ABSTRACT

Postdisaster environments are proven battle-grounds for human rights violations, and a binding international instrument speaking directly to the right to postdisaster human rights protections is a critical and necessary strategy in international disaster response and recovery efforts. This article encourages the development of an international instrument crafted to specifically address human rights protections in postdisaster contexts, founded in international human rights law and policy, and invoking the authority of international law bodies, which can also be used to further refine US emergency response policy.

Key words: postdisaster environments, human rights, emergency response policy

INTRODUCTION

Among dozens of people awaiting care at a hospital in St. Marc, Haiti, one man was so dehydrated that doctors couldn’t find a vein to start fluids. He died half an hour later, another casualty among hundreds in an outbreak of cholera that emerged in late October 2010 in Artibonite Valley, a region of Haiti that received thousands of refugees following the January 2010 earthquake. The disaster killed as many as 300,000 people,1 devastating an already beleaguered infrastructure and economy in what was the nation’s largest financial center, destroyed 60 percent of government infrastructure, and left more than 180,000 homes uninhabitable. Six months later, more than 1.5 million people remained in displacement camps.1 Experts warned that postdisaster conditions in Haiti were ripe for the spread of disease in areas with limited access to clean water—the family of the man who died at the St. Marc hospital had been drinking water from a river that tested positive for cholera.

Effective emergency response policy, both domestically and internationally, remains a complex and evolving entity of many factors and considerations, including an affected region’s existing infrastructure, emergency plans, social and economic make-up, and access to postdisaster aid. The core of emergency response policy, even domestically, and even where not explicitly stated, is fundamental human rights—rights inherent to all human beings, regardless of status or situation, and even in the midst of disaster or the aftermath.*

Disasters can function as mechanisms of injustice, and even when considered “natural,” the effect of a natural disaster on human beings is implicitly defined by man-made elements. For example, after Hurricane Katrina made landfall near New Orleans, unmaintained levees and stagnant government response were heavily blamed for the level of destruction and loss of life, not just the hurricane event itself. Pre-existing human rights violations, such as poverty, government corruption, and civil war, will also change the outcome of a postdisaster emergency response. Human rights and a government’s responsibility to uphold those rights will be a natural component to any emergency response policy, be it as a guiding principle or as an explicit framework, as in human rights law.

The longer the displacement situation lasts, the greater the risk of human rights violation

Cholera was not present in Haiti before the earthquake,1 but postdisaster conditions created a hotbed

*In 1948, the UN Universal Declaration of Human Rights became the first comprehensive agreement among nations as to the specific rights and freedoms of all human beings (binding on all UN member states, including the United States). It stated that “...the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”
for any number of new sufferings. In the weeks and months that followed the catastrophic earthquake in Haiti, tangential suffering, tragedy, and risks emerged from the rubble. Survivors were plagued by disease, infection, hunger, displacement, loss of loved ones, and the threat of human trafficking; a tenuous infrastructure was all but eviscerated; and a widespread humanitarian crisis cried out for an international response embedded in the internationally recognized tenants of human rights law and policy. As the United Nations (UN) Inter-Agency Standing Committee (IASC) has found, “the longer the displacement situation lasts, the greater the risk of human rights violation.”

In June, the US Senate released a report finding that Haiti had made little rebuilding progress in the 5 months since the earthquake because of an absence of leadership, disagreements among donors, and general disorganization. According to the report, “[w]hile many immediate humanitarian relief priorities appear to have been met, there are troubling signs that the recovery and longer term rebuilding activities are flagging.” In July, a CNN investigation found that 6 months after the earthquake, most governments that promised money to help rebuild the country had not delivered any funds at all, partially due to the world economic crisis.

The earthquake that devastated Port-au-Prince and surrounding areas was just one of the major natural disasters in 2010 that left an entire region of people acutely vulnerable to human rights violations. Just days before Haiti’s cholera outbreak emerged, an earthquake off the Mentawai Islands in Indonesia triggered a tsunami, leaving hundreds dead in the days following, and relief efforts struggling to reach remote villages that were all but destroyed.

This article will briefly discuss parts of the existing international and human rights legal framework regarding disaster contexts from core entities like the UN and other nongovernmental organizations (NGOs) and will offer three general recommendations for taking a human rights-based approach to disaster response that more fundamentally incorporates human rights protections into core international documents that guide disaster plans, procedures, and protocols both domestically and abroad.

