

## Handout 14.2 – Key legal references and instruments on the right to education in emergencies

**National:** Constitutions; civil and administrative laws and policies (on education, emergencies, financing, judiciary, rule of law, crime, inter-ministerial collaboration, disaster preparedness, international cooperation, internal displacement, freedom of speech, children, youth, gender, minorities, freedom of assembly, collective bargaining, codes of conduct for military, teachers, social workers, etc); criminal law

**Regional:** Several regional conventions address education: The African Charter on the Rights and Welfare of the Child (ACRWC); the Inter-America Convention on Human Rights and the Protocol of San Salvador; the European Convention on Human Rights; the African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa; etc.

**International:** International human rights law (IHRL); International Humanitarian Law (IHL - law of war) and International Criminal Law (ICC); Refugee law and Guiding Principles on IDPs. The *UN Convention on the Rights of the Child* (CRC) is centrally placed in this system (see below).

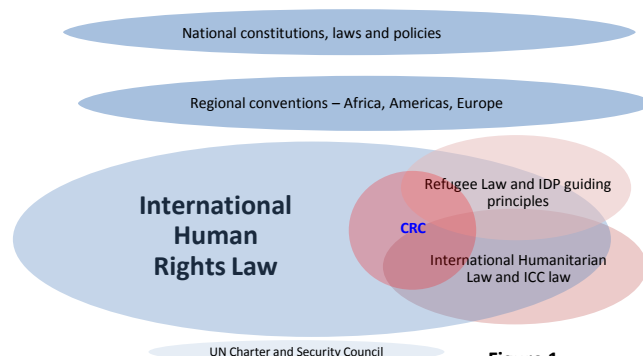


Figure 1

Table of major international legal frameworks, their relevant articles and wording	Lead agency or key player
<b>UN Convention on the Rights of the Child – CRC, 1989. + Op Protocol on the involvement of children in armed conflicts</b>	<b>UNICEF, Save the Children</b>
<b>Art 22 - Refugee children:</b> (...) a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments (...)	
<b>Art 28 - Right to Education:</b> (a) Make primary education compulsory and available free to all; (b) Encourage the development (...) of secondary education (c) Make higher education accessible to all on the basis of capacity (...); (d) Make educational and vocational information and guidance available and accessible to all (...); (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates. 2. (...) take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity (...) 3. (...) promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy (...). In this regard, particular account shall be taken of the needs of developing countries.	
<b>Art 29 - Aims of Education:</b> 1. States Parties agree that the education of the child shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) The development of respect for the child's parents, his or her own cultural identity (...); (d) The preparation of the child for responsible life in a free society (...), (e) The development of respect for the natural environment (...).	
<b>Art 30 - Minorities:</b> In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.	
<b>Art 38 - Armed Conflict:</b> 1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. (...) ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities. (...) ensure protection and care of children who are affected by an armed conflict.	
<b>Other articles of note in the CRC:</b> Non-discrimination (art 2); Best interest of the child (art 3); Right to life (in armed conflict and life-threatening violence) (art 6); Separation from parents (emergency and conflict) (art 9); Respect for views of the child and freedom of expression (art 12 + 13); Protection from violence (art 19); Abduction, sale and trafficking (art 35); Rehabilitation of child victims (art 39); See also <i>Op. Protocol on the involvement of children in armed conflict</i> on protection of children and youth under 18 - see esp art 3.5 on 'schools operated by or under the control of armed forces' in ref to art 28 and art 29 (above).	
<b>International Covenant on Economic, Social and Cultural Rights – ICESCR, 1966</b>	<b>OHCHR and UNESCO</b>
<b>Art 13 and art 14 - Right to Education</b> – similar to CRC art 28 and 29, but relevant also beyond children and the age of 18; <b>Art 2</b> on non-discrimination - see also <i>UNESCO Convention against Discrimination in Education (CADE - 1960)</i> for further elaboration and normative language on this theme.	
<b>International Covenant on Civil and Political Rights - ICCPR, 1966</b>	<b>OHCHR</b>
<b>Art 2- Non-discrimination:</b> 1. Each State Party [...] undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. See also similar articles in <i>CRC, ICESCR and the Refugee Convention</i> . <i>Discrimination is a good entry point for rights-based advocacy.</i>	
<b>Universal Declaration of Human Rights – UDHR, 1948. 'Only' a declaration, but considered universally binding</b>	<b>all</b>
<b>Art 26 - Right to Education</b> – similar to CRC art. 28 and 29, and ICESCR art. 13 and 14	
<b>4<sup>th</sup> Geneva Convention relative to the Protection of Civilian Persons in Time of War – GCIV, 1948</b>	<b>ICRC</b>
<b>Art 24 - Right to Education:</b> Parties to the conflict shall take necessary measures to ensure that children under 15 (...) the exercise of (...) their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.	
<b>Art 50 - Right to Education:</b> (...) the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents [See also <b>Additional Protocol II to the GC, 1977, art 3.3</b> ]	
<b>The International Criminal Court Statute or the Rome Statute – ICC, 1998</b>	<b>ICC itself</b>
<b>Art 8</b> [prohibiting] intentionally directing attacks against buildings dedicated to religion, education (...) provided they are not military objectives <b>(8)(2)(b)(ix)</b> ; conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities <b>(8)(2)(b)(xxvi)</b>	
<b>Monitoring and Reporting Mechanism for children affected by armed conflict – MRM, 2005/2011</b>	<b>SG/Security Council</b>
<b>S/RES/1998 (2011):</b> Reporting on violations of international law involving the recruitment of children by parties to armed conflict, as well as sexual violence, rape, abduction, killing, attacks against schools or hospitals and the denial of humanitarian access to children.	
<b>Convention relating to the Status of Refugees – 1951. + Additional Protocol – 1967</b>	<b>UNHCR</b>
<b>Art 22</b> 1. States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education. 2. States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships. See also Art 3 on non-discrimination	
<b>Guiding Principles on Internal Displacement – IDP, 1998 (non-binding)</b>	<b>all</b>
<b>Principle 23</b> (...) Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.	

