A HUMAN RIGHTS-BASED VULNERABILITY PARADIGM
Lessons from the case of displaced women in post-quake Haiti

Ingrid Nifosi-Sutton

Introduction

In this essay, I focus on the vulnerability of disaster-affected persons as conceptualised by the United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR or the Committee), the body that monitors State parties’ compliance with the 1966 UN International Covenant on Economic, Social and Cultural Rights (ICESCR or the Covenant). I apply the Committee’s vulnerability paradigm to the housing situation of internally displaced persons (IDPs) in post-quake Haiti. I contend and show that implementation of the paradigm leads to robust legal protection of persons affected by disasters (especially those that are most destructive) and, by extension, more effective disaster management. My essay builds upon a study of mine which explores the practice of UN and regional human rights monitoring bodies relevant to the protection of vulnerable groups. My essay is a continuation of this investigation in the sense that it further examines the vulnerability of disaster victims as elaborated by the CESCR, applies it to a post-disaster setting, and underscores its added analytical and operational value for disaster management tools that revolve around human rights protections of persons affected by disasters.

I develop my analysis in four main parts. First, I describe the housing situation of internally displaced women (IDP women) in post-quake Haiti. Since Haiti has ratified the ICESCR in October 2013, my essay specifically and exclusively focuses on governmental efforts aimed at providing housing to IDP women between 2014 and 2015. I deal with IDP women because they constitute more than half of the disaster victims internally displaced by the 2010 earthquake and because their predicament is particularly suitable to illustrate the complexity of the notion of disaster victims’ vulnerability developed by the CESCR. In the second part of this essay, I apply the vulnerability paradigm to the housing situation of Haitian IDP women.
Ingrid Nifosi-Sutton

women in the third part of this chapter. Based on this exercise, I conclude by emphasising the added value of the CESCR’s vulnerability paradigm, and arguing that it should be implemented in the most devastating disaster situations that may affect State parties to the ICESCR.

The housing situation of internally displaced women in post-quake Haiti

The earthquake that struck southern Haiti at the beginning of 2010 destroyed housing of more than 2 million Haitians. Once rendered homeless, a significant number of these persons moved to the metropolitan area of Port-au-Prince where they were hosted in camps for Internally Displaced Persons (IDPs). The International Organization for Migration (IOM) estimated that, in the immediate aftermath of the earthquake, there were more than 1.5 million IDPs and that more than 50% of these were women. 1

The Government of Haiti has adopted various measures to provide housing to the staggering number of IDP women. These measures form part of the overall governmental strategy to address the plight of IDPs in general and include rental subsidies and transitional shelters.

As explained by Amnesty International, the Haitian government has resorted to rental subsidies mainly because by January 2012 about 78% of the people who were still living in IDP camps had lived in rental accommodations before the earthquake and did not have enough financial means to rent a new house or apartment. 2 Authorities made it plain that the subsidies were not aimed at providing IDPs, including IDP women and their households, with permanent housing. The subsidies were rather meant to centre families, who did not own housing before the earthquake, to a situation similar to the one they were in before the disaster. As governmental officials have put it, the subsidies were meant to ‘buy each family some time to help themselves’. 3

The way the rental subsidy policy works is by giving IDPs living in camps, including IDP women and their households, US$ 500 to pay their rent for 1 year and a smaller amount of money to cover transportation costs. If, after 6 to 8 weeks these persons are still living in the same place, they can receive an additional grant of US$ 125. 4

A 2014 report published by the IOM and the Brookings Institution and the report of the former Special Rapporteur on the Rights of IDPs, Chaloka Beyani, on his summer 2014 visit to Haiti, have highlighted problems associated with the rental subsidy policy. These documents have denounced that: (a) a significant number of IDPs who benefited from the policy, including IDP women, could not afford paying for rent after the subsidies ended, 5 and (b) as of June 2014, a quarter of camps for IDPs were recaptured as the result of the return of at least 78 per cent of IDPs (including IDP women among them) who, after a year of enjoying rental subsidies, were unable to continue paying their rent. 6 Moreover, the rental policy did not incorporate elements enabling IDPs, in general, and IDP women in particular, to go on with their lives such as the restoration of livelihoods and job opportunities. 7

Transitional shelters built with significant donor investments are another way through which the housing situation of IDPs has been tackled. Transitional shelters are small dwellings with metallic roofs and frames made of timber, bamboo or steel. They are meant to provide housing solutions for a period of time varying between 3 and 5 years. 8 As Amnesty International has noticed, these shelters offer better protection than emergency shelters and can be built much more quickly than permanent houses. 9

Problems arise here between men and women. Due to difficulties including plots that offered security of tenure, the shelters benefited only families who owned land or were in areas where secure
A rights-based vulnerability paradigm

land was available. Additionally, concerns have been voiced that the construction of the shelters has been three times more expensive than the expected costs and that it has caused authorities to lose focus on finding permanent housing solutions.