ADVANCING A RIGHT-BASED APPROACH TO DISASTER RESPONSE: THE EXISTING LEGAL FRAMEWORK AND RELATED RECOMMENDATIONS

Core human rights documents as applied to disaster scenarios

Current international documents provide some level of postdisaster protection within secondary provisions applicable to disaster scenarios. However, a central, binding international document speaking directly to the right to postdisaster protections is an appropriate strategy in the international disaster response efforts, given that postdisaster environments are proven battlegrounds for human rights violations.

Many of the kinds of human rights violations associated with postdisaster environments receive separate treatment in various international documents, but are not addressed with particularity to disaster scenarios. For example, the international community widely recognizes the threat of human trafficking as a major human rights issue. Yet, while disaster scenarios are recognized as one of the primary risk environments for human trafficking, postdisaster trafficking has yet to receive direct attention within a binding international instrument. International efforts to combat trafficking should be founded in postdisaster protections that specifically address disaster environments as major sources of human trafficking violations.

A rights-based approach to disaster response must be based on international human rights standards, operationally directed to promoting and protecting human rights, seeking to analyze inequalities that lie at the heart of disaster scenarios, and redressing discriminatory practices and unjust distributions of power that impede disaster response and recovery. As

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1The United Nations established an IASC in 1992 in response to General Assembly Resolution 46/182 that called for strengthened coordination of humanitarian assistance. The resolution set up the IASC as the primary mechanism for facilitating interagency decision making in response to complex emergencies and natural disasters. The IASC is formed by the representatives of a broad range of UN and non-UN humanitarian partners (see www.humanitarianinfo.org/iasc).

1According to the World Health Organization, “In areas where human trafficking is widely prevalent, disasters may result in conditions that provide opportunities for traffickers (eg, large numbers of unaccompanied children).”
stated by the IASC Protecting Persons Affected by Natural Disasters: Operational Guidelines on Human Rights and Natural Disasters, “Human rights must be the legal underpinning of all humanitarian work pertaining to natural disasters.... There is no other legal framework to guide such activities, especially in areas where there is no armed conflict.”2 In addition, “those affected by natural disasters remain entitled to the protection of all guarantees of international human rights and, if applicable, humanitarian law subscribed to by the State concerned or applicable as customary international law.”2

Being displaced or affected by a disaster does not result in the loss of the rights of the population at large.3 However, people affected by disasters do “have specific needs distinct from those of the nonaffected population which call for specific assistance and protection measures,”2 and protection is “not limited to securing the survival and physical security of those affected by natural disasters.”2 Rather, protection “encompasses all relevant guarantees—civil and political as well as economic, social, and cultural rights—attributed to them by international human rights....”2

The UN has set a common standard on human rights with the adoption of the Universal Declaration of Human Rights (UDHR)7 in 1948. Since the adoption of the UDHR, the UN has adopted many other legally binding international human rights instruments, which can be used as a framework for discussing and applying human rights to disaster scenarios. For example, the 1966 International Covenant on Economic, Social and Cultural Rights calls on States Parties to recognize the importance of protecting and assisting the family unit, particularly, the protection of children from economic or social exploitation,8 and Article 7 of the 1966 International Covenant on Civil and Political Rights states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”9

The International Covenant on the Elimination of All Forms of Racial Discrimination10 also calls on States Parties to “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... [t]he right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution....”10

In 1989, the Convention on the Rights of the Child11 became the first legally binding international instrument to incorporate the full range of human rights,12 and it included provisions specifically addressing refugee children, calling on States Parties to take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee receives appropriate protection and humanitarian assistance.11 The Convention on the Rights of the Child was one of the first core human rights documents to directly address the need to protect children who are refugees or who are otherwise unaccompanied.11 It also included a tracing and reunification mechanism, a critical element of affective human rights-based disaster response, particularly for the purposes of protecting unaccompanied children.

Analysis and recommendations

A rights-based approach to disaster response must be based on international human rights standards and must be operationally directed to promoting and protecting human rights, seeking to analyze inequalities that lie at the heart of disaster scenarios and redressing discriminatory practices and unjust distributions of power that impede disaster response and recovery. Under a human rights-based approach, the plans, policies, and processes of disaster response would be anchored in a system of rights and corresponding obligations established by international law.

