



Global Coalition to **Protect**
Education from Attack

Enhancing Accountability for Attacks on Education: Guidance on Investigating and Prosecuting Education-Related Crimes



January 2025

Following the bombing of Avtorska Shkola Boyko school in Kharkiv in June 2024, war crimes prosecutors and security forces survey the scene.

© 2024 Hernandez/Shutterstock

Acknowledgements

This Guide is the result of independent research conducted by GCPEA and was written by Jelia Sané, barrister at Doughty Street Chambers (London) and consultant for GCPEA. It was reviewed and edited by GCPEA Secretariat, as well as GCPEA coalition members, including Veronique Aubert (Save the Children UK), Aurelie Lamazière (Save the Children International), Janine Morna (Amnesty International), Zama Neff (Human Rights Watch), Bede Sheppard (Human Rights Watch), and Matt Wells (Amnesty International).

GCPEA would like to thank all the individuals who have contributed to the research and development of the Guide, including key informants who provided invaluable inputs and shared their experiences (in their professional or personal capacity) namely:

- **Professor Cécile Aptel**, Deputy Director, UNICEF Global Office of Research and Foresight; Visiting Scientist, Harvard University; Professor, The Fletcher School, Tufts University; former director, International Federation of the Red Cross and Red Crescent; and Senior Officer at International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR).
- **Chiara Gabriele**, Senior Legal Adviser, TRIAL International;
- **Erin Gallagher**, Investigations Team Leader, International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (IIMM); former Investigator at the International Criminal Court (ICC) and Director of Investigations at Physicians for Human Rights;
- **Christopher Gosnell**, Senior Legal Officer, Independent Investigative Mechanism for Myanmar (IIMM);
- **Úrsula Gutiérrez Trápaga**, Child Rights Focal Point, International Justice Programme, JRR;
- **Niam Hayes**, Legal Officer, Gender and Children Unit, OTP-ICC;
- **Lavinia Lommi**, Political Affairs Officer, Office of the Special Representative of the Secretary-General for Children and Armed Conflict;
- **Dianne Luping**, Head of Gender and Children Unit, Office of the Prosecutor of the International Criminal Court (OTP-ICC);
- **Shamiso Mbizvo**, International Cooperation Advisor, Afghanistan Investigation, OTP-ICC;
- **Annette Mbogoh**, Executive Director, Kituo Cha Sheria (Kenya);
- **John Mwariri**, Coordinator, Legal Aid and Education Department, Kituo Cha Sheria (Kenya);



- **Javier Pérez Salmerón**, Senior Adviser, Crimes Against/Affecting Children, Global Rights Compliance and JRR Child Rights Expert; former Gender and Child Rights Adviser at the Independent International Commission of Inquiry on the Syrian Arab Republic and the IIM;
- **Aida Samani**, Senior Legal Adviser, Civil Rights Defenders (Sweden).
- **Anton Steynberg**, Senior Trial Lawyer, Afghanistan Unified Team, OTP-ICC;
- **Federica Tronchin**, Head of International Justice Programme and Senior Gender and Child Rights Advisor, Justice Rapid Response (JRR);

GCPEA is a coalition of organizations that includes: Save the Children, Amnesty International, the Education Above All Foundation (EAA), Human Rights Watch, Plan International, the United Nations Children’s Fund (UNICEF) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). GCPEA is a project of the Tides Center, a non-profit 501(c)(3) organization. This briefing paper is independent of the individual member organizations of the Steering Committee of GCPEA and does not necessarily reflect the views of the Steering Committee member organizations.

Finally, GCPEA would like to express its gratitude for the generous support provided by the Norwegian Ministry of Foreign Affairs and the Education Above All Foundation for the development of this work and extend thanks to the Spanish Agency for International Development Cooperation for supporting this paper’s production.



Table of Contents

Abbreviations	5
Introduction	6
Methodology	8
Key Findings and Recommendations.....	9
1. Chapter I. Understanding the Gravity of Attacks on Education	11
1.1 What is an ‘Attack on Education’?	11
1.2 The Protection of Education from Attack under International Law	11
1.3 The Scale and Impact of Attacks	14
2. Chapter II: Addressing the Lack of Investigations and Prosecutions of Education-Related Crimes	17
2.1 Barriers	17
2.2 Strategies and Solutions	19
3. Chapter III: Charging Education-Related Crimes under the Rome Statute	34
3.1 Part A. War Crimes (Article 8 Rome Statute)	34
3.2 Part B. Crimes Against Humanity (Article 7 Rome Statute)	43
Conclusions and Recommendations	51

Abbreviations

BiH	Bosnia and Herzegovina
CEDAW	UN Convention on the Elimination of All Forms of Discrimination against Women
CESCR	UN Committee on Economic, Social and Cultural Rights
CRC	UN Committee on the Rights of the Child
CRPD	UN Convention on the Rights of Persons with Disabilities
DRC	Democratic Republic of the Congo
GCPEA	Global Coalition to Protect Education from Attack
IAC	International armed conflict
ICC	International Criminal Court
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICL	International criminal law
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International humanitarian law
IHRL	International human rights law
IIIM	International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011
IIMM	Independent Investigative Mechanism for Myanmar
JRR	Justice Rapid Response
NIAC	Non-international armed conflict
OHCHR	Office of the High Commissioner for Human Rights
OPAC	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
OTP-ICC	Office of the Prosecutor of the ICC
SRSG	Special Representative of the Secretary-General
SRSG/ CAAC	Special Representative of the UN Secretary-General for Children and Armed Conflict
SSD	Safe Schools Declaration
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCRC	UN Convention on the Rights of the Child
UNODC	United Nations Office of Drugs and Crime

Introduction

The purpose of this Guide is to contribute to advancing accountability for attacks on education amounting to crimes under international law (‘education-related crimes’). It does so by providing information and practical guidance to national and international accountability mechanisms on how to enhance their capacity to conduct timely and effective investigations and prosecutions of education-related crimes over which they may have jurisdiction. While international accountability mechanisms have a key role to play, States have the primary obligation under international law to investigate and prosecute (or extradite for prosecution) a wide-range of international crimes.¹ The Safe Schools Declaration (SSD) contains an express commitment by signatory States (120 as of September 2024) to investigate attacks on education under applicable international and domestic law and, where appropriate, duly prosecute and punish perpetrators.²

Attacks on education are a grave and rising concern. In most conflicts around the world, students, teachers and education personnel are increasingly and deliberately targeted by State and non-State armed groups for unlawful killings, torture and sexual violence. Children are abducted at school and recruited and used by parties to conflict. Education facilities are destroyed or damaged through indiscriminate attacks. Armed forces and armed groups also use schools and other education facilities for military purposes, turning them into military targets and therefore endangering the lives and safety of students and education personnel.

The consequences of attacks on education are devastating and profound, especially for children and girls in particular. The immediate effects may include death or serious physical and psychological harm, school closures or shortages of qualified teachers. In the longer term, children may never return to school and thus are deprived of opportunities for education that could transform their lives and enable them to exercise their right to development. Education is both a fundamental right in itself and a means of achieving the realization of other human rights. Education plays a primary role in: combating poverty and achieving development goals; promoting post-conflict recovery, human rights and democracy; empowering women and girls; and safeguarding children from abuse and exploitation. In times of armed conflict, access to education and to a safe place to learn provides a protective environment for children and has been recognized as a humanitarian need.³

In situations of armed conflict, some attacks on education may be lawful but many would amount to serious violations of international humanitarian law – set out in the 1949 Geneva Conventions and their Additional Protocols (1977) – and customary law, which contains rules governing the targeting and treatment of civilians and civilian objects, of which students, teachers and education personnel, and educational facilities, prima facie form part. Attacks on education may also constitute gross violations of international human rights law, including the right to education as well as the right to life, the right to liberty and security and/or the right to be free from torture and the prohibition on discrimination. In certain cases, attacks on education may attract criminal responsibility, in particular for war crimes (when

- 1 See (amongst others): Geneva Convention relative to the Protection of Civilian Persons in Time of War, August 12, 1949, Article 146(1) and 146(2); ICRC, Customary International Humanitarian Law, Rule 158; 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 4, 5(1), 6 and 7; 2006 International Convention for the Protection of All Persons from Enforced Disappearance, Article 9(1), 10 and 11; International Court of Justice (ICJ) Advisory Opinion, *Reservations to the Genocide Convention*, 1951, p.23 and Decision on the *Application of the Convention on the Prevention and Repression of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia)*, ICJ 1996, at para. 31; ICJ Decision on *Obligation to Prosecute or Extradite (Belgium v. Senegal)*; Final Report of the International Law Commission 2014; Preamble of the Ljubljana-The Hague Convention on International Cooperation in The Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes.
- 2 *Safe Schools Declaration* (2015) [Safe Schools Declaration – An inter-governmental political commitment to protect students, teachers, schools, and universities from the worst effects of armed conflict \(protectingeducation.org\)](https://www.protectingeducation.org/).
- 3 See (amongst others): UN Committee on Economic, Social and Cultural Rights, General Comment No.13: The Right to Education (Art.13), 8 December 1999; UNESCO, “*Education Counts: Towards the Millennium Development Goals*” (2011); Save the Children, “*What do Children Want in Times of Emergency and Crisis? They Want an Education*” (June 2015).

committed in connection with an armed conflict) and crimes against humanity (when committed as part of a widespread or systematic attack directed against a civilian population).

Despite the prevalence and gravity of attacks on education – and the clear prohibition and criminalization of certain types of attacks under international law⁴ – justice remains elusive for the overwhelming majority of victims, survivors, and their families as incidents are rarely investigated and prosecuted, domestically or internationally. Findings of the research conducted to develop this Guide show that there are only a few examples of prosecutions of education-related crimes. The United Nations (UN) Security Council has condemned this persistent impunity and called on Member States to ensure that perpetrators of education-related crimes, including attacks on schools, are brought to justice,⁵ in line with their obligations under international law.

This Guide is based on relevant provisions of international criminal law, principally the Rome Statute of the International Criminal Court (ICC),⁶ international humanitarian law (IHL), and international human rights law (IHRL), and recognized best practice. This Guide recognizes the diversity of legal systems and investigative and prosecutorial approaches. Therefore, it seeks to provide general analysis, methodologies and recommendations that domestic and international actors working on accountability can adapt, draw from and build on, depending on their local context and mandates. It is hoped that this Guide will also be a useful tool for all relevant stakeholders working on monitoring, advocacy, and accountability for international crimes and human rights violations in conflict, in particular civil society organizations (CSOs) and National Human Rights Institutions.

This Guide focuses on the investigation of education-related crimes up to decisions to prosecute – issues such as the conduct of criminal trials, including e.g., special measures for vulnerable victims and witnesses, such as children; sentencing and appeals, and witness protection, are not addressed.

This Guide is structured in three parts:

Chapter I briefly explains what attacks on education are and summarizes the key provisions for the protection of education from attack under IHL and IHRL, before addressing key trends and patterns of different forms of attacks on education. In so doing, it seeks to make an evidence-based case for the greater consideration of education-related crimes by domestic and international accountability mechanisms, in light of their scale, gravity, and devastating impacts on the lives of victims and affected communities.

Chapter II sets out the main reported challenges to investigating and prosecuting education-related crimes at the national and international level and offers some strategies and solutions to overcome or mitigate them. These include: ensuring that education-related crimes are expressly criminalized in domestic law; making multi-disciplinary expertise available to investigation and prosecution teams; and effectively cooperating with CSOs who are often the ‘first responders’ to crimes against education. This Chapter also offers guidance on the type of evidence that may be relevant to establishing the commission of education-related crimes.

Chapter III provides an overview of some of the legal charges that may be available in respect to education-related crimes under the Rome Statute.⁷ It is beyond the scope of this Guide to comprehensively

4 See e.g. Articles 8(2)(b) (ix)/ 8(2) (e) (iv) Rome Statute (attacking a protecting object).

5 UN Security Council, Resolution 2601, S/RES/2601 (2021); see also Resolution 1998, S/RES/1998 (2011).

6 The 1998 Rome Statute is the founding treaty of the ICC, the world’s first and only permanent international criminal court. The Court has jurisdiction over war crimes, crimes against humanity and genocide committed on or after 1 July 2002, and crimes of aggression committed on or after 17 July 2018, by a national or on the territory of a State party or a State which has accepted its jurisdiction. The ICC also has jurisdiction over situations that are referred to it by the UN Security Council acting under Chapter VII of the Charter of the United Nations (see Articles 5 and 12 Rome Statute).

7 Where relevant, brief reference will be made to the jurisprudence and practice of other international criminal courts and tribunals, in particular the International Criminal Tribunal for the former Yugoslavia (ICTY), national courts, and to customary law.

address the myriad of potential charges that may be available and have already been the subject of considerable analysis, including: willful killing; murder; attacking civilians and civilian objects; torture, rape and other forms of sexual violence; and using, conscripting, and enlisting children. Rather this Guide focuses on two specific crimes which have received comparatively less attention, namely attacking buildings dedicated to education as a war crime,⁸ and the severe deprivation of the right to education as the crime against humanity of persecution.⁹ The law relating to the contextual elements of international crimes, or to modes of liability, is not considered.

GCPEA is cognizant that criminal justice - and broader accountability measures - cannot offer complete answers to the complex problem of attacks on education in conflict. However, beyond providing recognition and redress to individual victims as rights holders, criminal investigations and prosecutions can serve broader goals, including enforcing and upholding the rule of law and preventing and deterring future attacks. The aim of this Guide is to contribute to those efforts.

Methodology

The research for this Guide followed a mixed methods approach, involving extensive desk research and interviews and consultations with key informants.

The desk research included reviewing and analyzing all of the relevant indictments and judgments of international criminal courts and tribunals (principally ICC and the International Criminal Tribunal for the former Yugoslavia (ICTY) – as these appeared to be the only mechanisms to have prosecuted and adjudicated education-related crimes and those of relevant national jurisdictions, as well as relevant decisions and commentary by UN Human Rights Treaty Bodies and Special Procedures. The UN Secretary-General’s annual reports on Children and Armed Conflict were consulted, as well as reports of international, civil society and non-governmental organizations working on the protection of education in armed conflict and on the documentation of education-related crimes, relevant academic articles, and textbooks. In addition, policies and guidelines for the effective documentation and investigation of serious violations of IHL, gross violations of IHRL, and core international crimes were consulted, including those produced by the Office of the Prosecutor of the ICC (OTP-ICC), as well as UN reports on criminal responses to serious crimes, including in post-conflict settings (e.g. from the United Nations Office of Drugs and Crime (UNODC); the Office of the High Commissioner for Human Rights (OHCHR).

Initial consultations were held with representatives from eleven entities with a documentation or investigation/prosecution mandate. Of these, seven individual experts agreed to be formally interviewed. These experts included: victims’ lawyers; international investigators and prosecutors familiar with the workings of international criminal courts and tribunals and UN-mandated criminal accountability mechanisms; and representatives of CSOs engaged in the documentation and investigation of core international crimes at the domestic and international level. Most, though not all, experts spoke in a personal capacity.

Information was sought on a broad range of topics, including:

- Background information on the prevalence, patterns, drivers and impacts of education-related crimes in their focus countries or regions.
- The extent and quality of any related documentation, investigation or prosecution efforts.
- Barriers to the effective investigation and prosecution of education-related crimes.
- Recommended strategies and solutions to overcome or mitigate barriers.

⁸ Articles 8(2)(b)(ix) and Article 8(2)e(iv) Rome Statute.

⁹ Article 7(1)(h) Rome Statute.

Key Findings and Recommendations

Despite their prevalence, gravity, and devastating impact, education-related crimes are generally under-investigated and under-prosecuted at all levels.¹⁰

At the domestic level, GCPEA was able to identify four prosecutions of education-related crimes (as war crimes), in Bosnia and Herzegovina (BiH), Serbia, Kosovo and the Democratic Republic of the Congo (DRC), respectively.¹¹ At the international level, education-related crimes have to date featured in two prosecutions brought by the OTP-ICC: *Prosecutor v Katanga* (concerning the destruction of schools in the DRC)¹² and *Prosecutor v Al Hassan* (concerning restrictions on girls' access to education in Mali).¹³ GCPEA understands that attacks on school buildings and persecutory restrictions on the right to access education also form part of a number of ICC investigations, including in the Afghanistan¹⁴ and Myanmar/Bangladesh contexts.¹⁵

Education-related crimes have also featured in a handful of cases at the ICTY. The war crime of destruction of or willful damage to buildings dedicated to education was charged in at least five cases,¹⁶ of which three resulted in a conviction.¹⁷ In at least one other case before the Tribunal, the accused were convicted of the crime against humanity of persecution, amongst others in connection with the plunder and willful

-
- 10 There have been a handful of prosecutions of attacks on students, education personnel and/or educational facilities, under domestic anti-terrorism laws. These include, e.g., in Kenya (see BBC, “*Garissa University attack: Three convicted over Kenya massacre*,” 19 June 2019), Burkina Faso (see HRW, “*Some accountability for attack on Burkina Faso school*,” 7 September 2021); and Cameroon (see HRW, “*Cameroon: Sham Trial for Kumba School Massacre*,” 22 October 2021). As this paper is focused on core international crimes, these cases are not addressed further herein. There have also been prosecutions in Sweden (Clavier Berikindi (see TRIAL International, “Clavier Berikindi,” 27 April 2016, and “Tabaro Theodore ‘Rukertabaro,’ 8 February 2017) and in France (see TRIAL International, “Claude Muhayimana,” 27 April 2016) against suspected Rwandan *genocidaires* accused *inter alia* of massacring Tutsi civilians who had taken shelter inside school buildings. However, it does not appear that any of these cases involved students and/or education personnel who were targeted as such, nor destruction or damage to the educational facilities themselves, such that they can properly be regarded as ‘attacks on education’ and within the scope of this paper.
- 11 See, respectively, State Court of Bosnia and Herzegovina, *Prosecutor v Pasko Ljubičić*, X-KR-06/241, First Instance Decision, 28 May 2008; District Court in Belgrade, War Crimes Chamber, *Indictment against Vladimir Kovačević*, 26 July 2007; Priština/Prishtinë District Court, *Skender Islami et al*, 25 January 2008; Bukavu Military Tribunal, *Prosecutor v Ndayambaje and Nizehimana*, Judgment, 21 September 2018. It is acknowledged that there may be other cases that GCPEA was not able to identify in the course of this research.
- 12 See International Criminal Court (ICC), *Prosecutor v Katanga and Ngudjolo Chui*, Decision on the Confirmation of Charges (No. ICC-01/04-01/07), Pre-Trial Chamber I, 30 September 2008 and *Prosecutor v Katanga*, Judgment (No. ICC-01/04-01/07), Trial Chamber II, 7 March 2014 (‘Katanga Trial Judgment’).
- 13 *Prosecutor v Al Hassan* (No. ICC-01/12-01/18), Pre-Trial Chamber I, [Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud](#), 13 November 2019 (‘Al Hassan Confirmation Decision’), No. ICC-01/12-01/18, Trial Chamber X, Trial Judgment, 26 June 2024.
- 14 ICC, *Situation in the Republic of Afghanistan* (No. ICC-02/17), Pre-Trial Chamber III, Public redacted version of ‘Request for authorization of an investigation pursuant to article 15’, 20 November 2017, ICC-02/17-7-Conf-Exp (‘OTP Afghanistan Investigation Request’).
- 15 ICC, *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar* (No. ICC/01-19), Pre-Trial Chamber III, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, 14 November 2019.
- 16 See Article 3 (d) of the ICTY Statute. ICTY: (1) *Prosecutor v Martić* (IT-95-11-T), Trial Chamber, [Judgment](#) (12 June 2007): insufficient evidence that the school was not being used for military purposes, see at [395]; (2) *Prosecutor v Blaškić* (IT-95-14-A), Appeals Chamber, Judgment (29 July 2004): conviction vacated on appeal on procedural grounds (at [592]); (3) *Prosecutor v Prlić* (IT-04-74-T), Trial Chamber, [Judgment](#) (29 May 2013): insufficient evidence linking the destruction to the accused (at [458] and [1604]); (4) *Prosecutor v Milošević* (IT-02-54-T), and *Prosecutor v Hadžić* (IT-04-75): in both cases, the accused were indicted on charges of destruction or damage of institutions dedicated to education (and religion) however the proceedings were terminated before completion of the trial, upon their death.
- 17 ICTY: (1) *Prosecutor v Kordić & Čerkez* (IT-95-14/2), Trial Chamber, [Judgment](#) (26 February 2001): Kordić and Čerkez were both convicted of destruction and willful damage of Bosnian Muslim educational (and religious) institutions; (2) *Prosecutor v Miodrag Jokić* (IT-01-42/1-S), Trial Chamber, [Sentencing Judgment](#) (18 March 2004): Jokić entered a guilty plea to the shelling of educational facilities (amongst other protected objects) during the course of a military campaign in the Old Town of Dubrovnik and was sentenced to 7 years imprisonment; (3) *Prosecutor v Pavle Strugar* (IT-01-42-T), Trial Chamber, [Judgment](#), (31 January 2005): Strugar was convicted at trial, among other charges for destruction or willful damage done to institutions dedicated to education during the attack on Dubrovnik and sentenced to 7.5 years imprisonment.

destruction of schools.¹⁸ As far as GCPEA is aware, there have been no other prosecutions of education-related crimes before other international criminal courts and tribunals.

