

PART I: INTRODUCTION

1. HOW DO NATURAL DISASTERS AFFECT HUMAN RIGHTS?

Natural disasters¹ are traditionally seen as situations creating challenges mainly related to the provision of humanitarian assistance. Less attention has been devoted to the need for human rights protection in this particular context.

In particular, the tsunamis, hurricanes and earthquakes, which hit parts of Asia and the Americas in 2004 and 2005, as well as the Haiti earthquake of 2010, highlighted the fact that affected persons may face multiple human rights challenges in the aftermath of natural disasters, such as:

- ❖ Lack of safety and security (e.g. rampant crime, secondary impacts of natural disasters, etc.);
- ❖ Gender-based violence;
- ❖ Unequal access to assistance, basic goods and services and discrimination in aid provision;
- ❖ Abuse, neglect and exploitation of children;
- ❖ Family separation, particularly for children, older persons, persons with disabilities and other individuals who may rely on family support for their survival;
- ❖ Loss/destruction of personal documentation and difficulties to replace it, in particular due to inadequate birth registration mechanisms;
- ❖ Inadequate law enforcement mechanisms and restricted access to a fair and efficient justice system;
- ❖ Lack of effective feedback and complaint mechanisms;
- ❖ Unequal access to employment and livelihood opportunities;
- ❖ Forced relocation;
- ❖ Unsafe or involuntary return or resettlement of persons displaced by the disaster; or
- ❖ Lack of property restitution and access to land.

¹ For this notion, see Annex I, Glossary.

Experience has shown that, while patterns of discrimination and disregard for human rights may emerge during the emergency phase of a disaster, the longer the effects of the disaster last, the greater the risk of human rights violations becomes. Experience has also shown that pre-existing vulnerabilities and patterns of discrimination usually become exacerbated in situations of natural disasters.

Particularly at risk are those among the affected populations who are forced to leave their homes or places of habitual residence because of the disaster and who, as a result, become internally displaced persons² and should be treated in accordance with the 1998 Guiding Principles on Internal Displacement.

Often, negative impacts on the human rights concerns after a natural disaster do not arise from purposeful policies but are the result of inadequate planning and disaster preparedness, inappropriate policies and measures to respond to the disasters, or simple neglect.

As stated by the Secretary General “.....the risks and potential for disasters associated with natural hazards are largely shaped by the prevailing levels of vulnerability and the effectiveness of measures taken to prevent, mitigate and prepare for disasters.”³

These challenges could be mitigated or avoided altogether if the relevant human rights guarantees were taken into account by national and international actors, in all phases of the disaster response: preparedness, relief and recovery.

2. WHY DOES A HUMAN RIGHTS BASED APPROACH HELP PROTECT PERSONS IN SITUATIONS OF NATURAL DISASTERS?

A protection perspective can bring a strategic dimension to humanitarian assistance programmes, namely one of promoting and securing the fulfilment of human rights. Experience shows that assistance cannot simply be assumed to be a neutral activity affecting everyone equally and in a positive way. The manner in which assistance is delivered, used and appropriated, as well as the context in which it is taking place, has an important impact on whether the needs and human rights of affected persons are being respected or fulfilled. A human rights-based approach provides the framework and necessary standards for humanitarian assistance activities. It grounds the basis for humanitarian action in universal principles, such as human dignity and non-discrimination, as well as a set of universally accepted human rights. Those affected by the disaster thus become individual rights holders who can claim rights from particular duty bearers rather than simply being passive beneficiaries and recipients of charity.

² For this notion see Annex I, Glossary.

³ Report of the Secretary General to the General Assembly, “On international cooperation on humanitarian assistance in the field of natural disasters, from relief to development,” A/60/227.

In addition, a human rights-based approach can enhance the protection value of assistance activities: If, e.g., authorities provide women and children with sufficient food and adequate housing in a secure environment without discrimination, these persons are less exposed to the risks of sexual exploitation, child labour and violence than they would be if they were excluded from such assistance.