Widespread arbitrary evictions have exacerbated the housing situation of IDP women and their households. The occurrence of these phenomena is well documented by human rights NGOs, the Inter-American Commission on Human Rights, the Special Rapporteur on the rights of IDPs and human rights lawyers.

Evictions have been carried out by State officials and private individuals. State officials have been directly involved in the eviction of around 500 IDP families living in the camp called Camp Téléco Sans Fil when, on 8 August 2015, they closed and demolished the camp. The eviction was the result of competent authorities’ decision to allocate rental subsidies to the IDPs living in Camp Téléco Sans Fil. However, the 500 families that were evicted were found ineligible for the rental subsidies because they did not appear at unannounced verification visits in 2010 and 2014, the periods of time in which the subsidies were assigned.

Amnesty International also reported that, on 11 January 2015, a fire destroyed the makeshift shelters of Camp Comité du Peuple Progressiste. The IDPs housed there lost not only their shelter but also all their belongings. What is more, three people died in the fire. Some of the IDPs interviewed by Amnesty said that the fire was the result of arson.

The CESCR and disaster victims’ vulnerability

Scholars have amply demonstrated that the CESCR is particularly concerned with vulnerable groups and that this concern informs its overall monitoring activity of State compliance with the CESCR. The Committee usually refers to vulnerable groups by using the formula “vulnerable or marginalized and disadvantaged groups.” Advancing the human rights of these persons is a recurring theme of the Committee’s Concluding Observations on periodic reports that States submit to the Committee. The Committee lists vulnerable groups that the CESCR deems to be vulnerable or disadvantaged. Among these groups are, among others, the elderly, children, persons with disabilities and victims of natural disasters.

The CESCR and disaster victims’ vulnerability

Suffering from disaster is among those groups that the Committee regards as vulnerable or disadvantaged. The Committee regards as vulnerable or disadvantaged groups. Advancing the human rights of these persons is a recurring theme of the Committee’s Concluding Observations on periodic reports that States submit to the Committee. The Committee examines the prevalence of vulnerable groups among those deemed to be vulnerable or disadvantaged. By the same token, the Committee discusses the prevalence of vulnerable groups in its General Comment on the scope and impact of various provisions of the Covenant. Exposing disaster victims’ exposure to disaster is among the groups that the Committee regards as vulnerable or disadvantaged. The Committee has noted that natural disasters have a disproportionate impact on vulnerable groups, particularly women and children. The Committee has emphasized the need for States to prioritize the protection and assistance of vulnerable groups in the event of a disaster. The Committee has also highlighted the importance of States ensuring that vulnerable groups have access to basic needs such as shelter, food, and healthcare. The Committee has emphasized that States should take into account the specific needs and vulnerabilities of vulnerable groups in their disaster response and recovery plans.
experience particular problems in the field of housing are enumerated in paragraph 13, i.e. the homeless, those who have inadequate housing, those living in illegal settlements, those subject to forced evictions and low-income groups. These groups are characterised as ‘vulnerable and disadvantaged with regard to housing’.

It has been maintained that the Committee’s conceptualisation of vulnerable groups is unclear since the Committee does not conclusively determine whether these groups are vulnerable because they are discriminated against or whether these groups are discriminated against because they are vulnerable. 23 With a view to offering an alternative view, I submit that, taken together, paragraphs 8(e) and 13 indicate that the notions of disadvantage and vulnerability appear to coincide. The Committee uses them interchangeably to refer to groups that do not have access to adequate housing on an equal basis with other individuals in comparable situations. Stated differently, the Committee’s notion of vulnerability and disadvantage is predicated upon lack of equal and full enjoyment of the right to adequate housing. Furthermore, I take the view that the Committee appears to implicitly suggest that vulnerability to discrimination in the enjoyment of the right to adequate housing is due to certain factors such as age, disability and socio-economic condition.

Based on the above construction of paragraphs 8(e) and 13, for the purposes of the Committee’s practice, disaster victims are vulnerable and disadvantaged (hereafter vulnerable) in so far as they do not have access to adequate housing owing to the widespread damage that powerful natural disasters typically cause to structures and buildings of affected areas or to equal living with persons living in regions of the affected States that have not been struck by these disasters. Powerful natural disasters generate vulnerability because they give rise to de facto discrimination in the enjoyment of the right to adequate housing. Persons whose housing has been destroyed or severely damaged by a powerful disaster that does not occur in a factual pre-existing vulnerability they are deprived of the right to adequate housing to a greater extent than those individuals living in areas that the disaster has spared.