What key informants to this study have reported to GCPEA suggests that there is a wide-range of fundamental challenges behind the lack of accountability for education-related crimes, including: a historical tendency to overlook certain core international crimes against and affecting children; chronic underreporting of attacks on education and the complexity of collecting evidence, especially from child victims and witnesses; the lack of an absolute prohibition of the military use of schools and educational facilities in international law; resistance to recognizing the full justiciability of the right to education; and a lack of capacity and specific attitudes towards education in conflict among duty bearers and accountability mechanisms.

“Education is not a priority, it is always a secondary thought, even though education related crimes occur in most armed conflicts [...] education has been neglected.”¹⁹

“Attacks on schools...[do] not feature prominently in people’s minds as a crime to investigate.”²⁰

In light of the above, GCPEA calls for partnerships and collaboration with relevant stakeholders around the following key recommendations:

- Advancing general understanding of the gravity of attacks on education and the urgent need to address the lack of accountability for education-related crimes, including through promoting the protection of education in conflict into rule of law initiatives;
- Advocating for States to conduct comprehensive review of domestic laws to ensure compliance with international obligations and standards related to the protection of education in conflict, and undertake the necessary reforms to explicitly criminalize education-related crimes as war crimes and crimes against humanity;
- Strengthening the capacity of national and international accountability mechanisms to prioritize and conduct effective and timely investigations and prosecutions of crimes against/affecting education, whether allegedly perpetrated by State or non-State armed groups, including through collaboration with civil society, to advance justice for victims and prevention of attacks.

18 *Prosecutor v Kordić & Čerkez* (IT-95-14/2), Trial Chamber, [Judgment](#) (26 February 2001).

19 Interview with Javier Pérez Salmerón.

20 Interview with Erin Gallagher.

1. Chapter I. Understanding the Gravity of Attacks on Education

Attacks against students, teachers and education personnel, and educational facilities are a pervasive feature of contemporary armed conflicts. They amount to serious violations of humanitarian and human rights law and may constitute war crimes and crimes against humanity. As will be shown in this Chapter, the prevalence, nature and gravity of attacks on education are a cause for concern; they should be understood as serious violations of international law and adequately addressed by national and international actors wherever they occur to ensure accountability and justice.

1.1 What is an ‘Attack on Education’?

The concept of an ‘attack on education’ is not defined under international law.²¹ GCPEA considers that an attack on education is “any threatened or actual use of force against students, teachers, academics, education support and transport staff (e.g., janitors, bus drivers), education officials, buildings, resources, or facilities (including school buses).”

GCPEA monitors intentional and indiscriminate attacks perpetrated by armed forces, law enforcement, state security entities, and non-state armed groups. Children and adults alike can be the victims of attacks on education.

GCPEA specifically tracks five forms of attacks on education: attacks on schools; attacks on school, students, teachers and other education personnel; sexual violence at, or on the way to or from school and university; child recruitment and use at, or on the way to or from, school; attacks on higher education. In addition, GCPEA monitors the military use of schools and universities by armed forces and non-state armed groups, e.g., their use as barracks, weapons storage facilities, or detention and/or interrogation centers.²²

1.2 The Protection of Education from Attack under International Law

Attacks on education are governed by three main legal regimes under international law: international humanitarian law (IHL); international human rights law (IHRL) and international criminal law (ICL).²³ In summary, attacks on education that occur in situations of armed conflict may amount to serious violations of IHL as set out in the 1949 Geneva Conventions and their Additional Protocols (1977), and customary law. IHL addresses both the conduct of hostilities and the treatment of persons in the territory or custody of a conflict party in international and non-international armed conflicts (IAC and NIAC, respectively).

With regards to the conduct of military operations, students, teachers and education personnel, as well as educational facilities are prima facie protected from direct attack under general rules concerning the

21 The concept of ‘attacks’ as such is defined by Article 49 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

22 A detailed breakdown of GCPEA’s definition of ‘attacks on education’ with examples of attacks under each of the five categories is available here: [EUA 2024 \(protectingeducation.org\)](https://www.protectingeducation.org) at pp.79-83. Not all violence impacting education will constitute an ‘attack on education’. In particular, violence perpetrated by criminal organizations, private persons, or individuals not belonging to an armed group or force are not recorded by GCPEA.

23 For a comprehensive overview see British Institute of International and Comparative Law and Education Above All Foundation, *“Protecting Education in Insecurity and Armed Conflict: An International Law Handbook”* 2nd edn (2019) (“International Law Handbook”); Global Coalition to Protect Education from Attack (GCPEA), *“Lessons in War: Military Use of Schools and Other Education Institutions during Conflict”* (2012), pp.51-54.

targeting of civilians and civilian objects.²⁴ These provide, amongst others, that conflict parties must distinguish between civilians (and civilian objects) and combatants (and military objectives) at all times, and only direct attacks against the latter.²⁵ The principle of distinction also prohibits indiscriminate attacks (i.e., attacks which by their very nature are not directed against a specific military objective or cannot be limited to such objectives).²⁶

The protection from direct attack may lawfully cease if, and for as long as, civilians (e.g., students or teachers) take ‘direct part in hostilities’²⁷ or civilian objects (e.g., schools) become military objectives i.e., objects that contribute to the military action and whose destruction under the existing circumstances would offer a definite military gain.²⁸ In case of doubt, the civilian status or character of the person or object shall be presumed.²⁹

Even in such cases, attacks directed at military objectives are prohibited if the expected incidental loss of life or injury to civilians, or damage to civilian objects, would be excessive to the anticipated military advantage (principle of proportionality).³⁰ Where attacks are expected to be proportionate, conflict parties must nonetheless take all feasible precautionary measures to spare the civilian population, civilians and civilian objects from their effects (principle of precaution).³¹

Accountability mechanisms should take a comprehensive approach when addressing attacks on education, looking into all scenarios where different violations of international law may occur: (1) a targeted attack with collateral damage; (2) an attack that is not targeted, but still may amount to a war crime and be an attack on education (including but not limited to indiscriminate attacks); (3) attacks that specifically target schools, students, teachers; and (4) attacks that target the civilian population, but not specifically education (e.g. dropping bombs on an entire village with no military objective, hitting a school among many other civilian objects without the school necessarily being targeted).

IHL also contains a number of rules that apply to all civilians and persons hors de combat that are relevant to the treatment of students, teachers and education personnel in times of armed conflict. These include absolute prohibitions on rape and other forms of sexual violence³² and the use of torture and other

24 See International Committee of the Red Cross (ICRC) Customary International Humanitarian Law, Rules 25, 28 and 29 applicable in IAC and NIAC. This is in contrast to military and civilian hospitals, which benefit from special recognition under IHL- they are strictly protected from targeting must at all times be ‘respected and protected’ by conflict parties (see Article 19 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field, August 12, 1949 “GC I”; Article 18 Geneva Convention relative to the Protection of Civilian Persons in Time of War, August 12, 1949, “GC IV,” and Article 11(1) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977 , “Additional Protocol II”). Hospitals can lose their protected status only where they are used to commit, outside their humanitarian duties, “acts harmful to the enemy” (Article 21 GC I; Article 19 GC IV). Even in such cases, there is a requirement that the assailant should give due warning of any attack with a reasonable time limit before proceeding to an attack (Article 21, GC I; Article 19(1), GCIV; Article 13, Additional Protocol I.

25 See, International Committee of the Red Cross (ICRC) Customary International Humanitarian Law, Rules 1 and 7; Articles 48, 51(2) and 52(2) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977 (Additional Protocol I); Article 13(1) and (2) “Additional Protocol II; International Court of Justice (ICJ), *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion), 8 July 1996, at para. 179.

26 Article 51(4) Additional Protocol I; ICRC, Customary International Humanitarian Law, Rules 11 and 12.

27 Articles 13(2) and (3) Additional Protocol II; ICRC, Customary International Humanitarian Law, Vol. 1, Rule 6; ICRC, *Interpretative Guidance on the notion of Direct Participation in Hostilities under International Humanitarian Law*, at p. 47.

28 Article 52(2) Additional Protocol I.

29 **Articles 50(1) and 52(3) Additional Protocol I, Art 13(2) and (3) of Additional Protocol II; ICRC, Customary International Humanitarian Law, Rule 10.**

30 Article 51 Additional Protocol I; ICRC, Customary International Humanitarian Law, Rule 41.

31 Article 57 Additional Protocol I; ICRC, Customary International Humanitarian Law, Rule 15.

32 Article 27(2) GC IV; Articles 75(2)(b), 76(1) and 77(1) Additional Protocol I; Article 3(1), Article 3 Common to the four 1949 Geneva Conventions (“Common Article 3”); Article 4(2)(e) Additional Protocol II.

inhumane treatment.³³ Conflict parties have a special obligation to protect children,³⁴ which includes refraining from the recruitment and use of children³⁵ in hostilities³⁶.

Finally, IHL does not currently contain an absolute prohibition on the military occupation or use of educational facilities (e.g., as barracks or firing positions)³⁷ even though this practice risks turning them into military objectives liable to attack. However, military use may be restricted under certain rules of IHL, including the principle of precaution (which amongst others requires, where feasible, conflict parties to avoid locating military objectives within or near densely populated areas) and the obligations to afford special protection to children (and their education) in armed conflict.³⁸ IHL also strictly forbids the use of human shields i.e., deliberately placing civilians next to legitimate military targets to shield them from attack (in this case, using an educational facility for military purposes despite the presence of students and teachers).³⁹

Attacks on education and the military use of educational facilities may also infringe on a range of fundamental rights protected under IHRL, which continues to apply during armed conflict,⁴⁰ including the right to education. The right to education is guaranteed in nearly every international human rights instrument – including the Universal Declaration of Human Rights (UDHR),⁴¹ the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁴² and the UN Convention on the Rights of the Child (UNCRC) –⁴³ and protected under most national constitutions.⁴⁴ Additionally, the right to enjoy access to education on an equal basis and without discrimination forms part of customary law.⁴⁵

The UN Committee on Economic, Social and Cultural Rights (CESCR) has described the right to education as “both a human right in itself and an indispensable means of realizing other human rights.”⁴⁶ The UN Committee on the Rights of the Child (CRC) has clarified that education is both about access and quality and “goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.”⁴⁷ Similarly, the UN High Commissioner for

33 Common Article 3; Article 75 Additional Protocol I; ICRC, Customary International Humanitarian Law, Rule 90.

34 Article 77 Additional Protocol I; Article 4(3) Additional Protocol II.

35 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

36 Article 77(2) Additional Protocol I; Article 4(3)(c) Additional Protocol II.

37 This is again in contrast to hospitals which may not be used under any circumstances for military purposes (see e.g., ICRC, Customary International Humanitarian Law, Rule 28).

38 Article 57 Additional Protocol I; ICRC, Customary International Humanitarian Law, Rule 15; Article 77 Additional Protocol I; Article 4(3) Additional Protocol II. The “Guidelines for protecting schools and universities from military use during armed conflicts” contain a set of concrete measures that signatory States (currently 116) can take to reduce the military use of schools and universities, and to minimize the negative impact such use may have on the safety and education of students. The implementation of the Guidelines is a key commitment under the Safe Schools Declaration, an inter-governmental instrument to enhance the protection of education from attack in situations of armed conflict.

39 Article 51(7) Additional Protocol I; Article 13(2) Additional Protocol II. ICRC, Customary International Humanitarian Law, Article 28 GC IV and Rule 97.

40 IHL and IHRL apply concurrently in times of armed conflict. In case of inconsistency, IHL will generally apply as *lex specialis*. See, ICJ, *Legality or Threat of Use of Nuclear Weapons, Advisory Opinion*, 8 July 1996, at para. 25; *The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, 9 July 2004, at para. 106; *Case concerning armed activity on the territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment of 19 December 2005, paras. 216–220. See also: Office of the High Commissioner for Human Rights (OHCHR), “*International Legal Protection of Human Rights in Armed Conflict*” (2011) for general guidance. The UN Convention on the Rights of the Child contains special protections for the rights of children in conflict (Article 38).

41 Article 26 Universal Declaration on Human Rights.

42 Article 13 International Covenant on Economic Social and Cultural Rights.

43 Articles 28 and 29 UN Convention on the Rights of the Child. At the regional level, see (amongst others): Article 17, African Charter on Human and People’s Rights (1981); Article 13, Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (1988); Article 2, Additional Protocol to the European Convention on Human Rights (1954).

44 OHCHR, “*Background paper on attacks against girls seeking to access education*” (2015) at p. 6.

45 Klaus Dieter Beiter, *The Protection of the Right to Education by International Law* (Martinus Nijhoff 2006).

46 UN Committee on Economic, Social and Cultural Rights, General Comment No.13: The Right to Education (Art.13), 8 December 1999, at para. 1.

47 UN Committee on the Rights of the Child, General Comment No. 1: The Aims of Education.

Human Rights has observed that the right to education is “an important precondition for the meaningful exercise of most of the freedoms protected by human rights law”⁴⁸ including freedom of expression, assembly and protest; the right to vote; and the right to family life.

The use of explosive weapons and the fact that hostilities often take place in urban areas make educational facilities frequent casualties of warfare. The CESCR considers attacks on schoolchildren and educational facilities to be serious violations of the right to education. In addition, States’ obligations to respect, protect and fulfil the right to education in times of armed conflict include refraining from the military occupation of schools and preventing, punishing and providing redress for attacks by armed groups against educational facilities.⁴⁹

Attacks on education can give rise to breaches of other fundamental rights that are interdependent with and indivisible from the right to education, including the right to life; the right to liberty and security; the right to be free from torture and ill-treatment; and the prohibition on discrimination.⁵⁰ The rights of distinct groups of rights holders are enshrined in specific treaties, such as the UN CRC, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the UN Convention on the Rights of Persons with Disabilities (CRPD). Human rights-based responses to attacks on education should take into account the legal framework provided by such treaties and the jurisprudence emanating from their monitoring bodies.

Finally, attacks on education may rise to the level of crimes under international law, including, depending on circumstances, war crimes and crimes against humanity.

1.3 The Scale and Impact of Attacks

Every two years, GCPEA publishes *Education Under Attack*, the most comprehensive report documenting attacks on education on a global scale.⁵¹ In 2022 and 2023, GCPEA identified approximately 6,000 attacks on education and cases of military use of schools and universities, which constitutes a nearly 20 per cent increase compared to the two previous years. Attacks on schools were the most prevalent form of attack on education during this reporting period, with over 3,250 reported incidents in 27 different countries. More than 10,000 students and education personnel were reportedly killed, injured, abducted, arbitrarily arrested, or otherwise harmed, which is an increase by over 10 percent compared to 2020 and 2021.

The highest numbers of attacks on education were recorded in Palestine, Ukraine, DRC and Myanmar. Attacks increased in Ukraine, Sudan, Palestine, Syria, and Nigeria in 2022 and 2023, as compared to the previous two years. India, Pakistan, Palestine, and Afghanistan had high reported numbers of people harmed or killed in attacks on education.

Girls and women were specifically targeted in attacks on education in at least 10 countries, including disproportionately with sexual violence at, or on the way to or from, school or university. Girl and women students experience more difficulties resuming their education after an attack in many contexts and,

48 UNGA, Report of the United Nations High Commissioner for Human Rights, E/2015/59, 19 May 2015, at para. 52.

49 UNGA, Report of the United Nations High Commissioner for Human Rights, E/2015/59, 19 May 2015, at paras. 63-65; see also Protect Education in Insecurity and Conflict (PEIC) and Geneva Academy of International Humanitarian Law and Human Rights, *United Nations Human Rights Mechanisms and the Right to Education in Insecurity and Armed Conflict* (2013), at pp. 22-24; and International Law Handbook at pp. 74-110.

50 Amongst others, these rights are guaranteed under Articles 2(1), 3 6, 7, 9-10 and 17 International Covenant on Civil and Political Rights (ICCPR); Article 2 ICESCR; Articles 6, 37 UN Convention on the Rights of the Child; and Article 2 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“UNCAT”). For detailed guidance, see International Law Handbook, at pp. 123-161.

51 GCPEA, *Education Under Attack 2024* ([Education under Attack 2024 - Global Coalition to Protect Education from Attack \(protectingeducation.org\)](https://protectingeducation.org)).

together with female teachers, experience a wide range of negative long-term consequences, such as reprisals, social stigma and exclusion.⁵²

In 2024, the Special Representative of the UN Secretary-General for Children and Armed Conflict (SRSG/CAAC) denounced⁵³ the continued high numbers of attacks⁵⁴ and the increasing military use of schools, as well as use of air strikes and explosive weapons in populated areas, particularly in Ukraine, Israel and the Occupied Palestinian Territory, Myanmar, Afghanistan, Mali and Burkina Faso. The 2024 annual report of the UN Secretary-General on Children and Armed Conflict denounced a shocking 21 per cent increase in grave violations in 2023 and stressed that the use of schools for military purposes erodes their integrity and civilian character, renders them targets of attacks, and exposes children to heightened risks of other grave violations.⁵⁵

The true scale of attacks on education is likely greater than these numbers suggest. Whilst data has become more widely available in recent years, owing to increased awareness and reporting efforts by national and international actors, in certain contexts reporting systems remain weak or absent because of ongoing safety and security risks.⁵⁶ Additionally, even where reporting occurs, data is not systematically disaggregated by age, gender, disability, or perpetrator,⁵⁷ which may hinder efforts to properly understand and analyze the drivers and impacts of such attacks and, in turn, undermine the prospects for accountability.

The SSD describes the immediate and long-term consequences of attacks on education and military use of schools and universities for students, teachers, and communities living in situations of armed conflict. It highlights that “attacks on schools and universities have been used to promote intolerance and exclusion – to further gender discrimination, for example by preventing the education of girls, to perpetuate conflict between certain communities, to restrict cultural diversity, and to deny academic freedom or the right of association. 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.”⁵⁸

The UN Special Rapporteur on the Right to Education has called the effects of attacks on education and the lives of learners “devastating” and called on States to endorse and implement the Safe Schools Declaration.⁵⁹ Other international and regional human rights mechanisms have expressed similar concerns and calls to action. In a recent joint statement, the CRC and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) have stated that “the destruction and militarization of educational spaces not only obstructs daily learning but also poses a threat to the development of children, affecting their cognitive, emotional, and social growth during the most crucial phase of their development.”⁶⁰ In 2020, the ACERWC called on the African Union and other relevant African inter-governmental

52 GCPEA, *“It is very painful to talk about: the Impact of Attacks on Education on Women and Girls”* (2019).

53 Children and armed conflict, Report of the Special Representative of the Secretary-General for Children and Armed Conflict, A/HRC/55/57, paras 18-19.

54 More information on the meaning of attacks on schools for UN Monitoring and Reporting purposes can be found in the annexes of the MRM Field Manual.

55 Children and armed conflict Report of the Secretary-General, A/79/842-S/2024/384, para 4 and 13.

56 See, UNESCO, *“Key findings and discussion points”* (at pp.9-10); O’Malley, B., *“Education under Attack 2010: A summary”* (at pp.39-40); Coursen-Neff, Z., *“Attacks on education: monitoring and reporting for prevention, early warning, response and accountability”* (at pp.113-117, 120-123) in *Protecting education from attack: a state-of-the-art review* (2010); GCPEA, *“Toolkit for Collecting and Analysing Data on Attacks on Education”* (2021), at p.2.

57 GCPEA, *“Toolkit for Collecting and Analysing Data on Attacks on Education”* (2021), at p.2.

58 Safe Schools Declaration (2015).

59 A/HRC/53/27: Securing the right to education: advances and critical challenges - Report of the Special Rapporteur on the right to education, Farida Shaheed, para. 64.

60 Joint statement of the United Nations Committee on the Rights of the Child and the African Committee of Experts on the Rights and Welfare of the Child on 16th June 2024 - Day of the African Child.



organizations that authorize peace support operations to adopt an explicit ban on the use of schools in their operations,⁶¹ which the African Union implemented in 2021.

The ACERWC also recognized that attacks on education institutions have a disproportionately negative effect on girls, who are specifically targeted for sexual and gender-based violence, harassment or abduction.⁶² The UN Committee on Discrimination against Women (CEDAW) has expressed similar concerns, and called on States to prohibit the occupation of schools by security forces.⁶³

Finally, the OTP-ICC's 2023 Policy on Children recognizes that disruption of education is one of the most damaging effects of armed conflict on children and that some war crimes have unique impacts on children, such as acts intentionally directing attacks against education facilities.⁶⁴

61 African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 22 of the ACRWC, "Children in Situations of Armed Conflict," September 2020, paras. 72-78.

62 Ibidem.

63 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.

