

The IASC Operational Guidelines and other tools and learnings that can assist Ombudsmen to respond constructively to a natural disaster*

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Introduction

“Human rights don’t disappear the moment an earthquake, a hurricane or a tsunami strikes. We witnessed after the Indian Ocean tsunami, the earthquake in Haiti and many other disaster situations that during relief and recovery efforts the protection of human rights gains in importance as it can safeguard the dignity of those affected. People are at their most vulnerable in times of crisis so preventing discrimination and abuse is vital.”

- Foreword to the *IASC Operational Guidelines*, January 2011

The United Nations defines a natural disaster as “the consequence of events triggered by natural hazards that overwhelm local response capacity and seriously affect the social and economic development of a region”.¹

Between 300 to 400 significant natural disasters occur annually.² They occur in countries at all stages of economic, social and cultural development. The breadth of experience in different countries which have dealt with natural disasters, and the impacts left in the wake of such disasters, means that we have an awareness of the negative impacts for people which can happen in the post-natural disaster recovery and response phase if they are not prevented. New Zealand has its own recent and current experience to draw on from the response to and recovery around the Canterbury earthquakes.³

An interesting voice on the importance of community engagement and the participation of people affected by disasters in any subsequent recovery is Admiral Thad Allen (now retired). Admiral Allen is widely credited with turning around the Katrina recovery. He most recently led the Gulf Horizon Oil disaster recovery. Extraordinarily, Admiral Allen was in Canterbury when the February Earthquake occurred. He has said in regard to the importance of participation that:

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¹ UN General Assembly, “Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kalin: Operational Guidelines on the protection of persons in situations of Natural Disaster” (2011) A/HRC/16/43/Add.5, at 4.

² EM-DAT: The OFDA/CRED International Disaster Database, *2011 disasters in numbers*, Universite Catholique de Louvain – Brussels – Belgium, 18 January 2011, www.emdat.be.

³ The earthquake in 2010 was 7.1 in magnitude and the 2011 earthquake was 6.3 in magnitude. The region has experienced a series of aftershocks since.

“We all have to understand that there will never again be a major event in this country that won’t involve public participation. And the public participation will happen whether it’s managed or not. We’ve chosen to try to adapt and manage.”⁴

Thad Allen’s approach upon taking control of the Katrina recovery is also instructive. He may not have characterised his approach as a ‘human rights approach’ but few exponents of that approach could have done better. The first thing he did upon being put in command of the response was to give the public servants one order: “You are to treat affected people as if they are members of your family. If you do that you will err on the right side. If you do that and people have a problem with what you have done that is my problem not your problem.”⁵ By getting the focus right and by ensuring that the public servants knew someone had their back, Admiral Allen empowered the public servants to do the right thing for the affected people and to be ‘can-do’ rather than risk-averse. That clarity of citizen-centric purpose and meaningful empowerment breaks down traditional silos and barriers and better enables the collaboration needed for effective disaster recovery.

International experience in post-natural disaster recovery and response suggests that the longer the effect of any disruption lasts, the greater the risk of human rights violations. It is further important to recognise that even in developed countries, disasters are not uncommon, and that “Even in developed countries, disasters have a knack of finding the poor and vulnerable.”⁶

The prevalence of human rights violations following natural disasters is well understood. Despite this, the conceptual human rights framework which exists to guide responses to those violations is not as well understood. Possibly this is because the tools contributing to the conceptual frameworks that focus specifically on guiding post-disaster response have only been developed in the last few years. These include the *IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters* (the *IASC Operational Guidelines*)⁷ (formally adopted by the Inter-Agency Standing Committee in June 2006 and revised and republished in January 2011), and the World Bank’s publication *Safer Homes Stronger Communities: A Handbook for Reconstructing after Disasters* (developed in 2010).⁸

However, since the 2004 tsunami in Asia and Africa, understanding in this area has deepened in the international community, and the relationship between human rights and natural disasters has become better understood. Together, the human rights framework and the conceptual frameworks for post-natural disaster recovery and response form a strong framework which, if properly utilised, can help to ensure that post-natural disaster recovery and response is people-focussed and serves the needs of those affected by disasters.

International experience of disaster response and recovery provide valuable learnings for any country that suffers a natural disaster. International guidelines, such as the *IASC*

⁴ Scott Berinato, “‘You have to lead from everywhere’ – An Interview with Admiral Thad Allen (Ret)”, *Harvard Business Review*, November 2010, <http://hbr.org/2010/11/you-have-to-lead-from-everywhere/ar/1>.

⁵ Admiral Thad Allen (Ret), “Commencement Speech at the Maritime Mass Academy”, 2012, <http://www.youtube.com/watch?v=Rv0Iz9ImWpc>.

⁶ Charles W. Gould, “The Right to Housing Recovery After Natural Disasters”, 22 *Harvard Human Rights Journal* 2009, at 169.

⁷ The Brookings – Bern Project on Internal Displacement, *Inter-Agency Standing Committee (IASC) Operational Guidelines on the Protection of Persons in Situations of Natural Disasters*, 2011.

⁸ Abhas K. Jha et al, World Bank, *Safer Homes Stronger Communities: A Handbook for Reconstructing After Disasters*, World Bank, 2010.

