



Journal of The National Human Rights Commission, India

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Chairperson, NHRC

From the Editor's Desk

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Secretary General, NHRC

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Prof. B. B. Pande

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Food Security

Ending Indifference: A Law to Exile Hunger?
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*As Member of the Commission upto 28 June, 2012.

**He passed away recently. The Editorial Board acknowledges his contributions.

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HUMAN RIGHTS AND DISASTER MANAGEMENT

Human Rights and Human Security Implications of
Disasters: Critical Perspectives on Law and Governance

C. Raj Kumar*

Abstract

Disasters are common occurrences today in different parts of the world. There is something about natural disasters, which are generally viewed with little analysis or reflection on issues relating to responsibility and culpability. The human rights framework provides for analysing disasters within the context of what steps the state and other actors ought to have taken or have not taken with a view to mitigating the consequences of disasters. Issues relating to disaster preparedness, response mechanisms, including relief operations, aid availability and rehabilitation of the victims are central to this analysis. The article will also discuss issues relating to the development of international disaster response law (IDRL) and in particular the role of International Federation of Red Cross (IFRC) and International Committee of the Red Cross (ICRC) in formulating legal principles and policy analysis. The article would critically analyse the human rights consequences of disasters and to what extent human rights approaches to disaster management can help in improving the governance mechanisms and better prepare countries to deal with disasters and to understand the issue of state responsibility and liability. The article will cover issues relating to corruption that is widely prevalent in the disbursement of aid for victims and in particular the challenges of implementing rehabilitation measures for the victims of disasters. Poverty, discrimination, social exclusion, and vulnerability will be examined in the context of disasters and how the need for legal empowerment of the poor will address the human rights violations of disaster victims.

LL.B. (Delhi), B.C.L. (Oxford-Rhodes Scholar); LL.M. (Harvard); S.J.D. (Hong Kong) Vice Chancellor, O.P. Jindal Global University & Dean, Jindal Global Law School, Sonapat, Haryana, NCR of Delhi. Email: VC@jgu.edu.in This research was supported by the Strategic Research Grant (SRG), Project No: 7001892, School of Law, City University of Hong Kong.

I. Introduction

The frequent occurrences of disasters pose serious challenges for the ability of governments to respond to them effectively. While disaster management is an important area of growing academic and policy interest, there is a need to understand disasters from the standpoint of human rights. In particular, the questions relating to responsibility and accountability of state and non-state actors in relation to disaster are of fundamental significance. The legal framework of disaster management including efforts that ought to be taken by state and non-state actors by way of disaster preparedness requires rigorous examination. The chapter will examine the human rights framework of disaster management. It is recognised that disasters pose critical challenges for human rights and it becomes essential to understand how to respond to these challenges. The chapter will critically examine the existing framework of international law relating to human rights concerning disasters. It will also analyse the human rights implications of few disasters to understand the connections between disasters and human rights.

It is almost over six years since the tsunami disaster struck parts of South and South East Asia. Later, the world witnessed disasters like the hurricanes Katrina and Rita in the United States and the earthquakes in Pakistan and India and more recently hurricane Sandy in the USA. All of these have underlined the need for ensuring human security in disaster management through the protection of human rights and promotion of good governance policies. Development of rights-based approaches to disaster management adds a new and important dimension to the existing studies relating to preparedness, response including relief and rehabilitation, and mitigation.

In a report in the aftermath of the tsunami, prepared by the Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons, it was noted that there was a lack of attention to human rights protection and that measures needed to be taken to address issues such as discrimination. The focus on rights-based approaches was to ensure that effective steps for disaster management no longer remained a discretionary initiative that may or may not be taken by countries. Rather, it would become the mandatory responsibility of governments.

The human rights framework creates empowerment through legal tools and institutional structures. Judicial and other forms of institutional intervention help formulate ways to protect the rights of people who could be affected by disasters as well as the victims of disasters. Thus, rights-based approaches can ensure that governments are constantly evaluated and made accountable to people and to the international community on disaster preparedness and mitigation. Accountability becomes a core component in the rights-based approach. There is a need for transferring this framework into policies relating to disaster management. Another important aspect of the rights-based approaches to development is to define human rights goals relating to disasters and disaster management policies. Specifically, by providing for timelines, indicators, and measurements to monitor the progress towards disaster preparedness, as well as dealing with potential violations of specific human rights.

Disasters create unique situations where the existing frameworks of institutional mechanisms that are in place to respond are significantly challenged. Contemporary disasters in the form of earthquakes, hurricanes, tsunamis, floods and even terrorist attacks pose new threats to human security. Countries affected by these disasters, regardless of being developed or developing, have struggled to respond to the disasters.

There is also a threshold issue that needs a careful examination regarding the question of how “natural” is the impact of natural disasters on humanity. This inevitably deserves examination at two levels. First, to what extent human intervention in relation to use or abuse of natural resources causes long term damage to the fragile environment leading to greater vulnerability and risk of disasters; second, how prepared are we as societies to respond to disasters effectively. Both these questions raise issues of state responsibility and accountability.

At the outset, I would like to draw your attention to a November 2007 report by the International Federation of the Red Cross and Red Crescent Societies titled: *Law and Legal Issues in International Disaster Response: A Desk Study*. The report is one of the pioneering works under the international disaster response law (IDRL) project. It draws from the findings of 27 countries and regional studies that have been prepared by or in coordination with the Federation and National Red Cross and Red Crescent Societies in the context of the International Disaster Response Laws, Rules and Principles (IDRL) programme since 2001.

