

**DISASTER, DISPLACEMENT AND DUTY:
THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW
TO PHILIPPINE RELIEF AND RECOVERY***

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In the aftermath of ...tragedy, the foremost task of those who come to facilitate and design the rehabilitation process is to enable the survivors to overcome in a dignified way the unthinkable loss of family and property. It is critical that a clear course of action will be undertaken to lead the survivors from being victims to becoming the claimers of their future, able to generate real and sustained change. In order to attain these goals, and enhance the process of development in a holistic manner, it necessitates the learning and dialogue of human rights in a comprehensive way.

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Introduction

Very few things in life are worse than fighting a losing proposition.

Indeed, Cervantes' Don Quixote spent much of his time tilting at windmills, thinking them to be evil giants. The wistful hero lived in an imagined world of knights, castles, and Dulcineas-in-distress. For his troubles, he got nothing more than cautionary warnings from the dutiful Sancho Panza and head wags from his fellow villagers in La Mancha. They, like most of the world, preferred to fight the winnable, if mundane, battles offered by real life.¹

In essence, this is what the struggle against the elements has come down to: countries the world over have channeled all efforts towards averting the occurrence of natural disasters. The harsh reality is that nature will always have its way² and man has little choice other than to adapt to its

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¹ MIGUEL DE CERVANTES, THE INGENIOUS HIDALGO DON QUIXOTE OF LA MANCHA, PART I (1605).

² ANTONIO OPOSA, THE LAWS OF NATURE AND OTHER STORIES 15 (2003).

effects. Of course, this is not to say that disaster risk avoidance programs are losing propositions. Far from it. However, in the quixotic quest for the “perfect defense” to calamities, many have forgotten that the issue isn't exclusively one of prevention. Once a natural disaster strikes, attention must necessarily shift to understanding the aftermath – the consequences that can be quantified in terms of human cost – and the legal tools that can be used to alleviate undesirable effects.

In the last quarter of 2009, the Philippines experienced two back-to-back typhoons that wreaked unimaginable havoc on Luzon, one of the country's three main islands. Typhoon Ondoy (international name: Ketsana), dumped over 18 inches of rainfall on Manila in just 24 hours, overtaking the 1967 record. The Chief of PAGASA said that it resulted in the “worst flooding in Philippine history”³. Barely a week later, Typhoon Pepeng (international name: Parma) struck 11 provinces in northern Luzon. There was massive flooding due to the release of water from swollen dams. The resulting landslides cut off entire cities from rescuers. Together, Typhoons Ondoy and Pepeng left 956 dead and close to 1,800,000 families adversely affected. Of that, 1,700,000 were displaced from areas submerged in floodwaters. 500,000 farmers lost 100% of their livelihood. Property damage was estimated to be in the neighborhood of P38 billion.⁴

In December 2009, the authorities had to evacuate around 50,000 villagers living within the 6-8 km danger zone around the Mayon volcano in Albay province. The volcano had been showing increased activity and was spewing lava and ash that reached a height of about 100 meters (330 feet).⁵ By December 17, the Provincial Disaster Coordinating Council had declared a state of calamity after the PHIVOLCS raised the disaster warning to critical status.⁶ To date, a large number of evacuees are still housed in temporary shelters and are forbidden from returning to their homes at the foot of Mayon.

These facts and figures are very telling. When calamities of similar magnitudes occur, the price paid is always too high and the effects are almost always long-term. When risk reduction and prevention measures fail, the real reckoning point in disaster management becomes the period of

³ Rio Rose Ribaya, *Ondoy's Flood Worst in History – Pagasa*, MANILA BULLETIN [internet], Sep. 27, 2009, available at <http://www.mb.com.ph/node/222277/ondoy>.

⁴ National Disaster Coordination Council, *Situation Report No. 51*, Nov. 20, 2009.

⁵ Sophie Tedmanson, *Thousands Evacuated as Mayon Volcano Threatens Villages*, Times Online UK, Dec. 16, 2009, available at <http://www.timesonline.co.uk/tol/news/world/asia/article6956999.ece>.

⁶ National Disaster Coordinating Council, *Situation Report No. 23 Re: Mayon Volcano*, Jan. 4, 2010.

relief and recovery, wherein displaced communities are often the victims of human rights violations. Unfortunately, post-disaster abuses are all too quickly written off as the natural consequences of unnatural events. The aftershocks of an earthquake, the torrential rains of a typhoon, the ash fall following an eruption – these events are convenient scapegoats for the denial of various entitlements that are entrenched in international human rights [hereinafter IHR] law.

IHR law is defined as “universal legal guarantees protecting humans and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity.”⁷ The far-reaching scope of IHR is emphasized by the fact that a State is bound to respect, protect and fulfill these rights at all times, even during an armed conflict.⁸ In the case of natural disasters, certain rights – the right to life, the right to an adequate standard of living, and the right to humanitarian assistance – will be prominent concerns. Developing countries make interesting case studies in this regard because they usually experience a wide gap between the law and its implementation. In places like the Philippines, it is often alleged that existing legal safeguards are rendered nugatory in times of public emergencies when the primary, and often only, concern is survival. The confluence of weak government structures, lack of available resources and a burgeoning population only serve to justify this sorry state of affairs.

My theory is simple: Whenever a natural disaster occurs, and it results in displacement, there arises a duty on the part of the government to provide relief and recovery in accordance with its IHR obligations. States are under a moral imperative to view disaster situations through a protection lens. More than just saving lives, relief providers would do well to remember that the object of any such effort is to secure a certain minimum quality of life for affected communities. I assert that a human rights-based approach tempers the tragedy. Relief is made more effective by targeting the affected individual's immediate concerns. Recovery is made lasting by thinking ahead and addressing future needs.

In this paper, I will discuss the disaster-displacement-duty theory in the following manner: First, I will analyze the occurrence of natural disasters and how the body of “international disaster law” functions as a tool for risk reduction and avoidance. Second, I will look at the effects of natural

⁷ Office of the United Nations High Commissioner for Human Rights, *Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation* (2006).

⁸ *The Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] I.C.J. Rep. 225, ¶ 25.

disasters on human populations and use this as a takeoff point for laying down the groundwork for the application of international human rights (IHR) standards and principles. Finally, I will scrutinize the State's obligations to respect, protect and fulfill IHR in post-disaster situations. In particular, I will argue that attention must be refocused on the right to an adequate standard of living and the right to humanitarian assistance. A fourth right – the right to an effective remedy – will also be given due recognition.

PART I: DEALING WITH DISASTER

A. International Legal Framework for Disaster Management

Israeli political theorist Yaron Ezrahi noted that the ancient Greeks “were always worried that the gods were acting through nature. Natural disasters were seen as divine retribution and thunder was interpreted as the threatening voice of Zeus.”⁹ Ezrahi further adds that “This is the origin of the modern Western notion that nature is a realm of necessary rules and laws outside human control.”¹⁰ Nostradamus, Cassandra and street corner soapbox prophets also bore a similar message: disasters will happen and nothing can be done about it.

By way of disclaimer, I do not hesitate to say that shrouding natural disasters in mysticism is illogical and foolish. On the other hand, ignoring their *reality* and *eventuality* is even more dangerous. The truth is simply this: *the absolute avoidance and total prevention of natural disasters is unlikely.*

What is a natural disaster? In legal parlance, it is defined as “the consequences of events triggered by natural hazards that overwhelm local response capacity and seriously affect the social and economic development of the region.”¹¹ Its occurrence results in “a serious disruption of the functioning of society, which poses a significant, widespread, threat to human life, health, property or the environment, whether arising from accident, nature or human activity, whether developing suddenly or as a result of long-term processes, excluding armed conflict.”¹² According to the

⁹ THOMAS FRIEDMAN, *HOT, FLAT AND CROWDED*, 148 (2nd ed., 2009).

¹⁰ *Id.*

¹¹ INTER-AGENCY STANDING COMMITTEE, *PROTECTING PERSONS AFFECTED BY NATURAL DISASTER: IASC OPERATIONAL GUIDELINES ON HUMAN RIGHTS AND NATURAL DISASTERS*, (2006).

¹² International Federation of the Red Cross, *Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, 11 (2008), available at <http://www.ifrc.org/what/disasters/idrl/resources/guidelines.asp>; Association of Southeast Asian Nations, *ASEAN Agreement on Disaster Management and Emergency Response*, art. i(3) (2005).

United Nations International Strategy for Disaster Reduction Secretariat (UNISDR), the degree of disruption is dependent on the confluence of three components: **hazards, exposure, and vulnerability**.¹³

A **hazard** is a potentially damaging physical event, phenomenon and/or human activity, which may cause the loss of life or injury, property damage, social and economic disruption or environmental degradation. Hazards may either be “sudden-onset” or “slow-onset”. The former refers to events that happen at a moment's notice – earthquakes, flash floods, typhoons, hurricanes, and tsunamis, among others. The latter occur over a long period of time and may be comprised of several simultaneous smaller events. Arguably, climate change is one such example.

Exposure refers to the extent that a community may experience the effects of a hazard event. Population growth, migration, urbanization and economic development affect the level of exposure. Some communities may have greater exposure than others, as in the case of those located along coastlines and flood plains. These areas are considered hazard prone because above-average rainfall or strong winds have a tendency to exacerbate natural flooding.

Vulnerability is a “a propensity or susceptibility to suffer loss and is associated with a range of physical, social, political, economic, cultural, and institutional characteristics.”¹⁴ This factor is usually tempered by “the capacity of peoples or economies to absorb loss and recover”.¹⁵

The duty of preventing or mitigating the harmful effects of natural disasters is the common burden of all States, albeit in varying degrees. The State in which the disaster event happens is, of course, primarily responsible for the welfare of its citizens. The international community's complementary responsibility is triggered when the distressed State cannot or will not address the calamity. This springs from the *jus cogens*¹⁶ principle that everyone has the inherent right to life¹⁷ and that the burden of protecting this universally recognized right falls on all States.

¹³ UNITED NATIONS STRATEGY FOR DISASTER REDUCTION SECRETARIAT (UNISDR), GLOBAL ASSESSMENT REPORT ON DISASTER RISK REDUCTION 6 (2009), available at <http://www.preventionweb.net/english/hyogo/gar/report/index.php?id=9413>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ According to Art. 53 of the Vienna Convention on the Law of Treaties, a *jus cogens* norm is “a peremptory norm that is accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law of the same character.”

¹⁷ See HENRY STEINER AND PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT 47 (2nd ed., 2000).

In order to facilitate the fulfillment of these duties, various binding and non-binding global initiatives have been formulated. These include the 1994 Yokohama Strategy for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness and Mitigation and its Plan of Action, the Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disaster [hereinafter HFA]¹⁸, the Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations¹⁹ as well as a number of United Nations General Assembly declarations.²⁰ Meanwhile, similar strategies have been adopted at the regional level by bodies such as the Association of Southeast Asian Nations (ASEAN),²¹ the European Union (EU)²² and the African Union (AU).²³

The common obligations of these instruments may be classified into five key priorities:²⁴

- I. Ensure that disaster risk reduction is a national and local priority with a strong institutional basis for implementation
- II. Identify, assess and monitor disaster risks and enhance early warning.
- III. Use knowledge, innovation and education to build a culture of safety and resilience at all levels
- IV. Reduce underlying risk factors
- V. Strengthen disaster preparedness for effective response and recovery at all levels.

¹⁸ Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters, Jan. 22, 2005, A/CONF.206/6, available at <http://www.unhcr.org/refworld/docid/42b98a704.html>

¹⁹ Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, Jun. 18, 1998, available at <http://www.unhcr.org/refworld/docid/41dec59d4.html>.

²⁰ See e.g. United Nations General Assembly, UN Doc. A/58/484/Add.5 of Feb. 27, 2004; UN Doc. A/44/236 of Dec. 22, 1989; UN Doc. A/54/219 of Dec. 22, 1999; UN Doc. A/53 185 of Dec. 15, 1998.

²¹ ASEAN Agreement on Disaster Management and Emergency Response [hereinafter AADMER]. The AADMER was adopted on Jul. 26, 2005 at the ASEAN Foreign Ministers' Meeting. It entered into force on Dec. 24, 2009 after it was ratified by all 10 members of the Association.

²² Commission of the European Communities, EU Strategy for Supporting Disaster Risk Reduction in Developing Countries, COM (2009) 84, Feb. 23, 2009, available at http://ec.europa.eu/development/policies/9interventionareas/environment_en.cfm.