Guidelines offer guidance to ensure compliance with international human rights law and for governments and humanitarian organisations to take a 'bottom-up' and 'joined-up' approach in responding to disasters. Such guidelines are not an obstructive hoop-jumping exercise in political correctness, but rather they offer a people-centred, collaborative basis for a truly integrated recovery response that is nimble, aligned and efficient. At their heart is the participation of the people affected by natural disasters in their own recovery; as we say in New Zealand, it is "he tangata, he tangata, he tangata" who are most important.⁹

The *IASC Operational Guidelines* stress the fact that people do not lose their basic human rights as a result of a natural disaster. Affected people are entitled to all the relevant human rights guaranteed to all residents and citizens. The *IASC Operational Guidelines* stress that human rights encompass not only civil and political rights but also economic, social and cultural rights.

The IASC Operational Guidelines

In the response to or recovery from a natural disaster it is obviously difficult to promote all rights for all of those affected – balancing is required and is acceptable. The *IASC Operational Guidelines* provide a principled and pragmatic guide around how all four groups of rights outlined in the *IASC Operational Guidelines* (explained below) can ensure adequate protection of people affected by natural disasters, including displaced people.

The *IASC Operational Guidelines* primarily aim to help international and non-governmental humanitarian organizations. They are also very useful guides for Government agencies and in-country civil society organisations, particularly because they are based on significant international experience in dealing with what are relatively common "natural disaster" events no matter how "unprecedented" the event might be to people and a Government affected by a particular disaster. Furthermore, the *IASC Operational Guidelines* are relevant to businesses.

The IASC Operational Guidelines state:

"Often, negative impacts on the human rights concerns after a natural disaster do not arise from purposeful policies but are the result of inadequate planning and disaster preparedness, inappropriate policies and measures to respond to the disasters, or simple neglect.

As stated by the Secretary General '....the risks and potential for disasters associated with natural hazards are largely shaped by the prevailing levels of vulnerability and the effectiveness of measures taken to prevent, mitigate and prepare for disasters.'

⁹ The full text of the Maori proverb is as follows: "He aha tem ea nui? He tangata, he tangata, he tangata", which translates to "What is the most important thing? It is people, people, people."

These challenges could be mitigated or avoided altogether if the relevant human rights guarantees were taken into account by national and international actors, in all phases of the disaster response: preparedness, relief and recovery.”¹⁰

The IASC Operational Guidelines further state that:

“If humanitarian assistance is not based on a human rights framework, it risks having too narrow a focus, and not all the basic needs of the victims will be integrated into a holistic planning and delivery process. Factors that are important to recovery later on may also be overlooked. Furthermore, people affected by natural disasters do not live in a legal vacuum. They belong to the population of countries that have ratified international and regional human rights instruments and enacted constitutions, laws, rules and institutions that should protect these rights. Therefore, States are directly responsible for respecting, protecting and fulfilling the human rights of their citizens and other persons under their jurisdiction.”¹¹

The general principles of the *IASC Operational Guidelines* are as follows:

- Affected people, including Displaced people should enjoy the same human rights as those not affected by disasters
- Right of access to information for people concerned
- Affected persons should be able to participate in planning and implementation of disaster response and recovery
- State has primary duty and responsibility
- Humanitarian organizations are guided by rights

Human Rights are divided into four relevant categories in the *IASC Operational Guidelines*:

- Group A: Protection of life; security and physical integrity of the person; and family ties.
 - A.1 Life saving measures in particular evacuations
 - A.2 Protection against separation of families
 - A.3 Protection against secondary impacts of natural disasters
 - A.4 Protection against violence, including gender-based violence
 - A.5 Security in host families and communities, or in collective shelters
 - A.6 Dealing with mortal remains.
- Group B: Protection of rights related to the provision of food; health; shelter; and education
 - B.1 Access to and provision of humanitarian goods and services – general principles
 - B.2 Provision of specific goods, such as adequate food, water and sanitation, shelter, clothing; essential health service, and education ;
 - Provision of these rights related to basic needs should be Available, Accessible, Acceptable and Adaptable
- Group C: Protection of rights related to housing; land and property; livelihoods and secondary and higher education
 - C.1 Housing, land and property, and possessions

¹⁰ The Brookings – Bern Project on Internal Displacement, supra note 7, p.2.

¹¹ Ibid, p.3.

- C.2 Transitional shelter, housing and evictions
- C.3 Livelihood and work
- C.4 Secondary and higher education
- Group D: Protection of rights related to documentation; movement; re-establishment of family ties; expression and opinion; and elections
 - D.1 Documentation
 - D.2 Freedom of movement, particularly in the context of durable solutions
 - D.3 Re-establishing family ties
 - D.4 Expression, assembly and association, and religion
 - D.5 Electoral rights

Each group of rights identified in the *IASC Operational Guidelines* has associated practical activities listed that can be undertaken to ensure that the rights are respected. The IASC Operational Guidelines are available from the Brookings Institute at http://www.brookings.edu/~media/research/files/reports/2011/1/06%20operational%20guidelines%20nd/0106_operational_guidelines_nd. They are available in Bahasa Indonesia, English, Hindi, Spanish, Bengali, French and Russian.

The importance of participation and democracy to recovery: ‘Nothing about us without us’

Access to economic, political, and social power can and will mitigate vulnerability by alleviating the sense of powerless people affected by disasters can have. The participation of those people in decision-making is consistent with a rights-based approach. It is required by the *IASC Operational Guidelines* and by the human rights framework.

Sir Peter Gluckman, the New Zealand Prime Minister’s Principal Science Adviser, in his advice to the Prime Minister on the Canterbury earthquake, noted:

“... it is fair to state that the potential exists for the emotional effects of disaster to cause as great a degree of suffering as do the physical effects such as injury, destruction of infrastructure and loss of income.