Analysis of General Comments adopted after 1991 corroborates the above interpretations; they uphold the conclusion that factors generating unequal enjoyment of rights for vulnerable or marginalised and disadvantaged groups correspond to, or are implied in, the internationally prohibited grounds of discrimination the Committee examines in General Comment No. 20. This Comment deals with paragraph 2 of Article 2 of the ICESCR on the principle of non-discrimination. Prohibited discrimination grounds enumerated in paragraph 2 of Article 2 include: race, sex, color, language, education, political or other opinion, national or social origin, property, birth or other status. Prohibited grounds the Committee has read into the ground ‘other status’ encompass, although they are not limited to: disability, age and socio-economic situation. 24 In light of paragraph 34 of Comment No. 20, being affected by natural disasters can be deemed to be a ground that falls under the chapeau of place of residence, implied in the expressly listed ground ‘other status’, as such emergencies typically strike certain regions and areas of a State and, depending on their severity, make it difficult, if not impossible, for disaster victims to enjoy ESCR, including the right to adequate housing, on an equal basis with individuals living in unaffected areas.

Furthermore, unequal enjoyment of rights for vulnerable or marginalised and disadvantaged groups can also be triggered by the intersectionality of more than one of the prohibited grounds falling within the scope of paragraph 2 of Article 2. In this case, the vulnerability of the persons concerned will be compounded and layered, and indicative that, within vulnerable or marginalised and disadvantaged groups, there are persons who are more vulnerable, disadvantaged, and marginalised than other group members because they experience multiple forms of discrimination preventing them from adequately enjoying ESCR. 25
Implications of the vulnerability of disaster victims flowing from General Comment No. 4

As set forth in paragraph 11 of General Comment No. 4, the vulnerability of disaster victims does not merely describe their predicament. It has important legal ramifications. It primarily requires giving priority consideration to their housing situation through housing law and policy. One can understand the concrete import of such obligation in light of the State obligation to fulfil/provide spelled out in other General Comments of the CESCR. Specifically in the General Comment on the right to food and water, the Committee unequivocally affirmed that the obligation to fulfil/provide requires State parties to the CESCR to directly provide the right to water and food to disaster victims due to the magnitude of the deprivation of these rights that they typically experience.\(^26\) That the obligation to provide is part of the normative content of the right to adequate housing is indirectly borne out by paragraph 10 of General Comment No. 3 on the nature of State obligations under paragraph 1 of Article 2 of the ICESCR. The Committee makes it clear that a State party to the Covenant is prima facie failing to discharge its core obligations under the Covenant if a significant number of individuals is deprived of basic shelter and housing. Core obligations are duties State parties to the Covenant are expected to implement as a matter of priority to ensure the satisfaction of at least the most common minimal levels of each of the Covenant’s rights.\(^27\) Interpreting paragraph 10, a contrario, and taking into account the importance of core obligations, one infers that where a significant number of individuals are homeless, State parties to the Covenant have to urgently implement measures aimed at putting an end to such an extreme deprivation of adequate housing, including by directly providing adequate housing.

Thus, construing the State obligation flowing from the vulnerability of disaster victims under the terms of paragraph 11 of General Comment No. 4 in light of paragraph 10 of General Comment No. 3, it follows that State parties to the Covenant have to give priority consideration to homeless disaster victims by directly providing the right to adequate housing through adoption and implementation of relevant laws and policies. These measures should take part of a general housing policy which aims at progressively realising the right to adequate housing of disaster victims by providing them with temporary housing for a certain period of time and replacing it thereafter with permanent housing. Progressive realisation of economic, social and cultural rights, including the right to adequate housing, is foreseen under the ICESCR provided that, as the Committee has put it, State parties comply with the obligation to move as expeditiously and effectively as possible towards the full realisation of the Covenant rights. Provisions of temporary housing to disaster victims that is progressively upgraded or that is replaced with permanent housing would satisfy the above obligation.

It also is noteworthy that, in paragraph 15 of General Comment No. 4, the Committee asserts that State Parties to the ICESCR have to adopt a national housing strategy which should reflect extensive genuine consultation with, and participation by, all those affected, including the homeless, and adequately reflect the needs of homeless and their representatives. By mentioning the consultation and the adequately reflecting the needs of homeless and their representatives, the Committee is positively affirming the obligation to make housing policy and to implement housing law comprehensively. Consequently, where State parties to the ICESCR have taken into account the needs of homeless and their representatives, they have satisfied the obligation to make housing policy and to implement housing law comprehensively.

