

**DISPLACED FUTURES:
INTERNALLY DISPLACED PERSONS AND THE RIGHT TO EDUCATION**

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Education for internally displaced persons is essential, both as a human right enshrined in international law and as a component of the peace-building process. In emergency situations where the State fails to provide education for IDPs, the international community, though not legally obligated, maintains an ethical responsibility to ensure that IDP education is included as an integral component within the humanitarian assistance framework. The social and psychological benefits that education provides to IDPs give additional support to this argument. Furthermore, displacement is a crucial time of transition and vulnerability not just for children, but for youth and adults as well; failure to incorporate youth and adult education as a standard component during displacement is a detrimental omission in the quest to secure sustainable peace and initiate long-term development.

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Abbreviations & Acronyms

| | |
|-----------|---|
| AU | African Union |
| ACHPR | African Charter on Human and Peoples' Rights |
| ACRWC | Africa Charter on the Rights and Welfare of the Child |
| AYC | African Youth Charter |
| CADE | Convention against Discrimination in Education |
| CEDAW | Convention for the Elimination of Discrimination against Women |
| CESCR | Committee on Economic, Social, and Cultural Rights |
| CHR | Commission on Human Rights |
| CRC | Convention on the Rights of the Child |
| CRPD | Convention on the Rights of Persons with Disabilities |
| DDR | Disarmament, Demobilization, and Reintegration |
| ECHR | European Court of Human Rights |
| EFA | Education for All |
| ESC | European Social Charter |
| HRC | Human Rights Council |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social, and Cultural Rights |
| ICRC | International Committee of the Red Cross |
| ICERD | International Convention on the Elimination of All Forms of Racial Discrimination |
| ICMW | International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families |
| IDMC | Internally Displaced Monitoring Centre |
| IDP | Internally Displaced Person |
| INEE | Inter-Agency Network for Education in Emergencies |
| MDG | Millennium Development Goals |
| NGO | Non-Governmental Organization |
| OHCHR | Office of the High Commissioner on Human Rights |
| OP-ICESCR | Optional Protocol to the ICESCR |
| SAARC | South Asian Association for Regional Cooperation |
| SRSG | Special Representative to the Secretary-General |
| UDHR | Universal Declaration of Human Rights |
| UNESCO | United Nations Economic, Social, and Cultural Organization |
| UNGA | United Nations General Assembly |
| UNHCR | United Nations High Commissioner on Refugees |
| WRC | Women's Refugee Commission |

1. Introduction

There is a quiet giant created in the wake of armed conflict. It is not formally recognized within the United Nations' framework and as yet, most States have not adopted domestic legislation to adequately deal with it. However it is a growing crisis that merits greater attention: it is internal displacement. According to a report released by the Internal Displacement Monitoring Centre (IDMC), the number of internally displaced persons (IDPs) resulting from armed conflict and protracted violence had reached approximately 27.1 million by the end of 2009. This annual report provided an estimate of 26 million IDPs at the end of 2008, demonstrating an increase of over one million newly internally displaced during the course of the previous year and up approximately 10 million from the 17 million IDPs recorded in 1997 when the IDP numbers first began being tracked.¹ Compare this to statistics released by the United Nations High Commissioner on Refugees (UNHCR) that estimate the number of refugees to be 10.5 million at the end of 2008, a figure which decreased from 11.4 million the previous year.² This contrast reveals an ongoing shift in global displacement trends, highlighting the decreasing numbers of refugees and rapidly increasing numbers of IDPs in recent years.

This growing phenomenon can, in large part, be attributed to the changing nature of armed conflict in recent decades. Whereas the vast majority of wars used to be fought between states, recent trends illustrate that this is no longer the case. Present-day conflicts tend to be fought within a State, increasing the propensity for dislocation of large segments of the population within a specific region. Additionally, whereas displacement was previously a secondary outcome of conflict, it is now being used more frequently as a primary strategy of armed

¹ IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2009*, at 9 (2010).

² UNHCR, *UNHCR Statistical Yearbook 2008*, at 9 (2009).

groups and a method by which to increase vulnerability.³ Civilians become targets and internal displacement reaches unprecedented levels. As the number of IDPs continues to rise, so too does their impact on the globe. Whether these individuals are eventually repatriated, locally integrated, or resettled, the effects of how well they are able to adapt and rebuild following the cessation of violence will greatly influence the communities in which they live.

Due to displacement and the resulting lack of protection, IDPs are a highly vulnerable segment of the population. Although guaranteed equal rights under international law, they often lack means by which to ascertain these rights following displacement. Unfortunately, the right to education is a human right that is frequently denied to IDPs. This exclusion can result from a lack of political will, lack of resources, or discriminatory action on the part of the State. The challenge in accessing education is particularly acute for IDPs who remain within their State of origin as opposed to refugees who have crossed an internationally-recognized border and are able to avail themselves of other protection mechanisms.

Today access to education eludes IDPs in many countries around the world. Although collecting statistical data on displaced populations is challenging at best, the Women's Refugee Commission (WRC) published the *Global Survey on Education in Emergencies* in 2004 which sought to provide a portrait of the accessibility and quality of education in countries affected by conflict. With support from UN agencies and local partners, the WRC conducted interviews and collected data on education over the course of several years. The report is a summary of their findings. It estimates that "more than 27 million children and youth affected by armed conflict... do not have access to formal education. The

³ Thomas G. Weiss & David A. Korn, *Internal Displacement: Conceptualization and its Consequences* 22 (2006).

vast majority of these (more than 90 percent) are internally displaced or within their country of origin.”⁴ This statistic reveals the enormity of this obstacle which has only continued to grow in recent years. Considering that the period of displacement for most IDPs now lasts over a decade, the need for educational programming during this time is even more critical.⁵

This paper argues that education for internally displaced persons is essential, both as a human right enshrined in international law and as a component of the peace-building process. In emergency situations where the State fails to provide education for IDPs, it contends that though not legally obligated, the international community maintains an ethical responsibility to ensure that IDP education is included as an integral component within the humanitarian assistance framework. The social and psychological benefits that education provides to IDPs give additional support to this argument. Furthermore, this paper asserts that displacement is a crucial time of transition and vulnerability not just for children, but for youth and adults as well; it argues that failure to incorporate youth and adult education as a standard component during displacement is a detrimental omission in the quest to secure sustainable peace and initiate long-term development.

This paper begins by outlining the definitions and international framework for internal displacement and education for displaced populations. It follows by providing specific regional examples of denial of the right to education among IDPs. It then turns to examine the status and scope of the right to education under international law and its applicability to IDPs. This section revisits the concept of ‘sovereignty as responsibility’ and the inherent implications for the

⁴ WRC, *Global Survey of Education in Emergencies* 3 (2004).

⁵ Dale Buscher & Carolyn Makinson, *Protection of IDP Children, Women, and Youth*, in 22 *Forced Migration Review* 15, 16 (2009).

international community. The paper then further substantiates the importance of education for IDPs by exploring the practical benefits it provides to individuals and society. The following section discusses the case for inclusion of youth and adult education for displaced communities. Particular attention is given to the 2010 Education for All (EFA) Global Monitoring Report and the limited progress towards EFA goals related to youth and adult education.⁶ Finally, the paper concludes by offering recommendations on ways to further the fulfillment of the right to education for IDPs, including the need for both stronger legal instruments to protect this right for internally displaced populations and additional legal research to further the international discourse on ensuring the fulfillment of this right to IDPs.

In the words of renowned educator Maria Montessori, "Establishing lasting peace is the work of education; all politics can do is keep us out of war." Education not only impacts individual students, but it can transform communities as well. By increasing educational levels in a community, it opens doors for economic development, health awareness, poverty reduction, community safety, greater civic involvement, and other transformational changes. Education itself is not a singular goal; rather it should be viewed as the tool towards multiple goals. However, there is much work left to be done to provide adequate educational and vocational programs for IDPs, particularly those in situations of protracted displacement. The impact of most crises can continue to be felt for years afterwards. In order for these internally displaced communities to prepare for rebuilding their lives, communities, and in many instances, their countries, greater emphasis must be placed on providing access to quality education during the period of displacement.

⁶ UNESCO, *Education for All Global Monitoring Report 2010: Reaching the Marginalized* (2010).

2. Overview of Internal Displacement and Education in Emergencies

2.1 Definitions

It is essential to recognize that there are various kinds of emergencies that can have a serious impact on communities and result in mass displacement. One type of emergency is that created by natural disasters as seen following the 2004 tsunami in Southeast Asia and the 2009 earthquake in Haiti; another type of emergency is often referred to as a 'silent emergency.'⁷ This category which receives less international attention includes chronic problems such as widespread disease, climate change, and development projects. Finally there is a third type of emergency, characterized as 'human-made,' which are manifest through wars, armed conflict, or civil strife. These are often called 'complex emergencies.'⁸ Any of the aforementioned emergencies or a combination thereof can greatly inhibit a community's ability to fully function, often leading to prolonged displacement of community members. In recent years, an increasing awareness has developed of the long-term impact that such emergencies have on the affected communities.⁹

Though there are a variety of definitions used to determine what constitutes an emergency, the following definition of an educational emergency put forth by UNESCO will be adopted in this paper:

⁷ Mary Joy Pigozzi, *Education in Emergencies and for Reconstruction: A Developmental Approach* 1 (1999).

⁸ *Id.*

⁹ Kimberly A. Maynard, *Healing Communities in Conflict: International Assistance in Complex Emergencies* 5 (1999).

"An educational emergency is a crisis situation... which has destabilized, disorganized, or even destroyed the education system, and which requires an integrated process of crisis and post-crisis response." ¹⁰

While recognizing that many reasons trigger internal displacement such as development projects, environmental changes, economic motivations and natural disasters, for the purposes of this paper, the focus is limited to those IDPs facing displacement as a result of armed conflict as this is the primary cause of internal displacement in recent years.¹¹

2.2 Recognition of IDPs within the UN System

The concern for IDPs was first brought into focus within the United Nations (UN) in 1992 when then-Secretary General Boutros Boutros-Ghali developed a report for the Commission on Human Rights (CHR) about the growing impact of internal displacement.¹² As a result of this report, the CHR adopted Resolution 1992/73 which mandated the appointment of a Special Representative to the Secretary-General (SRSG) to investigate the overall situation of IDPs and the potential existence of human rights violations therein.¹³ It is notable that the establishment of both a working group and UN independent expert on IDPs was blocked in negotiations within the CHR.¹⁴ This is a reflection of member States' resistance to involvement on an issue that they viewed as a potential infringement on state sovereignty.¹⁵ In particular, a number of States from the global South were concerned that an independent expert would be authorized to conduct close examinations of internal human rights violations whereas a SRSG

¹⁰ UNESCO, *The Right to Education: an Emergency Strategy* (1999).

¹¹ IDMC, *supra* note 1.

¹² UN CHR, *Analytical Report of the Secretary-General on Internally Displaced Persons*, U.N. Doc. E/CN.4/1992/23 (1992).

¹³ UN CHR, E/CN.4/RES/1992/73 (5 Mar. 1992).

¹⁴ Weiss & Korn, *supra* note 3, at 28.

