

Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges

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Chapter 14

Legal Implementation of Human Rights Obligations to Prevent Displacement Due to Natural Disasters

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INTRODUCTION

Natural disasters are among the greatest causes of internal displacement worldwide. In the last two decades alone, they displaced over 115 million persons.¹ In fact, many more persons are displaced by disasters than by armed conflicts. For example, in 2006, over 6.2 million people were newly displaced by natural disasters² as compared to an estimated four million newly displaced by armed conflicts.³ Yet, while it has long been plainly understood to be an obligation of states to work to prevent displacement in wartime and likewise to prevent industrial accidents and other “man-made” disasters that might lead to homelessness, it has traditionally been considered that natural disasters are “acts of God” against which little can be done except hope for the best and prepare for the worst.

However, as observed by former UN Secretary-General Kofi Annan, “the term ‘natural disaster’ has become an increasingly anachronistic misnomer. In reality, human behavior transforms natural hazards into what should really be

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¹ EM-DAT: The OFDA/CRED International Disaster Database, <http://www.cred.be/emdat> (Université Catholique de Louvain, Brussels, Belgium).

² *Id.*

³ Internal Displacement Monitoring Centre, *Internal Displacement: Global Overview of Trends and Developments in 2005*, 9 INTERNAL DISPLACEMENT MONITORING CTR. (2006).

called unnatural disasters.”⁴ Human vulnerability is now recognized as a major component of what turns a natural hazard (such as a rainstorm) into a full-fledged disaster (such as a flood-provoked displacement crisis).⁵

The *Guiding Principles on Internal Displacement* (hereinafter, the *Guiding Principles*),⁶ like most international human rights instruments, speaks only indirectly to the topic of preventing disasters, but the Principles are germane to certain issues of human vulnerability as well as to the question of state responsibility. Moreover, the role of governments in reducing vulnerability through law and policy (among other means) has received greater attention, leading to many new developments in national legislation in recent years.

On the other hand, it must be acknowledged that international law—and particularly human rights standards—do not speak to the full range of choices that governments confront in this area. Particularly in the last few decades, governments have experimented with a wide range of legislative and policy mechanisms to mitigate disaster risk. This chapter will not attempt to cover the full spectrum of those approaches. Instead, it will focus on those steps that states have taken that might be considered to be required or at least particularly encouraged by international legal norms as re-articulated by the *Guiding Principles*.

⁴ The Secretary General, *Report of the Secretary-General to the United Nations General Assembly on the Work of the Organization*, ¶ 11, U.N. Doc. No. A/54/1 (1999). For purposes of convenience, I will nevertheless use the term ‘natural disaster’ in this paper.

⁵ The UN’s International Strategy for Disaster Reduction expresses this concept as a formula: ‘Risk = Hazard x Vulnerability,’ noting that ‘[t]he negative impact—the disaster—will depend on the characteristics, probability and intensity of the hazard, as well as the susceptibility of the exposed elements based on physical, social, economic and environmental conditions.’ International Strategy for Disaster Reduction, *Living with Risk: A Global Review of Disaster Reduction Initiatives* 36 (2004) [hereinafter *Living with Risk*].

⁶ U.N. Doc. No. E/CN.4/1998/53/Add.2 (1998).

LEGAL FRAMEWORK

Relevant Provisions of the Guiding Principles

The *Guiding Principles* have three provisions of relevance to the prevention of displacement from natural disasters. Those provisions are in Principles 5, 6, and 9.

Principle 5 lays out the duty of governments to abide by their obligations under international law, including human rights and humanitarian law, to prevent and avoid conditions that might lead to displacement in the first instance. Principle 6 articulates a prohibition against “arbitrary displacement,” which it does not define but does illustrate with a non-exhaustive list of examples. That list refers only to cases where displacement is caused by means of (unjustified) human intervention. Even its allusion to natural disasters is focused on evacuation rather than the effect of natural forces.⁷ However, the definition of internally displaced persons (IDPs) in paragraph 2 of the *Guiding Principles* makes clear that “displacement” extends not only to human-caused flight, but also to that directly caused by natural disasters.

It seems reasonable to conclude, therefore, that disaster-induced displacement could be considered “arbitrary” in the sense of Principle 6, if it is imputable to governmental authorities. This would be the case if the government’s acts unjustifiably expose persons to the risk of disaster or if it fails to act to mitigate disaster risks when there is a duty under human rights law to do so.⁸ Principle 9 provides that particular care should be taken to avoid displacement of indigenous peoples, minorities, peasants, pastoralists, and other groups with

⁷ The affirmative evacuation of persons due to a disaster is not addressed in this paper. However, human rights considerations relevant to such situations are discussed in the Inter-Agency Standing Committee’s Operational Guidelines on Human Rights and Natural Disasters: Protecting Persons Affected by Natural Disasters (2006), at §A.1.

⁸ Cf. Comm. on Econ., Soc. and Cultural Rights, General Comment No. 12, *The Right to Adequate Food*, ¶ 15, E/C.12/1999/5 (1999) (noting that governmental responsibilities pursuant to the right to food include not only refraining from actions that could reduce food availability but also many required ‘pro-active’ steps to guard against hunger).

special dependency and attachment to their lands. Other Principles discuss relevant rights (such as the rights to life, housing, and health, as discussed below) but mainly in terms of their enjoyment by persons who have already been displaced.

Legal Basis

The Duty to Abide by International Law, including Human Rights

Human Rights

While none of the major human rights instruments specifically refer to disaster mitigation, many do address core issues related to disaster vulnerability and consequent displacement. There are many types and causes of such vulnerability, but developmental issues related to urbanization and rural poverty have been identified as key factors.⁹ Low-income areas in cities tend to be located in the most seismically dangerous areas, receive little effective supervision of land use and construction standards, and are usually overcrowded.¹⁰ Marginalized groups, such as migrants and indigenous persons, disproportionately populate these areas.¹¹ Similarly, the rural poor tend to occupy marginal lands more greatly subject to floods and droughts due to environmental degradation and have few resources to sustain the loss of crops.¹² As noted by Didier Cherpitel, former Secretary-General of the International Federation of Red Cross and Red Crescent Societies (IFRC), “[d]isasters seek out the poor and ensure they stay poor.”¹³

⁹ United Nations Development Programme, *Reducing Disaster Risk: A Challenge for Development*, 58 (2004) [hereinafter *Reducing Disaster Risk*].

¹⁰ *Id.* at 61.

¹¹ *Id.* at 60.

¹² *Id.* at 66-70.

¹³ International Federation of Red Cross and Red Crescent Societies, *World Disasters Report 2002: Focus on Reducing Risk 11* (2002) [hereinafter *WDR 2002*].

Accordingly, the “soft law” right to development as recognized by the UN General Assembly is probably the most obviously on point, inasmuch as it implies that “states have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.”¹⁴

The right to adequate housing, as recognized in such instruments as the International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR),¹⁵ is also clearly implicated. The UN Committee on Economic, Social and Cultural Rights has construed that right to include an element of “habitability,” which requires states to ensure the availability of housing that provides adequate protection from health and safety hazards.¹⁶

Likewise, the right to life has been construed to include a duty of the government to take reasonable measures to protect against deadly hazards.¹⁷ The right to health entails obligations to act to prevent health crises (for example, through environmental hygiene and preventative medical

¹⁴ Declaration on the Right to Development, UN General Assembly Resolution 41/128, o.p. 2(3) (1986).

¹⁵ International Covenant on Economic, Cultural and Social Rights (1966), art. 11.

¹⁶ Comm. on Econ., Soc. and Cultural Rights, General Comment No. 4, *The Right to Adequate Housing* (1991), ¶ 8(d), reprinted in U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003) [hereinafter CESCR, GC 4].

¹⁷ Cf. Human Rights Committee, General Comment 6: Article 6, *Compilations of General Comments and General Recommendations Adopted by the Human Rights Treaty Bodies*, ¶ 5, U.N. Doc. No. HRI/GEN/1/Rev. 6 (1994) (asserting that ‘protection of this right requires that States adopt positive measures’ including, for example, ‘all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics’).

treatment).¹⁸ The right to food includes a core obligation that governments act to prevent hunger.¹⁹ The “soft law” right to a healthy environment²⁰ is interpreted to include an element of security. Violations of any of these rights can result in circumstances (e.g., disease outbreaks and famine conditions) that prompt persons to flee their homes. Inasmuch as race, gender,²¹ and other

¹⁸ See International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GOAR Supp. No. 16 at 49, art. 12, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, 6 I.L.M. 368 (1967) [hereinafter ICESCR]; see also Comm. on Econ., Soc. and Cultural Rights, General Comment No. 14, *The Right to Highest Attainable Standard of Health*, ¶ 15, U.N. Doc. E/C.12/2000/4 (2000) (interpreting this provision to require measures to ensure ‘the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health’) and ¶ 40 (inferring also a collective responsibility of the international community to address transmissible diseases as well as a special responsibility of economically developed states parties to assist the poorer developing states in this regard).

