



THE LAW AND PRACTICE ON DISASTER ISSUES



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HUMAN RIGHT-BASED APPROACH TO DISASTER RISK MANAGEMENT

Deborah D. ADEYEMO

ABSTRACT

Since the beginning of the 21st century, there has been an increasing trend of disasters caused by natural hazards such as earthquake, tsunami, hurricane, flood etc., and trends in climate change show increasing vulnerability and exposure of people to such disasters. Disasters have huge economic, environmental and social impacts ranging from loss of life, injury, disease displacement and other negative effects on human, physical, mental and social wellbeing, to damage to property, destruction of assets, loss of services, social and economic disruption, and environmental degradation.

While disasters predispose victims (especially vulnerable groups such as children, women and persons with disabilities) to human rights violations emanating from disaster impacts, disaster risk management requires a holistic approach which integrates the rights of victims. Disaster risk management

encompasses a systematic process of implementing strategies for preparing, responding and recovery from disaster in order to lessen the adverse impacts of hazard and reduce the possibility of disaster. Thus, human rights protection forms an important part of disaster risk management. The United Nations presupposes that human rights principles should guide disaster risk management, ranging from pre-disaster mitigation and preparedness measures to emergency relief and rehabilitation efforts. Even though there are a number of international soft law instruments concerning the rights of victims in disaster and State obligations in disaster prevention and management activities, the operational context of these rules should be explored in order to ensure an effective disaster risk management regime. Human rights may also provide appropriate mechanisms for compensation for preventable disaster losses. This article considers the subject of disaster risk management from a human rights perspective.

Keywords: Disaster, Disaster Risk Management, Human Rights, Victims

INTRODUCTION

Disasters are unpleasant and hazardous events which may take place in moments but have impacts that could last for months, years or even decades. Disasters may be natural-occurring or man-made, associated with factors such as climate change, environmental degradation etc. Winser *et al* stated that the risk involved in disasters are created by vulnerabilities caused by everyday living conditions.¹ United Nations (UN) reports show increasing trends in the frequency and severity of disasters

1 B. Winser, P. Blaikie, T. Cannon, & I. Davis, *At Risk: Natural Hazards, People's Vulnerability and Disasters* (London: Routledge 2004), 18.

globally over the last decade.² Recognising that no state is immune from disaster risk, the international community has consistently adopted frameworks on action plans towards disaster risk reduction and strengthening states resilience to reduce disaster risk since 2005. Regional strategies and platforms are also created in realising the goals of these frameworks. These frameworks are to serve as guidelines to state parties in formulating their disaster risk management system. National action plans, laws and policies on Disaster risk management however are viewed from a development perspective with focus on the environment, climate change and less focus on human rights issues involved in disaster management and disaster risk reduction. This chapter examines the concept of disaster risk management from a human rights perspective. It interrogates incorporating human rights as an operational guideline for disaster risk management and to what extent human rights considerations can be implemented in the different phases of disaster risk management.

This chapter is divided into six parts. The first part is the introductory section. Part two addresses the concept of disaster, disaster impacts and disaster risk management. Part three examines legal instruments concerning disaster risk management. Part four examines human rights issues in disaster. Part six analyses a human approach to disaster risk management while part six presents the conclusion.

DISASTER AND ITS IMPACTS

Disaster

Disaster generally refers to a sudden or calamitous event which has unfortunate consequences. It has been defined as 'a serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of

2 United Nations Office for Disaster Risk Reduction (UNISDR) 'The Economic and Human Impact of Disasters in the Last Ten years' Available at <http://www.unisdr.org/files/42862_economichumanimpact20052014unisdr.pdf> last accessed 21st October 2017.

exposure, vulnerability and capacity leading to human, material, economic and environmental losses and impacts³ Disasters may happen with a sudden onset such as in the case of natural disasters like earthquakes, cyclones, volcanic eruption, landslides and Tsunamis; it could also have a slow onset as in the case of droughts and environmental degradation.⁴ Disaster could also occur as a result of technological or man-made hazards such as industrial accidents and transport accidents. Disasters could be small scale or large scale.⁵ In the context of this chapter, disasters are limited to naturally occurring hazards and exclude such man-made disasters occasioned by armed conflicts.