The main recommendation of the study is the adoption and use of the draft Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance, which have been developed through consultations over the last 18 months with governments, National Red Cross and Red Crescent Societies and other humanitarian actors.

The need for disaster research is well demonstrated where the report has noted: "Recent experience indicates that national law and institutions are generally unprepared to handle the special issues incident to the receipt of international disaster relief and recovery assistance. While most states have disaster laws and/or plans of some sort, few have put sufficient advance thought into how to balance local control with the need for any international assistance that is required to be as speedy as possible. Instead, these dilemmas are commonly addressed for the first time in the charged and chaotic environment immediately following a disaster".

Before the different aspects of disaster management that has direct and indirect implications for human rights and governance, are outlined, it is necessary to provide some perspectives on the need for research in the field of disaster management.

1. Legal and Normative Framework

Research relating to disaster management helps develop the legal and normative framework that is essential for developing policies and practices relating to disaster management. In a rule of law society, it is important that the laws, both domestic and international provide a proper framework for implementing policies in the field of disaster management. Given the complexity of disaster relief, it has become all the more important that institutions engaged in disaster research work towards developing inter-disciplinary and multidisciplinary approaches to dealing with disasters.

2. Institutional and Policy Framework

The institutional framework for dealing with disasters has to be closely linked to the policies that have to be evolved. It is in this area that the interaction between academic institutions and policy making bodies is helpful. The institutional framework ought to bear in mind the problems of enforcement that is endemic to many societies. Policies

cannot be formulated in vacuum without recognising the social realities under which these policies have to be implemented.

3. Dialogue between Lawyers, Human Rights Activists, Social Scientists and Public Policy Specialists

There would be little resistance to the notion of such a dialogue to be promoted. Discussions of the kind that took place today are indeed expected to promote greater inter-disciplinary dialogues. But clearly there are obstacles that need to be overcome for making this dialogue meaningful and helpful for creating change in the field of disaster management. For example, it is inevitable that for most lawyers, the question of legal culpability, state responsibility, legally enforceable remedies, including availability of compensation, damages, etc., are critical in the context of disaster management. On the other hand, human rights advocates would see the impact of disasters on peoples and communities as a larger issue of governance, state neglect and lack of accountability on the part of state and its instrumentalities. This lack of accountability would be expanded to include both domestic and international remedies and liability mechanisms under private and public law. It is suffice to mention that the human rights perspectives on disaster management focuses on the what is known as rights-based approaches to disaster management – all of which may not be recognised as enforceable legal remedies in a court of law. Unfortunately, there is a significant gap in terms of communication and interaction between the social scientists and, for example, lawyers. At its best, research in the field of disaster management uses statistics as a tool for demonstrating certain aspects of victimisation or for that matter vulnerability, but beyond that, there is very little effort for researchers and practitioners to be bold enough to cross disciplinary boundaries or, for that matter, to pursue rigorous inter-disciplinary research.

II. International Legal and Human Rights Framework

It is important to understand the international law and human rights framework in the context of disasters. The UN General Assembly, in its Resolution 45/100, declared that the abandonment of victims of natural disasters without humanitarian assistance constituted “a threat to human

life and an offence to human dignity". This resolution asked all States that are in need of humanitarian assistance to "facilitate the work of ... organisations in implementing humanitarian assistance, in particular the supply of food, medicines and health care, for which access to victims is essential".¹

The UN Guiding Principles on Internal Displacement² provide the normative framework for protecting the rights of internally displaced persons (IDPs) and sets out the responsibilities of States and other actors towards these people.³ The Hyogo Declaration⁴ recognises that States bear the primary responsibility for the protection of persons within their jurisdiction (Principle 3).⁵ Further, Principle 5 states that authorities and international actors are obligated to "respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, as to prevent and avoid conditions that might lead to displacement of persons".⁶

In the context of the Asian tsunami and hurricanes Katrina and Rita, it is important to enquire whether the governments in the countries affected have taken adequate steps to deal with the plight of disaster victims, for example housing and other needs. There is also a need to develop domestic legal mechanisms that would empower the victims of disasters to seek compensation, particularly when public officials have not taken steps to

¹ United Nations, General Assembly Resolution "Humanitarian assistance to victims of natural disasters and similar emergency situations", A/RES/45/100, 68th Plenary Meeting, 14 December 1990. See also United Nations, General Assembly Resolution "Strengthening of the coordination of humanitarian emergency assistance of the United Nations", A/RES/46/182, 78th Plenary Meeting, 19 December 1991, which emphasises the importance of humanitarian assistance during natural disasters and emergencies, and United Nations, General Assembly Resolution "Strengthening of the coordination of emergency humanitarian assistance of the United Nations", A/RES/63/139, 63rd Session, 5 March 2009, which reaffirms the Resolution A/RES/46/182 and highlights the importance of strengthening the coordination of humanitarian assistance and the need for the United Nations organisations working together in close coordination with national Governments.

² UN Doc. E/CN.4/1999/53/Add.2, available at <http://www.unhcr.ch/html/menu2/7/b/principles.htm>.

³ "Protection of Internally Displaced Persons in Situations of Natural Disaster", A Working Visit to Asia by the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kalin, 27 February to 5 March 2005.

