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Integrating Human Rights into Disaster Management

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Introduction

The integration of human rights into all phases of the disaster management cycle has been repeatedly called for in several international fora. The latest, although timid, references are those contained in the Sendai Framework for Disaster Risk Reduction 2015–2030, where human rights are listed amongst its Guiding Principles. In particular, paragraph 19, letters (c), (d) and (h), contain the essential elements of a human rights-based approach to disaster management. Letter (c) states that ‘managing the risk of disasters is aimed at protecting persons and their property, health, livelihoods and productive assets, as well as cultural and environmental assets, while preventing and protecting all human rights, including the right to development’, and letter (d) calls for an ‘all-of-society engagement and partnership, empowerment and inclusive, accessible and non-discriminatory participation, paying special attention to people disproportionately affected by disasters’ (emphasis added).

The aim of this contribution is to explain how human rights standards and principles can be mainstreamed into disaster management to increase the enjoyment of rights by victims of such disasters, by fostering awareness and ownership by duty-bearers to meet their obligations towards vulnerable communities, and ensuring that ‘rights-holders are empowered to demand greater levels of safety before, during and after disasters’.

After some terminological clarifications, the chapter will survey different sets of documents – recommendations of United Nations (UN) human rights treaty and Charter-based mechanisms, UN Inter-Agency Standing Committee (IASC) and UN Development Group (UNDG) policy documents, deliberations of inter-governmental bodies and policy-making organs – thus highlighting three different ways in which human rights are being integrated into disaster management to strengthen prevention, preparedness and recovery efforts:

(a) Normative: the UN human rights machinery’s focus on States’ obligations in relation to the enjoyment of specific rights in disaster setting;

(b) Operational: an analysis of guidelines and tools developed for humanitarian actors (applicable at all levels, from national to international) as a means to contribute to better translating human rights law into concrete actions in disaster situations, and...
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The analysis will be circumscribed to the UN practice in this regard. The matter fact is moti-
vated by the fact that it is precisely at the UN level that the most significant attempts to apply a
Human Rights-Based Approach (HRBA) to disaster management are taking place, influencing
and shaping not only the work of that same Organization – its agencies, offices, departments and programmes – but also that of its member States.

Towards a human rights-based approach in disaster management?

Defining key terms

For the purposes of the present work, disaster management will be defined as ‘the organization
and management of resources and responsibilities for dealing with all humanitarian aspects of
emergencies, in particular preparedness, response and recovery, in order to lessen the impact of
disasters.’ This wording encompasses all phases of the disaster cycle from prevention and prepa-
rature, to emergency response and the post-disaster/recovery phase.

An HRBA is:

a conceptual framework for the process of human development that is normatively
based on international human rights standards and operationally directed to promoting
and protecting human rights. It seeks to analyse inequalities which lie at the heart of
development problems and redress discriminatory practices and unjust distributions of
power that impede development progress. An HRBA is therefore a framework of action as well as a methodological tool to apply international human
rights principles, values, standards and goals into all stages of programming.

In 2003, the Stamford Interagency Workshop on a Human Rights-Based Approach in the Con-
text of UN Reform reached a common understanding and consensus on the definition of HRBA
and also defined six key principles of HRBA to guide programming: (a) universality and inalien-
ability, (b) indivisibility, (c) inter-dependence and inter-relatedness, (d) non-discrimination and
equality, (e) participation and inclusion and (f) accountability and the rule of law. An HRBA is
therefore a ‘framework of action as well as a methodological tool’ to apply international human
rights principles, values, standards and goals into all stages of programming.

In an HRBA, the relationship between rights-holders and duty-bearers is shaped by human
rights norms and plans, policies and programmes that are grounded on a set of rights and corre-
lating legal obligations enshrined in international law. Such a framework helps to promote
the sustainability of interventions by empowering right-holders – especially the most vulnerable –
and enabling them to participate in the formulation of policies and to claim their rights and seek redress.

The progressive integration of human rights in disaster management

Disasters occurring in the last 10 to 15 years have shown the mounting importance of integrating
human rights into all phases of disaster management for ensuring the most appropriate response
for affected populations. If we take the 2004 Indian Ocean tsunami as a starting point, the need
to implement rights-based approaches in disaster management becomes clear and also evident in
the adoption of a series of key policy documents and guidelines in this regard.
Indeed, it was precisely in the aftermath of the Indian Ocean tsunami that, following input from the then Representative of the Secretary-General on the Human Rights of Internally Displaced Persons (Representative of the Secretary-General on IDPs), Walter Kälin, a process was triggered for providing advice to humanitarian organizations on the application of an HRBA for developing and implementing a response to natural disasters. Kälin paid a working visit to Asia to meet with actors from the region affected by the tsunami to discuss the human rights situation of internally displaced persons (IDPs) so as to recommend possible next steps in the international, regional and national response to that disaster. As a result, he flagged several practical issues and concerns arising in situations of displacement due to natural disasters and also recommended to use the Guiding Principles on Internal Displacement as a blueprint for the development of national, regional and international policies for protecting and assisting these displaced persons. He also raised the potential for the development of a set of more general guidelines for the protection of the human rights of persons affected by disasters. The latter recommendation culminated in the drafting and presentation, in 2006, of draft guidelines by the IASC on Protection of Persons in Natural Disasters, which were eventually adopted by the IASC in 2010. This document represents the first of a series of explicit guidance tools for humanitarian actors on how to apply an HRBA throughout the disaster management cycle.

