

## DISASTER DISPLACEMENT AND HUMAN RIGHTS: INVESTIGATING THE ROLE OF INTERNATIONAL LAW

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**Abstract:** Due to the record-breaking number of people affected by disasters, this article looks at how international law applies to disaster displacement, why refugee law is unlikely to be the solution, and how it can apply it to current developments in contemporary situations. It also discusses how can apply recent developments in contemporary situations. Disaster planning and preparedness are now explicitly included in nations' international legal obligations due to new interpretations of international human rights law. Furthermore, due to global warming, disasters like flooding and drought will occur more frequently and with greater intensity, complicating the implementation of international humanitarian law. As national governments restrict borders, anti-immigrant sentiment grows, and economies decline, further "othering" of migrants could make it more difficult to put protections in place.

**Keywords:** Disaster displacement, human rights, international law

### 1. Introduction

Climate change and human rights are now more widely accepted than ever. The Human Rights Council has acquired a series of resolutions highlighting the effects of climate change on the full realization of human rights, and the UNFCCC Conference of the Parties has also recognized that 'the adverse effects of climate change have a scope of direct and indirect implications for the impactful enjoyment of human rights.' While the effects of climate change have ramifications for Human rights and climate change are currently more universally recognized than at any other time in human history. According to the Human Rights Council, climate change has a range of direct and indirect implications for the effective enjoyment of human rights. The United Nations Framework Convention on Climate Change Conference of the Parties likewise recognized this. While climate change has implications for human rights throughout the world, it is well-established that the rights of people who are already vulnerable are particularly at risk. More people will be displaced as sea levels rise and extreme weather events become more frequent and stronger. Some of these individuals will be forced to flee across international borders.

Human rights implications of climate change are increasingly being recognized, particularly in the context of human displacement. Despite the knowledge adhering to international human rights, responsibilities and principles can enhance policymaking in response to global warming, relatively few concrete ways have been taken to incorporate a human rights perspective into climate policymaking. Similarly, the international community has not done enough to narrow the gap in human rights protection for the increasing number of people projected to be displaced across borders due to climate change beyond expressing worry. Human rights are at risk due to climate change, and this policy report is an important first step in identifying what UN agencies may and should do to begin defending those rights. The Human Rights Council is currently conducting additional research on the association among human rights promotion and safeguard in post-disaster and post-conflict situations.

In this brief paper, I like to emphasize four distinct ways international human rights law is being utilized to support disaster prevention, response, and recovery efforts. At the same time, there are numerous approaches to the relationship between human rights law and catastrophes.

- Litigation to hold governments liable when disaster prevention or mitigation fails.
- Incorporating gender into all phases of disaster risk management using gender-related international human rights law as a lens.
- The rights of persons who disasters have displaced are protected when international legislation, such as the Guiding Principles on Internal Displacement, is applied.
- To put human rights law into action, humanitarian groups must develop operational guidelines.

International human rights law has a great deal to offer those involved in disaster risk management, from government policymakers to first responders on the ground, from international agencies promoting disaster risk reduction to development organizations leading long-term prevention efforts.

## **2. Prevention: A Governmental Liability**

A person's right to life is recognized in every international human rights treaty. To recap and set the stage for this discussion, the OHCHR's statement on disaster risk reduction is as follows:

Human rights are the responsibility of every state. Natural disasters aren't always life-threatening in and of themselves. Exposure, vulnerability, and resilience contribute to catastrophe development, but they can mitigate them through human (and state) activity. As a result, it is a question of human rights when governments and others fail to adopt reasonable preventive actions to limit exposure and vulnerability while strengthening resilience.

It is the obligation of governments, in particular, to reduce disaster risks and protect those who are most vulnerable by issuing timely warnings and evacuating individuals in danger; if they fail to do so, they will be criticized both domestically and internationally and may be held liable for damages.

