

[T]he world has changed since 2002, and certainly not for the better. Issues such as Responsibility to Protect and the theory of humanitarian intervention have created an immense amount of suspicion in the minds of developing countries about hidden agendas behind humanitarian initiatives. Therefore, in my view, getting a UN GA Resolution such as 57/150 on the FMT initiative is almost an inescapable requirement for it to be effective.<sup>7</sup>

## HOW CAN INTERNATIONAL HUMAN RIGHTS LAW PROTECT US FROM DISASTERS?

*By Elizabeth Ferris\**

People do not lose their rights when disasters strike. In the past decade, there has been growing awareness of the relevance of international human rights law to prevention, response, and recovery from disasters. While the Convention on the Protection of Persons with Disabilities is the only human rights treaty explicitly to reference disasters, the applicability of human rights law to disasters is receiving greater attention from both the scholarly community<sup>1</sup> and intergovernmental bodies at the regional and international levels. The International Law Commission is working on Draft Articles on the Protection of Persons in the Event of Disasters and affirms that “[p]ersons affected by disasters are entitled to respect for their human rights.”<sup>2</sup> As Walter Kälin points out, UN treaty bodies are increasingly taking up issues related to disasters in carrying out their monitoring duties.<sup>3</sup> The UN Human Rights Council, for the first time, devoted a special session to human rights issues arising from a natural disaster: the Haitian earthquake of 2010. Presently, the Human Rights Council is engaged in further work on the relationship between the promotion and protection of human rights in post-disaster and post-conflict situations.<sup>4</sup>

While there are many entry points to the issue of the relationship between human rights law and disasters, my remarks will highlight four different ways that international human rights law is being used to strengthen efforts at prevention, response, and recovery from disasters:

- The use of legal remedies as a way of holding governments accountable when they fail to prevent or reduce the risk of disasters;
- The use of international human rights law relating to gender as a way of understanding how gender should be incorporated into all phases of disaster risk management;
- The use of primarily “soft” international law as reflected in the Guiding Principles on Internal Displacement, as a way of upholding the rights of those displaced by disasters;

<sup>7</sup> E-mail interview, *supra* note 2.

\* Co-Director, Brookings-LSE Project on Internal Displacement; Senior Fellow, Foreign Policy (eferris@brookings.edu).

<sup>1</sup> See, e.g., ERICA HARPER, INTERNATIONAL LAW AND STANDARDS APPLICABLE IN NATURAL DISASTER SITUATIONS (2009); Walter Kälin, *The Human Rights Dimension of Natural or Human-Made Disasters*, 55 GER. Y.B. INT’L L. 119–47 (2012).

<sup>2</sup> International Law Commission (ILC), Draft Articles on the Protection of Persons in the Event of Disasters, esp. arts. 6, 7, 8 & 9, UN Doc. A/CN.4/L.776 (2010). For a listing of all relevant ILC documents, see [http://legal.un.org/ilc/guide/6\\_3.htm](http://legal.un.org/ilc/guide/6_3.htm).

<sup>3</sup> Kälin, *supra* note 1, at 127–28; see also Eduardo Valencia-Ospina, *Sixth Report on the Protection of Persons in the Event of Disasters*, 14–19, UN Doc. No. A/CN.4/662 (2013).

<sup>4</sup> Promotion and Protection of Human Rights in Post-Disaster and Post-Conflict Situations, G.A. Res. 22/16, UN Doc. A/HRC/RES/22/16 (Apr. 10, 2013), [www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/A-HRC-RES-22-16\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/A-HRC-RES-22-16_en.pdf).

- The development of operational guidance for humanitarian agencies as a way of translating human rights law into concrete actions on the ground.

### DISASTER RISK REDUCTION (DRR)

The 2005 Hyogo declaration states that “States have the primary responsibility to protect the people and property on their territory from hazards and . . . to give high priority to disaster risk reduction in national policy, consistent with their capacities and resources available to them.”<sup>5</sup>

Disaster risk reduction is not just a set of technical activities intended to limit the impact of disasters. It is also a human rights issue. Disasters, as many have pointed out, tend to disproportionately affect those who are already marginalized and unable to exercise their full human rights.