²³ Africa Regional Strategy for Disaster Risk Reduction, Jul. 6 – 8, 2004. available at www.unisdr.org/africa/af-hfa/docs/africa-regional-strategy.pdf.

²⁴ See Hyogo Framework for Action, *supra* note 18, Part III(B).

B. Domestic Legal Framework for Disaster Management

The Philippines is one of the most disaster-prone countries in the world due to its geographic positioning on the Circum-Pacific Seismic Belt and the Pacific Typhoon Path. To illustrate the precise significance of the country's location, consider the following facts –

The Philippines holds the dubious distinction of having “the most complex network of trenches and faults in the world in terms of tectonics and geology.”²⁵ The largest of these faults is the Philippine Fault Zone (PFZ) at around 1,200 km and spans nearly the entire length of the archipelago. According to the Philippine Institute of Volcanology and Seismology (PHIVOLCS), between 5,000 and 7,000 earthquakes occur in the country each year, an average of between 200 and 250 quakes a day. To complete this doomsday picture, one only has to remember that there are about 300 volcanoes in the Philippines, 22 of which are active.²⁶ Once an eruption happens, “the probability of survival is zero if you are in the danger zone. The solution is obviously distance.”²⁷ Earthquakes and volcanoes aside, the Brussels-based Center for Research on the Epidemiology of Disasters (CRED) contends that typhoons have historically affected the most number of people through displacement, loss of family or loss of livelihood.²⁸ The Philippine Atmospheric Geophysical Services Administration (PAGASA) estimates that an average of 19 to 21 typhoons hit the Philippine Area of Responsibility (PAR) yearly,²⁹ out of which two will likely be “super typhoons”³⁰.

Of special note is the effect of the climate change phenomenon on a country's vulnerability to natural hazards. Climate change refers to “the response of the planet's climate system to altered concentrations of greenhouse gases in the atmosphere” and is caused by the accumulation of, among many others, three heat-trapping gases in the atmosphere: carbon dioxide (CO²), methane (CH⁴) and nitrous oxide (N₂O).³¹ The 2007 Synthesis Report by the Intergovernmental Panel

²⁵ Alcuin Papa, *Palawan Safest, No Earthquake Faults*, Inquirer News, Jan. 16, 2010, at <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20100116-247760/Palawan-safest-no-earthquake-faults>

²⁶ Tedmanson, *supra* note 5.

²⁷ Interview with Joey Salceda, Albay Provincial Governor, Dec. 21, 2009, available at <http://www.dailymail.co.uk/news/worldnews/article-1237494/Philippine-volcano-verge-eruption-lava-spills-mountain-villagers-refusing-leave.htm>.

²⁸ Center for Research and Epidemiology of Disasters, *EM-DAT: The OFDA/CRED International Disaster Database* (2009), available at <http://www.emdat.be>.

²⁹ United Nations Office for the Coordination of Humanitarian Affairs, *Philippines: Typhoon Season 2009 Situation Report*, Nov. 3, 2009, available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/VDUX-7XFN8J?OpenDocument>.

³⁰ *Id.*

³¹ DAVID HUNTER, *INTERNATIONAL ENVIRONMENTAL LAW AND POLICY* 631 (3rd ed., 2007).

on Climate Change (IPCC)³² notes that global atmospheric concentrations have increased markedly as a result of human activities since 1750 and now far exceed pre-industrial values. According to the Stern Review, “Climate change threatens the basic elements of life for people around the world – access to water, food production, health, and use of land and the environment.”³³ Ever since former US Vice President Al Gore and IPCC began their advocacy, climate change has been seen as the environmental hazard *du jour*, scientifically proven to exacerbate existing environmental conditions. The geographic distribution, frequency and intensity of natural hazards are continually being altered by climate change.³⁴ These extreme variations are “occurring in the amount, intensity and frequency of precipitation and are associated with increases in the extent of areas affected by drought, the number of heavy precipitation events that lead to flooding, and the intensity and duration of some types of tropical storms.”³⁵

Over the years, the country has suffered more than its fair share in terms of human cost. This has recently been affirmed in a Mortality Risk Index (MRI) released by the UNISDR in 2009. The Philippines ranked 12th among the 200 countries that were analyzed with respect to typhoon, flood, earthquake and landslide risk.³⁶ The UNISDR MRI results indicate that the government has not yet found an effective way to address the impacts of various hazards on the country's vulnerable communities. In addition, the country's socio-economic characteristics have affected its disaster risk profile. There are currently about 92 million Filipinos.³⁷ By the year 2025, the Philippine population will balloon to about 125 million people,³⁸ of which the women, children, elderly, and disabled are considered vulnerable sectors.

Poverty is also at an all time high, lessening the chances for early recovery. A recent UNISDR study has revealed that poorer countries have disproportionately higher mortality and economic loss risks, given similar

³² INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, FOURTH ASSESSMENT REPORT (2007).

³³ See, generally, NICHOLAS STERN, THE ECONOMICS OF CLIMATE CHANGE (2007).

³⁴ HUNTER, *supra* note 31.

³⁵ *Id.*

³⁶ United Nations International Strategy for Disaster Reduction, Mortality Risk Index (2009), available at <http://www.unisdr.org/news/y.php?id=9928>. The UNISDR MRI is based on a significant effort in modelling hazards (tropical cyclones, floods, earthquakes and landslides) in both frequency and severity, human exposure and identification of their vulnerability. The Philippines is preceded only by Bangladesh, China, Colombia, India, Indonesia, Myanmar, Afghanistan, Guatemala, Iran, Pakistan and Peru.

³⁷ National Statistics Office, *Philippines in Figures* (2009), available at <http://www.census.gov.ph/>

³⁸ Population Reference Bureau, World Population Data Sheet (2009), available at <http://www.prb.org>.

levels of hazard exposure.³⁹ The report went on to compare the Philippines to Japan -

“GDP per capita in Japan is \$31,267 compared to \$5,137 in the Philippines, and Japan has a human development index of 0.953 compared to 0.771 in the Philippines. Japan also has about 1.4 times as many people exposed to tropical cyclones than the Philippines. However, if affected by a cyclone of the same magnitude, mortality in the Philippines would be 17 times higher than that in Japan.”⁴⁰

Given the totality of these circumstances, how prepared is the Philippines, at least on a conceptual level, to deal with calamities?

Authorities have passed a number of laws that reorganized the government in order to mount better responses to public emergencies.⁴¹ The original cornerstone of Philippine disaster law was Presidential Decree No. 1566 (“Strengthening the Philippine Disaster Control, Capability, and Establishing the National Program on Community Disaster Preparedness”) which was the legal basis of the National Disaster Coordinating Council (NDCC).⁴² The NDCC used to be the country's frontline agency for coordinating all public sector responses before, during and after a disaster.⁴³ The agency's implementing rules and regulations⁴⁴ provide further detail on the local government's role in the planning of effective evacuation processes, and in the provision of emergency services. P.D. 1566 also provided for the devolution of certain responsibilities to regional coordinating councils (RCCs) and to local coordinating councils (LCCs).

Legislators recently passed the Climate Change Act of 2009.⁴⁵ This law focuses on the causal effect of climate change on existing vulnerabilities. It carries the following policy declaration-

“Further recognizing that climate change and disaster risk reduction are closely interrelated and effective disaster risk reduction will enhance climate change adaptive capacity, the State shall integrate disaster risk reduction into climate change program and activities.”⁴⁶

³⁹ UNISDR, *supra* note 13, at 7.

⁴⁰ *Id.*

⁴¹ Pres. Dec. No. 1 (1972); L.O. Impl. No. 19 (1972).

⁴² Pres. Dec. No. 1566 (1978).

⁴³ § 2(a).

⁴⁴ Pres. Dec. No. 1566, Implementing Rules and Regulations (1988).

⁴⁵ Rep. Act No. 9729 (2009).

⁴⁶ § 2.

The Act established a Climate Change Commission that was given, among others, the following tasks: 1) Ensure the mainstreaming of climate change, in synergy with disaster risk reduction, into the national, sectoral and local development plans and programs, 2) Coordinate and establish a close partnership with the NDCC in order to reduce people's vulnerability to disaster, 3) Coordinate with LGUs and private entities to address vulnerability to climate impacts, and 4) Oversee the dissemination of information on climate change and related disaster risk. There has been much criticism, however, of the NDCC. It has been dismissed by some as a paper tiger, powerless to immediately mobilize funds and manpower for dispatch to emergencies.

On 27 May 2010, the “Philippine Disaster Risk Reduction and Management Act”⁴⁷ was signed into law by the President Gloria Macapagal Arroyo. Its passage was brought about by the confluence of historical experience and international best practice. Given this, the law completely overhauled the country’s approach to disaster situations by reforming key policies, and institutions, realigning funding, and criminalizing certain related acts. Some of its salient features are:

1. The abolition of the NDCC and the creation of the National Disaster Risk Reduction Management Council (NDRRMC or National Council) – The NDRMCC is comprised of representatives from various sectors and is vested with far more powers than its predecessor.⁴⁸ As the country’s new disaster coordinating body, it is tasked with the development of “vertical and horizontal coordination mechanisms for a more coherent implementation of disaster risk reduction and management policies and programs by sectoral agencies and LGUs.”⁴⁹ It can now independently manage and mobilize resources for disaster risk reduction and management, including the National Disaster Risk Reduction and Management Fund.⁵⁰ Notably, it may also “coordinate or oversee the implementation of the country’s obligations with disaster management treaties” and make sure that such obligations are incorporated into local disaster risk reduction and management frameworks, policies, plans, frameworks and projects.⁵¹

⁴⁷ Rep. Act No. 10121.

⁴⁸ § 5.

⁴⁹ § 6(k).

⁵⁰ § 6(h).

⁵¹ § 6(q).

2. The abolition of Regional and Local Coordinating Councils and replacing them with Regional and Local Disaster Risk Reduction Management Councils (“RDRRMC and LDRRMC, respectively”)⁵² – The law takes on a “clustered approach” to disaster response, giving the RDRRMC and LDRRMC more power to manage on-the-ground responses in their respective areas. They may, among other responsibilities, recommend the implementation of forced or preemptive evacuation of residents. Local government units are also tasked with the continuous monitoring and mobilization of area resources and facilities as the need arises in order to protect and preserve life and properties during emergencies.
3. Guidelines for the declaration of a State of Calamity⁵³ - The declaration of a state of calamity is no longer exclusively vested in the President. Under this law, the declaration and lifting of a state of calamity may also be issued by the local sanggunian, based on the recommendation of the LDRRMC. Once a state of calamity has been declared, a number of remedial measures must be done. These include the imposition of a price ceiling on basic necessities and prime commodities⁵⁴ and the granting of no-interest loans by government lending and financing institutions to the most affected sections of the population.⁵⁵
4. The establishment of a mechanism for international humanitarian assistance⁵⁶ - The law gives some much-needed clarification to the exempt status⁵⁷ of imported and donated food, clothing, medicine and equipment for relief and recovery, as well as other disaster management and recovery-related supplies. This provision will facilitate the delivery of disaster assistance when previously, it had to pass through several levels of bureaucracy in order to gain free entry into the country.
5. The establishment of various Calamity and Quick Response Funds⁵⁸ – A specific amount shall be set aside for disaster risk reduction and mitigation as well as prevention and preparedness activities. A portion of the National Disaster Risk Reduction and Management Fund shall be

⁵² §§ 10, 12.

⁵³ § 16.

⁵⁴ As provided in Rep. Act No. 7581, “An Act Providing Protection to Consumers by Stabilizing the Prices of Basic Necessities and Prime Commodities and by Prescribing Measures Against Undue Price Increases During Emergency Situations and Like Occasions” [“Price Act”].

⁵⁵ Rep. Act No. 10121, § 17(d).

⁵⁶ § 18.

⁵⁷ The law expressly includes such goods as a conditionally free importation under § 105 of the Tariffs and Customs Code of the Philippines, as amended.