DISASTER IMPACTS

Disaster impacts is the total effect of a hazardous event or disaster which could be positive or negative.⁶ The effect of disaster could be immediate and localised⁷, but is often widespread and could last for a long period of time. Since disasters are influenced by both natural hazards and human actions/inactions, the impacts of disaster depend largely on vulnerabilities of the victims and its interplay with other social, economic and political factors. Disaster impacts is often measured in terms of the negative effects on the environment, human beings and the society.⁸ The level of preparedness and resilience of the state determines how well it is able to absorb the intensity of the impacts of disaster. According to the United Nations, disasters are as a result of the combination

3 United Nations Office for Disaster Risk Reduction, (UNISDR) 'Terminology' (2009) Available at <<https://www.unisdr.org/we/inform/terminology>> Last Accessed 20th October 2017. UNISDR opine that disaster impact could be positive in terms of economic gains.

4 Elretha Louw & Simon Van Wyk, 'Disaster Risk Management: Planning for Resilient and Sustainable Societies' [2011] *South Africa Civil Engineering* 16.

5 UNISDR Terminology (2009). Available at <<https://www.unisdr.org/we/inform/terminology> 20th October 2017>. Last Accessed 20th October, 2017.

6 UNISDR Terminology (2009) *Ibid* (n. 3).

7 This is measured in terms of disaster damage.

8 Evaluation of disaster impacts in terms of the negative outcomes/results provides the contextual perspective of the concept of disaster risk.

of conditions of vulnerability; insufficient capacity or measures to reduce or cope with the potential negative consequences; and exposure to a natural hazard.⁹ Thus, 'Disaster impacts may include loss of life, injury, disease and other negative effects on human physical, mental and social wellbeing, together with damage to property, destruction of assets, loss of services, social and economic disruption, and environmental degradation.'¹⁰ Broadly, the impacts of disaster could be direct or indirect; or at individual or community levels; economic, physical or social etc. While economic impacts of disasters are usually measured in terms of monetary cost, social expenditure and capital investment or capital stock lost, other factors such as damage to homes, services, public infrastructure, jobs loss, decreased productivity, land degradation etc. also constitute important parameters for measuring economic impacts of disasters.¹¹

Physical impacts are the most obvious and easily measured. Physical impacts of disaster include death and injuries, property damage and displacement of victims. One of the most immediate effects of disasters is the displacement of victims. Disasters such as floods, earthquakes, tsunamis etc. may force people out of their residences and homes. Displacement refers to forced movement of persons from their locality or environment and occupational activities.¹² Victims of disasters may be forced to move from areas that have been hit by disaster to areas of relative safety which

9 UNISDR WMO UN System Task team on the Post-2015 UN Development Agenda. 'Disaster Risk and Resilience' (2012) p. Available at <http://www.un.org/en/development/desa/policy/untaskteam_undf/thinkpieces/3_disaster_risk_resilience.pdf> Last accessed 17th October 2017.

10 Dewald Van Niekerk 'Introduction to Disaster Risk Reduction' (United States Agency for International Development (USAID), August 2011) 8. Available at <http://www.preventionweb.net/files/26081_kp1conceptdisasterrisk1.pdf > Last accessed 21st November 2017.

11 Internal Displacement Monitoring Centre, 'Global Disaster Displacement Risk: A Baseline for Future Work' (October 2017) (Report) 13

12 United Nations Educational Scientific and Cultural Organisation (UNESCO) 'Glossary of Migration Related Terms': Displacement' Available at <<http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/displaced-person-displacement/>> last accessed 20th November 2017.

could be within the boundaries of a state (internal displacement)¹³ or across international borders of a state. However, most of the disaster displaced victims remain within the borders of their country.¹⁴ Displacement in this context may not necessarily include pre-emptive and voluntary movement or evacuation carried out based on early warnings. Apart from disrupting their normal course of life, disasters also affect victims' access to basic necessities of life such as food, clothing and shelter.¹⁵ Victims stand health risk in the outbreak of disasters especially when their access to basic supplies and infrastructure which are essential to health is seriously affected. The health impacts may be direct and immediate or may be a consequence of the disruption of health system and services. Physical impacts of disaster such as injuries, illness have psychological effect on victims especially women and children.¹⁶

Disaster-induced displacement may also increase the economic impacts of disasters. Displacement increases the need for emergency measures, costly evacuation and resettlement plans which have huge monetary cost and economic implications.¹⁷ Internal Displacement Monitoring Centre (IDMC) reports that disaster-induced displacement is the least reported impacts of

13 Victims of displacement within a State are referred to as internally displaced persons (IDPs) while victims who have moved out of their States are referred to as refugees.

14 Displacement in the context of this chapter is restricted to internal displacements as opposed to displacement across borders.

15 IDMC suggests that while a high number of displacement may be an issue of concern, displacements may not necessarily constitute negative disasters impact. Pre-emptive movement of people based on timely early warnings may have saved many lives. Internal Displacement Monitoring Centre, 'Global Disaster Displacement Risk: A Baseline for Future Work' (October 2017) (Report) 13.

