

**RECOMMENDATIONS ON THE CADHOM PROJECT “DISASTERS
AND HUMAN RIGHTS”
PROGRAM 2010-2013 OF THE FRENCH NATIONAL RESEARCH AGENCY (ANR)**

List of authors :

- Interdisciplinary Research Centre on Environmental, Urban and Planning Law (CRIDEAU-OMIJ), University of Limoges, France.



- International Centre of Comparative Environmental Law (C.I.D.C.E.), Limoges, France



- The Institute for Sustainable Development and International Relations (IDDRI), Paris, France



- French Association for Natural Disaster Reduction (AFPCN), Paris, France



Recommendations adopted the 14/12/ 2013

Contact :
Stephanie Bartkowiak
CIDCE
32 rue Turgot
87031 Limoges Cedex 1
Tel: + 33 (0)5 55 34 97 25
E-mail : stephanie.bartkowiak@cidce.org
Website: www.cidce.org

I. RECOMMENDATIONS AT THE INTERNATIONAL AND REGIONAL LEVEL ON LEGAL AND INSTITUTIONAL DISASTER MANAGEMENT AND HUMAN RIGHTS FRAMEWORK

Recommendation 1: Integrating Human Rights in Disaster Law

- In the absence of a binding basic legal norm to guide, unify and consolidate the international disaster law, the international community should adopt a framework agreement based on an integrated approach to the whole cycle of natural and technological disasters that takes into account human rights. This framework agreement should take into consideration:

1. The environmental and socio-economic vulnerabilities;
2. The impact of disasters on the enjoyment of human rights and the importance of strengthening the protection of human rights as tools of resilience;
3. The contribution of disasters to the increase in the displacement of people and the vulnerability of displaced people, which requires measures to protect and ensure the rights of such persons;
4. The protection of the environment as a necessary measure to reduce risks and build resilience to the effects of disasters. Measures must be taken to safeguard and secure the environmental rehabilitation after disasters.
5. The strengthening, at the global level, of the control of norms for certain potentially catastrophic risks.

- With regard to the respect, protection and fulfillment of human rights in disaster circumstances, an international CODE OF PRINCIPLES on the protection of individuals in disaster circumstances should be developed and adopted, in case of natural or technological disasters, and applicable to the whole cycle of a disaster.

- With regard to regional disaster law, regional organizations should promote the integration of human rights in laws and aid agreements related to disasters.

- Non-binding rules designed for disaster management should be strengthened and integrate the protection and fulfillment of human rights throughout the disaster cycle.

- The linking of the international law of disasters that is being developed and the legal framework on climate change is much needed. Adaptation to climate change measures should take into account its impact on the frequency and intensity of disasters, including the impact on the enjoyment of human rights. Moreover, the legal framework on climate change must incorporate the ethical dimension of human rights as tools of resilience and provide concrete steps to protect these rights against effects of climate change.

- Taking into account the United Nations initiative to develop and adopt an international instrument to promote and protect the rights and dignity of older people (67/139 Resolution of the General Assembly on 20 December 2012) the protection of the rights of older people in disaster circumstances should be specifically integrated in this instrument

Recommendation 2: Make use of and sanction the work of the International Law Commission of the United Nations on "the protection of persons in the event of disasters"

- Drafts of more precise sections about those of Human rights most affected by disasters should be developed. The topic relative to the rights and obligations of states vis-à-vis persons to be protected should be strengthened as the simple reference to the obligation of States to protect people and provide relief and assistance is not sufficient.

- The Commission should take the opportunity of this project, which is the only initiative proposing binding rules for the protection of people in the event of disasters, to reinterpret human rights and corresponding obligations of States and to adapt them to the specific context of disasters. Issues relating to the protection of the rights of displaced people following disasters should also be addressed by the draft articles of the Commission.

