



# **BACKGROUND PAPER FOR THE PEIC/GENEVA CALL WORKSHOP**

## **“Education and Armed Non-State Actors: Towards a comprehensive agenda”**

23-25 June 2015, Geneva, Switzerland



**PEIC**

PROTECT EDUCATION IN INSECURITY AND CONFLICT  
حماية التعليم في ظروف النزاع وانعدام الأمن

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Jonathan Somer  
Persona Grata Consulting

Protect Education in Insecurity and Conflict (PEIC)  
Education Above All Foundation  
June 2015



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## ACKNOWLEDGEMENTS

This background paper was researched and written by Jonathan Somer, of Persona Grata Consulting. Comments of the draft versions of the paper were kindly provided by Mark Richmond and Margaret Sinclair (PEIC), Pascal Bongard and Carolin Nehme (Geneva Call), and anonymous reviewers. The provision of comments does not constitute agreement with any of the views expressed in the background paper. Special thanks are extended to Yezid Anteta Davila, ex-Commandante del Frente 29 De Las FRAC EP (see Appendix). Design and layout are by Qatar Foundation Publishing Center.



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## FOREWORD

Protect Education in Insecurity and Conflict (PEIC) seeks to protect and promote education in situations of insecurity and armed conflict. In many (though by no means all) locations, the threat to education comes at least in part from armed non-state actors (ANSAs) through attacks on students, personnel and education institutions and through the use of education premises in ways that may damage or destroy the education facilities and put students and education personnel at serious risk; the military use of schools and universities by ANSAs – though not as prevalent as such use by states – provides one striking illustration of this practice.

Recent years have witnessed growing international efforts to prevent and respond to attacks on education and military use of schools and universities. The ‘Safe Schools Declaration’ (Oslo, 29 May 2015) will doubtless serve as a major milestone in this direction. However, comparatively little attention has been devoted to another aspect of the relation between education and ANSAs, namely the role that ANSAs may play in the regulation, facilitation and provision of education services in the areas they control or in which they operate.

This background paper prepared by Jonathan Somer of Persona Grata Consulting has been commissioned by PEIC to inform and orient the deliberations of the Workshop on Education and Armed Non-State Actors (Geneva, 23-25 June 2015) organized by PEIC and Geneva Call. I believe that the background paper is a pioneering work that lays out for the first time a clear frame of reference for better understanding the role of ANSAs in the provision of education. The background paper combines consideration of the international normative framework with strategic and operational issues that affect not only ANSAs themselves but also international actors concerned with education in situations of emergency, conflict and insecurity. Key questions are posed that constitute an agenda for both reflection and action.

PEIC is pleased to be playing a catalytic role in this exercise, which it considers vital for extending the boundaries of our collective thinking about attacks on education and the impact of armed conflict on education. For PEIC, the Geneva workshop and the background paper constitute a first step towards both increased understanding of a complicated and much-neglected phenomenon and improved strategies and actions on the part of those interlocutors interfacing with ANSAs in the area of education. Above all, we hope that this process, as it unfolds, will lead all actors – states and ANSAs, international actors and national/local counterparts – to protect and promote education with greater vigour and determination.

**Mark Richmond**

**Director, Protect Education in Insecurity and Conflict (PEIC)  
Education Above All Foundation**

## EXECUTIVE SUMMARY

The past several years have seen increased international efforts to reduce the adverse impact of actions by armed non-state actors (ANSAs) on access to education in situations of insecurity and armed conflict. Interventions have focused largely on preventing attacks on education and the use of schools for military purposes. Yet there has been almost no attention paid to the positive obligations of ANSAs or, in other words, what they are supposed to do—in spite of clear evidence that a significant number of ANSAs regulate, facilitate and even provide education in areas where they operate.

From a rights-based approach, this gap is curious. The right to education is not suspended in armed conflict, while the Millennium Development Goals have strived to achieve universal primary education for all. So why does the gap exist? The answer is likely that ANSAs' role in ensuring education sits at the intersection of several anomalies that cut across different international normative frameworks and response mechanisms.

- Anomaly 1: Both States and ANSAs may be duty bearers in armed conflict and other situations of insecurity.
- Anomaly 2: Ensuring education is one of few positive obligations held by ANSAs.
- Anomaly 3: Education falls within humanitarian assistance but is not a life-sustaining activity.

The tension for international actors, particularly when ANSAs control territory, becomes how to meet the needs of beneficiaries in offering humanitarian services and promoting the right to education, without reinforcing ANSAs' governance capacity. The Background Paper and subsequent Workshop will dissect the issue of Education and ANSAs into three aspects of i) attacks on education, ii) use of schools for military purposes, and iii) ensuring education. While all of the aspects are essential to a comprehensive approach, the main focus will be on ANSAs' role in ensuring education, as this is the least understood. We would like to initiate a discussion among policy-makers, practitioners and researchers based on this picture, in the pursuit of universal access to quality education for all—even for those who find themselves under the control or influence of ANSAs. Simply put, they are key stakeholders.

Knowledge of the role ANSAs play in ensuring education remains limited and far from comprehensive. Unlike the negative aspects of attacks on education and military use of schools, there has been no effort to consolidate a global picture on the positive aspect of ensuring education. We do not know how many ANSAs currently provide education, but some have sophisticated systems in place, including even specific internet and Facebook pages for education departments. From a historical view, academic research indicates that at any given time since the Second World War, approximately one-third of insurgencies have provided education, and half of those who have controlled territory have done so. Some State-like ANSAs administer universities and other higher education institutions. ANSAs have built education systems from scratch. Some of these initiatives have gone on to form the basis of the State system in cases where ANSAs have assumed control of the State apparatus. Other ANSAs have taken over administration of existing education systems, possibly changing curriculum and issuing new regulations. ANSAs have invited assistance organisations to establish new schools or administer existing ones, with or without conditions. Other ANSAs have not participated in the provision of education *per se*, but rather have facilitated conditions for school access and service delivery.

Examples are entering into and implementing agreements with adversaries and/or international actors, protecting schools from enemy attack, encouraging parents to send children to schools, ensuring equal access to girls and low castes, or putting an end to corrupt practices. ANSAs often adopt curriculum connected to the core values of the revolutionary movement, which often includes language, cultural or religious elements, and may deliberately reject the national curriculum. Many ANSAs accuse international organisations of lack of cooperation out of deference to the wishes of opposing governments. However, there is evidence of historical and to a lesser extent, contemporary cooperation. Research indicates that ANSAs are greater violators than States as regards attacks on education, while ANSAs are less frequent users of schools and universities for military purposes.

When ANSAs make their beliefs and commitments known, they can be held accountable and when they disseminate their beliefs and commitments within their ranks and institutions, such doctrine can be followed and implemented. ANSA doctrine (e.g., constitutions, codes of conduct) covers a wide range of issues towards compliance within the four As (available, accessible, acceptable and adaptable) of the right to education framework, as well as the religious dimensions of IHL standards. It promotes the right to education by improving access for girls, the socially disadvantaged, children in remote communities, and adults. Only in rare cases, such as the Taliban and Boko Haram, is ANSA doctrine at odds with international standards.

ANSAs have negative obligations under IHL to refrain from intentionally and indiscriminately attacking education facilities and personnel, and to refrain from using schools for military purposes if feasible. The non-binding Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict (2015) [the 2015 Guidelines] suggest functioning schools and universities should never be used for military purposes. IHL also imposes positive obligations to ensure children receive an education, including moral and religious components, in line with the wishes of parents or guardians. The extent to which international human rights law applies to ANSAs is unclear, but it would impose higher standards on ANSAs, particularly on the duty to fulfil the right to quality education. Various UN bodies, including the Security Council, have either called upon or urged ANSAs to fulfil basic needs of affected populations.

There is little guidance that specifically addresses ANSAs, particularly when it comes to positive aspects of ensuring education. An exception is the recommendations of the Committee on the Rights of the Child on education in emergency situations, although it is unclear how these would be applied in practice. With respect to negative obligations, the Commentary to the 2015 Guidelines specifically invites ANSA to adopt the Guidelines.

The international response framework is confused, but recognizes a role for humanitarian actors to assist ANSAs in meeting their obligations. The extent to which this extends to ensuring education is unclear. In practice, the UN Action Plan template for the attacks on schools violation envisions cooperation with ANSA signatories on support for programmatic initiatives ensuring children's right to education. Yet there are currently no ANSA signatories, nor are there any indications of significant progress with listed ANSAs towards this end. The Geneva Call Deed of Commitment promotes cooperation between ANSA signatories and assistance actors, and has already facilitated contacts towards these ends.

Few assistance actors have internal policies on engagement with ANSAs, and several have identified this as a problem. UNICEF is an exception, although its policy limits the circumstances in which engagement may take place. In practice, with the exception of

organisation like Geneva Call and the ICRC, the little ANSA engagement on education that does take place is driven by individual initiatives rather than organizational policy. It is generally limited to improving compliance with negative obligations, while assistance towards ensuring education is generally limited to non- or partially recognized States. When ANSA engagement does happen, it is often under the guise of community engagement. There is a significant deference to States, not surprisingly, when it comes to ANSA engagement, and many organisations are reluctant to engage, and particularly assist ANSAs, due to the chilling effect of counter-terror measures among other reasons.

## DISCUSSION FRAMEWORK

### 1. TO WHAT EXTENT SHOULD ANSAs BE ENGAGED WITH AND SUPPORTED IN THEIR EFFORTS TO ENSURE AND REGULATE EDUCATION?

- To what extent does the international response turn a blind eye to ANSA service provision in general and education provision specifically?
- How should the normative framework be interpreted, developed, and/or adapted in order to be more relevant for situations where ANSAs control and administer territory?
- What are the possibilities for a consensus in the humanitarian community on whether humanitarian action should include building the capacity of ANSAs to provide services?
- What are the consequences for education of the lack of consensus?
- To what extent should ANSA capacity-building be restricted to essential services, and does education qualify as such?
- Should ANSAs be steered towards acceptance of the State education system as a priority outcome?
- What approach should education actors take towards ANSA changes to State curriculum?
- To what extent is it justifiable to adapt the notion of quality education in light of ANSA realities? Are there red lines?
- Should ANSAs' provision of education only be promoted in certain situations (e.g. where the ANSA is generally recognized to be the legitimate representative of the population, is firmly established as a non- or partially recognised State, is considered the 'good guy' by the international community, complies with IHL norms)?

### 2. HOW CAN RESPONSE BE IMPROVED?

- How can information on education and ANSAs best be gathered and employed towards policy and operational response?
- How can ANSAs be more appropriately accepted as stakeholders in education-related policy and practice, and how can this best lead towards their engagement?
- To what extent should guidance be created and disseminated for both ANSAs and humanitarian/education assistance actors?
- How can experience on education and ANSAs best be shared and integrated with other sectors?

- To what extent do counter-terrorism regulations and donor restrictions, as well as risk aversion/tolerance on the part of humanitarian actors, impact on education in areas control by ANSAs?
- How can counter-terrorism restrictions and humanitarian risk aversion be dealt with?

### **3. HOW SHOULD INTERNATIONAL ACTORS APPROACH EDUCATION AND ANSA ISSUES IN PEACE AND TRANSITION PROCESSES?**

- How can education be best leveraged to promote peace rather than fuel conflict in peace and transition processes?
- How can the convergence of parallel State and non-State education systems, or in cases where ANSAs assume control of the state apparatus, the conversion of non-State to State systems, be promoted in peace and transition processes?

## LIST of ANSAs and ACRONYMS

| Generic/Political Name                                  |       | Military Wing   |               | Country/Region           |
|---|-------|---|---------------|--------------------------|
| Abkhazia  |       | Abkhazian Armed Forces  |               | Abkhazia/<br>Georgia     |
| Al-Shabaab  |       |   |               | Somalia                  |
| L'Armée Populaire pour la restauration de la démocratie | APRD  |   |               | Central African Republic |
| Bangsamoro Islamic Freedom Fighters                     | BIFF  |   |               | Philippines              |
| Barisan Revolusi Nasional-Coordinasi                    | BRN-C |   |               | Thailand                 |
| Boko Haram  |       |   |               | Nigeria                  |
| Communist Party of India/ Naxalites                     | CPI-M |   |               | India                    |
| Communist Party of Nepal-Maoists                        | CPN-M |   |               | Nepal                    |
| Donetsk People's Republic                               | DPR   | United Armed Forces of Novorossiya                                  |               | Ukraine/Donetsk          |
| Ejército de Liberación Nacional                         | ELN   |   |               | Colombia                 |
| Eritrean People's Liberation Front                      | EPLF  | Eritrean People's Liberation Army                                   | EPLA          | Ethiopia/Eritrea         |
| Forces Nouvelles  |       |   |               | Ivory Coast              |
| Fuerzas Armadas Revolucionarias de Colombia             | FARC  |   |               | Colombia                 |
| Forces Republicaines de Cote d' Ivoire                  | FRCI  |   |               | Ivory Coast              |
| Hamas   |       | Ezzedeen AL-Qassam Brigades   |               | Palestine                |
| Hezbollah   |       | Jihad Council   |               | Lebanon                  |
| Houthis   |       |   |               | Yemen                    |
| Islamic State   | IS    |   |               | Iraq/Syria/Libya         |
| Justice and Equality Movement (JEM)                     | JEM   |   |               | Sudan/South Sudan        |
| Kachin Independence Organisation                        | KIO   | Kachin Independence Army  | KIA           | Myanmar/Burma            |
| Karen National Union (KNU)                              | KNU   | Karen National People's Army<br>Karen National Defence Organization | KNLA/<br>KNDO | Myanmar/Burma            |
| Karenni National Progressive Party                      | KNPP  | Karenni Army  | KA            | Myanmar/Burma            |

|  |           |  |          |                         |
|--|-----------|--|----------|-------------------------|
| Liberation Tigers of Tamil Eelam                               | LTTE      |  |          | Sri Lanka               |
| Moro Islamic Liberation Front                                  | MILF      | Bangsamoro Islamic Armed Forces                      | BIAF     | Philippines             |
| National Coalition for Syrian Revolution and Opposition Forces |           | Free Syrian Army                                     | FSA      | Syria                   |
| National Transitional Council                                  | NTC       | Free Libyan Army                                     |          | Libya                   |
| New Democratic Front / Communist Party of the Philippines      | NDFP/ CPP | New People's Army                                    | NPA      | Philippines             |
| New Mon State Party  |           | Mon National Liberation Army                         | MNLA     | Myanmar/ Burma          |
| Ogaden National Liberation Front                               | ONLF      |  |          | Ethiopia                |
| Partiya Karkerên Kurdistanê                                    | PKK       | Hezen Parastina Gele                                 | HPG      | Turkey                  |
| People's Liberation Front of India                             | PLFI      |  |          | India                   |
| Polisario Front  |           |  |          | Morocco/ Western Sahara |
| Restoration Council of Shan State                              | RCSS      | Shan State Army-South                                | SSA-S    | Myanmar/Burma           |
| Rojava Self-Rule Administration                                |           | Yekîneyên Parastina Gel and Yekîneyên Parastina Jinê | YPG/ YPJ | Syria                   |
| Somaliland   |           |  |          |                         |
| Sudan People's Liberation Movement                             | SPLM      | Sudan People's Liberation Army                       | SPLA     | Sudan                   |
| Sudan People's Liberation Movement-North                       | SPLM-N    | Sudan People's Liberation Army-North                 | SPLA-N   | Sudan                   |
| Taliban  |           |  |          | Afghanistan             |
| Transnistrian Republic of Moldavia                             |           |  |          | Moldova/ Transnistria   |
| União Nacional para a Independência Total de Angola            | UNITA     |  |          | Angola                  |

|          |  |
|----------|--|
| • AP     | Action Plan  |
| • ANSA   | Armed Non-State Actor  |
| • CTFMR  | Country Task Force on Monitoring and Reporting                     |
| • DRC    | Democratic Republic of the Congo                                   |
| • FATF   | Financial Action Task Force  |
| • GCPEA  | Global Coalition to Protect Education from Attack                  |
| • HREIB  | Human Rights Institute of Burma                                    |
| • IAC    | International Armed Conflict                                       |
| • IASC   | Inter-Agency Standing Committee                                    |
| • ICL    | International Criminal Law   |
| • INGOs  | International Non-Governmental Organisation                        |
| • IHL    | International Humanitarian Law                                     |
| • IHR    | International Human Rights Law                                     |
| • INEE   | Inter-Agency Network for Education in Emergencies                  |
| • JRS    | Jesuit Relief Service  |
| • MDG    | Millennium Development Goal  |
| • MRM    | Monitoring and Reporting Mechanism                                 |
| • MSCP   | Minimum Standards for Child Protection in Humanitarian Action      |
| • MSE    | Minimum Standards for Education                                    |
| • NIAC   | Non-International Armed Conflict                                   |
| • NGO    | Non-Governmental Organisation                                      |
| • OCHA   | United Nations Office for the Coordination of Humanitarian Affairs |
| • OHCHR  | Office of the United Nations High Commissioner for Human Rights    |
| • SRRE   | Special Rapporteur on the Right to Education                       |
| • TRO    | Tamils Rehabilitation Organisation                                 |
| • UN     | United Nations   |
| • UNGA   | United Nations General Assembly                                    |
| • UNSG   | United Nations Secretary-General                                   |
| • UNICEF | United Nations Children's Fund                                     |