16 'Emergency Risk Management Health: Overview' (Emergency Risk Management for Health Fact Sheets) (Global Platform May 2013). Available at <http://www.who.int/hac/techguidance/preparedness/risk_management_overview_17may2013.pdf> Last Accessed 20 November 2017; 'Protecting People's health from the Risk of Disasters' (March 2015) Available at <http://www.who.int/hac/techguidance/preparedness/protecting_peoples_health_march2015.pdf?ua=1> Last Accessed 23rd November 2017.

17 IDMC (2017) *op. cit.* (n.11).

sudden-onset disasters.¹⁸ The focus on displacement whether internal or across borders is usually on violence-induced displacement occasioned by armed conflicts. While economic disaster impacts are included in the United Nations Global Assessment Report (GAR), there is little or no report on the human impacts of disaster in terms of disaster-induced displacement.¹⁹ Overall, disaster impacts whether physical, economic or social are ultimately surmised in its impacts on human lives.

DISASTER RISK MANAGEMENT

Risk is an inevitable part of life which applies to many aspects of daily lives at both individual and national levels.²⁰ The concept of risk broadly covers an assessment of the likelihood of negative outcomes and the efforts to mitigate them.²¹ Mitigating efforts could involve individuals, communities, states or regions and international community at large.²² Disaster risk is the potential or probability of harmful consequences resulting from disaster. Disaster risks are determined by the probability of the combination of hazards, exposure, vulnerability and coping capacity.²³ Disaster risk management describes policies, strategies and plans aimed at reducing existing or prospective disaster risk in order to strengthen state's resilience and reduce disaster impacts.

Disaster risk management (DRM) refers to the 'systematic process of using administrative directives, organisations and operational skills and capacities to implement strategies,

18 Internal Displacement Monitoring Centre, 'Global Disaster Displacement Risk: A Baseline for Future Work' (October 2017) (Report) 5. Sharona Hoffman, Preparing for Disaster: Protecting the Most Vulnerable in Emergencies (2009) 42, University of California Davis 1491, 1494. Hoffman reports that disaster preparedness plans of various States across six different countries reveal that there usually little or no provision for the needs of vulnerable groups in disasters.

19 IDMC (2017) *op. cit.* (n. 11).

20 IDMC *op. cit.* (n. 11) 8.

21 UNISDR (2009) defines risk as the combination of the probability of an event and its negative consequences. USAID (2011) *op. cit.* posits that risk is associated with the coping capacity of humans with a particular situation e.g. natural hazards.

22 IDMC. *op. cit.* (n. 11) 8.

23 UNISDR 'Terminology' (2009) *op. cit.* (n. 3)

policies and improved coping capacities in order to lessen the adverse impacts of hazards and the possibility of disaster.²⁴ It encompasses both preventive and responsive approach to disaster management. It is preventive by aiming at lessening the possibility of disaster and responsive in reducing the adverse impact of disasters. While it may be impossible to entirely prevent the occurrence of disasters especially naturally occurring disasters, DRM recognises measures which aim at disaster risk reduction and play an important role in effectively managing the frequency and severity of such disasters.²⁵

Thus, disaster risk management incorporates both 'disaster management (DM) which includes preparedness, response and post-disaster recovery processes, and disaster risk reduction (DRR) which principally involves processes that attempt to reduce or control the levels of existing disaster risk and which can also be incorporated into post-disaster recovery.'²⁶ Consequently, 'Disaster risk management systems refer to the legal, policy, administrative and institutional frameworks established within a country for coordinated and systematic DRM.'²⁷

DRM involves activities and measures against disaster hazards aimed at prevention, mitigation, preparedness, response, recovery and rehabilitation.²⁸ DRM essentially involves these six components which reflect three key phases of disaster risk management. The pre-disaster phase incorporates activities relating to prevention and mitigation while disaster phase includes measures relating to response and the post-disaster phase addresses recovery, rehabilitation and reconstruction measures. The United Nations Office for Disaster Risk Reduction

24 International Federation of Red Cross and Red Crescent Societies (IFRC) and United Nations Development Programme (UNDP) 'The Handbook on Law and Disaster Risk Reduction' (2015) 7.

25 IDMC posits that natural hazard disasters are not entirely attributable to an 'act of God' occurring in vacuum and that mitigation effort can reduce disaster risk and loss. Internal Displacement Monitoring Centre, 'Global Disaster Displacement Risk: A Baseline for Future Work' (October 2017) (Report) 8.