64 OTP-ICC, Policy on Children, December 2023, at paras 29 and 36.

2. Chapter II: Addressing the Lack of Investigations and Prosecutions of Education-Related Crimes

The UN Security Council has condemned the limited accountability for education-related crimes and called on Member States to ensure that perpetrators of attacks, including attacks on schools, are brought to justice⁶⁵ in line with States' obligations under international law. States have also been urged by the UN Treaty Bodies, including the CESCR and the CRC, to conduct prompt and impartial investigations for attacks on education and military use of schools, and to prosecute perpetrators.⁶⁶

Impunity for education-related crimes denies victims' their rights to an effective remedy,⁶⁷ weakens the rule of law, and can undermine long-term peace and reconciliation. The existence of effective accountability measures can also play a key role in preventing future unlawful attacks on education. As observed by the SRSG/CAAC, holding those targeting schools accountable may be the best defense for deterring attacks on schools.⁶⁸

As it will be shown in this Chapter, barriers to effective criminal accountability for education related crimes depend on a wide range of factors, but strategies and solutions exist for domestic and international accountability actors to enhance investigations and prosecutions.

2.1 Barriers

There are several, mutually reinforcing reasons why there have been limited investigations and prosecutions of education-related crimes. Education-related crimes tend to disproportionately affect children and, as highlighted in a study by Save the Children and the University of Oxford,⁶⁹ crimes against and affecting children have historically largely been overlooked in accountability processes. Instead, justice efforts have traditionally focused on crimes against adult populations/the general population and largely eclipsed children's experiences of war and violence. This is linked to a number of factors, including a broader historical indifference to children's issues, and the limited dedicated expertise in the investigation and analysis of crimes against/affecting children. In the context of education-related crimes in particular, one key informant reported that, "without [a child rights] expert that can help the team to understand [...]"

65 UN Security Council, Resolution 2601, S/RES/2601 (2021); see also Resolution 1998, S/RES/1998 (2011).

66 Concluding observations on the reports of Colombia, Yemen, India under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict CRC/C/OPAC/COL/CO/1, 2010, para 40 and CRC/C/OPAC/YEM/CO/1, 2014, para 30; CRC/C/OPAC/IND/CO/1, 2014, para 29; Concluding observations on the second periodic report of Zimbabwe under the Convention on the Rights of the Child, CRC/C/ZWE/CO/2, 2016, para 69(d); Concluding observations on the combined third to fifth periodic reports of the Democratic Republic of the Congo under the Convention on the Rights of the Child, CRC/C/COD/CO/3-5, 2017, para 48(c); Concluding observations on the second periodic report of the Central African Republic under the Convention on the Rights of the Child, CRC/C/CAF/CO/2, 2017, para 63. See also GCPEA, "Protecting Schools from Military Use: Law, Policy and Military Doctrine" (2021).

67 Victims of gross violations of international human rights and/or humanitarian law have the right to an effective remedy, as per (amongst others): Article 8 of the 1948 Universal Declaration of Human Rights; Article 2 of the 1966 International Covenant on Civil and Political Rights; Article 14 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and Articles 4 and 39 of the 1989 Convention on the Rights of the Child. The obligation to make reparation in case of violations of international humanitarian law is reflected in Article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV) and article 91 Protocol I, and is part of customary international law applicable to non-international armed conflict. Article 75 of the Rome Statute for the International Criminal Court (Rome Statute) also incorporates the right to reparation of victims of crimes under the jurisdiction of the Court; see also UN General Assembly, A/RES/60/147, 21 March 2006 (UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights Law and Serious Violations of International Humanitarian Law).

68 Office of Special Representative of the Secretary-General (SRSG) for Children and Armed Conflict (CAAC), "Accountability best defence for deterring attacks on schools: Leila Zerrougui," October 9, 2015.

69 See generally, Save the Children and the Oxford Institute for Ethics, Law and Armed Conflict, "Advancing Justice for Children: innovations to strengthen accountability for violations and crimes affecting children in conflict" (2021).

the importance of education and the elements related to education crimes” investigative teams are less likely to consider them.⁷⁰

Other reported barriers include a reluctance to interview children, based on the assumption that they are unreliable witnesses and/or a fear of inevitably re-traumatizing them; challenges in ensuring adequate psychosocial support for child victims and witnesses;⁷¹ and difficulties in accurately assessing age.⁷² Thus, it appears that “there has been less attention devoted to the investigation and prosecution [of crimes against/affecting] children because practitioners consider that it may be too difficult and decide to prioritize other crimes.”⁷³ When crimes against/affecting children have been addressed, their experiences have often been reduced to child soldiering (for boys) and sexual and gender-based violence (for girls) – attempts to proactively collect evidence of other crimes are rarely made.⁷⁴ These are extremely serious crimes, however, other types of criminality, such as the destruction of schools, also warrant consideration and recognition.

Another reason why education-related crimes, and particularly the destruction of schools, may have been overlooked is that international crimes cases have traditionally centered on a narrow set of violations of civil and political rights, such as the right to life or the right to physical and mental integrity. Investigations and prosecutions have generally focused on allegations of killings; torture and other-ill treatment; and, more recently, rape and other forms of sexual violence.⁷⁵ Crimes involving violations of economic, social and cultural rights, such as the right to education, have generally received less attention. This may be explained by the fact that this generation of human rights has traditionally been conceptualized as aspirational, based on obligations of progressive realization, and therefore non-justiciable, particularly in the criminal context.⁷⁶

Key informants confirmed that “education is not part of the repertoire of questions that [investigators] ask. Their focus is on killings, on sexual violence, which means that it doesn’t end up being part of the evidence”⁷⁷ and further that, in practice “the destruction of schools was not prioritized in a context where you have violence against civilians.”⁷⁸ Others observed that investigating education-related crimes “falls out of the scope of interest of the work of investigation and documentation” because “education is seen as a service” and a “form of humanitarian assistance.”⁷⁹ It was also reported that many criminal investigators and prosecutors “will say ‘we are not human rights investigators’” or will not always consider that economic, social or cultural rights constitute “fundamental rights” for the purposes of establishing persecution. In particular, “many will argue that education is not a fundamental right. It is very difficult internally to change these attitudes.”⁸⁰

70 Interview with Javier Pérez Salmerón.

71 See generally, Save the Children and the Oxford Institute for Ethics, Law and Armed Conflict, “*Advancing Justice for Children: innovations to strengthen accountability for violations and crimes affecting children in conflict*” (2021) (“Advancing Justice for Children Report”).

72 Advancing Justice for Children Report, p.37.

73 Interview with Professor Cécile Aptel.

74 Advancing Justice for Children Report, p.73.

75 See generally, L. van den Herik, “*Economic, Social and Cultural Rights: International Criminal Law’s Blind Spot*” in *Economic, Social and Cultural Rights in International Law: Contemporary Issues and Challenges* (2014), pp. 343-366; L. Arbour, “*Economic and social justice for societies in transition*,” *International Journal of Law and Politics*, vol. 40, No. 1 (2007); M. Jarvis and K. Vigneswaran, “*Challenges to successful outcomes in sexual violence cases*” in *Prosecuting Conflict-Related Sexual Violence at the ICTY* (2016), p. 33.

76 See generally, L. van den Herik, “*Economic, Social and Cultural Rights: International Criminal Law’s Blind Spot*” in *Economic, Social and Cultural Rights in International Law: Contemporary Issues and Challenges* (2014), pp. 343-366; A. Cahill-Ripley, “*Foregrounding socio-economic rights in transitional justice: realizing justice for violations of economic and social rights*,” in *Netherlands Quarterly of Human Rights* (2014), Vol 32/2, 183-213.

77 Interview with Erin Gallagher.

78 Interview with Chiara Gabriele.

79 Interview with Javier Pérez Salmerón.

80 Interview with Javier Pérez Salmerón.

A further challenge, specific to attacks against education facilities, is that IHL does not currently contain an absolute prohibition on their military use and occupation (contrary e.g., to hospitals). It was reported that in practice, if there is a military presence in or around the school, the assumption will always be that the attack was lawful (and therefore need not be investigated). Yet, according to one key informant, “it should be the other way around, we should start from the premise that [the school] was not being used for military purposes [...] that there was education there, there were students, classes were not interrupted.”⁸¹

Finally, it is important to recall that there are multiple structural barriers to accountability. These have been previously documented but include (in summary): the fact that education-related crimes often occur in countries where the justice system has been weakened by armed conflict and insecurity, which is a particular impediment to domestic accountability; that the resources, expertise and skills to effectively investigate and prosecute such complex crimes may be lacking or limited; and are underreported attacks against students, teachers and educational institutions to national, regional and international authorities. In addition, States may lack the resources or political will to enact domestic legislation criminalizing attacks on education or to enforce legal standards through investigations and prosecutions.⁸²

2.2 Strategies and Solutions

Expressly criminalize education-related crimes in domestic law

To date, few countries have explicitly criminalized attacks on education facilities as war crimes. However, all States should ensure that their national legislation adequately proscribes international crimes, including education-related crimes, in line with the definitions contained in the Rome Statute and the Elements of Crimes.⁸³ This includes enacting explicit provisions criminalizing attacks on schools as a war crime⁸⁴ and severe deprivation of the right to education as the crime against humanity of persecution (as well as the range of crimes affecting education, listed in Chapter III). In the case of ICC State parties, this domestic implementation of the Rome Statute is essential – it allows States to exercise primary jurisdiction over Rome Statute crimes, in accordance with the principle of complementarity, and to fulfil their obligations under the Statute to cooperate with the Court.⁸⁵ Recent recommendations of the CRC to the State Parties to the Optional Protocol to the UN CRC on the Involvement of Children in Armed Conflict (OPAC) indicate that all States, even those who aren’t affected by armed conflict, should criminalize and punish the recruitment and use of children under the age of 15 as a war crime.⁸⁶

Even where a State is not a party to the ICC, it should enact national legislation criminalizing war crimes, crimes against humanity (including education-related crimes), and other core international crimes in line with the Rome Statute. This ensures that conduct amounting to a core international crime that is not covered by the State’s ordinary criminal law can be prosecuted and punished as appropriate, regardless of ICC membership.⁸⁷ States should do so in the context of incorporating international law and the

81 Interview with Javier Pérez Salmerón.

82 See generally, Coursen-Neff, Z., “Attacks on education: monitoring and reporting for prevention, early warning, response and accountability” in *Protecting education from attack: a state-of-the-art review*, UNESCO (2010) at pp.111-123.

83 See generally, Case Matrix Network, “*Implementing the Rome Statute of the International Criminal Court- Ratification, Implementation and Cooperation*” (2017); HRW, “*International Criminal Court: Making the International Criminal Court Work- A Handbook for implementing the Rome Statute*” (2001).

84 This has been expressly recommended by the UN Committee on the Rights of the Child- see, Committee on the Rights of the Child, “Day of General Discussion on the ‘Right of the Child to Education in Emergency Situations-Recommendations- 19 September 2008, 3 October 2008, at para. 35.

85 See Preamble of the Rome Statute and generally, Case Matrix Network, “*Implementing the Rome Statute of the International Criminal Court- Ratification, Implementation and Cooperation*” (2017).

86 Concluding observations on the report submitted by Senegal and Bahrain under article 8 (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/SEN/CO/1, para 27 and CRC/C/OPAC/BHR/CO/1, para 6.

87 See generally, Case Matrix Network, “*Implementing the Rome Statute of the International Criminal Court- Ratification, Implementation and Cooperation*” (2017); See Sheppard, B (HRW), “*Painful and inconvenient: Accountability for attacks on education*” in *Protecting Education from Attack: A State-of-the Art-Review*.

“Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict” into the domestic legal system.

States have the primary duty under international law to investigate and prosecute (or extradite for prosecution) crimes against education (and crimes affecting education) amounting to international crimes under national or international law. This duty stems from States’ general obligation under international law to investigate and prosecute core crimes of international law and other gross violations of international human rights law.⁸⁸

The primacy of domestic jurisdictions is not affected by the establishment of the ICC. To the contrary, one of the foundational principles of the Rome Statute is complementarity, whereby the Court can only assume jurisdiction if State parties are either “unwilling or unable genuinely” to investigate or themselves prosecute crimes under the court’s jurisdiction.⁸⁹ Moreover, the ICC can only exercise jurisdiction over crimes perpetrated by nationals or on the territory of States parties (currently 124), unless a non-state party has temporarily accepted the Court’s jurisdiction or is referred to the ICC by the UN Security Council, and only over crimes committed after July 2002.⁹⁰

National proceedings are thus the first forum for addressing international crimes. A basic precondition for domestic accountability is that States have the proper legislation in place, and related capacity, to investigate and prosecute international crimes at the national level, including education-related crimes, in accordance with their international obligations.

Example: Limitations of Prosecuting School Attacks under Bosnian Criminal Law

To date, few countries have explicitly criminalized attacks on education facilities as war crimes. Instead, such attacks have been charged under broader, generic provisions, e.g., as attacks on civilian objects.

One example of this approach is *Prosecutor v Pasko Ljubičić*, which concerned a former senior officer of the military police of the Croatian Defense Council in central Bosnia. Ljubičić was accused, amongst others, of deploying a military battalion to attack a Bosnian-Muslim village. During the attack, a Muslim primary school was burnt to the ground.⁹¹

Ljubičić was first indicted by the ICTY in 2000 on multiple counts of crimes against humanity and war crimes, including destruction and willful damage to institutions dedicated to education under Article 3(d) of the ICTY Statute.⁹² In 2006, his case was transferred to the War Crimes Section of the

88 This obligation is established for war crimes and genocide in numerous international conventions, including: 1948 Convention on the Prevention and Punishment of Genocide (Genocide Convention), Article VI; 1949 Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), Article 49(1); 1949 Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), Article 50(1); 1949 Convention Relative to the Treatment of Prisoners (Third Geneva Convention), Article 129(1); Fourth Geneva Convention, Article 146(1); 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 5(1); 2006 International Convention for the Protection of All Persons from Enforced Disappearance, Article 9(1). International Court of Justice ICJ, Advisory Opinion, *Reservations to the Genocide Convention*, 1951, p.23 and Decision on the *Application of the Convention on the Prevention and Repression of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia)*, ICJ 1996, at para. 31.

89 Article 17 Rome Statute.

90 Articles 11-13 Rome Statute.

91 See Sheppard. B (HRW), “*Painful and inconvenient: Accountability for attacks on education*” in Protecting education from attack: a state-of-the-art review, UNESCO (2010) at p.129

92 The original indictment was issued by the ICTY on 26 September 2000 (ICTY, *Prosecutor v. Pasko Ljubičić*, Indictment) and a corrected amended indictment on 2 April 2002 (ICTY, *Prosecutor v. Pasko Ljubičić*, Corrected Amended Indictment).

Court of Bosnia and Herzegovina (BiH) under the ICTY's rules of procedure.⁹³ Because there was no equivalent standalone crime in the Bosnian criminal code, the specific charge of destruction or damage to educational institutions did not feature in the domestic indictment. Instead, it appears that this crime was subsumed within the count of attacks on civilian objects and the destruction and looting of property as war crimes under the Bosnian criminal law. In April 2008, following a guilty plea, Ljubičić was sentenced to 10 years imprisonment.⁹⁴

Whilst this approach of charging school attacks under more general provisions may lead to similar punishments, explicit criminalization is preferred because:

- Enumerating specific crimes against education provides a clear basis for investigation and prosecution, brings more attention to these crimes, and reduces the risk of them being overlooked and acknowledges their seriousness.
- It also recognizes the unique harm suffered by victims and the corresponding reparations to which they are entitled, in line with the expressive function of criminal justice.
- Using domestic law criminal charges may mean that the crimes will be subject to statutes of limitation under national law, while under international law, crimes against humanity and war crimes are not subject to statutes of limitations.⁹⁵

In addition to explicit criminalization, States should ensure that other general legal principles established by the Rome Statute, such as those excluding the availability of certain defenses (e.g., superior orders), are incorporated into their domestic frameworks; and that penalties for crimes against education are appropriate and take full account of their gravity and impact.⁹⁶

States should also ensure that their criminal procedural framework facilitates structural investigations i.e., one which enables authorities to collect information and evidence on the contextual elements of crimes, over-arching crime patterns, and structures of potential perpetrator groups even before an individual suspect has been identified.⁹⁷

Build political will

The effective investigation and prosecution of education-related crimes, domestically and internationally, requires a firm political commitment to accountability. This is particularly important at the national level, where governments may be reluctant to prosecute their own officials and state security forces, or

93 For a summary, see ICTY, *Case Information Sheet*, “Lašva Valley” (IT-00-41), *Pasko Ljubičić*; and ICTY, Corrected Amended Indictment, 2 April 2002. As part of its completion strategy, the ICTY began to transfer suitable cases involving lower and intermediate level accused to domestic jurisdictions (ICTY, Rule 11 bis, Rules of Procedure and Evidence (2009). These “Rule 11 bis” transfer cases were tried in accordance with the national law of the State in question, on the basis of the ICTY indictment and supporting evidence provided by ICTY prosecutors.

94 See Sheppard, B (HRW), “*Painful and inconvenient: Accountability for attacks on education*” in *Protecting education from attack: a state-of-the-art review*, UNESCO (2010) at p.129. See also, *Prosecutor v Vladimir Kovačević* another ICTY transfer case, this time to the War Crimes Chamber of the Belgrade District Court in Serbia, where the specific charges of destruction and willful damage to education institutions were subsumed upon transfer under a broader charge of ‘war crime against civilian population’ under the Serbian criminal code (District Court of Belgrade-War Crimes Chamber, Indictment Against Vladimir Kovačević (July 26, 2007)). *Kovačević* was ultimately found unfit to stand trial, and was not prosecuted.

95 See UNGA, Convention Against the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, Resolution 2391 (XXIII), 754 UNTS 73 (November 11, 1970). See also UNGA, Rome Statute, art. 29.

96 See generally, Case Matrix Network, “*Implementing the Rome Statute of the International Criminal Court- Ratification, Implementation and Cooperation*” (2017); HRW, “*International Criminal Court: Making the International Criminal Court Work- A Handbook for implementing the Rome Statute*” (2001).

97 European Union Agency for Criminal Justice Cooperation (EUROJUST), “*Key factors for the successful investigations and prosecutions of core international crimes*” (2022). A growing number of national jurisdictions use structural investigations to address international crimes, including Germany, France and Sweden (see M. Ingeson, “*Structural Criminal Investigations in Sweden- Reinventing Investigations of International Crimes*,” *Scandinavian Studies in Law Vol. 66*, (October 5, 2020).

where the pursuit of criminal justice may be perceived as undermining peace and reconciliation. Political will is also necessary to ensure that attacks on education are criminalized under domestic law; potential barriers to jurisdiction are addressed (e.g., immunities for public officials, limitation statutes or amnesty laws); and the justice system is resourced and equipped to conduct effective and impartial investigations into alleged crimes and prosecute suspected perpetrators,⁹⁸ in accordance with fair trial rights⁹⁹ and the rights of victims of crime.¹⁰⁰ In the absence of clear political will, education-related crimes risk being left unaddressed and unpunished.

One important tool for fostering political will is the Safe Schools Declaration (SSD) – an intergovernmental political agreement through which signatory States recognize the serious and detrimental impacts of attacks on education and military use of schools and universities, and expressly undertake to better protect education in armed conflict.¹⁰¹ Endorsing States commit to investigate attacks on educational facilities, students, and staff during armed conflict under applicable domestic and international law and, where appropriate, duly prosecute alleged perpetrators.

As will be further developed below, there are several measures that States can take to implement their commitment to accountability for attacks on education, including ensuring that: domestic laws and policies allow for investigations and prosecutions; education is an integral part of investigative strategies wherever the factual circumstances warrant; and investigative and prosecution teams have the requisite expertise and resources to bring perpetrators to justice.

Develop expertise, build capacity

Investigating and prosecuting core international crimes, including education-related crimes, can present unique challenges for national and international actors, owing to (amongst others), the nature and scale of the criminality; the risks to the safety and security of victims and witnesses or to investigators themselves because of ongoing armed conflict or insecurity; and the huge volume of information and evidence. Crimes may have been perpetrated by state actors (e.g., military, police, state officials) or non-state armed groups, often operating within complex organizational structures.¹⁰²

Building an international crimes case can also be legally and evidentially complex, owing to how these crimes are structured. Generally, prosecutors will need to establish:¹⁰³

- a. The underlying elements (*actus reus and mens rea*) of the offence (e.g., that the perpetrator intentionally or willfully directed an attack against a school that was not a military objective);
- b. The specific contextual elements, for example, that the school attack was committed in the context of an armed conflict (war crimes); and
- c. How these alleged crimes (known as the “crime base”) are linked to the alleged perpetrators - who may be senior military leaders, politicians or commanders of non-state armed groups far

98 See generally, European Union Agency for Criminal Justice Cooperation (EUROJUST), “Key factors for the successful investigations and prosecutions of core international crimes” (2022); Office of the United Nations High Commissioner for Human Rights (OHCHR), “Rule-of-law tools for post-conflict States, Prosecution initiatives” (2006); UN General Assembly (UNGA), Report of the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, Pablo de Greiff, A/HRC/27/56, 27 August 2014.

99 The right to a fair trial is universally acknowledged in international law, including under the Universal Declaration of Human Rights (Article 10); the International Covenant on Civil and Political Rights (Article 14); and the Rome Statute (Article 67).

100 See e.g., United Nations General Assembly (UNGA), “Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power,” A/RES/40/34 (29 November 1985); European Union (EU), “Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA” (25 October 2012).