In parallel, regional and international human rights treaty-based monitoring bodies started applying and interpreting their respective treaties in disaster situations thus clarifying that the integration of human rights into disaster management is a legal obligation and hence requiring the need for applying an HRBA.

These tools also have served not only to improve protection in disaster settings that have taken the form of standard setting exercises as intergovernmental deliberations. The Human Rights Council (HRC) has initiated discussions over the promotion and protection of human rights in post-disaster and post-conflict situations and has noted discussing human rights aspects of specific disaster-induced situations, such as in the special session of January 2010 focused on an HRBA to support the recovery process in Haiti. Also within the Universal Periodic Review process, attention has been given to rights-sensitive actions in disaster management. Recommendations to several countries, such as Vietnam, Kenya, El Salvador, Cuba, Bangladesh, Bangladesh, Nepal, Oman, Pakistan, Palau, the Philippines, Solomon Islands and the United States of America, put emphasis on measures and programmes aimed at providing protection and assistance to victims of natural disasters from emphasizing the importance of taking into account protection concerns in all phases of the disaster cycle.

The issue of integrating human rights into disaster management has also been part of the discussions within the International Law Commission (ILC) prior to the adoption of the first reading of the Draft Articles on the protection of persons in the event of disasters (Draft Articles). Indeed, when commenting on Draft Article 29 of the draft, several States elaborated on the need to apply a rights-based approach. The ILC, notably that the two approaches not necessarily 'mutually exclusive but complementary'. The formulation referred to, indeed, emphasizes the importance of a response to a disaster, and the reduction of the risks thereof, that adequately and effectively meets the "needs" of the persons concerned, and that "has to take place with full respect for the rights of each person". These efforts represent an initial engagement with the human rights implications of disasters, but a systematic analysis of the subject is yet to take place and there is limited doctrinal examination of the subject.

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Integrating human rights into the disaster management cycle: the work of the UN human rights machinery

A variety of UN treaty bodies’ concluding observations and recommendations of thematic and country-specific HRs, special procedures show an increasing trend in auditing States’ obligations vis-a-vis vulnerable groups and in relation to the enjoyment of specific rights in disaster situations. Various thematic and country specific human rights mechanisms in the context of UN treaty bodies have advocated drawing up HRBA of disaster management. Human rights concern is also reflected in the UN’s guiding principles of humanitarian action. The UN human rights machinery – treaty- and Charter-based – reaffirms the integration of human rights into disaster management thus calling for an HRBA as a tool to ensure that protection concerns are taken into account in such situations. In the concluding observations to State parties reports, there are various specific recommendations of UN treaty monitoring bodies towards rights-sensitive measures in disaster preparedness, response and recovery.27

The Committee on the Protection of the Rights of Persons with Disabilities (CPRD) has emphasised the need for comprehensive plans on disaster risk reduction that are fully accessible and fully inclusive.28 At its third session, the Committee also decided to establish a working group to follow up the situation in Haiti and other similar disasters around the world, in order to more closely follow issues related to the protection of persons with disabilities in disaster-prone countries in compliance with Article 11 of the Convention on the Rights of Persons with Disabilities that establishes for States parties the obligation to ensure the protection and safety of persons with disabilities in situations of risk, including natural disasters.29

The Committee on Economic, Social and Cultural Rights (CESCR) has underlined the need for preventive action to ensure that housing is built in accordance with the rules applicable to earthquake-prone areas, also avoiding construction in areas prone to natural disasters.30 It has also recommended the adoption of an HRBA to disaster response, risk mitigation and reconstruction efforts, making sure in particular that disaster management plans do not discriminate or lead to discrimination in the enjoyment of economic, social and cultural rights.31

On disaster response, the major treaty body deliberations are contained in the General Comments of the CESCR, in particular in General Comment n. 3 on the nature of obligations of States Parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) that introduces the concept of ‘core obligations’ to apply at all times regardless of any constraints, including in disaster situations.32

Both the Committee on the Elimination of Racial Discrimination (CERD) and the Human Rights Committee (HRC) have stressed the need to ensure genuine consultation and participation of victims of natural disasters in the design and implementation of all responses affecting them and to guarantee that rights of the most marginalized groups are fully taken into account in reconstruction plans with particular attention to access to housing, education and healthcare.33