The following recommendations are examples of human rights-based approaches to disaster response, which can be embedded into current and prospective international disaster relief efforts, plans, procedures, and protocols, domestically and internationally.

An analysis of the adequacy of the existing legal framework of postdisaster human rights protections in providing a human rights-based approach must consider the impact of health policies, programs, and practices on human rights, the health impacts resulting from human rights violations, and health and
human rights as complementary approaches to defining and advancing human well-being. The analysis highlights existing protections that can be applied to disaster scenarios, and how postdisaster human rights protections can be bolstered to equal those anchoring international armed conflict policies.

**Human rights protections for situations of armed conflict**

- Recommendation: Provide the same level of human rights legal treatment to post-disaster situations as afforded situations of armed conflict.

The framework established for situations of armed conflict is a significant reference point for protections provided during situations that create acute threats to human rights, including the right to health. The core human rights documents that address situations of armed conflict recognize that the risk of human rights violations naturally increases in these situations, and must therefore be directly and particularly addressed in accordance with human rights standards. Natural disaster scenarios prompt many of the same major risks of human rights violations, particularly as they relate to human enslavement and trafficking, and should also be treated accordingly, with similar deference in human rights documents.

For example, humanitarian law has established protections for soldiers and civilians during times of armed conflict, beginning with the four Geneva Conventions,13-16 which are at the core of international humanitarian law, the body of international law that regulates the conduct of armed conflict and seeks to limit its effects. The Geneva Conventions specifically protect people who are not taking part in the hostilities (civilians, health workers, and aid workers) and those who are no longer participating in the hostilities, such as wounded, sick and shipwrecked soldiers, and prisoners of war. The fourth Geneva Convention affords protection to civilians, including in occupied territory, and in the absence of foundational international legal protection for civilians in situations of natural disaster, it serves as the original framework for these kinds of protections.

Several humanitarian documents intended to specifically address persons in situations of armed conflict may be expanded, or mirrored in new documents, to address situations of more general emergency such as natural disaster. For example, the 1974 Declaration on the Protection of Women and Children in Emergency and Armed Conflict17 provides that "[a]ll forms of repression and cruel and inhuman treatment of women and children... committed by belligerents in the course of military operations or in occupied territories shall be considered criminal."17 This provision could be mirrored in an instrument protecting human rights during situations of natural disaster to apply to criminal treatment to repression and inhuman treatment committed in postdisaster contexts. This foundational principle of protection afforded during armed conflict does mention situations of “emergency,” but situations of disaster should be more specifically addressed to receive the same level of declaratory treatment and provisional authority.

Article 38 of the Convention on the Rights of the Child also highlights the particular risks to children associated with situations of armed conflict. A human rights-based approach to disaster response would be similarly rooted in such policy language, ensuring the protection and care of children (and other vulnerable group, including people with disabilities) who are affected by disasters.

One central binding international instrument addressing situations of natural disaster would be the most efficacious method of implementing this rights-based approach. Despite the current absence of such a singular document, other international instruments do contain provisions directly relevant to human rights in the midst of disaster, which can be viewed as a foundation for a central binding international document.

Guiding UN documents and other NGO standards should be used to establish a binding international instrument that adequately and directly addresses the right to be protected from human rights violations in postdisaster contexts. Such an instrument could serve as a means of increasing government action and accountability and as a means of implementing human rights-based approaches to disaster response programming and planning.
Protection related to internal displacement and disasters

Recommendation: Use existing human rights-based guidance to inform an international instrument addressing postdisaster human rights.

The 2006 Convention on the Rights of Persons with Disabilities is one of the few core human rights documents that expressly provides for protections during natural disasters. However, other human rights documents do provide some support for a rights-based approach to disaster response. The combination of these documents (examples described later) should be used as a foundation for a comprehensive rights-based approach to disaster response that provides express human rights protections in postdisaster contexts.

