

The Right to Education for Children in Emergencies

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Abstract

This paper presents the key international legal instrument relevant for education, their use and links with policy frameworks and tools being developed by the humanitarian community to address education rights of children in conflict and emergencies. It describes the current thinking around the right to education in emergencies and why education is a central right to uphold from the onset of a crisis. It gives a brief introduction to how education can meet the international

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legal standards, as well as the international policy frameworks, such the Millennium Development Goals and Education for All. A continuous case study focuses on Cote d'Ivoire and how the right to education fared in the conflict of that country between 2000 and 2010. The paper looks at issues of enforceability and applicability of the right to education in emergencies, highlighting challenges and mechanisms at national, regional and international levels. The role of the Inter-Agency Network for Education in Emergencies' (INEE) Minimum Standards for Education as well as the Inter-Agency Standing Committee's (IASC) Education Cluster is discussed, again with specific reference to Cote d'Ivoire, and the centrality of existing monitoring and reporting mechanisms for child rights violations are highlighted. Bringing together all of these elements in one place and making a strong case for the use of both humanitarian and human rights law in securing the right to education in emergencies is what this article brings to the discussion, arguing that the Convention of the Rights of the Child must be seen as the most central instrument.

Keywords

Right to education; Human Rights; International Humanitarian Law; Emergencies; Conflicts; Refugees; Internally Displaced Persons; Convention on the Rights of the Child; Millennium Development Goals; Education for All; Inter-Agency Network for Education in Emergencies; United Nations; Côte d'Ivoire

*Après le pain, l'éducation est le premier besoin du peuple*¹

Introduction

Data from 2010 suggest that approximately 39 million of the 72 million children not enrolled in primary education live in conflict affected areas.² These are the children most at risk of having their right to education violated. The right to education for children – and other learners – in emergencies is well reflected in international human rights instruments as well as in the international policy frameworks. These come together most effectively in the Convention on the Rights of the Child (CRC)³ and the Minimum Standards of the Inter-Agency Network for Education in Emergencies (INEE),⁴ as will be demonstrated. However, there are persistent challenges to the implementation of these mechanisms and frameworks, due to lack of knowledge, resources,

¹ “After bread, education is the principal need of the people”, Georges Danton, in a speech to the National Convention in 1793 during the height of the French Revolution.

² Save the Children, *The Future is Now: Education for Children in Countries Affected by Conflict* (2010), at viii

³ Convention on the Rights of the Child (1989), 1577 UNTS 3 (entered into force 2 September 1990).

⁴ The Minimum Standards of the Inter-Agency Network for Education in Emergencies Handbook is available at http://www.ineesite.org/index.php/post/inee_handbook/ (last accessed 15 March 2011).

political will and adequate enforcement tools. Their legitimacy may suffer as a consequence and the implementation of the right to education remain a distant dream for many millions.

It must be reminded that the right to education is a core human right, central in all major human rights instruments. It is a right in itself and it helps to ensure that humans can reach their full potential and claim their other rights. It may be helpful to define education from the perspective of rights to, in and through education. Children have a right *to* education (access to quality education), they have rights *in* education (a non-discriminatory environment based on respect and the best interest of the child); and they gain rights *through* education (the ability to make informed choices concerning their lives and to participate as citizens in the world).

A. Education in Emergencies: A Low Priority Gaining Greater Recognition

Historically, education (let alone the *right* to education) has at best been the domain of long-term development interventions rather than humanitarian policy and intervention. The primary mandate of emergency relief organizations was often limited to programs categorized as life-saving: food, shelter, water and sanitation and healthcare. Physical survival has been regarded as the main humanitarian imperative until recent years; consequently, emergency response has been focused on survival and life-saving interventions.⁵

In addition, some donors and humanitarian aid workers have resisted rights-based approaches in general, reflecting concerns about departing from the tried-and-tested set of humanitarian principles of neutrality, impartiality and independence that were perceived as enabling agencies to deliver aid to those most in need. The introduction of human rights perspectives, including on education, was seen by some as shrinking the humanitarian space, due to a feeling that rights-based approaches could not work in an emergency setting where there is a strong imperative to prioritize immediate survival needs.⁶

However, the fact is that an average length of refugee displacement can be up to twenty years in duration.⁷ Therefore, the idea that the majority of today's crises are life-or-death situations where, if resources were diverted to meeting

⁵ Gerald Martone, *An Unexpected Lifeline* (2010).

⁶ Child Rights and Emergencies. *Child Rights Information Network Newsletter*, Number 20 (February 2007).

⁷ Office of the Special Representative of the UN Secretary-General on Children and Armed Conflict, *Working Paper No.2: The Rights and Guarantees of Internally Displaced Children in Armed Conflict* (2010), at 4.

the right to education, people would be allowed to die has been increasingly questioned. Instead, there is an increasing consensus that emergency response must not only focus on how people are dying in crises, but also address the critical question of how people are living. For those living in emergency contexts, education is an absolute priority.⁸

Countless assessments of emergency-affected and displaced populations affirm this, as community members specifically identify education as a priority need for their communities. In many cases, the demand by refugee or displaced leaders for children's education often exceeds requests for food, water, medicine and even shelter. For instance, during the famine in Afghanistan in the winter of 2001-2002, when village leaders' requests for education were declined by aid groups in favor of food and other commodity distributions, community leaders asked that teachers be categorized as 'most vulnerable' for priority rationing of food parcels so that education would continue.⁹

This, along with a growing body of evidence of the importance of education in emergency interventions because of the life-saving and life-sustaining role that the sector can play – both as an end itself, but also due to the role it can play in convey key messages and services relevant to other sectors – has resulted in a change in beliefs. Since the early 2000s education has been included in the planning and provision of humanitarian relief from the beginning of any intervention by the United Nations (UN) and NGOs. In addition, the international community of States, UN organizations and large international NGOs has created inter-agency standards that provide good practices and concrete guidance for coordinated action to enhance the quality of educational preparedness and response, increase access to safe and relevant learning opportunities, and ensure accountability in providing these services.

B. Why Education is Critical in Emergency

Education is critical for the tens of millions of children and youth affected by conflict and disasters for whom it can provide physical, psychosocial and cognitive protection that can sustain and save lives.

Education in emergencies ensures dignity and sustains life by offering safe spaces for learning, where children and youth who need other assistance can be identified and supported. Quality education saves lives by providing

⁸ Martone, *supra* note 5.

⁹ Allison Anderson et al., *Standards Put to the Test: Implementing the INEE Minimum Standards for Education in Emergencies* (London: Overseas Development Institute, 2006), at 2.

physical protection from the dangers and exploitation of a crisis environment. When a learner is in a safe learning environment, he or she is probably less likely to be sexually or economically exploited or exposed to other risks, such as forced or early marriage, recruitment into armed forces and armed groups or organized crime. In addition, education can convey life-saving information to strengthen critical survival skills and coping mechanisms, such as information on how to avoid landmines, how to protect oneself from sexual abuse, how to avoid HIV infection and how to access health care and food.

Education opportunities also mitigate the psychosocial impact of conflict and disasters by providing a sense of routine, stability, structure and hope for the future. By strengthening problem-solving and coping skills, education enables learners to make informed decisions about how to survive and care for themselves and others in dangerous environments.

Schools and other learning spaces can act as an entry point for the provision of essential support beyond the education sector such as protection, nutrition, water and sanitation and health services. Coordination between workers in the education, protection, shelter, water and sanitation, health and psychosocial sectors is important in establishing learner-friendly, safe spaces.

Quality education contributes directly to the social, economic and political stability of societies. It helps to reduce the risk of violent conflict by enhancing social cohesion and supporting conflict resolution and peace-building. However, while the chances for long-term peace-building increase significantly if a conflict-affected population is educated, education can also have a negative impact on peace and stability. Education can contribute to conflict if it reinforces inequities and social injustice by denying access to education for some learners, or if curricula or teaching practices are biased. Education facilities can be targeted during conflict or students and education personnel can be attacked on their way to and from school. Well-designed education reform, which can start soon after an emergency, is necessary to help ensure the protection of education systems and set conflict-affected societies on paths to sustainable peace and development.

Moreover, emergencies may even offer an opportunity for national authorities, communities and international stakeholders to work together for social transformation by creating more equitable educational systems and building back better structures. Groups that are often excluded, such as young children, girls, adolescents, disabled children, refugees and internally displaced persons, can benefit from newly arisen education opportunities. This can be a dividend of a crisis, resulting in improvements in access to and quality of education. In addition, crises may provide an opportunity to teach all members of

a community new skills and values, providing curricula that are relevant to the needs of learners and encourage critical thinking.

1. The Right to Education during Emergencies: Normative Frameworks

A. The Right to Education in International Law

There is a wide range of different international instruments that speaks to the right to education; these instruments are drawn from international human rights law, international humanitarian law, refugee law and international criminal law, as well as from guiding principles that may be taken to form part of international customary law. Together they protect those civilian groups who are most at risk during conflict: refugees, internally displaced persons (IDPs), child soldiers, girls and women, disabled, migrants and poor, minorities and excluded, illiterate adults, orphans and adolescents etc. The following hold the most important provisions on education relevant in emergencies: the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) and the Additional Protocols (1977),¹⁰ the Convention relating to the Status of Refugees (1951),¹¹ the International Covenant on

¹⁰ In 2006, every Member State of the UN had signed the Geneva Conventions which are deemed to be of customary nature. Duty-bearers ranges from States to all armed forces operating in a conflict and individuals in these forces, as well as occupying forces, the international community, UN, NATO or similar. Rights-holders are civilians and non-combatants. Additional Protocol II concerns non-international conflicts and is therefore especially relevant for IDPs (Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non- International Armed Conflicts (1977), 1125 UNTS 609 (entered into force 7 December 1978) [AP II]). Of relevance to education is Article 24 and 50 of the Fourth Geneva Convention, both of which concerns children who are orphaned or separated from their families as a result of war shall have access to education and their education shall, as far as possible, be entrusted to persons of similar cultural tradition (Convention relative to the Protection of Civilian Persons in Time of War (1949), 75 UNTS 287 (entered into force 21 October 1950) [GC IV]). Article 4.3(a) of the First Protocol affirms the obligation to provide children with the care and aid they require, and the right to receive education Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (1977), 1125 UNTS 3 (entered into force 7 December 1978) [AP I]).