The Committee on the Rights of the Child (CRC) has elaborated on the need for States parties to develop strategies and plans aimed at reducing vulnerabilities of and risks for children and families that may be caused or exacerbated by natural disasters, including by incorporating child-specific and child-sensitive risk and vulnerability reduction strategies into national plans on disaster preparedness. It has also stressed the importance of ensuring that the special physical and psychological vulnerabilities and needs of children, as well as their views, are taken into account and that children are fully involved in such policy dialogues.34 The importance of defining strategic budgetary lines for children in disadvantaged or vulnerable situations who require affirmative social measures has also been underlined together with the need to ensure that those measures are protected and preserved even in situations of natural disaster in particular as they relate to health and education.35
Particular emphasis is also repeatedly given to the need to increase children’s awareness and preparedness for climate change and natural disasters by incorporating it into school curricula and teacher training programmes.

The Committee on the Elimination of Discrimination against Women (CEDAW) has stressed that the promotion of gender equality and sensitisation to gender equality issues must be an explicit component of national plans and policies, including in particular those aimed at at national disaster management, and has underlined the importance for such plans to include the concerns of women, particularly those living in rural areas. 36 This treaty body has also pointed to the importance for these plans to target women not only as victims but also as active participants in their development and maintenance. 37 It has also called for appropriate measures to eliminate all forms of discrimination against women in relation to access to learning and food aid in natural disaster situations and to ensure that women in such situations are adequately protected from violence. 38

Special procedures of the HRC have also elaborated on human rights protection in all phases of the disaster management cycle, providing specific recommendations both in country-specific reports and thematic studies. Such elaborations constitute a useful reference for clarifying what a human approach to disaster management entails.

The Representative of the Secretary-General and the Special Rapporteur on IDPs have dealt with the issue thoroughly, developing a specific report on the protection of IDPs in situations of natural disasters 39 and by issuing specific recommendations during visits to disaster-prone countries 40 calling for an HRBA to sustainable development that integrates issues of internal displacement caused by natural disasters. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to secure housing, has also addressed human rights issues in disaster management plans to be designed within an HRBA explaining how such processes must be carried out in consultation with the active participation of concerned communities, by gender-sensitive, due regard upon local knowledge and culturally appropriate‘ giving special attention to groups at risk of discrimination’. 41 This special procedure has also elaborated on the need to integrate human rights standards, and particularly the right to adequate housing, in post-disaster and post-conflict reconstruction processes and has elaborated a specific thematic report on the protection of children from risk and vulnerability, including in natural disasters. 42

The Report of the Special Rapporteur on the sale of children, child prostitution and child pornography has also developed a thematic study on the protection of children from risk and sexual exploitation following a humanitarian crisis due to natural disasters. 43 This report contains a detailed outline of the creation and strengthening of comprehensive child protection systems in relation to natural disasters 44 and provides guidance for better assisting all involved actors to efficiently evaluate and address the varying levels of risk and vulnerability faced by children in natural disasters. 45

While these recommendations all suggest that States have specific human rights obligations with regard to all phases of disaster response including disaster prevention and preparedness, evacuation, emergency assistance and relief measures, as well as return and reintegration of those displaced, 46 they also contain specific indications on how to address human rights issues in disaster management and constitute a guidance tool for all stakeholders involved in planning and implementation. Importantly, they also provide evidence of the fact that responses to natural disasters are still too focused on humanitarian assistance and emergency management activities that mainly aim to meet the immediate survival needs of affected groups, and that their recommendations go in the direction of affording the need to integrate protections issues more systematically so as to ensure a full ‘cycle of protection’ 48 in disaster management.
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A snapshot of disaster management-related policy documents upholding an HRBA

In the late nineties, the UN embarked on a process towards the systematic mainstreaming of human rights into the work of the Organisation. In his 1998 Report on the Work of the Organisation, the then UN Secretary-General Kofi Annan emphasised that ‘the promotion of human rights is the common thread running through every stage of our work on peace and security’ and also reported on the implementation of a rights-based approach to development, which he described as being a tool that ‘empowers people to demand justice as a right, not as charity, and gives communities a moral basis from which to claim international assistance where needed.’

It took a little bit longer for the human rights implications of disaster response to be recognised since ‘natural disasters have traditionally been seen as situations that create challenges and problems but in terms of society’s obligations to respond to the inalienable rights of individuals, … empower people to demand justice as a right, not as charity, and give communities a moral basis from which to claim international assistance where needed.’


The IASC Operational Guidelines represent the first policy document containing instructions for humanitarian actors for the full integration of human rights into humanitarian assistance in situations of natural disasters. Adopted by the IASC in 2007, following feedback from their field-testing, they were revised in 2010 through incorporating lessons learned from the field and expanding the rights-based approach to include also pre-disaster measures.