Recommendation 3: The recognition of the right to the environment as a human right, an essential tool to build resilience to the impacts of disasters

- The right to the environment should be globally recognized as a human right, considering its importance as a tool for building resilience to risks and effects of ecological disasters. The restoration of the environment damaged by disaster integrates priority actions of the reconstruction phase.
- The European system of protection of human rights should formally pledge the recognition of the right to the environment as a human right, as essential to the ethical backbone of disaster law at the regional level.
- The Inter-American system of protection of human rights should make justiciable the right to environment embedded in Article 11 of the Additional Protocol to the American Convention on Human Rights dealing with Economic, Social and Cultural Rights, called "Protocol of San Salvador."

Recommendation 4: The international institutional framework for disasters and human rights

- The international institutional framework should evolve to establish an international governance of disasters, capable of facilitating and enhancing coordination between agencies responsible for matters concerning the management of disaster risks and their impacts on human rights.
- An international platform bringing together all stakeholders in the field of disasters and human rights should be established to facilitate dialogue, coordination of actions and to strengthen the relationship between disaster risk management and protection of Human rights.
- An alternative to creating a new agency would be to expand the work scope of the IASC (Inter-Agency Standing Committee). As of today not a single organization responsible for human rights is a member of IASC. It should incorporate other human rights organizations and expand its scope of intervention to the entire disaster cycle and not only humanitarian assistance.
- Human rights organizations should incorporate disasters as a priority in the implementation of their measures and mechanisms to protect human rights.
- Stronger links between the organizations responsible for human rights and the agencies responsible for disaster risk reduction and humanitarian assistance would be desirable so as to also introduce the issue of human rights in their field of action.
- The UNDAC (United Nations Disasters Assessment and Coordination) should be strengthened and possibly transformed into a global organization for Ecological Assistance with the status of a United Nations specialized agency.
- In the event of a major disaster in severely disrupted countries it would be appropriate to deploy a military force of international and neutral characters, to protect the physical integrity of victims, to secure their property, to ensure the safety of international aid and a free access for international aid without discrimination.
- An international observatory for disasters and human rights should be put in place to support and evaluate initiatives and experiences. The observatory could make recommendations and advise States that wish to move forward in this area, particularly regarding the development of the legal and policy framework for disaster risk management with a human rights protection dimension.
- Regional agencies responsible for disaster risk management should also deal with the protection of human rights of victims of disasters and coordinate with agencies and regional systems for the protection of human rights.
- Regional organizations that do not have specific bodies for disaster risk management yet should create them, always in coordination with the agencies responsible for human rights in the regional context.

Recommendation 5: Access to justice and international and regional mechanisms to protect human rights

- The role of regional systems and international mechanisms of human rights should be strengthened to counter human rights violations in disasters circumstances including with respect to State responsibility.
- International Courts and mechanisms for the protection of human rights should be considered as remedies available to victims of disasters to protect their rights. Information should be available for victims of disasters on access to these organizations.
- Victims of disasters should no longer face any obstacles to access to justice in regional systems and international mechanisms of human rights especially in terms of right of individual petition.
- Special legal assistance to victims of disaster should be provided by the states.
- The decisions already adopted by the international and regional systems for the protection of human rights should be considered as guidelines for the development of the relationship between human rights and disasters.

Recommendation 6: Strengthening the Guiding Principles on Internal Displacement people within their own country

- The international community should take all necessary measures to accelerate the integration of the Guiding Principles into domestic law of each country, through the development of an appropriate strategy and greater consensus around these principles.
- To increase the effectiveness of the Guidelines, measures should be taken to ensure the participation of displaced people in the political process, decisions regarding the management of displacement and the search for durable solutions.
- Binding standards should be developed at the regional level, given the advanced level of consideration of the Guidelines in the regional context.
- To the extent that there is no question of creating new rights, but simply to reinterpret existing ones in the context of the protection of internally displaced persons (IDPs), additional protocols on the rights of IDPs could be adopted in the context of existing international and regional instruments protecting the Human rights.