⁵⁸ Rep. Act No. 10121, §§ 21, 22.

allotted to a Quick Response or stand-by fund which can be immediately accessed for relief and recovery programs in order to quickly normalize the situation and living conditions of people in communities and disaster stricken areas.⁵⁹

C. The Human Rights-Based Approach To Post-Disaster Responses

When displacement occurs as a result of disaster, the government, as the primary “duty-bearer” under IHR law, has the responsibility of respecting, protecting and fulfilling at least the minimum level of rights for the affected communities.⁶⁰ In the event that citizens, the “rights-holders”, are being deprived of such, the State has the burden of showing that all of its resources are being called upon to remedy their need.⁶¹ A state experiencing a full-scale natural disaster might argue that these basic rights cannot be fully provided due to lack of access to affected communities or the strain on scarce government resources. Nonetheless, disaster conditions cannot relieve States of their minimum obligations, irrespective of the availability of resources of the country concerned or any other factors and difficulties.⁶²

In the aftermath of a disaster, government, NGO and private sector efforts usually focus on distributing relief goods, dispatching rescue workers, shoring up structures, and accounting for life and property damage. This “needs-based” approach is the understandable and necessary reflex reaction of a society that seeks to regain some measure of normalcy in the wake of tragedy. Unfortunately, the observance of human rights is often overlooked and is treated as a non-immediate demand on the government's attention. Sebastian Albuja and Isabel Adarve note that this approach rarely incorporates a protection framework. They said that the operational guideline to disaster protection is largely unknown, even to primary relief providers.⁶³

⁵⁹ Rep. Act No. 10121, § 21, ¶ 2; § 22(c).

⁶⁰ International Commission of Jurists (ICJ), Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (hereinafter Maastricht Guidelines), Jan. 26, 1997, *available at* <http://www.unhcr.org/refworld/docid/48abd5730.html>.

⁶¹ *Id.*

⁶² UN Commission on Human Rights (UNCHR), Note verbale dated 86/12/05 from the Permanent Mission of the Netherlands to the United Nations Office at Geneva addressed to the Centre for Human Rights [hereinafter Limburg Principles], Jan. 8, 1987, E/CN.4/1987/17, *available at* <http://www.unhcr.org/refworld/docid/48abd5790.html>

⁶³ Sebastian Albuja & Isabel Adarve, Working Towards Protection in Natural Disasters: Challenges From a Conflict/Disaster Context 10 (Sep. 22, 2009) (unpublished manuscript)(on file with the Refugee Studies Center, University of Oxford), *available at* http://www.rsc.ox.ac.uk/index.html?conf_conferences_220909_papers.

Fortunately, a paradigm shift has been taking place. More and more, relief providers are moving towards a “human rights-based” approach in responding to displacement in natural disasters.⁶⁴ The UNHCR has defined a human rights-based approach as --

[A] conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyze inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.⁶⁵

In distinguishing this from the more traditional needs-based approach, the United Nations explained that --

A need not fulfilled leads to dissatisfaction. In contrast, a right that is not respected leads to a violation, and its redress or reparation can be legally and legitimately claimed. A human rights-based approach to programming differs from the basic needs approach in that it recognizes the existence of rights. It also reinforces capacities of duty-bearers to respect, protect and guarantee these rights.⁶⁶ (emphasis supplied)

Thus, the crux of such an approach is simply that the duty-bearer must view disaster situations through a protection lens -- the vigilant observance of the minimum requirements of IHR during emergency relief provision as well as factoring in such standards when making long-term recovery efforts.

A human rights-based approach provides the following key benefits:⁶⁷

The human rights-based approach shifts the focus of disaster risk reduction and management more directly onto individuals and the effects of disaster on their lives;

⁶⁴ For example, Chile (A/C.6/63/SR.22, para. 16), Finland (on behalf of the Nordic States) (A/C.6/63/SR.22, para. 53), France (A/C.6/63/SR.24, para. 81), Poland (A/C.6/63/SR.24, para. 55), Portugal (A/C.6/63/SR.25, para. 6), Spain (A/C.6/63/SR.23, para. 37) and Thailand (A/C.6/63/SR.23, para. 90). *See also* Austria (A/C.6/63/SR.23, para. 10) (elements of human rights law will have a bearing on the topic).

⁶⁵ UNCHR, *supra* note 62.

⁶⁶ Office of the High Commissioner on Human Rights, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (2006), available at www.ohchr.org/Documents/Publications/FAQen.pdf.

⁶⁷ Marc Limon, *Human Rights and Climate Change: Constructing a Case for Political Action*, 33 HARV. ENVTL. L. REV. 439, 450 (2009).

It will help amplify the voices of the most vulnerable to the harmful effects of disaster – women, children, elderly, disabled and indigenous. The needs of poorer communities will also be a stronger consideration;

It has the potential to contribute, qualitatively, to the construction of better policy responses at both the national and international level; and

It emphasizes international cooperation with respect to relief provision, technology sharing and policy coordination.

PART II: REVISITING THE POST-DISASTER PROTECTION ARSENAL

In the aftermath of Typhoons Ondoy and Pepeng, displacement was massive. The NDCC reported that there were about 83,493 families, comprising 419,333 persons that were housed in 526 evacuation centers.⁶⁸ It was widely recognized that conditions in these shelters were deplorable. Sleeping facilities were limited to mats and cardboard swaths on the floor. Hundreds often shared a single toilet and wash area. There was no organized system for waste disposal. Food, water and medicine were in perpetual short supply. Because of overcrowding, disease spread like wildfire amongst the displaced. The Department of Health even recorded upper respiratory tract infection, fever, skin disease, and infected wounds as among the given conditions in evacuation centers.⁶⁹

This scenario illustrates the fact that disasters are not so much about the cause as they are about the effects on human populations. Undoubtedly, calamities are inextricably linked to images of masses in flight. Media practitioners have inaccurately described disaster victims as “refugees”. The 1951 Refugee Convention⁷⁰, as well as its Protocol⁷¹, defines a refugee as a person who, “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that

⁶⁸ Katherine Adraneda, *Stricter Sanitation Measures in Evacuation Centers Sought*, PHIL. STAR, Oct. 3, 2009, available at <http://www.philstar.com/Article.aspx?articleId=510791>.

⁶⁹ Shianee Mamanglu, *Water in 5 Evacuation Centers Test Positive for E.Coli*, MANILA BULLETIN, Oct. 10, 2009, available at <http://www3.mb.com.ph/node/224160/water-five-evacuation-center>.

⁷⁰ Convention Relating to the Status of Refugees, Jul. 28, 1951, 189 U.N.T.S. 150. Entered into force Apr. 22, 1954.

⁷¹ Protocol Relating to the Status of Refugees, Nov. 18, 1966, 606 U.N.T.S. 267. Entered into force Oct. 4, 1967.

country”⁷² This definition implies that for the status to attach, an individual must first flee across internationally recognized borders and into another country.

On the other hand, victims of natural disasters generally remain within the national territory and are thus more properly termed as “internally displaced persons” or IDPs. The non-binding 1998 UN *Guiding Principles on Internal Displacement* [hereinafter GPD]⁷³ describes them as “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.”⁷⁴ Their government still has the primary duty and responsibility to provide protection and extend humanitarian assistance.⁷⁵ The international community only has a subsidiary role in the protection of IDPs. In fact, outside interference is sought only if a State is “unwilling or unable to provide adequate protection or assistance.”⁷⁶

IDPs have specific rights that are triggered by reason of their displacement. In this regard, the GPD is said to be the basic international norm for their protection. It functions as a roadmap of sorts, incorporating certain established protections found in IHR law and molding it to the particular needs of the affected communities. Francis Deng, the former Representative of the UN Secretary General on IDPs, said that “The Guiding Principles are being introduced to the local displaced population...so they are aware of their rights and not seen simply as people begging for humanitarian assistance, but people who have their rights as citizens and therefore demand a response as a matter of right.”⁷⁷

The core principles of the GPD are:

⁷² Convention Relating to the Status of Refugees, art.1(2).

⁷³ UN High Commissioner for Refugees, *Guiding Principles on Internal Displacement*, 22 July 1998, E/CN.4/1998/53/Add.2. See also Resolution 1998/50 of Apr. 17, 1998.

⁷⁴ Introduction – Scope and Purpose, ¶ 2.

⁷⁵ Principle 3.

⁷⁶ UN High Commissioner for Refugees, *Forced Displacement in the Context of Climate Change: Challenges for States under International Law*. Paper to the 6th session of the Ad Hoc Working Group on Long Term Cooperative Action (AWG-LCA 6), May 19, 2009.

⁷⁷ UN Office for the Coordination of Humanitarian Affairs, *Internal Displacement In Depth* (2002), available at <http://www.irinnews.org/webspecials/idp/intFrancisDengCont.asp>.

- Equality – IDPs should enjoy the same rights and freedoms under domestic and international law that other persons in their country are enjoying.⁷⁸ Protections should be given to all the displaced that need it, irrespective of sex, religion, belief, legal or social status, age, disability, property, birth, or any other similar criteria.
- Recognition of vulnerability – Special protections should be accorded children (especially unaccompanied minors), expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons.⁷⁹
- Comprehensive protection – IDPs should be protected from abuses so that they can enjoy the right to life, liberty, and security⁸⁰; the right to dignity, physical, mental and moral integrity;⁸¹ the right to a family life;⁸² the right to an adequate standard of living;⁸³ and the right to have his property protected during his displacement.⁸⁴
- Return to normalcy – States should make an effort to ensure that there are proper conditions for the resettlement and rehabilitation so that some measure of normalcy can be achieved at the soonest possible opportunity.⁸⁵

The protections in the GPD seem to be distinctly suited to a situation wherein displacement is caused by armed conflict. Thus, while the GPD's coverage extends in principle to disaster IDPs, the protection regime is slightly more tenuous. In order to see a more complete picture, resort must be had to the IHR instruments from which the GPD was derived.⁸⁶

A. Underlying Protection Regime for Communities Displaced by Disaster

⁷⁸ *Guiding Principles on Internal Displacement*, *supra* note 73, Principle 1.1.

⁷⁹ Principles 4.2, 19.

⁸⁰ Principles 10, 12.1, 14.

⁸¹ Principle 11.

⁸² Principle 17.

⁸³ Principle 18.

⁸⁴ Principle 21.

⁸⁵ Principles 28, 29, 30.

⁸⁶ UN Economic and Social Council, *Further Promotion and encouragement of human rights and fundamental freedoms, including the question of the procedure and method of work of the Commission on Human Rights, mass exoduses and displaced persons*, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998).

The body of IHR law is a tribute to the real subjects of international law – the individual.⁸⁷ Lauterpacht believes that the periphery of individual rights is constantly expanding,⁸⁸ always finding new expressions in order to suit modern contexts. Thus, the protection of disaster IDPs fits comfortably within this broad scope because these individuals do not suffer any diminution of rights by reason of their displacement.

IHR is, first and foremost, a transformative tool. It changes the dynamics between the State and the individual by imposing duties on the former and granting rights to the latter. In addition, Hoffman believes that IHR has a function that is both symbolic and conservative: it enshrines, elevates, and consecrates the ideas it embodies. Once codified, and subscribed to by States, it produces a solemn effect that demands compliance.⁸⁹

This theory of solemn effects applies with equal force to the GPD, derived as it is from binding IHR obligations which are expressed in the U.N. Bill of Human Rights – comprised of the Universal Declaration of Human Rights [hereinafter UDHR],⁹⁰ the International Covenant of Civil and Political Rights [hereinafter ICCPR],⁹¹ and the International Covenant of Economic, Social and Cultural Rights [hereinafter ICESCR]⁹² - and in later, more specific instruments of protection – the Convention on the Elimination of All Forms of Discrimination [hereinafter CERD]⁹³, the Convention on the Elimination of All Forms of Discrimination Against Women [hereinafter CEDAW]⁹⁴, the Convention on the Rights of the Child

⁸⁷ According to Jeremy Bentham, creator of the phrase “international law”, the term only applies to “mutual transactions between sovereigns as such” [JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 6 (Burns & Hart. eds. 1970)]. It seems that generally, states are considered as the main subjects of international law. However, Sir Ian Brownlie believes that “there is no general rule that the individual cannot be a subject of international law. [IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 66 (5th ed.)]. Modern practice has revealed that “a large part of international law establishes individual rights and obligations and provides international and municipal procedures for enforcing these rights and obligations.” *See generally* *Filartiga v. Pena Irala*, 630 F.2d 876 (2d Cir. 1980); *The Paquete Habana Case*, 175 U.S. 677 (1900).