In fact, they are often interrelated. Indeed, it is clear that recovery is primarily judged in terms of people feeling that they are coping with their lives and livelihood, not just in physical terms. [...]

A feeling of self-efficacy and community efficacy assists the population in reactivating their coping mechanisms. Local governance, empowerment and ownership have been shown to facilitate recovery.

Then inevitable tensions and conflicts in achieving this are obvious (long-term versus short-term, public versus private, local versus national interests) and cannot be avoided - rather, they have to be openly handled with sensitivity.

It follows that, from the psychosocial perspective, those involved in directing the recovery should create governance structures that understand and actively include

community participation and enhance individual and community resilience. Such approaches will be most likely to be effective in re-establishing coping and functioning communities.”¹²

Furthermore, Sir Peter Gluckman could not have emphasised better why democratic participation rather than an autocratic approach is needed when he advised the Prime Minister that: “The most important ameliorating factors for the recovery phase appear to be:

- Recognising that the situation is distressing and not easy for the affected population;
- Being explicit about how governance arrangements will facilitate local engagement and empowerment;
- Recognition by the community of the conflict that is inherent between the desire for a rapid physical recovery and the difficulties that planners face. This conflict is inevitable and real - the key is to involve the community openly in resolving it;
- Providing information on expected post-disaster emotions;
- Providing community monitoring and good information on access to support services;
- Providing clarity over reconstruction and rehabilitation plans.”¹³

The importance of housing to recovery

A holistic planning and delivery process is crucial, particularly related to housing, in regard to providing for and protecting the basic needs of affected people. As the United Nations Special Rapporteur on the right to adequate housing has said, “Realizing the right to adequate housing is about ensuring basic services and infrastructure, upgrading settlements and strengthening communities, as much as it is about building housing”.¹⁴ The point most often missed is the centrality of having a house to live in to being in a community that can support a vulnerable person. It is estimated that over 90% of the support provided to most vulnerable people is provided by family and community at no cost to the Government. This reality is often overlooked.

A Berkley University Study of the effect of the Asian Tsunami found that “Widespread disaster that destroys the infrastructure of communities can wipe out these vital social networks of relationships that hold individuals and families together. Attention to maintaining communities intact during the reconstruction period is as critical as rebuilding communal infrastructure like schools, parks, and markets.”¹⁵ Attention to maintaining communities intact also needs to be factored into rebuilding housing in the recovery period. It also needs to be remembered that the longer the displacement from housing the greater the risk of greater and longer lasting human rights violations.

¹² Sir Peter Gluckman, “Psychosocial effects of the earthquakes”, *Stuff*, 10 May 2012 (re-published), <http://www.stuff.co.nz/the-press/opinion/perspective/6892800/Psychosocial-effects-of-the-earthquakes>.

¹³ Ibid.

¹⁴ UN News Centre, “UN human rights expert urges putting housing at core of post-disaster recovery” (Raquel Rolnik, United Nations Special Rapporteur on the right to adequate housing), 21 October 2011 <http://www.un.org/apps/news/story.asp?NewsID=40141&Cr=housing&Cr1>.

¹⁵ Human Rights Center, University of California Berkeley, East-West Center, *After the Tsunami: Human Rights of Vulnerable Populations*, 2005, p.9.

The issues and learning from the coastal redevelopment and 'buffer-zones' in the Asian Tsunami are relevant to Canterbury and anywhere where governments resort to 'zoning' in the post-disaster phase. Considerable tension, confusion and conflict was caused in India, Indonesia, Sri Lanka, and Thailand when those states created buffer-zones along the coast designed to mitigate the impact of damage from future storms or tsunamis. "The decisions about these zones and the financial or other incentives to move inland leave the survivors little choice about relocation." These are similar issues to those faced by affected people in the "red zones" in Canterbury.

The right to housing under international law is found in the International Covenant on Economic, Social and Cultural Rights ("ICESCR"). Article 11 of the ICESCR asserts "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 United Nations Committee on Economic Social and Cultural Rights (CESCR) has defined the following specific aspects of the right to Housing, including: legal security of tenure, availability of essential services, affordability, habitability, accessibility, a location with access to employment, healthcare, schools, and similar services, and cultural adequacy. CESCR cites "victims of natural disasters" and "people living in disaster prone areas" as among those affected people that should be ensured "some degree of priority consideration in the housing sphere."¹⁶ CESCR has also considered forced evictions which may be relevant in Canterbury or any disaster recovery scenario. CESCR sets out in the General Comment the procedural protection that are to be followed in any forced eviction including genuine consultation with those affected, notice, information, legal remedies, and legal aid.

By agreeing to be bound by ICESCR a State has agreed to take appropriate steps in its country to ensure the realization of this right. This is not an obligation of the State to the international community – it is an obligation of the State to the people living in the State. As recently as May 2012 the New Zealand Government asserted in Geneva to the ICESCR Committee that the fact that these ICESCR obligations are not judiciable in New Zealand makes no difference to New Zealand's commitment to meeting its obligations.

There are other international human rights treaties and conventions that are relevant as well. ICCPR, CERD, CEDAW and the CRPD all have provisions relevant to natural disaster response and recovery.

The United Nations Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living supports the IASC Operational Guidelines which were updated in 2011. The IASC Operational Guidelines' criteria for adequacy of housing are: Accessibility, Affordability, Habitability, Security of Tenure, Cultural Adequacy, Suitability of Location, and Access to Essential Services such as water, utilities, health and education. The IASC Guidelines criteria are the same as those in CESCR General Comment 4. The criteria emphasize a quick transition from shelter to permanent housing, and they encourage consultation and participation with affected groups and persons to ensure sustainable long-term planning.