Recommendation 7: For an international legal status of the environmentally-displaced

- To fill the legal vacuum at the international level regarding environmentally displaced persons and because of the lack of international governance in this regard, the international community must initiate negotiations for the adoption of a legal and institutional framework for managing the environment induced displacements, tailored to give an international status to environmentally displaced and guarantee their rights.
- The future convention on the international status of environmentally-displaced persons (EDPs) must provide a legal and institutional framework for managing the environmental displacements and determine the human rights of EDPs. The draft prepared by research centers at the University of Limoges and the International Centre of Comparative Law of the Environment - CIDCE fully prepared and tested in the CADHOM project countries responds in the most complete way to the requirements of human rights.
- Such an international instrument establishing a legal and institutional framework for environmental displacement should be used to assist States to ensure that their national standards and policies are adapted and strengthened. It will also help stimulate the adoption of standards and measures of multilateral cooperation at regional and sub-regional level.

II. RECOMMENDATIONS AT THE NATIONAL LEVEL CONCERNING THE LEGAL AND INSTITUTIONAL DISASTER MANAGEMENT FRAMEWORKS AND HUMAN RIGHTS

Recommendation 8: The international and regional legal framework to protect human rights

- To incorporate the human rights dimension in the management of disasters risks, CADHOM Project countries should ratify all international and regional standards of protection of human rights, especially those of particular importance in the context disasters and environmental movements.
- Each of the States, whether of the North or the South, should incorporate the provisions of international and regional protection of human rights in its national law and make the necessary adjustments to the legal and institutional frameworks to make these rights practical and effective. Procedural means and access to justice should be established or strengthened to ensure the protection and realization of human rights.

Recommendation 9: The international and regional legal framework on disasters

- Given the small number of binding international standards for disasters, States should ratify existing international and regional standards, incorporate their provisions into domestic law and make needed adjustments to the legal and institutional frameworks to make them effective.
- States should take the necessary measures to contribute to the development and strengthening of international and regional disaster law. They should take initiatives in this area within the international community and support proposals that move towards this direction.

Recommendation 10: The commitment of the CADHOM Project countries following the Declaration and the Hyogo Framework for Action

- Considering that the Hyogo Framework for Action addresses several human rights, States should advance its implementation internally and in particular ensure that the five priorities of this document are actually implemented at the field level.
- Member countries of the project that have not yet established a national platform for disaster risk reduction are encouraged to do so. These platforms should systematically integrate national organizations dedicated to human rights protection and members of the civil society.
- National reports on the progress of the implementation of the Hyogo Framework for Action should be systematically developed by the platforms and be sent to the United Nations International Strategy for Disaster Risk Reduction (UNISDR).
- Member States of the Project should contribute to the discussion on the integration of human rights in the next Hyogo Framework for Action to be adopted in 2015. They should send a document to that effect to UNISDR (United Nations International strategy for Disaster Risk Reduction), as part of the consultation process for the development of the Post-Hyogo strategy.

Recommendation 11: Legal framework of an "integrated management" of natural and technological disasters

- States should develop a comprehensive set of general rules based on a concept of "integrated management" of the risks of natural and technological disasters applied to the whole cycle of disasters, on a human rights based approach. Human rights are a key element of this "integrated management" of disaster risk.

- Sectorial standards for specific types of disaster risk should be closely consistent with the general rules.
- Rules should clarify the definition and types of disasters, the institutional organization of their management, its control and tools to make this management effective, including financial resources and early warning. General rules containing only clauses on principles and objectives are not sufficient.

Recommendation 12: The consistency of environmental, urban and regional planning policies with the management of disaster risk

- States and sub-national institutions should include human rights in land planning and management policies, including their environmental aspects in two ways:
 - The inclusion of disaster risks in all regulatory documents and implementation of public policies related to land use and sustainable development of the regions, ensuring consistency between the various requirements;
 - By better consideration of various scales of territories and territorial dynamics in the management of disaster risk prevention, in particular with a focus on large urban areas in zones of high hazard (coastal areas, major river basins and high seismicity areas).