## The CRC

Exemplary due to its wide range of articles bridging different areas of international law applicable for different types and phases of emergencies:

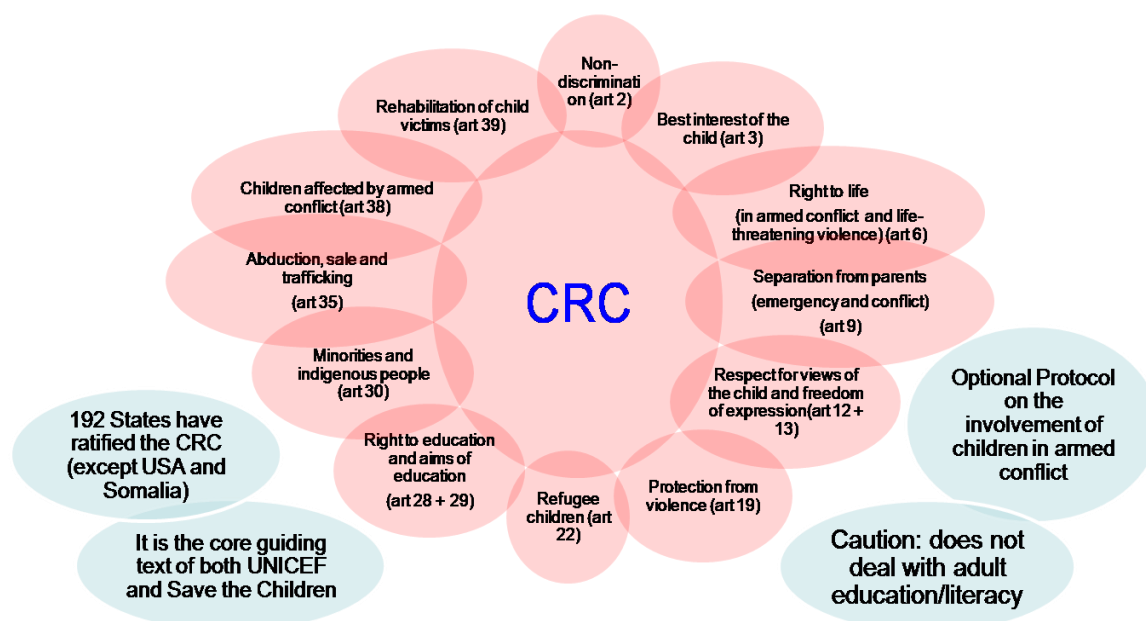


Figure 2

## Types of emergencies

Usually the talk is of at least 3 types: ‘natural’ disasters, armed conflict and complex emergencies. However, from a legal perspective 2 broader categories of emergency may be easier to situate in the landscape of human rights and humanitarian law:

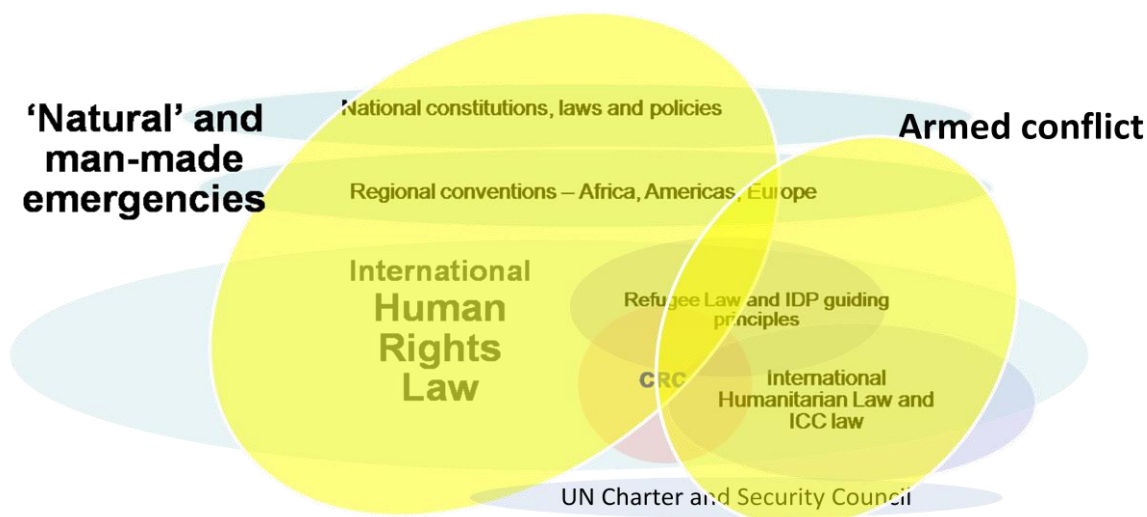


Figure 3

## Some key focus areas for human rights action:

'Natural' and man-made emergencies	Armed conflict
<b>Key focus:</b> obligations of government; voice of marginalised; disaster risk reduction (DRR); Non-discrimination against particular groups; participation and voice in reconstruction efforts	<b>Key focus:</b> protection and safety of learners and schools; impunity; conflict mitigation; physical integrity in situations where violence is generalized and arms proliferate; violence against women (which frequently rises during and after conflict)