



HUMAN
RIGHTS
WATCH

PROTECTING SCHOOLS FROM MILITARY USE

Laws, Policies, and Military Doctrine





Protecting Schools from Military Use

Law, Policy, and Military Doctrine

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Introduction

This report collects recent and historic examples of laws, court decisions, military orders, policies, and practice by governments, armed forces, non-state armed groups, and courts aimed at protecting schools and universities from use for military purposes.

The examples in this report of law, policy, and doctrine protecting schools and universities from military use should encourage more governments and non-state groups to adopt their own concrete measures to protect students, educators, and the institutions in which they study.

Since 2007, the military use of schools or universities has been documented in at least 29 countries with armed conflict or insecurity, according to the Global Coalition to Protect Education from Attack, of which Human Rights Watch is a member. That number represents the majority of countries experiencing armed conflict during the past decade. Examples can be found in Africa, the Americas, Asia, Europe, and the Middle East. The military use of schools is therefore a global problem, needing international attention and response.

Schools and universities have been taken over either partially or entirely to be converted into military bases and barracks; used as detention and interrogation facilities; for training fighters; and to store or hide weapons and ammunition.

Human Rights Watch has investigated the military use of schools in Afghanistan, the Democratic Republic of Congo, the Central African Republic, India, Iraq, Pakistan, Palestine, the Philippines, Somalia, South Sudan, Syria, Thailand, Ukraine, and Yemen. Further information on our research can be found in the annex of this report.

Our research has documented how the use of schools for military purposes endangers students' and teachers' safety, and can interfere with students' right to education.

Protections for education from military interference date back at least to Roman times when Emperor Constantine proclaimed that all professors of literature must be free from the obligation to accommodate or quarter soldiers in order that “they may more easily train many persons in the liberal arts.” For more on historical protections, see chapter 3.

1935: The Roerich Pact between various countries in the Americas states that educational institutions “shall be considered as neutral and as such respected and protected by belligerents.”

1948: The United Nations General Assembly adopts the Universal Declaration of Human Rights, consisting of 30 articles, including that “everyone has the right to an education.” In the following decades, various international and regional treaties and declarations repeat and elaborate on this core right.

1949: The Fourth Geneva Convention lays out protections for civilians during armed conflict, including that an occupying power—a military force controlling the territory of another country—“shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.” The International Committee of the Red Cross (ICRC), which promotes respect for international humanitarian law and its implementation in national law, has elaborated that this requirement is “very general in scope,” and that occupying authorities “are bound not only to avoid interfering with [the] activities [of schools], but also to support them actively... The Occupying Power must therefore refrain from requisitioning staff, premises or equipment which are being used by such establishments.”

1977: The two Additional Protocols to the Geneva Conventions outline further protections for children, schools, and education, including recognizing that receiving an education is a “fundamental guarantee” for children, even in situations of non-international armed conflict.

In 2009, the issue of the military use of schools began to garner international attention. Early that year, the United Nations Committee on the Rights of the Child—the international body of experts that oversees implementation of the Convention on the Rights of the Child—recommended that parties to the treaty “fulfill their obligation therein to ensure schools as zones of peace and places where intellectual curiosity and respect for universal human rights is fostered; and to ensure that schools are protected from military attacks or seizure by militants; or used as centres for recruitment.”

Later in that year, Mexico, acting as president of the UN Security Council, noted the council “urges parties to armed conflict to refrain from actions that impede children’s access to education, in particular ... the use of schools for military operations.”

Since then, both the Committee on the Rights of the Child and the Security Council, increasingly joined by other international and regional bodies, have continued to elaborate protections that should be provided to protect children’s safety and students’ right to education from the potential negative consequences of military use of schools.

In 2012, in response to this increased interest, a coalition of UN agencies and civil society organizations, including Human Rights Watch, initiated consultations with experts from the ministries of foreign affairs, education, defense, as well as the armed forces of countries from various world regions, to develop guidelines directed at both government armed forces and non-state armed groups on how to avoid using schools and mitigate the negative consequences of such use. In 2014, the government of Norway took over the global consultation on these guidelines, and in December 2014 oversaw the release of the finalized *Guidelines for Protecting Schools from Military Use during Armed Conflict*.

In early 2015, the governments of Norway and Argentina led a consultative process that led to the Safe Schools Declaration, a political commitment by countries to do more to protect students, teachers, schools, and universities during armed conflict, including through use of the *Guidelines* to refrain from using schools and universities for military purposes. As of March 14, 2017, 59 countries had endorsed the declaration.

The most recent development in the Security Council’s increased response to the problem of military use of schools came in June 2015, with the unanimously supported Resolution 2225. It expressed “deep concern that the military use of schools in contravention of applicable international law may render schools legitimate targets of attack, thus endangering the safety of children.” The Security Council encouraged all member states “to take concrete measures to deter such use of schools by armed forces and armed groups.”

See chapter 1 for more information on international law and standards protecting schools from military use.

In addition to laws and standards at the international level, many individual countries have also adopted their own laws and policies to protect schools and universities from military use. Indeed, protections for schools are likely to be most effectively guaranteed when they are explicitly enumerated domestically. Chapter 2 contains examples of legislation, military orders, jurisprudence, municipal ordinances, and other statements of doctrine and policy from around the world, including from armed non-state actors.

Most of these examples of domestic laws and policies fall within five linking themes, although some countries fall into multiple categories:

- 1) Many countries that have experienced the military use of schools, or countries that have deployed their armed forces to conflict zones, have created new policies in response to these experiences.
- 2) At least three countries—Burma, Nepal, and Sudan—have included commitments to refrain from all military use of schools as part of peace agreements between the government and domestic armed non-state actors.
- 3) A number of Latin American countries have laws making university campuses immune from action by government security forces: national police and military units cannot enter the grounds without the university rector's authorization. Such laws are related to student-led movements to reform universities in Latin America, which valued universities' autonomy or independence from the state.
- 4) At least six countries have laws modeled on the Manoeuvres Act enacted by the British Parliament in 1897 regulating the conducting of military manoeuvres and excluding certain areas, such as schools, from encampments or other related interferences. The UK law (and its subsequent updates) did not define what constitutes a military manoeuvre. In 1991, during the Gulf War, the then-UK minister of state for the armed forces broadly defined the term as “the strategic or tactical movement of a military force.” A fair reading of the term might also suggest that it refers to military training exercises, involving a degree of simulation, sometimes popularly referred to as “war games.” Even with this limited definition, such laws are still relevant to protecting schools from military use in light of the adage that soldiers should “fight like they train.”

- 5) Since 2009, and hand-in-hand with increased international interest and the drafting of the Safe Schools Declaration in 2015, has been more consideration of the issue of protecting schools from military use in some domestic contexts. Further domestic examples are likely in the coming years, as demonstrated by recent policy statements from armed forces and ministries of foreign affairs.

Disclaimer: The inclusion of a law or policy in this collection does not reflect any assessment by Human Rights Watch as to whether the relevant country or entity has adhered to its own doctrine. Instead, the examples aim to encourage greater awareness that alternatives to military use of schools have been considered both feasible and necessary, and to ease greater monitoring for their enforcement.

Recommendations

All Countries Should:

- Endorse the Safe Schools Declaration, and thereby endorse and commit to use and bring into their domestic policy and operational frameworks the *Guidelines on Protecting Schools from Military Use during Armed Conflict*.
- Take concrete measures to deter the use of schools by armed forces and non-state armed groups, including through the explicit regulation of military use of schools, using the *Guidelines on Protecting Schools from Military Use during Armed Conflict* as a minimum standard.

I. International

African Union

African Charter on Human and Peoples' Rights, 1981

Every individual shall have the right to education.

– African Charter on Human and Peoples' Rights (also known as the Banjul Charter), adopted by the eighteenth Assembly of Heads of State and Government of the Organisation of African Unity, June 1981, article 17(1).

African Charter on the Rights and Welfare of the Child, 1990

- 1) Every child shall have the right to an education...
- 3) States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realisation of this right and shall in particular:
 - a) provide free and compulsory basic education;
 - b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;
 - c) make the higher education accessible to all on the basis of capacity and ability by every appropriate means;
 - d) take measures to encourage regular attendance at schools and the reduction of drop-out rates;
 - e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

– African Charter on the Rights and Welfare of the Child, adopted by the Organisation of African Unity in 1990, article 11.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003

Article 12 - Right to Education and Training

- 1) States Parties shall take all appropriate measures to:

- c) protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices.

– Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, 2003.

Peace and Security Council of the African Union (AU) 597th meeting, 2016

Council expressed deep concern over the continuing violations of children’s rights and violence perpetrated against children, including sexual violence, attacks against schools, as well as wanton destruction of educational infrastructure, not only during situations of armed conflicts, but also during times of peace...

Council noted with serious concern that despite African and global engagements towards the protection of children affected by armed conflict and the progress achieved to strengthen the existing legal frameworks, grave violations of children’s rights still continue in most African countries affected by conflicts. Council also noted with concern, the weak and slow implementation of existing AU and international legal instruments relating to protection of children’s rights. In this regard, Council underscored the need for all Member States to mainstream the protection of children, educational infrastructure and personnel in their public administration and management systems...

Council called on all Member States in conflict situations to comply with International Humanitarian law and to ensure that schools are not used for military purposes. In this context, Council welcomed the initiatives taken by some Member States to promote and protect the right of children to education and to facilitate the continuation of education in situations of armed conflicts. In this respect, Council commended the fifteen (15) AU Members States, namely, the Central African Republic, Chad, Cote d’Ivoire, Kenya, Liberia, Madagascar, Mozambique, Niger, Nigeria, Sierra Leone, South Africa, South Sudan, Somalia, Sudan and Zambia, which have already endorsed the Guidelines for Protecting Schools and Universities from Military Use During Armed Conflicts, also popularly known as the “Safe Schools Guidelines” and urged all the other AU Member States, which have not yet done so, to also endorse these Guidelines. In the same context, Council

underscored the need to further strengthen the Guidelines in order to ensure that they are applicable to all situations and circumstances...

- Press Statement on the Peace and Security Council of the African Union’s 597th meeting on May 10, 2016: “Children in Armed Conflicts in Africa with particular focus on protecting schools from attacks during armed conflict.”

Peace and Security Council of the African Union 615th meeting, 2016

Council, once again, called on all Member States in conflict situations to comply with International Humanitarian Law (IHL) and to ensure that schools are not attacked and used for military purposes. In this context, Council welcomed the initiatives taken by some Member States to promote and protect the right of children to education and to facilitate the continuation of education even in situations of armed conflicts. Council further encouraged all Member States that have not yet done so, to sign the Safe Schools’ Declaration...

- Press Statement on the Peace and Security Council of the African Union’s 615th meeting on August 9, 2016: “Education of Refugees and Displaced Children in Africa.”

Association of Southeast Asian Nations (ASEAN)

ASEAN Human Rights Declaration, 2012

Every person has the right to education.

- ASEAN Human Rights Declaration, adopted November 2012, article 31(1).

Commission of Inquiry on Syria

Seventh Report, 2014

Children’s right to education has been denied by the use of schools as military bases and training camps...

The commission of inquiry recommends that all parties... Respect and protect schools and hospitals, and maintain their civilian character.

- Report of the independent international commission of inquiry on the Syrian Arab Republic, Human Rights Council, February 12, 2014, A/HRC/25/65, para. 78 & 157.

Fifteenth Report, 2017

Education

13. As defined by General Comment No. 13 of the United Nations Committee on Economic, Social and Cultural Rights, “education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.”
14. The legal obligations of Governments concerning the right to education consist of:
(i) the duties found in article 2.1 of the ICESCR; and (ii) the more specific obligations to recognise, respect, protect and fulfil this and other rights. The obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide.
15. Moreover, under IHL, schools may only be the object of attack by warring parties when used for military purposes, and such attacks require prior warning when the school is located in a densely populated civilian area. [Citation to International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, 2005, Volume I: Rules, at Rule 20.]

– Report of the Independent International Commission of Inquiry on the Syrian Arab Republic “Special inquiry into the events in Aleppo,” A/HRC/34/64, March 1, 2017, annex I, paras. 13-15.

Committee on Economic, Social and Cultural Rights

General Comment 13: The Right to Education, 1999

There is a strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education... If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State party's maximum available resources.

The right to education, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfill... The obligation to respect

requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfill (facilitate) requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education. Finally, States parties have an obligation to fulfill (provide) the right to education...

States have obligations to respect, protect and fulfill each of the ‘essential features’ (availability, accessibility, acceptability, adaptability) of the right to education. By way of illustration, a State must respect the availability of education by not closing private schools; protect the accessibility of education by ensuring that third parties ... do not stop girls from going to school; [and] fulfill (facilitate) the acceptability of education by taking positive measures to ensure that education is ... of good quality for all...

– General Comment No. 13: The right to education, Committee on Economic, Social and Cultural Rights, E/C.12/1999/10, December 8, 1999, paras. 45-46, & 50.

Concluding Observations on Thailand, 2015

The Committee recommends that the State party take all necessary measures to ensure that the situation in the southern border provinces has no adverse effects on the enjoyment of the rights enshrined in the Covenant. In particular, it should ensure that schools, teachers and medical personnel are adequately protected from attacks and that everyone has access to education...

– Concluding observations on the combined initial and second periodic reports of Thailand, E/C.12/THA/CO/1-2, June 19, 2015, para. 34.

Committee on the Elimination of Discrimination Against Women

Concluding Observations: India, 2014

The Committee is equally concerned that girls are subjected to sexual harassment and violence including in conflict-affected regions where the reported occupations of schools by the security forces contributes to school drop-out.

The Committee ... calls upon the State party ... to take measures to... Prohibit the occupation of schools by security forces in conflict-affected regions in compliance with international humanitarian and human rights law standards...

– Concluding observations on the combined fourth and fifth periodic reports of India, Committee on the Elimination of Discrimination Against Women, CEDAW/C/IND/CO/4-5, July 18, 2014, paras. 26-27.

Committee on the Rights of the Child

Day of General Discussion on “The Right of the Child to Education in Emergency Situations”: Recommendations, 2009

With reference to the obligation under international law for States to protect civil institutions, including schools, the Committee urges States parties to fulfill their obligation therein to ensure schools as zones of peace and places where intellectual curiosity and respect for universal human rights is fostered; and to ensure that schools are protected from military attacks or seizure by militants; or use as centres for recruitment. The Committee urges States parties to criminalize attacks on schools as war crimes in accordance with article 8(2)(b) (ix) of the Rome Statute of the International Criminal Court and to prevent and combat impunity.

– Day of General Discussion on “the Right of the Child to Education in Emergency Situations”: Recommendations, Committee on the Rights of the Child, 49th Session, October 3, 2008, para. 35.

OP-CAC Concluding Observations: Colombia, 2010

The Committee is ... concerned over continued reports indicating the occupation of schools by the armed forces and over military operations in the vicinity of schools. The Committee recognizes the State party’s duty to guarantee the right to education throughout the territory, however underlines that military presence in the vicinity of schools significantly increases the risk of exposing school children to hostilities and retaliations by illegal armed groups.

The Committee urges the State party to immediately discontinue the occupation of schools by the armed forces and strictly ensure compliance with humanitarian law and the principle of distinction. The Committee urges the State party to conduct prompt and impartial investigations of reports indicating the occupation of schools by the armed

forces and ensure that those responsible within the armed forces are duly suspended, prosecuted and sanctioned with appropriate penalties.

- Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Concluding observations: Colombia, U.N. Doc. CRC/C/OPAC/COL/CO/1 (2010), paras. 39-40.

OP-CAC Concluding Observations: Sri Lanka, 2010

The Committee ... calls upon the State party to: (a) Immediately discontinue military occupation and use of the schools and strictly ensure compliance with humanitarian law and the principle of distinction and to cease utilizing the primary section of V/Tamil MV school and the Omanthai Central College in Vavuniya to host separatists; and (b) Ensure that school infrastructures damaged as a result of military occupation are promptly and fully restored.

- Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Concluding observations: Sri Lanka, CRC/C/OPAC/LKA/CO/1 (2010), para. 25.

Concluding Observations: Afghanistan, 2011

The Committee is particularly concerned that, in the prevailing conditions of conflict, schools have been used as polling stations during elections and occupied by international and national military forces.

The Committee recommends that the State party ... (i) Use all means to protect schools, teachers and children from attacks, and include communities, in particular parents and children, in the development of measures to better protect schools against attacks and violence...

- Consideration of reports submitted by States parties under article 44 of the Convention Concluding observations: Afghanistan, CRC/C/AFG/CO/1 (2011), paras. 61-62.

Concluding Observations: Syria, 2012

The Committee also expresses serious concern about consistent reports that some schools have been used by the State party's security forces as detention centres.

The Committee strongly urges the State party ... to stop using schools as detention centres, and to strictly ensure compliance with humanitarian law and the principle of distinction...

– Consideration of reports submitted by States parties under article 44 of the Convention
Concluding observations: Syria, CRC/C/SYR/CO/3-4 (2012), paras.51-52.

Concluding Observations: Thailand, 2012

[T]he Committee remains concerned that in the context of the ongoing armed violence:... Access to education has been disrupted by the targeting of government schools and teachers by non-State armed groups and by the presence of government military and paramilitary units near the schools.

The Committee recommends that the State party:

- a) Take immediate measures to ensure that the situation in the southern border provinces has no adverse effects directly and indirectly on children...
- b) Ensure that schools are not disrupted by State military and paramilitary units and are protected from attacks by non-state armed groups...

– Consideration of reports submitted by States parties under article 44 of the Convention
Concluding observations: Thailand, CRC/C/THA/CO/3-4 (2012), paras.84-85.

Concluding Observations: Israel, 2013

The Committee urges the State party to: Cease attacks against schools and use of schools as outposts and detention centres in the OPT...

– Consideration of reports submitted by States parties under article 44 of the Convention
Concluding observations: Israel, CRC/C/ISR/CO/2-4 (2013), paras.63-64

OP-CAC Concluding Observations: Yemen, 2014

The Committee is concerned at the deliberate attacks on and occupation of schools and hospitals by all parties to the conflict and the denial of humanitarian access, all of which have a negative impact on the survival and development of children.

The Committee urges the State party to: ensure that the relevant domestic legislation explicitly prohibits the occupation and use of, and attacks on, schools and hospitals, in line with international humanitarian law; expedite the reconstruction of these facilities as appropriate; and take practical measures to ensure that cases of unlawful attacks on

and/or occupation of schools and hospitals are promptly investigated and that the perpetrators are prosecuted and punished.

- Concluding observations on the report submitted by Yemen under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, CRC/C/OPAC/YEM/CO/1, February 26, 2014, paras. 29-30.