26 IFRC 'The Handbook on Law and Disaster Risk Reduction' *op. cit.* (n. 24) 7.

27 UNISDR 'Terminology' (2009) *op. cit.* (n 3).

28 IFRC 'The Handbook on Law and Disaster Risk Reduction' (2015) *op. cit.* (n. 24), 7.

(UNISDR) broadly categorises disaster risk management actions into prospective, corrective or compensatory.²⁹ Prospective DRM activities are preventive measures which address disaster risks reduction policies to avoid prospective or increased disaster risk. Corrective activities address prevailing disaster risks which are required to be managed and reduced. Compensatory activities focus on strengthening the social and economic resilience of individuals and societies in the face of residual risk that cannot be effectively reduced.

Disaster risk management is therefore a multifaceted approach which cuts across various fields and sectors.³⁰ DRM infuses issues on development, climate change, environment and health etc. In line with the multi-faceted approach to DRM, human rights considerations must maintain high priority in disaster risk reduction as much as in disaster management. Displacement risk is an inevitable element of disaster risks which must be adequately incorporated in designing effective disaster risk management regime in any state. Climate change in combination with other factors, is projected as an imperative risk driver of displacement.³¹

The United Nations reports that globally, 14 million people are likely to be displaced by weather related and metrological disasters yearly.³² Therefore disaster risk management measures must envisage and adequately provide for displacement risk and other forms of

29 UNISDR 'Terminology' (2009) *op.cit.* (n. 3).

30 'Disaster Risk Reduction: A Preparedness Approach' in Pardeep Sahni, Madhavi Ariyabandu (Eds.) *Disaster Risk Reduction in South Asia* (PHI Learning Pvt Ltd. 2003) 132-144; The South African Disaster Risk Management Act 57 of 2002 recognises disaster management as a continuous and integrated multi-sectoral and multi-disciplinary process.

31 The Assessment Report of the IPCC Working Group II reports that climate change over the 21st century is projected to increase the displacement of people. Intergovernmental Panel on Climate Change (IPCC) Working Group II AR 5 Climate Change 2014: Impacts, Adaptation and Vulnerability Summary for Policy Makers (IPCC 2014) Available at <http://www.ipcc.ch/report/ar5/wg2/docs/WGIIAR5_SPM_Top_Level_Findings.pdf> Last accessed 23 November 2017.

32 UN News Centre 'On International Day: UN forecasts 14 million people made homeless each year by disasters' (13 October 2017) Available at <<http://www.un.org/apps/news/story.asp?NewsID=57881#.Wey6sDtrzIU>> Last accessed 21st October 2017.

physical disaster impacts such as death, injuries in the three main phases of disaster risk management. The risk of disaster-induced displacement is largely determined by the exposure of people in terms of 'the situation of people, infrastructure, housing, production capacities and other tangible human assets located in hazard-prone areas'³³ to vulnerabilities.³⁴ Vulnerabilities are measured in terms of 'physical, social, economic and environmental factors or processes which increases the susceptibility of an individual or a community, asset or systems to impacts of hazards.'³⁵ A multi-faceted approach to disaster-induced displacement risk, must incorporate a human rights approach beyond the conventional humanitarian response to disaster-induced displacement as a post-disaster recovery measure.

DISASTER RISK MANAGEMENT LAWS

International Legal Instruments on Disaster Risk Management

In 2005, states globally under the auspices of the United Nations adopted Hyogo Framework for Action (2005-2015): Building the Resilience of Nations and Communities to disasters (HFA) in Hyogo Japan.³⁶ The Hyogo Framework was designed as a ten-year plan aimed at reducing vulnerabilities to hazards which cause disasters. The HFA outlined five priorities for action under which States committed themselves towards disaster risk reduction by developing a legal framework (policy, legislative and institutional) for their states and implementing such framework.

33 United Nations General Assembly, Report of the Open-ended Intergovernmental Expert Working Group on Indicators and Terminology relating to Disaster risk Reduction A/71/644 I December 2016 Available at <https://reliefweb.int/sites/reliefweb.int/files/resources/50683_oiewgreportenglish.pdf> Last Accessed 20 November 2017.

34 Intergovernmental Panel on Climate Change (IPCC) Summary for Policymakers in Managing the Risk of Extreme Events and Disasters to Advance Climate Change Adaptation, (Cambridge University Press 2012) Available at <https://www.ipcc.ch/pdf/special-reports/srex/SREX_Full_Report.pdf> Last accessed 20 November 2017.