¹⁹ See General Comment No. 12, *supra* note 8, ¶ 14 (asserting that ‘[e]very State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.’).

²⁰ See, e.g., Principle 1 of the Stockholm Declaration of the United Nations Conference on the Human Environment of 1972, *available at* <http://www.unep.org> (‘Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.’); Council of Europe Parliamentary Assembly Recommendation 1614, at 2 (2003) (recommending that member states ‘recognize a human right to a healthy, viable and decent environment which includes the objective obligation for states to protect the environment, in national laws, preferably at constitutional level’); Draft Principles On Human Rights And The Environment, U.N. Doc. No. E/CN.4/Sub.2/1994/9, Annex I (1994), Principle 1 (‘All persons have the right to a secure, healthy and ecologically sound environment.’).

²¹ With regard to the heightened disaster risks often borne by women, see United Nations Division for the Advancement of Women, *Making Risky Environments Safer, in Women 2000 and Beyond*, at 6-8 (2004).

discrimination is often a factor in who ends up living and working in marginal and endangered areas, the right to freedom from discrimination can also be critical.²²

Finally, there is a nascent movement among some activists to promote a “right to safety.”²³ As one advocate has urged, it could guarantee “not the right to be safe... [but] a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of safety,” along the model of the “right to the highest attainable standard of health.”²⁴ While this proffered right has not yet been expressly taken up by an intergovernmental forum, a growing consensus at least as to the corresponding state obligation can be detected in the declaration adopted by delegates to the World Conference on Disaster Reduction in 2005. “We affirm that States have the primary responsibility to protect the people and property on their territory from hazards, and thus, it is vital to give high priority to disaster risk reduction in national policy, consistent with their capacities and the resources available to them.”²⁵

²² See, e.g., International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GOAR Supp. No. 16 at 49, art. 2, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, 6 I.L.M. 368 (1967) [hereinafter ICESCR]; International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. No. 14 at 47, art. 5, U.N. Doc. A/6014 (1966) [hereinafter CERD]; Convention on the Elimination of All Forms of Discrimination Against Women, Sept. 3, 1981, G.A. Res. 34/180, U.N. GAOR Supp. No. 46 at 193, art. 2, U.N. Doc. A/34/46, 1249 U.N.T.S. 13, 19 I.L.M. 33 (1980) [hereinafter CEDAW].

²³ See Delhi Declaration on Peoples’ Right to Safety, Fifth World Conference on Injury Prevention and Control (2000), available at <http://web.iitd.ac.in/~tripp/righttosafety/deldeclaration.pdf>; WDR 2002, *supra* note 13, at 13; John Twigg, *The Right to Safety: Some Conceptual and Practical Issues*, Benfield Hazard Research Centre Disaster Studies Working Paper No. 9 (2003).

²⁴ See Twigg, *supra* note 23, at 11.

²⁵ Hyogo Declaration, World Conference on Disaster Reduction (2005), ¶ 4, available at <http://www.unisdr.org/wcdr/intergover/official-doc/L-docs/Hyogo-declaration-english.pdf>.

Environmental Law

Outside the domain of human rights, there is a large number of international environmental instruments that are relevant to reducing the potential for hazards that could lead to disasters (and are thus relevant to Principle 5). In fact, it is difficult to set conceptual limits in this area, as nearly any environmental treaty could be said to be linked, to one degree or another, to this goal (albeit often with regard to so-called “man-made” rather than natural hazards).²⁶ It is beyond the ambition of this chapter to provide a full agenda on human rights and the environment, but it does seem worthwhile to make particular reference to two treaties that resonate with themes that can be derived from the human rights obligations discussed above.

The United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification (UNCCD) of 1994²⁷ requires its 192 state parties,²⁸ among other things, to accord “due priority to

²⁶ Potentially relevant treaties range from those focused on reversing the effects of climate change (now widely believed to be increasing the risks of extreme weather disasters) such as the United Nations Framework Convention on Climate Change, May 9, 1992, 31 I.L.M. 849, and its Kyoto Protocol, Dec. 10, 1997, U.N. Doc. FCCC/CP/1997/L.7/Add.1, to instruments addressed to protecting the biological diversity that many scientists and states see as key to staving off future famines, epidemics and other calamities, such as the Convention on Biodiversity of 1992, the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 1973 and the International Treaty on Plant Genetic Resources for Food and Agriculture of 2001, (see, e.g., Pascal Girot, *Biodiversity Conservation and Disaster Risk Reduction*, available at <http://www.undp.org/biodiversity/biodiversitycd/biodev4.htm>; United Nations University, *Biodiversity Conservation May Help Reduce Natural Disaster Impacts* (Mar. 30, 2006), available at http://www.terradaily.com/reports/Biodiversity_Conservation_May_Help_Reduce_Natural_Disaster_Impacts.html; The Hague Ministerial Declaration of the Conference of Parties to the Convention on Biological Diversity, ¶ 8 (2002), reprinted in 32 ENVIRONMENTAL POLICY AND THE LAW 186 (2002).

²⁷ Convention to Combat Desertification, 33 I.L.M. 1328 (1994), art. 5.

²⁸ See United Nations Treaty Section, available at <http://untreaty.un.org> (updated as of Nov. 15, 2007).

combating desertification and mitigating the effects of drought, and allocate adequate resources in accordance with their circumstances and capabilities.” It further requires that state parties integrate anti-desertification measures in development plans; address socio-economic factors in desertification; promote the awareness and participation of local populations, particularly women and youth, in anti-desertification measures; and strengthen or enact appropriate legislation. Thus, in this critical area of famine prevention, states are obligated to take very specific steps involving communities through national law.

Similarly, the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 1998²⁹ requires its forty-one state parties (currently only in Europe and Central Asia)³⁰ to gather environmental data, respond positively to most public requests for environmental information, promote public participation in decisions impacting upon the environment, and ensure access to legal redress where public information requests are denied or for acts damaging to the environment in contravention of national law. “Environmental information” is defined quite broadly to include, among other things, “the state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment.”³¹

The Hyogo Framework

Probably the most widely known international instrument on the prevention of disasters is the Hyogo Framework for Action (the Hyogo Framework),³² which was adopted at an international conference and later approved by the UN

²⁹ 38 I.L.M. 517 (1999).

³⁰ See UN Economic Commission for Europe, Aarhus Convention, Status and Ratifications, available at <http://www.unece.org/env/pp/ratification.htm> (updated as of Sept. 18, 2007).

³¹ See *id.* art. 2(3)(c).

³² U.N. Doc. No. A/Conf.206/6 (2005) [hereinafter Hyogo Framework].

General Assembly in 2005.³³ Building upon a previous international consensus document (the Yokohama Strategy for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness and Mitigation and its Plan of Action of 1994³⁴), the Hyogo Framework sets out the following five priority areas of action for governments and other stakeholders for the period of 2005-2015:

1. Ensure that disaster risk reduction is a national and a local priority with a strong institutional basis for implementation;
2. Identify, assess and monitor disaster risks and enhance early warning;
3. Use knowledge, innovation and education to build a culture of safety and resilience at all levels;
4. Reduce the underlying risk factors; and
5. Strengthen disaster preparedness for effective response at all levels.³⁵

Among the detailed recommendations it offers pursuant to each of these priorities, the Hyogo Framework calls on governments to develop “national platforms” to facilitate coordination across sectors; enact or revise special national legislation and policy frameworks; allocate appropriate resources to risk reduction activities; ensure the active participation of potentially affected communities; gather relevant statistical information; promote dialogue and education on disaster risk; integrate a gender perspective in risk reduction activities; and promote “diversified income options” for communities living in high-risk areas.³⁶

³³ See UN General Assembly Resolution 60/195, ¶ 2, U.N. Doc. No. A/RES/60/195 (2005).

³⁴ The Yokohama Strategy, in turn, had built upon the activities and conclusions reached through the ‘International Decade of Disaster Reduction’ which was proclaimed by UN GA Resolution 42/169, U.N. Doc. No. A/RES/42/169 (1987).

³⁵ See Hyogo Framework, *supra* note 32, ¶ 14.

³⁶ *Id.* at ¶¶ 16-19.