¹⁵ *Id.*

might simply present ideas on accessible, diplomatic solutions to the challenges of IDPs.¹⁶

The first SRSG on IDPs was Francis Deng, a former Sudanese diplomat and senior fellow at the Brookings Institute. Under a somewhat vague mandate, Deng began conducting country visits and initiating dialogue with governmental representatives to develop ideas and guidance on what could be done to increase the protection of IDPs.¹⁷ At this point, the original mandate allowed only for preliminary investigation and reporting back to the CHR, inviting “a comprehensive study identifying existing laws and mechanisms for the protection of the internally displaced, possible additional measures to strengthen implementation of these laws and mechanisms and alternatives for addressing protection needs not adequately covered by existing instruments”; however it did not extend to the SRSG any additional powers.¹⁸ At this point, NGOs also played a vital role in advocating for a more formalized mechanism within the UN to support and protect IDPs.¹⁹ Following Deng’s first report, the CHR acknowledged the need for further investigation on the subject of IDPs and adopted Resolution 1993/95, essentially extending the mandate of the representative for an additional two years.²⁰

Since then, the mandate of the SRSG on IDPs has been continually extended by the CHR and the newly created Human Rights Council (HRC).²¹ Deng continued to serve in this capacity until reaching UN established time limits for such a

¹⁶ *Id.*

¹⁷ UN CHR, *supra* note 13.

¹⁸ UN CHR, *supra* note 13, at para. 5.

¹⁹ Weiss & Korn, *supra* note 3, at 39.

²⁰ UN CHR, Res. 1993/95, 03 Nov. 1993, E/CN.4/RES/1993/95.

²¹ See UN CHR, E/CN.4/RES/1995/57 (03 Mar. 1995); UN CHR, E/CN.4/RES/1998/50 (17 Apr. 1998); UN CHR, E/CN.4/RES/2001/54 (24 Apr. 2001); UN CHR, E/CN.4/RES/2005/46 (19 Apr. 2005); UN HRC, A/HRC/RES/6/32 (14 Jan. 2007); UN HRC, A/HRC/14/L.18 (14 June 2010).

position in 2004. One of the most significant contributions during Deng's 12-year term as representative was the development of the *Guiding Principles on Internal Displacement*.²² Drafted over the course of several years, the *Guiding Principles* were presented to the CHR in 1998. This is the first international document to deliberately and comprehensively define the specific rights of IDPs. Though not binding on States in and of themselves, the *Guiding Principles* are drawn directly from hard law sources such as international humanitarian law, the ICESCR, and the ICCPR.²³

The *Guiding Principles* are also significant in that they provide for the first time a working definition for IDPs which has gradually been accepted by the international community. According to the *Guiding Principles on Internal Displacement*, IDPs are defined as:

“persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”²⁴

When Deng stepped down in 2004, Walter Kälin was appointed as the new representative on IDPs and as of 2010, continues to serve in that capacity.²⁵ He has further elaborated on the work of his predecessor and continues to draw awareness to the growing crisis of IDPs in the international community through country visits and reports.²⁶ Additional UN Resolutions have been passed in

²² *Guiding Principles on Internal Displacement, Addendum to the Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39*, 11 Feb. 1998, E/CN.4/1998/53/Add.2.

²³ Susan F. Martin et al., *The Uprooted: Improving Humanitarian Responses to Forced Migration* 63 (2005).

²⁴ *Guiding Principles*, supra note 22.

²⁵ UN CHR, E/CN.4/RES/2004/55 (20 Apr. 2004).

²⁶ See UN CHR, A/HRC/10/13 (09 Feb. 2009); UN CHR A/HRC/10/13/Add.2 (13 Feb. 2009).

subsequent years, demonstrating the support of both the CHR (and later the HRC) and the General Assembly. Informally, United Nations High Commissioner for Refugees (UNCHR) has been instrumental in helping IDPs in certain situations within the category of “other persons of concern to the UNHCR.”²⁷ However, it is not a sustainable solution as this protection extends to only a percentage of those internally displaced across the globe and at present, there still does not exist within the UN framework an agency with the specific mandate to protect and assist IDPs.

2.3 The International Framework for Education in Emergencies

In recent years, education has emerged as one of the crucial and central aspects of humanitarian assistance. The evolving perspective of education in emergencies is captured in a report released by UNESCO that states, "Education is a basic right and is likewise a means to the achievement of the basic rights to life and to health. It is therefore now seen as the fourth pillar of humanitarian assistance to victims of conflict and of natural disasters, alongside nourishment, health services and shelter."²⁸ However education in emergency situations and specifically education for displaced populations has not always enjoyed the place of recognition in humanitarian assistance framework that it has reached today.

Though the topic of refugee education dates back to the creation of UNHCR in 1950, it was not until the 1990s that a wider discussion began on the challenge of providing education to displaced populations.²⁹ When the Education for All (EFA) mandate was adopted at the Jomtien World Conference on Education for All in 1990, little consideration was given to the issue of education in

²⁷ UNHCR, *supra* note 2.

²⁸ UNESCO, *Education in Situations of Emergency, Crisis and Reconstruction* (2003).

²⁹ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428.

emergencies.³⁰ However, at the Mid-Decade EFA meeting in 1996, greater attention was given to the issue.³¹ That same year, the UN published a report commissioned in 1994 by Graca Machel entitled *Impact of Armed Conflict on Children*.³² This report was the first in-depth evaluation of the variety of ways that children are affected by armed conflict and an important section delineated the interference with their educational progress. In particular, it highlighted the importance of education in helping children cope emotionally and regain a sense of normalcy in their lives.³³

When international leaders gathered again for the World Education Forum in Dakar in 2000, they acknowledged that instances of armed conflict and natural disasters and the resulting displacement present a serious impediment to reaching the goals set forth in EFA.³⁴ Supporting evidence for this conclusion came from the *EFA Thematic Study, Education in Situations of Emergency and Crisis: Challenges for the New Century*, published by UNESCO in the same year.³⁵ Then in 2001, a collection of research papers commissioned by UNHCR entitled *Learning for a Future: Refugee Education in Developing Countries* were published which contributed to the international discussion.³⁶ The papers evaluated current educational programming and underscored the need for additional research in the field. Finally in 2004, the Inter-Agency Network for Education in Emergencies (INEE) published the *Minimum Standards for Education in Emergencies, Chronic Crises, and Early Reconstruction*. This tool was prepared to serve as a guideline to “articulate the minimum level of educational access and

³⁰ Fumiyo Kagawa, *Emergency Education: A Critical Review of the Field*, in 41 *Comparative Education* 487, 489 (2005).

³¹ *Id.*

³² Graca Machal, *Impact of Armed Conflict on Children* (1996).

³³ *Id.*

³⁴ Kagawa, *supra* note 30.

³⁵ Kacem Bensalah et al., *Education in Situations of Emergency and Crisis: Challenges for the New Century* (2000).

³⁶ *Learning for a Future: Refugee Education in Developing Countries* (Jeff Crisp et al. eds., 2001).

provision to be attained in emergencies, through to the early reconstruction stage.”³⁷ In the *Minimum Standards* handbook, there is recognition that this will not answer all the questions encountered in the provision of educational assistance. However, it serves as a useful tool at the international, national, and local levels for those involved in educational programming for refugees and IDPs.³⁸

3. Lack of Access to Education for IDPs

3.1 Barriers to the Right to Education for IDPs

According to Katarina Tomaševski, the first UN Special Rapporteur on the Right to Education, the right to education should embody the following four elements: **availability, accessibility, acceptability and adaptability**.³⁹ This framework is grounded in international human rights law and provides a standard by which to assess education. Tomaševski asserts that “a review of education in all its dimensions by the human rights yardstick” is necessary to determine whether it fulfills the right to education under international law.⁴⁰ Unfortunately, education for IDPs frequently does not meet these four requirements. The following section outlines a number of factors that serve as barriers to availability, accessibility, acceptability and adaptability in IDP education.

The issue of discrimination is an obstacle that IDPs often face in the educational sphere. In some instances, IDPs may be sent to segregated schools or denied

³⁷ INEE, *Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction* (2004).

³⁸ *Id.*

³⁹ Katarina Tomaševski, *Right to Education Primer No. 3, Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable* (2001).

⁴⁰ *Id.* at 16.

access to public schools based on their race or ethnicity.⁴¹ They may be subjected to prejudice within the classroom based on their status as an IDP.⁴² In other instances, the language barrier prevents IDPs from integrating into the school system, particularly in the case of minority populations. Such discriminatory obstacles often result in high rates of attrition and more frequent absences among IDP students.⁴³

Another barrier is the lack of documentation. Some schools require official documents during the registration process. However, most IDPs flee their communities with limited or no forewarning. Often there is no time to collect documentation before departing or in other situations, the documents belonging to IDPs may have been confiscated during travel.⁴⁴ This presents a serious challenge considering that obtaining replacement documents may require traveling back to unstable conflict areas, greatly risking personal security.

Safety also presents a challenge to education in IDP communities. As stated in the *Handbook for the Protection of Internally Displaced Persons* published by UNHCR: "Peer-to-peer violence, corporal punishment, sexual abuse or exploitation, lack of qualified staff, and inadequate monitoring and supervision within the education system, can discourage children and adolescents from attending school and contribute to high drop-out rates."⁴⁵ Additionally IDPs may be faced with traveling significant distances to attend school and can face threats to safety en route such as landmines or armed recruits.⁴⁶ Young women and girls

⁴¹ See Sean Loughna, et al, *Not Displaced, Out-of-Place: Education of IDP Children in Georgia* (2010).

⁴² Erin Mooney & Colleen French, *Barriers and Bridges: Access to Education for Internally Displaced Children 3* (2005), available at [http://www.nrc.ch/8025708F004CFA06/\(httpKeyDocumentsByCategory\)/CD4655D8BD64EFB7C1257280005166D0/\\$file/IDP_Child_Education_Brookings_JAn_2005.pdf](http://www.nrc.ch/8025708F004CFA06/(httpKeyDocumentsByCategory)/CD4655D8BD64EFB7C1257280005166D0/$file/IDP_Child_Education_Brookings_JAn_2005.pdf).

⁴³ WRC, *supra* note 4, at 22.

⁴⁴ Mooney & French, *supra* note 42, at 2.

⁴⁵ UNHCR, *Handbook for the Protection of Internally Displaced Persons* 283 (2007).

⁴⁶ Mooney & French, *supra* note 42, at 2.

may face the risk of sexual assault when traveling to and from classes.⁴⁷ The numerous threats to safety undermine the potential for educational programming in many IDP communities.

Finally, another obstacle to IDP education is the implementation of school fees or other monetary requirements. Though international law requires that education should be free at the primary level, some schools levy fees on families to pay for teachers' salaries or school upkeep, particularly in States where limited governmental resources are directed toward education. Additional costs may arise from the purchase of uniforms, textbooks and school supplies.⁴⁸ For IDP families who have lost their primary source of income, even nominal fees can be prohibitive. This obstacle also often heightens gender inequality in access to education as in situations where families cannot afford sending all their children to school. This is due to the fact that males are generally given preference over females in school enrollment.⁴⁹

3.2 Regional Examples

Burma

In Burma, due to ongoing civil strife dating back to its independence in 1948, internal displacement is a widespread phenomenon. With an estimated 470,000 IDPs, there exist communities which have lived in supposedly 'temporary' settings for years on end.⁵⁰ Unfortunately access to education is a protracted problem in these communities. Few schools currently exist in the areas of resettlement, requiring students to travel great distances through potentially

⁴⁷ WRC, *supra* note 4, at 16.

⁴⁸ Mooney & French, *supra* note 42, at 4.

⁴⁹ WRC, *supra* note 4, at 20.