## **3. Rights-based protections applicable to natural disaster**

The international disaster response framework is relevant in disaster-induced displacement scenarios and tools for managing internal displacement difficulties. There is no legally binding disaster response tool at the international level. As an alternative, a wide range of soft-law instruments is used on a global, regional, and national scale. Many UN agencies, such as the World Food Programme, the World Health Organization & the Office for the Coordination of Humanitarian Affairs, regulate disaster relief and response. The policies in this sector are not owned by anyone international institution.

Duplication and fragmentation of governance arrangements at global and regional levels are major complaints of disaster response frameworks. Inadequate infrastructure and cooperation between state institutions, intergovernmental organizations, and non-governmental organizations exacerbate poor governance systems that restrict aid delivery. ILC Draft Articles offer a legal responsibility for nations to work with the United Nations, the International Red Cross & Red Crescent Movement, other IGOs, and NGOs to recognize the challenges inherent in disaster response coordination. Non-governmental organizations (IGOs) and non-governmental organizations (NGOs) are trusted to provide many front-line services during disaster response initiatives because of their shown capacity to respond to natural disasters. Several soft-law tools control natural disasters, including the ILC Draft Articles. It's unclear whether a single legally enforceable (hard-law) instrument is needed to streamline obligations because of the abundance of instruments and the well-documented

problems in coordinating support. On the other hand, a soft-law approach has various advantages, and the current toolkit offers a lot.

Soft law frequently develops in areas where developing legally binding international standards is politically impossible or impractical. There are some of the benefits of soft law:

- Negotiating soft-law instruments is more straightforward and less expensive
- Insensitive areas, soft-law instruments impose lower “sovereignty costs” on states;
- Soft-law instruments give states greater elasticity in coping with insecurity and adapting over time;
- Legal instruments that don't have teeth accommodate people of all backgrounds better; and
- Actors who are not states, such as international secretaries and state administrative agencies, have access to soft-law instruments that are not available to states.

For three reasons, disaster answer frameworks have remained "soft" to date. First, defining the standards or periods that should apply to rescue and revival efforts is exceedingly complex, given the wide variation in each state's ability to react to natural disasters. Although examples such as Cyclone Nargis are discussed below, most conditions make an effort to respond promptly and to the highest ability to natural disasters. It has been previously claimed that states' ability to safeguard their citizens depends on the circumstances and views toward the necessity of human rights regimes. The adoption of legally obligatory disaster response standards on top of existing international responsibilities is therefore unlikely.

Second, because each crisis is unique, solutions must be adaptable and varied, making soft-law instruments a more viable policy option. To accommodate the numerous domestic frameworks for allocating responsibility and power between national, sub national, as well as municipal governments, there needs to be some degree of flexibility as well. While a standard for dealing with and recovering from a specific type of disaster, such as a flood or hurricane, may be achievable, it would be difficult to create internationally enforceable standards that purport to allocate responsibilities to specific government entities. Third, non-state actors have established many of the most helpful international norms for disaster response. NGOs can use their enormous experience and knowledge to help shape standards for best practices, although participation in the instruments is entirely voluntary.

Among the many worldwide disaster response rules, guidelines, and agreements, selected three for analysis. We chose these instruments because they applied human rights concepts in the Asia-Pacific region. However, none of these tools focuses specifically on the rights of disaster victims who have been displaced. Three instruments use a human rights-based approach to disaster response in different ways. Each will be judged based on how well it can assist persons who have been displaced due to natural disasters in meeting their human rights obligations. The following are the three instruments selected:

- Operational Guidelines of the Inter-Agency Standing Committee on the safeguard of Persons in Natural Disaster condition (IASC Guidelines);
- Strategy for the Domestic Facilitation and Regulation of International Disaster Relief & Initial Recovery Assistance (IDRL strategy) of the International Federation of Red Cross & Red Crescent Societies; and
- The ASEAN Agreement on Disaster Management and Emergency response

They were adopted as the gold standard for disaster response regulations that support the human rights Inter-Agency Standing Committee. They were compiled to address a safeguard gap identified due to existing disaster reaction instruments being primarily operational and thus failing to explicitly recognize the human rights protection standards applicable during the disaster response period. The IASC Manual takes a solid rights-based approach, stating

that "ignorantly disregarding the human rights of those affected by natural disasters" means "ignorantly disregarding the fact that such people do not live in a legal vacuum, but in countries with laws, rules, and organizations designed to protect their rights."