¹¹ Convention Relating to the Status of Refugees (1951), 189 UNTS 150 (entered into force 22 April 1954), as modified by the 1967 Protocol, 606 UNTS 267 (entered into force 4 October 1967). The Refugee Convention has 144 countries, but may also be considered international customary law. Again, State Parties as host states are the main duty-bearer; but also UNHCR keeping a watching brief, NGOs and other mandated humanitarian assistance providers,

Economic, Social and Cultural Rights (ICESCR) (1966),¹² the Convention on the Rights of the Child (CRC) (1989),¹³ the Rome Statute of the International Criminal Court (1998)¹⁴ and lastly the Guiding Principles on

and 3rd party or private actors commissioned by host state or UN can be held accountable. The convention protects refugees across international borders, who have met criteria for refugee status; these criteria are laid out in the convention. The education relevant provisions are: Article 1 on the definition of ‘refugee’; Article 3 on non-discrimination; and especially Article 22(1) stating that refugee children should be accorded the same treatment as is accorded to nationals with respect to elementary education); and Article 22(2) which ensures that treatment must no less favourable than that accorded to foreigners with respect to education other than elementary education.

¹² International Covenant on Economic, Social and Cultural Rights (1966), 993 UNTS 3 (entered into force 3 January 1976) [ICESCR]. The ICESCR has 160 State Parties, who are the main duty-bearers; but also the international community (for technical and financial assistance) may be considered a duty-bearer, which is important in relation to the wording to wording of the MDG and EFA wording, as we shall see later. Of relevant articles there is Article 2 on non-discrimination; Article 13 on education; and Article 14 on a national plan for the implementation of primary education. One should also consider the Optional Protocol to the ICESCR on an individual complaints mechanism, which is slowly being ratified by States at the moment and will offer an important mechanism to the international Treaty Body system. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, GA Res. A/RES/63/117, 10 December 2008.

¹³ CRC, *supra* note 3 The CRC is the most widely ratified convention in the world with 192 State Parties and probably has *all* the provisions necessary for addressing education in emergencies and is therefore arguably the best and most wide-ranging of conventions: Article 2 on non-discrimination; Article 3 on the best interest of the child; Article 12 on children’s participation; Article 22 entitles refugee children to receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights, i.e. including education; Article 28 specifies the right to education, notably primary education compulsory and available free to all; but also the development of different forms of secondary education, and to make higher education accessible to all on the basis of capacity by every appropriate means, and educational and vocational information and guidance available and accessible; Article 29 address the aims of education; Article 30 concerns minorities and Article 38 children in armed conflict: to be covered by rules of international humanitarian law applicable to States in armed conflicts which are relevant to the child, including protecting them from taking part in hostilities and being conscripted. Lastly Article 39 deals with the rehabilitation of child victims, amongst other instances from armed conflict and torture. Especially relevant is also Optional Protocol 1 to the CRC (2000) on child soldiers, protecting everyone up until the age of 18 from recruitment into armed forces (the Convention itself had placed the minimum age at 15). Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, GA Res. 54/263, 25 May 2000.

¹⁴ Rome Statute of the International Criminal Court, A/CONF.183/9, 17 July 1998. The Rome Statute has 110 ratified or acceded State Parties and further 38 states that have signed but not ratified the treaty. Three of these states (Israel, Sudan, USA) have “unsigned”. The duty-bearers under international criminal law are State Parties; all armed forces; individuals (acting on their own, or as part of official or rebel forces), whereas rights-holders are civilian persons or property protected under the provisions of the relevant Geneva Convention. The relevant article for protection of education is Article 8 (2)(e)(iv) on intentionally directed

Internal Displacement (non-binding) (1998).¹⁵ In addition, a number of other UN instruments should be considered as well.¹⁶

Taken together these instruments cover education in times of peace and in conflict and emergencies specifically. Their scope is universal since every country in the world has ratified at least one of the major instruments. Some of them are very clear on education – especially articles 13 and 14 ICESCR and articles 28 and 29 CRC – offering an in-depth guide for the different elements that education should contain and what the responsibilities of the State is regarding education specifically. Though these two instruments, as well as more specific treaties on disability, women, racial discrimination, are from within the body of international human rights law (IHRL), and it is important to recognize that there is no derogation possible on education in times of war and that (primary) education is subject to immediate realization, according to both the CRC and the ICESCR. This means that even though some of the more specialized international humanitarian law (IHL) instruments and

attacks against buildings dedicated to education (and many other buildings) provided they are not military objectives.

¹⁵ UN Commission on Human Rights, *Guiding Principles on Internal Displacement*, Doc. E/CN.4/2998/53/Add.2, 11 February 1998. The Guiding Principles do not require ratification and has no State Parties, yet they build on international human rights and may therefore be considered as international customary law. Indirect duty bearers are therefore States; armed forces; international community; mandated humanitarian agencies and NGOs; and UNHCR on a watching brief. The rights-holders on the other hand are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, during emergency, and who have *not* crossed an internationally recognized State border. The relevant provision for education is Principle 4(2) which clearly says that certain IDPs, such as children, shall be entitled to protection and assistance that takes into account their special needs; and Principle 23 on education, which affirms the right of every human being to education (1), specify that to give effect to this right for internally displaced persons, the authorities concerned shall ensure that persons, in particular displaced children, receive education which shall be free and compulsory at the primary level, and education should respect its recipients' cultural identity, language and religion (2); that special efforts should be made to ensure the full and equal participation of women and girls in educational programs and education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit (3+4).

¹⁶ Other relevant UN instruments: Universal Declaration of Human Rights, GA Res. 217A (III), 10 December 1948, art. 2 (non-discrimination) and art. 26 (education); International Covenant on Civil and Political Rights (1966), art. 2 (non-discrimination), 999 UNTS 171 (entered into force 23 March 1976) [ICCPR]; Convention on the Elimination of all Forms of Discrimination against Women (1979), art. 10 (education), 1249 UNTS 13 (entered into force 3 September 1981) [CEDAW]; International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (2006), art. 24 (education), 993 UNTS 3 (entered into force 3 May 2008) [CRDP].

refugee law may seem vaguer on education, the fundamental principle of non-discrimination still applies at all times. This is especially in evidence with the CRC when it *de facto* couples Articles 22, 28, and 38, thus bridging IHRL and the *lex specialis* IHL.

Children living in conflict zones are often exposed to crimes as described by the Rome Statute, and perpetrators are thus in breach of international criminal law (ICL) – be it attacks on schools, on learners and educators, rape and exploitation, or similar atrocities – and may be charged and convicted by the International Criminal Court (ICC). Attacks on education facilities and education personnel¹⁷ are also prohibited by the ICC Statute.¹⁸ However, even though these acts may be crimes against humanity, and thus universal in nature, the ICC’s jurisdiction only covers those countries that have signed and ratified the Rome Statute, which leaves out countries like Sudan and Somalia unless the situation in these countries is being referred to the ICC by the Security Council.

The international instruments are all binding on States Parties and in the case of the GCs also on other warring parties, be they occupying powers, *de facto* authorities of a given territory and other non-state organized armed groups (and not just to the effect that these other parties should not hinder and spoil, but that they actually have the duty to respect, protect and fulfill the human rights of people in their charge); the Rome Statute is also binding upon individuals committing criminal acts; and the Guiding Principles on Internal Displacement, though non-binding, have been drawn from existing norms in IHRL and IHL and are fast gaining international recognition and customary legal status. Taken together, they are very clear with regards to duty-bearers, primarily the State, but also UN agencies such as UNHCR and other mandated international community representatives. NGOs are not

¹⁷ This present paper will not deal much with the aspect of ICL and the criminal acts in war that infringe upon the right to life, security, protection and education. There is a growing awareness of this issue and 2010 saw the birth of the new Global Coalition for Protection of Education from Attack. This initiative springs from the report by Brendan O’Malley for UNESCO on *Education under Attack* (2010) and the highly instructive accompanying *Protecting Education under Attack. A State-of-the-Art Review* (2010) which holds a series of very informative background papers on the legal protection and challenges for education under attack (esp. chapters 6-11).

¹⁸ ICC Statute, *supra* note 14, Art. 8 (2)(e)(iv). “[R]esearch conducted [...] into the coverage of such attacks in the principal relevant treaties in IHRL, IHL, ICL and customary law suggest such attacks are already covered, even though the protection of education buildings is not expressly mentioned in terms as thoroughly as, for example, the protection of hospitals.” O’Malley/UNESCO, *supra* note 17, at 142.

direct duty-bearers unless they act on the explicit mandate of and under the guidance of the UN.

With regards to criteria for refugee status, it is important to keep in mind that refugees must be outside their country of nationality (or without nationality) because of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, and they must be unable or unwilling to return because of this fear.¹⁹ A child or adult who holds this refugee status cannot be forced to return to his or her country of origin where he or she may face persecution, or be passed on to another country that might force such a return (known as ‘non-refoulement’ obligations). There are not the same formal criteria for internally displaced; they do not have a right to be recognized in the same way, even if their experience and traumas are the same, and their basic lack of access to services equal or worse. Legally, they remain under the ‘protection’ of their own government – even though that same government may be the cause of their flight, or else has shown itself incapable of saving its citizens from rebel groups or generalized violence. They are therefore foremost covered by their own national laws and policies. This does leave internally displaced, and especially children, with much less of a legal guarantee than refugees. The Guiding Principles does recognize and cater for this.

It is always difficult to compare situations of distress, and emergency or conflict zones may be relatively quiet or the dangers may be of a different nature to those effecting displaced populations. However, with the Guiding Principles and the attention of UNHCR, the agencies of the Inter Agency Standing Committee’s (IASC) Education Cluster and others, the protection and realization of displaced children’s right to education may appear to be in safer hands than that of children remaining in conflict zones. However, IDPs is also the fastest growing group of children outside the education system, it is a group that is often not counted or tracked, and thus not reached. And even when reached and assisted, IDP camps are enormous communities, sometimes of an almost permanent nature, with very little resources, no functioning judicial system, and offer multiple dangers of recruitment into armed forces, abduction, rape and systematic discrimination, all in direct violation to children’s right to life, protection, and education – and to merely be children.²⁰

¹⁹ Refugee Convention, *supra* note 11.

