

# Internal displacement in Asia and the Pacific: a human rights-based approach to law, policy and practice

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**Adopting a human rights-based approach to examining law, policy and practice relating to displacement in the context of disasters and climate change highlights gaps between international and national standards, and realities on the ground.**

People living in Asia and the Pacific face displacement in the context of floods, typhoons, tsunamis, sea level rise, volcanic eruptions, earthquakes, wildfires and other hazards. More people are newly displaced in this region than in the rest of the world combined. It therefore follows that a) displacement should feature prominently in legal and policy frameworks relating to disaster risk reduction and climate change

adaptation, and b) robust measures should be in place to protect people from displacement, protect people during evacuation and throughout displacement, and facilitate durable solutions to displacement.

Research led by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law examined law, policy and practice relating to displacement in the context of disasters and climate change in ten countries

across the region. We worked with academic partners in each country to examine how displacement was addressed in national legal and policy frameworks, and what prevention, preparedness, response and recovery looked like in particular situations of displacement. The ten countries comprise Bangladesh, Cambodia, China, Indonesia, Myanmar, Nepal, the Philippines, the Solomon Islands, Thailand and Vanuatu. Academic partners in each country designed and implemented the empirical research.

### How displacement is addressed in law and policy

Our review of law and policy in these ten countries revealed some variety in the manner in which displacement was addressed but also a number of similarities. We found that Vanuatu and Bangladesh had developed specific policy documents that promote a multi-level, multi-stakeholder, multi-sectoral approach to displacement in the context of disasters and climate change. These documents identified measures to prevent and prepare for displacement, protect people during evacuation and throughout displacement, and facilitate durable solutions. They expressly adopted a human rights-based approach, reflecting international standards and guidelines like the Guiding Principles on Internal Displacement and addressing – in a practical manner – questions around governance systems and structures, participation and access to information, non-discrimination and equality, and attention to substantive rights. These documents stand out among the countries' national legal and policy responses, which tended to address displacement within more general disaster risk reduction and climate change adaptation documents in a less systematic manner and with less focus on human rights.

More commonly, States tended to address displacement in an ad hoc manner within a number of legal and policy documents. Occasionally reference was made to human rights treaties as well as to international standards, such as the Sphere standards, the IASC Operational Guidelines and the Guiding Principles on Internal

Displacement. Participation and access to information featured prominently, as did non-discrimination. Not being grounded in international standards, however, language in these documents tended to be somewhat vague, with reference to 'vulnerable groups' and participation of 'the community'. We noted in our reports on the national legal and policy framework for each country how the adoption of a human rights-based approach would support a more systematic integration of international standards and guidelines.<sup>1</sup>

We further recognised that, apart from the examples from Bangladesh and Vanuatu, few legal and policy frameworks addressed the question of durable solutions to displacement in any detail. Similarly, specific measures to protect people from displacement risk were rarely developed, and could only be inferred from more general measures relating to disaster risk reduction and climate change adaptation. Importantly, the distinctive examples from Bangladesh and Vanuatu had not yet been implemented at the time of the research, which prevented any evaluation of the added value that such systematic integration of international standards could bring to the reality of displacement in the context of disasters and climate change.

### Challenges in practice

Through case-studies examining particular situations of displacement, we saw clearly the gap between international and even national standards, and realities on the ground.<sup>2</sup> In some cases, such as in the Philippines municipality of Dulag in the context of the Typhoon Haiyan, responsible actors at the local level were well aware of the standards they should achieve (for instance in relation to preventing gender-based violence in evacuation centres, or even guaranteeing the minimum core of rights to food, shelter and health), but they lacked resources. International human rights law emphasises that authorities have a duty to fulfil the minimum core of economic, social and cultural rights even in disasters; however, hearing about the challenges faced by local actors – who were themselves also affected in the disaster – highlights the

importance of budget allocation for disaster risk reduction and climate change adaptation.

In other contexts, we found that a commitment to building back better can actually act as an impediment to durable solutions. In Nepal, indigenous Tamang people displaced in the 2015 earthquakes remained displaced in 2018, in part because of obstacles to satisfying requirements for safe building construction.

Persons with disabilities were often overlooked in practice, even when national legal and policy frameworks expressly integrated the Convention on the Rights of Persons with Disabilities into the disaster risk reduction context. This was evident in our case-studies on evacuation from Mt Sinabung in Indonesia and flood-related displacement in Fulchharri administrative region (*upazila*) in Bangladesh.

