

Most major international human rights treaties and documents include references to the right to education. By ratifying these instruments, states are legally bound to respect and implement them.<sup>8</sup> Moreover, additional sources, such as the Universal Declaration of Human Rights – which have binding customary and moral value for both Israel and the oPt – offer a comprehensive picture of education rights. The complete texts of the most relevant human rights provisions on the right to education are included in Annex 1 but a brief explanation of some of the main references is also provided below.

Article 26 of the UDHR speaks of a certain degree of free, equally accessible or available education aimed at the best development of the human being in a setting respectful of the others and their rights. In addition, the preamble provides a clear interpretation that education is also seen as a multiplier of other rights.

Article 13 of the ICESCR is based on the UDHR, but also specifically refers to free or inexpensive, egalitarian and comprehensive education that is accessible to all. It introduces the important concept of progression in the introduction of free education, refers to adult education and adds the effective participation of all persons in a free society. The provisions regarding individual and group choice are more detailed, too, and speak of minimum educational standards.

The broadest provision on the right to education is Article 28 of the CRC. Its fundamental aspects refer to: free, compulsory primary education for all; different forms of secondary education available and accessible to all; and higher education made accessible on the basis of capacity. But article 28 also mentions vocational education and guidance, access to scientific and technical knowledge and modern teaching methods, casting a new light on the definition of education. Article 28 also differs from

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8 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by Israel in 1979; International Covenant on Civil and Political Rights (ICCPR), ratified by Israel in 1991; ICESCR, ratified by Israel in 1991; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Israel in 1991; CRC, ratified by Israel in 1991; Convention on the Rights of Persons with Disabilities (CRPD), signed by Israel in 2007.

other norms in that it does not set any aim for the right to education. This is simply due to the fact that another article provides for it.

Article 29 of the CRC is very detailed and adds to the usual objectives of education by speaking of the full development of the child's personality. It also considers the child's talents and abilities, requiring that they are achieved to the best of their potentialities and introduces new reference terms, such as respect for the natural environment and respect for cultural identity, language and values of both the child's country of origin and the country he or she is living in.

The subsequent interpretations by the attendant monitoring bodies - both the CESCR and the CteeRC - and Special Procedures (such as the UN Special Rapporteur on the right to education) have also elaborated on the definitions provided here.

The most useful sources for such interpretation are the first report of the first UN Special Rapporteur on the right to education<sup>9</sup> and General Comment N. 13 of ICESCR.<sup>10</sup> These documents clearly set out a common framework of interpretation for the right to education. Universally known as the 4A scheme<sup>11</sup>, it identifies four key elements at the basis of any work on education as a human right:

**Availability** – meaning that human, material and budgetary resources should be sufficient and adequate to ensure education for all. Individuals should also be free to choose or seek out schools in accordance with their religious and moral convictions and with minimum standards set by the State.

**Accessibility** – that is to say that the education system should not discriminate on any ground and positive steps should be taken to reach the most marginalized. It also includes physical and economic accessibility.

**Acceptability** – requiring that the content of education and teaching

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9 K. Tomaševski, Preliminary Report of the Special Rapporteur on the right to education, UN document E/CN.4/1999/49, 1999.

10 CESCR, General Comment N. 13: the right to education, UN document E/C.12/1999/10, 1999.

11 K. Tomaševski, supra note 8, paragraphs 42-74; CESCR, supra note 7, paragraph 6.

methods should be relevant, culturally appropriate and of quality. It also entails that the human rights of all those involved should be upheld in education.

Adaptability – whereby education should be flexible so as to respond to the needs and abilities of students, meet the best interests of the child and adapt to different contexts and changing societies.

The 4A scheme facilitates our analysis and shows that there are differences between providing for education and complying with the right to education. In fact, making education available does not meet the requirements of the right if it does not possess the right qualities to attain its objectives. Education could be made compulsory and free, but if schooling equals indoctrination rather than education, and if the parents and pupils' freedom of choice is not respected, then the right to education is partly denied. Getting everyone to school is not sufficient if the educational curriculum perpetuates gender or discriminatory stereotypes. Equally important are those statistics that record as a success an increase in enrolments from 60% to 90%, while actually hiding the fact that this increase indicates continued denial of the right to education for 10% of children. This interdependence and the need to take a holistic approach to dealing with education as a human right is also reflected in the INEE MS, which in addition to detailing overarching 'foundational' standards, cover four main 'domains' of education; access and learning environment, teaching and learning, teachers and education personnel and education policy.

Table 1: Exploring the 4As<sup>1</sup>

Availability	Accessibility
Is primary education free and compulsory?	Is education accessible to all, without discrimination on any grounds – for example race, colour, ethnicity, sex, language, and religion, economic or social status? Are positive attempts made to reach the most vulnerable? Are there any laws, such as preventing child labour laws, which need to be enforced to ensure accessibility?
If not, is there a government plan to achieve free and compulsory primary education, with a reasonable time frame and budget?	
Is sufficient money allocated for all children to receive primary education?	
Is the state making concrete steps towards achieving free secondary and higher education?	Is education within safe physical reach? Are there appropriate transport facilities?
Are teachers well trained, and do they receive domestically competitive salaries, do they have appropriate working conditions, teaching materials and the right to organise?	Is education affordable for all? This includes indirect costs such as textbooks and uniforms?
Are school buildings safe? Do sanitation facilities exist? Is there safe drinking water, a library or ICT resources?	Have all legal and administrative obstacles, such as the need for a birth certificate, been abolished?

Acceptability	Adaptability
Is education pluralistic? Is it free from religious (or other) indoctrination? Are the curriculum and texts open and tolerant towards a range of different (religious, political, cultural or philosophical) belief systems?	Is the school able to adapt education provision to the specific needs of their pupils and local children? For example, are religious and cultural holidays recognised? Are students with disabilities catered for?
Is education non-discriminatory? Are texts and curriculum non-biased and objective? Is the education relevant and culturally appropriate?	Can education adapt to the changing needs of societies and communities? For example, is there adequate provision for linguistic and cultural minorities – balancing learning national language and culture with preserving their own? Is education adapting to respond to the HIV pandemic?
Are there minimum standards for education (numbers of text books, methods of instruction, etc.), which are monitored and enforced by government in both the private and public school systems?	Is there a link between school-leaving age and minimum age for employment, marriage, military, criminal responsibility etc.? What happens to young people if there is a mismatch of ages?
Is the school safe? Is violence condemned? Are minimum health standards in place?	Does schooling protect and enhance children's rights? For example, does it prevent them from child labour or forced marriages? Does it enhance their employability, increase gender equality etc.?
Are there sufficient teachers? Are they trained to an appropriate standard? Are they properly supported and supervised?	

## B) International Humanitarian Law

During armed conflict or occupation (such as in the oPt since 1967), International Humanitarian Law (IHL) is also applicable. IHL underpins IHRL, regulates hostilities, protects civilians, and places duties on parties to the conflict. IHL is applicable between individuals as well as between the State and the individual. Violations of IHL may also constitute war crimes carrying criminal responsibility, to be judged under International Criminal Law. Customary international law includes a large number of rules of IHL which, unlike treaties, States are bound to respect even if they have not formally adopted them.

IHL is primarily made up of the Hague Regulations of 1907, and the four 1949 Geneva Conventions and their two Additional Protocols from 1977



and customary international law. Of these, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War<sup>13</sup> contains several articles on education and the obligations of the occupying power, only one of which, as we shall see, continues to be applicable in the oPt. Chief amongst these;

- the obligation to facilitate the proper working of institutions dedicated to the education and care of children (art.50);
- the prohibition of destruction, unless “absolutely necessary” by military operations (art. 53);
- the provision on the right to education of children under fifteen, who are orphaned or are separated from their families as a result of the war (art. 24);
- and the articles on education to internees, (art. 94, 142) and individual relief to internees (art. 108).

International customary law is based on widespread, representative and virtually uniform practice by States who act in a certain manner because they believe they are bound to do so (opinion juris). Customary law is binding upon all States, irrespective of whether they have ratified the treaty, which contains the specific rule or not. In other words, it is the body of international law that is considered universal, and of which the Geneva Conventions and the Hague Conventions are part. The ICRC has identified 161 rules of a customary nature, applicable in conflicts and humanitarian situations. In other words: these are not new norms but clarifications and presentation of systematic approaches to existing law. These are variously applicable in both international and non- international armed conflicts, and quite a few of these are relevant to both the oPt and the topic of education.<sup>14</sup>

### **C) International Criminal Law**

IHL is also the main source for the regulation of hostilities, and strictly forbids any deliberate or incidental targeting during conflict of civilians, teachers and students, and school buildings (in so far as they are not used for military purposes, whereby their targeting can become justified). Per-

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13

Israel is a signatory

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Please see Annex 1 for a listing of the relevant rules and associated commentary by the ICRC.

petrators can be held responsible, collectively as well as individually, for war crimes or crimes against humanity as committed per the definitions of international criminal law and specifically the Rome Statute, under which the International Criminal Court (ICC) has been set up. Relevant to the protection of education is art.8, which deals with war crimes and prohibits the intentional direction of attacks against the civilian population (Art. 8(2)(b)(i) & Art. 8(2)(e)(i)) and against civilian objects (Art. 8(2)(b)(ii)) in times of international and non-international armed conflict.

There is also a specific reference to the prohibition of intentionally directing attacks against buildings dedicated to education (Art. 8(2)(b)(ix) & Art. 8(2)(e)(iv)). An attack intentionally directed at a school, as well as the civilians inside it, would be prohibited both in terms of the general prohibition against attacking civilians and civilian objects as well as the specific prohibition against attacking educational buildings.

Another major principle of the laws of war and a trigger of criminal responsibility is the need for proportionality in military response. In the context of hostilities this signifies that any attack should not result in incidental civilian casualties or damage to civilian property which would be disproportional with respect to the military gain to be achieved by targeting a specific military objective.

Lastly, it is worth noting that while IHL and ICC law outlaws the targeting of education facilities and infrastructure, IHRL, via the right to life and to education, contains a duty to protect teachers and students alike from attacks by third-party actors, including in times of armed conflict. Israel is not a party to the Rome Statute, so violations on territory under Israeli control (i.e. both West Bank and Gaza) can only be responded to by referral from the Security Council – which, from a political perspective, seems unlikely to happen. Nevertheless, the ICC remains a powerful standard setter and moral deterrent and an attempted case involving the oPt would open up many avenues for advocacy. The use of ICC to protect education in the oPt may become increasingly relevant, since any admission of Palestine as a member of the United Nations and/or recognition of Palestine as a state by the UN Security Council OR General Assembly would allow Palestinians to directly petition the ICC. Of note here is that the both current and past cases would be allowed to

be tried, since application for statehood was made with the ability to backdate cases for a certain period of time, covering at least Operation Cast Lead.

#### **D) The law pertaining to Refugees and protections afforded to IDPs**

Refugee law is another body of law, regulating the duties of host-states, camp authorities, the international community and humanitarian actors in the safeguarding and care of populations compelled to move across international borders as the result of fear of persecution, war or natural disasters.

The prime international instrument safeguarding the rights of refugees is the Convention relating to the Status of Refugees (1951)<sup>15</sup>. The convention protects refugees across international borders, who have met criteria for refugee status as laid out in the convention. The education relevant provisions are: Article 3 (non-discrimination) and Article 22 (education) stating that refugee children shall be accorded the same treatment as is accorded to nationals with respect to elementary education (1); and ensures that treatment must be no less favourable than that accorded to foreigners with respect to education other than elementary education (2).

For those persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence during times of emergency, and who have *not* crossed an internationally recognized State border, no specific legal instrument exists. These internally displaced people (IDPs) fall under existing national as well as international law, both IHL and IHRL.

However, in an effort to address what has been an increasing challenge due to the prevalence of non-international conflicts during the past couple of decades, the *Guiding Principles on Internal Displacement*, were introduced in 1998. They do not require ratification and have no State Parties, yet they build on IHRL and may therefore be considered part

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<sup>15</sup> As seen below, for the oPt it is important to note that Palestine refugees are effectively excluded from the application of the 1951 Refugee Convention within UNRWA's areas of operations as a result of Art. 1D of that convention. See UNHCR Revised Note on Art. 1D, Oct 2009, available on UNHCR's website.

of international customary law. The relevant provisions for education are Principle 4(2) which clearly states that certain IDPs, such as children, shall be entitled to protection and assistance that takes into account their special needs; and Principle 23 on education, which affirms the right of every human being to education (1), and which then goes on to offer a very useful framework for that education:

*the authorities concerned shall ensure that persons, in particular displaced children, receive education which shall be free and compulsory at the primary level, and education should respect its recipients' cultural identity, language and religion (2); and special efforts should be made to ensure the full and equal participation of women and girls in educational programs and education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit (3+4).*

### **E) National laws and standards**

Last but by no means least, national law must be considered. These usually comprise the constitution at the highest level and a series of legislative acts (laws, decrees, orders, etc.) at the intermediate and lower/local levels. These sources form the basis of policies and strategies for implementation. Depending on their legal systems, States or other de-facto authorities may apply international treaties directly or indirectly in their domestic legislation. In order for national governments to ground their education systems on internationally accepted standards and principles, it is crucial to ensure a proper 'translation' and coherence between international and national laws. A unified strategy is needed that spans not only the education sector, but also other areas of responsibility (transport, budget, equality, etc.).

National laws are the first port of call when determining if a violation has taken place. They are the tools for direct implementation of the right to education and, although they may vary from country to country, they should either incorporate international law at the national level or certainly not contradict it. In the case of occupation, as regulated by IHL, it is very important to specify that the occupying power, exercising full control or authority, should not change or introduce new laws,

except in very specific cases, including the rectification of existing laws that are inconsistent with IHL and IHRL, and certainly none that are considered detrimental to the existing ones. In fact, it must respect existing laws and be guided by these in the execution of its duties.

Each of the above bodies of law intersect and complement each other to allow us to better shape strategies and action for fuller implementation of the right to education.

## 1.2. Relationship between different frameworks

When considering what set of instruments of international law to refer to, it is important to know how they apply to particular contexts and what their relative value added is. Here the relationship between IHRL and IHL is especially relevant. This section considers this as well as the relationship between legal and political frameworks in order to pinpoint their potential to overcome limitations and create spaces for opportunities.

### Links between IHRL and IHL

IHRL and IHL are not mutually exclusive; on the contrary, they are complementary and provide opportunities, rather than limitations. A useful way of illustrating this is by seeing IHL and IHRL as existing “on a continuum”<sup>16</sup> because of their shared purpose to promote human rights and human dignity. Yet where IHL is a *lex specialis*, a special law applicable in special circumstances, IHRL applies at all times, in so far as the States have signed and ratified the relevant human rights instruments)<sup>17</sup>. Therefore, no-one, regardless of the situation, can lose their human rights, be they rights to life, to non-discrimination and dignity, or the right to education and other specific rights. IHL may be the first reference point at times, precisely because it refers to these special situations. Similarly, IHRL may fill a gap or influence IHL. Overall, it can be said that IHL thus serves to give additional and specialised protection.

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16 Harvard Program on Humanitarian Policy and Conflict Research, Policy Brief on IHL and IHRL in the occupied territory, May 2007

17 “The International Court of Justice, United Nations human rights treaty bodies, successive High Commissioners for Human Rights and special procedures of the Commission on Human Rights and its successor, the Human Rights Council, consistently have averred that international human rights law and international humanitarian law apply concurrently in all of the Occupied Palestinian Territory. Notably, in its Advisory Opinion on the Wall, the International Court of Justice pointed out that Israel remains bound by its obligations under several international human rights treaties.” (UN Document A/HRC/12/37, para 6)

Some international instruments also bridge the different bodies of law. This is most powerfully so in the case of the CRC, which is a cornerstone in the protection of education, but which also contains articles that very clearly pertain to situations of conflict. With the inclusion of art.28 and art.29 alongside art.22 (on refugee children), art.38 (children in armed conflict) and art.39 (on rehabilitation of child victims from armed conflict), as well as the First Optional Protocol on banning child soldiers, the CRC de-facto bridges IHRL and IHL. Considering that the CRC is the most widely ratified human rights instrument in the world and has considerable moral force given its subject matter and powerful champions in specially dedicated agencies, such as UNICEF and the Save the Children Alliance, it is clear that the benefits of using the CRC as an overarching instrument are manifold.

### **Human rights and political commitments / strategies**

In a world very much focused on quantitative targets and development goals, it is inevitable to also think of education in terms of international political commitments and pledges, as expressed in the Education for All movement (EFA) and the Millennium Development Goals (MDGs). Though international law must underpin and inspire such commitments and goals, it is also important not to confuse the two. Political commitments are powerful and contribute to move millions out of poverty, indignity and violence - but they are different from the law.

The legal human rights framework briefly explained above is very detailed and demanding in reality. It is not surprising therefore, that States find it easier to shift attention to less constraining approaches, such as those embodied in international development and educational strategies. If it is true that governments have been supportive of education at the international level, it is also true that they have been less supportive of the right to education.<sup>18</sup> The difference between the two approaches is exemplified in the table below, where it is evident that the status of education in global education and development strategies has been moved from one of a governmental obligation to a social and political responsibility.

18  
2001, p.9

K. Tomaševski, Removing obstacles in the way of the right to education, Primer No.1, Right to Education Project,

**Table 2. Human Rights & Political Commitments**

	Human Rights	EFA & MDGs
Who?	Obligation of the State <sup>19</sup>	Political commitment of a Government
What?	Rule of Law	No remedy for lack of performance
When?	Obligations are immediate <sup>20</sup>	Long-term goals
How?	Legal obligations	Monitoring
How much?	All human rights for all	Specific quantitative targets

However the two approaches complement each other: global strategies set mainly quantitative priorities and goals while human rights reinforce them with more qualitative minimum standards that can be invoked to hold duty-bearers to account when they do not deliver. The consequences of defining education as a human right are the associated duties and responsibilities, as well as remedies for abuses.

Finally, as previously noted, the INEE MS for education in emergencies, along with the corresponding key actions and guidance notes, are derived from references to education in international law. They are also compatible with the political declarations<sup>20</sup> that have been made and thus represent a concise compilation for practitioners of the various legal obligations and political commitments that refer to education – not withstanding situations of conflict (where IHL is also applicable) as well as crisis and disaster.

### **1.3. The added value of a rights-based approach to education**

Legal frameworks may appear complex and demanding, too technical and/or far removed from reality. However, a legal approach affords greater clarity in terms of the relationship between duty-bearers and

<sup>19</sup> And in the case of the oPt as non-state actors such as the PA and the de-facto authorities in Gaza (ref. UN Document A/HRC/12/37, para 7).