Preventing Displacement of Special Groups

In support of the requirement for the “particular care” included in Principle 9 concerning the prevention of displacement of “minorities, peasants, pastoralists and other groups with special dependency and attachment to their lands,” the *Guiding Principles on Internal Displacement: Annotations* (the *Annotations to the Guiding Principles*) cites ILO Convention No. 169 of 1989. Article 13(1) provides that “governments shall respect the special importance for the cultures and spiritual values of their relationship with the lands or territories, or both as applicable, which they can occupy or otherwise use, and in particular the collective aspects of this relationship.”³⁷

This sentiment was recently reiterated in the United Nations Declaration of the Rights of Indigenous Peoples (the Declaration), which was adopted by the United Nations Human Rights Council in 2006³⁸ and the UN General Assembly in 2007.³⁹ The Declaration provides that “States shall provide effective mechanisms for prevention of, and redress for:...[a]ny action which has the aim or effect of dispossessing [indigenous peoples and individuals] of their lands, territories or resources.”⁴⁰ Arguably, this language is broad enough to include the failure to adequately protect indigenous peoples from loss of their homes due to disasters.

OVERVIEW OF OBSTACLES TO THE IMPLEMENTATION OF THE GUIDING PRINCIPLES

In contrast to many of the other topics addressed in this volume, the obstacles in the area of natural disaster risk reduction and early warning reside generally with governments, societies, and communities attempting to identify, adopt, and implement effective programs, rather than particularly with the

³⁷ WALTER KÄLIN, *GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT: ANNOTATIONS* 22-23 (2nd ed., 2007) [hereinafter *ANNOTATIONS*].

³⁸ U.N. Doc. No. A/HRC/1/L.10 (2006).

³⁹ U.N. G.A. Res. 61/1295, U.N. Doc. No. A/RES/61/1295 (2007).

⁴⁰ *Id.* art. 8.

“potentially displaced.” On the positive side, these obstacles and their potential solutions are increasingly well-known and international momentum for addressing them is growing. On the negative side, this knowledge still has not necessarily rendered the necessary changes easy to achieve.⁴¹

Institutional Tradition and Culture

Traditionally, disaster policies and initiatives, at both the national and international levels, have been primarily aimed at preparation for an adequate response, rather than reducing risk in the first place. Thus, in an analysis of national reports provided by states in preparation for the 2005 World Conference on Disaster Reduction, the United Nations International Strategy for Disaster Reduction (ISDR) noted that 80 percent of those responding reported having relevant decrees, laws, national policies or strategies, however, “many legislative initiatives and political mechanisms [were] still mainly focused on disaster management.”⁴²

While since that time a number of new national laws and plans have been developed that specifically refer to disaster risk reduction, a 2007 ISDR analysis found that many of the laws and plans still mainly focused on post-disaster response.⁴³ It attributed this to the fact that the central coordinating

⁴¹ As noted by the former UN Secretary-General at the closing of the International Decade of Natural Disaster Reduction, “[w]e know what has to be done. . . . What is now required is the political commitment to do it.” WDR 2002, *supra* note 13, at 18.

⁴² See United Nations International Strategy for Disaster Reduction, Summary of National Information on the Current Status of Disaster Reduction, as Background for the World Conference on Disaster Reduction, Kobe, Japan, Jan. 18-22, 2005, at 7 [hereinafter 2005 Hyogo Report], available at <http://www.unisdr.org/wcdrpreparatory-process/national-reports.htm>.

⁴³ International Strategy for Disaster Reduction, Disaster Risk Reduction: Global Review 2007 (2007) at 40 [hereinafter Global Review 2007]. See also WDR 2002, *supra* note 13, at 25 (noting that the majority of existing national disaster plans ‘focus on emergency response, creating committees and listing governmental and civil responsibilities during disasters; [n]ational plans may mention longer term mitigation and preparedness, but lack detailed and dedicated resources’).

agency in many countries remains with the organization responsible for disaster response.

Political Forces

In addition to the simple force of institutional habit, there are common political forces that can impede the development of political will to take necessary steps for risk reduction. As pointed out by a 2004 study undertaken by the United Kingdom Department for International Development:

[t]here is a perverse architecture of incentives stacked against disaster risk reduction. It is generally a long-term, relatively low-visibility process, with no guarantee of tangible rewards in the short term and little media interest. When a disaster is prevented or its impacts substantially mitigated through appropriate risk reduction measures, it is often not obvious how much worse matters would have been had those measures not been taken...For politicians in hazard-prone countries, being associated with disaster response, for example the distribution of food aid or the reconstruction of schools and hospitals, yields quick political returns. Any such kudos that might result from success in the introduction of longer-term risk reduction measures is likely to be limited in comparison, and outside most politicians' time horizons.⁴⁴

The problem is not only an absence of incentives, but also a number of disincentives to action on risk reduction. Governments have often hesitated to address evolving risks where doing so might result in negative impacts on powerful interest groups—particularly where those at risk belong to a disfavored minority or indigenous community. For example, it has been reported that “Afro-Honduran Garifuna communities on the north coast of Honduras have failed to stop the erosion of their traditional land-use practices

⁴⁴ Department for International Development, *Disaster Risk Reduction: A Development Concern* at 36 (2004), available at <http://www.dfid.gov.uk/pubs/files/drr-scoping-study.pdf>.

by commercial plantations and road construction—changes that have destroyed rainforest covers, affected watersheds and apparently led to much greater vulnerability to flooding.”⁴⁵

Likewise, governments have hesitated to admit the existence of developing risks because of the negative light they might cast on their own performance. For example, governments have often been hesitant to admit to a developing famine risk.⁴⁶

Breadth of the Topic

Progress on risk reduction is further complicated by the sheer breadth of the initiatives that should be undertaken, and the number of institutions and persons that should be involved to address the relevant issues. As mentioned above, disaster risk results not only from the danger of particular hazards (such as hurricanes or earthquakes) but also from the vulnerabilities of particular persons and places to large impacts from those hazards. Thus, risk reduction programs must simultaneously address issues ranging from environmental management, land use, and urban planning to poverty reduction, health policy, social development, gender policy, anti-

⁴⁵ John Twigg, *Disaster Risk Reduction: Mitigation and Preparedness in Development and Emergency Programming*, 9 HUMANITARIAN NETWORK GOOD PRACTICE REVIEW 210-11 (2004).

⁴⁶ See, e.g., *Humanitarian Issues in Niger: HPG Briefing Note* (Overseas Development Institute, Aug. 2005), available at <http://www.odi.org.uk/hpg/papers/HPGBriefingNote4.pdf> (noting that “[a]voiding the famine label has often been convenient for those needing to justify slow or failed responses”); Walker, P. (1989) *Famine Early Warning Systems*, (noting that “[i]f the state viewed famine as anything other than temporary and abnormal, it would mean admitting some degree of responsibility. Some states have been willing to do this but not many”); WDR 2002, *supra* note 13, at 25 (arguing that ‘El Salvador’s disastrous landslides in January 2001 exposed the reluctance of a neo-liberal government to address key factors that it had earlier acknowledged as increasing vulnerability to disasters: inadequate public health services, insecure livelihoods, poor housing in unsafe locations, outdated government prevention and response structures, and a severely degraded environment’).

discrimination, and education.⁴⁷ Moreover, “many actors need to be involved, drawn from governments, technical and educational institutions, professions, commercial interests, and local communities.”⁴⁸ At the same time, care must be taken to ensure that promoting this complex mix of activities does not drift into an amorphous push for development.⁴⁹

Lack of Resources and Enforcement

Finding the resources needed for such far-reaching measures is another crucial issue. Particularly in developing countries, it can be difficult to justify the expenditure of scarce funds for an event that may or may not occur in the future, as discussed above.⁵⁰ International donors are still much quicker and more generous in providing resources for disaster relief and reconstruction than prevention.⁵¹ Thus, it is no surprise that ISDR has repeatedly noted that “[m]any countries, particularly in Africa, highlight lack of resources

⁴⁷ See *Living with Risk*, *supra* note 5, at 21.

⁴⁸ *Id.*

⁴⁹ See *WDR 2002*, *supra* note 13, at 48-50 (noting that ‘development will [not] of itself reduce vulnerability’ and that ‘[t]he development agenda has often submerged genuine and important debates about managing risks’).

⁵⁰ See *id.* at 15-16; see also Department for International Development, *Reducing the Risk of Disasters—Helping to Achieve Sustainable Poverty Reduction in a Vulnerable World: A DfID Policy Paper 10* (2006), available at <http://www.dfid.gov.uk/pubs/files/disaster-risk-reduction-policy.pdf> [hereinafter *DfID Policy Paper*].