²⁰ The CRC Committee has expressed concern about the plight of internally displaced children in camps, referring States to UNHCR. For example: “[...] The Committee is disturbed [...] by the massive numbers of people who have been forcibly regrouped within the country and by the very poor, sometimes life-threatening conditions in displaced and regrouped persons

B. The Regional Perspective

A comprehensive listing of legal instruments pertaining to education should also include regional conventions.²¹ These often follow UN instruments in scope and tone and contain articles on education and discrimination. A very instructive example of a convention at a regional level is the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009):

[A] legally binding instrument for all of Africa, one that references and simultaneously reinforces existing international standards for protecting the human

camp, and the poor health and education services available to camp populations”. [...] “The Committee urges the State Party to make every effort to protect the civilian population from displacement and to implement its plans to end regroupment, giving particular attention to the situation of unaccompanied children and the need for effective family tracing. The Committee further urges the State Party to ensure that all displaced children and their families, including those who have been regrouped, have access to essential health and education services and to consider the need for continued access to such services during the often slow process of return to communities of origin. The Committee also urges the State Party to provide returning children and their families with assistance in re-establishing themselves in their homes. In addition, the Committee urges the State Party to continue to work closely with UNHCR towards establishing conditions conducive to the return of refugees in safety and in the context of a durable solution.” (Human Rights Committee, Burundi, CRC/C/15/Add.133, 16 October 2000, paras. 67 and 68)

²¹ Relevant regional instruments: Convention for the Protection of Human Rights and Fundamental Freedoms (1950), 213 UNTS 222 (entered into force 3 September 1953), last amended by Protocol No. 14 (entered into force 1 June 2010); OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1001 UNTS 45 (entered into force 20 June 1974); American Convention on Human Rights (1969), 1144 UNTS 123 (entered into force 18 July 1978), and its Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988), OAS Treaty Series No. 69 (1988) (entered into force 16 November 1999) [Protocol of San Salvador]; African Charter on Human and Peoples’ Rights (1981), OAU Doc. CAB/LEG/67/3 rev. 5 (entered into force 21 October 1986); Cartagena Declaration on Refugees (1984), OAS Doc. OEA/Ser.L/V/II.66/doc.10, rev. 1, at 190-93 (1984-85); African Charter on the Rights and Welfare of the Child (1990), OAU Doc. CAB/24.9/49 (entered into force 29 November 1999); European Social Charter (1961), 529 UNTS 89 (entered into force 26 February 1965) amended (1996), ETS 1963 (entered into force 3 July 1999); Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003), adopted by the 2nd Ordinary Session of the Assembly of the African Union in Maputo, Mozambique; Arab Charter on Human Rights (2004), 2004, reprinted in 12 Int’l Hum. Rts. Rep. 893 (2005) (entered into force 15 March 2008); African Youth Charter (2006), http://www.africa-union.org/root/au/Documents/Treaties/Text/African_Youth_Charter.pdf (last accessed 18 March 2011); African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009), adopted by a Special Summit of the African Union, held in Kampala, Uganda,

rights of IDPs established by the Guiding Principles on Internal Displacement. By doing so, the Convention has contributed to the Principles' universal authority and their evolution from 'soft law' to 'hard standards'. It can also serve as a model instrument for other regions and individual countries experiencing internal displacement to consider adapting to their own conditions. Among its many provisions, the Convention affirms the panoply of rights enjoyed by IDPs under human rights and humanitarian law.²²

As of January 2011 it is not yet in force, awaiting further ratifications, but it will be interesting to see how it will be applied.

Though there are major differences between the regional mechanisms, they are also equal in having courts whose decisions are binding upon the State Party. This is a major improvement on the UN's different international complaints procedures, whose decisions are not binding and whose committees are merely advisory. The international and regional instruments have reporting mechanisms, whereby both State and civil society report to international committees of experts. Such mechanisms are slow, even in times of peace, and in conflict almost non-existent. They do however provide an opportunity to name and shame, and to bring the attention of the international community. The Human Rights Committee of the ICCPR does have quasi-judicial powers with its individual complaint mechanism and has adjudicated cases. Much remains to be seen with the new complaint mechanism of the ICESCR and the possibility of a similar mechanism for the CRC. The powers of the committees are however seldom more than to name and shame, and to be advisory. Their comments find the way into the official UN literature and will thereby add weight to any argument or pressure on the State as the prime duty-bearer.

C. The Centrality of the Child Rights Convention

The CRC is in a sense the most interesting of the above legal instruments, because it covers every aspect of displacement, conflict, protection and education rights, having provisions on refugees, human rights in general, and IHL

on 22 October 2009 (not yet entered into force). It is worth noting that Asia still does not have a regional human rights framework, and that the Arab World is quite weak on formal human rights frameworks.

²² Andrew Salomon, *An African Solution to Internal Displacement: AU Leaders Agree to Landmark Convention* (Brookings-Bern Project on Internal Displacement, 2009, http://www.brookings.edu/papers/2009/1023_african_union_solomon.aspx (last accessed 15 March 2011)).

pertaining directly to conflict, thereby underscoring an important point: that IHRL applies at all times, in peace as well as in conflict (and international refugee law and IHL deal just with specific problems), with very little room for derogation (and never in the case of the right to education). The CRC (and the ICESCR) apply always, demanding that States commit the maximum extent of available resources etc., meaning also that for the State it is necessary to explain what may be legitimate constraints upon it if it cannot meet this target. The burden of both responsibility and proof is on the shoulders of the State; the CRC also reminding States that all it does must be non-discriminatory and in the best interest of the child.

Again, the international human rights legal framework for protection comes together in the CRC, as the only human rights convention that actively seek to build a bridge to IHL. The provisions for non-discrimination (Article 2), the best interests of the child (Article 3), the rights to life (Article 6), to be heard (Article 12), refugees (Article 22), education (Articles 28 and 29), armed conflict (Article 38) and rehabilitation (Article 39) are all non-derogable and universally ratified. The Optional Protocol to the CRC on the involvement of children in armed conflict protects children from becoming child soldiers,²³ as does the ILO Convention 182 on Worst Forms of Child Labour,²⁴ both of them are central to defining and securing the right to education in emergencies and conflicts.

UN General Assembly resolution 1612 (2005) has set up a Monitoring and Reporting Mechanism (MRM) to report on the children affected by armed conflict.²⁵ This mechanism draws directly upon the provisions of the CRC and the Optional Protocol to the CRC on children being recruited into armed forces. Attacks on learners, education and education facilities is one of the prime areas monitored. The Committee of the CRC also monitors such situations itself,²⁶ and there are examples of where national legislation has been

²³ First Optional Protocol to the CRC, *supra* note 13.

²⁴ Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999), No. 182 (entered into force 10 November 2000).

²⁵ GA Res. 1612, 26 July 2005.

²⁶ “The Committee remains concerned that children living in Chechnya and the Northern Caucasus (and in particular internally displaced children) remain very deeply affected by the conflict, in particular with regard to their rights to education and health. The Committee is also concerned about reported cases of arrests and disappearances by security agents of young persons suspected of being associated with insurgency groups. The Committee is concerned that there has been limited identification and marking of mined areas, or efforts to clear mines, notwithstanding the recent ratification by the State Party of Protocol II,

made to respond to education under attack, such as The National Education Law of Guatemala, which provides for the protection of “educational communities,” stipulating that the Ministry of Education should ensure that educational institutions do not suffer any intervention from political parties or the military.²⁷

Taken together, these provisions on education in the above instruments are impressive and far-reaching, even if the CRC does suffer somewhat for being limited in subject matter, as it addresses only children (up till the age of 18), although it does have provisions on tertiary education. And like the Refugee Convention, the CRC also lacks an individual complaint mechanism (as has recently been introduced in the Covenant on Economic, Social and Cultural Rights). There are also a significant number of reservations to it, mostly from European and Arab countries, though the reservations are few in areas concerned with education and conflict. However, it is truly universal in being the most widely ratified of all human rights treaties (only two States have signed but not yet ratified it – by comparison, the Refugee Convention has been ratified by around 140 countries). Such universality is tremendously important: it underscores that these are indeed the rights of all children and that no State, individual or representative of the international community can side-step their obligations.

2. Right to Education during Emergencies: How Should it Look?

A. The 4A Framework

Important points of commonality between the articles of education in the various human rights instruments are: the focus on basic/elementary/primary education (the slight shift in definitions is of no real importance as there seems to be agreement on the outcome); that it should be free and compulsory; that it should respect the cultural identity of the child; and that

as amended, to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.”(Human Rights Committee, Russian Federation CRC/C/RUS/CO/3, 23 November 2005, para. 68)

²⁷ National Education Law, Guatemala, Legislative Decree No. 12-91 (12 January 1991), Art. 100. If this has actually had an effect on the behaviour of the military is unknown.

it is the international human rights standards (i.e. those set forth in the CRC and the ICESCR) that define the norm, meaning there is no basis for introducing a sub-standard level of education in emergencies, in camps and for refugees. Another key provision of the right to education – as it is with all human rights – is the principle of non-discrimination²⁸ in access to basic education, an access that must be universal, compulsory, free and immediately fulfilled at all times.²⁹ Other parts of education such as secondary and higher, are subject to progressive realization and the availability of resources.³⁰

What all the international instruments define is the normative basis for the right to education. Though different in scope and applicability, they may be interpreted as agreeing on an overarching definition of scope and content of the right to education. This can be explained using a simple four-part typology,³¹ applicable at all times, ensuring that education is of the highest quality:

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

²⁸ Art. 2(2), ICESCR, *supra* note 12; Art 2, CRC, *supra* note 3.

²⁹ Art. 13(2)(a), ICESCR, *supra* note 12.

³⁰ Arts 2(2) and 13(2)(b)(c), ICESCR, *supra* note 12.

³¹ See The Committee on Economic, Social and Cultural Rights, *General Comment No. 13, The Right to Education*, E/C.12/1999/10, 8 December 1999.

B. A Human Rights Based Approach

The 4A-provisions, and the perspectives of rights *to*, *in* and *through* education, apply equally in times of peace and of war, conflict, and disasters. They are reflected in IHLR and IHL, their achievement defines a process as well as an end, and they challenge inequalities and abuse and at best teach good citizenship, shared values, peace and reconciliation. Applying these entails using a human rights-based approach, and this can be achieved by understanding, respecting and bringing to life the following five concepts:

- *Participation*: mechanisms must ensure that all affected groups, especially learners most at risk, participate in the planning and realization of education. In emergencies channels must be open for participation so that all voices are heard, and this is the key obligation of the various duty-bearers.
- *Accountability*: all decisions must be fully transparent and budgets must be open for scrutiny to counter corruption and neglect by duty-bearers, a particular concern in times of emergencies where normal oversight mechanisms may be dysfunctional given the sudden influx of other service providers and duty-bearers than the State.
- *Non-discrimination*: it is the core human rights obligation of any duty-bearer to ensure that everyone has equal access to education, especially the weakest and most vulnerable groups. The grounds for discrimination often multiply in emergencies, and many more groups will be marginalized in unexpected ways.
- *Empowerment*: participation builds ownership and empowerment, giving people a voice to claim their rights and assist others; this is especially important in emergencies where normal structures will have ceased to function. Voices are the democratic means by which rights-holders can hold duty-bearers to account.
- *Link to the law*: the knowledge of human rights law must be used to challenge existing practice and to embed new improved standards in what? In emergencies, possibly with suspended rule-of-law, such knowledge must be used to document violations and access the mechanisms afforded by law, immediately or in the near future.³²

³² For further material on a human rights-based approach to education please visit: <http://www.right-to-education.org> (last accessed 18 March 2011).