OP-CAC Concluding Observations: India, 2014

[T]he Committee is concerned at the deliberate attacks on schools by non-State armed groups, as well as the occupation of schools by State armed forces in north-eastern India and in areas where Maoist armed groups are operating.

The Committee urges the State party to take all necessary measures to prevent the occupation and use of as well as attacks on places with a significant presence of children, such as schools, in line with international humanitarian law. It also urges the State party to ensure that schools are vacated expeditiously, as appropriate, and to take concrete measures to ensure that cases of unlawful attacks on and/or occupation of schools are promptly investigated and that perpetrators are prosecuted and punished.

- Concluding observations on the report submitted by India under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, CRC/C/OPAC/IND/CO/1, July 7, 2014, paras. 28-29.

Concluding Observations: Zimbabwe, 2016

[T]he Committee remains concerned ... about: ... The reported use of some schools by militia groups as bases and for political purposes, as well as cases of harassment, expulsion and unlawful arrests and detention of teachers and students during and after the last parliamentary and presidential elections.... [T]he Committee urges the State party to: ... Take appropriate measures to deter the military or political use of schools and establish mechanisms to monitor and investigate allegations of attacks on education facilities.

- Concluding observations on the second periodic report of Zimbabwe, CRC/C/ZWE/CO/2, March 7, 2016, paras. 68-69.

Concluding Observations: Democratic Republic of Congo, 2017

The Committee notes the initiatives taken by the Government to improve access of children to schools, including ... to prohibit the occupation of schools by the military back in 2013. However, it regrets that the efforts are not sufficient and a large number of school age children in the country remain out of school. In particular, the Committee expresses its serious concern that: ... Armed groups continue to attack schools, student and teachers in conflict affected areas putting children at risk of abduction and recruitment and use schools for military purposes...

In the light of its general comment No. 1 (2001) on the aims of education and taking note of Goal 4 of the Sustainable Development Goals, the Committee recommends that the State party: ... Implement its laws and regulations that prohibit attacks and occupation of schools by the military and take measures to bring those responsible to justice...

– Concluding observations on the combined third to fifth periodic report of the Democratic Republic of Congo, CRC/C/COD/CO/3-5, February 28, 2017, paras. 39-40.

Concluding Observations: Central African Republic, 2017

While welcoming the State party's endorsement of the Safe Schools Declaration, in June 2015, to protect education during armed conflict, the Committee is deeply concerned about attacks against students, teachers and schools as well as the military use of schools by parties to the conflict.

The Committee urges the State party to take the measures necessary to deter the use of schools by parties to the conflict, including by bringing the "Guidelines for protecting schools and universities from military use during armed conflict" into military policy and operational frameworks; and investigate and prosecute attacks against education and bring perpetrators to justice. It should further ensure that children affected by the conflict can be reintegrated into the education system, including through non-formal education programmes.

– Concluding observations on the second periodic report of the Central African Republic, CRC/C/CAF/CO/2, March 8, 2017, paras. 62-63.

Convention on the Rights of the Child

Convention on the Rights of the Child, 1989

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - a) Make primary education compulsory and available free to all;
 - b) Encourage the development of different forms of secondary education, ... make them available and accessible to every child...;
 - c) Make higher education accessible to all on the basis of capacity by every appropriate means; ...
 - d) Take measures to encourage regular attendance at schools and the reduction of dropout rates.

– Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of November 20, 1989, entry into force September 2, 1990, article 28.

Optional Protocol on the Involvement of Children in Armed Conflict, 2000

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences it has for durable peace, security and development,
Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools...

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law...

– Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted by General Assembly resolution A/RES/54/263 of May 25, 2000, preamble.

Council of Europe

Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1952

No person shall be denied the right to education.

– Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1952, article 2.

Revised European Social Charter, 1996

Part I

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:...

9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.
10. Everyone has the right to appropriate facilities for vocational training...

Article 17 – The Right of Children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. (a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose; ...
2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

– Revised European Social Charter, 1996.

European Union

Charter of Fundamental Rights, 2000

Article 13 – Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14 – Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.

– Charter of Fundamental Rights, 2000.

European Parliament recommendation to the Council of 12 March 2014 on humanitarian engagement of armed non-state actors in child protection

The European Parliament ... Addresses the following recommendations to the Commissioner for Development and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy: ... call on the Member States to join international efforts to prevent attacks against and the military use of schools by armed actors through endorsing the draft Lucens Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict...

– European Parliament recommendation to the Council on humanitarian engagement of armed non-state actors in child protection, 2014/2012(INI), March 12, 2014.

Geneva Conventions

Fourth Geneva Convention, 1949

Art. 50.

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

Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their

own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend.

– Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, August 12, 1949.

Protocol I Additional to the Geneva Conventions, 1977

Art 52. General protection of civilian objects

- (3) In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used...

Art 58. Precautions against the effects of attacks

The Parties to the conflict shall, to the maximum extent feasible:

- (a) without prejudice to Article 49 of the Fourth Convention, endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives;
- (b) avoid locating military objectives within or near densely populated areas;
- (c) take the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.

– Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977.

Protocol II Additional to the Geneva Conventions, 1977

Art 4. Fundamental guarantees

- 3) Children shall be provided with the care and aid they require, and in particular:
 - (a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care...

Art 13. Protection of the civilian population

- 1) The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.

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

Inter-American Framework

Charter of the Organization of American States, 1967

The Member States will exert the greatest efforts, in accordance with their constitutional processes, to ensure the effective exercise of the right to education...

– Charter of the Organization of American States, 1967, article 49.

Additional Protocol to the American Convention on Human Rights, 1988

Everyone has the right to education.

– Additional Protocol to the American Convention on Human Rights, Protocol of San Salvador, 1988, article 13.

Inter-American Democratic Charter, 2001

Education is key to strengthening democratic institutions, promoting the development of human potential, and alleviating poverty and fostering greater understanding among our peoples. To achieve these ends, it is essential that a quality education be available to all, including girls and women, rural inhabitants, and minorities.

– Inter-American Democratic Charter, 2001, article 16.

Inter-American Commission on Human Rights (IACHR), Fourth report on human rights situation in Colombia, 2013

In addition to poverty, a number of conflict-related factors have undermined the right of children and adolescents to education: the destruction, the occupation and the forced closure of schools; the scarcity of teachers because of the threats and attacks made against them; the anti-personnel mines and unexploded ordnance in and around the schools and school sidewalks; the abusive use of school areas for military propaganda

and recruitment activities; and forced displacement. Added to the aforementioned there is a high level of violence, including student harassment. The IACHR observes that Colombian boys and girls have, as well as all the boys and girls of the hemisphere, the right to access an education. The schools, within the framework of an armed conflict, are also established as instruments to prevent forced recruitment and other serious violations of children's and adolescents' human rights. In this regard, the Commission reiterates that schools should serve as shelter for children and provide them protection. Therefore, their use for military purposes places children in a situation of risk of attacks and impedes the exercise of their right to education.

– Inter-American Commission on Human Rights. Truth, Justice, and reparation: Fourth report on [the] human rights situation in Colombia, OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, para. 732.

International Committee of the Red Cross

Commentary on the Geneva Conventions, Volume IV, 1958

The obligation of the Occupying Power to facilitate the proper working of institutions for children is very general in scope. The provision applies to a wide variety of institutions and establishments of a social, educational or medical character, etc., which exist under a great variety of names in all modern States (e.g. child welfare centres, orphanages, children's camps, childrens' homes and day nurseries, "medico-social" reception centres, social welfare services, reception centres, canteens, etc.). All these organizations and institutions, which play a most valuable social role even in normal times, become of increased importance in wartime when innumerable children are without their natural protectors, who have fallen on the battlefield, or have been victims of bombing, conscripted to do forced labour, interned or deported...

The Occupying Powers must, with the co-operation of the national and local authorities, facilitate the proper working of children's institutions. That means that the occupying authorities are bound not only to avoid interfering with their activities, but also to support them actively and even encourage them if the responsible authorities of the country fail in their duty. The Occupying Power must therefore refrain from requisitioning staff, premises or equipment which are being used by such establishments and must give people who are responsible for children facilities for communicating freely with the occupation authorities; when their resources are inadequate, the Occupying Power must

ensure by mutual agreement with the local authorities that the persons concerned receive food, medical supplies and anything else necessary to enable them to carry out their task. It is in that sense that the expression “the proper working” of children's institutions should be understood.

This provision assures continuity in the educational and charitable work of the establishments referred to and is of the first importance, since it takes effect at a point in children's lives when the general disorganization consequent upon war might otherwise do irreparable harm to their physical and mental development.

– Commentary on the Geneva Conventions of 12 August 1949, 1958, Volume IV, pp. 286-287.

International Covenant on Economic, Cultural and Social Rights

1. The States Parties to the present Covenant recognize the right of everyone to education ...
2. ... [W]ith a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, ... shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, ...;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued ... and the material conditions of teaching staff shall be continuously improved.

– International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200A (XXI) of December 16, 1966, entry into force January 3, 1976, article 13.

International Red Cross and Red Crescent

Resolution 2 of 31st International Conference of the Red Cross and Red Crescent, 2011

[Annex 1]

Objective 2.1: To enhance the protection of children in armed conflict...

(c) Protection of education in armed conflict

States take all feasible measures to prevent civilian buildings dedicated to education from being used for purposes that could cause them to lose their protection under international humanitarian law.

– Resolutions of the 31st International Conference of the Red Cross and Red Crescent, Resolution 2, “4-year action plan for the implementation of international humanitarian law,” Annex 1, 2011.

League of Arab States

Arab Charter on Human Rights, 2004

1. The eradication of illiteracy is a binding obligation upon the State and everyone has the right to education...
4. The States parties shall guarantee to provide education directed to the full development of the human person and to strengthening respect for human rights and fundamental freedoms.

– Arab Charter on Human Rights, adopted by the Council of the League of Arab States, May 22, 2004, article 41.

Non-State Armed Groups

Deed of Commitment for the Protection of Children from the Effects of Armed Conflict, 2010

[We] solemnly commit ourselves to the following terms: ...

To further endeavor to provide children in areas where we exercise authority with the aid and care they require, in cooperation with humanitarian or development organizations where appropriate. Towards these ends, and among other things, we will: ... v) avoid using for military purposes schools or premises primarily used by children.

– Geneva Call, Deed of Commitment under Geneva Call for the Protection of Children from the Effects of the Armed Conflict (2010), art. 7.

Safe Schools Declaration

Safe Schools Declaration, 2015

The impact of armed conflict on education presents urgent humanitarian, development and wider social challenges. Worldwide, schools and universities have been bombed, shelled and burned, and children, students, teachers and academics have been killed, maimed, abducted or arbitrarily detained. Educational facilities have been used by parties to armed conflict as, inter alia, bases, barracks or detention centres. Such actions expose students and education personnel to harm, deny large numbers of children and students their right to education and so deprive communities of the foundations on which to build their future. In many countries, armed conflict continues to destroy not just school infrastructure, but the hopes and ambitions of a whole generation of children...

Where educational facilities are used for military purposes it can increase the risk of the recruitment and use of children by armed actors or may leave children and youth vulnerable to sexual abuse or exploitation. In particular, it may increase the likelihood that education institutions are attacked...

We emphasize the importance of Security Council resolution 1998 (2011), and 2143 (2014) which, inter alia, urges all parties to armed conflict to refrain from actions that impede children's access to education and encourages Member States to consider concrete measures to deter the use of schools by armed forces and armed non-State groups in contravention of applicable international law.

We welcome the development of the *Guidelines for protecting schools and universities from military use during armed conflict*. The Guidelines are non-legally binding, voluntary guidelines that do not affect existing international law. They draw on existing good practice and aim to provide guidance that will further reduce the impact of armed conflict on education. We welcome efforts to disseminate these guidelines and to promote their implementation among armed forces, armed groups and other relevant actors.

Recognizing the right to education and the role of education in promoting understanding, tolerance and friendship among all nations; determined progressively to strengthen in practice the protection of civilians in armed conflict, and of children and youth in particular; committed to working together towards safe schools for all; we endorse the

Guidelines for protecting schools and universities from military use during armed conflict,
and will:

- Use the Guidelines, and bring them into domestic policy and operational frameworks as far as possible and appropriate;
- Make every effort at a national level to collect reliable relevant data on attacks on educational facilities, on the victims of attacks, and on military use of schools and universities during armed conflict, including through existing monitoring and reporting mechanisms; to facilitate such data collection; and to provide assistance to victims, in a non-discriminatory manner;...
- Meet on a regular basis, inviting relevant international organisation and civil society, so as to review the implementation of this declaration and the use of the guidelines.

– Safe Schools Declaration, opened for state endorsement May 29, 2015 in Oslo, Norway. As of March 14, 2017, 59 countries had endorsed the declaration

Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, 2014

Parties to armed conflict are urged not to use schools and universities for any purpose in support of their military effort. While it is acknowledged that certain uses would not be contrary to the law of armed conflict, all parties should endeavor to avoid impinging on students' safety and education, using the following as a guide to responsible practice:

Guideline 1: Functioning schools and universities should not be used by the fighting forces of parties to armed conflict in any way in support of the military effort.

- (a) This principle extends to schools and universities that are temporarily closed outside normal class hours, during weekends and holidays, and during vacation periods.
- (b) Parties to armed conflict should neither use force nor offer incentives to education administrators to evacuate schools and universities in order that they can be made available for use in support of the military effort.

Guideline 2: Schools and universities that have been abandoned or evacuated because of the dangers presented by armed conflict should not be used by the fighting forces of parties to armed conflict for any purpose in support of their military effort, except in extenuating circumstances when they are presented with no viable alternative, and only

for as long as no choice is possible between such use of the school or university and another feasible method for obtaining a similar military advantage. Other buildings should be regarded as better options and used in preference to school and university buildings, even if they are not so conveniently placed or configured, except when such buildings are specially protected under International Humanitarian Law (e.g. hospitals), and keeping in mind that parties to armed conflict must always take all feasible precautions to protect all civilian objects from attack.

- (a) Any such use of abandoned or evacuated schools and universities should be for the minimum time necessary.
- (b) Abandoned or evacuated schools and universities that are used by the fighting forces of parties to armed conflict in support of the military effort should remain available to allow educational authorities to re-open them as soon as practicable after fighting forces have withdrawn from them, provided this would not risk endangering the security of students and staff.
- (c) Any traces or indication of militarisation or fortification should be completely removed following the withdrawal of fighting forces, with every effort made to put right as soon as possible any damage caused to the infrastructure of the institution. In particular, all weapons, munitions and unexploded ordnance or remnants of war should be cleared from the site.

Guideline 3: Schools and universities must never be destroyed as a measure intended to deprive the opposing parties to the armed conflict of the ability to use them in the future. Schools and universities—be they in session, closed for the day or for holidays, evacuated or abandoned—are ordinarily civilian objects.

Guideline 4: While the use of a school or university by the fighting forces of parties to armed conflict in support of their military effort may, depending on the circumstances, have the effect of turning it into a military objective subject to attack, parties to armed conflict should consider all feasible alternative measures before attacking them, including, unless circumstances do not permit, warning the enemy in advance that an attack will be forthcoming unless it ceases its use.

- (a) Prior to any attack on a school that has become a military objective, the parties to armed conflict should take into consideration the fact that children are entitled to special respect and protection. An additional important consideration is the potential long-term negative effect on a community's access to education posed by damage to or the destruction of a school.
- (b) The use of a school or university by the fighting forces of one party to a conflict in support of the military effort should not serve as justification for an opposing party that captures it to continue to use it in support of the military effort. As soon as feasible, any evidence or indication of militarisation or fortification should be removed and the facility returned to civilian authorities for the purpose of its educational function.

Guideline 5: The fighting forces of parties to armed conflict should not be employed to provide security for schools and universities, except when alternative means of providing essential security are not available. If possible, appropriately trained civilian personnel should be used to provide security for schools and universities. If necessary, consideration should also be given to evacuating children, students and staff to a safer location.

- (a) If fighting forces are engaged in security tasks related to schools and universities, their presence within the grounds or buildings should be avoided if at all possible in order to avoid compromising the establishment's civilian status and disrupting the learning environment.

Guideline 6: All parties to armed conflict should, as far as possible and as appropriate, incorporate these Guidelines into, for example, their doctrine, military manuals, rules of engagement, operational orders, and other means of dissemination, to encourage appropriate practice throughout the chain of command. Parties to armed conflict should determine the most appropriate method of doing this.

– Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, finalized December, 2014. As of March 14, 2017, through the Safe Schools Declaration, 59 countries had endorsed the guidelines.

Special Rapporteur on the Right to Education

Report to the Commission on Human Rights, 2004

Security and the Right to Education in Emergency Situations

119. The Special Rapporteur also believes that security in schools forms part of the human right to education. Security means not only physical, psychological and moral safety but also a right to be educated without interruption in conditions conducive to the formation of knowledge and character development.

120. It is for this reason that emergencies are threats, embracing as they do a wide range of possibilities such as natural disasters, armed conflicts and situations of occupation...

– The Right to Education, Report submitted by the Special Rapporteur on the right to education, Mr. Vernor Muñoz Villalobos, Economic and Social Council, Commission on Human Rights, December 17, 2004, E/CN.4/2005/50, paras. 119-120.

Communication with the government of India, 2009-2010

Communication sent

84. On 28 December 2009, the Special Rapporteur sent a communication regarding the conflict in India's Bihar and Jharkhand States between the Maoist rebels (Naxalites) and government security forces.

85. According to information received, it was alleged that education of tens of thousands of India's most disadvantaged and marginalized children was being disrupted by the ongoing conflict between Naxalite insurgents and police and other security forces in the eastern states of Bihar and Jharkhand. Security forces are allegedly occupying government school buildings as bases for anti-Naxalite operations, sometimes only for few days but often for periods lasting years. Meanwhile, it was reported that the Naxalites are directly targeting and blowing up government schools, including those not used or occupied by security forces.

86. It was reported that police and paramilitary forces were occupying school buildings either temporarily or for extended periods, as part of their counter-insurgency operations. Security forces had been known to take over entire school facilities and campuses, completely shutting down the school, or occupy part of school buildings, forcing classes to continue in the reduced space and alongside the

armed men. While some of these occupations had lasted only days at a time and coincide with extra protection to schools and remote locations during times such as an election, many other police occupations had been reported to last for many months and even for several years.

87. It was further alleged that the presence of heavily armed police and paramilitaries living and working in the same buildings where children were studying has detrimental impacts on children's studies and frequently puts the authorities in breach of their obligations to realize children's right to education.