⁵⁰ IDMC, *Country Profile: Myanmar* (2010), available at [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountries\)/59F29664D5E69CEF802570A7004BC9A0?OpenDocument](http://www.internal-displacement.org/8025708F004CE90B/(httpCountries)/59F29664D5E69CEF802570A7004BC9A0?OpenDocument).

militarized, land-mined areas in order to attend classes.⁵¹ Additionally, the government has issued an order that all classes must be taught in Burmese which presents learning obstacles for the high percentage of ethnic minorities currently living in IDP settlements. Finally, considering that only 1.3% of the national budget is allocated for education in Burma, schools impose monthly fees on students to cover operational costs. These fees may range from USD\$10 to \$35 per month.⁵²

Colombia

With estimates of up to 4.9 million IDPs, Colombia ranks high on numbers of internal displacement, second only to Sudan.⁵³ Despite governmental efforts, the situation for IDP education remains bleak. According to the Ministry of Education's estimates of the total number of displaced children versus the number enrolled in school, the exclusion rate for IDPs may be as high as 82.3 percent.⁵⁴ Obstacles to attendance include monetary obligations imposed by the schools related to uniforms, school supplies, and transportation. For internally displaced families struggling to make ends meet financially, such costs can prevent them from sending their children to classes.⁵⁵ Additionally, discrimination within the school system plays a role as many IDPs in Colombia are ethnic minorities.⁵⁶

⁵¹ Partners Relief & Development and Free Burma Rangers, *Displaced Childhoods: Human Rights & International Crimes against Burma's Internally Displaced Children* 73 (2010).

⁵² *Id.* at 37.

⁵³ IDMC, *Country Profile: Colombia* (2010), available at <http://www.internal-displacement.org/8025708F004CE90B/%28httpCountries%29/CB6FF99A94F70AED802570A7004CEC41?opendocument>.

⁵⁴ IDP Voices, *The Right to Education: Colombia* (2006), available at [http://www.internal-displacement.org/80257297004E5CC5/\(httpPages\)/D9B5CD1B775DEDAAC12572F60053DFDA?OpenDocument](http://www.internal-displacement.org/80257297004E5CC5/(httpPages)/D9B5CD1B775DEDAAC12572F60053DFDA?OpenDocument).

⁵⁵ *Id.*

⁵⁶ Mooney & French, *supra* note 42, at 3.

Sudan

Sudan is currently home to the highest number of IDPs in the world as a result of reoccurring civil conflicts. Estimates put the number of IDPs close to 5 million.⁵⁷ According to a report by the Women's Refugee Council, "education indicators in Southern Sudan today are among the worst in the world."⁵⁸ Overcrowded classes with poorly trained teachers are characteristic of most schools throughout Sudan. Young women and girls are particularly disadvantaged as there are few female teachers and when faced with potential safety concerns and required school fees, parents are far more likely to send their sons to school as opposed to their daughters.⁵⁹ Youth are also severely disadvantaged as access to post-primary education in most parts of Sudan is virtually non-existent.⁶⁰

The right to education inheres in all persons; however, the above examples illustrate the scope of the problem that exists with the provision of this right to IDPs. Unfortunately, these are not isolated incidents. Current estimates find that approximately 90 percent of IDPs are denied the right to education.⁶¹ This inequality constitutes a human rights violation as illustrated by the following elucidation of the right to education in international law.

4. The Right to Education in International Law

As a result of their displacement, IDPs often face challenges in ascertaining certain human rights. Access to education, in particular, can elude many IDPs during this time of increased vulnerability. Although not yet having reached a

⁵⁷ IDMC, *Country Profile: Sudan* (2010), available at <http://www.internal-displacement.org/8025708F004CE90B/%28httpCountries%29/F3D3CAA7CBEBE276802570A7004B87E4?OpenDocument>.

⁵⁸ WRC, *From the Ground Up: Education and Livelihoods in Southern Sudan* 3 (2007).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Vernor Muñoz, *Protecting Human Rights in Emergency Situations*, in *Even in Chaos: Education in Times of Emergencies* 9, 20 (Kevin M Cahill ed., 2010).

level to concretely form part of customary international law, the existence of the right to education in treaty law and case law cannot be disregarded. The following section explores the development of legal framework defining the right to education over time. It should be noted that additional legislation supporting the right to education exists in many States in the form of domestic law⁶²; however, for the purposes of this paper, this chapter will be specifically examining international and regional legal instruments.

4.1 The International Legal Framework

The right to education was first set out in the Universal Declaration of Human Rights (UDHR) adopted by the UNGA in December 1948. Article 26 states:

“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.”⁶³

Although the UDHR is a declaration and therefore not legally binding, it did provide a foundation upon which subsequent international treaties have been based. The provision of the right to education found in the UDHR is often incorporated into binding treaties that also enshrine the right to education.

The second international document to address the right to education was the Convention against Discrimination in Education (CADE).⁶⁴ The CADE

⁶² See *La Constitución Política de la República de Costa Rica*, Art. 77, 78, 83, available at <http://www.constitution.org/cons/costaric.htm>.

⁶³ Universal Declaration of Human Rights (10 Dec. 1948), U.N.G.A. Res. 217 A (III) (1948).

⁶⁴ Convention against Discrimination in Education (Paris, 14 December 1960), UNESCO, entered into force 22 May 1962.

specifically addresses the importance of equality in education with reference to the standard and quality of education, accessibility of education, and the conditions under which it is provided. Article 3 is particularly relevant as it sets out the following obligations on States: to discontinue any practices that created discrimination in education, to ensure equal access to educational institutions for students of all nationalities, and to disallow any differential treatment of students of different nationalities or particular social groups.⁶⁵ With entry into force in 1962, the CADE set forth the standard for education at that time. This specific legal instrument is particularly relevant for IDPs as oftentimes specific ethnic groups are targeted during displacement.⁶⁶ The provision of non-discrimination explicitly enshrined in the CADE affirms that IDPs cannot be denied access to education based on their status as internally displaced or any other minority status.

In 1966, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) reaffirmed the right to education as a universal human right. Article 13 of the ICESCR sets out that:

“The States Parties to the present Covenant recognize the right of everyone to education. 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.”⁶⁷

Given that the ICESCR includes a provision of ‘progressive realization,’ the Committee on Economic, Cultural, and Social Rights (CESCR) clarifies what the obligations of the State entail. In General Comment 13, the CESCR asserts that

⁶⁵ *Id.*

⁶⁶ IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2008*, at 20 (2009).

⁶⁷ International Covenant on Economic, Social and Cultural Rights (New York, 16 Dec. 1966) 993 U.N.T.S. 3, *entered into force* 3 Jan. 1976.

the immediate obligations required by States are to ensure non-discrimination of any kind in education and to take “deliberate, concrete, and targeted” steps towards the full realization of the right to education.⁶⁸ This reaffirms that the ‘progressive realization’ clause found in the ICESCR does not alleviate the State of its responsibilities. It also signifies that any exclusion of IDPs from education on the basis of their status is discriminatory and therefore constitutes a violation of Article 13 of the ICESCR.

It is noteworthy that Article 13(b) of the ICESCR also states, “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.” Article 13(d) adds, “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.”⁶⁹ Such wording offers support for the provision of educational services to youth and adult, though does not go as far as to create a legal obligation on States. The imperative of addressing the educational needs of youth and adult IDPs will be explored in greater depth in Chapter 6.

Furthermore, on International Human Rights Day, 10 December 2008, the UN General Assembly adopted an Optional Protocol to the ICESCR which establishes an individual complaints process and an inquiry procedure.⁷⁰ These accountability mechanisms have the potential to facilitate international recognition of a right to remedy for violations of the rights set forth in the

⁶⁸ CESCR, General Comment 13, Art. 1 (21st Session, 1999), UN Doc E/C.12/1999/10 (1999), at para. 43-45.

⁶⁹ *Id.* at Art. 13.

⁷⁰ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (New York, 10 Dec. 2008) 869 U.N.T.S. A/63/435.

ICESCR, including education.⁷¹ In her address to the General Assembly, the UN High Commissioner for Human Rights, Navi Pillay, reflected, “Closing a historic gap in human rights protection under the international system, the Optional Protocol represents a veritable milestone in the history of universal human rights, making a strong and unequivocal statement about the equal value and importance of all human rights and the need for strengthened legal protection of economic, social and cultural rights.”⁷² Symbolically the Optional Protocol was adopted during the 60th anniversary commemoration of the UDHR. However, the OP-ICESCR is still awaiting the requisite 10 ratifications before it enters into force.⁷³ At the time of writing, Ecuador is the only State to have ratified the Protocol. Additionally, doubts have been raised as to the justiciability of the rights it seeks to protect.⁷⁴ Whether it is able to live up to its aspirations and provide a remedy following violations of the ICESCR remains to be seen. As it stands, it may be years before it enters into force and can be evaluated on its usefulness in protecting economic, cultural, and social rights.

The right to education for particular vulnerable groups is also expressed in various UN treaties. Of particular significance are the Convention for the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) considering that women and children make up approximately 80% of IDP populations.⁷⁵ Article 10 of CEDAW addresses the ongoing issue of gender discrimination in education. It requires all States to “take all appropriate measures to eliminate discrimination against women in order to

⁷¹ *Id.* at Art. 2, 8, 11.

⁷² OHCHR, *A Boost to Protecting Economic, Social and Cultural Rights* (5 May 2009), available at http://www.ohchr.org/EN/NEWSEVENTS/Pages/OP_ICESCR.aspx.

⁷³ OP-ICESCR, *supra* note 70, at art. 18.

⁷⁴ See Michael J. Dennis & David P. Stewart, *Justiciability Of Economic, Social, And Cultural Rights: Should There Be An International Complaints Mechanism To Adjudicate The Rights To Food, Water, Housing, And Health?*, in 98 *American Journal of Int'l Law* 462 (2004).

⁷⁵ Buscher & Makinson, *supra* note 5, at 15.

ensure to them equal rights with men in the field of education.”⁷⁶ Many IDPs come from traditionally patriarchal societies where the education of women is not greatly valued or widely practiced. However, during times of conflict, women often find themselves with new responsibilities such as primary wage-earner or in charge of negotiating business transactions for the first time. As a result, new skills are needed and access to education is crucial. The fulfillment of the right to education for women set forth in CEDAW takes on an even greater significance for many women following displacement; it is incumbent on the State to provide it for them. Additionally, there is an Optional Protocol to the CEDAW that allows for individual complaints and an inquiry procedure, provided that State has ratified the Protocol.⁷⁷

Another significant treaty is the CRC which obligates States to provide education without discrimination to all children living within its borders. Article 28 elaborates on the issue of accessibility and the inclusion of secondary and tertiary education, requiring States to “take measures to encourage regular attendance at schools and the reduction of drop-out rates.”⁷⁸ Article 29 addresses the quality of education provided, requiring that it be child-friendly, culturally-sensitive, and allow for the full development of each child.⁷⁹ General Comment 1 provided by the Committee on the Rights of the Child elaborates further on the qualitative dimension, specifying that curriculum must be relevant to the social, cultural, environmental, and economic context and develop respect for the cultural identity, language, and values of the students.⁸⁰ Additionally, it notes, “it is

⁷⁶ Convention on the Elimination of All Forms of Discrimination against Women (New York, 18 Dec. 1979) 1249 U.N.T.S. 13, 19 I.L.M. 33 (1980), *entered into force* 3 Sept. 1981.

⁷⁷ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (New York, 6 Oct. 1999) A/RES/54/4, *entered into force* 22 Dec. 2000.