⁵¹ See *DfID Policy Paper*, *supra* note 50, at 10; see also Report of the Secretary-General on International cooperation on humanitarian assistance in the field of natural disasters, from relief to development, ¶ 31, U.N. Doc. No. A/60/227 (2005) (“[p]aradoxically, it is still much easier to mobilize support for post-disaster relief efforts than for preparedness and mitigation activities that would avoid or minimize the loss of life and the destruction of vital assets and infrastructure.”).

earmarked for disaster risk reduction as one of the key constraints on implementing the Hyogo Framework priority areas, in particular Priority 1.”⁵²

Perhaps even more importantly, certain risk management measures, such as strict enforcement of environmental laws, land use regulations, and building codes, may interfere with short term economic gain from development (boding ill for support from economic and social elites) and/or negatively impact the poor (who, for example, frequently inhabit dangerous buildings and zones because they have little other choice).⁵³ It is little wonder, therefore, that lack of enforcement of existing law is a common complaint, particularly in the area of building codes.⁵⁴

REGULATORY FRAMEWORK

Inasmuch as disaster risk reduction touches on so many different topic areas, it cannot be expected that it will be addressed through a single legal instrument or even in instruments of a single type. However, the Hyogo Framework recommends the establishment of a flagship national policy and law to link the different instruments and subject areas.

⁵² Global Review 2007, *supra* note 43, at 46. Likewise, in 2005, ISDR reported that ‘[o]ver three quarters of national information identifie[d] resources constraints (financial, technical or human) as the main impediment to realizing a more efficient approach to disaster risk reduction. Almost three quarters explicitly refer[red] to financial resource[s], with Africa as the most concerned region.’ 2005 Hyogo Report, *supra* note 42, at 5.

⁵³ See, e.g., WDR 2002, *supra* note 13, at 54-55 (relating allegations that risk mapping activities in Peru had acted to the detriment of poor communities); Andrew Maskrey, *Disaster Mitigation: A Community Based Approach*, at 42 (1989) (noting that building regulations had had little impact in Lima, Peru, in part because ‘[l]ow income groups are forced to occupy marginal land irrespective of seismic intensities, because no other land is available through market mechanisms’ and that ‘tenants and owners have neither the economic capacity nor the will to reinforce or rebuild to adequate technical norms’).

⁵⁴ See, e.g., World Conference on Disaster Risk Reduction, Thematic Discussion Paper Cluster 1—*Governance: Institutional and Policy Frameworks for Risk Reduction*, Kobe, Japan, Jan. 18-22, 2005, at 6.

Some of the issues discussed in this chapter can only be addressed through enacted law. Examples are institutional and budgetary arrangements, zoning rules, building codes, environmental standards, and legal remedies for affected persons. Others might be addressed through less formal means such as national policies, plans, or operating procedures, but are more likely to be successful if reinforced through law. These include measures to address gender and vulnerable groups, data collection, and information-sharing arrangements and the inclusion of civil society and communities in risk reduction planning and programming.

Still, policies, plans, and procedures for risk reduction are equally important, inasmuch as they can be more flexible and more easily adopted than laws. Also, they can make the links between different legal regimes and inspire the development of new laws where required.

SUBSTANTIVE ELEMENTS OF STATE REGULATION

At present, just over a dozen governments have adopted specific laws or plans on internal displacement.⁵⁵ Of these, few have adopted a definition of “IDP” wide enough to cover displacement by disaster,⁵⁶ and none expressly refer to the prevention of this kind of displacement. However, the constitutions and disaster management statutes of a number of states include provisions relevant to this question.

Acknowledging a State Duty to Reduce Disaster Risk

A few states have adopted constitutional provisions that expressly provide for an obligation to reduce the risk of disasters. For example, Ethiopia’s constitution provides that the “Government shall take measures to avert any

⁵⁵ See Jessica Wyndham, *A Developing Trend: Laws and Policies on Internal Displacement*, HUM. RTS. BRIEF 8 (Winter 2006).

⁵⁶ One exception is Uganda’s policy on internal displacement. See Uganda National Policy for Internally Displaced Persons, Office of the Prime Minister, Department of Disaster Preparedness and Refugees, Aug. 2004, at x.

natural and man-made disasters.”⁵⁷ Likewise, Uganda’s constitution commits the state to “institute an effective machinery for dealing with any hazard or disaster arising out of natural calamities or any situation resulting in general displacement of people or serious disruption of their normal life.”⁵⁸ Macedonia’s constitution includes among its “fundamental values of the constitutional order,” “proper urban and rural planning to promote a congenial human environment, as well as ecological protection and development.”⁵⁹

A substantial number of states have also enshrined the individual human rights described above, the rights to development,⁶⁰ housing,⁶¹ life,⁶² food,⁶³ health,⁶⁴ and a healthy environment, in their constitutions in ways that might be interpreted to extend to protection against disaster risk. The language that some of these constitutions use to guarantee the latter right seems particularly apt to the context of disaster prevention. For example, South Africa’s constitution guarantees citizens the right to “an environment that is not harmful to their health or well-being.”⁶⁵ Ecuador’s constitution establishes “the right to live in a safe environment that is ecologically balanced and free

⁵⁷ CONST. OF ETH. art. 89(3).

⁵⁸ CONST. OF UGANDA art. 23.

⁵⁹ CONST. OF THE FORMER YUGOSLAV. REPUBLIC OF MACED. art. 8.

⁶⁰ *See, e.g.*, CONST. OF UGANDA art. 9; CONST. OF REPUBLIC OF MALAWI art. 30.

⁶¹ *See, e.g.*, CONST. OF THE KYRG. Republic art. 33; CONST. OF SPAIN art. 47.

⁶² *See, e.g.*, CONST. OF THE REPUBLIC OF TURK. (as amended in 2007) art. 17; CONST. OF THE REPUBLIC OF CROAT. art. 21.

⁶³ *See, e.g.*, CONST. OF THE PEOPLE’S REPUBLIC OF BANGL. art. 15; CONST. OF THE REPUBLIC OF GUAT. (as amended in 1993) art. 99.

⁶⁴ *See, e.g.*, CONST. OF BURK. FASO (as amended in 2000) art. 26; Constitution of Romania art. 34.

⁶⁵ CONST. OF S. AFR. art. 24.

of contamination.”⁶⁶ Belgium’s constitution provides for “the right to enjoy the protection of a healthy environment.”⁶⁷ Mongolia’s constitution set out “the right to a healthy and safe environment and to be protected against environmental pollution and ecological imbalance.”⁶⁸

Other states have acknowledged a duty to reduce disaster risks in their disaster management legislation. For example, Costa Rica’s National Law on Emergencies and Reduction of Risk provides that “[i]t is the responsibility of the Costa Rican State to prevent disasters. To this end, all institutions are required to take account of risk and disaster concepts in their programs and to include measures to reduce risks in their ordinary work, promoting a culture of risk reduction.”⁶⁹ Likewise, Indonesia’s 2005 Law on Disaster Management provides that “the Republic of Indonesia has the responsibility of protecting all people of Indonesia and their entire native land in order to protect life and livelihoods, including from disaster.”⁷⁰

While potentially rather rhetorical in the absence of a concrete remedy (as discussed below), formal statements of state responsibility are certainly consistent with the human rights norms described above. At least they set a positive tone for the interpretation and implementation of the more concrete steps in disaster management legislation.

⁶⁶ POLITICAL CONST. OF ECUADOR art. 23(6).

⁶⁷ CONST. OF BELG. (as amended in 2006) art. 23.

⁶⁸ CONST. OF MONGOLIA art. 16(2).

⁶⁹ Ley Nacional de Emergencias y Prevención del Riesgo, Decreto Legislativo No. 8488, Expediente No. 14.452, art. 25 (2006) (Costa Rica) (unofficial translation by the author).

⁷⁰ Law Concerning Disaster Management (2005), prelim. ¶ a, art. 6 (Indonesia) (unofficial translation).

Developing Specific National Legislation and Plans for Disaster Risk Reduction

Human rights norms⁷¹ also support the call of instruments such as the Hyogo Framework and the UN Convention to Combat Desertification (the UNCCD Convention) that governments ensure an adequate priority to disaster risk reduction efforts through the adoption of dedicated national legislation and plans. This is because experience has shown that it is unlikely that all reasonable precautionary steps will be taken in the absence of dedicated legal and policy frameworks.

This is not to say that international norms require that all activities and authority be centralized at the national level. On the contrary, as expressed in the Hyogo Framework,⁷² it is widely accepted that responsibility for some disaster risk reduction tasks can, and should, be decentralized to the local level.⁷³ A number of states (including both those with federal and non-federal systems) have taken this approach. For example, Nicaragua's disaster management law sets up governmental coordinating structures at the national, departmental, regional, and municipal levels.⁷⁴ Draft legislation under review in the Philippines would call for even more structures, with committees at the

⁷¹ Cf. CESCR GC 4, *supra* note 16, ¶ 12 (asserting that '[w]hile the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose').

⁷² See Hyogo Framework, *supra* note 32, ¶ 16(i)(d) (calling on governments to '[r]ecognize the importance and specificity of local risk patterns and trends, decentralize responsibilities and resources for disaster risk reduction to relevant sub-national or local authorities, as appropriate').