3. Policy Frameworks – Furthering or Hindering the Right to Education in Emergencies?

Clearly, both the right to education and the protection offered to children in conflict, and/or as refugees and displaced persons are very strong within international law. However, much remains to be done to translate this right into reality, especially in the field of education in emergencies (conflicts, complex emergencies *and* natural disasters). Not least of these is a closer analysis at the relationship between the different positions taken by international law and the argument of this present article, that the CRC somewhat bridges these bodies of law, in its scope and inclusion of key provisions from the different strands, could be a modest contribution to this analysis. However, the real test is in the translation of international law into national laws, policy frameworks and tools, as is very much in evidence from the experience in Côte d’Ivoire over the last decade.

Due to the nature and application of international law, it is necessary to both use the law and its instrument at face value as well as to ‘translate’ them, and there have been several attempts to take the meaning of the legal framework around the right to education and bring it into global policy frameworks, mechanisms and tools. While these frameworks and tools have succeeded in putting the right to education in emergencies more at the forefront of global discussions, they also pose challenges that will be explored in the following section, chief amongst these being the sense of a dilution of the human rights guarantees and the obligations of duty-bearers.

A. The Education For All Goals

The year 2000 constituted a turning point for the education sector, with two major events both setting the milestone of international development standards for education by allowing ambitious targets for human development to be adopted and illustrating very clearly the challenges of trying to reflect legally binding norms in what are politically non-binding declarations and aspirations. The 2000 World Education Forum took place in Dakar³³ and saw more than 1000 participants from 164 countries committed to expanding

³³ World Education Forum, Dakar, Senegal, 2000, http://www.unesco.org/education/efa/wef_2000/index.shtml (last accessed 18 March 2011).

access and improving the quality of education by agreeing to 6 fundamental goals (See Box 1):

Box 1: Education For All Goals

Goal 1: Expanding and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children;

Goal 2: Ensuring that by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to, and complete, free and compulsory primary education of good quality;

Goal 3: Ensuring that the learning needs of all young people and adults are met through equitable access to appropriate learning and life-skills programmes;

Goal 4: Achieving a 50 per cent improvement in levels of adult literacy by 2015, especially for women, and equitable access to basic and continuing education for all adults;

Goal 5: Eliminating gender disparities in primary and secondary education by 2005, and achieving gender equality in education by 2015, with a focus on ensuring girls' full and equal access to and achievement in basic education of good quality;

Goal 6: Improving all aspects of the quality of education and ensuring excellence of all so that recognized and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life skills.

Though not mentioning the right to education outright, they are extremely precise and do, to a far extent, reflect many of the standards in the CRC, the ICESCR and much of the IHL framework. The focus on quality and on discrimination is prominent and they do not shy away from the highest attainable level, thus reflecting the spirit of human rights. Secondly, on the all-important question of resources and the role of the international community in supporting countries, the former Special Rapporteur on the Right to Education has pointed out that

there is an interesting statement in the Dakar Framework for Action to the effect that 'no countries seriously committed to education for all will be thwarted in their achievement of this goal by a lack of resources'. The implication is clear:

any State desirous of ensuring primary education, but incapable of doing so, should be able to obtain the funds essential for that purpose.³⁴

What the Special Rapporteur fails to do is to trace this wording of the non-binding Dakar Education For All (EFA) framework back to one of its sources: Article 2(1) ICESCR that states:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.³⁵

This is important, because it offers a blueprint, in line with EFA, for the international community's legal obligation to assist "through international assistance and co-operation, especially economic". These arguments should be much further explored, especially in the context of emergencies, where money needs to be raised quickly through flash appeals, and where we often see large commitments but very little actual disbursement of that money, once the attention of the donor community shifts to some new emergency.

The Dakar Framework for Action highlighted the educational consequences of emergencies, placing special emphasis on children affected by conflict, natural disasters and instability, and on the conducting of educational programs in ways that promote mutual understanding, peace and tolerance and that help to prevent violence and conflict. Once again, these are strong and credible echoes of the legal normative standards on the aims of education, as perhaps most clearly stated in Article 29 CRC.

B. *The Millennium Development Goals*

The commitments in the Dakar Framework of Action were thus not a very far cry from human rights, even if they did not dare to speak its name outright. They were also largely formulated by educationalists and so quite detailed and relevant. Unfortunately, they were further diluted in September of that same year by the statement made by all 191 member countries of the United Nations during the Millennium Summit.³⁶ The Millennium Declaration of

³⁴ Vernor Muñoz, *Report of the Special Rapporteur on the Right to Education, Right to Education in Emergency Situations*, A/HRC/8/10, 20 May 2008, para. 60.

³⁵ ICESCR, *supra* note 12.

³⁶ United Nations Millennium Development Goals (2000), <http://www.un.org/millennium/summit.htm> (last accessed 5 April 2011).

the summit reasserted the centrality of education in the national development strategies of low-income and middle-income countries, which broadly speaking are also those often most prone to disasters, emergencies and fragility: “Education is development. It creates choices and opportunities for people, reduces the twin burdens of poverty and diseases, and gives a stronger voice in society.”³⁷ An important place was reserved to education, yet when the Declaration was translated into 8 goals, the 2 education relevant goals came to look like this:

Box 2: Education Specific Millennium Development Goals (MDGs)

MDG 2: Ensure universal primary education for all children by 2015

MDG 3: Eliminate gender disparities in primary and secondary education by 2005/2015

This was thereby an even further cry from human rights than EFA. The goals were written by politicians with clearly very little interest in any form of legally binding obligations. Hence, the goals look nice, and may well be nominally achievable, but they do not use the language of rights and obligations, and they assign educational goals to a development agenda rather than a rights agenda. They take a narrow view of quantifiable access to primary education that is universal (MDG 2) and the promotion of gender parity (MDG 3), which has had the unintended consequence of diverting attention from the comprehensive domains needed to ensure quality education, from early childhood and secondary education to teacher training. They do not relate to actual human rights law or set up redress mechanisms for abuses in order to ensure accountability. Nor do they address structural inequalities or include the participation of all stakeholders.

Take for example MDG2: it does not mention that primary education should be free and compulsory, an immediate obligation under both IHRL and IHL. It also does not reflect the quality and content aspects of acceptability and adaptability and the need to have minimum standards. Furthermore, it equals education with schooling, but “schooling does not necessarily amount to education”³⁸ especially in situations of emergency and displacement. The target also overlooks additional forms of direct and indirect discrimination on

³⁷ *Supra* note 36.

³⁸ Katarina Tomaševski, *Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable*, Primer No. 3 (2003), at 43; <http://www.right-to-education.org/sites/r2e.gn.apc.org/files/B6g%20Primer.pdf> (last accessed 20 March 2011).

other grounds against other groups, such as minorities, disabled, rural populations and those first in line when emergency strikes.

Nonetheless, the 2005 World Summit³⁹ allowed world leaders to review the progress made by developing countries in the implementation of the MDGs and to reaffirm their commitment to achieve the eight development goals, including the two on education. The outcome document reaffirms States' commitment to timely and effective humanitarian assistance for children in armed conflicts and singles out education as a key element of that humanitarian assistance.⁴⁰ However, as was also seen at the MDG +10 summit in New York in September 2010, the MDGs remain disconnected from legislation, monitoring and accountability, and thus there will be little chance of unveiling discrimination, inequalities and violations and for claiming rights in order to achieve a proper human development worthy of its name. Ministries of education and donor agencies have their political agreements with policy frameworks, they adopt objectives and move forward activities to meet these goals. However, a framework or policy does not automatically translate into action on the ground that is rights-based, sustainable and accountable. This has also meant that the challenge of getting humanitarian actors to engage with the right to education still remains.

4. Education in Côte d'Ivoire during and after the Conflict

The legal, political and operational dimensions of the right to education do not merely reflect different discourses at global level; they also have practical implications for the realization of this fundamental right for children affected by crises. The article takes Côte d'Ivoire as a case-study to examine the relevance, contradictions and potential of the various approaches to the right to education in emergencies. It also draws lessons learnt during the 2002-2007 conflict, the 2007-2010 post-conflict phase, and the resurgence of violence following the results of the presidential elections end 2010.

A. Côte d'Ivoire – Background to the Conflict

Once considered to be one of the most stable countries in Sub-Saharan Africa, Côte d'Ivoire has experienced a collapse in political order since 2000. The end

³⁹ World Summit, New York (2005), <http://www.un.org/summit2005/> (last accessed 20 March 2011).

⁴⁰ MDG+5 Outcome Document, United Nations 2005, http://www.un.org/ga/59/hlpn_rev.2.pdf (last accessed 5 April 2011), para. 97.

of the 33-year presidency of Félix Houphouët-Boigny since the country's independence in 1960 allowed the nation to grapple with the democratic process for the first time. However, this opportunity was overtaken by a series of political coups and the instrumentalization of rising ethnic tensions around the concept of "Ivoirite," or "true Ivorian". Election violence in 2000 left more than 250 people dead while confirming President Laurent Gbagbo in power. Rebels failed to oust Gbagbo in a September 2002 coup attempt, but they seized control of the northern half of the country and launched a full-blown civil war, splitting the country into two: the north was controlled by former rebels, known as the New Forces, and the south was controlled by government forces. Presidential and legislative elections were postponed several times since October 2005 and finally took place in late 2010. The disputed outcome of these elections has once again thrown the country into an armed crisis, and so the prospects for the reunification of the country that had seemed to have improved since the Ouagadougou peace agreement in 2007, may appear a distant hope. In the following we shall deal only with the conflict and developments in Côte d'Ivoire between 2000 and 2010, leaving the most recent developments for a future occasion.

B. *The Right to Education in Côte d'Ivoire*

Since gaining its independence in 1960, Ivorian society has placed a high value on education. In the wake of independence, education was seen as a *sine qua non* condition for economic and social development as well as an investment in the future of the nation.⁴¹ Education was also at the center of the "politique de refondation" (policy of renewal) of Laurent Gbagbo who became president in 2000, a process to overhaul the nation, including an effort to give every child in Côte d'Ivoire the chance to go to school. In addition, Côte d'Ivoire has adhered to a number of international and regional human rights and humanitarian law instruments protecting the right to education, including the GC IV (ratified in 1961) and the CRC (ratified in 1991).⁴²

⁴¹ A specific National Planning Commission was established in 1962 within the Ministry of Education with support from an expert team from UNESCO to devise the objectives and strategies of the education system as a flagship of the newly established country

⁴² Other international frameworks to which Côte d'Ivoire has signed up to include: the ICCPR ratified in 1992, the ICESCR ratified in 1992, the African Charter on Human and People's Rights ratified in 1992, the African Charter on the Rights and Welfare of the Child ratified in 2007, the Rome Statute (1998) signed in 1998 but not yet ratified, and the Refugee Convention ratified in 1961.