<sup>20</sup> Not forgetting that economic and social rights do have a degree of “progressive realisation” to them.

rights-holders. It allows us to identify what is required in terms of obligations, content and actions. Knowing and understanding the substance of the law is the first step towards grounding real demands and claims on a legitimate basis and consequently influencing the needed changes at the structural and societal levels. This section begins this process by looking at some general principles and standards as they may relate to the situation in the oPt.

### The PANEL model

The precision of IHRL is improved even further when it is combined with the key guiding principles at the basis of any rights-based approach: participation, accountability, non-discrimination, empowerment and legality. This approach, commonly known as the PANEL model, has been developed by the OHCHR and is drawn directly from the requirements of IHRL.<sup>21</sup>

It requires States to ensure:

**Participation** of everyone in decisions which affect their human rights. Are all affected rights holders - children, parents, teachers, civil society - able to genuinely participate in education decision making?

**Accountability** of duty bearers for the realisation of human rights. Are there processes and mechanisms for addressing possible violations of the right to education?

**Non-discrimination** and equality. Is the State fulfilling its obligations towards all rights-holders, including specific groups, whilst also paying special attention to multiple exclusions in (and through) education?

**Empowerment** of people to know their right to education and how to claim it

**Legality** or an explicit link to IHRL. To what extent do international standards inform indicators, policies and practices in education?

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<sup>21</sup> For general references to RBA see among others: OHCHR, Human rights in development: what, why and how (New York/Geneva: United Nations, 2000). For references to the different elements of the PANEL model, see OHCHR, Human rights and poverty reduction: a conceptual framework (New York and Geneva: United Nations, 2004); OHCHR, Draft guidelines: a human rights approach to poverty reduction strategies (New York/Geneva: United Nations, 2002).



**Table 3. The PANEL model applied to the oPt: some illustrations**

<b>PARTICIPATION</b>	Are teachers and parents consulted about curriculum content (by the PA, by UNRWA, by Israel’s MoE)? <sup>22</sup>
<b>ACCOUNTABILITY</b>	What are the avenues known and available to Palestinians to complain about the lack of infrastructures or about the standards of teaching?
<b>NON-DISCRIMINATION</b>	How are the authorities responding to the needs of children with mental or physical disabilities? And how does that intersect with the situation of girls or children living in rural areas?
<b>EMPOWERMENT</b>	Are there opportunities in the oPt not only to learn about human rights but also to practice and claim them in established systems for redress of violations?
<b>LEGALITY</b>	Are Palestinian and Israeli laws, policies and military orders in conformity with the relevant treaties and customary law?

### Obligations and the 4As

IHRL law also offers us an operational typology of obligations. All human rights treaties contain a range of obligations that are expressed in a variety of ways, but are all identifiable under three main headings:

- Respect, meaning refraining from interfering with the enjoyment of the right<sup>23</sup>;
- Protect, entailing the guarantee that third parties do not infringe on someone’s enjoyment of the right;
- Fulfil (facilitate & provide), requiring the adoption of appropriate legislative, administrative, budgetary, judicial and other measures.

When combined with the 4A scheme we are left with a powerful framework of application to identify State obligations and associated actions. The table below provides some examples;

<sup>22</sup> In the case of curricula for Palestinian children attending schools in Jerusalem or imprisoned in the Israeli detention system.

<sup>23</sup> See also UN Document A/HRC/12/37, para 6 and the reference therein to the ICJ Wall Opinion: “The Court also noted that Israel’s obligations under ICESCR include “an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities””

Table 4. Obligations and the 4As

	Availability	Accessibility	Acceptability	Adaptability
Respect	Respect the freedom to establish and direct educational institutions in accordance with minimum standards	Respect the right of all individuals not to be discriminated against in accessing education	Respect the freedom of parents to ensure education in conformity with their moral and religious convictions	Respect the establishment of formal and informal initiatives that promote adult education
Protect	Ensure that educational freedoms do not lead to extreme disparities of educational opportunities	Ensure that nobody, including parents, can stop a child from attending primary education	Ensure that curricula, textbooks and teaching methods do not perpetuate or encourage discrimination	Ensure that diverse abilities and situations are taken into account in policies and planning
Fulfil	Provide a sufficient number of public schools offering free and compulsory education for all children	Provide compulsory education without discrimination, within safe reach and free from direct or indirect costs (for children and parents)	Provide education of good quality that is child-centred, child-friendly and empowering	Adapt education to the best interests of the child  Design and implement education for children precluded from formal schooling

When applied to the case of the oPt, this approach allows us to identify key areas for further analysis.

In terms of availability, for instance, making sure that a sufficient number of schools are available is not enough. To fulfil the right, duty-bearers have the obligation to ensure that schools have appropriate infrastructures and facilities, safe from attack and in good condition, and, furthermore, that teachers are adequately trained and paid. Examples from Area C and Gaza - where the number of schools is insufficient, the infrastructure inadequate and or overcrowded, education facilities are subject to attacks (that affect both the physical and psychosocial wellbeing

of students and teaching staff) - illustrate the scope of the challenge. For this violation and the following on the other 3 As, see table below of indicative violations of the Right to Education in the occupied Palestinian territory.<sup>24</sup> The situation in Gaza is also exacerbated by the fact that professional teachers, who went on strike over their labour conditions, were replaced by other teachers whose qualifications and experience are unknown, thus adding another challenge to assessing the fulfilment of availability.

When it comes to accessibility, measures to fulfil this aspect should include the elimination of fees and indirect costs, but also affirmative action to protect students' access to school and to provide for the most marginalised. The existence of different fees and of significant costs of transportation throughout the oPt shows that an assessment in the light of international standards is necessary and urgent. Similarly, attacks on schools or on children and educational staff on the way to school, (as in the case of some communities that experience settler violence) do not pass the test of legality when analysed through the requirement of the physical dimension of accessibility. Similarly, the mere presence of checkpoints and the many other forms of restriction of movement (not necessarily accompanied by physical violence) represent serious obstacles to the full implementation of accessibility. Lastly, when looking at the non-discrimination aspect of accessibility, this requires not only opening the doors, but identifying barriers and adopting temporary special measures where needed. This is particularly relevant for children in detention, nomadic children or children in East Jerusalem (who are subject to different movement and access requirements based on the permit scheme that has been established for the various areas of the oPt).

Under acceptability, duty-bearers must ensure that education is acceptable to children, parents and teachers. This means that the content and methods of education must be of relevance and good quality and that the human rights of all those involved must be respected and upheld in education. In the case of the oPt for example, this translates into ensuring that forms of assessment, such as tests and exams, are fair and appropriate to the capacities of the child and that the curriculum covers

all subjects - not only a selection decided on the basis of 'security'. It also means ensuring that teachers are not hampered in their work through lengthy controls at check-points and that students have the freedom to choose where to receive their higher education. School discipline should also be compatible with human dignity. Therefore instances of corporal punishment<sup>25</sup>, abusive teachers, indoctrination or pressure to conform should alert us to the need to be more attentive to this aspect of acceptability as well.

In terms of adaptability, the obligation is to respect and protect diverse abilities and situations and ensure that they are taken into account. This also means that education should contribute to challenge inequalities and cater for children with special educational needs or hard to reach children. In this case, children with disabilities (including those with mental health problems due to trauma), Bedouin children, children in detention and working children, would be better respected and protected if education was more adaptable.

Many of these violations are captured in this table of indicative violations of the Right to Education in the occupied Palestinian territory:

**Table 5. Indicative violations of the Right to Education in the occupied Palestinian territory**

Description of right to education violation	Data source
Students from two schools in the Gaza buffer zone were evacuated due to frequent firing by Israeli forces close to the schools; in one incident the firing reached within 6 meters of the school walls and in the other incident resulted in damages to a number of classrooms. Four other incidents include the damage of 5 schools in Gaza during Israeli air strikes targeting nearby areas.	Bulletin on children affected by armed conflict Israel and the occupied Palestinian territory, UNICEF, May 2011 <a href="http://www.unicef.org/oPt/UNICEF_-_CAAC_Bulletin_-_May_2011.pdf">http://www.unicef.org/oPt/UNICEF_-_CAAC_Bulletin_-_May_2011.pdf</a>
In the West Bank, a security incident between PA security forces and Israeli settlers resulted in an Israeli military incursion into Nablus City and the closure of checkpoints. Four schools were closed for one day, affecting 2,724 students, and 7 schools were closed for half a day, affecting 3,923 students. In addition, 85 teachers were denied access to schools due to closure of the checkpoints.	Bulletin on children affected by armed conflict Israel and the occupied Palestinian territory, UNICEF, May 2011 <a href="http://www.unicef.org/oPt/UNICEF_-_CAAC_Bulletin_-_May_2011.pdf">http://www.unicef.org/oPt/UNICEF_-_CAAC_Bulletin_-_May_2011.pdf</a>

<sup>25</sup> Corporal punishment is a huge area in itself and merits individual attention beyond the scope of this report. Much commentary can be found in conjunction with Art. 19 of the CRC, protecting the child from all forms of violence.

<p>A demolition order was issued against a new primary school due to open for the 2011/2012 school year.</p>	<p>Bulletin on children affected by armed conflict Israel and the occupied Palestinian territory, UNICEF, July 2011  <a href="http://www.unicef.org/oPt/UNICEF-CAAC_Bulletin-July_2011.pdf">http://www.unicef.org/oPt/UNICEF-CAAC_Bulletin-July_2011.pdf</a></p>
<p>In Gaza, three successive explosions took place within a training site of the Izziddin al-Qassam Brigades, the armed wing of the Hamas Movement on 20 October. The explosions happened in a densely populated area to the west of Rafah and caused damages to dozens of houses, an UNRWA clinic, and three schools. The explosions left 26 injuries, including 18 children some of whom were outside the school.</p>	<p>Bulletin on children affected by armed conflict Israel and the occupied Palestinian territory, UNICEF, Sept-Oct 2010  <a href="http://www.unicef.org/oPt/CAAC_Bulletin_SepOct2010.pdf">http://www.unicef.org/oPt/CAAC_Bulletin_SepOct2010.pdf</a></p>
<p>Israeli settlers set fire to a storage room for sports equipment in a Girls Secondary School in the village of Essawiya, south of Nablus, and vandalised the school wall with graffiti that read «regards from the hills» in Hebrew. The Ministry of Education and Higher Education (MoEHE) has filed a complaint with the Israeli Civil Administration.</p>	<p>Bulletin on children affected by armed conflict Israel and the occupied Palestinian territory, UNICEF, Sept-Oct 2010  <a href="http://www.unicef.org/oPt/CAAC_Bulletin_SepOct2010.pdf">http://www.unicef.org/oPt/CAAC_Bulletin_SepOct2010.pdf</a></p>
<p>A young Palestinian woman from Gaza, studying for a university degree in business administration and translation at Bethlehem University, was forcibly transferred to Gaza by the Israeli military in October 2009, just two months away from finishing her degree. On 9 December 2009, after two hearings, the High Court upheld the position of the Israeli state and ruled not to allow her to return to Bethlehem University to complete her studies. In the course of the High Court hearings, the state made no security allegations against her but simply said her presence in the West Bank was "illegal". After being refused permission to return to Bethlehem, Berlanty continued to study with her former university teachers via email and telephone calls. She completed her studies long-distance and received her bachelor's degree from Bethlehem University in Gaza's Church of the Holy Family on 10 January 2010.</p>	<p>See Amnesty <a href="http://www.amnesty.org/en/news-and-updates/expelled-west-bank-2010-04-28">http://www.amnesty.org/en/news-and-updates/expelled-west-bank-2010-04-28</a>  Or relief web / GISHA  <a href="http://reliefweb.int/node/335184">http://reliefweb.int/node/335184</a></p>
<p>The recurrent electricity power cuts, created by the restrictions on the import of industrial fuel, have disrupted the functioning of schools in most areas of education provision. In the course of the past two years, some of the most basic educational items including paper, text books, computers, and educational kits have been systematically denied entry or delayed for prolonged periods by the Israeli authorities.</p>	<p>UN OCHA Special Focus, August 2009  Locked in, the humanitarian impact of two years of blockade on the Gaza Strip  <a href="http://reliefweb.int/sites/reliefweb.int/files/resources/2D59635A80E526FFC12576120045D074-Full_Report.pdf">http://reliefweb.int/sites/reliefweb.int/files/resources/2D59635A80E526FFC12576120045D074-Full_Report.pdf</a></p>

<p>Palestinian children receive minimal education in only two out of 12 Israeli prisons and detention centres that hold children. Even then, only minimum language, maths, and science are taught. Geography, for example, is not taught for «security reasons».</p>	<p>Save the Children Child Rights Fact sheet (data source Defence for Children International) April 2008  <a href="http://www.savethechildren.org.uk/en/docs/OPT_April_08_Eng.pdf">http://www.savethechildren.org.uk/en/docs/OPT_April_08_Eng.pdf</a></p>
<p>In Gaza, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) turned away 40,000 eligible children in 2010/11 due to an acute classroom shortage. Currently, most students study in two shifts, in classrooms or oversized metal containers used as classrooms of up to 50 students, with three children seated at desks designed for two.</p>	<p>See for example;  <a href="http://www.savethechildren.org.uk/en/docs/Child_Rights_Review_2010(1).pdf">http://www.savethechildren.org.uk/en/docs/Child_Rights_Review_2010(1).pdf</a></p>
<p>In Area C of the West Bank, which falls under complete Israeli control, almost 38,000 students in grades 1-12 attended 135 government schools and 12 UNRWA schools. Because permits to invest in educational infrastructure are nearly impossible to obtain from Israeli authorities, the humanitarian community reported that 18% of government schools (24 out of 135) were unsafe, among them tents, caravans, crude cement buildings and tin shacks. Thirty-one percent of schools had inadequate water and sanitation facilities.</p>	<p>See for example;  <a href="http://www.savethechildren.org.uk/en/docs/Child_Rights_Review_2010(1).pdf">http://www.savethechildren.org.uk/en/docs/Child_Rights_Review_2010(1).pdf</a></p>
<p>Many schools in Area C are far from the communities they serve—up to 25 kilometres in some areas—meaning high and sometimes insurmountable transportation costs or very long walks for school children.</p>	<p>See for example;  <a href="http://www.savethechildren.org.uk/en/docs/Child_Rights_Review_2010(1).pdf">http://www.savethechildren.org.uk/en/docs/Child_Rights_Review_2010(1).pdf</a></p>
<p>On 8 December 2010, Israeli military forces demolished 29 structures in the village of Khirbet Tana, including the school, displacing 61 Palestinians, including 13 children, and affecting over 100 others, including at least 22 children studying in the school. Previous to this, the community experienced large-scale demolitions on two other occasions, in July 2005 and January 2010, during which the village's school was destroyed.</p>	<p>UNOCHA oPt  <a href="http://www.ochaopt.org/documents/ocha_opt_khirbet_tana_fact_sheet_20110210_english.pdf">http://www.ochaopt.org/documents/ocha_opt_khirbet_tana_fact_sheet_20110210_english.pdf</a></p>
<p>UNRWA Union strike results in the closure of 243 UNRWA schools in Gaza for two days in October 2011</p>	<p>UNRWA;  <a href="http://www.unrwa.org/etemplate.php?id=1132">http://www.unrwa.org/etemplate.php?id=1132</a></p>

In the following chapters this approach and the tables on the 4As will be expanded through the use of additional examples from the oPt.

## CHAPTER 2 - LEGAL FRAMEWORKS (II)

# THE PRACTICE AND WHAT THE RIGHT TO EDUCATION LOOKS LIKE IN THE OPT

*The previous chapter highlighted a number of the most relevant legal international provisions on the right to education, with a special focus on IHRL. In other words: how education should look. The following chapter looks at what international law is applicable in the oPt; who is responsible for it and how to identify violations.*

In general, international law is applicable in three ways: through the State's (or de-facto authority's) own ratification and recognition of the obligations stipulated in international instruments; through custom; or by the international community applying it if the State in question does not or cannot comply.

The latter occurs in extreme cases of the overruling of national sovereignty and primarily only happens through the UN Security Council (UNSC). This has not yet been the case for Israel and the oPt. Custom applies mostly in the case of IHL, and is the recognition that there are rules of engagement and obligations on conflicting parties so wide-spread or fundamental that they apply alongside the Geneva Conventions. This

means that the obligations ratified and recognised by Israel and, where applicable, by the PA and the de-facto authorities in Gaza are binding and entail consequences in terms of actions that need to be undertaken at the national level. It is therefore essential to understand and analyse how they are implemented on the ground.

## 2.1. What international law is applicable in oPt?<sup>26</sup>

*Due to the occupation by Israel of the occupied Palestinian territory, IHL, including the law that regulates occupation, applies. This was reaffirmed by the 2004 Advisory Opinion of the ICJ on the legality of the Wall.<sup>27</sup> IHRL is applicable to the territory of a State, but also extends to any territory and persons which are under its effective jurisdiction, even if it is outside its borders. Since the oPt has been under Israeli effective control for almost 45 years, the international human right covenants and all other relevant IHRL therefore very clearly apply. Thus, not only does Israel need to follow IHL including international customary law, but it is primarily bound to respect, protect and fulfil, including to report on, all IHRL obligations that it has signed and ratified.*

IHRL remains relevant in this context and many UN institutions, including all major UN bodies, are increasingly adopting a human rights approach that makes increased advocacy possible. Moreover, the ICJ - the highest legal authority in the UN - stated in its Advisory Opinion on the Wall in 2004 that the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC) all apply to the oPt, and increasingly so in the absence of the use of key articles of the Fourth Geneva Convention most relevant to education and other social and economic rights.

The fact that Israel refuses to acknowledge its IHRL obligations in the oPt is important to note (and any public analysis of this refusal will in-itself carry a lot of advocacy potential) but also a claim that has been repeated-

<sup>26</sup> For a succinct analysis of international human rights and international humanitarian law applicable to Israel as well as to the Palestinian authorities, please see UN document A/HRC/8/17 on the 'Human Rights Situation in Palestine and Other Occupied Arab Territories', esp., paragraphs 5-9

<sup>27</sup> Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion on the Wall) issued by the International Court of Justice on 9 July 2004. <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=4>



ly refuted by all relevant UN and international bodies, such as the treaty Bodies and the ICJ<sup>28</sup> who concluded that the protection offered by these human rights conventions does not cease in cases of armed conflict and that they apply to individuals within the jurisdiction of a State, including for individuals under its jurisdiction but outside its own territory: such as is the case for the West Bank and Gaza. As such it was stated that direct military operations had closed and there was simply no reasonable claim for exemption on the grounds of a crisis or a state of emergency.<sup>29</sup> Although an advisory opinion is not in itself binding, it is highly regarded, as it comes from the most distinguished legal body in the world. In other words, an advisory opinion does not create law, but it does summarize existing law, and thus represents what can be considered an authoritative statement of international law and its application to particular facts.

