The rights of internally displaced persons in connection with natural hazard-related disasters

Vikram Kolmannskog

INTRODUCTION

There is an increasing understanding of the importance of climate change as a risk multiplier (IPCC, 2012), also in the context of human mobility. It is recognised that people move for a complex set of reasons. The majority of displaced persons remain within their country of origin (IASC, 2008a; IDMC, 2012). This chapter addresses internal displacement and rights in the context of climate change and natural hazard-related disasters. Using secondary sources such as UN reports, media reports and research papers, it draws upon some experiences relating to the 26 December 2004 tsunami and Hurricane Katrina in August 2005. The tsunami affected several Asian countries; approximately 1,7 million people were displaced in India, Sri Lanka and Indonesia alone (Inderfurth et al., 2005). Katrina hit New Orleans and the Missisippi Gulf Coast region where estimates of displaced people ranged from 600 000 to one million (Lewis, 2009).

Developing countries are particularly vulnerable to climate change and disasters and have high social and economic losses (O'Brien et al., 2012). The example of Katrina illustrates that also developed countries are vulnerable, and degrees of vulnerability vary among people within a country. Furthermore, a premise behind the references to these two

disasters is that the experiences, needs and rights are similar both in climate-related disasters (hurricane) and non-climate-related disasters (tsunami).

The chapter begins by presenting the 1998 Guiding Principles on Internal Displacement, the rights framework for all internally displaced persons. It considers what major issues arose in the context of the tsunami and Katrina and how they were framed as human rights concepts such as non-discrimination, participation and durable solutions to displacement. It then highlights some later, international developments. Finally, the chapter concludes with a short consideration of how rights can be further promoted.

INTERNALLY DISPLACED PERSONS AND RIGHTS

Several rights and systems of law, in particular human rights, have been identified as relevant for internally displaced persons (IDPs). Rather than creating a separate convention, the 1998 UN Guiding Principles on Internal Displacement (UN Doc. E/CN.4/1998/53/Add.2; hereafter: Guiding Principles or GP) is a synthesis of such law, specified and applied to the context of IDPs. The Guiding Principles cover three different phases of internal displacement: protection against displacement, protection during displacement, and durable solutions to displacement. Included are elements from the 1966 International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (IESCR).

Strictly speaking, the principles are so-called "soft law" and not legally binding. One can, however, refer to the "hard law" behind them, such as rights in the International Covenants (Kälin, 2001), and the Guiding Principles have been recognized in several UN General Assembly Resolutions, including at the World Summit in 2005 (G.A. Res. 60/L.1, §132, U.N. Doc. A/60/L.1). There are also several examples of national and regional IDP legislation and policy inspired by the Guiding Principles, such as the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.

A major challenge for IDPs is that states, which have the primary responsibility for people on their territory, are sometimes unwilling or unable to protect them, and in some cases even deny them international assistance by referring to the principle of national sovereignty and non-interference. The introduction to the Guiding Principles clarifies that the principles presented aim to guide non-state actors, including NGOs, as well as states. Where states are not willing or able to protect, the role of the non-state actors becomes crucial both in advocacy and providing actual protection on the ground.

"Internally displaced persons" according to the broad and descriptive definition in the Guiding Principles are:

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights

or natural or human-made disasters, and who have not crossed an internationally

recognized State border.

<div align="right">(GP, Introduction: Scope and Purpose, 2)</div>

When the Guiding Principles were drafted some argued that only persons fleeing

persecution and violence should be included, but the majority favoured the broader

definition, that also included people fleeing due to disasters (Cohen, 2009). Still, many

states, UN agencies, NGOs and academics have continued to neglect people displaced by

disasters. Protection in natural hazard-related disasters is still poorly understood, especially

by state agencies (Albuja and Cavelier, 2009), and an approach that treats people as objects

of state care rather than with dignity is still prevalent (Kälin, 2009). The UN leadership role

is decided upon by the UN High Commisioner for Refugees (UNHCR), the Office of the

High Commissioner of Human Rights (OHCHR) and UNICEF, on a case-by-case basis, an

arrangement that does not provide necessary predictability or rapidity of response.

