

HOW CAN INTERNATIONAL HUMAN RIGHTS LAW PROTECT US FROM DISASTERS?

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People do not lose their rights when disasters strike. As climate change increases the likelihood that disasters will become both more intense and more unpredictable, it is time for the international human rights community to devote more attention to disasters and on the humanitarian community to incorporate a rights-based approach to disaster management.

In the past decade, there has been growing awareness of the relevance of international human rights law to prevention, response and recovery from disasters. In many respects, the 2004 Indian Ocean tsunami marking a turning point in the international community's perception of disasters. Before the 2004 tsunami, disasters were primarily seen in terms of the need to mobilize rapid humanitarian aid – an area in which logistical expertise was prioritized. After the tsunami, awareness grew that human rights had to be built into all phases of disaster management – prevention or risk reduction, response and recovery.²

While the Convention on the Protection of Persons with Disabilities is the only human rights treaty to explicitly reference disasters, the applicability of human rights law to disasters is receiving greater attention from both the scholarly community³ 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.”⁴ As Walter Kälin points out, UN treaty bodies are increasingly taking up issues related to disasters in carrying out their monitoring duties.⁵ 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.

¹ With thanks to Walter Kälin and Ingrid Nifosi-Sutton for their comments and to Amy Copley for her research assistance in preparing this paper, particularly her work on legal cases related to governmental responsibility for protecting life.

² For an early example of this concern with human rights, see the joint statement by Walter Kälin and Miloon Kothari, “Relief and Rehabilitation Efforts Remain Problematic One Year After Asian Tsunami, Say UN Experts”, www.brookings.edu/research/speeches/2005/12/19tsunami-kalin. Also see: Walter Kalin, “Protection of Internally Displaced Persons in Situations of Natural Disaster: A Working Visit to Asia”, www.brookings.edu/research/reports/2005/04/tsunami and Hope Lewis, “Human rights and natural disaster: the Indian Ocean tsunami”, *School of Law Faculty Publications*, Northeastern University, Paper 3. <http://hdl.handle.net/2047/d20001074>.

³ See for example, Erica Harper, *International Law and Standards Applicable in Natural Disaster Situations*, International Development Law Organization, 2009. Walter Kälin, “The Human Rights Dimension of Natural or Human-Made Disasters,” *German Yearbook of International Law*, vol. 55, 2012: 119-147.

⁴ ILC, *Draft Articles on the Protection of Persons in the Event of Disasters*, see especially draft articles 6,7, 8 and 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

⁵ Kälin, “The Human Rights Dimension,” op cit., pp. 127-128. Also see Eduardo Valencia-Ospina, *Sixth report on the protection of persons in the event of disasters*, 2013, A/CN.4/662, pp. 14-19.

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.⁶

While there are many entry points to the issue of the relationship between human rights law and disasters, in this short paper, I would like to 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
- The development of operational guidance for humanitarian agencies as a way of translating human rights law into concrete actions on the ground.

International human rights law has much to offer those involved in disaster risk management – from governmental policy-makers to local first responders, from international agencies promoting disaster risk reduction to development organizations taking the lead in long-term preventive efforts.

Prevention: A Governmental Responsibility

All international human rights conventions include the right to life and the subsequent obligation of the state to protect life. OHCHR's message on disaster risk reduction sums up the linkages and provides a useful context to this discussion:

'All states have positive human rights obligations to protect human rights. Natural hazards are not disasters, in and of themselves. They become disasters depending on the elements of exposure, vulnerability and resilience, all factors that can be addressed by human (including state) action. A failure (by governments and others) to take reasonable preventive action to reduce exposure and vulnerability and to enhance resilience, as well as to provide effective mitigation, is therefore a human rights question.'⁷

⁶ UN General Assembly, *Promotion and protection of human rights in post-disaster and post-conflict Situations*, A/HRC/RES/22/16, 10 April 2013, www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/A-HRC-RES-22-16_en.pdf.

⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR) "Organization profile: Policies and Programmes in DRR", www.preventionweb.net/english/professional/contacts/profile.php?id=1370.

In particular, states have a responsibility to reduce the risks of disasters and to protect those at imminent risk of disasters through timely warnings and evacuations and when they fail to do so, they face domestic and international criticism⁸ and potential legal action.

Disaster Risk Reduction (DRR)

It is the responsibility of governments to protect their populations from national disasters and central to that effort is reducing the risks of natural hazards. While governments cannot prevent cyclones or earthquakes, they can take measures to reduce the impact of these events on their people.

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.”⁹ The internationally-accepted 2005 Hyogo Framework on Disaster Risk Reduction sets out three strategic goals: the integration of disaster risk reduction into sustainable development policies and planning; the development and strengthening of institutions, mechanisms and capabilities to build the resilience of communities to hazards; and the systematic incorporation of risk reduction approaches into emergency preparedness, response and recovery programs.¹⁰

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. The relationship between DRR and human rights has been recognized by both the United Nations and civil society actors working on DRR. For example, the 2009 UN Development Group’s Guidance on Disaster Risk Reduction emphasizes the importance of incorporating a human rights-based approach into disaster risk reduction.¹¹ The Global Network on Civil Society Organizations for Disaster Reduction called for the inclusion of a more

⁸ See for example, Chris Kromm and Sue Sturgis, “Hurricane Katrina and the Guiding Principles on Internal Displacement,” Institute for Southern Studies, 2008, www.brookings.edu/~media/events/2008/1/14%20disasters/0114_isskatrina.pdf; Actionaid, “Tsunami Response: A Human Rights Assessment”, January 2006, www.alnap.org/pool/files/actionaid_tsunami_hro_jan2006.pdf; and EAT-BURMA and JHU CPHHR, “After the Storm: Voices from the Delta”, May 2009, www.jhsph.edu/research/centers-and-institutes/center-for-public-health-and-human-rights/locations/asia/BurmaCyclone.html.

⁹ Hyogo Declaration, World Conference on Disaster Reduction, UN Doc. A/CONF.20/L.3/Rev.1, para. 4, 2 February 2005, www.unisdr.org/2005/wcdr/intergover/official-doc/L-docs/Hyogo-declaration-english.pdf.

¹⁰ International Strategy for Disaster Reduction (ISDR), *Hyogo Framework for Action 2005-2015: I S D R International Strategy for Disaster Reduction International Strategy for Disaster Reduction, Building the Resilience of Nations and Communities to Disaster*, January 2005, www.unisdr.org.

¹¹ “Integrating Disaster Risk Reduction into the CCA and UNDAF: A Guide for UN Country Teams”, www.undg.org/docs/9866/UNDG-DRR-Guidance-Note-2009_DUP_08-07-2009_11-43-02-734_AM.PDF

specifically human rights-focused component in the run-up to the 2015 Sendai meeting which will agree on a post-Hyogo framework.¹²

Governmental responsibility to protect citizens

There have also been 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 Krymsk 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 versus Russia and in the case of a methane explosion which was a manmade disaster, Öneriyildiz versus Turkey (2004). Notably, the European Court of Human Rights did not find the government responsible in the case of Murillo Saldias and others versus Spain (flooding 2006).