Moreover, paragraph 15 of General Comment No. 4 provides an additional State obligation relevant to the vulnerability of disaster victims: the Committee points out that State parties to the Covenant are expected to implement a national housing strategy which should reflect adequate consultation with, and participation by, all those affected, including the homeless, and should adequately reflect the needs of homeless and their representatives. Consequently, State parties to the ICESCR are expected to make housing policy comprehensively and to implement housing law comprehensively by involving and consulting with all those affected, including the homeless, and by adequately reflecting the needs of homeless and their representatives.

A rights-based vulnerability paradigm
Article 11 of the ICESCR requires States parties ‘either alone or on the basis of international cooperation’ to monitor the situation of the right to housing and to do whatever necessary to determine the extent of homelessness and inadequate housing.

But what is the right to adequate housing about? In General Comment No. 4, the Committee maintains that right to adequate housing, as contained in the ICESCR, is quite a complex entitlement predicated on human dignity and the scope of which goes far beyond the notion of having a roof on one’s head. As the Committee has beautifully put it, the right to housing is the right to live somewhere in security, peace and dignity. The Committee goes on to illustrate the concrete meaning of this wording when explaining the import of housing adequacy. In its view the fundamental notion of adequacy is made up of certain essential elements that State parties to the Covenant must take into account in any particular context, including, therefore, when formulating and implementing policies conducive to access to housing for disaster victims.

Elements that are considered here include affordability, security of tenure and accessibility. Affordability refers to the economic dimension of housing and necessitates that housing costs should be commensurate to income levels. It also implies that tenants should be protected against unreasonable rent increases. Security of tenure takes various forms, including rental (public and private) accommodation, and also protects from arbitrary eviction and harassment. In the Committee’s view, State parties to the ICESCR should take immediate steps concerning security of tenure of persons and households lacking it in consultation with them. Accessibility entails that housing must be accessible to those entitled to it, including disadvantaged groups. Quite relevantly to this investigation, the Committee has expanded the notion of adequate housing by detailing characteristics that housing should have in areas at risk. In 2006, when assessing the second periodic report of El Salvador, the Committee made clear that, in areas at risk, necessary steps for the realization of the right to adequate housing as spelled out in General Comment No. 4 include implementation of ‘effective preventive measures, ensuring that housing is constructed in accordance with the standards for resisting earthquakes . . . , and to adopt a national territorial classification plan, avoiding construction in areas prone to natural disasters.’

Rather importantly, as every Covenant right, the right to adequate housing ‘must, in accordance with article 2(2) of the Covenant, not be subject to any form of discrimination’. Before concluding it is important to recall that, in paragraph 2 of General Comment No. 4, the Committee maintains that States parties to the Covenant are required to adopt measures that are conducive, within a reasonable period of time, to the full realization of the Covenant rights, including the right to housing. Importantly, such measures must (effectively) contribute to bringing about the realization of the Covenant rights. As the Committee put it, those measures should be deliberate, concrete and targeted in a clearly delineated manner. The Committee refers to the concept of vulnerability and emphasizes that State parties to the ICESCR should take into account the particular features of housing, security and accessibility to housing. The Committee stresses that competent authorities should deal with vulnerable disaster victims by directly providing access to housing through implementation of measures that effectively comply with the core elements of housing adequacy identified in General Comment No. 4.

General Comment No. 7 on forced evictions: further reference to vulnerability

The above legal framework has to be complemented by the Committee’s analysis of forced evictions. The Committee considers forced eviction as General Comment No. 7, and defines them...
A rights-based vulnerability paradigm

As the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. Forced evictions amount to prima facie violations of the right to adequate housing as well as infringements of the right of access to justice where the evictees cannot challenge the legality of the evictions.

Thereafter the Comment indicates that forced evictions can occur in different contexts including in situations of internal displacement and that they impose duties on States parties to the ICESCR. Contracting States are required to refrain from committing forced evictions and adopt legislation providing the greatest possible security of tenure to occupiers of houses and land. Such legislation must also provide coexistence of forced eviction and accountability for individuals, including State agents and private persons, who have engaged in them.

The Comment dwells on vulnerability in paragraph 10 of General Comment No. 7. The Comment affirms that various vulnerable groups such as women suffer disproportionately from the practice of forced evictions. Specifically, violence to all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership). Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation. This means that governments must comply with the non-discrimination provisions set out in Article 3 and paragraph 2 of Article 2 of the ICESCR as to make sure that, where evictions occur, effective measures are taken to avoid that sex-based discrimination is involved.