Furthermore, many organisations provide support to target groups identified in their own

mandates and have historically focused on conflict IDPs (Birkeland, 2003; Kolmannskog,

2008). In Aceh, Indonesia, the government preferred labelling those uprooted by the

tsunami as "homeless", while the US government described those displaced by Katrina as

"refugees", "evacuees" and "disaster victims"; IDPs in their view were people displaced by

conflict elsewhere (Cohen, 2009). In the following, some particular issues that arose during

the two disasters are discussed and framed in rights language.

AN OPPORTUNITY FOR (NON-)DISCRIMINATION

From a sociological point of view, de Sousa Santos (2002: 487) speaks of citizenship as the "sum total of rights effectively exercised" and a matter of degree. He argues that "super-citizens" have the right connections and cash resources to be on top. The remainder of citizens make up what he calls "the strange civil society" which comprise second, third and fourth class citizens. Many IDPs find themselves somewhere in this latter group, and within the group of IDPs some are less citizens than others in this sociological sense. At the same time, non-discrimination (and equality) is a paramount principle in human rights (GP 4, GP 22, ICCPR arts. 2(1) and 26, IESCR art. 2(2)) and modern law and justice in general (Eng, 2007: 186).

The three states where Katrina had the most impact were among the poorest in the United States with more than one out of six living in poverty prior to the hurricane (Liu et al, 2011). The majority of the poor were Afro-Americans. While Afro-Americans constitute approximately 12 percent of the US population, they make up some 50 percent of the homeless population (Human Rights Committee, 2006: para 22). Due to entrenched and historic racism and classism, Katrina had a disproportionately negative impact on poor Afro-Americans (Lewis, 2009).

Evacuation is among the first possible disaster response measures. In connection with Katrina, rescue and evacuation plans were based on the assumption that people would use their private vehicles (Edwards, 2006; Human Rights Committee, 2006: para 26; Kälin,

2009). This was not discriminatory on the face, but since everyone knows that poverty is more rampant in the Afro-American communities, the latter were in effect discriminated against (Edwards, 2006). Many poor Afro-Americans did not have their own big American car that they could drive away in. The state's duty to protect people entails an obligation to help *all* people move from zones where they face a danger (see for example the European Court of Human Rights, 2008). Effective non-discrimination may require that distinctions are made to take into account special protection needs. The Human Rights Committee (2006) was concerned about reports that the poor, and in particular Afro-Americans, were disadvantaged during Katrina. The non-existence of an adequate evacuation plan could also contribute to a breach of right to life (Edwards, 2006: 378). When prisoners were left in flooding jails, the basic rights to life and the ban on torture and inhuman treatment were also compromised (Lewis, 2009: 241).

In Sri Lanka, evacuation and relocation after the tsunami resulted in discrimination of another kind. "Buffer zones" were established along the coast in a discriminatory manner allowing construction of tourism facilities while local residents were not allowed to return and reconstruct their homes (Fletcher et al., 2005; Kälin, 2009). Both the tsunami and Katrina show how issues of discrimination can arise in the context of disasters and how they can be framed in human rights language such as the principle of non-discrimination.

During displacement, pre-existing patterns of discrimination are often exacerbated (Fletcher et al., 2005; IASC, 2008b). The tsunami resulted in much international aid, both in terms of money and NGO engagement. In India, Dalits ("the oppressed"; official term "scheduled

castes") were discriminated against in the distribution of aid (Asian Human Rights Commission, 2005). In Sri Lanka, aid and reconstruction was focused on the Sinhalese-dominated South, neglecting the equally hard hit, Tamil-dominated East (Fletcher et al, 2005: 63). Aid was sometimes distributed first to men with the unfounded assumption that males would then automatically provide it to women and children (Fletcher et al, 2005). In Thailand, Burmese migrant workers were excluded from relief efforts and many were deported back to Burma (Asian Human Rights Commission, 2005). According to General Comment 3 (1990) by the UN Committee on Economic, Social, and Cultural Rights, even developing countries with limited "available resources" are under an immediate obligation to distribute the domestic and international aid available to them in an even-handed manner and to protect survivors from discrimination by others.