Table of Disaster-related Legal Cases

Court Decision		Natural Disaster	Man-made Disaster
Held Responsible	Nationally	1. L’Aquila Earthquake (2009) 2. Krymsk Floods (2012)	
	Regionally	3. ECtHR: Budayeva and Others v. Russia (mudslide; 2008)	4. ECtHR: Öneriyildiz v. Turkey (methane explosion; 2004)
Not Held Responsible	Nationally	5. Hurricane Katrina (2013)	
	Regionally	6. ECtHR: Murillo Saldias and Others v. Spain (flooding; 2006) ¹³	

1. L’Aquila Earthquake (2009)

On April 6, 2009, a 6.3 magnitude earthquake hit the city of L’Aquila, Italy, killing 308 people and injuring 1500 others. In the six months preceding the major quake, a series of smaller tremors (less than 5.0 magnitude) had shaken the region and a week before the 6 April earthquake, an alarm had been sounded, followed by a minor earthquake. As the warning seemed to have been overblown, the Italian National Department of Civil Protection (DPC) began legal proceedings against the technician who had sounded the alarm, seeking punitive damages for the “unnecessary alarmism” that he caused.

The DPC then convened the National Commission on Major Risks on March 31, 2009 to discuss the prospect of a major seismic event with regional/local authorities and scientists. At

¹² 2011 Global Platform for Disaster Risk Reduction, May 2011, www.globalnetwork-dr.org/un-global-platform/gp-previous-years.html.

¹³ This case was seen both domestically and at the European Court on Human Rights, but was found inadmissible at the latter. (See further explanation in the case description).

the press conference following the meeting, Bernardo De Barnardinis, the vice-director of the DPC, reassured local populations that the situation in L'Aquila posed "no danger," communicating that "the scientific community continues to assure me that...it's a favorable situation because of the continuous discharge of energy."¹⁴ The DPC took a clear stance that the recurring tremors in the region posed no grave threat to the citizens of L'Aquila, and there was no immediate reason for alarm.

When an unusually large tremor shook L'Aquila at 12:30 A.M. on April 6, 2009, some people fled their homes in panic. The response by the DPC was to tour the streets with loudspeakers, advising people to calm down and return home. Three hours later the 6.3 magnitude earthquake struck.

The legal proceedings that followed the disaster spurred much controversy, as six seismologists and one government official were convicted for multiple counts of manslaughter and faced jail sentences of six years. The official charges brought against them were for providing 'incomplete, imprecise and contradictory information' and for 'carrying out a superficial analysis of seismic risk, and proving false reassurances to the public' in the meeting and press conference preceding the earthquake. These charges have largely been misrepresented by the media as centering on the scientists' inability to predict the earthquake, when in fact they focus on the unreasonable reassurances made by these officials after their March 31st meeting.¹⁵

As of early 2014, the sentences for the L'Aquila officials have been suspended as they are awaiting a verdict on their appeal.¹⁶ However, some of the relatives of those killed in the earthquake participated in the proceedings against the members of the Commission and obtained compensation.

2. Krymsk Floods

On July 6 and 7, 2012, unusually heavy rains prompted massive floods in the town of Krymsk, Russia (pop. 60,000) and the surrounding Krasnodar region. The floods killed 172 people—most of whom were elderly residents, unable to find safety when the storm hit in the middle of the night. An estimated 7,200 homes were flooded, and 29,000 people lost all of their belongings. Regional energy, gas and water supply systems were also severely damaged.

¹⁴ Stephen Hall, "Scientists on trial: At fault?" *Nature* vol. 477, 2011, pp. 264-269, www.nature.com/news/2011/110913/full/477264a.html

¹⁵ David Alexander, "The L'Aquila earthquake of 6 April 2009 and Italian Government policy on disaster response", *Journal of Natural Resources Policy Research*, vol. 2, no. 4, 2010, pp. 325-342, www.tandfonline.com/doi/pdf/10.1080/19390459.2010.511450; Stephen Hall, "Scientists on trial: At fault?" *Nature* vol. 477, 2011, pp. 264-269, www.nature.com/news/2011/110913/full/477264a.html; also see: Carina Fearnley, "Scientists on trial: Lessons for disaster preparedness", www.scidev.net/global/communication/opinion/scientists-on-trial-lessons-for-disaster-preparedness.html and Julien Etienne and Tommaso Palermo, "The L'Aquila earthquake case is not "science on trial". It is a challenge to the way public officials communicate risk." <http://blogs.lse.ac.uk/europpblog/2012/11/01/laquila-earthquake-conviction/>.

¹⁶ Press TV, "Italian police arrest four in quake bribery case", 8 January 2014, www.presstv.ir/detail/2014/01/08/344473/italy-police-nab-4-in-quake-fraud-case/; Nature News Blog, "Italian seismologists appeal L'Aquila ruling", 7 March 2013, <http://blogs.nature.com/news/2013/03/italian-seismologists-appeal-laquila-ruling.html>.

In the wake of the floods, President Putin pledged \$60,000 compensation to residents who had lost relatives in the floods. He also ordered federal authorities to investigate whether local officials used an early warning system to alert residents to the flood. A week later, the authorities found that Krymsk's 'early warning system' had consisted of a few broken loudspeakers, text messages and warnings on the regional TV channel after rain had already cut power to most of the area. The meteorological service began issuing alerts for heavy rains and flash floods on 5 July, at which point local emergency staff should have convened a meeting to discuss their preparedness strategy. However, only 5 of the 30 emergency staff members appeared for the meeting. At court, authorities demonstrated that the decree introducing a state of emergency over the torrential rains was falsified to appear as though it was issued prior to the storm. As a result, the mayor of Krymsk, the former head of the Krymsk district, and the acting head of the local emergency service were charged with criminal negligence for "failing to provide adequate advanced warning to local residents" and sentenced to up to three-and-a-half, six and four-and-a-half years of imprisonment, respectively.¹⁷

After the floods, victims slowly received compensation and by September 2012, nearly all victims who had lost family members had received their compensation although those who filed claims for new housing had not been awarded any payments.¹⁸ There also seems to have been an issue whereby many victims were considered to have been allocated too much funding and asked to return some of their compensation (January 2013)¹⁹ and by March 2013, there were reports that some housing needs still had not been met.²⁰ However, by April 2013, Ria Novosti reported that "15 billion rubles (some \$481 million) has been spent from the federal and territorial budgets to contain the damage and provide relief and compensation payments to local residents."²¹

3. Budayeva and Others v. Russia

In July 2000, a mudslide triggered by the overflowing Gerhozhansu River killed eight people in the town of Tyrnauz. The dams that protected Tyrnauz were severely damaged by heavy mudslides over the course of the preceding year, but were never repaired as advised by the

¹⁷ For coverage of this event, see Elise Giuliano, "Assigning Blame After Natural Disasters in Russia", September 2013, www.ponarseurasia.org/memo/assigning-blame-after-natural-disasters-russia#_ftnref3; Moscow News, "Krymsk officials arrested over deadly flooding", 23 July 2012, <http://themoscownews.com/russia/20120723/189988923.html>; Ria Novosti, "Flooding Negligence Case Sees Ex-Officials Sentenced to Jail", 21 August 2013, <http://en.ria.ru/russia/20130821/182889163.html>; Ria Novosti, "Flood Town Authorities Falsified Emergency Order – Investigators", 25 July 2012, <http://en.ria.ru/russia/20120725/174773075.html>; Ellen Barry, "3 Face Negligence Charges in Reaction to Russia Flood", *New York Times*, 22 July 2012, www.nytimes.com/2012/07/23/world/europe/russian-flood-leads-to-negligence-charges.html.

