IRis

Northeastern University

School of Law Faculty Publications

School of Law

October 01, 2006

Human rights and natural disaster : the Indian Ocean tsunami

Hope Lewis
Northeastern University School of Law

Recommended Citation

Lewis, Hope, "Human rights and natural disaster : the Indian Ocean tsunami" (2006). *School of Law Faculty Publications.* Paper 3.
http://hdl.handle.net/2047/d20001074

This work is available open access, hosted by Northeastern University.

Human Rights and Natural Disaster: The Indian Ocean Tsunami

By Hope Lewis

Northeastern University School of Law

***Human Rights*, Fall 2006, Vol. 33, No. 4, p. 12-16**

Why should we focus on human rights in the aftermath of a natural disaster? When governments face massive loss of life, public health crises, and thousands of injured, hungry, and homeless people, the demands of humanitarian aid coordination and delivery, and the rebuilding of infrastructure, the basic need to reestablish public services and security immediately spring to mind. But governments and the international community are also obligated—legally, politically, and morally—to undertake recovery efforts in ways that are consistent with the human rights of those most affected by disaster.

The December 26, 2004, Indian Ocean tsunami—actually an earthquake that generated several tsunamis—took the lives of more than 229,866 children, women, and men. Hundreds of thousands more were injured and millions displaced. Recognized as one of the worst natural disasters in recorded human history, the Indian Ocean tsunami remains a global issue. People in fourteen countries (Bangladesh, Burma, India, Indonesia, Kenya, Madagascar, Malaysia, Maldives, the Seychelles, Somalia, South Africa, Sri Lanka, Tanzania, and Thailand) were directly affected as well as thousands of tourists from other Asian countries, the European Union, Australia, the United States, and Canada.

Like the 2005 Katrina disaster in our own country, the Indian Ocean tsunami marked a turning point for some in the human rights movement. The world is beginning to recognize that human rights protections must be an integral part of disaster prevention and planning, humanitarian assistance, and rebuilding efforts.

Humanitarian Outpouring and Government Responsibility

The unparalleled scope of the tragedy generated a season of unprecedented charitable giving. Individuals and corporations pledged an estimated $5 billion. Quick and broad-based humanitarian concern was generated at international, regional, and domestic levels. The sheer magnitude of the human catastrophe caused many private actors to pause, take stock, and try to help in some way.

But the scale of the problems left in the tsunami's wake revealed the need for larger and more sustained action than well-meaning private humanitarian nongovernmental organizations (NGOs) and individuals could provide. Millions of survivors needed food, medical treatment, and emergency and permanent housing, along with the accompanying public services of clean water, electricity, and waste disposal. Hundreds of thousands of homes, hospitals, schools, roads, and other infrastructure had to be repaired or rebuilt. Families struggled to find each other, identify their dead, and locate the lost or injured. Legal titles to land and property were to be allocated where records had been destroyed. The complex deployment of money, expertise, administrative organization, and even military resources was necessary at governmental and intergovernmental levels as well as private ones.

According to the United Nations (UN), NGOs, and media reports, two years after the disaster there are both positive signs of concrete progress and disappointing accounts of continuing failures. For a compilation of major two-year assessments, see the website of the UN Office of the Special Envoy for Tsunami Recovery at www.tsunami specialenvoy.org.

Of course, recovery from such a disaster will take years in the most badly affected areas. Progress has already occurred. Tons of food aid, medical supplies, and other emergency supplies have been distributed. Thousands of permanent homes have been built. Roads, schools, hospitals, and offices are being reconstructed. Yet, as one second-anniversary report put it, "much done, more to do." United Nations Children's Fund, Much Done, More to Do: A 24-Month Update on UNICEF's Work to Rebuild Children's Lives and Restore Hope Since the Tsunami (Dec. 2006).