If humanitarian assistance is not based on a human rights framework, it risks having too narrow a focus, and not all the basic needs of the victims will be integrated into a holistic planning and delivery process. Factors that are important to recovery later on may also be overlooked. Furthermore, people affected by natural disasters do not live in a legal vacuum. They belong to the population of countries that have ratified international and regional human rights instruments and enacted constitutions, laws, rules and institutions that should protect these rights. Therefore, States are directly responsible for respecting, protecting and fulfilling the human rights of their citizens and other persons under their jurisdiction.

Thus, human rights remain important as norms underpinning humanitarian work in natural disasters. Despite the existence of national disaster management laws in many countries, and certain international provisions on specific aspects of disaster response, human rights law provides an important and comprehensive international legal framework to guide humanitarian response activities.⁴

Most international – and many national – humanitarian organizations, while not directly bound by international human rights treaties, accept that human rights should underpin their actions. In the interest of the affected people, they should ensure that these rights are respected and protected – even beyond the strict wording of their mandates – and, at a minimum, refrain from promoting, actively participating in, or in any other manner endorsing policies or activities, which do or can lead to human rights violations by States.

The challenge often is how to apply human rights in an operational context, given the many potential humanitarian and human rights dilemmas arising in situations of natural disasters, among other challenges. At the operational level, a human rights framework helps to:

- *Identify relevant needs and interests of affected persons:*

Example: Human rights law provides for the freedom of movement and the right to choose one's place of residence, thus protecting internally displaced persons' choice to return to their homes or settle elsewhere in the country. Human rights law in contrast does not provide for a right to credit, thus leaving it to a large extent to the discretion of agencies and authorities whether or not to set up a micro-credit program for affected persons.

⁴ In the context of natural disasters, international humanitarian law as a branch of law applicable in situations of armed conflicts is not applicable in natural disaster settings unless in an armed conflict civilians under the control of a party to the conflict are affected. This exceptional situation is not addressed in these Operational Guidelines.



- *Identify rights holders and duty bearers:*
Examples: (1) According to the Convention on the Rights of the Child, children are entitled to have their best interests given paramount consideration and are therefore rights-holders. (2) According to many human rights conventions, the State as the main duty bearer has a duty to provide police protection in camps and collective centres.
- *Identify the limitations of what people can demand:*
Example: As the freedom of movement is not an absolute right, forced evacuations or relocations are permissible in certain exceptional cases (see below guidelines A.1.4 and D.2.4).
- *Ensure that humanitarian action meets human rights standards:*
Example: The human rights standard that food, shelter or health services must be accessible for persons with special needs requires for example to organize humanitarian action in a way addressing the specific access problems of female headed households, older people, persons with disabilities or others with particular vulnerabilities.

3. WHAT IS PROTECTION?

A definition

According to the Inter-Agency Standing Committee (IASC) protection is defined as:

“... all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. HR law, IHL, refugee law).”⁵

Such activities can be *responsive*, i.e. aiming to prevent imminent or stop on-going violations, *remedial*, i.e. aiming to provide redress (e.g. access to justice, reparation or rehabilitation) for past violations, or *environment-building*, i.e. aiming at creating the necessary legal and institutional framework, capacity and awareness that is necessary to promote respect for human rights and prevent future violations.⁶

Protection actors and their obligations

This definition of protection has to be seen in the context of fourfold obligations that international human rights law imposes on States to *respect* human rights, i.e. to refrain from actively violating them; to *protect* such rights, i.e. to intervene and take protective action on behalf of the victim against threats by others or stemming from a situation; to *fulfil* them, i.e. to provide goods and services necessary to allow people to fully enjoy their rights; and to discharge these obligations *without discrimination*.

⁵ IASC IDP Protection Policy 1999. The definition was originally adopted by a 1999 Workshop of the International Committee of the Red Cross (ICRC) on Protection.

⁶ IASC IDP Protection Policy 1999; Global Protection Cluster Working Group, Handbook for the Protection of Internally Displaced Persons, March 2010, p. 7.

In a temporal perspective, these duties mean that States have, in particular: (a) to *prevent violations* of human rights from occurring or from re-occurring; (b) to *stop them* while they are happening by making sure that State organs and authorities respect the rights concerned and protect victims against threats by third parties or stemming from situations including natural disasters; and (c) to *ensure reparation and full rehabilitation* once a violation has happened.