¹⁸ Nikita Serebryannikov, "In Krymsk, 5913 persons, affected by flood, receive no compensation", *Caucasian Knot*, 13 September 2012, <http://eng.kavkaz-uzel.ru/articles/22210/>.

¹⁹ Allison Quinn, "Krymsk Flood Victims Asked to Return Compensation Funds", *Moscow Times*, 29 January 2013, www.themoscowtimes.com/news/article/krymsk-flood-victims-asked-to-return-compensation-funds/474659.html.

²⁰ IDMC, "IDPs increasingly neglected despite continuing needs", 14 March 2013, www.internal-displacement.org/europe/russian-federation/2013/idps-increasingly-neglected-despite-continuing-needs.

²¹ Ria Novosti, "Reconstruction of Flood-Ravaged Krymsk Totals \$660 Mln", 2 April 2013, <http://en.ria.ru/russia/20130402/180405567.html>.

state metrological institute. Two weeks prior to the mudslide, the institute warned the local Ministry for Disaster Relief of the imminent danger posed by these dams, especially given the recent heavy rains and requested local authorities to be poised to issue an emergency warning if necessary. These recommendations were not implemented. The day before the fatal mudslide, a smaller mudflow hit the town prompting local authorities to evacuate the affected areas, however, the authorities did not prevent the evacuees from returning when the mud settled. The next day a major mudslide hit the town and killed eight people.

Relatives of the victims tried to receive compensation in domestic courts, but were rejected since, according to the ruling, the victims died of 'natural causes' that 'could not have been foreseen or prevented' by the state. The relatives, including the wife of Mr. Budayeva who died in the mudslide, appealed their case to the European Court of Human Rights which found that the state was in violation of its duty to protect life since it did not act on the clear, preventive measures necessary to protect its population.

This ruling is particularly significant since it affirms that the 'right to life' (Article 2 of the European Convention on Human Rights) establishes a positive obligation of the state to take reasonable and appropriate actions to protect the lives of those within its jurisdiction. While states maintain flexibility in how they prioritize and allocate resources towards disaster risk reduction, the Court ruled that the state is liable for deaths when it fails to act on proposed, preventive measures to mitigate risk of an identifiable natural disaster. In this case, a causal link was established between administrative flaws that prevented the implementation of the required measures and the deaths of the victims. Russia was ordered to pay between EUR 10,000-30,000 to each of the victims' families.²² The court held that the government failed to adopt measures that could have mitigated the effects of mudslides, the government did not inform the applicants of the increased risk of mudslides due to the lack of the above measures and that competent authorities did not carry out an investigation capable of determining the circumstances in which the husband of Ms. Budayeva died. This last point is interesting because it suggests that under the European Convention on Human Rights the State has to provide effective remedies in cases where disaster victims have died as a result of governmental negligence in mitigating a recurring or foreseeable disaster.²³

4. Öneriyildiz v. Turkey

Finally, although it deals with a manmade disaster, the Öneriyildiz v. Turkey case is relevant. On 28 April 1993, a buildup of methane at a public rubbish dump caused a deadly explosion in Ümraniye, Istanbul, killing 39 people and destroying a number of homes. Although two years earlier experts had warned the authorities of the risk of such an explosion if gases were not burnt off, the authorities had taken no steps to control the gases or evacuate the surrounding

²² European Court of Human Rights, *Budayeva and others v. Russia*, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, judgment of 20 March 2008. <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2294127-2474035>; Walter Kälin and Claudine Haenni Dale, "Disaster risk mitigation – why human rights matter", *Forced Migration Review*, vol. 31, pp. 38-39, www.fmreview.org/FMRpdfs/FMR31/38-39.pdf.

²³ Ingrid Nkosi-Sutton, personal communication to the author.

area. Criminal and administrative investigations were carried out, and the mayors of Ümraniye and Istanbul were convicted of failing to comply with the expert report of May 1991. They were sentenced to at least three months in jail and fined 160,000 Turkish liras (TRL), but the sentences and fines were never enforced.

Öneryıldız, a relative of several of the victims, subsequently sought damages in his own name in the Istanbul Administrative Court, holding the authorities responsible for the deaths of his relatives and the destruction of his property. In November 1995, he was awarded TRL 100,000,000 for non-pecuniary damage and TRL 10,000,000 for pecuniary damage for the destruction of household goods (equivalent to EUR 2,077 and EUR 208 respectively.) Yet, he never received his compensation.

He then brought the case to the European Court on Human Rights, which ruled in his favor, asserting that the state has a duty to protect its citizens in cases where it creates risks through industrial and other “dangerous activities.” The Court found that the municipal authorities had violated the victims’ right to life (Article 2) by failing to carry out the necessary safety measures proposed by experts and allowing dwellings to be built within the “danger zone” while fully aware of the risk.²⁴ The court further found that domestic criminal proceedings did not adequately establish whether competent authorities were responsible for the death of the applicants’ relatives. What is more, the governmental officials who were found guilty were sentenced to derisory fines which were eventually suspended.

5. Hurricane Katrina

On August 29, 2005, Hurricane Katrina, a Category 3 storm, hit southeast Louisiana. During the storm, the levees protecting the low-lying city of New Orleans were breached by floodwaters in several places, inundating 80 percent of the city. The storm and subsequent flooding killed at least 1,836 people and led to damages of more than \$100 billion. Local residents, businesses and government entities in large part blamed the U.S. Army Corps of Engineers for failing to properly maintain and operate the Mississippi River-Gulf Outlet (MRGO), which was considered to have funneled Katrina’s storm surge into many parts of the city. More than 500,000 claims for damages were filed against the Corps.

In 2009, District Judge Stanwood Duval ruled in favor of six residents and one business who claimed that the Corps’ inadequate oversight of the MRGO led to the flooding of New Orleans’ Lower 9th Ward and neighboring St. Bernard Parish. While the 5th Circuit Court of Appeals initially agreed with that decision in March 2012, the following September, a three-judge panel reversed the earlier opinion, citing a 1928 law that grants the Corps and other federal agencies immunity from damages caused by their failing structures. On December 20, 2013, Judge Duval dismissed almost all remaining lawsuits against the federal government for damages caused by

²⁴ European Court of Human Rights, Öneryıldız v. Turkey, Application 48939/99, judgment of 30 November 2004. <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=003-1204313-1251361>; Walter Kälin and Claudine Haenni Dale, “Disaster risk mitigation – why human rights matter”, *Forced Migration Review*, vol. 31, pp. 38-39, www.fmreview.org/FMRpdfs/FMR31/38-39.pdf.

the failure of levees and floodwalls during Hurricane Katrina, ordering both sides to pay for their own legal expenses. In his final ruling he stated: "The Flood Control Act of 1928 as interpreted over the years gives the United States Army Corps of Engineers virtually absolute immunity, no matter how negligent it might have been in designing and overseeing the construction of the levees." Only one major law suit related to Hurricane Katrina is still active; it is being heard by the U.S. Court of Federal Claims and focuses on whether the Corps took a portion of the property value of residents of the Lower 9th Ward in failing to maintain the MRGO.²⁵

6. Murillo Saldias and Others v. Spain

In 1996, torrential rains led to flooding at the Biescas camp site in Spain, leaving 87 people dead and many more injured. The site had been developed by a private individual on public land owned by the local authority. To develop the land, he completed the necessary administrative process which involved consultation with a number of municipal and regional authorities. During this process, an expert expressed serious reservations about the location of the camp site and the questionable corrective works that had been done to prevent flooding there. However, the developer and local authorities overlooked the formal report issued by the expert, and the plans to establish a campsite were carried out.