There have been legal cases where governments have been held responsible for failing to warn or protect their citizens, most notably by national judicial authorities in the cases of the L’Aquila earthquake (2009) and the Kyrmsk floods (2012), although there have also been cases where national judicial authorities have determined that a specific state agency was not responsible, such as Hurricane Katrina (2013). The European Court of Human Rights held that the government of Russia was responsible in 2008 in the case of *Budayeva and Others v. Russia* and in the case of a methane explosion which was a manmade disaster, *Öneryildiz v. Turkey* (2004). Notably, the European Court of Human Rights did not find the government responsible in the case of *Murillo Saldias and Others v. Spain* (flooding 2006).

### HUMAN RIGHTS LAW AND GENDER

While there are many groups which face specific needs in the aftermath of a disaster, e.g., children, persons with disabilities, and ethnic and religious minorities, gender plays a particularly important role in all phases of disaster management, from prevention to response to recovery. In this respect, international human rights law—particularly the Convention on the Elimination of all Forms of Discrimination Against Women—has much to offer. Women are at increased risk of dying in sudden-onset disasters; they face increased risk of violence in the aftermath of disasters; and they often encounter discrimination in assistance and long-term recovery efforts.

While much international attention has focused on violence against women, CEDAW and other basic human rights instruments affirm the importance of eliminating all forms of discrimination. This must include elimination of discrimination in assistance when a disaster occurs, involvement of women in reducing the risk of disasters, and ensuring equal access to resources during the recovery period. Many of the principles in other relevant instruments, such as the Guiding Principles on Internal Displacement and the Operational Guidelines on Protection of Persons in Situations of Natural Disasters, affirm these basic principles. The *IASC Gender Handbook on Humanitarian Action*<sup>6</sup> spells out the legal basis for a focus on gender in humanitarian action and provides practical guidance on incorporating a rights-based approach to gender equality.

<sup>5</sup> Hyogo Declaration, World Conference on Disaster Reduction, UN Doc. A/CONF.20/L.3/Rev.1, para. 4 (Feb. 2, 2005), [www.unisdr.org/2005/wcdr/intergover/official-doc/L-docs/Hyogo-declaration-english.pdf](http://www.unisdr.org/2005/wcdr/intergover/official-doc/L-docs/Hyogo-declaration-english.pdf).

<sup>6</sup> Inter-Agency Standing Committee, *Gender Handbook in Humanitarian Action* (Dec. 2006), [www.humanitarian.info/org/iasc/pageloader.aspx?page=content-subsidi-tf\\_gender-genderh](http://www.humanitarian.info/org/iasc/pageloader.aspx?page=content-subsidi-tf_gender-genderh).

At the international level there seems to be growing awareness that recognizing the importance of gender is not only good practice but that it is a basic human right that needs to be incorporated into all phases of disaster risk management.

#### INTERNAL DISPLACEMENT

The scale of displacement caused by disasters has only recently begun to be recognized and quantified. The Internal Displacement Monitoring Centre estimates that over 140 million people were displaced by sudden-onset disasters in the five year period from 2008–2012.

The Guiding Principles on Internal Displacement,<sup>7</sup> developed in 1998 and affirmed by the World Summit of 2005, explicitly apply to those displaced by disasters as well as by conflict. While not a legally binding document, the Guiding Principles are based on and draw out the relative norms of international human rights and humanitarian law (and, by analogy, refugee law) and apply them to situations of internal displacement. The Principles recognize that individuals have a right to protection from arbitrary displacement; a right to protection and assistance when they are displaced; and a right to support to find durable solutions to their displacement, consisting of either return or settlement in their place of displacement or in another part of their country. The Guiding Principles have been used by many governments as the basis for laws and policies on IDPs, and have been incorporated into policies and guidelines for humanitarian actors. However, it is fair to say that most efforts to incorporate the Guiding Principles into laws and policies have focused on those displaced by conflict, and there are as yet no national disaster laws which reference the Guiding Principles (although there is legislation pending in the Philippines).

The African Union Convention on Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention),<sup>8</sup> adopted by the African Union in 2009 and entering into force in 2012, is the world's first binding regional instrument on internal displacement. Unlike the Guiding Principles, it is a formal, legally binding convention that establishes the obligations of states to prevent displacement, protect and assist those who have been displaced, and support solutions to displacement.