## Israel

Israel has ratified the major human rights instruments, from the ICPPR and the ICESCR to the CRC. Like all other states, it is also obligated under the Geneva Conventions. At the same time, though there are areas where Israel's control is greater than in other areas, Israel has de-facto control and authority over the oPt and duly exercises jurisdiction there, either directly or through the delegation of power to the PA. As such, Israel's obligations under IHRL hold equally with regards to Israeli citizens and Palestinian residents of the oPt where it exerts effective control. Israel, however, disputes this, as evidenced by its refusal to report on the status of implementation of the various human rights instruments in the oPt. But since this refusal is not accepted by the relevant Treaty Bodies, nor is it a possibility afforded by the instruments themselves, it is de-facto a violation of its obligations, not an exoneration of them. All obligations under IHRL and IHL therefore remain applicable.

In addition to the Wall opinion of the ICJ, another major point of interest is the relevance of refugee law. Israel signed the Convention Relating to

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28 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion on the Wall or the Wall Opinion) issued by the International Court of Justice on 9 July 2004, para 112

29 From the point of view of education it is even more interesting that the ICJ, in para. 112 of the Wall Opinion, specifically calls upon article 14 (primary education) of the ICESCR, citing that it "it applies both to territories over which a State party has sovereignty and to those over which that State exercises territorial jurisdiction. Thus Article 14 makes provision for transitional measures in the case of any State which «at the time of becoming a Party has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge»."

the Status of Refugees in 1951, ratified it in 1954 and acceded the optional protocol in 1968.<sup>30</sup> It also, however, included several reservations (to articles 8, 12 and 28). Of these reservations, article 8 is particularly relevant as it refers to the need for limitations regarding the treatment of refugees during exceptional circumstances. By rejecting this article and owing to the definition within Israeli law of Arab States as 'enemy alien' states, Israel is able to exclude Arab country nationals from any refugee protection regime. The definition of 'enemy aliens' has increasingly been extended to Palestinians in the oPt.<sup>31</sup> Moreover, given the current institutional framework, the refugee convention is of limited applicability to Palestinian refugees. According to the most common interpretation of article 1D of the convention,

*"(it) shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than United Nations High Commissioner for Refugees protection or assistance."*

Since a refugee protection and relief regime comprised of the United Nations Relief and Works Agency (UNRWA) and the United Nations Conciliation Commission for Palestine was set up specifically to deal with the Palestinian refugee situation after 1948, the continued presence of such agencies (albeit almost non-existent in the case of the latter) means that the 1951 Refugee Convention may not be applied in the oPt.<sup>32</sup> However, since UNRWA as a United Nations agency (which provides education to Palestinian refugees) is guided by international law and especially, with regards to education, by the standards set in the CRC and ICE-SCR it is assured that the education administered and defined by UNRWA<sup>33</sup> does not fall below the international standards, in so far as UNRWA is able to carry out its mandate, in Gaza and elsewhere.

30 The optional protocol removed the conventions previous limitations and ensures its universal coverage

31 See for example; Adalah; 2009. <http://www.adalah.org/newsletter/eng/nov09/Haneen%20enemy%20English%20final.pdf>

32 The UNCCP was established in 1948 as part of UNGA resolution 194. It was given a dual mandate to achieve a final settlement of the Palestine question, and to provide protection and promote a durable solution for Palestine refugees. Although its protection mandate was highly comprehensive its overall dual mandate ultimately restricted its ability to fulfil this and today the commission is reduced to a functionary role with only skeleton staff.

For a comprehensive discussion of this see: <http://www.palestine-studies.org/enakba/legal/Akram,%20Palestinian%20Refugees%20and%20Their%20Legal%20Status.pdf>

33 See UNRWA regulatory frameworks such as: UNRWA Operations (UN General Assembly Resolution 65/100, of January 2011, para.13); UNRWA Education Technical Instructions; the Tool for Incorporating Minimum Standards on Protection into UNRWA Programming and Service Delivery.

Overall however, there is not much to distinguish Israel from any other State and duty-bearer under international humanitarian and human rights law when it comes to the oPt. Specifically:

In the West Bank, arguments that the PA is fully responsible in fields such as education and other aspects of social welfare ignore that there has not been a genuine devolvement of power. Israel continues to exercise overall authority and control by restricting access and movement of students and teachers, by not issuing or randomly withdrawing building permits for schools and roads, by restricting the flow of building material, by enacting nebulous, unnecessary (and hence illegal) and non-contestable military orders, by positively favouring Israeli settlers inside the oPt with regards to their access to education, and by avoiding any serious legal action against military or settler violence on Palestinian schools or schoolchildren, to name but a few examples. In this situation, Palestinians have the same rights as Israelis and the State of Israel remains the ultimate duty-bearer.<sup>34</sup>

Moreover, Israel's unilateral annexation of East Jerusalem is clearly rejected by the UN and all authoritative international legal opinion, as reaffirmed in the Wall Opinion. The city remains occupied and an integral part of the oPt. As such, the rules of IHL and IHRL remain applicable to East Jerusalem and Israel has a duty to cease all systematic discriminations with regards to the access and quality of education provided. Similarly, it has a duty to enact the fulfilment of the right to education for Palestinians, specifically and in accordance with their rights as the population of an occupied territory, which means that the claim that the Israeli State Education Law can be applied to the Palestinians living inside East Jerusalem is not valid in so far as this law is biased towards Israeli nationals, their language, curricula etc. The violations are further exacerbated by the fact that Palestinian residents are obligated

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<sup>34</sup> In its exercise of these duties, and specifically in relation to education, Israel may have devolved varying levels of administrative responsibility to the PA in Areas A and B and Area C, and it may officially have withdrawn from Gaza, yet it retains and exerts military control, limiting the various Palestinian authorities in the exercise of their duties.

to pay municipal taxes, but do not, in general, receive the same level and quantity of educational services.<sup>35</sup>

In the case of Gaza, although the Israel security cabinet officially refers to Gaza and Hamas as a 'hostile entity' and Israel has withdrawn from Gaza, it still exercises effective authority and control by enforcing a very tight siege over the land borders, airspace and sea access. As such, the legal obligations of Israel vis-à-vis Gaza have not changed. It remains an occupying power and to its systematic targeting of education facilities through military actions, we must also add that it hinders the establishment of and continued provision of educational services by both the delegated PA authorities and by UNRWA, as well as other international agencies operating in Gaza to provide services and support to the education system under the auspices of relief aid and development support.

Palestinian authorities (the Palestinian Authority and Gaza authorities)  
The PA was established based on the Oslo Agreements. The PA acquired some control over the areas A and B of the West Bank and the Gaza Strip. Legal discussions on the status of the oPt, which followed the establishment of the PA, focused on the PA's level of control. Some argued that in these areas controlled by the PA, Israel was not obliged to follow the laws of occupation since it no longer had effective control over them. However, internal checkpoints and presence of the Israeli army within the West Bank, the de-facto tight siege of Gaza, along with the particularly significant physical presence of the Israeli security apparatus in the wake of Second Intifada that began in 2000, bear witness to the fact that the oPt remains occupied under international law.

In addition to the obligations under IHL, Palestinian authorities in the oPt are also have human rights obligations. Although Palestine is not (yet) a state and its capacity to sign and ratify international human rights instruments is debatable<sup>36</sup>, it can be argued that, because of their state-

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For more information see UNESCO, (2011), *Education for All Global Monitoring Report*, p. 157.

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This situation may have changed with the admission of Palestine as a full UNESCO member, as some international covenants may be signed by UN Member States or Member States from UN Specialized Agencies.

like functions and their declarations, the authorities in the oPt have human rights obligations. Notably, the PLO, the PA and Hamas have stated their intention to be bound by IHRL. The Palestinian Basic Law of 2002 offers a clear illustration of this. The PA has recently taken steps to review the fulfilment of its obligations under the CRC, in preparation for future ratification and implementation of the treaty. This exercise has brought to the fore the range of Palestinian laws relating to education and can be seen as an important 'state-building' exercise. Ultimately however, Israel, as the occupying power and as a party to the CRC, is responsible for the welfare and respect for the basic rights of the population living under its occupation, directly or, in the wording of the Wall opinion, by means of not "raise[ing] any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities".<sup>37</sup>

Lastly, it is the opinion of the High Commissioner for Human Rights, that

*"the Palestinian Authority (PA), the Palestine Liberation Organization (PLO) and the Palestinian Legislative Council (PLC) have made numerous statements and undertakings through which they have declared themselves bound by international human rights obligations. With respect to Hamas, it is worth recalling that non-State actors that exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control. Hamas has also made public statements that it is committed to respect international human rights and humanitarian law."<sup>38</sup>*

## 2.2. From obligations to violations

*The fact that education is a right and that both Israeli and Palestinian authorities have duties and obligations to implement it, means that we are provided with a legal framework within which it is possible to:*

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<sup>37</sup> While the PA is able to govern certain areas of Palestinian life in Areas A, B and C of the West Bank, as demonstrated above, it is still Israel that is the ultimate duty-bearer. It is therefore of note that even though the PLO made a unilateral undertaking in 1982 to apply the Geneva Convention (IV), and again in 1989 to adhere to it, and that Hamas in Gaza has similarly obligated itself under international humanitarian law, in the case of education under IHL, let alone IHRL, Israel remains the duty-bearer until such a time as duties can be transferred to a sovereign Palestinian state whose borders or authority is not violated by any neighbouring states

<sup>38</sup> UN Document A/HRC/12/37, para 7

- recognise rights-holders (with entitlements and freedoms) and duty-bearers (with responsibilities) and therefore identify corresponding obligations;
- distinguish obstacles, denials and, most importantly, violations;
- articulate strategies that respond to universal obligations while providing for specific interventions where the right to education is more at risk.

This section aims to understand how to identify obligations and then recognise violations.

The 4A scheme offers an indication of the key features that need to be considered. The tripartite typology of obligations (respect, protect and fulfil), in turn, offers an indication of the actions that need to be put in place (or avoided) in order to realise the right to education. Taken together, the two frameworks show how the State should behave and what objectives it should achieve. In order to be able to do so, however, it is also necessary to understand how legal provisions translate into actions and objectives. In this respect, it is useful to refer to the content and the modalities regarding the realisation of the right to education.

### Core content

Among the elements recognised in the above mentioned human rights instruments, some are defined as *core content*, that is to say that they embody the intrinsic value of the right to education without which the right would lose its meaning:

- access to education on a non-discriminatory basis;
- free and compulsory primary education for all;
- development of strategies which include provisions for secondary, higher and fundamental education;
- quality education at all levels;
- and free choice of education.

This core content is universal in nature and can be operationalised in different ways at the local level. However, complying with a core obligation should not depend upon the availability of resources,

but rather the needs of people or the local context. Core obligations are immediate and non-derogable, as indicated by the CESCR.<sup>39</sup> Therefore, regardless of the specific situation in the oPt, or the resources (human, financial, political) at the disposal of all actors, these are the basic elements that must be implemented. This being said, some elements should be implemented immediately and others may be subject to progressive realisation.

### Immediate and progressive realisation

Those issues that require immediate action (regardless of resources) include:

- Non-discrimination – any form of discrimination in education must be prohibited immediately;
- Limited progressive realisation – even with limited resources, States nonetheless have a strict limit of two years to develop plans of action to provide free and compulsory primary education for all;
- Non-retrogressive measures – States cannot take measures that are detrimental to the existing protection of the right to education. For example, they cannot introduce fees for secondary education if it had formerly been free;
- Minimum core obligations – to meet the minimum essential level of the right to education (see above).

IHRL also recognises that a lack of resources can be an obstacle to its full realisation and that this can only be achieved over a period of time. Resource availability and progressive realisation are mentioned in different provisions (art.2.1 ICESCR and art.4 CRC, for example), but this does not mean that States can wait or postpone the respect, protection and fulfilment of the right to education until such a time as they have the necessary resources. On the contrary, they are under the obligation to demonstrate that they are making every effort to improve the situation. Therefore, while the full realisation of the right to education may be progressive, the obligation “to take steps” towards that aim is immediate.

## Conduct and result

The types of actions and objectives emerging from the content and obligations of the right to education are usually referred to as 'conduct' and 'result'. Conduct means that the action must be directed to realise the enjoyment of the right to education; result means that the action must be directed to achieve specific targets needed to meet the substantive standards contained in the right. To give two examples related to art.14 CESCR:

- conduct requires States to adopt and implement a detailed plan of action for free and compulsory primary education;
- and result requires the State to specify a set of stages in the plan with corresponding implementation dates and, more importantly, to meet those dates and achieve those stages.

If the State is not carrying out its conduct in accordance with its obligations or is not achieving the targeted results, it can be considered liable for violations of the right to education. There are some terms and conditions for this and there is a certain margin of appreciation due to the progressive nature of some obligations. However, we have also seen that there are some obligations, such as non-discrimination, that are required to be implemented fully and immediately.

For example, in the oPt, requiring the payment of fees at the university level may be acceptable to a certain extent under progressive realisation (the immediate obligation of free education is for the primary and compulsory levels). However, authorities must show that they are taking steps towards making higher education progressively free, cannot introduce fees where there were none before and must not establish fees that discriminate on the basis of geographic location or type of university.<sup>40</sup> It is therefore important to clearly understand what can be considered a violation and what can be considered a reasonable step towards implementation, but not yet a violation.

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<sup>40</sup> Overall in the oPt fees vary between the different higher education institutions and all universities charge fees to students. While competition helps to ensure that fees remains quite similar from one university to another, costs between universities nevertheless exist, as well as between the courses studied (for example, a medical student will pay more than a student studying English literature).



## Definition(s) of violations

In general terms, the failure of a State to comply with the obligations that it has undertaken by ratifying a treaty amounts to a violation of that treaty. Violations may be divided into two types, acts of commission or acts of omission. In the first case (commission) the violation occurs through a direct action of the State; in the second (omission), the violation occurs when the State does not take action or fails to take the steps needed. It means that failure to perform any of the obligations to respect, protect and fulfil the right to education constitutes a violation of such right. For example an act of commission occurs if Israel adopts discriminatory legislation in relation to access to education for children in East Jerusalem. It is an act of omission, instead, when neither Israel nor the Palestinian Authorities take steps to make secondary and higher education progressively free.

## 2.3. Violations and the 4As

Some challenges of a violation approach

The violation approach can be very powerful and help us better understand and realise the right to education. However, it is not without difficulties. Resources, political will, and contextual conditions may be a challenge. The legal framework provides for some margins and requires the duty-bearer to demonstrate the extent of the challenges and obstacles. For example, it is important to distinguish between inability and unwillingness to comply with obligations. Making schools available, for instance, may not be possible, despite all the willingness to do so if construction materials are not allowed in the country or if even temporary and inappropriate infrastructures such as tents are demolished.

In any event, the burden of proof rests on the duty-bearer and the lack of available resources cannot be used as a pretext for non compliance. Actually, the State has the obligation to seek financial and technical assistance if that is the case (and States in a position to assist have the obligation to provide such assistance).<sup>41</sup>

Another important challenge is the existence (or lack) of mechanisms to redress violations. There must also be accountability for possible acts of omission or commission that amount to violations. This means establishing a system of functional and accessible mechanisms of complaint. These do not only include institutions for the prosecution of violators and the setting up of remedies for the victims, but also, as we will see in the next sections, mechanisms for monitoring and investigation. This applies both at the national and international level. It is important to always make sure that victims are aware of them, have access to them, and know how to use them.

Last but not least, there are overlaps and interconnections of the 4As and the tripartite typology which make it hard to categorise violations. It may well be that key issues and problems can be interpreted under

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41 See art.2.1 of ICESCR: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures".

more than one A or type of obligation. This is not necessarily negative though, as it may actually offer different entry points to claim that the right has been violated and can open new monitoring and advocacy channels as we shall see later on.

Some benefits of a violation approach

As is often the case, challenges also present opportunities. As such, looking at violations is fundamental if we are to correct distortions or abuses of power and rights. Another benefit is that through cases and the identification of violations it is possible to develop a better understanding of the content of the right to education and to put pressure on the system to be more responsive in line with human rights principles.

### **Identifying violations: a step-by-step guide**

Below are some suggestions on how to identify violations. One can think of this as a staged process based on the following steps:

1. What are the applicable sources (i.e. national and international standards and instruments)?
2. What articles/provisions can be referred to when looking into a specific issue?
3. What are the obligations that derive from those sources?
4. Who is the duty-bearer in this specific case?
5. What types of conduct or results are required by the duty-bearer in question?
6. Is the duty-bearer failing to achieve that conduct or those results? (omission)
7. Is the duty-bearer acting against that conduct or those results? (commission)
8. Are there any conditions to be taken into account? (progressive realisation, resources, willingness, inability, reservations to some provisions...)
9. Are there mechanisms for accountability and redress that can be accessed?

Indeed, the benefits and challenges of using a violation approach emerge very clearly when applying these conceptual frameworks to the concrete reality of the oPt. Once again building on the previous tables while looking at each of the 4As allows us to identify obligations and related violations within a clear legal framework that has been legitimised by international instruments.

**Table 6. Availability**

RESPECT	O: Respect independence of parents councils	
	V: Interference with the independence of parents councils	
PROTECT	O: Respect for minimum standards in the establishment of schools, both those standards defined by INEE as well as any national standards	Examples include: *prohibitions on school building and repairs or renovations to educational infrastructure by the Israeli Civil Administration and East Jerusalem municipality. <sup>42</sup>
	V: Establishing schools with no or low minimum standards	
	O: Protect educational facilities from attacks	Examples include: *execution of demolition orders by Israeli authorities
	V: Failure to protect educational facilities from attack	*damage to and destruction of educational premises during military operations *damage and destruction of schools by Israeli settlers  See also: UNICEF CAAC, Israel and oPt annual review, 2010
	O: Protection for teachers so they can reach schools and teach	Examples include: *abusive treatment/harassment by Israeli military at checkpoints and gates along the Wall;
	V: Denial of permits/entry into different areas of the oPt or the country for educational staff	*delays at checkpoints *delays in and refusals of issuing permits

<sup>42</sup> For instance, the case of Ka'abneh school in the Jordan Valley in Area C is one such illustration. Catering to 57 students from grades 1-8, it operates with sub standard infrastructure owing to prohibitions that have been placed on building (which currently do not allow for the establishment of a permanent structure). The school consists of 9 classrooms that are housed in temporary structures: caravans and shipping containers. There is no glass or ventilation nor any connection to the water supply or electricity network (also prohibited by the Israeli Civil Administration). The school uses tankered water. One latrine does not have a door.