88. It was reported that school principals, teachers, parents, and students have not received prior notification regarding the police occupying their schools. Concern had been expressed that this lack of notification to school authorities deprived the community of the opportunity to prepare better alternatives for continuing studies and eliminates the opportunity for local residents and their children to propose alternative locations for the police presence. Moreover, lack of notification and explanation to the students left the children confused and uncertain. Moreover, it was also reported that representatives from the Bihar and Jharkhand Departments responsible for education and schools had opposed and objected to the use of their schools by security forces, yet their objections had not been considered by the security units carrying out the school occupations.

89. It was further alleged that the generalized fear and disruption that results from attacks by the Naxalite rebels had lead to some students dropping out from school or experiencing interruptions to their studies. Concern had been expressed that girls especially appear likely to drop out following a partial occupation of a school. Although some students may transfer to other schools in the area if their parents can cover the related costs, many students simply drop out of education all together. The increased rate of girl students dropping out was linked to either perceived or experienced instances of harassment by the security forces of girl students. As well as leading to increased rates of students dropping out of school, long-term occupation of schools had been reported to also decrease the enrollment rate and the rate of students continuing on to higher years of study.

Communication received

90. On 7 April 2010, the Government responded to the communication sent by the Special Rapporteur on 28 December 2009 and informed that the Government had examined this communication and, according to the concerned State authorities, no breach of the right to education of children had been reported in Bihar. However, the concerned authorities had been sensitized to provide adequate protection in this regard, so as to enable prompt and suitable action in the event of an instance of such a breach.

Observations

91. The Special Rapporteur thanks the Government for its reply, but nevertheless would like to express concern regarding the conflict in India's Bihar and Jharkhand States between the Maoist rebels (Naxalites) and government security forces and its effects in the realization of the right to education.

– Report of the Special Rapporteur on the right to education, Vernor Muñoz, Addendum, Communications sent to and replies received from Governments, May 17, 2010, A/HRC/14/25/Add.1, paras. 84-91.

Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Roerich Pact)

The historic monuments, museums, scientific, artistic, educational and cultural institutions shall be considered as neutral and as such respected and protected by belligerents ...

The same respect and protection shall be accorded to the historic monuments, museums, scientific, artistic, educational and cultural institutions in time of peace as well as in war.

– Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Roerich Pact), Apr. 15, 1935, 49 Stat. 3267, 167 L.N.T.S. 289, art. 1.

United Nations Department of Peacekeeping Operations

United Nations Infantry Battalion Manual, 2012

[Section] 2.13

...

The military has a special role to play in promoting the protection of children in their areas of operation and in preventing violations, exploitation and abuse. Relevant issues that need to be considered by unit commanders include, but are not limited to, grave violations committed against children such as recruitment and use of children by armed forces and groups, rape and grave sexual violence, killing and maiming, abductions, attacks on schools and hospitals and denial of humanitarian access as well as child sensitive Disarmament, Demobilization and Reintegration (DDR), and detention of children.

Therefore, special attention must be paid to the protection needs of girls and boys who are extremely vulnerable in conflict. Important issues that require compliance by infantry battalions are:

- Children should not be put in the direct line of danger...
- Schools shall not be used by the military in their operations.

– Department of Peacekeeping Operations, Department of Field Support, United Nations Infantry Battalion Manual, 2012, sec. 2.13.

United Nations General Assembly

Universal Declaration of Human Rights, 1948

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

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

– Universal Declaration of Human Rights, adopted by the UN General Assembly December 10, 1948, article 26.

The Right to Education in Emergency Situations, 2010

The General Assembly... reminding all parties to armed conflict of their obligations under international law to refrain from the use of civilian objects, including educational institutions, for military purposes and child recruitment... Urges all parties to armed conflict to fulfil their obligations under international law, in particular their applicable obligations under international humanitarian law and international human rights law, including to respect civilians, including students and educational personnel, to respect civilian objects such as educational institutions and to refrain from the recruitment of children into armed forces or groups, in accordance with their applicable obligations under international law, urges Member States to fulfil their applicable obligations under international law, including international humanitarian law, related to the protection and respect of civilians and civilian objects...

– The right to education in emergency situations, A/64/L.58, June 30, 2010.

Rights of the Child Resolution, 2015

The General Assembly...

48. Expresses its deep concern about the growing number of attacks in contravention of international humanitarian law, as well as threats of attacks against schools, recognizes the grave impact of such attacks on children's and teachers' safety, as well as on the full realization of the right to education, further expresses its concern that the military use of schools in contravention of applicable international humanitarian law may also affect the safety of children and teachers and the right of the child to education, and encourages all States to strengthen efforts in order to prevent the military use of schools in contravention of applicable international humanitarian law;
49. Calls upon all States to give full effect to the right to education for all children and in particular:...

- (b) To take all appropriate measures to eliminate obstacles to effectively accessing and completing education, such as ... armed conflicts...
- (e) To take all appropriate measures to eliminate discrimination against girls in the field of education and to ensure equal access for all girls to all levels of education, including through ... improving the safety of girls on the way to and from school, taking steps to ensure that all schools are accessible, safe, secure and free from violence ...
- (m) To take necessary measures to protect schools from attacks and protected persons in relation to them in situations of armed conflict and to refrain from actions that impede children's access to education...

– Rights of the Child, A/C.3/70/L.28/Rev.1, November 18, 2015.

United Nations Security Council

Presidential Statement, April 29, 2009

The Security Council ... urges parties to armed conflict to refrain from actions that impede children's access to education, in particular ... the use of schools for military operations.

– Statement by the President of the Security Council, 6114th meeting of the Security Council, April 29, 2009, S/PRST/2009/9.

Resolution 1998, 2011

[The Security Council] Urges parties to armed conflict to refrain from actions that impede children's access to education and to health services and requests the Secretary-General to continue to monitor and report, inter alia, on the military use of schools and hospitals in contravention of international humanitarian law, as well as on attacks against, and/or kidnapping of teachers and medical personnel...

– Security Council Resolution 1998, July 12, 2011, S/Res/1998 (2011), para. 4.

Presidential Statement, February 12, 2013

The Security Council expresses deep concern about the severity and frequency of attacks against schools, threats and attacks against teachers and other protected persons in relation to schools, and the use of schools for military purposes, and significant implications of such attacks on the safety of students and their access to education. The

Council calls upon all parties to armed conflict to put an end to such practice and to refrain from attacks against teachers and other protected persons in relation to schools, provided that they take no action adversely affecting their status of civilians.

– Statement by the President of the Security Council, 6917th meeting of the Security Council, February 12, 2013, S/PRST/2013/2.

Resolution 2143, 2014

Expresses deep concern at the military use of schools in contravention of applicable international law, recognizing that such use may render schools legitimate targets of attack, thus endangering children's and teachers' safety as well as children's education and in this regard:

- (a) Urges all parties to armed conflict to respect the civilian character of schools in accordance with international humanitarian law;
- (b) Encourages Member States to consider concrete measures to deter the use of schools by armed forces and armed non-State groups in contravention of applicable international law;
- (c) Urges Member States to ensure that attacks on schools in contravention of international humanitarian law are investigated and those responsible duly prosecuted;
- (d) Calls upon United Nations country-level task forces to enhance the monitoring and reporting on the military use of schools...

– Security Council Resolution 2143, March 7, 2014, S/Res/2143 (2014), para. 18.

Resolution 2225, 2015

Expresses deep concern that the military use of schools in contravention of applicable international law may render schools legitimate targets of attack, thus endangering the safety of children and in this regard encourages Member States to take concrete measures to deter such use of schools by armed forces and armed groups...

– Security Council Resolution 2225, June 18, 2015, S/Res/2225 (2015), para. 7.

II. Domestic

Afghanistan

Ministry of Education Memo to Ministry of Interior Affairs, 2016

[W]e are seeking the ministry's support to follow up on the military use of schools and educational centres, and evacuation of schools and education centres of military checkpoints and military bases.

The military use of schools and educational centres, can put these premises at high risks of vulnerability. The military checkpoints/bases currently located in many schools in provinces, can convert schools into military targets of education enemies. Given the budget limitation of this ministry for reconstruction of these premises as a result of military use, please direct the concerned authorities to immediately vacate the schools from the military use in different provinces of the country.

– Letter from Dr. Asadullah Hanif Balkhi, Minister of Education, to Ministry of Interior Affairs, number 311, April 2016.

Ministerial Directives, 2016

On 4 June and 4 July, the Ministry of Education sent two directives to all security-related ministries highlighting the commitment of Afghanistan to the Safe Schools Declaration and requesting security forces to stop using schools for military purposes.

– Report of the Secretary-General, The situation in Afghanistan and its implications for international peace and security, S/2016/768, September 7, 2016, para. 33.

Argentina

Higher Education Act, 1995

Article 31

Public forces cannot enter the national universities without prior written order from a competent court or a request from the lawfully constituted university authority.

– Ley de Educacion Superior, Ley 24,521, July 20, 1995, article 31.

Bangladesh

The Manoeuvres, Field Firing and Artillery Practice Act, 1938

Article 3

- (1) Where a notification ... has been issued, such persons as are included in the military forces engaged in the Manoeuvres may, within the specified limits and during the specified periods,-
 - (a) pass over, or encamp, construct military works of a temporary character, or execute military Manoeuvres on, the area specified in the notification ...
- (2) The provisions of sub-section (1) shall not authorise entry on or interference with any ... educational institution...

– The Manoeuvres, Field Firing and Artillery Practice Act, Act No. 5 of 1938, March 12, 1938, art. 3.

Acquisition and Requisition of Immovable Property Ordinance, 1982

When any property is required temporarily for a public purpose or in the public interest, the Deputy Commissioner may, with the prior approval of the Government, by order in writing, requisition it:

Provided that no such approval shall be necessary in the case of emergency requirement of any property:

Provided further that, save in the case of emergency requirement for the purpose of maintenance of transport or communication system, no property which is bona fide used by the owner thereof as the residence of himself or his family or which is used either for religious worship by the public or as an educational institution or orphanage or as a hospital, public library, graveyard or cremation ground shall be requisitioned.

– Acquisition and Requisition of Immovable Property Ordinance, April 13, 1982, art. 18(1).

Burma

Karenni National Progressive Party [KNPP] Statement on Child Soldiers, 2006

[Y]oung people were encouraged by the KNPP to go to schools run by the organization to pursue an education rather than becoming soldiers. These schools were not used for military recruitment and the students were not encouraged by the KNPP to serve in the army when they finished school.

– Karenni National Progressive Party Headquarters, Statement on the Use of Child Soldiers, Statement No. 01/2006, August 31, 2006.

Nationwide Ceasefire Agreement between the Government of the Republic of the Union of Myanmar and Ethnic Armed Organizations, 2015

Chapter 3

Sec. 5: The Tatmadaw and the Ethnic Armed Organizations agree to abide by the following troop-related terms and conditions: ...

- d. Avoid using any religious buildings, schools, hospitals, clinics and their premises as well as culturally important places and public spaces as military outposts or encampments...

Sec. 9: The Tatmadaw and the Ethnic Armed Organizations shall abide by the following provisions regarding the protection of civilians: ...

- a. Provide necessary support in coordination with each other to improve livelihoods, health, education, and regional development for the people....
- h. Avoid restrictions on the right to education in accordance with the law; destruction of schools and educational buildings, including educational tools; and the disturbance and hindrance of students and teachers....
- k. Avoid the destruction or actions that would lead to the destruction of schools, hospitals, clinics, religious buildings and their premises and the use of such places as military bases or outposts.

– Nationwide Ceasefire Agreement between the Government of the Republic of the Union of Myanmar and Ethnic Armed Organizations, October 15, 2015.

Canada

Policy Statement on the Safe Schools Declaration and the Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict, 2017

The world is home to more young people than at any other time in history. While great strides have been made to enhance their development and wellbeing, an estimated 250 million children live in countries and areas affected by armed conflict. Among them, girls are 2.5 times more likely to be out of school than boys. Canada shares the strong conviction to mitigate and ultimately stop the terrible effects of armed conflict on children, schools and universities. Canada strongly believes that education is a right that must be upheld, including in conflict situations. We believe that all students, girls and boys, must be able to attend school or university without fear of being targeted. Schools should be places where students come together in peace to learn about the world and their contribution to it; education can be a remedy for conflict and should never be a target of it. Protecting children and youth from all forms of violence and harmful practices is critical to upholding their rights, ensuring that they thrive, and helping them grow into engaged and productive members of society.

The Safe Schools Declaration and the Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict recognize the importance of education and its role in promoting understanding, tolerance and respect for all. Canada joins other countries in endorsing the Safe Schools Declaration and, in doing so, reaffirms its commitment the protection of persons affected by armed conflict, including children.

We are concerned with the use of schools by parties to armed conflict for military purposes such as bases, barracks, weapons caches and detention centers, where such use is in contravention of international humanitarian law and we welcome efforts to address this. Eliminating all violations against children in all settings, including in situations of armed conflict, is a priority and we recognize and firmly support the need to prevent the unlawful recruitment and use of children in armed conflict, as well as for the rehabilitation and reintegration of children who have been recruited and involved in hostilities.

Compliance with international humanitarian law remains the best means to protect schools and other civilian objects from unlawful attack and we call on all parties to armed

conflicts, including non-state actors, to adhere to these established international legal obligations. While not legally binding, the Declaration and associated Guidelines will inform the planning and conduct of Canadian Armed Forces operations during armed conflict, which are always carried out in full compliance with Canada's obligations under international humanitarian law.

Canada shares the strong desire to minimize the adverse effects of armed conflict on children and we strongly agree with the importance of adhering to the protections that international humanitarian law affords to civilians and civilian objects, including schools and the students who attend them. Our endorsement of the Declaration gives us an important opportunity to reiterate our call for compliance with international humanitarian law.

– Policy Statement on the Safe Schools Declaration and the Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict, Global Affairs Canada, February 20, 2017.

Central African Republic

MINUSCA directive on the protection of schools and universities against military use, 2015

Purpose:

1. These guidelines aim at preventing the use of schools and universities by MINUSCA Force and Police and to minimize the impact of armed conflict on the security and education of children.

General principles:

2. Schools have to be havens of peace, where children are protected even in times of armed conflict. They are, however, often attacked or used for military purposes by parties to the conflict in the Central African Republic, to the detriment of children.
3. MINUSCA Force and Police are requested not to use schools for any purpose. All MINUSCA military and police personnel should avoid encroaching on the security and education of children by using the following guidelines as good practice.

4. Schools and universities that are operational should never be used in any way. This applies to schools and universities that are closed after school hours, during weekends and holidays and during vacation periods.
5. Abandoned schools and university buildings which are occupied or used by MINUSCA Force and Police should be liberated without delay in order to allow educational authorities to reopen them as soon as possible. All signs of militarisation or fortification of such buildings or structures should be completely removed after the withdrawal and any damage caused to the institution should be repaired quickly before hand-over to the authorities, to allow the return to educational use.
6. All ammunitions, unexploded ordinance or war debris should be cleared from the site.
7. The use of a school or university by a party to a conflict is not permitted, and cannot provide grounds for continuation of such use.
8. Military and police personnel tasked to secure schools or universities should avoid wherever possible entering into the school premises or buildings in order not to compromise their civilian status.
9. The Force Commander and the Police Commissioner are requested to ensure the implementation and wide dissemination of this directive.

– United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) directive on the protection of schools and universities against military use, from Special Representative to the Secretary General Parfait Onanga-Anyanga, MINUSCA/OSRSG/046/2015, December 24, 2015.

Chile

World Humanitarian Summit Commitment, 2016

Chile will promote and disseminate in the formation of its Armed Forces the Guidelines to Prevent Military Use of Schools and Universities during Armed Conflict.

– Advocacy Commitment 139015, World Humanitarian Summit, 2016.

Colombia

Yenys Osuna Montes v. the Mayor of Zambrano Municipality, Constitutional Court, 1999

Yenys Maria Osuna Montes, a student at the educational institution “*Escuela Oficial Mixta María Inmaculada*,” filed an action for injunctive relief against Alejandro Lopez Franco, mayor of the municipality of Zambrano (Bolívar), arguing that her rights to life and education were being threatened.

The petitioner was elected student representative by her peers at the above-mentioned school and, in such capacity, she sees to it that the rights and duties of her fellow students and teachers are respected and observed. Petitioner claimed in her complaint:

...I consider that our dignity as humans and the integrity of the institution I belong to, and which together with all members of the educational community we have strived to preserve, have been stepped on. We do not feel safe, and we live under the constant strain of knowing that we are serving as human shields for the police headquarters which are located right behind our building, and my friends and I often worry that a confrontation could break out during school hours. If this happened, what would we do?

Therefore, Osuna Montes requested that the judge order the municipal government to move the Police Headquarters to a new site.

The evidence contained in the case file includes:

- A document ... indicating that:

It is hereby noted that in the toilets and the school playground the windows have no protection. The classrooms used by the 1st and 4th grade of the primary level, as well as the school’s playground, are situated immediately adjacent to the street where the police headquarters are located. There is a street separating the wall at the rear end of the school compound from the Police Station and the Police Inspectorate by 6.50 meters. The School

occupies a full block. Three barricades have been set up in the street leading to the Police Headquarters using bags and barrels filled with sand. The first barricade, which was built at the corner, is at a distance of 3.71 meters from the School wall. The other one is in the middle of the street, in front of the Police Inspectorate, while the third barricade is located on the other corner, on a diagonal line from the School, at approximately 3.10 meters.

- Documents signed by the [Commander of the Police Station of Zambrano]..., which state that:
 - 1) “Reports by the 3rd Naval Infantry Battalion indicate that approximately 300 FARC [Revolutionary Armed Forces of Colombia] guerrillas were stationed in farms in the area surrounding the municipality of Córdoba Tetón, and that one of their main objectives is to take over the Zambrano municipality.”
 - 2) “According to intelligence reports, the Zambrano Police Station is one of the military objectives pursued by the Caribbean Block of the FARC, made up of fronts 35 and 37 of that guerrilla group.”