⁷⁸ Convention on the Rights of the Child (New York, 20 Nov. 1989) 1577 U.N.T.S. 3, 28 I.L.M. 1448 (1989), *entered into force* 2 Sept. 1990.

⁷⁹ *Id.*

⁸⁰ Committee on the Rights of the Children, General Comment 1, CRC/GC/2001/1 (17 Apr. 2001), at para. 4, 9.

important to focus on the child's own community when teaching human and children's rights and the principle of non-discrimination.”⁸¹ As such, the right to education not only applies to the availability of education, but to the quality of education as well. Education that promotes intolerance and discrimination does not comply with the standards set forth in Article 29 of the CRC. Given the context in which IDP education takes place, due regard to these provisions is of the utmost importance.

Despite being the most widely adopted international human rights treaty, the CRC existed for many years as the only international human rights treaty with a mandatory reporting procedure that did not include a communications mechanism. However, due in large part to NGO support, in March 2010, the HRC adopted a resolution that mandates the drafting of an Optional Protocol to the CRC for the purposes of establishing a communications mechanism.⁸² This is poised to be a useful instrument for the right to education as it enforces that children are rights-holders too and offers an international remedy for violations of the CRC. Drafting of the Optional Protocol is set to begin in late 2010.

The right to education is also incorporated into the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), and the Convention on the Rights of Persons with Disabilities (CRPD). The ICERD is the oldest international human right treaty and highlights the importance of non-discrimination in education in Articles 5 and 7.⁸³ The ICMW speaks to the right to education in Articles 30, 40, and 45, setting forth that migrant workers and their family members shall be given equal

⁸¹ *Id.* at para. 11.

⁸² UN HRC, Res. A/HRC/RES/13/3 (24 March 2010).

⁸³ International Convention on the Elimination of All Forms of Racial Discrimination (New York, 7 Mar. 1966) 660 U.N.T.S. 195, 5 I.L.M. 352 (1966), *entered into force* 4 Jan. 1969.

access to education in their host State.⁸⁴ Finally, Article 24 of the CRPD underscores the rights of persons with disabilities to equal opportunity and accommodation of individuals' needs in educational settings; access to vocational and adult education for persons with disabilities should be provided by the State as well.⁸⁵ These treaties serve to further enshrine the right to education in international law.

In addition to international human rights treaties, Special Procedures to safeguard the right to education exist within the UN framework under the Office of the High Commissioner on Human Rights (OHCHR). One is the aforementioned SRSG on Internally Displaced Persons who regularly reports to the HRC on access to education in his country reports.⁸⁶ The *Guiding Principles on Internal Displacement*, drafted by this mandate-holder, serves as a useful tool in the protection of IDPs' rights.⁸⁷ In particular, Principle 23 reiterates the obligation on States to provide education to those internally displaced within its borders.⁸⁸ In addition, the CHR appointed a Special Rapporteur on the Right to Education whose mandate includes particular attention to the difficulties with implementation of this right.⁸⁹ The mandate was originally adopted for a period of three years in 1998 and has been successively extended by the HRC since then.⁹⁰ In the 2008 annual report, the current UN Special Rapporteur, Vernor Muñoz, focuses on presenting a discussion of education in emergencies,

⁸⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (New York, 18 Dec. 1990) 2220 U.N.T.S. 93, 30 I.L.M. 1521 (1990), *entered into force* 1 July 2003.

⁸⁵ Convention on the Rights of Persons with Disabilities (New York, 13 December 2006) A/61/611, *entered into force* 3 May 2008.

⁸⁶ See *supra* note 26.

⁸⁷ *Guiding Principles*, *supra* note 22.

⁸⁸ *Id.* at 23.

⁸⁹ UN CHR, Res. E/CN.4/RES/1998/33 (17 April 1998), at para. 6.

⁹⁰ See UN CHR, E/CN.4/RES/2001/29 (20 April 2001); UN CHR, E/CN.4/RES/2004/25 (16 April 2004); UN HRC, A/HRC/RES/5/1 (18 June 2007); UN HRC, A/HRC/RES/8/4 (12 June 2008).

underscoring the legally-binding nature of the right to education in international law and highlighting the growing number of IDPs denied that right.⁹¹ He draws attention to the existing discrepancies between commitment and fulfillment, calling on international actors to extend support in cases where the State is unwilling or unable to fulfill the right to education during emergencies.⁹² The responsibility of the international community will be further explored in section 5 of this chapter.

4.2 International Humanitarian Law

Internal displacement is frequently the result of armed conflict. In situations of international and internal armed conflict, international humanitarian law is applicable and therefore pertinent to this discussion. This section will review the most basic provisions of international humanitarian law that are relevant to the discussion. The aim of this section is to provide the legal context for education in situations of armed conflict; it is not, however, to provide a comprehensive review of international humanitarian law.

First and foremost, it is crucial to note that human rights law is applicable in both times of peace and war.⁹³ Additionally, there is no derogations clause under the ICESCR which would allow States to temporarily suspend their obligations. Therefore, States are bound to fulfillment of the rights therein, even in times of emergencies. The subjection of this treaty to ‘progressive realization’ as stated in Article 2(1) has been used to limit State culpability; however, this guise is

⁹¹ Vernor Muñoz, *Report on Right to Education in Emergencies*, A/HRC/8/10, at 10-12 (2008).

⁹² *Id.* at 16-17.

⁹³ ICRC, *International Humanitarian, Human Rights, and Refugee Law* (2004).

gradually being eroded by emerging jurisprudence.⁹⁴ Recalling that human rights law continues to apply, due consideration must be given to the constraints on a State during times of conflict.

Of the large corpus of international humanitarian law that is relevant in situation of armed conflict, for the purposes of this discussion, the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (applicable in international armed conflicts) and the Second Protocol Relating to the Protection of Victims of Non-international Armed Conflicts warrant particular attention. In international armed conflict, Article 24 of the Fourth Geneva Convention is applicable and requires that Parties to the conflict ensure that the education of children be “facilitated in all circumstances,” adding that as far as possible it should be undertaken by persons of a similar cultural tradition.⁹⁵ With regard to internal armed conflicts, Article 4(3) of the Second Optional Protocol states that children are entitled to receive care and aid including educational programming.⁹⁶ Accordingly, a State’s obligation to respect, protect, and fulfill the right to education continues to apply even during times of armed conflict. While these are not the only provisions found in international humanitarian law, they provide a basis for the applicability of the right to education in times of conflict.

⁹⁴ See *Free Legal Assistance Group, Lawyers Committee for Human Rights, Union Interfricaine des Droits de l’Homme, Les Témoins de Jehovah v. Zaire*, no. 25/89, 47/90, 56/91, 100/93, ACHPR 2005 and *Cyprus v Turkey*, no. 25781/94, ECHR 2001.

⁹⁵ Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention No. IV), Aug. 12, 1949, 6 UST 3516, TIAS No. 3365, 75 UNTS 287.

⁹⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609

4.3 Regional Human Rights Law and Systems

As illustrated, the right to education has a firm basis in international treaty law; it is enshrined in various regional instruments as well. This right is set out in numerous regional human rights treaties in Africa, the Americas, Asia, the Middle East and Europe. The provisions of these treaties are explored in greater detail below. Such regionally-adopted binding law serves to reinforce the obligation on States that have ratified these treaties regarding the right to education. Additionally, under the African, the American, and the European systems, the creation of regional courts offers individuals a regional remedy for rights violations in instances where domestic remedies are unavailable or inadequate.⁹⁷

As the home to more IDPs than any other continent, Africa faces a unique challenge in providing for their protection and fulfillment of human rights.⁹⁸ In recent years, as the African Union (AU) has become more established, the legal framework for protecting the right to education has become enshrined in regional documents. The foundational human rights instrument of the AU is the African Charter on Human and Peoples' Rights (ACHPR) which entered into force in October 1986. Article 17 recognizes the right of each individual to education.⁹⁹ However, article 17 fails to adequately align the responsibility with the State. By simply declaring "every individual has the right to education," it does not specify the provision of said education as a State responsibility nor does it stipulate that it should be available free of charge at least at the primary level.

⁹⁷ See Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (9 June 1998), *entered into force* 25 January 2005; Statute of the Inter-American Court of Human Rights, art. 1, OEA/Ser.P/IX.0.2/80, Vol. 1 at 98, *entered into force* 1 Jan. 1980; European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 Nov. 1950), 312 E.T.S. 5, *entered into force* 3 Sept. 1953.

⁹⁸ IDMC, *supra* note 1, at 8.

⁹⁹ African Charter on Human and Peoples' Rights [Banjul Charter] (Nairobi, 27 June 1981), 21 I.L.M. 58, *entered into force* 21 Oct. 1986.

Despite somewhat scant provisions for education in the ACHPR, subsequent regional instruments amplify the responsibilities of the State. The Protocol to the ACHPR on the Rights of Women in Africa specifically addresses the right to education and training in Article 12. It requires States to “take all appropriate measures” to eliminate discrimination and guarantee equal educational access to women, protecting against sexual harassment and gender stereotyping in the school.¹⁰⁰ Beyond that, it requires States to “take specific positive action” to promote literacy, education, and training for women and seek to increase the enrollment and retention of girls in educational facilities.¹⁰¹ This signifies an important legal advancement in the protection of the rights of women in Africa. Given that there is no provision for progressive realization, these obligations are already incumbent on the 27 States that have ratified the Protocol.¹⁰²

Additional legal instruments were developed to reinforce the right to education for young people in Africa. The Africa Charter on the Rights and Welfare of the Child (ACRWC) entered into force in November 1999. In Article 11, it specifies that all children without discrimination have the right to education and that the State is responsible for the full realization of this right. In addition to primary education, the ACRWC highlights the value and necessity of secondary and higher education opportunities.¹⁰³ As one of the most widely endorsed human rights treaties in Africa, it has now been ratified by 45 States.¹⁰⁴ The significance of such broad ratification is that many of these States are host to large number of IDPs; therefore, the obligations set forth in the ACRWC apply to all internally

¹⁰⁰ Protocol to the ACHPR on the Rights of Women in Africa (Maputo, 11 July 2003), *entered into force* 25 Nov. 2005.

¹⁰¹ *Id.*

¹⁰² See AU, *Status List of Treaties, Conventions, Protocols and Charters*, 2010, <http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>.

¹⁰³ Africa Charter on the Rights and Welfare of the Child (Addis Ababa, 11 July 1990), *entered into force* 29 Nov. 1999.

¹⁰⁴ See AU, *supra* note 102.

displaced children in those States. The ACRWC can and should be used as a tool in confronting the denial of the right to education in these cases.

A more recent legal instrument, the African Youth Charter (AYC) includes both education and skills development in Article 13. It reaffirms the right to education *of good quality* for young people. Additionally, it states, “The value of multiple forms of education, including formal, non-formal, informal, distance learning and life-long learning, to meet the diverse needs of young people shall be embraced.”¹⁰⁵ Of particular importance is the definition section found in the introduction to the AYC. It specifies, “For the purposes of this Charter, *youth* or *young people* shall refer to every person between the ages of 15 and 35 years.”¹⁰⁶ When taken into account with the non-discrimination clause included in Article 2, this could serve as a powerful tool for IDPs, particularly those beyond traditional school age who have not received the requisite education. It could serve to combat illiteracy and provide alternative forms of education to help people rebuild their lives and communities following displacement. Having been ratified by 15 member States, the AYC entered into force in August 2009.¹⁰⁷

The African Union was the first regional human rights body to develop a legal instrument specifically for IDPs. In October 2009, the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (The Kampala Convention) was adopted. Article 9 specifies the duty of the State to provide, among other forms of humanitarian assistance, educational services to IDPs “to the fullest extent practicable and with the least possible delay.”¹⁰⁸ A Conference of States Parties to the Convention, facilitated by the AU, will oversee

¹⁰⁵ African Youth Charter (Banjul, 2 July 2006), *entered into force* 8 Aug. 2009.