After Katrina poor Afro-Americans were portrayed as "looting" food and other materials by the media while whites as having "found" food (Edwards, 2006: 374). When the government issued "shoot on sight" orders, Afro-Americans may have been particularly targeted (Ibid.). Latinos and other immigrants who did not have formal U.S. citizenship status were once again reminded that they could not even depend on basic rights to food, water, a living wage, housing, and health care (Lewis, 2009). Mississippi Governor Haley Barbour, repeatedly sought, and obtained, waivers from the Department of Housing and Urban Development (HUD) allowing the state to spend federal funds that would normally be reserved for low- to moderate-income residents on other projects (Maloy, 2007). Therefore, it can be argued that the relief and recovery efforts did not reach all people equally. The Human Rights Committee (2006: para 26) has highlighted the importance of

ensuring that the rights of the poor, in particular Afro-Americans, are fully taken into consideration in the recovery and reconstruction plans.

WHO GETS TO PARTICIPATE AND WHO IS PUSHED AROUND?

It is often those most vulnerable to hazards that are left out of decision-making processes. Within households women and children may be ignored; within communities or within nations marginalised groups may not be heard, and social division and political power influence the agenda. Yet, participation is a key element in dignity (Kant, 1785/1993), human rights and modern law in general. IDPs have a right to be informed, consulted and to participate in decisions affecting them (GP 7(3)c and d, GP 18(3) and GP 28(2)).

As evidenced during the tsunami as well as other disasters, limited-term response and reconstruction budgets, and an understandable desire for rapid action meant that central governments and international organisations imposed their own values and visions (O'Brien et al, 2012; Fletcher et al., 2005). A common post-tsunami complaint was that IDPs, who knew the geography, the flood plains and other important features, had not been consulted about where they thought appropriate land for relocation could be found.

Consultation and participation can also promote learning, a key component for living with uncertainty and disasters (O'Brien et al., 2012). In sociology of law and legal theory, "reflexive legal rationality" is seen as a modern development that combines forms of material regulation with procedural regulation and thereby accommodates the complex and

constantly changing processes that are to be regulated (Sand, 2008). Participation and involving key actors are characteristics of reflexive legal rationality. Reflexive arrangements are particularly useful in dealing with climate change and disasters as they are highly complex phenomena.

While participation is important, we should not romanticise local actors and their views, which may be maladaptive (O'Brien et al., 2012). At the same time, there is a real risk that states and other non-local actors use climate change and disasters as a pretext while in reality they have other motives for relocating certain groups from certain areas; the "buffer zones" in Sri Lanka where land was cleared of people to accommodate commercial and tourist industry, provide one example of this (see also Barnett and Webber, 2009).

Freedom of movement (ICCPR art 12) includes the right to remain at the place of habitual residence. Based on this right and other law, the Guiding Principles expressly state a right not to be arbitrarily displaced (GP 6). In the context of climate change and disasters, forced movement is considered legitimate only if it is required by the safety and health of those affected (GP 6(2)d; see also Human Rights Council, 2012: para 4h). The evacuation or relocation must be a measure of last resort; all feasible alternatives must have been explored in order to avoid displacement altogether (GP 7(1); see also Barnett and Webber, 2009; Human Rights Council, 2012: para 4h). This means that authorities must make real efforts to implement other adaptation measures to make the areas safe enough so people can choose to stay. Involuntary relocation and resettlement rarely leads to improvements in the quality of life of those who are moved, so moving communities in anticipation of climate

change and disasters may precipitate vulnerability more than it avoids it (Barnett and Webber, 2009).