⁴ Hyogo Declaration, World Conference on Disaster Reduction, UN Doc. A/CONF.20/L.3/Rev.1, para. 4 (2 February 2005).

⁵ *Supra* n.2, p.10.

⁶ *Supra* n.2.

prevent the effects of disasters and/or have not responded sufficiently. The question of compensation should also be related to the responsibility and accountability of multinational corporations and other business enterprises under the human rights regime.

As for responses to disasters, there are specific human rights challenges which relief and rehabilitation systems pose. The UN Special Representative on the Human Rights of Internally Displaced Persons observed that discrimination, especially in areas with pre-existing ethnic conflicts, might affect the relief and aid distribution.⁷ Although Principles 4(1) and 24(1) have recognised that response to natural disasters must be in accordance with the principle of impartiality and neutrality, without discrimination on the basis of race, ethnicity, religion or other characteristics (e.g., class or caste),⁸ discrimination continues to be an important human rights issue that affects the uniform implementation of policies relating to disaster management.

III. Rights-Based Approaches to Disaster Management

The legal and normative framework of international human rights law is well established. However, the implementation of international human rights treaties and their effectiveness to devise enforcement systems in states has been a significant challenge. The international community has come to accept that it is not enough to formulate human rights laws in the form of solemn declarations such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR); there should be an overarching commitment to developing rights-based approaches. But the question that comes up again is whether the development of rights-based approaches to disaster management adds new value to the existing studies relating to disaster prevention, response mechanism, including relief and rehabilitation and disaster mitigation. For this purpose, it is useful to examine the human rights implications of recent disasters.

⁷ *Supra* n.2, p.14.

⁸ *Supra* n.2.

In a report in the aftermath of tsunami prepared by the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, it was noted that there was a lack of attention to human rights protection and measures needed to be taken to address issues such as discrimination.⁹ This was echoed in the tsunami aftermath reports of India and Indonesia by Human Rights Watch and Amnesty International, respectively.¹⁰ Even the response to hurricane Katrina has raised issues relating to racism and discrimination against the victims, the majority of whom were African-Americans. There are no specific findings on these allegations, but the fact that such levels of deep and pervasive impoverishment in New Orleans could prevail has raised certain serious governance issues.

The US-based independent think tank, the Brookings Institution, has developed a human rights framework for disaster preparedness, management and mitigation. It has outlined eight factors that have a bearing on the rights of disaster victims after tsunami that must be examined:¹¹

- a. The Guiding Principles on Internal Displacement to protect the rights of persons uprooted by natural disasters;
- b. the right of people to have access to humanitarian and development aid;

⁹ *Supra* n.2, p.8.

¹⁰ "India: End Caste Bias in Tsunami Relief", Human Rights Watch, 14 January 2005; "After the Deluge: India's Reconstruction Following the 2004 Tsunami", Human Rights Watch, May 2005 Vol. 17, No.3 (C), p. 41-42; "Indonesia: The Role of Human Rights in the Wake of the Earthquake and Tsunami: A Briefing for Members of the Consultative Group on Indonesia" 19-20 January 2005, Amnesty International 19 January 2005, AI Index: ASA 21/002.2005, p.1.

¹¹ "Warning Systems, Reconstruction and Stability: Durable Solutions in the Aftermath of the Tsunami Tragedy", Post-Tsunami Human Rights Concerns, the Brookings Institution, 21 March 2005. For further reading, see "Human Rights and Natural Disasters: Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster", Brookings-Bern Project on Internal Displacement, Pilot Version (March 2008), available at http://www.brookings.edu/~media/research/files/reports/2008/5/spring%20natural%20disasters/spring_natural_disasters (last visited 26 November 2012). The InterAgency Standing Committee (IASC) adopted Operational Guidelines on Protecting Persons in Natural Disasters in June 2006 to promote and facilitate a rights-based approach to disaster relief. Under the Brookings-Berne Project on Internal Displacement, this Pilot Manual was created. It intends to help people working on disaster management in the field understand the human rights dimensions of their work and gives them practical examples and operational guidance about how some of the concepts may be implemented. Following feedback from field-testing of the operational guidelines, a revised version was drafted in 2011, which expands the rights-based approach to include preparedness measures. "IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters", the Brookings-Bern Project on Internal Displacement, January 2011, available at <http://ochanet.unocha.org/p/Documents/Operational%20Guidelines.pdf> (last visited 26 November 2012).

- c. discrimination as a human rights issue in the tsunami affected countries;
- d. involuntary relocation to settlement and camps for victims of disasters and its consequence for human rights;
- e. the essentially civilian character of IDP camps and settlements need to be assured;
- f. protection of property rights of tsunami victims;
- g. consultation with the displaced people; and
- h. the need for the creation of security zones or exclusion zones with the right to freedom of movement, property, and the ability to make a living.

The need to focus on rights-based approaches to disaster management is to ensure that accountability becomes a core component. According to the United Nations Development Programme (UNDP), the rights-based approach underlines the importance of participation, equality, non-discrimination and access to opportunities in society by ensuring that the rule of law, transparency and accountability is protected and good public management practices are followed by institutions. The task that lies ahead for all the countries is transferring this framework into domestic policies relating to disaster management.