- Statement by the acting Headmistress of “Escuela María Inmaculada” ... in which she states the following:

We, the teachers and parents of the students at ‘*Escuela María Inmaculada*,’ have met with previous city mayors to discuss the fact that school premises were often used to accommodate members of the Army when they were sent to our city. During the periods when the school was used to house these officers, children would not attend classes. In early August this year, after the guerrilla took over Córdoba, the day after that (...) It is really dangerous that the school is at such short distance from the Police Headquarters. Given the current state of public order, children, teachers and the institution are at risk, because in case—God forbid—of a takeover by the guerrilla they would be affected in the first place, because

we are 4 or 5 meters away from the Police Headquarters. QUESTION: Could you specify how you think public order has been disturbed in the municipality of Zambrano Bolívar? ANSWER: The day after the guerrilla took over the municipality of Córdoba, Ms. Maida, one of the teachers, was at a meeting with the Secretary of Education and other school headmasters. They wanted to suspend classes on August 5 and 6 due to the state of public order. While they were at this meeting, rumors spread that Zambrano had been taken over and this created a climate of chaos: some mothers rushed to the school to fetch their children, and others were upset because their children had been allowed to go home just a moment before. The truth is that the teachers in the morning shift got too scared and desperate when they heard the rumors about the attack in Zambrano. QUESTION: Is there anything else you would like to add, correct or change in this statement? ANSWER: At present, we are finishing the afternoon shift earlier than usual, before 6 p.m., because we are a bit scared, and we are always the last to hear about the status of public order.

- Statement by the minor who brought the action for injunctive relief...:

I feel that teachers rush the classes and finish earlier than planned, because they say that the guerrilla will come to the school. I think that both students and teachers are worried because the school is right next to the Zambrano Police Station. QUESTION: Tell us if any event lately has made you feel unsafe or worried as a result of your proximity to the Police Headquarters. ANSWER: The school has always been right next to the Police Station and we did not have any problems before. But now we are constantly scared because the guerrilla took over Córdoba Bolívar and there were confrontations with the Police. The following day, we saw police officers, from here, from Zambrano, running and riding their motorbikes around the school. They were carrying guns and they said that members of the guerrilla were going to enter the school, and suddenly all the mothers came to fetch their children in tears, frightened by the rumors that the

guerrilla would storm the building. The streets were full of people and we feared for our lives....

- Statement by the Head of the educational center, who claimed that classes had been disrupted due to the status of public order. She said that she had repeatedly requested the city's mayor to stop using the school building to accommodate members of the Army, but that the mayor had dismissed her requests....

3. The rights of children to life, personal integrity and to a full and adequate physical and psychological development and education. The State's role in preserving those rights. The prevalence of the rights of minors. Constitutional protections and enforcement of International Humanitarian Law to cope with actual threats to prevailing rights. Reasonable restrictions on the duty of solidarity. The protection of rights requires an enforceable court order.

This time the Court has been asked to establish whether the fundamental rights of these children—in particular the rights to life, personal integrity, to a full and adequate physical and psychological development and the right to education—have been violated or threatened by the municipal government's response to repeated requests to move to a new site the Police Headquarters adjacent to the school that is home to the petitioning minor and her classmates and teachers...

There is, in principle, an apparent tension between the fundamental rights of children (Articles 11, 12, 44 and 67 of the Political Constitution of Colombia), which under the Constitution should prevail over the rights of others, on the one hand; and people's duty to act in accordance with the principle of social solidarity, to respect the legitimately constituted authorities in their efforts to maintain national independence and integrity, and to strive toward the achievement and maintenance of peace, on the other (art. 95 of the P.C.).

The undoubted, visible and demonstrated presence of an armed conflict in the area, recent events proving that there are constant guerrilla attacks directed primarily against police stations and headquarters, other evidence presented by the State's security forces and the testimony to that effect indicate that there is not just a theoretical possibility of risk or

fear, but an actual and serious threat to the 264 children who every day attend this school, which is not just near the Police Station, but right next to it...

In the case of children, even though in principle they must act with solidarity or, better still, should be educated in the principles of solidarity and the demands of social coexistence, it must be established on a case-by-case basis if, given their position of unique vulnerability and defenselessness, they have the capacity and the obligation to tolerate all situations or perform all actions that are required from them, regardless of their present circumstances and the dangers to their fundamental rights, in particular their right to life.

Therefore, if we take into account that, due to their physical and psychological conditions and their total lack of experience they cannot defend themselves from attacks in the same way as an adult—especially attacks as serious as those discussed here—one cannot reasonably expect a minor to run the risk of losing his or her life, even more so when the risk can be avoided or reduced. This is one of the most important responsibilities of society as provided, *inter alia*, by Article 44 of the Constitution.

The duty of solidarity of minors cannot be interpreted to imply that they should tolerate that the environment where they receive education becomes a battle field and that they get caught in the crossfire, if we understand that infants, because of their defenseless state, are mere victims and cannot be expected to become heroes in the context of armed combat.

However, in this decision, and in line with its previous rulings, the Court has examined in particular the actual, evident and undeniable risk faced by the children in this case and has assessed the need to provide effective protection to them, based on factual considerations rather than theoretical classifications of what constitutes or not a military target. In light of the Political Constitution, 264 children are clearly at a grave risk of death or injury that could be prevented; and the existing dangers which have been proven to this Court emanate from the guerrilla's unilateral decision—not always consistent with academic classifications—which may consider, as they have done in the past, that the Police forces—a civilian armed body- are a military target. This factual situation cannot be

ignored by the judge hearing the constitutional protection action or by government and police authorities.

Past experiences clearly indicate, and this is undeniable, that when guerrilla groups launch attacks against municipalities, they often—and almost invariably—target police stations and other public buildings in the first place. Hence, the risk posed by the specific circumstances of this case—particularly taking into account many official reports that speak categorically about the possibility of a “guerrilla takeover,” the peculiarity that the school was built immediately next to the police premises, and the fact that the school has been used as barracks to house military and police personnel—is so serious that it amounts to a threat, as defined in Article 86 of the Constitution, and which has been previously examined by this Court:

A threat to a fundamental constitutional right can take many forms: it may relate to the specific circumstances in which an individual exercises such right; to the existence of positive and unmistakable signs indicating an individual's intention to act in a way that violates the right in question; or to a challenge (attempted crime) that affects the right at issue directly; it may also consist of unintentional acts whose characteristics persuade the judge before whom an action for relief has been brought that, should he fail to issue an order to enjoin such conduct, the right in question would be violated; it may likewise be caused by an authority's failure to act which, over time, could give rise to or enhance a risk; and it may also result from the existence of an unconstitutional rule—an authorization or an order— which, if applied, would constitute per se a violation or denial of fundamental rights. In the latter case, Article 86 of the Constitution mandates that such unconstitutional order or authorization should not apply to the case at issue, in accordance with Article 4 of the Constitution, provided that the principle of incompatibility between the two provisions is met. (Constitutional Court. Fifth Constitutional Review Chamber. [Corte Constitucional. Sala Quinta de Revisión]. Decision T-349 of August 27, 1993).

In the instant case, it should be underscored that, on certain occasions, Police and Army officers have stayed overnight in the School premises, aggravating in this way the risk to children's health, life, and integrity. As a result, an order will be issued to enjoin them from doing so in the future.

Having analyzed all the evidence submitted in the course of the proceedings, the Court understands that there is a high probability that the Zambrano municipality will be taken over by the guerrilla group that operates in that part of the country's territory, as can be inferred from intelligence reports. Therefore, there is a real and impending threat to the lives of the local residents, particularly those in the proximity of the police station. And there is no justification for the fact that those who are closest to the police station are no other than the students of the above-mentioned school.

This is further aggravated by the disruption of the educational process which has caused fear among children and has resulted in high drop-out rates, as demonstrated by the evidence provided.

In this respect, the Court finds that an unreasonable burden has been placed on the students of the school in the municipality of Zambrano and that the duty of solidarity—which also falls on minors—is limited by their capacity to assume such obligation. Forcing children to occupy a facility which is in immediate proximity to the police station and, as a result, is highly exposed to attacks that fall under the guerrilla's classification of armed conflict would be a manifestly disproportionate measure which violates the right to equality and threatens the right to life and education.

Also, this openly contradicts Article 44 of the Political Constitution, which provides that the rights of children have priority over the rights of others. It must be emphasized that international humanitarian law requires that children be protected from the horrors of the war.

It should be recalled that Protocol II to the Geneva Conventions, with a view to protecting civilians and children from attacks, encourages the temporary evacuation of children from an area in which hostilities are taking place to a safer area.

Taking into account the special relevance of the fundamental rights of children; that the duty of solidarity should reasonably and proportionally meet the limits imposed by prevailing fundamental rights; that there are constitutional provisions which expressly protect minors in areas of armed conflict; and that it must not be overlooked that one of the main goals of the State is precisely to protect the lives of its members—and this is also the paramount and necessary purpose of political organization; this Court considers it appropriate to require the municipal mayor, in collaboration and coordination with the relevant authorities at the departmental and national levels, especially the Ministries of Finance and Public Credit, Education, and National Defense, to adopt all necessary budgetary and administrative measures to transfer without delay the educational institution “Escuela Oficial Mixta María Inmaculada” in the Zambrano municipality to an area where the risk is lower, or otherwise to move the Police Headquarters to a different site that is still within the territory of the municipality but where a potential guerrilla attack would not likely result in the horrendous killing of children.

And given that for practical reasons this judgment may not be executed immediately, the Court understands that, in view of the circumstances of the case and in order to ensure the observance of the fundamental rights at issue, it is both viable and necessary to grant temporary injunctive relief to reduce the risk that threatens the lives of these children.

Therefore, the Court understands that the city’s mayor should prevent members of the State security forces from entering the school premises to conduct practices, trainings or to mount weapons, ammunition or deploy armed personnel, as this would increase the danger to the student community. Also, the educational community should be instructed on how to manage an emergency evacuation situation and on the mechanisms to protect the lives of its members.

In addition, this Court finds striking that the appellate court has only formally safeguarded the petitioner’s rights and has failed to issue a specific order for their protection. In this regard, it is worth noting that the action for injunctive relief (*acción de tutela*) is a protection established to safeguard rights that have been threatened and to guarantee their effectiveness (art. 2), and that the Constitution explicitly states that (art. 86) “the protection will consist of an order enjoining others to act or refrain from acting.”...

The lower court's decision is hereby SUPPLEMENTED and the municipal mayor is ordered, in collaboration and coordination with the relevant authorities at the departmental and national levels, especially the Ministries of Finance and Public Credit, Education, and National Defense, to adopt without delay all necessary budgetary and administrative measures to transfer as soon as possible the educational institution "*Escuela Oficial Mixta María Inmaculada*" in the Zambrano municipality to an area where the risk is lower, or otherwise to move the Police Headquarters to a different site that is still within the territory of the municipality but where the minors attending the school could be effectively protected.

In the meantime, before the execution of this judgment is completed, the mayor shall prevent members of the State's security forces from occupying the premises of the educational institution "*Escuela Oficial Mixta María Inmaculada*" and conducting shooting practices or training in the use of firearms, ammunition and explosives. Likewise, the educational community shall be instructed on how to manage an emergency evacuation situation as well as on the mechanisms to protect the lives of its members...

– Yenys Osuna Montes v. the Mayor of Zambrano Municipality, SU-256/99, Constitutional Court, April 21, 1999.

Wilson Pinzón v. the Mayor of La Calera, Constitutional Court, 2001

...Petitioner files a writ of protection on behalf of his minor son, who attends the nursery school Jardín Infantil Departamental La Calera. He states that this educational institution is situated one block from a police station and a military base of the Colombian Army. The police station is opposite the military base...

Petitioner says that the municipality was taken over by guerrillas on July 19th, 1994, when the police station was completely destroyed by an attack with firearms... On July 27th, 1999, a second guerrilla attack was launched, and residents fled with their children to more remote locations in order to avoid danger.

The following day, the petitioner requested the mayor of the municipality to move the police station "to a more appropriate and less-residential location outside the urban zone..." The mayor responded to those requests stating that this issue was not under his purview and that "securing the lives of individuals was not a responsibility of the

Municipal Government but of the military forces,” that the property which housed the police station did not belong to the municipality and that no objections had been raised when the police station was relocated.

In response, the petitioner pointed out that public deed No. 182 dated March 8th, 1996 proved that the police station is located in a property owned by the municipality. He added that while residents did not object when the police station was inaugurated in a residential area, their opinion was never sought.

The petitioner also expressed concern over the statements made on television by the FARC spokesman, Raúl Reyes, who recommended Colombian authorities to locate police stations outside the urban areas of municipalities, as the members of such organization had been instructed to attack police stations...

FINDINGS OF THE CHAMBER

...

2.1 The State has an obligation under the Constitution to protect the rights and the lives of individuals - Description of duties of the police forces:

Article 2, paragraph 1, of the Constitution establishes that the essential purpose of the State is to guarantee the effective enjoyment of the rights enshrined therein. In turn, article 11 provides that the fundamental right to life may not be violated. Also, in its second paragraph, article 2 lists the purposes for which authorities have been instituted, including in the first place the obligation to protect the lives of individuals.

In order to achieve those purposes, the constituent assembly deemed it necessary to organize a public force (art. 216), made up by the military and the police. The police force is created as a civilian organization within the sphere of the national government. Its primary purpose is to maintain the conditions necessary for the exercise of rights and freedoms and to ensure that the inhabitants of Colombia live in peace.

However, although the Constitution conceives the police as a civilian institution with preventive functions—as opposed to the military forces—in the current socio-political situation in Colombia, characterized by widespread instability and violence, this

classification does not always portray the reality or allow the police to perform the service it is expected to provide. Therefore, in previous cases, the Colombian Constitutional Court has recognized that the police force is in a “grey area” halfway between the military and the civilian spheres.

...[A]s a result of the current state of affairs of the Colombian conflict, the police force may not be classified as an entirely civilian institution from a legal standpoint, because in certain regions of the country instability has grown to the point that police officers and their workplaces are often chosen as military targets by the guerrillas...

2.2 People’s solidarity is a necessary condition for an adequate police service.

Clearly, in order to live together, individuals must fulfill certain social responsibilities... This duty of solidarity, in terms of the service provided by the police, justifies imposing certain burdens on private individuals, insofar as the location of police stations is part of a strategic plan to allow authorities to make the most of available resources and provide an effective service for everyone...

2.3 Limits on the duty of solidarity:...

However, the duty of solidarity does not require private individuals to indiscriminately take any risk which could undermine their rights. In such case, the State would abdicate its role as guarantor of those rights, suggesting that no oversight of administrative measures is possible because their purpose is legitimate.

On the contrary, the fact that the State is subject to the rule of law also means that the mechanisms by which it pursues its constitutional goals should be monitored. The problem does not lie in determining when the principle of general interest should prevail over any consideration of subjective rights. Instead, the extent of the duty of solidarity should be defined to establish what can be reasonably expected from private individuals when the service provided by the police poses a risk to the population. The prevalence of the general interest is not a constitutional rule with a single legal consequence, but rather a principle that, as such, may be taken into consideration.

The burdens that a government may place on private individuals by virtue of the prevalence of the general interest are enforceable insofar as the private interest infringed is incompatible with the needs of the service. Even though private individuals must accept certain burdens required for the provision of any public service, the State has an obligation to minimize inherent risks, so that individuals do not bear an unnecessarily heavy burden. This is particularly true in cases where the risk threatens people's lives and physical integrity. Claiming that life and other rights can be guaranteed by policing alone is not enough. Those responsible for the administration of the police service should take all necessary actions to minimize the risks involved and, at the same time, bring the needs of the service more closely in line with a fair distribution of public burdens.

In all cases, even when the needs of the service may not be harmonized with subjective rights or interests, burdens should be necessary, reasonable and proportionate. A burden will be necessary if the measure at issue is required for an appropriate provision of the service. Of course, the government has significant latitude in this regard, as it usually has the information and resources to identify the needs for the service and the means available to provide it. Reasonability should be the defining criterion for weighing the legal interest pursued or protected against the legal interest undermined by the burden. Needless to say, this assessment should be made taking into account the hierarchy established in the Constitution. The proportionality assessment seeks to guarantee that the burden does not impinge too much on the rights, expectations and other interests of those who bear it. In other words, only the sacrifice that is strictly necessary should be made to achieve the objective.

The most important aim of international humanitarian law is the protection of civilians in times of conflict, based on two fundamental principles: the principle of distinction between combatants and civilians, and the principle of proportionality...

With these principles in mind, under the current state of affairs in the country, the police forces, both in practice and in law, occupy a "grey area" halfway between the civilian and the military sectors; it is an armed State force involved in counterinsurgency activities, and as such its members can be classified as combatants. Therefore, on the understanding that the police are part of the combatant population, and that despite the risks to civilians

resulting from ongoing attacks against this armed force the State cannot renege on its obligation to fulfill this role, we can only conclude that the State must take actions to minimize such risk. In other words, strictly “military” operations, as well as all other activities conducted by State armed forces, should only pose the minimum possible risk to the civilian population. On this point, article 13 of Additional Protocol II to the Geneva Conventions of 1949 ... establishes the minimum protection provisions for the civilian population and, to guarantee this protection, affirms the principle of distinction between civilians and combatants...

“ARTICLE 13. Protection of the civilian population.”

“1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.”

“2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”

“3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.” ...

As part of the protection of civilians against the dangers arising from military operations, covered under subsection 1 of this article, the State should take specific measures to guarantee that the risk posed to civilians is the minimum necessary to ensure an effective performance by the police forces. The notions of efficiency and risk are variables that should be assessed based on the second principle that we mentioned, the principle of proportionality. Taking into account such principle, the need to establish police stations in accessible locations from where services can be provided to the whole population should not entail an excessive risk for those who live in the vicinity...

2.7 Concluding observations

With the above considerations in mind, we can conclude that in these cases the admissibility of [writ of protection] actions is conditioned on a sufficient showing that the threat represents an imminent risk to the life and personal integrity of an individual or group, because of the current scale of historic guerilla attacks in a certain geographical location, and the specific circumstances of the person requesting the injunction. However, failure to establish the existence or imminent occurrence of a risk within the term of the [writ of protection] action does not mean that the risk is not real. Even when the judge acts with the utmost diligence and performs all necessary tests to establish the seriousness of the risk, the constitutional term may turn out to be insufficient, as the analysis of all elements involved can often exceed the investigative capacity of the [writ of protection] judge and, therefore, impinge on their capacity to offer protection. However, administrative authorities, and in particular entities responsible for intelligence activities and safeguarding the security of individuals, have the necessary means and infrastructure to establish whether a guerrilla attack is imminent and the degree of exposure of those who live in the vicinity of police stations.

Irrespective of the admissibility or inadmissibility of the [writ of protection] action, executive authorities should assess these risk situations in many of the country's municipalities, and take such measures as may be necessary to minimize the threat. Only efficient and sufficient planning, prevention and correction efforts can guarantee the effective enjoyment of the rights to life and personal integrity in the context of a climate of widespread violence that pervades many parts of the country. In such cases, the prompt and responsive actions of the [writ of protection] judge would be inadequate to deal with the scope and nature of the issue of insecurity.