What are the reasons behind the adoption of an HRBA in situations of natural disasters? The Introduction to the Guidelines clarifies that a rights-based approach can help protect persons in situations of natural disasters by grounding the basis for humanitarian action in universal principles, such as human dignity and non-discrimination and a set of universally accepted human rights standards and by considering individuals as rights-holders who can claim their rights from duty-bearers and not as simple passive beneficiaries and recipients of aid. Emphasis is put on the protection role that humanitarian and development actors (the latter more in the recovery phase) play to ensuring that the rights of affected individuals under international human rights law are respected, protected and fulfilled without discrimination. This perspective of humanitarian action in situations of natural disasters entails a shift from a purely needs-based approach to a rights-based one, with the corresponding legal obligations and responsibilities which needs to do so. Rights cannot be addressed without questions who holds the obligations in relation to those rights and can be held accountable.

The IASC Operational Guidelines aim at providing practical guidance to humanitarian actors for adopting a rights-based approach in situations of natural disasters so as to ensure that protection standards are integrated into any disaster response and recovery effort and to identify exactly which persons are affected by the humanitarian action and who are responsible for their protection. With an operational focus, they are informed by and draw on relevant international human rights law, existing standards and policies pertaining to humanitarian actions, and human rights guidelines on humanitarian standards in situations of natural disasters. They encompass the response and recovery phases in relations...
of natural disasters while they only touch upon, where relevant, issues related to preparedness and risk reductions—since these phases are beyond the scope of the policy document. They also serve the purpose of providing humanitarian actors with a ‘basis when entering into dialogue with governments about their obligations towards affected people under human rights law’. Indeed, under human rights law, States have a fundamental obligation to respect human rights, to protect and fulfill them and to discharge these obligations without discrimination. The IASC Operational Guidelines, addressed primarily to humanitarian actors that are not necessarily State entities, influence the above rights-duty relationship by attributing to the international community an important role to play in supplementing and complementing State efforts in these instances where the capacity or will of the authorities to fulfill their duties are inadequate. The concept of human rights protection in the humanitarian action endeavor, moreover, entails that humanitarian actors play a role with regard to ensuring that the rights of affected persons under international human rights law are respected, protected and fulfilled without discrimination.

Protection activities must respect the principles of humanity, impartiality, and neutrality and combat discrimination. Such activities should be structured so as to do no harm to beneficiary populations nor to expose them to further risks; to ensure access to relevant goods, services and opportunities; and to ensure for affected persons to claim their rights. After having set out the general principles, the Guidelines provide key principles relevant for the protection of human rights of persons affected by disasters by grouping them into four sections:

(a) Protection of rights related to the protection of life, personal security and physical integrity; and the protection of family ties in the context of evacuations;
(b) Protection of rights related to the provision of food, health; shelter and education;
(c) Protection of rights related to housing, land and property; and livelihoods;
(d) Protection of rights related to documentation, free movement in the context of durable solutions for IDPs; re-establishment of family ties, expression and opinion; and elections.

As indicated in the Introduction to the policy document, users ‘may limit themselves to consult category A and B during the immediate emergency phase and turn to C and D at a later stage. This does not entail in any case a hierarchy among relevant rights but it is meant to help quickly identifying those rights primarily relevant during a given phase of a disaster’ for each principle listed under A, B, C, and D the Guidelines provide a set of practical activities that can be considered in order to ensure the protection of the relevant rights of the persons affected by disasters. This non-exhaustive, non-binding list constitutes a useful pathway for actors planning interventions in disaster situations in designing, developing and implementing actions through a human rights lens.

Policy into ‘tools for action’: the OHCHR checklists for Integrating Human Rights in Natural Disaster Management in the Pacific (2007)

One of the expected results of a workshop jointly organised by OHCHR and UNDP Pacific Centre in Suva, Fiji, on 9 to 11 May 2007 was that of ‘developing human rights checklists, specific to the Pacific region, to be used by concerned actors in situations of natural disasters response and recovery’. These Checklists would provide a decision tool that could be used and updated as necessary. The event, titled ‘Integrating Human Rights in Natural Disaster Management in the Pacific’, saw the participation of UN staff and national and regional counterparts, especially those involved in disaster relief and recovery operations and programming. The Checklist activities were designed and considered during the workshop and then piloted during the Red Cross Regional...
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Disaster Management Forum Simulation Exercise on 28 and 30 July 2007 in Suva, Fiji. Feedback from this exercise was incorporated into the final version of the Checklists. This instrument, tailored for the Pacific region, aims at facilitating the integration of human rights issues in natural disaster management. It is meant to serve as a ‘memory trigger’ regarding key human rights issues to take into account in the different phases of natural disaster management. As such, it presents a non-exhaustive list of human rights issues that might emerge articulated into three different checklists to help identify them:

(a) Emergency response: contains a set of key ‘survival-related’ rights that require immediate attention during the emergency response and recovery.
(b) Response and recovery: contains a detailed checklist applicable both during response and recovery. It is structured in four sections based on the key principles identified for the protection of the human rights of persons affected by disasters as identified in the IASC Operational Guidelines.
(c) Prevention: provides guidance regarding the key human rights issues to which disaster management teams (at all levels, UN, regional and national) should be alert during natural disaster preparedness activities.