At the two-year mark, NGOs and journalists report that there is cause for serious concern about human rights in tsunami-affected countries as time and distance allow the world's memory to fade. Former President Bill Clinton observed that only one-third of the permanent housing needed in the region had actually been constructed. BBC News, "Clinton Warns on Tsunami Progress" (Dec. 2, 2006), news.bbc.co.uk/2/hi/ asia-pacific/6201350.stm. The BBC reports that only half of the billions in aid pledged by foreign governments has been delivered. Nations must be held accountable by people within their own countries as well as at the international level for such failures. And of monies donated to charitable or humanitarian organizations, much of it remains unspent. Nonprofits, therefore, should be subject to similar scrutiny.

All too often, the legal and moral obligations of states to respect, protect, and fulfill internationally recognized human rights are overlooked when a catastrophe occurs. It is, however, precisely at such times and in the years to follow that human rights can be in the most danger.

A Human Rights Approach

The UN and major international human rights and humanitarian NGOs identified significant human rights concerns early in the crisis. They realized that even the best-intentioned recovery efforts too easily can fall prey to apathy, "disaster fatigue," political manipulations, or even outright discrimination or economic expediency. A human rights culture must be established

before, during, and after such catastrophic events in order for any reconstruction plan to be just and sustainable.

Although governments do not cause natural disasters in the same way that they can be responsible for torture, arbitrary arrests, or extrajudicial executions, they do bear legally, politically,
or morally binding responsibilities with regard to the human rights impact of those disasters.

Two legally binding international human rights treaties, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights, elaborate state obligations as to the economic, social, and cultural rights (increasingly well defined by courts and other legal bodies) as well as the range of civil and political rights with which most U.S. lawyers are more familiar. The broad obligations in the two covenants are supplemented by a panoply of treaties focusing on the human rights of racial and ethnic minorities, women, children, migrant workers, and persons with disabilities. Many of these legal standards impose requirements on states affected by the tsunami.

The Guiding Principles on Internal Displacement outline the responsibilities of governments and other actors toward those who have been displaced by natural disaster or armed conflict. Although not legally binding as such, they reflect the moral and political obligations of the adopting states to provide for the basic needs of displaced persons as well as to protect their rights of compensation, participation, and return. They draw directly from standards common to international human rights and humanitarian law. Significantly, in a globalized world where some trans-national corporations, financial institutions, insurgent groups, and other organizations can approximate or exceed the power of governments, the Guiding Principles recognize that nonstate actors share responsibility with governments for the human rights of displaced persons.

Some Key Areas of Human Rights Concern

Despite some progress in developing awareness of a human rights perspective after the tsunami, crucial issues remain that governments and other actors in the region must address using a human rights lens. All human rights are potentially at risk in postdisaster situations, but the UN and international and local NGOs have identified some key areas of concern and priority as they implicate the most severely affected countries in South Asia.

Nondiscrimination. Principle 4(1) of the Guiding Principles states: “These Principles shall be applied without discrimination of any kind, such as race, color, sex, language, religion, or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.” Indeed, during the extreme threats to life and limb involved in disaster situations, fundamental truths about our common humanity emerge. Despite racial, gender, cultural, religious, class, linguistic, and political differences, we may feel, at least temporarily, a strengthened sense of empathy when coming face-to-face with the suffering of those who have lost loved ones or who are dislocated from home and community ties. Therefore, reports about discrimination in the provision and distribution of aid and in the recognition of other human rights following the tsunami are particularly appalling.

Media reports indicated that Dalits (low-caste groups) in some parts of India were discriminated against in the distribution of food and other aid. Equally disturbing reports from Sri Lanka pointed out that the provision of humanitarian aid to Tamil civilians was limited because of the armed conflict between the government and the Liberation Tigers of Tamil Eelam, an insurgency group.