## INTRODUCTION

### **“There is a conflict of interests between children and Westphalia”**

- Background Paper interview respondent

The past several years have seen increased international efforts to reduce the adverse impact of actions by armed non-state actors (ANSAs) on access to education in situations of insecurity and armed conflict. Interventions have focused largely on preventing attacks on education and the use of schools for military purposes. While some progress has been made, these efforts are incomplete as they only address negative obligations of ANSAs or, in other words, what they are not allowed to do. There has been almost no attention paid to the positive obligations of ANSAs or, in other words, what they are supposed to do - in spite of clear evidence that a significant number of ANSAs regulate, facilitate and even provide education in areas where they operate.

From a rights-based approach, this gap is curious. The right to education is not suspended in armed conflict, while the Millennium Development Goals (MDGs) have strived to achieve universal primary education for all, regardless of whether children are living in areas controlled by national governments or non-state authorities.

So why does the gap exist? The answer is likely that ANSAs' role in ensuring education sits at the intersection of several anomalies. It is an issue that does not fit cleanly into - but rather cuts across - different international normative frameworks and response mechanisms.

#### **Anomaly 1: Both States and ANSAs may be duty bearers in armed conflict and other situations of insecurity.**

States are the primary duty bearers responsible to fulfil the rights and basic needs of persons in their territory. However, armed conflicts are a stark exception to this international norm. All parties to a non-international armed conflict (NIAC) - both States and ANSAs - bear the primary responsibility to respect, protect, assist and meet the basic needs of civilian populations within their effective control. Another emerging exception is situations where ANSAs control territory, wherein such ANSAs are said to assume obligations to respect, protect and fulfil human rights. Simply put, NIACs and situations where ANSAs control territory are anomalies where the State-centric paradigm is supplanted, at least to some extent, by a multiple duty bearer paradigm.<sup>1</sup>

- *States may be sensitive to this exception and concerned that it may grant legitimacy to a non-State adversary.*
- *Humanitarian actors may not understand that the existence of multiple duty bearers in armed conflict dictates a fundamentally different response compared to natural disaster settings, where the State is normally the sole duty bearer.*

#### **Anomaly 2: Ensuring education is one of few positive obligations held by ANSAs**

Most obligations imposed on ANSAs are negative, e.g., do not target civilians, do not torture, do not use child soldiers. However, international law does impose a few obligations on ANSAs of a positive nature, such as ensuring the provision of health care and education. The scope of the obligation for ANSAs to ensure education is not well-defined, but will depend on the extent to which they control territory.

- *States may be particularly sensitive to the notion of a non-State adversary undertaking social service provision and that they may do so under cover of international law.*

- *Humanitarian actors mainly focus their engagement with ANSAs on negative obligations as part of protection response, including attacks on education and the use of schools for military purposes.*

### **Anomaly 3: Education falls within humanitarian assistance but is not a life-sustaining activity**

One of the tenets of impartial humanitarian action is that it does not constitute interference in the sovereign affairs of a State. While it has not always been the case, education is more and more being considered an integral part of humanitarian response, and is now firmly established as a component of the Inter-Agency Standing Committee (IASC) cluster approach. However, ensuring education differs from the bulk of humanitarian assistance in that it would not be as widely considered as a 'life sustaining' activity. It is also unclear whether education can be considered a 'basic' need in terms of the normative and response framework. Moreover, unlike other types of humanitarian assistance subject matter, education curricula may be central to the ideological battle-ground between the conflicting parties.

- *States may be extremely sensitive towards accepting the legitimacy of humanitarian engagement of ANSAs towards providing a non-life sustaining social service that may be used as a socialization and legitimizing agent.*
- *Humanitarian actors may be less likely to consider ANSAs' role in ensuring education as part of their humanitarian response, especially if they disagree with the ideology and actions of the ANSA.*

## **Intersection of the Anomalies—A Sensitive Environment, A Confused Response**

The tension for international actors, particularly when ANSAs control territory, becomes how to meet the needs of beneficiaries in offering humanitarian services and promoting the right to education, without - controversially - reinforcing the governance capacity of either States or ANSAs. Hugo Slim, a leading expert on humanitarian action, has recently warned of the dangers of lumping armed conflict and disaster situations into a unified humanitarian response: "the ability and the desire one might have to work with government, build up local structures around natural disaster or chronic vulnerability, is very different to the way humanitarian ideals might want to work with governments and [ANSAs] in a conflict."<sup>2</sup> Yet ANSAs and States are apples and oranges in the State-centric international order. The ability to regulate and administer education—just like other social welfare provision—may be part of an ANSA's strategy to challenge State authority. The humanitarian model of impartiality and neutrality may be a necessary trade-off when it comes to saving lives and fundamental protections in the here and now, but is it good sense to give equal treatment to States and ANSAs with respect to non-life sustaining service provision? How do we conceptualize a model wherein the State does not necessarily have a monopoly on authority and the ability to regulate and administer education? What are the implications if ANSAs have obligations to facilitate and provide education, and when they do so (or do not) in practice?

When ANSAs take positive action towards ensuring education, it does not necessarily mean a positive result. By regulating education, ANSAs may impose their own curriculum, prevent or allow access for particular groups, etc. Just like in State systems, education may be used to indoctrinate, assert control, etc. And even for ANSAs with the purest of intentions, meeting

basic standards as well as supporting opportunities for students to acquire relevant certification will be difficult challenges.

The Background Paper and subsequent Workshop will dissect the issue of Education and ANSAs into three aspects of i) attacks on education, ii) use of schools for military purposes, and iii) ensuring education. While all of the aspects are essential to a comprehensive approach, the main focus will be on ANSAs' role in ensuring education. Such an approach should not be viewed as a prioritisation, but rather a reaction to the differences in the maturity of international understanding and response. Attacks on education and military use of schools are prohibitive norms that fit into the contemporary discourse on protection of civilians and to some extent are mainstreamed into humanitarian protection response. Monitoring and reporting, although under-resourced and incomplete, is widely undertaken. Moreover, both of these aspects are specifically addressed through the United Nations (UN) Security Council thematic issue of children and armed conflict. For attacks on education, the UN is mandated to list non-compliant ANSAs as violators, and to engage them in dialogue. The Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict (2015) [henceforth the '2015 Guidelines'] have been developed and address ANSAs directly. On the other hand, we know little about the role played by ANSAs in ensuring education, and the impact of ANSA regulation on the right to education. Meanwhile, the international normative and response framework remains confused.

The objective of the Background Paper is not to provide solutions or to advocate for any particular response. Rather, it is a first attempt to paint a more complete picture of the impact ANSAs have on education in situations of conflict and insecurity. ANSAs not only attack education and use schools for military purposes, but also regulate, facilitate and even provide education. Simply put, they are key stakeholders. We would like to initiate a discussion among policy-makers, practitioners and researchers based on this picture. By doing so, we hope it will become evident that there have been blind spots in the international understanding and response. This is only the first step in what we hope will be the beginning of a process towards leveraging a more comprehensive approach in the pursuit of universal access to quality education for all - even for those who find themselves under the control or influence of ANSAs.

## Definitions and context

**Armed non-State Actor:** There is no universal definition of ANSAs. For the purposes of the Background Paper, it will refer to organised entities that use (or have the capacity to use) sustained violence in opposition to one or more States or other ANSAs, often referred to as organised armed groups, non-State armed groups, revolutionary movements, guerrillas, etc.<sup>3</sup> ANSAs do not have the legal capacity to become party to relevant international treaties such as the Geneva Conventions or the International Covenant on Economic, Social and Cultural Rights. The term ANSA will be used as a default to include the combined military and political components of such entities, unless there is specific reason to delineate. Clearly, ANSAs are different in their structures, objectives, capacities and motivations. Some control and administer territory much the way States do. Others are fleeting and fragmented. While typologies cannot capture the complexities that differentiate the actions and impact of ANSAs, for current purposes, it is worthwhile to roughly distinguish between three types of ANSAs on the basis of the extent to which they control and administer territory. This distinction, although not always clear, is particularly relevant to the role ANSAs play in ensuring education. As we will see in the normative framework, it can influence the extent of their legal obligations, and as we will see in the international response, it can influence the willingness of the international

community to engage with the ANSA, particularly on positive obligations. It will also influence the extent to which they have institutions devoted to education, such as 'ministries' or 'departments'.

- i. Non- or Partially Recognized States: These entities have a long-term stable control of territory and operate with State-like structures. Some may be recognized by States (e.g. Abkhazia), and even have membership in regional organizations (e.g. Western Sahara, as represented by the Polisario Front).
- ii. ANSAs who control territory: These entities are not as entrenched as the above, but do exercise control over civilians and act to a greater or lesser extent as *de facto* authorities (e.g. MILF in the Philippines). They may regulate and provide social services. They often have both political and military structures
- iii. ANSAs who do not control territory: These entities are the most diverse in terms of organisation. Some are hierarchical (e.g. JEM in Sudan); many are cell-structured (e.g. BRN-C in Thailand). They do not govern, but may take measures to influence governance through the use or threat of violence.

**Authority:** The entity, either State or non-State, which exercises governmental functions over an area, either *de jure* or *de facto*.

**Duty bearer:** State or non-State holders of obligations, either of international humanitarian law (IHL) or international human rights law (IHRL).

**Protection of Education:** The Background Paper breaks down the protection of education in armed conflict and situations of insecurity into separate components as per the table below (with greater clarity provided in the Normative Framework section), and further classifies each component according to the human rights 'respect, protect and fulfil' framework. The terms 'aspect' and 'obligation' are differentiated in order to distinguish what ANSAs do/could do regarding the particular component from what they are required to do. The term 'positive' refers to the action rather than outcome, so does not necessarily refer to a positive result.

**Table 1: Components of the Protection of Education in Armed Conflict and Situations of Insecurity**

|                               |                                      |   |         |
|-------------------------------|--------------------------------------|---|---------|
| Negative Aspects/ Obligations | Attacks on Education                 | -Do not intentionally attack/threaten students, personnel or education facilities that are not legitimate targets, or allow excessive collateral damage                           | respect |
|                               | Use of Schools for Military Purposes | -Do not use schools (including higher learning institutions) for military purposes unless they are abandoned and no other choice exists. Covers both partial and full occupation. | respect |

|                                  |                  |  |         |
|----------------------------------|------------------|--|---------|
| Positive Aspects/<br>Obligations | Ensure Education | -Take feasible measures to protect education from unlawful attacks or improper use   | protect |
|                                  |                  | -Facilitate or provide education in accordance with accepted international standards | fulfil  |

## Methodology

The methodology of the Background Paper differs according to its sections. In all sections, the text makes clear where information comes from sources that may be considered partial. Such sources remain valuable in terms of filling in 'factual' blanks where no other information exists, and for providing an ANSA perspective. The section Positive Aspects: Ensuring Education was compiled primarily through a literature review of publically available sources, including on-line and library-based research. The section Negative Aspects: Attacks on Education and the Military Use of Schools and Universities was compiled primarily through review of the *Education Under Attack* series of publications of UNESCO and the Global Coalition to Protect Education from Attack (GCPEA), as well as the GCPEA *Lessons in War* publications from 2012 and 2015.<sup>4</sup> The rationale for this limited range of research was to avoid duplicating recent efforts, while at the same time to extract the ANSA-relevant existing information in order to disaggregate ANSA practice from State practice. The Section What ANSAs Say They Do was compiled through a search of the database Their Words, a compilation of ANSA statements, codes of conduct and agreements on humanitarian issues, administered by Geneva Call, as well as other public sources. The Section International Response in Practice was compiled through a review of online sources, organisations' websites, as well as semi-structured, confidential interviews with relevant organisations' representatives. A total of 18 interviews were conducted with 14 international humanitarian and relief organisations, including UN agencies. The names of interviewees and organisations remain anonymous due to the sensitivity of the subject matter. The ex-ANSA memoire was conducted through a questionnaire. The contributor is responsible for the content, which has not been verified.

## WHAT ANSAs DO: PRACTICE

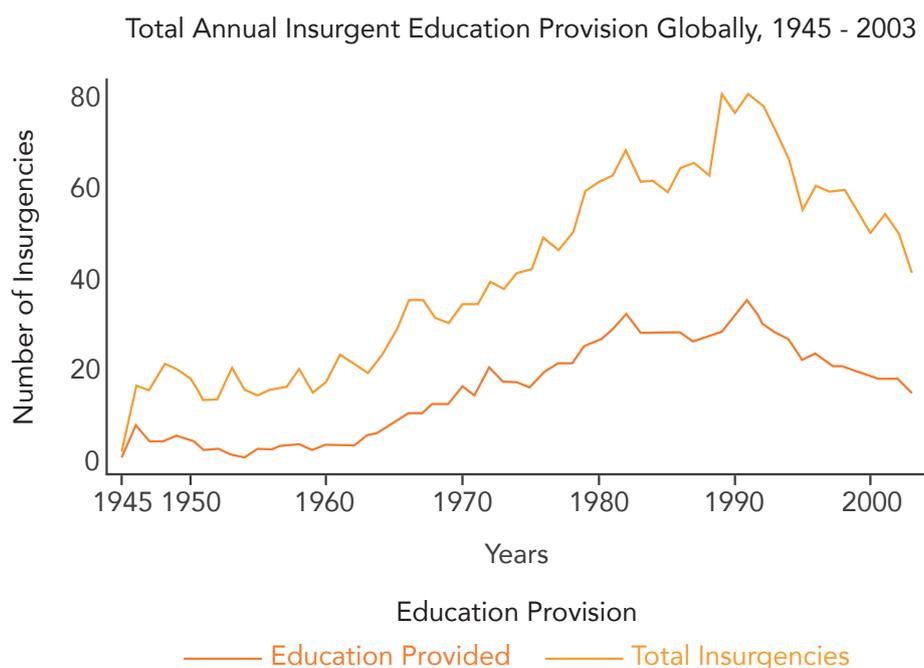
### Positive Aspects: Ensuring Education

Knowledge of the role ANSAs play in ensuring education remains limited and far from comprehensive. Unlike the negative aspects of attacks on education and military use of schools and universities, there has been no effort to consolidate a global picture on the positive aspect of ensuring education. This section may be considered an initial modest attempt to do so, looking at the contributions of both historical and current ANSAs. As a matter of semantics, reporting on an ANSA's role in ensuring education does not mean the action has met relevant standards, but rather that it falls into the category.