101 Safe Schools Declaration (2015).

102 For an overview, see EUROJUST, “Strategy of the EU Genocide Network to combat impunity for the crime of genocide, crimes against humanity and war crimes within the European Union and its Member States” (2014) pp.15-23; ICTY and United Nations Interregional Crime and Research Institute (UNICRI), “Manual on Developed Practices” (2009), pp. 7-10.

103 See Global Rights Compliance (GRC), “Basic Investigative Standards for International Crimes Investigations” (2019), at.106.

removed from the battleground - including evidence of how they may have committed the crimes, or “modes of liability.”¹⁰⁴

These factors differentiate international crimes from national crimes and mean that a broad range of multi-disciplinary investigative and legal expertise is essential to effective domestic and international investigations and prosecutions. Alongside investigators with traditional policing skills in handling witnesses and evidence in line with criminal justice standards (including vulnerable witnesses, such as children and victims of sexual and gender-based violence), investigating crimes against education will often require the expertise of military, criminal and political analysts, child rights experts, as well as forensic specialists.¹⁰⁵ Teams should also have the proper technical expertise and tools to ensure the secure collection and storage of all forms of evidence.¹⁰⁶

For example, building a case related to the aerial bombardment of a school would require, amongst others, evidence of the civilian character of the school and anyone present (i.e., that the school was being used as a school and not e.g., a military barrack such that it could be considered a military objective); the location and value of any military objectives in the vicinity; the forces responsible for the bombing; the effective command structures through which the orders to bomb were given, as well as the basis for the decision to attack the school, and whether it was taken in good faith. In addition, investigators and prosecutors should seek to collect evidence of, and analyze, the immediate and long-term impact and harm caused by the destruction of the school on the child victims, having regard to their age and other intersecting identities.¹⁰⁷

Investigating and prosecuting education-related crimes also requires appropriate legal expertise in international criminal and humanitarian law, international human rights law (especially as regards the crime of persecution- see below), as well as relevant domestic law and procedure. Depending on the jurisdiction, investigative processes may be independently conducted by law enforcement or other investigative agencies or directed and actively supervised by prosecutors.¹⁰⁸ In whatever way evidence collection is divided between investigators and prosecutors, it is good practice to have substantial legal input into core international crimes investigations at the earliest possible opportunity.¹⁰⁹ The absence of such expertise may result in evidence relevant to education-related crimes being overlooked, or in a failure to recognize and charge such crimes even where there is evidence.

104 In general terms evidence of liability should cover both direct perpetrators and chains of command, structures and hierarchies- this may be critical in establishing the criminal liability of higher-level leaders committed by lower-level perpetrators and subordinates. The law regarding modes of liability differs across national systems, international criminal courts and tribunals and customary international law. The Rome Statute recognizes several modes of liability, including direct and indirect perpetration; aiding and abetting; and command and superior responsibility (See Articles 25 and 28 Rome Statute). In many cases, States may have incorporated the Rome Statute definitions of crimes but not the provisions on modes of liability, which remain governed by domestic law (UNODC, *Handbook on Gender Dimensions of criminal justice responses to terrorism* (2019), p. 151). For these reasons, the Rome Statute specific provisions are not addressed herein.

105 ICTY and United Nations Interregional Crime and Research Institute (UNICRI), *Manual on Developed Practices* (2009), p.12.

106 Ibid.

107 Advancing Justice for Children Report at pp.36, 40.

108 United Nations Office on Drugs and Crime (UNODC), *Handbook on effective prosecution responses to violence against women and girls* (2014), Criminal Justice Handbook Series, pp.69-72.

109 ICTY and United Nations Interregional Crime and Research Institute (UNICRI), *Manual on Developed Practices* (2009), pp.12-13.

Example: Prosecuting School Attacks in the Military Courts of the DRC

Even where attacks on educational facilities are expressly criminalized under domestic law, they are not always charged as such. For example, the case against *Gilbert Ndayambaje* and *Evariste Nizehimana* in the DRC concerned two military commanders of the Democratic Forces for the Liberation of Rwanda (FDLR), a non-state armed group operating in the region of South Kivu. In 2018, they were indicted and prosecuted on various charges in connection with a 2012 attack against a village, during which civilians were murdered. A number of civilian objects, including houses and a primary school, were burned to the ground.¹¹⁰

Although the DRC has ratified the Rome Statute and adopted implementing legislation (including criminalizing attacks on buildings dedicated to education, in line with the Rome Statute), the school attack was charged under the more generic offense of attacking a civilian object instead. Ultimately, the military court did not agree with this charge, as they found that there was no armed conflict and therefore none of the crimes amounted to war crimes. Instead, they qualified the school attack as arson under ordinary domestic law; and some of the other crimes against civilians as crimes against humanity. The defendants were convicted.

According to TRIAL International, who was involved in this case, prosecutors in this instance may have been unaware of the more specific charges, owing to a lack of training and capacity on the specific crime in the justice system.¹¹¹

These challenges may be overcome by:

- **Sensitization and training programs:** Personnel involved in the investigation and prosecution of international crimes should receive regular and up-to-date sensitization and training on crimes against education. Training should address, at a minimum, the drivers, patterns and differential impacts of education-related crimes in the given context; the legal elements of education-related crimes and evidentiary standards; and strategies for evidence collection and analysis, including from victims and witnesses with specific vulnerabilities, such as children.¹¹²
- **Adopting policies, protocols and guidance:** Effective sensitization and training may require developing specialized guidance and adopting specific policies and protocols. This may help to promote changes in the practice of investigative and prosecution teams and ensure standardized practices in the handling of such crimes. It is also important to develop processes that allow for monitoring of compliance with any guidance, policies and protocols.¹¹³

110 Bukavu Military Tribunal, *Prosecutor v Ndayambaje and Nizehimana*, Judgment, 21 September 2018. See also, TRIAL International, “Opening of a trial for crimes against humanity and war crimes in South Kivu,” 23 August 2018, available at: <https://trialinternational.org/latest-post/opening-of-a-trial-for-crimes-against-humanity-and-war-crimes-in-south-kivu/>.

111 Interview with TRIAL International.

112 Adapted from, UNODC, “Handbook on Gender Dimensions of criminal justice responses to terrorism” (2019), p.157 and EUROJUST, “Strategy of the EU Genocide Network to combat impunity for the crime of genocide, crimes against humanity and war crimes within the European Union and its Member States” (2014), pp.44-45.

113 Ibid.

Example: The Effective Investigation and Prosecution of the Crime of Persecution

Persecution is a unique crime,¹¹⁴ insofar as it does not typically consist of a single act of violence, but is the accumulation of systemic and discriminatory violations of fundamental rights that would otherwise not necessarily be criminalized. Effectively investigating and prosecuting persecution requires a specific approach— one that incorporates elements of human rights investigations that may be less familiar to criminal investigators and prosecutors— in order to identify and understand the discrimination that underlies the crime and how it relates to crime patterns.¹¹⁵ According to Article 7(1) (h) of the Rome Statute, there are several grounds for persecution, including gender, on which the OTP’s Policy on the Crime of Gender Persecution provides instructive guidance.¹¹⁶ Approaches to effective investigations and prosecutions include:

- In the preparation and planning of investigations, it is important to identify violations of fundamental rights and their connection to acts or crimes and the targeting of members from one or more groups or collectivities. To that end, staff should receive training on the identification of “*patterns, red flags and factual indicators*” related to persecutory conduct and briefings on local traditions, religious practices, customs and cultural issues (paras. 73-74).
- In terms of analysis, it is important to evaluate the human rights context prior to the commission of the crimes, as this can provide a helpful indicator of the fundamental rights violations committed during the temporal scope of the investigation (para.79). Expert or overview witnesses able to provide information on the historical, cultural and social context in which the crimes took place should be identified (para. 74).
- Evidence should be collected, and crime patterns analyzed, “*from a fundamental rights perspective*” in order to determine whether the prohibited acts or crimes were carried out as a means to enforce discrimination (para.80)— in this case, on the basis of gender.
- Persecution may be motivated by multiple, intersecting grounds of discrimination (e.g., race, age, ethnicity, in addition to gender)— therefore an intersectional approach¹¹⁷ to the analysis of the crime should be adopted (para.81).

For additional guidance, see: CUNY School of Law, MADRE and UN Women, “*Identifying Gender Persecution in Conflict and Atrocities- A Toolkit for Documenters, Investigators and Adjudicators of Crimes Against Humanity*” (2021)

- **Establishing specialized units at the domestic level:** States should consider establishing specialized multi-disciplinary units, with adequate human, material and financial resources, focused on the investigation and prosecution of core international crimes, preferably within their prosecution, law enforcement or judicial cooperation services. This approach can facilitate the building and consolidation of specialist knowledge and skills and the development of institutional knowledge and concentrate and centralize domestic efforts under one single entity. In turn, this can render the criminal justice system more efficient and better equipped at providing accountability for international

114 ICC, [Elements of Crimes](#), Crime against humanity of persecution, p. 10.

115 See generally, UN Women, “*Comments on the Development of a Policy on the Crime against Humanity of Gender Persecution*” (2022).

116 OTP, Policy on the Crime of Gender Persecution (2022).

117 Intersectional approaches are described by OHCHR as follows: “*The intensity or severity of discrimination that individuals may face depends on the number and interplay of their personal characteristics that generate discrimination against them. The interplay of identities linked to gender, ethnicity, religion, race, sexual orientation, disability, national origin, age, etc. results in experiences of exclusion and disadvantage that are unique to those with multiple identities. This is known as multiple discrimination. The interplay of different grounds of discrimination is analyzed by intersectional analysis, which acknowledges that human rights violations rarely occur merely on the grounds of gender but are often the result of the intersection of age, ethnicity, national origin, sexual orientation, class, health status, etc. with gender*” (OHCHR, ‘Chapter 15: Integrating Gender into Human Rights Monitoring’, Manual on Human Rights Monitoring, 2011, p. 6).

crimes.¹¹⁸ Specialized units have been established in several countries, including in Germany, France, the United Kingdom, Canada, Sweden and the Netherlands.¹¹⁹

- **Requesting specialist external support:** National authorities should engage in cross-sector and peer collaboration, including by requesting technical advice and support from national and international actors with relevant experience and expertise on the right to education, protection of education in conflict, children's rights and on the investigation and prosecution of core international crimes. Potential actors include States who have established specialized multi-disciplinary units, National Committees for the implementation of international humanitarian law, National Human Rights Institutions and Ombudspersons, as well as CSOs like GCPEA and Justice Rapid Response.¹²⁰

Include education-related crimes in investigative and prosecution strategies

Strengthening accountability for education-related crimes requires more than explicit criminalization and specialist skills and expertise. The gravity of attacks on education, having regard to their nature and impact (as detailed in Chapter I), must be recognized – and their investigation and prosecution should be specifically prioritized, whenever the factual circumstances warrant.

It is rarely possible for accountability actors to investigate and prosecute every single potential international crime within their jurisdiction. In most cases, the volume and complexity of criminality will far exceed the resources and capacities of any justice system. The nature of international crimes means that investigators and prosecutors will inevitably be confronted with huge numbers of potential victims, witnesses and perpetrators, including groups acting within complex hierarchical structures. They may also face external challenges, including a weakened justice system, limited investigative resources, a lack of security, and concerns around availability of and access to evidence.¹²¹ For these reasons, in most contexts, it will not be feasible to bring to justice every single perpetrator, and strategic choices will have to be made around which incidents to prioritize for investigation.¹²²

Investigators and prosecutors may understandably choose to prioritize the most serious crimes, particularly in contexts where resources are limited, which are often (but not only) those involving the death or serious injury of civilians. In this context, it appears that the gravity of education-related crimes is not always fully recognized. This may be due to a limited understanding of the long-term impact of such attacks, and perceptions that they are inherently less grave than other international crimes, or “victimless” insofar as they ‘only’ result in damage to infrastructure in the case e.g., of a school attack not involving loss of life or injury to civilians. In this context, it appears that the gravity of education-related crimes is not always fully recognized. This may be due to a limited understanding of the long-term impact of such attacks, and perceptions that they are inherently less grave than other international crimes. However, as outlined in Chapter I, in such cases, when schools are damaged or destroyed, the loss is far greater than physical structures. The resulting disruption to education systems can have devastating long-term consequences, such as depriving children, youth and adults of opportunities for education that could

118 See generally, Redress and International Federation for Human Rights (FIDH), “*Strategies for the effective investigation and prosecution of serious international crimes: the practice of specialised war crimes units*” (2010); EUROJUST, “*Key factors for the successful investigations and prosecutions of core international crimes*” (2022); International Centre for Transitional Justice (ICTJ), “*Gearing up in the fight against impunity- dedicated investigative and prosecutorial capacities*” (2022).

119 For an overview, see EUROJUST, “*Strategy of the EU Genocide Network to combat impunity for the crime of genocide, crimes against humanity and war crimes within the European Union and its Member States*” (2014) pp.26-34.

120 Justice Rapid Response (JRR) is a global facility that provides rapidly deployable experts to investigate international crimes and serious human rights violations and to enable a holistic, gender-sensitive, and inclusive approach to justice. JRR established three programmes respectively supporting international, national and civil society justice actors to promote the rights and access to justice of victims and survivors. (see: <https://www.justicerapidresponse.org/what-we-do/making-justice-possible/>).

121 Office of the United Nations High Commissioner for Human Rights (OHCHR), “*Rule-of-law tools for post-conflict States, Prosecution initiatives*” (2006), pp.5-6; UN General Assembly (UNGA), Report of the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, Pablo de Greiff, A/HRC/27/56, 27 August 2014, at para.33.

122 See generally, Forum for International Criminal Law, *Criteria for Prioritizing and Selecting Core International Crimes Cases* (2010), M. Bergsmo (ed); Office of the High Commissioner for Human Rights (OHCHR), *Rule of Law tools for post-conflict States: Prosecution initiatives* (2006), pp.7-8

transform their lives, holding back the human development progress of entire nations, and leaving countries trapped in reinforcing cycles of violence and poverty.¹²³ Moreover, education-related crimes, such as attacks on educational facilities are often linked to the commission of other crimes (e.g., persecution or forcible transfer) – it is therefore important for such attacks to be investigated and prosecuted, in order to capture the full criminality that has occurred.

In order to avoid certain serious crimes being overlooked, including education-related crimes, and in line with best practice, prioritization should be based on a formal set of policy criteria that allow for an objective and impartial evaluation of the gravity and impact of the crimes committed. Such a prioritization policy could also include an express undertaking to consider under-reported/investigated/prosecuted crimes, such as attacks on education. In most cases, operational considerations should also be reflected in the criteria, including the availability of evidence and investigative resources and the estimated time required to complete the investigation.¹²⁴

Adopting a set of objective criteria can help to: reduce the scope for bias; ensure a more comprehensive and representative investigative and prosecutorial strategy; enhance the performance of criminal justice systems and, in turn, public confidence; and shield prosecutorial decisions from undue influence.¹²⁵ The criteria for the selection and prioritization of cases should be transparent so that the strategy for the identification of alleged perpetrators is understood. This is particularly important to help manage the legitimate expectations of victims and affected communities.¹²⁶ Public presentation of prosecutorial priorities needs to be done without signaling to potential perpetrators that other crimes will be overlooked.

Finally, fair and effective prioritization requires some preliminary knowledge and understanding of the local context and dynamics, the types and patterns of crimes alleged, and the likely victims and perpetrators. It is therefore important to first conduct a preliminary mapping of the criminality that may have occurred in the given context.¹²⁷ The actual or possible perpetration of attacks on education should be an explicit component of this mapping process, even in the absence of specific allegations. Amongst others, mapping can be based on open-source information, including news reports, reports from international organizations, including UN agencies and UN missions, and from CSOs. These sources should be reviewed for information relating to education-related crimes, and GCPEA's Education under Attack reports can support accountability mechanisms, particularly with understanding of scale and patterns of attacks.

Evidence collection and analysis

As with other international crimes, a strategic and comprehensive approach to evidence collection can strengthen domestic and international prosecutions and increase the prospect of securing convictions.

123 Education for All (EFA), Global Monitoring Report, *"The hidden crisis: Armed conflict and education"* (2011) at p.131.

124 See Case Matrix Network (CMN), *Case Mapping, Selection and Prioritisation of Conflict and Atrocity-Related Crimes* (2018); OHCHR, *Rule of Law tools for post-conflict States: Prosecution initiatives* (2006), pp.7-8. See e.g. The OTP's Policy Paper on Case Selection and Prioritisation (2016), which sets out the Office's criteria when deciding which incidents, persons and conduct to investigate and prosecute. The predominant criterion is gravity, having regard to the scale, nature, manner of commission and impact of the crimes. Factors relevant to this analysis include the vulnerability of the victims, any discriminatory motives on the part of the perpetrators, and the bodily or psychological harm caused to the victims and their families. The other two criteria are the degree of responsibility of the alleged perpetrators, and the representativeness of the charges and in that regard the policy states that *"the Office will pay particular attention to under-prosecuted crimes, including crimes against or affecting children and attacks against protected objects,"* which include buildings dedicated to education (at para. 46).

125 See Case Matrix Network (CMN), *Case Mapping, Selection and Prioritisation of Conflict and Atrocity-Related Crimes* (2018); OHCHR, *Rule of Law tools for post-conflict States: Prosecution initiatives* (2006), pp.7-8; see also UN General Assembly (UNGA), Report of the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, Pablo de Greiff, A/HRC/27/56, 27 August 2014 which notes that: "[...] the use of inadequate or unjustified criteria in the distribution of prosecutorial resources can result in new or renewed ways of discrimination and rights violations, which may undermine efforts to overcome past violations and establish a new social order based on justice, equality and the rule of law," at para. 39.

126 See Case Matrix Network (CMN), *Case Mapping, Selection and Prioritisation of Conflict and Atrocity-Related Crimes* (2018); OHCHR, *Rule of Law tools for post-conflict States: Prosecution initiatives* (2006), pp.7-8.

127 *"Rule-of-law tools for post-conflict States, Prosecution initiatives"* (2006), p. 6.

Different categories of evidence (testimonial, documentary, physical and digital) should be: collected from a broad range of sources; in line with relevant admissibility rules and standards; and hold regard to the underlying and contextual legal elements of the crimes and applicable modes of liability. Evidence of impact should also be collected and analyzed with an intersectional approach, and include disaggregation on the basis of gender, age, and disability – this will be particularly relevant to assessing gravity (and to sentencing and reparations, in the event of a conviction).

Education-related crimes rarely occur in a vacuum – they are often linked to the commission of other crimes. This means they should not be investigated in isolation but considered within broader patterns of violations and crimes.

Tables 1 and 2 below provide example forms of evidence that may be relevant to establishing the elements of (a) attacking buildings dedicated to education and (b) the severe deprivation of the right to education as persecution, respectively.

Table 1. Attacking Buildings Dedicated to Education as a War Crime¹²⁸

Category	Sources	Relevance
<p>Testimonial evidence <i>Accounts of victims, witnesses and suspects</i></p>	<p>Direct victim/eyewitness, such as a student,¹²⁹ teacher or staff member present during the school attack</p> <p>Family members, members of the community, relief workers with relevant knowledge of the school attack</p> <p>Pattern witnesses, such as local community leaders who may have relevant information on other victims/eyewitnesses and other school attacks.</p> <p>Insider witnesses (e.g., members of state security forces or armed groups) who may have evidence about the specific attack, the armed group’s military strategy and decision-making process at the time; their positions, weaponry and range capability; and de facto command structure</p> <p>Expert witnesses (e.g., military experts) to assess the point of origin of the attack and the location of possible military objectives in the vicinity; artillery and weapons experts on the range and power of the weaponry used</p>	<p>May help to establish that a physical attack against a school took place (including timing and location; origin of the attack, description of the destruction or damage); the circumstances surrounding the attack; the identity of the alleged direct perpetrators and the organization and command structure of the perpetrator group; the fact that the school was being used as a school at the time of the attack; the context, including the existence of an armed conflict and/or other attacks against civilians (including e.g. murder, abuses or abduction of students and teachers)</p>

128 Adapted from Global Rights Compliance (GRC), “*Basic Investigative Standards for International Crimes Investigations*” (2019); UK Foreign and Commonwealth Office, “*International Protocol on the Documentation and Investigation of Sexual Violence in Conflict- Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law,*” 2nd edn (2017).