Sex discrimination is also apparent. Women have been excluded from receiving boats or other subsistence fishing supports or employment as aid workers. Female tsunami survivors charge that aid was sometimes distributed first to men (or in places more accessible to men) with the unfounded assumption that males would then automatically provide it to women and children. Land titles and inheritance rights were sometimes inappropriately allocated to male survivors rather than to female claimants. Such violations run afoul of legal prohibitions under international human rights treaties and the Guiding Principles.

Discrimination based on economic class is also at issue. The wealthy or large businesses affected by the disaster can exercise the influence to demand rapid private compensation and reconstruction loans for the rebuilding of luxury resorts. By contrast, in some areas, poor farmers and people from fishing villages were forcibly relocated to temporary shelters, with little prospect of regaining their lands, homes, or livelihoods. ActionAid International, Tsunami Response: A Human Rights Assessment (Jan. 2006).

Even poor countries with limited "available resources" are under an immediate obligation to distribute the domestic and international aid available to them in an even-handed manner and to protect survivors from discrimination by others. UN Committee on Economic, Social, and Cultural Rights, General Comment 3 (1990). Clearly, governments are tempted to avoid this obligation where marginalized or disfavored groups or groups in conflict zones are involved, but no state should be allowed to use the racial or social status of any group as an excuse for failing to protect and fulfill their human rights.

The right to the highest attainable standard of health. Principle 19 of the Guiding Principles specifically notes: "All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services." Under these and other principles, then, governments are obliged to respect, protect, and fulfill the right to health. *See also* UN Committee on Economic, Social, and Cultural Rights, General Comment 14 (2000). After the preservation of life itself, the physical well-being of tsunami victims was the primary area of focus immediately following the tragedy. Two years later, however, some regions still experience severe shortages in health services and the physicians and nurses to provide them. Poor sanitation, lack of potable water, and overcrowded conditions in temporary shelters and camps present potential vectors for the spread of disease.

Most governments tend to overlook mental and emotional health as an integral aspect of public health and human rights. After the loss of wives, husbands, children, parents, homes, community ties, and treasured memories, surviving populations are at greater risk of severe depression and other mental and emotional illnesses. The need for culturally contextual mental health and

community support services in the affected areas is critical if the societies are to rebuild physically and socially. Such care is an important aspect of the right to health for every individual and group. Haroon Ashraf, *Tsunami Wreaks Mental Health Havoc*, 83/6 Bull. of the World Health Org. 405 (June 2005), *available at* www.scielosp.org/scielo.php?pid=S0042-96862005000600005&script=sci_arttext&tlng=en.

The right to adequate housing. Article 11(1) of the ICESCR clearly states: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate . . . housing, and to the continuous improvement of living conditions." The right of adequate housing and land rights have received the most attention since the tsunami. *See, e.g.*, Housing and Land Rights Network, Do People's Voices Matter?: The Human Right to Participation in Post-Tsunami Housing Construction (Dec. 15, 2006). Two-year assessments indicate that, despite unprecedented effort in some countries, progress is still too slow in others. Although Oxfam notes that the Indonesian government has made significant progress in rebuilding more than one-third of the 128,000 homes needed in the Aceh region, thousands of poor people still remain homeless. Oxfam International, The Tsunami Two Years On: Land Rights in Aceh (Dec. 7, 2006).

Problems range from the legal and practical issues of searching for title to land or homes when personal and public records have been destroyed to the deliberate removal of poor or disfavored groups from desirable land in favor of commercial hotel and tourism interests. Many of the poor had been living in rented homes or had no tenancy status prior to the tsunami.

Even given the enormity of the administrative tasks, however, critics question why more effective action has not been taken in situations in which people are living under the most desperate circumstances. The most marginalized survivors are still living without clean running water, electric power, and proper waste disposal facilities. Some camps are far from access to employment or subsistence, education, or health care.