⁸⁸ HERSCH LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS, IN INTERNATIONAL HUMAN RIGHTS IN CONTEXT 148 (1950).

⁸⁹ Stanley Hoffman, *The Study of International Law and the Theory of International Relations*, in INTERNATIONAL HUMAN RIGHTS IN CONTEXT 135 (1963).

⁹⁰ Universal Declaration of Human Rights, U.N. Doc. A/811, Dec. 10, 1948.

⁹¹ International Covenant on Civil and Political Rights, UN Doc.A/RES/2200 (1966), 999 U.N.T.S. 171. Entered into force Mar. 23, 1976.

⁹² International Covenant for Economic, Social and Cultural Rights, UN Doc.A/RES/2200 (1966), 993 U.N.T.S. 3. Entered into force Jan. 3, 1976.

⁹³ Convention on the Elimination of All Forms of Racial Discrimination, UN Doc. A/RES/2106, 660 U.N.T.S. 137. Entered into force Jan. 4, 1969.

⁹⁴ Convention on the Elimination of All Forms of Discrimination Against Women, UN Doc. A/RES/34/180, Dec. 18, 1979, 1249 U.N.T.S. 13. Entered into force Sep. 3, 1981.

[hereinafter CRC]⁹⁵, and the Convention on the Rights of Persons with Disabilities [hereinafter CRPD].⁹⁶

Arguably, all of these instruments are centered on respect for the individual's inherent right to life and consequently, the quality in which that life may be lived. To emphasize this duty, Art. 4 of the ICCPR states in hyperbolic language that this is the "supreme right" from which no derogation is permitted even in times of "public emergency which threatens the life of the nation." Undoubtedly, intentional crimes such as genocide and extrajudicial killings flout the spirit behind the right. But does government omission amounting to neglect in times of natural disaster fall within the same category? The Committee on Human Rights warned that the right to life should not be interpreted too narrowly. Applying this to the context of natural disasters, "the protection of this right requires that States adopt positive measures. In this connection (for example), the Committee considers that it would be desirable for State parties to take all possible measures to eliminate malnutrition and epidemics."⁹⁷

Economic and social rights such as the right to food, to water, to a home, to public assistance in matters of health, welfare and education⁹⁸, are recognized as essential companion rights to the right to life. Indeed, the interdependence of these two categories of rights – civil and political rights on one hand and economic, social and cultural on the other – are well established and can never be considered as existing in completely different spheres.

IHR in theory is different from IHR in practice. A shortcoming of the implementation is often rooted in the law's generalities and abstractions. Even the GPD does not bring down the protections to a workable, operational level. Although the latter instrument is a little bit more specific, there are still some gaps that have to be filled.⁹⁹

⁹⁵ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3. Entered into force Sep. 2, 1990.

⁹⁶ Convention on the Rights of Persons with Disabilities, UN Doc. A/RES/61/106, Mar. 30, 2007, Annex I adopted, entered into force May 3, 2008.

⁹⁷ Committee on Human Rights, CCPR General Comment 6: The Right to Life, (Art. 6), ¶ 5, (16th session, 1982).

⁹⁸ Oscar Schacter, *International Law in Theory and Practice*, in INTERNATIONAL HUMAN RIGHTS IN CONTEXT 227 (1991).

⁹⁹ David Fidler, *Disaster Relief and Governance After the Indian Ocean Tsunami: What Role for International Law?*, 6 MELB. J. INT'L L. 458 (2005), available at <http://www.austlii.edu.au/au/journals/MelbJIL/2005/16.html>.

The beginnings of the creation of an IHR-based manual began as early as 1997. The Sphere Project¹⁰⁰ was conceptualized as a result of widespread dissatisfaction with the way humanitarian response to the Rwanda refugee crisis was conducted. It was observed that the law's protections did not translate to actual results for the intended beneficiaries. The espoused objective of the Project was "to develop a humanitarian charter and associated set of minimum standards in collaboration with leading NGOs, interested donor governments and UN agencies, to both disseminate the resultant products widely within the international humanitarian system and to encourage their formal adoption and practice by relief agencies and their donors." As a result of such consultation, the *Humanitarian Charter and Minimum Standards in Disaster Response* was formulated¹⁰¹ [hereinafter Humanitarian Charter].

The Inter-Agency Standing Committee (IASC)¹⁰², the agency tasked by the United Nations General Assembly to lead inter-agency coordination of humanitarian assistance in disasters, came up with the *Operational Guidelines on Human Rights and Natural Disasters*¹⁰³ [hereinafter Operational Guidelines]. This document seeks to provide States with guidelines on the practical implementation of international instruments protecting human rights. The recommendations fall within four broad categories: a) rights related to physical security and integrity (e.g. protection of the right to life and the right to be free of assault, rape, arbitrary detention, kidnapping, and threats to these rights); b) rights related to basic necessities of life (e.g. the rights to food, drinking water, shelter, adequate clothing, adequate health services, and sanitation); c) rights related to other economic, social and cultural protection needs (e.g. the rights to be provided with or have access to education, to receive restitution or compensation for lost property, and to

¹⁰⁰ See The Sphere Project, [online], available at <http://www.sphereproject.org>.

¹⁰¹ THE SPHERE PROJECT, SPHERE HANDBOOK: HUMANITARIAN CHARTER AND MINIMUM STANDARDS IN DISASTER RESPONSE (2004), available at <http://www.unhcr.org/refworld/docid/3d64ad7b1.html>.

¹⁰² The Inter-Agency Committee was established in June 1992 in response to UNGA Resolution 46/182 on the strengthening of humanitarian assistance. UNGA Resolution 48/57 affirmed its role as the primary mechanism for inter-agency coordination of humanitarian assistance. The members of the IASC are the Food and Agriculture Organization (FAO), the United Nations Office for Coordination of Humanitarian Affairs (OCHA), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the United Nations Human Settlements Programme (UNHABITAT), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), World Food Programme (WFP), World Health Organization (WHO), International Committee of the Red Cross (ICRC), International Council of Voluntary Agencies (ICVA), International Federation of Red Cross and Red Crescent Societies (IFRC), American Council for Voluntary International Action (InterAction), International Organization for Migration (IOM), Office of the High Commissioner for Human Rights (OHCHR), and the World Bank (World Bank).

¹⁰³ Inter-Agency Standing Committee, *Protecting Persons Affected by Natural Disasters. IASC Operational Guidelines on Human Rights and Natural Disasters*, June 2006, available at <http://www.unhcr.org/refworld/docid/4a54bbcf.html>.

work); and d) rights related to other civil and political protection needs (e.g. the rights to religious freedom and freedom of speech, personal documentation, political participation, access to courts, and freedom from discrimination).¹⁰⁴

The International Development Law Organization (IDLO), an intergovernmental organization that promotes legal, regulatory and institutional reforms to advance economic and social development in post-crisis and developing countries, has also come up with its own human rights-based framework for post-disaster response. In 2009, it published the *Manual on International Law and Standards Applicable in Natural Disaster Situations*¹⁰⁵ [hereinafter the Manual]. The Manual aims to assist on-the-ground relief providers in incorporating IHR to their fieldwork by providing a comprehensive analysis of the international legal standards pertaining to five key aspects of disaster response: human rights, the rights of vulnerable groups, the rights of children, land and property management and anti-corruption/funds management.¹⁰⁶

While largely hortatory, these have proven useful in launching effective responses where applied. The overall impact of these guidelines was tremendous because they codified practical expressions of IHR on an international level, lessening the *ad hoc* nature of relief and recovery. In order to illustrate this, I will again take up my earlier example concerning women's right to health care during displacement.

The Humanitarian Charter acknowledges that the primary responsibility for hygiene practice lies with the affected community. Thus, sufficient knowledge and facilities should be available to the IDPs. As a part of this process, women should be able to participate in identifying risky practices and conditions and take responsibility to measurably reduce these risks. The government should engage in promotional activities, training and facilitation of behavioral change, based on activities that are culturally acceptable and do not overburden the displaced communities.¹⁰⁷ It mentions in great detail the minimum requirements for the provision of non-food, health-related relief. These include special clothing and bedding for pregnant and lactating women, the provision of appropriate infant formulas and

¹⁰⁴ *Id.*

¹⁰⁵ INTERNATIONAL DEVELOPMENT LAW ORGANIZATION, *MANUAL ON INTERNATIONAL LAW AND STANDARDS APPLICABLE IN NATURAL DISASTER SITUATIONS* (1st ed., 2009).

¹⁰⁶ UN General Assembly, *Second Report on the Protection of Persons in the Event of Disasters/ by Eduardo Valencia-Ospina, Special Rapporteur*, May 7, 2009, A/CN.4/615, ¶ 14(b).

¹⁰⁷ THE SPHERE PROJECT, *supra* note 101.

breast milk substitutes that conform to World Health Organization standards, and the provision of a steady supply of sanitary napkins and other reproductive health items.¹⁰⁸ The Operational Guidelines add that appropriate reproductive and psychosocial health care should be given to women, particularly those who became the victims of sexual and other abuses during the period of displacement.¹⁰⁹

B. International Human Rights in Philippine Disaster Law

IHR is recognized in Philippine law through the binding force of treaty obligations¹¹⁰ and the incorporation clause of the 1987 Constitution.¹¹¹ Past judicial decisions of the Supreme Court have also invoked IHR principles by upholding the right to life, liberty and security of person, the right to the highest attainable standard of health, and the right to education, among others.¹¹² This consistent recognition of IHR forms sufficient basis for a human rights-based approach to disaster response.

It is quite unfortunate that neither P.D. 1566 nor its implementing rules mentioned any applicable recovery, resettlement and rehabilitation standards in the aftermath of the disaster. It appears that an internal memo was circulated to the members of the NDCC, RDCCs, LDCCs and relevant volunteer organizations prescribing guidelines in the coordination of the delivery of humanitarian services to disaster victims and internally displaced persons.¹¹³ However, this memo is simply recommendatory and carries no penalty or sanction for non-compliance.

While there has been no codification of a binding IHR framework for disaster response, it is heartening to note that the Philippines has of late recommended a human rights-based approach with respect to recent emergency evacuation efforts, as in the case of the 2009 Mayon volcano eruption. The Commission on Human Rights (CHR) issued an Advisory cautioning the provincial government of Albay, the NDCC and other

¹⁰⁸ *Id.*

¹⁰⁹ Inter-Agency Standing Committee, *supra* note 103, Guideline B.2.5.

¹¹⁰ The Philippines is a State Party to all the major human rights treaties. Dates of ratification: ICCPR – October 13, 1986; ICESCR – June 7, 1974; CEDAW – August 15, 1981; CRC – August 21, 1990; CRPD – April 15, 2008.

¹¹¹ CONST. art. II, § 2.

¹¹² *See e.g.* BAYAN v. Ermita, G.R. No. 169838, Apr. 25, 2006; Guinguing v. Court of Appeals, G.R. No. 128959, Sept. 30, 2005; Pablo-Gualberto v. Gualberto, G.R. No. 154994, Jun. 28, 2005; Echegaray v. People, G.R. No. 132601, Jan. 19, 1999; Cang vs. Court of Appeals, G.R. No. 108725, Sep. 25, 1998; PT&T v. NLRC, G.R. No. 109281, Dec. 7, 1995; Simon v. Commission on Human Rights, G.R. No. 100150, Jan. 5, 1994; Arreza v. GAUF, G.R. No. 62297, Jun. 19, 1985.

¹¹³ National Disaster Coordinating Council, Joint Memo. Circ. No. 17, Dec. 9, 2008.

government bodies to “pay particular attention to vulnerable sectors, ensure protection for human rights and human dignity, prevent and avoid discrimination.” and to ensure that the process is “transparent and, wherever possible, participatory”.¹¹⁴ The CHR's recommendations included:

- undertaking all measures to inform the evacuees, in a manner and language that they can understand, of the need for the evacuation, that there is no other alternative for their safety, of the place where they will be taken and for how long;
- engaging in a dialogue between the evacuees and an interagency team comprised of the NDCC, the CHR, and the Department of Social Welfare and Development (and others if deemed necessary) to discuss the concerns of the reluctant residents and identify any alternative measures to answer these concerns such as the security of their property, the tending of their crops and domestic animals;
- continuing maintenance of decent and dignified living conditions at the evacuation centers and provision for the needs of vulnerable sectors, e.g. schooling for children, privacy for women, basic necessities accessible to persons with disabilities;
- arresting and detaining “disaster tourists” and other persons violating the designated no entry danger zones with full respect for the rights of suspects, within the bounds of law, and only with proportional force.