The tools are complemented by a companion note on vulnerability that outlines issues related to vulnerable groups in situations of natural disasters and provides examples for disaster responders on protective and preventive measures to mitigate vulnerability factors.

The added value of the Checklists lies in their practical approach. They translate the IASC Operational Guidelines into a concrete working tool for members of disaster management teams to systematically human rights-sensitive assessments during the different phases of disaster management. Their role as a reminder of the human rights issues to take into consideration during emergency response, recovery assessment and operations and to identify potential human rights violations (so-called ‘red flags’) makes them a flexible and user-friendly tool for incorporating human rights issues into the disaster management cycle. The Checklists also constitute a valuable instrument for further raising awareness of human rights issues in disaster management and a good example of an assessment/information-gathering methodology on human rights issues.

The UNDG Guidance Note for UNCTs on integrating Disaster Risk Reduction into the Common Country Assessment and United Nations Development Assistance Framework (2009)

In 2009 the UNDG adopted a Guidance Note for United Nations Country Teams (UNC Ts) on integrating Disaster Risk Reduction (DRR) into the Common Country Assessment (CCA) and UN Development Assistance Framework (UNDAF), as a follow-up to the adoption of revised Guidelines for UN Country Teams on Preparing a CCA and UNDAF, where the importance of DRR as a crosscutting theme had been repeatedly highlighted. The Guidance Note provides advice, including links to resources, on how to integrate DRR into the processes of CCA/UNDAF preparation, formulation, monitoring, and evaluation. The focus of the document is on disaster caused by vulnerability to natural hazards. The Note provides a framework for DRR into the UN’s practice at the national level through a reflection of disaster risk considerations at all stages of the CCA/UNDAF process. In particular, the country analysis phase should include the recognition of the risk of crises and natural disasters, as well as capacity for crisis prevention and disaster preparedness, and during the programme design and planning phases, UNDAFs should reflect risks of...
crises and natural disasters, as well as capacity gaps for crisis prevention and disaster preparedness, as identified in the analysis.\textsuperscript{72}

The CCA/UNDAF Guidelines identify five interrelated principles that must be applied throughout the UNDAF: one of these is an HRBA. The Guidance Note specifies that \[140\] incorporating HRBA into DRR interventions helps to foster ownership and citizenship by DRR duty-bearers to meet their obligations towards vulnerable communities. It also helps to ensure that ‘rights-holders’, particularly the most vulnerable where rights are often ignored, are motivated to demand greater levels of safety before, during and after disasters.\textsuperscript{73}

In relation to this principle, the Guidance Note highlights the advantages of using an HRBA in the context of disaster risk, explaining that it entails a risk analysis based on human rights: The document outlines the process and result-oriented nature of an HRBA in disaster settings as it introduces human rights standards and principles\textsuperscript{74} into the programming cycle by stressing an empowered focus on rights, non-discrimination, and attention to vulnerable groups, participations, empowerment and accountability.

**How to integrate an HRBA into the disaster management programming cycle**

The 2003 UN Common Understanding on an HRBA to development cooperation identified three complementary criteria that must be met in any approach. The first criterion requires that ‘all programmes should further the realization of human rights’.\textsuperscript{75} The second establishes that human rights standards and principles\textsuperscript{76} should ‘guide all programming in all sectors and all phases of the programming process’.\textsuperscript{77} The third criterion affirms that programming should contribute to the development of capacities of duty-bearers to meet their obligations and of rights-holders to claim their rights.\textsuperscript{78} Based on these three criteria, the document identifies the ‘necessary, specific and unique’\textsuperscript{79} elements to an HRBA to programming:

- (a) Assessment and analysis in order to identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying and structural causes of the non-realisation of rights.

- (b) Programme assess the capacities of both-duty-bearers to claim their rights and of duty-bearers to fulfil their obligations. They then develop strategies to build these capacities.

- (c) Programme monitor and evaluate both outcomes and processes guided by human rights standards and principles.

- (d) Programming is informed by the recommendations of international human rights bodies and mechanisms.\textsuperscript{80}

The UNDG Guidance Note on integrating DRR into the CCA/UNDAF explains the added value of applying an HRBA in disaster risk reduction. The HRBA contributes to the identification of the disasters that can constitute the biggest risks, the most likely to be affected and the most vulnerable segments of the population (what is the risk and who is most at risk). It allows for an analysis of the underlying and root causes of the vulnerabilities identified (what are the origins of the problem) and a mapping of actors and institutions responsible for mitigating risks (who are the duty-bearers). It also permits an evaluation of the capacities needed to avert disaster risks, both for potential victims of human rights violations due to disaster vulnerability.
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and for those responsible for addressing such issues (what are the capacities needed to address/redress the situation). In particular, the application of an HRBA to programming helps answering four critical questions:

(a) Who has been left behind and why?
(b) What are they entitled to?
(c) Who has to do something about it?
(d) What capacity do they need to take action?