3. The case in question

In the [writ of protection] proceedings before this Court, ...the guerrillas have launched attacks against police stations which left several police officers and civilians injured and caused significant structural damage. In addition, according to the report by the Ministry of Defense, both municipalities are of strategic interest to the guerrillas and there is presence of several FARC fronts or blocs. This situation was further compounded by the statements

that one guerrilla commander made on television, claiming that police stations were targets of guerrilla attacks and should be relocated.

These events underscore that at present ... police stations in La Calera... are potential targets of FARC attacks, and the means by which such attacks are carried out pose a significant risk to the buildings and the lives and personal integrity of the population in the vicinity.

...Taking into consideration the particular circumstances of the petitioners seeking protection, this differential analysis rests on a question of fact, i.e., the defenselessness of minors in nursery schools, and a question of constitutional law, resulting from the prevalence of the rights of children over those of other people. The prevalence of the rights of children also means, in turn, that the legal interest to be protected by sacrificing these rights should be of a superior constitutional value. Only then can protection be denied. At the same time, to the extent that the threat does not pose an imminent risk to the life or physical integrity of the children whose protection is sought by the [writ of protection] action, the decision to grant protection may not be grounded in the prevalence of those rights.

...[T]he evacuation and, in general, the effective protection of approximately 330 minors who attend the two nursery schools in the area near the police station in the municipality of La Calera will not be possible in the event of an attack. Even if appropriate preventive measures are taken to conduct an evacuation or safeguard the children, the headmasters of the institution do not have the necessary tools to protect their lives, and minors are under no obligation to bear the burden of such a great risk...

To the extent that a group of minors in a school or nursery are not capable of coping with the risk of a guerrilla attack, and considering also that the professors and headmasters have no means to protect them either, the probability of a guerrilla attack represents an imminent threat to the defenseless children who attend a nursery located near a police station.

In addition, because the rights of children are involved and these rights have prevalence over the rights of other people, the level of protection should be greater. Article 44 of the Constitution recognizes the duty of the State to provide special protection to children from all forms of physical violence. In this way, public administration can only be

released from the obligation to provide special protection when it can prove conclusively that such protection may compromise a legal interest of higher constitutional value than the rights of children...

For the reasons stated... this Court AFFIRMS the decisions rendered on September 12, 2000, which granted the protection requested...

– Wilson Pinzón and others v. the Mayor of La Calera, T-1206/01, Constitutional Court of Colombia, November 16, 2001.

Order from Commander General of the Military Forces, 2010

Considering International Humanitarian Law norms, it is considered a clear violation of the Principle of Distinction and the Principle of Precaution in attacks and, therefore a serious fault the fact, that a commander occupies or allows the occupation by his troops, of a good of private nature, or of public use, such as the housing where the civilian population lives and public institutions such as education establishments, [and] communal rooms; which causes an imminent risk to minors' protection. This affects in a sensible manner the way in which minors' Rights are granted and respected.

The General Command of the Armed Forces and the Military Commanders have repeated on various occasions through different directives the prohibition of the occupation of the buildings mentioned above, warning about the serious danger that teachers and children may face who go daily to exercise their right to education. For this reason, commanders at all levels are responsible for the application of issued orders and instructions and the control of the actions taken by their subordinates, since the use of civilian and public property has historically triggered other accusations against troops, such as forced displacement, theft, indiscriminate attacks, and both physical and verbal abuse against minors, who are subject to special protection. Against such accusations, it is required to undertake disciplinary investigations where possible and to carry out ... monitoring in order to avoid a repetition of the behavior in operation areas.

– General Commander of the Military Forces, order of July 6, 2010, official document Number 2010124005981 / CGFM-CGING-25.11.

Democratic Republic of Congo

Ministerial Directive, 2013

I urge you to educate all members of the [Congolesse army] that all those found guilty of one of the following shortcomings will face severe criminal and disciplinary sanctions: ... Recruitment and use of children... Attacks against schools ... requisition of schools ... for military purposes, destruction of school facilities.

– Minister of Defense Alexandre Luba Ntambo, Ministerial Directive on the Implementation of the Action Plan, Ministry of Defense, No. VPM/MDNAC/CAP/0909/2013, May 2, 2013.

Denmark

Military Manual, 2016

Protection of children entails some respect for children's right to education etc, including in conflict-affected areas. Therefore actors should exercise restraint with respect to military use of child care institutions, schools, and orphanages. This also applies in situations where the international legal basis, such as [Status of Forces Agreements], otherwise make it possible to evacuate such institutions for use by international forces. [Footnote included referring to UN Security Council Resolution 2143.]...

The principle of distinction concerns not only a requirement to distinguish between the military targets and civilian objects in attacks. The principle also includes that the warring parties help to enable the distinction of the opponent. On that basis ... [parties] must endeavor to keep civilians and civilian objects separate from military targets... The international legal framework for armed conflict aims, as far as possible, to protect the civilian population and civilian objects, including schools and hospitals, and helps to maintain the basis for the continuation of civil society in the conflict-affected states, even after conflict has ended...

...[I]n this connection restraint should be exercised with respect to use of schools and other education institutions in support of Danish military operations. This particular focus on schools is due to the grave consequences of military use, not only in terms of immediate risk

to the lives of children and young people, who may be in or in the neighborhood of such schools, but also more long-term consequences for school-aged children.

– Military Manual on the Law of the Danish Armed Forces in International Military Operations, September 2016, pp. 45, 115, & 154.

Ecuador

Higher Education Law, 2010

Article 19 — Inviolability of university campuses.

The campuses of universities and polytechnics are inviolable and cannot be searched except in the cases as for a person's home, as provided in the Constitution and the law. They must be used exclusively for the fulfillment of the aims and objectives set out in this law.

The monitoring and maintenance of internal order are the responsibility of campus authorities. When the protection of public forces is needed, the legal representative of the institution will request the relevant assistance, and inform the top collegiate academic body.

Those who violate these campuses will be sanctioned in accordance with law.

– Ley Orgánica de Educación Superior, 2010, article 19.

Greece

Law on the Structure and Operation of Higher Education Institutions (repealed), 1982

Article 2: Academic freedoms and university asylum

...

- (4) To ensure academic freedom, freedom of scientific inquiry, and the free distribution of ideas, "University Asylum" is recognized.
- (5) University Asylum covers every area of the universities, and prohibits any intervention in these areas by state forces without an invitation or the permission of the competent organ of the university, as outlined below.
- (6) (a) The organ has three members, and consists of the rector or his legal deputy, a representative of the teaching/research faculty, and a representative of the students.

- (b) The representative of the faculty and his or her substitute must be members of the University Senate and elected by the whole body of the faculty who are members of the Senate. The representative of the students and his or her substitute must be members of the Senate and elected by the whole student body that are members of the Senate.
- (c) This organ can make decisions only if all three members agree unanimously. In the case of non-agreement an extraordinary meeting of the Senate on the same day shall take place, in order to make a decision. The final decision can only be valid if a two-thirds majority are in support.
- (7) Intervention by state forces without the permission of the competent organ of the university is allowed only if flagrant felonies or flagrant crimes against human life are being committed.
- (8) Those in violation of the provisions of paragraph (5) on University Asylum shall be punished with at least six months sentence, but only after being officially accused by the Senate or the competent organ outlined in paragraph (6).

– Law on the Structure and Operation of Higher Education Institutions, law 1268/1982, article 2(4)-(8), repealed 2011.

India

Manoeuvres, Field Firing and Artillery Practice Act, 1938

Article 3: Power exercisable for purpose of manoeuvres.

- (1) Where a notification under sub-section (1) of section 2 has been issued, such persons as are included in the military forces engaged in the manoeuvres may, within the specified limits and during the specified periods,___
 - (a) pass over, or encamp, construct military works of temporary character, or execute military manoeuvre on, the area specified in the notification, ...
- (2) The provisions of sub-section (1) shall not authorise entry on or interference with any ... educational institution...

– Manoeuvres, Field Firing and Artillery Practice Act, Act No. V of 1938, March 12, 1938, art. 3

Requisitioning and Acquisition of Immovable Property Act, 1952

Power to requisition immovable property:

Where the competent authority is of opinion that any property is needed or likely to be needed for any public purpose, being a purpose of the Union, and that the property should be requisitioned, the competent authority ... may, by order in writing requisition the property... Provided that no property or part thereof ... is exclusively used ... as a school, ... or for the purpose of accommodation of persons connected with the management of ... such school, ... shall be requisitioned.

– Requisitioning and Acquisition of Immovable Property Act, Act No. 30 of 1952, March 14, 1952, art. 3.

Inqualabi Nauzwani Sabha v. Bihar, High Court at Patna, 2001

One aspect needs to be placed on record at the outset lest it may be misunderstood that the police is being evacuated from the present camping ground and that this affect the law and order situation. This is not so. By all means let the police force even be increased to double strength. No one has any objection to this.

But what is being complained of is that the police has occupied the building of the school with the result that the children are not being sent to school where the police has occupied the classrooms. This is depriving the children of education.

The correct perspective would be that the police may remain within the district; but, the schools should not be closed for the reason that the classrooms have been converted into barracks. Why should this happen? This is depriving a generation and a class of children from education to which they have a right.

– Inqualabi Nauzwani Sabha and others v. The State of Bihar, C.W.J.C. No. 4787 of 1999, High Court of Patna, order of January 2, 2001.

Paschim Medinipur Bhumij Kalyan Samiti v. West Bengal, High Court at Calcutta, 2009

Mr. Roy, the learned Advocate General, appearing on behalf of the State/respondents, informs this Court that in fact, 22 schools in the district of West Midnapore were

requisitioned for the purpose of accommodating the police forces deployed there to cope with the abnormal situation prevailing.

Mr. Roy further submits that out of 22 schools, the possessions of 10 schools have already been returned to the school authorities and other two schools, namely, Goaltore Boys High School and Goaltore Girls School will be vacated within 2nd December, 2009...

In such circumstances, we dispose of this writ application by directing the State/respondents to deliver back the possession of the 10 remaining schools ... positively within 30th December, 2009...

[T]he cost of consumption of the electricity in those schools by the police personnel will be borne out by the State Government in no time.

It is needless to mention that the mid-day meal should immediately start in those schools, where the possession has already been handed over to the school authorities and in respect of other schools, it should resume immediately after the handing over of possession of those schools.

– Paschim Medinipur Bhumij Kalyan Samiti v. West Bengal, W.P. No. 16442(W) of 2009, High Court at Calcutta, judgment of November 24, 2009.

National Commission for Protection of Child Rights, Protection of Children's Rights in Areas of Civil Unrest, 2010

Schools should never be used as temporary shelters by security forces. The [National Commission for Protection of Child Rights] is of the view that use of schools by police or security forces violates the spirit and letter of the [Right to Free and Compulsory Education] Act 2009 because it actively disrupts access to education and makes schools vulnerable to attacks. The Home Ministry should ensure that its directives against this are implemented. District magistrates must never offer schools to police and security personnel, and must enquire promptly into complaints that they are being used in this way. The army or police

personnel in their turn must not use schools to set up camps or checkpoints. On the contrary, they should be directed to actively protect educational facilities.

– National Commission for Protection of Child Rights, Protection of Children's Rights in Areas of Civil Unrest, 2010, p. 10.

Exploitation of Children in Orphanages v. India, Supreme Court of India, 2010-2011

The Deputy Commissioner of N.C. Hills should ensure that the Schools, Hostels and Children Home Complex presently occupied by the armed/security forces are vacated within a month's time and it should be ensured that the school buildings and hostels are not allowed to be occupied by the armed or security forces in future for whatsoever purpose...

The Ministry of H.R.D. [Human Resources Development, i.e. Education], Government of India is directed to submit a list of schools and hostels (district-wise), collected from the State Governments/Union of Territories Administrations which are currently occupied by the armed/security forces in the North Eastern States duly indicating the date from which or duration for which such schools and hostels have been occupied by the security forces...

The Ministry of Home Affairs is directed to ensure that the paramilitary forces vacate the school and hostel buildings occupied by them and submit an Action Taken Report to this Court as well as NCPC within two months from today. The Ministry shall file a proper affidavit in this matter on the next date of hearing of this Writ Petition.

– Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India and others, W.P. (Criminal) No. 102 of 2007, order of September 1, 2010.

State of Jharkhand:

So far as the State of Jharkhand is concerned, it is admitted that out of a total number of 47 locations where security forces have been housed in schools and hostels, only 26 of them have been vacated by the security forces. Rest of them still continue to be in occupation of the security forces. In the circumstances, there shall be a direction directing the State of Jharkhand to forthwith take appropriate steps and vacate the security forces from the school buildings, hostels, etc., within two months from today. The State of Jharkhand is directed to file its compliance report.

The State of Jharkhand is further directed to submit a detailed affidavit as to whether those buildings stated to have been vacated by the security forces have already been handed over to the concerned department and whether the schools are actually being run in those buildings. There shall be a similar direction for all the States where the school buildings, hostels, etc. were under the occupation of security forces.

State of Tripura:

So far as the State of Tripura is concerned, it is admitted that still 16 school buildings, hostels etc., continue to be under the occupation of the security forces and the State requires six months' further time to vacate them. We are not inclined to grant time as prayed for by the State. There shall be a similar direction directing the State of Tripura to vacate the security forces from the school buildings, hostels etc., in their occupation within two months from today. The State Government shall file the compliance report.

– *Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India and others*, W.P. (Criminal) No. 102 of 2007, order of March 7, 2011.

Nandini Sundar v. Chhattisgarh, Supreme Court of India, 2011

So far as the school buildings, educational institutions and hostels occupied by the security forces in the State of Chhattisgarh is concerned, it is stated that effective steps are being taken for vacating those buildings and the process had already begun. There shall be a direction to the Union of India and the State of Chhattisgarh to ensure that the security forces vacate all the educational institutions, school buildings and hostels within a period of four months from today. There shall be an order accordingly.

– *Nandini Sundar and others v. The State of Chhattisgarh*, W.P. (Civil) No. 250 of 2007, Supreme Court of India, order of January 18, 2011.

It is necessary to note here that this Court had to intercede and order the Government of Chhattisgarh to get the security forces to vacate the schools and hostels that they had occupied; and even after such orders, many schools and hostels still remain in the possession and occupancy of the security forces. Such is the degree of degeneration of life, and society. Facts speak for themselves...

- (i) the issue of schools and hostels in various districts of Chhattisgarh being occupied by various security forces, in a manner that precludes the proper education of students of such schools...

With respect to the issue of the schools and hostels occupied by the security forces, it may be noted that the State of Chhattisgarh had categorically denied that any schools, hospitals, ashrams and anganwadis were continuing to be occupied by security forces, and in fact all such facilities had been vacated. However, during the course of the hearings before this bench it has turned out that the facts asserted in the earlier affidavit were erroneous, and that in fact a large number of schools had continued to be occupied by security forces. It was only upon the intervention, and directions, of this Court did the State of Chhattisgarh begin the process of releasing the schools and hostels from the occupation by the security forces. That process is, in fact, still on going. We express our reservations at the manner in which the State of Chhattisgarh has conducted itself in the instant proceedings before us. It was because of the earlier submissions made to this Court that schools, hospitals, ashrams and anganwadis have already been vacated, this Court had passed earlier orders with respect to other aspects of the recommendations of the NHRC, and did not address itself to the issue of occupancy by security forces of such infrastructure and public facilities that are necessary and vital for public welfare. A separate affidavit has been filed by the State of Chhattisgarh seeking an extension of time to comply with the directions of this Court. This is because a large number of schools and hostels still continue to be occupied by the security forces. We will deal with the said matter separately.

– Nandini Sundar and others v. The State of Chhattisgarh, W.P. (Civil) No. 250 of 2007, Supreme Court of India, judgment of July 5, 2011.

A second interlocutory application ... has also been filed on behalf of the State of Chhattisgarh, for extension of time to vacate the school buildings, educational institutions and hostels, occupied by the security forces in Chhattisgarh.

Upon hearing learned counsel for the respective parties, we also allow the same. The State of Chhattisgarh is given a further period of two months to vacate the said premises.

While extending the period, we also make it clear that no further extension of time should be prayed for on behalf of the State of Chhattisgarh for the aforesaid purpose.

– Nandini Sundar and others v. The State of Chhattisgarh, W.P. (Civil) No. 250 of 2007, Supreme Court of India, order of November 18, 2011.

Israel

Manual on the Rules of Warfare, 2006

It may be the case that a target might change its status from civilian to military or vice versa. For example, if an anti-aircraft battery is positioned on the roof of a school or if a sniper takes up a position on the minaret of a mosque, the protection provided for the facility by the virtue of it being [a] civilian target is no longer valid, and the attacker is permitted to attack it. The legal responsibility for the deaths of civilians in such a case is that of the side that made unreasonable use of a civilian target rather than on the side who attacked this target. In the case of incidents in which there is a doubt as to whether the target changed its status from civilian to military, the Additional Protocols determine that it should be assumed that it is not a military target unless proven otherwise.

– Military Advocate-General's Corps Command, Israeli Defense Forces Schools of Military Law, "Rules of Warfare on the Battlefield," Second Edition, 2006, p. 27.

Israeli Defense Forces' Operational Plans and Rules of Engagement Orders, 2009

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...The [Israeli Defense Forces (IDF)] took extensive steps to weigh the risk of civilian harm against the existence of important military objectives, based on the information available at the time of targeting decisions. Such assessments were a significant part of IDF training and rules of engagement, and they were implemented in the field... [F]or attacks planned in advance, each operation and target was considered on an individual basis (and reviewed by several authorities, including legal officers) in order to ensure that it met the requirements of proportionality. The same analysis was frequently repeated in the field based on real time data, immediately prior to an attack, to confirm that excessive civilian harm was not anticipated.

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On numerous occasions, this review led to a decision not to attack legitimate military targets, to avoid the possibility of civilian harm, even though such an attack might not be excessive in relation to the anticipated military advantage. As just one example of many ... Israeli forces identified a rocket launcher between two school buildings on 18 January 2009, but refrained from attacking because of its proximity to the schools...

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The parties in control of the territory where the hostilities take place also have obligations under the Law of Armed Conflict to minimise civilian harm, including with regard to their own population. Thus, the parties to the conflict “shall, to the maximum extent feasible, take the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.” [1977 Additional Protocol I, Article 58(c)]. This means they should “avoid locating military objectives within or near densely populated areas” [1977 Additional Protocol I, Article 58(b)]. ... To do the opposite – to place weapons systems in or near apartment buildings, schools, mosques or medical facilities ... – violates the Law of Armed Conflict, because such tactics inevitably increase civilian casualties beyond what otherwise might occur in connection with an attack on a legitimate military target.