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<p>O: Provide adequate infrastructure for children (also age appropriate)</p> <p>V: Failure to provide adequate infra-structures</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*insufficient permits to build/upgrade schools</li> <li>*insufficient planning of spaces and classrooms adequate to the number and needs of children (e.g. classrooms on the ground level for younger children)</li> </ul>
<p>O: Provision of construction material for schools and permits to build schools</p> <p>V: Impeding entry/provision of construction material as well as demolition of existing buildings</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*Gaza blockade rendering it very difficult to build new schools</li> <li>*demolition of schools or other buildings in Area C</li> </ul>
<p>O: Provide alternative means to access education (i.e. e-learning)</p> <p>V: Failure to provide alternative methods for learning</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*need for resource allocation towards alternative education</li> <li>*insufficient training of teachers in alternative forms of education</li> </ul>
<p>O: ensure that teachers' salaries are "domestically competitive" and non-discriminatory</p> <p>V: discrepancies in teachers' salaries based on type or level of education</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*how do UNRWA teacher's salaries and benefits compare with those for teachers in government schools and across different levels of education. Does the comparison reveal discrepancies with international obligations?</li> </ul>
<p>O: ensure that education is available also to the most marginalised groups, regardless of their economic situation</p> <p>V: Lack of available education for the poorest areas or groups</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*poverty leading to drop out of students</li> </ul>
<p>O: Ensure transparency in the budget in order to do an accurate analysis of resource allocation for education</p> <p>V: Unavailable or unclear education budget</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*disproportionate allocations to certain areas more than others</li> </ul>

**Table 7. Accessibility**

RESPECT	<p>O: Respect the right of all individuals not to be discriminated against in accessing education</p> <p>V: Denial of access to individuals or groups through legislated or enforced discrimination</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*higher education students who have been physically prevented from accessing education opportunities outside of the Gaza Strip (including in the West Bank) or who face financial difficulties in accessing education within Gaza</li> <li>*chronic underfunding and subsequent lack of education provision for Palestinians in East Jerusalem</li> <li>*pending applications for family reunification and therefore students do not have the required documents to enrol in East Jerusalem schools</li> <li>*separation of students based on age, for example young mothers not allowed to return to school or who left school to get married</li> <li>*Issues around age of majority – discrimination between PA and Israeli systems</li> </ul>
	<p>O: Ensure children have safe access to schools</p> <p>V: Failure to secure safe access</p> <p>O: protect students from dangers on the way to school</p> <p>V: failure to ensure safety on the way to school</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*settler violence and violence in the context of military incursions and armed clashes and corresponding lack of accountability for these acts</li> <li>*military and militant activities near schools in the buffer zone (approximately 30% of students at these schools come from families who live, and have always lived, between school and border)</li> <li>*difficulties in remote and unsafe areas or on busy streets (insufficient traffic lights, police presence, etc.)</li> <li>*need to keep children in schools and not allow them to go to political rallies</li> </ul>

FULFIL	O: Provide schools at primary and secondary level	Examples include; *Lack of primary and secondary schools in Gaza
	V: Insufficient number of schools at different levels	*Discrimination between government and UNRWA schools (resource allocation)
	O: Provide school transportation (making it available and affordable) especially for long distances and in poor weather	Examples include: *Poor transportation and roads leading to the drop out of students *Costs of transportation (parents cannot afford it) *Students walking long distances from home to school
	O: Facilitate visas needed to allow study abroad, and allow Gazan students to study in the West Bank  V: Denial of Visas to study abroad, or in the West Bank	Examples include: *students (and teaching staff), especially in Gaza, not being allowed to exit for study or teaching and professional development either abroad or in the West Bank <sup>43</sup>

<sup>43</sup> In many cases students could get the visa but they are not allowed to exit Gaza in order to get the visa (they need to make the applications in person) or bureaucratic rules require them to have a diplomatic chaperone out of Gaza. It's not necessarily that their visas are denied but more that they face a myriad of bureaucratic obstacles (horizontal violence) that prevents them from getting the visas to leave in the first instance. Gisha has more information at: [www.gisha.org/index.php?intLanguage=2&intItemId=1213&intSiteSN=143&OldMenu=143](http://www.gisha.org/index.php?intLanguage=2&intItemId=1213&intSiteSN=143&OldMenu=143).

**Table 8. Acceptability**

<b>RESPECT</b>	<p>O: Ensure students opinions (on curriculum or learning methods and possible difficulties) are heard</p> <p>V: Failure to allow students' point of view</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*lack of involvement of students in curriculum review</li> <li>*historical and cultural relevance of the curriculum not guaranteed</li> <li>*lack of or limitations to student councils</li> </ul>
	<p>O: Respect students' need for suitable learning environment</p> <p>V: Lack of attention to classroom environment</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*considering where young students are placed (on what floor)</li> <li>*overcrowded classrooms (reason for drop out)</li> <li>*schools operating in double shifts to the detriment of class time for students and teaching time for teachers</li> <li>*High ratio of students per counsellor</li> <li>*schools do not meet basic standards of hygiene and safety</li> </ul>
<b>PROTECT</b>	<p>O: Take measures to ensure the psychological and physical integrity of students and teachers going to and from school</p> <p>V: Failure to protect the psychosocial and physical well-being of students and teachers</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*obstacles and violence on the way to school/work</li> <li>*military raids on school premises</li> <li>* intentional or unintentional targeting of schools during military operations</li> <li>*attacks and vandalism against schools by settlers and systematic failure of the state to prevent this</li> <li>*lack of psychological support for students and teachers</li> </ul>
	<p>O: Ensure learning environment free from violence</p> <p>V: Failure to secure safe learning environment</p>	<p>Examples include the need for:</p> <ul style="list-style-type: none"> <li>*implementing codes of conduct for teachers</li> <li>*develop health screening programmes</li> <li>*develop policies on corporal punishment and a broader non violence policy in schools</li> <li>*complaints mechanism for corporal punishment</li> </ul>



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O: Provide curriculum development for a good quality education that is child-centred, child-friendly and empowering

V: Failure to review and make curriculum acceptable, relevant and of good quality

O: Incorporate the teaching of human rights in the education curriculum, as well as principles of equality and non-discrimination

V: Failure to review curricula to include human rights education promoting the principles of equality and non-discrimination

Examples include:

- \*curriculum not appropriate or easily understandable
- \*need for curriculum review (so that it does not lead to drop out if poor)
- \*need for parental involvement in curriculum development
- \*need to ensure all rights are respected, protected and taught in and through education

O: provide trained and qualified teachers

V: hiring and dispatching unqualified teachers

Examples include:

- \*Use of inexperienced teachers
- \*need to create norms and standards regarding teacher accreditation
- \*competency exams for teachers to ensure they are of high standards

**Table 9. Adaptability**

<b>RESPECT</b>	<p>O: Respect the right of education for children in particular situations or with specific lifestyle/culture</p> <p>V: Denial of access to education for children in specific situations</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*children in detention (is education provided in prisons? If so, what subjects?), Bedouin/herding communities, IDP children etc.</li> <li>*orphans (16,000 in number in Gaza), spread between UNRWA and government schools</li> <li>*female headed households</li> <li>*working children</li> <li>*ensure monitoring systems in schools (child labour)</li> </ul>
<b>PROTECT</b>	<p>O: Protect cultures, traditional ways of life through educational systems that adapt to needs of students and their families</p> <p>V: Lack of attention to specific cultural, traditional, working needs</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*Orphans at risk of not continuing education as families send them to work</li> </ul>
<b>FULFIL</b>	<p>O: Introduce new technologies in educational institutions so students keep up with needs of society</p> <p>V: Failure to keep educational institutions up to date and responsive to society's changing needs</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*destruction of laboratory materials, computers, poor equipment, etc.</li> <li>*obstacles and interference with new communication technologies (internet, emails, etc.)</li> </ul>

The illustrations again demonstrate the complexity of the issue, the interconnections among the 4As and the typology of obligations, and the challenges in identifying precise spaces, actions and omissions in one single category. Problems with infrastructure, for instance, may be discussed and analysed through availability and acceptability. Attacks on educational premises, as well as on students and teachers, may fall under accessibility or acceptability. Upgraded teaching methods may be looked at through both the lens of availability and adaptability. At times it may be better to use only one 'category'; at others it may be useful to combine the strength of two or more. Yet other times it may be required to draw upon the more general principles afforded by the PANEL model, such as, for example, non-discrimination or accountability. The decision will depend on the most effective avenues at our disposal, but also on the relevant duty-bearers. In fact, one of the advantages of using the approach illustrated by the tables above is that it facilitates the task of attributing responsibilities.

## 2.4. Actors, duty-bearers and rights-holders

*The main entity responsible for making education available, accessible, acceptable and adaptable is the State. The main 'beneficiaries' are individual human beings, be they children, adults, parents, teachers, etc. This section looks at other actors who also play an important role in the full realization of the right to education.*

Human rights provisions are addressed to the State or non-State actors that exercise government-like functions and control over a territory, yet they also encompass rights and freedoms on certain educational activities that are not limited to these State-like actors but also involve others. These include, for instance:

- private individuals or businesses;
- legal entities or bodies;
- community and faith-based organisations;

These actors are entitled to establish and direct educational institutions at all levels, but must ensure that these educational institutions conform to minimum standards and respect the principles of non-discrimination, equal opportunity and effective participation for all in society.

Other important non-state actors who have rights, freedoms and obligations regarding the right to education include:

- the child and his or her parents, as the bearers of the right to education and freedom of choice, but also as the bearers of the duty to comply with compulsory-education requirements;
- the child's parents, as 'first educators' with the obligation under the CRC to provide guidance in the exercise of rights in accordance with the child's evolving capacities and having the best interests of the child as a primary consideration;

- teachers as professional educators with the right to academic freedom and labour rights, but also the duty to respect the dignity and human rights of students and colleagues<sup>44</sup>

From both the human rights framework and the global strategies mentioned above, it is also clear that the international community in the broadest sense, including agencies and bodies within the UN system, financial institutions, and civil society actors, have duties and important functions when it comes to the implementation of the right to education.

Last, but not least, civil society organisations (CSOs) and other non-state actors have some core obligations too. These are largely reflected in the obligation of the State to protect against harmful activities or violations carried out by non-state actors. There is also reference to non state actors in the preamble and article 29 of the UDHR.<sup>45</sup> A similar responsibility is recognised in the preambles of both the ICESCR and the ICCPR.

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44 For a more comprehensive list of key stakeholders and corresponding actions that may be taken to ensure the right to education is upheld, see the INEE Minimum Standards handbook, Foundational standards and specifically the standard related to community participation.

45 Preamble, "every individual and every organ of society (...) shall strive (...) to promote respect for these rights and (...) to secure their universal and effective recognition and observance" and art. 29 providing that everyone "has duties to the community".

## Duty-bearers in oPt and their obligations/violations

It is often difficult to identify community responsibilities. Nonetheless, the previous analysis of obligations and violations and the use of the 4As are of immense assistance. If the duty to fulfil is strictly assigned to the State and its implementing mechanisms, the obligations to respect and to protect can be interpreted as prerogative of other actors as well. This, however, does not mean that everything is crystal clear. Looking at the examples that we used in the previous tables, it is not always easy to determine who the actual duty-bearer is. There may well be cases where more than one entity is legally bound to achieve results, avoid omissions, rectify acts of commission and in the end act in full compliance with its obligations. Table 6 below represents one such discussion (and should not therefore be considered exhaustive).

Table 10. Obligations and Violations of the 4As

	Availability	Accessibility
Respect	<p>O: Respect the freedom to establish and direct educational institutions in accordance with minimum standards</p> <p>V: Prohibition of establishing educational institutions other than those directed by the State</p>	<p>O: Respect the right of all individuals not to be discriminated against in accessing education</p> <p>V: Denial of access to particular individuals or groups, whether through legislated or enforced discrimination</p>
Protect	<p>O: Ensure that the educational freedoms do not lead to extreme disparities of educational opportunities</p> <p>V: Failure to monitor and regulate private education to ensure that it conforms to minimum standards and does not discriminate</p>	<p>O: Ensure that nobody, including parents, can stop a child from attending primary education</p> <p>V: Failure to address obstacles to attendance (such as child labour, child marriage, household chores) that are linked to parents/families' needs and views</p>
Fulfil	<p>O: Provide a sufficient number of public schools offering free and compulsory education for all children</p> <p>V: Failure to use the maximum of available resources to provide, for example, schools in adequate conditions</p>	<p>O: Provide compulsory education without discrimination, within safe reach and free from direct or indirect costs (for children and parents)</p> <p>V: Failure to provide free textbooks or facilitate access to school for children living in rural areas</p>

Acceptability	Adaptability
<p>O: Respect the freedom of parents to ensure education in conformity with their moral and religious convictions</p> <p>V: Inhibition of the establishment and operation of religious schools that respect minimum standards</p>	<p>O: Respect the establishment of formal and informal initiatives that promote adult education</p> <p>V: Interference with the establishment of formal and informal adult education programmes</p>
<p>O: Ensure that curricula, textbooks and teaching methods do not perpetuate or encourage discrimination</p> <p>V: Use of curricula that are biased towards a specific group or situation on account of their sex, race, language, religion, disability, ethnicity, income.</p>	<p>O: Ensure that diverse abilities and situations are taken into account in policies and planning</p> <p>V: Failure to ensure equal standards for educational opportunities and facilities for persons with disabilities</p>
<p>O: Provide education of good quality that is child-centred, child-friendly and empowering</p> <p>V: Allowing the use of corporal punishment and failure to ban it</p>	<p>O: Design and implement education for children precluded from formal schooling</p> <p>V: Failure to develop or implement programs for particularly vulnerable children (for example street children or children of illegal immigrants)</p>

The following tables relate the earlier examples of application of the 4A's to the corresponding duty bearers. What emerges is the omnipresence of some actors, while others are indicated as duty-bearers only for specific issues. Even when this is the case, it could be easily noted that the ultimate obligation can always be traced back to the relevant State or Authority. As such, the relevant entities within the State or Authority should be encouraged to assume their responsibilities. Tangible examples of how to engage all of these duty bearers may also be found under the INEE Minimum Foundational Standard on community participation.

TABLE 11. AVAILABILITY

RESPECT	O: Respect independence of parents councils V: Interference with the independence of parents councils	Examples include: <sup>46</sup> *direct control of parents councils through political appointees. *non-participatory councils dominated by school headmasters.
	O: Respect for national minimum standards in the establishment of schools V: Establishing schools with no or low minimum standards	Examples include: *the Israeli Civil Administration's prohibition on building in Area C, and the same in East Jerusalem by the Jerusalem Municipality, that effectively prevent any construction of new permanent structures or additions onto existing ones. Consequently children are forced to learning in a range of poor quality and sub standards classrooms. *other examples include schools located near to closed military areas where there may be UXO or shooting may occur.
	Duty-bearer: occupying power, PA	
PROTECT	O: Protect educational facilities from attacks V: Failure to protect educational facilities from attack	Examples include: *issuance and execution of demolition orders by Israeli authorities *damage to and destruction of primary schools during military operations *damage and destruction of schools by Israeli settlers
	O: Protection for teachers so they can reach schools V: Denial of permits/entry into the country for educational staff	Examples include: *abusive treatment/harassment by Israeli military at checkpoints and gates along the Wall; *delays at checkpoints *delays in and refusals of issuing permits for teachers, especially in the case of Jerusalem
	Duty-bearers: occupying power, MoEHE, MoT	

<sup>46</sup> These two examples are hypothetical rather than based on substantiated and verifiable experience in this context and appear here for the sake of the argument.



<b>FULFIL</b>	<p>O: Provide adequate infrastructure for children (also age appropriate)</p> <p>V: Failure to provide adequate infra-structures</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*insufficient permits granted to build/upgrade schools</li> <li>*insufficient planning of spaces and classrooms adequate to the number and needs of children (classrooms on the ground level for younger children)</li> </ul>
	<p>O: Provision of construction material for schools and permits to build schools</p> <p>V: Impeding entry/provision of construction material, as well as demolition of existing buildings</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*Gaza blockade has made it very difficult to build new schools</li> <li>*demolition of schools or other buildings in Area C</li> </ul>
	<p>O: Provide alternative means to access education (i.e. e-learning)</p> <p>V: Failure to provide alternative methods for learning</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*need for resource allocation towards alternative education</li> <li>*insufficient training of teachers in alternative forms of education</li> </ul>
<b>Duty-bearers: occupying power, MoEHE, UNRWA</b>		

**TABLE 12. ACCESSIBILITY**

RESPECT	<p>O: Respect the right of all individuals not to be discriminated against in accessing education</p> <p>V: Denial of access to individuals or groups through legislated or enforced discrimination</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*Students of higher education with difficult access even within Gaza</li> <li>*Various systems – PA/ Gaza MoEHE, UNRWA system, EJ schools: is there inherent discrimination?</li> <li>*pending applications for family reunification and therefore students do not have the required documents to enrol in East Jerusalem schools</li> <li>*separation of students based on age, for example young mothers not allowed to return to school or who left to get married</li> <li>*Issues around age of majority – discrimination between PA and Israeli systems</li> </ul>
	<p>Duty-bearers: universities (may be lacking branches in other areas of Gaza), MoT (need to provide free transport for some children studying in remote areas for whom the cost of transportation may otherwise prove prohibitive), MoEHE (school fee standards and norms), NGOs, INGOs working in communities (girls access to schools), Palestinian Legislative Council, legal system, UNRWA, local government, and the State of Israel.</p>	
PROTECT	<p>O: Ensure children have safe access to schools</p> <p>V: Failure to secure safe access</p> <p>O: protect students from dangers on the way to school</p> <p>V: failure to ensure safety on the way to school</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*settler violence and violence in the context of military incursions and armed clashes</li> <li>*Schools in the buffer zone (in particular the most vulnerable students –approximately 30% in most of these schools - who live between the schools and the border)</li> <li>*Difficulties in remote and unsafe areas or on busy streets (insufficient traffic lights, police presence, etc.)</li> <li>*need to keep children in schools and not allowing them to go to political rallies</li> </ul>
	<p>Duty-bearers: MoT, MoEHE, NGOs and INGOs working with communities, local government, legislative council, and the State of Israel.</p>	

FULFIL	<p>O: Provide schools at primary and secondary level</p> <p>V: Insufficient number of schools at different levels</p>	<p>Examples include;</p> <ul style="list-style-type: none"> <li>*Lack of primary and secondary schools in Gaza</li> </ul>
	<p>O: Provide school transportation (making it available and affordable) especially for long distances and in poor weather</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*Poor transportation and roads leading to the drop out of students</li> <li>*costs of transportation (parents cannot afford it)</li> <li>*students walking long distances from home to school</li> </ul>
	<p>O: Facilitate Visas needed to allow study abroad</p> <p>V: Denial of Visas to study abroad</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*students and teachers, especially in Gaza, not being granted visas for study or work and professional development abroad</li> </ul>
Duty-bearers: occupying power, MoEHE, MoT, UNRWA		