These commitments are reflected in national legislation, in particular the Constitution (2000)⁴³ and the Education Act (1995) which reaffirms the right to education of all Ivoirians as a State priority. Thus, compared to many other developing countries, Cote d'Ivoire fares relatively well in terms of recognizing the right to education through policy, legal instruments, and international commitments. However, despite this relatively robust framework, spending on education has been inadequate since the 1990s and during the conflict the right to education has been relegated to the bottom of the national priority list.

C. The Conflict and its Implications on the Education System

Since 2000 the State itself and the rebel forces directly contributed to the violation of the right to education, as a consequence of which the civil war had a terrible impact on the education system, especially in the northern and south-western parts of the country. Thousands of rights-holders including students and teachers were barred access to the education system, and education infrastructure itself was seriously damaged. According to UNDP, the net enrolment ratio (as a percentage of the relevant age group) for primary schools in 1997 was 58.3%, dropping to 34.1% for secondary schools. By 2005, net primary enrolment had fallen to 56%, and enrolment for secondary schools to only 20%. The war caused 358,332 out of school children in 2002. Only 29.4% of those enrolled in school in 2001 re-enrolled in 2002.⁴⁴ Overall, the United Nations estimate that over 700,000 children, boys and girls, has been denied their right to education since 2002 due to the lack of teachers and deteriorating living conditions.⁴⁵

Estimations of the number of IDPs due to the 2002–2007 crisis in Côte d'Ivoire vary between 500,000 and 700,000. Many children and their families

⁴³ Article 7 holds that “every human being has a right to the development and fulfilment of his personality in its material, intellectual and spiritual dimensions. The State guarantees all citizens equal access to health, education, culture, information, vocational training, and employment [...]”. Article 8 deals with the responsibilities for ensuring these rights: “The State and local authorities have the obligation to ensure youth development. They create favourable conditions for moral and civic education [...]”

⁴⁴ ROCARE Study on the Impact of the War on Girls' Education in Cote d'Ivoire, by Dr. Emile BIH and Cinthia Acka Douabele for the International Conference on Education, Violence and Conflict in Africa, 06-10 mars 2006, Yaoundé, Cameroun.

⁴⁵ United Nations Security Council, 26 September 2005, Sixth progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire.

fled the rebel-controlled areas for the south of the country, generating a massive influx into schools. Teachers, school administrators, and local education authorities were also displaced. Up to 80% of classes in the north were taught by volunteer, largely unqualified, teachers, drawn from local communities.

As defined by international law, the State has the duty to respect, protect, and fulfill the right to education. The fact that the State was not present and providing little to no support to the education system in over half of Côte d'Ivoire between 2002 and 2007 calls into question its role and capacity of as a primary duty-bearer for ensuring access to quality education. One may ask if in situations where the State no longer possesses a monopoly on the sanction, control and use of force do traditional legal accountabilities hold? And what happens to the right to education when education is used as a tactic of war by parties to the conflict? After the contested presidential election results end 2010, which led to the recognition of Alassane Ouattara by the Independent Electoral Commission and by the international community and simultaneously to the recognition of Laurent Gbagbo by the Constitutional Council, the State of Cote d'Ivoire de facto had for several months two Presidents, two governments and two Education Ministers. In order to call for the world's attention to the post-electoral political crisis, which further deteriorated into a severe humanitarian crisis, the pro-Ouattara coalition launched a call for civil disobedience that massively affected the education system since 60% of Cote d'Ivoire's civil servants are teachers. As a result, 800,000 children in the Center, North and West of the country were denied their right to education for between four to six months. Clearly, this is a violation of the right to education, but the question remains as to who is representing the State when one government is considered illegitimate but controls by the use of force state institutions and the other one is officially in power but has no means to take charge?

While the numbers of children deprived of schooling during the crisis were high across the nation, the rebel-controlled areas were most affected, with the acute education crisis clearly paralleling the political crisis (and division) of the country. In 2003, only 28% of schools in the rebel-controlled areas were re-opened; very few school inspectors and education officials working in the regional education departments in the north stayed in their posts, as the government called them back to the south; exams in the north were postponed and students who missed these crucial exams slipped between the cracks of the educational system with their future education and employment opportunities cancelled. A demonstration of anger took place in September 2005 after the Education Minister cancelled national exams in the

north for security reasons, thereby preventing students to start the following school year in October.⁴⁶

Some believe that the underlying motive of the government in interrupting education in the north was to portray the rebel movements as incapable of governing the territory under their control and disinterested in organizing social programs for their citizens, thereby discrediting them in the eyes of their supporters and the international community. Conversely, the rebels have accused the government of committing ‘cultural genocide’ by denying northern citizens education and other social services and therefore sat out to support education by providing goods to teachers and the school community.

In violation of Article 8(2)(e)(iv) ICC Statute, many schools were attacked and destroyed during the crisis.⁴⁷ For example, soon after rebels took control of Bouaké, a major northern city, its university was looted and closed down. In November 2004, riots against the French force in Abidjan – after the French bombing of the Ivorian air force – destroyed numerous schools, causing long-term effects on the education-sector infrastructure. Other schools were occupied as military camps by fighting forces, with school furniture looted, destroyed or used as fire wood. In addition, children were associated with armed groups on both sides of the conflict, in pro-government militias and the Forces nouvelles (FAFN).⁴⁸ In an interview with a local researcher, a female student from the main high school in Bouaké shared this story:

I have a friend who no longer attends school because her mother does not have enough money anymore to pay for school fees. Her father was a policeman here

⁴⁶ United States Peace Institute, *Special Report, Education and Conflict in Côte d’Ivoire*, 8 April 2010, http://www.usip.org/files/resources/SR235Sany_final_lowres-1.pdf (last accessed 20 March 2011).

⁴⁷ Such attacks are not just criminal offenses, however despicable, but also actions that infringe upon the enjoyment and exercise of the right to education. The *Education under Attack 2010* review by UNESCO deals extensively with this matter, citing procedures and examples of ongoing cases, albeit none of these are from Côte d’Ivoire: “Currently, the OTP is conducting investigations and prosecutions in eight cases, in four conflicts (the Democratic Republic of the Congo [DRC], Uganda, Sudan and the Central African Republic [CAR]), involving 14 individuals. Six of those cases contain references to crimes that might be described as attacks on education as defined in *Education under Attack 2010*: The Prosecutor v. Thomas Lubanga Dyilo (Situation in the DRC); The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui (Situation in the DRC); The Prosecutor v. Bosco Ntaganda (Situation in the DRC); The Prosecutor v. Joseph Kony, Vincent Oti and Okot Odhiambo (Situation in Uganda); The Prosecutor v. Omar Hassan Al Bashir (Situation in Darfur); The Prosecutor v. Jean Pierre Bemba (Situation in the Central African Republic).” O’Malley/UNESCO, *supra* note 17, at 150.

⁴⁸ Report of the Secretary-General on Children and Armed Conflict, A/61/529-S/2006/826, 26 October 2006, paras 23–28.

in Bouaké; he was killed and their house was looted. There is no-one to support her education.⁴⁹

She added “there are also two boys in my class who do not come to school anymore because they have enrolled as child soldiers with the MPCCI rebel-group.”⁵⁰

D. The International Response to the Conflict

From the international community’s perspective, attention was paid to how a destabilized, ethnically divided, and fragile Côte d’Ivoire would pose a great risk to regional stability and how the high number of out-of-school youth may exacerbate state fragility. However, no international or regional framework was used to oblige the State to fulfill its responsibilities towards its citizens. Specifically on the right to education, no initiative was taken by international human rights bodies to document or denounce the violations of the right to education. One opportunity to do so was the Côte d’Ivoire’s report to the Committee on the Rights of the Child, due in 2006. However, Côte d’Ivoire – like so many before it – did not submit a report, and there will be a gap of more than 12 years between the last CRC report submitted in 1999 and the next one planned for 2011. Because the State has the ultimate decision of if and when to submit this report, no information on the right to education during the Ivoirian crisis seems likely to be examined by the CRC – or any other treaty body – in the near future. Though international legal standards on the right to education were translated into national policies, it has done little for education in an emergency situation in which the State is an active party, itself preventing children from going to school and using education as a tactic of war.

UNICEF and partner NGOs set up a range of formal and non-formal education programs to provide children with an opportunity to play and learn. In the government-controlled area, UN agencies and NGOs supported the government in setting up ‘écoles-relais’ (relay schools) so that schools could welcome the influx of IDP students and teachers. According to this model, two schools used alternatively the same school space. When a village was attacked, space would be made for students and teachers from this village into the school of another village. Another strategy promoted by humanitarian actors was to implement a double-shift system so that one

⁴⁹ Educational Research Network for West and Central Africa, *Impact du conflit sur l’éducation primaire: Le ROCARE lève le voile sur le cas de la Côte d’Ivoire*, 16 August 2010.

⁵⁰ *Ibid.*

group of students would attend school in the morning and the other group in the afternoon.

In rebel-controlled areas, humanitarian actors procured emergency supplies to set up and equip temporary learning spaces and accommodation for teachers. They also identified volunteer teachers and gave them rudimentary training. Small community schools set up by community members in churches or rudimentary shelters were supported through the distribution of kits for school feeding programs. NGOs promoted the use of multi-grade classes and established ‘classes passerelles’ which represented a bridging program for children aged 8 to 12 years-old who had never attended school before. At the end of the conflict, the Norwegian Refugee Council established such bridging programs targeted at children age 9-14 with the goal of reintegrating them into the formal education system. Around 2700 children were enrolled in 2007/2008 and more than 5670 in 2008/2009. Through this action, it was estimated in that 286,000 children were attending NGO-run primary schools and 55,000 were attending NGO-run secondary schools.⁵¹

Questions have been raised about NGOs and donors operating in the north unintentionally becoming part of the conflict dynamics, providing support to the rebel forces and excuses to the government for not fulfilling its primary duties. Clearly, the resources and interventions of humanitarian actors supported by a few humanitarian-oriented bilateral donors were essential in minimizing to the possible extent of the disruption of education during the crisis. Many children, in the south and in the north, were able to continue their education thanks to ‘relay schools’, community schools, and non-formal temporary learning spaces; some were even able to attend school for the first time in their life. From this perspective, humanitarian actors ensured that children could exercise their right to education.