35 UNISDR 'Terminology' (2009) *op. cit.* (n 3).

36 Adopted by the UN General Assembly in Resolution A/RES/60/195.

At the expiration of the HFA in 2015, the Sendai Framework for Disaster Risk Reduction (2015-2030) was adopted as a fifteen-year plan with four action plans and seven global targets. The framework aims primarily at substantial reduction of disaster risk and disaster impacts. It recognises state parties as the primary duty bearers in disaster risk reduction. State parties agreed to implement the Sendai Framework with a clear focus of shifting from managing disaster to managing disaster risk.³⁷ The Sendai framework global targets are reflective of the importance of recognising human rights in disaster risk management. While global targets 1 and 2 focus on reducing global disaster mortality rate and the number of persons affected by disasters generally, global targets 4 and 7 also aimed at reducing disaster damage to basic health and educational services and providing access to risk information.³⁸ Regional strategies and platforms are created based on the framework to strengthen commitment and implementation. These frameworks are however soft laws which are non-binding and create only voluntary obligations without specific obligation in recognising human rights.

NATIONAL DISASTER RISK MANAGEMENT LAWS

National Disaster Risk Management laws capture the whole body of institutional and policy framework of the disaster management system. These laws could be in form of a single dedicated law or a collection of interacting laws which set out different aspects of disaster risk management system. In Nigeria, the National Emergency Management (Establishment) Act 1999 is the main disaster management law. It established the National Emergency Management Agency (NEMA) at the federal level and makes

37 UN News Centre 'With focus on natural disaster UN Risk Reduction forum open in Mexico' (25th May 2017) Available at <<http://www.un.org/apps/news/story.asp?NewsID=56843#.Wey6CTrzIU>> Last Accessed 21st October 2017.

38 Available at <<http://www.unisdr.org/we/coordinate/sendai-framework>> Last accessed 20th October 2017.

provision for equivalent agencies and laws at the state³⁹ and local⁴⁰ government levels. Apart from this federal law, there is no single comprehensive law which addresses disaster risk management in Nigeria, especially as it concerns disaster risk reduction. There are however other specific laws which are designed to address specific areas relating to disaster risk reduction. These laws focus on specific aspect such as the environment, climate and land use etc.

There are also national policies on disaster management such as the National Disaster Response Plan (NDRP) 2010 and the National Disaster Management Framework (NDMF) 2010 which were set out to incorporate policies on disaster risk reduction as set out in the Hyogo Framework priorities.⁴¹ The lingering questions however are: do national laws and policies integrate a human right approach to disaster risk management? How well do they incorporate the main concerns of individual disaster victims in all the phases of disaster risk management? While it can be argued that national laws significantly address disaster risk, vulnerabilities to such risk, coping capacities of the state and disaster impacts on the community, there is a need to look beyond community response and focus on individuals who are affected by disaster impacts. Even though the international framework create non-obligatory duties, states may be obliged to implement the guidelines of the framework where the priorities are viewed from a human rights standpoint.

39 State Emergency Management Agency (SEMA). Some states of the federation have equivalent provisions adapted from the federal Act.

40 Local Government Emergency Agency (LEMA).

41 International Federation of Red Cross and Red Crescent Societies, 'Background Report Law and Regulation for the Reduction of Risk from Natural Disasters in Nigeria: A National Desk Survey' (International Federation of Red Cross and Red Crescent Societies October 2012). Available at <<http://drr-law.org/resources/Nigeria-Desk-Survey.pdf>> Last accessed 21st October 2017.

DISASTER AND HUMAN RIGHTS

Human Rights in Disasters

The frequency and magnitude of disasters have increased over the years and climate change has had an increasing influence on disaster trends in the recent decades.⁴² In 2015, the Centre for Research on Epidemiology of Disasters (CERD) Annual Disaster Statistical Review shows an increasing trend of natural disasters globally with 376 natural disasters with over 110 million victims globally.⁴³ IDMC reports that since 2008, it had recorded more than 3800 disaster events in over 170 countries and territories.⁴⁴

Disaster impacts, whether economic, social or physical, are borne by people either as direct victims or indirect victims. While disaster may be a development issue, it is as much a human rights issue because human rights are at risk generally at disaster times. Beyond the impacts already identified above, disasters pose great humanitarian challenge and problem and this has increased the need to ensure human rights protection in times of disasters. Disasters impacts impinge on the human rights of victims. Direct victims suffer violation of their basic human rights through death,