At the one end of the spectrum, ANSAs have built education systems from scratch. This often occurs in underdeveloped areas where schools have not existed, or where ethnic groups have been excluded. Some of these initiatives have gone on to form the basis of the State system in cases where ANSAs have assumed control of the State apparatus. Other ANSAs have taken over administration of existing education systems, possibly changing curriculum and issuing new regulations. ANSAs have invited assistance organisations to establish new schools or administer existing ones, with or without conditions. Towards the other end of the spectrum, ANSAs have not participated in the provision of education *per se*, but rather have facilitated conditions for school access and service delivery. Examples are entering into and implementing agreements with adversaries and/or international actors, protecting schools from enemy attack, encouraging parents to send children to schools, ensuring equal access to girls and low castes, or putting an end to corrupt practices. ANSAs often adopt curriculum connected to the core values of the revolutionary movement, which often includes language, cultural or religious elements, and may deliberately reject the national curriculum. In some cases, ANSA schools are solely for ANSA constituencies, while in other cases they are universal.

### Primary and Secondary Education

We do not know how many ANSAs currently provide education, but some have sophisticated systems in place, including even specific Internet and Facebook pages for education departments.<sup>5</sup> From a historical view, academic research indicates that at any given time since the Second World War, approximately one-third of insurgencies have provided education, and half of those who have controlled territory have done so.<sup>6</sup> The latest data available show that in 2003, approximately 20 insurgencies worldwide were providing education.



Source: Megan Stewart, "What's so new about the Islamic State's Governance," *Washington Post*, October 7, 2014 (see footnote 6 above).

There are numerous examples of ANSAs that have established education systems in parallel to, or in the absence of, State systems. The Eritrean People's Liberation Front (EPLF) developed a Department of Education in 1975, and then in 1976 opened its first school, consisting of 90 students, mostly orphans, children of fighters, displaced children and nomads. By 1987, 25,000 students were enrolled in 125 schools.<sup>7</sup> In Angola, UNITA established 22 secondary schools in the areas it occupied, and almost 700 primary schools, with 7,127 teachers and 224,881 students.<sup>8</sup> In the early days of its insurgency in Sudan, the SPLM created a parallel education system through a foundation under its control.<sup>9</sup> After the SPLM halted its own school system under international pressure, it created an education secretariat to oversee education provision by international organisations.<sup>10</sup> In the Central African Republic (CAR), the APRD claimed to run 50 bush schools for displaced children.<sup>11</sup> The Forces Nouvelles, although it did not provide education in the initial phases of its conflict in Ivory Coast, eventually decided to create a National Secretariat for Education with full-time paid staff.<sup>12</sup>

Recent examples are also plentiful. With respect to non- or partially recognised States, Abkhazia submits that it administers 171 public secondary schools with 26,220 pupils (it did not provide data on primary schools).<sup>13</sup> The Polisario Front reports that it administers free primary and secondary schools in its self-administered refugee camps.<sup>14</sup> In Somaliland, local government is responsible for education.

Other ANSAs that control territory also provide education. In Myanmar, several ANSAs have education departments and administer schools. The KIO established the KIO Education Department in 1978, and latest data indicate that it runs four high schools, 32 middle schools, and 243 primary schools, providing education to over 23,000 students.<sup>15</sup> KNPP provides 460 primary schools, 33 middle schools, and 12 high schools, with 1,677 teachers and 50,351 students.<sup>16</sup> KNU has been running schools since the 1950s, and has operated the Karen Education Department (KED) since the 1970s. Today, KED wholly or partly administers hundreds of the 1,294 schools attended by 141,623 students in Karen areas, as well as in refugee camps in bordering States.<sup>17</sup> In the ceasefire conditions since 1995, the NMSP Mon National Education Committee ran 156 schools in 2011, and shared the running of an

additional 156 'mixed' schools with the government.<sup>18</sup> While the RCSS does not administer schools, it supports around 500 community-based schools by providing teacher stipends, running costs and materials.<sup>19</sup>

The NCSROF in Syria reports that it has allocated 4 million USD to repair 72 schools and provide equipment. It further reports that its Ministry of Education has printed and will distribute 2 million textbooks.<sup>20</sup> JEM claims to have established 13 schools in Birak and Jabal Moon areas of Sudan, and to support these schools out of its "meager resources".<sup>21</sup> In India, the PLFI has built at least one school with a large compound, and paid teacher salaries in Jharkand,<sup>22</sup> while the CPI-M claims to have established schools in areas where the "government had never bothered to go".<sup>23</sup> Hezbollah in Lebanon administers at least 14 Mahdi schools, which include secondary education.<sup>24</sup> In the Sinjar region of Iraq, the scene of ethnic cleansing at the hands of IS, the PKK has opened up 6 schools for 800 Yezidi students. The PKK also provides education to its own youth members in special camps for children.<sup>25</sup> Less formal structures include the FARC 'community guerrilla centres' in Colombia, which provided informal education based on the education level of community members.<sup>26</sup> In the Philippines, adult literacy campaigns are also delivered by NDFP,<sup>27</sup> and for women by CPN-M,<sup>28</sup> while MILF<sup>29</sup> delivers religious education as well as basic literacy and numeracy to orphan victims of war.

Rather than establishing their own education systems, many other ANSAs in control of territory have cooperated with and/or co-opted existing government administration. In many cases, this has involved the full or partial regulation of education systems. In Sri Lanka, the LTTE worked alongside the government. While the government paid teacher salaries, the LTTE created the Tamil Eelam Education Council, which was headed by a Secretary of Education, and was responsible for regulating and supplementing education provided by the government of Sri Lanka, including the mobilization of civil society.<sup>30</sup> Following an Action Plan between the government, the LTTE and the UN, the LTTE Education Society was active in mobilization efforts to promote enrolment and achievement.<sup>31</sup> In Ivory Coast, the Forces Nouvelles' Committee for Schools and Examinations coordinated with the government education ministry so that 4,000 children in rebel-held areas were able to sit the 2006 national exam.<sup>32</sup> Through schools as zones of peace agreements, the CPN-M in Nepal was given the task of auditing expenditures of the government District Education Offices.<sup>33</sup> At the time of writing, the Rojava Self-Rule Administration in the Kurdish regions of Syria seems to be in transition from cooperating with government authorities to taking over provision of education. For the most part, teachers continue to be paid by the Syrian government, although the Rojava Administration has also constructed schools for displaced persons, e.g. 5,000 children displaced from Kobane are attending schools in tent cities in Suruc.<sup>34</sup> In areas of Iraq controlled by Islamic State, salaries continue to be paid by the government, although IS has created a 'Diwan of Education' and its agents ensure that teacher salaries are not distributed to absent teachers.<sup>35</sup> Since the ceasefire broke down in Kachin areas in 2011, jointly managed KIO/government schools in Myanmar have been closed, and arrangements for students to take the national exam have been discontinued.<sup>36</sup>

National curriculum has been adapted or supplanted in many cases. The EPLF examined British and Ethiopian curricula but found them unsuitable, opting to create its own.<sup>37</sup> Islamic State has suspended classes in history, philosophy, music and literature, although the curriculum has been maintained in physics, chemistry, math, English and Arabic. Government teachers

have been obliged to launch a new curriculum in accordance with Sharia standards.<sup>38</sup> Al-Shabaab also attempted to emphasize Islamic and Arabic culture by standardising curriculum in Southern Somalia,<sup>39</sup> and the Taliban also amended curriculum in schools it allowed to remain open.<sup>40</sup> The Rojava Administration has adapted curriculum, particularly towards changes in history and geography and new texts on the teaching of ideological leader Abdullah Ocalan, as well as instruction in Kurdish language.<sup>41</sup> In Myanmar, contrasting approaches have been taken by different ANSAs. The NMSP, in ceasefire with the government since 1995, offers Mon language instruction at the primary level, shifting to Burmese at the middle and high school levels. The curriculum allows graduates to sit government matriculation exams and enter the state higher education system. The KNU, which only recently agreed on a ceasefire, has adopted a curriculum that emphasizes Karen culture and language, but does not 'prepare students for integration with the government system'.<sup>42</sup> KIO schools use the national curriculum, but substitute the local language for instruction, and add courses on Kachin history.<sup>43</sup> In Sudan, the SPLM-N reports that it has adopted the curriculum of neighbouring East African States.<sup>44</sup> Similarly, the DPR in Ukraine has adopted the curriculum of neighbouring Russia.<sup>45</sup> Of course, much of the change in curriculum is directly related to conflict socialisation. The KED Secretary notes: "The facts that we mention in our textbooks are very different from what has been mentioned in the government system. For example, they call us rebels or terrorists, and we also call them the same."<sup>46</sup>

ANSAs have also taken other measures to ensure education. Girls and women were provided education in historically disadvantaged areas of Eritrea for the first time by the EPLF.<sup>47</sup> In Nepal, the CPN-M have insisted that girls and low caste children attend schools, to the point of holding parents accountable and liable for punishment. In one rebel-controlled district during the conflict, 50 per cent of students were girls.<sup>48</sup> The KNU notes that it provides equal access in spite of gender stereotypes, particularly in remote areas, where according to cultural values, girls should only complete primary education.<sup>49</sup> The CPN-M also banned the practice of school officials soliciting payments from parents, imposed an alcohol ban in situations where teachers were often intoxicated on the job, and agreed to accept schools as zones of peace in some conflict-affected areas.<sup>50</sup> The MILF has actively encouraged children to attend government-run schools in the territory it controls,<sup>51</sup> while the Forces Nouvelles helped to keep arms away from schools by punishing any student found with a weapon.<sup>52</sup>

## Higher Education

It is not surprising that only the most State-like ANSAs have the capacity to provide higher education. Abkhazia reports that it operates 13 colleges with 1,733 students, and two universities with 3,778 students.<sup>53</sup> Somaliland has released a list of 17 accredited universities,<sup>54</sup> while in 2014, the Rojava Administration opened a university with law, sociology and history departments.<sup>55</sup> IS eliminated the faculties of archaeology, fine arts, law, philosophy, political science, sports, tourism and hotel administration at the University of Mosul, and cancelled classes involving human rights and democracy. Male teachers are not allowed to teach female students. Students are allowed to travel outside of IS-controlled territory to take final exams if they pledge before a religious court that they will return back to Mosul and not join Kurdish Peshmerga or Iraqi Army forces fighting against the Islamic State.<sup>56</sup> In other situations, ANSAs

facilitate scholarships for students to attend higher education institutions outside of their territory. The Polisario Front states that it provides scholarships for university study abroad, mainly in Algeria, Libya, Spain and Cuba.<sup>57</sup> UNITA sent dozens of students to universities abroad to study at medicine, engineering, and agricultural faculties.<sup>58</sup> The MILF procures scholarships abroad for young Moros in Islamic studies and jurisprudence. Villages without an imam, or in need of a teacher, can appeal to the MILF, who can often sponsor such personnel.<sup>59</sup> Accreditation is also an issue with higher education. The DPR claims that it is “the name of the university and not the State that stamps the degree that matters,” while trying to get Russia to recognise degrees from these universities.<sup>60</sup>

## Quality of Education

Not much is known about the quality of ANSA education. At one end of the spectrum, parents with little or no training act as teachers.<sup>61</sup> At the other end, Hizbollah school tuition fees run close to 1000 USD/year and students score top marks on the national high school exam.<sup>62</sup> In the Ivory Coast, at the time the Forces Nouvelles cooperated with national authorities on education, the pass rate for the baccalaureate was 30% in rebel controlled areas compared to 40% in government-controlled areas, while the pass-rate for the exam for 13 year olds was slightly higher in rebel-held areas than in government-controlled regions.<sup>63</sup> The DPR Minister of Education justified the move to Russian curriculum by stating that the “Russian Education system is one of the world’s best”.<sup>64</sup> Parents of children attending MNSP and KNU reported that they felt their children were receiving an acceptable level of quality education.<sup>65</sup> There is little evidence on the extent to which ANSA-provided education is consistent with international norms. We have seen above that ANSAs sometimes fill gaps in the right to education. MILF has taken measures to ensure that children have access to religious education, while many of the Burmese ethnic ANSAs and the Rojava administration provide education in native languages. On the other hand, ANSAs have also implemented measures contrary to international standards. For example, IS has removed courses dealing with human rights.

## ANSA Challenges in Ensuring Education

Some ANSAs have been vocal in expressing the challenges faced in their efforts to ensure education. The most consistent challenge in their view is the lack of support from the international community. The KNU has requested the UN, international non-governmental organisations (INGO) and non-governmental organisations (NGO) to support their work through the provision of education material.<sup>66</sup> The Polisario Front says it is especially difficult to find funding for educational programs.<sup>67</sup> Access to qualified teachers is another challenge. SPLM-N states that most of its teachers come from neighbouring Kenya, Uganda and South Sudan (see above re curriculum), and after the escalation in hostilities in 2011, teachers have fled and not returned.<sup>68</sup> As a barrier to education, enemy attacks on schools have also been widely reported. The Rojava Administration reports that in its Kobane canton, over 300 schools have been destroyed in the conflict with IS.<sup>69</sup> Prior to its ceasefire, KNU reported that it must move schools when they are attacked by government forces, and sometimes schools have had to move more than three times in a year.<sup>70</sup> According to the KED Secretary, “They burned, we built. They came back to destroy, we rebuilt. ... We kept them busy.”<sup>71</sup>

## ANSA Cooperation with Aid and Donor Agencies

Many ANSAs accuse international organisations of lack of cooperation out of deference to the wishes of opposing governments. JEM “regrets the failure of UNICEF and others to obtain permission from the Government to visit JEM-held areas and appeals to all to facilitate the free movement of all organizations working for the protection of children in conflict zones,” further stating that “International organizations working in this field are reluctant to work with JEM as that will jeopardize their dealings with the Government of Sudan.”<sup>72</sup> The KNU has called on the UN to pressure the Myanmar government to allow the UN and INGOs to visit KNU areas in order to work towards a child protection action plan.<sup>73</sup>

However, there is evidence of cooperation. In the historical context, the SPLM in Sudan worked with several relief organisations, including the Jesuit Refugee Service, International Aid Sweden, Across and UNICEF [United Nations Children’s Fund] towards developing an education system in the territory under their control. The JRS program alone resulted in 40,000 children in primary and secondary school in SPLM territory.<sup>74</sup> The LTTE signed an Action Plan with the UN, which although oriented towards the ending of recruitment and use of children in hostilities, included education as one of 11 sub-projects to be led and implemented by UN agencies and by international and national NGOs.<sup>75</sup> Non- or partially recognised States often have good cooperation with the assistance organisations. Abkhazia reports that in 2008, there were 13 registered international organisations working on child security. Somaliland reports that the international community, particularly UNICEF and Save the Children, provide assistance on protecting child rights. Somaliland reports that it cooperates with different UN agencies like UNHCR and UNICEF on education. Another example is the NCSROF cooperation with Qatar in printing 2 million textbooks for Syrian children. For those 15 ANSAs who have signed the Geneva Call Deed of Commitment on children and armed conflict,<sup>76</sup> one of the specific undertakings is:

*To further endeavour to provide children in areas where we exercise authority with the aid and care they require, in cooperation with humanitarian or development organizations where appropriate. Towards these ends, and among other things, we will: i) take concrete measures towards ensuring that children have access to... education.”*

To date, there are no public sources making reference to such cooperation, though contacts have already been facilitated towards this end. Upswings in conflict have also seen a reduction in assistance. The SPLM-N claims that prior to escalation of hostilities in 2011, it was working with 10 international assistance organisations, but that eight of them have pulled out and not returned.