However, the example of Côte d’Ivoire has also shown very clearly that the right to education has two faces: is not just about the rights-holder, but also very much about the duty-bearer. While in practice, humanitarian actors enabled access to education for thousands of children, the legal obligation to uphold the right to education remained – and remains – with the State. However, even if the State is not able or willing to provide education, and thus *de facto* in breach of its obligations, it is often difficult to blame it and the best approach is to ensure that there is no discrimination in the access to the education that is being provided, by the State and other actors, and then to assist or to lead the immediate re-building of the education system, so that the

⁵¹ UNOCHA, *United Nations Consolidated Appeal Process, Côte d’Ivoire Mid-Term Review, 2004*, 2004.

State can resume its duties. Tools and mechanisms such as the INEE Minimum Standards and the IASC Education Cluster have been established to ensure coordination of all education actors behind the common goal of facilitating a careful re-instatement of the prime duty-bearers, ensuring access to quality education in emergencies and post-crisis contexts. These tools have been put to the test in Côte d'Ivoire, as we shall see below.

5. Enforceability of the Right to Education in Emergencies

A. *From Bottom up: Use of National, Regional and International Legal Mechanisms*

If the State does not secure education for its citizens, for refugees and for the IDPS, as was the case in Côte d'Ivoire, then in theory (if not always in practice, depending on the judiciary of the individual State) there will be a number of enforcement – whether legal or quasi-legal – mechanisms in place, presenting a range of actions available to hold the State to account. However, it may here be helpful to first look at what the nature of such violations may be, using the language of international law. As seen above the right to education should include four essential features known as the 4As: education should be *available, accessible, acceptable* and *adaptable*. Furthermore, the right to education entails a corresponding set of three obligations (tripartite typology) on the part of States to respect, protect and fulfil the 4As of this right:

The obligation to *respect* requires States to refrain from interfering with the enjoyment of the right to education; an example of a failure here could be the denial of access to particular individuals or groups, whether through legislated or enforced discrimination. The obligation to *protect* requires States to take measures that prevent third parties from interfering with the enjoyment of the right education; an example of non-protection could be the failure to protect primary schools from attack. Lastly, the obligation to *fulfill* has two dimensions, to facilitate or to adopt appropriate measures towards the full realization of the right and to provide to education, one example of non-fulfillment being the failure to develop or implement programs for vulnerable children outside of the formal education system.⁵²

Violations of the right to education occur through *acts of commission*, when a State deliberately prevents or allows others to prevent the realization of the

⁵² See Angela Melchiorre, *The Right to Education – Submission for the NGO Consultation on the UN Draft Guiding Principles on Extreme Poverty and Human Rights* (2010), <http://www.right-to-education.org> (last accessed 21 March 2011).

right, or *acts of omission*, when the State fails to act to realize the right, even if resources are available. Finally, there are three core ways in which States may violate its duty to fulfill the right to education which are important to keep in mind in this context: *Retrogression* – implementing policies which move further away from the right to education. *Discrimination* – discriminatory laws, policies or practices undermine the universality of the right to education. *Failure to meet minimum core obligations* – failure to take concrete measures to ensure education for all with priority given to free compulsory primary education.⁵³

In a narrow sense enforceability may mean the possibility of courts and quasi-judicial bodies to consider claims concerning alleged violation of the rights as detailed above, and, when appropriate, to provide remedies. Human rights set standards for how law and access to justice must look and may inspire a questioning of the protection offered or of any domestic laws at odds with international standards.

Under the State's obligation to protect, respect and fulfill the rights of all residing on its territory, be they refugees or IDPs, is the key provision of basic access to justice. In times of emergency, such access may be denied or suspended, or the justice rendered may even be the cause of conflict. Nor may it be possible for logistical reasons: the gathering of evidence, the protection of witnesses, the economic resources needed, etc., will hinder efforts.

Hence it is the responsibility of any duty-bearer, be it the State or other actors fulfilling the role of protection, to ensure documentation for later use, for upon return to relative stability and the rule of law, or for the attention of international courts. In cases of refugees, where the host-country is not itself affected by conflict, no delay should occur, and it is up to Ombudspersons, National Human Rights Institutes, and other independent legal actors to raise the issue and demand access to justice.

If national remedies are either exhausted or found to be lacking, one can take a violation to the regional or international level. Using mechanisms set forth in the regional treaties, such as the regional courts (the European Court, the African Court or the Inter-American Court) can be a very powerful way to bring issues to public attention, resulting in both naming-and-shaming as well as in rulings binding upon the State.

At the international level (i.e. above the regional level), there is not this second option of a binding legal ruling to be brought upon a State. Here, the deliberations and comments of the treaty bodies are merely advisory. However, a remaining challenge is to much better at using these mechanisms (the treaty

⁵³ Kate Newman, *Education Rights: A Guide for Practitioners and Activists* (2007), <http://www.right-to-education.org> (last accessed 21 March 2011).

body committees' reports, deliberations and recommendations, the individual complaints procedures, etc.), as well as being better at using the Special Rapporteur on the right to education and other mandate holders, or indeed the newcomer: the Universal Periodic Review, where civil society can submit reports on the right to education in the State under examination. In times of emergency, however, this may not always be possible, and may not even be seen as a top priority in the early or ongoing phases of conflict, intervention and recovery.

B. Using the INEE Minimum Standards and the IASC Cluster System to Embed or Re-instate the Right to Education

During the last decade, international actors have made some strides in the effort to translate international law and political agreements on the right to education into a comprehensive programmatic response. One major initiative in this has been the development of standards that move theory about rights into programmatic action. Standards not only serve as a platform for defining good practice, but they also provide a powerful advocacy tool both inside humanitarian organizations and externally with governments, donors and populations affected by conflict.

The Inter-Agency Network for Education in Emergencies (INEE), conceived out of the World Education Forum in 2000, developed a set of Minimum Standards for Education in order to improve the way in which humanitarian action is accountable to the education rights of people affected by disasters. The handbook, *INEE Minimum Standards for Education: Preparedness, Response, Recovery*, presents a global framework for ensuring quality, coordinated humanitarian response that meets the educational rights of people affected by disaster through processes that assert their dignity.⁵⁴

The guidance in the *INEE Minimum Standards for Education* handbook is designed for use in crisis response in a range of situations, including disasters caused by natural hazards and conflict, slow- and rapid-onset situations and emergencies in rural and urban environments. The handbook provides direction on how to prepare for and respond to acute emergencies in ways that reduce risk, improve future preparedness and lay a solid foundation for quality education. This contributes to building back stronger education systems in the recovery and development stages.

⁵⁴ INEE facilitated a global consultative process that engaged national authorities, practitioners, policy-makers, academics and other educators around the world in the development of this handbook in 2004 and its update in 2010.

The *INEE Minimum Standards for Education* is derived from human rights and take the language and spirit of human rights law as the basis of education planning. By doing so, these standards help to achieve quality education by bringing to life the principles of participation, accountability, non-discrimination and legal protection.

The Content of the INEE Minimum Standards

The INEE Minimum Standards Handbook contains 19 standards, each with accompanying key actions and guidance notes, in five domains:

Foundational Standards include coordination, community participation and analysis. These standards, which must be applied across all domains in the handbook, give particular attention to the need for good diagnosis at all stages of the project cycle in order to better understand the context and apply more appropriately the standards in the domains that follow.

Access and Learning Environment focuses on access to safe and relevant learning opportunities. This domain highlights critical linkages with other sectors such as health, water and sanitation, nutrition and shelter that help to enhance security, safety and physical, cognitive and psychological well-being.

Teaching and Learning focuses on critical elements that promote effective teaching and learning, including curricula, training, professional development and support, instruction and learning processes, and assessment of learning outcomes.

Teachers and Other Education Personnel covers administration and management of human resources in the field of education. This includes recruitment and selection, conditions of service, and supervision and support.

Education Policy focuses on policy formulation and enactment, planning and implementation.

Since its launch in 2004, the *INEE Minimum Standards for Education* handbook has proved to be an effective tool in over 80 countries for the promotion of quality education from the start of an emergency through to recovery. Users relate that the standards provide a common framework and facilitate the development of shared objectives between different stakeholders, including members of governments, communities and international agencies, to meet the right to education.

The standards define the goals for access to quality education in universal terms, while the key actions represent specific steps that are needed to achieve each standard. Since every context is different, the key actions in the handbook must be adapted to each specific local situation, program or policy.

This is a challenge, as *context*, including available resources, and the stage of the emergency must be considered in determining locally acceptable contextualized actions. Ideally, the process of contextualization should occur prior to the onset of any emergency as part of educational contingency planning and preparedness. The experience of users of the INEE Minimum Standards has shown that contextualization is more effective when carried out as a participatory and collaborative exercise.

The standards represent an international effort to shore up human rights law that, for multiple reasons, has not proven efficient and was not operationalized. Therefore, there was a need create operational standards for humanitarian workers that help to translate this right into concrete actions. However, several challenges follow from this. One is that the standards are non-binding; therefore, there is an accountability gap. In addition, the great majority of users of the INEE Minimum Standards are UN agencies and NGOs. While there are some governments using them, it is usually due to a Ministry of Education official's participation in a training and institutionalization is slow. As the implementation of this tool is led by humanitarians and technical specialists within Ministries of Education – rather than a whole government – there is less recourse for populations from a legal perspective. If law was fully implemented, citizens would be better able to exercise their right to hold the state accountable.

Lastly, and perhaps most worryingly, is that fact that the humanitarian community itself has proven hard to convince of the use and benefits of a rights-based approach. They self-censor for fear, correctly or not, of a shrinking of the humanitarian space in which they operate, often at the invitation of States, if they talk too loudly of rights. An illustrative point of this is how in the 2010-update process of the INEE Minimum Standards handbook it proved impossible to find agreement around the use of the word 'duty-bearer', not even in the introduction. The commitment to human rights, at least at the linguistic level, may therefore not always be as complete as one could wish for.

In addition to the INEE Minimum Standards being widely used across contexts and organizations, the establishment of the Inter-Agency Standing Committee (IASC) Education Cluster in 2007 at the global level and the activation of education clusters at the field level provide unique opportunities for the application of education standards articulated within the INEE *Minimum Standards for Education* to support inter-agency coordination, capacity-building, preparedness and advocacy on education in emergency and post-crisis recovery settings.

The IASC Cluster system is the central mechanism through which the international community coordinates action during humanitarian crises. The goal of the IASC Education Cluster, co-led by UNICEF and the Save the

Children Alliance, is to strengthen system-wide preparedness and technical capacity to respond to humanitarian emergencies and for ensuring greater predictability and more effective inter-agency responses in education in the areas of standard and policy setting, building response capacity, and operational support. The education cluster is a key mechanism for supporting States in determining educational needs in emergency situations and responding to them in a coordinated way.