After the deadly flood, a criminal investigation was launched and applicants joined the proceedings as civil parties. The investigating judge, however, ruled that the case was inadmissible because "the constituent elements of the alleged offences" had not been identified (*Murillo Saldías and Others v. Spain*, 76973/01, ECHR § 35-1). The applicants appealed, but were dismissed. They also applied for *amparo* relief in the Constitutional Court, but their claims were considered to be unfounded and inadmissible. The first applicant then brought administrative proceedings against the regional and central authorities in the Audiencia Nacional on the grounds of strict liability and was awarded substantial damages (approximately EUR 200,000 for the deaths of each of his four family members.) He then lodged an appeal on "points of law which are still pending before the Supreme Court" (*Murillo Saldías and Others v. Spain*, 76973/01, ECHR § 35-1).

At the same time, the first applicant brought the case to the European Court on Human Rights with other applicants who had received injuries during the flood. They complained under Article 2 that the authorities had not taken sufficient preventive measures to protect users of the campsite since they authorized permission for the land to be developed despite their awareness

²⁵ WDSU, "Judge rejects claims over failed Katrina floodwall", 16 April 2013, www.wdsu.com/news/local-news/new-orleans/Judge-rejects-claims-over-failed-Katrina-floodwall/-/9853400/19771448/-/14c5vpez/-/index.html; Environment News Service, "Court: Negligence by U.S. Army Corps Caused Katrina Flooding", 18 November 2009, www.ens-newswire.com/ens/nov2009/2009-11-18-092.html; AP via USA Today, "Judge ends Katrina flooding lawsuits against feds", 28 December 2013, www.usatoday.com/story/news/nation/2013/12/28/judge-ends-katrina-flooding-lawsuits-against-feds/4233217/; Mark Schleifstein, Times-Picayune, "Federal judge dismisses most of remaining Katrina damage lawsuits", 27 December 2013, www.nola.com/environment/index.ssf/2013/12/federal_judge_dismisses_most_o.html.

of its potential for flooding. The applicants also complained under Article 6(1) that the investigating judges and the Spanish courts had been biased and under Article 13 that the authorities had not conducted an appropriate investigation to identify those responsible for the disaster. However, these complaints were found inadmissible for two reasons: first, the first applicant had already been awarded reasonable compensation for the deaths of his relatives from domestic administrative proceedings and was likely to receive even more awards for damages from his appeal. Therefore, he no longer held victim status according to Article 34 of a violation of his rights under Article 2. The other applicants had joined the criminal proceedings as civil parties and had not brought administrative proceedings against the authorities before lodging their complaints to the Court so their complaints were found inadmissible as well since they failed to exhaust domestic remedies before bringing their case to the European Court.²⁶

These cases indicate that both national and regional authorities have been willing, in at least some cases, to hold governments responsible for failure to protect their citizens from the risk of disasters. Although this paper focuses on sudden-onset natural disasters, there is at least some interest in using the courts to hold governments accountable for their responsibility to protect their citizens from the effects of climate change.²⁷ Already several lawsuits have been filed against states by indigenous groups and other climate change activists on this premise.²⁸

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, ethnic and religious minorities, gender plays a particularly important role in all phases of disaster management from prevention to response to recovery. And in this respect international human rights law – particularly the Convention on the Elimination of all Forms of Discrimination against Women – has much to offer.

²⁶ See *Murillo Saldias and Others v. Spain* (App no 76973/01) ECHR 28 November 2006, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-78694> and <http://caselaw.echr.globe24h.com/0/0/spain/2006/11/28/murillo-saldias-and-others-v-spain-dec-2963-76973-01.shtml>; Council of Europe, “Press release issued by the Registrar: Inadmissibility Decision”, 20 December 2006, <https://wcd.coe.int/ViewDoc.jsp?id=1077443&Site=COE>.

²⁷ Myles Allen, “Liability for climate change: Will it ever be possible to sue anyone for damaging the climate?” *Nature*, vol. 421, 27 February 2003, www.climatelaw.org/articles/allen-nature-article.pdf.

²⁸ For example, see: Subnational: *Kanuk v. Alaska Department of Natural Resources* www.motherjones.com/mojournal/2013/10/meet-college-freshman-suing-alaska-not-stopping-global-warming; *Alec L. et. al v. Lisa P. Jackson, et. al* www.theatlantic.com/national/archive/2012/05/an-inconvenient-lawsuit-teenagers-take-global-warming-to-the-courts/256903/; *American Electric Power Company v. Connecticut* http://en.wikipedia.org/wiki/American_Electric_Power_Company_v._Connecticut; www.supremecourt.gov/opinions/10pdf/10-174.pdf and www.huffingtonpost.com/2011/06/20/supreme-court-climate-change-lawsuit-ruling_n_880340.html. At the national level: *Athabaskan People’s Petition to Canada* http://earthjustice.org/our_work/cases/2013/protecting-human-rights-by-reducing-black-carbon-emissions-to-slow-arctic-warming; And at the supranational level: *Federated States of Micronesia v. CEM Group* http://heinonline.org/HOL/Page?handle=hein.journals/sdlp10&div=31&g_sent=1&collection=journals#123; and *Palau, “Climate Change and the ICJ: Seeking an Advisory Opinion on Transboundary Harm”*, www.law.yale.edu/news/17449.htm.

Women are more likely to die and to suffer ill health effects as a result of natural disasters. For example, globally, for every one adult male who drowns in a flood, there are 3-4 women who die.²⁹ This is because many women/girls don't learn how to swim or climb trees, or they may be unable to leave their homes for cultural reasons. One study on a 1991 cyclone in Bangladesh noted that many women died at home with their children as they had to wait for their husbands to return and make the decision to evacuate.³⁰ The first statistical analysis of the effect of natural disasters on the life expectancy of men and women (a study of 4,605 natural disasters occurring in 141 countries) not only found that women were more likely to die in natural disasters and their aftermath, but discovered that this effect was strongest in countries with very low social and economic rights for women. In those countries where women in their everyday lives enjoy rights equal or almost equal to men, this effect disappeared. Natural disasters lower the life expectancy of women more than that of men (they either kill more women than men or kill women at an earlier age than men.) Actually since female life expectancy is generally higher than that of males, for some countries natural disasters narrow the gender gap in life expectancy.³¹ The study also found that the stronger the disaster (as measured by the number of people killed relative to population size) and the lower the women's socioeconomic status, the stronger this effect on the gender gap in life expectancy.³²

In the 2005 earthquake in Pakistan – which killed 73,000 people – women were mostly at home when the earthquake hit while their adult male family members were working in the fields. This meant that women were more apt to be injured by collapsing homes than their husbands and indeed UN agencies reported a large number of paraplegics among Pakistani women.³³ Some of the differences in men's and women's experiences in disasters are due to women's reproductive roles. Normally in developing countries about 1 in 5 women of childbearing age is pregnant.³⁴ Women do not stop giving birth when a hurricane or earthquake occurs. However, they do have a harder time. Studies show adverse reproductive outcomes following disasters, including early pregnancy loss, premature delivery, stillbirths, complications and infertility.³⁵

²⁹ Lorena Aguilar, "Acknowledging the Linkages: Gender and Climate Change," Presentation at the World Bank's

Workshop on Social Dimensions of Climate Change, March 2008, http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1170428243464/3408356-1170428261889/3408359-1202746084138/Gender_Presentation022808.pdf.