## Impact on Conflict, Peace and Transition

There are also examples of the impact of ANSA education provision on the complex dynamics of conflict, peace and transition. In Ivory Coast, when the Forces Nouvelles controlled the northern part of the territory, the government assured the estimated 6,000 teachers who had stayed on in the north that no charges would be laid against them if they returned, and called

on them to return to the south in order to receive their salaries.<sup>77</sup> This has been described as an ultimatum, and possibly one that backfired;

...what practically permitted the restoration of the educational system [in the rebel-held north] was not just the good will of many hundreds of civilians worried about their children's future but the intelligent instrumentalisation of the situation by the rebel leaders. The rebels sought simultaneously to improve their image internationally while casting the southern regime and its sympathisers in a negative light through accusations of the perpetration of an 'intellectual genocide' against northerners. Simply by providing minimal and inexpensive coordination among well-intentioned volunteers and parents raising funds at the neighbourhood level, a purely military rebel movement managed ultimately to raise its profile and set up a state-like administration in charge of primary and secondary education.<sup>78</sup>

The KNU is wary that education is being used as a stealth means of government infiltration. "That's the ticket in. To send the others, they start with education," says the KED secretary, referring to the situation under the ceasefire. "In the military, there's a demarcation line. If they cross it, they have to let us know ahead of time. But for education, that demarcation line doesn't exist."

## Negative Aspects: Attacks on Education and the Military Use of Schools and Universities

This section will briefly summarize and consolidate ANSA-related information on attacks on education and the military use of schools (see Methodology section).<sup>79</sup> It will focus on presenting available information that disaggregates between State and ANSA acts, and therefore does not purport to present a complete picture of ANSA practice.

### Attacks on Education

Generally, research indicates that ANSAs are greater violators than States as regards attacks on education. ANSAs are less likely to arrest, imprison and torture, and to attack higher education, while more likely to perpetrate abduction and attacks on government-run primary and secondary schools. ANSAs are implicated in attacks in Afghanistan, Colombia, Democratic Republic of the Congo (DRC), India, Libya, Palestine, Mali, Nigeria, Pakistan, the Philippines, Somalia, Syria, and Yemen. Higher education institutions have been attacked by Boko Haram in Nigeria and Al-Shabaab in Somalia, while FARC is accused of threatening university teachers in Colombia. Girls have been singled out. For example, Al-Shabaab and Boko Haram have kidnapped girls at schools, and the Pakistani Taliban have attacked girls en route to or from school, the case of Malala Yousafzai being the best known example. Teachers have been used as human shields by BIFF in The Philippines. The Ministry of Education in Gaza was using the armed wing of Hamas to train school children. In some cases, such as the Maoists in India and the Afghan Taliban, it is reported that schools are often attacked at night, specifically to destroy the infrastructure without harming the students.

ANSAs' attacks on education are particularly linked to motives such as enemy use of schools for military purposes, spreading fear among civilians, undermining government control over an area, preventing the education of certain groups such as girls, or reacting to perceived bias in education. Some also use the ransom of students or teachers to fund their activities. In Afghanistan, the Taliban claim to be motivated by a determination to end western or un-Islamic influence in schools, and in DRC, attacks were claimed to be ethnically motivated.

### Military Use of Schools and Universities

Between 2005 and 2011, ANSAs are alleged to have used schools for military purposes in 16 out of 24 conflicts, while States were implicated in military use in all of these conflicts. By 2015, this number has grown to disproportionately to 21 out of 26 conflicts, implicating 50 ANSAs. The countries where ANSAs used schools are Afghanistan, CAR, Colombia, Ivory Coast, DRC, Georgia, India, Iraq, Libya, Mali, Nepal, Nigeria, OPT/Israel, Pakistan, the Philippines, Somalia, Sudan, South Sudan, Syria, and Yemen. Using 2012 data, Ivory Coast, DRC, Libya, Mali and Somalia were the only countries where it was reported that ANSAs were predominately responsible for military use of schools. Universities were used by Al-Shabaab in Somalia and university residences were used by FRCI in Ivory Coast. ANSAs in Colombia, DRC, Mali, Somalia, Thailand and Yemen are reported to have recruited children from schools, in some cases using teachers as recruiting agents. While there has been no attempt to further disaggregate the type of military use undertaken by ANSAs, the following uses have been reported: barracks, firing positions, command posts, ammunition storage, child recruitment and using children to traffic narcotics. A researcher reports that FARC used armed cadres to accommodate volunteer mobile teachers who educate the rural populace. The practice began after paramilitaries bombed an education centre and left graffiti threatening all those who participated in activities with the FARC.<sup>80</sup>

## WHAT ANSAs SAY THEY WILL DO: DOCTRINE

Doctrine has been defined both as “a set of beliefs” and “that which is taught”. Both of these definitions are significant for understanding the importance of doctrine for ANSA compliance with humanitarian norms. First, when ANSAs make their beliefs and commitments known, they can be held accountable. Second, when ANSAs disseminate their beliefs and commitments within their ranks and institutions, such doctrine can be followed and implemented. ANSA doctrine is expressed inter alia through constitutions, codes of conduct, military orders, programs of action. It covers a wide range of issues towards compliance within the four As (available, accessible, acceptable and adaptable) of the human rights framework, as well as the religious dimensions of IHL standards. It promotes the right to education by improving access for girls, socially disadvantaged, children in remote communities, and adults. Only in rare cases, such as the Taliban and Boko Haram, is ANSA doctrine at odds with international standards.

Understanding the relevant doctrine of ANSAs is important for engagement actors and others trying to influence ANSA behaviour. Yet doctrine should not be mistaken for practice. We have already looked at what ANSAs do. In this section, we will look at what they say they will do.

### Provision and Facilitation of Education

- Encouraging or guaranteeing education

*The ONLF further pledges to actively encourage the establishment of local schools at the village level in Ogaden so that our children, who are currently denied access to education by the colonizer have the opportunity to become productive members of their community.*

- Political Program of the Ogaden National Liberation Front (ONLF)

*...take all necessary measures to assist child-rearing parents, to provide or permit schools and education for the children*

-Article V, Section 2, NDFP, Declaration and Program of Action for the Rights, Protection and Welfare of Children

*The rightful place of children, being in tender ages, must be in schools to prepare them for the future either as leaders of the community or as good, law-abiding, and productive members.*

MILF, Statement made during the Mindanao Interfaith Forum on Children “In the pursuit of peace for and with the children of Mindanao from the MILF perspective.”

*Children’s right to education will not be restricted*

-Article 6, Kurdistan Workers’ Party/People’s Defence Forces (PKK/HPG): To Geneva Call - rules for the conduct of warfare (2011)

*To make arrangements for children to receive compulsory primary education*

-Article 16, Child Protection Law of Tamil Eelem, 2006

*...we will take concrete measures towards ensuring that children have access to adequate... education.*

-Article 7, Geneva Call Deed of Commitment (14 signatories).81

- Free education

*All children have the right for education. Therefore the Tamil Eelam Education Department shall make arrangements to provide Primary Education free to all children."*

-Article 11, The 2006 Child Protection Law of Tamil Eelem

*The national policy is that primary education shall be free.*

-Article 15(7), Somaliland Constitution

*All persons have the right: to free and compulsory primary and secondary education.*

-Article 30, The Constitution of the Rojava Cantons

- Higher Education

*Higher education should be made available to all children in accordance with their own abilities and desires.*

- Article 17, The 2006 Child Protection Law of Tamil Eelem

- Vocational education

*Make education and vocational training accessible to all children on the basis of individual's knowledge, mental and physical capacity so as to raise their standards.*

- Article 11, The 2006 Child Protection Law of Tamil Eelem

- Adult education and literacy

*The eradication of illiteracy and the (provision) of adult education is a national obligation, and the efforts of the public and the state shall be combined to fulfil this obligation.*

-Article 15(6), Somaliland Constitution

- Gender

*To fight for women's right to education and strengthening her economic status*

-Section 12, article 6, SPLM-N Interim Constitution, October 2013

- Disabled and disadvantaged

*Children with physical, mental and psychological disorders have the right to free education and upkeep in all special educational establishments... Orphans and children deprived of parental care have the right to free education and activities in all state educational establishments till graduation, but not later than their 25th birthday.*

-Article 10, Law on the Rights of the Child, Transnistrian Republic of Moldavia

*Make vocational education and training available to the children who are physically and mentally handicapped.*

-Article 12, The 2006 Child Protection law of Tamil Eelem

*Take all necessary measures to encourage and help street or vagabond children to go back to school*

-Article 5, Section 2, NDFP, Declaration and Program of Action for the Rights, Protection and Welfare of Children

- Religious, Cultural and Language Education

*The learning of and training in the Islamic religion is a fundamental path and shall be compulsory at all levels of education. At the same time, the promotion of Koranic schools is the responsibility of the state.*

-Article 15(3), Somaliland Constitution,

*All communities have the right to teach and be taught in their native language.*

-Article 9, The Constitution of the Rojava Cantons

*Children can study in the state language or in any other language in the comprehensive schools*

- Article 10, Law on the Rights of the Child, Transnistrian Republic of Moldavia

- Physical Education

*In order to ensure a healthy physical and mental growth of the young, and to improve their wellbeing and maturity, the state shall give special attention to the promotion and encouragement of physical education and sports which will be recognised as one of the basic subjects in the educational curriculum of both state and other schools.*

-Article 15(8), Somaliland Constitution

- Truancy and attendance

*Take measures to encourage regular attendance at schools and to reduce the drop-out rates and take appropriate measures to improve discipline in the school... to avoid making them work at home during school hours and higher education times...*

- Articles 15 and 16, The 2006 Child Protection law of Tamil Eelem

- Democratic, human rights, and/or revolutionary values

*They shall take all efforts to educate the children on the revolutionary history of the Filipino people, the basic problems in a semicolonial and semifeudal society and the revolutionary tasks of the people.*

-Article V, Section 3, NDFP, Declaration and Program of Action for the Rights, Protection and Welfare of Children

*The education system of the Autonomous Regions shall be based upon the values of reconciliation, dignity, and pluralism. It is a marked departure from prior education policies founded upon racist and chauvinistic principles...The education system, public service channels and academic institutions shall promote human rights and democracy.*

-Article 91, The Constitution of the Rojava Cantons

- Cooperation with Assistance Providers

*The organizations [NGOs] that come to the country are tools of the infidels. In the guise of serving, they are destroying Islam, so all their activities are banned, whether it is [building] roads or anything else, or clinics or schools or a madrassa or anything else.*

-Taliban Code of Conduct (2010)

The NDFP and the United Nations Secretary-General (UNSG) Special Representative on Children and Armed Conflict cannot at this point establish and develop positive and productive relations because of the baseless and unwarranted vilification and listing of the NPA as child rights violators in the annual report of the UNSG. So long as such vilification and listing of the NPA persist, the NDFP finds it more useful to cooperate with other UN agencies like the UNICEF in upholding the rights of children, protecting them and looking after their welfare.

-Article 6, Section 6, NDFP Declaration and Program of Action for the Rights of Children

## Protecting Schools

*DO NOT* harm cultural, educational and religious buildings and historic sites unless Qadhafi forces are using them for hostile purposes, and such harm is absolutely necessary.

- National Transitional Council/Free Libyan Army (NTC/FLA): Frontline Manual (2011)

*If a school fails to heed a warning to close, it must be burned. But all religious books, for the sake of respecting them, must be secured beforehand.*

-Article 26, Taleban Code of Conduct (2010)

*In order to shield them from attacks by armed groups [the ELN/civil society/National Peace Committee] will proceed, with the civil society leadership and coordination of the Attorney General's Office and the Office of the Ombudsman, to identify and demarcate all goods protected by IHL, such as... Schools.*

- Puerta del Cielo Agreement between the Ejército de Liberación Nacional (ELN), civil society and the National Peace Committee

## Military Use of Schools and Universities

*to refrain from endangering the safety of civilians by intentionally using them as "human shields" or by using civilian facilities such as hospitals or schools to shield otherwise lawful military targets*

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

*[Both sides] agree to immediately put an end to such activities as capturing educational institutions and using them, abducting teachers and students, holding them captives, causing them to disappear, and not to set up army barracks in a way that would adversely impact schools and hospitals.*

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

*...we will...avoid using for military purposes schools or premises primarily used by children.*

Geneva Call Deed of Commitment, (14 signatories)

## WHAT ANSAs ARE OBLIGED TO DO: NORMATIVE FRAMEWORK

The Westphalian legal order assures that while all States are equal, there is no room for non-State actors at the table. In the meantime, the world has changed. If Walmart were a country, it would be the world's 25<sup>th</sup> richest. If the Islamic State were indeed a State, it would be more powerful than many others. International law is slowly but surely catching up.

The 1949 Geneva Conventions were the first international treaties to create obligations on non-State actors - in this case ANSAs - albeit applying only a fraction of IHL. Additional Protocol II of 1977 extended the scope of coverage, including the obligation for ANSAs who control territory to ensure children receive education. Customary IHL has subsequently expanded to close the gap between the law of international armed conflict (IAC), which only applies to wars between States, and non-international armed conflict (NIAC), which applies to wars between States and ANSAs, or between different ANSAs. An underlying feature of IHL is the equality of belligerents principle, meaning that the law applies equally to all parties, no matter who is the 'good guy' or 'bad guy'. During the 1990s, international criminal law (ICL) also developed to criminalize individual acts in NIAC such that it is now a crime for a member of an ANSA to intentionally attack schools and civilians.

The most recent and controversial evolution is the application of human rights law to ANSAs. Human rights law requires duty bearers to respect (do not - negative obligation), protect (take measure to ensure others do not - positive obligation), and fulfil (do - positive obligation). While an emerging consensus considers ANSAs who control territory to have certain human rights obligations, it remains uncertain what these obligations would actually be in practice. The Office of the UN High Commissioner for Human Rights (OHCHR) has adopted a progressive position, stating:

It is increasingly considered that under certain circumstances non-State actors can also be bound by international human rights law and can assume, voluntarily or not, obligations to respect, protect and fulfil human rights.<sup>82</sup>

This notion of a duty on ANSAs to fulfil human rights is a sensitive area as it goes to the heart of the sovereign domain of the State, which is to provide law, order and services. Many of those who oppose the application of IHRL to ANSAs do so under the rationale that it would be undermining the authority of the State. The opposing view is that focus should be on the right holder rather than the duty bearer, so if ANSAs are the *de facto* authority, they are the ones who must ensure those rights. The dilemma is greater in IHRL because the scope of rights is significantly broader than the basic provisions of the law of NIAC—duty bearers have obligations towards ensuring education under both legal regimes.