The first stage of any programming is the carrying out of a situation analysis. The carrying out of such an assessment through a human rights lens helps determine the extent of a potential problem and the affected groups. An HRBA adds value to such an assessment by making a correlation between the challenge identified and the human rights obligations stemming from the international instruments ratified by the country at stake. Such an assessment helps to identify possible discrimination and inequality patterns and give an overview of the situation of marginalized and vulnerable groups.

Once the existence of a problem has been ascertained, the causality analysis from a human rights standpoint entails the identification of the causes of the problem through establishing its immediate, underlying and root causes and identifying which rights are at stake. This will result in a list of potential or actual human rights violations, the major factors contributing to such infringements and the actors involved.

A role-pattern analysis then allows the identification of the claim/duty on the basis of the causality analysis, determining who the rights-holders and duty-bearers are in relation to specific rights. A capacity gap analysis indicates the capacities necessary for duty-bearers to respond to claims and for right-holders to advocate for the enjoyment of their rights. Such analysis should lead to the identification of candidate actions contributing to reducing the capacity gaps of right-holders and duty-bearers.

Integrating human rights in disaster settings: concluding remarks

The past decade has witnessed an increasing awareness of the importance to support the protection of persons from human rights violations as a central element of the international response to humanitarian crises. This has in turn influenced the drafting and adoption of new human rights standards, the clarification by UN human rights bodies of the extent of human rights obligations and the strengthening of international coordination for preventing and responding to crises.

At the operational level, the IASC has reaffirmed the fundamental importance of protection in humanitarian action through ensuring respect for international human rights and international humanitarian law. The 2005 humanitarian reform brought the creation of the cluster approach within which the Protection Cluster plays an instrumental role in coordinating the protective response during humanitarian assistance actions. An HRBA to programming, human rights language and protection requirements are contained in most IASC policy guidelines and standards. Furthermore, policy documents of UN agencies and funds further internalize human rights as a cross-cutting element of their mandates and operational work plans. In 2013, the IASC and UNDG adopted the ‘Common Framework for Preparedness’, as an instrument to ensure coherence and coordination of the international efforts to enhance preparedness in the disaster risk management context that require all actors, whether focused on humanitarian assistance or development, to develop national and local capacities for preparedness.
is that of reducing vulnerability and enhancing resilience and protection by applying an HRBA, including through consultation with the affected populations and through laws and policies that mitigate the human rights consequences of crises. This instrument is yet another which seeks to foster the application of an HRBA in a disaster management context. Within the Protection Cluster, a set of tools has been developed to this end, with the aim of strengthening protection in national and international protection contexts while improving their understanding of the rights and vulnerabilities of different groups affected by disasters, identifying and responding to common protection threats and supporting protection and rights-sensitive approaches to post-disaster recovery and rehabilitation.

In December 2013, the IASC Principals 88 while reaffirming the centrality of protection in humanitarian action, underlined that the imperative for the UN to protect people lies at the heart of humanitarian action and explained that:

In practical terms this means identifying who is at risk, how and why at the very outset of a crisis and thereafter taking into account the specific vulnerabilities that underlie these risks, including those experienced by men, women, girls and boys, and groups such as IDPs, older persons, persons with disabilities, and persons belonging to racial and other minorities. 89

In other words an HRBA should be taken towards humanitarian action.

The UN human rights machinery, both treaty- and Charter-based bodies and the Universal Period Review (UPR) system, all call for an HRBA in disaster management, through recommendations that provide guidance on specific actions to undertake in the various disaster management phases. Issues related to disaster management have also been raised and discussed by States during the UPR process. The ICC, in its work on the protection of persons affected by disasters, has also stressed the importance of addressing the needs of concerned persons with full respect for their rights. As per States’ obligations and role in disaster settings, both the Human and the other minorities.

The lessons learned from responses to recent disasters have revealed how the need to prioritize capacity building, participation, accountability, non-discrimination, and transparency for contributing directly to the realization of rights. Lessons from the humanitarian response to the Haiti earthquake have been highlighted from the decision to invest in direct service delivery instead of local capacity development can result in the creation of a blank space where help can be infused. 90 The disaster response and reconstruction phases in that country were indeed not founded on an HRBA, but rather international actors neglected existing infrastructures and created parallel structures, and there was no focus on key stakeholders to ensure effective delivery. This trend reflects the need to prioritize human rights aspects related to all phases of disasters.