³⁰ World Health Organisation, *Gender and Health in Disasters*, 2002. pp. 2. Available at: www.who.int=gender=other_health=en=genderdisasters.pdf.

³¹ Eric Neumayer, and Thomas Plümpner. "The Gendered Nature of Natural Disasters: The Impact of Catastrophic Events on the Gender Gap in Life Expectancy, 1981–2002." *Annals of the Association of American Geographers* 97, no. 3 (September 2007): 551-566. SocINDEX with Full Text, EBSCOhost (accessed October 25, 2010).

³² Ibid.

³³ Brookings-Bern Project on Internal Displacement, *Protecting and Promoting Rights in Natural Disasters in South Asia: Prevention and Response*, July 2009,

www.brookings.edu/~media/Files/rc/reports/2009/0701_natural_disasters/0701_natural_disasters.pdf,

For gender and spinal cord injuries resulting from earthquakes generally, see www.ncbi.nlm.nih.gov/pmc/articles/PMC2031935/.

³⁴ UNFPA, *State of World Population 2010*, 2010, pp. 33.

³⁵ 14 World Health Organisation, *Gender and Health in Disasters*, 2002. Available at: www.who.int=gender=other_health=en=genderdisasters.pdf.

There can be social taboos around norms of appropriate behavior which contribute to health problems in young women.³⁶ And there can be consequences for children; for example, 20 percent of mothers who had been breastfeeding their infants at the time of the 2005 Pakistan earthquake were no longer able to do so, either because their supply of milk was insufficient or because (in 10 percent of the cases) the mothers were missing or dead.³⁷ While women are more likely to die in natural disasters, they also face particular needs once a disaster occurs. First, there is sometimes a post disaster 'flight of men', which leaves women as heads of households with sole responsibility for providing for the family. Sometimes men are killed, leaving their wives/partners behind. But the loss of livelihoods also often pushes men to migrate from rural areas to towns in search of work, leaving their wives with the immediate responsibility to feed their children.³⁸ Moreover, the fact that women tend to have lower literacy levels than men and are less likely to own land leave women at a disadvantage in recovery efforts.³⁹

Women are also more likely than men to experience violence – both at the hands of gangs who are often emboldened by the breakdown in law and order resulting from the disaster and by domestic violence. Security risks are common around temporary shelters for communities displaced by natural disasters. For example, there were allegations of gang infiltration in urban shelters in Honduras after Hurricane Mitch in 1998, resulting in robberies, rapes and even killings due to the lack of law and order in these places.⁴⁰ In Haiti after the 2010 earthquake numerous cases of rape and sexual assault in IDP camps were reported by media and NGOs. The paralysis of the police and justice system (who were themselves heavily hit by the earthquake) coupled with general distrust towards state institutions, meant that it is likely that sexual and gender-based violence were severely unreported.⁴¹ Girls in camps were also at risk of sexual exploitation. In several camps, women reported to Amnesty International that it was a common practice for many girls to exchange sex for food or material goods.⁴² And increases in gender-based violence are not limited to developing countries. In the US, after Hurricane Katrina, sexual violence was common in trailer camps set up to house those displaced by the

³⁶ During the 1998 floods in Bangladesh, adolescent girls reported perineal rashes and urinary tract infections because they were not able to wash out menstrual rags properly in private, often had no place to hang the rags to dry, or access to clean water. They reported wearing the still damp cloths, as they did not have a place to dry them. World Health Organisation, *Gender and Health in Disasters*, 2002.

Available at: www.who.int/gender/other_health/en/genderdisasters.pdf.

³⁷ Michael M Priebe, "Spinal Cord Injuries as a Result of Earthquakes: Lessons From Iran and Pakistan", *The Journal of Spinal Cord Injuries*, 2007, www.ncbi.nlm.nih.gov/pmc/articles/PMC2031935/.

³⁸ Krishna Bandyopadhyay, Soma Ghosh and Nilanjan Dutta, *Eroded Lives*, Mahanirban Calcutta Research Group, December 2006, www.mcrq.ac.in/Eroded_Lives.pdf.

³⁹ Graham Tobin, Linda Whiteford. "The Role of Women in Post-Disaster Environments: Health and Community Sustainability". The Center for Disaster Management and Humanitarian Assistance, November 2001, pp. 7. Available at: http://hsc.usf.edu/nocms/publichealth/cdmha/images/tobin_women.pdf.

⁴⁰ UN Human Rights Council, A/HRC/10/13/Add.1, 5 March 2009, pp. 17.

⁴¹ Nina Lakhani, "Rape on the rise in Haiti's camps", *The Independent*, 7 February 2010, www.independent.co.uk/news/world/americas/rape-on-the-rise-in-haitis-camps-1891514.html; Also see: Amnesty International, *Sexual violence in Haitian camps of the displaced, beyond the number*, 22 March 2010, <http://livewire.amnesty.org/2010/03/22/sexual-violence-in-haitian-camps-of-the-displaced-beyond-the-numbers/>.

⁴² Amnesty International, *Haiti after the Earthquake, Initial Mission Findings*, March 2010, pp. 12.

storm. A 2006 survey conducted by the International Medical Corps in the trailer camps found alarmingly high rates of gender-based violence. “In the 274 days following the disaster, the rate of women experiencing beatings by a spouse was 3.2 per cent – more than triple the US annual rate.”⁴³

Gender inequities are evident in response to most disasters. Disaster and emergency management agencies, law enforcement and fire personnel have historically been dominated by men – who may overlook the special needs of women and children (for example, sanitary supplies and contraceptives.)⁴⁴ Traditional cultural patterns, and particularly inheritance laws, present particular difficulties for women after a disaster. In Pakistan, displaced women living in camps found that privacy and maintaining purdah were difficult; “many have never been around a man who isn’t a member of their family. Now they are amongst hundreds of men who are complete strangers.”⁴⁵ In another example, the Sri Lankan government offered funding to families affected by the 2004 tsunami, but in the eastern coastal area of Batticaloa, authorities recognized only male-headed households, so women whose husbands had died weren’t eligible to receive the assistance. Sri Lankan and Acehnese women described many instances where they received relief supplies in the form of goods, but were not able to access recovery grants which only went to men as heads of households. Without cash to start over, it would be difficult for them to re-build their livelihoods.⁴⁶ In Thailand, families received twice as much aid from the government to bury male relatives as for female ones.⁴⁷ Concerns about reproductive rights often are not addressed immediately following a disaster, although women still give birth when earthquakes occur, still need contraception while living in tents, and still need sanitary supplies.⁴⁸

Women also bring strengths and resources to disaster response. Women are the “frontline responders in the moment of extreme crisis and long-term caregivers to disaster-impacted family members.”⁴⁹ Over 300,000 people were injured in the Haitian earthquake, many with severe injuries (which are unfortunately common in cases of earthquakes.) Women are the main caregivers of the injured, the elderly and family members who have been left with long-term disabilities. Women are important not just in providing physical care for their family members but

⁴³ IFRC, *World Disaster Report 2007, Focus on Discrimination*, 2007, pp. 123, www.ifrc.org/Docs/pubs/disasters/wdr2007/WDR2007-English.pdf.

