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Methods to Incorporate Human Rights Law into Disaster Prevention and Reduction Strategies

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This post is part of the *ESIL Interest Group on International Human Rights Law* [blog symposium](http://www.ejiltalk.org/introduction-to-symposium-on-international-human-rights-law-in-times-of-crisis/) (<http://www.ejiltalk.org/introduction-to-symposium-on-international-human-rights-law-in-times-of-crisis/>) on ‘The Place of International Human Rights Law in Times of Crisis’.

Earthquakes, floods, hurricanes, volcanic eruptions and landslides are all natural phenomena that have occurred throughout the history of humankind. This blog reflects on the ensuing crisis in human life, infrastructure, economic stability and ongoing development projects when such events occur. The limited capacity of a State to prepare, respond and rebuild afterwards is what will often turn these events into ‘disasters’ and crisis situations. Thus, disaster is the consequence of a combination of factors: disaster risk arises when hazards (such as earthquakes, floods, hurricanes, volcanic eruptions and landslides) interact with pre-existing physical, social, economic and environmental vulnerabilities. The ‘elements at risk’ may, therefore, refer to exposure of people, buildings, businesses, and infrastructure. This post shows how and why human rights law is an invaluable asset to States and organisations hoping to reduce the risk of disasters. Critically, it analyses methods available to incorporate human rights law into disaster prevention and reduction strategies.

International Disaster Risk Reduction (DRR) Frameworks

Over the past two decades, as the international disaster management agenda has been developed and refined, firstly in Yokohama ([Yokohama Strategy and Plan of Action for a Safer World: guidelines for natural disaster prevention, preparedness and mitigation 1994](http://www.unisdr.org/files/8241_doc6841contenido1.pdf)) and then in Hyogo ([Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters](http://www.unisdr.org/we/inform/publications/1037)), the human rights



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agenda has also undergone a significant shift. Human rights principles are firmly entrenched in the international legal order through the proliferation of human rights courts and institutions. The international community has agreed oversight of State failure to protect (World Summit Outcome Document 2005), meaning that State achievements and failures are not beyond scrutiny, even- or especially- in times of emergency. On 18 March 2015, at the Third UN World Conference in Sendai, Japan, the international community adopted a non-binding resolution to reduce the risk of disasters entitled the Sendai Framework for Disaster Risk Reduction 2015-2030

(http://www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf).

The key targets, priorities for action and the guiding principles contained within, speak to a world in which the reduction of risk of disasters would be a critical step forward in the implementation of disaster management. If States and international organisations, such as the UN and International Federation of the Red Cross (IFRC), can reduce the risks posed by natural phenomena and man-made threats, or even prevent the loss of life and critical infrastructure, then all the better for the populations affected.

Human Rights Law and DRR

Human rights law has the potential to support existing efforts, by States, the UN and the IFRC, to prevent and reduce disaster risk. The guiding principles contained in the Sendai Framework state that:

Managing the risk of disasters is aimed at protecting persons and their property, health, livelihoods and productive assets, as well as cultural and environmental assets, *while promoting and protecting all human rights, including the right to development.*

This statement has stimulated significant debate (<https://www.unisdr.org/we/inform/publications/49949>) as to the utility of a human rights-based approach to disaster risk reduction. Of course, human rights apply in disaster situations and in the aftermath of disasters, but, is there more that can be done through the implementation and dissemination of human rights law for the prevention and reduction of disasters in a more systematic way? There are critical issues in human rights when considering disaster management and reduction: non-discrimination, equality, right to liberty, legal protection, security, access to health services, shelter and housing, clean water, education, and, perhaps, compensation. Every individual has the right to protection and assistance in times of emergencies, the right to development, and equal access to healthcare and education. For the most part, questions about human rights come after ‘disasters’, as people ask, didn’t the victims have a right to life (see ECHR Budayeva and others v Russia, No 15339/02, 29 September 2008 ([ECHR Öneriyildiz v Turkey, No 48939/99, 30 November 2004 \(](http://hudoc.echr.coe.int/eng#{)

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Accusations are made that the State put lives at risk ([ECHR Kolyadenko and others v Russia, No 17423/05, 28 February 2012 \(http://hudoc.echr.coe.int/eng#{"fulltext":](#)

[\["Kolyadenko"\]."documentcollectionid2":](#)

[\["GRANDCHAMBER","CHAMBER"\]."itemid":\["001-109283"\]}}\)\)](#) and

failed to prevent flooding that caused damage to homes ([ECHR Hadzhiyska v Bulgaria, No 20701/09, 15 May 2012 \(http://hudoc.echr.coe.int/eng#{"fulltext":\["Hadzhiyska"\],"itemid":\["001-111208"\]}}](#)) (inadmissible)). Many of the issues are innately practical,

such as: Is the temporary accommodation adequate? Will it be adequate in six months' time? Where is the emergency health care? Why aren't aid agencies getting across the border? Why wasn't an Early Warning System in place? In essence, all of these questions are asking, didn't the government have an obligation to protect its people?