¹⁶ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 4 The Right to Adequate Housing (Article 11(1) of the Covenant)*, 1991, at 8(e).

In the recovery from the earthquakes New Zealand has the opportunity to show its commitment to the housing right and live up to its recently restated intention to meet its ICESCR obligations. It has been noted that: “Natural disasters present a need for housing recovery beyond that of a single individual, but not typically at the full scale of a nation’s general housing shortfall. Disasters can serve, then, as a bellwether of a state’s commitment to the housing right.”¹⁷ CESCR had made clear in its recent recommendations to New Zealand that it will be monitoring New Zealand’s response. Other States that are party to IESCR can expect a similar response.

The wider human rights framework

The human rights framework in New Zealand is established by the international human rights law that New Zealand has agreed to be bound by and the relevant internal New Zealand law, including the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993. The international human rights conventions are – in New Zealand – often somewhat misleadingly often called ‘international obligations’ when in fact they are domestic duties of the New Zealand State towards people living in New Zealand that the New Zealand state has agreed with other states to apply in New Zealand.¹⁸

New Zealand has ratified the International Covenant on Civil and Political Rights (ICCPR) which deals with civil and political rights, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which addresses economic, social and cultural rights. Both Conventions have implications for natural disasters.

Additionally, there are various international treaties that apply to thematic issues. They include the International Convention on the Elimination of All Forms of Racism (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CROC), the Convention on the Rights of Migrant Workers and their Families (MWC) and the Convention on the Rights of Persons with Disabilities (CRPD). With the exception of the MWC New Zealand has ratified all these treaties. These treaties can also have implications for the response to and recovery from natural disasters. So even where nations have not ratified ICCPR or ICESCR, they may have obligations to people in their country after a natural disaster because of ratification of one or more of these thematic treaties.

In addition a large number of United Nations resolutions and declarations establish standards of practice relevant to disaster situations and disaster recovery. Although not binding in the same way as treaties, they can acquire significant status as a result of their moral force and specific application. The most relevant to a natural disaster are the United Nations *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (the Pinheiro Principles) and the *Guiding Principles on Internal Displacement* (the Guiding Principles).

¹⁷ Gould, supra note 6, p.181.

¹⁸ Inter-Agency Standing Committee “Protecting Persons Affected by Natural Disasters” Brookings-Bern project on Internal Displacement, 2006, at 1.24; Gould supra note 6, p.171.

The international framework also provides for what are known as “special procedures” which deal with specific issues or thematic matters. They may be individuals mandated to monitor, investigate and report on particular human rights issues or situations (Special Rapporteurs or Special Representatives), or a working group of up to five people, and are designed to promote and ensure compliance with human rights standards.¹⁹

Selected international instruments with relevance to the disaster response and recovery context

International Covenant on Civil and Political Rights (ICCPR)

The rights in the ICCPR are effective as soon as a State ratifies the Covenant. They apply to everybody equally, without discrimination and can be limited only in situations of public emergency where the life of the nation is under threat and “to the extent strictly required by the exigencies of the situation.”²⁰

The articles that are most relevant to natural disaster response and recovery are article 12 (the right to liberty of movement and the freedom to choose one’s residence) and article 19(2) (the right to freedom of expression including the right to seek, receive and impart information). Both allow limitations in certain circumstances. In the case of article 12, restrictions are permitted if they are provided by law and designed to protect national security, public order, public health or morals or the rights and freedoms of others. Article 19 allows limitations proscribed by law to protect the rights or reputations of others or in situations of public emergency.

In relation to the right to freedom of movement, people who are displaced as a result of natural disasters need to be provided with the necessary information to allow them to exercise their right to decide where they want to live – including whether to return to their homes, integrate in the community where they have moved as a result of displacement or to resettle elsewhere.²¹ This has been interpreted as ensuring appropriate measures are taken to allow people to return to their homes in sustainable conditions.²²

“Sustainable” means that people:

- feel safe and secure, as well free from unmitigated risks of further calamitous effects produced by natural hazards;
- are able to repossess their properties or homes, and these have been adequately reconstructed or rehabilitated; and
- are able to return to their lives as normally as possible, with access to services, schools livelihoods, employment etc, without discrimination.

¹⁹ Ministry of Foreign Affairs and Trade New Zealand, *Handbook on International Human Rights*, 2008, p.31.

²⁰ Art. 4, ICCPR.

²¹ *IASC Operational Guidelines*, at D.2.

²² *Ibid*, at D 2.3.

Freedom of expression includes the right to be consulted and to participate in decision making.²³ Mechanisms need to be developed to enable affected communities to voice their concerns and opinions about their situation and the State's response to the disaster.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

The rights in the ICESCR must also be provided equally and on a non-discriminatory basis. They are, however, subject to the concept of progressive realisation and resource limitations. Given the potential cost, compliance with the substantive rights is expected to happen incrementally or, to use the language of the Covenant, "progressively", depending on the resources available and the competing claims and priorities on those resources.²⁴ To avoid this being used as reason for non-compliance, States must demonstrate they have made every effort to use the resources at their disposal to satisfy at least the minimum or core obligations in the treaty as a matter of priority. It follows that there is a strong presumption against any deliberately retrogressive measures.