Where the capacity and/or willingness of the authorities to fulfil their responsibilities is/are insufficient, the international community plays an important role in supporting and complementing the efforts of the State. The scope and complexity of many natural disasters call for the active involvement of organizations both within and outside the UN system which possess special expertise and resources.

Humanitarian and development actors are committed to respect human rights guarantees, in particular civil and political rights, a commitment embodied in the principle of “do no harm.”⁷ They also play an important role in fulfilling economic, social and cultural rights by providing humanitarian assistance including food, water and sanitation, shelter, health services and education. However, distributing humanitarian goods and providing humanitarian services, while greatly contributing to the enjoyment of human rights by affected persons, are not as such protection activities. They become so insofar as they specifically aim at preventing future, stopping on-going and redressing past violations of such rights.

Thus, the concept of *protection in the context of humanitarian action can be understood as the role humanitarian and (in the context of recovery) development actors play with regard to ensuring that the rights of affected persons under international human rights law are respected, protected and fulfilled without discrimination.*

Protection in practice

Protection is about securing human rights. To make this abstract notion more tangible, it is useful to draw from the experience that key protection challenges typically consist of situations where people are harmed or neglected, where access to available humanitarian goods and services is curtailed, where people whose rights are disregarded or have been violated do not have the possibility or are impeded from asserting these rights, and where they face discrimination. For practical purposes, protection activities can be classified in the following way:

1. **Harm:** Activities addressing (past, present or future) harm inflicted on or caused by neglect of people in contravention of human rights guarantees;
2. **Lack of access:** Activities aimed at ensuring that people in need have access to goods and services protected by human rights such as adequate food, water and sanitation, shelter, health services, education, etc., and that obstacles impeding or hindering access are removed;

⁷ For this notion see Annex I, Glossary.

3. **Incapacity and obstacles to claim one's rights:** Activities aimed at ensuring that people can exercise their rights themselves and assert them in case of violations, as well as activities strengthening their capacities in this respect, in particular in cases of:
 - (i) Lack of information, consultation and participation regarding decisions affecting the persons concerned and their rights;
 - (ii) Lack of documentation;
 - (iii) Lack of effective remedies against violations, including access to courts and reparation for violations of their rights; and
 - (iv) Lack of accountability for violations.
4. **Discrimination:** Activities aimed at ensuring that people are not singled out for harm, denied access, unable to assert their rights, or otherwise disadvantaged on the basis of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth, age or other status, i.e. discriminated against.

What exactly such protection activities are comprised of depends to a large degree on the actual circumstances and the opportunities as well as the constraints. However, protection tools typically comprise the following:

1. **Monitoring** of situations and identification of relevant protection issues; prioritization of protection activities on the basis of needs;
2. **Advocacy** with relevant stakeholders (confidentially or publicly);
3. **Capacity building** of relevant stakeholders as well as affected persons and communities; and
4. **Direct protection delivery** for affected persons, e.g. transportation of persons who want to evacuate from disaster-affected areas; lighting of water points and sanitation areas in camps and collective centres to prevent or reduce instances of gender-based violence; provision of legal aid to victims of human rights violations.

4. WHAT IS THE PURPOSE AND SCOPE OF THESE OPERATIONAL GUIDELINES?

Audience and purpose

These Operational Guidelines primarily aim to help international and non-governmental humanitarian organizations and members of the Inter-Agency Standing Committee to ensure that disaster relief and recovery efforts are conducted within a framework that protects and furthers human rights of affected persons. Specifically, they aim to:

- ❖ Ensure that human rights principles and protection standards – including the fundamental principle of non-discrimination – are integrated into all disaster response and recovery efforts from the earliest stage possible;

- ❖ Identify relevant measures to ensure that affected persons and their communities are fully consulted and can actively participate, to the extent possible, in all stages of the disaster response in accordance with their human rights;
- ❖ Complement (but not replace) existing guidelines on humanitarian standards in situations of natural disasters; and
- ❖ Provide a basis for humanitarian actors when entering into dialogue with governments about their obligations towards affected people under human rights law.

The Operational Guidelines may also be useful for those governmental actors, in particular disaster management institutions, who are primarily responsible for providing protection and humanitarian assistance to affected persons. Furthermore, they may also inform national laws and policies.