42 Cyclone in Myanmar (2008), earthquakes in Japan (2010), Haiti 2010, and Nepal (2015) are only a few of the high impact disasters which have attracted global attention; Worldwatch Institute quoting Munich Re data reports that the frequency of water-related disasters such as flood and wind storms attributed to climate change have increased six-folds since the 1950s' while the frequency of other types of disasters have risen only slightly. Available at <<http://www.worldwatch.org/node/4127>> Last accessed 23rd November 2017; U.S. Climate Resilience Toolkit reports that increased extreme weather and climate conditions have increased the risk and vulnerability of certain categories of human population disaster risk and eventually disaster impacts. 'Disaster Risk Reduction' (Excerpts from the Report on Climate Change Impacts in the United States: The Third National Climate Assessment Available at <<https://toolkit.climate.gov/topics/tribal-nations/disaster-risk-reduction>> Last accessed 23rd November 2017.

43 Debarati Guha-Sapir Philippe Hoyois and Regina Below 'Annual Disaster Statistical Review 2015: The Number and Trends' (ZCERD October 2016) Available at <https://reliefweb.int/sites/reliefweb.int/files/resources/ADSR_2015.pdf> Last Accessed 23rd November 2017. The report shows that in China, there were 36 incidences of natural disaster consisting of 17 storms, 13 floods and landslides, 5 earthquakes and an incident of drought. In the United States, 28 disaster incidents, 21 in India 15 in Philippines and 10 in Indonesia.

44 IDMC (2017) op. cit. (n. 11) 6.

injuries, displacement, loss of body parts or means of livelihood etc. Victims of disasters, especially vulnerable groups face huge human rights challenges and their rights are often overlooked during disasters.

VULNERABLE GROUPS IN DISASTERS

Certain groups are regarded as vulnerable in times of disaster. These group of persons may have specific needs which render them more vulnerable than others. Women, children, older people, internally displaced persons (IDPs), people living with disabilities or HIV/AIDS, ethnic minorities etc. have been recognised as vulnerable. This is because they have less physical strength and weaker immune system. The elderly are also regarded as vulnerable because they are more dependent on others for survival. These group suffer the impacts of disaster more than any other and are more likely to suffer discrimination in the post recovery measures of DRM. In post-disaster periods, IDPs especially women and children are highly susceptible to gross violations of their human rights. IDPs move from places of disaster to places of relative safety while some are lodged in camps established in areas where they have restricted access to food, shelter and health services. The Guiding Principles on Internal Displacement⁴⁵ recognise that these set of people have a right to protection and assistance required by their condition and treatment which takes into account their special needs.⁴⁶ States have the obligation to provide such protection and assistance.

Internal displacement of disaster victims, especially the vulnerable groups poses a great risk of violations of human rights. Victims often face issues such as enforced relocation, discrimination in aid provision, sexual and gender based violence, unsafe and involuntary return to settlement etc. Since 2008, disasters have displaced an average of 26.4 million people annually and in 2014, more than 19.3 million people in 100

⁴⁵ Adopted by UN General Assembly in 2005 by resolution A/60/L.1.

⁴⁶ *Ibid.*

countries were displaced from their homes mostly within their own countries.⁴⁷ The United Nations reports that in 2016, 445 million people were affected by disasters globally out of which 8000 people lost their lives.⁴⁸ IDMC reports that 24.2 million new disaster-induced displacement were recorded in 2016 and as at September 2017, more than 8 million people were displaced by disaster. Internally displaced persons (IDPs) as a result of disasters usually do not have access to basic economic, social and cultural rights. Disasters may deprive the rights of IDPs to access health care, education, employment and social amenities. While such human rights violations are often unintended and attributed to lack of sufficient resources and capacity to prepare and respond to disasters and their aftermath, such violations could be a result of failure to recognise the role of human rights in national policies and laws on DRM.

INTERNATIONAL LEGAL RULES ON HUMAN RIGHTS AND DISASTERS

Human rights principles of international human rights law and international humanitarian laws are applicable to persons generally, irrespective of whether they are affected by disasters or not. During disasters, human rights principles should be made applicable to disaster victims especially in spite of their plight. The fact that they are victims of disaster does not detract from their human rights guaranteed under the various legal instruments. These essentially include their basic civil, political, social, economic and cultural rights guaranteed by the principal international human rights documents such as the Universal Declaration of Human Rights,⁴⁹ International Covenant on Civil and Political Rights,⁵⁰

47 World Disaster Report: 'Resilience: Saving Lives today and Investing Tomorrow' (IFRC 2016) 21. Available at <http://www.ifrc.org/Global/Documents/Secretariat/201610/WDR%202016-FINAL_web.pdf> Last accessed 23rd November 2017.