129 To note that specific considerations for child victims/witnesses are addressed in the next session.

Table 1 continued

<p>Documentary evidence</p> <p><i>A document is anything on which information of any description is recorded (e.g., paper). The actual evidence is the information recorded, not the physical document itself.</i></p>	<p>Official documents, such as written military orders and instructions, combat and situation reports, communication logs and records from ministries (e.g., ministry of education).</p> <p>Unofficial documents, such as newspaper articles, reports from local or international NGOs related to education or child rights (e.g., Human Rights Watch, Save the Children, Amnesty International or GCPEA); reports from the UN (e.g., UNICEF, annual reports of the UNSG on Children and Armed Conflict)</p>	<p>May help establish the prevalence; nature; scale and pattern of reported school attacks, as well as the presence and movement of suspected perpetrators; their organization and command structure; the existence of a plan and strategies and modes of liability; the involvement of the alleged perpetrators in the crimes; information about victims</p>
<p>Digital evidence (including open-source evidence)¹³⁰</p> <p><i>Any probative information or data stored on, received or transmitted by an electronic device (e.g., a computer or smartphone)</i></p>	<p>Photographs and videos footage of the school site, taken before and after the attack or showing the attack in progress.</p> <p>Aerial photos and satellite imagery, for example of troops or civilian population movements or showing the school building before and after its destruction</p> <p>Fire data</p> <p>Location information stored on cell phones or social media</p> <p>Emails, text and instant messages</p> <p>Digital evidence should be handled by forensic digital experts, skilled in its proper collection, storage and interpretation.</p>	<p>May help to establish the physical attack on the school; the location of the perpetrators at the time of the attack and their relationship with other suspects; the movement of troops; or whether the school was being used for military purposes at the time or had retained its civilian character</p>
<p>Physical evidence</p> <p><i>Any physical object or matter that can provide information to help establish that a school attack took place, or provide a link between a crime and its victim(s) and/or perpetrator(s)</i></p>	<p>Physical material e.g., clothing or uniforms that may have been worn by the perpetrators</p> <p>Weapons, bullet/shell casings, explosives</p> <p>The site of the school itself, and evidence pointing to it being used as a school at the time of the attack (e.g., school materials, forensic material such as bodies or body parts)</p>	<p>May help to establish the physical attack on the school; whether the school was a military objective; or the identity of perpetrators</p>

¹³⁰ For specific guidance on digital open-source investigations, see OHCHR with the Human Rights Center at the University of California, Berkeley, School of Law, “Berkeley Protocol on Digital Open-Source Investigations: A Practical Guide on the Effective Use of Digital Open Source and Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law” (2022).

Table 2. Severe Deprivation of the Right to Education as Gender Persecution as a Crime Against Humanity¹³¹

Category	Source	Relevance
Testimonial evidence	<p>Direct victims/eyewitnesses, such as women and girls who were prohibited from attending school, or parents who received warnings and threats for sending their daughters to school</p> <p>Pattern witnesses, such as local community leaders or teachers with relevant knowledge of other, restrictions on education rights of women and girls other forms of discrimination, or acts of violence against them</p>	<p>May help to establish conduct amounting to violations of the right to education; targeting patterns against women and girls; or the identity of perpetrators</p>
Documentary evidence	<p>Official documents can include letters sent by an armed group to e.g., female students and their parents, as well as teachers warning them against attending school; organizational policies, directives and regulations prohibiting women and girls from studying or closing girl's schools and co-educational schools; regulations setting out behavioral codes for men and women (e.g., dress codes)</p> <p>Unofficial documentary evidence can include public statements made by officials in e.g. the media; reports of civil society and international organizations documenting restrictions on access to education for women and girls by an armed group; killings, threats, abductions of female students and teachers; or physical attacks on girls' schools</p>	<p>May help to establish organizational policies or targeting patterns against women and girls, or that persecutory acts were committed in connection with other crimes under the Rome Statute.</p>
Digital evidence	<p>Photo/video material, social media posts, video-recorded statements or radio broadcasts of members of the armed group regarding their policies, aims and objectives, including restricting the fundamental rights of women and girls, or showcasing the use of hate speech or discriminatory language towards women and girls</p>	<p>Can show specific incidents that help build the case for persecution (e.g., authorities blocking women/girls from attending school; authorities physically removing women/girls from school; violent suppression of protests demanding access to education; mixed-ethnic villages in which only schools belonging to a certain ethnic group are destroyed), or help to establish the discriminatory intent of the perpetrators, for example.</p> <p>Satellite imagery could show a widespread pattern of schools being destroyed, damaged, boarded up, etc.; or the disproportionate destruction of girls' schools in close proximity to boys' schools.</p>
Physical evidence	<p>Can include sites of physical attacks on girl's schools; billboards displaying propaganda and discriminatory language against women and girls; physical injuries on women and girls as a result e.g., of acts of violence</p>	<p>May help to establish the commission of other Rome Statute crimes, or the discriminator intent of the perpetrators</p>

131 Ibid.

Child victims and witnesses

Because education-related crimes tend to disproportionately affect children, a child sensitive approach to accountability should be adopted and systematized within domestic and international accountability mechanisms.¹³² This entails applying a child rights-based approach in all phases of investigations and prosecutions with the support of dedicated expertise to ensure that crimes against/affecting children are analyzed and dealt with through a child rights lens. This includes ensuring that child victims and witnesses are empowered to exercise their rights during the justice process and that their rights are effectively balanced when it comes to best-interests assessment.¹³³

Child rights expertise can take the form of special adviser or specialized unit and can enhance: the systematic collection of evidence crimes against/affecting children, including crimes against education; the analysis of such crimes having regard to the age, gender, disability, and other intersecting identities of child victims and witnesses; and the ability of the institution as a whole to address crimes against/affecting children. It is important for this expertise to be embedded into operational aspects of investigations and prosecutions (e.g., in the design and review of investigation plans and interview questionnaires; the provision of advice on the evidence; or the conduct of legal and factual analyses) and not segregated.¹³⁴

All investigators and prosecutors should receive appropriate information, awareness raising and training on how to apply a child rights-based approach in their work.¹³⁵ Interviews of and the gathering of statements from children should be part of such capacity building.¹³⁶

Adopting specific policies should help to foster and mainstream child-specific approaches and ensure that all investigators and prosecutors are equipped with a baseline knowledge on how to approach these cases. Policies, such as the Policy on Children of OTP-ICC, aim to create an institutional environment where the responsibility and capacity of all staff to pursue accountability for crimes against/affecting children is strengthened.¹³⁷

The 2005 UN Guideline on Justice in Matters involving Child Victims and Witnesses of Crime contains guidance and best practice on enhancing the protection of child victims and witnesses in the criminal justice system. The Guideline is based on international and regional norms concerning the rights of children, in particular the UNCRC.¹³⁸ Key principles under the Guideline include the right of child victims and witnesses to: be treated with dignity and compassion; be protected from discrimination; be heard; and have their best interests taken as a primary consideration.¹³⁹ The Guideline also emphasizes the importance of specialized training to equip investigators and prosecutors with the skills needed to address crimes against/affecting children in an effective and child-sensitive manner and address the specific needs and vulnerabilities of child victims and witnesses.¹⁴⁰

132 Guidance Notes of the UN Secretary-General on the UN Approach to Justice for Children (2008) and Child Rights Mainstreaming (2023).

133 General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1).

134 See in particular, Advancing Justice for Children Report, at pp.77-82; interviews with Professor Cécile Aptel, Erin Gallagher and other key informants.

135 See as an example of training "[Integrating a Child Rights Approach in Accountability Work](#)," developed by [Justice Rapid Response](#) and Save the Children.

136 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, para 64. See the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel's Detailed findings on the military operations and attacks carried out in the Occupied Palestinian Territory from 7 October to 31 December 2023 (A/HRC/56/CRP.4) as an example of interviewing children as part of the methodology of an accountability mechanism.

137 Policy on Children of the Office of the Prosecutor of the International Criminal Court (2023).

138 United Nations Economic and Social Council (ECOSOC), "[Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime](#)," Resolution 2005/20 (2005), ("ECOSOC Guidelines).

139 See Guidelines, VI, VIII, XI and para. 8.

140 See paras. 4, 22, 40-44 (Guideline XV-Implementation).

Indeed, the effective investigation of attacks on education affecting children may require interviewing child victims and witnesses. Although children can give credible evidence, investigators may be reluctant to conduct interviews with child victims and witnesses. This is reportedly due, amongst others, to: a fear of re-traumatization or otherwise causing harm, concerns that children are not sufficiently reliable witnesses, or the fact that consent will often be required from the child's parents or guardians, who may be unwilling to provide it.¹⁴¹ These concerns are legitimate – at the same time, if investigators systematically fail to directly engage with children, there is a risk that evidence of crimes against/affecting them, and in particular their true gravity and impact, will not be collected, and that their victimization will go unpunished, ultimately hampering children's rights to access justice and effective remedies.

In order to address these challenges, adequate and child-friendly safeguards to the substantive and procedural rights of children to access justice and effective remedies¹⁴² must be provided, to ensure that, where necessary, they (children) can be interviewed safely, with due care and sensitivity.¹⁴³

Elaborating on the 2005 UN Guidelines, the CRC has clarified that child victims and child witnesses of a crime must be given an opportunity to fully exercise their right to freely express their view; therefore, “every effort has to be made to ensure that a child victim or/and witness is consulted on the relevant matters with regard to involvement in the case under scrutiny, and enabled to express freely, and in her or his own manner, views and concerns regarding her or his involvement in the judicial process.”¹⁴⁴ Directors of schools, parents, community leaders, and local CSOs can also help investigators understand the impact of the attack on the affected children, including the loss of education.¹⁴⁵ Where safe interviews are not possible, investigation and prosecution of the crimes affecting children will still be undertaken using alternative sources. For example, in the case of a physical attack on a school, this can include adult eyewitnesses, such as teachers or other adults present during the attack who may have evidence regarding the timing and location of the attack, and whether the school was being used as a school up until the time of the attack. Open-source evidence (e.g., CSOs reports, media articles) is also useful in place of interviews.

Cooperate with civil society organizations

Effective cooperation between national authorities and local and international CSOs can improve the prospects for accountability. Amongst others, CSOs can play a key role in monitoring and documenting incidents (e.g., the destruction of a school in the local area) and their impact on individual victims and communities. Critically, they can also collect and preserve information and evidence of crimes that may otherwise be lost for accountability proceedings that may occur in the future. This documentation can, in turn, influence which incidents and crimes are eventually selected and prioritized by criminal investigators.¹⁴⁶

CSOs can also provide leads to investigators on relevant evidence; help them understand the broader context and local dynamics; and assist in the identification of victims and witnesses. In addition, they can advocate for the investigation and prosecution of education attacks to be prioritized by national authorities,

141 Advancing Justice for Children Report at pp. 46-47.

142 Committee on the Rights of the Child Concept Note: General Comment on Children's Rights to Access to Justice and Effective Remedies.

143 As example of guidance, see (amongst others), National Institute of Child Health and Human Development (NICHD), “Investigative Interview Protocol”; Olivia Lind Haldorsson and Child Circle, “Barnahus Quality Standards Guidance for Multidisciplinary and Interagency Response to Child Victims and Witnesses of Violence” (2017); United Nations Office on Drugs and Crime (UNODC), “Justice in Matters involving Child Victims and Witnesses of Crime Model Law and Related Commentary” (2009); UK Ministry of Justice and National Police Chief's Council, “Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures” (2022).

144 General comment No.12 (2009) of the Committee on the Rights of the Child on the right of the child to be heard.

145 Interview with Javier Pérez Salmerón.

146 See generally, International Nuremberg Principles Academy, “Cooperation between Civil Society Actors and Judicial Mechanisms in the Prosecution of Conflict-Related Sexual Violence: Guiding Principles and Recommendations” (2017); UC Berkeley School of Law, Human Rights Centre, “First Responders- An International Workshop on Collecting and Analyzing Evidence of International Crimes” (2014).

including by highlighting the prevalence and gravity of such crimes in the given context. Moreover, local CSOs in particular are well-placed to conduct outreach with local communities and to provide them with information concerning the justice process, and support victims' access to psychosocial support.¹⁴⁷

At the same time, cooperation is not without its challenges. These can include increased security risks for CSOs; concerns for accountability mechanisms around maintaining independence, impartiality and confidentiality; and CSOs ability to safely collect relevant evidence (e.g., from child victims or other vulnerable witnesses) in a way that is admissible in future court processes.¹⁴⁸

Some of these challenges can be overcome by:

- Developing clear guidelines to govern the cooperative relationship (including the form and nature of cooperation envisaged; respective roles and responsibilities; confidentiality and impartiality; safety and security);¹⁴⁹
- Providing guidance and building the capacity of CSOs to safely and ethically document core international crimes and collect and preserve relevant evidence in a manner that does not undermine the integrity of any future prosecutions;¹⁵⁰
- Facilitating awareness-raising and information-sharing by CSOs to national authorities regarding e.g., patterns, prevalence and impacts of crimes against education in a particular context.

147 Ibid.

148 Ibid.

149 See e.g., ICC, "Guidelines Governing the Relations between the Court and Intermediaries for the Organs and Units of the Court and counsel working with intermediaries" (2014).

150 See e.g., ICC and EUROJUST, "Documenting international crimes and human rights violations for accountability purposes: Guidelines for civil society organisations" (2022); Global Rights Compliance (GRC), "Basic Investigative Standards for International Crimes Investigations" (2019); UK Foreign and Commonwealth Office, "International Protocol on the Documentation and Investigation of Sexual Violence in Conflict- Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law," 2nd edn (2017).

3. Chapter III: Charging Education-Related Crimes under the Rome Statute

The five forms of attacks on education described in Chapter I¹⁵¹ may, depending on the context, amount to crimes under international law. In particular, they may constitute war crimes, when committed in the context of, and associated with, an armed conflict. They may also amount to crimes against humanity, when perpetrated as part of a widespread or systematic attack against a civilian population, in times of peace or in war.

This Chapter provides a (non-exhaustive) overview of the criminalization of select attacks on education under international law – namely the crimes of attacking buildings dedicated to education, the persecutory deprivation of the right to education, and the destruction of enemy property – charged by the OTP-ICC in relation to school attacks in the DRC. It is primarily based on the Rome Statute and the practice of the ICC. Where relevant, reference is also made to jurisprudence of other international criminal courts and tribunals, in particular the ICTY,¹⁵² of select national courts.¹⁵³

It is beyond the scope of this Chapter to comprehensively address the legal requirements of each and every international crime potentially constituted by the various forms of education-related crimes described in Chapter I. However, references to other forms of attacks are made to suggest the need for additional analysis.

3.1 Part A. War Crimes (Article 8 Rome Statute)

War crimes are serious violations of IHL committed in international or non-international armed conflicts giving rise to individual criminal responsibility.¹⁵⁴

Article 8 Rome Statute¹⁵⁵ distinguishes four categories of war crimes:

- a. Grave breaches of the four 1949 Geneva Conventions¹⁵⁶ committed against protected property or protected persons (Article 8(2)(a)).
- b. Other serious violations of the laws and customs of war applicable in international armed conflict (Article 8(2)(b)).

151 Attacks on schools; attacks on school students, teachers and other education personnel; sexual violence at, or on the way to or from, school and university; child recruitment and use at, or on the way to or from, school; attacks on higher education.

152 The ICTY has addressed the destruction or damage of institutions dedicated to education as a war crime and crime against humanity in *Prosecutor v Martić* (IT-95-11-T), Trial Chamber, Judgment (12 June 2007); *Prosecutor v Blaškić* (IT-95-14-A), Appeals Chamber, Judgment (29 July 2004); *Prosecutor v Prlić* (IT-04-74-T), Trial Chamber, Judgment (29 May 2013); *Prosecutor v Milošević* (IT-02-54-T), and *Prosecutor v Hadžić* (IT-04-75); *Prosecutor v Kordić & Čerkez* (IT-95-14/2), Trial Chamber, Judgment (26 February 2001); *Prosecutor v Miodrag Jokić* (IT-01-42/1-S), Trial Chamber, Sentencing Judgment (18 March 2004 and *Prosecutor v. Pavle Strugar* (IT-01-42-T), Trial Chamber, Judgment, (31 January 2005).

153 GCPEA was able to identify four prosecutions of attacks against education (educational facilities) as war crimes: State Court of Bosnia and Herzegovina, *Prosecutor v Pasko Ljubičić*, X-KR-06/241, First Instance Decision, 28 May 2008; District Court in Belgrade, War Crimes Chamber, *Indictment against Vladimir Kovačević*, 26 July 2007; Priština/Prishtinë District Court, *Skender Islami et al*, 25 January 2008; and Bukavu Military Tribunal, *Prosecutor v Ndayambaje and Nizehimana*, Judgment, 21 September 2018.

154 International Committee of the Red Cross (ICRC), (2005), [Study on Customary International Humanitarian Law](#), Rule 156.

155 Article 8(1) provides that the Court shall have jurisdiction over war crimes “in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes,” however these are not legal requirements for the exercise of jurisdiction over war crimes, but intended to serve as a “practical guideline” for the work of the Court (see *Prosecutor v Bemba* (No. ICC-02/05-01/08), Pre-Trial Chamber II, [Decision pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor against Jean-Pierre Bemba Gombo](#), 15 June 2009, at [211]).

156 Grave breaches are prohibited acts which are specifically enumerated under the four 1949 Geneva Conventions, including willful killing; torture or inhuman treatment; and extensive destruction and appropriation of property, not justified by military necessity, and carried out unlawfully and wantonly. See, ICRC (2011), [How does law protect in war: Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law](#), “Grave breaches.”

- c. Serious violations of Article 3 common to the Geneva Conventions against persons taking no active part in the hostilities ((Article 8(2)(c)).
- d. Other serious violations of the laws and customs applicable in non-international armed conflicts ((Article 8(2)(e)).

For any conduct to qualify as a war crime, two contextual elements (“*chapeau*”) must be satisfied:

- a. The relevant conduct must be committed in the context of, and associated with, an armed conflict (international or non-international);¹⁵⁷ it does not, however, need to be carried out at a time or location where the actual hostilities occurred, provided it was closely related to them¹⁵⁸ (“nexus requirement”); and
- b. The direct perpetrator must be aware of the factual circumstances establishing the existence of the armed conflict.¹⁵⁹

These contextual elements are common to all war crimes and distinguish war crimes from other crimes that may be committed during armed conflict that ought to be regarded as ordinary crimes.¹⁶⁰

3.1.1 Attacks against education facilities

As outlined in Chapter I, attacks on school infrastructure are the most common form of education-related crimes and have devastating long-term impacts on education provision and systems.

The Rome Statute provisions that may be relevant to attacks against educational facilities include, but are not limited to:

- a. Articles 8(2)(b) (ix) / 8(2)(e)(iv) (attacking a protected object), and
- b. Articles 8(2)(b)(xiii) / 8(2)(e)(xii) (seizing or destroying enemy property).

Attacking a protected object: buildings dedicated to education

Article 8(2)(b)(ix) and Article 8(2)(e)(iv) are mirror provisions and apply to international and non-international armed conflicts, respectively. Both provisions expressly criminalize attacks on educational facilities (along with other protected objects) as follows:

“For the purpose of this Statute, ‘war crimes’ means:

[...]

Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives.”¹⁶¹

157 See generally, International Criminal Court (ICC), [Elements of Crimes](#) (2011), Introduction to Article 8, p. 13 (the Elements of Crimes are designed to “assist” the Court in the interpretation and application of the crimes over which it has jurisdiction - Article 9 Rome Statute). *Prosecutor v Ntaganda* (No. ICC-01/04-02/06), Trial Chamber VI, Judgment, 8 July 2019, at paras. 698-704, 716-717 and 726 (“Ntaganda Trial Judgment”) and International Criminal Tribunal for the Former Yugoslavia (ICTY), *Prosecutor v. Tadić* (No. IT-94-1-A) Decision on the defense motion for interlocutory appeal on jurisdiction, 2 October 1995, at para. 70.

158 Ntaganda Trial Judgment, at para. 731.

159 ICC Elements of Crimes, Introduction to Article 8, p.13.

160 Ntaganda Trial Judgment, at para. 731.

161 Article 8(2)(b)(ix) and Article 8(2)(e)(iv) Rome Statute.

The ICC Elements of Crimes set out the physical elements (*actus reus*) and mental elements (*mens rea*) of the war crime of attacking protected objects, including buildings dedicated to education. In such cases, the prosecution must show that:

- a. The perpetrator directed an attack.
- b. The object of the attack was one or more protected objects, which were not military objectives.
- c. The perpetrator intended such protected object or objects, which were not military objectives, to be the object of the attack.¹⁶²

The OTP has yet to prosecute an attack against a building dedicated to education under Article 8(2)(b) (ix)/Article 8(2)(e)(iv) which means that there is currently no ICC jurisprudence on this crime.

Attacks against other protected objects, namely religious buildings and hospitals have, however, been charged in cases related to crimes perpetrated during armed conflicts in Mali,¹⁶³ DRC¹⁶⁴ and the Central African Republic.¹⁶⁵ In a series of related decisions and judgments, the ICC has interpreted the legal requirements of the war crime of attacking protected objects and made findings relevant to attacks on buildings dedicated to education. These findings are summarized below.

a) The perpetrator directed an attack.

An attack is defined as “acts of violence against the adversary, whether in offence or defense.”¹⁶⁶ The Court has ruled that in order to constitute an ‘attack’, the acts in question must have occurred during the actual conduct of hostilities and involved physical injury or destruction.¹⁶⁷ In effect, this means that e.g., acts of pillage against a protected object, such as a school, that cause damage or destruction outside of combat action, once a school has fallen under the control of a conflict party, are not criminalized under this provision.¹⁶⁸

Article 8(2)(e)(iv) is an inchoate offence- this means that suspected perpetrators can be charged and prosecuted for launching an attack against a protected object, regardless of whether it results in any physical damage or destruction.¹⁶⁹

162 ICC, [Elements of Crimes](#), War crime of attacking protected objects, p.23 and p.36.

163 See, ICC, *Prosecutor v Ahmad Al Faqi Al Mahdi*, Pre-Trial Chamber I (No. ICC-01/12-01/15) Decision on the confirmation of charges against Ahmad Al Faqi Al Mahdi, 24 March 2016 (“Al Mahdi Confirmation Decision); and *Prosecutor v Al Hassan* (No. ICC-01/12-01/18), Pre-Trial Chamber I, [Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud](#), 13 November 2019 (“Al Hassan Confirmation Decision).