⁷³ See, e.g., Living with Risk, *supra* note 5, at 82.

⁷⁴ See Ley No. 337: Ley Creadora del Sistema Nacional para la Prevención, Mitigación y Atención de Desastres (Nicaragua) (2000).

national, provincial, city, municipal, and *barangay* (community) level.⁷⁵ United States law contemplates that most disaster management activities will be governed and performed at the state and local levels, with the national government generally acting in a secondary role to assist them.⁷⁶ It is important that appropriate resources, or at least the authority to obtain resources, follow any devolution of responsibilities to lower levels of government.⁷⁷

Prompted in large part by the growth of international interest in risk reduction, a number of states have adopted new risk reduction laws and plans in recent years. In a 2004 study of disaster risk reduction and development, UNDP identified nine countries (Algeria, China, El Salvador, Haiti, India, Nicaragua, Madagascar, Turkey, and South Africa) that had recently adopted new plans and or laws of this kind.⁷⁸ In 2007, ISDR noted that Mozambique, Kenya,

⁷⁵ See Philippines Senate Bill 2013, Disaster Risk Management Act of 2008, filed Jan. 30, 2008, available at http://www.senate.gov.ph/lis/bill_res.aspx?congress=14&q=SBN-2013.

⁷⁶ See Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288 as amended as of 2007, at §101(b) (United States) (noting Congress' intent 'to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters').

⁷⁷ See, e.g., Wafula Nabutola, *Risk and Disaster Management: A Case Study of Kenya*, 3rd Fédération Internationale de Géomètres Regional Conference, Jakarta, Indonesia, at 5, Oct. 3-7, 2004 (noting that, '[a]t the time of independence, the local authorities operated relatively independently and had well-structured sources of revenue. This made it possible to manage their own affairs and provide quality social service. Through a series of legislations, however, the Central Government took over most of the revenue generators leaving the local government helpless and penniless but still expected to deliver service like fire fighting.').

⁷⁸ See Reducing Disaster Risk, *supra* note 9, at 78-79.

Zambia, Tanzania, Honduras, St. Lucia, and a number of Caribbean states had also adopted or were considering similar legislation⁷⁹

Including Measures for Flood Mitigation

Historically, floods have been by far the largest cause of displacement due to natural disasters worldwide⁸⁰ and they are a high on-going risk in over ninety countries.⁸¹ According to the Intergovernmental Panel on Climate Change, increased flooding is one result that can be expected in the short term due to the effects of climate change.⁸² Thus, for many states, inclusion of flood mitigation measures in domestic law and/or policy should be considered a minimal element of avoiding arbitrary displacement.

Floods have a number of predictable causes, including deforestation, wetland degradation, and desertification, all issues susceptible to mitigation through governmental regulation.⁸³ For example, in May 2004, a storm struck the border region between Haiti and the Dominican Republic causing floods in both countries. Massive deforestation was identified as a major factor for the extent of the damage caused on the Haitian side of the border, where over 2,600 persons were reported dead or missing and over 31,000 were affected.

⁷⁹ See Global Review 2007, *supra* note 43, at 39-40.

⁸⁰ According to the CRED Database, *supra* note 1, nearly 80 million persons have been displaced by floods worldwide since 1970. This is over four times the number of those displaced by earthquakes.

⁸¹ See Reducing Disaster Risk, *supra* note 9, at 40. The World Bank has identified the Midwestern United States, Central America, coastal South America, Europe, eastern Africa, northeast India and Bangladesh, China, the Korean peninsula, Southeast Asia, Indonesia, and the Philippines as at particularly high risk. See World Bank, *Natural Disaster Hotspots: A Global Risk Analysis*, Disaster Risk Management Series No. 5, at 43 (2005).

⁸² See Inter-governmental Panel on Climate Change, Fourth Assessment Report, Working Group II Report: *Impacts, Adaptation and Vulnerability*, at 371-73 (2007).

⁸³ See World Bank, *Development Actions and the Rising Incidence of Disasters*, at 25 (2007).

In comparison, in the Dominican Republic, where logging had been officially banned since 1967, 688 were reported dead or missing and just over 10,000 were affected.⁸⁴

Moreover, in many cases, lands highly susceptible to future flooding are possible to predict in advance. Development of these areas can then be managed through zoning regulations to minimize residential development and promote other uses such as agriculture, which are less likely to expose human life and habitation to destruction.⁸⁵ Where development is permitted, requirements can be included to minimize risk. For example, Algeria's disaster management law provides for the development of flood risk maps setting out certain zones where no building would be allowed and others (with comparatively less risk) where building would be allowed only if protected by special precautions against the effects of floods.⁸⁶

Adopting and Updating Building Codes

The second and third largest causes of disaster-related displacement are windstorms and earthquakes, respectively.⁸⁷ For these types of disasters in particular, a primary factor of vulnerability is the resilience of homes and buildings. Accordingly, building codes are indispensable means for preventing the potential displacement (as well as death and injury) that these hazards may cause, in addition to zoning and environmental efforts as mentioned above.

⁸⁴ See *id.*; CRED Database, *supra* note 1. Many of those reported as 'affected' in these statistics can be presumed to have been displaced, though displacement-specific statistics are not available for both countries.

⁸⁵ See United Nations Department of Economic and Social Affairs et al., *Guidelines for Reducing Flood Losses*, at 34-35 (2004).

⁸⁶ See Law No. 04-20 of Dec. 25, 2004, arts 24-25 (Algeria) (concerning the prevention of major risks and the management of disasters in the framework of sustainable development).

⁸⁷ According to the CRED Database, *supra* note 1, since 1970, 44.2 million persons have been displaced by windstorms and 19.5 million have been displaced by earthquakes.

Armenia recognized this when it included the “construction of buildings, engineering nets, hydro-technical structures, constructions, ways of transport communication and highways with the necessary levels of safety and reliability” among the key “preventive activities” described in its 1998 Law on Population Protection in Emergency Situations.⁸⁸ Similarly, Saint Lucia specifically incorporated powers and procedures for “hazard inspections” of potentially dangerous buildings in its Disaster Management Act of 2006.⁸⁹

While most states already have regulation of some kind in this area, some gaps still remain. For example, as of 2006, Djibouti reported to the United Nations Centre for Regional Development that it had no earthquake-related building code (though a draft was under consideration).⁹⁰ Likewise, in 2005, the French Ministry of Ecology and Sustainable Development reported that French territories in Polynesia were not covered by national seismic zoning rules and had no regulation on this topic.⁹¹ Moreover, it has been reported that many building codes are outdated and ill-prepared to handle modern construction trends and developing natural hazards.⁹²

⁸⁸ See Law on Population Protection in Emergency Situations (1998) (Armenia), available at <http://www.brookings.edu/projects/idp/Laws-and-Policies/armenia.aspx>.

⁸⁹ See Law No. 30 of 2006, Disaster Management Act of 2006, ¶ 23 (Saint Lucia).

⁹⁰ See United Nations Centre for Regional Development, *Survey of Building Code Enforcement/Dissemination in Seismic Countries: Summary Report (2006)*, at 3, available at <http://www.hyogo.uncrd.or.jp/hesi/survey.htm>.

⁹¹ See Ministère de l'Écologie et du Développement Durable, Programme National de Prévention du Risque Sismique (Nov. 2005), at 13, available at <http://www.ecologie.gouv.fr/Le-Plan-Seisme.html>.

⁹² See International Strategy for Disaster Reduction, *Building Code Enforcement and Dissemination: Safer Buildings for Sustainable Habitat*, Report of a Side-Event at the Global Platform for Disaster Risk Reduction, Geneva, Switzerland, June 5, 2007, at 3, available at [http://www.preventionweb.net/globalplatform/first-session/docs/side-events/June 5 Tue/05 Building Code Enforcement/Building Codes report detailed .pdf](http://www.preventionweb.net/globalplatform/first-session/docs/side-events/June%205%20Tue/05%20Building%20Code%20Enforcement/Building%20Codes%20report%20detailed.pdf).

Addressing Uncertain Land Tenure⁹³

Insecurity of land tenure has been identified as an important contributing factor to vulnerability to disasters and, in particular, to disaster-induced displacement.⁹⁴ Persons without a clear legal title to the land they occupy are often deterred from taking steps (both physical and political) that might reduce disaster risks to the plots they occupy.⁹⁵ Moreover, once displaced by a disaster, such persons face greater difficulties in finding long-term solutions to their plight, as they normally fall outside reconstruction and resettlement schemes keyed to the losses of land owners.⁹⁶

⁹³ Chapter ten in this volume discusses property rights and land tenure issues.