The 1993 UN World Conference on Human Rights adopted the Vienna Declaration and Programme of Action (VDPA), a framework for the enhancement of international cooperation in the field of human rights, reaffirming the UDHR and the UN Charter. Within its framework, the VDPA emphasizes "the importance of and the need for humanitarian assistance to victims of all natural and man-made disasters." The declaration goes on to say that "[w]henever so called for, national plans of action should be devised to combat devastating emergencies resulting from natural disasters and armed conflicts and the equally grave problem of children in extreme poverty."

In 1998, the UN Secretary-General’s Special Representative on Internally Displaced Persons (IDPs) issued the Guiding Principles on Internal Displacement based on existing international humanitarian law and human rights instruments “to serve as an international standard to guide governments as well as international humanitarian and development agencies in providing assistance and protection to IDPs.”

The Guiding Principles are heavily referenced in the UN’s 2005 report the Protection of Internally Displaced Persons in Situations of Natural Disaster, which noted that “[a]lthough the major human rights treaties upon which the [Guiding] Principles are based do not directly refer to internal displacement, the protections these instruments provide certainly apply to displaced persons, including those displaced by natural disasters. Likewise, when natural disasters strike in the context of ongoing armed conflicts, the requirements of international humanitarian law continue to apply.”

The Protection of Internally Displaced Persons in Situations of Natural Disaster uses the UN Guiding Principles on IDPs as legal authority for response to the risk of human rights violations in postdisaster contexts. These documents preceded and formed the basis for the UN 2006 release of a guidance document that outlines a rights-based approach to disaster response: The UN IASC Protecting Persons Affected by Natural Disasters: Operational Guidelines on Human Rights and Natural Disasters. The document reflects “an understanding of the need for the humanitarian system to provide to the people on the front lines of disaster response the guidance they need to ensure the protection of the rights of the people left homeless by natural disasters.” The IASC recognized that victims of disaster response encounter a number of human rights violations, including “unequal access to assistance, discrimination in aid provision, enforced relocation, sexual and gender-based violence, loss of documentation, recruitment of children into fighting forces, unsafe or involuntary return or resettlement, and issues of property restitution.”

In collaboration with the IASC, the Brookings-Bern Project on Internal Displacement also published the IASC Guidelines accompanying Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster Human Rights and Natural Disasters. The Manual noted that the IASC Guidelines are addressed to intergovernmental and nongovernmental humanitarian actors and were needed “because already existing guidelines...”
on humanitarian action in emergencies, as well as standards for protecting human rights in armed conflict, did not deal specifically with human rights concerns emanating from natural disasters.”

If uniformly and internationally utilized, the IASC Guidelines and Manual could directly impact health policies, programs, and practices on human rights as they relate to disaster response. The guidelines take a human rights-based approach to disaster response, using the foundation of core human rights documents to articulate the rights of people in disaster scenarios, and the obligation of States Parties to take appropriate measures “respect, protect and to fulfill the human rights of their citizens and of any other persons in their territory or under their jurisdiction.” The IASC Guidelines should also be expanded and adopted as a controlling document for ratification by UN States Parties. An expansion should include applicable standards adopted by other major humanitarian organizations addressing post-disaster human rights.

**Human rights and disasters: Other standards**


In the United States, the devastating terrorist attacks of September 11, 2001, and the destruction prompted by Hurricane Katrina in 2005 exposed gaping and tragic vulnerabilities in domestic preparedness and response planning. In just the first decade of the twenty-first century, these two major disasters seared the American consciousness and delivered an unprecedented jolt to the concept of national and statewide emergency planning, launching an overhaul in emergency management policy that rippled through all levels of both the public and private sector. Hurricane Katrina represented the worst-case scenario of disaster response—or a lack thereof. Although domestic emergency preparedness policy has largely focused on technical preparedness and a push for predisaster planning and resource procurement, more emphasis is needed on the concept of using human rights as a framework for emergency policy. In post-Katrina New Orleans, for example, a major planning and response weakness surrounded the continuity of critical services—at hospitals and nursing homes, in the prison system, and generally all human services. These services are intimately tied with the concept of human rights and the right to health, and call for a response that prioritizes those rights—rather than viewing them merely as services that may be suspended in times of crisis. From this human rights perspective, some consequences of disasters are essentially universal, regardless of pre-existing human rights violations within a particular region. For example, the International Committee of the Red Cross (ICRC) Central Tracing Agency and Protection Division’s Inter-Agency Guiding Principles on Unaccompanied and Separated Children noted that in almost all armed conflicts, mass population displacements, natural disasters, and other crises, a number of children become separated from their families. This kind of commonality can be addressed from a human rights policy perspective, as a means of strengthening the domestic response policy on the issue.