**TABLE 13. ACCESSIBILITY**

<b>RESPECT</b>	<p>O: Ensure students opinions (on curriculum or learning methods and possible difficulties) are heard</p> <p>V: Failure to allow students’ point of view</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*lack of involvement of students in curriculum review</li> <li>*historical and cultural relevance of the curriculum not guaranteed</li> <li>*lack of or limitations to student councils</li> </ul>
	<p>O: Respect students’ need for a suitable learning environment</p> <p>V: Lack of attention to classroom environment</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*considering where young students are placed (on what floor)</li> <li>*overcrowded classrooms (reason for drop out)</li> <li>*schools operating in double shifts to the detriment of class time for students and teaching time for teachers</li> <li>*high ratio of students per counsellor</li> <li>*schools do not meet basic standards of hygiene and safety</li> </ul>
Duty-bearers: parents, community, school authorities		
<b>PROTECT</b>	<p>O: Take measures to ensure the psychological and physical integrity of students and teachers going to and from school</p> <p>V: Failure to protect the psychosocial and physical well-being of students and teachers</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*obstacles and violence on the way to school/work</li> <li>*military raids on school premises</li> <li>*intentional or unintentional targeting of schools during military operations</li> <li>*attacks against schools by settlers</li> <li>*lack of psychological support for students and teachers</li> </ul>
	<p>O: Ensure learning environment free from violence</p> <p>V: Failure to secure safe learning environment</p>	<p>Examples may include:</p> <ul style="list-style-type: none"> <li>*implementing codes of conduct for teachers</li> <li>*health screening programmes</li> <li>*policies on corporal punishment and a need for a broader non violence policy in schools</li> <li>*complaints mechanism for corporal punishment</li> </ul>
Duty-bearers: occupying power, Palestinian Authority, Ministry of Interior, police, community, parents, school authorities		

**FULFIL**

O: Provide curriculum development for good quality education that is child-centred, child-friendly and empowering

V: Failure to review and make curriculum acceptable, relevant and of good quality

O: Incorporate the teaching of human rights into the curriculum, including the principles of equality and non-discrimination

V: Failure to review curricula to include human rights education promoting the principles of equality and non-discrimination

Examples include:

- \*Curriculum not appropriate or easily understandable
- \*need for curriculum review (so that it does not lead to drop out if poor)
- \*need for parental involvement in curriculum development
- \*need to ensure all rights are respected, protected and taught in and through education

O: Provide trained and qualified teachers

V: Hiring and dispatching unqualified teachers

Examples include:

- \*use of inexperienced teachers after strikes
- \*need to create norms and standards
- \*competency exams for teachers to ensure they are of high standards

Duty-bearers: MoEHE, INGOs, NGOs, UNRWA, PA, MoF, school authorities, Israeli MoE (EJ)

TABLE 14. ADAPTABILITY

RESPECT	<p>O: Respect the right to education of children in particular situations or with specific lifestyle/culture</p> <p>V: Denial of access to education for children in specific situations</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*children in detention (is education provided in prisons? If so, what subjects?), Bedouin/herding communities, IDPs...</li> <li>*orphans (16,000 in number in Gaza), spread between UNRWA and government schools</li> <li>*working children</li> <li>*ensure monitoring systems in schools (for issues such as child labour)</li> </ul>
	Duty-bearers: Israeli prison service, Palestinian authority	
PROTECT	<p>O: Protect cultures, traditional ways of life through educational systems that adapt to the needs of students and their families</p> <p>V: Lack of attention to specific cultural, traditional, working needs</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*Orphans or children from single parent households at risk of not continuing education as families send them to work</li> </ul>
	Duty-bearers: Israeli prison service, Palestinian Authority, Ministry of Detainees, ex-detainees, MoEHE, NGOs, INGOs, chamber of commerce	
FULFIL	<p>O: Introduce new technologies in educational institutions so students keep up with needs of society</p> <p>V: Failure to keep educational institutions up to date with changing society</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*destruction of laboratory materials, computers, poor equipment, etc.</li> <li>*obstacles and interference with new communication technologies (internet, emails, etc.)</li> </ul>
	Duty-bearers: Israeli prison service, security apparatus, MoEHE	

## CHAPTER 3: MONITORING AND REPORTING MECHANISMS AND APPROACHES

*The following section will look at some of the different monitoring and reporting mechanisms available to the UN and civil society. The main focus will be on 'soft' legal mechanisms available to UN, States and civil society at the international level. Attention will then focus on the Monitoring and Reporting Mechanism for Children Affected by Armed Conflict (MRM) as it pertains to the oPt. Lastly, this section will focus on the importance of indicators, presenting a methodology and framework for rights-based indicators, applicable for education in the oPt.*

The core underpinning of any human rights work is to monitor and report on specific violations of human rights (be they individual or collective) and on the status of implementation of human rights standards and norms. Monitoring means the gathering of data, qualitative or quantitative, in a systematic, objective and transparent fashion. Reporting means the analysis and use of this data in the wider human rights system, either for the purpose of targeted action on a specific violation or for the broader action on a more systemic level. Without this evidence and analysis, accountability and re-dress through advocacy or

campaigning is difficult to achieve. Without an assessment of the duty-bearer(s)' performance, any progress or sustainable plan towards education for all would be almost impossible and void of real meaning. Even more importantly, monitoring the right to education is a key element for the prevention of denials, distortions and ultimately violations. The key need for monitoring and reporting is also reflected in the INEE Minimum Standards. Notably, the foundational standard on analysis has as standard 3: "regular monitoring of education response activities and the evolving learning needs of the affected population is carried out".

### 3.1. Why monitor and report?

*The purposes of monitoring and reporting are numerous and vary according to the violations committed, the legal framework and the aims and capacities of monitoring organisations. This section highlights the benefits that monitoring and reporting can bring to a fuller implementation of the right to education if conducted in a systematic and informed manner.*

Primarily monitoring is done:

*To identify violations, individual or systematic, so that these may be documented and acted upon.*

A number of other, often mutually supportive, reasons for monitoring and reporting can also be identified:

*To check and review laws and policies, especially at the national level, that ensure access to quality education and prevent attacks on education, but also to review international law as it pertains to the right to education in IHRL, IHL and international criminal law, and where necessary to suggest changes and improvements;*

*To check on the adequate use of available funds, ensuring that there are legal provisions in place for defining what percentage of available funds go to the various sectors and levels of education, and then to monitor that these funds are actually spent towards the fulfilment of the right to education;*



*To assess progress (or regression) in accordance with the provisions of progressive realisation in IHRL, and to check against any regression occurring due to the State's inability or unwillingness to fulfil the right to education;*

*To support mechanisms to correct/redress violations, either judiciary or quasi-judiciary, at national or international level, by ensuring that the correct information is available, and that legal and contextual analysis is available to contribute to the (re-)establishment of the right to education and any necessary redress of violations;*

*To enhance cooperation among actors, ensuring that information is correct, validated and neither redundant nor contradictory, as well as contributing to different actors speaking with one voice for greater strength and/or dividing tasks according to their mandate and expertise on the various aspects of the right to education.*

### 3.2. Who to report to on the implementation of IHRL: Mechanisms

*The international human rights system has three main sources of information for monitoring and reporting: the periodic reporting by States Parties to the various treaties and bodies, the gathering and analysis of data by the UN itself, and the reporting by various national and international CSOs. This section looks at each of them and their interactions in order to offer indications on technical mechanisms and procedures that could be used more effectively at the international level.*

The official UN international human rights regime has a well-developed system for monitoring and reporting, with different UN bodies charged with receiving and acting upon the information: the office of the UN Secretary General, ECOSOC, the General Assembly, the Human Rights Council, the so-called special procedures (Independent Experts, Special Rapporteurs, Working Groups), the different treaty-based Committees of independent experts, etc. All of these are, to various degrees, supported by UN agencies, primarily the Office for the High Commissioner for Human Rights (OHCHR), but also OCHA, UNICEF, the UNCT and Resi-

dent Representative, UNSCO and UNRWA in the case of the oPt, and various other specialised agencies.

The UN system attempts to involve all actors in the reporting, allowing both national and international civil society to collect and present analysed information and data to the various mechanisms, either as part of joint submissions with the UN or as stand-alone submissions. While the system can be somewhat complex and bureaucratic, overall it works well. Challenges remain in: a lack of awareness regarding the uses of the system by many actors (especially civil society); a lack of cooperation between actors with regards to reporting (between civil society actors themselves, as well as between States, the UN and civil society); the lack of innovation and of challenges to the shortcomings of the system by UN and CSOs and, ultimately, a lack of enforced accountability mechanisms related to the system.

There are, as indicated above, numerous actors involved in the monitoring and reporting, especially at the national and sub-national level, where many organisations and individuals contribute information or verification, often at great personal risk. It will go too far here to mention the many different actors, also given that they change from situation to situation. Instead Table 15 below shows some of the mechanisms for monitoring and reporting, behind each of which there will be a number of involved or potentially involved actors. Engaging with the different mechanisms and entities will reveal some of the actors, though most here are found at the policy level, distanced from the occurrence of the violations. The table, which is by no means exhaustive, or unique to the situation in oPt, is divided into national entities, and international hard and soft law, in order to show the various components of the system.

**TABLE 15. LEGAL MECHANISMS AT NATIONAL AND INTERNATIONAL LEVEL**

International hard law	International soft law	National Hard law
— Int’l Court of Justice	— UN Special Rapp.	— Nat. HR Institutes
— Int’l Criminal Court	— UN Gen. Ass. resolutions	— Courts
— UN Security Council	— Human Rights Council and other treaty bodies examining complaints (e.g. CRC, CESCR, UPR etc)	— Parliament
	— MRM1612	— Government (Ed., finance)



The first column, international hard law, denotes those legal entities whose decisions have binding power on States and individuals. They rely on data and information, as evidence, from the field in order to arrive at their decisions.

The second column, international soft law, denotes those entities or mechanisms which are set up by international law or General Assembly Resolutions, but whose decisions are only guiding, not binding in themselves; their monitoring and reporting may similarly only guide other processes.

The third column, on national hard law, denotes the classic institutions of the sovereign State (the judiciary, legislative and executive), as well as independent National Human Rights Institutions or Ombudsmen as watch-dogs at national level. These four gather information and as well as act upon it.

The third column also represents ‘national remedies’: those resources that must be exhausted before a legal claim can be brought to the in-

ternational fora in column 1 (or to some extent in column 2, although it is not a requirement for reporting to the Special Rapporteur or the General Assembly, etc.), with the exception of the ICC, which only takes cases that have not been tried at national level. The large arrow denotes this movement up through the international system. Most of the mechanisms in Table 15 are relevant for the situation in the oPt. All of them are guided by the normative frameworks provided by IHL, ICL and IHRL, most will be part of in-country reporting on violations of IHRL; quite a few of the entities/mechanisms will also be involved in monitoring and reporting on IHL and in some cases on International Criminal Law.

Most entities/mechanisms are represented both in Israel and in Palestine, though the absence of statehood bars Palestine from reporting to the Treaty Body system or from sitting around the table at the decision making bodies of the UN (they only attend as observers). Similarly, due to only limited devolvement of power to the PA, Palestinian institutions may not yet be classed as full duty-bearers.

*Exploring the international human rights system (or 'soft law' as referred to above)*

This report deals primarily with IHRL and how it may be better used, understood and applied. The development of monitoring mechanisms and methods in IHRL is a continuous work in progress, but some of the well established avenues that can be used at the international, regional and national level for monitoring and reporting on the right to education are highlighted below.

Treaty Bodies (TBs) are derived from the various Conventions and oversee the implementation of their provisions by State Parties through four main functions: i) review of periodic reports; ii) clarification and interpretation of the relevant treaty through General Comments; iii) examination of complaints (only after all internal remedies have been exhausted); iv) inquiries into grave or systematic violations.

The table below offers a schematic summary of the most relevant TBs for the right to education. We have already mentioned the CESCR and CRC Committees. However, one should not underestimate, for example, the impact of the CEDAW or CRPD Committees on issues related to the

right to education for the specific groups they attend to. Nor should one neglect the role of the Committee against Torture in monitoring and guiding State compliance on the prohibition of corporal punishment in schools, for instance, or to a certain extent on the issue of attacks/abuses on children and teachers. At times, it might actually be more effective to address one Committee rather than the other, depending on the degree of acceptance and application of the corresponding treaty in a specific country. Whilst Israel is the main duty-bearer in this case, and whilst it has a general approach to deny its reporting duties on the situation in the oPt, it seems that in its dialogue with some Committees it is more open to discussion, and therefore it may be more effective to refer to those mechanisms rather than others.

**TABLE 16. TREATY BODIES AND THEIR FUNCTION**

Treaty	Treaty Body	Functions			
		Review of reports	General Comments	Examination of complaints <sup>1</sup>	Inquiry into grave violations <sup>1</sup>
ICCPR	Human Rights Committee	X	X	X	
ICESCR	CESCR	X	X	X	X
ICERD	CERD	X	X	X	
CAT	CAT	X	X	X	X
CEDAW	CEDAW	X	X	X	X
CRC	CRC	X	X		
CRPD	CRPD	X	X	X	X

<sup>1</sup>For the CESCR Committee, these functions will be valid when the Optional Protocol will enter into force.

What is important to underline about this monitoring process is that, to some extent, all Committees, and especially the CRC, base their review and interactive dialogue with the State Party on a range of information, including that received from other UN bodies/agencies and NGOs (through so-called shadow reports). This offers civil society organizations an entry point for lobbying and strategizing at the international level.

The UN Special Rapporteur (SR) on the right to education was the first UN special procedure to be established on economic, social and cultural rights. Therefore, this mechanism has a long standing track record of assessing the state of the right to education worldwide. Through both thematic and country reports, the SR not only examines and monitors the implementation of the right to education, but also refines understandings of key aspects and provides recommendations for further action. S/He can also receive individual or group complaints on alleged violations of the right to education. These are then examined and discussed in so called 'Communications with Governments'<sup>47</sup>.

While the previous mechanisms rely on independent experts, the Universal Periodic Review (UPR) is a peer-review process carried out by governmental representatives. This is a relatively recent monitoring process that follows a periodic timetable to ensure that every State is assessed. Such peer involvement can be positive in offering an opportunity for other States to follow up on recommendations accepted by the reporting State. It also offers the opportunity for civil society actors to submit alternative short contributions. Though therefore important for some international naming and shaming strategies, it is also to a large extent a political body, and its statements may be perceived to be driven by ulterior motives, and thus be less effective than other mechanisms.

The Working Group on Grave Violations against Children is a platform for responding to certain violations of the right to education within the context of armed conflict through two education related triggers. In the oPt, the Working Group is voluntary in nature (i.e. the oPt is not a listed country that has been mandated to report to the SRSRG), but it does have its monitoring and reporting work and mandate defined at the international level where reports are received and read in the office of the SRSRG. Within this mechanism, there is potential to make better use of

47 There are several references to Israel/oPt in such reports. The Special Rapporteur on the Right to Education commented in its 2005 report on the wall and the advisory opinion by the International Court of Justice, stating that it is illegal according to international law and that it impedes the realization of several human rights, including the right to Education. See para. 124 at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/171/40/PDF/G0417140.pdf?OpenElement>.

In the 2009 Special Rapporteur contributed to a combined report presented to the Human Rights Council, which proposes a comprehensive analysis of the effects of the blockade of the Gaza strip on the enjoyment of a number of human rights. The right to education is referred to in paras. 64-73: [http://www.un.org/children/conflict/\\_documents/A.HRC.10.22.pdf](http://www.un.org/children/conflict/_documents/A.HRC.10.22.pdf)

The 2011 report of the Special Rapporteur on the Right to Education contains an addendum which updates the information about Gaza and outlines a communication which has been sent about it to the government of Israel: <http://unispal.un.org/UNISPAL.NSF/0/4CA688CB996A703B85257896004ECBD7>

IHRL through the use of indicators and a much more concerted effort to join forces with other groups and to lead on advocacy, possibly with influential coordinating bodies, such as the Education and Protection Clusters.

In the oPt, the Working Group on Grave Violations against Children was established in 2007. Data is collected on education violations related to attacks on schools and humanitarian access to education. Incidents are compiled and verified in a monthly data sheet and submitted to UNICEF for inclusion in the monitoring and reporting mechanism (MRM) database. Various public sources are used, including UN agency reports and reports from international and local NGOs. Relationships with several human rights and protective presence monitoring groups in some of the highest risk areas are built by the Working Group to ensure that reporting is as comprehensive as possible. In addition, the group has taken steps to engage more closely with the Palestinian MoEHE in order to draw on their data and incident reports on violations.

The Working Group is not only a credible source of information and analysis on children affected by armed conflict in the oPt, but has also taken steps to share the information more widely and link it to responses. Beyond the official bi-monthly submissions to the Office of the Special Representative of the Secretary-General (SRSG), a bi-monthly news Bulletin on Children and Armed Conflict is produced and widely circulated. Members of the Working Group have conducted orientation sessions on the MRM to the various Clusters and sub-Clusters in the oPt (Education, Protection, Child Protection, etc.) and there are ongoing efforts to strengthen the linkages to responses – be they programmatic or advocacy.

The work that the group has conducted in terms of strengthening education indicators is also helping to inform global strategies. The working group has contributed to the Global Feasibility Study (commissioned by Qatari NGO Education Above All) and has also been in touch with the Global Coalition for Protecting Education from Attack in order to strengthen cooperation at the field level. The focus now needs to be on linking the evidence-base that the working group now has on violations against children to response mechanisms and focused advocacy initiatives. The Working Group has already taken a pro-active approach

in this regard and provides data and analysis on trends and vulnerable areas in order to facilitate response programming through the appropriate clusters. These linkages need to be further strengthened and institutionalized. Examples that may be built upon include: the use of the MRM in the identification of vulnerable schools for agencies' programming; the subsequent development of response for these identified vulnerable schools and communities based on the issues highlighted through the MRM data; and the further development of an integrated child protection and education emergency response framework for which the Working Group has been a driving force in the identification of response areas.

Looking ahead, the Working Group should also take advantage of additional advocacy opportunities that may be leveraged as a result of the recent passing of UNSC Resolution 1998, passed in July 2011. This resolution calls for a greater focus on attacks against education by ensuring that those against schools and hospitals will be listed in the UN Secretary-General's annual report on children in armed conflict and targeted measures will be imposed on violators. This resolution is complemented by the commitment demonstrated when General Assembly Resolution (A/64/58) on "The right to education in emergency situations" was passed in June 2010, which may also provide additional opportunities. The oPt based Working Group has already made significant strides in defining and where appropriate contextualising the education indicators. As global efforts to implement UNSC Resolution 1998 are implemented, the oPt example should be adapted to reflect these debates, but the work of the oPt Working Group should also be taken into account in these global debates.