The UN Security Council recognizes armed conflict as an exceptional situation where the State is not the sole primary duty bearer with respect to protection, and contemplates a positive role for ANSAs towards affected populations:

The Security Council reaffirms that parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of affected civilians and urges parties to armed conflict to meet their basic needs, and give attention to the specific needs of women and children...<sup>83</sup>

This view is taken even further by the Under-Secretary General for Humanitarian Affairs and Humanitarian Relief Coordinator: “International law is clear: parties to conflict are responsible for meeting the basic needs of persons under their control.”<sup>84</sup>

A comprehensive analysis has not been undertaken, however, and there is a dearth of policy specifically on ANSAs and the provision of education. The Special Rapporteur on the Situation of Human Rights in Sudan, prior to the independence of South Sudan, “urged the SPLM to actively take responsibility to meet the needs of the people living in areas under its control, including in terms of health and education, particularly where peace has been established.”<sup>85</sup>

## The Relevant Law<sup>86</sup>

This section will take a summary look at how IHL (specifically NIAC),<sup>87</sup> IHRL and ICL deal with ANSAs on the protection of education. The table below employs a traffic light analogy to summarize how adequately the law applies.

*Table 2: The Coverage under International Law of the Protection of Education by States and ANSAs*

| Law  | When                               | Who                | What  |
|------|------------------------------------|--------------------|---|
| IHL  | armed conflict                     | -States<br>-ANSAs  | -attacks<br>-military use<br>-ensure education for children               |
| IHRL | all times                          | -States<br>-ANSAs? | -attacks<br>-military use<br>-respect, protect, fulfil right to education |
| ICL  | -armed conflict<br>-widespread act | individuals        | -attacks  |

Explanatory Note: Green cells indicate full coverage of the particular branch of international law. Yellow cells indicate partial coverage. As all of the horizontal rows have at least one yellow cell, the table indicates that no branch of international law obliges ANSAs to fully protect education for all persons in all circumstances.

The table shows that the law is like a child’s favourite blanket—a patchwork quilt with some holes in it. While IHL imposes obligations on ANSAs, it only applies during armed conflict, which in NIAC requires the ANSA to meet a threshold of organisation and involvement in protracted armed violence against opposition forces. ICL creates individual criminal responsibility for ANSA members, but only for a limited range of offences committed in

relation to an armed conflict or otherwise as part of a widespread or systematic attack. It is often pointed out that the wide berth of IHRL fills many gaps of IHL. That may be fine for States, but for ANSAs, the extent of the application of IHRL remains unresolved. The fog of law is the most dense when it comes to ANSA's exercise of State authority and regulation, such as detention, judicial process, and the provision of services such as education. An expert commentator has pointed out:

No rules have been developed to govern the territory under the control of an ANSA in a non-international armed conflict in terms of positive obligations; yet there are many situations where ANSAs with a political structure control and even administer sizeable parts of territory.<sup>88</sup>

However, many ANSAs have made commitments on education (see What ANSAs Say They Will Do section above). Unilateral undertakings of ANSAs or their agreements with States indicating willingness to be bound have in some cases been interpreted to establish human rights obligations on such ANSAs.<sup>89</sup> Even if such undertakings do not create legal obligations, they do at least contribute to normative standard-making.

## Attacks on Education

The negative obligation on ANSAs to refrain from intentionally or indiscriminately attacking education is relatively straightforward. Intentional violations constitute an international crime in armed conflict.<sup>90</sup> Students, teachers, parents and support staff are protected from attack and the threat of attack as long as and for such time as they do not directly participate in hostilities. Schools, materials, facilities and transports are protected as long as they are not used for military purposes. Protections can be put into jeopardy for example, in the following cases:

- Schools are used by State armed forces for barracks, military training, storage of military equipment, or for military communication.
- Teachers extract tactical military information from children whose parents are ANSA members and supply it to State authorities.
- State armed forces are used to guard schools.

Collateral damage to education is prohibited where the expected damage is excessive to the expected military advantage, but in any event ANSAs must take precautions to avoid or minimize collateral damage when carrying out operations on legitimate targets in the vicinity of schools.<sup>91</sup> The 2015 Guidelines, which are consistent with international law and apply to States and ANSAs, advise that schools and universities must never be destroyed in order to deprive the opposing party of future use, and that feasible alternatives to attack should be considered when the opposing party has converted a school into a military objective.<sup>92</sup>

## Military Use of Schools and Universities

There is no absolute international law prohibition on the use of schools and universities for military purposes. Under IHL, ANSAs must take feasible positive measures to ensure their own military assets are separated from education facilities.<sup>93</sup> The duty to protect and fulfil the human right to education, if applicable, would impose even more restrictions. Among other things, the 2015 Guidelines advise that functioning schools should not be used in support of

the war effort in any way; abandoned schools should only be used if no feasible alternative is available; fighting forces (e.g. the armed wing of an ANSA) should not be used to provide security for schools unless alternative means are unavailable.<sup>94</sup> It is not an international crime to use a school or university for military purposes, but pillage or seizing the property of an adversary - unless imperative military necessity demands - does amount to a war crime.<sup>95</sup>

## Ensuring Education

The law of NIAC requires ANSAs who control territory to ensure children are provided with the aid and care they require, which includes ensuring that children receive an education, including moral and religious components, in line with the wishes of parents or guardians.<sup>96</sup> This entails an obligation to either provide or facilitate provision by others, such as the State or relief organisations. It also entails an obligation to take feasible measures to ensure that children's education is protected from enemy interference. ANSAs without territorial control must allow access to education.<sup>97</sup> The age of children is not defined by IHL, but the individual needs of children should be taken into account. IHRL - to the extent it is applicable - would extend obligations towards ensuring at least the most basic forms of education, which would include providing primary education for all, as well as conditional secondary and higher education.

... education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms...[E]ducation shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.<sup>98</sup>

Fundamental education should be made available for those who have not received or completed primary education. The core components of education are contained in the four 'As' framework of availability, accessibility, acceptability and adaptability.<sup>99</sup> The MDGs and the Sustainable Development Goals refer to "inclusive and equitable quality education" and "life-long learning opportunities for all." Therefore, the human rights dimension builds upon IHL by adding the obligation towards adult basic education, as well as towards a greater range of standards.

## THE INTERNATIONAL RESPONSE

The first part of this section will look at a selection of international norms and policy provisions relevant to the engagement of ANSAs in general and education specifically, while the second part will look at the relevant practice of international humanitarian actors. While the work of national actors is beyond the scope of this Background Paper, their work is crucial in ANSA engagement and should not be overlooked in response strategies

### A LOCAL INITIATIVE ON CHILD PROTECTION ENGAGEMENT OF ANSAs

Local actors are also extremely valuable engagers of ANSAs, and a key part of the overall engagement framework. While it goes beyond the scope of this study to include local actors, the following example is given to highlight the importance of their role.

#### Human Rights Institute of Burma (HREIB)

HREIB engages with ANSAs to foster their adherence to legal standards and norms against using and recruiting child soldiers. At a time when international actors had very limited access inside ethnic-controlled areas of Myanmar, and when the UN was prohibited from engaging with ANSAs, HREIB was engaging ANSAs directly and even soliciting commitments from some. Eventually HREIB began working with Geneva Call in a coordinated and strategic partnership to maximise the comparative advantages of the local actor and the international actor. While Geneva Call brought international attention and specialization, HREIB had much greater access to remote areas and was able to approach ANSAs from a local perspective, with local understanding, using local messaging and persuasion techniques. HREIB reports that since training members of the Kachin Independence Army (KIA) some significant changes in their policies regarding child protection have been seen.

## Norms and Policy

### Multiple Duty Bearers, State Sovereignty and Humanitarian Action

The normative backbone for humanitarian action in NIAC, known as the right of initiative and enshrined in the Geneva Conventions, is that impartial humanitarian bodies may offer their services to State or non-State parties to conflict.<sup>100</sup> In areas where ANSAs are in control of border regions, legal experts disagree as to whether acceptance by an ANSA of the offer of services by an impartial humanitarian organisation is sufficient, or whether the State itself also needs to consent. The answer may be different for UN and non-UN actors, and may be influenced by UN Security Council decisions.<sup>101</sup> No such right of initiative exists in situations short of armed conflict where ANSAs control territory.

In line with the normative framework regarding both ANSA responsibilities and humanitarian response, the UN Office for the Coordination of Humanitarian Affairs (OCHA) has stated:

*In situations of armed conflict, all parties to the conflict are responsible for ensuring that the civilian population is respected and protected. This includes ensuring they are spared the effects of fighting and have access to food, medical services and other basic needs. When national authorities or non-state parties to conflict*

*are unable or unwilling to meet these obligations, humanitarian organizations may undertake complementary activities to ensure the rights of the affected population are upheld. This may be done by directly assisting the affected population or through action, including advocacy, to enable or encourage the primary duty-bearers to meet their obligations.*<sup>102</sup>

OCHA's policy position clearly recognizes the existence of multiple duty bearers in situations of armed conflict as an exception to the general rule of the State as primary duty bearer. It mandates a humanitarian response to either replace or support activities of ANSAs aimed at securing rights and meeting basic needs of affected populations. Yet such clarity is confused by a landmark UN General Assembly (UNGA) resolution on the strengthening of humanitarian assistance, where the UNGA makes no distinction between armed conflict and disaster response (noting that the use of the term 'other emergencies' below is interpreted to refer to armed conflicts):

Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory.<sup>103</sup>

The Resolution further states that impartial humanitarian organisations should "supplement national efforts". There is no reference to differing paradigms between natural disasters and armed conflict, the humanitarian right of initiative, or to the responsibility of ANSAs in situations of armed conflict. According to the UNGA, the State remains firmly in the driver's seat for humanitarian response, even with respect to populations living in areas controlled by ANSAs. It is difficult to reconcile these two policy positions.

While the above contradiction is relevant to all humanitarian action vis-a-vis ANSAs, the positive aspect of ensuring education is particularly challenging from a response perspective. Traditionally, education has not been established as a basic need, even though ensuring education (for children of an undefined age only) is a responsibility of all parties to conflict under IHL.<sup>104</sup> The result is that the positive aspect of ensuring education has not always been considered as part of humanitarian response<sup>105</sup> - unlike the negative aspects of protecting education, which are considered part of general protection response. Recent years, however, have seen an affirmation of the humanitarian component of education, with the inclusion in 2006 of education as an IASC Cluster. Ensuring education is now considered a humanitarian activity from two policy perspectives: first, in its own right towards securing the fundamental right to education, and second, as a protection activity, to shelter children from the consequences of armed conflict.

## Protection of Civilians

The United Nations Security Council in its Resolution 1894 (2009) has called upon all parties concerned "to seek, where appropriate, support from United Nations peacekeeping and other relevant missions, as well as United Nations Country Teams and the International Committee of the Red Cross and, where appropriate, other members of the International Red Cross and Red Crescent Movement, on training and awareness raising on international humanitarian, human rights and refugee law."

In reports on the Protection of Civilians in Armed Conflict, the UN Secretary-General has adopted 'enhancing compliance by [ANSAs]' as one of five core challenges towards the

protection of civilians. He has “emphasized repeatedly the need for consistent engagement with [ANSAs] to seek improved compliance with international humanitarian and human rights law.”<sup>106</sup>

Principle 5 of The Minimum Standards for Child Protection in Humanitarian Action includes:

In some contexts, an armed force or group or non-state actor may be the *de facto* authority. Where relevant, possible and appropriate, neutral and impartial organisations with the right expertise can discuss child protection issues with such groups, including the legal obligations of the group in relation to child protection, and their role in the practice of child protection.

The same Principle also warns to “avoid the creation of parallel structures, such as agency-based staff that replace or bypass government- or community-employed social workers”, without reference to the potential for multiple duty bearers in situations of armed conflict or where ANSAs control territory.

## Education-Related Aspects

In 2011, UNICEF adopted the Programme Guidance Notes on Engaging with non-State Entities in Humanitarian Action, which cites UNICEF’s programmatic objectives in humanitarian action as a strong rationale for engagement with ANSAs.<sup>107</sup> It states that “where [ANSAs] control populations and territory, engaging with them is in certain contexts critical to delivering on UNICEF’s mandate and ensuring achievement of the Core Commitments for Children in Humanitarian Action. Commitment 2 reads: “Children, including preschool-age children, girls and other excluded children, access quality education opportunities.”<sup>108</sup> The Guidance Notes also justify ANSA engagement as “UNICEF’s mandate correlates closely with the Millennium Declaration and the Millennium Development Goals, specifically promoting universal primary education (Goal 2)...” further clarifying that the “MD and MDGs apply equally in peacetime and in armed conflict.” Moreover, the Guidance Notes stress that “[t]he negative consequences of non-engagement - children without access to basic social services or the victims of persistent grave violations of their rights – outweigh the risks of engaging with armed non-state entities.” However, the Guidance Notes also state that UNICEF must act as part of the UN system and the Monitoring and Reporting Country Task Force (see below), and thereby only exceptionally should UNICEF act unilaterally in engaging ANSAs.

The UN Special Rapporteur on the Right to Education is subject to the 2008 Manual of Operations of Special Procedures Holders. The Manual states that non-State actors, including ANSAs, may be “relevant interlocutors in the quest to restore respect for human rights” and that “it might thus be appropriate for mandate-holders to engage in a dialogue with such actors.” Direct engagement by Special Mandate Holders may take place in the concerned State where there is a peace process, cease-fire, or where the ANSA *de facto* controls territory. Otherwise, contact should take place outside of the concerned State but should not appear clandestine. The Office of the High Commissioner for Human Rights will encourage engagement where appropriate.

The Monitoring and Reporting Mechanism on children and armed conflict (MRM)<sup>109</sup> is derived from a series of Security Council resolutions that mandate the UN Secretary-General to list

State and non-State parties to conflict responsible for grave violations, including recurring attacks against schools. The violation is interpreted broadly to include attacks or threats of attacks on persons and objects associated with schools, and the MRM is to further report on military use of schools, although is it not a 'listable' violation.<sup>110</sup> The relevant Guidance Note,<sup>111</sup> issued in 2014, states that ANSAs must comply with IHL, and that they "should respect human rights and not interfere or obstruct in any way in the enjoyment of human rights, including access to education." (p.16). The Guidance Note also provides advocacy points for all potential engagement actors before or during Action Plan (AP) negotiation. Parties listed as violators under the UNSC MRM process must enter into and comply with APs in order to get de-listed. Country Task Forces on Monitoring and Reporting (CTFMR), which may include UN and non-UN agencies, are established in relevant countries, where it is the role of the CTFMR to establish dialogue with listed ANSAs. However, any engagement of ANSAs must be with the consent of the concerned State.<sup>112</sup> The Guidance Note includes an Action Plan template, which states, "This draft Action Plan template relates to both Government armed forces and non-State armed groups. Some of the provisions, however, may differ, as Governments have a higher threshold of responsibilities, which needs to be reflected as such." Article 4.2, which does not distinguish between type of actor (i.e., State or non-State), reads:

The CTFMR, in cooperation with the Government/[armed group] and relevant international and national child protection partners, commits to support the day-to-day implementation of the Action Plan by providing technical expertise and supporting programmatic initiatives ensuring children's right to education and health care, including through assisting in the provision of remedial and alternative schooling and health care, de-militarization, rehabilitation and reconstruction of schools.

This means that in APs signed with ANSAs listed as violators for recurring attacks against schools, the CTFMR would commit to work with them on ensuring education.