Two landmark laws, the 1992 Special Protection of Children Against Abuse, Exploitation and Discrimination Act¹¹⁵ and the 2009 Magna Carta of Women,¹¹⁶ both contain relevant provisions.

Republic Act No. 7610 lists natural disasters as a circumstance that endangers the normal survival and development of children.¹¹⁷ Although the specifics of child protection during calamities was not further developed in the body of that law, Article X (Children and Armed Conflict) provides a human rights-based approach for the care of displaced minors. It provides:

¹¹⁴ Commission in Human Rights, *Human Rights Protections During the Evacuation Area Threatened by Impending Mayon Volcano Eruptions*, CHR-IV A2009-014 (2009).

¹¹⁵ Rep. Act. No. 7610 (1992).

¹¹⁶ Rep. Act. No. 9710, (2009).

¹¹⁷ Rep. Act. No. 7610, § 3(c)(5).

ARTICLE X: Children in Situations of Armed Conflict

Section 23. Evacuation of Children During Armed Conflict. – Children shall be given priority during evacuation as a result of armed conflict. Existing community organizations shall be tapped to look after the safety and well-being of children during evacuation operations. Measures shall be taken to ensure that children evacuated are accompanied by persons responsible for their safety and well-being

Section 24. Family Life and Temporary Shelter. – Whenever possible, members of the same family shall be housed in the same premises and given separate accommodation from other evacuees and provided with facilities to lead a normal family life. In places of temporary shelter, expectant and nursing mothers and children shall be given additional food in proportion to their physiological needs. Whenever feasible, children shall be given opportunities for physical exercise, sports and outdoor games.

Section 26. Monitoring and Reporting of Children in Situations of Armed Conflict. – The chairman of the barangay affected by the armed conflict shall submit the names of children residing in said barangay to the municipal social welfare and development officer within twenty-four (24) hours from the occurrence of the armed conflict.

Meanwhile, the Magna Carta of Women provides the most specific codification of IHR in disaster situations –

Section 10. Women Affected by Disasters, Calamities, and Other Crisis Situations. - Women have the right to protection and security in times of disasters, calamities, and other crisis situations especially in all phases of relief, recovery, rehabilitation, and construction efforts. The State shall provide for immediate humanitarian assistance, allocation of resources, and early resettlement, if necessary. It shall also address the particular needs of women from a gender perspective to ensure their full protection from sexual exploitation and other sexual and gender- based violence committed against them. Responses to disaster situations shall include the provision of services, such as psychosocial support, livelihood support, education, psychological health, and comprehensive health services, including protection during pregnancy.

PART III: REFOCUSING THE CHALLENGE**A. Right to an Adequate Standard of Living**

In 1941, then United States President Franklin D. Roosevelt delivered his “Four Freedoms” speech¹¹⁸ in which he named the four fundamental freedoms that humans “everywhere in the world” ought to enjoy. He named “freedom from want” as a basic requirement that governments must accord their citizens. This finds application in the case of IDPs who suffer no diminution of existing rights by reason of their displacement and whose most pressing concern is survival. Rights which are normally taken for granted during normal times – physical security, shelter, health care, food and water – are acutely compromised during the period of displacement.¹¹⁹ Art. 11(1) of the ICESCR provides –

“The State Parties to the present Covenant recognize the right of everyone to an **adequate standard of living** for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the full realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.” (emphasis supplied)

The urgency of a post-disaster situation constitutes an exception to the “progressive realization of protection rights”¹²⁰ in the ICESCR. The umbrella right to an adequate standard of living needs to be immediately fulfilled in order to preserve the dignity and safety of the IDP.

Principle 18 of the GPD defines an “adequate standard of living” as safe access to (a) basic shelter and housing, (b) essential food and potable water, (c) appropriate clothing, and (d) essential medical services and sanitation. With respect to the latter three elements, the IASC Guidelines qualifies the concept of adequacy even further by requiring the goods and services to be (i) available – the goods and services are made available to the affected population in sufficient quantity and quality, (ii) accessible – the goods and services are granted without discrimination to all in need, are within safe reach and can be physically accessed by everyone, including vulnerable and marginalized groups, and are known to the beneficiaries, (iii) acceptable – the goods and services are culturally appropriate and sensitive to gender and age, and (iv) adaptable – the goods and services are flexible

¹¹⁸ Delivered on Jan. 6, 1941. The four freedoms were later to be incorporated into the Preamble of the Universal Declaration of Human Rights.

¹¹⁹ FRANCIS DENG, *PROTECTING THE DISPOSSESSED: A CHALLENGE FOR THE INTERNATIONAL COMMUNITY* (1993).

¹²⁰ Committee on Economic, Social and Cultural Rights, CESCR General Comment No. 3: The Nature of State Parties' Obligations, U.N. Doc. HRI/Gen/1/Rev.3 (5th session, 1990).

enough to adapt to the change of needs in the different phases of emergency relief and reconstruction.¹²¹

a. Food and Water

Sustenance has always been one of the driving forces of man's existence. Access to food and water is therefore an important human right and legal literature is replete with affirmations of this idea.¹²² In a post-disaster context, States should make every effort to ensure that IDPs have access at all times to adequate food and water.¹²³ The Committee on Economic, Social and Economic Rights clarifies that "adequate food" means "the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture".¹²⁴ Meanwhile, the right to water means that an adequate amount of safe water must be accessible for personal and domestic uses. This is necessary to prevent death from dehydration, reduce risk of water-related disease and to provide for consumption, cooking, personal and domestic hygiene requirements.¹²⁵

To what extent is the State duty-bound to provide these resources to communities displaced by disaster? What is the exact nature of its duty? According to the Humanitarian Charter, the ultimate goal is to achieve some measure of food security for the displaced population. This is attained either through the sale of subsidized food, imposition of price controls over basic food items, creation of food-for-work programs and, in the initial phases of disaster relief and recovery, the provision of food aid¹²⁶. A Sphere indicator of food security is when IDPs already "have sustainable access to adequate and appropriate food and non-food items in a manner that ensures their survival, prevents erosion of assets and upholds their dignity"¹²⁷ In order to

¹²¹ Inter-Agency Standing Committee, *supra* note 103, Guideline B.2.1.

¹²² See Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), art. 14, ¶ 2(h); Convention on the Rights of the Child (CRC), art. 24, ¶ 2(c); 1949 Geneva Convention relative to the Treatment of Prisoners of War, arts. 20, 26, 29, 46; 1949 Geneva Convention relative to the Treatment of Civilian Persons in Time of War, arts. 85, 89, 127; Additional Protocol I to the Geneva Conventions, arts. 54, 55; Additional Protocol II to the Geneva Conventions, arts. 5, 14.

¹²³ United Nations Food and Agriculture Organization (FAO), Voluntary Guidelines to Support to the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, ¶ 16.5 (2004).

¹²⁴ Committee on Economic, Social and Cultural Rights, CESCR General comment 12: The right to adequate food, UN Doc. E/C.12/1999/5, (20th session, 1999).

¹²⁵ Committee on Economic, Social and Cultural Rights, CESCR General Comment 15: The Right to Water, UN DOC. E/C.12/2002/11, (29th session, 2002).

¹²⁶ Food aid in the form of "relief goods" distribution is the usual emergency response of governments and donor organizations. These goods usually include rice, instant noodles, canned meats, dried fish, basic condiments and bottled water.

¹²⁷ THE SPHERE PROJECT, *supra* note 101, at 18.

quickly attain this, the UN Food and Agriculture Organization (FAO)'s *Voluntary Guidelines on the Right to Adequate Food* recommends that “States should take appropriate emergency preparedness measures, such as keeping food stocks for the acquisition of food and take steps to put in place adequate systems for distribution.”¹²⁸ States should also “consider establishing mechanisms to assess nutritional impact and to gain understanding of the coping strategies of affected households in the event of natural or human made disasters. This should inform the targeting, design, implementation and evaluation of relief, rehabilitation and resilience building programs.”¹²⁹

Because the dignity and independence of the beneficiaries is a major concern, the Humanitarian Charter recommends that food aid, often viewed as a form of charity, should be resorted to only in the immediate aftermath of a disaster and should be discontinued as soon as possible. It should be given based on assessed needs and should prioritize vulnerable groups that are not capable of procuring nutrition on their own. In this assessment, factors causing malnutrition should also be a cause for concern as it can be “the most serious health problem” in evacuation centers. Thus, specific dietary requirements should also be considered when making the initial needs assessment.

b. Temporary Shelter

Even before a disaster event happens, at-risk communities should be evacuated.¹³⁰ If the hazard hits before this can be done, they should be immediately rescued during or after the fact. In any event, a large portion of the displaced should be taken to emergency shelters – public halls, covered basketball courts, hospitals, and schools – where they can be accommodated until the danger abates. The right to seek and be provided shelter is endorsed in the following instruments:

Principle 18, GPD

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (b) Basic shelter and housing;

¹²⁸ FAO, *supra* note 123, at ¶ 16.6.

¹²⁹ ¶ 16.8.

¹³⁰ Inter-Agency Standing Committee, *supra* note 103, at Guideline A.1.

Art. 27(3), CRC

State Parties, in accordance with national conditions within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.

Art, 14, CEDAW

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Principle 1, UN Principles for Older Persons¹³¹

Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help.

Vancouver Declaration on Human Settlements¹³²

Section III (8): Adequate shelter and services are a basic human right which places an obligation on Governments to ensure their attainment by all people, beginning with direct assistance to the least advantaged through guided programs of self-help and community action.

Governments should endeavor to remove all impediments hindering attainment of these goals. Of special importance is the elimination of social and racial segregation, inter alia, through the creation of better balanced communities, which blend different social groups, occupations, housing and amenities.

Part II 1. The improvement of the quality of life of human beings is the first and most important objective of every human settlement policy. These policies must facilitate the rapid and continuous improvement in the quality of life of all people, beginning with the satisfaction of the basic needs of food, shelter, clean water, employment, health, education, training, social security without any discrimination as to race, color, sex, language, religion, ideology,

¹³¹ UN General Assembly, U.N. Doc. A/RES/46/91 (1991).

¹³² See U.N. Conference on Human Settlements, Vancouver Declaration on Human Settlements, § III(8), U.N. Doc. A/Conf.70/15 (1976).

national or social origin or other cause, in a frame of freedom, dignity and social justice.¹³³

The Sphere Project notes that shelter “is a critical determinant for survival in the initial stages of a disaster. Beyond survival, shelter is necessary to provide security and personal safety, protection from the climate and enhanced resistance to ill health and disease. It is also important for preserving human dignity and to sustaining family and community life.”¹³⁴ Temporary shelters should contain facilities necessary for health, security and comfort of the displaced. They should have sustainable access to natural and common resources, potable water, sanitation and washing facilities, means of refuse disposal and drainage.¹³⁵ According to observations made by the Brookings-Bern Project on Internal Displacement, evacuees should not be housed in these makeshift shelters for more than three weeks because conditions tend to deteriorate rapidly beyond that point.¹³⁶

The most ardent desire of an IDP is to be able to return to his/her home, to take stock, and to move forward. Many believe that once the dust settles or the floodwaters recede, the homecoming process will be a straightforward affair. The reality is farthest from the truth.

Ideally, the government would exert all efforts to expedite the IDPs’ transition from temporary to more permanent housing.¹³⁷ It should facilitate the return of the displaced communities to their homes via activities that are intended to make the process as painless as possible.

The success of such efforts should be weighed against the following questions:¹³⁸

- a) “How fast was the transition from temporary shelter to more permanent housing?”
- b) How does the returning community profile compare to the pre-disaster profile?
- c) How extensive was the affected community's participation in the resettlement and rehabilitation process?”

¹³³ *Id.*

¹³⁴ THE SPHERE PROJECT, *supra* note 101.

¹³⁵ Committee on Economic, Social and Cultural Rights, General Comment 4: The Right to Adequate Housing, (6th session, 1991), UN Doc. HRI/GEN/1/Rev.3, Aug. 15, 1997.

¹³⁶ Brookings-Bern Project on Internal Displacement, *When Displacement Ends: A Framework for Durable Solutions* (2007).

