

Disaster Law

Stefanie Haumer

The impetus for new disaster response laws lies in the gaps that exist in the scope and geographic coverage of existing international law. There are also gaps in the application of existing international norms, and especially in the ability of domestic laws to address common legal issues in international disaster relief and recovery operations.

Various international agreements and soft-law instruments contain a wide range of regulations that are relevant during and in the aftermath of a disaster. This includes provisions concerning effective assistance on the ground as well as the protection of affected persons. For instance, people who migrate due to a disaster in their home country are not covered by the 1951 Convention relating to the Status of Refugees. However, provisions for a disaster or its direct aftermath can be found in **international** agreements, such as the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1979 Convention on the Elimination of all Forms of Discrimination against Women or the 1990 Convention on the Rights of the Child.¹

In addition, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families² covers climate-related migrants who work abroad, although fewer states have ratified this agreement.

Relevant **regional** human rights agreements include the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1969 American Convention on Human Rights and the 1981 African Charter on Human and Peoples' Rights.³ Neither of these treaties, nor the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa covers persons who leave their home due to, or in anticipation of, a slow-onset crisis.⁴ The same holds true for the 1984 Cartagena Declaration on Refugees.⁵ The 2005 Association of Southeast Asian Nations Agreement on Disaster Management and Emergency Response⁶ deals with aspects of disaster risk, with a focus on prevention

and mitigation as well as on preparedness, emergency response and rehabilitation.

The only instrument explicitly addressing climate change induced disasters is the 2012 Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) in Africa⁷ (known as the Kampala Convention), stating that States Parties are obliged to take measures to protect and assist persons who have been internally displaced due to natural or human-made disasters, including climate change. Another obligation under the Kampala Convention is that the States Parties shall devise early warning systems in areas of potential displacement. With this provision and the obligation for states to establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures, anticipatory movement too can be addressed.

Certain instruments, while not in themselves legally binding, at least have political impact and may indicate a trend, perhaps even contributing to the emergence of rules of customary law. These **soft-law instruments** include the 1998 Guiding Principles on Internal Displacement⁸ and the 2005 Hyogo Framework for Action 2005-2015 contained in the final report of the World Conference on Disaster Reduction.⁹ In addition, the Pinheiro Principles¹⁰ are designed to provide practical guidance to states, UN agencies and the broader international community on how best to address the complex legal and technical issues surrounding housing, land and property restitution. And the Inter-Agency Standing Committee's 2011 Operational Guidelines on the Protection of Persons in Situations of Natural Disaster¹¹ aim to complement

February 2014

existing guidelines on humanitarian standards in situations of natural hazards.

At the regional level of the European Union, the 2012 Host Nation Support Guidelines are non-binding guidelines for the provision of host nation support to participating states delivering assistance during a major emergency, to complement existing international agreements and guidelines.¹² Non-EU states are encouraged to take the guidelines into account when they request and receive international assistance via the EU Civil Protection Mechanism. The guidelines aim to remove as far as possible any foreseeable obstacle to international assistance so as to ensure that disaster response operations proceed smoothly. They cover four areas: emergency planning, emergency management and coordination on site, logistics and transport, and legal and financial issues.

IDRL

The purpose of the International Federation of Red Cross and Red Crescent Societies (IFRC) International Disaster Response Law (IDRL) Guidelines is to provide states with an instrument which allows them to analyse their corresponding legislation and fill normative gaps if necessary. The aim is to strengthen the legal framework for international response to disasters and become better prepared to address regulatory problems relating to provision of international assistance. These Guidelines do not apply to armed conflicts nor to disasters that occur during armed conflicts, nor do they recommend any changes to existing international law or agreements.

The core part of the Guidelines suggests a number of legal facilities for entry as well as operations on the ground, with a strong focus on expediting regular procedures and reducing legal and administrative barriers in a disaster situation. Furthermore, affected states should, when it is in their power and to the extent possible under the circumstances, consider providing certain services (transport and logistic

support, use of buildings or equipment) at reduced or no cost to assisting actors.

Within the study that eventually led to the IDRL Guidelines, gaps were identified in the scope and geographic coverage of existing international law, as well as in the knowledge and application of existing international norms, and especially concerning the question whether domestic law is able to address common legal issues in international disaster relief and recovery operations.

An IDRL Model Act is being drafted to assist states to integrate the recommendations of the IDRL Guidelines into their national laws.¹³ The model act is intended to complement the Guidelines and to serve as a reference tool and example to law-makers as they develop legislation appropriate to their national circumstances. A number of states have made progress in implementing the recommendations of the IDRL Guidelines, for example Colombia and Mozambique have brought in new policies and legislation.