48 UN News Centre 'With focus on natural disasters, UN risk reduction forum opens in Mexico' (15th May 2017) Available at <<http://www.un.org/apps/news/story.asp?NewsID=56843#.Wc0IbDtrzIV>> Last accessed 21st October 2017.

49 Adopted by the UN General Assembly on 10th Dec. 1948

50 Adopted by the Un General Assembly on 16th Dec. 1966

International Covenant on Economic Social and Cultural Rights⁵¹ and African Charter on Human and Peoples' Rights.⁵² Victims in fact, may have specific protection and assistance needs, distinct from persons not directly affected by the disaster. International humanitarian law and human rights law have limited provisions in the context of disaster displacement and IDPs do not enjoy the same human rights provisions as refugees.

In 2007, the United Nations International Law Commission (ILC) began working on draft article on the protection of persons in the event of disasters.⁵³ The draft articles aim among other things 'to facilitate adequate and effective response to disaster that meets the essential need of persons concerned with respect to their rights.'⁵⁴ While this draft articles are still a work in progress, draft articles 5 specifically provides for the respect and protection of the rights of victims of disasters.

The operational guidelines on human rights and natural disasters adopted by the United Nations Inter-Agency Standing Committee (IASC) in 2006 and subsequently revised in 2011 are meant to complement existing humanitarian standards on situations of natural disaster to ensure protection of victims, principles of non-discrimination and accountability in disaster response, recovery and reconstruction efforts.

International human rights should therefore form part of the guidelines for disaster risk management. The Guiding Principles on Internal Displacement⁵⁵ while recognising the role of non-state actors, imposes legal obligation on states in respect of persons displaced by natural disaster. The guiding principles, drawing on basic principles of international human rights and humanitarian law protects the rights of victims to compensation, participation and return.⁵⁶

51 *Ibid.*

52 Adopted 1st June 1981.

53 UN General Assembly Resolution 62/66 of 6th December 2007.

54 Draft Article 2.

55 Adopted by UN General Assembly in 2005 by resolution A/60/L.1.

56 Principle 4 of 'the Guiding Principles.'

DISASTER RISK MANAGEMENT AND HUMAN RIGHTS

Whether as development, health or environmental issue, DRM can be viewed from the rights perspective. Individuals have basic civil rights such as; the right to life, right to human dignity, or economic, cultural and social rights such as; the right to housing, the right to a safe and healthy environment, the right to health or more controversial rights such as the right to development. Generally, States have the sacrosanct three fold duty to respect, protect and fulfil these rights. Specifically, states where such disasters occur are the primary duty bearers and they have obligations under international human rights principles to discharge these obligations. In respect of disaster risk management and all its components, human rights are essential in the three phases of disaster risk management. It is important to incorporate a right based approach to disaster risk management so as to focus on the needs of the individuals before, during and after disasters. Disaster impacts have more severe and intense human impact than any other element that make up the society. While disaster impacts may affect humans, the environment, economic situation etc. Overall, these impacts eventually have greater human impacts over all other forms of impacts. Thus, human rights of individual should form the underlying principles of disaster risk management whether in disaster risk reduction or disaster management. The focus should not be restricted to disaster management and the humanitarian approach to the plight of disaster victims in terms of reliefs offered as a component of response and post-disaster recovery process of DRM.

Human rights principles could form the underlying basis for pre-disaster DRM activities in respect of prevention, preparedness and mitigation. In this respect, the human rights may be broadly categorised into two groups; the right to protection and the right against discrimination while other rights are subsumed in the two broad categories.⁵⁷ Recognition of certain basic and fundamental

57 This is in line with the provision of the United Nations Inter-Agency Standing Committee's Operational Guidelines on Human Rights and Natural Disaster

individual rights in DRM activities is an important consideration in fulfilling states' obligation towards disaster risk reduction. In states where certain categories of human rights especially economic, social and cultural rights as provided by international and regional human rights documents are either not recognised or non-justiciable, human rights principles guaranteeing the right to food, shelter, health and work; the right to access information relevant to disaster risk and the right to safe environment could be implied from broader and basic human rights such as; the right to life and human dignity. Human rights considerations create pre-disaster responsibility on the part of states to ensure that they regard their obligations towards risk reduction in terms of prevention, mitigation and preparedness. State will not only ensure that they put measures in place towards building risk resilience but also ensure that such measures are implemented to protect human rights of persons within their territory.