¹³⁷ Inter-Agency Standing Committee, *supra* note 103, Guideline C.3.1.

¹³⁸ Emilie Filmer-Wilson, *The Human Rights Based Approach to Development: The Right to Water*, 23 NETH.Q. HUM. RTS. 213 (2005).

It must be remembered that the idea of returning to one's home is conditioned upon the element of voluntariness. The IDP must be *willing* to return to his original habitation and must do so without being subject to external force or pressure. All related government activities are therefore presumed to merely facilitate the IDP's explicit desire to return to his/her home. This is because displaced communities enjoy the right to free movement and the right to choose his or her place of residence within the country.¹³⁹ As an offshoot of these rights, a disaster IDP may freely choose to seek safety in another part of the country or even leave the country. Moreover, displaced communities are protected from forcible return to or resettlement in an area where their life, safety, liberty or health is at risk.¹⁴⁰ According to the United Nations Human Rights Committee, the enjoyment of both rights "is an indispensable condition for the free development of a person and is a right that interacts with other fundamental rights."¹⁴¹

Additionally, an IDP may claim a freestanding right of return. This right¹⁴² is normally applied to refugees who wish to re-enter their countries of origin.¹⁴³ Obviously, the concept of return to one's country has no bearing on an IDP as he or she has never crossed the borders of one State in order to enter another State. However, recent developments suggest that there is an emerging right in favor of IDPs to return to their homes. Numerous U.N. Security Council Resolutions¹⁴⁴ and the GPD¹⁴⁵ all stand testament to this fact. The latter specifically provides –

Principle 28

(1) Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons.

¹³⁹ *Guiding Principles on Internal Displacement*, *supra* note 73, Principle 14. *See also*, UDHR, art. 13; ICESCR, art. 12.

¹⁴⁰ *Guiding Principles on Internal Displacement*, *supra* note 73, Principle 15.

¹⁴¹ Human Rights Commission, General Comment No. 27: Freedom of Movement (1999), ¶ 1.

¹⁴² UDHR, art.13(2); ICCPR, art.12.

¹⁴³ *See* Convention Relating to the Status of Refugees.

¹⁴⁴ *See e.g.* SC Res. 820, U.N. doc. S/Res/820, Apr. 17, 2003; SC Res. 859, U.N. doc. S/Res/859, Aug. 24, 1983; SC Res. 941, U.N. doc. S/Res/941, Sep. 23, 1994; SC Res. 884, U.N. doc. S/Res/884, Nov. 12, 1993; SC Res. 745, U.N. doc. S/Res/745, Feb. 28, 1992; SC Res. 1009, U.N. Doc S/Res/1009, Aug. 15, 1995; SC Res. 1079, U.N. Doc. S/Res/1079, Nov. 15, 1996; SC Res. 1145, U.N. Doc. S/Res/1145, Dec. 19, 1997; SC Res. 1244, U.N. Doc. S/Res/1244, Jun. 10, 1999; SC Res. 999, U.N. Doc. S/Res/999, Jun. 16, 1995; SC Res. 1031, U.N. Doc. S/Res/1031, Dec. 15, 1995.

¹⁴⁵ *See Guiding Principles on Internal Displacement*, *supra* note 73.

- (2) Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration. (emphasis supplied)

Suppose that an IDP who desires to return home cannot do so because of the occurrence of one or several complications. The home could have been destroyed or otherwise rendered uninhabitable during the disaster. The household's main source of livelihood could be eliminated, rendering return to the locale impractical. The core community from which the household draws support could have been scattered or dispersed. The government may have re-classified the area in which the home is located as a permanent danger zone that is unfit for human habitation. The upshot of all of these is that there will be permanent displacement.

What then is the duty of the government to a community that has been permanently displaced by a natural disaster? Assuming there is such a duty, will this be the same if the proximate cause of the displacement was a sovereign exercise of police power?

If the permanent displacement was directly caused by the occurrence of the disaster event (i.e., the house was buried in a landslide, or saltwater has encroached on the farmlands of an agricultural community), the authorities must undertake the resettlement of the IDPs in another place. In relocating them to new homes, the following criteria for adequacy¹⁴⁶ must be taken note of:

- i. *Accessibility* – Vulnerable groups such as women, disabled and elderly should be given some priority in being provided adequate housing
- ii. *Affordability* – Housing-costs should not compromise the ability of the IDP to meet his other basic needs. To this extent, the government should be prepared to subsidize a percentage of costs.
- iii. *Habitability* – The new homes of the resettled community should be protected from the elements and disease vectors. They should have structural integrity and not contribute to the physical risk of its occupants.

¹⁴⁶ Inter-Agency Standing Committee, *supra* note 103, Guideline C.3.2; *See also* Committee on Economic, Social and Cultural Rights, CESCR General Comment 4: The Right to Adequate Housing (Art.11), ¶ 8 (6th session, 1991) for an elaboration of the IASC criteria for adequacy.

- iv. *Security of tenure* – The resettled community must be entitled to some legal claim to their new abode so as to have peace of mind that they will not be forcibly evicted, harassed, or threatened in the future.
- v. *Suitability of location* – The new location must have access to places of employment, schools, health services, etc.
- vi. *Cultural identity* – Adequate housing also means respect for the culture-specific needs of the displaced community.

As a general rule, every person has the right to freely select his or her place of residence. However, these entitlements are not absolute. In cases of natural disasters, movement-related rights may have to give way when there is full justification for the State's exercise of its police power and when there are adequate provisions for resettlement in a safe location. Thus, if the proximate cause of the displacement was some form of eviction by the State, the arbitrariness of such action must be evaluated.

The State may prevent displaced individuals from returning or resettling in their old homes because of persistent environmental risk. It may also justify the action by invoking the *ordre public*¹⁴⁷ – that the returning community's presence in the area will only exacerbate conditions for the larger community. IHR law tacitly condones such evictions since they merely fulfill the State's paramount duty to protect life. Moreover, any such action must be accompanied with safeguards to protect the IDPs' other rights. Thus –

Evictions should not result in individuals being rendered homeless or vulnerable to the violations of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be is available.¹⁴⁸

¹⁴⁷ Inter-Agency Standing Committee, *supra* note 103, Guideline A.1.4.

¹⁴⁸ Committee for Economic, Social and Cultural Rights, CESCR General Comment No. 7 (Art.11): forced evictions), ¶ 16 (16th session, 1997).

Because the evictions occur after the initial stages of disaster, the GPD demands additional guarantees from the State. Principle 7(3) requires the following to be complied with:

- (a) “A specific decision shall be taken by a State authority empowered by law to undertake such measures;
- (b) Adequate measures shall be taken to guarantee to those who will be displaced full information on the reasons and procedures for their displacement, and, where applicable, on compensation and relocation.
- (c) The free and informed consent of those to be displaced shall be sought;
- (d) The authorities concerned shall endeavor to involve those affected, particularly women, in the planning and management of their relocation;
- (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
- (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.”

B. Right to Humanitarian Assistance

Disaster-stricken states are often unable to meet the sheer volume of demands made on its attention, finances, personnel and other resources. The government's ability to help is spread too thinly to be effective. Hence, it has been the voluntary practice of the international community to come to the aid of disaster-stricken countries. Emmerich de Vattel, a noted Swiss jurist, said that

“If a Nation is suffering from famine, all those who have provisions to spare should assist it in its need, without, however, exposing themselves to scarcity...Whatever be the calamity affecting a Nation, the same help is due to it.”¹⁴⁹

This practice has come to be termed as “international humanitarian assistance”, which is the overarching label to “the provision of commodities and materials required during natural disaster relief operations. Assistance is

¹⁴⁹ EMMERICH DE VATTEL, *THE LAW OF NATIONS OR THE PRINCIPLES OF NATURAL LAW, APPLIED TO THE CONDUCT AND TO THE AFFAIRS OF NATIONS AND OF SOVEREIGNS*. Book II, Chap. 1, sec. 5. (first published 1758).

likely to consist of food, clothing, medicines, temporary shelters and hospital equipment".¹⁵⁰ It is distinguished from foreign aid by "its emergency character and use for relieving victims of natural disasters."¹⁵¹

In disaster situations, the key actors are 1) the affected State, 2) the international community, 3) IGOs and NGOs. Special Rapporteur Valencia-Ospina pointed out that these actors are motivated by the principles of international solidarity and cooperation, described as –

the communion of responsibilities and interest between individuals, groups and States, connected by the ideal of fraternity and the notion of cooperation. The relationship between international solidarity and international cooperation is an integral one, with international cooperation as a core vehicle by which collective goals and the union of interests are achieved.¹⁵²

It is clear, however, that each of these actors has a unique role to play. The affected State has the primary responsibility to respond to disasters occurring within its own territory.¹⁵³ This means that it has absolute control over its political, administrative, military, and regulatory tools and assets for the purpose of responding to its affected citizens. This is a natural consequence of the principle of sovereignty.¹⁵⁴ However, its IHR obligations require it to seek external assistance should it be unable to meet the needs of its distressed population.¹⁵⁵ Further, the affected State must provide safe and unimpeded access to communities that need relief. This may include providing legal facilities for entry and operations – expediting/waiving visas and work permits, exempting good and equipment from customs duties and taxes, and providing ample security escorts for humanitarian actors going into disaster-stricken areas.¹⁵⁶

The role of the international community is a little bit more complex. Humanitarian assistance cannot be legally compelled though States have a

¹⁵⁰ United Nations Draft Convention on Expediting the Delivery of Emergency Assistance, UN Doc. A/39/267/Add.2, 1984., art.1, ¶ 1(c); *See also* Strengthening the Coordination of Humanitarian Emergency Assistance of the UN, UNGA Res. 46/182 of 19 Dec. 1991.

¹⁵¹ Rohan Hardcastle & Adrian Chua, *Humanitarian Assistance: Towards a Right of Access for Victims of Natural Disasters*, 325 INTERNATIONAL REVIEW OF THE RED CROSS 589-609 (1998).

¹⁵² *See supra* note 106, at ¶ 55.

¹⁵³ *See Guiding Principles on Internal Displacement supra* note 73; Inter-Agency Standing Committee, *supra* note 103.

¹⁵⁴ *Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.)*, 1986 I.C.J. 14, ¶ 202. The ICJ defined the principle of sovereignty as "the right of every sovereign State to conduct its affairs without outside interference".

¹⁵⁵ International Federation of the Red Cross and Red Crescent, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, § 3(2) (2007).

¹⁵⁶ *Id.*, Part V.

moral duty to extend aid in times of crisis. This duty is again based on the notion of solidarity, an international legal principle that finds expression in various instruments.¹⁵⁷ Most notably, the UN Charter provides --

Article 1(3)

To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

Subsequent UN General Assembly Resolutions have pushed this point further by underscoring the importance of humanitarian assistance as a tool to ensure the neutralization of threats to human life and dignity in post-disaster situations.¹⁵⁸ Schacter believes that UNGA Resolutions are “authentic interpretations of existing treaty obligations under the UN Charter”.¹⁵⁹

¹⁵⁷ See e.g. the Declaration of the United Nations Conference on the Human Environment, Report of the United Nations Conference on the Human Environment, Stockholm, Jun. 5-16, 1992 (United Nations publication, Sales No. E.73.II.A.14), and corrigendum, chap. I; Report of the United Nations Conference on Environment and Development Rio de Janeiro, Jun. 3-14, 1992 (United Nations publication, Sales No. E.93.I.8 and corrigenda); The Vienna Convention for the Protection of the Ozone Layer United Nations, 1513 UNTS 26164; Montreal Protocol on Substances that Deplete the Ozone Layer, 1522 UNTS A-26369; The African Charter on Human and Peoples’ Rights, 1520 UNTS 26363.

¹⁵⁸ UN General Assembly, UN DOC. A/RES46/182, A/RES/59/279.

¹⁵⁹ Oscar Schacter, *International Law in Theory and Practice*, in INTERNATIONAL HUMAN RIGHTS IN CONTEXT (1991).