The Recommendations of the Committee on the Rights of the Child on Education in Emergency Situations recognize ANSAs' role in ensuring education.<sup>113</sup> Before issuing recommendations on Education in Emergencies, the Committee made the following qualification as to whom the recommendations are addressed:

*Par. 26...The Committee recalls that the purpose of the 2008 Day of General Discussion is to provide States and other actors with more comprehensive guidance as to their obligations to promote and protect the right to education as outlined in articles 28 and 29. Therefore the following recommendations are addressed not only to States parties but also to other relevant actors including non-State actors who may have de facto control over areas in which the inalienable rights of the child, including his/her right to education, must be respected, protected and fulfilled.*

There are two points of interest in the statement. First, the Committee is clear that the recommendations are addressed to ANSAs. Second, the Committee takes a similar approach to that of OHCHR, in explicitly stating that ANSAs who control territory must not just respect, but also protect and fulfil the right to education. Nevertheless, the recommendations themselves are framed in State-centric terms. And the Committee does not give any indication in the recommendations themselves as to how they may be adapted for the specific circumstances of ANSAs.

Through the Geneva Call Deed of Commitment on Children and Armed Conflict, ANSAs who exercise authority over children have the opportunity to publicly commit to take concrete

measures, in cooperation with humanitarian and development actors, towards ensuring that children have access to adequate education.<sup>114</sup>

The Commentary on the Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict note that the 2015 Guidelines invite State and non-State parties to adopt them, and includes ANSA practice in its Examples of Relevant Domestic Law, Guidance and Practice section.<sup>115</sup>

## Education Sector

Within the education sector, there is little evidence of nurturing ANSAs' role in ensuring education. Policy and response are generally directed towards the State, or towards actors working with States, without considering a role for ANSAs in specific circumstances of armed conflict and/or where they control territory. In describing its mandate, the Education Cluster states that it "serves to strengthen the capacity and preparedness of the humanitarian personnel and government authorities to plan, coordinate and manage good quality educational programmes in emergencies."<sup>116</sup> Moreover, the Education Cluster does not mention ANSAs in the list of stakeholders (Governments, humanitarian agencies and donors) who have 'an important responsibility' in recognizing the right to education and ensuring the provision of education in humanitarian response.<sup>117</sup> The Inter-Agency Network for Education in Emergencies (INEE) Minimum Standards for Education (MSE) also demonstrate a State-centric approach. First, the MSEs declare that providing quality education to all is the primary responsibility of the 'national' authorities. Second, reference is made to working with 'national' authorities towards social transformation. The consistent reference to 'national authorities' or 'education authorities' (the latter by definition in the MSEs is explicitly linked to governmental agencies) may be contrasted to other instruments such as the Guiding Principles on Internal Displacement, which make a conscious use of the term 'authorities' without qualification (unless specifically indicated) to take into account the possibility of application to ANSAs that control territory.

While the Sustainable Development Goals do not address ANSAs, the education standard contained in [draft] Goal 4 is to "ensure inclusive and equitable quality education and promote life-long learning opportunities for all."

## Counter-Terrorism Measures and Humanitarian Action<sup>118</sup>

Counter-terrorism measures imposed by the UN, regional organisations, and States have had an increasingly significant impact on the ability of humanitarian actors to engage ANSAs, amounting to what had been described in an IASC-commissioned independent study as a "chilling effect".<sup>119</sup> UN Security Council Resolution 1373 (2001) orders States to implement measures to suppress terrorist acts within their jurisdiction. In 2012, the Financial Action Task Force (FATF) issued Recommendation 8, warning that the non-profit sector is particularly vulnerable to being abused for the financing of terrorism, and recommending that States review the adequacy of relevant laws. Many States and the European Union have created so-called "terror lists" of proscribed organisations and individuals to whom it is unlawful to provide material support or actions for their benefit. Several ANSAs and their members appear on such lists. For example, the United States has criminalized activities such as training listed ANSAs on their obligations to respect IHL,<sup>120</sup> and the United Kingdom has made it a crime

to be present at locations where terrorist training takes place.<sup>121</sup> With respect to the former, criminal liability is attracted even for persons who are not normally under the jurisdiction of the United States. Travel bans and economic sanctions have been put on ANSA members responsible for education; for example, Canada has imposed bans on the Minister of Education of the DPR.<sup>122</sup>

Many donors have begun to impose restrictions that can be specific towards a certain ANSA, or general obligations of 'enhanced due diligence'. These may require grantees to vet partners and sub-partners, and track the use of their funds. For example, one such clause requires grantees to 'take all reasonable steps to minimise knowing and voluntary payments or any other benefits to al-Shabaab, or to entities controlled by al-Shabaab, or to individuals acting on behalf of al-Shabaab', including fees at roadblocks and other transit points, 'purchases or procurement of goods or services, and payments to al-Shabaab'.<sup>123</sup>

Some policy efforts have been made to attempt to limit the reach of counter-terrorism measures. In his 2012 *Protection of Civilians* report, the UN Secretary-General has "stressed ongoing concern about counter-terrorism legislation and other measures that criminalize the engagement of humanitarian organizations with certain non-State armed groups or that otherwise impede principled humanitarian action."<sup>124</sup> The FATF has also recognized in a 2013 report that NGOs can play a role in preventing the causes of radical ideology and can be 'potential allies in the fight against terrorism'.<sup>125</sup>

## International Response in Practice

*Note that the following section is partly based on anonymous interviews (see Methodology section). Agencies are only named when information comes from public sources.*

It is beyond the scope of the Background Paper to conduct a comprehensive mapping of international response in practice.<sup>126</sup> However, what is indicated by the literature review and anonymous interviews is that there is more activity aimed towards ANSA compliance with the negative aspects of protecting education than collaboration towards the positive aspects. In fact, many respondents reported that working with ANSAs to ensure education is simply not on the radar screen. Others questioned whether the principles of impartiality and neutrality really exist in a State-centric education paradigm, and therefore the extent to which it is possible to work with ANSAs on education provision. For those mechanisms and activities that do exist, there is little evidence of progress.

Many UN and non-UN agencies reported engagement of ANSAs on the negative aspects. Such engagement was often *ad hoc*. In Ivory Coast, a UN Child Protection Advisor used the MRM findings as a baseline to negotiate with an ANSA. Commanders were willing to attend trainings and sensitization on international standards out of fear of sanctions or arrest. As a result, only 5 out of 45 schools remained occupied.<sup>127</sup> In Nepal, negotiations with CPN-M towards establishing schools as zones of peace were conducted by Save the Children through local intermediaries. The DRC Education Cluster - according to one respondent at the 'prompting' of the respondent's agency - has been successful in engaging in dialogue with armed groups in part because it is not an NGO or a UN agency.<sup>128</sup> One respondent reported on direct dialogue on attacks on education with representatives of BRN-C in Southern Thailand and Naxalites in India, as well as military use of schools with the Syrian National Council (what is

now the NSCSROF/FSA) and ANSA representatives in Yemen. In almost all of these cases, the respondent believes ANSA reaction was genuine and more than ‘just lip service’. Another respondent noted that it had experience in working with urban gangs in Colombia and Brazil towards respect of schools.

In some cases, ANSA engagement was planned and systematic, although usually as part of a training programme for broader protection of civilians. This is the case for the ICRC. Geneva Call has produced training material geared towards ANSAs that includes protection of schools components, including videos, booklets and an interactive quiz.<sup>129</sup> Geneva Call also convened a session to introduce and discuss the Guidelines on the Military Use of Schools and Universities with representatives of 35 ANSAs from 14 countries at its meeting of signatories in 2014.<sup>130</sup> In CAR, one respondent reports that protection training of ANSAs, including attacks on education, was ‘even in the budget line.’”

As has been seen in the ANSA practice section, much of the reported cooperation with ANSAs on positive norms is historical and/or with non- or partially recognized States. UNICEF and several NGOs were engaged with SPLA prior to the independence of South Sudan.<sup>131</sup> In the case of UNICEF, this included peace-building reforms in education, as well as structural capacity, building of the Secretariat of Education.<sup>132</sup> In Somaliland, Save the Children has implemented its education programme in close consultation with the Ministry of Education, with the objective of transferring capacity towards a future national government.

There is no indication that the Special Rapporteur on the Right to Education (SRRE) has attempted to engage ANSAs on education issues, beyond noting in a 2008 report on *Education in Emergencies*, that Additional Protocol II is ‘of utmost relevance today,’ as it covers the actions of non-State armed groups’ and establishes the right to receive an education. However, to the extent that recommendations address ANSAs, it is focused mostly on accountability mechanisms rather than any calls towards engagement.<sup>133</sup>

While six ANSAs are listed for attacks on schools/hospitals violations in the 2014 UNSG Report on Children and Armed Conflict, no Action Plans (APs) have been signed on this violation. Previously, the UN entered into an AP with the LTTE which, while focused on their listing for recruitment of child soldiers, did address education provision. Education was one of 11 sub-projects to be led by, and implemented by, UN agencies, international and national NGOs, in cooperation with the LTTE Education Society and the Tamils Rehabilitation Organisation (TRO), a LTTE-oriented NGO.<sup>134</sup> A review of the AP implementation gives mixed results on the education component. While it questions to what extent the interventions were based on need, it does point to significant achievement in catch-up education for children who missed school as a result of the conflict, to success in *back-to-school* campaigns jointly conducted with the LTTE Education Society, school reconstruction and meal provision for students.<sup>135</sup>

The Geneva Call Deed of Commitment on children and armed conflict has been signed by 14 ANSAs. To date, there are no public reports of initiatives on the education components. In spite of the State-centric focus of the INEE MSE, one respondent noted that they have been used with at least one non- or partially recognised State. Another respondent told of mediating between the State and an ANSA on the issue of payment of teachers in regions sympathetic to the ANSA.

## Evaluation of the International Response

Contradictions in the international framework regarding duty bearers and the right of humanitarian initiative in armed conflict make for a confused response towards ANSA engagement. In situations short of armed conflict, normative support for the right to engage ANSAs is non-existent, in spite of emerging view that ANSAs may be duty bearers. There is a significant deference to States, not surprisingly, when it comes to ANSA engagement. Two reasons are at play. First, as a political consideration, the notion of state sovereignty is so pervasive in the collective mind-set that the multiple duty bearer paradigm - no matter how legitimate - does not get much traction, even from humanitarians. Second, as a humanitarian consideration, States remain the ultimate gatekeeper for access purposes, and humanitarian organisations know that they risk having their operation shut down if they do not comply with State requirements. This is even true when ANSAs control border regions, as agencies that choose to initiate cross-border relief without the consent of the State will generally be considered *persona non grata* in areas of government control. A respondent noted:

We tend to say that we need to work with national systems. That is the general understanding. But we don't talk about the fact that where there are pockets of insurgents, working with national systems is really taking sides.

Not surprisingly, respondents expressed concern that engagement with ANSAs can have a negative impact on relations with the concerned State. UN agencies particularly feel constrained in their ability to interact. One respondent noted that senior staff have been issued with guidance clarifying that they are entitled to engage with ANSAs, but that in practice it would be difficult to do so without the consent or acquiescence of the concerned State. The dilemma is most acute in building capacity of ANSAs to provide social services such as ensuring education. A respondent noted, "if we provide capacity to ANSAs, we facilitate the transfer of authority away from the State, and the State would not be very happy." In fact, the Sri Lanka AP was a direct result of a peace process, and would likely not have been otherwise permitted by the government.

Several respondents admitted that when agencies talk about 'working with communities', in effect they are often working with ANSAs without admitting it. One said, "we go in and work with communities, but what does 'communities' mean?" This sentiment was supported by another respondent:

Nowhere in the education field is there a discussion about working with insurgents. It is assumed that if you are working in insurgent areas you are working with communities, using national standards. We need to have that discussion.

Others noted that local State administration in conflict areas is often associated with ANSAs, while it was also pointed out that ANSAs often control refugee camps in neighbouring States and teachers in such camps are often connected to ANSAs.

There is a perception that the humanitarian space to work with ANSAs is shrinking. Several respondents who have been in the humanitarian field for some time reflected that in the past, ANSA engagement - even towards positive norms - was more mainstream, for example in Ethiopia with the EPLF, and in Afghanistan following the Soviet intervention. One went so far as to say that, "in the past, UNICEF would say that the well being of children is the issue, so legitimacy concerns are irrelevant". Another noted that while in the past, communication with ANSAs on child protection was routine, now it is "only about access". Some noted that pressure also comes from donors to "not work in certain places". Security and fragmentation

of ANSAs was also given as a reason for this change.

Research shows that counter-terrorism measures have had an overall “chilling effect” on the willingness of humanitarian organisations to engage ANSAs.<sup>136</sup> While even engagement on negative obligations could create criminal liability under the United States legislation, capacity-building of ANSAs would expose organisations to even greater risk. Concern over donor or third-state restrictions was expressed in interviews. One organisation reported that it instituted a no-contact policy with Hamas after Hamas assumed control of Palestinian Authority institutions. The reason given was concern over counter-terror legislation and donor restrictions. The organisation could therefore not operate in Palestinian-operated schools, which fundamentally affected its programming.

Inclusive mechanisms and processes to engage ANSAs on education exist with respect to all components of the respect, protect and fulfil rights-based framework. On the negative aspects, MRM APs, the Geneva Call Deed of Commitment and the 2015 Guidelines all reach out to ANSAs. The inclusion of ANSAs in the practice section of the 2015 Guidelines is a model to be encouraged. More surprisingly, mechanisms have been created for positive aspects as well. The LTTE AP was an *ad hoc* agreement between the UN and an ANSA to cooperate on education provision. Its limited achievements represent a significant accomplishment under the circumstances. The MRM Model AP represents a significant step forward, as it institutionalizes a commitment from CTFMRs to provide technical expertise and support programmatic initiatives on education. However, it is only open for negotiation with ANSAs who are listed as violators. In theory, this raises questions, as violators have access to an assistance mechanism that compliant ANSAs do not. In practice, no APs have been negotiated, and it does not seem likely that any will be in the foreseeable future. The Geneva Call Deed of Commitment also strives to envision cooperation, but as it not an agreement with assistance organisations, it can only facilitate the process. The 2014 Meeting of Signatories was a milestone in that it provided the space for ANSAs to discuss implementation challenges, including specifically on ensuring education and use of schools, and in bringing humanitarian assistance providers in dialogue with ANSAs. Yet there is no evidence of the Deed of Commitment generating action on the provision of education by signatories. The Deed of Commitment also requires ANSAs to endeavour to protect education from enemy interference, and the MSCP, while not a mechanism for engagement, encourages humanitarian actors to engage ANSAs on their role in child protection.

The MRM has been plagued with criticism by ANSAs who are prevented from signing APs due to the objection of the concerned State. Moreover, findings of an internal UN study indicate that while the MRM has been successful with State violators, the greatest problem of the MRM is its inability to convince most ANSAs to comply.<sup>137</sup> One respondent stated that focus on creating APs with States takes away focus on the potential engagement of ANSAs. Another said that the MRM makes ANSAs more insular, as ANSAs will be suspicious of the motivations of humanitarians, which works counter to the need to build relationships with ANSAs. There is a sense among some relief workers of ‘being pushed’ into contributing to the MRM. On the other hand, some believe that the MRM has motivated ANSAs to improve their compliance.

In terms of other mechanisms, a respondent alleged—a point supported by the Manual of Operations of Special Procedures Holders—that the current SRRE mandate holder could be more active regarding ANSAs but does not want to ‘rock the boat’ vis-a-vis States. Another suggested that the MSEs are relevant for ANSAs, and can be used for self-assessments, rapid needs assessments, teacher training/professional development, and even ‘law’ development. However, the exclusive language is not ANSA engagement-friendly, and there has been no

effort to promote the use of the MSEs with ANSAs.