The fact of the matter is that the human rights of the victims of tsunami were not duly protected by the governments who are responsible for the safety and security of its people.¹² The situation of vulnerable people became much worse after the tsunami as allegations of discrimination and other forms of human rights violations came to the forefront even during relief efforts. In a report titled: *Tsunami Response – A Human Rights Assessment* (hereafter HR Report) released in January 2006, it was observed: "...that human rights have been undermined in the aftermath of the tsunami. A major effort is required to prevent further abuse of human rights and to correct the wrongs that characterize the first year of the tsunami

¹² See "Study Showing Governments Violate Human Rights of Tsunami Survivors Released at UN". Web: <http://www.un.org/apps/news/story.asp?NewsID=17364&Cr=tsunami&Cr1=> (last visited 4 February 2008).

response...”¹³ Human rights ought to become the central focus of disaster management. This means that governments take responsibilities to ensure that the human rights consequences of disasters are recognised and efforts taken to eliminate them. In this regard, Mr. Miloon Kothari, UN Special Rapporteur on Adequate Housing noted in the Foreword to the report that: “Inadequate response and a lack of consideration for the human rights of victims creates a human induced tragedy that exacerbates the plight of those already suffering the effects of a disaster brought on by natural causes. Therefore, individual states, international agencies including the UN and its programmes, civil society and the private sector, must redouble efforts towards the realisation of human rights worldwide, including rights to disaster-preparedness and disaster-response. Indeed this is essential if we are to reduce the loss of life, human suffering and homelessness resulting from disasters in the future...”¹⁴

IV. Corruption and Transparency in the Distribution of Aid

Corruption is a serious issue that undermines the governance process in the aftermath of disasters. Corruption violates human rights, undermines the rule of law, distorts the development process and disempowers the state.¹⁵ First, corruption violates the legal and regulatory framework that is prevailing in a society. Secondly, corruption violates human rights as it hinders the process of fulfilling civil, political, economic and social rights of the people of a society. Corruption affects the poor disproportionately as they cannot afford to pay bribes and thus are not able to receive what they are otherwise entitled to.

¹³ “Tsunami Response – A Human Rights Assessment”, January 2006, p.10, ActionAid International, PDHRE, People’s Movement for Human Rights Learning and South Asia Regional Programme Habitat International Coalition – Housing and Land Rights Network (HIC-HLRN). Web: <http://www.actionaid.org/wps/content/documents/TSUNAMI%20REPORT%20-%20for%20screen%20viewing.pdf> (last visited 21 November 2012).

¹⁴ Miloon Kothari, Foreword to “Tsunami Response – A Human Rights Assessment”, January 2006, p.03. Web: <http://www.actionaid.org/wps/content/documents/TSUNAMI%20REPORT%20-%20for%20screen%20viewing.pdf> (last visited 21 November 2012).

¹⁵ For further reading on human rights based approaches to developing corruption-free governance, see C. Raj Kumar (2003) “Corruption and Human Rights—Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Service in India”, *Columbia Journal of Asian Law* 17(1): 31-72; C. Raj Kumar (2004) “Human Rights Approaches of Corruption Control Mechanisms – Enhancing the Hong Kong Experience of Corruption Prevention Strategies”, *San Diego International Law Journal* 5: 323-351; C. Raj Kumar (2004) “Corruption in Japan: Institutionalising the Right to Information, Transparency and the Right to Corruption-Free Governance”, *New England Journal of International and Comparative Law* 10(1):1-30.

Transparency in governance and accountability in the distribution of aid in disaster-affected countries is very important for the protection of human rights of the victims. Transparency International has noted that “corruption in the delivery of aid undermines the very spirit of humanitarian action”.¹⁶ Corruption causes relief to be “diverted away from affected communities or distributed inequitably”, depriving those who require assistance.¹⁷

The right to a society free of corruption is an inherent human right because life, dignity, equality, and other important values significantly depend upon this right. Thus, the state would be in violation of the right to economic self-determination if it engages in the corrupt transfer of ownership of national wealth as well as international aid to selected people and power holders. It is here that the concept of transparency and accountability fits in well with an integral understanding of corruption-free governance and protection of human rights in the wake of disasters.

The anti-corruption discourse should recognise that the problem of corruption is one of the state losing its capacity to govern and to appropriately respond to disasters. Goals, measurements and indicators could be formulated to ensure that there is a constant effort to keep corruption under check. The expert meeting on corruption prevention and tsunami relief, jointly organised by ADB/OECD Anti-Corruption Initiatives for Asia and the Pacific and Transparency International, noted that cooperation amongst all sectors is required to “strengthen trust between stakeholders and lead to a more effective channeling of resources to affected communities”.¹⁸ This

¹⁶ “In the Wake of Disaster: Preventing Corruption in Tsunami Relief and Reconstruction”, Transparency International.

Web: http://www.transparency.org/in_focus_archive/tsunami/in_focus_tsunami.html (last visited 21 November 2012).

¹⁷ Ibid.

¹⁸ Meeting Conclusions and Framework for Action”, Expert Meeting on Corruption Prevention in Tsunami Relief, ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and Transparency International, 7-8 April 2005, Jakarta, Indonesia. See also “Curbing Corruption in Tsunami Relief Operations”, Proceedings of the Jakarta Expert Meeting Organized by ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and Transparency International, and hosted by the Government of Indonesia, 7-8 April 2005, available at <http://www.adb.org/sites/default/files/pub/2005/curbing-corruption-tsunami-relief.pdf> (last visited 26 November 2012). For further reading, see Samir Elhawary and M.M.M Aheeyar, “Beneficiary perceptions of corruption in humanitarian assistance: A Sri Lanka case study”, HPG Working Paper, August 2008. This report, commissioned by Transparency International, explores the perceptions of corruption amongst beneficiary populations in tsunami-affected Sri Lanka, with the aim of informing strategies that seek to reduce corruption in humanitarian assistance.

becomes even more important in countries such as Indonesia, India, Pakistan, and Sri Lanka, which were affected by tsunami and the recent earthquakes – countries where there is a high degree of corruption.