¹⁰⁶ *Id.*

¹⁰⁷ See AU, *supra* note 102.

¹⁰⁸ Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala, 23 Oct. 2009).

the implementation of the Convention. Individual complaints may be filed with the African Commission or African Court.¹⁰⁹ This Convention has the potential to facilitate great gains in the protection of IDPs' rights across Africa in the area of education and beyond. However, in order for it to enter into force, the Convention requires ratification by 15 member States of the AU; thus far, Uganda is the only State that has ratified it.¹¹⁰ Consequently, it could be a significant amount of time before the Convention provides meaningful protection to IDPs in Africa.

As the above section illustrates, there are numerous regional human rights instruments in Africa that protect the right to education for IDPs. Unfortunately, far too often the progress towards fulfillment of the inherent legal obligations has been nominal. In these cases, strategic litigation could be a useful tool to provide States with the impetus needed to comply with their obligations.

In the Americas, the right to education is set out in the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (The Protocol of San Salvador) adopted by the Organization of American States (OAS). Article 3 sets forth an obligation of non-discrimination, stating that the benefits of education should extend to all individuals. Then Article 13 closely echoes the wording of the ICESCR in setting out that the right to education belongs to everyone and should be geared toward full human development, respect for human rights, and participation in civil society.¹¹¹ However, the wording of Article 13 is deficient in that it does not specify that it is the duty of the State to provide this education. The imprecision of this wording

¹⁰⁹ *Id.*

¹¹⁰ See AU, *supra* note 102.

¹¹¹ Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (San Salvador, 17 Nov. 1988), 69 OAS T.S., *entered into force* 16 Nov. 1999.

allows for varying interpretations as to the nature of the State's obligations. Thus far, the Protocol has been ratified by 15 member States of the OAS, among them Colombia which has the greatest number of IDPs in the Americas.¹¹²

Though no regional human rights mechanisms currently exist in Asia or the Middle East, steps towards greater protection of human rights have taken shape in recent years. One crucial step is the South Asian Association for Regional Cooperation (SAARC) Social Charter, adopted in Islamabad in January 2004. It first acknowledges that "education is the cutting edge in the struggle against poverty and the promotion of development." Following that, Article 5 includes two important provisions related to education: the first is the responsibility of providing free education to all children and the second is the creation of enhanced job opportunities for young people by increasing investment in education and vocational training.¹¹³ Although primary education is mentioned briefly in the 2002 SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, the SAARC Social Charter represents the first significant acknowledgment by a regional body in Asia of the importance of the right to education. Additionally, it incorporates the aspects of non-discrimination and respect for cultural diversity in Article 2(2), numbers 7, 11, and 15, allowing for the applicability of said provisions to IDPs as well.¹¹⁴ Though not legally binding on States, the Social Charter has the potential to serve as a foundation upon which future binding treaties can be based.

The Arab Charter on Human Rights (ACHR) is another regional document which specifically sets out the right to education. In Article 34, it states, "The eradication of illiteracy is a binding obligation and every citizen has a right to

¹¹² See OAS, *Basic Documents – Ratifications of Protocol of San Salvador*, 2010, <http://www.cidh.oas.org/Basicos/English/Basic6.Prot.Sn%20Salv%20Ratif.htm>.

¹¹³ South Asian Association for Regional Cooperation Social Charter (Islamabad, 4 Jan. 2009).

¹¹⁴ *Id.*

education. Primary education, at the very least, shall be compulsory and free and both secondary and university education shall be made easily accessible to all.”¹¹⁵ After being ratified by seven States of the Arab League, the ACHR entered into force in March 2008 and became a binding legal instrument.¹¹⁶ However, one significant challenge with both the SAARC Social Charter and the ACHR is State accountability as currently neither has a monitoring body to ensure compliance with the rights stated therein.

The European human rights system is the oldest regional system and also reaffirms the right to education. Interestingly though, in its first mention, education is expressed as a negative right, thereby alleviating due obligations on the State. In Article 2 of the first Additional Protocol to the European Convention on the Protection of Human Rights, it states, “No one shall be denied the right to education.”¹¹⁷ As such, it does not suggest a positive obligation on the State to provide education. This seems to be a grave omission for the 45 member States to have ratified it.¹¹⁸ However, the European Court of Human Rights (ECHR) has since held States responsible for provision of quality education as will be seen in the subsequent examination of case law related to the right to education.

Additionally, the revised version of the European Social Charter (ESC), adopted in 1996, embraces a comprehensive understanding of the right to education. Included in the obligations on States are the provision of free primary and secondary education, free and effective vocational guidance services, access to

¹¹⁵ Arab Charter on Human Rights (Cairo, 22 May 2005), *entered into force* 15 March 2008.

¹¹⁶ See Arab League Online, *Ratification of Arab Human Rights Charter*, 2010, http://www.arableagueonline.org/lasimages/picture_gallery/human8-3-2010.PDF.

¹¹⁷ Additional Protocol to the European Convention on the Protection of Human Rights (Paris, 20 March 1952), *entered into force* 18 May 1954.

¹¹⁸ See Council of Europe, *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms*, 2010, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=009&CM=8&DF=27/06/2010&CL=ENG>.

training, higher education, vocational and continuing education, and access and integration to education and vocational training for those with disabilities.¹¹⁹ As outlined, this encompasses educational services for all age groups, not just primary education. Considering the extent of these provisions, the ESC is a useful legal instrument in that it takes the right to education further than any other instrument in international law. It also includes a non-discrimination clause in Article E of Part 5, extending its applicability to all persons within a State's borders.¹²⁰ The ESC entered into force in July 1999 and currently has been ratified by 42 member States.¹²¹

4.4 Relevant Case Law

In addition to the plethora of international and regional legal instruments that provide for a right to education, there is also an increasing jurisprudence from regional human rights courts related to the right to education. Such jurisprudence reinforces the responsibility of the State to provide education as well as offer a remedy to victims of educational rights violations. The jurisprudence also helps States to understand the scope of the right to education and the exact obligations that are incumbent upon the state in relation to the delivery of this right. While thus far there have been no cases specifically involving the right of IDPs to adequate and accessible education, the possibility of such a case being presented to a regional or international court is definitely within reach. As the following case law demonstrates, the culpability of the State in instances where it has failed to provide non-discriminatory access to education is being further defined with each decision.

¹¹⁹ European Social Charter, (Strasbourg, 3 May 1996.), 163 ETS, *entered into force* 1 July 1999.

¹²⁰ *Id.*

¹²¹ See Council of Europe, *Signatures and ratifications of the European Social Charter, its Protocol, 2010*, http://www.coe.int/t/dghl/monitoring/socialcharter/presentation/SignaturesRatifications_en.pdf.

In March 2010, a judgment by the Grand Chamber of the ECHR clearly denounced separate educational facilities for ethnic minorities. The case was *Orsus and Others v. Croatia*; it reached the Grand Chamber on appeal after having been dismissed twice in municipal courts in Croatia and receiving a negative ruling in 2008 in the ECHR.¹²² This particular case dealt with the segregation of Romani children into separate classes in Croatia. The ECHR ruled such segregation to be in violation of Article 14 of the Convention read in conjunction with Article 2 of Protocol 1 which ensures the right to education without discrimination.¹²³ This follows on the heels of two other rulings against the segregation of Romani children in primary schools in other parts of Europe.¹²⁴ This ruling also represents a victory for IDPs in that ethnicity and being a language minority are not legally valid arguments by any State as rationale for not integrating IDPs into the local school system. It further applies in that any differential treatment to IDPs with regard to education may be interpreted by the court as discrimination. The burden of proof then rests with the State to establish that the differential treatment is not discriminatory.

Another significant judgment on the right to education came from the Economic Community of West African States (ECOWAS) Community Court of Justice in October 2009. The case was *SERAP v. Federal Republic of Nigeria and Universal Basic Education Commission*.¹²⁵ In this case, Nigeria was accused of failing to provide quality education as guaranteed under Article 17 of the ACHPR.¹²⁶ The basis of the claim was the discovery of mass corruption and redirection of funds,

¹²² *Orsus and Others v. Croatia* [GC], no. 15766/03, ECHR 2010.

¹²³ *Id.*

¹²⁴ See *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, ECHR 2007 and *Sampanis and Others v. Greece*, no. 32526/05, ECHR 2008.

¹²⁵ *SERAP v. Federal Republic of Nigeria and Universal Basic Education Commission*, no. ECW/CCJ/APP/0808, ECOWAS 2009.

¹²⁶ *Id.*

resulting in the loss of nearly N\$3.4 billion originally designated for education in Nigeria. Dismissing claims by the government of Nigeria that education is "a mere directive policy of the government and not a legal entitlement of the citizens," the Court ruled that education is indeed a justiciable right, subject to litigation before the regional court.¹²⁷ This decision has been lauded as a landmark ruling that could permanently redefine human rights jurisprudence in Africa.¹²⁸ Indeed this case raises the bar – it calls for greater State accountability for ensuring access to education within national borders.

4.5 International Responsibility

Despite existing human rights obligations enshrined in international law, States in armed conflict often lack the resources or political will to provide education for IDPs. However, given their territorial jurisdiction, the State is the sole authority with whom this obligation rests. While there is no legally binding provision in international law requiring the international community to assist in such situations, there is an ethical obligation to respond to the apparent need. The concept of 'sovereignty as responsibility' was introduced in 1996 by then-SRSG Francis Deng and his fellow authors at Brookings Institute.¹²⁹ This doctrine recognizes that 'sovereign states have often failed to take responsibility for their own citizens' welfare and for the humanitarian consequences of conflict, leaving the victims with no assistance' and suggests that when States do not fulfill their obligations, they open themselves up to the forced delivery of humanitarian assistance to the affected civilian population.¹³⁰ It conceives sovereignty as

¹²⁷ *Id.*

¹²⁸ Amnesty International, *ECOWAS Court Says Nigerians have a Right to Education*, 22 Nov. 2009, available at ReliefWeb: Documents.

¹²⁹ Francis M. Deng, et al., *Sovereignty as Responsibility: Conflict Management in Africa* (1996).

¹³⁰ *Id.* at 8.

responsibility as both a national obligation and an international imperative.¹³¹ This follows on similar conceptual ideas included in Deng's first report as SRSG on internally displaced populations:

"No Government can legitimately invoke sovereignty for the deliberate purpose of starving its population to death or otherwise denying them access to protection and resources vital to their survival and well-being. The presumption that if a Government is incapable of providing protection and assistance then the international community should act, either on the invitation of the host country or with international consensus, to fill the vacuum is in consonance with the principle of sovereignty."¹³²

Herein lays a fundamental difference between refugees and IDPs. Refugees, having left their State of origin, may avail themselves of other protection mechanisms. By contrast, IDPs are still under the geographic jurisdiction of the original State which in some cases may be the same perpetrator of their displacement. In instances where IDPs are denied education by the State, they have no further recourse at the domestic level. Consequently, it is the duty of the international community to facilitate fulfillment of the right to education. This holds true both in situations where education is being intentionally withheld from IDPs and where the State lacks adequate resources to fulfill this obligation. Not only is international assistance warranted on the basis of education as an inherent human right, but it also is a requisite involvement if the international community is truly committed to the Millennium Development Goals (MDG) and the Education for All agenda.