In addition to the relevant human rights law described earlier, a number of international movements have emerged to address disasters within a humanitarian framework. One such movement is the Sphere Project, launched in 1997 by a group of humanitarian NGOs and the Red Cross and Red Crescent movement “to define and uphold the standards by which the global community responds to the plight of people affected by disasters,” through a set of guidelines set out in what is commonly referred to as the Sphere Handbook. The Sphere, “a project to develop standards and train people in their use,” is based on the core beliefs that “those affected by disaster or conflict have a right to life with dignity and therefore a right to protection and assistance” and that “all possible steps should be taken to alleviate human suffering arising out of disaster and conflict. The Sphere Handbook describes the core principles that govern humanitarian action and asserts the right of populations to protection and assistance.
These principles can be enshrined, specifically, within international standards defined in a binding instrument dedicated to postdisaster human rights protections. Such a document would increase government accountability to provide protection in postdisaster contexts, while providing a framework from which humanitarian organizations and NGOs can implement a rights-based approach to disaster response. The ICRC’s standards noted that “[t]he breakdown of social structures and services accompanying major crises means that communities and States themselves may not be in a position to provide the necessary protection and care for children without families... It is therefore imperative that humanitarian organizations ensure that the most vulnerable children are protected.”

Other NGOs have also called for increased protections for children during times of emergency. ECPAT International is a global network of organizations, with Special Consultative Status with the UN Economic and Social Council, working together to eliminate child prostitution, child pornography, and the trafficking of children for sexual purposes. In 2006, ECPAT released Protecting Children from Sexual Exploitation and Sexual Violence in Disaster and Emergency Situations, a manual about “how to protect children from sexual violence and sexual exploitation, specifically in disaster and emergency situations.”

Intended as a practical guide for people “working directly in the field,” the manual seeks to provide “fundamental information to assist personnel working in emergency situations in responding to protect children, in terms of what can be done before disaster strikes... in the immediate aftermath... and in the longer term reconstruction phase...” and also includes “recommended actions and key considerations to be taken into account in the event of sexual violence or sexual exploitation.” This document could be used to inform a central binding international document addressing human rights protections in postdisaster contexts, which can be used to inform and refine US emergency response policy.

In The Tale of the Three Pigs: Taking Another Look at Vulnerability in the Light of the Indian Ocean Tsunami and Hurricane Katrina, Greg Bankoff notes:

“If the Indian Ocean Tsunami and Hurricane Katrina can be said to have any ‘lessons’ for us, it is to suggest that western developed countries may have as much to learn about disaster preparedness, management and recovery from non-western developing countries in terms of community-based assistance and the integrated flexible use of technology as the latter do from the former in terms of technocratic know-how and scientific expertise.”

While the United States is commonly viewed as a progenitor of disaster aid, domestic emergency response policy could perhaps itself find enhancement through a human rights framework review.

CONCLUSIONS

Disaster areas have proven to be major sources of human rights violations, and efforts to combat postdisaster threats should be rooted in human rights protections specifically embedded in international law—an authoritative disaster response instrument that builds on existing authoritative provisions, non-binding guidelines, and NGO standards and recommendations. Disaster scenarios are equally as prone to human rights violations as armed conflict environments, but have yet to be the subject to the same level of internationally binding policies. The parallels between human rights analysis in disaster situations and human rights analysis in armed conflicts warrant parallel treatment. Given these parallels, a central binding document may also be drafted using armed conflict instruments as a point of reference.

In addition, the guiding UN documents and other NGO standards should be used to draft or revise binding international documents to more adequately and directly address the right to be protected from human rights violations in postdisaster contexts as a means of increasing government action and accountability and implementing human rights-based
approaches to disaster response programing and planning. A binding international instrument speaking directly to the right to postdisaster human rights protections is a critical and necessary strategy in international disaster response and recovery efforts. Such an instrument may also be used, in conjunction with other guidelines and manuals, to inform and guide US domestic emergency response policy in a way that more directly addresses the inalienable human rights of those affected by disasters.

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