⁴⁴ WHO, *Gender and Health in Disasters*, 2002, www.who.int=gender=other_health=en=genderdisasters.pdf.

⁴⁵ BBC news, “Pakistan floods: ‘Cultural shock’ for women in camps,” 18 August 2010, www.bbc.co.uk/news/world-south-asia-11013826.

⁴⁶ UNIFEM, *UNIFEM responds to the Tsunami Tragedy, Protection and Rights*, www.unifem.org/campaigns/tsunami/page4.html.

⁴⁷ Lin Chew and Kavita N. Ramdas, *Caught in the Storm: The Impact of Natural Disasters on Women*, December 2005, pp. 3.

⁴⁸ See Brookings-Bern Project on Internal Displacement, *Summary Report: Protecting and Promoting Rights in Natural Disasters in South Asia: Prevention and Response*, July 2009, pp. 20, www.brookings.edu/~media/Files/rc/reports/2009/0701_natural_disasters/0701_natural_disasters.pdf.

⁴⁹ Enarson and Morrow, 1998a:5 cited by Graham Tobin, Linda Whiteford. “The Role of Women in Post-Disaster Environments: Health and Community Sustainability”. The Center for Disaster Management and Humanitarian Assistance, November 2001, pp. 7. Available at: http://hsc.usf.edu/nocms/publichealth/cdmha/images/tobin_women.pdf.

also in providing the emotional support necessary to deal with the psychological trauma of loss.⁵⁰

Secondly, when a disaster occurs, traditional gender roles can change. Sometimes women are called to perform tasks that would normally not be considered as women's jobs. For example, Hurricane Mitch (1998) provided an opportunity for the mobilization of women. "Men and women worked side-by-side during the emergency of Hurricane Mitch and observers were impressed by the high level of community participation. The fact that women cleared roads, dug wells, and performed other non-traditional tasks was surprising to many relief workers. Women's groups mobilized to clear roads, provide food assistance, and organize relief efforts at community level."⁵¹ More immediately, women often display ingenuity and creativity in coming up with livelihood strategies to meet immediate family needs, as in the many small scale producers selling goods and food in Haitian markets. The fact that women turn to prostitution or survival sex in order to support their families is evidence of the failure of the international aid machinery – women should never be so desperate that they have to sell their bodies to provide for their families – but it is also testament to the strong will of women that they will do whatever is necessary to support their families.⁵²

Thirdly, women's organizations can play a particularly important role – even though they seldom receive the acknowledgement or the support they need. In the case of the Haitian earthquake, many women's groups, badly affected themselves by the disaster, were able to reconstitute themselves and resume their work with women. Thus Kofaviv, an organization of and for rape survivors, was able to reconstitute itself after the earthquake and worked to support individual women and to mobilize for broader social change.⁵³ Women's groups in Haiti have names like Shining Star, Valiant Women, Vigilant Women, Femme Democrat and Women of Courage. "We have kept these names for our women's organizations as they are meant to inspire women. We believe women are the pillars of society." Women in these groups explained that they had organized immediately to set up community kitchens, provide first aid and care for the sick children and orphans. "When relief was being distributed, agencies enlisted help of male leaders. This led to a lot of violence, disruption, stoppage of aid and unrest in several communities. At some point, several aid agencies reversed this trend, by relying on women. They trained women as camp organizers and charged them with relief distribution." This is almost always a good strategy for distribution of food – women are more apt to know where the vulnerable groups are – those who can't make it to relief lines and are often invisible. Women's

⁵⁰ IRIN, "Pakistan: Changed lives after the floods", 28 October 2010, www.plusnews.org/PrintReport.aspx/ReportId=90904.

⁵¹ Patricia Delaney, Elizabeth Shrader. *Gender and Post-Disaster reconstruction: The Case of Hurricane Mitch in Honduras and Nicaragua*, LCSPG/LAC Gender Team, The World Bank, January 2000, ftp://ftp.shef.ac.uk/pub/uni/academic/A-C/ar1mb/WB_GenderAndPostDisasterReconstruction.doc.

⁵² The World, "Resorting to prostitution in Haiti", 7 October 2010, www.theworld.org/2010/10/07/resorting-to-prostitution-in-haiti/, see also: Latin America News Dispatch, "Sex Work Flourishes In Post-Earthquake Haiti", 5th November 2010, <http://latindispatch.com/2010/11/05/sex-work-flourishes-in-post-earthquake-haiti/>.

⁵³ Madre, Kofaviv (Commission of Women Victims for Victims), www.madre.org/index/meet-madre-1/our-partners-6/haiti-kofaviv--zanmi-lasante-36.html.

groups have organized all kinds of collective self-help activities from community kitchens to cleaning sites and toilets to calling for camp lighting to reduce violence against women.⁵⁴

In terms of disaster risk reduction, women often take disaster warnings more seriously than men do and communicate them through networks they create and maintain with friends, family and other community members. Disasters can provide an opportunity for community organizing and the emergence of women community leaders to address existing structural problems affecting communities.

What does international human rights law offer to analyses and action on the basis of gender? The Universal Declaration of Human Rights begins with: “all human beings are born free and equal in dignity and rights.” The International Covenant on Civil and Political Rights (ratified by 150+ countries) prohibits discrimination on the basis of gender. The International Covenant on Social, Economic and Cultural Rights upholds the right to equality in education, a decent standard of living, health and work --- all of which correspond to humanitarian assistance. In 1979, the General Assembly adopted the UN Convention on the Elimination of all Forms of Violence against Women which provided a comprehensive affirmation of the rights of women to full equality. In addition to human rights treaties, there have been UN conferences and resolutions strengthening the rights of women. In 1993, at the Vienna Conference on Human Rights, the international community officially recognized Violence against Women as a human rights violation and the same year the General Assembly adopted the Declaration on the Elimination of Violence against Women. A year later, the Commission on Human Rights adopted a resolution for “integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women,” appointing a Special Rapporteur on Violence against Women.⁵⁵ In 2004, the Commission on Human Rights established a Special Rapporteur on trafficking in persons, especially in women and children.

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 Action⁵⁶ 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.

⁵⁴ Disasterwatch, Sparks of Hope: Grassroots Women organize Self Help efforts to restore communities after the Haiti disaster, July 2010, www.disasterwatch.net/resources/Haitireport-June2010.pdf.

⁵⁵ The United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences, *15 years of the United Nations Special Rapporteur on Violence against Women, its causes and consequences (1994-2009) - A critical review*, www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf.

⁵⁶ IASC, “Gender Handbook in Humanitarian Action”, December 2006, www.humanitarianinfo.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.