The IASC endorsement of education as part of the cluster process represented a significant achievement as it indicated not only the recognition by the humanitarian community of the right to education and the critical role that education plays in humanitarian response, but also their willingness to support its provision. Moreover, by promoting the INEE Minimum Standards for Education, the IASC Education Cluster is upholding the right to education in helping to address capacity gaps and bring actors together at country and global levels. While the cluster is still working out its own coordination gaps, it *is* helping the international community to better respond to the needs of affected populations through coordination.

The recurring problem with the IASC cluster system is that there are few avenues of accountability, especially downwards to affected populations. International NGOs and the UN system are often not geared to ensure full participation of the affected populations in emergencies. Without being an outright violation of the normative aspirations of humanitarian and human rights law, it certainly hinders a full human-rights based approach. In the coming years this is one of the things that should be looked at closely, within the Cluster system, as well as in the wider systems of response to emergencies.

In addition to the INEE Minimum Standards and the establishment of the IASC Education Cluster, the Sphere-INEE Companionship represents a new and significant programmatic attempt to translate international law and policy frameworks into concrete and usable tools. The Sphere Project's Humanitarian Charter and Minimum Standards in Disaster Response, which were launched in 1997 by a group of humanitarian NGOs and the Red Cross and Red Crescent movement, articulate what people affected by disasters have a right to expect from humanitarian assistance. The Sphere Handbook includes a Humanitarian Charter and minimum standards for the traditional emergency response sectors of water supply, sanitation and hygiene promotion; food security and nutrition; shelter, settlement and non-food items; and health action.

The challenge for both users of the INEE *Minimum Standards for Education* and the Sphere standards is to effectively institutionalize these standards into not only programs but also operational and organizational policies at local, national, regional and global levels.

C. The IASC Education Cluster and the INEE Minimum Standards Put to the Test in Côte d'Ivoire

Because the IASC Education Cluster was established at the global level in 2007, it was not activated in Côte d'Ivoire before relatively late in the decade and at a time when the Ouagadougou peace agreement was reached. During the crisis, humanitarian actors had taken part in an informal education coordination mechanism set up to discuss operational issues which was not attended by the government. While education interventions had been implemented, education in emergencies was not seen as a priority humanitarian response and there was little awareness of the INEE Minimum Standards. In this context, INEE decided to organize its regional capacity-building workshop on the INEE Minimum Standards for francophone countries in Côte d'Ivoire in 2007. The workshop brought together twelve countries in emergency or post-crisis situations, which had all received prior training on the INEE Minimum Standards except for Côte d'Ivoire. While initially expressing resistance to what they perceived as a "foreign set of education rules", a number of Ministry of Education officials have a few years later become champions of education in emergencies and of the INEE Minimum Standards, and Côte d'Ivoire is regarded as an example in the West and Central Africa region of the institutionalization of the right to education in emergencies.

Following this first INEE workshop, an important capacity-building process was set in motion. Ministry of Education (MoE) officials requested the support of UNICEF in organizing training on the INEE Minimum Standards for the 22 Regional Education Directors of the country and for national-level representatives in 2008. UNICEF also sponsored the participation of key MoE representatives to the regional training on education in emergencies for frontline responders organized by the Education Cluster (2009), to the INEE Global Consultation (2009), and to the regional Education Cluster Coordinator trainings (2010). Training workshops were also organized for four regional education directions – Man and Adzope (2009) and Odienne and San Pedro (2010) – which resulted in the development of education in emergencies action plans that are tailored to priorities for each region but typically include activities pertaining to advocacy, capacity-building, assessments, and contingency planning.

Ongoing discussions between humanitarian actors and the government led to the recognition of education in emergencies as a main component of the Education Programme jointly implemented by UNICEF and the Government in the framework of the 2009-2013 Cooperation Programme. In addition, a formal advocacy meeting was organized in February 2010 with the Cabinet of the Minister of Education and Directors from key sections within the Ministry,

which led to a commitment to endorse a ministerial decree establishing an education in emergencies unit within the Ministry and to provide support to the development of national and regional education in emergency action plans.

Another key achievement stemming from these capacity-building and advocacy efforts is the progressive integration of education in emergencies into national education sector plans. While the Mid-term Action Plan (2010–2013) produced by the dedicated Ministry of Education Task Force did not initially include any considerations related to education in emergencies, but an openness within the Ministry led to including key emergency preparedness and response items into the plan. In addition, the Ministry Task Force has invited UNICEF and Save the Children to be part of a Working Group that will be responsible for integrating ‘cross-cutting issues’ such as education in emergencies into the ten year Education Sector Plan (2010–2020).

It is not unlikely that it will also be those same non-State actors who will be pressing for the inclusion of a more systematic use of the right to education framework. However, in the experience of Cote d’Ivoire, building from the ground up (from the INEE Minimum Standards to institutionalization of education in emergencies) has been a more meaningful strategy than translating international frameworks into national policy for securing the right to education in emergencies and reinforcing the responsibility of the State. There are strong reasons to believe that the institutionalization process itself will be as important as the ministerial decrees and policies in sustaining education in the event of crisis. Ministry of Education officials at the national and regional level see it as their responsibility to coordinate and manage education in emergencies interventions and have acquired the knowledge and skills to do it. How does this process start is a key question. Now that humanitarian actors from the education sector are coordinated under the umbrella of the Education Cluster, it seems that a key role for education cluster coordinators in emergency-affected countries is to share good practices and build the capacity of government while ensuring that they remain in the driving seat.

6. Application of the Right to Education in Emergencies

A. Actions at the International Level

Despite the extremely broad scope of the existing legal frameworks, there are also quite a few challenges and barriers once we leave the desktop and begin thinking of application. One thing is law, norms and standards; another is actually asking what this means in practice. The first part of this process is to

examine the attempts to reinforce the right to education in emergencies through general comments, reports and resolutions. While progress has been made, ultimately the barrier is the non-binding nature of these initiatives.

Article 29 CRC deals with the Aims of Education and is a clear treaty provision that creates an obligation for action on the part of the State. In the case of emergencies such action is well advised to be inspired by the Guiding Principles, which are of course exactly that: non-legally binding guidelines for making the right to education for internally displaced meaningful. Furthermore, a whole body of commentary has been developed by the UN, such as the general comments by the UN treaty body committees, specifically the CESCR General Comment 13 from where we have the 4As framework that goes a long way to further explaining the content of education.⁵⁵ Similarly the Committee of the CRC works towards further elaborating the articles of the Convention, for example on education and unaccompanied children. We are still waiting for a General Comment to be issued following the CRC's 2008 Day of General Discussion on the right to education in emergency situations.⁵⁶ Such a piece of commentary would be extremely helpful, to stand alongside the aforementioned 2008 report by Vernor Muñoz, the former Special Rapporteur on the Right to Education, as a normative official interpretation of how education should look and how we can use the CRC in securing education in violent conflict.

In the meantime however, the committee did issue a report which:

- calls upon States parties to honor their obligation to fully ensure the right to education for every child within their jurisdiction, without any discrimination, throughout all stages of emergency situations.
- calls upon States parties, donors and relief agencies to include education as an integral component of the humanitarian relief response from the outset.
- urges all States parties, in particular those that are prone to natural disasters or in areas likely to be affected by armed conflict, to prepare a plan of action for the provision of the right to education in emergency situations.

⁵⁵ See above for more on the 4As. See also <http://www.right-to-education.org> (last accessed 21 March 2011). The 4As was originally conceived by the first UN Special Rapporteur on the Right to Education, Katarina Tomaševski, and then later adopted by the Committee on Economic, Social, and Cultural Rights, in its *General Comment 1. The Right to Education* (1999).

⁵⁶ The 2008 Day of General Discussion was intended to provide States and other actors in the field of emergencies with more comprehensive guidance as to their obligations to promote and protect the right to education as outlined in articles 28 and 29 CRC.

- calls upon States parties, United Nations agencies, donors and relief agencies to ensure the right of the child to education in emergency situations by adopting education as a relief measure and prioritizing it as a main area of basic relief assistance. The Committee reiterates the critical importance of including education in every humanitarian relief response from the outset.⁵⁷

Many of these recommendations were echoed at the United Nations General Assembly debate on 18 March 2009 on access to education in emergency, post-crisis and transition situations. The debate led to the first ever UN General Assembly resolution on education in emergencies,⁵⁸ adopted on 9 July 2010. Among other things, the resolution reaffirms and urges Member States to ensure access to education in emergency situations for all affected populations and to implement strategies and policies to ensure and support the realization of this right as an integral element of humanitarian assistance and response. Once again however, it is worth noting that these are non-binding declarations, even if they do have the power and potential to form part of that larger body of customary law.

The challenges to the legal guarantees of the right to education are by and large common to all international human rights and norms and may be boiled down to the problems of translation into national legal frameworks,⁵⁹ as well as their enforceability or justiceability – the ability to claim rights and to seek re-dress through judicial mechanisms, at national or international level. However, such challenges are especially exacerbated in times of conflict and emergency where the State can be absent or not willing to live up to its role as the prime duty bearer, and where a number of other actors may enter the scene. These may be rebel groups and other armed fighters who have *de facto* control of large areas and who either ignore the plight of children, exploit or kill them, or indeed take their responsibility serious towards children and civilians; or it may be national civil society groups as well as different international mandates representing the international community, such as UNICEF, UNHCR, or international NGOs, and even peace-enforcing and peace-keeping forces. Though ideally there to create clarity and protection, confusion may also ensue, causing further impunity to certain actors, and sidelining

⁵⁷ CRC, *Recommendations from the Committee on the Rights of Child, Day of General Discussions*, 19 September 2008 (2008).

⁵⁸ GA Res. A/64/290: The Right to Education in Emergency Situations, 27 July 2010.

⁵⁹ For further study on this, see UNICEF, *Law Reform and Implementation of the Convention of the Rights of the Child* (2007).

those already vulnerable – ethnic, linguistic and religious minorities, disabled, poor – can very easily become the result.

Because education is not always acknowledged by all actors as a non-derogable, fundamental human right,⁶⁰ but rather (and more conveniently) as a tool or a non-binding development goal, reached through the Education for All and Millennium Development Goals frameworks, the international community has not been provoked to acknowledge its role as a legal entity once a State fail, and has not evoked the same legal argumentation, nor effectively recognized its own legal responsibility. Similarly, a non-human rights-based response to an emergency by the international community often risk further discrimination in case of unintentional differentiated education provisions, and those already on the fringes of society and legal protection, have their risks further exacerbated.