164 See, ICC, *Prosecutor v Ntaganda*, Pre-Trial Chamber II (No. ICC-01/04-02/06), Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, 9 June 2014.

165 See, ICC, *Prosecutor v Alfred Yekatom and Patrice-Edouard Ngaïssona*, Pre-Trial Chamber II (No. ICC-01/14-01/18), Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona, 20 December 2019 (“Yekatom and Ngaïssona Confirmation Decision”).

166 Ntaganda Trial Judgment, at para. 912.

167 ICC, *Prosecutor v Ntaganda* (No. ICC-01/04-02/06 A A2), Appeals Chamber, [Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’](#), 30 March 2021, at paras. 1145-1170. It is highlighted that the Appeals Chamber was divided on this issue (three out of five judges seemed to disagree with the narrow IHL definition of attack), and that the Chambers approach departs from the reasoning of the Trial Chamber in *Prosecutor v Al Mahdi* (No. ICC-01/12-01/15), Trial Chamber VIII, [Judgment and Sentence](#), 27 September 2016, at para. 15 (“the element of ‘direct[ing] an attack’ encompasses any acts of violence against protected objects and will not make a distinction as to whether it was carried out in the conduct of hostilities or after the object had fallen under the control of an armed group”) and of the Pre-Trial Chamber in *Prosecutor v Al Hassan* (No. ICC-01/12-01/18), Pre-Trial Chamber I, [Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud](#), 13 November 2019, at para. 522, “Al Hassan Confirmation Decision” (“La Chambre souscrit à l’analyse de la Chambre de première instance VIII dans l’affaire Al Mahdi, qui a considéré que « l’élément consistant à “diriger une attaque” inclut tous les actes de violence commis contre des biens protégés » et qu’il n’y a pas lieu de faire de distinction selon le fait que ces actes « [aient] été commis lors de la conduite des hostilités ou après le passage du bien sous le contrôle d’un groupe armé ») (in French only).

168 Ntaganda Trial Judgment at paras. 1140-1141.

169 Al Mahdi Confirmation Decision at para. 43.

b) The object of the attack was one or more protected objects, which were not military objectives.

Prosecutors must present sufficient evidence to establish that the protected object itself was the target of the attack, and not e.g., civilians present within it. In a case concerning an attack on a hospital, the Court was unpersuaded that “the mere presence of bullet marks on the walls” was sufficient to conclude that the hospital itself, rather than the patients within it, was the object of the attack.¹⁷⁰

Prosecutors must also prove that the protected object was not a military objective (and thus not “targetable” under international law) at the time of the attack. As noted in Chapter I, a military objective is an object which by its “nature, location, purpose or use makes an effective contribution to military action” and whose “total or partial destruction in the circumstances ruling at the time, offers a definitive military advantage.”¹⁷¹ As noted above, IHL further provides that in case of doubt as to whether an object normally dedicated to civilian purposes has been turned into a military objective, belligerents must presume that it is a civilian object.¹⁷² The burden of proving that an object is a civilian object lies with the prosecution.¹⁷³

The potential military use of schools, e.g., as detention centers or command posts, can turn them into military objectives such that they may lawfully be attacked (provided their destruction confers a military advantage and subject to the principles of proportionality¹⁷⁴ and precaution.¹⁷⁵ It will therefore be important to collect and analyze evidence of the civilian status of the school at the time of the attack, including factors such as the presence of soldiers around the time of the attack and/or of weapons linked to a conflict party.

c) The perpetrator intended the protected object (s) to be the object of attack.

The mental element (*mens rea*) of the crime of attacking protected objects, including educational buildings, is intent and knowledge.¹⁷⁶ It must be established that the perpetrator intentionally or willfully directed an attack against an educational building, in the knowledge that it was such a building and not just any object not constituting a military objective.¹⁷⁷

Whilst the OTP has yet to charge and/or prosecute attacks against educational facilities under this particular provision, it appears to form part of at least one ongoing investigation- relating to crimes against the education of women and girls perpetrated by the Taliban and Islamic State- Khorasan Province armed group in Afghanistan (see below).¹⁷⁸

170 Ntaganda Trial Judgment at paras. 1143-1144.

171 Article 52(2) Additional Protocol I.

172 Article 52(3) Additional Protocol I: “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.” (our emphasis); see also see also, Prosecutor v Galić, Case No. IT-98-29-T, Judgment (TC), 5 December 2003 at para 51 (‘In case of doubt as to whether an object which is normally dedicated to civilian purposes is being used to make an effective contribution to military action, it shall be presumed not to be so used. The Trial Chamber understands that such an object shall not be attacked when it is not reasonable to believe, in the circumstances of the person contemplating the attack, including the information available to the latter, that the object is being used to make an effective contribution to military action’).

173 ICTY, *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Judgment (AC), 17 December 2004, at para. 53 (‘Article 52(3) of Additional Protocol I provides that in case of doubt as to 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. The Appeals Chamber notes that the imperative “in case of doubt” is limited to the expected conduct of a member of the military. However, when the latter’s criminal responsibility is at issue, the burden of proof as to whether an object is a civilian one rests on the Prosecution.

174 Article 51 Additional Protocol I; ICRC, Customary International Humanitarian Law, Rule 41.

175 Article 57 Additional Protocol I; ICRC, Customary International Humanitarian Law, Rule 15.

176 Article 30 Rome Statute.

177 See by analogy, Ntaganda Trial Judgment at para. 47: “the perpetrator therefore must have been aware that he or she was attacking a hospital or place where the wounded and sick were collected.”

178 ICC, Situation in the Islamic Republic of Afghanistan, Pre-Trial Chamber III (No. ICC-02/17), Public redacted version of “Request for authorization of an investigation pursuant to article 15, 20 November 2017, ICC-02/17-7-Conf-Ex”, OTP, 20 November 2017.

In Focus: Preliminary Examination into School Attacks in Nigeria

On 18 November 2010, the OTP of the ICC announced a preliminary examination¹⁷⁹ into alleged crimes under international law committed in Nigeria in the context of the armed conflict between the Boko Haram non-state armed group and Nigerian security forces.

In 2015, the OTP concluded that, based on the available information, there was a reasonable basis to believe that Boko Haram had committed war crimes (and crimes against humanity) under the Rome Statute. The OTP identified eight potential thematic cases against Boko Haram, including attacking buildings dedicated to education (as well as teachers and students). In particular,

- Boko Haram is alleged to have deliberately targeted primary schools, pursuant to a policy that such schools are the main conduits for the transmission of Western values to schoolchildren and to the community as a whole.
- Between January 2012 and October 2013, at least 50 schools were burned down or badly damaged, and a further 60 were forced to close.
- In March 2014, the authorities of Borno state closed all secondary schools in the state in order to protect students and teachers from further attacks.

In addition to targeting buildings dedicated to education, Boko Haram is alleged to have killed or wounded hundreds of teachers and schoolchildren.¹⁸⁰

In 2020, the OTP announced the completion of its preliminary examination in Nigeria. The next step in the judicial process is for OTP to request authorization from the Pre-Trial Chamber to open a formal investigation into alleged crimes in Nigeria. However, former ICC prosecutor Fatou Bensouda decided not to seek such authorization citing a number of factors, including the court's resource constraints. The lack of progress has been criticized by human rights NGOs.¹⁸¹ The current prosecutor, Karim A.A. Khan, engaged with the Nigerian authorities and in March 2024, Deputy Prosecutor Mame Mandiaye Niang visited Nigeria, and stressed that the Office is giving a chance to the principle of complementarity in Nigeria, but remains committed to move forward with investigations in the absence of genuine efforts by Nigerian authorities to bridge existing impunity gaps.¹⁸²

179 A preliminary examination is an assessment into potential crimes within the jurisdiction of the Court conducted by the OTP to determine whether there is a reasonable basis to proceed with a formal investigation. Preliminary assessments may be initiated on the basis of information sent by individuals or groups, States, intergovernmental organizations and NGOs; a referral from a State Party or the Security Council; or a declaration accepting the exercise of jurisdiction by the Court by a non-State party under Article 12(3) Rome Statute. See generally, OTP, Policy Paper on Preliminary Examinations (2013).

180 See e.g. OTP-ICC, Report on Preliminary Examination Activities (2015), 12 November 2015, at paras. 201-202.

181 See e.g., Amnesty International, "Nigeria: Open letter to the OTP requesting immediate action on the situation in Nigeria," 13 February 2021; see also, Human Rights Watch (<https://www.hrw.org/news/2022/11/22/human-rights-watch-briefing-note-twenty-first-session-international-criminal-court>) and (<https://www.hrw.org/news/2022/11/30/canada-should-put-its-money-where-its-mouth>).

182 See, ICC, *Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the situation in Nigeria*, 11 December 2020; ICC Prosecutor, Mr Karim A.A. Khan QC, *concludes first official visit to Nigeria*, 22 April 2022.

Destroying enemy property

Articles 8(2)(b)(xiii) and 8(2)(e)(xii) Rome Statute criminalize, in IAC and NIAC respectively, the destruction of enemy property not justified by military necessity.¹⁸³

Article 8(2)(e)(xii) was charged in relation to the destruction of schools (amongst other property) in *Prosecutor v Katanga*, one of the OTP's first investigations and ICC's earliest cases. The legal elements of this offence are summarized below, for completeness, however it is noted that there is jurisprudence which suggests that attacks against protected objects, including buildings dedicated to education, should be charged under the more specific provisions where appropriate.¹⁸⁴

The legal elements of this offence that must be established by the prosecution are:

- a. The perpetrator destroyed or seized¹⁸⁵ certain property;
- b. Such property was property of an enemy/ adversary;
- c. Such property was protected from that destruction or seizure under the international law of armed conflict;
- d. The perpetrator was aware of the factual circumstances that established the status of the property;
- e. The destruction or seizure was not required by military necessity.¹⁸⁶

183 Whilst their wording is slightly different, these are equivalent provisions. Article 8(2)(b)(xiii) refers to “destroying or seizing the enemy’s property unless such destruction or seizure be imperatively demanded by the necessities of war” whereas Article 8(2)(e)(xii) refers to “destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict” (see *Prosecutor v Katanga*, Judgment (No. ICC-01/04-01/07), Trial Chamber II, 7 March 2014, at para. 890, “Katanga Trial Judgment”).

184 In *Prosecutor v Yekatom and Patrice-Edouard Ngaïssona*, charges were brought in relation to the destruction of religious buildings, under both Article 8(2)(e)(iv) and Article 8(2)(e)(xii). The Pre-Trial Chamber refused to confirm the destruction of enemy property charge on the grounds that “attacks against buildings dedicated to religion are specifically criminalized under article 8(2)(e)(iv) of the Statute and that such buildings do not constitute the ‘property of an adversary’ within the meaning of article 8(2)(e)(xii) of the Statute” (see the *Yekatom and Ngaïssona Confirmation Decision* at para. 96). At the same time, judges of the Appeals Chamber, when considering the meaning of ‘attack’ under Article 8(2)(e)(iv) have held that: “[w]e note that article 8(2)(e)(iv) of the Statute is the only provision applicable in armed conflicts not of an international character that sets out a crime specifically related to buildings dedicated to religion and hospitals. However, in certain circumstances other crimes may cover the prohibited conduct in relation to such objects: the crime of pillaging under article 8(2)(e)(v) or the crime of destroying or seizing the property of an adversary, which both apply to, inter alia, scenarios outside of hostilities” (*Prosecutor v Ntaganda* (No. ICC-01/04-02/06 A A2), Appeals Chamber, [Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’](#), Separate opinion of Judge Howard Morrison and Judge Piotr Hofmański on the Prosecutor’s appeal, 30 March 2021, at para. 41).

185 There are no provisions in the treaties of international humanitarian law which specifically clarify the concept of seizure of property. The ICRC commentary states that there is a distinction in law between seizure and requisition. Seizure applies to State property which is war booty; requisition only affects private property. There are, however, certain cases mentioned in Article 53, para. 2 of the Hague Convention in which private property can also be seized; but such seizure is only sequestration, to be followed by restitution and indemnity, whereas requisition implies a transfer of ownership. (ICRC, *Commentary I Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, p. 296). The rest of the literature is not always in agreement with this point of view. M. Greenspan holds that seizure and requisition must be distinguished on the basis of the nature of the goods appropriated: articles susceptible of a direct military use are seized; articles not susceptible of a direct military use but useful for the needs of the occupying or advancing army are requisitioned. (M. Greenspan, *The Modern Law of Land Warfare*, p.293, 296, 300). In the absence of a clear consensus on the meaning of seizure, it is submitted that seizure encompasses any kind of depriving a person of the property legally belonging to him and that the act may be temporary or permanent in nature. (Kittichaisaree, *International Criminal Law*, p. 174-175).

186 ICC, *Elements of Crimes*, at p. 17, 29.

a. Destruction or seizure of property

This provision covers all types of property, movable and immovable, as well as public and private property, and has been charged in relation to the destruction of schools,¹⁸⁷ as well as houses, shops and mosques.¹⁸⁸ It is broader in scope than the war crime of attacking protected objects, as it applies to destruction or seizure during, but also outside, the actual conduct of hostilities, after a party to the conflict has taken control of an area.¹⁸⁹ The destruction must, however, be effectuated, and this can take many forms, including setting ablaze, demolishing or pulling down a building as well as causing damage such that the property is no longer fit for purpose.¹⁹⁰

b. Belonging to an adversary

The property must belong to an ‘adversary’, meaning individuals or entities considered to be aligned with or with allegiance to a party to the conflict that is adverse or hostile to the perpetrators¹⁹¹ (e.g., a state school). Where the destroyed property belongs to persons who have no stated or apparent allegiance to the conflict, it may be established that they were ‘adverse’, or perceived as such, by showing that they were not aligned to, or supportive of the perpetrators’ party or its objectives. This may be demonstrated in light of their ethnicity or place of residence.¹⁹²

c. Property protected under IHL and perpetrator’s awareness

The property must have been protected from destruction under the rules of IHL i.e., it must not have been a military objective as explained above. In the present context, this means that an educational facility must not have been turned into a military objective at the time of its destruction (e.g., through its military use) and the perpetrator must have been aware that it was a civilian educational facility.¹⁹³ The key question to evaluate the perpetrator’s awareness will be whether, in the circumstances of the case “a reasonable person could not have believed that the property attacked and destroyed was a military objective.”¹⁹⁴ Even if the educational facility had become a military objective at the material time, it will be necessary to assess whether its destruction conferred a military advantage on the attacking party. This is a subjective test – the advantage offered must be evaluated from the perspective of the attacker. Any advantage must be definite – indeterminate or potential advantage will not suffice to justify the attack.¹⁹⁵

d. Destruction or seizure not required by military necessity

The destruction of property will be justified by military necessity only if is necessary to achieve a military purpose and otherwise in conformity with IHL (i.e., “measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war”).¹⁹⁶ Only where the perpetrator had no other option can the destruction be considered to be justified.¹⁹⁷ It is the prosecution that bears the burden of proving that the incident of property destruction was not justified by military necessity.

187 *Prosecutor v Katanga*, Decision on the Confirmation of Charges (No. ICC-01/04-01/07), Pre-Trial Chamber I, 30 September 2008, at para. 321.

188 See e.g., *Prosecutor v Ali Muhammad Ali Abd-Al Rahman “Ali Kushayb,”* Decision on the Confirmation of Charges (No. ICC-02/05-01/20), Pre-Trial Chamber II, 9 July 2021, Count 5 at p. 55.

189 *Ntaganda* Trial Judgment at para. 1158.

190 *Katanga* Trial Judgment at para. 891; *Prosecutor v Ongwen*, Trial Judgment (No. ICC-02/04-01/15), Trial Chamber IX, 4 February 201, at para. 2775 (“Ongwen Trial Judgment”).

191 *Ntaganda* Trial Judgment at para. 1160; *Ongwen* Trial Judgment at para. 2776.

192 *Ntaganda* Trial Chamber at para. 1169; *Katanga* Trial Judgment at para. 891.

193 It is not, however, necessary to show that the perpetrator was aware that the property was legally protected under IHL (see *Katanga* Trial Judgment at para. 900).

194 *Ntaganda* Trial Chamber at para. 1162.

195 *Ongwen* Trial Judgment at para. 2777. For guidance on the two-step test for a military object see British Institute of International and Comparative Law and Education Above All Foundation, “*Protecting Education in Insecurity and Armed Conflict: An International Law Handbook*” 2nd edn (2019) (“*International Law Handbook*”) at p. 217.

196 See Article 14 of the Lieber Code (Instructions for the Government of Armies of the United States in the Field of 24 April 1863); *Katanga* Trial Judgment, at para. 894.

197 *Katanga* Trial Judgment at para. 894.

In general, the destruction of military objectives will generally be justified by military necessity and will therefore not constitute a crime. Nonetheless, a case-by-case assessment must be carried out. Similarly, the destruction of civilian objects will have to be assessed in light of the prevailing circumstances, including whether the destroyed property was defended.¹⁹⁸

In addition to cases where the perpetrator intended to destroy a certain object as such, there may be cases where an attack directed at a military object (e.g., military barracks) causes ‘incidental damage’ to a civilian object (e.g., a school). In such cases, any proportionate collateral damage caused to the non-military object will not constitute destruction as a war crime.¹⁹⁹

e. Perpetrator’s intent and knowledge

The mental elements that must be established are that the perpetrator either intended to destroy the property or knew that such destruction would occur “in the ordinary course of events.”²⁰⁰

In Focus: Prosecuting the Destruction of Schools in the DRC

Article 8(2)(e)(xii) was charged in relation to the destruction of schools (amongst other property) in *Prosecutor v Katanga*, one of the OTP’s first investigations and ICC’s earliest cases.

Germain Katanga was a Brigadier General in *Forces Armées de la République Démocratique du Congo* (Armed Forces of the Democratic Republic of the Congo - “FARDC”) accused of war crimes and crimes against humanity during the course of an attack on a village in eastern DRC on 24 February 2003. It was alleged that a number of schools, amongst other civilian objects, were destroyed during the course of this attack.²⁰¹

At trial, the Chamber heard live evidence of the destruction of a number of schools in the village. The Chamber noted that, at the time, all of these schools had already been closed down for several years prior to the attack, and that one school had become a military position for the opposing non-State armed group.²⁰²

The Chamber was unable to determine when the alleged acts of destruction had occurred based on the evidence presented.²⁰³ These deficiencies in the evidence regarding the precise dates of the school attacks meant that the Chamber was ultimately unable to establish Katanga’s criminal responsibility for the destruction of schools in Bogoro.²⁰⁴

3.1.2 Violence against students, teachers and educational staff

The status of civilian students, teachers and educational staff is not specifically recognized under the Rome Statute and acts of violence perpetrated against them are not criminalized as such. This is in

198 Ongwen Trial Judgment at para. 1165.

199 Ongwen Trial Judgment at para. 1166.

200 Article 30 Rome Statute.

201 For an overview, see Katanga Trial Judgment at paras.1-13.

202 Katanga Trial Judgment at paras. 725, 920.

203 “The Chamber is, however, not in a position to determine whether the destruction of Kavali School took place on 24 February 2003, since Witnesses V-2 and D03-707 (that is, Mathieu Ngudjolo) found out about it several weeks after the attack and P-268 simply stated that he had ‘[TRANSLATION] heard’ that the roofing sheets had been removed. Regarding the other schools in Bogoro, the Chamber is also unable to determine whether the acts of destruction were perpetrated there during the attack, as the only testimony on the topic provided no detail about damage caused or the circumstances of its commission.”

204 Katanga Trial Judgment at para. 924.

contrast e.g., to attacks on medical or religious personnel, which are specifically criminalized.²⁰⁵ Such conduct may however be captured by other legal charges that are generally available in relation to violence against “protected persons” (in the case of international armed conflicts)²⁰⁶ or “persons taking no active part in the hostilities” (in the case of non-international armed conflicts).²⁰⁷

Amongst these is Article 8(2)(b)(iv) Rome Statute, which criminalizes intentionally launching an attack in the knowledge that such an attack would cause excessive incidental loss of life or injury to civilians, or damage to civilian objects, in relation to the concrete and direct anticipated military advantage.²⁰⁸ This may be particularly relevant in circumstances where educational facilities and/or personnel are attacked as part of a broader disproportionate attack against civilians and/or civilian objects, but where there is no evidence that they have been targeted as such.

Other, potentially relevant charges, include:²⁰⁹

- a. Willful killing²¹⁰ or murder;²¹¹
- b. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;²¹²
- c. Torture, inhuman treatment²¹³ or cruel treatment;²¹⁴
- d. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;²¹⁵
- e. Conscripting or enlisting children under the age of 15 years into the national armed forces or armed groups or groups and/or using them to participate actively in hostilities.²¹⁶

205 Article 8 (2) (b) (xxiv)/8(2)(e)(ii) Rome Statute; similarly, attacks on personnel involved in humanitarian assistance and peacekeeping missions are specifically criminalized (Article 8(2) (b) (iii)/8(2)(e)(iii) Rome Statute).