Some of the more common questions that are asked in relation to international humanitarian assistance deal with issues of accountability and effectivity. In response to these, State Parties to the Geneva Conventions and the International Committee of the Red Cross and Red Crescent Movement adopted the “*Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance.*” [hereinafter Guidelines]¹⁶⁰ The UN General Assembly has since encouraged states to use the Guidelines as a means to streamline existing disaster cooperation frameworks.¹⁶¹ The International Law Commission (ILC), the body charged with codifying customary law, has drawn upon the Guidelines as basis for a draft global treaty dealing with protections for persons in the event of disasters.¹⁶²

In analyzing the Guidelines, it is very evident that the primary consideration in drafting the provisions is the individual’s needs. Under this instrument, relief providers are required to provide aid without factoring in nationality, race, ethnicity, religious beliefs, class, gender, disability, age and political opinions.¹⁶³ At the same time, disaster relief and initial recovery assistance should be “responsive to the special needs, if any, of women and particularly vulnerable groups, which may include children, displaced persons, the elderly, persons with disabilities, and persons living with HIV and other debilitating illnesses.”¹⁶⁴ This also implies that all such actions must be done in consultation with the affected communities. It makes reference to the use of “applicable international standards for quality” which, as I have already discussed, are the Sphere Project’s Humanitarian Charter, the IASC’s Operational Guidelines, the IDLO Manual and UNGA Resolutions. Resolution 46/182 provides --

Emergency assistance must be provided in ways that will be supportive of recovery and long-term development. Development assistance organizations of the United Nations system should be involved at an early stage and should collaborate closely with those responsible for emergency relief and recovery, within their existing mandates. International cooperation and support for rehabilitation and reconstruction should continue with sustained intensity after the initial relief stage. The rehabilitation phase should be used as an

¹⁶⁰ Adopted by Resolution 4, 30th International Conference of the Red Cross and Red Crescent (2007).

¹⁶¹ UN Doc. A/RES/63/139, UN Doc. A/RES/63/141, UN Doc. A/RES/63/137 of 2008; See also ECOSOC Resolution 2008/36 of 2008 and 2009/3 of 2009.

¹⁶² INTERNATIONAL FEDERATION OF THE RED CROSS, 2009 PROGRESS REPORT ON THE IDRL GUIDELINES 12 (2009).

¹⁶³ *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, *supra* note 155, Guideline 4.2(b).

¹⁶⁴ Guideline 4.3(a).

opportunity to restructure and improve facilities and services destroyed by emergencies in order to enable them to withstand the impact of future emergencies.¹⁶⁵

In some instances, States have entered into legally binding cooperative agreements to provide disaster relief. An example of such an agreement is the 2005 ASEAN Agreement on Disaster Management and Emergency Response¹⁶⁶ [hereinafter AADMER]. It entered into force in December 2009 after it was ratified by all ASEAN member nations. Its expressed objective is to “jointly respond to disaster emergencies through concerted national efforts and intensified regional and international cooperation.”¹⁶⁷ This Agreement is a welcome change from the ASEAN’s traditional non-interventionist stance because it strikes a balance between respect for the sovereignty of a State and the demands of a human rights-based approach to regional disaster management. Under the AADMER, Parties committed to observe a Standard Operating Procedure in emergency response. This was drafted with IHR principles in mind, as can be seen from the following provisions:

- Each State may, on a voluntary basis, earmark assets and capacities for the regional standby arrangements for immediate disaster relief and emergency response. These may include the provision of military and civilian assets, relief goods, and relevant technologies.¹⁶⁸
- There shall be a joint assessment of the specific needs and requirements of the affected communities so that the proper emergency assistance may be extended¹⁶⁹
- The Parties shall, jointly or individually, develop strategies and implement programs for community rehabilitation as a result of a disaster.¹⁷⁰

¹⁶⁵ See Declaration on Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations, U.N. Doc. A/RES/46/182 (1991).

¹⁶⁶ The “ASEAN AGREEMENT ON DISASTER MANAGEMENT AND EMERGENCY RESPONSE” was adopted at the ASEAN Foreign Ministers’ Summit in Vientiane, Lao PDR, on Jul. 26, 2005. It entered into force in December 2009 after the Philippines ratified the instrument. This agreement legally binds ASEAN member states “to promote regional cooperation and collaboration in reducing disaster losses and intensifying joint emergency response to disasters in the ASEAN region”.

¹⁶⁷ ASEAN AGREEMENT ON DISASTER MANAGEMENT AND EMERGENCY RESPONSE, art. 2.

¹⁶⁸ art. 9(1).

¹⁶⁹ art. 11(3).

¹⁷⁰ art. 17.

Disputes arising from non-fulfillment of the obligations under the AADMER may be settled via agreement or negotiation.¹⁷¹ At this early stage of its implementation, this compliance mechanism has yet to be tested.

Humanitarian assistance may also be sought and received from international governmental organizations and from non-governmental organizations. Though they are not traditionally bound by IHR law obligations, the IASC Operational Guidelines assert that IHR must still underpin their actions. Hence –

In situations of natural disaster, they should therefore respect the human rights of persons affected by disasters at all times and advocate for their promotion and protection to the fullest extent. Humanitarian organizations shall not promote, actively participate in, or in any other manner contribute to, or endorse policies or activities which do or can lead to human rights violations by States. They shall strive to enable the affected people to exercise their own rights.¹⁷²

C. Right to an Effective Remedy

As earlier described, IHR violations are likely to happen in post-disaster situations. Prolonged displacement often results in the deprivation of the right to an adequate standard of living – shelter, food, water, and healthcare. Strained national resources coupled with uncoordinated responses mean that IDPs have little or no access to basic goods and services. Crucial government omissions mean that for affected communities, the right to life is itself compromised.

The victims may understandably succumb to feelings of helplessness, despair or even impotent rage against an absent or incompetent government. But what to do about it? Chief Justice Marshall, in the landmark U.S. case of *Marbury v. Madison*¹⁷³, stated that –

The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

¹⁷¹ art. 31.

¹⁷² Inter-Agency Standing Committee, *supra* note 103, at ¶ III of the General Principles.

¹⁷³ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803).

a. *Content of the Right*

For Dinah Shelton, the right to an “effective remedy” encompasses two separate concepts. First, “remedies are the processes by which arguable claims of human rights violations are heard and decided, whether by courts, administrative agencies, or other competent bodies.”¹⁷⁴ Second, “it is the outcome of the proceedings, the relief afforded the successful claimant.”¹⁷⁵ She further adds that it is the duty of the State to provide both conceptions of an effective remedy to victims of IHR violations.¹⁷⁶ There is no difference if such injury was caused by an act or an omission of the State because the right of the individual to seek redress is the same in either case, as long as an established right is violated. “Rights enshrined in binding IHR instruments operate directly and immediately within the domestic legal system of each state party, enabling individuals to seek enforcement of them before national courts and tribunals.”¹⁷⁷

Indeed, the right to seek an effective remedy is well-established in international law. It has in fact been expressly codified in the UN Bill of Human Rights –

Art. 8 of the UDHR

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or laws.

Art.2(3), ICCPR

Each State Party to the Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as recognized in the Covenant are violated shall have an effective remedy notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have the right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

¹⁷⁴ DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW 7 (2nd ed., 2005).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 114.

¹⁷⁷ *Id.* at 11.

Although there is no explicit provision regarding the right to a remedy in the ICESCR, the Committee has stated that appropriate measures to implement the Covenant might include judicial remedies with respect to rights that might be considered justiciable.¹⁷⁸ A subsequent statement clarified that a “State Party seeking to justify its failure to provide any domestic legal remedies for violations of economic, social and cultural rights would need to show either that remedies sought are not appropriate to give effect to the rights or that they are unnecessary.”¹⁷⁹ In one occasion, the ICJ even ruled in the grant of reparations for a violation of a provision of the ICESCR.¹⁸⁰

b. International Recognition of the Right in the Context of Disaster

Surprisingly, there is a growing body of cases invoking the right to a remedy in natural disaster situations. The European Court of Human Rights (EctHR) recently recognized the State's duty to protect life against the consequences of disasters. It was held that a government may be liable for its failure to implement disaster risk-reduction/ disaster risk-avoidance measures in the face of a known or knowable environmental hazard. Walter Kalin, Representative of the UN Secretary General on the Rights of IDPs, explains the Court's position by saying that the “the right to life does not solely concern deaths resulting from the use of force by agents of the State but also...lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction” and stressing that “this positive obligation entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life.”¹⁸¹

*Oneryildiz v. Turkey*¹⁸²

¹⁷⁸ Committee on Economic, Social and Cultural Rights, CESCR General Comment 3: The Nature of the State Parties' Obligations (Art.2, par.1), E/1991/23, ¶ 6 (5th session, 1990).

¹⁷⁹ Committee on Economic, Social and Cultural Rights, CESCR General Comment 9: The domestic application of the Covenant, E/C.12/1998/24, ¶ 3 (19th session, 1998).

¹⁸⁰ In the *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004 I.C.J. 136.), the Court declared that Israel's construction of a security barrier in the Occupied Palestinian Territories (OPT) constituted a breach of its obligations under the ICESCR, specifically the obligation to respect the right to an adequate standard of living. The ICJ held that Israel was not entitled to derogate from the provisions of the ICESCR because 'the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind found in Article 4 of the (ICCPR).

¹⁸¹ Walter Kalin, *Disaster Risk Mitigation – Why Human Rights Matter*, FORCED MIGRATION REV. 38, 39 (2009).

¹⁸² *Oneryildiz v. Turkey*, Application Nos. 48939/99, European Court of Human Rights, Judgment of Jun. 18, 2002 (unreported).

Petitioners brought an action for damages against the Government of Turkey for the deaths of their relatives and the destruction of their property as a result of a methane gas explosion that occurred in a government dump site. At the time of the accident, the petitioners were living in a slum quarter surrounding said dump site. Subsequent domestic judicial proceedings found several government officials guilty of gross negligence for not removing the illegal structures around the dump site and for not closing the site itself in spite of a 1991 expert report that said a methane gas explosion was imminent unless the government took action.

The ECtHR found the Government of Turkey liable based on the fact that it could not have been ignorant of the risks inherent in methane gas accumulation in dump sites or of the necessary preventive measures. This “actual knowledge” theory was substantiated by the 7 May 1991 expert report that was commissioned by the local mayors and was actually presented to them 20 days later. The Court further said that “Since the Turkish authorities had known or ought to have known that there was real and immediate risk to persons living near the rubbish tip, they had had an obligation under Article 2 of the Convention to take such preventive operational measures as were necessary and sufficient to protect those individuals, especially as they themselves had set up the site and authorized its operation, which had given rise to the risk in question.” It was of no moment that the victims acted illegally by “squatting” on a restricted area because it was observed that the government tolerated this to the extent that the structures became a legitimized part of the urban environment. In fact, the petitioners had lived in the same area, undisturbed for 5 years and were even made to pay local council taxes.

In the case of *Budayeva v. Russia*, the ECtHR held Russia liable for not properly warning its citizens of the increased risk in living an area that was prone to mudslides. This case is particularly important because it identified the instances when a State must act to protect its citizens from a disaster: a) when faced with imminent, clearly identifiable hazards, and b) when calamities are frequently occurring in a given area.

*Budayeva v. Russia*¹⁸³

¹⁸³ *Budayeva and Others v. Russia*, European Court of Human Rights, Application nos. 15339/02 and 15343/02, Judgment of Mar 20, 2008.

Petitioner's husband and several others perished when their village was hit by a succession of mudslides. The village was situated in a mountain district near Mount Elbrus. Documentary evidence already indicated that the area was susceptible to mudslides. This was in fact acknowledged by the government when they built a retention dam to protect the citizens. In 1999, the dam was seriously damaged as a result of mud and debris flow. Reconstruction of the dam was infeasible so the only way to avoid casualties was to inform the area's inhabitants of the significantly increased risk of mudslides and encourage relocation. The Court held the Government of Russia liable for the deaths because it failed to implement such warning measures. Russia's failure constituted a violation of Article 2 of the Convention as it had a positive obligation to safeguard the lives of the people within its jurisdiction. According to the Court, "States must establish legislative and administrative frameworks to deter any threat to the right to life. The obligation applies to imminent, clearly identifiable natural hazards. It applies especially to recurring calamities affecting a distinct area developed for human habitation" Since the State had been given early warning as to the impending disaster, it could have implemented land-planning and emergency relief policies in the region.