The main problem from a legal perspective is not the lack of law or frameworks guaranteeing especially primary/basic education, but rather an uncertainty or *ad hoc* nature in application and in the determination of legal status of refugees (often refugees are classified as immigrants, allowing them far fewer rights), or the dodging of State responsibility in the case of IDPs. Secondly, much focus has been on post-conflict situations, but such late stage is only one stage, in a world that seems at times to speculate in the state of war or protracted social conflicts to prolong impunity and lawlessness. Here it is necessary to remember that law is not just a component of re-building countries, but very much a tool in both not starting a conflict and in ending a conflict. Similarly with education, the normative instruments, ranging from the Geneva Conventions Rights to the CRC emphasize the aims of education as including one fostering respect and peace⁶¹ and the non-binding Education For All-framework similarly says that “education should promote not only skills such as the prevention and peaceful resolution of conflict, but also social and ethical values.”⁶²

⁶⁰ *Report of the Special Rapporteur on the Right to Education, supra* note 34, paras 12 and 34.

⁶¹ CRC, *supra* note 3, art. 29: “1. States Parties agree that the education of the child shall be directed to: (a) The development of the child’s personality, talents and mental and physical abilities to their fullest level; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) The development of respect for the child’s parents, his or her own cultural identify, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) The development of respect for the natural environment.”

⁶² World Education Forum, 2000, http://www.unesco.org/education/efa/wef_2000/index.shtml (last accessed 15 March 2011).

B. National Level Implementation

At the national level, laws and policies, in the form of the constitution and education acts and bills that cater for either the situation of internal displacement or for refugees, must be in place. National legal frameworks must be in line with international legal standards, in particular the CRC and the Refugee Convention, as well as, less binding, the Guiding Principles. This is the real power of international law and norms: it dictates the standards which must be lived up to by all ratifying States. This is especially interesting in the case of the Refugee Convention because it so clearly asserts itself in the debate around where these standards come from, by affirming that refugees should be “accorded the same treatment as is accorded to nationals with respect to elementary education”.⁶³

In other words, that ‘common standard of achievement’, to paraphrase the UDHR, which the international normative frameworks represent must therefore be reflected in national legislations. This is the case in most countries of the world, and a well-publicized example is the recent Constitutional Amendment in India.⁶⁴ A more conflict and refugee-related example is the South African Refugee Act of 1998 which directly follows the Refugee Convention by saying that “refugees and their children are entitled to the same basic health service and basic primary education, which citizens of the Republic receives from time to time”. Not all countries have such legislation in place, let alone the policies and infrastructure to provide education. And there also need to be a note of caution, as the Machel 10-year review study makes clear: “adoption of relevant national legislation is not sufficient. To give the legislation ‘teeth’ requires administrative and other implementation mechanisms, such as the establishment of relevant institutions or bodies with corresponding powers and training. While vitally important, these mechanisms require more resources than the simple adoption of legislative provisions. International cooperation and support are often critical to help countries emerging from armed conflict meet their obligations.”⁶⁵ Furthermore, when education afforded to nationals is not itself meeting international human rights standards, let alone national obligations in the constitution, education laws or policies, it is difficult to expect that refugees will be secured such

⁶³ Refugee Convention, *supra* note 11, Art. 22(1).

⁶⁴ See also the Right to Education Project’s database on constitutional guarantees for the right to education: <http://www.right-to-education.org> (last accessed 21 March 2011).

⁶⁵ UNICEF, *Children and Conflict in a Changing World. Machel Study 10-Year Strategic Review* (2009), at 64.

education rights. In these cases it is usually UNCHR and UNICEF who is asked by governments or the UN to assist.

C. Embedding the Right to Education in Emergencies in Côte d'Ivoire

In Côte d'Ivoire the creation of an education in emergencies unit within the Ministry of Education and the integration of education in emergencies into sector plans and policy frameworks are undeniable achievements from the last few years. This work now needs to be picked up, monitored and reported upon by those concerned by human rights: the State, human rights bodies, and civil society. If the accountability for the right to education in emergencies now appears to be clearly placed where it should be, it is the role of that same duty-bearer, the State, to allow civil society, Ombudsmen and an independent judiciary to hold the government accountable. The possibility of courts and quasi-judicial bodies to consider claims concerning alleged violation of the rights and to provide remedies must now be explored, and the connection between the institutionalization in national policy frameworks and access to justice in Côte d'Ivoire must be tested.

The enforceability of human rights assumes that there is an independent and functioning justice system that is freely accessible to all, but like in many other fragile States, the judicial system in Côte d'Ivoire, even after the conflict, is highly corrupt and of very little capacity. Grave violations of human rights such as murder and rape have not systematically been challenged by the authorities or in the judicial system. In theory, the African Court or the court of the ECOWAS could be tested to as a powerful way to bring education issues to public attention, resulting in both naming-and-shaming as well as in decisions binding on the state. However, after almost ten years of crisis and immediate recovery, civil society organizations have been severely affected and some dismantled, and few are left to take on cases or even to sound the alarm. If international human rights groups such as Amnesty International and Human Rights Watch could place a greater focus on the right to education in Côte d'Ivoire, this may provide incentives both to human rights monitoring and reporting mechanisms and to national civil society organizations to follow through on legal recourses.

Conclusion

Despite challenges of translation in to action at both the national and international level, despite continuous negligence and resulting impunity, and despite lack of resources and commitments, there is a growing awareness of use of

tools offered by international law to improve the right to education for children in emergencies. The work and standard setting of the INEE and the IASC has contributed to this, albeit there remains an uphill struggle to get the humanitarian community to fully embrace human rights and humanitarian law. Similarly, it is clear that despite the limitations of the policy frameworks such as the Millennium Development Goals and the Education for All movement, the possibility of combining these with the GCs, the ICC Statute, the 1951 Refugee Convention, the Guiding Principles on Internal Displacement, and not least the CRC, offers a very high level of potential protection for all groups of learners (and education personnel) affected by emergencies: those living in conflict zones, in internal displacement as well as those forced to seek refuge across an international border, be they child soldiers, poor, marginalized, disabled, or just unfortunate enough to have been caught up in humanitarian emergencies.

Chief amongst these key treaties is the CRC. It incorporates all the major elements relevant for the protection of education, it is universally ratified and has a very strong and able champion in UNICEF, the key UN agency for children. In addition, the CRC has inspired one of the most significant developments in the last 10 years: the UN Monitoring and Reporting Mechanism (MRM) of Security Council Resolution 1612, which enables the Security Council to rely and act on accurate and country-specific information around six grave child's rights violations, of which attacks on schools is one and the killing and maiming of children is another. However, both the reporting procedures to the CRC and the MRM mechanism have proven more time-consuming than envisioned and, in the case of the CRC, perceived to be without any strong enforcement mechanism. These are great challenges.

The MRM needs to find its legs and become more institutionalized: coverage needs to be more comprehensive, with the Security Council authorizing detailed investigation of all countries in which there are concerns. The monitoring system suffers from limited resourcing and fragmented reporting that is primarily based on information gathered through UN country missions. If the MRM is to provide a more accurate picture of the scale and scope of gross human rights violations against children, it needs to be resourced and equipped to conduct more robust investigation, and the United Nations Secretary-General should call on member states to increase support.⁶⁶ Similarly, the ambitions of a current working group on an individual complaints mechanism for the CRC must be matched with political will to sign and ratify an optional protocol which makes such access to recourse possible.

⁶⁶ UNESCO, *Education for All Global Monitoring Report 2011* (2011), at 253.

As documented above, the efforts to secure education for all in Côte d'Ivoire were many, and though the introduction of the IASC Cluster system and the use of the INEE Minimum Standards both came relatively late in the crisis, they have both been successful in re-focusing the education system. Yet, the status of the rule of law has and remains a great concern, and all of these shortcomings of the international legal framework, MRM and particularly the reporting to the CRC, are illustrative of the failure to uphold the right to education in Côte d'Ivoire during the worst years of the past decade. Up until the most recent crisis, UNICEF was supporting the government of Côte d'Ivoire with the preparations of its 5-year report to the Committee on the Rights of the Child for 2011. The previous report was submitted in January 1999,⁶⁷ and considered by the CRC in May 2001.⁶⁸ Ten years have therefore passed, with no coverage during a crisis that saw a significant rise in the number and gravity of children's rights violations. And sadly Côte d'Ivoire is only one of many countries where such neglect in reporting takes place.

At a time (Spring 2011) where it is uncertain when Côte d'Ivoire will emerge from the recent slip back into civil war, it is extremely worrying that the necessary bulwark may not be in place to respect, protect or fulfill rights, including the right to education. The education system does not only suffer, but also contributes to the continued exacerbation of ethnic differences as a tool to enhance the war between north and south. The *2011 EFA Global Monitoring Report* draws the conclusion that the country is not yet out of the woods, let alone ready for another battering: in "2006, fewer than one-third of children in the north and north-west were attending school – around half the level in most of the south. Recent education programmes risk reinforcing the north-south divide, with a school subsidy initiated as a pilot project in 2002 continuing to reach only schools in the south".⁶⁹

To this end, the international community must promote the CRC to help us remember what education is foremost about. Not only does education go about its business of ensuring children their basic human right to learn and to be children, but in emergencies it also saves lives through protected spaces and psychosocial interventions, and it can help foster peace and reconciliation in preparing the child for "friendship among all peoples, ethnic, national and religious groups and persons of indigenous groups".⁷⁰ The Committee on the

⁶⁷ Committee on the Rights of the Child, *Initial Reports of States Parties due in 1993: Côte d'Ivoire*, CRC/C/8/Add.41, 27 April 2000.

⁶⁸ Committee on the Rights of the Child, *Concluding Observations*, CRC/C/15/Add.155, 9 July 2001.

⁶⁹ UNESCO, *supra* note 67, at 167.

⁷⁰ CRC, *supra* note 3, Art. 29.

Rights of the Child points to the need for an education “which succeeds in reconciling diverse values through dialogue and respect for difference”.⁷¹ The Vienna World Conference on Human Rights in 1993 similarly emphasized that education can be a vehicle for promoting understanding, tolerance, and peace, thereby contributing to reconciliation and rebuilding the social fabric in war-torn societies.⁷² In this sense, the words from the UNESCO Constitution have never been truer, and education has never more central to the solution: “since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed”.⁷³

⁷¹ Committee on the Rights of the Child, *General Comment No. 1, The Aims of Education*, CRC/GC/2001/1, 27 April 2001, para. 4.

⁷² Vienna Declaration and Programme of Action (Vienna Declaration), adopted by the World Conference on Human Rights, A/CONF.157/24 (Part I) at 20, 25 June 1993, Section II, 33.

⁷³ Constitution of the United Nations Educational, Scientific and Cultural Organization (1945), at <http://www.unesco.org> (last accessed 21 March 2011).