Recommendation 13: The participation of civil society in the institutional framework for disasters

- With spaces for action and effective tools such as new technologies of network communications, civil society should participate in an effective and operational manner in the management of all phases of disasters (prevention, response, reconstruction).
- Special attention should be given to the participation in decision-making of vulnerable groups, including women and indigenous peoples.
- Information on events and their understanding must be considered as owed to all stakeholders
- Early warning, continuity of vital services, the rapid return to a stabilized situation are priority objectives for operators of civil society as much as to the government.

Recommendation 14: The coordination between human rights organizations and agencies responsible for managing disaster risk

- The institutional framework for disaster risk management should include organizations and non-governmental organizations for the protection of human rights, to ensure that these rights will be considered as tools for resilience in all phases of the disaster.
- National systems of protection of human rights must also incorporate into their policies and actions, issues relating to the management of disaster risks and, especially, the protection of the rights of victims of disasters.

Recommendation 15: The role of local authorities

- The management of disaster risk at the local level should be promoted and strengthened. In accordance with the principle of proximity, local actors must take the first steps of prevention, response and recovery to disasters and ensure that human rights are also taken into account.

Recommendation 16: Access to justice for the protection of human rights in Disaster circumstances

- Access to justice for the effectiveness of human rights in disaster circumstances should be facilitated.

- Barriers to access to justice still present in national law or in the judiciary system should be eliminated.
- Victims of disasters should have the information, the adequate legal assistance, guarantees and effective judicial remedies to denounce violations of human rights associated with disasters and obtain compensation.
- People should be informed about human rights at risk of violation in disaster circumstances, the emergency procedures and the means at their disposal to protect these rights.
- The judiciary should be prepared, trained and equipped to deal with such petitions on human rights-related to disaster circumstances.
- National law should develop and make clear and unbiased the system of liabilities in disaster circumstances and the links between the occurrence of catastrophic events and the protection of human rights.
- States should ensure compliance and effectiveness of decisions in judicial and administrative proceedings related to human rights in disaster circumstances, as well as set a reasonable timeframe to make these decisions and enforce them.

Recommendations 17: The incorporation of human rights into disaster law

- Disaster law should incorporate human rights as tools for building and strengthening resilience and take them into account in the management of all phases of natural and technological disasters.
- The rights of potential or actual victims, including the most vulnerable of them and those of rescuers should be clearly specified in the management rules of disasters risks as well as how to make them effective throughout the disaster cycle. The mere indication of such rights is not enough. Concrete and effective measures for the protection and realization of human rights must also be provided.
- The rights already embedded and protected in domestic law should be reinterpreted to fit the context of disasters and thus give them a proper and sufficient content to ensure the protection of people, especially the most vulnerable.

Recommendation 18: Integrating disaster law into constitutional law: a strategy to strengthen the relationship between human rights and disaster

- States should provide disasters a constitutional status.
- The integration of disaster law into constitutional law allows the strengthening of the ties between disasters and human rights by forcing to rethink human rights so as to take into account disaster situations.

Recommendation 19: The declaration of a state of emergency in disaster circumstances

- The declaration of emergency rule should not apply to all cases of disasters, but only for catastrophic events with a high level of risk and public danger.
- Any exemption designed to exclude or limit certain human rights should be strictly limited.
- The exemptions should be provided in the constitutions and meet the criteria defined in international and regional standards for the protection of human rights.
- Constitutions should clearly indicate when a disaster may warrant the declaration of a state of emergency. Constitutional provisions should specify the procedures for declaring emergency measures and their extinction, and the means of informing the population.
- States should comply with the requirements of Article 4 of the International Covenant on Civil and Political Rights, the restrictions on derogations provided for in other international instruments protecting human rights, and the provisions governing the state of emergency and exceptional measures in regional law of human rights.

Recommendation 20: The integration of human rights in the policies and rules of management of and adaptation to climate change

- States should adopt adaptation to climate changes policies that take into account the impacts of climate change on human rights.
- Legal standards should be adopted to reduce the impacts of climate change on the frequency and intensity of disasters, on environmentally induced displacements and on the enjoyment of human rights.
- Policies and standards related to climate change should include the legal framework for disasters.