In upholding the individual right to life and the corresponding state obligation to protect life, Kalin adds that the government must therefore: 1) enact and implement laws that deal with all relevant aspects of disaster risk mitigation and set up the necessary mechanisms and procedures, 2) inform the population about the possible dangers and risks, 3) evacuate potentially affected populations, and 4) take the necessary administrative measures, including supervising potentially dangerous situations.¹⁸⁴

A pair of cases decided in the South African Constitutional court are also instructive. In *Republic of South Africa and Others v. Grootboom and Others*,¹⁸⁵ the Constitutional Court of South Africa ruled on a challenge brought by squatters who were evicted from an informal community located beside a sports stadium. It was decided that the State violated their right to adequate housing since the only reason they became informal settlers was because they needed to escape the 'appalling conditions'¹⁸⁶ in their original

¹⁸⁴ Kalin, *supra* note 181.

¹⁸⁵ *Grootboom and Others v. Government of the Republic of South Africa and Others*, (CCT38/00) [2000] ZACC 14 (Sep. 21, 2000).

¹⁸⁶ The Court noted that the plaintiffs in this case lived in an area that was partially waterlogged, positioned right next to a highway, and lacked running water, sewage, and refuse collection; only five percent of the households had electricity.

communities. The Court held that the state was obliged to devise and implement a coherent, co-ordinated housing program. Its failure to do so and subsequent failure to provide for those in most desperate need was a violation of Art. 11(1) of the ICESCR. It was further noted that South Africa's national housing program did not contain a provision that would 'facilitate access to temporary relief for people ... who are in crisis because of natural disasters such as floods and fires ...'¹⁸⁷ This was deemed evidence of its non-compliance with its international human rights commitments.

The later case of *Minister of Public Works and Others v. Kyalami Ridge Environmental Association and Others*¹⁸⁸ cited Grootboom when it ruled on an issue directly tackling the responsibility of the State to protect IDPs in times of natural disaster. Here, the South African government established a temporary shelter on state-owned land for the purpose of housing flood victims. The occupants would later be moved to more permanent housing once provisions were made. A local resident's association protested against the shelter construction, citing the government's non-compliance with zoning regulations and environmental protection laws. They also said that property values had fallen off because of the presence of the undesirable structure. The Court held that the government's constitutional obligations with respect to the right to housing "included the need to facilitate access to temporary relief for people who had no access to land, no roof over their heads, for people who were living in intolerable conditions and for people who were in crisis because of natural disasters such as floods and fires, or because their home was under threat of demolition."¹⁸⁹

c. Right to Reparations

An interesting point to consider would be the concept of reparations for housing and property losses sustained during a natural disaster. Should the State be held liable to displaced persons? In answering this question, a distinction must first be made between losses arising from the disaster event itself *vis a vis* a loss caused by constructive eviction.

It is unclear whether reparations for losses sustained solely because of the occurrence of a natural disaster is compensable. Much like the case of a pure accident, no one is liable for an "act of god" though human rights

¹⁸⁷ See Rebecca Barber, *Protecting the Right to Housing in the Aftermath of Natural Disaster: Standards in International Human Rights Law*, 20 INT'L J. REFUGEE L. 432 (2008).

¹⁸⁸ *Minister of Public Works & Ors. v. Kyalami Ridge Environmental Ass'n & Ors.*, (CCT 55/00) [2001] ZACC 19 (May 29, 2001).

¹⁸⁹ *Id.*

violations may subsequently occur during the period of displacement. Barber, however, believes that restitution or compensation for property lost during displacement is an “emerging and independent principle of international law” and that disaster IDPs have a “freestanding and independent right” to restorative justice.¹⁹⁰ In support of this, she cites the Pinheiro Principles¹⁹¹. This provides –

Principle 2.1

All refugees and displaced persons have the right to have restored to them any housing, land, and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated from any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.

The accompanying Explanatory Note clarifies that while the Principles have traditionally applied to property loss in armed conflict situations, the all-inclusive reference to “refugees and displaced persons” also extend to disaster victims, entitling them to housing, land and property restitution.¹⁹² Notwithstanding this clarification, Charles Gould is of the opinion that this is not enough reason to obligate States to answer for homes and property destroyed by natural disasters.¹⁹³ He believes that the Note, when standing alone, “lacks the strength to compel physical restoration”.

Constructive eviction is an altogether different issue. I earlier pointed out that the State might use its police powers to prevent displaced communities from returning to their homes. I also mentioned the two conditions – full justification and adequate resettlement – that must attend the exercise of such power so that it will not be considered a human rights violation. Assuming that either of these conditions is absent, does an IDP have the right to claim reparations?

Under the UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Gross Violations of International Human

¹⁹⁰ Barber, *supra* note 187.

¹⁹¹ U.N. Economic and Social Council (ECOSOC), Commission on Human Rights, Sub-Commission on Promotion and Protection of Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons, U.N. Doc. E/CN.4/Sub.2/2005/17 (Jun. 28, 2005).

¹⁹² United Nations Economic and Social Council, Sub-Commission on the Promotion & Protection of Human Rights, *Explanatory Notes on the Principles on Housing and Property Restitution for Refugees and Displaced Persons*, ¶ 4, U.N. Doc. E/CN.4/Sub.2/2005/17/Add (Jul. 11, 2005).

¹⁹³ Charles Gould, *The Right to Housing Recovery After Natural Disasters*, 22 HARV. HUM. RTS. J. 169, 198 (2009).

Rights Law and Serious Violations of International Humanitarian Law,¹⁹⁴ one could argue that IDPs might be able to claim at least one of the following types of reparation in case of a gross violation of human rights: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.¹⁹⁵ Of these, restitution in the form of return to one's place of residence, if still habitable, is preferred.¹⁹⁶ Restitution is "an equitable remedy, or a form of restorative justice, by which persons who suffer loss or injury are returned as far as possible to their original pre-loss or pre-injury position."¹⁹⁷ If restitution is no longer available, the next best option is the grant of compensation – the receipt of some kind of monetary payment for losses suffered. In either case, it is worthwhile to again emphasize that IDPs are only entitled such recourse in the event that the State exercises its police power and prevents their return to their original abode following the occurrence of a natural disaster. In other instances, as in a straight claim for damages for property losses occurring as a result of flooding, an IDPs claim for reparation against the State is more contentious. Here, the State's function, *inter alia*, is merely to "facilitate the availability of private sources of compensation in the event of a disaster" (ex: enforcing insurance contracts and ensuring that insurers are solvent and pay what they owe).

Are constructive evictions "gross violations" of ICESCR obligations? Note that nowhere in the Basic Principles is the term defined. However, the Commission on Human Rights has said "that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing."¹⁹⁸ Thus, there is basis for saying that evictees might actually have a legal remedy if they were arbitrarily prevented from returning to their homes or if there were no adequate provisions for their resettlement in suitable homes.

The Way Forward

Internally displaced persons tend to feel neglected and forsaken, unable to find solace in having survived a calamity when the pressures of day-to-day subsistence coupled with the uncertainty of the future are constant sources of worry. In such instances, it is the duty of the

¹⁹⁴ UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law, U.N. Doc A/RES/60/147 (Mar. 21, 2006).

¹⁹⁵ § 18.

¹⁹⁶ § 19.

¹⁹⁷ See *supra* note 192.

¹⁹⁸ Commission on Human Rights, Forced Evictions, Res. 1993/77, U.N. Doc E/CN.4/Res/1993/77, Mar. 10, 1993.

government to step in and address their insecurity, whether by providing emergency assistance or by facilitating plans for long term resettlement and rehabilitation. But as was described in this paper, such an expectation may not always be met. Deng observed that in times of natural disaster, “there is a crisis of national identity that generates a cleavage between the affected population and controlling authorities.”¹⁹⁹ As the primary duty-bearer, the government must therefore use a protection lens in order to expedite post-disaster normalcy. Such an approach entails the observance of the minimum standards of IHR so that an adequate standard of living can be achieved for the affected communities.

The following courses of action are recommended in order to realize, to the fullest extent possible, the IHR protections for present and future IDPs in the Philippines.

First, R.A. 10121 and its implementing rules and regulations must be effectively implemented. Its recognition and integration of human rights in all phases of disaster response is a laudable step forward. The new law’s nod to human rights is evident in the expressed State policy: that care should be taken to “uphold the people’s constitutional rights to life and property by addressing the root causes of vulnerabilities to disasters, strengthening the country’s institutional capacity for disaster risk reduction and management and building the resilience of local communities to disasters including climate change impacts.”²⁰⁰ International norms, standards and principles of humanitarian assistance will be strictly observed in order to overcome human sufferings due to recurring disasters.²⁰¹ In light of this, the government must develop and strengthen the capacities of vulnerable and marginalized groups to mitigate, prepare for, respond to, and recover from the effects of disasters²⁰². It will also provide maximum care, assistance and services to individuals and families affected by disaster, implement emergency rehabilitation projects to lessen the impact of disaster, and facilitate resumption of normal social and economic activities.²⁰³ Significantly, the law also recognizes that certain sectors of society - women, children, elderly, differently-abled people, and ethnic minorities – that are more vulnerable to the impacts of a natural disaster than others.²⁰⁴

¹⁹⁹ DAVID KORN, EXODUS WITHIN BORDERS: AN INTRODUCTION TO THE CRISIS OF INTERNAL DISPLACEMENT (1999).

²⁰⁰ Rep. Act No. 10121., § 2(a).

²⁰¹ § 2(b).

²⁰² § 2(n).

²⁰³ § 2(p).

²⁰⁴ § (oo).

However, these IHR principles must first be widely disseminated to the concerned actors.

Second, the body of “international disaster law” must be reexamined in order to identify how the Philippines can better participate in and avail of the benefits of international cooperation in this field. The country’s compliance with present commitments under the Hyogo Framework for Action, the AADMER, the IFRC Guidelines, etc. should be assessed so that shortcomings in implementation can be addressed. Much can be improved with respect to stockpiling emergency goods, maintaining ready-access funds for responding to disaster events, shoring up vulnerable infrastructure, purchasing tools for weather and climate analysis, and disaster preparedness training. Additionally, the government should explore multilateral, regional and bilateral partnerships with respect to disaster relief. Some treaties and agreements should be entered into or more faithfully observed in order to shore up the legal infrastructure needed for efficient responses. An example of such failing is the country’s stubbornness in removing import barriers to humanitarian aid. In this respect, R.A. 10121 is an encouraging step forward in that it revised the entry requirements for relief goods and equipment, in accordance with the Tariff and Customs Code, as amended. The fact that they are now treated as conditionally exempt from import duties means that there will be fewer obstacles to their usefulness. This move actually complies with the country’s obligations under the Amended Kyoto Customs Convention²⁰⁵.

Third, existing post-disaster management tools and technologies must be inventoried and maximized. Worth mentioning is the Humanitarian Response Monitoring System (HRMS), a state-of-the-art database that provides streamlined information concerning the estimated 125,000 IDPs living in conflict-torn Mindanao. Set up by the International Organization for Migration (IOM) and funded by the European Commission’s Humanitarian Aid Office, the HRMS “monitors IDP movements, tracks humanitarian response, and highlights gaps and needs.”²⁰⁶ In addition, the technology collates information and activity maps on humanitarian response missions by area as well as by sector. At present, only 20% of the total number of IDPs in Mindanao are registered on the system but it is hoped

²⁰⁵ PROTOCOL OF AMENDMENT TO THE INTERNATIONAL CONVENTION ON THE SIMPLIFICATION AND HARMONIZATION OF CUSTOMS PROCEDURES of May 18, 1973, Jun. 26, 1999. This new Protocol supersedes 50 out of 60 provisions of the original Kyoto Customs Convention.

²⁰⁶ UN Office for the Coordination of Human Affairs, *Philippines: New database to highlight IDPs needs*, IRIN News (online), Jan. 15, 2010, available at <http://www.irinnews.org/Report.aspx?ReportId=87742>.

that the database will contain more information mid-2010.²⁰⁷ The usefulness of a comprehensive IDP database cannot be underestimated and there is no reason that its functionality cannot be extended to tracking disaster IDPs.

Conclusion

The hand of nature continually leaves its indelible mark on the pages of human history. Ironically, the tragedy caused by a natural disaster does not destroy the human spirit. Rather, it defines the true depths of a society's resilience and strength.

We must remember that while the displaced community bears the brunt of the suffering and uncertainty, disasters render all of us vulnerable. It is therefore a standing challenge to local policymakers, law enforcement officials, the international community, NGOs and civil society to answer the call of solidarity and take up the cudgels of protection.

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²⁰⁷ *Id.*