While consultation and participation may be difficult during the emergency phase of a disaster, it is particularly important, with regard to return, resettlement and recovery (GP 28(2); See also Human Rights Council, 2012: para 4g). The tsunami experience showed that IDPs are often isolated in camps or otherwise ignored, while government officials in distant towns and cities formulate and implement programs, sometimes in favour of special interests (Fletcher et al., 2005). There were similar issues after Katrina, and the Committee on the Elimination of Racial Discrimination eventually recommended "that every effort is made to ensure genuine consultation and participation of persons displaced […] in the design and implementation of all decisions affecting them" (2008: para 31).

CREATING A NEW HOME

On the basis of freedom of movement, Guiding Principle 28 spells out three durable solutions. IDPs have the right to choose between returning to the place of origin, local integration in the place of displacement, and resettlement in another part of the country. The affected should receive compensation for property and land lost as well as assistance in resettling and re-establishing their livelihoods and residence (GP 28 and 29).

Many people have not been able to return home even years after Katrina. Sufficient affordable housing is still not available. In fact, New Orleans still has the second highest rate of homelessness in the United States (Bradley, 2012).

During the tsunami some villages became part of the sea (Fletcher et al., 2005: 40). For conflict displaced people, returning to the place of origin remains an option, but in some disaster situations people simply cannot return. As in the case of initial evacuation or relocation, it can only be for the safety and health of those affected that a state prohibits return to an area (GP 6(2)d).

As a corollary to Guiding Principle 28, Guiding Principle 15 d stipulates the right of IDPs to be protected against forcible return or resettlement to places where their life, safety, liberty or health would be at risk. In human rights law, there is a ban on sending a person, independent of conduct or status, to places where they risk certain rights violations, in particular torture and inhuman or degrading treatment (see for example the landmark case European Court of Human Rights, 1989). In connection with the "buffer zones", fishing communities were moved inland and given no retraining or resources to survive there (Kälin, 2009). One could question whether this is inhuman treatment and therefore illegal. It is also possible that some Thai deportations of Burmese migrants back to Burma may have been in violation of the ban.

Experience indicates that there is not sufficient focus on the creation of livelihood opportunities and the provision of basic services such as water, sanitation, education, and

health at the relocation and resettlement sites (EACH-FOR, 2008; Kälin, 2009; O'Brien et al., 2012). After the tsunami, fishing communities that were moved in-land regularly ended up destitute since no adequate livelihood alternatives were available or made available. On the American Gulf Coast, the absence of jobs for those with skills that were not suited to the rising casino industry, such as the shrimpers, have had little assistance from the federal government (Williams and Bennett, 2008). A successful example of integration and livelihood support is that of Houston, USA, where city authorities took active measures to integrate displaced people into the local labour market by providing them with the necessary information and individual counselling (Kälin, 2009). Where people are unable to return to previous sources of livelihood, appropriate measures including provision of re-training opportunities should be taken (IASC, 2008b: C 4.2).

According to the previous Representative of the UN Secretary General on the Human Rights of IDPs, problems relating to housing, property, and livelihoods in most cases result from an inadequate legal and budgetary framework, and the fact that the affected often come from marginalised sections of society that continue to be marginalised (Kälin, 2009).

RECOGNITION OF IDPs, (UN)NATURAL DISASTERS AND RIGHTS

Climate change represents a system-scale transformation that will have widespread consequences. Responses to climate change and changes in disaster risk can in turn be both incremental and transformational (O'Brien et al., 2012). "Transformational responses are not always radical or monumental – sometimes they simply involve a questioning of

assumptions or viewing a problem from a new perspective" (O'Brien et al., 2012: 466). A transformation may be that we start seeing disasters not merely as natural, but that we see how human rights (violations) play a role in vulnerability and that human rights can be a framework for addressing displacement as well as disaster risk reduction, response, and recovery more generally. Rights may be violated in natural disaster situations not because of conscious intention but because of a lack of rights-based planning (IASC, 2008b).