Recommendation 21: The establishment of a culture of prevention, adaptation and resilience to disasters that takes better account of the respect of human rights by strengthening the right to education

States should develop a culture of resilience based on Human Rights in each phase of disasters. In particular:

- National and local authorities, relief workers, humanitarian aid teams, civil society organizations should receive appropriate training and instructions on the protection of human rights in disaster circumstances.
- The knowledge of local communities related to disasters and resilience should be recognized and promoted
- The role of media in disaster situations should be guided by the guarantee offered to victims of disaster that they will be treated by the former with dignity, that their right to information and privacy will be respected.

Recommendation 22: The integration of human rights in the policies and rules for managing nuclear disasters

- States should develop and adapt their legal and institutional framework associated to nuclear disasters to meet the specifics of this type of catastrophic events, including the impacts on human rights and the role of these human rights in building resilience to hazards and effects of nuclear disasters.
- The right to health should be a priority in the management of nuclear disasters.
- Human rights should be integrated into the policies and rules for managing nuclear disasters. Government agencies and civil society organizations responsible for the protection of human rights should be consulted and also integrated into the institutional framework of prevention, response and recovery in the event of a nuclear disaster.

Recommendation 23: The duty of States to protect people in case of disaster, seek assistance and not to arbitrarily refuse assistance when they do not have the capacity to provide themselves

- A country affected by a disaster has a duty to ensure within its territory the protection of people and their rights and provide them with assistance and emergency relief.
- If the disaster exceeds the response capacity of the country, it has the obligation to seek external assistance to ensure that the rights of victims and rescuers will be fully respected.
- States cannot arbitrarily refuse consent to external assistance when they do not have the ability or willingness to provide assistance to disaster victims within their territory, which would correspond to deny people the protection and respect for their human rights in disaster circumstances.

Recommendation 24: Evacuation Decisions during disasters

- Public authorities should take all necessary steps to prepare and perform at the best time the evacuations, potentially compulsory when they become indispensable for the survival of victims.
- Evacuations should, wherever possible, be prepared, tested, explained and the consent of the victims collected beforehand except in extreme circumstances when the victims' lives are at stake.
- Evacuations should be accompanied by measures to ensure the protection of abandoned property.
- Evacuations will occur in conditions of dignity, security and respect for human rights of displaced persons, in particular those of vulnerable groups such as the disabled, children and the elderly.
- Displaced persons following evacuation measures have the right to a voluntary and informed return, in safe conditions that guarantee in particular the respect of their right to health and human dignity.

Recommendation 25: The integration of Guiding Principles on Internal Displacement within their own country into national law

- Countries should develop legal and administrative measures to prevent and manage internal displacement caused by disasters. They should provide the means to ensure and protect the rights of Internally Displaced Persons (IDPs). They should include in their policies, programs and legal standards the specific needs of IDPs in their country, especially in strategies to prevent the causes and consequences of displacement in the context of ecological disasters.
- The Guiding Principles on Internal Displacement within their own country should be systematically integrated into the internal legal and institutional framework of disasters.
- Management of internal displacement should be one based on a human rights approach. The rights recognized in each country must be reinterpreted to suit the specific needs of IDPs and the context of each displacement.
- Countries should take measures to prevent the causes of displacement and avoid internal displacement caused by disasters. If internal displacement has to take place, countries should ensure assistance to displaced people by means of human rights.
- Countries should develop information, training and participation policies to ensure that displaced people have access to information about their rights as IDPs, including the rights outlined in the Guiding Principles on Internal Displacement within their own country, and that means are made available to promote the exercise of these rights. Displaced persons should be involved in all decision-making processes relating to their conditions of environmentally displaced persons.

Recommendation 26: The adequacy of national standards on immigrants to integrate the situation of external displacement due to disaster

- States should adapt the national legal framework applicable to immigrants to integrate the management of external displacements induced by disasters.
- They should develop a legal and institutional framework that can provide answers to external displacement with a perspective of hosting, protecting displaced persons and respecting and promoting their human rights, by extending, to the externally displaced, the rights granted to refugees under the Refugees Convention of 1951.