#### **4. Rights-based protections applicable to internal displacement**

Human rights can be violated across the board when people are uprooted because of calamities. It is the Guiding Principles that identify the human rights consequences of internal displacement. The Guiding Principles outline the rights of internally displaced people (IDPs) and the responsibilities of governments towards them. Humanitarian and human rights NGOs worldwide use them as the gold standard for IDP protection, and they've been adopted into national legislation all around the world. As a soft-law instrument, the Guiding Principles are not legally enforceable by states. International human rights treaties do place legal responsibilities on States Parties, but they heavily rely on them. States must ratify applicable treaties and be ready and competent to enforce human rights law and the Guiding Principles. States may find themselves unable to meet all of their human rights commitments during a crisis, even if they want to. States have shown a refusal time and time again to comply with human rights law, even when they can do so. It will then examine such protections with the relevant Guiding Principles provisions before defining the human rights law that applies during disaster-induced displacement. Next, it will look at the level to which human rights treaties have been ratified in the Asia-Pacific area before looking at some examples that highlight the variety of concerns that must be considered when taking a human rights-based approach to disaster-induced relocation.

Many of the major United Nations human rights conventions cover disaster-induced relocation, including the International Covenant on Civil and Political Rights (ICCPR) & the International Covenant on Economic, Social & Cultural Rights (ICESCR) (ICESCR). Apart from that, they've been incorporated in various international treaties to protect the rights of certain groups, such as CEDAW, CERD, and CRPD, which aim to eliminate all forms of discrimination against women and people of color and those with disabilities (CRPD).

When natural disasters cause people to flee their homes, it has serious ramifications for their human rights. As will be shown, disasters and governments' management of the post-disaster period and any consequent relocation can have an impact on several specific human rights. States owe it to their residents to safeguard them from removal when necessary in light of these hazards. These duties include making sure that conditions that could cause displacement are avoided or minimized and making sure that communities are disaster-ready. Human rights repercussions of forced displacement might last for months or even years when prevention is not available. Disasters and relocation can harm human rights, and states are responsible for seeking and recognizing international help.

Displacement makes the right to a decent quality of living, including the right to food and water, even more important. Subsistence is another important right. Once a natural disaster destroys crops or agricultural land, drinking water is contaminated; individuals are forced to give up their means of livelihood, such rights are compromised. They must defend their right to appropriate living standards and a way of subsisting for those who have been displaced. The state, family, friends, or non-governmental organizations (NGOs) may become the sole source of food and water for displaced people. International human rights law imposes requirements to ensure that these necessities are addressed.

Furthermore, the right to the best available health care is protected through international law (including mental and emotional health). States must make certain that any injuries experienced during an emergency are treated properly because of concerns about the right to health during a disaster. Increased illness risk due to filthy circumstances and the development of water-borne infections, as well as starvation, compromise the right to health

following a disaster. There may be additional negative repercussions for people who are already unwell and in need of continuous medical treatment or hospitalization due to the volatility of health services and limited access to medical providers as a result of displacement. When individuals are displaced, managing these hazards becomes even more difficult, especially when there is little official engagement. Living conditions might be unhealthy and medical treatment difficult to acquire if removal is unregulated. Emergency shelters, camps, and other types of legally organized shelters require authorities to ensure that the conditions are suitable for protecting the right to health and that people receiving care have access to it.

## 5. The Protection framework

These Guidelines are based on the following understanding of disaster relief and human rights protection:

- International human rights legislation ratified through the State concerned or applicable as customary international law protects people harmed or displaced by natural disasters. Being displaced or otherwise impacted by the tragedy does not mean they lose their rights. Because of this, they require different protection and aid measures than others who weren't affected via accident.
- The primary duty and liability for providing such safeguard and assistance rest with the affected countries' national establishment. Those impacted by natural disasters have the right to petition their governments for protection and assistance. Thus, the primary duty bearers are the countries' national and local governments.