The language of the Sendai Framework was welcomed by [experts \(http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15733\)](#) calling for a strong human rights based approach to

disasters. The references to prevention and reduction were likewise taken seriously by the attendees and drafters of the Sendai Framework, but to be useful, human rights law must be incorporated into disaster prevention and reduction strategies. Proper willingness by States to respect human rights, at all times, is critical to the utility of human rights law as a prevention tool. Significantly, the risk of a hazard becoming a disaster is something that can be planned for. Whether it is the risk of a tsunami, earthquake, nuclear power plant leak, or a flood, the State can prepare for the eventuality, even if, obviously, it cannot be prevented. Human rights law must be included at this stage. If there is potential for a landslide, does the State have a plan to evacuate to protect life? Does the state have a plan to temporarily or permanently rehouse people? Is there a plan to care for the injured or to protect against trafficking and kidnapping of children? What about strategies to prevent rape and other forms of [sexual abuse that have been reported in large scale housing \(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236656/women-girls-disasters.pdf\)](#) during disaster? Used to its full potential, human rights law will protect life, limit damage, and, potentially, embed resilience in communities likely to suffer.

By way of example, when the earthquake in the Indian Ocean in 2004 triggered a tsunami that swept ashore Thailand, the world looked on as people, homes, businesses, stability and development were ruined. After the initial outpouring of donations and the rapid deployment of aid, questions were asked. For international lawyers, human rights lawyers in particular, questions were raised not only about abuses as a consequence of the Tsunami but also whether they could have been prevented. Importantly, environmental law might also have a role here as risks become more likely, more planning should have been undertaken, in line with the precautionary principle.

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Methods to Incorporate Human Rights Law into Prevention and Reduction Strategies

I would like to propose three methods to incorporate human rights law into disaster risk reduction strategies, particularly prevention. Firstly, the legal parameters of human rights in disaster situations vary, which is a situation that needs remedying. The predictable ‘state of emergency’, often cited as a reason to derogate from civil and political rights obligations, is avertable with proper planning, adequate allocation of resources and action plans for vulnerable groups (using human rights law instruments). Human rights can, for example, mandate participation and equality. Human rights law contains within it key information about specific capabilities, vulnerabilities and resilience of vulnerable groups. The law itself can therefore be utilised to take risk informed decisions. It can also guide questions of accountability, should abuses occur.

Secondly, the Sendai Framework mandates that States have the primary responsibility for prevention but they share it with other stakeholders. States must therefore work together with the international community, including States and organisations, such as the UN and IFRC, to prevent human rights abuses occurring.

Finally, human rights must be given effect in practical terms. When States decide upon the allocation of resources for disasters, make assessments as to the risks, or create early warning systems, all of which are preventative tools, they can embed human rights in the process and mechanisms for implementation. For example, respect for women, disabled people, children, and the elderly, means that these groups should be consulted at the planning stages. Human rights should be built into education programmes in schools on disasters. Human rights can be used, rather pragmatically, as a language to teach children and communities about their rights and as a means to build capacity of that community to ask for water, food, shelter and that their needs are met. From the bottom-up, therefore, human rights law can enable citizens to be empowered to ensure that their rights are provided for, before a disaster. From the top down, international organisations should utilise human rights law to remind States of their obligations, to embed school programmes on disasters, to equip hospitals, and to make agreements with the UN/IFRC should a disaster strike. What must be remembered is that all of these practical steps need to take place before a disaster occurs to ensure appropriate response strategies are put into place.

As a final word, the implementation of human rights into disaster risk reduction and prevention policies is a logical step on the path to proper protection and assistance for those likely to be affected by disasters. Legislation, codes of practice, and international law, can only go so far at times of intense vulnerability and so, by embedding human rights from the beginning, people and States are forced to plan to ensure that they remain respected at all times.

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