IFRC and UNDP are working on a joint project to research, compare and consult on the efforts of various countries to strengthen how their laws support disaster risk reduction (DRR), particularly at the community level and focusing on implementation.¹⁴ An area where effective legal frameworks might be necessary is the question of DRR in informal settlements (slums and shantytowns) from which people are at risk of displacement.

In 2007 IFRC set out a strategic framework for addressing humanitarian dimensions of migration and internal displacement and prepared policy papers among which was the Policy on Migration.¹⁵ In its Strategy 2020 the IFRC's stated aims include: to provide assistance and protection services to vulnerable migrants; to strengthen migrants' and host community resilience through economic security, recovery and social inclusion within local communities; to improve equitable access to health care, psychosocial and social services; to be sensitive to addressing environmental

issues, especially push-pull factors of scarce resources and climate change; and to focus on changing the dialogue on migration, promoting social inclusion and addressing reintegration of migrants who choose to return, fighting xenophobia, stigmatisation, discrimination and violence (including gender-based violence, human trafficking and smuggling) towards migrants.

Gaps and practical problems for displaced people

Large-scale disaster-induced displacement can be both a consequence and a cause of major social inequities. Humanitarian organisations and other assisting actors, including states, operating in the context of disasters face a wide range of practical problems arising in part from gaps in the existing legislation. In addition, there are problems affecting refugees and IDPs irrespective of their reason for migrating, although this reason often is a crisis or disaster and its consequences.

Several aspects contribute to gaps in the protection of migrants. To begin with, the existing instruments often are not legally binding and soft law can only be used as an advocacy tool. Binding regulations may not be ratified by crucial states or their enforcement is not monitored by an independent body. In addition, the specific agreements do not foresee a particular instrument for individuals to effectively claim their rights or the affected persons do not have the actual possibility and means to do so. So the existence of a legal instrument does not automatically lead to effective protection of the rights covered by that instrument.

Furthermore, these instruments, which grant certain rights to persons in an exceptional situation, are tailored rather narrowly. As a consequence, persons might not fulfil the criteria named in the various Conventions – especially the acknowledged reasons for moving – and therefore might not qualify for protection. This holds true, for instance, for persons who migrate not due to an acute disaster – which under some Conventions constitutes a reason – but because of a

slow-onset crisis. Further, persons moving voluntarily to avoid, for example, the impacts of a(nother) prolonged drought are not protected as they do not fulfil the criteria of relevant legal instruments. At the same time, law and regulation is just one tool in supporting DRR, and the law's effectiveness depends on good implementation.

Several (factual) problems probably cannot be resolved (legally). Hence, the focus should not only be on new regulations but on the actual implementation and enforcement of existing ones. The creation of a specific legal framework which applies to environmentally induced migration *per se*, for example, should not be seen as the answer to climate-related displacement, especially if it is not accompanied by the political will to implement and enforce this new instrument.

Stefanie Haumer HaumerS@drk.de works as a Legal Advisor in International Humanitarian Law for the German Red Cross. www.drk.de The views expressed in this article are those of the author and do not necessarily reflect the views of the German Red Cross.

1. www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx
www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx
www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx
www.ohchr.org/en/professionalinterest/pages/crc.aspx
2. www2.ohchr.org/english/bodies/cmw/cmw.htm
3. <http://conventions.coe.int/treaty/en/treaties/html/005.htm>
www.hrcr.org/docs/American_Convention/oashr.html
www1.umn.edu/humanrts/instree/z1afchar.htm
4. www.africa-union.org/Official_documents/Treaties_20Conventions_2020Protocols/Refugee_Convention.pdf
5. www.unhcr.org/refworld/docid/3ae6b36c.html
6. www.asean.org/news/item/asean-agreement-on-disaster-management-and-emergency-response-vientiane-26-july-2005-2
7. www.unhcr.org/4ae9bede9.html
8. www.brookings.edu/about/projects/idp/gp-page
9. www.unisdr.org/files/1037_hyogoframeworkforactionenglish.pdf
10. <http://2001-2009.state.gov/documents/organization/99774.pdf>
11. <https://docs.unocha.org/sites/dms/Documents/Operational%20Guidelines.pdf>
12. http://ec.europa.eu/echo/files/about/COMM_PDF_SWD%2020120169_F_EN_2.pdf
13. www.ifrc.org/PageFiles/88609/Pilot%20Model%20Act%20on%20IDRL%20%28English%29.pdf
14. www.ifrc.org/en/what-we-do/idrl/about-disaster-law/legislation-for-disaster-risk-reduction/law--drr/
15. www.ifrc.org/PageFiles/89395/Migration%20Policy_EN.pdf