206 Protected persons under the 1949 Geneva Conventions and their Additional Protocols include the civilian population and civilian persons; prisoners of war; wounded, sick and/or shipwrecked members of armed forces. are civilians, persons who are wounded or sick, and medical and religious civilian personnel. Civilian educational personnel and students do not constitute a specific category of protected persons.

207 Persons participate directly in hostilities (and are thus targetable) if they carry out acts which “aim to support one party to the conflict by directly causing harm to another party, either directly inflicting death, injury or destruction, or by directly harming the enemy’s operations or capacity.” ICRC, *Interpretative Guidance on the notion of Direct Participation in Hostilities under International Humanitarian Law*, at p. 47.

208 Article 8(2)(b)(iv). There is no equivalent provision applicable in NIAC and it remains unclear whether similar conduct may be charged under 8(2)(e)(i), which generally punishes intentionally directing attacks against civilians and the civilian population, and which must be interpreted within the established framework of international law (see, OTP, Policy on Cultural Heritage (2021), at para. 51).

209 The definitions of each of these crimes are set out in the Elements of Crimes. They have been extensively analyzed elsewhere, including in the context of education: see in particular, British Institute of International and Comparative Law and Education Above All Foundation, “*Protecting Education in Insecurity and Armed Conflict: An International Law Handbook*,” 2nd edn (2019).

210 Article 8(2)(a)(i) criminalizes the willful killing of protected persons in IAC.

211 Article 8(2)(c)(i) criminalizes the murder of those not taking a direct part in hostilities in NIAC.

212 Article 8(2)(b)(i) in IAC; Article 8(2)(e)(i) in NIAC.

213 Article 8(2)(a)(ii).

214 Article 8(2)(c)(i).

215 Article 8(2)(b)(xxii) in IAC; Article 8(2)(e) in NIAC. The ICC has clarified that victims of sexual violence do not have to fulfill the “status” requirements (i.e., be protected persons in the sense of the 1949 Geneva Conventions or persons taking no active part in the hostilities in the sense of Common Article 3), finding that “while international humanitarian law allows combatants [...] to target combatant members of the opposing forces as well as civilians directly participating in hostilities, and further provides for certain justifications for conduct that results in damage to property or the death of persons that may not be legitimately targeted there is never a justification to engage in sexual violence against any person; irrespective of whether or not this person may be liable to be targeted and killed under international humanitarian law” (ICC, *Prosecutor v Ntaganda* (No. ICC-01/04-02/06), Trial Chamber VI, [Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9, 4 January 2017](#), at [49]). This means e.g. that the Court will have jurisdiction over ‘same side’ crimes of sexual violence, including those perpetrated against child soldiers by member of the same armed group (ICC, *Prosecutor v Ntaganda* (No. ICC-01/04-02/06 OA5), Appeals Chamber, [Judgment on the appeal of Mr. Ntaganda against the “Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9,” 15 June 2017](#)).

216 Article 8(2)(b) (xxvi) in IAC; Article 8(2)(e) (vii) in NIAC.

3.2 Part B. Crimes Against Humanity (Article 7 Rome Statute)

Under Article 7 Rome Statute, a crime against humanity is defined as the commission of one or more acts enumerated under Article 7(1) in circumstances where:

- a. The conduct is committed as part of a widespread or systematic attack directed against a civilian population; and
- b. The perpetrator knew that the conduct was part of this attack or intended for it to be.²¹⁷

In brief summary:

- a. Article 7(1) enumerates several acts that may constitute crimes against humanity, including murder; deportation or forcible transfer of population; torture; imprisonment or other severe deprivation of liberty; rape and other forms of sexual violence; apartheid; and persecution.²¹⁸
- b. An attack in this context means a “campaign, operation or series of actions”²¹⁹ carried out against a civilian population, pursuant to a State or organizational policy to commit such an attack and involving the commission of acts proscribed under Article 7(1). This attack does not need to be part of a military operation or involve the use of armed force;²²⁰ indeed a crime against humanity can occur outside situations of armed conflict.
- c. A widespread attack is one that is “massive, frequent, carried out collectively with considerable seriousness and directed at a multiplicity of victims.”²²¹ A systematic attack is one that: follows “an organized plan in furtherance of a common policy, follows a regular pattern, and results in a continuous commission of acts or ‘patterns of crimes’ such that the crimes constitute a ‘non-accidental repetition of similar criminal conduct on a regular basis.’”²²²
- d. A policy “refers essentially to the fact that a State or organization intends to carry out an attack against a civilian population.”²²³ Such a policy does not need to be formalized²²⁴ and its existence may be inferred from a range of factors, including: a recurrent pattern of violence; the fact that an attack was directed or planned; and the use of public or private resources to further the policy.²²⁵

As noted in Chapter I, students, teachers and education personnel are frequently targeted by acts of violence such as those listed under Article 7(1), including murder, torture and rape and other forms of sexual violence. Where such acts are committed as part of a widespread or systematic attack directed against a civilian population, they may amount to crimes against humanity.

Depending on the facts, charges of deportation (or forcible transfer) may also be appropriate. This crime is committed when the perpetrator deports “by expulsion or other coercive acts” one or more persons, lawfully present, to another State or location, without grounds permitted under international law. Importantly, such coercive acts may include the destruction of property, including schools, as e.g. as found by

217 ICC, Elements of Crimes, Introduction to Crimes against humanity, p. 3.

218 Article 7(1) Rome Statute.

219 Katanga Trial Judgment at para. 1101.

220 Ntaganda Trial Judgment at para. 662.

221 ICC, *Prosecutor v Jean-Pierre Bemba* (Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo) ICC-01/05-01/08, Pre-Trial Chamber II (15 June 2009) (“Bemba Confirmation Decision”) at para.83.

222 *Prosecutor v Katanga and Ngudjolo Chui* (Decision on the confirmation of charges) ICC-01/04-01/07, Pre-Trial Chamber I (30 September 2008), at para. 397.

223 Katanga Trial Judgment at para. 1108.

224 Bemba Confirmation Decision at para. 81.

225 Ntaganda Trial Judgment at para. 674; Ongwen Trial Judgment at para. 2679.

the ICC in its decision authorizing an investigation into crimes against the Rohingya in the Myanmar/Bangladesh situation.²²⁶

The legal requirements of each of these various underlying crimes are set out in the Elements of Crimes and not detailed here – only the crime of persecution will be considered in the following section.

Finally, only those acts listed under Article 7(1) may satisfy a crime against humanity. However, the commission of other criminal acts not listed under this provision, such as attacking buildings dedicated to education, may be useful in establishing that the attack was directed against civilians, or the existence of a State or organizational policy (e.g., to target education).

3.2.1 Persecution

In cases where education-related crimes are motivated by discrimination e.g., to prevent a particular group from accessing education based e.g., on their gender and/or ethnicity or religious identity, it may be appropriate to charge the crime of persecution. Article 7(2) Rome Statute defines persecution as: “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”²²⁷

The legal elements of this offence that must be established by the prosecution are:

- a. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights;
- b. The perpetrator targeted such person or persons by reasons of the identity of a group or collectivity or targeted the group or collectivity as such;
- c. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender identities²²⁸ as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law;
- d. The conduct was committed in connection with any act referred to in Article 7(1), of the Statute or any crime within the jurisdiction of the Court;
- e. The perpetrator’s conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.²²⁹

226 ICC, Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar (No. ICC/01-19), Pre-Trial Chamber III, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, 14 November 2019, at paras. 52-53, 97-100, and OTP, Request for authorisation of an investigation pursuant to article 15 (No. ICC-01/19), 4 July 2019, at paras. 106-107. In addition, Amnesty International has argued that the severe deprivations of the right to education (amongst other fundamental rights) of the Rohingya population of Rakhine (Myanmar), constitutes one of several “inhumane” acts committed against the Rohingya in the context of an “institutionalized regime of systematic oppression and domination by one racial group over another” for the purposes the crime of apartheid as a crime against humanity under Article 7 Rome Statute (see: Amnesty International, “Caged without a roof: Apartheid in Myanmar’s Rakhine State” (2017).

227 Article 7(2) Rome Statute.

228 Article 7(3) Rome Statute defines gender as “the two sexes, male and female, within the context of society”; the OTP’s Policy on the Crime of Gender Persecution (2022) clarifies that: “gender is understood as the two sexes, male and female, within the context of society. Gender refers to sex characteristics and social constructs and criteria used to define maleness and femaleness, including roles, behaviors, activities and attributes. As a social construct, gender varies within societies and from society to society and can change over time. This understanding of gender is in accordance with article 21 of the Statute.”, at p. 3.

229 ICC, [Elements of Crimes](#), Crime against humanity of persecution, p. 10.

a. Severe deprivation of fundamental rights contrary to international law

The crime of persecution is committed by a single or series of acts constituting a “severe” attack on “fundamental” rights.²³⁰ Fundamental rights include a variety of derogable and non-derogable rights.²³¹ In order to determine whether a protected right is a “fundamental” right for the purposes of Article 7, the ICC has looked at international human rights documents and treaties, such as the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, for guidance.²³²

Whilst not every human rights violation will amount to persecution, the Court has expressly recognized that the right to education is a fundamental right for the purposes of establishing criminal liability under Article 7.²³³ Whether deprivations of a fundamental right are “severe” must be assessed on a case-by-case basis, having regard to the context in which the violations occur and their cumulative impact.²³⁴ Prosecutors should bear in mind that acts of persecution can take various forms, including physical violence (such as murder or torture); conduct amounting to crimes under Rome Statute; or non-violent acts.²³⁵ In all cases however, the conduct must be “in connection with” a Rome Statute crime (e.g., attacking a building dedicated to education as a war crime).²³⁶

In Focus: Prosecuting Deprivations of the Right to Education in Mali

In the decision confirming the charges in *Prosecutor v Al Hassan*, the ICC Pre-Trial Chamber found that in the circumstances of that case there were reasonable grounds to believe that the severe deprivation of the right to education had been perpetrated through non-violent acts, namely prohibiting mixed-gender education, closing secular public schools and imposing a school curriculum based on religious ideology.²³⁷ Al Hassan is alleged to have been a member of the Islamist armed group Ansar Eddine (“Defenders of the religion”), which controlled the city of Timbuktu (Mali) together with another armed group (Al Qaeda in the Islamic Maghreb “AQIM”) between April 2012 and January 2013, in the context of an armed conflict opposing Malian security forces and various armed groups beginning in January 2012.²³⁸

Ansar Eddine and AQIM are alleged to have committed a widespread and systematic attack against the civilian population of Timbuktu and the surrounding areas, in furtherance of a policy to control the population and impose their religious and ideological vision based on a strict interpretation of Sharia, or Islamic law. The groups allegedly regulated every aspect of civilians’ public and private lives through the imposition of strict new rules. This included: prohibiting traditional cultural practices (e.g., banning the wearing of amulets, talismans and practicing certain rituals); imposing a strict dress code on men and women; and restrictions on freedom of circulation, speech and association. These rules were enforced by violence and threats of violence, including arbitrary detention, torture, rape and other forms of sexual violence.²³⁹ Women and girls were particularly targeted.²⁴⁰ Al Hassan is suspected to have been a leader of the Islamist Police and is facing numerous counts of war

230 Ntaganda Trial Judgment at para. 991.

231 ICC, Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar (No. ICC/01-19), Pre-Trial Chamber III, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, at para. 101 (“Bangladesh/Myanmar Investigation Decision”).

232 Ntaganda Trial Judgment at para. 991.

233 Al Hassan Confirmation Decision at para. 668 and Al Hassan Trial Judgment at para 1201; see also, Bangladesh/Myanmar Investigation Decision at para. 101.

234 Ntaganda Trial Judgment at para 992, Al Hassan Decision on Confirmation of Charges at para. 668.

235 Al Hassan Trial Judgment at para 1201.

236 Al Hassan Confirmation Decision at para. 668.

237 Al Hassan Confirmation Decision at para. 683.

238 Al Hassan Confirmation Decision at paras.70, 74 and 75.

239 Al Hassan Confirmation Decision at paras.182-192.

240 Al Hassan Confirmation Decision at para 183.

crimes and crimes against humanity, including gender and religious based persecution.²⁴¹ This case is particularly significant because he is the first individual to be prosecuted for gender-based persecution by an international criminal tribunal (the ICC being the first such tribunal to have jurisdiction over this crime).

On 26 June 2024, Trial Chamber X, by majority, convicted Al Hassan of some of the war crimes and crimes against humanity charges brought against him. The Chamber found that Ansar Eddine/AQIM “*did not accept the form of education taught in public schools and students were unable to attend those schools which remained generally closed after [their arrival]*”²⁴² and further that this meant that “*some inhabitants decided to send their children to other regions to continue their education.*”²⁴³ Nevertheless, it appears that the Chamber did not find a standalone violation of the right to education giving rise to persecution. Rather, it considered these restrictions alongside other restrictive measures adopted by Ansar Eddine/AQMI and found that they formed part of a broader campaign by Ansar Eddine/AQMI “*to impose their vision and interpretation of Sharia on all members of the Timbuktu population*” which severely violated their fundamental right to freedom of thought, conscience and religion.²⁴⁴ For the Majority, “*the infringement of this right is at the heart of the persecution charged in this case*” (our emphasis).²⁴⁵

In December 2022, the OTP issued its first Policy on the Crime of Gender Persecution which seeks to provide guidance to staff on investigating and prosecuting this crime. Importantly, the Policy expressly recognizes that acts of gender persecution may include attacks on schools and other educational facilities, and the imposition of regulations restricting access to education.²⁴⁶

Finally, the severe deprivation of fundamental rights must be “contrary to international law,” meaning that there can be no justification under international law for the deprivation of these rights. The ICC has found in that regard that whilst international human rights law primarily lays down obligations for States, in the context of establishing persecution, “what matters is that the right cannot be enjoyed by the person entitled to it,” including due to acts or omissions perpetrated by non-state armed groups.²⁴⁷

b. Against an identifiable group, by reason of its identity

The persecutory conduct must have been committed against any identifiable group or collectivity, on prohibited grounds. The ‘targeted group’ should be viewed broadly, and not all victims of the crime are required to fall within the target group.²⁴⁸ For example, if a perpetrator who targets girls’ education attacks male teachers and male members of staff at a girls’ school, they may form part of the targeted group for the purposes of establishing persecution.²⁴⁹

241 Al Hassan Confirmation Decision at pp.451-465.

242 Prosecutor v Al Hassan, No. ICC-01/12-01/18-2594-Red, Trial Chamber X, Judgment, 26 June 2024, at para 1532 (‘Al Hassan Trial Judgment’).

243 Al Hassan Trial Judgment, at para 1543.

244 Al Hassan Trial Judgment, at para 1544.

245 Al Hassan Trial Judgment, at para 1545.

246 OTP, Policy on the Crime of Gender Persecution (2022), at paras. 23, 24, 80.

247 Ntaganda Trial Judgment at para.993.

248 Ntaganda Trial Judgment at para. 1011; similarly, in *Prosecutor v Naletilić and Martinović*, the ICTY held that “*the targeted group does not only comprise persons who personally carry the (religious, racial or political) criteria of the group. The targeted group must be interpreted broadly, and may, in particular, include such persons who are defined by the perpetrator as belonging to the victim group due to their close affiliations or sympathies for the victim group*” (our emphasis), Trial Chamber, [Judgment](#), IT-98-34-T, 31 March 2003, at para. 636.

249 OTP, Policy on the Crime of Gender Persecution (2022), at para.80.

In evaluating the status of the targeted group, the Court will consider the specific political, social and cultural context; objective factors relevant to the discriminatory ground alleged; and the subjective perceptions of the alleged perpetrator and victim.²⁵⁰ Additionally, the target group can be defined positively but also negatively, meaning that individuals may be targeted because they do not belong to a particular group.²⁵¹

It must be demonstrated that the perpetrator targeted certain persons, a group, or a collectivity, based on a prohibited ground – namely political, racial, national, ethnic, cultural, religious, gender grounds – or “other grounds that are universally recognized as impermissible under international law.”²⁵² It is enough to establish one such ground, although intersecting grounds may equally form the basis for the discrimination (e.g. gender and ethnicity).²⁵³ Not all targeted persons are required to be members, sympathizers, or otherwise actually related to the targeted group; moreover, it is also sufficient that the perpetrator perceived the victim as a member or an affiliate of the targeted group.²⁵⁴

c. Connection with any act referred to in Article 7(1) or any crime within the Court’s jurisdiction

Under the Rome Statute, persecution is not a standalone crime. Acts of persecution must be perpetrated in connection either with another act enumerated under Article 7(1) or another crime falling within the jurisdiction of the Court (e.g., war crime of attacking a building dedicated to education, addressed above).²⁵⁵ This connection does not mean that the other crimes must have been committed with persecutory intent per se.²⁵⁶

d. Mental element

The accused must have acted with intent and knowledge (Article 30 Rome Statute) and with a specific intent to discriminate based on one or more of the prohibited grounds under Article 7(1)(h).²⁵⁷ It is this specific discriminatory intent that distinguishes persecution from the other crimes against humanity listed under Article 7. It must be shown that the perpetrator acted with the intent to harm a victim because of their membership of a particular community or group. A specific intent to discriminate may be inferred from the general behavior of the perpetrator and the circumstances surrounding the commission of the crime.²⁵⁸

250 Ntaganda Trial Judgment at para. 1010; Al Hassan Decision on Confirmation of Charges at para.665.

251 Ntaganda Trial Judgment at para. 1009. The *Ntaganda* Pre-Trial Chamber, in finding persecution as a crime against humanity, held that crimes perpetrated against the non-Hema civilian population was based on ethnic grounds. *Prosecution v. Ntaganda*, Pre-Trial Chamber II (No. ICC-01/04-02/06-309), [Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, 9 June 2014](#), at [58]. The ICTY also permitted the persecuted group to be defined in the negative for crimes against humanity charges, and permitted persecution against “non-Serbs” to be alleged in many cases. *E.g.*, *Prosecutor v. Milomir Stakić*, Appeals Chamber (No. IT-97-24-A), [Judgment](#), 22 March 2006, at para.26.

252 Article 7(1)(h) Rome Statute.

253 Ntaganda Trial Judgment at para. 1009.

254 Ntaganda Trial Judgment at para. 1011; similarly, in *Prosecutor v. Naletilić and Martinović*, the ICTY held that “the targeted group does not only comprise persons who personally carry the (religious, racial or political) criteria of the group. The targeted group must be interpreted broadly, and may, in particular, include such persons who are defined by the perpetrator as belonging to the victim group due to their close affiliations or sympathies for the victim group” (our emphasis), Trial Chamber, [Judgment](#), IT-98-34-T, 31 March 2003, at para. 636.

255 Office of the Prosecutor (OTP, November 2022), [Draft Policy on the Crime of Gender Persecution](#), p.12

256 Office of the Prosecutor (OTP, November 2022), [Draft Policy on the Crime of Gender Persecution](#), p.12

257 Al Hassan Decision on Confirmation of Charges (2019) at para. 671

258 Al Hassan Decision on Confirmation of Charges (2019) at para. 671; ICTY, *Prosecutor v Kvočka and others* (No. IT-98-30/1-T), Trial Chamber, Judgment, 2 November 2001, at para. 463.

In Focus: Investigating Persecutory Education-Related Crimes in Afghanistan

Conflict background

Afghanistan has been affected by multiple and overlapping armed conflicts for decades. In October 2001, in response to the attacks of 11 September 2001 on New York City and Washington D.C., a coalition of international forces, led by the United States, launched a military operation in Afghanistan (“Operation Enduring Freedom”). The primary stated objectives of this operation were to combat Al Qaeda and the Taliban government of Afghanistan, which was suspected of harboring Al Qaeda and its leadership. The Taliban were eventually ousted from power and a new administration, backed by the international community, was installed in June 2002 (Afghan Transitional Administration). Thereafter, hostilities continued between the new Afghan government (backed by the UN mandated and NATO-led International Security Assistance Force and US forces) on the one hand, and the Taliban and other anti-government armed groups on the other hand. Because international forces were operating with the consent of, and in cooperation with, the Afghan authorities, this conflict was characterized as non-international.²⁵⁹

In parallel and since 2015, an armed group known as the Islamic State- Khorasan Province (“ISK”) – a regional affiliate of the Islamic State active in south and central Asia- has been engaged in armed conflicts against the Afghan government (until its collapse in August 2021), and against the Taliban (which is ongoing). Following the withdrawal of US troops, the Taliban regained effective control over the territory of Afghanistan in August 2021, becoming the de facto government of the country.²⁶⁰

ICC investigation

The situation in Afghanistan has been under preliminary examination by the OTP since October 2006. The preliminary examination focused on war crimes and crimes against humanity allegedly committed by members of the Taliban and affiliated armed groups; Afghan security forces; and US armed forces and Central Intelligence Agency (CIA).²⁶¹

The OTP sought authorization from the Court to open an investigation in 2017²⁶² – this request was finally granted, following lengthy litigation, in March 2020.²⁶³ The Afghan government subsequently asked for this investigation to be deferred to the national justice system.²⁶⁴ In September 2021, following the Taliban’s takeover of the country, the OTP applied to the Court to resume its investigations.²⁶⁵ This application was granted in October 2022.²⁶⁶

At the time of writing, the OTP investigation is ongoing. The Office has announced that it intends to focus on crimes allegedly committed by the Taliban and ISIS-KP and to deprioritize other aspects

259 For an overview, see, ICC, Situation in the Islamic Republic of Afghanistan, Pre-Trial Chamber III (No. ICC-02/17), Public redacted version of “Request for authorization of an investigation pursuant to article 15, 20 November 2017, ICC-02/17-7-Conf-Ex”, OTP, 20 November 2017, at paras. 13- 20 and 125-127 (“OTP Afghanistan Investigation Request”); Geneva Academy, Rule of Law in Armed Conflicts (RULAC), Non-international armed conflicts in Afghanistan, available at: <https://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-afghanistan#collapse2accord>

260 Ibid.

261 OTP Afghanistan Investigation Request at para. 22.

262 OTP Afghanistan Investigation Request.

263 ICC, Appeals Chamber (No. ICC-02/17-138), Situation in the Islamic Republic of Afghanistan, Judgment on the appeal against the decision on the authorization of an investigation into the situation in the Islamic Republic of Afghanistan, 5 March 2020.