Importantly, we do not suggest that an expressly human rights-based approach is a prerequisite to addressing displacement in the context of disasters and climate change. However, the approach does help to identify gaps that could result in harm. In Hat Yai municipality in Thailand, for instance, the authorities did not adopt a human rights-based approach but instead combined engineering solutions to flood risk with community-based initiatives around early warning plus the creation of 'mentor houses' where private individuals enter into an agreement with the local authority to provide emergency shelter (close to home) for people in the event of an evacuation. The hard infrastructure initiatives helped protect the residents of Hat Yai but entailed some potential for development-related displacement. Part of the flood risk reduction strategy entailed adjusting the shape and size of the Khlong Ror 1 canal, and this process included an element of compulsory land acquisition, with people forced to leave. No environmental impact assessment or follow-up studies were conducted. Our research also identified the potential for creating further disaster risks as flood waters diverted away from the municipality threatened to impact smaller communities downstream. Additionally,

whilst potentially quite innovative, the mentor house approach warrants further examination, given that the arrangements rely on private individuals: how can the State ensure protection from exploitation and gender-based violence? Our review of international standards and guidelines did not identify specific guidelines relating to protection from gender-based violence outside camp settings. Under international human rights law, the State remains responsible for protecting people within its jurisdiction even when immediate services (such as shelter) are delivered by private actors. This is an area for further research.

Finally, a number of case-studies revealed the particular challenges faced by people living in informal settlements. In the Solomon Islands, for instance, the 2014 flood in the capital city Honiara displaced people who were living informally on the river banks near the centre of town. A relocation process was initiated but issues relating to security of tenure and access to labour, education and adequate housing were unresolved and many people returned to the river banks.

### Recommendations

In the examples provided above, national and local authorities responded to situations of internal disaster-related displacement in ways that were not always aligned with international human rights standards, and at times in a manner that did not reflect domestic legal obligations, for instance in relation to the rights of persons with disabilities and the rights of women. However, our research took place at a time when many countries were taking active steps to integrate a human rights-based approach to disaster displacement into national and sub-national law, policy and practice. Our research did not demonstrate a positive correlation between the existence of national law and policy aligned with international human rights standards, on the one hand, and the protection of people from and during displacement, on the other. Rather, the examples drawn from the case-studies show how human rights were adversely impacted in particular

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displacement contexts. A more systematic integration into national and sub-national law and policy of rights-based measures ought to contribute to better outcomes on the ground. However, additional practical measures are also required. In our submission to the UN High-Level Panel on Internal Displacement,<sup>3</sup> we highlighted the need to:

- Promote and facilitate research examining displacement in the context of disasters and climate change, prioritising support for academics working in countries which have high levels of exposure and vulnerability and ensure such research is carried out in a manner that is inclusive of diverse voices and sources of knowledge.
  - Promote technical cooperation supporting the systematic integration of displacement considerations into national and sub-national legal and policy frameworks.
  - Promote capacity-strengthening initiatives focusing on human rights-based approaches to disaster risk reduction, climate change adaptation and land use planning.
  - Identify, develop, promote and disseminate effective practices for ensuring the meaningful and effective participation of different groups of people displaced and at risk of being displaced in the context of disasters and climate change in decisions and processes that affect their lives.
- Promote a human rights-based approach to data (incorporating, for instance, principles such as self-identification, participation, privacy and transparency).<sup>4</sup>
  - Integrate displacement considerations into university courses on disaster risk reduction, climate change adaptation, sustainable development, land use planning and other related fields.
  - Encourage and support national human rights institutions to address issues relating to internal displacement.
  - Encourage regional and international human rights monitoring procedures to systematically address internal displacement

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1. The tool, plus national law and policy reports for each of the ten countries in the study and other materials produced during the research programme, can be accessed at <https://rwi.lu.se/disaster-displacement/>

2. Scott M and Salamanca S (Eds) *Climate Change, Disasters and Internal Displacement in Asia and the Pacific: A Human Rights-Based Approach* (Routledge 2021)

3. [bit.ly/HLP-APANDD-submission](https://bit.ly/HLP-APANDD-submission)

4. See UN OHCHR (2018) *A Human Rights-Based Approach to Data: Leaving No One Behind in The 2030 Agenda for Sustainable Development* [bit.ly/OHCHR-approach-to-data-2018](https://bit.ly/OHCHR-approach-to-data-2018)