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Thus, combatants who choose to fight from within civilian buildings bear responsibility for the consequences, because their very presence in such structures “will make an attack against them legitimate.” As the ICRC explains in its Commentary to Additional Protocol I, “It is clear that a belligerent who accommodates troops in purely civilian buildings, for example, in dwellings or schools, or who uses such buildings as a base for combat, exposes them and the civilians present there to serious danger: even if attacks are directed only against members of the armed forces, it is probable that they will result in significant damage to the buildings.”...

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...[The Israeli Defense Forces (IDF)] took precautions regarding sensitive sites. The IDF’s operational plans and rules of engagement order special precautions with regard to

military activity in proximity to United Nations and Red Cross facilities (of which there are several hundred in Gaza), hospitals, religious sites and educational institutions—a total of almost 1,900 sensitive sites in the Gaza Strip. All these sensitive sites were clearly marked in advance on IDF operational maps and aerial photographs, according to the information available to the IDF, as provided by the different organisations. The IDF distributed these maps at all levels of command, and gave clear orders regarding the protection of facilities and vehicles of this sort. The IDF set up a special Civil Administration situation room and a centre for humanitarian coordination to facilitate cooperation between the IDF and the U.N., the Red Cross and other international organisations...

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This mode of operation created complex operational, moral and legal challenges to the IDF, which frequently had to reconcile its commitment to minimise the risk to civilians and provide special protection to sensitive sites with military imperatives, such as the prevention of rocket launches from areas adjacent to schools and hospitals or the protection of troops under attack by Hamas terrorists operating from the vicinity of U.N. facilities. In some cases, the IDF refrained from military activities because of potential significant harm to sensitive sites... In other cases where it was necessary to proceed with military operations despite the risk to sensitive sites, the IDF took precautions to minimise the risk for harm.

– Ministry of Foreign Affairs, *The Operation in Gaza 27 December 2008–18 January 2009: Factual and Legal Aspects*, July 29, 2009, secs. 130-131, 139, 140, 259 & 261.

Italy

World Humanitarian Summit Commitments, 2016

Italy will continue to implement domestic legislation to prohibit/limit the use of schools and places of worship in support of the military effort.

Italy will support the inclusion of the *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict* into military manuals, doctrine and other means of dissemination.

– Policy Commitments 207055 & 207069, *World Humanitarian Summit*, 2016.

Lebanon

Palestine Liberation Organization, Ain al-Helweh Refugee Camp, 2017

On 6 March 2017, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in Lebanon obtained written assurances from Palestinian armed groups in the Ain al-Helweh refugee camp that there would be no repetition of violations of neutrality of UNRWA's facilities in the camp. The assurances were requested by UNRWA in order to resume its operations in the camp, following days of fighting between rival Palestinian factions. During the clashes, a number of UNRWA schools were occupied, including one placed on high ground which sustained considerable damage.

– UNRWA Lebanon, March 14, 2017.

Luxembourg

Endorsement of Lucens Guidelines, 2014

We are pleased to confirm hereby that Luxembourg formally endorses the Lucens Guidelines [for Protecting Schools and Universities from Military Use during Armed Conflict] and commits itself to implement to implement them both in its legislation and military doctrine...

[A]s a non-permanent member of the United Nations Security Council and as Chair of the Security Council Working Group on Children and Armed Conflict for the biennium 2013-2014, Luxembourg has striven to help improving the situation of children affected by armed conflict. Luxembourg's efforts at the head of the Security Council Working Group have, *inter alia*, translated into the unanimous adoption, in March 2014, of Resolution 2143 (2014), which encourages Member States to consider concrete measures to deter the use of schools by armed forces and armed non-State groups and calls for enhanced monitoring and reporting of the military use of schools.

– Letter from Etienne Schneider, Deputy Prime Minister, Luxembourg, and Jean Asselborn, Minister of Foreign and European Affairs, Luxembourg, to the Global Coalition to Protect Education from Attack, December 12, 2014.

World Humanitarian Summit Commitment, 2016

Luxembourg confirms its commitment to incorporate the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict into military manuals, doctrine, rules of engagement, operational orders, and other means of dissemination.

– Policy Commitment 213039, World Humanitarian Summit, 2016.

Malaysia

Military Manoeuvres Act 1983

Article 2

...

“military manoeuvre” means any deployment of service personnel, guns, vehicles, ships or aircraft carried out on any land, sea, tidal water, shore or air by the armed forces or any of the visiting forces...

Article 7

- (1) When any military manoeuvre is being executed under this Act, the persons engaged in the military manoeuvre may, within the limits specified in the notice, if any, and during the period specified-- (a) pass over and encamp, construct military works not of a permanent character and execute military manoeuvres on any land;...
- (2) Nothing in this Act shall authorize-- ... entry on or interference with any ... school ... or any ground attached to any ... school...

– Military Manoeuvres Act, December 28, 1983, art. 2, 7.

Nepal

Comprehensive Peace Agreement concluded between the Government of Nepal and the Communist Party of Nepal (Maoist), 2006

7.5.4. With the realization of the fact that the right to education to all should be guaranteed and respected, both sides are committed to maintaining a congenial academic environment in educational institutions. Both sides agree to guarantee that the right to education shall not be violated. They agree to immediately put an end to such activities as capturing educational institutions and using them, abducting teachers and students,

holding them captives, causing them to disappear, and not to set up army barracks in a way that would adversely impact schools and hospitals.

– Comprehensive Peace Agreement concluded between the Government of Nepal and the Communist Party of Nepal (Maoist), November 21, 2006, art. 7.5.4.

Council of Ministers, 2011

In order to assure all people of Nepal the fundamental right to obtain an education, it has become the necessity of today to make the whole educational sector peaceful, prosperous, relevant, and results oriented. At present the country has begun to move along the path of peace; however, various groups and protests, in order to draw the attention of the government to their own demands, are continuously calling for various types of movements, strikes and shut downs, and the first target of such activities has become the education sector. These types of situations have created a hindrance to the implementation of the full educational program, lowering students' expected learning achievement and resulting in a situation in which the entire educational standard has been hampered...

In order to assure the learning rights of students and provide easier access to a well-managed and peaceful environment as well as the continuous operation of schools without hindrance to learning, implement according to the decision [it is decided to] declare schools a "Zone of Peace."

– Decision of the Government of Nepal, May 25, 2011.

Ministry of Education Guidelines on Schools as Zones of Peace, 2011

To keep the school free from armed activities and other kinds violence refers to the following conditions:

- (a) No armed activities in the school premises and in its periphery.
- (b) No presence of armed group or conflicting parties in the school premises.
- (c) No use of school for any armed activities.
- (d) No incidence of kidnapping of student, teacher, staff and members of school management committee, admission / involvement in activities of armed group or force, illegal detention, torture and threatening from various parties.

- (e) Not being used of student, teacher, staff and school management committee by armed conflicting parties.
- (f) No training or armed activities and spying in school premises and in its periphery by any groups or conflicting parties.
- (g) No entrance of any kind of arms and organic- chemical explosive substance except for educational purpose in school premises and in its periphery.
- (h) By any reason, no attack, targeted, use as shield or making physical damage to the school and extortion.
- (i) With any reason, no violence or activities that instigate for such violence be inflicted in school surroundings and in its periphery.
- (j) Maintain mutual respect between students and teachers having various ideology and belief....

– Schools as Zones of Peace National Framework and Implementation Guideline, Ministry of Education, promulgated under rule no. 192(3) of Education Regulation (2002), 2011.

New Zealand

Military Manoeuvres Act (repealed), 1915

Article 2: Governor-General may, by Proclamation, declare lands to be available for military manoeuvres

- (1) The Governor-General may from time to time, by Proclamation, declare that any land referred to in that Proclamation shall, for such period as may be specified therein, be available for military manoeuvres; and every such Proclamation shall have effect according to its tenor.
- (2) A Proclamation under this section shall not authorise entry on or interference with any ... school ... or any ground attached to any ... school...

Article 6: Definition of right to execute military manoeuvres

The right to execute military manoeuvres under this Act includes the right to enter on, pass over, and encamp on any land proclaimed under this Act, and to construct military works thereon.

– Military Manoeuvres Act, No. 42 of 1915, repealed April 12, 2012, art. 2, 6.

Manual of Armed Force Law, draft second edition

[To be issued as a Defence Order]

14.35.8

[New Zealand Defence Forces (NZDF) are only to use the buildings of educational institutions for military purposes if it is absolutely necessary to do so. In such cases all feasible steps are to be taken to ensure that:]

- (a) Civilians and in particular, children are protected from the effects of attack upon the institutions by opposing forces – including where necessary the removal of such persons from the vicinity;
- (b) Such use is for the minimum time possible;
- (c) The adverse effects upon children, in particular in respect to their right to education, are minimised to the maximum extent possible.

[Commentary to paragraph]

Similarly schools and other educational institutions are entitled to particular protection from the effects of war as the destruction or endangerment of such facilities is unequivocally an attack upon the learning and development of future generations who bear no responsibility for the armed conflict from which the damage arises.

In many cases the fact that a building or object is of religious or cultural significance, or is an educational or charitable institution, will be easily apparent to commanders of New Zealand forces and members of the NZDF. On the other hand it cannot be taken for granted that every member of the NZDF will know the purpose or cultural or spiritual significance of every object encountered during operations. Commanders and other members of the NZDF responsible for the planning and execution of operations therefore bear particular responsibility for the identification of such objects and for ensuring that this information is passed to those members of the NZDF involved in operations. As wanton damage to objects which are not of military objectives is prohibited outright in any event, the provisions relating to cultural, religious, educational or charitable property should be regarded as an additional safeguard.

New Zealand also recognises that children have a right to education. [Citation provided to ICESCR.] Use and occupation of schools and other educational institutions obviously inhibits the exercise of this right. Where for military reasons it is necessary for a force to use such an institution all feasible steps must be taken, in consultation with local authorities, to ensure that the disruption to the education of children is reduced to as low as reasonably practicable. This may include the need to identify and facilitate the use of other suitable facilities for such purposes.

– Draft Manual of Armed Force Law (2nd Ed), volume 4.

World Humanitarian Summit Commitment, 2016

New Zealand will incorporate the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict into military manuals, doctrine, rules of engagement, operational orders, and other means of dissemination by December 2017.

– Operational Commitment 224043, World Humanitarian Summit, 2016.

Nicaragua

Law on Autonomy for Institutions of Higher Education, 1990

Article 9 – Autonomy confers ... (4) The inviolability of the university campuses. The public forces can only enter them with written authorization from the competent university authorities.

– Ley de Autonomía de las Instituciones de Educacion Superior, Ley No. 89 (1990), article 9.

Nigeria

Children and Armed Conflict Statement, 2015

As a demonstration of our national commitment to the well-being of children, Nigeria was among the first group of States to endorse the Safe Schools Declaration in Oslo, Norway, on 29 May. The Declaration complements and strengthens our existing national safe schools initiative, established in 2014 as part of the policy response of the federal Government to promote safe zones for learning. The Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict will serve as a compass to guide and reinforce efforts towards the achievement of this objective. We are committed to the

dissemination of these guidelines and to promoting their implementation. We are indeed persuaded that this initiative will promote and protect the right to education and prevent the discontinuities in education inherent in situations of armed conflict.

– Statement by Ambassador Joy Ogwu, United Nations Security Council, 7466th Meeting, Meeting Record, S/PV.7466, June 18, 2015.

Norway

Safe Schools Conference Speech, 2015

Many of Norway's military bases are located in scarcely populated areas. In these places there are some "dual use"-objects, in terms of buildings that are owned by the Armed Forces and put at the disposal of the local population simply because it financially wouldn't be sustainable, or even affordable, to build twice as many buildings. Sometimes these buildings are used for education. For example gym centers used by schools for physical education as well as by the army for physical training of the forces. ... As part of the implementation process the Ministry of Defence has interpreted the Guidelines [on Protecting Schools and Universities from Military Use during Armed Conflict] to mean the following: ... [I]f the Armed Forces own realty/ buildings that is/are being rented out/leased to civilian educational facilities, the leasing contracts are, for the future, to contain a cancellation clause if an armed conflict should occur on Norwegian territory.

– Speech delivered by Ms. Ine Eriksen Søreide, Minister of Defence, Norway, at the Oslo Conference on Safe Schools, May 29, 2015, Report of the Oslo Conference on Safe Schools, Ministry of Foreign Affairs, Oslo, Norway, 2015, p. 19.

World Humanitarian Summit Commitment, 2016

Norway commits to promote and enhance the protection of civilians and civilian objects, especially in the conduct of hostilities, for instance by sparing civilian infrastructure from military use in the conduct of military operations. This means that it will work to increase the protection of education from attack during armed conflict, inter alia by sparing, as far as possible, schools and educational facilities from military use in situations of armed conflict. In this context, Norway commits to intensifying its efforts to support implementation and universalize the Safe Schools Declaration, which contains a number of important preventive measures aimed at increasing the protection of education in

armed conflict. Norway will also promote and participate in follow-up initiatives to the Oslo Conference on Safe Schools.

– Advocacy Commitment 227020, World Humanitarian Summit, 2016.

Pakistan

Manoeuvres, Field Firing and Artillery Practice Act, 1938

Article 3: Power exercisable for purpose of manoeuvres.

- (1) Where a notification under sub-section (1) of section 2 has been issued, such persons as are included in the military forces engaged in the manoeuvres may, within the specified limits and during the specified periods,___
 - (a) pass over, or encamp, construct military works of temporary character, or execute military manoeuvre on, the area specified in the notification, ...
- (2) The provisions of sub-section (1) shall not authorise entry on or interference with any ... educational institution...

– Manoeuvres, Field Firing and Artillery Practice Act, Act No. V of 1938, March 12, 1938, art. 3.

Peru

University Law (amended and then replaced), 1983

The campuses of universities are inviolable. The police forces can only enter it by judicial order, and at the express request of the Rector, who will immediately inform the University Council, except in case of *flagrante delicto* [while the crime is in progress] or or imminent danger that a crime will be perpetrated. The university premises are only to be used for the fulfillment of their own purposes and are exclusively dependent on the relevant university authority. Anyone who causes damage to university premises or facilities, or who disturbs or prevents their normal use, or those who occupy them illegally, partially, or totally, will be held legally liable.

– Ley Universitaria, No. 23733, December 9, 1993, article 8. Article modified by Article 1 of Legislative Decree No. 726, published on November 12, 1991: "Article 8.- The university premises are only to be used for the fulfillment of their own purposes. The Ministry of Defense, or of the Interior, or of the Military Commands, or Police officers, or if applicable, the Armed Forces and the National Police of Peru, may enter university premises when they become aware that terrorist elements or groups disturb the peace and internal order; respecting the academic and administrative autonomy of said centers of studies."

Law No. 25416, 1992 (repealed 2014)

The university premises constitute an institutional domicile and are therefore inviolable. Except in case of *flagrante delicto* [while the crime is in progress], or imminent danger that a crime will be perpetrated, the National Police can only enter in them by judicial order or at the express request of the Rector, who will immediately inform the University Council.

The university campus is part of the urban structure and the National Police can monitor it to protect the university's heritage and prevent the commission of crimes. In areas declared to be in a state of emergency, the President of the Republic may provide for the intervention of the Armed Forces on university premises. The actions referred to in this article do not compromise the exercise of academic freedom.

– Ley No. 25416, Sustituyen el Artículo 8 de la Ley No. 23733 modificando por el Artículo 1 del Decreto Legislativo No. 726, March 11, 1992 (repealed 2014).

University Law, 2014

Article 10: Guarantees for the exercise of university autonomy:

The exercise of autonomy in university education is governed by the following rules: ...

10.2: The university premises are only to be used for the fulfillment of their own purposes and are exclusively dependent on the relevant university authority. They are inviolable. Any violation carries liability according to law.

10.3: The National Police and the Public Prosecutor's Office may only enter the university campus by judicial order or at the request of the Rector, and the latter must report to the University Council or the whoever fulfils this job, except when a state of emergency has been declared, there's a flagrant crime, or imminent danger of the perpetration of a crime. In these cases, the actions of the public forces do not compromise or reduce university autonomy.

10.4: When the university authorities become aware of the alleged commission of a crime, they are to inform the Public Prosecutor's Office, for the initiation of investigations.

– Ley Universitaria, Ley No. 30220, July 9, 2014, article 10.

Philippines

Special Protection of Children against Abuse, Exploitation and Discrimination Act, 1992

Children as Zones of Peace. – Children are hereby declared as Zones of Peace. It shall be the responsibility of the State and all other sectors concerned to resolve armed conflicts in order to promote the goal of children as zones of peace. To attain this objective, the following policies shall be observed... (e) Public infrastructure such as schools, hospitals and rural health units shall not be utilized for military purposes such as command posts, barracks, detachments, and supply depots...

– RA No. 7610, An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation, and Discrimination, Providing Penalties for its Violation and Other Purposes, June 17, 1992, art. X(22)(e).

Davao City, Children’s Welfare Code, 1994

Section 16

... (e) Public infrastructure such as schools, hospitals and rural health units shall not be utilized for military purposes such as command post, barracks, detachments and supply depots...

– Davao City, Children’s Welfare Code, December 2, 1994.

Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law, 1998

Article 4(7):

Personnel and facilities of schools, the medical profession, religious institutions and places of worship, voluntary evacuation centers, programs and projects of relief and development shall not be the target of any attack. The persons of said entities shall be guaranteed their safety.

– Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law Between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines, March 16, 1998.

Cebu City, Children's Code, 2001

Section 16

... (e) Public infrastructure such as schools, hospitals and rural health units shall not be utilized for military purposes such as command posts, barracks, detachments, and supply depot...

– Cebu City, Ordinance No. 1874, “An ordinance establishing the Cebu city children’s code and for other purposes,” January 24, 2001.

Cotabato Province, Child and Youth Welfare Development Code, 2003

Section 89

... (g) Public infrastructures such as schools, hospitals and rural health units shall not be utilized for military purposes such as command posts, barracks, detachments, and supply depots...

– Cotabato Province, Provincial Ordinance No. 292, “The Child and Youth Welfare and Development Code of Cotabato Province,” 2003.

Armed Forces Letter Directive No. 34, 2009

To attain this objective, all [Armed Forces of the Philippines] personnel shall strictly abide and respect the following: ... (e) Basic infrastructure such as schools, hospitals and health units shall not be utilized for military purposes such as command posts, barracks, detachments, and supply depots.

– Armed Forces of the Philippines Letter Directive No. 34, GHQ AFP, November 24, 2009, para. 7.

Human Rights-Based Intelligence Operations: Rules of Behavior For Military Intelligence Personnel, 2011

3.6 Guidelines on Children Involved in Armed Conflict

Rules and Regulations on Children Involved in Armed Conflict (CIAC)

...