V. Protection of Women's Rights in the Aftermath of Disasters

Disasters do not differentiate between men and women, but the consequences of disasters create different levels of victimisation among men and women. There have been a number of instances of victimisation of women in the aftermath of disasters. For example, the Asia Pacific Forum on Women, Law and Development, in its report in March 2005, noted several instances of human rights violations, such as rape and other forms of sexual abuse of women.¹⁹ The injustices perpetrated against women during and after disasters can be curtailed by recognising the human rights of women within the broader human rights-disaster management interface. Underlining the urgency for focusing on gender perspective in tsunami disaster, the APWLD Report noted that women's rights are especially prone to violation due to their socio-economic status and existing male-dominated structure of societies.²⁰ The Guiding Principles, especially Principle 4(2), recognise that displaced women face a range of risks.²¹ The UN report has observed that women suffer from exclusion, are exploited, and affected by high levels of trafficking.²²

¹⁹ "Women's Human Rights Concerns in Tsunami Affected Countries", Asia Pacific Forum on Women, Law and Development (APWLD), 22 March 2005. See also "Why are Women More vulnerable During disasters?: Violations of Women's Human Rights in the Tsunami Aftermath", Asia Pacific Forum on Women, Law and Development (APWLD), October 2005, available at http://www.apwld.org/pdf/tsunami_report_Oct2005.pdf (last visited 26 November 2012).

²⁰ *Ibid.* In 2006, APWLD published the Guidelines for Gender Sensitive Disaster Management. They are the result of the documentation project "Survey of Women's Human Rights Violations in the Aftermath of the Tsunami in India, Indonesia, Thailand and Sri Lanka and the October 8, 2005 Earthquake in Pakistan" coordinated by APWLD. The Guidelines are a set of practical steps to assist governments, the non-state sector and civil society to respond to women's concerns and needs in post disaster situations. "Guidelines for Gender Sensitive Disaster Management", APWLD, 2006, available at http://www.apwld.org/pdf/Gender_Sensitive.pdf (last visited 26 November 2012). The International Federation of Red Cross and Red Crescent Societies (IFRC) also published a Practical Guide to Gender-Sensitive Approaches for Disaster Management in 2010. These guidelines are intended to help Red Cross and Red Crescent National Societies and the International Federation of Red Cross and the IFRC to incorporate effective gender-sensitive and inclusive approaches into their disaster management strategies when assisting communities prepare for, respond to, and recover from disasters. "A Practical Guide to Gender-Sensitive Approaches for Disaster Management", Asia Pacific Zone and IFRC, 2010, available at www.ifrc.org/PageFiles/96532/A_Guide_for_Gender-sensitive_approach_to_DM.pdf (last visited 26 November 2012).

²¹ "Protection of Internally Displaced Persons in Situations of Natural Disaster", A Working Visit to Asia by the Representative of the United Nations Secretary General on the Human Rights of Internally Displaced Persons, Walter Kalin, 27 February to 5 March 2005, p.18.

²² *Ibid.*

In the HR Report, it was observed that the rehabilitation efforts that were taken in the aftermath of tsunami were largely insensitive to the issues relating to women, including the policies relating to rehabilitation. In particular, the report observed: "Women's rights to equal participation in the decision-making processes have also been ignored. Women's rights to own property have been largely undermined. Programmes undertaken to restore livelihoods by governments largely ignored women's roles in income generation; most of the beneficiaries of these programmes have been men. All these inevitably meant a violation of women's human rights."²³ Obviously, this issue of neglecting women's rights in the aftermath of tsunami reflects the more fundamental problem in formulating disaster management policies, which ought to take cognizance of human rights and make them integral to their disaster and risk reduction framework.

VI. Expanding the Role of NGOs and Civil Society during Disasters

Since disasters pose significant challenges to governance, it is not possible for the governments to take care of all the relief and responses during and in the aftermath of a disaster. NGOs and the wider civil society have to contribute to the uplifting of the disaster victims. The civil society will also have its own sense of priorities when it comes to formulating policies relating to disaster management. This can be done by including civil society in the discussions relating to developing response mechanisms. The NGOs that participated in the Asian Civil Society Consultation on Post-Tsunami Challenges in February 2005 identified the following as major areas of concern: "the transparency and accountability of funds raised and received; the need to place people before corporate interests; the required synergy and cooperation based on humanitarian principles of neutrality, impartiality, universality and non-discrimination; and the importance of empowering local communities and NGOs."²⁴

²³ "Tsunami Response – A Human Rights Assessment", January 2006, p.47, ActionAid International, PDHRE, People's Movement for Human Rights Learning and South Asia Regional Programme Habitat International Coalition – Housing and Land Rights Network (HIC-HLRN). Web: <http://www.actionaid.org/wps/content/documents/TSUNAMI%20REPORT%20-%20for%20screen%20viewing.pdf> (last visited 21 November 2012).