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Critics of the Haiti emergency response converge on the fact that aid was largely ‘delivered outside the human rights framework, with a focus on distributions to meet immediate needs at the cost of investing in long-term infrastructure and structural reform’. 91 The Independent Expert on the situation of human rights in Haiti stressed several times that:

To ensure effective delivery of human rights, there should be a human rights-based approach to humanitarian action, with a focus on distributions to meet immediate needs at the cost of investing in long-term infrastructure and structural reform. 92 The Independent Expert on the situation of human rights in Haiti stressed several times that:

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72 The rights-based approach is not a conceptual approach, but rather one that requires a change of paradigms at all levels: first and foremost, it seeks to ensure that those who are the most vulnerable, women, children and disabled persons; it also systematically involves civil society organizations, in particular those representing women,
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farmers and vulnerable groups, assists in reconstructions effort, and includes gender-specific analyses and concrete gender-equality targets in reconstruction plans and strategies.

The rights-based approach is aimed firstly at taking into consideration the needs and aspirations of Haitians themselves so as to restore a more decentralized and sustainable development capable of protecting the population against natural hazards. It is also an approach that makes it possible to ensure that reconstruction is equitable, specifically seeking equality between the wealthiest and the less prosperous regions, with the objective of creating a more just society. 94

In order to be successful, disaster responses must place human rights at their core. An HRBA programming methodology that identifies rights and duties, explores why these cannot be met, evaluates the extent of the capacity gap and seeks to close such gaps by developing sustainable local capacity95 represents a valuable tool for the practical integration of human rights into the disaster management programme cycle. The progressive boost towards the systematic upholding of such an approach given by UN treaty bodies, special procedures and policy-making organs such as the HRC, is leading to a gradual affirmation and recognition of the fact that an HRBA to disaster management is a result of international obligations. This is also sustained by the steady introduction of an HRBA to disaster management as a programming tool into national regulatory frameworks and international policies for humanitarian aid and assistance.

Notes

1 See the debates in HRC sessions on best practices and challenges in the promotion and protection of human rights in post-disaster situations and the adoption by each one of HRC Res 22/16: Promotion and Protection of Human Rights in Post-Disaster and Post-Conflict Situations, UN Doc. A/HRC/RES/22/16 (10 April 2013), or discussions at the Third UN World Conference on Disaster Risk Reduction.


4 Ibid.


10 OHCHR (n. 6) 15.

11 OHCHR, ‘Protection of Internally Displaced Persons in Situations of Natural Disaster: A Working Visit to Asia by the Representatives of the United Nations Secretary-General on the Human Rights of

12 Ibid 6, 28–30.

13 Ibid 30.


17 See: UN General Assembly, Resolution 82/177 (1977). (23 March 2005). This resolution, however, was introduced without opposition and was passed by consensus. It states that "The purpose of the present draft articles is to facilitate the adequate and effective response to disasters and reduction of risks of disasters, so as to meet the essential needs of the persons concerned, with full respect for their rights", and aims at "encouraging States to consider international assistance and cooperation necessary to protect and provide assistance to the victims of a disaster and to facilitate relief efforts". It is however limited to any serious natural disaster of "international concern", and use of international forces is prohibited.


19 The resolution adopted, the reports presented and the statements issued at that session are available at www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Session13/Pages/13thSpecialSession.aspx, accessed on 6 June 2017.

20 Such recommendations were made during consideration of those countries within the first and second UPR cycle. A summary of them is available through a search in the UPR database of recommendations, available at www.upr-info.org/database/, accessed on 23 October 2016.

21 ILC, Eight Report on the Protection of Persons in the Event of Disasters, UN Doc. A/CN.4/697 (17 March 2016). This issue is only briefly mentioned here since it is the subject of specific analysis of McDermott’s chapter in this volume.

22 Art 2 reads as follows: ‘[t]he purpose of the present draft articles is to facilitate the adequate and effective response to disasters and reduction of risks of disasters, so as to meet the essential needs of the persons concerned, with full respect for their rights’. UNGA, Report of the International Law Commission, Sixty-Eight Session 2016, UN Doc. A/71/70 (18 August 2016) paras 49, 19.


24 Ibid.

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26. Indeed the analysis carried out in the present chapter is mainly based on UN operational and policy documents, on reports of UN Charter- and treaty-based mechanisms and on the deliberations of policy-making organs.