⁹⁴ See, e.g., UN-Habitat, *Scoping Report: Addressing Land Issues After Natural Disasters*, at 33 (2008); International Strategy for Disaster Reduction, *Words Into Action A Guide for Implementing the Hyogo Framework*, at 158 (2007) (recommending that states enact laws to ‘ensure security of land rights as incentives for risk-reducing investments’).

⁹⁵ For example, it has been noted that ‘[o]wing to unequal land tenure policies and skewed resource distribution, many of Central America’s farmers own small plots of land on ecologically-fragile, disaster-prone lands. With little access to credit, land titles and technical assistance to diversify and enhance their livelihoods, these farmers have little incentive to invest in sustainable farming practices. Clear-cutting of forestlands for timber, ranching and farming, and widespread burning have led to massive losses of protective vegetative cover, leaving hillsides barren and unable to absorb or retain water. During Hurricane Mitch, heavy rainfall led to massive runoffs on these degraded hillsides, which carried away tons of topsoil, rocks and vegetation. Debris-choked rivers overflowed their banks, causing extensive damage to human and natural systems that lie in their paths.’ International Institute for Sustainable Development et al., *Livelihoods and Climate Change*, at 13 (2003); See also Mark Pelling, *Cities are Growing More and More Vulnerable*, *Habitat Debate* 6 (2006) (arguing that ‘[i]nsecure land tenure compounds vulnerability, acting as a disincentive for families and city authorities to invest in basic services and secure construction. People living in informal settlements and those in rental accommodation are among those most at risk’).

⁹⁶ See UN-Habitat, *supra* note 94, at 33.

Pursuant to the right to adequate housing, the Committee on Economic, Cultural and Social Rights has asserted that “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats” and called on all states to take “immediate measures” in this regard.⁹⁷ While land tenure is a complex and highly sensitive policy issue that is unlikely to be solved within the confines of disaster management legislation, some states have identified legislative reform in this area as an important component of building a legal framework for risk reduction. For instance, the Tanzania Land Use Planning Commission identified a 1995 National Land Policy designed to strengthen land tenure as a “major milestone” in its work to reduce environmental disaster risk.⁹⁸

Procedural Elements of State Regulation

Encouraging Accountability

While legally formalizing commitments to disaster risk reduction is critical, it is not enough by itself to ensure sustained action. As noted by ISDR, even exhaustively crafted legislative and policy processes often later fall prey to declining political commitment in the implementation phase, and thus, “[i]n spite of recent legislative and institutional reforms, there is little evidence of enforcement or accountability for risk reduction.”⁹⁹ Accordingly, legal frameworks for risk reduction should also include specific measures to ensure that good intentions are actually carried out.

⁹⁷ See Comm. of Econ., Soc. and Cultural Rights, General Comment No. 4, *The Right to Adequate Housing* ¶ 8(a) (1991).

⁹⁸ See Gerald Mango, *The Role of Environmental Management in Disaster Risk Reduction in Tanzania*, presentation to the panel discussion on Ecosystems and Environment for Disaster Reduction at the Global Platform for Disaster Risk Reduction, Geneva, Switzerland, June 6, 2007, at 5.

⁹⁹ See Global Review 2007, *supra* note 43, at 47. See also Reducing Disaster Risk, *supra* note 9, at 36 (noting that lack of enforcement of building regulations were important factors in earthquakes in Turkey in 1999 and Algeria in 2003).

Ensuring Adequate Funding

One important step in this direction, as noted by the Hyogo Framework,¹⁰⁰ would be to adopt measures to ensure that risk reduction activities are adequately funded. This can be promoted through budgeting processes that are specific and transparent as to how funds are allocated toward risk reduction objectives.

For example, in Guatemala, the 1996 Law on the National Coordinator for the Reduction of Natural or Man-Made Disasters provides for the creation of a dedicated National Fund for Disaster Reduction for the use of the coordination system.¹⁰¹ In Pakistan, a 2006 disaster management ordinance called for the establishment of similar funds both at the national and regional levels.¹⁰² Similarly, in 2000, the Ethiopian government established a National Disaster Prevention and Preparedness Fund as well as an Emergency Food Security Reserve (a revolving grain stock).¹⁰³

Costa Rica's 2002 disaster management law not only created a national disaster fund, but also required all departments and levels of government to maintain a separate budget line for disaster risk reduction activities.¹⁰⁴ Moreover, it required all national agencies to direct 3 percent of any budget

¹⁰⁰ See Hyogo Framework, *supra* note 42, ¶ 16(ii).

¹⁰¹ See Decreto 109-96: Ley de la Coordinadora Nacional para la Reducción de Desastres de Origen Natural o Provocado (1996), art. 15 (Guatemala).

¹⁰² See Ordinance No. 40 of 1996, National Disaster Management Ordinance, arts. 29-30 (Pakistan).

¹⁰³ See Francois Grünewald et al., *Ethiopia: Real Time Evaluation of the 2006 Emergency Response*, at 25 (2006), available at <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docid=1008392>.

¹⁰⁴ República de Costa Rica, Ley Nacional de Emergencias, No. 7914, arts. 43-45 (Feb. 3, 2002), available at <http://www.ifrc.org/what/disasters/idrl/publication.asp>.

surplus they might have each year into the national disaster fund.¹⁰⁵ Likewise, Madagascar allocates an annual budget line for disaster risk and management activities and requires each national ministry to allocate a proportion of its annual budget to disaster risk reduction and response activities.¹⁰⁶

Incorporating Risk Reduction into Development Planning

Another useful way to make disaster risk reduction goals real is to incorporate them into mainstream development planning. Several states mandate this by law. For example, India's Disaster Management Act requires "every Ministry or Department of the Government of India to...integrate into its development plans and projects, the measures for prevention or mitigation of disasters in accordance with the guidelines laid down by the National Authority[.]"¹⁰⁷ Likewise, Indonesia's disaster management law requires both the national and regional governments to incorporate disaster risk elements into their development programming, and to ensure that "[e]very development activity involving high disaster risks is equipped with disaster risk analysis as part of a disaster management effort in accordance with power vested."¹⁰⁸

Requiring Reporting to Legislative Oversight Bodies

Requiring assigned executive agencies to regularly report on their activities to reduce disaster risk to parliamentary bodies can provide an additional incentive for efficient action. One example of this is Pakistan's 2006 disaster management ordinance, which requires both the national and provincial governments to make annual reports of their disaster management activities to their respective legislative bodies.¹⁰⁹ South Africa's 2002 disaster management law calls on the national, provincial, and municipal disaster centers to submit

¹⁰⁵ *Id.* art. 46.

¹⁰⁶ *See* Global Review 2007, *supra* note 43, at 46-47.

¹⁰⁷ Disaster Management Act of 2005, Bill No. LV-F of 2005, ¶ 36(b) (India).

¹⁰⁸ *See* Indonesia, *supra* note 70, arts. 6-7, 9, 40.

¹⁰⁹ *See* Pakistan, *supra* note 102, art. 41.

annual reports to their legislative bodies on their activities, the results of their monitoring of prevention and mitigation initiatives, any disaster that occurred and problems experienced, evaluating disaster plans and strategies, and making recommendations.¹¹⁰

Providing for a Legal Remedy

An under-used means to increase accountability in this area is to ensure that communities affected by disasters have a right to a legal remedy where their losses in a natural disaster are properly considered to be partially due to culpable inaction by their government or third parties. However, some national disaster management laws would appear to allow for a remedy of this sort.

For example, Indonesia's disaster management law, which sets out a number of responsibilities of national and regional governments for disaster risk reduction, also includes a provision on dispute resolution which indicates a preference for seeking amicable solutions but, in the event this is not possible, allows for "out-of-court or in-court settlement."¹¹¹ A separate provision of the same act also makes it a criminal offense to "implement high risk development without disaster risk analysis."¹¹² Likewise, Armenia's emergency management law provides that "[o]fficials and citizens are responsible for the breach of the present law...and for creating conditions and preconditions for emergency situation[s]...[as] defined by the order of the [Republic of Armenia's] legislation."¹¹³

Other states preclude governmental liability in these circumstances. For example, Pakistan's disaster management ordinance renders the government, as well as its officers, immune from court jurisdiction for their disaster-related

¹¹⁰ See Act No. 57, Disaster Management Act of 2002, Government Gazette No. 24252 (2003), at arts. 24, 36, 50 (South Africa).

¹¹¹ See Indonesia, *supra* note 70, at art. 47.

¹¹² *Id.* art. 75(a).