Case studies of social-ecological systems suggest that there are three phases involved in systems transformations, including navigating the transition by making use of a sudden crisis as an opportunity for change, whether the crisis is real or perceived (O'Brien et al., 2012). The tsunami and Katrina were two such crises. Although the contexts were very different, this chapter has shown how major human rights principles such as non-discrimination and participation were seen as relevant in a developed, Western country and developing, Asian countries. De Sousa Santos (2002) argues that,

> once cross-culturally reconstructed, human rights are one of the most powerful factors
> in bringing about the unthinking of modern law and politics, thereby generating the
> emancipatory energies necessary to face the challenges of the new times ahead.
>
> (282)

The Sri Lankan National Human Rights Commission took up hundreds if not thousands of cases of persons with human rights problems (Cohen, 2009), and in the aftermath of the tsunami there was increased international recognition of the importance of a human rights

approach in dealing with those affected by disasters (Cohen, 2009). After visiting the region, Walter Kälin, Representative of the UN Secretary-General on the Human Rights of IDPs at the time, concluded that displaced people share many common types of vulnerability regardless of the reasons for their displacement and that "it is no less important in the context of natural disasters than it is in cases of displacement by conflict to examine and address situations of displacement through a 'protection lens'" (Cohen, 2009: 58). Kälin added disaster IDPs to the concerns of his mandate. The Human Rights Committee (2006) also stressed the need to review relevant,

> practices and policies to ensure the full implementation of [the] obligation to protect life and of the prohibition of discrimination, whether direct or indirect, as well as of the United Nations Guiding Principles on Internal Displacement, in matters related to disaster prevention and preparedness, emergency assistance and relief measures.
>
> (para 26)

The tsunami also triggered the development of the Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster (IASC, 2008b). The Human Rights Council (2012: para 4 g) seems to acknowledge them as a soft law instrument along with the Guiding Principles.

In 2006 the International Law Commission included the topic "Protection of persons in the event of disasters" in its programme of work (ILC, 2012). Since then, they have drafted

articles stressing the application of non-discrimination and human rights more generally in natural hazard-related disasters.

Katrina was also seen as a human rights crisis. Among the goals of the organisers of the "International Tribunal on Hurricanes Katrina and Rita" was to expose to the world the human rights abuses committed by the US government, and to attain national and international recognition as IDPs (Lewis, 2009). Shadow reports to, for example, the UN Committee on the Elimination of Racial Discrimination resulted in official reactions from Committee. Several reforms have followed the disaster in the areas of evacuation planning, schooling, health, government ethics and accountability, and broad participation in public meetings and processes as well as grassroots organization (Liu et al., 2011). Seven years later, when Hurricane Isaac arrived on the same day as Katrina had, New Orleans was better prepared (Bradley, 2012).

Increased focus on climate change has also lead to important international developments in this field. The OHCHR has clarified that climate change and disasters potentially impinge upon the enjoyment of the full range of internationally protected human rights, including the right to not be arbitrarily displaced (OHCHR, 2009). A special report from the Intergovernmental Panel on Climate Change (IPCC, 2012) describes how a changing climate is influencing natural hazards such as storms, floods and droughts in terms of frequency, severity, timing and/or spatial distribution. Hazards combined with human vulnerability can result in disasters (ISDR, 2004). The concept of social-ecological systems recognizes the interdependence of social and ecological factors (O'Brien et al., 2012). The

social or "human" factor is highly relevant in what has been called "natural disasters": First, human-made climate change can influence the hazard side. Second, human factors, including human rights realisation or violation, influence vulnerability.

In 2009 the Internal Displacement Monitoring Centre, which up until then had focused on conflict displacement, started monitoring displacement due to natural hazard-induced disasters. According to the center, millions of people are forced to flee every year due to sudden-onset disasters such as floods and storms (IDMC, 2012). At the Nansen Conference on Climate Change and Displacement in the 21st Century, held in Oslo June 2011, the participants emphasized that "[r]esponses to climate and environmentally-related displacement need to be […] guided by the fundamental principles of humanity, human dignity, human rights and international cooperation" (Wahlström, 2011: 5).