264 ICC, Pre-Trial Chamber II (No. ICC-02/17), Situation in the Islamic Republic of Afghanistan, Notification to the Pre-Trial Chamber of the Islamic Republic of Afghanistan’s letter concerning article 18(2) of the Statute, 15 April 2020, OTP.

265 ICC, Pre-Trial Chamber II (No. ICC-02/17), Situation in the Islamic Republic of Afghanistan, Request to authorize resumption of investigation under article 18(2) of the Statute, 27 September 2021, OTP.

266 ICC, Pre-Trial Chamber II (No. ICC-02/17-196), Situation in the Islamic Republic of Afghanistan, Pre-Trial Chamber II, Decision pursuant to article 18(2) of the Statute authorizing the Prosecution to resume investigation, 31 October 2022.

of the investigation as originally envisaged, including alleged crimes committed by Afghan and US forces.²⁶⁷ On 28 November 2024, the OTP received a referral of the Situation in Afghanistan from Chile, Costa Rica, Spain, France, Luxembourg, and Mexico, which highlighted, among others, violations of women and girls' right to education. On receipt of the referral, the Prosecutor confirmed that the Office has been and continues to conduct an active investigation in the Situation, which already encompasses the alleged crimes described in this referral.

Education-related crimes

Education has been a casualty of the war in Afghanistan. Students, teachers and education personnel, and educational infrastructure have both been indiscriminately and deliberately targeted by armed groups with devastating impacts.

In particular, there is evidence to show that the Taliban and ISIS-KP have committed attacks on education, including through: acts of physical violence against students and teachers (e.g., murder, acid attacks; abductions); issuing threats and directives restricting girls' education; and damaging or destroying educational facilities (including through the use of suicide bombs; IEDs and rocket attacks). GCPEA's Education under Attack 2020 report classified Afghanistan among the countries most heavily affected by attacks on education between 2015 and 2019, identifying over 600 reported incidents of attack or military use of schools that harmed nearly 1,500 students and educators. Both groups are opposed to Western models of education and secular education – in particular the education of girls, as well as co-educational learning environments – and have unleashed a widespread and systematic campaign of violence against the education sector, in furtherance of a policy to limit and deny women and girls' right to education. Individuals perceived to support the education of women and girls, including male teachers and male students attending co-educational spaces, have also been deliberately attacked.²⁶⁸

Women and girls in Afghanistan have been persecuted and deprived of their right to education on the basis of their gender.²⁶⁹ There is also evidence to suggest intersecting forms of persecution, on religious/ethnic grounds, of women and girls belonging to the Hazara-Shia.²⁷⁰

These education-related crimes appear to be one of the areas of focus of the OTP Afghanistan investigation. The OTP's investigation request (2017) states that:

- there is a reasonable basis to believe that Taliban and affiliated armed groups have committed the crime against humanity of persecution against civilians, including on the basis of gender; and,
- pursuant to the rules and ideology of the Taliban and affiliated armed groups, women and girls have been deliberately attacked, including to prevent them from studying and countless have stopped attending school as a result.²⁷¹

267 ICC, "Statement of the Prosecutor of the International Criminal Court, Karim A. A. Khan QC, following the application for an expedited order under article 18(2) seeking authorization to resume investigations in the Situation in Afghanistan," 27 September 2021, available at: <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-khan-qc-following-application>

268 See, amongst others, HRW, "Lessons in Terror: Attacks on Education in Afghanistan" (2006); GCPEA, Education Under Attack 2014, Afghanistan country profile, at pp. 114-119 (2014); Education Under Attack 2018, Afghanistan country profile at pp. 76-86; Education Under Attack 2020, Afghanistan country profile at pp.98-102.

269 OTP Afghanistan Investigation Request at para. 112; Amnesty International, "Death in slow motion, Women and Girls under Taliban Rule," 2022; MADRE and the Institute for Gender, Law and Transformative Peace of Cuny Law School, "Gender Persecution in Afghanistan: A crime against humanity," 2023.

270 See HRW, *Afghanistan: Surge in Islamic State Attacks on Shia* (2021); United Nations High Commissioner for Refugees (UNHCR), *Persecution and perseverance: Survival stories from the Hazara community* (2020).

271 OTP Afghanistan Investigation Request at para. 112, 115-116.

The request goes on to provide examples of incidents and conduct depriving women and girls of their right to access education potentially amounting to persecution:

- The destruction of hundreds of public schools through IED, rocket, grenade and arson attacks;
- Threats and acts of violence against teachers, school administrators and students;
- The issuance of public announcements and night letters designed to intimidate parents from sending their daughters to school.²⁷²

The request notes that education attacks were motivated by several factors, including an ideological opposition to education generally or to the education of girls, and because public schools represented symbols of State power, being in some areas the only public presence (at para. 147).

Although the OTP investigation remains at an early stage (having been granted authorization to resume in October 2022),²⁷³ officials interviewed for the purposes of this Guide were able to shed some light on the Office's approach to investigating education-related crimes.

In particular:

- The OTP indicated that education-related crimes impacting children were an investigative priority, in line with the Office's policies on crimes against/affecting children. The attacks being perpetrated in Afghanistan were of particular concern, because of their ongoing nature and because of the evidence suggesting that they may be discriminatory.
- The OTP received extensive credible and detailed information on the prevalence, gravity and impact on education of attacks by the Taliban and ISIS-KP during the preliminary examination phase from multiple sources, including UN agencies and NGOs (including Human Rights Watch and a number of Afghan NGOs). This documentation had an influence on what crimes the OTP was able to identify when seeking authorization to investigate, including education-related crimes.
- When investigating persecution, it is important to adopt a holistic approach and consider how deprivation of fundamental rights (e.g., of the right to education) connects to other crimes against the civilian population.

*Allegations of education-related crimes amounting to persecution as a crime against humanity were also considered in the Nigeria preliminary examination, and form part of the current investigations into crimes committed against the Rohingya in Bangladesh/Myanmar situation.*²⁷⁴

272 OTP Afghanistan Investigation Request at para. 119.

273 Situation in the Islamic Republic of Afghanistan, No. ICC-02/17, Pre-Trial Chamber II, Decision pursuant to article 18(2) of the Statute authorizing the Prosecutor to resume investigation, 31 October 2022. The Prosecution requested authorization to open an investigation on 20 November 2017, this request was rejected by Pre-Trial Chamber II on 12 April 2019 and subsequently granted, on appeal, by the Appeals Chamber on 5 March 2020. On 26 March 2020, the Government of Afghanistan requested a deferral of the OTP's investigation under Article 18(2) Rome Statute. On 31 October 2022, the Pre-Trial Chamber authorized the Prosecution to resume its investigation, having considered that the Afghan authorities were not carrying out genuine investigations such that ongoing deferral was justified.

274 See e.g., OTP-ICC, Report on Preliminary Examination Activities (2015), 12 November 2015, at paras. 201-202. ICC, Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar (No. ICC/01-19), Pre-Trial Chamber III, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, 14 November 2019, at paras. 52-53, 97-100, and OTP, Request for authorization of an investigation pursuant to article 15 (No. ICC-01/19), 4 July 2019, at paras. 106-107.

Conclusions and Recommendations

Education-related crimes are under-investigated and under-prosecuted. This Guide is a call to national and international accountability actors to pay greater attention to attacks on education amounting to international crimes over which they may have jurisdiction, and to ensure that the timely and effective investigation and prosecutions of these crimes is prioritized, in line with their obligations under international law.

GCPEA acknowledges that it will rarely be possible for accountability mechanisms to investigate and prosecute every single potential international crime within their jurisdiction. Nevertheless, the magnitude of attacks on education and their gravity, having regard to the profound, often transgenerational, harm they can inflict, deserves to be recognized and urgently addressed, including through the pursuit of criminal accountability. The ongoing and persistent impunity for these crimes not only compounds the victimization of survivors and their communities, it also weakens the rule of law and undermines the prospects of preventing and deterring future crimes.

This Guide has sought to make an evidence-based case for the prioritization of the investigation and prosecution of attacks on education and examined the potential war crimes and crimes against humanity charges that may be available for some attacks (direct attacks), while noting the need for further analysis for other forms of attacks (indiscriminate attacks). It has also explored some of the reported attitudinal and structural barriers to criminal accountability. Drawing on the views of expert investigators, prosecutors, civil society actors and academics, and on extensive desk research, this Guide has attempted to offer some strategies and solutions to overcome or mitigate these barriers.

Based on the foregoing, this Guide sets out below specific recommendations for States; national investigative and prosecution agencies; the International Criminal Court and UN-mandated criminal accountability mechanisms; UN bodies; National Human Rights Institutions and civil society organizations to strengthen accountability for crimes against education, and other forms of education-related crimes rising to the level of international crimes.

1. States should:

- 1.1** Comply with their obligation to promptly and impartially investigate and prosecute (or extradite for prosecution) core international crimes over which they have jurisdiction, including crimes against/affecting education.
- 1.2** Review their domestic laws, including military justice legal frameworks where relevant, and ensure that they:
 - 1.2.1** Incorporate legal obligations related to the right to education and the protection of students, teachers and education personnel, and educational facilities in armed conflict, as provided for in the Geneva Conventions and their Additional Protocols, customary international humanitarian law and international human rights law.
 - 1.2.2** Incorporate the Rome Statute definitions of core international crimes, including those applicable to education-related crimes (in particular, attacking buildings dedicated to education as a war crime and persecution as a crime against humanity), as well as general legal principles under the Rome Statute (such as those excluding the availability of certain defenses e.g., superior orders).
 - 1.2.3** Provide for appropriate penalties and sanctions for core international crimes, including crimes against/affecting education.
 - 1.2.4** Enable the exercise of extra-territorial, including universal, jurisdiction over crimes against/affecting education as well as other core international crimes and other conduct amounting to gross violations of human rights and serious violations of international humanitarian law.

- 1.3** Remove any barriers to the exercise of jurisdiction over crimes against/affecting education in domestic law, such as statutes of limitations, amnesties, or official immunities.
- 1.4** Allocate sufficient funds to the timely and effective investigation and prosecution of crimes against/affecting education and ensure that the criminal justice system is equipped to address these crimes in conformity with due process rights, victims' rights, in particular children's rights, and other relevant international human rights norms and standards.
- 1.5** Consider establishing specialized multi-disciplinary units focused on the investigation and prosecution of core international crimes, including crimes against/affecting education and children, and ensure that they are provided with adequate human, financial and material resources.
- 1.6** As necessary, fully cooperate with the ICC and other international criminal accountability mechanisms in respect of the investigation and prosecution of crimes against/affecting education.
- 1.7** Ensure that victims of education-related crimes, including children, can access justice and exercise their right to effective remedies, including through obtaining appropriate reparations, compensation, and, where relevant, measures to promote physical and psychological recovery, rehabilitation and reintegration, even in the absence of criminal investigations and prosecutions.
- 1.8** Endorse, implement and support the Safe Schools Declaration in a gender-responsive and disability-inclusive manner and implement UN Security Council Resolution 2601 on the protection of schools in armed conflict (2021).

2. National investigative and prosecutorial agencies should:

- 2.1** Make a priority the effective and timely investigation and prosecution of crimes against/affecting education whether allegedly perpetrated by State or non-State armed groups.
- 2.2** Ensure that teams have/can access the necessary multi-disciplinary investigative and legal expertise, including in:
 - 2.2.1** Criminal investigations, including in the conduct of interviews with vulnerable victims and witnesses (i.e., such as children, victims of sexual and gender-based crimes, and insider witnesses) and the secure collection and storage of all forms of evidence;
 - 2.2.2** Military (including ballistic) expertise and forensics, including digital forensics;
 - 2.2.3** Analysis (including military and political analysis, age-disaggregated analysis and intersectional approaches);
 - 2.2.4** Domestic criminal law and procedure; international criminal law; international humanitarian law; international human rights law.
- 2.3** Ensure a child sensitive approach to accountability including through dedicated expertise on the application of a child rights-based approach to investigation and prosecution of crimes against/affecting children, and ensure that such expertise is embedded in the operational aspects of the work.
- 2.4** Adopt policies, protocols and operational guidelines to enhance the prioritization, and effective and timely investigation and prosecution of crimes against/affecting education – where such policies, protocols and guidelines already exist, they should be reviewed to ensure that they promote accountability for crimes against/affecting education. Draw from best practice as relevant, including the ICC's Policy on Children and Policy on the Crime of

Gender Persecution, and the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

- 2.5** Consider requesting technical advice and specialist support from national and international actors with experience and expertise on the right to education, the legal framework related to the protection of education in conflict and attacks on education, children's rights, and/or in the investigation and prosecution of core international crimes (e.g., National Committees for the implementation of international humanitarian law, National Human Rights Institutions and Ombudspersons, including children's Ombudspersons, Justice Rapid Response and GCPEA, including through the State-led implementation network for the Safe Schools Declaration).
- 2.6** Develop and implement a clear strategy for effective outreach with victims and affected communities by strengthening and establishing partnership with relevant stakeholders, including CSOs.
- 2.7** Ensure that victims and witnesses engaging with investigative and prosecution agencies can access witness protection programs as necessary, and that referral pathways are in place for the provision of mental health, psychosocial and other services.
- 2.8** Cooperate with CSOs working on accountability for crimes against/affecting education, including by providing/supporting training on documenting education-related crimes, to ensure proper evidence collection that may support future accountability.

3. The Office of the Prosecutor of the International Criminal Court; the UN accountability mechanisms and other international criminal accountability mechanisms should:

- 3.1** Make a priority the timely and effective investigation and prosecution of crimes against/affecting education over which they have jurisdiction, and commit the necessary human, material and financial resources to do so.
- 3.2** Continue to develop and/or enhance policies and staff capacity and competency to ensure timely and effective investigations and prosecutions of education-related crimes, including in relation to crimes against/affecting children.
- 3.3** Conduct effective outreach with victims and communities by strengthening and establishing partnership with relevant stakeholders.
- 3.4** Ensure adequate witness protection and psychosocial support.
- 3.5** Cooperate with CSOs engaged in the documentation of crimes against/affecting children and share knowledge and best practice to improve the collection and preservation of evidence, where necessary and relevant.

4. National Human Rights Institutions and Ombudspersons, including Children's Ombudspersons could, depending on their legal powers:

- 4.1** Monitor, document and investigate attacks on education, including through the use of GCPEA's Toolkit for Collecting and Analyzing Data on Attacks on Education, to support prosecution initiatives when possible.
- 4.2** Assist victims of education-related crimes by ensuring that they have equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant and appropriate information.
- 4.3** Recommend legal reforms to criminalize attacks on education, including in the context of domestication of the Rome Statute and incorporation of international human rights treaties.

- 4.4** Provide training, technical assistance and capacity building on international human rights law and child-friendly justice to domestic accountability actors.
- 4.5** Raise general awareness on the scale and gravity of attacks on education and the need to enhance accountability for education-related crimes.
- 4.6** Advocate for governments to endorse and effectively implement in a gender-responsive and disability-inclusive manner the Safe Schools Declaration and UN Security Council resolution 2601 on the protection of schools in armed conflict.

5. Civil society organizations should:

- 5.1** Systematically raise the need to enhance accountability, including criminal accountability, for education-related crimes in conflict in political and diplomatic fora, including before the UN Security Council, General Assembly and Human Rights Council, and in bilateral and multilateral advocacy with States.
- 5.2** Lobby States to review their domestic legislation and ensure that their domestic frameworks enable the timely and effective investigation and prosecution of crimes against/affecting education, in line with international human rights standards, through the exercise of extra-territorial (including universal) jurisdiction; and that the allocation of sustainable funding to such efforts.
- 5.3** Advocate for domestic investigative and prosecution agencies, and international criminal accountability mechanisms to adopt child-sensitive approaches and child rights-based methodologies at all phases of the investigation and prosecutions. This will allow crimes against/affecting education to be considered equally to the other crimes and for agencies to ensure that any investigations and prosecutions have the adequate human, financial and material resources to be timely and effective.
- 5.4** Cooperate, when safe and possible, with accountability mechanisms on incidents, patterns, drivers and impacts of crimes against/affecting education with due regard for the confidentiality, safety, security and wishes of survivors.
- 5.5** Advocate for and support, including through further guidance, accountability mechanisms to proactively consider and investigate incidents of indiscriminate/disproportionate attacks that amount to war crimes and that include destruction/damage to schools and/or death or injury of students, teachers, and other educational personnel.
- 5.6** Consult with victims of crimes against/affecting education and affected communities to: assess their wishes and concerns; support outreach efforts to victims of crimes against/affecting education and impacted communities; and empower individuals and communities to recognize and assert their legal rights and facilitate their meaningful access to justice in relation to education-related crimes.
- 5.7** Where appropriate, develop litigation strategies for national, regional and international judicial and quasi-judicial fora to better advance the rights and protections of victims of education-related crimes.
- 5.8** Monitor and document attacks on education, including through the use of GCPEA's Toolkit for Collecting and Analyzing Data on Attacks on Education, and consistently highlight the perpetration of education-related crimes before UN human rights Treaty Bodies (including the CRC, the CESCR and the CEDAW); UN country and thematic special procedures of

the Human Rights Council (e.g. the Special Rapporteur on the Right to Education and the Special Rapporteur on Violence against Women), and relevant UN Special Representatives of the Secretary-General, such as for Children and Armed Conflict, on Violence Against Children and on Sexual Violence in Conflict; the Universal Periodic Review; and advocate and recommend that UN Member States investigate, prosecute, and otherwise hold accountable the perpetrators of education-related crimes in accordance with international law.

- 5.9** Advocate for governments to endorse and effectively implement in a gender-responsive and disability-inclusive manner the Safe Schools Declaration and UN Security Council resolution 2601 on the protection of schools in armed conflict.

6. UN bodies and mechanisms should:

- 6.1** Via the General Assembly, call on Member States to ensure accountability for crimes against/affecting education, including by amending their domestic laws as necessary, and prioritizing the investigation and, where appropriate, prosecution of such crimes, including through the exercise of extra-territorial, including universal, jurisdiction.
- 6.2** Via the UN Security Council, Human Rights Council and General Assembly, request that current and future UN-mandated criminal accountability and investigative mechanisms (e.g., commission of inquiry and fact-finding missions), systematically document and investigate education-related crimes in conflict, and ensure that they have the adequate human, material and financial resources to do so.
- 6.3** Via the UN Treaty Bodies, include recommendations on accountability, for education-related crimes in their concluding observations on country periodic reports as well as in the elaboration of general comments. Recommendations should include the explicit criminalization of education-related crimes as war crimes and crimes against humanity and universal jurisdiction over such crimes. When possible, Treaty Bodies should activate and undertake inquiries for grave or systematic violations resulting from attacks on education, including through collaboration with the UN-mandated accountability mechanisms.
- 6.4** Via UN country and thematic special procedures of the Human Rights Council, the Universal Periodic Review and relevant UN Special Representatives of the Secretary-General, such as for Children and Armed Conflict, on Violence Against Children and on Sexual Violence in Conflict, recommend that UN Member States promptly and impartially investigate, prosecute, and otherwise hold accountable the perpetrators of education-related crimes, relative to their mandate.
- 6.5** Finally, via all UN bodies and entities, promote universal endorsement of the Safe Schools Declaration and urge governments, especially of countries in conflict, to fully implement the Declaration as well as Security Council Resolution 2601, including by holding to the commitment to investigate attacks and prosecute perpetrators in accordance with international law.



Global Coalition to **Protect**
Education from Attack

For media inquiries: email media@protectingeducation.org

For other inquiries: email gcpea@protectingeducation.org

Global Coalition to Protect Education from Attack
Secretariat Office
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299

 [@GCPEAtweets](https://twitter.com/GCPEAtweets)

 [@Global Coalition to Protect Education from Attack](https://www.linkedin.com/company/global-coalition-to-protect-education-from-attack)