Displacement and Disasters

The *Guiding Principles on Internal Displacement*⁵⁷ 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, protection and assistance when they are displaced and support to find durable solutions to their displacement – return or settlement in their place of displacement or in another part of their country. The *Guiding Principles* (Principle 3) begin with an affirmation that States bear the primary responsibility for protection of people – both citizens and habitual residents – within their area of jurisdiction. The *Guiding Principles*, now available in 60 languages, 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)⁵⁸, adopted by the African Union in 2009 and which entered 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 which establishes the obligations of states to prevent displacement, protect and assist those who have been displaced, and support solutions to displacement. In 2012, there were about 10.4 million people in Africa who had been displaced internally by conflict – a third of the world's total – with another 8.5 million displaced by sudden-onset disasters.⁵⁹ The Kampala Convention spells out the obligation of states to prevent displacement by instituting early warning systems and developing disaster risk reduction strategies. States parties are obligated to protect and assist those displaced by disasters, including by climate change. States parties are liable to make reparations to IDPs for damages when “a State Party refrains from protecting and assisting internally displaced persons in the event of natural disasters.” (article 12.3)

⁵⁷ UN Commission on Human Rights, *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2, 1998, www.brookings.edu/projects/idp/gp_page.aspx.

⁵⁸ [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)

⁵⁹ Internal Displacement Monitoring Centre, *The Kampala Convention: Progress and Prospects*, 2013, <http://www.internal-displacement.org/africa/kampala-convention/>.

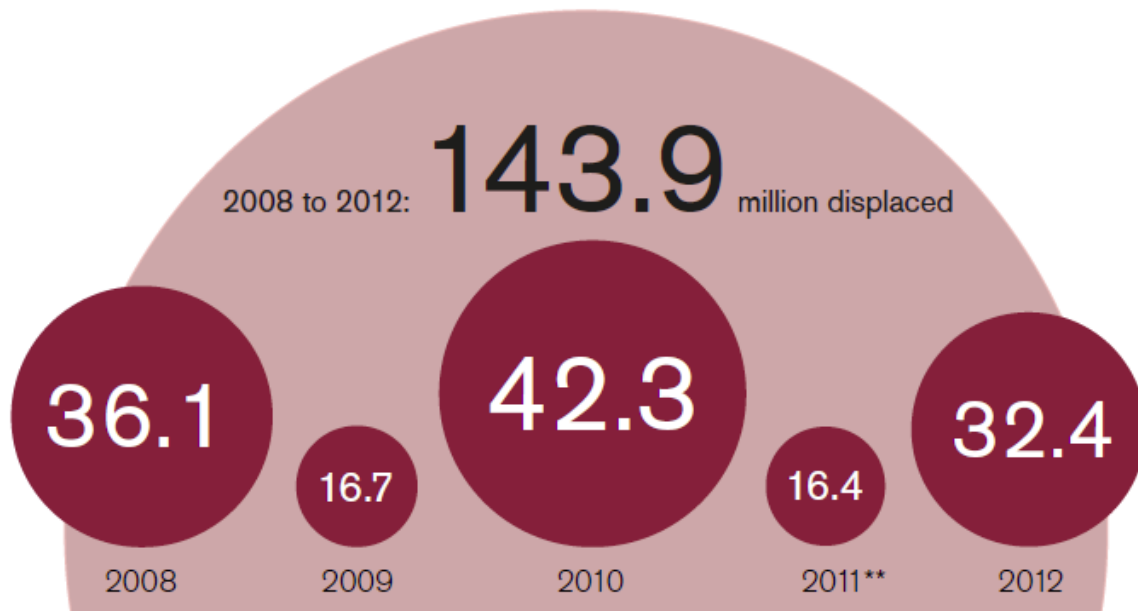
The scale of displacement caused by disasters has only recently begun to be recognized and quantified. The Internal Displacement Monitoring Centre estimates that over 140 million people were displaced by sudden-onset disasters in the five year period from 2008-2012, with significant year-to-year variations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

While there are similarities in needs between those displaced by disasters and those displaced by conflict, there seem to be different patterns of displacement. Hydrometeorological disasters, the largest cause of disaster-induced displacement, tend to displace people temporarily. Indeed, there is often an assumption that all disaster-induced displacement is temporary – that people can return to their homes once the flood waters recede or the rubble is cleared after an earthquake. In practice, however, displacement from disasters can be protracted and there is little evidence of what happens with those who are unable to return to their communities. (For example, anecdotal evidence suggests that many displaced by both Hurricane Mitch [1998] and Hurricane Katrina [2005] did not return to their communities of origin.) Unlike conflict situations, in some cases people are unable to return to their communities because of the extent of physical damage, e.g. the Montserrat eruption in 1997 or in the cases of villages destroyed by landslides or volcanic eruptions.

Human rights law – including such instruments as the Guiding Principles on Internal Displacement and the binding international law on which it is based and the Kampala Convention – offers guidance to those seeking to respond to those displaced by disasters, including such principles as the need to ensure participation of displaced communities and to support long-term solutions.

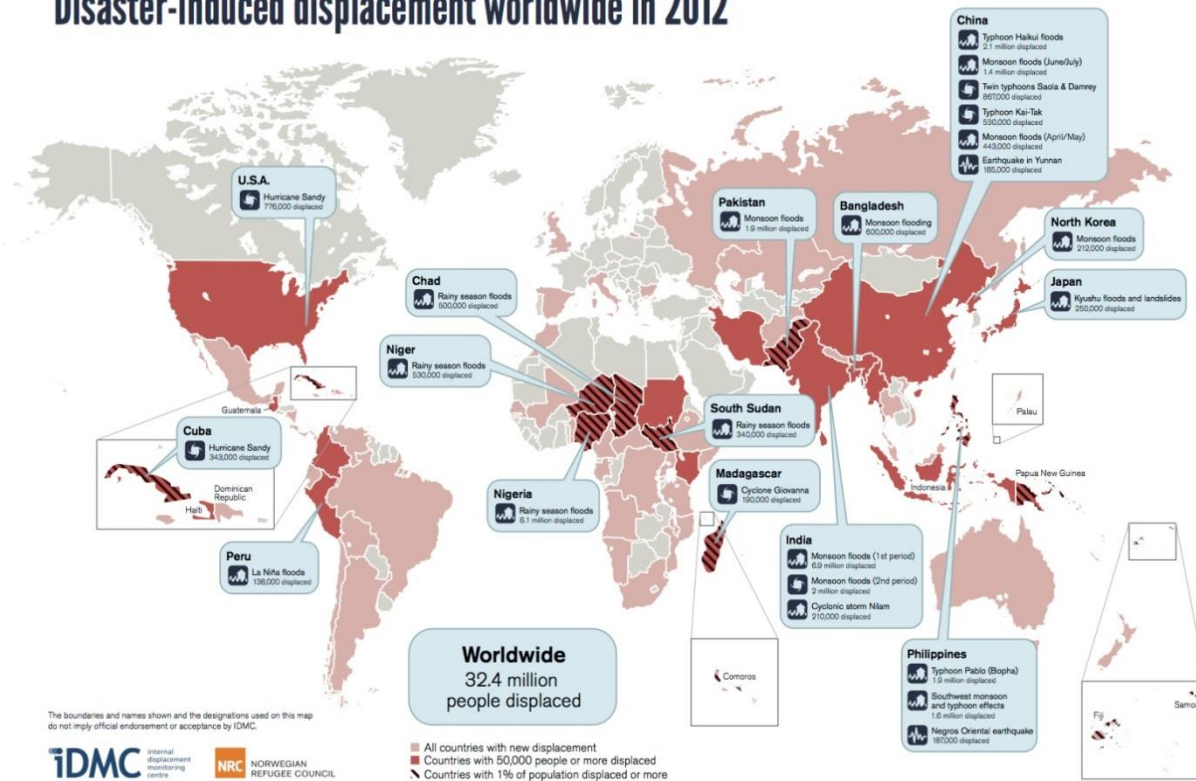
Indeed in many workshops with governmental and civil society representatives working in the area of disaster management, there is a recognition that existing national disaster law does not address the specific needs or uphold the rights of those displaced by disasters. National laws and policies should reflect not only basic human rights instruments but also draw on the particular understandings of displacement.

