Human Rights in case of Disasters: Emerging Legal Issues

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• Introductory remarks: disasters, human rights and International Law
• Problems in presence: Restriction of human rights in case of an emergency or disaster
• Practice in Human Rights Courts
• Conclusions
Disasters: their relevance and regulation by international law
The importance of disasters

- Reported natural and technological disasters 1900-2018 (CRED)
Transboundary or international consequences
Evolution of International regulation of disasters

- **Sectorial**
  - 1960 Convention on Third Party Liability in the Field of Nuclear Energy, 29 July 1960
  - 1963 Vienna Convention on civil liability for nuclear damage, 21 May 1963
  - 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 29 November 1969

- **Global:**
  - 1997 Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations
Relationship between human rights and disasters

• 3 dimensions (W. KÄLIN):
  • **Factual**: disasters may seriously affect the enjoyment of human rights
  • **Legal**: HR may entitle individuals to be protected by the State against (certain) hazards and their effects on life, property...
  • **Operational**: HR may help to shape disaster management and response and suggest a rights-based approach to disaster relief and reconstruction
Human rights affected in case of disaster

• Right to live, an adequate standard of living for himself and his family, food, water, clothing, housing, health care, sanitation,

• Freedom of association, dignity, freedom, prohibition of discrimination, education, free exercise of religion...

• But also... social and economic rights (work...), cultural rights..

• Affected depending on scale of disaster, big/small cities, more or less prepared...
Different ways to affect

Before the disaster: HR that existed and **must remain** in prevention, preparedness and response

- Right to live, freedom of movement, not arbitrary deprivation of property, dignity, food...

After the disaster: HR that existed before the disaster hits and were lost and **must be restored**

- Disaster response: right to food, health, medical services, water and sanitation, shelter..
- Disaster reconstruction: rights to education, work, freedom of religion...
Absence of specific mention in classical HR Instruments

Exceptions: situation of risk or emergencies

• African Charter on the Rights and Welfare of the Child 1990 (art. 23)
  • 4. The provisions of this Article apply mutatis mutandis to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.

• Convention on the Rights of Persons with Disabilities 2006 (art. 11)
  • States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

• 2015 Inter-American Convention on Protecting the Human Rights of Older Persons (art. 29)
  • States Parties shall adopt all necessary specific measures to ensure the safety and rights of older persons in situations of risk, including situations of armed conflict, humanitarian emergencies, and disasters, in accordance with the norms of international law, particularly international human rights law and international humanitarian law.
Related normative frameworks

- Relationship between Human Rights Law, Humanitarian Law and Disaster Law
- They are different frameworks but closely interrelated
  - Ratione materiae
  - Ratione personae
  - Ratione temporis
- Non derogation of HR in case of armed conflict.
- *Mutatis mutandis* Non derogation of HR in case of disasters: art. 5 ILC Draft Articles
Human rights and disasters

• For a long time HR discourse on humanitarian crises focussed almost exclusively on armed conflict. It was assumed that in disaster situations HR were not an issue as everyone would be ready to assist victims out of compassion and thus fully respect their basic rights

• But the reality is:
  • “mass violation of HR, inequities in aid distribution, necessity to protect women and children...” (Representative of UN Secretary-General on human rights of internally displaced persons in 2005)
  • In 2017: “Lack of respect for international humanitarian law and international human rights law remains one of the most pressing challenges” Strengthening of the coordination of emergency humanitarian assistance of the United Nations, Report of the Secretary-General to GA and ECOSOC, A/73/73, para. 39)

• Work of HR Treaty bodies in place HR dimension of disasters
  • E.g. OHCHR deployment of HR advisor to countries affected by natural disasters
Application of human rights to disasters situations

- Principles applicable Disaster response (UNGA Res 46/182)
  - Humanitarian principles: humanity, neutrality, impartiality, non-discrimination (ILC Draft Article 6)
  - Human dignity (ILC Draft Article 4)
- Also applicable to prevention, preparedness and reconstruction
Derogation / limitation of human rights in case of emergency

- Derogation:
  - Temporary: suspension
  - Permanent: elimination **NOT POSSIBLE**

- Limitation: reduction of the scope of action of right

- IACHR Advisory Opinion 6/86, 9 May 1986, the word "laws" in article 30 of the American Convention on Human Rights
  - Para 14: Article 30 refers to the restrictions that the Convention itself authorizes with respect to the different rights and freedoms recognized therein. It must be emphasized that, under the Convention (Art. 29(a)), all acts directed toward the suppression of any one of the rights set forth therein are illicit. In exceptional circumstances and under conditions precisely spelled out, the Convention allows the temporary suspension of some of the obligations assumed by the states (Art. 27). Under normal circumstances, there can only be "restrictions" to the enjoyment and exercise of such rights.
Possibility accepted by HR bodies and treaties

Inter-American Commission of Human Rights

- “the adoption of extraordinary measures is not contrary to the rule of law provided that the situation is very serious”

Suspension clause in HR Instruments

- Tool intended for help States to recover after crisis
- Examples:
  - Art. 4.1 1966 International Covenant on Civil and Political Rights
  - Art. 27.1 Inter-American Convention on Human Rights
  - Art. 15.1 European Convention on Human Rights
  - Art. F Revised European Social Charter
Conditions of applicability

• Exceptional threat
• Official proclamation (non internationally)
• Non-derogability of certain rights
• Strict necessity
• Compatibility with other international legal obligations
• Non-discrimination
• International notification (of limitation)
It is the right and duty of the international monitoring organs, in the cases brought before them, to make an independent assessment of the public emergency in the light of the relevant treaty provision.

At the European level, a wide margin of appreciation is granted to the Contracting States in deciding on the presence within their borders of a “public emergency threatening the life of the nation”.

The public emergency justifying the derogation must be so serious as to actually constitute a threat to the life of the nation (universal and European levels) or its independence or security (the Americas). This excludes, for example, minor riots, disturbances and mass demonstrations.
ECHR: Budayeva and others v. Russia, 2008
• Judgment:

• The Court found that the Russian government breached Article 2 ECHR, both in its substance and in its procedural aspects.

• First, the authorities **omitted to implement land-planning and emergency relief policies** despite the fact that the area of Tyrnauz was particularly vulnerable for mudslides, thus exposing the residents to “mortal risk”.

• Second, the Court determined **that the lack of any state investigation or examination** of the accident also constituted a violation of Article 2 ECHR.
Some concluding remarks

• Application of Human Rights to disaster situations (4 phases of disaster management): Need of further clarification HR approach, implementing conditions?

• Relationship between Human Rights Law, IHL, IDL… Coherence?

• Need for specific rules in HR instruments?

• Human Rights Courts precedent, the beginning of a trend?
Thank you

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