²⁴ United Nations General Assembly, "Protection of and assistance to internally displaced persons", A/60/338, 60th Session, 7 September 2005, at p. 14.

Moreover, the concerns of NGOs may be quite different from the government, the international community as well as the aid agencies and it is important that they are included in formulating strategies related to responding to disasters, including planning the relief and rehabilitation work. The fundamental issue is placing the people who are affected by disasters at the centre of attention, and the human rights framework intends to do that by stressing upon the rights of disaster victims.

VII. The Way Forward: Emphasising Governance and Human Rights

It is unfortunate that a number of elaborate and useful recommendations that were already available have not been adequately considered or implemented by the international community. Among other things, the Report of the Independent Commission on International Humanitarian Issues recommended that the UN should formulate a code of conduct to regulate the management of disasters on a principle that humanitarian criteria ought to prevail over any political or sovereignty constraints during the period of emergency.²⁵

There is a need for strengthening national capacity to better manage disasters.²⁶ At the World Conference on Disaster Reduction held at Kobe, Japan in January 2005, the issue of governance was discussed in a panel co-organised by the UNDP. It was noted: "Governance occupies a very central space in the work of UNDP, which views the characteristics of good governance – participation, rule of law, transparency, responsiveness, equity, efficiency, accountability, and strategic division – as key for disaster risk reduction and more broadly sustainable development".²⁷ This aspect has been significantly marginalised in discussions relating to disaster

²⁵ Keith Suter, "After the Tsunami: The Politics of International Relief", *Contemporary Review*, pp.135-141.

²⁶ For further reading, see "What Does Governance Have To Do With It? Strengthening National Capacities to Manage Disaster Risks", United Nations Development Programme (UNDP).

Web: <http://www.undp.org/bcpr/disred/documents/wcdr/undppr210105.pdf> (last visited 21 November 2012). See also "Issue Brief: Disaster Risk Governance: Crisis Prevention and Recovery", UNDP, November 2012, available at http://www.undp.org/content/dam/undp/library/crisis%20prevention/20121311_Issue_brief_disaster_risk_reduction_governance.pdf (last visited 26 November 2012).

²⁷ See "What Does Governance Have To Do With It? Strengthening National Capacities to Manage Disaster Risks", United Nations Development Programme (UNDP).

Web: <http://www.undp.org/bcpr/disred/documents/wcdr/undppr210105.pdf> (last visited 21 November 2012).

management. If the governance capacity of countries is increased, inevitably this would lead to better preparedness, including the abilities to respond to disaster. It is notable that some of the important findings of a UNDP study analyzing the experience of nineteen countries have underlined these dimensions. Some of the important findings of the UNDP study are: (a) Countries that have created institutional mandates for risk management have been more successful resulting in disaster risk management becoming a policy priority; (b) the manner in which policies are implemented is connected to the availability of effective decentralized governance structures, a well-informed citizenry, and the engagement of important local actors including public officials; (c) Lack of progress towards enforcing laws, rules and regulations relating to disaster risk reduction has been because of lack of capacity for implementation at the local level.²⁸

It is important to understand the damage caused by hurricane Katrina and tsunami as larger threats to human security. The Commission on Human Security defines human security as “a means protecting vital freedoms” through protection and empowerment. In this context, David Filder has underscored the need for re-examining the notion of security in the light of contemporary threats in the form of disasters like the tsunami and SARS. He has observed: “The international legal issues raised by the Indian Ocean tsunami echo concerns voiced in other contexts about the need to rethink concepts of “security” in the face of non-military threats to human well-being. Recently, the UN Secretary-General’s High Level Panel on Threats, Challenges, and Change made the case for “comprehensive collective security,” which the Panel defined as security not only from war but also from poverty, infectious disease, and environmental degradation...²⁹ As SARS did in the case of infectious diseases, the tsunami tragedy perhaps raises the need to think about natural disasters through the lens of comprehensive collective security and to focus more attention on governance regimes that will more effectively protect, alert, and provide relief to

²⁸ “What Does Governance Have To Do With It? Strengthening National Capacities to Manage Disaster Risks”, United Nations Development Programme (UNDP).

Web: <http://www.undp.org/bcpr/disred/documents/wcdr/undppr210105.pdf> (last visited 21 November 2102).

²⁹ UN Secretary-General’s High-Level Panel on Threats, Challenges, and Change, Report—A More Secure World, Our Shared Responsibility 1-2 (2004). Web: <http://www.un.org/secureworld/> (last visited 4 February 2008).

populations threatened by natural disasters.”³⁰ There are at least five issues that the international community needs to examine for ensuring human security in the light of evolving policies relating to disaster management and governance reform.

1. Need for Developing Institutional Mechanisms:

It is important to have a comprehensive domestic and international legal and institutional infrastructure that is able to quickly and efficiently respond to the crises that affects us. At the international level, the International Federation of Red Cross and Red Crescent Societies have taken an important step in initiating the International Disaster Response Laws, Rules and Regulations (IDRL) project.³¹ See International Disaster Response Laws (IDRL), Project Report 2002-2003, 28th. International Conference of the Red Cross and Red Crescent, 2-6 December 2003, document prepared by the International Federation of Red Cross and Red Crescent Societies.

³⁰ David P. Fidler, “The Indian Ocean Tsunami and International Law”, January 2005. Web: http://www.asil.org/insights/2005/01/insight050118.htm#_ednref14 (last visited 21 November 2012).