The AFP [Armed Forces of the Philippines] strictly abide and respect the following:

...

5. Public infrastructure such as schools ... shall not be utilized for military purposes such as command posts, barracks, detachments, and supply depots...

– Office of the Deputy Chief of Staff for Intelligence, Armed Forces of the Philippines, Human Rights-Based Intelligence Operations: Rules of Behavior For Military Intelligence Personnel, 2011, chapter 3.6.

House Bill 4480: Special Protection of Children in Situations of Armed Conflict, 2011

SEC. 5. Definition of Terms . . . As used in this Act:...

- (g) Attacks on schools ... refer to the occupation ... of schools ... or disruption of educational activities... It also refers to attacks of such places which have been temporarily abandoned by the community as a result of armed conflict, unless these places have been declared as a “no man's land.”

...

SEC. 8. Unlawful or Prohibited Acts

- (a) It shall be unlawful for any person to commit the following acts of grave child rights violations:...
- (12) Attack on schools

SEC. 9. Penalties. - The following penalties and sanctions are hereby imposed for the offenses enumerated in this Act:...

- (b) Any person found guilty of committing any of the acts enumerated in subparagraph[] ... 12 of Paragraph (a), Section 8 of this Act shall be punished with an imprisonment of not less than fourteen (14) years but not more than twenty (20) years and a fine of not less than One million pesos (P 1,000,000.00) but not more than Two million pesos (P2,000,000.00)...

– House Bill 4480, An Act Providing for the Special Protection of Children in Situations of Armed Conflict and Providing Penalties for Violations Thereof, 15th Congress of the Philippines; approved by House on third reading (Yeas: 233; Nays: 0; Abstain: 0) on May 23, 2011; transmitted to Senate and received by Senate May 31, 2011; as of August 2012: pending in Senate Committees on Youth, Women and Family Relations; National Defense and Security; and Finance.

Poland

Armed Forces Accommodation Act, 1995

Temporary quartering

Section 62

- (1) Temporary quartering occurs when it is necessary to temporarily quarter military units, service members and employees of those units, and persons accompanying the Armed Forces, and to warehouse or store devices, armaments, supplies and military equipment – outside of buildings, parts of buildings or land designated for permanent quartering.
- (2) In particular, temporary quartering occurs during:
 - (1) exercises, movement or transport of troops;
 - (2) service-related trips or temporary performance of duties by service members and employees of the military away from their permanent place of service or employment;
 - (3) state of emergency, martial law, mobilization or war...

Section 64

- (1) The following types of real property are not subject to temporary quartering:
- (5) real property of institutions of higher education, or research and development units...

– Armed Forces of the Republic of Poland Accommodation Act, No. 86, item 433, June 22, 1995, as amended, chapter 7, sections 62-64.

Singapore

Military Manoeuvres Act, 1963

Article 3

- (1) When any military manoeuvres are being executed under this Act, such persons as are engaged in the manoeuvres may within the limits specified in the notice, if any, as aforesaid and during the specified period —
 - (a) pass over and encamp, construct military works not of a permanent character and execute military manoeuvres on any land; ...

- (2) Nothing in this Act shall authorise entry on or interference with any ... school ... or any ground attached to any ... school...

– Military Manoeuvres Act, September 16, 1963, as revised December 31, 2014, art. 3.

Slovenia

Safe Schools Declaration endorsement, 2016

I am pleased to confirm herewith that Slovenia endorses the Safe Schools Declaration. With this endorsement, we express our commitment to advance the principles of the Safe Schools Declaration, including use of the Guidelines [for Protecting Schools and Universities from Military Use during Armed Conflict].

Slovenia will include the Guidelines in the pre-deployment training of civilian and military personnel participating in international operations and missions and into the Handbook on International Humanitarian Law for the Slovenian Armed Forces. Slovenia will also endeavor to include the Guidelines in the EU and NATO Security Sector Reform concepts and operational activities.

– Letter from Darja Bavdaž Kuret, State Secretary, Ministry of Foreign Affairs, Slovenia, to Tore Hattrem, State Secretary, Ministry of Foreign Affairs, Norway, April 12, 2016.

South Sudan

Order from the Office of the Deputy Chief of General Staff for Political Military Operations, 2012

1. I am hereby once again repeating my message to all of you about occupation of schools by our army. This act of occupation is deplorable and it is [in] violation of our law of land. Besides, you are depriving our children from the much needed education.
2. I hereby order you to urgently evacuate the following schools occupied by the forces under your direct commands.

[List of eight schools, by name, state, county, date occupied, and division occupying school.]

3. Failure to evacuate the above mentioned schools will lead to severe disciplinary actions and the act is a serious violation of the law of our land which shall bear regrettable implications on each of you Div. CDRs [divisional commanders].
4. Each division CDR [commander] must report the date of their evacuation of the above mentioned schools within seven days starting from 17th 04.2012-24th 04.2012.
5. Remember all eyes are on your immediate action.

– Order from Lt. Gen. Obuto Mamur Mete, Deputy Chief of General Staff for Moral Orientation, April 16, 2012.

Draft General Order on SPLA Interaction with Children, 2012

1. It has become apparent that there is a need to regulate the manner in which SPLA personnel interact with children.
2. For purposes of this instruction, the definition of a child is any person under the age of 18 years of age.
3. The primary mission of the SPLA is to uphold the Republic of South Sudan's Constitution, secure its territorial integrity, and protect its people, especially the children...
5. The aim of this directive is to provide comprehensive and unambiguous instruments pertaining to the appropriate manner by which children are dealt with by the SPLA.

DIRECTIVE:

6. PROHIBITION: It is expressly prohibited to: ...
 - (c) Occupy schools or interfere with or disrupt classes. Under no circumstances are school buildings or school facilities to be used for any military purpose.
7. The only exception to this instruction that will be tolerated is where children are in imminent danger owing to conflict or natural disaster and there is an identified need to evacuate children for their own safety. Such authority must be sought from the Chief of General Staff, via the Judge Advocate General of the SPLA (Director, Military Justice and Legal Affairs Directorate). If children are permitted access to SPLA camps or premises pursuant to this exception, the camp or unit commander

will immediately contact his unit's or his superior unit's child protection officer to enable evacuation of such children to Unicef, UNMISS, Save the Children, or similar international or humanitarian organizations that can provide assistance to the children in a civilian environment.

DISCIPLINARY:

8. Failure to carry out these directives and instruction will lead to the offender being charged under section 67 of Ref (A), the SPLA Act, for disobedience of lawful orders. Upon conviction, any offender who is the commanding officer of an SPLA unit shall be relieved of his or her command.

– Draft General Order on SPLA Interaction with Children, from General James Hoth Mai, Chief of General Staff, November 2012

Directive Order on Child Protection and the Release and Reintegration of Children Associated with the SPLA, 2013

NOTE: THIS IS A PUNITIVE ORDER. Under this General Order, SPLA members are prohibited from: (1) recruiting children into the SPLA; (2) using children in any manner; or (3) occupying schools. SPLA members violating this Directive ARE SUBJECT TO the full range of disciplinary and administrative measures available under South Sudanese and International Law, including, but not limited to:

- Referral of charges to general court-martial
- Referral of charges to civilian criminal court
- Referral of charges to the ICC (International Criminal Court)
- Punitive dismissal from service
- Non-judicial punishment
- Administrative separation from service
- Administrative reduction in grade
- Relief from command (where applicable)
- Adverse performance evaluation...

1. **PURPOSE:** This “Directive-style” General Order ... makes clear that (1) children—defined as all persons under the age of 18 years old—shall NOT be recruited into the SPLA or used by or within the SPLA in ANY capacity for ANY purpose; AND (2) SPLA units and/or soldiers will NOT, under any circumstances, attack, occupy, or use for any purpose schools or school buildings or property.

This General Order announces a ZERO TOLERANCE POLICY: SPLA Members are prohibited from: (1) recruiting or using children for ANY purpose; (2) occupying schools or using school property for ANY purpose under ANY circumstances. These prohibitions are without exception and unconditional. Any officer, non-commissioned officer (NCO), or soldier suspected of violating this General Order may be tried by court-martial for violating Section 67 of the SPLA Act of 2009 (reference (b)), Disobedience of Lawful Orders.

This is a Punitive Order:

- a. When children are found to be associated with SPLA forces OR SPLA forces found to be occupying or using school property, the circumstances of the situation shall be thoroughly investigated by an officer appointed by the Commanding Officer of the pertinent Battalion, Brigade, or Division, OR by the COGS or a D/COGS OR a Director or Deputy Director of a General Headquarters Bilpam Directorate, OR by the Judge Advocate General of the SPLA (the Director, Military Justice & Legal Affairs Directorate). The officer appointed as the Investigating Officer shall coordinate with both the Child Protection Officer AND the judge advocate assigned to the Command or to its senior command...
- b. Officers, NCOs, and soldiers suspected of being in violation of this General Order themselves shall be investigated. The officer conducting the investigation shall make a written report of his or her inquiry that sets forth comprehensive Findings of Fact, lists the evidence supporting each Finding of Fact, renders Opinions and a Conclusion concerning the facts underlying the event or events being investigated, and makes Recommendations with respect to the disposition of the case, including whether the situation investigated warrants the taking of administrative or

disciplinary action by the Command against any Officer, NCO, or soldier suspected of conduct violating this General Order.

- c. A written investigative report that has been reviewed by a judge advocate and endorsed by the commanding officer of the unit involved and by the pertinent Division or Brigade Commander or Directorate senior officer shall be forwarded to the Chief of General Staff via the Head of the SPLA's Child Protection Unit and the Judge Advocate General of the SPLA.
- d. Disciplinary and/or adverse administrative action SHALL BE taken if there is evidence that suggests that any member or members of the SPLA have violated laws, rules, or orders relating to the recruitment or use of children by or within the armed forces, the occupation of schools, or the protection of children generally.

2. SITUATION

...The UN Secretary General Report on Children & Armed Conflict for 2011, lists the SPLA as a persistent violator of Child Protection laws... The SPLA appears on this list, the UN Secretary General's *List of Shame*, alongside groups such as the *Lord Resistance Army (LRA)*, *Al-Shabaab*, *Al-Qaida*, and the *Taliban*. This is intolerable and all SPLA actions causing SPLA to appear on this List will cease immediately. SPLA Officers, NCOs, and Soldiers ... will immediately cease occupying or using schools for ANY purpose...

3. **GENERAL ORDER.** All SPLA members, personnel, and units are unconditionally prohibited from: ... Occupying schools, interfering with or disrupting school classes or activities, or using school facilities for any purpose, to include but not limited to storing equipment, billeting, or taking cover from ongoing or prospective enemy attack.
 - a. Punitive Order. This General Order is punitive in nature.
 - b. Effective Date. This General Order takes effect immediately.
 - c. Responsible Officers. Commanders at ALL echelons of Command – GHQ, Sector, Division, Brigade, Battalion, Company, Platoon – are held responsible and accountable for ensuring all members of their Commands give immediate effect and obedience to this General Order...

- f. Report Required. Within 15 days of the termination of the Grace Period – or Not Later Than 15 October 2013 – Commanders at each echelon of Command are to deliver to the COGS, via the Judge Advocate General of the SPLA (Director, Military Justice & Legal Affairs Directorate), GHQ Bilpam, a properly completed *Certification of Unit Free of Persons Under the Age of 18 Years*. ... Commanders failing to submit this report in timely fashion will be subjected to adverse judicial and administrative disciplinary action...

Certification of Unit Free of Persons Under the Age of 18 Years

... I, (Major General/Brigadier General/Colonel/(Rank of Commander) _____, Commanding Officer of _____ (Division/Brigade/Battalion/Company/Platoon), do hereby certify that: ...

5. Units under my command are not occupying schools or utilizing school facilities in any way.

CONCLUSION. I hereby certify that the foregoing information and statements relating to the state of personnel under my command have been certified and are true...

– General Order, from General James Hoth Mai, Chief of General Staff, August 14, 2013.

Order from the Acting Sudan People's Liberation Army Chief of Staff, 2014

...This message serves to reaffirm the SPLA Commitment as this General order demand that; All SPLA members are prohibited from:-
...Occupying of using schools in any manner.

The SPLA members violating the directives ARE SUBJECT TO the full range of disciplinary and administrative measures available under South Sudanese and International Law including but not limited to as indicated in the attached punitive Order:

- (a) Referral of charges to General Court Martial
- (b) Referral of Charges to Civilian Criminal Court
- (c) Punitive Dismissal From Service
- (d) Non Judicial Punishment

- (e) Administrative Separation from Service
- (f) Relief from Command (where applicable)
- (g) Adverse Performance Evaluation

Therefore, you are directed to implement and observe this order as detailed in the attached document. All unit commanders are to use the forms and submit their reports and failure to do so measures will be taken in this order. [sic] For immediate execution.

– Lt. Gen. Thomas Cirillo Swaka, Acting Sudan People's Liberation Army Chief of Staff, 557/9/2014, September 10, 2014.

Draft Amendment to Sudan People's Liberation Army Act, 2014

Section 22(3) Occupation of Schools and Hospitals

Occupation of Schools and Hospitals: every SPLA member commits an offence who occupies Schools or Hospitals ... which are prohibited commits an indictable offence and liable to:

- a) Court martial
- b) Dismissal from the service
- c) Non-judicial punishment
- d) Administrative separation from service
- e) Administration reduction in grade
- f) Relief from command
- g) Adverse performance evaluation

– Draft amendment to Sudan People's Liberation Army Act, as per letter of Kuot Jook Alith, Legal Advisor, Ministry of Defense and Veteran Affairs, September 11, 2014.

Sri Lanka

Firing Ranges and Military Training Act, 1951

Article 6

- (1) After a military manoeuvres Order is made, the authorized forces may, within the authorized area and during the authorized period and subject to the provisions of subsection (2)

- (a) pass over, and encamp, construct such military works as are not of a permanent character, and execute military manoeuvres on any authorized land,
 - (b) use any authorized road, and
 - (c) supply themselves with water from any authorized source of water and, for that purpose, dam up any running water.
- (2) The provisions of subsection (1) shall not authorize
- (a) the entry into or interference with (except to the extent of using any authorized road) any ... school ... or ground attached to any ... school...

– Firing Ranges and Military Training Act, August 13, 1951, art. 6

Sudan

Agreement between the Government of Sudan and the Sudan People's Liberation Movement to protect non-combatant civilians and civilian facilities from military attack, 2002

Article 1

Basic Undertakings

1. The Government of the Republic of Sudan (GOS) and the Sudan People's Liberation Movement (SPLM) (hereafter referred to as the "Parties") reconfirm their obligations under international law, including common Article 3 of the 1949 Geneva Conventions, to take constant care to protect the civilian population, civilians and civilian objects against the dangers arising from military operations. In this context, the Parties specifically commit themselves: ...
- c) to refrain from endangering the safety of civilians by intentionally using them as "human shields" or by using civilian facilities such as hospitals or schools to shield otherwise lawful military targets; ...

– Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Movement to protect non-combatant civilians and civilian facilities from military attack, 2002, art. 1.

Switzerland

Swiss Armed Forces manual on the law of armed conflict, draft update

Educational institutions are to be treated with particular caution. Their destruction may amount to particularly grave disadvantages for a people and the future of a country. Moreover, children, who require extra protection due to their vulnerability, are present in schools. In addition, universities as well as other institutions of higher education often constitute or host significant cultural objects. Therefore, in applying the principles of precautions and proportionality, particular importance has to be attached to educational institutions. Their military use should be avoided.

– Swiss Armed Forces manual on the law of armed conflict, draft update.

Syria

Declaration by Free Syrian Army, 2014

[O]ccupation [of schools] by military forces represents a direct violation of domestic and international law... The Free Syrian Army fully supports the demilitarization of all schools ... used for military purposes. We stand ready to work with the international community to ensure the immediate and complete demilitarization of all schools ... under our jurisdiction. To support these efforts, the Free Syrian Army today states its official position prohibiting the militarization of schools and... and will amend its Proclamation of Principles to reflect the same. This statement will be circulated among all of our battalions and guide the actions of our members. Any individuals found to violate the principles listed in our proclamation will be held accountable, in accordance with international law.

– Declaration signed by President of Syrian Opposition Coalition and Chief of Staff of Supreme Military Council, Free Syrian Army, April 30, 2014.

National Coalition of Syrian Revolution and Opposition Forces Declaration, 2014

We affirm our responsibility to respect International Humanitarian Law at all times including ... the responsibilities to ... [r]espect and protect schools and hospitals, and refrain from using in them in support of the military effort, including by locating military objectives within or near them.

– National Coalition of Syrian Revolution and Opposition Forces, Declaration of Commitment on Compliance with IHL and the Facilitation of Humanitarian Assistance, 2014.

Turkey

Kurdistan Workers' Party Rules for the Conduct of Warfare, 2004

Children's right to education will not be restricted.

– Kurdistan Workers' Party/People's Defence Forces (PKK/HPG), Rules for the Conduct of Warfare, The General Assembly of KONGRA-GEL, 2004.

Ukraine

Manual on the Implementation of the Rules of International Humanitarian Law in the Armed Forces, 2004

As concerns children, international humanitarian law envisages the following: ... the right of children to receive an education shall be guaranteed.

– Manual on the Implementation of the Rules of International Humanitarian Law in the Armed Forces, September 11, 2004, sec. 1.4.11.

United Kingdom

Military Manoeuvres Act (repealed), 1897

Art. 2

Where an Order in Council under this Act authorises the execution of military manoeuvres, such persons as are under the authority of Her Majesty engaged in the manoeuvres ... may under the direction of the Secretary of State within the specified limits and during the specified period,

- (a) Pass over and encamp, construct military works, not of a permanent character, and execute military manoeuvres on any authorised land;...

Provided as follow—

- (1) Nothing in this Act shall authorise entry on or interference with (except to the extent of using authorised roads) any ... school, ... pleasure ground or nursery ground, ... ground attached to any ... school...

– An Act to Facilitate Military Manoeuvres, 60 & 61 Victoria, Ch. 43, August 6, 1897, repealed December 18, 1958, art. 2.

House of Commons Debate, 1915

Mr. KING asked the number of schools in England and Wales which, since the opening of the War, have been commandeered for military purposes; how many schools were still in military occupation at the end of last month; and how many scholars have been displaced in consequence?