While it is inevitable that in any disaster, the immediate priority will be the protection of life and personal security, this is closely followed by the realisation and protection of certain social and economic rights including provision of the basic necessities of life such as access to goods and services and humanitarian assistance; adequate food, sanitation, shelter, clothing and essential health services; and access to education, housing and work.

Article 11 of ICESCR recognises the right to an adequate standard of living, including adequate housing.²⁵ While housing has emerged as one of – if not, the - most pressing concerns in the wake of natural disasters, it is closely linked to the right to health (Art.12) and the right to work (Articles 6-8). The quality of housing directly affects people's health, particularly that of children and older people. Security and adequacy of housing have far-reaching effects on children's health, achievements in education and their general development. The right to health includes the right to physical and psychosocial or mental health. The right to work which includes the opportunity to work, free choice of employment, just and favourable conditions of work and non-discrimination, is also important.

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

CERD identifies the right to housing as one of the rights to be enjoyed without discrimination.²⁶ The CERD provision has been brought into New Zealand domestic law by the Human Rights Act 1993. It is unlawful in New Zealand to: refuse or fail the sale of any estate or interest in land or any residential or business accommodation; dispose of the estate, interest or accommodation on less favourable terms and conditions; treat any person seeking to acquire an estate, interest or accommodation differently from other persons in the same circumstances; deny any person, directly or indirectly, the right to occupy any land or any residential or business accommodation; terminate any estate or interest in land or the right of any person to occupy land or any residential or business accommodation; seek to

²³ Art. 19 ICCPR.

²⁴ Art. 4 ICCPR. See also Alston & Quinn, "The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights" *Human Rights Quarterly* 9(2) 1987.

²⁵ The right to housing is also mentioned in CEDAW, UNCROC and CRPD, the latter referring to the right of disabled people to live independently and choose their place of residence.

²⁶ Art. 5(e)(iii) CERD.

impose on anyone else (such as a tenant) a condition limiting who may come on to the property by reason of the prohibited grounds of discrimination.

The Convention on the Rights of Persons with Disabilities (CRPD)

The Convention on the Rights of Persons with Disabilities gives voice, visibility and legitimacy to disabled people and their issues. It is aimed at promoting and protecting the dignity of persons with disabilities and ensuring their equal treatment under the law including the right to health services, education and employment. Article 11 of the CRPD specifically relates to situations of risk and humanitarian emergencies, and says that states parties shall take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, which include the occurrence of natural disasters.

International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Among other things, CEDAW provides that women should have the right to equal pay for work of equal value and the same employment opportunities as men. Article 14(f) of CEDAW states that women have the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles)

The Pinheiro Principles outline the international standards pertaining to the rights of refugees and displaced persons to return to their original homes and country of residence.²⁷ They highlight the right to restitution for displaced persons and are grounded in the principle of restorative justice and restitution as a legal remedy. The Pinheiro Principles are noteworthy as they reflect a shift from an approach based on charity to one emphasising entitlement to a right.

Guiding Principles on Internal Displacement (the IDP Guiding Principles)

The IDP Guiding Principles are based on international humanitarian law and are intended to serve as a standard to guide governments in providing assistance and protection to internally displaced persons.

The IDP Guiding Principles define an internally displaced person and identify the rights and guarantees relevant to protection of internally displaced people at all phases of displacement, including prevention and protection from arbitrary displacement, access to protection and assistance during displacement itself and rights relating to durable solutions.²⁸

Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context

²⁷ *The Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons*. Centre on Housing Rights and Evictions, 2006.

²⁸ OHCHR, "Protecting the Human Rights of Internally Displaced Persons in Actual Disasters: Challenges in the Pacific": Discussion paper (2011).

The third report of the Special Rapporteur²⁹ addresses the right to adequate housing and how it should be incorporated into national and international relief and reconstruction initiatives in post-disaster and post-conflict contexts. It notes that in such situations, an inevitable tension arises between the need to act quickly and decisively to facilitate people's return to their homes and the need to be comprehensive and thorough in dealing with what are, in fact, very complex issues.³⁰

It concludes that the process of reconstruction and development should recognise that housing has an inherent social value that is vital for social stability, alleviation of poverty and development.³¹ Any response should therefore seek to address not just damage to housing and infrastructure but also:

- the disruption of social and economic relationships and networks;
- the destruction of home centred livelihoods;
- the rights and concerns of ... groups particularly vulnerable to discrimination; and
- compromised access to facilities, amenities and livelihood opportunities.³²

Business and human rights, the right to health and the right to housing: Insurance companies and other businesses involved in disaster response and recovery

The Ruggie Principles and the OECD Guidelines

It is important that companies involved in earthquake response and recovery are aware of *The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (the Ruggie Principles).³³ From 2005 to 2011, Professor John Ruggie served as the United Nations Secretary-General's Special Representative for Business and Human Rights. In that capacity, he produced the UN Guiding Principles on Business and Human Rights. This soft-law instrument was endorsed unanimously by the UN Human Rights Council.³⁴

Notably, the core provisions of the Ruggie Principles on corporate responsibility to respect human rights were also incorporated into a new human rights chapter in the OECD Guidelines for Multinational Enterprises (2011), ISO 26000, the new Sustainability Policy of the International Finance Corporation, and the European Commission's new Corporate Social Responsibility Strategy. The Guiding Principles also enjoy the strong support of many international businesses and civil society organizations. As a result, the international

²⁹ Raquel Rolnik, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context*, A/HRC/16/42, 2010.

³⁰ Ibid, at para 20.

³¹ Ibid, see pp.19-20.