### 3.3. Approaches to monitoring the implementation of the right to education at the national level

Monitoring the right to education is essential at all levels. It needs to go beyond international and regional bodies, as it can also prove extremely useful for national and local assessments. Various approaches can be taken in this sense. The following section highlights some of them.

Monitoring enables stakeholders to:

- i) assess the results of legislative, administrative and policy measures taken by the State on every aspect of the right to education;
- ii) track and evaluate progress (or retrogression);
- iii) identify challenges and obstacles;
- iv) and facilitate corrective and remedial measures in case of violations.

#### Budget analysis

Reviewing budget allocations is a very useful tool for monitoring the full realization of the right to education. As budgets reflect not only the level of resources, but also policy priorities for the government, a careful analysis allows us to assess the extent to which the most efficient use is made of available resources and whether or not there is sufficient political will. It can also help identify areas of neglect, under-funding or decreases in funding, thus unveiling possible failures or violations. Having said that, it is also important to underline that attention should focus on the efforts made by the State, rather than just the amount spent on education. For instance, a country with few resources could be using them equitably, achieving slow but important and fair progress on the education of all members of society, as opposed to a rich country that is investing very little, or even reducing allocations, on its most deprived groups or areas. Other limitations in this area concern the lack of transparency of some budgets, or the fact that increased resource allocations do not always amount to improved access or enjoyment of the right to education. In the end, what matters is not how much is spent but how it is spent and how transparent and participatory the process is. Budget analysis may be one way of assessing the impact of the recently estab-

lished joint funding mechanisms whereby key education donors contribute to a fund that is centralised within the MoEHE.

### Rights-based indicators

In order to monitor State compliance of the right to education, indicators are needed that are based on the specific provisions of human rights law. On this basis, benchmarks can then be set against which one can monitor progress over time. Indicators and benchmarks should cover the 4As and overarching issues such as non-discrimination, participation, and accountability. Traditional education and development indicators (enrolment rates, pupil/teacher ratios, gender (dis)parity, etc.) are very useful and usually reflect accessibility and availability more than acceptability and adaptability. Nor do they tend to adequately capture issues of process and outcomes of education. Rights-based indicators are also able to capture the equally important aspects of intake, structure and impact of education. Moreover, they underline the need to ensure that data collection and analysis are fully disaggregated in accordance with the internationally prohibited grounds for discrimination (i.e. not only male/female, rural/urban, rich/poor but also by ethnic origin, language, disability, age, etc.).<sup>48</sup>

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48 While traditional development indicators evaluate education as a basic human need and therefore need to be checked against goals, right to education indicators aim to measure the extent to which States fulfil their legal obligations. In addition, development indicators may tend to regard marginalised groups as recipients of aid, rather than as rights-holders. In contrast, indicators based on education as a human right place these groups and the key principle of non-discrimination at the core of the approach. In so doing, they make these groups and violations of their rights more visible and create the conditions for such groups to be empowered to hold States accountable for their performance.

## The Right to Education Project's indicators

Building on previous initiatives, the Right to Education Project's indicators are drawn from international and regional human rights law. In addition, they reflect more directly the 4A scheme, while encompassing governance and including three cross-cutting principles of the PANEL model: non-discrimination, participation and accountability.<sup>49</sup>

The illustration here shows the interconnections and the different levels of analysis:

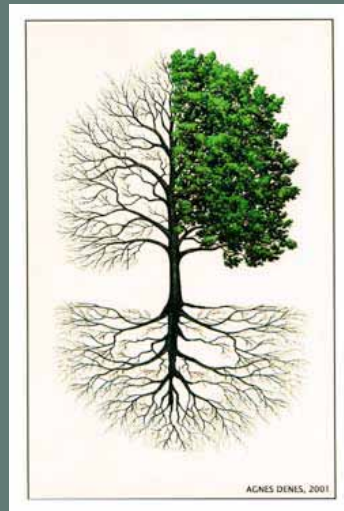
**Leaves** - our 200+ indicators

**Secondary branches** - 37 headings:  
(ECCD, language, disability, budget, gender, etc.)

**Main branches** - Our main framework:  
4As and Governance

**Trunk** - 3 fundamental HR principles:  
non-discrimination, participation,  
accountability

**Roots** - legal norms and standards:  
- National constitutions and laws  
- Regional conventions and charters  
(African, American, Arab, European)  
- International human rights law and standards (ICESCR, ICCPR, CERD, CEDAW, CRC, CMV, CRPD, GC 13, etc.)



By using rights based indicators in the oPt, we will be better able to unveil the multifaceted dimensions of education as a human right and provide assessment tools that can enhance our capacity to monitor and report on implementation.

Building on the tables used in the previous chapters, it is now possible to identify some illustrative rights-based indicators for the various instances of obligations and violations:

TABLE 17. AVAILABILITY

RESPECT	<p>O: Respect independence of parents councils</p> <p>V: Interference with the independence of parents councils</p>	<p>Examples include :<sup>49</sup></p> <p>*direct control of parents councils through political appointees.</p> <p>*non-participatory councils dominated by school head-masters.</p>	<p>Indicators:</p> <p>*are there parents councils and are they independent?</p>
	<p>O: Respect for minimum standards in the establishment of schools</p> <p>V: Establishing schools with no or low minimum standards</p>	<p>Examples include:</p> <p>*the Israeli Civil Administration’s prohibition on building in Area C and East Jerusalem that effectively prevents any construction of new permanent structures or additions onto existing ones. Consequently children are forced to learning in a range of poor quality and sub standards classrooms.</p> <p>*other examples include schools located near to closed military areas where there may be UXO or shooting may occur.</p>	<p>Indicators:</p> <p>*are there minimum educational standards applicable to all schools?</p> <p>*is there a monitoring body controlling whether minimum standards are met?</p>
Duty-bearer: occupying power			

50 These two examples are hypothetical rather than based on substantiated and verifiable experience in this context and appear here for the sake of the argument.

<b>PROTECT</b>	<p>O: Protect educational facilities from attacks</p> <p>V: Failure to protect educational facilities from attack</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*execution of demolition orders by Israeli authorities</li> <li>*damage to and destruction of primary schools during military operations</li> <li>*damage and destruction of schools by Israeli settlers</li> </ul>	<p>Indicators:</p> <ul style="list-style-type: none"> <li>*number of schools threatened with demolition orders (by location/region)</li> <li>*number of schools demolished (by location/region)</li> <li>*number of school closures (provisional or permanent) due to curfews, periods of heightened conflict, damage/destruction (by location/region)</li> </ul>
	<p>O: Protection for teachers so they can reach schools and teach</p> <p>V: Denial of permits/entry into the country for educational staff</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*abusive treatment/ harassment by Israeli military at checkpoints and gates along the Wall;</li> <li>*delays at checkpoints</li> <li>*delays in and refusals of issuing permits</li> </ul>	<p>Indicators:</p> <ul style="list-style-type: none"> <li>*number of physical barriers (checkpoints and other barriers) teachers face on their way to and from school (by location/region)</li> <li>*Frequency with which teachers are absent or unable to reach schools (by location/ region)</li> <li>*frequency with which teachers are late for school and number of lost hours (by location/region)</li> </ul>
Duty-bearers: occupying power, MoEHE, MoF			

FULFIL	<p>O: Provide adequate infrastructure for children (also age appropriate)</p> <p>V: Failure to provide adequate infrastructures</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*insufficient permits to build/upgrade schools</li> <li>*insufficient planning of spaces and classrooms adequate to the number and needs of children (classrooms on the ground level for younger children)</li> </ul>	<p>Indicators:</p> <ul style="list-style-type: none"> <li>*number of schools reporting adequate facilities:</li> <li>*sufficient number of classrooms including blackboards, tables, desks, chairs and space per student (by location/ region)</li> </ul>
	<p>O: Provision of construction material for schools and permits to build schools</p> <p>V: Impeding entry/provision of construction material, as well as the demolition of existing buildings</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*Gaza blockade makes it very difficult to build new schools</li> <li>*demolition of schools or other buildings in Area C</li> </ul>	<p>Indicators:</p> <ul style="list-style-type: none"> <li>*number of schools demolished in Area C</li> <li>*number of schools/school age children ratio in Gaza</li> </ul>
	<p>O: Provide alternative means to access education (i.e. e-learning)</p> <p>V: Failure to provide alternative methods for learning</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*need for resource allocation towards alternative education</li> <li>*insufficient training of teachers in alternative forms of education</li> </ul>	<p>Indicators:</p> <ul style="list-style-type: none"> <li>*% of budget allocated to alternative methods of education</li> <li>*number of teachers trained on e-learning</li> </ul>
Duty-bearers: Israeli prison service, security apparatus, MoEHE			

**TABLE 18. ACCESSIBILITY**

RESPECT	<p>O: Respect the right of all individuals not to be discriminated against in accessing education</p> <p>V: Denial of access to individuals or groups through legislated or enforced discrimination</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*Students of higher education with difficult access, even within Gaza</li> <li>*with the various systems – PA/ Gaza MoEHE, UNRWA system, EJ schools - is there an inherent discrimination?</li> <li>*pending applications for family reunification leave students without the required documents to enrol in East Jerusalem schools</li> <li>*separation of students based on age, for example young mothers not allowed to return to school or who left to get married</li> <li>*issues around age of majority – discrimination between PA and Israeli systems</li> </ul>	<p>Indicators:</p> <ul style="list-style-type: none"> <li>*Do domestic laws forbid discrimination in education? On which grounds: age, gender, race, ethnicity, colour, origin, language, status, opinion, sexual orientation, disability, socio-economic status, other?</li> <li>*Have refugee or internally displaced children attending school had to leave school because their parents lost their residence permit?</li> <li>*Do children have to present birth certificates/special permits to enrol?</li> </ul>
	<p>Duty-bearers: universities (may be lacking branches in other areas of Gaza), MoT, MoEHE (school fee standards and norms), NGOs INGOs working in communities (girls access to schools), legislative council, laws, UNRWA, local government, and the State of Israel</p>		

PROTECT	<p>O: Ensure children have safe access to schools</p> <p>V: Failure to secure safe access</p> <p>O: protect students from dangers on the way to school</p> <p>V: failure to ensure safety on the way to school</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*settler violence and violence in the context of military incursions and armed clashes</li> <li>*Schools in the buffer zone (30% of students live between school and border at these schools)</li> <li>*Difficulties in remote and unsafe areas or on busy streets (insufficient traffic lights, police presence, etc.)</li> <li>*need to keep children in schools and not allowing them to go to political rallies</li> </ul>	<p>Indicators:</p> <ul style="list-style-type: none"> <li>*is access to school safe and secure?</li> <li>*number of incidents of settler violence, military incursions, armed clashes (by location/region)</li> <li>*number of car or pedestrian accidents involving children on their way to and from school</li> </ul>
	Duty-bearers: MoT, MoEHE, NGOs and INGOs working with communities, local government, legislative council, and the State of Israel.		
FULFIL	<p>O: Provide school transportation (making it available and affordable) especially for long distances and in poor weather</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*poor transportation and roads leading to the drop out of students</li> <li>*costs of transportation (parents cannot afford it)</li> <li>*students walking long distances to and school</li> </ul>	<p>Indicators:</p> <ul style="list-style-type: none"> <li>*% population for which school-house distance is: is between 1 and 5 km or more than 5 km (by location/region and by rural/urban)</li> <li>*is transportation provided? If so, what is the cost?</li> </ul>
	<p>O: Facilitate Visas needed to allow study abroad</p> <p>V: Denial of Visas to study abroad</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>*students and teachers, especially in Gaza, not being granted visas for study or teaching and professional development abroad</li> </ul>	<p>Indicators:</p> <ul style="list-style-type: none"> <li>*number of students who have been denied a visa to study abroad</li> </ul>
Duty-bearers: occupying power, MoEHE, MoT, UNRWA			



**TABLE 20. ADAPTABILITY**

<b>RESPECT</b>	<p>O: Respect the right of education for children in particular situations or with specific lifestyle/culture</p> <p>V: Denial of access to education for children in specific situations</p>	<p>Examples include:                      *children in detention (is education provided in prisons? If so, what subjects?), *Bedouin/herding communities                      *IDPs                      *orphans (16,000 in number in Gaza), spread between UNRWA and government schools                      *working children                      *ensure monitoring systems in schools (child labour)</p>	<p>Indicators:                      *% Refugee or internally displaced children enrolled in schools                      *Is compulsory education provided outside of the formal school system for children in detention, refugee children or children who have been displaced?                      *Do children in detention of compulsory school age receive education integrated with the education system?</p>
	Duty-bearers: Israeli prison service, Palestinian authority		
<b>PROTECT</b>	<p>O: Protect cultures, traditional ways of life through educational systems that adapt to needs of students and their families</p> <p>V: Lack of attention to specific cultural, traditional, working needs</p>	<p>Examples include:                      *Orphans at risk of not continuing education as families send them to work</p>	<p>Indicators:                      *% of orphans enrolled in school                      *% of working children</p>
	Duty-bearers: Israeli prison service, Palestinian Authority, Ministry of Detainees, ex-detainees, MoEHE, NGOs, INGOs, chamber of commerce		
<b>FULFIL</b>	<p>O: Introduce new technologies in educational institutions so students keep up with needs of society</p> <p>V: Failure to maintain educational institutions up to the standards of with our changing society</p>	<p>Examples include:                      *destruction of laboratory materials, computers, poor equipment, etc.                      *obstacles and interference with new communication technologies (internet, emails, etc.)</p>	<p>Indicators:                      *number of demolitions of schools and classrooms or damages to laboratories and equipment                      *obstacles to the use of internet (power cuts or others)</p>
	Duty-bearers: Israeli prison service, security apparatus, MoEHE		



## CHAPTER 4 -

# ADVOCACY AND RECOMMENDATIONS

*This last chapter presents some rights based advocacy approaches to consider for the oPt. These address not only the legal perspective but also structural and societal approaches. The chapter will then proceed to present overall recommendations.*

The present report is grounded in a rights-based approach (RBA), and the same lens can be used to look at strategies, not only at the legal level (admittedly the most suitable for such an approach), but also at the structural and community levels.

## 4.1. Rights-based strategies for advocacy

The added value of a RBA is its ability to address all three levels of action:

TABLE 21. SUBSTANCE, STRUCTURES AND SOCIETY

Substance	State structures	Society / communities
<ul style="list-style-type: none"> <li>• Uses concepts, research and fact-finding</li> <li>and</li> <li>• Defines the content of the right</li> <li>• Identifies and shows violations</li> </ul>	<ul style="list-style-type: none"> <li>• Uses legal action</li> <li>and</li> <li>• Identifies prime duty-bearers</li> <li>• Holds violators to account</li> <li>• Makes the system more responsive</li> </ul>	<ul style="list-style-type: none"> <li>• Uses political action</li> <li>and</li> <li>• Enhances acceptance of the right</li> <li>• Influences people's behaviour</li> <li>• Engages people as rights-holders and participants in decision-making</li> </ul>

Here it is instructive to also recall the PANEL model: Participation, Accountability, Non-discrimination, Empowerment, and Legality.

When combined these theoretical frameworks provide us with very useful ideas for practical action and strategies which may be expanded on by cross referencing with the INEE Minimum Standards and tools which provide further guidance for programming and advocacy approaches.

### Legal strategies

Working at the legal level allows us not only to clarify concepts and content regarding education, but also to identify levels of responsibilities, reinforce claims, and unveil violations. The right to education can be reclaimed through judicial mechanisms and many cases have been successfully adjudicated by courts. In other instances, using the constitution has proven effective not only to redress violations but also to deepen our understanding of the right. Moreover, using other more general legislation (such as the principle of non-discrimination) has offered additional entry points to pursue and redress violations. Regardless of the mechanism or system that one wants to approach, however, one would

almost inevitably also have to use other activities and strategies such as lobbying, research, advocacy, information sharing, and mobilization.

In order to do so effectively, legal work and advocacy should be based on a number of elements/steps:

- 1) understand the legislation you are dealing with;
- 2) identify responsibilities and entitlements;
- 3) establish if a violation has occurred;
- 4) collect, document, and analyze evidence to show the link between obligations and violations and recommend alternative actions;
- 5) clarify key messages and claims you want to make: what specific aspect do you want to focus on? what will be your argument?;
- 6) decide who to target (both in terms of perpetrators of violations and mechanisms for redress);
- 7) and decide who to work with to prepare, carry out, and follow up your legal work.

Each of these steps can be followed individually or in collaboration with other actors who might be more experienced and better equipped. Various constituencies (not only lawyers) should be involved, such as the media, NGOs, teachers, parents, students, and even parts of the government. Legal cases may also need to be supplemented and reinforced with other strategies.

The benefits and risks of legal strategies also need to be considered. In most cases litigation should be a measure of last resort, but in some instances it can actually be more effective than other strategies such as campaigning or lobbying. All approaches used should complement and reinforce each other.

Benefits of legal action include:

- challenges the government directly, forcing it to be responsive;
- raises public awareness and sets precedents (even if unsuccessful, a case can still be useful in terms of lessons learnt, better understanding and popularization);
- and can stimulate action within civil society and encourage wider mobilization.

Risks of taking a legal route include:

- consequences for the individuals or groups involved;
- consequences for you and your organization, especially in terms of relationship with structures of power;
- or consequences for the right to education and its overall realization, both in the short- and long-term

### Community based strategies

The above mentioned strategies already include some elements of social mobilization in their approach. For example, legal approaches often need complementary awareness-raising activities, campaigns, media work, and the creation of supportive linkages with directly-affected constituencies. Yet, while in a legal scenario most of these activities focus on change at the national and international levels, community based strategies work at local and national level and therefore affect planning and choice of strategies. It is important to link what is happening on the ground with what may be achieved through those who hold the power to bring about change. Whether this is the school management committee or a community leader or a local council, or even just members of the family, priorities, mixed methods and staged approaches all need to be considered.<sup>51</sup>

Other steps to bear in mind when planning large scale mobilization and civil society's support for any cause include:

- 1) make sure to know the politics around the situation;
- 2) map the distribution of responsibilities and power among the main stakeholders;
- 3) decide how to frame activities (around a specific aspect of the right to education, a specific group or a systematic failure of the authorities);
- 4) think carefully about language used, as well as that which will be adopted by other actors such as the media: language and phrasing should

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<sup>51</sup> See INEE Minimum standards, foundational standards for examples of how to ensure that responses are grounded in the community in terms of resources that are in place and build on existing coping mechanisms

- chosen for maximum impact within the targeted constituencies;
- 5) make strategic links with those who are not directly affected (the 'usual suspects') as they could see the issue from a fresh perspective and provide additional ideas. Examples may include officials from other ministries dealing with issues such as infrastructure, gender or family matters;
  - 6) and do not under-estimate the usefulness of keeping a constructive relationship with the government instead of remaining on a confrontational level, especially if the government is showing commitment to improve things and the issue is more a matter of inability rather than unwillingness.