¹¹³ See Armenia, *supra* note 88, art. 23.

work (even as it makes it a criminal offense for private actors to disobey governmental orders).¹¹⁴ Likewise, Micronesia's disaster relief law provides that its provisions "shall [not] be construed to create or authorize any cause of action against the National Government, its officials or employees for failure to prevent or mitigate the effects of a disaster."¹¹⁵

The concern to avoid excessive litigation is certainly understandable in this area in light of the frequent tendency to assign blame liberally after a major catastrophe.¹¹⁶ However, it would be more reasonable, and more consistent with human rights standards,¹¹⁷ to achieve this by defining a limited right to a remedy by statute rather than excluding legal recourse altogether. For example, the right to bring a case against the government could be limited to situations of gross negligence or reckless behavior and/or confined to an administrative proceeding before a neutral decision-maker rather than being allowed to go to a civil court.

Allowing Special Powers for Risk Reduction

Where these types of measures prove insufficient to raise the profile of disaster risk reduction commitments, another approach, exemplified by

¹¹⁴ See Pakistan, *supra* note 102, arts. 33, 42-44.

¹¹⁵ See Micronesia: Disaster Relief Assistance Act of 1989, §710, available at http://www.fsmlaw.org/fsm/code/title41/T41_Ch07.htm#705. Compare also Cain Burdeau and Michael Kunzelman, *Katrina Levee Lawsuit Dismissed*, Fox News (Jan. 31, 2008) (reporting on the dismissal of a legal case against governmental authorities in the United States for failure to adequately prepare the levees in New Orleans on the basis of governmental immunity), available at http://www.foxnews.com/wires/2008Jan31/0.4670_KatrinaLeveeSuit.00.html.

¹¹⁶ Cf. Twigg, *supra* note 45, at 209 (noting the potential positive potential of public interest litigation for improving risk reduction, but also expressing the concern that the adversarial nature of legal remedies might 'undermine opportunities for collective efforts').

¹¹⁷ Cf., e.g., Committee on Economic and Social Rights, Concluding Observations on the Report of Zambia, ¶ 33, U.N. Doc. E/C.12/1/ADD.106 (2005) (reaffirming the principle that all economic, social and cultural rights should be justiciable).

Jamaica's Disaster Management Act, could be to provide the executive with special powers to enforce prevention measures in the face of especially dangerous situations. Under Jamaica's law, the Prime Minister may, on recommendation of the Office of Disaster Preparedness and Emergency Management, declare a part of the Island a disaster zone where existing law is insufficient to address a "local condition tending to endanger public security."¹¹⁸ This then allows him/her to take "measures recommended by the Office or any other measures that he thinks expedient for removing or otherwise guarding against any such condition and the probable consequences thereof or mitigating as far as possible, any such hazard."¹¹⁹ Of course, as noted by the Government of Jamaica in a recent report on legal issues in disasters,¹²⁰ care must be taken in invoking extraordinary powers where the measures selected might impinge on the human rights of persons affected (e.g., where property is condemned or persons ordered to vacate their homes).

Gathering and Disseminating Relevant Information

In addition to governments paying adequate attention to risk reduction issues, they must actively encourage their populations to do so as well. This requires systems for efficiently gathering and sharing relevant information.

Ensuring Early Warning

The term "early warning" is generally used to refer to systems of alert for imminent hazards. Effective early warning systems are plainly critical for saving lives and, in some circumstances, they can also help to avoid displacement. For instance, early warning alerts on food security can lead to expedited action to avoid localized famines which could result in population displacement. Similarly, for windstorms and wildfires, early notice can

¹¹⁸ See Act 15 of 1993, Disaster Preparedness and Emergency Management Act (June 25, 1993), art. 12 (Jamaica).

¹¹⁹ *Id.*

¹²⁰ See Candice Rochester, *Legal Challenges to the International Response to Natural Disasters in Jamaica: Context of Hurricanes Ivan, Dennis and Emily*, at 4 (2007), available at <http://www.ifrc.org/Docs/pubs/idrl/idrl-amforum-jcrochester.pdf>.

provide communities an opportunity to secure their homes to some degree against potential damage. Unfortunately, governments have sometimes fallen short in providing a useable early warning to their populations, in part due to ambiguity in the allocation of institutional responsibility, both for monitoring, disseminating, and developing hazard information.

On the other hand, a number of states have enacted laws that successfully define methods and assign responsibilities in this area. For example, Nicaragua's disaster management law sets out three color-coded levels of alert for disaster risk, corresponding to various stages of an impending hazard (such as a developing hurricane), and tasks specific departments and ministries with monitoring and public announcements of threats.¹²¹ Similarly, by standing order, Bangladesh has instituted a Cyclone Warning System, which mandates that the Government begin providing initial warnings on the basis of meteorological predictions twenty-four hours in advance of a potential cyclone, announce a "Danger Stage" eighteen hours in advance, and then a "Great Danger Stage" ten hours in advance.¹²² Bangladesh's government has also entered into an extremely successful partnership with the Bangladesh Red Crescent Society and the International Federation of Red Cross and Red Crescent Societies to operate a "people-centered" cyclone preparedness program, employing radio broadcasts and 33,000 village-based volunteers using megaphones and hand-operated sirens to warn communities of impending storms.¹²³

Collecting Data

Data collection about potential hazards (e.g., seismological, meteorological, tidal, and riparian data) is of obvious importance in predicting and anticipating disasters. Equally critical, however, is gathering and updating population data, both as a matter of mapping vulnerability and as a basis for needs assessment

¹²¹ See Nicaragua, *supra* note 74, arts. 26-30.

¹²² See Asian Disaster Reduction Center, *Total Disaster Risk Management: Good Practices*, at 66 (2003).

¹²³ See WDR 2002, *supra* note 13, at 16.

if a disaster does strike and planners must be able to estimate the likely number of displaced and other affected persons. The latter type of data gathering should be supported by law, carried out or at least coordinated by public institutions, and accorded appropriate funding.

A good example of this is South Africa's Disaster Management Act, which created a National Disaster Management Centre, among whose duties was to "act as a repository of, and conduit for, information concerning disasters and disaster management."¹²⁴ Among the types of information the Centre is required to collect are data on hazards, risk factors, areas and communities that are particularly vulnerable, and indigenous knowledge on disaster management.¹²⁵ The Centre is also empowered to seek information from any organ of state or person, in the latter case under pain of criminal sanction in case of failure to comply.¹²⁶

Guaranteeing a Right to Disaster Information

States should also make sure that the public is provided a right to access information in the hands of the government that is necessary for their protection from disasters. In some states, this might be covered to some extent by general legislation on access to governmental information. However, a number of states have also adopted specific legislation on sharing information about environmental hazards.

For example, several state parties to the UN Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) have codified a specific governmental responsibility to provide information about environmental hazards to the public upon

¹²⁴ See South Africa, *supra* note 110, art. 17.

¹²⁵ *Id.*

¹²⁶ See *id.* at ¶¶ 18, 60.

request.¹²⁷ Likewise, the Russian Federation's 1994 disaster management law provides that "citizens...have the right to be informed of hazard[s] they can be exposed to at certain places of their residence within the [Russian Federation's] territory as well as of safety-provision measures."¹²⁸

Taking Gender Issues Adequately into Account

Studies show that women tend to be disproportionately affected by major disasters.¹²⁹ While various reasons have been forwarded for this phenomenon, many of them are traceable to the effects of gender-based discrimination.¹³⁰ Unfortunately, few states have included specific provisions concerning gender issues in their disaster management legislation.¹³¹ More have done so in less formal plans and strategies. One example is Bangladesh, whose Standing Order on Disaster Management of 1999 includes a model Union/Municipal Corporation Disaster Action Plan which calls for disaster committees to have

¹²⁷ See, e.g., Statutory Instrument No. 3391, Environmental Information Regulations (2004), art. 5 (United Kingdom); Loi du 5 août 2006 relative à l'accès du public à l'information en matière d'environnement, Moniteur Belge (Aug. 8, 2006), at 42538 (Belgium).

¹²⁸ See Law on Protection of Population and Areas From Natural Disasters and Human-Created Accidents (Dec. 21, 1994), art. 18(1) (Russian Federation), unofficial translation available at http://www.adrc.or.jp/manage.php?URL=./management/RUS/Russia_Statute1.htm&Lang=en&NationCode=643.

¹²⁹ See, e.g., United Nations Department of Economic and Social Affairs, Division for the Advancement of Women, *Making Risk Environments Safer*, WOMEN 2000 AND BEYOND, at 6 (Apr. 2004); Pan American Health Organization, Gender and Natural Disasters (undated), available at http://www.paho.org/English/DPM/GPP/GH/gender_disasters.pdf.