The *Guiding Principles on Internal Displacement* also speak to the responsibilities of the international community. Principle 5 states that "all authorities and international actors shall respect and ensure respect for their obligations under

¹³¹ *Id.*

¹³² UN CHR, E/CN.4/1993/35 (21 Jan. 1993).

international law, including human rights and humanitarian law.”¹³³ Furthermore, Principle 25 notes that the primary responsibility for provision of humanitarian assistance to IDPs lies with the host State; however, it states, “when authorities concerned are unable or unwilling to provide the required humanitarian assistance,” consent for international assistance shall not be arbitrarily withheld.¹³⁴ It adds, “All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.”¹³⁵ Finally, additional support is found in Article 2(1) of the ICESCR which obligates States to fulfill the rights enumerated therein “individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources.”¹³⁶

The enshrinement of the right to education in international law outlined above dictates that it should be available to all without regard to social, economic, or displacement status. Nonetheless, IDPs continue to be among the most disadvantaged groups worldwide in accessing this right. The involvement of the international community is crucially needed in facilitating the provision of education to IDPs. It is not a legal obligation, but rather an ethical commitment to care about the lives and futures of those without recourse.

In recent years, the international community has gained greater understanding of the numbers of IDPs denied the right to education and has begun to mobilize to face this challenge. UN agencies leading this effort are UNICEF and UNESCO. Additionally, other international NGOs working in conflict-affected countries are beginning to incorporate education to displaced populations as a standard

¹³³ *Guiding Principles*, *supra* note 22, at 3.

¹³⁴ *Id.* at 13.

¹³⁵ *Id.*

¹³⁶ ICESCR, *supra* note 67.

response.¹³⁷ Organizations working in IDP education have often provided support to government and community schools through educational materials, teacher training workshops, and school reconstruction projects; on occasion, they have also supplied teacher stipends or incentives.¹³⁸ However, given its recent emergence, this arena still suffers from a lack of inter-agency coherence, uniform response mechanisms, international political support, and sufficient financial resources. The need to address these inconsistencies will be discussed further in Chapter 7.

5. The Role of Education in IDP Communities

Emergency situations such as those created by armed conflict and displacement present many challenges; however, such times of transition can also offer opportunities for change. In the case of IDPs, resettlement in another region may provide an opportunity to provide education to persons that have never been able to access it before. There exists the potential for new financial resources available from international agencies as well as diminished resistance from existing bureaucratic structures during such times. Unfortunately, in existing camps for displaced populations, the quality of education accessible to IDPs lags far behind that accessible to refugees.¹³⁹ It is imperative that to benefit from this window of opportunity, the implementation of education be considered a priority for internally displaced populations. The following section explores the benefits that quality education provides to IDP populations and further reiterates why the right to education for IDPs is crucial for long-term recovery.

¹³⁷ Rebecca Winthrop & Mary Mendenhall, *Education in Emergencies: a Critical Factor in Achieving the Millennium Development Goals*, in *The Commonwealth Ministers Reference Book* (2006).

¹³⁸ WRC, *supra* note 4, at 10.

¹³⁹ Buscher & Makinson, *supra* note 5, at 17.

5.1 Individual and Community Benefits

The importance of education for IDPs extends beyond the fulfillment of a human right. In the midst of conflict, IDPs face numerous challenges and education can serve a vital function beyond the learning objective. The importance of establishing education in IDP communities is multi-fold. First and foremost, it establishes a sense of normalcy and allows families and individuals to begin to create daily routines. This alone can be a significant step in the healing process for many people.¹⁴⁰ Furthermore, research has shown that displaced persons experience a range of emotions following exposure to an emergency.¹⁴¹ The psychological trauma may include a vast spectrum of emotions from confusion and anger to fear and despair. Women and young people are particularly susceptible to psychological trauma.¹⁴² The introduction or resumption of education in an IDP's life can serve to alleviate the long-term impact of such trauma. Education can also assist in identifying IDPs who are suffering from severe shock or trauma. Once identified, additional services can be provided to these community members to address their psychological needs.¹⁴³ In his 2008 report focusing on displaced persons, the Special Rapporteur on the Right to Education asserts,

“Education provides physical, psychosocial and cognitive protection that can be both lifesaving and life-sustaining. Education offers safe spaces for learning, as well as the ability to identify and provide support for affected individuals, particularly children and adolescents. Education mitigates the psychosocial impact of conflict and disasters by giving a sense of normality, stability, structure and hope during a time of crisis, and provides essential building blocks for social reconstruction and future economic stability.”¹⁴⁴

¹⁴⁰ Bensalah, *supra* note 35.

¹⁴¹ Maynard, *supra* note 9, at 114.

¹⁴² *Id.*

¹⁴³ Bensalah, *supra* note 35, at 28.

¹⁴⁴ Muñoz, *supra* note 91, at 10.

In addition to the emotional impacts, other interpersonal impacts have been observed. Oftentimes IDPs may deal with higher levels of distrust, segregation, hostility, and violence as a result of the conflict and resulting displacement.¹⁴⁵ The classroom setting creates a space which allows students to process their emotions and begin to restore relationships.¹⁴⁶ Just as primary education is useful in creating routine and stability in the recovery process, so too youth and adult education programs can be therapeutic for the students enrolled. Such programs offer individuals both a centralized focus and a renewed sense of hope for the future.

Beyond giving students an individualized sense of hope and direction, education can also play a vital role in the community as a whole. Research suggests that “social fallout from internal warfare is generally more difficult to assess and reverse at the community level than the physical and economic effects.”¹⁴⁷ The breakdown of social networks, toll on local leadership, and loss of social services are all byproducts of displacement, resulting in damage to community viability.¹⁴⁸ To this end, educational programming can offer a venue to engage and empower displaced communities. It can serve as a catalyst for community dialogue and healing. Additionally it can plant the seeds for future civil society development, be it during displacement or following resettlement or repatriation of IDPs. Given the prolonged state of conflict in many countries where there are large numbers of IDPs, this may be the first introduction for some young people to concepts such as democracy and the role of civil society. Educators can use this opportunity to go beyond simply providing classroom instruction to laying the groundwork for promoting economic and social justice, respect for human rights, and civil society. In order to realize these benefits, a high quality of

¹⁴⁵ Maynard, *supra* note 9, at 109.

¹⁴⁶ Bensalah, *supra* note 35, at 16.

¹⁴⁷ Maynard, *supra* note 9, at 111.

¹⁴⁸ *Id.* at 111-113.

education that conforms to human rights principles of equality and non-discrimination is essential.

5.2 Mitigation of Recruitment to Illicit Activity

Education also acts as a deterrent to involvement in illicit activities, particularly among youth. Research has demonstrated that where education is not available, individuals are more susceptible to recruitment into illicit activities including fighting groups or the sex trade.¹⁴⁹ While both sectors employ the use of human trafficking, this paper distinguishes between recruitment by armed forces for roles as combatants, laborers, or sex slaves which takes place primarily during conflict and for-profit recruitment by sex traffickers which increases in post-conflict settings. In both instances, the recruitment may be either forced or voluntary under deceptive pretenses.

Globally, human trafficking is on the rise.¹⁵⁰ The UN definition of trafficking is comprehensive and includes recruitment “by means of the threat or use of force or others forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits...for the purpose of exploitation.”¹⁵¹ Though illegal under international law, collapse of the rule of law, rising criminality and weak protection mechanisms during conflict situations and vulnerability due to displacement make IDPs a highly targeted group for trafficking.

¹⁴⁹ WRC, *supra* note 4, at 10.

¹⁵⁰ Alja Klopčič, *Trafficking in Human Beings in Transition and Post-Conflict Countries*, in 1 Human Security Perspectives 7, 10 (2004).

¹⁵¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. (New York, 15 Dec. 2000) 383 U.N.T.S., *entered into force* 25 Dec. 2003.

An area of particular concern is the increased susceptibility of IDPs to recruitment by armed forces in areas of ongoing conflict, particularly among children. The Cape Town Principles define a child soldier as “any person under 18 years who is part of any kind of regular or irregular armed force in any capacity.”¹⁵² This definition is therefore not limited to children carrying weapons, but rather encompasses children working in the role of cooks, porters, spies, messengers, or sex slaves. It applies equally to both girls and boys. Though the practice of using child soldiers is clearly illegal under international human rights law, it has grown significantly in recent years.¹⁵³ It is estimated that there are currently over 300,000 children serving as child soldiers in more than 85 countries around the world.¹⁵⁴ Two factors cited as contributing to extreme vulnerability to recruitment are poverty and social dislocation, noting that displaced children and those separated from their families are particularly vulnerable.¹⁵⁵

While it is certain that the majority are forcibly recruited, the reality is that there are an increasing number of children who willingly volunteer for conscription.¹⁵⁶ In these circumstances, “violence, poverty, and lack of educational opportunity together play a pivotal role in seducing youth to join belligerents in a war to which they are in fact victims.”¹⁵⁷ Armed groups claim to provide a home and a community to those who join their ranks. For IDPs who have recently lost just that, such an offer may seem irresistibly enticing. In hundreds of interviews

¹⁵² Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa (Cape Town, 30 April 1997).

¹⁵³ See Geneva Convention No. IV, *supra* note 95, also Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (New York, 25 May 2000) UN Doc.A/54/RES/263, *entered into force* 12 Feb. 2002.

¹⁵⁴ Gerald Martone, *An Unexpected Lifeline, in Even in Chaos: Education in Times of Emergencies* 101 (Kevin M Cahill, MD ed., 2010).

¹⁵⁵ Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report* (2008).

¹⁵⁶ Martone, *supra* note 155.

¹⁵⁷ *Id.*

conducted with child soldiers, UN Child Protection Officer Alec Wargo notes that very few were enrolled in school at the time of recruitment. When asked as to the reasons for their enlistment, “many stated that they had ‘nothing to do’ and were often in dire economic straits or had suffered estrangement from their parents or caregivers.”¹⁵⁸ However illustrious the promises of monetary compensation and daily food after joining an armed group, more often than not they go unfulfilled.¹⁵⁹ Additionally, displaced persons may feel anger or need for revenge against a specific armed group, increasing their propensity to take up arms if invited. For many IDPs who have lost family members, homes, or suffered violence, they often believe they have nothing left to lose and thus become more willing to join armed groups.

Another risk that women and children in IDP communities face is recruitment into the sex trade. In areas affected by conflict, chaos reigns and the rule of law offers little protection. Add to this a situation in which persons have fled their homes and find themselves in a new setting where oftentimes they do not know the language, the culture, or how to access the resources they need and the result is a highly destitute and vulnerable group of people. According to a report published by Save the Children, trafficking of women and children exists in 85% of recent conflict zones.¹⁶⁰

In such situations, traffickers prey on displaced women and children, using the increased levels of vulnerability to their advantage for exploitative purposes. It is often presented as an opportunity to improve their social, economic, or political

¹⁵⁸ Alec Wargo, *The Child Protection Viewpoint*, in *Even in Chaos: Education in Times of Emergencies* 30 (Kevin M Cahill, MD ed., 2010).

¹⁵⁹ *Id.* at 31.

