# The International Human Rights Framework and Disasters

*Dr. Deepa Kansra*[1]

## Content

## I. Introduction

One notable development within the international human rights treaty framework has been the recognition of standards and principles applicable to natural disasters. Through the works of human rights treaty bodies, specific rights and obligations have been interpreted within existing human rights conventions. The same clearly indicating that human rights law is inclusive of an approach to dealing with natural disasters. At the same time, one can also view the expanding regional and domestic jurisprudence on the subject. Quoting the regional ECHR; *to prevent disaster is a human rights question*.

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[1] Dr. Deepa Kansra is Assistant Professor at the Human Rights Studies Programme, School of International Studies, Jawaharlal Nehru University, India.

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More so, specific human rights have been designed in the context of disasters. [ See Venier]

Several shifts in approaches to disasters have been adopted over the years [1980's, 90's]. The shift particularly moving from the *reactive* approach to a *preventive* one [the Disaster Risk Reduction- DRR, policy framework aims at *preventing* new and *reducing* existing disaster risk]. The shift also incorporating new models of *disaster governance*. [ Yokohama Strategy and Plan of Action for a Safer World [1994] statement, *disaster prevention and preparedness should be considered integral aspects of development policy and planning at national, regional, bilateral, multilateral levels for reduction of disaster…and relief needs…*].

The normative standards applicable to disaster situations are scattered and placed in different instruments of both binding and non- binding nature. However there are evident convergences and agreements across domestic, international and regional systems.

## II.     The International Human Rights Framework

The international human rights treaty framework includes the core treaties that define the normative field of human rights including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Child, the Convention on the Elimination of All forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment , the Convention on the Rights of Persons with Disabilities, the Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Protection of the Rights of All Migrant Workers and Members of the Their Families.

The treaty bodies created for monitoring and implementation of the above include the Human Rights Committee [ICCPR], the Committee on Economic, Social and Cultural Rights [ICESCR], the Committee on the Elimination of Racial Discrimination [ICERD], the Committee on the Elimination of Discrimination Against Women [CEDAW], the Committee Against Torture [CAT], the Committee on the Rights of the Child CRC, Committee on Migrant Workers [CMW], the Committee on the Rights

of Persons with Disabilities [CRPD], the Committee on Enforced Disappearances [CED].

Although the international human rights treaty framework does not specifically have a disaster risk reduction framework, the same has been included with time. The following works & events are worth considering;

1. General Comments and Concluding Observations of of human rights treaty bodies.
2. The overlapping and norm sharing between DRR and the International Human Rights Framework.
3. The International Law Commission Draft Articles on Protection of Persons in the Event of Disasters [2016]. The same referring to the human rights based approach, the application of human rights principles and state responsibilities in context of disasters. [See Articles]
4. The World Conference on Disaster Reduction [2005]
5. New Sendai Framework [upto 2030]- [directly deals with the human rights approach to disasters].

### III.    Treaty Bodies

The development of a system of disaster governance within the human rights framework has been a notable expansion of the framework. In 2017, the Human Rights Council encouraged treaty bodies to assist states in dealing with disaster management. Treaty bodies through general comments and concluding observations have addressed the following within human rights treaties;

a. *State responsibility* in the area of disaster management and related rights.
b. *Establishing rights* based on special needs and vulnerabilities. [Committee under CEDAW, CRC, CERD, CRPD].
c. Affirming that *all laws and policies* must be read in accordance with principles of non-discrimination, participation, access to justice, relief and rehabilitation etc. [Concluding Observations on several reports of 2015, 2016, 2017).
d. *Redressal of violations* arising out of natural or human made disasters. [Committee under ICESCR – prevention of access to humanitarian assistance and food in cases of emergency situation is a violation of right to food].
e. *Converging and engaging* with other international, regional and national normative frameworks on disaster management. [International Humanitarian Law etc.]

On the specific human rights in context of disasters, the Committee under the Disabilities Convention referred to special needs and vulnerabilities of *disabled persons*. The CEDAW Committee [2016] referred to *gender related* dimensions of disaster reduction- management, and the Committee under CRC referred to rights, needs and *vulnerabilities of children*. A few of the rights recognized by treaty bodies are;

-   Right to life
-   Right to equality [HRC]
-   Right to family
-   Right to property
-   Right to compensation
-   Right to security
-   Rights in resources – building resilience
-   Right to access water, food and aid [ICESCR]
-   Right to information [also recognized under the Sphere Project, an international initiative that provides minimum standards for health services in disaster response. It recommends that states "provide information on the major endemic health problems, major health risks, … and behaviors that protect and promote good health." Also, right to be informed- preventive and post-disaster [ECHR jurisprudence]
-   Right to humanitarian assistance

## IV.    International Law Commission [ILC]

The ILC has been facilitating a constructive dialogue on significant areas of disaster management, human rights standards and international cooperation. The following are some important reports of the ILC.

a. Protection of Persons in the Event of Disasters – Document A/CN.4/615- Second Report of Special Rapporteur – 2009- discussed most relevant legal issues- definition of disaster- classification of disasters- concept of protection of persons- concept of solidarity between states and human beings- *solidarity* as a international legal principle- *duty to cooperate*. The report also emphasised on the *rights based approach* to disaster management and prevention.

b. Protection of Persons in the Event of Disasters- 2010 report- emphasised on the principles of *humanity, neutrality, impartiality*- regarded as important principles by state and non-state entities. It discussed the *primary responsibility* of the affected state towards assistance and basic needs of the people. [principle of sovereignty].

c.  Protection of Persons in the Event of Disasters- 2011- state responsibility to not arbitrarily withhold its consent to external assistance- and right to offer assistance in the international platform.

d.  Protection of Persons in the Event of Disasters- 2013- national law- prevention- mitigation and preparedness.

## V.     Points for further discussion

The literature on the subject has grown rapidly over the years. Several developments outside the international human rights treaty framework have strengthened and reinforced the application of human rights standards and principles to DRR. The following are few other points which directly or indirectly influence the human rights dimensions of disaster management and prevention;

a.  *Regional Jurisprudence* on the subject- indicating the region centric developments in human rights law on disaster management. E.g. the European court jurisprudence includes that the state is in violation of rights for failing to take DRR measures. Another notable contribution by the regional court has been the use of legal remedies to hold governments accountable with case law indicating the imposition of liability of criminal negligence on officers failing their duties. [see examples discussed]

b.  *Domestic jurisprudence*- indicating a society and peoples centric approach- involvement of local institutions, allocation of economic and non-economic responsibilities, laws and institutional remedies [e.g.

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use of Public Interest Litigation in India- Supreme Court guidelines on Drought/Disaster Management].

c.  The use of *traditional knowledge systems* – rain water harvesting, ground water technology etc.[looking at developments under the Convention on Bio-diversity].

d.  *Public-private partnerships* – Sustainable Development Goals emphasize on the role of partnerships. [e.g. to make use of cost effective catastrophe bonds, stockpile flood relief, technology building, communications systems etc. ] .

e.  *Civil society interventions* – legitimacy- conflict with state authority and other regulatory actors- duties and rights of non-state actors.

f.  The *international standards* on humanitarian assistance, rights and duties of individual states towards cooperation and mutual sharing with other states and agencies, and incorporating parameters for *disaster vulnerable regions* and *populations* across the world.

[ See Economic and Social Commission for Asia and the Pacific –Committee on DRR Report [2017]. From the report, *as the Asia- Pacific region experiences rapid economic growth, disaster risk is outpacing resilience…Dealing with shared risks and vulnerabilities among countries in the region requires synchronization of policy actions and strengthened regional cooperation.* ]

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