In pre-disaster situations, the right to life may serve as a legal basis for a pre-disaster risk DRM measure toward reducing the risk of exposure and vulnerabilities of individuals. The right to life places a corresponding obligation on States to ensure that persons within their territory are protected from disaster risks and hazards and their right to access information on early warning signs regarding metrological and hydrological hazards. While it may be impossible to absolutely safeguard against disaster-induced displacement, prospective disaster risk management must make adequate provisions for the protection of displaced persons and permanent relief for resettlement. Temporary, planned evacuation may be a pre-disaster management measure which may ensure that the human rights are not grossly violated in disaster period, whereas sudden displacement is chaotic, disorganised and uncertain.⁵⁸

During disasters, mitigation, preparedness and rehabilitation measures should also incorporate human rights principles aimed

58 World Disaster Report: 'Resilience: Saving Lives today and Investing Tomorrow' (IFRC 2016) 22. Available at <http://www.ifrc.org/Global/Documents/Secretariat/201610/WDR%202016-FINAL_web.pdf> Last accessed 23rd November 2017.

at protecting disaster victims and re-integrating them into the society.

First, disaster victims have the right to protection which includes their right to survival and physical security.⁵⁹ This covers victims' right to life and human dignity. Their right to survival incorporates the right to basic necessities of life such as food, water, shelter, adequate clothing and health services etc.⁶⁰ Victims' right to survival and physical security will only be fully realised where other basic rights such as the right to education, the right to work, right to receive restitution or compensation for lost property and such other related rights are guaranteed. Thus, relief and assistance extended to victims displaced by disasters are not just humanitarian reliefs but they are entitlements of the victims.

Post-disaster human rights concerns have been linked to inadequate disaster risk prevention and mitigation in terms of planning and preparedness which overlooks human rights guarantees.⁶¹ In post-disaster situations, states also have an obligation to prevent re-occurrence of the violations of these rights and to ensure reparations and full rehabilitation.⁶² Victims should be protected from secondary hazards which may predispose them to further disaster risk.

Second, victims have a right to non-discrimination. Victims must be protected against any kind of discrimination on the basis of their sex, colour, religion, language, age, disability etc. Disaster victims should enjoy the same rights as those who are not affected. The right to non-discrimination protects vulnerable groups as much as other persons.

59 Draft Article 4 of the Protection of Persons in the Event of Disasters provides for the protection of human dignity in the event of disaster; Operational Guidelines on Human Rights Manual (2011) *Ibid.*, 8.

60 *Ibid.*

61 'Human Rights and Natural Disaster Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster' (Brookings-Bern Project on Internal Displacement March 2011), 2. Available at

62 *UN Guiding Principles on Internal Displacement 2005.*

NATIONAL HUMAN RIGHTS LAWS AND DISASTER RISK MANAGEMENT

While DRM laws do not necessarily enumerate or provide for human rights, national constitutions and specific human rights laws generally mirror international human rights obligations of states. Constitutional provisions on human rights may serve as the basis for legal responsibility and liability of national government in respect of failure to fulfil their obligations on disaster risk reduction. As regards recovery and rehabilitation, constitutional provisions regarding economic and social rights may provide the essential legal framework for DRM activities such as compensation and re-integration of disaster victims. Sendai Framework priority 4 recognises recovery, rehabilitation and reconstruction as important phase in DRM. Specifically, such rights as the right to good food and healthy environment, right to access risk information are pivotal to DRM in realising priority 4. National DRM focus on regulating such issues as land use and urban planning, construction, building, environmental and resource management, climate change, health and safety standards etc. The laws regulating these sectors are aimed at reducing disaster risk and ensuring that people are safer.

The principle of *Ubi jus ibi remedium* (where there is a right, there is a remedy) ensures that where there is a breach of these right, there should be a remedy for such breach. This would provide a mechanism for compensation for preventable disaster losses and also ensure accountability and legal responsibility on the part of states.

CONCLUSION

Disasters and disaster risks are increasing phenomena globally. The focus of international and national actions and policies have been disaster risk reduction by addressing the various factors that predispose societies to disasters with little or no consideration for human rights especially of those directly affected by disasters.

Victims' protection are considered as entirely humanitarian in terms of assistance and relief aids to victims, however the protection of victims is not just humanitarian but right based. Thus, the right to protection should be reflected in pre-disaster and much as in post disaster phase. While no human rights principle is absolute and derogation of these rights is permitted in exceptional and unforeseen circumstances, with the frequency and severity of the trend of disasters over the years, disasters are no longer considered exceptional. As such, adequate measures towards disaster risk reduction and prospective disaster risk management is an imperative in any society. DRM laws and policies should adopt an integrated approach which recognises human rights principles before, during and after disasters as guiding principles for disaster risk reduction and disaster management.

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