Figure 2.1: Global disaster-induced displacement*



* Number of individual people displaced. Rounded to the nearest 100,000. ** Revised figure.⁶

Disaster-induced displacement worldwide in 2012



Figures available at: IDMC, “Global Estimates 2012: People displaced by disasters”, May 2013, pp. 11, 24-25, www.internal-displacement.org/assets/publications/2013/2012-global-estimates-corporate-en.pdf.

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. This was based on a working visit in February 2005, where he found myriad human rights issues in his assessments of internal displacement following the disaster.⁶⁰ He found, for example, that in some cases IDPs faced discrimination and that within the IDP population, different responses were implemented for those displaced by conflict and by natural hazards and sometimes between IDPs living inside and outside of camps. He recommended that the Guiding Principles on Internal Displacement serve as a basis for development of policies by states as well as by international and national humanitarian actors to protect and assist those displaced by disasters. He also called for the development of more general guidance on human rights in humanitarian settings, recognizing that while IDPs have specific needs related to their displacement, others affected by the disaster often face protection concerns. 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 2010.⁶¹

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 responsibility to provide assistance to persons affected by natural disasters and to protect their human rights. They also state that all communities affected by the disaster should be entitled to easily accessible information concerning the nature of the disaster they face, possible mitigation measures that can be taken, early warning information, and information about ongoing humanitarian assistance.

The *Guidelines (para 21)* point out that people affected by disasters face four typical kinds of practical challenges to their human rights:

1. They may be denied access to available humanitarian assistance, such as food, water and sanitation, shelter health care, education, and livelihoods
2. They may risk imminent harm, in particular violence against their lives, including gender-based violence but also destruction of property, trafficking of children, separation of families and so on
3. They may be denied possibilities to assert their rights because they lack essential information or are not consulted on issues directly affecting them; have lost documentation such as identity cards necessary to enjoy their rights without the ability to have them replaced and do not have access to effective remedies when their rights are violated, and

⁶⁰ See: Walter Kalin, "Protection of Internally Displaced Persons in Situations of Natural Disaster: A Working Visit to Asia", www.brookings.edu/research/reports/2005/04/tsunami.

⁶¹ Brookings-Bern Project on Internal Displacement, *Inter-Agency Standing Committee, Operational Guidelines on the Protection of Persons in Situations of Natural Disasters*, January 2011, <http://www.brookings.edu/research/reports/2011/01/06-operational-guidelines-nd>

4. They may experience discrimination on account of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status and thus be denied access or unable to assert their rights.⁶²

The *Guidelines* are based on the realization that while all human rights are important, priorities must be set in the aftermath of a disaster. The first priority is to protect life, personal security, and the physical integrity and dignity of affected populations while a second priority relates to provision of the basic necessities of life including adequate food, water and sanitation, shelter, clothing and essential health services. Other economic, social and cultural rights (e.g. education, housing, livelihoods) are a third priority, followed by other civil and political rights (such as freedom of movement, assembly, electoral rights, etc.) as a fourth priority.

The *Operational Guidelines* offer concrete guidance to those responding to natural disasters, with a particular focus on humanitarian actors. For example, in the immediate aftermath of a flood, governments are usually not able to provide necessary educational facilities for affected children. This can (and must) come later, once the children are protected against violence and have access to the basic necessities of life. Similarly, the right to documentation is a crucial issue for many affected by emergencies, but affected communities have a more urgent need for sufficient food and water. The Guidelines offer further guidance on incorporating a human rights approach to disaster risk reduction and to recovery efforts.

On the practical level, there have been some impressive efforts to incorporate a rights-based approach to natural disaster response. For example, the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Development Program (UNDP) developed *Checklists for Integrating Human Rights in Natural Disaster Management in the Pacific*⁶³ as a tool for disaster managers to ensure that their plans and programs are addressing the needs of the community as a whole as well as ensuring that groups which are already marginalized or vulnerable are not further disadvantaged.

Concluding Thoughts

For the past two decades, humanitarian actors have sought to incorporate a human rights framework into their approaches to humanitarian assistance. Shortcomings in the humanitarian response to the Rwandan genocide of 1994 led directly to the development of the Sphere Standards and the Red Cross/NGO Code of Conduct⁶⁴ which incorporate human rights principles into guidance for humanitarian action. Just as the response to Rwanda led to changes in approaches to those affected by conflict, the 2004 Indian Ocean tsunami led to awareness of the need to incorporate a more explicitly human rights-based approach to those affected by disasters. This focus on disaster response has been amplified in the past decade to a

⁶² *Operational Guidelines, op cit.*, para 21.

⁶³ UNDP Pacific Centre and OHCHR Regional Office for the Pacific, Suva, Fiji, 2007.

www.undppc.org.fj/resources/article/files/Checklist_Integrating_HumanRights_in_natural_Disaster_Management.pdf.

⁶⁴ See: The Sphere Project, "The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response", www.sphereproject.org/handbook/ and IFRC, "The Code of Conduct for The International Red Cross and Red Crescent Movement and NGOs in Disaster Relief", www.ifrc.org/en/publications-and-reports/code-of-conduct/.

recognition that human rights is relevant to preventive measures and long-term recovery as well as to immediate humanitarian response.

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 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. A good start has been made in incorporating human rights law into operational guidance for humanitarian actors, as evidenced by the IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters, the IASC Gender Handbook on Humanitarian Action, and to specific guidance notes on other specific groups, such as children and the elderly. Regional instruments, such as the Kampala Convention, offer an exciting entry point to recognizing state obligations to protect and assist those displaced by disasters.

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. Regional bodies could provide forums for discussing the contributions which regional and international human rights law makes to policies and approaches to disasters. In terms of legal research, an important contribution to these efforts would be a systematic comparative analysis of national legislation from a human rights perspective to identify examples of good practice and make suggestions of ways that such legislation could be strengthened through references to international human rights law. While there has been some good work done in drawing the connections between human rights and climate change, more could be done to analyze the relationship between human rights and both sudden- and slow-onset disasters.⁶⁵

Human rights law has much to offer to policy-makers 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 even more people on this planet, 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.

⁶⁵ OHCHR, *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights*, A/HRC/10/61, 15 January 2009, www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Study.aspx.