In General Comment No. 7, the Committee ascribes the special vulnerability of women to a dimension of it, to the fact that they are affected by forced evictions to a greater extent than other evictees or prospective evictees owing to institutionalised sex-based discrimination in the housing field. Women should be specifically protected against sex-based discrimination if evictions occur as a result of failed tenancies, including in disaster and post-disaster settings, given that the principle of equality between men and women and the principle of non-discrimination (enshrined in Article 3 and paragraph 2 of Article 2 of the ICESCR) are, in the Committee’s words, fundamental components of international human rights law and fundamental to the enjoyment of each of the specific rights enumerated in the Covenant. As for General Comment No. 4, the term ‘vulnerable’ in General Comment No. 7 signifies being affected by unequal enjoyment of the right to adequate housing.

For the purposes of this essay the above conclusion further entails that, when a powerful disaster strikes a State where there is legislation setting out sex-based discrimination in relation to property and housing rights, women-heads of households who have been rendered homeless by the disaster and forcibly evicted in its aftermath are especially vulnerable because they have been re-exposed to homelessness as a result of the evictions and encounter significant difficulties in accessing housing after the evictions owing to de jure sex-based inequality in the exercise of housing rights.

The prohibition of forced evictions also incorporates precise procedural guarantees which apply to any persons affected by forced evictions and a fortiori to especially vulnerable groups such as women, including forcibly evicted disaster-affected women. These guarantees include genuine consultation with prospective evictees; adequate and reasonable notice for all affected individuals prior to the scheduled date of evictions; provision of legal remedies; and provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts. Finally, in the words of the Committee, eviction should be

283

284
Ingrid Nifosi-Sutton

not render individuals homeless or vulnerable to the violation of other human rights. Where the evictees are unable to provide for themselves, State parties to the ICESCR ‘must take all appropriate measures, to the maximum of their available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available’. 51

Critical assessment of the Committee’s notion of vulnerable disaster victims

One could argue that labeling disaster victims ‘vulnerable’ and forcibly evicted disaster-affected women ‘especially vulnerable’ is stigmatising since the adjective vulnerable is typically associated with powerlessness and weakness in the face of harm. In the same vein, some commentators have individually warned against several ‘ills’ of notions of vulnerable groups, which include victimisation, paternalism and essentialism. 52 Victimisation and paternalism are disempowering consequences of regarding certain persons as vulnerable. Essentialism might lead to consideration of vulnerable disaster victims as monolithic and overlook the predicament of group members or sub-groups. 53

It is important to emphasise that the definition of vulnerable groups as elaborated by the CESCR is legal rather than merely descriptive. This point is less obvious than it seems. A legal definition of vulnerable disaster victims escapes a narrative that describes the vulnerability of certain groups of persons in terms of innate characteristics they have or predicaments they are in, thereby avoiding judgmental and stigmatising. In other words, the Committee’s paradigm does not ascribe the vulnerability of disaster victims to their disaster victim status or to gender/sex coupled with disaster victim status. Rather, the paradigm places more emphasis on the lack of effective legal protection characterising the situation of these persons, and acknowledges powerful natural disasters and sex/gender as elements that should help competent authorities better understand the challenges inherent in implementing these persons’ right to adequate housing in conformity with the requirements set forth in the ICESCR. 54 That the vulnerability paradigm of the CESCR is not conducive to stigmatisation and, consequently, victimisation and paternalism, is further evident in its empowering reach. The Committee unmistakably regards vulnerable disaster victims as right-holders and main stakeholders who should have a say in the way in which their right to adequate housing is realised in the aftermath of a powerful natural disaster and have access to justice where infringements of it have occurred.

The CESCR is not the only human rights monitoring body that regards vulnerable groups as being made up of persons who are exposed to violations of human rights to a greater extent than other persons in comparable situations. To mention just a few examples, the European Court of Human Rights has considered persons living with HIV/AIDS and the Roma vulnerable in so far as they have suffered considerable historical discrimination, on the grounds of, respectively, health status and race. 55 The Inter-American Court of Human Rights has considered persons affected by natural disasters as vulnerable when drafting the Articles on the Protection of Persons in the Event of Disasters. Draft Article 6 on humanitarian principles states that ‘response to disasters shall take place in accordance with the principle of impartiality, and on the basis of non-discrimination, while taking into account the needs of the particularly vulnerable’. In the commentary to Draft Article 6, the IAC underlines that these affected by disaster are by definition
A rights-based vulnerability paradigm

vulnerable" 57 and that, among these, there are particularly vulnerable individuals such as women. 58 While the ILC's notion of vulnerability is predicated upon exposure to disasters rather than legality, it shares similarities with the main requirements of the vulnerability paradigm of the CESCR in containing that disaster-affected States tackle the housing situation of homeless disaster victims urgently. The ILC takes the view that the principle of non-discrimination, implied in the humanitarian principle of impartiality, is of special relevance to the situation of these disaster victims who are particularly vulnerable. It requires priority be given to their needs. 59