¹⁶⁰ Save the Children, *State of the World's Mothers 2003: Protecting Women and Children in War and Conflict* 5 (2003).

situation in more developed cities or countries.¹⁶¹ Traffickers may entice potential victims by presenting it as a highly lucrative means to escape from their current situation. In other instances, traffickers operate under completely false pretenses, claiming to offer safe passage and document fixing as a way that displaced persons can start over elsewhere.¹⁶² Whereas such an offer prior to the conflict might not have been appealing, IDPs may feel they have no viable alternative and respond accordingly. The reality upon arrival, however, is not the fresh start they were promised.

Enrollment in education by its very virtue lessens the likelihood of recruitment in illicit activities such as armed conflict or the sex trade. It represents as a symbol of change and an investment in the future. It serves as a lifeline for those who have lost everything. Even in situations of recurring displacement, education is one item that individuals are able to carry with them wherever they go. As recognition of this, education is often named by leaders of displaced populations as a priority need for their community.¹⁶³ In fact, communities rank the need for education as a higher priority than food, water, medicine, and even shelter in many cases.¹⁶⁴

Education also plays a vital role in the disarmament, demobilization, and reintegration (DDR) process for former members of the armed forces. When transitioning back into society, these persons are often left unemployed and disenfranchised. The importance of DDR programs for building sustainable peace cannot be overstated. These programs are designed to offer ex-combatants viable alternatives to participation in armed conflict and to provide assistance in

¹⁶¹ Klopčič, *supra* note 151, at 8.

¹⁶² *Id.* at 9.

¹⁶³ Martone, *supra* note 155, at 97.

¹⁶⁴ *Id.*

resuming life in the community.¹⁶⁵ In conflict-affected areas, DDR programs can also be used as a venue for imparting information about the human rights inherent to each person, the protection of those rights under international law, and the importance of a culture of respect for human rights. Fulfillment of the right to education in such instances can facilitate greater protection of other human rights as well. Only by providing extensive DDR, educational, and vocational programming can the peace-building process reduce regional vulnerability and provide sustainable results.

5.3 Benefits of Relevant Curriculum

It is critical to recognize that education is not a neutral activity, particularly with reference to the teaching of history and social sciences.¹⁶⁶ Throughout the years, curriculum has been tailored, twisted, and rewritten by different groups to serve a particular agenda or reinforce specific ideals. It has been used to stir up animosity, increase intolerance, and further marginalize certain sectors of society.¹⁶⁷ For displaced communities, this concern is especially salient. Special attention must be given to curriculum design to ensure that it is balanced, equitable, and promotes inclusivity of all persons. Beyond this, it is also vital that the curriculum be relevant to the lives of displaced persons.

Through offering an integrated, highly relevant curriculum, education in IDP communities can improve the quality of life and indeed save lives. Following displacement, new daily risks exist where they did not exist previously. Increased health and environmental concerns often emerge within IDP communities. Certainly the relevance of specific subjects will vary among IDP

¹⁶⁵ Coalition to Stop the Use of Child Soldiers, *supra* note 7, at 27.

¹⁶⁶ Falk Pingel, *The Power of the Curriculum, in Even in Chaos: Education in Times of Emergencies* 110 (Kevin M Cahill, MD ed., 2010).

¹⁶⁷ *Id.*

populations from different regions, but the benefit of incorporating such vital information into the curriculum offers a great return on investment.

Health topics within IDP communities may include education on HIV/AIDS, maternal health, nutrition, disease prevention, and basic sanitation. Due to high instances of rape in conflict zones, awareness on HIV/AIDS is particularly important. Education on the prevalence and nature of sexual diseases and ways in which they are transmitted is critical to combat the rapidly growing crisis of HIV/AIDS.¹⁶⁸ Maternal health is also highly relevant as estimates suggest as many as 25 percent of women and girls of reproductive age living in refugee camps are pregnant.¹⁶⁹ Such education not only decreases the rate of mother and infant mortality, it also results in healthier babies and fewer pregnancies over the course of a lifetime. It has been found in both developed and developing countries that with higher levels of education among women comes an overall decrease of family size.¹⁷⁰ Additional education on fundamental subjects such as nutrition, disease prevention, and basic sanitation result in healthier behaviors and a general increase in standard of living, especially among displaced populations where large numbers of people are living closely together.

Environmental education may include topics such as landmines, resource scarcity, and safety in emergencies. Presently landmines are used as weapons of war in at least 68 countries with an estimated 110 million unexploded mines littering the ground in conflict and post-conflict zones.¹⁷¹ Mines present a specific danger to young children because of their natural curiosity and interest in objects surrounding them. By educating on landmines in the classroom, students gain an understanding of the imminent danger they pose. Scarcity of resources is

¹⁶⁸ Bensalah, *supra* note 35, at 29.

¹⁶⁹ Martone, *supra* note 155, at 105.

¹⁷⁰ *Id.* at 104.

¹⁷¹ Bensalah, *supra* note 35, at 28.

frequently a central issue in many civil conflicts; as such, providing information on sustainable environmental practices can be highly beneficial in the long run.¹⁷² In addition to resource scarcity, ecological disasters are an ongoing threat and oftentimes a reality in many conflict zones. Education on how to respond in emergencies such as earthquakes, floods, and landslides can also save lives. This topic becomes particularly crucial as climate-related disasters continue to increase around the globe.

Finally, the curriculum should seek to include conflict resolution skills, gender training, and human rights education. Given the incitement of ethnic and religious animosity in most conflict situations, education must address the root causes, not simply provide a 'band-aid' solution. During both the conflict and the post-conflict era, education can serve to facilitate intercultural understanding and interaction. Human rights education can also play a vital role in informing IDPs of their rights and identifying rights violations. It is important to note that "any substantial progress in peace-building and social development has to be inclusive and allow for participatory processes; one of the prerequisites for this is literacy."¹⁷³ Though not guaranteed, the classroom usually offers the most effective arena in which these concepts can be introduced to conflict-affected communities such as the internally displaced. Students replicate outside the classroom what they are taught within the classroom. As such, both educational and vocational programming should incorporate such relevant, peace-building information.

¹⁷² *Id.* at 32.

¹⁷³ Ulrike Hanemann, *Literacy in conflict situations* (2005).

5.4 Peace-building Prospects

Estimates suggest that roughly half of all States emerging from violent conflict revert back to conflict within five years.¹⁷⁴ The majority of other States end up highly dependant on foreign aid, resulting in an unsustainable financial position. Given this reality, it is vital to evaluate the shortcomings of current peace-building efforts and consider specific changes by which to improve the sustainability of such efforts. In 2004, of the total global humanitarian pledges given towards conflict recovery, only 1.5 percent was directed to education programs.¹⁷⁵ This lack of adequate funding not only limits the extent to which education can be provided in emergency situations, it can also interfere with efforts to coordinate communication across agencies given the competition for limited resources.¹⁷⁶ As the previous section points out, education can be a significant tool in the area of conflict prevention. Conversely, insufficient educational opportunities result in a population inadequately prepared to rebuild their lives and their countries. The lack of political will and targeted funding reveals that education for displaced populations still has not received due precedence for the role it plays in peace-building and long-term recovery.

6. The Case for the Provision of Youth & Adult Education to IDP Communities

The provision of adult and youth education is not a legally binding obligation on States; yet for States with high levels of illiterate and under-skilled individuals, the cost of not providing these services is much higher. This is particularly true for States struggling to recover post-conflict. Consider the overwhelming numbers of IDP children currently not being provided with the right to

¹⁷⁴ UNGA, *In Larger Freedom : Towards Development, Security and Human Rights for All : report of the Secretary-General*, 23 May 2005, A/59/2005.

¹⁷⁵ Winthrop & Mendenhall, *supra* note 138.

¹⁷⁶ *Id.*

education; in a few years, having not received the necessary education as children, they will form a new generation of illiterate and under-skilled youth and adults with limited economic self-sufficiency. For these individuals, education represents the overdue fulfillment of a human right. Youth and adult education must not be relegated to a place of marginalization, but recognized as a crucial factor in the development of conflict-affected States.

6.1 The “Education for All” Mandate

Six goals emerged from World Conference on Education for All hosted in Dakar in 2000 as foundations of the Education for All initiative. Those six goals are as follows:¹⁷⁷

1. Expand early childhood care and education
2. Provide free and compulsory primary education for all
3. Promote learning and life skills for young people and adults
4. Increase adult literacy by 50 percent
5. Achieve gender parity by 2005, gender equality by 2015
6. Improve the quality of education

Two of the EFA goals relate directly to youth and adult education: goals 3 and 4. Unfortunately, progress towards these goals in the past two decades has been a signal failure.¹⁷⁸ However, the implementation of effective youth and adult education in refugees and IDP communities could be a vital step towards reaching that goal.

In January 2010, UNESCO published the *Education for All Global Monitoring Report 2010: Reaching the Marginalized*. This report assessed the global progress made over the past 10 years towards the six goals within the EFA mandate.¹⁷⁹ The report offers a mixed review on progress. Strides have been made in some

¹⁷⁷ UNESCO, *supra* note 6.

¹⁷⁸ *Id.* at 94.

¹⁷⁹ *Id.* at 1.

areas such as primary education with the number of children attending primary schools having increased by 33 million in the past decade.¹⁸⁰ However, one of the major challenges highlighted in the report was achieving progress towards youth and adult EFA goals.¹⁸¹

An overall summary on the goal of promoting learning and life skills for youth and adults demonstrates that few gains have been made. The UNESCO report notes, “Unlike other parts of the Dakar Framework, goal three has been the subject of quiet neglect. It has been conspicuous by its absence not just from the agendas of high-level development summits, but also from the campaigns of non-governmental organizations.”¹⁸² Indeed, this presents a crisis not only in human rights, but also considering that “a country’s most important resource is not its raw materials or its geographic location, but the skills of its people.”¹⁸³

Recalling the inclusion of education beyond the primary level in Article 13 of the ICESCR, the Committee on Economic, Cultural, and Social Rights (CESCR) further elaborated on this provision in General Comment 13.¹⁸⁴ The CESCR notes that secondary education, along with technical and vocational education, form part of the right to education as they are considered “foundations for life-long learning and human development.”¹⁸⁵ The CESCR reiterates the importance of non-discrimination and equality. This strengthens the case for making such education programs available to IDP communities; however, further legal provisions are needed to adequately address the needs of under-skilled youth and adults.

¹⁸⁰ *Id.* at 55.

¹⁸¹ *Id.* at 94.

¹⁸² *Id.* at 76.

¹⁸³ *Id.* at 76.

¹⁸⁴ CESCR, *supra* note 68, at para. 12-16.

¹⁸⁵ *Id.*

According to the UNESCO report, there has also been minimal progress made towards the goal of halving adult illiteracy – a condition that affects an estimated 759 million people over the age of 15, approximately one in every five adults.¹⁸⁶ This continues to be one of the most neglected of all the EFA goals. Two-thirds of the world’s illiterate adults are women.¹⁸⁷ Additionally, as literacy is a language-based activity, illiteracy disproportionately affects those speaking minority and indigenous languages worldwide as they have fewer opportunities to acquire and use literacy skills.¹⁸⁸ The report illustrates the situation quite bluntly; “on current trends, there will be 710 million illiterate adults worldwide in 2015. The evidence from monitoring is clear: unless far more is done to accelerate progress, the 2015 targets [for EFA] will not be reached.”¹⁸⁹

Again using Article 13 of the ICESCR as its foundation, the CESCR elaborated on this right in General Comment 13.¹⁹⁰ It points out that fundamental education should be available to all who have not yet completed their basic learning needs. It should not be limited by age or gender, but rather extend to include children, youth and adults, including older persons.¹⁹¹ Adult literacy services are not a luxury, but rather the overdue fulfillment of a human right. Indeed, as the Right to Education Project has concluded, adult illiteracy should be viewed as a double violation of the right to education: “Firstly, it is a consequence of the lack of available, accessible, acceptable and adaptable education for adults when they were children. Secondly, the State’s failure to provide free, quality and inclusive

¹⁸⁶ UNESCO, *supra* note 6, at 94.