The right to housing is not merely an unattainable statement of a laudable aspiration. It is a legally defined right about which there is specific and growing jurisprudence on a government's legal obligations. *Government of the Republic of South Africa v. Grootboom*, 2001 (1) SA 46 (CC) (right under the constitution of South Africa); UN Committee on Economic, Social, and Cultural Rights, General Comment 4 (1991) (the core obligations associated with the right).

The right to a livelihood. Article 6(1) of the ICESCR states: "The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."

Among those most deeply affected by the coastal impact of the tsunami are people who made their living by fishing and by working small farms. Boats and farms were destroyed or severely damaged, workers killed or injured, and normal fishing and cultivation areas disrupted and polluted. Although some humanitarian efforts have addressed these problems by providing for new boats and equipment, other priorities have interfered in the rebuilding of these means of subsistence and livelihood.

Although governments and communities were understandably concerned that the jobs and economic investment associated with tourism should be regenerated quickly after the tsunami, without an explicit human rights approach, poor fishing communities and farmers will get lost in the shuffle, or worse, intentionally moved out of the way of financially powerful private actors. Governments have an obligation to make sure that those whose livelihoods and subsistence were disrupted by the disaster have the right to return and to the supports necessary to reestablish and develop their own communities.

The rights of vulnerable groups. Returning to the Guiding Principles, Principle 4(2) notes: "Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs."

Governments tend to respond quickly to the demands of the most powerful interests following a natural disaster because they fear the loss of foreign and domestic investment. But the international human rights standards require a different focus. Often the most socially and economically marginalized groups in our communities—children, women, the elderly, and persons with disabilities—that are forgotten when it comes to long-term disaster relief and the implementation of international human rights. Governments should, instead, address their rights as a matter of priority.

Children are estimated to have constituted one-third of the casualties in the region. Others were orphaned and now live in institutions or temporary camps rather than family or home settings. Lack of educational access remains a serious problem given the need to rebuild many schools. Left without family or community supports, some children are vulnerable to sexual abuse or trafficking. Governments must therefore engage in targeted efforts to address their needs and prevent further violations.

Estimates also indicate that women were killed in numbers disproportionate to their percentage of the population along some coasts. Now, surviving widows and heads of households live with the emotional, social, and economic toll of loss. Some are subject to gender-based violations such as rape in displacement camps, domestic violence (exacerbated by social dislocation), discrimination in employment, and exclusion from participation in political and economic life.

Persons with disabilities who survived the initial floods may now be subject to continuing discrimination in employment, accessible housing, and access to education and medical care. Others suffer social stigmatization and isolation.

Participation from the ground up. Finally,Article 28(2) of the Guiding Principles calls for "[s]pecial efforts . . . to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration." This right to participation is one of the least recognized, but most important, human rights in the post-tsunami context. International human rights instruments require states to ensure that those most affected by political and economic policies should participate at all levels—civil, political, economic, social, and cultural. This participation, as a human right, should not be based on top-down

models of largesse and inclusion after the fact. Rather, those most affected should be involved at all stages—priority and goal setting, planning, and implementation.

A Role for Human Rights Advocacy

Lawyers can and do assist in the aftermath of catastrophic situations such as that presented by the Indian Ocean tsunami by ensuring access to services and protecting the legal and economic interests of survivors at the domestic level. But lawyers and community advocates can use international human rights strategies as another set of tools to hold governments and nonstate actors accountable for the well-being of disaster survivors. To rebuild lives, families, homes, and communities, human rights advocates must work in partnership with humanitarian, development, public health, and housing experts to create and monitor concrete benchmarks by which human rights progress (or failures) can be measured. To paraphrase the UNICEF report cited earlier, much has been done, but there is more to do.

Hope Lewis is a professor of law at Northeastern University School of Law and coauthor of Human Rights in the Global Marketplace: Economic, Social, and Cultural Dimensions *(Transnational 2005).* *She greatly appreciates Celeste Lim's research assistance in the preparation of this article.*

As published in *Human Rights*, Fall 2006, Vol. 33, No. 4, p. 12-16