The Committee's notion of vulnerability does not lead to essentialism either. On the contrary, its emphasis on lack of full and equal enjoyment of human rights allows additional consideration of a myriad of different situations in which the rights of disaster victims are at stake. Also the paradigm is quite nuanced since it takes into account the predicament of disaster victims who are disproportionately affected by violations of rights and consequently particularly vulnerable.

Applying the vulnerability paradigm to the housing situation of Haitian IDP women

The IDP women in post-quake Haiti are a vulnerable group for the purposes of General Comment No. 11. These persons' vulnerability lies in their exposure to de facto discrimination in the enjoyment of the right to adequate housing in paragraph 1 of Article 11 of the ICESCR. Specifically, these women are vulnerable because they could not access the right to adequate housing, on an equal basis with those living in areas that were not affected by the 2010 earthquake, due to the widespread material damage the disaster caused in southern Haiti and ensuing extreme deprivation of housing. Extreme deprivation of housing has to be understood as homelessness.

As underscored, the first implication of the above notion of vulnerability is that States parties to the ICESCR have to address the situation of homeless disaster victims, as a matter of priority, through implementation of relevant measures aimed at directly providing the right to adequate housing. The measures should be part of a strategy that progressively realises the right to adequate housing of disaster victims by providing them with temporary housing for a certain period of time and replacing it after some time with permanent housing. The important caveat here is that said measures effectively foster realisation of the right to adequate housing of vulnerable disaster victims if, and only if, they are in line with the essential elements making up housing adequacy under paragraph 1 of Article 11 of the ICESCR. This being so, has Haiti complied with the obligation to timely provide vulnerable IDP women with the right to adequate housing through the adoption of measures that effectively contribute to adequate accommodation? Has Haiti progressively realised the right to adequate housing of IDP women?

It is undeniable that the government of Haiti has adopted measures to promptly deal with the housing situation of the IDP women, and hence their vulnerability, thereby seeking to implement the obligations to directly provide them with the right to adequate housing. These measures, however, do not conform to the normative content of the right to adequate housing so far as they fail short of the core elements of this entitlement. The fact that a significant number of IDP women have not been able to pay for rent after the expiration of the rental subsidies and returned to camps for IDPs is manifestly at variance with the notion of affordability; it highlights absence of security of tenure and indicates that competent authorities have failed to guarantee access to adequate housing to the IDP women. Return to IDP camps dramatically prevents a realisation of IDP women's vulnerability. The tenures concerned remain precarious, once again, unequal enjoyment of the right to adequate housing, this time owing to their socio-economic situations, another prohibited discrimination ground that, as seen above, the CESCR has read into the ground "other status" set out in paragraph 2 of Article 2 of the ICESCR. 60 This situation prevents them from
measuring accommodation in the post-disaster phase and therefore exposing the right to adequate housing to an equal footing with those IDPs who, after having benefited from rental subsidies, had accessed permanent housing. Furthermore, return to IDP camps signals that the government has not ensured IDP women’s right to adequate housing progressively since their temporary accommodation was not coupled with options leading to permanent housing.

Transitional shelters lack several constitutive elements of the right to adequate housing, too. To begin with, their allocation appears to present a discriminatory nature that benefited only IDPs who were in areas that offered security of tenure. While the information used for the purposes of this essay does not highlight specific forms of sex/gender-based discrimination, it is submitted that those IDP women who have not benefited from transitional shelters, because they were not in areas that offered security of tenure, appear to have suffered unlawful differential treatment in the enjoyment of the right to housing based on the above-mentioned prohibited ground ‘place of residence’. This type of discrimination augments IDP women’s vulnerability by intensifying the pre-existing de facto discrimination in access to adequate housing that they were experiencing as a result of the 2010 earthquake, and hence exposing them to greater unequal enjoyment of the right to adequate housing than other Haitians who had been affected by the disaster.