¹⁸⁷ *Id.*

¹⁸⁸ UNESCO, *The Global Literacy Challenge* (2008).

¹⁸⁹ UNESCO, *supra* note 6, at 94.

¹⁹⁰ CESCR, *supra* note 68.

¹⁹¹ *Id.*

adult literacy programs represents an ongoing violation of the right to education.”¹⁹²

As demonstrated above, the CESCR interprets international law as protecting not only the right to education for children, but also that of persons who have not been afforded adequate educational opportunities.¹⁹³ This provision is particularly relevant for youth and adult IDPs. Unfortunately youth and adult education remains a low priority among governments and the international community and receives minimal funding from donors. This is short-sighted considering that illiteracy and unskilled labor force result in huge costs to society and the economy – and that resources directed towards youth and adult education have the potential to generate a high return on investment.¹⁹⁴

6.2 Intersectionality

To fully understand the problem, it is vital to recognize the intersection between poverty, illiteracy, and vulnerability to emergencies. Often it is those with the least resources who are the most affected.¹⁹⁵ A disproportionate number of those affected by armed conflict are functionally illiterate. In fact, over half of the 25 countries with the lowest adult literacy rates worldwide are either facing conflict or recently emerging from conflict.¹⁹⁶ Additionally, 10 of the 25 countries with the lowest rates of female adult literacy are dealing with conflict or have done so in the recent past.¹⁹⁷ The correlation between these factors is evident.

¹⁹² Right to Education Project, *Adult Literacy is a Human Right*, available at <http://www.right-to-education.org/sites/r2e.gn.apc.org/files/Adult%20literacy%20flyer.pdf>.

¹⁹³ See *infra* note 169 and accompanying text.

¹⁹⁴ UNESCO, *supra* note 6, at 103.

¹⁹⁵ IDMC, *supra* note 66.

¹⁹⁶ Hanemann, *supra* note 174, at 5.

¹⁹⁷ *Id.*

The intersections among disadvantaged groups extend even further. Though global demographic statistics for IDPs is an area in need of greater development, national surveys conducted in States with high IDP populations demonstrate that those living in poverty, ethnic minorities, and women are disproportionately affected by displacement.¹⁹⁸ Incidentally, these are the exact same sectors of the population among which low levels of education attainment prevail.¹⁹⁹ This intersectionality further demonstrates the tremendous need for youth and adult education in IDP communities. Primary education offers great value, but in itself, will not provide displaced persons with the tools needed to navigate this transitional time and prepare to rebuild their lives after resettlement. The CESCR emphasizes this point by noting,

“As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make.”²⁰⁰

Overlooking the educational needs of youth and adult IDPs further perpetuates the marginalization created by intersectionality and neglects an opportunity to break the cycle of poverty.

6.3 Educational Needs of Displaced Youth and Adults

There are various areas in which youth and adult education need to be strengthened. Currently the bulk of educational humanitarian assistance is directed towards primary education, relegating youth and adult education to a

¹⁹⁸ IDMC, *supra* note 66.

¹⁹⁹ UNESCO, *supra* note 6, at 99-100.

²⁰⁰ CESCR, *supra* note 68.

marginal status.²⁰¹ This is reflected in both political will and resource allocation. A survey by Women’s Refugee Commission found that education programs beyond primary level are few and far between in States affected by conflict.²⁰² Additionally at present, “none of the international agencies has a specific policy or strategy aiming at literacy or adult and youth basic education.”²⁰³ The following section focuses on three main areas within youth and adult education that merit further development: basic literacy, secondary education, and technical and vocational training.

Basic literacy education for youth and adults is a critical area of need among displaced communities. In December 2009, the Belem Framework for Action was adopted at the Sixth International Conference on Adult Education in Belem, Brazil.²⁰⁴ It called for “redoubling of efforts to reduce illiteracy by 50 percent from 2000 levels by 2015.”²⁰⁵ Additionally, it emphasized the need for increased mobilization of resources and expertise, provision of relevant curricula and quality assurance mechanisms, and a reduction in the literacy gender gap.²⁰⁶ Currently, there is a dearth of effective literacy programming, especially in developing countries where it is most needed. Basic literacy is the tool by which people are able to comprehend the world around them and make informed decisions. The need for such skills is particularly acute during displacement.

Furthermore, literacy is not only a human right, but also an enabling right that serves as precondition for full enjoyment of other human rights including the right to freedom of expression, the right to participate in public affairs, the right to work, and the right to participate in cultural life. Language forms an integral

²⁰¹ Hanemann, *supra* note 174, at 8.

²⁰² WRC, *Untapped Potential: Displaced Youth 4* (2007).

²⁰³ Hanemann, *supra* note 174, at 4.

²⁰⁴ UNESCO, *Belem Framework for Action* (2010).

²⁰⁵ *Id.* at 6.

²⁰⁶ *Id.* at 9.

part of cultures around the world. The ability to read and write enables individuals to more fully engage with the world around them. It allows them to gather news and information from different sources and formulate their own conclusions. Armed with literacy, individuals are less likely to be exploited and are more prepared to care for their families and themselves. They are better equipped to investigate their options in any given situation and make informed decisions based on that knowledge. Indeed, the right to education is the key that unlocks the door to the enjoyment of so many other human rights.

Access to secondary education is another area that needs to be improved in conflict-affected areas across the globe. According to a study undertaken by Women's Refugee Commission, less than six percent of displaced youth are enrolled in secondary education worldwide.²⁰⁷ Secondary school provides a setting in which youth learn valuable cognitive and social skills to become productive members of society. As explored in the previous chapter, secondary school can act as a deterrent to recruitment into illicit activities which are often targeted towards marginalized youth.²⁰⁸ Youth are the future leaders of their communities and their countries. The skills they utilize in such positions will depend on what they have been taught. Unfortunately at present, the poignant need for accessible secondary education is often overlooked.

Technical and vocational training also has a vital role to play in IDP communities. Many displaced persons have lost their primary source of livelihood and must develop new skills in order to subsist. For others, they may find themselves newly in a position of needing to earn an income following displacement. As the *EFA Global Monitoring Report* points out, "For individuals, the skills carried into the labor market have a major influence on job security and

²⁰⁷ WRC, *supra* note 203, at 2.

²⁰⁸ See *infra* note 136 and accompanying text.

wages.”²⁰⁹ Although technical and vocational training programs have not been widely implemented in displaced communities, those which have been carried out report largely positive results.²¹⁰ Inclusion of women needs to be intentional since oftentimes they may be at a disadvantage in receiving information about such programs, particularly in patriarchal cultures or communities in which women’s education is traditionally marginalized. Additionally non-formal and flexible approaches are an important consideration within this sector so as to provide greater options to youth and adults juggling different roles and responsibilities.

When initializing youth and adult education as with all educational programming, particular attention should be given to utilizing local resources and engaging community participation. This is a vital component, without which an educational program cannot be truly successful. The term ‘community participation’ should encompass listening to ideas and concerns of the affected population, involving them in the decision-making process and mobilizing local community resources to be utilized in education programs.²¹¹ Even in situations of displacement, the IDP community is still the most knowledgeable about their culture, their needs, what will work, and what will not. When planning for youth and adult education, community members can provide guidance on what types of education are needed and would be well received in the community. Additionally, they can assist in answering questions and encouraging enrollment once the classes begin.

Community representation should seek to include women, ethnic minorities, groups with special needs, and other traditionally marginalized groups. In

²⁰⁹ UNESCO, *supra* note 6, at 77.

²¹⁰ See Hanemann, *supra* note 174, at 15-16.

²¹¹ INEE, *supra* note 37, at 14.

highly politicized environments, the focus should be on non-discriminatory, equitable education that addresses the needs of the community. Not only is this approach far more effective in avoiding obstacles within the community it serves, it also creates greater sustainability of the educational system in the long run.

7. The Way Forward

The right to education remains an unfulfilled promise for the vast majority of IDPs throughout the world today. Estimates suggest that 90 percent of IDPs do not have access to education.²¹² Displaced by armed conflict, yet still within the borders of their State of origin, their recourses are few and their futures are uncertain. A coordinated effort by community, national, and international actors is needed to confront what this paper has argued to be a widespread violation of the right to education for IDPs. The following recommendations outline action steps that are needed to advance fulfillment of the right to education for IDPs.

Stronger legal instruments for IDPs are required at the international, regional, and State level, standardizing support and protection of human rights including the right to education. This should incorporate accountability mechanisms for dealing with cases of discrimination and other violations of the right to education. Included should be provisions for the critical education and training needed by youth and adults to help them initiate the recovery process and move towards self-sufficiency. To this end, greater recognition by national and international actors including governments, funders, and NGOs should be given to the role of IDP education in peace-building and long-term sustainability for conflict-affected States.

²¹² Muñoz, *supra* note 61, at 20.

States must recognize their obligation to protect the right to education, including that of IDPs. This right continues to apply during times of conflict. Tangible, proactive steps should be taken to ensure that education is accessible to internally displaced populations. In cases where the State is unable to fulfill this obligation, assistance of the international community should be sought.

Inclusion of IDP education should be standard in all humanitarian assistance framework and not marginalized as an extra-curricular activity. Consistent application of INEE *Minimum Standards for Education in Emergencies, Chronic Crises, and Early Reconstruction* should be undertaken by all those involved in providing education in conflict-affected areas to ensure quality education for IDPs. Greater communication and cooperation is needed among international agencies involved in provision of IDP education as well as meaningful partnerships and engagement with national and community-level actors. To this end, the development of a systematic international response for assisting IDPs with a single coordinating agency would help eliminate redundancies and increase coherence. Additionally, it would streamline requests for international assistance from conflict-affected States by designating one agency to which all requests should be made.

Increased donor investment in IDP education is required to adequately address the current deficiencies. Again the rationale of having a single designated agency is that it could facilitate more targeted funding appeals in this area and greater accountability to funders. Additional resources must be directed toward the implementation of youth and adult education and vocational training for IDPs. Flexible and informal educational options should be made available to IDPs to accommodate the needs of different groups.

Additional academic and field research is needed in the area of IDP education, particularly on the literacy and vocational needs of youth and adult IDPs which has received limited attention thus far. Monitoring and evaluation outcomes of current education programs should be documented and published to contribute to best practices within the field. Information-sharing networks such as those developed by INEE are needed to enhance the knowledge database and conclusions drawn from these networks should influence future program design.

Education for internally displaced persons is essential, both as a human right enshrined in international law and as a component of the peace-building process. In recent years, education for displaced populations has received greater attention. Still, there remains much to be done to ensure the provision of quality education to IDPs during displacement. In emergency situations where the State fails to provide education for IDPs, though not legally obligated, the international community maintains an ethical responsibility to ensure that IDP education is included as an integral component within the humanitarian assistance framework. Displacement is a crucial time of transition and vulnerability not just for children, but for youth and adults as well; the failure to incorporate youth and adult education and vocational training as a standard component during displacement is a detrimental omission in the quest to secure sustainable peace and initiate long-term development. Education is not only a human right, it also provides life-sustaining support and stability to those caught in the crossfire. Above all, education can better prepare IDPs for sustainably rebuilding their lives, their communities, and their countries.