Several respondents noted that their organisations are struggling with developing internal policy on ANSA engagement. As one respondent put it, they would like to see greater clarity of expectations and approach, and to be more systematic, as generally responses are *ad hoc* and dependent on personalities. The issue has often been on the table for several years without definitive outcomes. Another said that there is a need for internal discussion on how to not be seen as favouring one side in light of security and operational concerns. Respondents were almost unanimous in their interest to participate in a global discussion on both the negative and positive aspects of ANSA impact on education. One respondent justified the need for such a discussion as a rhetorical *mea culpa*: “what happens when ANSAs say, ‘ok, we’ll comply’, but there is no one there to assist them?”

## DISCUSSION FRAMEWORK

The Background Paper's survey of the landscape of education and ANSA issues has taken account of the policy and practice of ANSAs, the normative framework, and international policy and response. This section will attempt to frame key areas of discussion in moving forward towards the Education and ANSA workshop to be held in Geneva on 23-25 June, 2015. It will draw parallels to the discussion at a recent Chatham House Roundtable on healthcare and ANSAs as, in spite of some key differences, the two issues converge in many respects on the issue of service provision.<sup>138</sup>

### 1. TO WHAT EXTENT SHOULD ANSAs BE ENGAGED WITH OR SUPPORTED IN THEIR EFFORTS TO ENSURE AND REGULATE EDUCATION?

The Background Paper has established that ANSAs that control territory often take positive measures to regulate and ensure education, including by its provision. In some cases these measures may be in accordance with international norms, in other cases not. The Background Paper has also shown that ANSAs who do not provide formal education still may contribute to the right to education, for example by providing literacy classes for adults. Many interview respondents agreed that there is a tendency in the humanitarian response to ignore ANSA contributions to education and instead talk about community provision. This sentiment was mirrored in the healthcare discussion, where one participant at the Chatham House Roundtable said that assistance providers need to "take the lid off" the current practice of not acknowledging ANSA provision of services and funnelling assistance through "front organisations" (meaning ANSA-affiliated civil society organisations) in order to shield the relationship.

- **To what extent does the international response turn a blind eye to ANSA service provision in general and education provision specifically?**

The normative framework is challenged by situations where ANSAs control and administer territory either in parallel to or in the absence of the State. The interrelationship between IHL obligations and potential IHRL obligations of ANSAs has yet to be worked out. This is true for all service provision norms in general, and for education provision norms in particular. In situations that fall short of armed conflict, the normative framework is even less clear. A leading legal expert has claimed, "the real [legal] challenges are the many situations in which the ANSAs' organs exercise public and administrative power which concurs with or replaces those of the concerned states."<sup>139</sup> On education, the Geneva Academy for International Humanitarian Law and Human Rights has recommended:<sup>140</sup>

- The scope of obligations to respect, protect, and fulfil the right to education in situations where the state loses control of part of its national territory should be clarified.
- A Statement or General Comment by the Committee on the Rights of the Child on the obligations of armed non-state actors to respect children's rights, including the right to education, should be seriously considered.

- **How should the normative framework be interpreted, developed, and/or adapted in order to be more relevant for situations where ANSA control and administer territory?**

ANSA provision of services is particularly sensitive for States as it challenges State authority. At the same time, service provision of essential needs and to meet the fundamental rights of populations is a duty of both States and ANSAs. As noted, OCHA has endorsed humanitarian action to enable primary duty bearers to meet their obligations. Many ANSAs have called for international assistance towards these ends and, in some cases, have accused relief agencies of bowing to State pressure to stay away. This tension raises questions as to the extent to which humanitarian action can remain shielded from the Westphalian system. An expert in humanitarian policy has recently stated:

*Neutrality and independence do not mean that humanitarian agencies should not seek the consent of the host state and engage with it to build its capacity to comply with international law and assume its responsibilities toward its population... However, these principles imply that the same should be true with non-state armed groups having de facto control over a given population.*<sup>141</sup>

Some may question whether humanitarian action can be viewed in a vacuum. One objective of many ANSAs in establishing service provision is to create a parallel regime as an alternative to the government. A Background Paper survey respondent said “every smart ANSA knows that health and education are key to political control. It’s a way to consolidate loyalty and territory.” Research on ANSA governance has posited that “if an insurgency is able to co-opt humanitarian organizations into its governance project, then it is more likely to develop an effective system of governance.”<sup>142</sup> If accurate, this has significant implications for humanitarian action. Yet ANSAs have also shown that they have provided education in areas where the State had not done so. On the one hand, humanitarian objectives may be met, but on the other hand, humanitarian action may be contributing to the breakdown of the State. Some may argue that humanitarian interests should be constrained by the political interest to preserve the State.

- **What are the possibilities for a consensus in the humanitarian community on whether humanitarian action should include building the capacity of ANSAs to provide services?**
- **What are the consequences for education of the lack of consensus?**

The health care community is also wrestling with these issues. It was stated at the Chatham House Roundtable that ANSAs must develop their own capacity to deliver at least emergency healthcare in order to meet their obligations. One participant suggested that assistance actors should support the provision of healthcare by ANSAs if it makes sense under the circumstances from the beneficiary standpoint. The Background Paper has shown how education has been on the cusp of humanitarian response, and may still be considered a second tier humanitarian priority by some. It may be argued that it is acceptable under the humanitarian imperative to support the provision of ANSA services when it comes to essential or life-saving services such as healthcare, but a line should be drawn on non-essential services such as (arguably) education. Moreover, education can be distinguished from healthcare as it is value-loaded, which potentially makes education more contentious between warring parties with different ideals and ideologies. The duty on ANSAs to ensure education does not mean they must provide it themselves. Some ANSAs, as the ex-FARC memoire shows (see ANNEX 1), do not aspire to create their own education system but rather accept the national system and promote its expansion towards un-serviced areas.

- **To what extent should ANSA capacity-building be restricted to essential services, and does education qualify as such?**
- **Should ANSAs be steered towards acceptance of the State education system as a priority outcome?**

When it comes to education, a further contentious issue is when ANSAs influence curriculum. The Background Paper has shown that many ANSAs adapt or substitute national curriculum, with the result that students may be unable to get accreditation, sit exams, etc. This is relevant for higher education as well. In other cases, curriculum has been intentionally adopted to match that of adjoining States. In such cases, it is in these adjoining States that the only practical possibilities for continuing education exist, and not incidentally, it is where ANSAs often feel a greater affinity (for ethnic, ideological or other reasons) than to the concerned State.

The issue of curriculum is also central to broader questions regarding the right to education. ANSAs that do not provide education also influence the State's fulfilment of the right to education for better or worse. For those that do provide, in some cases ANSAs' changes to the education system have been an improvement on the State system, such as by committing to pluralism and human rights promotion, while in other cases ANSAs have eroded the right to education, such as by excluding girls. ANSAs may have challenges in meeting the full range of standards due to their limited human and financial resources, as well as the impact of conflict. In fact, it is difficult to imagine implementation of the INEE MSE by all but the most State-like ANSAs. As we have seen in the normative framework, the requirements of IHL are much less exacting than those of IHRL, which may be interpreted by some as reason to have different standards for States and ANSAs.

- **What approach should education actors take towards ANSA changes to State curriculum?**
- **To what extent is it justifiable to adapt the notion of quality education in light of ANSA realities? Are there red lines?**

It may be that not all assistance actors view neutrality as an infallible principle. Several Chatham House roundtable participants were of the view that it would be acceptable to assist some ANSAs, but not, for example, IS. Donors in situations such as Sudan and Syria have worked with ANSAs on a range of governance capacity-building issues towards securing donor political objectives. Particularly in Syria, governance assistance intensified after recognition by several States and the European Union of the then-Syrian National Council opposition as legitimate. The Background Paper also showed that there seems to be a greater willingness of international assistance actors to work with non- or partially recognised States than with other ANSAs. There may also be those who argue that assistance on social service provision should be contingent on an ANSA's substantial compliance with negative IHL obligations.

- **Should ANSA's provision of education provision only be promoted in certain situations (e.g. where the ANSA is generally recognized to be the legitimate representative of the population, is firmly established as a non- or partially recognized state, is considered the 'good guy' by the international community, complies with IHL norms)?**

## 2. HOW CAN RESPONSE BE IMPROVED?

Whether it is in assisting ANSAs in the provision of education, negotiating with them to secure access, or working with them towards ending attacks on education and the military use of schools and universities, there is room to improve the international response. In order to understand the scope of the issue, the first step may be to further map the current state of knowledge and to identify gaps. Progress has already been made with respect to the negative aspects. Less progress has been made on the positive aspects. There is evidence to show that at any given time approximately half of ANSAs who control territory provide education in some form. Yet we do not have a current mapping of ANSAs who control territory, the number and size of populations under their control, the number of beneficiaries of ANSA education, or the number of persons without access to education in ANSA-controlled territory. Moreover, emerging research is attempting to identify characteristics and typologies of ANSAs that are predictive of their compliance with humanitarian standards,<sup>143</sup> as well as their motivation for service provision.<sup>144</sup> Impact of ANSA engagement on humanitarian standards has proven hard to measure, but some empirical evidence exists to show its effectiveness in other sectors.<sup>145</sup> Little is understood about engagement effectiveness in the education sector. There may be a tendency that while more ‘engagable’ ANSAs are currently moving towards peace processes, emerging ANSAs are more difficult to engage and influence. Some of this missing knowledge is specific to the Education sector, but many gaps are relevant to wider communities. There is a potential wealth of much-needed research that can contribute to humanitarian response if it is properly integrated, and if the assistance community is able to effectively coordinate its needs among different sectors and with the research community.

- **How can information on education and ANSAs best be gathered and employed towards policy and programmatic response?**

ANSAs are conspicuous by their absence as recognized stakeholders. They are seldom mentioned in lists of stakeholders or in targeted recommendations: for example, as mentioned in the Background Paper regarding the Education Cluster, and in the Save the Children publication on The Right to Quality Education in Armed Conflict.<sup>146</sup> While they are certainly part of the problem, ANSAs may also be part of the solution. Positive processes and mechanisms exist—often with shortfalls—and could be built upon or modelled, although the reluctance of decision-makers to do so would need to be confronted. The Recommendations of the CRC on the Rights of the Child on Education in Emergency Situations and the INEE MSE could be revisited in terms of how to make them relevant for the specificity of ANSAs. For those instruments that are inclusive, more can be done to leverage them towards better engagement of ANSAs. Their feedback can also be sought on effectiveness of aid. As one researcher reports, “Rebels, it seems, share international NGOs’ frustration with earmarked donations.”<sup>147</sup>

- **How can ANSAs be more appropriately accepted as stakeholders in education-related policy and practice, and how can this best lead towards their engagement?**

ANSAs may not be aware of their responsibilities and options towards respecting and ensuring education. For example, they may not know that government-employed teachers are protected as civilians, that schools should not be used for military purposes, and that they may have positive obligations to ensure education. While training of some ANSAs is being undertaken on negative obligations, and the 2015 Guidelines and their Commentary are directed towards ANSAs, there is no comprehensive guidance that would also include positive aspects to ensure

education. The same may be true for humanitarian and education actors. Particularly, there seems to be a lack of understanding among many humanitarian and education professionals on the implications of multiple duty bearers, and the need for different responses in disaster and armed conflict settings. Moreover, most guidance on ANSA engagement is tailored towards either access or compliance with negative aspects. When policy guidance has tried to address the issue of ANSA contribution to child protection—as with the MSCP—it has been with a very broad brush. ANSA engagement on positive aspects is largely uncharted territory. Moreover, with the exception of a GCPEA workshop—which only addressed ANSA issues tangentially—there has been little effort to share experience and lessons learned across the education sector and with other sectors. The Special Rapporteur on the Right to Education has recommended that the Education Cluster become the appropriate mechanism for determining educational needs in emergency situations and responding to them in a coordinated manner.<sup>148</sup> As the healthcare sector has already begun a parallel process of the challenges of healthcare and ANSAs, links can be made between the processes.

- To what extent should guidance be created and disseminated for both ANSAs and humanitarian/education assistance actors?
- How can experience on education and ANSAs best be shared and integrated with other sectors?

Deference to State counter-terrorism measures and other restrictions, as well as risk-aversion remain a significant barrier to ANSA engagement. Engagement on positive aspects is particularly susceptible. Deference may be systemic, as with the MRM, it may be a matter of agency risk policy, or it may be a calculated cost-benefit decision to avoid being denied access by the concerned government, thereby losing access to populations in need. In some cases, agencies defer based on concerns for their own staff, in other situations out of concern for beneficiaries. The UN, as an organisation of States, is particularly sensitive and vulnerable. The UNICEF Guidance Notes are an exception to some extent, although enthusiasm should be mitigated by the restrictions on engagement. The author of this Background Paper was invited by a child protection coordinating body in a conflict-affected country to provide training on engagement of ANSAs, specifically as it was seen as a priority issue. Turnout among international civil society actors was low. The reason given by the coordination team was that agencies were reluctant to attend as it could send the message to their staff that it was “OK” to engage ANSAs. At the normative and high-level policy level, the political leverage that States employ against ANSA inclusion should not be underestimated. Yet the international community cannot ignore the hypocrisy of calling on ANSAs to comply, and then turn a blind eye when ANSAs reach out. Change will not be achieved without political will in the humanitarian and education sectors.

- **To what extent do counter-terror regulations and donor restrictions, as well as risk aversion/tolerance on the part of humanitarian actors, impact on education in areas control by ANSAs?**
- **How can counter-terrorism restrictions and humanitarian risk aversion be dealt with?**

### **3. HOW SHOULD INTERNATIONAL ACTORS APPROACH EDUCATION AND ANSA ISSUES IN PEACE AND TRANSITION PROCESSES?**

Recent trends have seen major long-term insurgencies moving into advanced stages of peace process, such as MILF in the Philippines, FARC in Colombia, PKK in Turkey, and several ethnic

Burmese ANSAs in Myanmar. Many of these ANSAs have been education providers, and others have taken certain measures to provide or influence education. As is well noted, education can be both divisive and unifying. The Asia Foundation's Myanmar Representative states:

...administrative and social services have long been delivered by [ANSA] political structures and associated networks of service providers and social organizations, rather than by the state. If not carefully considered, well-intentioned aid-supported programs may inadvertently fuel conflict rather than contribute to peace at a particularly delicate moment in the process.

- **How can education be best leveraged to promote peace rather than fuel conflict in peace and transition processes?**

Where ANSAs provide education, convergence of parallel State and non-State education systems will be a contentious and difficult issue. Convergence is not just relevant for curriculum and student accreditation. It is also relevant for teacher accreditation. At the Chatham Roundtable, a participant noted that in Angola, the UN was able to promote strides in healthcare convergence, partially as UNITA was granted stewardship of the Ministry of Health as part of the power-sharing agreement. However the participant noted that education was a much greater challenge. In Myanmar, experts see opportunity: "if the peace process stays on-track, there will be increasing contacts between the two systems, and opportunities for "convergence" between the Karen and government education regimes." In other cases, such as South Sudan, the ANSA education institution - in partnership with UNICEF - converted into a government entity upon the formation of a new State. Even for ANSAs who do not provide, education may be an important issue during transition phases.

- **How can the convergence of parallel State and non-State education systems, or in cases where ANSAs assume control of the state apparatus, the conversion of non-State to State systems, be promoted in peace and transition processes?**
- **How can education convergence and conversion be promoted in peace and transition processes?**

While it would be premature for this Background Paper to provide conclusions, it is hoped that this Discussion Framework will provide inspiration for a fruitful exchange of ideas.