A further failure to account for IDP women’s qua vulnerable group is evident in the fact that the government of Haiti has not considered them persons as right-holders and, consequently, stake-holders who should have had a say regarding the identification and implementation of measures giving effect to their right to adequate housing in the post-disaster phase. The evictions described in the first part of this essay squarely fall within the definition of forced evictions the CESCR put forward in General Comment No.7 and engage the responsibility of Haiti which did not prevent them or respond to them. The evictions severely aggravate the vulnerability of IDP women who are heads of households to violations of the right to adequate housing and make them a particularly vulnerable group. The evictions have rendered these women homeless once again and further subjected them to pre-existing statutory gender-based discrimination under domestic legislation denying them the ability to administer property. Their only choice they are left with is to escape homelessness to avoid precarious accommodations elsewhere.

The evictions carried out by State officials when they demolished Camp Téléco Sans Fil is contrary to the requirements flowing from the prohibition of forced evictions since it was carried out without prior consultation with IDP women and without providing them with alternative housing solutions given their ineligibility for rental subsidies. What is more, IDP women did not have access to remedies to challenge the lawfulness of their eviction from Camp Téléco Sans Fil and Camp Comité du Peuple Progressiste and were never compensated for the property destroyed during these evictions.

Final remarks

Highly destructive disasters such as the 2010 earthquake that struck southern Haiti are sobering reminders of the fragility of human existence. They dramatically test the capability of affected States and the international community to safeguard human security, a notion that the UN Commission on Human Security defines as the ‘vital core of all human lives’ and which encompasses fundamental human rights and freedoms. Given that protection of human rights is the pivot around which disaster response should revolve, I take the view that the vulnerability paradigm of the CESCR is a formidable analytical and operational tool for formulating adequate protection of disaster victims and, by extension, better disaster management. Its hallmark lies in the fact that it provides guidance on how to actualise human rights in disaster settings. The paradigm breaks new ground since it transcends
the idea that disaster response merely entails timely provision of certain goods and logistics to the needy. The paradigm aims at promoting disaster management that is human rights-centric.

First, the paradigm provides States parties to the ICESCR that have been struck by a disaster, especially a powerful natural disaster, with a better understanding of the scope of the protection needs of disaster victims and how to address them. The emphasis on the vulnerability of persons affected by powerful disasters qua exposure to de facto discrimination in the enjoyment of the right to adequate housing; the far-reaching State obligations ensuing from it; and the notion that disaster victims’ vulnerability is more worrisome when these persons suffer particularly pervasive discrimination or multiple forms of discrimination in access to housing, illuminate for contracting States specific requirements integral to paragraph 3 of Article 11 of the ICESCR that correspond to the unique needs of disaster victims.

Expanding on the above points, the Committee’s vulnerability paradigm incorporates a cluster of obligations that, taken together, constitute a road map for States parties to the ICESCR to follow in order to minimize or eliminate disaster victims’ exposure to homelessness, and which is conducive to disaster recovery and resilience in the field of housing. Thus, applying the main State obligations flowing from the paradigm to a disaster cycle that begins with the response to the disaster, the relevant road map would incorporate adoption of measures to be implemented in the order outlined below as to ensure the right to adequate housing of disaster victims timely, effectively and progressively:

- Monitoring and collection of information on the situation of homeless disaster victims in order to identify housing needs and challenges to be addressed at a priority matter in the immediate aftermath of the disaster and subsequently in the post-disaster phase;
- Genuine consultation with homeless disaster victims or their representatives when devising housing strategies to be implemented in the very aftermath of the disaster and in the reconstruction phase;
- Design and implementation of measures for the provision of adequate housing to homeless disaster victims that are tailored to the outcomes of the consultation with them and which comply with the elements underpinning housing adequacy within the meaning of General Comment No. 4, particularly accessibility, affordability, security of tenure and resistance to earthquakes. These measures should form part of a general housing policy which aims at realizing the right to adequate housing of disaster victims on a progressive basis by ensuring access to temporary housing for a certain period of time and replacing it thereafter with permanent housing;
- Undertaking of special efforts to make sure that housing measures do not result in a worsening of the vulnerability of disaster victims by adding to the extent of their deprivation of the right to adequate housing. This means that the housing measures at hand must never generate discrimination in access to housing based on any of the prohibited grounds of discrimination enumerated or implied in paragraph 2 of Article 2 of the ICESCR or be in contradiction to Article 3. Such efforts must also encompass ensuring, if existing national legislations on the right to housing prevent them from discriminatory against groups such as women;
- Where evictions have occurred in the post-disaster phase and the affected States have discriminatory laws in the field of housing, additional measures will have to be put in place to ensure that the discriminatory impact of such evictions is minimized. Where necessary, the measures must also enable those women to exercise their housing and property rights without discrimination based on their gender; and
- Ensuring access to justice and reparations where disaster victims’ right to adequate housing has been violated.
Ingrid Nifosi-Sutton