While persons affected by natural catastrophes may survive and be physically safe, protection does not end there. Civil and political rights and economic, social, and cultural rights are all included in the protection provided by international human rights law, which also applies to humanitarian law. It is possible to divide human rights into four categories even though all of them are inherently linked.

- A. security and integrity rights (such as protection of life and freedom from assault, rape, arbitrary detention, kidnapping, and threats related to the preceding); preservation of the right to privacy;
- B. health and safety issues, such as the right to food and clean water; appropriate housing; the right to health and safety; and cleanliness;
- C. economic, social, and cultural rights (such as the right to education, the right to reparation for lost property) are included; and
- D. Civil and political rights go beyond law's requirements (e.g., religious freedom and freedom of expression, personal documentation, political participation, access to courts, & non-discrimination). Priority must be given to the first two categories of rights during the life-saving phase of an emergency. Those affected by natural catastrophes, especially the displaced, have only partial protection of their human rights unless all rights categories are fully respected.

To preserve people's human rights, it's vital to make sure they aren't discriminated against because of their race, colour, sex, ethnicity, language, religion, political or social views, or national or social background. Intentional and unintentional discrimination are included in the term "discrimination," as policies and practices discriminate. One of the most difficult problems in disaster assistance is avoiding and addressing injustices and prejudice between those immediately affected by a disaster and those who are only indirectly affected and between different groups among the victims. Women and girls, people with disabilities or HIV/AIDS, single parents, the elderly without family assistance, and members of ethnic or religious minorities and indigenous peoples are among the most at-risk demographics, as are internally displaced persons, women, and girls.

## **6. The Importance of Disaster Law and Policy**

In the integrated approach needed to deal with climate displacement, including planned relocations, disaster law and policy are essential but often disregarded components. In many nations, catastrophe risk management is regulated via legislation. These frameworks provide a legal foundation, and an enabling environment is created for future actions, such as risk reduction, preparedness, reaction, and recovery. By clarifying roles and responsibilities, disaster law also helps streamline the processes for managing disaster risk across sectors and jurisdictions.

The effective application of disaster law and policy can encourage better-integrated approaches and institutional frameworks to coordinate relocation across sectors and from the national to village levels. As well as forcing vulnerable groups, such as the displaced, to participate in risk assessment and decision-making. But research shows that catastrophe law and policy usually ignore or deal insufficiently with the issue of displacement and planned relocation.

## **7. Non-Refoulement and the 2020 Decision of the UN Human Rights Committee**

Individuals who survive a disaster and flee international borders have some protection under international human rights law under the principle of non-refoulement. It occurs when returning a person would put their lives in danger, subject them to torture, or subject them to cruel, barbaric, or degrading treatment in violation of the ICCPR's Articles 6 and 7 of the Convention against Torture's Article 3. (UN Human Rights Committee, 2004, para. 12). People who have been evacuated from disaster areas cannot be sent back. However, there hasn't been a single occasion when non-refoulement has been successfully claimed for these reasons.

The January 2020 ruling of the UN Human Rights Committee is the most significant legal judgment to date on the nexus between non-refoulement and disaster (UN Human Rights Committee, 2020). There was a request to look at whether or not a slow-onset disaster may trigger the right to life to trigger non-refoulement provisions. I New Zealand was accused by a citizen of the tiny island nation of Kiribati of violating its international law commitments against refoulement by sending him back to his native country, where the impacts of sea-level rise threaten his right to survival. The Committee agreed with the claimant's evidence that climate change threatened the islands' sea level rise. Land disputes generated violence, which was aggravated by natural conditions. Freshwater had become limited and regularly contaminated; sea walls had proven mostly ineffectual in defending against storm surges and king tide. The Committee, on the other hand, voted 16 to 18 to deny the claim. Potable water was found to be scarce but readily available, and that while salt-water flooding made crop cultivation "difficult, but not impossible," it was not specific enough to be a personal threat to the claimant (UN Human Rights Committee, 2020, para. 4.6). They didn't think his allegation showed an "extreme precarity" serious enough to imperil his life's right. Hence they didn't find it persuasive (UN Human Rights Committee, 2020). However, the plan did leave the door open for further protection if and when things got worse.