Overall key advice for advocacy is to think creatively and to consider all elements of an advocacy response.

Benefits and risks to consider include:

- campaigns, awareness-raising activities (such as workshops or trainings), and media work can bring results quicker than a legal case;
- a larger movement within society puts direct and indirect pressure on duty bearers that goes beyond the courtroom;
- impact can be further reaching, especially if utilising coalitions;
- people are empowered more directly and at all levels;
- participation is also enhanced, if done properly and genuinely and ideas flow from the bottom up;
- when considering risks, always balance pros and cons and see whether a confrontational campaign is worth it, or whether it is likely to provoke more negative consequences for those directly affected and for the right to education in general;
- and how does the activity fit in the wider picture? Is it likely to have a positive impact? What are the risks if something goes wrong or if the campaign perhaps damages the broader cause for the right to education?

Overall aims, processes and actions for change

Developing and applying strategies for the right to education requires different actions at different levels and a need to link together differ-

ent perspectives. The main consideration is then; what specific change needs to happen to make the right become a reality. This could entail:

- 1) a change in the capacity of duty-bearer to fulfil the obligations and right;
- 2) a change in the capacity of right-holder to claim and exercise the right;
- 3) and a change in support from civil society.

In order to do this, we should:

- a) look at issues on a time-line (short- and long-term perspectives and objectives);
- b) consider how social change may happen and be brought about (where does it happen? who are the change makers? who can influence them?);
- c) be aware of changes in global and local norms (both positive and negative);
- d) focus also on the process of to check that it reflects the need to respect rights;
- e) map and understand the situation;
- f) analyze impact;

The following table provides a framework for planning a Right Based Approach advocacy strategy by making clearer links between outputs and the right, and placing a stronger focus on accountability:



**TABLE 22. A RIGHTS BASED ADVOCACY STRATEGY**

RBA TO STRATEGIES	Goal	Process	Outputs	Actions
	What substantive aspect(s) of the right to education are you trying to improve/change with your strategy?	In what ways is the strategy adhering to the PANEL model (i.e. is it participatory, accountable, non-discriminatory, empowering, linked to the law)?	Are the strategy's outputs aimed at achieving the realization of one (or more) aspect(s) of the right to education (and not simply a more generic purpose)?	Does the strategy identify and target: <ol style="list-style-type: none"> <li>1) root causes;</li> <li>2) all stakeholders and their relationships;</li> <li>3) conduct and results that the duty-bearer must undertake;</li> <li>4) opportunities (or lack thereof) for right-holders to claim their right to education;</li> <li>5) and/or gaps in the capacity of stakeholders to fulfil duties or claim rights.</li> </ol>

## 4.2. Recommendations

1 Identifying the added benefit: using IHRL to advocate for the right to education under occupation and towards statehood and greater accountability

- FULLY EMBRACE THE MUCH BROADER IHRL FRAMEWORK
  - As has been demonstrated, IHRL provides a universal legal framework with useful commentary and received interpretation, dedicated and unique to education.
  - IHRL is useful in all situations, not least in occupation, where it very importantly builds a bridge to the future of Palestine, anticipating that the goal is an end to occupation and the transfer of duties to new and empowered sovereign duty-bearers.
  - IHRL allows for greater advocacy reach in terms of longer term approaches to education. Notably it allows us to advocate more freely on wider issues of development, linking the state of emergency to

recovery and longer term perspectives. This would also allow us to shift the discourse from that of one imposed by the occupying power to one invested in by the population of the occupied territory.

- By using IHL and IHRL together and understanding the linkages between IHRL and other internationally accepted tools, resources and commitments, the education community can gain new and more powerful ways of meeting the demands of donors and other actors.
- BETTER UNDERSTAND WHICH LEGAL MECHANISMS AND FORA EXIST AND HAVE POTENTIAL
    - IHRL allows us access to a host of different fora, e.g., treaty bodies and Human Rights Council and related procedures, including UPR and special procedures mandate holders which becomes necessary owing to the difficulty to hold duty-bearers to account through the existing mechanisms of IHL. This in turn may help mitigate for the de-facto impunity and disregard for international standards that have historically been the case for the oPt.
    - IHRL allows us to strengthen existing reporting. For example, using IHRL to inform the development of indicators for data collection around UNSC Res. 1998 can allow for a more comprehensive and contextually appropriate understanding of what constitutes an attack on education.
    - IHRL only gain legitimacy and greater powers through the continuous support of local, national and international actors, and by the flow of reliable and up-to-date education specific data. It is therefore important to better embed IHRL into existing reporting and data collection.
  - SEE THE RIGHT TO EDUCATION AS AN ENTRY POINT TO TALKING ABOUT RIGHTS IN GENERAL AND WITH ALL ACTORS
    - The right to education must be looked at as an individual right, but it must also be seen as a representative right (one that holds elements of all other rights). It is also an enabling right and a key example in the wider analysis of how to access and best put to use the different mechanisms afforded by IHL and IHRL.
    - Framing the right to education in the language of non-discrimi-

nation (the corner stone of all legal instruments of IHRL) gives the analysis a very tangible link to the wider set and aspirations of human rights.

- The huge advocacy potential that lies in using education as an entry point to wider campaigns on rights under occupation and towards development must be employed when targeting all interlocutors and duty-bearers: Israel, the international community, donors and the PA and de-facto authorities in Gaza.

## 2 Broadening the scope for advocacy: focus on all elements of education and links to other rights

### • USING NEW TOOLS TO BRIDGE THE WORLD OF EDUCATION AND LAW

- IHRL and its commentary afford us new approaches to deal with ongoing issues. The fundamental message of human rights is that all rights are universal and indivisible. This holds true under occupation, as well as towards broader development goals, and thus a wide range of education issues and concerns can be dealt with through this framework.
- The 4A framework helps to clarify types of education and better see how educational processes are affected by certain actions. Importantly, it also facilitates wider engagement on education issues by legal and human rights actors and may strengthen the application of other tools.
- By understanding the linkages between the right to education and more widely used tools and resources, educationalists will be able to strengthen and diversify their message and enlist additional support from other sectors. In particular, educationalists using the INEE Minimum Standards may strengthen and complement the application of the standards by understanding and highlighting the corresponding legal references; thereby reaching both educationalists as well as other sectors including the large protection community.

### • IHRL PROVIDES US WITH A WIDER FOCUS ON ALL ELEMENTS OF EDUCATION

- Just as education should not be seen in isolation from other rights, we should also look beyond basic and elementary education. IHRL allows us to treat education as an indivisible system where each stage must be considered in relation to the wider sector.
- Related to this, early childhood education and higher education in the oPt must be dealt with as a human rights issue. IHRL shows us that if the violations of children's rights begin at birth in the oPt, then so must their rights. In terms of access to and safeguarding of higher education few agencies are mandated or able to deal with this. University teachers and students, as well as their universities and their academic freedom, are violated in a systematic way. The introduction of a mechanism, inspired by the MRM mechanisms for children in armed conflict, to ensure reporting on higher education is essential for addressing this issue - but this mechanism must be able to analyse and recommend on elements of quality and access. UNESCO is uniquely placed to lead on this work.
- IHRL also allows us to better capture the key issue of quality of education. While addressing questions of access to education is crucial, this should not be to the detriment of other barriers to the teaching and learning process and the participation of children within the system. IHRL's more comprehensive understanding of education can help us to identify these barriers, and develop strategies to redress them. The question of quality is especially relevant in the oPt where it has been expressed as a key concern of the Ministry of Education and Higher Education, and lies at the heart of the UNRWA educational reform process.

### 3 Strengthen capacities to use IHRL with all relevant actors and across all platforms

#### • FURTHER CAPACITY BUILDING OF ACTORS TO UNDERSTAND AND USE IHRL AND NATIONAL LEGAL MECHANISMS FOR ADVOCACY AND PROTECTION.

- The use of IHRL to support education programming and advocacy must be systematic, institutionalised, shared by all agencies, recurrent, responsive and, most importantly, locally grounded. It must also be accompanied with a critical understanding of the interna-

tional mechanisms, experiences and standards.

- This may be achieved through the use of existing groupings, such as the Cluster system, the Education Sector Working Group, and child protection mechanisms including the MRM-CAAC. In trying to do so, a mapping of all the education stakeholders in the oPt (who does what, who has which capacities and limitations, who collects which information, etc.) will be a useful first step.
- Endorsing a human rights-based approach to education also means that agencies' programme and project activities should contribute to the realisation of the right to education. Indeed human rights may enter into all stages of education programming, from planning, analysis and assessment to implementation, to monitoring and evaluation based on human rights treaties and conventions. By linking to human rights standards, education programming can become more results based towards the achievement of normative and internationally accepted standards for education.<sup>52</sup>
- The adoption of an IHRL based approach to education can also facilitate coordination. As noted, IHRL bridges the humanitarian and development sectors and by unifying the approach to one of IHRL, these mechanisms may be able to better coordinate their actions and priorities, working together for greater accountability. This is particularly relevant in the oPt where the context is constantly changing over time and between geographical areas.

#### • THE ROLE OF UNESCO AND OHCHR

- OHCHR and UNESCO are uniquely placed to combine their different yet mutually reinforcing expertise to support the right to education. Both of them have the ability to institutionalise such capacity building, draw lessons and technical resources from their global work and experiences and can bring all actors to the table through their work with the PA, UNRWA and other UN agencies, as well as the range of CSOs dedicated to education, protection and human rights.
- Through working together on capacity building, all the different tools, approaches, indicator sets, reporting practices and experiences can be brought together and understood, where possible, as

one package. This means rising above the individual agency's immediate strategies and goals if needed, encouraging full support to the dedicated and leading tools already in use (chiefly the Minimum Standards and other resources of the INEE), and dedicating qualified human resources to this task.

#### • THE ROLE OF THE PA (AND THE DE-FACTO AUTHORITIES IN GAZA) AND OF NATIONAL ACADEMIC INSTITUTIONS

- The PA should take a lead on an IHRL approach: ownership and eventual full responsibility of duties must be carefully built and strongly embedded.<sup>53</sup> The PA must also work closely on this issue with UNRWA, as they are the two main education providers for Palestinians.
- A key element in wider ownership of this process is harnessing the potential of the right to education as an enabling right, through the creation at the academic level of new research- and knowledge platforms for with the issues of occupation as well as for the preparation of statehood, aiming for cross-sectoral synergies between academia, practitioners, governmental officials, etc.

#### • THE ROLE OF EXISTING COORDINATION MECHANISMS

- The Education cluster and education Sector Working Group (SAG) must use their unique role and space as a coordinating body, vis-à-vis both national and international actors, humanitarian and development organisations alike, to work with OHCHR and UNESCO to support the adoption and implementation of a right to education approach.
- The coordination mechanisms should explore and understand further the current developments of the protection cluster in the oPt. The education cluster, specifically, should explore the opportunities of the legal advisory task force and joint advocacy on education related issues. One way of institutionalising this may be to have human-rights trained staff supporting advocacy and knowledge management issues for the cluster. Such training could perhaps be

<sup>53</sup> See Palestinian National Authority & Save the Children UK (2010). The Palestinian National Authority Report on the Implementation of the Convention on the Rights of the Child in the Occupied Palestinian Territory. Ramallah

offered by the OHCHR or other officially mandated human rights agencies. While the education cluster uses and should continue to use the INEE Minimum Standards as the authoritative benchmarks for its work, highlighting the linkages between human rights and the INEE MS, as well as stressing the right to education in emergency situations may allow for greater outreach and traction of core education in emergency messages.

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## ANNEX 1: LEGAL FRAMEWORKS:

Israel's Obligations for the Fulfilment of the Right to Education  
International Human Rights Law: Provisions related to education  
and non-discrimination<sup>54</sup>

### Legally-binding instruments:

**International Covenant on Economic, Social and Cultural Rights (ICESCR) Adopted on 16 December 1966, entered into force 3 January 1976, Israel signed the treaty on 19 December 1966 and ratified the treaty on 3 October 1991**

**<http://www2.ohchr.org/english/law/cescr.htm>**

**Article 2: 1.** Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

**2.** The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Article 13: 1.** The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

**Article 14:** Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two

years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

### **Optional Protocol to the International Convention on Economic, Social and Cultural Rights (OP-ICESCR), Opened for signature on 24 September 2009 (not yet entered into force)**

On 10 December 2008, the UN General Assembly adopted by consensus the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OPICESCR).

The Protocol allows individuals to seek justice for violations of their economic, social and cultural rights at the international level, for the first time, through the establishment of a communications procedure (individual complaints process) and an inquiries procedure. For many years, the ICESCR was one of the only major human rights treaties to lack a petition mechanism; the Optional Protocol to the ICESCR confirms the equal value and importance of all human rights, as initially envisaged by the Universal Declaration of Human Rights, and remedies a long-standing gap in human rights protection under the international system.

### **International Covenant on Civil and Political Rights (ICCPR) Adopted on 16 December 1966 and entered into force 23 March 1976 (for all provisions except those in Article 41) and on 28 March 1979 for the provisions of Article 41.**

Israel signed the treaty on 19 December 1966 and ratified the treaty on 3 October 1991.

***<http://www2.ohchr.org/english/law/ccpr.htm>***

**Article 2: 1.** Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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.

**Article 18: 4.** The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

### Convention on the Rights of the Child (CRC)

Adopted on 20 November 1989 and entered into force on 2 September 1990.

Israel signed the treaty on 3 July 1990 and ratified the treaty on 3 October 1991.

<http://www2.ohchr.org/english/law/crc.htm>

**Article 2: 1.** States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

**Article 4.** States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

**Article 19: 1.** States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.



2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

**Article 22: 1:** States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

**Article 28: 1.** States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appro-

appropriate measures such as the introduction of free education and offering financial assistance in case of need;

- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of dropout rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

**Article 29:** 1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and

religious groups and persons of indigenous origin;  
(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

**Art 38: 1.** States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

### **International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)**

**Adopted on 7 March 1966 and entered into force on 4 January 1969.**

**Israel signed the treaty on 7 March 1966 and ratified the treaty on 3 January 1979.**

***<http://www2.ohchr.org/english/law/cerd.htm>***

**Article 5:** In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(e) Economic, social and cultural rights, in particular:

(v) The right to education and training; Convention on the Rights of Persons with Disabilities (CRPD) Adopted on 13 December 2006 and entered into force on 3 May 2008

Israel signed the treaty on 30 March 2007 but has not yet ratified it.

**<http://www2.ohchr.org/english/law/crpd.htm>**

**Article 24 1.** States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

- (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- (b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- (c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

- (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- (b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- (c) Reasonable accommodation of the individual's requirements is provided;
- (d) Persons with disabilities receive the support required, within

the general education system, to facilitate their effective education;

- (e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

- (a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

- (b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

- (c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Adopted on 18 December 1979 and entered into force on 3 September 1981

Israel signed the treaty on 17 July 1980 and ratified the treaty on 3 October 1991.

<http://www2.ohchr.org/english/law/cedaw.htm>

**Article 10:** States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and

physical education;

- (h) Access to specific educational information to help to ensure the health and wellbeing of families, including information and advice on family planning.

### **UNESCO Convention against Discrimination in Education**

Adopted on 14 December 1960 and entered into force on 22 May 1962

Israel ratified on 22 September 1961

***[http://portal.unesco.org/en/ev.php-URL\\_ID=12949&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html)***

**Article 1: 1.** For the purposes of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

- (a) Of depriving any person or group of persons of access to education of any type or at any level;
- (b) Of limiting any person or group of persons to education of an inferior standard;
- (c) Subject to the provisions of Article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or (d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

**2.** For the purposes of this Convention, the term 'education' refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.

**Article 2:** When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of Article 1 of this Convention:

- (a) The establishment or maintenance of separate educational sys-

tems or in-situations for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study;

- (b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level ;
- (c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

**Article 3:** In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:

- (a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;
- (b) To, ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;
- (c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries ;



- (d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;
- (e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.

**Article 4:** The States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

- (a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;
- (b) To ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent;
- (c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;
- (d) To provide training for the teaching profession without discrimination.

### **Rome Statute of the International Criminal Court**

**Adopted on 17 July 1998 and entered into force on 1 July 2002**

**Israel has not ratified**

**<http://www2.ohchr.org/english/law/criminalcourt.htm>**

**Article 5:** Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole.

The Court has jurisdiction in accordance with this Statute with respect to the following crimes: ( a ) The crime of genocide; ( b ) Crimes against humanity; ( c ) War crimes; ( d ) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime.

Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

### **Article 8: War crimes**

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

( b ) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives.

#### ***Non legally-binding instruments:***

Universal Declaration of Human Rights (UDHR)<sup>55</sup>

Proclaimed by the United Nations General Assembly in Paris on 10 December 1948

#### ***General Assembly resolution 217 A (III)***

**Article 2:** Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, na-

tional or social origin, property, birth or other status...

**Article 26: 1.** Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.

Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Committee on Economic, Social and Cultural Rights, General Comment No. 13, The right to education (Article 13 of the Covenant) E/C.12/1990/10, 8 December 1999

**<http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/ae1a0b-126d068e868025683c003c8b3b?Opendocument>**

UN Guiding Principles on Internal Displacement  
Adopted by UN General Assembly Resolution 60/L.1, para. 132  
**<http://www.idpguidingprinciples.org/>**

**Principle 23: 1.** Every human being has the right to education.

2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.

3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.

4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

Rules for the Protection of Juveniles Deprived of their Liberty  
Adopted by General Assembly resolution 45/113 of 14 December 1990

**[http://www2.ohchr.org/english/law/res45\\_113.htm](http://www2.ohchr.org/english/law/res45_113.htm)**

Rule 38: Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

**Rule 39:** Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

Standard Minimum Rules for the Treatment of Prisoners  
Adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955 and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

**<http://www2.ohchr.org/english/law/treatmentprisoners.htm>**

**Article 40:** Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

**Article 77: 1.** Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

**2.** So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

## *International Humanitarian Law*

Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War.

Geneva, 12 August 1949

Ratified by Israel on 6 July 1951

<http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>

**Article 6:** The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2.

In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations.

In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.

Protected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by the present Convention.

**Article 50:** The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children(...)

Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend.