³² Ibid, at para 61.

³³ See <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples>.

³⁴ In 2011.

community has reached unprecedented convergence on normative standards for the human rights conduct of corporations, and the focus now shifts to implementation. The Principles, which apply to the whole supply chain, are designed to ensure that companies do not violate human rights in the course of business transactions and provide redress when infringements occur.

The Ruggie Principles are divided into three 'pillars':

- The first is the duty of the State to **protect** against abuse by third parties - which includes businesses - by adopting appropriate policies, regulations and adjudication.
- The second is the responsibility of business to **respect** human rights, to avoid infringing the rights of others and to address any adverse impacts
- The third is the responsibility of business to ensure victims have greater access to an effective **remedy**.³⁵

The Ruggie Principles are not legally binding in the same way as a treaty. They establish standards of behaviour with which States are expected to conform. Ruggie himself sees them as providing "a common global platform for action, on which cumulative progress can be built, step-by-step, without foreclosing any other promising longer term developments".³⁶ In other words, they anticipate incremental progression towards the elimination of human rights abuses by both businesses and the State.

Although States are not directly responsible for the human rights abuses of private actors, States may be held to have breached their human rights obligations if they fail to take appropriate steps to prevent, investigate or punish such abuse.³⁷

If businesses have executed and promoted their execution of United Nations, World Bank, OECD or sustainability commitments to promoting and respecting human rights, those commitments remain in place during disaster recovery. Businesses that engage in 'bluwashing' (put simply, committing to human rights standards for publicity value but not backing that up in business operations) risk punishment by both capital markets and consumer markets. This is particularly true for insurance companies. Human rights compliance is seen as a non-negotiable pre-condition for investment in reinsurance or insurance markets by many government or government-related funds and by many privately held funds. Many of these funds will withdraw capital from downstream companies that breach human rights. Social media also makes it possible for customers to expose and highlight human rights hypocrisy. NGOs have a key part to play in holding such organisations accountable to their commitments, and they can provide valuable tools to enable others to do so too. One of the best examples of this is the excellent reference guide on how to hold businesses to account for human rights abuses, published by the French NGO International Federation for Human Rights, entitled *Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms*.³⁸

³⁵ John Ruggie, *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, A/HRC/17/31 at para 6.

³⁶ Ibid, at para 13.

³⁷ Ibid, at 1(A)(2).

³⁸ See <http://www.fidh.org/Updated-version-Corporate-8258>. The latest updated version of the publication is from March 2012.

Health and housing are two areas of post-natural disaster recovery where businesses may find themselves in breach of human rights law standards. For example, the New Zealand Human Rights Commission is watching to activities of insurance companies involved in the Canterbury recovery. If it emerges that claims management practices are exacerbating psycho-social harm beyond the normal levels experienced in earthquakes, then there is potential for human rights abuse. International human rights law requires that everyone has the right to the highest attainable level of health and to adequate housing as a component of the right to an adequate standard of living. The right to adequate housing includes, among other things, the right to protection against arbitrary or unlawful interference with privacy, family, home, and to legal security of tenure.

UN Global Compact and other United Nations principles

The UN Global Compact³⁹ provides a global commitment to human rights by businesses that agree to comply with its principles. The first two principles of the UN Global Compact, which are derived from the Universal Declaration of Human Rights, are:

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights;⁴⁰ and
- Principle 2: Business should make sure that they are not complicit in human rights abuses.⁴¹

The United Nations Environment Programme (UNEP) Finance Initiative Principles for Responsible Investment (PRI) and the UNEP Finance Initiative Principles for Sustainable Insurance (PSI) (adopted June 2012) also provide global standards, including human rights standards, for business. They are described as follows in the PSI:

“The Principles and PRI are global frameworks within the financial sector. They are aligned with and complement the aims of the UN Global Compact Principles, which promote the adoption of sustainable business practices across all industry sectors. The UN Global Compact Principles are derived from universally-accepted principles in the areas of human rights, labour, environment and anti-corruption.

There is no obligation for signatories of the Principles to sign the PRI or the UN Global Compact Principles, and vice-versa.”⁴²

Not all insurers operating in New Zealand have signed these documents. IAG has signed the UN Global Compact and the PSI. IAG was a founding signatory of the PSI.⁴³ Many funds that invest in reinsurers who reinsure insurers operating in New Zealand, and many reinsurers who reinsure insurers operating in New Zealand, have signed the Global Compact, the PRI and the PSI.

Principle 1 of the PSI states that insurers will embed in their decision-making environmental, social and governance issues relevant to their insurance business including claims

³⁹ See United Nations Global Compact, http://www.unglobalcompact.org/http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/Note_on_Human_Rights_Jan_09.doc.

⁴⁰ See <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle1.html>.

⁴¹ See <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/Principle2.html>.

⁴² See http://www.unepfi.org/fileadmin/documents/PSI_document-en.pdf.

⁴³ IAG, 2012 IAG Sustainability Report, see http://www.iag.com.au/reportingcentre/2012/sustainability_report/assets/downloads/publication.pdf.

management that “respond to clients quickly, fairly, sensitively and transparently at all times and make sure claims processes are clearly explained and understood; and integrate Environmental Social and Governance issues into repairs, replacements and other claims services.”