## **8. Internal Displacement and recent Developments in Legal Protections**

Most of the people who were displaced by calamities are now back in their own homes. Refugee law and non-refoulement do not apply to internally displaced people (IDPs) until they cross an international border. Few international treaties specifically address the needs of internally displaced persons. With the publication of the GPID in 1998, international law's rights for internally displaced people underwent their first comprehensive assessment (IDPs). Internal displacement calls for the application of humanitarian and human rights principles from around the world. Only the African Union's 2009 Convention on the

Protection and Assistance of Internally Displaced Persons in Africa deals with IDP protection. Human rights duties continue to apply despite the absence of international legal mechanisms that bind the rest of the world. Confronted with this protection vacuum and an ever-increasing number of internally displaced people (IDPs), UN Secretary-General Ban Ki-moon established the Panel in December of that year. The Panel is tasked with identifying long-term solutions to, raising awareness, and strengthening efforts to combat internal displacement. It is made up of eight state delegates and guided via a small Expert Group. It will be a year from now when the Panel's final recommendations are due (UN, 2020; UN Secretary-General, 2019).

This Panel was appointed after a decade of exponential growth in the number of disaster-displaced individuals (Internal Displacement Monitoring Centre, 2020a) and a rise in the number of international instruments addressing disaster displacement, even if the disaster is not the Panel's only concern. The UNFCCC Cancun Agreement (UNFCCC, 2011), the Sendai Framework (2015, paragraphs 4, 28(d), 33(h)(j)), the New York Declaration for Refugees and Migrants (2016, paragraphs 1, 18, 43, 50), and the additional global compact accords in 2018 (Globo). For example, the Nansen Initiative (2012–2015), superseded by the Platform on Disaster Displacement, has built worldwide systems to deal with disasters and displacement. Because of this, the UNFCCC Taskforce on Displacement was created in 2015. (2015, para. 49). These tools and practices recognize the connection between catastrophe risk reduction and human rights principles in mitigating displacement.

People internally displaced by disaster have seen major advances in protections during the previous decade, focusing on human rights norms. Disaster risk reduction has become an explicit part of a state's commitment to safeguarding life in numerous international instruments that now openly identify the link between tragedy and displacement today. Disaster preparedness and vulnerability reduction are essential components in reducing disaster-related displacement. These are explicitly recognized in the Migration Compact as well. In addition to being significant from a legal perspective, these changes also coincide with an increase in the frequency of disaster relocation and thus have the potential to have a large impact if states adopt domestic policy and legislation to reflect these changes.

## Conclusion

According to the Inter-Agency Standing Committee's Operational Guidelines for Human Rights and Natural Disasters, the human rights of persons displaced via natural disasters must be considered while formulating effective humanitarian responses. A wide range of actors is involved in disaster response at present, including the governments of disaster-affected nations, local and national civil society organizations, as well as UN agencies and international non-governmental organizations (NGOs).

While there is the growing gratitude that those impacted by natural disasters require protection, significant work remains to be done before this recognition becomes a reality. For instance, it should integrate training on the Operational strategy into existing UN agencies and non-governmental organizations (NGOs) training programs to ensure their mainstreaming into ongoing programs. Should designate a lead agency to protect those impacted by natural disasters as part of the cluster strategy to humanitarian reply. The UN's resident representative or humanitarian coordinator is to consult with UNHCR, UNICEF, and OHCHR to determine which agency is best equipped to take on protection responsibilities in a given situation. However, agencies express concern about their capacity to assume additional responsibilities and the resulting dilution of their traditional mandates.

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