The PARLIAMENTARY SECRETARY to the BOARD of EDUCATION (Mr. Herbert Lewis): From the beginning of the War till the end of last month 1,023 elementary schools had been occupied for military purposes. At the end of last month 169 were still in occupation, 92 of which were in use as hospitals. The number of children displaced was 109,335, for all of whom (with the exception of a small department for children suffering from ringworm) some other provision has been made. Eighty-eight secondary schools have been similarly occupied (including some partly occupied): 33 were in occupation at the end of last month, 22 of these as hospitals. Other provision has been made for all the pupils displaced.

– House of Commons debate, vol. 74 c143, September 16, 1915.

Manoeuvres Act, 1958

Art. 2

- (1) Subject to the provisions of this Act, any persons taking part with the authority of Her Majesty in the manoeuvres authorised by a manoeuvres Order ... may, under the direction of the Secretary of State, within the manoeuvres area and during the manoeuvres period-
 - (a) pass over, and encamp, construct works not of a permanent character and execute defence manoeuvres on, any land; ...
- (2) The foregoing subsection shall not authorise entry on or interference with- ...
 - (c) any school or ground attached thereto...

– Manoeuvres Act, 7 Elizabeth 2, Ch. 7, December 18, 1958, art. 2.

House of Commons Debate, 1991

Mr. Foulkes: To ask the Secretary of State for Defence what definition of the term military manoeuvre is used when considering the applicability of the Manoeuvres Act 1958 to military exercises.

Mr. Archie Hamilton [holding answer Monday 11 February 1991]: There is no statutory definition of the term “military manoeuvre,” but in common service usage the term would be used to describe the strategic or tactical movement of a military force.

– House of Commons Debate, vol. 186 c68W, February 18, 1991.

Manual of the Law of Armed Conflict, 2004

5.4.2

In cases of doubt, objects that are normally used [footnote 1] for civilian purposes are to be presumed as not being used for military purposes. [footnote 2]...

[footnote 1:] “Used” is not the same as “occupied”. Use could occur, for example, when enemy troops take shelter from direct fire behind a house or school.

[footnote 2:] ... If, for example, it is suspected that a schoolhouse situated in a commanding tactical position is being used by an adverse party as an observation post and gun emplacement, this suspicion, unsupported by evidence, is not enough to justify an attack on the schoolhouse. Where there is doubt about the status of a target, a pilot may not be able to resolve that doubt by visual observation in order to justify the attack. He is entitled to rely on intelligence relayed to him unless his own observation contradicts that intelligence or raises doubts about its reliability.

...

15.18

It is prohibited:

- (a) to commit any act of hostilities against cultural property, so long as it is not being used for military purposes.

As a corollary, the better view is that the law also prohibits:

- (b) the use of cultural property for purposes which are likely to expose it to destruction or damage in armed conflict, unless there is no feasible alternative to such use...

15.18.1

Cultural property includes ... institutions dedicated to ... education...

– United Kingdom Ministry of Defence, Joint Service Manual of the Law of Armed Conflict, Joint Service Publication 383 (2004).

Army Doctrine Note 16/02: Human Security, 2016

There have been 10 UNSCRs [United Nations Security Council Resolutions] relating to children and armed conflict.... [UNSCR] 1998 [of date] 2001 Declared schools and hospitals off limits for both armed groups and military activities...

Schools in Conflict: LOAC

14. Opening. Schools and other educational establishments must be permitted to continue their ordinary activities. Any occupying power must, with the cooperation of the national and local education authorities, facilitate the proper working of schools and other institutions devoted to the care and education of children. In certain circumstances an occupying power may be within its rights in temporarily closing educational institutions, but only when there are very strong reasons for doing so, these reasons are made public, and there is a serious prospect that the closure will achieve important and worthwhile results.
15. Targeting. There is no definition of civilian objects within LOAC nor is the term used in the treaties dealing with internal armed conflicts, but the principles of military necessity and humanity require attacks to be limited to military objectives. Thus attacks on schools are prohibited unless they are being used for military purposes and even then considerable care would have to be taken.

– Army, “Human Security: The Military Contribution,” Doctrine Note 16/02, June 2016, sec. 4-4 – 4-5.

United States

Field Manual 27-10: The Law of Land Warfare, 1956

Treatment of Property During Combat

... The United States and certain of the American Republics are parties to the so-called Roetich [*sic*] Pact, which accords a neutralized and protected status to historic

monuments, museums, scientific, artistic, educational, and cultural institutions in the event of war between such States.

– Field Manual 27-10: The Law of Land Warfare, Department of the Army Field Manual, July 18, 1956, para. 57.

Final Report on the Persian Gulf War, 1992

Another reason for collateral damage to civilian objects and injury to civilians during Operation Desert Storm lay in the policy of the Government of Iraq, which purposely used both Iraqi and Kuwaiti civilian populations and civilian objects as shields for military objects. Contrary to the admonishment against such conduct contained in Article 19, [Geneva Convention for the Wounded], Articles 18 and 28, [Geneva Convention], Article 4(1), 1954 Hague, and certain principles of customary law codified in Protocol I... the Government of Iraq placed military assets (personnel, weapons, and equipment) in civilian populated areas and next to protected objects (mosques, medical facilities, and cultural sites) in an effort to protect them from attack. For this purpose, Iraqi military helicopters were dispersed into residential areas; and military supplies were stored in mosques, schools, and hospitals in Iraq and Kuwait. Similarly, a cache of Iraqi Silkworm surface-to-surface missiles was found inside a school in a populated area in Kuwait City... This intentional mingling of military objects with civilian objects naturally placed the civilian population living nearby, working within, or using those civilian objects at risk from legitimate military attacks on those military objects.

The Coalition targeted specific military objects in populated areas, which the law of war permits; at no time were civilian areas as such attacked. Coalition forces also chose not to attack many military targets in populated areas or in or adjacent to cultural (archaeological) sites, even though attack of those military targets is authorized by the law of war.

– United States Department of Defence, *Conduct of the Persian Gulf War: final report to Congress, 1992*, p. 613.

Military Commissions Act, 2006

§ 950(v) Crimes triable by military commissions

(a) DEFINITIONS AND CONSTRUCTION...

- (3) PROTECTED PROPERTY.—The term ‘protected property’ means property specifically protected by the law of war (such as buildings dedicated to ... education...), if such property is not being used for military purposes or is not otherwise a military objective. Such term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.
- (b) OFFENSES.—The following offenses shall be triable by military commission under this chapter at any time without limitation: ...
- (10) USING PROTECTED PROPERTY AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of the location of, protected property with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished as a military commission under this chapter may direct.

– Military Commissions Act of 2006, sec. 3, amending United States Code at chapter 47A, sec. 950(v).

Law of War Manual, 2015

Obligation With Respect to the Care and Education of Children:

The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children. This obligation goes beyond merely not interfering with such institutions, but also includes the affirmative duty to support them when the responsible authorities of the country fail to do so....

1935 Roerich Pact:

The 1935 Roerich Pact was concluded in Washington on April 15, 1935. It provides for the respect and protection of “historic monuments, museums, scientific, artistic, educational and cultural institutions” and their personnel in time of peace as well as in war. Such institutions and personnel receive protection as cultural property under the 1954 Hague Cultural Property or the general protection afforded civilian objects and persons.

– United States Department of Defence, Office of General Counsel, Law of War Manual, June 2015, secs. 11.13.1 & 19.15.

Venezuela

Universities Act, 1970

Article 7:

The university grounds are inviolable. The monitoring and maintenance of order within them falls within the competence and responsibility of the university authorities; it may only be searched to prevent a crime or to enforce decisions of the courts.

The university grounds is defined as the space precisely delimited and previously allocated for the realization of the functions of teaching, research, academic or administrative extension, typical of the Institution.

It is for the national and local authorities to monitor avenues, streets, and other places open to free access and traffic, and the protection and safety of buildings and structures located within areas where universities operate, and other measures as may be necessary in order to safeguard and ensure public order and safety of persons and property, even if these are part of the University.

– Ley de Universidades, September 8, 1970, art. 7.

Yemen

Order to the First Armored Division, 2011

To operations:

Any school falling within the Northwest Zone and the Armored Division shall be swiftly and decisively evacuated of any military presence.

Thank you,

Brigadier General, General Staff

Ali Mohsen Saleh

Commander of the Northwest Military Zone

Commander of the First Armored Division

– Order of Brigadier General Ali Mohsen Saleh (Ali Mohsen al-Ahmar), Commander of the First Armed Division, Commander of the Northwest Zone, April 9, 2011.

III. Historic

Roman Empire

Constantine, 333AD

In confirmation of the special grants of imperial favor by previous sainted Emperors, We command that physicians and professors of literature and also their wives and their children shall be free from the performance of every obligatory and compulsory public service. They shall not be held subject to the duties of military service nor receive quartered persons nor perform any compulsory public service, so they may more easily train many persons in the liberal studies and the aforesaid arts.

– Posted on the fifth day before the kalends of October at Constantinople in the year of the consulship of Daimatius and Zenophilus; September 27, 333 (Theodosian Code 13.3.3).

Valentinian and Valens, 370AD

All men shall know that exemption has been granted to the physicians and teachers of the City of Rome, so that their wives also shall be granted exemption from all disquietude, and they shall be free from all other public burdens. It is Our pleasure that the aforesaid persons shall not be held subject to military duty at all, nor shall they be compelled to receive quartered military persons.

– Given on the third day before the kalends of May in the year of the consulship of Valentinian Augustus and the third consulship of Valens Augustus; April 29, 370 (Theodosian Code 13.3.10).

Honorius and Theodosius Augustus, 414AD

We command that grammarians, orators and teachers of philosophy ... shall enjoy this prerogative, namely, that ... [t]heir homes, wherever they may be established, shall not be compelled to receive and quarter a soldier or judge. We command that all these privileges shall be observed unimpaired for their children also and for their wives, so that the children of the aforesaid persons shall not be dragged to military duty against their will.

We command, moreover, that these privileges shall be conferred upon the aforesaid professors and their children.

– Given on the day before the kalends of December at Constantinople in the year of the consulship of Constantius and Constans; November 30, 414 (Theodosian Code 13.3.16).

Theodosius and Valentinian II

The Emperors Theodosius and Valentinian, by this law, settled a certain number of professors in the state; *viz.* three orators well versed in Roman eloquence, for the teaching of rhetoric, and the art of speaking, which was in great vogue at the time; ten grammarians; and five sophists or logicians; two professors of law; and one in philosophy: but did not hereby exclude those of liberal arts mentioned by the Constitution of Constantine. And thus schools of general learning were established ... assigning to each of them their particular school and places to read in at some distance from each, that their scholars might not disturb one another by a confusion of voices, and divert each other's mind from his studies. And as they took care that they should not hinder each other, by this means, in their studies; so they also prohibited smiths and such-like persons to work near the schools and houses of their professors, since the public advantage ought to be preferred hereunto; and by this means the state was filled with men of learning and wisdom. And if any person averred himself to be a smith settled by public authority, for making of arms for the state, and that he was equally privileged with scholars, the magistrate was to assign him a convenient place in the city to work in, without any inconvenience to the scholars. Thus were universities of scholars, in former times, taken care of, for the good of the state.

– John Ayliffe, *A New Pandect of Roman Civil Law: As Anciently Established in that New Empire, and Now Received and Practised in Most European Nations*, 1734, Book II, p. 107.

Theodosius the Younger and Valentinian III, 427AD

According to a second edict of Our Majesty, which retains its own validity and which was promulgated about persons who must be exempted as well as those who must furnish the quarters that are due to persons in imperial service, those privileges must be observed which We formerly sanctioned for chief physicians and masters of literature. For We command that such men, because of their necessary arts and liberal instruction, must be freed as long as they live from the molestation of furnishing quarters. Those privileges,

therefore, shall remain unimpaired, which appear to have been formerly established by Our most just constitutions regarding ... masters of liberal studies.

– Given on the fourteenth day before the kalends of September in the year of the consulship of Hierius and Ardabur; August 19, 427 (Theodosian Code 13.3.18).

Swedish Empire

Gustavus Adolphus, 1631

Any soldier and every servant attached to our army, convicted of having committed any disorder in churches, hospitals, or schools, shall be punished with death; whether he has committed it of his own accord or at the instigation of others.

– Articles of War, additional article, 1631.

Gustavus Adolphus, 1632

No soldier shall abuse any churches, colleges, schools, or hospitals, or offer any kind of violence to ecclesiastical persons nor any way be troublesome with pitching or enquartering upon them: or with exacting or contribution from them. No soldier shall give disturbance or offence to any person exercising his sacred function, or ministry, upon pain of death.

– Articles of War, additional article, 1632.

Denmark and Norway

Christian V, Articles of War Letter, 1683

Recent mothers, pregnant wives, old people, priests, church officials, children, and others that pose no threat or offense to [soldiers], as well as churches, hospitals, and schools, must all be protected, under heavy corporal penalty.

– Christian V, Articles of War Letter, 1683 (abolished 1881), article 116.

Acknowledgments

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Annex: Human Rights Watch Research on Military Use of Schools

“Dreams Turned into Nightmares” Attacks on Students, Teachers, and Schools in Pakistan, report, March 27, 2017.

No Class: When Armed Groups Use Schools in the Central African Republic, report, March 23, 2017.

Iraq: 37 Men Fleeing Fighting Detained, Inform Families of Whereabouts; Allow Outside Contact, press release, November 10, 2016.

Afghanistan: Rise in Military Use of Schools, Security Forces, Taliban Threaten Children’s Lives, Education, press release, August 17, 2016.

“Education on the Front Lines” Military Use of Schools in Afghanistan’s Baghlan Province, report, August 2016.

Nigeria: Northeast Children Robbed of Education, Boko Haram’s Devastating Toll on Students, Teachers, Schools, press release, April 11, 2016.

“They Set the Classrooms on Fire” Attacks on Education in Northeast Nigeria, report, April 2016.

Nigeria: A Year On, No Word on 300 Abducted Children, Government Response to Damasak Attacks Woefully Inadequate, press release, March 29, 2016.

Ukraine: Attacks, Military Use of Schools, Protect Students, Schools by Joining Safe Schools Declaration, press release, February 11, 2016.

Studying Under Fire, Attacks on Schools, Military Use of Schools During the Armed Conflict in Eastern Ukraine, report, February 2016.

Yemen: Houthis Endangered School for Blind, Coalition Airstrike Shows Added Risks for People With Disabilities, press release, January 13, 2016.

South Sudan: Terrifying Lives of Child Soldiers, Children Describe Forced Recruitment, Trauma, Abuse, press release, December 14, 2015.

“We Can Die Too” Recruitment and Use of Child Soldiers in South Sudan, report, December 2015.

DR Congo: Students, Schools at Risk in Conflict Zones, Join International Safe Schools Declaration, press release, October 27, 2015.

“Our School Became the Battlefield,” Using Schools for Child Recruitment and Military Purposes in Eastern Democratic Republic of Congo, report, October 2015.

Respect Civilian Nature of Schools and Universities, Military Use Risks Students’ Lives, Safety, and Education, press release, May 12, 2015.

Lessons in War 2015: Military Use of Schools and Universities during Armed Conflict, Global Coalition to Protect Education from Attack report, May 2015.

Attacking Education a War Tactic Globally, Study Shows, press release, February 27, 2014.

Syria: Attacks on Schools Endanger Students, Children Interrogated, Arrested; Schools Shelled, press release, June 5, 2013.

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Yemen: Troops Used Schools, Endangering Children, Armed Occupations in Capital During and After Uprising Harm Education, press release, September 11, 2012.

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Somalia: Warring Parties Put Children at Grave Risk, Al-Shabaab Rebels Impose Forced Marriages, use Students as 'Human Shields,' press release, February 21, 2012.

No Place for Children, Child Recruitment, Forced Marriage, and Attacks on Schools in Somalia, report, February 2012.

Syria: Stop Torture of Children, Security Forces Detain Juveniles, Occupy Schools, press release, February 3, 2012.

Philippines: Soldiers on the School Grounds, Armed Forces Should Cease Military Use of Schools, press release, November 30, 2011.

Global: Schools No Havens in War Zones, Governments Should Outlaw Attacks on, and Military Use of, Education Sites, press release, July 20, 2011.

Schools and Armed Conflict, A Global Survey of Domestic Laws and State Practice Protecting Schools from Attack and Military Use, report, July 2011.

Thailand: Protect Students, Teachers, Schools in South, Both Insurgents and Government Forces Undermining Children's Education, press release, September 21, 2010.

“Targets of Both Sides” Violence against Students, Teachers, and Schools in Thailand’s Southern Border Provinces, report, September 2010.

India: Protect Education in Naxalite Conflict, Schools Attacked by Maoist Fighters and Occupied by Government Security Forces, press release, December 9, 2009.

Sabotaged Schooling: Naxalite Attacks and Police Occupation of Schools in India's Bihar and Jharkhand States, report, December 2009.

Violent Response: The U.S. Army in al-Falluja, report, June 2003.

PROTECTING SCHOOLS FROM MILITARY USE

Laws, Policies, and Military Doctrine

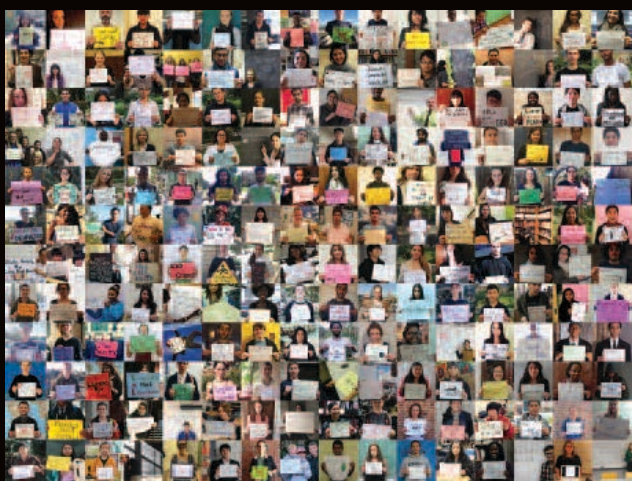
The use of schools for military purposes is a global problem, in need of global attention and response.

Schools and universities have been taken over either partially or entirely to be converted into military bases and barracks. They have been used as facilities for detention and interrogation, for training fighters, and to store or hide weapons and ammunition.

Protecting Schools from Military Use: Law, Policy, and Military Doctrine presents the wide range of protections that countries and other actors have afforded through law and policy to students, schools, and universities. It lays out relevant international law and standards, and includes numerous examples of legislation, court decisions, military orders, and policies from around the world.

These examples should serve to convince more governments to adopt their own clear measures to deter the military use of schools and universities, and so protect more students, educators, and the institutions in which they study.

Human Rights Watch urges all governments to endorse the Safe Schools Declaration and to implement concrete protections for schools and universities from military use.



Students and teachers from around the world call for schools and universities to be protected from military use.

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