IAG Managing Director and CEO Mike Wilkins describes being sustainable as follows: “Being sustainable is fundamental to the way we do business at IAG. We do not see it as a programme that runs alongside our operations. Rather, we see it as an outcome of everything we do. In practice, this means our day-to-day operational decisions consider the interests and long-term prosperity of our customers, the community, our people, suppliers, the natural environment and our shareholders. In doing so, we will secure a successful future for our businesses and the many people who rely on us to be there when they suffer the hardship of unexpected loss.”⁴⁴ Horizontal integrity mechanisms like NHRI’s can make clear to businesses that make such claims that compliance with such claims will be monitored.

The World Bank

The World Bank has produced a very valuable resource for housing and community recovery called *Safer Homes Safer Communities: A Handbook for Reconstructing after Disasters*.⁴⁵ The standards applied by the World Bank to international development investment are also based on universal human rights and anti-corruption standards.

The World Bank International Finance Corporation’s *Sustainability Framework* articulates the Corporation’s strategic commitment to sustainable development, and is an integral part of IFC’s approach to risk management. The *Sustainability Framework* comprises the IFC’s *Policy and Performance Standards on Environmental and Social Sustainability*, and the IFC’s *Access to Information Policy*. The *Policy on Environmental and Social Sustainability* describes IFC’s commitments, roles, and responsibilities related to environmental and social sustainability. The IFC’s *Access to Information Policy* reflects IFC’s commitment to transparency and good governance on its operations, and outlines the Corporation’s institutional disclosure obligations regarding its investment and advisory services.

The IFC *Performance Standards* are directed towards clients, providing guidance on how to identify risks and impacts, and are designed to help avoid, mitigate, and manage risks and impacts as a way of doing business in a sustainable way, including stakeholder engagement and disclosure obligations of the client in relation to project-level activities. In the case of its direct investments (including project and corporate finance provided through financial intermediaries), IFC requires its clients to apply the *Performance Standards* to manage environmental and social risks and impacts so that development opportunities are enhanced. IFC uses the *Sustainability Framework* along with other strategies, policies, and initiatives to direct the business activities of the Corporation in order to achieve its overall development objectives. The *Performance Standards* may also be applied by other financial institutions. Together, the eight *Performance Standards* establish standards that the client is expected to

⁴⁴ Ibid.

⁴⁵ Abhas K. Jha et al, World Bank, supra note 8.

meet throughout the life of an investment by the IFC. Performance Standard 5 is of particular relevance to the consideration of resettlement.

In many ways post natural disaster developments are or may be analogous to a major IFC investment. In the case of Canterbury, it is a NZ\$13.5 billion investment by New Zealand in the recovery of Canterbury. The IFC Framework could be easily adapted to the investment in Canterbury and other disaster recovery.

Sustainability indexes

There are a number of sustainability indexes which are relevant in the post-disaster context. The Dow Jones Sustainability Index is an example. Wikipedia describes the DJSI as:

“The Dow Jones Sustainability Indexes (DJSI) launched in 1999, are a family of indexes evaluating the sustainability performance of the largest 2,500 companies listed on the Dow Jones Global Total Stock Market Index. They are the longest-running global sustainability benchmarks worldwide and have become the key reference point in sustainability investing for investors and companies alike. In 2012, S&P Indices and Dow Jones Indexes merged to form S&P Dow Jones Indices. The DJSI is now managed cooperatively by S&P Dow Jones Indices and SAM.

The DJSI is based on an analysis of corporate economic, environmental and social performance, assessing issues such as corporate governance, risk management, branding, climate change mitigation, supply chain standards and labor practices. The trend is to reject companies that do not operate in a sustainable and ethical manner. It includes general as well as industry specific sustainability criteria for each of the 58 sectors defined according to the Industry Classification Benchmark (ICB).

The DJSI family contains one main global index, the DJSI World, and various indexes based on geographic regions such as: Europe, Nordic, North America and Asia Pacific. The DJSI also contains industry specific indexes called “blue chip indexes.” In addition, the DJSI methodology facilitates the design, development and delivery of customized sustainability indexes; e.g. indexes covering different regions, indexes covering different segments of the leading sustainability companies, indexes covering additional exclusion criteria and indexes denominated in different currencies.”⁴⁶

To be incorporated in the Dow Jones Sustainability Index, companies are assessed and selected based on their long term economic, social and environmental asset management plans. Selection criteria evolve each year and companies must continue to make improvements to their long term sustainability plans in order to remain on the Index. Indexes are updated yearly and companies are monitored throughout the year

To be listed on the DJSI companies must complete the SAM Research Corporate Sustainability Assessment Questionnaire. Part 3.23, ‘Business and Human Rights’ requires companies to indicate their commitment to the Ruggie framework. Companies are therefore at risk of delisting if their practice does not accord with their disclosure.

Conclusion: What will happen if we do not learn from the international experience?

If we do not learn from international experience in the context of natural-disaster recovery and response, the most vulnerable people affected by disasters will likely suffer many human rights violations. These violations may include unequal access to assistance;

⁴⁶ See http://en.wikipedia.org/wiki/Dow_Jones_Sustainability_Index.

discrimination in the provision of aid and recovery assistance; enforced relocation; sexual and gender-based violence; involuntary return or resettlement; and issues of property restitution and housing. Already, vulnerable people will be discriminated against in the recovery process. This may not be immediately apparent because it is what we do not do that is likely to cause more harm than what we do do. At least that will be the position in hindsight if history repeats itself. The IASC Operational Guidelines are one tool that can be useful in avoiding history repeating itself.