³¹ See International Disaster Response Laws (IDRL), Project Report 2002-2003, 28th International Conference of the Red Cross and Red Crescent, 2-6 December 2003, document prepared by the International Federation of Red Cross and Red Crescent Societies.

Web: [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5XRDP7/\\$File/IDRL_Report_FINAL_ANG.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5XRDP7/$File/IDRL_Report_FINAL_ANG.pdf) (last visited 21 November 2012). On 30 November 2007, the state parties to the Geneva Conventions and the International Red Cross Red Crescent Movement adopted the “Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance” (the “IDRL Guidelines”). The IDRL Guidelines are meant to assist governments to become better prepared and avoid needless delays in the dissemination of humanitarian relief and ensure better coordination and quality of the assistance provided. In 2008, the UN General Assembly adopted three resolutions (United Nations, General Assembly Resolution “Strengthening emergency relief, rehabilitation, reconstruction and prevention in the aftermath of the Indian Ocean tsunami disaster”, A/RES/63/137, 63rd Session, 3 March 2009; United Nations, General Assembly Resolution “Strengthening of the coordination of emergency humanitarian assistance of the United Nations”, A/RES/63/139, 63rd Session, 5 March 2009; and United Nations, General Assembly Resolution “Strengthening of the coordination of emergency humanitarian assistance of the United Nations”, A/RES/63/141, 63rd Session, 10 March 2009) that encourage states to use the IDRL Guidelines. “IDRL Guidelines”, IFRC, <http://www.ifrc.org/en/what-we-do/idrl/idrl-guidelines/> (last visited 26 November 2012).

Further, IFRC, in cooperation with UN Office for the Coordination of Humanitarian Affairs (OCHA) and the Inter-Parliamentary Union (IPU), is working on A “Model Act for the Facilitation and Regulation of International Disaster Assistance” to assist states to integrate the recommendations of the IDRL Guidelines into their national laws. It issued a Pilot Version of the Model Act in November 2011, which is available at <http://www.ifrc.org/PageFiles/88609/Pilot%20Model%20Act%20on%20IDRL%20%28English%29.pdf> (last visited 26 November 2012). The IFRC will organize an Expert meeting on the Model Act for international disaster assistance, Geneva, 10-11 December 2012. This meeting will gather experts from governments, national societies, humanitarian organisations and academia. Following this meeting, a revised version of the Model Act will be published. IFRC, “Meetings and Events”, IFRC, <http://www.ifrc.org/en/what-we-do/idrl/meetings-and-events/> (last visited 26 November 2012).

Web: [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5XRDP7/\\$File/IDRL_Report_FINAL_ANG.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5XRDP7/$File/IDRL_Report_FINAL_ANG.pdf) (last visited 21 November 2012).

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The nature of disasters is such that a wide variety of domestic and international institutions may have to be responsible for both disaster preparedness as well as formulating proper responses to disasters.

2. International, Regional and Domestic Perspectives in relation to Management of Disasters:

It is necessary that coordination and efficient use of resources remain the objective of all disaster management initiatives. It will be helpful to learn from other experiences as to how the response mechanisms failed or did not exist in some cases, and how effectiveness was compromised for disaster management as in the case of the tsunami disaster. In the case of hurricane Katrina, the investigation may reveal the reasons for the failure of any disaster management or evacuation plans that were in place.

3. Role of NGOs in Providing Disaster Relief and Humanitarian Aid

The civil society response to disasters has come in different ways, including grassroots NGOs providing humanitarian relief in the form of physical support. This also includes the role of domestic and international NGOs providing financial aid. The situation of Katrina has raised a significant issue for the need to understand the prioritisation of financial aid relating to countries that are affected by disasters. Obviously, issues relating to transparency and accountability of the NGOs and their partners in dealing with effective management of resources are issues that need further attention.

4. Role of the Private Sector

Disasters affect the lives and livelihood of people in many ways. It has not been sufficiently recognised that the private sector has an important role in responding to disasters. It is important to note that more than US\$9 billion in public and private funds has been pledged to help countries affected by the Indian Ocean tsunami.³² It has been

³² See Margaret Arnold and Saroj Kumar Jha, "The Private Sector's Role in Disaster Recovery and Risk Mitigation", World Bank. Web: <http://rru.worldbank.org/Discussions/topics/topic67.aspx> (last visited 21 November 2012).

rightly observed that, "A much closer interaction between business and government is needed to ensure appropriate risk reduction strategies, adequate measures for implementation of protection and security measures, and a liability and insurance regime that take proper account of the needs of the community and business sector alike".³³

The nature of disasters and the consequences of them on community are profound that there is need for non-state actors of all kinds, including the private sector to be involved in one way or the other. The private sector has the ability to provide technical manpower and help in capacity building, besides providing in-kind donations³⁴ and services in the aftermath of disasters.³⁵

5. The Law and Governance Challenge Posed by Disasters

The normative legal framework for determining the status of victims of disasters is well established under international law, although, doubts were expressed in the aftermath of hurricane Katrina with regard to the status of the victims and inaccurate reports characterized the status of these victims to be that of "refugees".³⁶ The correct position under international law is that "persons who are forced to flee the hurricane and subsequent disasters on the Gulf coast are not refugees. Rather, the international community refers to such persons

³³ Hari Srinivas, "Disaster Management: A Role for the Private Sector", Global Development Research Centre, Japan. Web: <http://www.gdrc.org/uem/disasters/dm-privatesector.html> (last visited 21 November 2012).