To dispel all doubt, the UN, nation states and NGOs have clarified that the IDP definition covers all climate change-related and disaster-related displacement occurring within a country (IASC, 2008a; Beyani, 2011; Wahlström, 2011). In its 2011 resolution on IDPs (A/C.3/66/L.45/Rev.1) the General Assembly included climate change and disaster displacement and encouraged the Special Rapporteur, in close collaboration with states, IGOs and NGOs, to continue to explore the human rights implications and dimensions in order to support states to build local resilience and capacity for prevention and protection.

HUMANISATION AND BEYOND

This chapter has explored internal displacement and rights in the context of climate change and natural hazard-related disasters through experiences from the tsunami and Hurricane Katrina and later developments. States and other actors should now take a rights-based and inclusive approach to IDPs. This would be a transformative approach to disasters and displacement. Adopting a human rights framework will help actors identify the most vulnerable and deliver assistance in a manner that decreases vulnerabilities or at least does not increase them. Moreover, human rights activism is one tool among other social justice efforts. As argued by Lewis (2009: 204) in the context of Katrina, the human rights approach has the advantage that it is "…broad enough to take in the amazing variety of complex abuses that occurred, as well as to set them in global context."

A recurrent theme in this chapter is that disasters can highlight existing discrimination and marginalisation in society. Disasters can be an opportunity to address these issues. Disasters can also exacerbate these issues. A major obstacle to human rights realisation, closely related to the concept of non-discrimination and de Sousa Santos' concept of citizenship, is that while we may recognise that all humans should have certain rights, we dehumanise some people so much that they are no longer seen as humans that can claim such rights. A comment attributed to Mrs Barbara Bush regarding those housed temporarily in awful conditions in the Houston Astrodome is illustrative: "Many of the people in the arena here, you know, were underprivileged anyway so this is working very well for them" (Edwards, 2006: 395). One way of addressing this dehumanisation is through insisting on a human rights approach and storytelling that creates empathy and serves as "sentimental education" (Rorty, 1998). The stories that the IDPs from the tsunami and Katrina insisted

on telling both domestic and international audiences form an important part of this. The storytelling may help consolidate new common identities, for example the superordinate identity of human being. This in turn can change whom we consider ingroup and outgroup and our behavior towards each other (Hogg and Vaughan, 2011).

The internationalisation of the issues is important because who is viewed as human in the Human Rights Council or Committee on Elimination of Racial Discrimination is hopefully different from that in the US White House or Colombo at the time; sometimes distance works well. While the international human rights system has weak enforcement mechanisms, a significant source of pressure has been naming, shaming, and the public outrage and "interest convergence" resulting from an "embarrassment effect" (Lewis, 2009: 237).

Considering the universal obligations of human dignity and that climate change is a global process, the international community also has a responsibility to support and strengthen different states' ability to provide protection. Paragraph 14(f) of the Cancun Agreements now invites parties to enhance adaptation by undertaking "[m]easures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels" (UNFCCC, 2011). Importantly, the reference calls for cooperation and funding for actions related to displacement. When it comes to states' (lacking) will to protect IDPs, the international community must be prepared for "political mobilization of

international human rights or [. . .] humanitarian intervention in situation of extreme, life-threatening forms of social exclusion" (de Sousa Santos, 2002: 488).

Finally, the climate change and global environmental change framing of internal displacement, along with the principle of common heritage of human kind – which is increasingly referred to in International Law – may point towards a *jus humanitatis*,

> a law of and for humanity as a whole, the law of a decent condition in a non-dualist, but rather mutualist, interaction with nature […] Indeed, from the perspective of outer space, we are enabled to see the arbitrary borders that separate nations, and we become keenly aware of a single delicate ecological system

> (de Sousa Santos, 2002: 309).

In addition to finding and feeling and identifying with a superordinate identity, a sense of interdependence and shared goals can also help shape group dynamics and new social identities (Hogg and Vaughan, 2011). Rilke (1903/2005) writes, "I live my life in widening circles / that reach out across the world. / I may not complete this last one / but I give myself to it."

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