Natural disasters and the subsequent recovery will, unless we succeed where others have failed, exacerbate the vulnerability of affected people already facing the reality of entrenched inequality and discrimination - women, ethnic minorities, indigenous people, and disabled people, as well as creating new groups of vulnerable people such as 'renters' or 'house owners'. "Renters have been called both the easiest and the hardest households to return to permanent housing. They are the easiest if unaffected rental units are available in the area – since they are not dependent on a particular property unlike "house owners" who are – and they are the hardest when there is no available rental housing."⁴⁷ Gould notes that governments and NGOs tend to see housing as within the private sector and thereby leave some of the lowest-income individuals and families at particular risk. Renters are often the poorest and most marginalised members of a community and suffer disproportionately as a result of the failure to mitigate this risk. 'Home-owners' – particularly elderly homeowners on fixed incomes – are also vulnerable.⁴⁸

In the context of natural-disaster recovery, it is likely that acts of omission are going to cause significant problems in regards to vulnerable affected people. As Gould says: "Perhaps the greatest challenge in the recovery of housing, however, arises not from acts of commission – land grabs and forced resettlements – but from acts of omission. The respective aftermaths of both Hurricane Katrina and the Indian Ocean Tsunami reflect a failure to focus adequately on the particular needs of the most vulnerable, especially those who did not own their housing prior to the disaster and who are especially dependent on the rebuilding decisions of others. Given the complexity of vulnerability in the disaster context, there is clearly a need for a more visible rights perspective."⁴⁹

⁴⁷ Gould, supra note 6, p.185.

⁴⁸ Ibid, pp. 185-188.

⁴⁹ Ibid, p. 193.



Human Rights
Commission

Te Kāhui Tika Tangata

Your nation has just
suffered a major
natural disaster?

Are there any
human rights
frameworks to guide
response and
recovery?

Admiral Thad Allen

- Treat affected people as if they are members of your own family
- If you do that and someone has a problem with what you have done it is my problem not your problem.

There are International Human Rights “Hard Law” and “Soft Law” Instruments that are useful to Government, Integrity Institutions, Business and NGO’s in a time of natural disaster response and recovery

The international human rights treaties and conventions are binding on States during and after a natural disaster.

The “soft law” instruments like the IASC Operational Guidelines :

- ✓ are very helpful but not binding, even though they contain binding international law obligations under treaty and customary law (they are consistent with international human rights law and international humanitarian law and international refugee law);
- ✓ address both international and domestic response;
- ✓ address governmental and non-governmental actors in humanitarian action;
- ✓ explicitly acknowledge the primary responsibility of national Governments and domestic authorities.

IASC Operational Guidelines on Human Rights in Natural Disasters

“IASC Operational Guidelines” – 2006

Part I: Introduction

Part II: Operational Guidelines, protecting human rights related to:

- A. Life, Security, Physical Integrity of the Person, & Family Ties
- B. Provision of Food, Health, Shelter, & Basic Necessities of Life
- C. Education, Housing, Land & Property, and Livelihoods
- D. Documentation, Freedom of Movement, Re-establishment of Family Ties, Freedom of Expression & Opinion, and Elections.

Part III: Protection of Specific Groups of Persons

Guiding Principles on Internal Displacement

“IDP Guidelines” - 1998

- endorsed by UN Human Rights Commission and UN General Assembly in 1998;
- purpose = protection of internally displaced persons in internal conflict situations, natural disasters and other situations of forced displacement;
- Relevant in all phases of displacement;
- Guiding principles to guide Governments and non-governmental humanitarian actors;
- definition of “IDPs”
 - persons or groups of persons
 - forced or obliged to leave their homes or places of habitual residence
 - in particular as a result of or in order to avoid the effects of (...) natural or human-made disasters
 - who have not crossed an internationally recognized State border
- encompass general principles; protection from arbitrary displacement; protection and assistance during displacement; access to humanitarian assistance; durable solutions.

Principles on Housing and Property Restitution for Refugees and Displaced Persons

“Pinheiro Principles” - 2005

- 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
- provide a consolidated and universal approach to dealing effectively with outstanding housing and property restitution claims
- sections II-IV re-affirm existing human rights and apply them to the specific question of housing and property restitution
- sections V-VI reaffirm what States should do in terms of developing national housing and property restitution procedures and institutions, and ensuring access to these by all displaced persons. Among other things, stresses the importance of consultation and participation in decision-making by displaced persons
- Useful guidance in Third Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context (2011)

Business and human rights – Punishment by capital markets and consumer markets for human rights hypocrisy

- **Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework – “Ruggie Principles” - 2011.**
 - Endorsed unanimously by UN Human Rights Council. Three parts:
 - State duty to **protect** against third party human rights abuses (includes businesses)
 - Responsibility of business to **respect** human rights and address adverse impacts
 - Ensuring victims of business-related human rights abuse have greater access to effective **remedy**
- **OECD Guidelines for Multinational Businesses (2011 Edition) updated to include human rights guidance for Multinational Business**
- **UN Global Compact**
 - launched 2000. Strategic policy initiative for businesses that are committed to aligning their operations and strategies with 10 principles in areas of human rights, labour, environment and anti-corruption
 - businesses and organisations choose whether to commit to the UN Global Compact. Currently 10,000 participants in 145 countries
- **Sustainability standards and indexes and best practice guides**
 - World Bank Safer Homes Safer Communities – A Handbook for Reconstructing after Natural Disasters
 - International Finance Corporation Sustainability Frameworks for Investment and Insurance (adopted 2006, updated 2012);
 - Dow Jones Sustainability Index.
- ***Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms* - by French NGO International Federation for Human Rights**