³⁴ It is widely recognized that US department store Wal-Mart had played an important positive role in the immediate aftermath of hurricane Katrina. Wal-Mart had immediately sent 1,900 truckloads of water and other emergency supplies to the persons affected by the hurricane. It had also contributed US\$ 17 million to the hurricane relief effort, and more than \$3 million in merchandise. See Liza Featherstone, "Wal-Mart to the Rescue!", September 13 2005. Web: <http://www.thenation.com/doc/20050926/featherstone> (last visited 4 February 2008).

³⁵ Hari Srinivas, "Disaster Management: A Role for the Private Sector", Global Development Research Centre, Japan. Web: <http://www.gdrc.org/uem/disasters/dm-privatesector.html> (last visited 21 November 2012). See also Iain Murray, "Hurricane Sandy, And The Invisible Hand Of Disaster Recovery", 1 November 2012, available at <http://www.forbes.com/sites/realspin/2012/11/01/hurricane-sandy-and-the-invisible-hand-of-disaster-recovery/> (last visited 26 November 2012), highlighting the importance of the role of private sector in disaster management. For example, responses by private insurance companies and financial provide the liquidity to get households and communities up and running again.

³⁶ Frederic L. Kirgis, "Hurricane Katrina and Internally Displaced Persons", ASIL Insight, The American Society of International Law, September 21, 2005. Web: <http://www.asil.org/insights/2005/09/insights050921.html> (last visited 21 November 2012).

as internally displaced”.³⁷ Frederic L. Kirgis, “Hurricane Katrina and Internally Displaced Persons”, ASIL Insight, The American Society of International Law, September 21, 2005. Web: <http://www.asil.org/insights/2005/09/insights050921.html> (last visited 21 November 2012).

A set of standards, as discussed earlier, is applicable to IDPs. While normative standards are there, but when it comes to their enforcement in the domestic context, even rich countries fall short. In a report submitted to the Commission on Human Rights by Dr. Arjun Sengupta after a mission to the US, he observed that: “...poverty in the United States is not an individual issue, but rather a systematic problem of inability to participate in economic and social activities in a meaningful way. The poor are insecure and vulnerable and nowhere is this insecurity more evident than in the cases of Hurricanes Katrina and Rita. People who had been left behind were largely groups that were extremely poor...and unable to cope with disasters and natural shocks”.³⁸

There is a need to develop comprehensive frameworks that include disaster mitigation and management systems within the wider governance framework of a society. Both tsunami and SARS revealed the fragility of disaster response systems and health care mechanisms respectively. This means that all key institutional actors within the government and civil society need to recognise that disaster management is not about reactive policies, but about proactive and long-term policies that involve reforming the governance system. For this purpose, laws, both domestic and international, play an important role in providing the necessary framework for disaster management.

³⁷ Frederic L. Kirgis, “Hurricane Katrina and Internally Displaced Persons”, ASIL Insight, The American Society of International Law, September 21, 2005. Web: <http://www.asil.org/insights/2005/09/insights050921.html> (last visited 21 November 2012).

³⁸ Report submitted by the independent expert on the question of human rights and extreme poverty, Addendum, Para 43, page 14, E/CN.4/2006/43/Add.1. Web: <http://www.ohchr.org/english/bodies/chr/docs/62chr/E.CN.4.2006.43.Add.1.pdf> (last visited 21 November 2012).

Contributors

- Dr. M. R. Ahmed, Director, Academy of Prisons & Correctional Administration, Vellore*
- Professor B. B. Pande, Former Professor of Criminal Law, Delhi University and Consultant (Res.), National Human Right Commission*
- Justice G. P. Mathur, Member, National Human Rights Commission and Former Judge, Supreme Court of India*
- Shri Harsh Mander, Director, Centre for Equity Studies, New Delhi*
- Dr. N. C. Saxena, Member, National Advisory Council, New Delhi*
- Ms. Kathyayini Chamaraj, Journalist, Apt No 001, HM Wimberly, 6 Berlie Street, Langford Town, Bangalore*
- Dr. Rajiv Sharma, Former Secretary General, National Human Rights Commission*
- Shri Madhu Sudan Sharma, Project Coordinator, Cuts, International, Consumer Unity & Trust Society, Jaipur*
- Dr. Debabrata Roy Laifungbam, President/Convener, Elders' Council, Centre for Organization Research & Education, Indigenous Peoples' Organization in Special Consultative Relationship with ECOSOC of United Nations, Manipur*
- Dr. Immanuel Zarzosang Varte, Deputy Director, Centre for Organization Research & Education, Manipur*
- Prof. C. Raj Kumar, Vice Chancellor, O. P. Jindal Global University & Dean, Jindal Global Law School, Sonipat*
- Prof. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights, New Delhi*
- Dr. K. P. Singh, Additional Director General of Police, Prisons Department, Haryana*
- Shri Jaideep Singh Kochher, Joint Secretary (Training), National Human Rights Commission*
- Dr. Vibhuti Patel, Director, PGSR & Professor & Head, Department of Economics, SNDT Women's University, Churchgate, Mumbai*
- Shri Sankar Sen, Former Director General (Investigation), NHRC*

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National Human Rights Commission
Faridkot House, Copernicus Marg, New Delhi-110 001
E-mail : covdnhrc@nic.in, Website : www.nhrc.nic.in

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