Some may say that the vulnerability paradigm places an excessive burden on a State party to the ICESCR that has been affected by a powerful disaster and that its requirements are not realistic. Maintaining these points does not do justice to disaster victims who, as their fellow human beings, are born “equal in dignity and rights”\(^1\) to those who are less affected. A disaster affected State does not do justice to disaster victims who, as their fellow human beings, “are born . . . equal in dignity and rights”;\(^1\) acquiesces to loose disaster management; and dooms human rights law to irrelevance in the event of disasters. A disaster-affected State that is party to the Covenant should do whatever is in its power to implement the vulnerability paradigm in good faith. This is a requirement that flows from its ratification of the Covenant.\(^2\) If the disaster situation warrants it, the affected State could also seek international assistance. Seeking international assistance for the purposes of implementing the right to adequate housing under the ICESCR is not optional. It is mandatory in cases where a contracting State does not have enough funds to give effect to it and should be used to tackle the predicament of those who are inadequately housed.\(^3\)

Selected Bibliography

68. de Guttry, Gestri and Venturini (eds), International Disaster Response Law (Springer, 2012).

Notes

4 Ibid.
5 Ibid.
7 Ibid.
9 Amnesty International, Jh. 2 para 17.
10 Ibid.
11 Ibid.
12 Ibid.
13 Ibid.
14 Ibid.
15 Ibid.
16 Ibid.
17 Ibid.
18 Ibid.
19 Ibid.
20 Ibid.
21 Ibid.
A rights-based vulnerability paradigm


14 Amnesty International (n. 3) 23.

15 Ibid.

16 Ibid 26.

17 Ibid.

18 Ibid.

19 Ibid.

20 Ibid.


23 Chapman and Carbonetti (n. 21) 724–725.


25 Ibid. See also para 17 of Comment No. 20.


27 CESCR, General Comment No. 20: The Right to Adequate Food (Art. 11 of the Covenant), UN Doc. E/C.12/1999/5 (1999) paras 16; 20. See also para 17 of Comment No. 20.


29 General Comment No. 4 (n. 22) para 12.


31 Ibid para 10.

32 Ibid para 8(c).

33 Ibid para 8(a).

34 Ibid para 8(e).

35 Ibid.

36 Ibid para 8(a).

37 Ibid para 8(e).


39 General Comment No. 7 (n. 41) para 2.

40 General Comment No. 20 (n. 24) para 2.


42 Ibid paras 6 and 11.

43 Ibid para 6.

44 Ibid para 8.


49 Ibid para 33.

50 Ibid para 34.

51 Ibid para 35.

52 Ibid para 36.

53 Ibid para 40.

54 Ibid para 41.

55 Ibid.

56 Ibid.

57 Ibid.

58 Ibid.

59 Ibid.

60 Ibid.

61 Ibid.

62 Ibid paras 2 and 5.

63 Ibid.

64 Ibid paras 10–11.

65 Ibid para 11.

66 Ibid para 11.

289
Ingrid Nifosi-Sutton

51 Ibid para 16.
53 Ibid para 12.
55 Nifosi-Sutton (n. 1) Section 1 of Chapter 6; Peroni and Timmer (n. 52) 1065–1067. For a broader overview of the practice of the European Court of Human Rights relevant to the protection of vulnerable groups, see, generally, L. Burgorgue-Larsen and A. Ubeda de Torres, ‘War’ in the Jurisprudence of the Inter-American Court of Human Rights’ 33 Human Rights Quarterly (2011) 148, 156.
56 Nifosi-Sutton (n. 1), Sections 5.3, 5.4, 5.5 and 5.6 of Chapter 5. On the IACtHR’s use of the notion of vulnerability and its legal implications under the American Convention on Human Rights, see, also, General Comment No. 20 (n. 24) para 35. On the jurisprudence of the Inter-American Court of Human Rights (2009) 160, 166.
58 Ibid. See also para 31.
59 Ibid paras 5 and 7.
60 General Comment No. 20 (n. 24) para 8.
62 Ibid.
64 Ibid.
65 Ibid paras 19 and 20.
66 General Comment No. 20 (n. 24) para 19.
67 Ibid para 31. For further and complementary analysis of the relevance of the international right to adequate housing in post-disaster settings, see Rolnik’s chapter in this volume.