**ICRC Commentary on Article 50<sup>56</sup>:** The obligation of the Occupy-

ing Power to facilitate the proper working of institutions for children is very general in scope. The provision applies to a wide variety of institutions and establishments of a social, educational or medical character, etc., which exist under a great variety of names in all modern States (e.g. child welfare centres, orphanages, children's camps, children's homes and day nurseries, "medico-social" reception centres, social welfare services, reception centres, canteens, etc.). All these organizations and institutions, which play a most valuable social role even in normal times, become of increased importance in wartime when innumerable children are without their natural protectors, who have fallen on the battlefield, or have been victims of bombing, conscripted to do forced labour, interned or deported. These various establishments, organizations and institutions must be respected whatever their status under the law of the country and whether they are privately run or under State control. The only criterion in deciding whether they are to be protected is whether they are devoted to the care and education of children.

The Occupying Powers must, with the co-operation of the national and local authorities, facilitate the proper working of children's institutions. That means that the occupying authorities are bound not only to avoid interfering with their activities, but also to support them actively and even encourage them if the responsible authorities of the country fail in their duty. The Occupying Power must therefore refrain from requisitioning staff, premises or equipment which are being used by such establishments and must give people who are responsible for children facilities for communicating freely with the occupation authorities; when their resources are inadequate, the Occupying Power must ensure by mutual agreement with the local authorities that the persons concerned receive food, medical supplies and anything else necessary to enable them to carry out their task. It is in that sense that the expression "the proper working" of children's institutions should be understood. [p.287] This provision assures continuity in the educational and charitable work of the establishments referred to and is of the first importance, since it takes effect at a point in children's lives when the general disorganization consequent upon war

might otherwise do irreparable harm to their physical and mental development.

**Article 53:** Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

**ICRC Commentary on Article 53<sup>57</sup>:** In the very wide sense in which the Article must be understood, the prohibition covers the destruction of all property (real or personal), whether it is the private property of protected persons (owned individually or collectively), State property, that of the public authorities (districts, municipalities, provinces, etc.) or of co-operative organizations. The extension of protection to public property and to goods owned collectively, reinforces the rule already laid down in the Hague Regulations, Articles 46 and 56 according to which private property and the property of municipalities and of institutions dedicated to religion, charity and education, the arts and sciences must be respected. It should be noted that the prohibition only refers to “destruction”. Under international law the occupying authorities have a recognized right, under certain circumstances, to dispose of property within the occupied territory -- namely the right to requisition private property, the right to confiscate any movable property belonging to the State which may be used for military operations and the right to administer and enjoy the use of real property belonging to the occupied State.

Relating to the scope of this article, it should be noted that the provision is limited to property situated in the occupied territory and destruction resulting from action by the Occupying Power.

The prohibition of destruction of property situated in occupied territory is subject to an important reservation: it does not apply in cases “where such destruction is rendered absolutely necessary by military operations”. The occupying forces may therefore un-



dertake the total or partial destruction of certain private or public property in the occupied territory when imperative military requirements so demand. Furthermore, it will be for the Occupying Power to judge the importance of such military requirements.

It is therefore to be feared that bad faith in the application of the reservation may render the proposed safeguard valueless; for unscrupulous recourse to the clause concerning military necessity would allow the Occupying Power to circumvent the prohibition set forth in the Convention. The Occupying Power must therefore try to interpret the clause in a reasonable manner: whenever it is felt essential to resort to destruction, the occupying authorities must try to keep a sense of proportion in comparing the military advantages to be gained with the damage done.

### *Customary International Humanitarian Law*<sup>58</sup>

**ICRC, Customary IHL Database:** The following includes a non-exhaustive list of rules applicable to situations of international armed conflicts and in particular the situation in Israel and the occupied Palestinian territory and as relates specifically to the right to education.

Rule 7<sup>59</sup>: The parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects.

Civilian objects are all objects not falling under the definition of military objectives.<sup>60</sup>

Military objectives are *“those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite*

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58 Customary international humanitarian law sets the basic standard of conduct in armed conflict and is universally applicable independent of existing treaty law. It is derived from the common practice of States, and is accepted and acknowledged as law by the world community.

59 ICRC, Customary IHL Database, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule7](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule7).

60 See Rule 9. Definition of Civilian Objects. ICRC, Customary IHL Database, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule9](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule9).

*military advantage.*<sup>61</sup>”

Many military manuals state that the presence of civilians within or near military objectives does not render such objectives immune from attack.[16] This is the case, for example, of civilians working in a munitions factory. This practice indicates that such persons share the risk of attacks on that military objective but are not themselves combatants. This view is supported by official statements and reported practice.[17] Such attacks are still subject to the principle of proportionality (see Rule 14) and the requirement to take precautions in attack (see Rules 15–21). The prohibition on using human shields is also relevant to this issue (see Rule 97).

Several States have stressed that the rule contained in Article 52(2) of Additional Protocol I, which provides that “attacks shall be limited strictly to military objectives”, only prohibits direct attacks against civilian objects and does not deal with the question of incidental damage resulting from attacks directed against military objectives.[31] The purpose of these statements is to emphasize that an attack which affects civilian objects is not unlawful as long as it is directed against a military objective and the incidental damage to civilian objects is not excessive. This consideration is taken into account in the formulation of the current rule by the use of the words “attacks directed against”.

Rule 10<sup>62</sup>: Civilian objects are protected against attack, unless and for such time as they are military objectives.

Loss of protection of civilian objects must be read together with the basic rule that only military objectives may be attacked. It follows that when a civilian object is used in such a way that it loses its civilian character and qualifies as a military objective, it is liable to attack. This reasoning can also be found in the Statute of the International Criminal Court, which makes it a war crime to intentionally direct attacks

61 See Rule 8. Definition of Military Objectives. ICRC, Customary IHL Database, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule8](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule8).

62 ICRC, Customary IHL Database, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule10](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule10).

against civilian objects, provided they “are not military objectives”.  
[1]

The issue of how to classify an object in case of doubt is not entirely clear. Additional Protocol I formulates an answer by providing that “in case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used”.[4]

The burden of proof in determining the precise use of an object results in the party attacking the object.

According to the Report on the Practice of Israel, Israel is of the view that this presumption only applies when the field commander considers that there is a “significant” doubt and not if there is merely a slight possibility of being mistaken.

Accordingly, the decision whether or not to attack rests with the field commander who has to determine whether the possibility of mistake is significant enough to warrant not launching the attack.  
[10]

In the light of the foregoing, it is clear that, in case of doubt, a careful assessment has to be made under the conditions and restraints governing a particular situation as to whether there are sufficient indications to warrant an attack. It cannot automatically be assumed that any object that appears dubious may be subject to lawful attack. This is also consistent with the requirement to take all feasible precautions in attack, in particular the obligation to verify that objects to be attacked are military objectives liable to attack and not civilian objects (see Rule 16).

**Rule 11<sup>63</sup>:** Indiscriminate attacks are prohibited.

**Rule 12<sup>64</sup>:** Indiscriminate attacks are those:

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63 ICRC, Customary IHL Database, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule11](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule11).

64 ICRC, Customary IHL Database, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule12](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule12).

- (a) which are not directed at a specific military objective;
- (b) which employ a method or means of combat which cannot be directed at a specific military objective; or
- (c) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

**Rule 14<sup>65</sup>:** Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.

Under the Statute of the International Criminal Court, “intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects ... which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated” constitutes a war crime in international armed conflicts.[7]

**Rule 15<sup>66</sup>:** In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.

Numerous States have expressed the view that military commanders and others responsible for planning, deciding upon or executing attacks necessarily have to reach decisions on the basis of their assessment of the information from all sources which is available to them at the relevant time.[26] At the same time, many military manuals stress that the commander must obtain the best possible intelligence, including information on concentrations of civilian persons, important civilian objects, specifically protected objects, the natural environment and the civilian environment of

65 ICRC, Customary IHL Database, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule14](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule14).

66 ICRC, Customary IHL Database, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule15](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule15).

military objectives.[27]

**Rule 17<sup>67</sup>:** Each party to the conflict must take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.

**Rule 38<sup>68</sup>:** Each party to the conflict must respect cultural property:

**A.** Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments unless they are military objectives.

To the extent that cultural property is civilian, it may not be made the object of attack (see Rule 7). It may only be attacked in case it qualifies as a military objective (see Rule 10). The Statute of the International Criminal Court therefore stresses that intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes or historic monuments is a war crime in both international and non-international armed conflicts, “provided they are not military objectives”.[1]

While in any attack against a military objective, all feasible precautions must be taken to avoid, and in any event, to minimize incidental damage to civilian objects (see Rule 15), special care is required to avoid damage to some of the most precious civilian objects.

This requirement was already recognized in the Lieber Code, the Brussels Declaration and the Oxford Manual and was codified in the Hague Regulations.[5] The Report of the Commission on Responsibility set up after the First World War identified the “wanton destruction of religious, charitable, educational and historic build-

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ICRC, Customary IHL Database, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule17](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule17).

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ICRC, Customary IHL Database, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule38](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule38).

ings and monuments” as a violation of the laws and customs of war subject to criminal prosecution.[6]

The Second Protocol to the Hague Convention for the Protection of Cultural Property, adopted by consensus in 1999, brings the Hague Convention up to date in the light of developments in international humanitarian law since 1954. It is significant in this respect that the Second Protocol has maintained the waiver in case of imperative military necessity, as requested by many States during the preparatory meetings, but has sought to clarify its meaning. It provides that a waiver on the basis of imperative military necessity may only be invoked when and for as long as: (1) the cultural property in question has, by its function, been made into a military objective; and (2) there is no feasible alternative to obtain a similar military advantage to that offered by attacking that objective.[16] The Second Protocol further requires that the existence of such necessity be established at a certain level of command and that in case of an attack, an effective advance warning be given whenever circumstances permit.[17] During the negotiation of the Second Protocol, this interpretation of the waiver in case of imperative military necessity was uncontroversial.

**Rule 40<sup>69</sup>:** Each party to the conflict must protect cultural property,

**A.** All seizure of or destruction of wilful damage done to institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science is prohibited.

Article 56 of the Hague Regulations prohibits “all seizure of, and destruction, or intentional damage done to” institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science.[1] The violation of this provision was included among the violations of the laws and customs of war in the Statute of the International Criminal Tribunal for the Former Yugoslavia over which the Tribunal has jurisdiction. [2] Under the Statute of the International Criminal Court, destruction of buildings dedicated to religion, education, arts, science or

charitable purposes and historic monuments and destruction and seizure that is not imperatively demanded by the necessities of the conflict constitute war crimes in both international and non-international armed conflicts.[3]

**Rule 51<sup>70</sup>:** In occupied territory, [...] (c), private property must be respected and may not be confiscated, except where destruction or seizure of such property is required by imperative military necessity.

State practice establishes this rule as a norm of customary international law applicable in international armed conflicts.

According to the Hague Regulations (Art. 56), the property of municipalities and of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. As a result, it is prohibited to seize or destroy such property, including historic monuments and works of art and science.

**Rule 135<sup>71</sup>:** Children affected by armed conflict are entitled to special respect and protection.

Practice indicates that this includes access to education. This is also reiterated in the provisions of the CRC relating to the realization of rights of children affected by armed conflict.

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70 22 ICRC, Customary IHL Database, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule51](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule51).

71 ICRC, Customary IHL Database, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule135](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule135).

## Israeli National Laws – Key provisions related to basic education stage

### Provisions in Israeli law relating to non-discrimination<sup>72</sup>

The principle of equality is not covered by a Basic Law and is not included in the two Basic Laws (Basic Law: Human Dignity and Liberty and the Basic Law: Freedom of Occupation), which were passed in 1992 and gives constitutional protection for some civil liberties and human rights.<sup>73</sup> Deputy-Attorney General Judith Karp wrote in 1993 that there is no constitutional guarantee of equality under Israeli law and no clear, special legislative protection to assure equality for the Arab-Israeli minority.<sup>74</sup>

In its Concluding Observations in consideration of Israel's initial State Report (2001), the Committee on the Rights of the Child expressed concern that non-discrimination is not expressly guaranteed under the Constitution. The Committee recommended that Israel take effective measures, including enacting or rescinding legislation where necessary, to ensure that all children enjoy all the rights set out in the CRC without discrimination (Article 2).<sup>75</sup>

### Provisions in Israeli law relating to education

In Israel's fundamental human rights laws, which the Supreme Court has ruled have constitutional status, the right to education is not mentioned. Some believe that the right, or aspects of the right, to an education is subsumed in the right to human dignity established by the Basic Law: Human Dignity and Liberty but this view is not shared by all including at least one Supreme Court justice.

**State Education Law 1953** – In Israel, education will be provided, as a rule, by the State on the basis of an educational program that is supervised and approved by the Ministry of Education. The law recog-

72 Sources include: CRIN, Compliance – Israel relating to implementing legislation for CRC provisions, August 2008 (draft); CRC/C/8/Add.44, Israel Period Reports submitted to the Committee on the Rights of the Child, 27 February 2002; E/C.12/ISR/3, Israel Third Periodic Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights, 12 July 2010.

73 Defence for Children International – Israel Section (in consultation with members of The Israeli Children's Rights Coalition), A Mixed Bag: Lawmaking to Promote Children's Rights, Ongoing Discrimination, and Many Serious Violations, NGO Comments on the Initial Israeli State Report on Implementing the UN Convention on the Rights of the Child, April 2002.

74 Ibid.

75 CRC/C/15/Add.195, Committee on the Rights of the Child Concluding Observations on Israel's initial State Report, 9 October 2002.



nizes two streams of education: State education and State religious education. The law allows the Minister of Education to approve, at the request of 75% of the parents of students in State or State religious schools, an additional or special educational program. The law also sanctions non-government education institutions, recognized but not official institutions that are supervised by the Ministry of Education, and independent institutions that are not supervised by the Ministry.

**Section 10 of the law** stipulates that parents have the right to choose the stream of education which their children will attend. However, parents who request that their children attend a State or State religious school are not allowed to choose the specific school their children will attend. The local school board refers children to schools, first and foremost in accordance with the policy of social integration, which is imposed upon parents and children.

**Article 34(4) of the State Education Law** grants the Minister of Education the authority to regulate the education system for non-Jewish children. The result of this provision is two separate state-education sub-streams: the Jewish state education and the Arab state education. This division creates vast differences in resources and is problematic in terms of the non-discrimination principle. When replying to critics, state representative argue that the goal is to allow Arab children to study in their own language, about their culture and religious, by Arab-speaking teachers.

**Compulsory Education Law 1949** – education in Israel is compulsory for children aged 3– 17 inclusive, or until three years in kindergarten and twelve years in school. The law allows the Minister of Education to grant an exemption from compulsory education in special cases, such as when a child is educated privately, or cannot be integrated into a regular school.

**Free education** – compulsory education is free for children aged 3-17 (inclusive).

However, parents are required to purchase books and school supplies for their children, and sections 6-8 of the law allow a local authority to

charge fees for services provided to pupils. In addition to mandatory fees, the school is authorized to collect optional fees for special services, if these are approved by a parents' committee. However, school registration and attendance are not conditional upon any payment.

The Ministry of Education provides financial assistance to students whose parents cannot pay for school services that supplement those required by law. In order not to place any student at a disadvantage, a committee comprising representatives of schools, parents' organizations and the local authority determines which families are eligible for assistance, discounts or exemptions because of their financial situation or because they have more than one child in school.

Responsibility for the regular school attendance of each and every child falls on parents, the State, and the local authorities. According to **section 4(a) of the Compulsory**

**Education Law**, parents (or guardians) must register their school age children at an education framework and ensure that they attend it regularly. Parents who do not fulfil this obligation are committing a criminal offense. School principals, homeroom teachers, guidance counsellors, and truant officers are responsible for enforcing regular school attendance on behalf of State and local authorities.

Under the **Apprenticeship Law 1953**, being an apprentice is also thought to constitute compulsory education (as defined by **section 2A(a) of the Compulsory Education Law 1949**). Youth who do not attend an education framework that is under the surveillance of the Ministry of Education thus still have the right to a basket of services under section 6 of the Compulsory Education Law 1949.

**Special Education Law 1988** – establishes the right of children with physical, mental, emotional or behavioural disabilities to an education suited to their needs and development, and ensures that education frameworks are adapted appropriately. In 2001 the **Special Education Law** created a preference to integrating children with special needs in the mainstream school system, so that children have the right to be first considered for receiving support services that will enable them to remain in the state (non-special) education system

rather than be moved to a separate school.

The law stipulates how eligibility for special education is to be determined, and that an individual study plan is to be made for each and every child, so as to enable him to fulfil his/her potential. The law also expands the type and scope of services provided in the framework of special education. Under the law, special education is provided to children and youth ages three through 21; the law also increased the number of special education hours, lengthened the school day and year (special education schools are open during vacations), and established the right of children to paramedical services (e.g., physical, occupational, and speech therapy), expressive therapies, and assistive devices.

**The Students' Rights Law of 2000** prohibits discrimination against a student based on ethnic, socio-economic, and political grounds in registration, admission, or removal of a student, determining educational programs and class composition, as well as student's rights and obligations, including implementation of disciplinary rules. The law recognized a right of a hearing for a student and his parents prior to a permanent removal from an educational institution.

The law provides that discipline in an educational institute must be implemented in a way that befits human dignity, including the right not to be subjected to physical or degrading disciplinary measures. Additionally, an educational institution must not employ a punitive measure against a student for an act or an omission by his parents.

The Ministry of Education imposes an absolute ban on the use of any form of corporal punishment as a means of discipline. The same holds for verbal violence - that is, injurious or humiliating remarks. These directives are enforced through the criminal justice system and through disciplinary measures.

The prohibition against the use of corporal punishment was recently given legal sanction by the Students' Rights Law 2000, which determines that the implementation of disciplinary measures by a school in a manner that respects human dignity is the students' right. In this

context, the law specifically prohibits the use of corporal or humiliating punishment.

**Extended School Day and Enrichment Education Law 1997** – orders the extension of school hours, is intended to increase equal opportunity in education and to enable children to fulfil their potential. The law stipulates that at least four school days a week will be eight-hour school days.

**The Free Education for Sick Children Law 5761-2001** – is aimed at advancing equal opportunity in education for sick children and providing a suitable educational framework for children in hospitals or at home due to long term illness. The purpose of the Law is to preserve the normative lifestyle of these children. The educational framework for children in hospitals or at home aim, is to identify the special educational needs of the sick child and to enable, subject to the learning capacities and medical condition of the child, the promotion of his/her development. According to the Law, the Minister of Education will introduce a special educational program for sick children to be implemented in their own homes or in hospitals with the consent of the parents.