27. The main recommendations by treaty bodies are reproduced by relevant treaty.


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38 CommEDAW, Concluding Observations on the Combined Initial to Third Periodic Reports of Solomon Islands, UN Doc. CEDAW/C/SLB/CO/1–3 (14 November 2014) para 41.
44 Ibid paras 21–27. This expression has been used by Walter Kälin who has been calling for the establishment of a ‘cycle of protection’ that constantly adapts to the challenges posed by natural hazards and political transitions to those affected in order to diminish the impact of disasters, prevent displacement and other negative consequences, and fight deadlock solutions.
46 Ibid para 174.
48 Ibid para 168.
49 Ibid 6.
50 Ibid 9.
52 Ibid 6.
54 Ibid 8.
55 Ibid 5–6.
56 Ibid 5–6.
57 Though, as explained in the document, the Operational Guidelines are also useful for those governments and actors in particular disaster management institutions, primarily tasked with providing protection and humanitarian assistance to affected persons, and for the information contained here and other. Ibid 6.
58 The do no harm principle, developed by M.B. Anderson in the 1990s, has developed into an approach, being both explicit and in various sets of protocols that constitute the operational framework for humanitarian action. The notion of such principle remains that all involved in humanitarian action must do all they reasonably can to avoid experiencing or allowing harm or harm to result in another harm. Ibid 9.
60 Ibid 10.
61 Ibid 10.
62 Ibid 10.
63 Ibid 10.
64 Ibid 10.
65 Ibid 10.
66 Ibid 10.
67 Though, as explained in the document, the Operational Guidelines are also useful for those governments and actors including disaster management institutions, primarily tasked with providing protection and humanitarian assistance to affected persons, and for the information contained here and other. Ibid 6.
68 The do no harm principle, developed by M.B. Anderson in the 1990s, has developed into an approach, being both explicit and in various sets of protocols that constitute the operational framework for humanitarian action. The notion of such principle remains that all involved in humanitarian action must do all they reasonably can to avoid experiencing or allowing harm or harm to result in another harm. Ibid 9.
69 Ibid.
71 Ibid.
72 Ibid 10.
73 Ibid 10.
74 Ibid 10.
75 Ibid 10.
76 Ibid 10.
77 Ibid 10.
78 Ibid 10.
79 Ibid 10.
80 Ibid 10.
81 Ibid 10.
82 Ibid 10.
83 Ibid 10.
84 Ibid 10.
85 Ibid 10.
86 Ibid 10.
87 Ibid 10.
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66 Ibid 2, 10 ff.
67 Ibid 2, 18 ff.
68 Ibid 28 ff.
69 Details on its mandate and composition are available at https://undg.org/home/about-undg/, accessed on 6 June 2017.
70 UNDG (n. 3).
71 Ibid 8.
72 Ibid.
73 Ibid 12.
74 The principles are those identified in the Common Understanding: universality and inalienability; non-discrimination and equality; participation and inclusion; accountability; the rule of law. For a detailed presentation of the programming in all phases of the programming process, including assessment and analysis, programme planning and design, implementation, monitoring and evaluation, see IASC (n. 7) 2.
75 IASC (n. 7) 1.
76 Ibid.
77 Ibid 3.
78 Ibid.
79 Ibid.
80 Ibid.
81 UNDG (n. 3) 19. See also OHCHR (n. 6) 27.
83 A situational analysis refers to a process of gaining understanding of the current situation in the area/ theme/location of interest. Typically this is done by identifying the key factors influencing the situation considered, their causes, as well as the needs, interests, capacities and constraints of the various relevant stakeholders.
85 IASC/UNDG, Common Framework for Preparedness (18 February 2013).
86 The Framework is ‘common’ in the sense that it is open to all actors (whether development or humanitarian ones) to develop national and local capacity for preparedness at the country level taking into account both national and international capacities for preparedness.
87 This represents a commitment by the IASC, the International Strategy for Disaster Reduction and UNDG to make the development of preparedness capacity at the country level more systematic and coherent.
89 The definition of protected persons is provided in the Human Rights of IDPs: A UN Principles approach (2006) and in IASC/UNDG’s Common Framework for Preparedness (2013). The IASC is chaired by the ERC.
90 IASC, The Centrality of Protection in Humanitarian Action: Statement by the Inter-Agency Standing Committee (IASC) Principals (17 December 2013). Such a statement follows the Report of the Secretary-General on the Protection of Civilians in Armed Conflict (30 March 2013) and Human Rights are also mentioned in the Secretary-General’s Statement (29 September 2013) on the 60th Session of the Commission on Human Rights (E/CN.4/2013).
General's Internal Review Panel on United Nations Action in Sri Lanka of 2012 that reveals ‘significant challenges that the United Nations may face in winning the consent and support of a government in order to adopt necessary measures to help in addressing humanitarian needs at the same time respecting or ensuring compliance with international law’. Although referred to an armed conflict situation, that of Sri Lanka, the report also identifies critical issues that are applicable to non-armed conflict situations—humanitarian assistance that is applicable to non-armed conflicts in situations of violence and insecurity including armed and humanitarian disasters—and that can lead to a protection implementation gap. As the case of the Sri Lanka report makes clear, there is a lack of an adequate and shared sense of responsibility (corresponding to a shared sense of responsibility within the United Nations system) to address international human rights violations within the United Nations system.


92 Ibid 1177.

93 Ibid 1148.


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