These Operation Guidelines may also be useful for civil society in countries affected by natural disasters.

Scope

The Operational Guidelines cover response and recovery in situations of natural disasters. While they do not deal with preparedness and risk reduction as such, references to possible measures for preparedness are included where appropriate. Furthermore, these Guidelines can be used for inserting protection issues in disaster preparedness policies and strategies, namely at national and regional levels, through promotion of training activities and capacity building of entities involved in the disaster management as well as human rights activities; improvement of legal and institutional frameworks; and contingency plans.

The Operational Guidelines spell out key principles which should guide humanitarian action in situations of natural disasters and are accompanied by possible activities, which are concrete and real-life examples of how the key principles could be implemented in a given context. Indicated activities are illustrative, not exhaustive and therefore do not replace more detailed guidance as referenced in Annex III. Activities included in these Guidelines aim at:

- ❖ Preventing or stopping *harm*;
- ❖ Ensuring that affected persons have *access* to relevant goods, services and opportunities;
- ❖ Ensuring that affected persons can *claim their rights*; or
- ❖ Avoiding or combating *discrimination*.

The Operational Guidelines are informed by and draw on relevant international human rights law, existing standards and policies pertaining to humanitarian action, and human rights guidelines on

humanitarian standards in situations of natural disaster.⁸ However, the Operational Guidelines do not list the rights of persons as enshrined in international law. Rather, they focus on what operational standards humanitarian actors may be guided by in order to implement a rights-based approach to humanitarian action in the context of natural disasters.⁹ While these Guidelines have been drafted with the consequences of quick-onset natural disasters in mind, most of them are also relevant in preparation for or after other kinds of disasters, such as slow-onset disasters.

Structure

The Guidelines first set out some general principles. For practical reasons, the presentation of key principles relevant for the protection of the human rights of affected persons is divided into four chapters, namely:

- (A) Protection of rights related to *protection of life; security and physical integrity; and the protection of family ties in the context of evacuations*. These guarantees are civil and political rights¹⁰ particularly relevant already during and immediately after the disaster occurs. Some of them, in particular the right to security and physical integrity remain important throughout the disaster response, e.g. in the context of gender-based violence;
- (B) Protection of rights related to the provision of *food; health; shelter; and education*. These social rights¹¹ help to ensure that survivors of the disaster receive life-saving humanitarian assistance, particularly during the emergency phase and, to the extent necessary, also at later stages;
- (C) Protection of rights related to *housing, land and property; and livelihoods*. These are economic, social and cultural rights that start becoming particularly relevant once the emergency phase is over and recovery efforts commence; and
- (D) Protection of rights related to *documentation, free movement in the context of durable solutions for internally displaced persons; re-establishment of family ties, expression and opinion; and elections*. These are civil and political rights that may become more important the longer the recovery phase lasts.

⁸ The Guidelines are based on the full spectrum of the universal human rights instruments, as far as appropriate, as well as on relevant regional human rights conventions and other standards, such as the Guiding Principles on Internal Displacement, the Sphere Project's *Humanitarian Charter and Minimum Standards in Disaster Response* (the Sphere Handbook), and the IFRC Code of Conduct. The Operational Guidelines should be seen as complementing these standards and policies and interpreted so as to be consistent with them.

⁹ Currently the UN's International Law Commission is in the process of preparing standards addressing additional State responsibilities in the context of natural disaster relief, which run parallel to the immediate need of the humanitarian agencies for guidance.

¹⁰ At the international level, these rights are primarily enshrined in the 1966 International Covenant on Political and Civil Rights.

¹¹ They are primarily enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights.

Thus, users may limit themselves to consult categories A and B during the immediate emergency phase and turn to C and D at a later stage. However, only the full respect of *all* rights mentioned in these chapters can ensure adequate protection of the human rights of those affected by natural disasters. All human rights are universal, indivisible, interdependent and interrelated.¹² The structure of these Guidelines thus does not suggest any hierarchy among relevant rights but rather helps to quickly identify those rights that are primarily relevant during a given phase of a disaster.

¹² World Conference on Human Rights in Vienna, Vienna Declaration and Programme of Action UN Doc A/CONF.157/23, 12 July 1993.