#### THE OPERATIONAL GUIDELINES FOR PROTECTION OF PERSONS AFFECTED BY NATURAL DISASTERS

Following the 2004 Indian Ocean tsunami, the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons (RSG) initiated a process to provide guidance to humanitarian organizations working in the aftermath of disasters. In 2006, he presented draft guidelines to the Inter-Agency Standing Committee on Protection of Persons in Natural Disasters, which after field-testing, were revised and adopted by the IASC in 2010.<sup>9</sup>

These guidelines emphasize that persons affected by natural disasters should enjoy the same rights and freedoms under human rights law as others in their country and not be discriminated against. They reassert the principle that states have the primary duty and

<sup>7</sup> UN Commission on Human Rights, Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2 (1998), [www.brookings.edu/projects/idp/gp\\_page.aspx](http://www.brookings.edu/projects/idp/gp_page.aspx).

<sup>8</sup> [http://www.au.int/en/sites/default/files/african\\_union\\_convention\\_for\\_the\\_protection\\_and\\_assistance\\_of\\_internally\\_displaced\\_persons\\_in\\_africa\\_\(kampala\\_convention\).pdf](http://www.au.int/en/sites/default/files/african_union_convention_for_the_protection_and_assistance_of_internally_displaced_persons_in_africa_(kampala_convention).pdf).

<sup>9</sup> Brookings-Bern Project on Internal Displacement, Inter-Agency Standing Committee, Operational Guidelines on the Protection of Persons in Situations of Natural Disasters (Jan. 2011), <http://www.brookings.edu/research/reports/2011/01/06-operational-guidelines-nd>.

responsibility to provide assistance to persons affected by natural disasters and to protect their human rights.

### CONCLUDING THOUGHTS

Perhaps the most fundamental responsibility of states is to protect the lives of those living in their territories. When governments are unwilling or unable to protect people from the effects of natural disasters—or at least to minimize the risks and damages of natural hazards—this is a human rights violation and governments need to be held accountable for their actions, as has been done in some court cases. Disaster risk reduction and prevention of displacement are human rights issues. Ensuring the impartial distribution of aid after a disaster is not only a basic humanitarian principle but also a basic human right. Developing and implementing equitable recovery/reconstruction programs is not only sound development practice but also a human rights issue.

The fact that the intersections between human rights law and disasters are receiving increased attention from international lawyers, humanitarian and development practitioners, civil society groups, and governments is encouraging. But much more needs to be done, particularly at the national level, to ensure that national laws and policies on disaster management (prevention, response, and recovery) incorporate a human rights perspective.

Human rights law has much to offer to policymakers and to communities affected by the threat of disasters. Given the fact that global warming, exacerbated by population settlement patterns, is likely to produce disasters affecting ever-greater number of people, it is time for human rights lawyers to offer their expertise to governments at all levels, to communities, and to regional and international organizations struggling to prepare for the disasters of tomorrow.

### WILL INTERNATIONAL LAW SAVE US FROM CLIMATE DISASTERS?

*By Michael B. Gerrard\**

I am going to address the role of international law in dealing with disasters that can be caused or worsened by climate change.

The United Nations Framework Convention on Climate Change (UNFCCC) was adopted in 1992 with the objective of preventing dangerous anthropogenic interference with the climate system. Thus, one of its chief purposes is to prevent the sort of natural disasters that could be caused or worsened by climate change. The principal instrument to achieve this objective was the Kyoto Protocol of 1997, which aimed to reduce global emissions of greenhouse gases (GHGs) by 2008–2012 to 5% below their 1990 levels. The Kyoto Protocol has failed; emissions are instead about 40% higher than 1990 levels.

The parties to the UNFCCC convened in Copenhagen in December 2009 in the hopes of achieving a new legally binding agreement to succeed the Kyoto Protocol. This also failed. Instead, the parties made voluntary pledges. The parties also adopted a goal of keeping global average temperatures within 2° C above pre-industrial conditions. Even at this level, very serious consequences occur, such as the likely submersion of the low-lying island nations, loss of much of the polar ice cap, significant sea level rise, and prolonged droughts in parts

\* Andrew Sabin Professor of Professional Practice and Director, Center for Climate Change Law, Columbia Law School.