¹³⁰ *Id.*

¹³¹ See Global Review 2007, *supra* note 43, at 78 (lamenting that, 'although there has been a history of engagement in the subject of gender and disaster risk management and recovery—on behalf of international agencies, NGOs and even some ministries in select countries, serious efforts to incorporate the issue into risk reduction and recovery practice is conspicuously absent').

at least two women representatives,¹³² provide specialized training for women in first aid and purification of water,¹³³ and draw up lists of families who might need assistance after a disaster, with special attention to female-headed households.¹³⁴

Similarly, in India, the Gujarat State Disaster Management Policy lists “address[ing] gender issues in disaster management with special thrust on empowerment of women towards long term disaster mitigation” among its primary objectives. It provides a number of measures in its capacity building activities with local communities and civil society groups to promote and support the role of women in disaster mitigation.¹³⁵

Devoting Specific Attention to Other Potentially Vulnerable Groups

There are likewise relatively few states that have devoted specific attention to other vulnerable groups, such as indigenous peoples, in existing domestic law on preventing disasters. One exception is Article 9 of Peru’s Law Concerning Internal Displacements, which specifically requires the state “to take measures for the protection of Andean indigenous peoples, ethnic groups in the Amazon basin, *campesino* minorities and other groups having a special dependency on their land or a special attachment to it.”¹³⁶

¹³² See Bangladesh: Standing Order on Disaster Management (1999), at annex H, ¶ 2.

¹³³ *Id.* ¶¶ 9.3-9.4.

¹³⁴ *Id.* ¶ 12.1.

¹³⁵ See Gujarat State Disaster Management Policy (India).

¹³⁶ Republic of Peru, Law No. 28223 Concerning Internal Displacements, art. 2, May 19, 2004, available at http://www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx, specifically requires the state ‘to take measures for the protection of Andean indigenous peoples, ethnic groups in the Amazon basin, campesino minorities and other groups having a special dependency on their land or a special attachment to it.’

INSTITUTIONAL ELEMENTS OF STATE REGULATION

The first priority for action of the Hyogo Framework not only commits states to make disaster risk reduction a priority, but also to give it “a strong institutional basis for implementation.” To do this, it recommends the creation of “multi-sector national platforms,” meaning “national mechanisms for coordination and policy guidance on disaster risk reduction that need to be multi-sectoral and inter-disciplinary in nature, with public, private and civil society participation involving all concerned entities within a country (including United Nations agencies present at the national level, as appropriate).”¹³⁷ As of 2006, thirty-five countries had developed such national platforms.¹³⁸

Most national disaster management laws already devote substantial (sometimes near exclusive) attention to defining institutional structures. Traditionally, these structures have centered on a single civil defense or civil protection agency and this continues to be the case in many countries.¹³⁹ However, pursuant to the suggestion of the Hyogo Framework and the encouragement of ISDR, there is a trend in more recent legislation to establish inter-ministerial councils as well as inter-departmental provincial and municipal councils to increase the coordination and participation of the many sectors that are implicated by risk reduction.¹⁴⁰

Some states also make specific provision in their laws for the inclusion of civil society actors and communities in the planning and implementation of disaster mitigation activities. As auxiliaries to the public authorities in the humanitarian field, these should include, at a minimum, the National Red

¹³⁷ See Hyogo Framework, *supra* note 42, at 11, n.9.

¹³⁸ See Sálvano Briceño, *Progress on the Implementation of the Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters* (Powerpoint Presentation to the ISDR ECOSOC Side Event, July 19, 2006), available at <http://www.unisdr.org/eng/isdr-system/docs/1>.

¹³⁹ See Global Review 2007, *supra* note 43, at 39.

¹⁴⁰ *Id.*

Cross or Red Crescent Society.¹⁴¹ As of 2004, seventy-seven existing National Societies reported being mentioned in such laws.¹⁴²

It is also highly desirable for these laws to provide for the direct involvement of communities in making themselves less vulnerable. One good example in this area is Nicaragua's disaster management law, which sets the "involvement of the population in the activities of the different public and private entities participating in the National System for Prevention, Mitigation and Response to Disasters" among its fundamental principles.¹⁴³

INTERNATIONAL ROLE

United Nations

ISDR

The International Strategy for Disaster Reduction (ISDR)¹⁴⁴ reports to the Under-Secretary General for Humanitarian Affairs (also known as the Emergency Relief Coordinator). It serves as the secretariat to the Hyogo Framework, and as such has a central role in promoting and assisting member states in the development of appropriate laws and policies to implement the Hyogo priorities. The ISDR has developed a large database of national laws

¹⁴¹ See Final Goal 2.1.1, 27th International Conference of the Red Cross and Red Crescent (1999) (calling on states to including National Red Cross and Red Crescent Societies on appropriate national disaster policy and coordination bodies).

¹⁴² See International Federation of Red Cross and Red Crescent Societies, *Well-Prepared National Society: Self-Assessment 2002-2004*, at 11 (2005). For two examples, see Act on the Protection against Natural and other Disasters (2006) (Official Gazette of the Republic of Slovenia No 28/06, Mar. 17, 2006), art. 74(2) (Slovenia); Robert T. Stafford Disaster Relief and Emergency Assistance Act (as amended as of June 2007), sec. 204(c) (United States).

¹⁴³ See Nicaragua, *supra* note 74, art. 2(10).

¹⁴⁴ See International Strategy for Disaster Reduction Home Page, <http://www.unisdr.org>.

and policies on disaster risk reduction as well as detailed guidance for the development and promotion of national risk reduction platforms.

UNDP

The United Nations Development Programme's Bureau of Crisis Prevention and Recovery¹⁴⁵ has initiatives focused on the prevention of conflict, disaster risk reduction, and recovery and reintegration in dozens of countries around the world. It supports the advisory services of UNDP country offices in the area of disaster risk reduction, which have worked with a number of governments to update their laws in many of the areas discussed in this chapter.

Red Cross/Red Crescent Movement

International Federation

The International Federation of Red Cross and Red Crescent Societies is an international membership organization formed by the national Red Cross and Red Crescent Societies around the world. The Federation's International Disaster Response Laws, Rules and Principles (IDRL) Programme¹⁴⁶ gathers and disseminates information on national and international law on disaster relief and recovery, as well as researching outstanding legal issues in this area. In addition to its legal database, publications and trainings, it has provided support to national societies for their advocacy with governments for the development of appropriate law and policy in these areas.

Climate Centre

The Red Cross/Red Crescent Climate Centre supports National Red Cross and Red Crescent Societies to eventually reduce the loss of life and the damage

¹⁴⁵ *See id.*

¹⁴⁶ *See* International Federation of Red Cross and Red Crescent Societies [IFRC], *International Disaster Response Laws, Rules and Principles*, available at <http://www.ifrc.org/idrl>.

done to the livelihoods of people affected by the impacts of climate change and extreme weather events. It has produced a number of publications aimed at explaining the potential effects of climate change and highlights successful strategies for preparing to address those effects, particularly at the community level.

Other Actors

ProVention Consortium

The ProVention Consortium is a global coalition of international organizations (notably including the World Bank, UN entities, and the International Federation), governments, the private sector, civil society organizations, and academic institutions dedicated to increasing the safety of vulnerable communities and to reducing the impacts of disasters in developing countries. It provides a forum for multi-stakeholder dialogue on disaster risk reduction and a framework for collective action. It has produced a large number of studies and papers on best practices in risk reduction and sponsors workshops and high-level conferences on the various issues.

SUMMARY OF RECOMMENDATIONS

1. Governments should develop specific national platforms and policies on disaster risk reduction, consonant with the Hyogo Framework. Responsibilities for risk reduction and early warning should also be integrated into institutional arrangements for disaster relief and recovery to ensure a holistic approach.
2. Governments should ensure that zoning regulations and building codes address disaster risk and that they are adequately enforced. Care should be taken to mitigate the potential negative effects of such enforcement on the poor and marginalized.
3. Governments of countries that face the possibility of floods should ensure that a comprehensive approach to flooding mitigation, including environmental regulations and zoning approaches, is included in their legislation and plans.

4. Governments should devote adequate attention to equitable solutions for insecure land tenure issues to increase incentives for communities to make their own land less vulnerable.
5. Disaster risk reduction activities should be assigned specific budgets and sufficiently funded.
6. Governments should incorporate risk reduction elements into development planning.
7. Governments should ensure that agencies tasked with disaster risk reduction activities regularly report to legislative oversight bodies.
8. Governments should provide a legal remedy to affected communities where disaster-related damages are attributable to gross negligence by government actors.
9. Governments should ensure that adequate procedures are in place to provide early warning to their populations of impending hazards, including community-level actors as much as possible in their implementation.
10. Governments should ensure that procedures are in place to regularly collect data on potential hazards and on populations in order to support contingency planning, and ensure a public right to such information.
11. The involvement of civil society and communities should be sought out and promoted in risk reduction and, particularly, early warning initiatives. The role of National Red Cross and Red Crescent Societies, as auxiliaries to the public authorities in the humanitarian field, should be clearly set out in disaster legislation.
12. Gender issues and the needs of vulnerable groups should be adequately taken into account in disaster risk reduction legislation and planning.