## End Notes

- 1 See *infra*, What ANSAs are Obligated to Do: The Normative Framework section.
- 2 Interview with Hugo Slim, at <http://theglobalobservatory.org/2013/04/interview-with-hugo-slim-humanitarian-expert/>
- 3 Private Military and Security Providers will be excluded as there are specific international frameworks for them. See the Montreux Document on Private Military and Security Companies.
- 4 All available at [www.protectingeducation.org](http://www.protectingeducation.org). As the 2015 *Lessons in War* publication was released just prior to final production of the Background Paper, it is not fully integrated into the report.
- 5 For example, KNU at <https://www.facebook.com/pages/Karen-Education-Department/260810940628112>, DPR at <http://mondnr.ru>
- 6 The figures and the table are derived from a database constructed by Megan Stewart, PhD Candidate, Georgetown University, where 'provision' is defined as "built a school, developed curriculum and provided teachers, or paid for, administered and maintained schools that were already open." (conversation with author). A summary of the data is available at <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/10/07/whats-so-new-about-the-islamic-states-governance/>
- 7 Roy Pateman, *Eritrea: Even the Stones are Burning*, Red Sea Press, Lawrenceville, N.J., 1988, pp. 220-21.
- 8 Zachariah Mampilly, *Rebel Rulers: Insurgent Governance and Civilian Life During War*, Cornell University Press, Ithaca, N.Y., 2011, pp. 219-220.
- 9 *Ibid.*, p. 160.
- 10 The international community has accused SPLM of using their schools as recruiting grounds. *Rebel Rulers*, *op. cit.*, p. 160.
- 11 *In Their Words*, Geneva Call, 2010, p. 13, at [http://www.genevacall.org/wp-content/uploads/dlm\\_uploads/2014/01/2010\\_GC\\_CANSA\\_InTheirWords.pdf](http://www.genevacall.org/wp-content/uploads/dlm_uploads/2014/01/2010_GC_CANSA_InTheirWords.pdf)
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- 13 *In Their Words*, *op. cit.*, p. 11.
- 14 *Ibid.*, p. 29.
- 15 Kim Jolliffe, *Ethnic Conflict and Social Services in Myanmar's Contested Regions*, Asia Foundation, 2014, p. 15.
- 16 *Ibid.*, p.19.
- 17 *Ibid.*, p.17.
- 18 Marie Lall & Ashley South, "Comparing Models of Non-state Ethnic Education in Myanmar: The Mon and Karen National Education Regimes", *Journal of Contemporary Asia*, 44:2 (2014), p. 314.

- 19** Ethnic Conflict and Social Services, op. cit., p. 21.
- 20** National Coalition of Syrian Revolution and Opposition Forces Daily Newsletter, 28 February 2014.
- 21** Report of the Panel of Experts established pursuant to resolution 1591 (2005) concerning the Sudan Issued 29 October 2009 - A Response from JEM.
- 22** Jharkhand officials discover school run by Maoists, *Hindustan Times*, 3 July 2014, available at <http://www.hindustantimes.com/india-news/jharkhand-officials-discover-school-built-and-run-by-maoist-group/article1-1236387.aspx>
- 23** Statement of Comrade Azad, Spokesperson, Central Committee, CPI (Maoist), at [http://bannedthought.net/India/CPI-Maoist-Docs/Statements-2014/CC\\_Collected\\_Interviews\\_10th\\_Anniversary-Eng-View.pdf](http://bannedthought.net/India/CPI-Maoist-Docs/Statements-2014/CC_Collected_Interviews_10th_Anniversary-Eng-View.pdf)
- 24** "Hizbollah Mahdi Schools Mix Maths with Doctrine", *Financial Times*, Oct. 20, 2013, at <http://www.ft.com/cms/s/0/e0be1122-2695-11e3-9dc0-00144feab7de.html#ixzz3VHxZduBv>
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- 32** Cote d'Ivoire's Forces Nouvelles, op. cit., p. 25.
- 33** Pauline Rose and Martin Greeley, *Education in Fragile States: Capturing Lessons and Identifying Good Practice*, DAC Fragile States Group, 2006, p. 15.
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38 *IS Imposes new rules*, op. cit., and *IS imposes Strict New Order*, op. cit.

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40 Global Coalition to Protect Education from Attack, *Education under Attack 2014*, p. 116.

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48 It is not known what form the punishment of parents took. Hart reports that the fifty per cent figure may be skewed as many boys were sent away during the conflict. *Conflict in Nepal and Its Impact on Children*, op. cit., p. 32.

49 *In Their Words*, op. cit., p. 23.

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51 This created a hybrid system where children went to secular government schools during the week and MILF- affiliated madrassas on weekends. Jennifer Keister, *States within States: How Rebels Rule*, UC San Diego Dissertation, p. 249, at <https://escholarship.org/uc/item/2bm3g35t>

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53 *In Their Words*, op. cit., p. 11.

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- 64** Donetsk Separatist Officials, op. cit.
- 65** Comparing Models of Non-state Ethnic Education in Myanmar, op. cit., p. 317.
- 66** *In Their Words*, op. cit., p. 24.
- 67** *Ibid.*, p. 29.
- 68** Sudan: Education Under Threat in South Kordofan, op. cit.
- 69** Kobane Reconstruction Board, First Urgent List of Essential Needs of Kobane Canton, 2015, at <http://helpkobane.com/wp-content/uploads/2015/02/FIST-URGENT-LIST-OF-ESSENTIAL-NEEDS-OF-KOBANE-CANTON1.pdf>
- 70** *In Their Words*, op. cit., p. 21.
- 71** What Burma's Rebel Educators want from School Reform, op. cit.
- 72** *In Their Words*, op. cit., pp. 18-19.
- 73** *Ibid.*, p.24.
- 74** *Rebel Rulers*, op. cit., p. 160.
- 75** Review of Sri Lanka Action Plan, op. cit., p. 2.
- 76** The signatories as of June 2015 are: Chin National Front/Army (CNF/CNA), Karen National Union/Karen National Liberation Army (KNU/KNLA), Karenni National Progressive Party/ Karenni Army (KNPP/KA), New Mon State Party/Mon National Liberation Army (NMSP/ MNLA), Pa'O National Liberation Organization / Pa-o National Liberation Army (PNLO/PNLA), Kuki National Organization (KNO), Kuki National Organization (KNO), Democratic Party of Iranian Kurdistan (PDKI), Free Life Party of Kurdistan/ Liberation Forces of Eastern Kurdistan (PJAK), Komala Party of Iranian Kurdistan (KPIK), Komala Party of Kurdistan (KPK), Komalah-The Kurdistan Organization of the Communist Party for Iran, The Kurdistan Democratic Party – Iran (KDP-Iran), Democratic Self-Administration in Rojava / People's Protection Units / Women's Protection Units (YPG-YPJ), People's Defence Forces/Kurdistan Worker's Party (HPG/PKK)
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**78** Yvan Guichaoua and Jake Lomax, "Fleeing, Staying Put, Working with Rebel Rulers", Agency and Governance in the Context of Civil Conflict: Policy Brief 3, Institute of Development Studies, July 2013, pp. 5-6, at <https://www.ids.ac.uk/files/dmfile/3YvanFINAL.pdf>

**79** Unless otherwise indicated, information is derived from the 2014 GCPEA *Education Under Attack* and the 2012 GCPEA *Lessons in War* publications. Some key figures have been included from the 2015 *Lessons in War* Publication, but as it was released just prior to publication, it has not been fully incorporated. All available at <http://www.protectingeducation.org/resources>

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**81** For a list of signatories, see <http://www.genevacall.org/how-we-work/armed-non-state-actors/>

**82** United Nations Human Rights Office of the High Commissioner, International Legal Protection of Human Rights in Armed Conflict, 2011, p. 21, at [http://www.ohchr.org/Documents/Publications/HR\\_in\\_armed\\_conflict.pdf](http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf)

**83** Statement by the President of the Security Council, 12 February 2014, S/PRST/2014/3.

**84** Statement By Kyung-Wha Kang, Assistant Secretary-General for Humanitarian Affairs and Deputy Emergency Relief Coordinator, On Behalf Of Under-Secretary-General For Humanitarian Affairs And Emergency Relief Coordinator, Valerie Amos, Security Council Open Debate on the Protection of Civilians in Armed Conflict, 30 January 2015.

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**86** More detailed information on the education and armed conflict legal framework can be found in two prior PEIC publications, *Protecting Education in Insecurity and Armed Conflict: An International Law Handbook (2012)*, and *United Nations Human Rights Mechanisms and the Right to Education in Insecurity and Armed Conflict*, at <http://educationandconflict.org/publications>.

**87** The law of IAC is generally not relevant as for the most part it only applies between two States.

**88** Gilles Giacca, *Economic, Social and Cultural Rights in Armed Conflict*, Oxford University Press, 2014, p. 241.

**89** United Nations Human Rights Mechanisms and the Right to Education, op.cit., p. 101.

**90** Statute of the International Criminal Court, article 8(e)(i) and (iv).

**91** ICRC, Customary IHL Database, Rules 14 and 15, at [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul](https://www.icrc.org/customary-ihl/eng/docs/v1_rul)

**92** Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, Guidelines 3 and 4, at [http://protectingeducation.org/sites/default/files/documents/guidelines\\_en.pdf](http://protectingeducation.org/sites/default/files/documents/guidelines_en.pdf)

**93** Customary IHL Database, Rule 22.

**94** Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, Guidelines 1 and 2.

- 95** Statute of the International Criminal Court, article 8(e)(v) and (xii).
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- 97** Customary IHL Database, Rule 135 (Commentary).
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- 107** See p. 4, at <http://www.unicefinemergencies.com/downloads/eresource/docs/RemoteProgramming/2011-11-21-ProgrammeGuidanceonEngagingwithNSEinHumanitarianAction.pdf>
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- 130** GCPEA Press Release, 37 Countries Start Process of Protecting Schools and Universities during Conflict, 29 May 2015.
- 131** Education in Fragile States, op. cit., p. 14
- 132** Ibid., p. 15.
- 133** Special Rapporteur on the Right to Education, Right to Education in Emergency Situations, 20 May 2008, A/HRC/8/10.
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- 146** Save the Children, *The Right to Quality Education in Armed Conflict*, at [https://www.essex.ac.uk/armedcon/story\\_id/rewritethefuture.pdf](https://www.essex.ac.uk/armedcon/story_id/rewritethefuture.pdf)
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- 148** *The Right to Education in Emergency Situations*, op. cit., para. 84.
- 149** Community Action Boards are organisations acknowledged by the State, once they obtain legal personality, which serve as a bridge between communities and local governments.

## APPENDIX 1: REFLECTIONS OF AN EX-ANSA FIGHTER

### FARC EP AND ITS IMPACT ON EDUCATION IN AREAS OF CONFLICT

**By: Yezid Arteta Dávila, ex-Comandante del Frente 29 De Las FARC EP**

FARC EP is an organisation with a long-standing concern for schooling in its areas of influence; as such, it takes measures, some of which are coercive, to prevent school dropout in rural regions. Parents are summoned and monetary sanctions imposed if their children are not sent to rural schools. Rural schools are one of the main channels of communication between the guerrillas and the community. Through the teachers and students, parents receive summons to attend meetings, various orientations and messages regarding activities being carried out in the area that involve the population.

FARC EP has encouraged the construction of schools in “colonisation zones” through resources and means provided by the communities. In some cases, namely areas in which illegal crops are cultivated, a tax is levied upon the producers and buyers of the end product (coca paste or marijuana) in order to build projects for the community, which include schools. Generally, parents who choose not to send their children to school so they can be employed for agriculture or the cultivation of illegal crops are penalised financially by rebels.

The State only accredits qualifications from schools financed from public funds; this has prompted FARC EP to work alongside local communities in all the respective administrative processes so as to have the State recognise and completely finance the primary and secondary education centres created outside of its scope of authority.

The guerrillas encourage communities to create committees that are in charge of raising and managing the funds for the construction and operation of new schools. In order for these schools to gain legal status and for their certificates to be officially valid, the Community Action Boards (JACs in Spanish)<sup>149</sup> go through the required legal process before government organizations, at both local and provincial levels.

In certain situations, FARC EP has established a tax on the consumption of alcoholic beverages (referred to as “beer bonus” in some regions) in order to raise money so that children who have completed primary education may carry on with secondary school studies, with no exceptions or distinctions. The “beer bonus” is treated as ‘hybrid’ funding, given that primary education is taken care of by means of State resources and secondary school teachers are paid for with money raised through the alcohol consumption tax created by the guerrillas. It should be noted that money raised in this way is managed by the community and not by the guerrillas.

FARC EP is in charge of justice in regions in which it commands a strong presence. On occasion, civilians who live in such regions have been punished for crimes such as burglary and fighting. Punishments include community work for the improvement of local schools, namely carrying constructions materials for the enlargement of facilities, repairing roofs or painting walls.

FARC EP has never been involved with the educational content offered in schools or institutes within its areas of influence. All the books and programs the students receive are institutional; rebel ideology reaches the population in these areas through mechanisms other than school teaching. Similarly, FARC EP has never been involved with the management and control of these schools, since the organisation understands that it is the State’s responsibility to care for

education. However, guerrillas do tend to pressure the municipal administration to achieve a more widespread educational coverage. Public education is one of FARC EP's main banners and the communities are encouraged to fight for this right. The guerrillas very much welcome the widening of educational coverage by the State in FARC EP's areas of influence.

On one occasion, the State sent high school graduate soldiers, unarmed and without uniforms, to comply with the mandatory military service by teaching in rural schools in so-called "red zones", considered dangerous. FARC EP took exception to this tactic and expelled the soldiers, arguing that the said soldiers were only there to perform intelligence work in the region. Rebels are very careful about the origin of local educators and tend to be suspicious about those who come from outside the region. The guerrillas may veto educators if there is reason to suspect that their profession is only a cover to perform intelligence work in the area.

In the past, members of FARC EP took over educational facilities to spend the night or as rest stops during long travels. These facilities were chosen in order to economise on physical effort; staying in schools released them from having to set up camping places, build latrines and stoves, and find water sources. The Eighth FARC EP Conference, held in 1993, saw the Central Leadership forbid all units from using civilian facilities as camping sites or for overnight stay; schools were protected under this command order. It is common in rural Colombian areas for educational facilities to host community activities such as meetings, bazaars, voting processes and festivals. FARC EP units in charge of mobilisation and propaganda also use these places to convene meetings of the community. School walls are places where the guerrillas routinely paint murals referring to their symbols; these murals are not well accepted by some communities but criticism is muted so as to avoid retaliation from the guerrillas. In regions where combat between regular and irregular forces is on-going, schools are used as shelters where civilians seek refuge and protection. Typically, schools are out of the line of fire, but if one group notices any adversaries in educational facilities, it will not hesitate to open fire against them. In such cases, schools have been affected by fire coming from FARC EP.

FARC EP has never had an administrative unit regarding education and there are no specific education-related internal rules. There have never been any agreements on the protection of schools with any opposing parties. Prior to the 1990s, FARC EP had no familiarity with the international rules that govern internal conflicts. However, many universal principles such as the treatment of prisoners and respect for the civilian population were part of the statutes and regulations of its disciplinary regime. During the 1990s, FARC EP became familiarised with international law regulations that govern internal conflicts, even though by then, many universal principles such as the treatment of prisoners and respect towards civilians were a part of their statute and discipline regime regulations. It was not until the arrival of International Committee of the Red Cross delegates in conflict-affected areas during the mid-1990s that the FARC EP began to become more familiar with International Humanitarian Law.