HUMAN RIGHTS AND DISASTERS
Does a rights approach reduce vulnerability?

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Awareness of human rights

Widespread awareness of human rights and of the value of a rights approach is a characteristic of our era. The trend now is to give rights an explicit legislative basis, and to incorporate them into a wide range of agreements and policy including commercial contracts and labour agreements. Many major commercial entities and communities are committing themselves to upholding basic human rights, for example through joining the United Nations sponsored Global Compact [http://www.unglobalcompact.org/]. Recently, the city of Melbourne joined the Compact making human rights part of the city’s vision.

Our awareness of human rights has been greatly enhanced by globalisation of the media and the spread of North Atlantic notions of democracy. To some commentators this reflects a resumption of the US led post World War II project - interrupted for 40 years by the cold war (Cately, 1997). This project included the spread of human rights expressed through democratic institutions of the US model and global free trade and financial systems. Global trade and finance are formally represented by the Bretton Woods institutions of the IMF and World Bank, and by GATT (now the World Trade Organisation or WTO). Today, the concept of rights is being extended well beyond individual freedom of expression, voting and trade, to encompass basic needs such as food, housing, employment opportunities, a clean environment and increasingly gender and cultural rights, and perhaps safety. Although the European Union has promoted the broader concept, it is these newer rights that are the most strongly contested by many groups and governments in both rich and poor countries. Through groups like Human Rights Watch, Amnesty International, the International Federation of Red Cross/Red Crescent Societies, and the environmental justice movement, our awareness of rights extends to knowledge of their contested nature and widespread abuse.

But the processes of globalisation – in particular economic globalisation – have created losers too as a result of enhanced competition for capital and trade and the now easy relocation of commercial activity. Some argue that these processes are leading to the creation of many more vulnerable communities worldwide through for example loss of livelihoods or environmental degradation. Increasing violence in many parts of the world
has also helped make many communities vulnerable to all types of crises including natural hazards. For the purposes of this paper vulnerability is considered to be a function of social and economic well-being (see for example Blaikie et al, 1996), and is linked with equitable and sustainable development (for example, see Mileti, 1999).

As someone interested in hazard management I see that my task is to contribute to vulnerability reduction. In this context, key questions are: does a human rights approach help reduce vulnerability? and are there other proven approaches? This note introduces the rights approach in the context of disasters and highlights some relevant issues.

Other approaches

Approaches to vulnerability reduction that are not rights based (or at least that are not explicitly based on human rights law), exist and have proven reasonably effective. As this paper concerns a rights approach, I will simply outline these here.

I recognise that there is intense debate about almost every aspect of the concept of vulnerability, and that we are all vulnerable somehow. Nevertheless, I would argue that most people in rich countries are now much less vulnerable to so called “natural” hazards than they were a few decades ago (although we may consider ourselves more vulnerable to other problems) – as measured for instance by the key outcomes of life expectancy and health, and by the availability of crisis support. This is not a result of an explicit rights approach. Instead, it reflects the continual expansion of health and safety knowledge and regulation, livelihood security, and the personal accumulation of wealth and various forms of “insurance” – in addition to the political consensus that supports these trends. Of course, these overall figures disguise inequalities which appear to be increasing rapidly (UNDP Human Development Report 2000), with implications for the rights of those becoming relatively poorer.

How does a rights approach help?

A rights approach could help reduce vulnerability if the approach made reduction a legal requirement. Existing human rights, and rights related, law appears to cover many of the components of vulnerability. In addition, long established international humanitarian law sets out obligations in times of war (Plattner, 1992), and there is currently debate over the existence of much broader rights to humanitarian assistance (Kent, 2000).

Rights can exist formally in law as well as informally through custom or practice. In some areas of activity, practice is as if a legal right existed. This is especially the case with emergency aid which generally flows (or appears to flow) to apparently needy areas as if it was a right. Aid to help those affected flows from governments, non-government organisations and individuals, often from all over the world. This applies to both rich and some poor countries, with some outstanding exceptions; for example, citizens of the United Kingdom do not receive any aid from their national government following
disasters like flooding.

Examples of relevant rights law

There are numerous international conventions in the areas of human rights, as well as those concerning health, children, violence, labour law and so on. Most have or may have some relevance to vulnerability.

Everyone has the right to life, liberty and security of person (Article 3, Universal Declaration of Human Rights adopted and proclaimed by the UN General Assembly, 10 December 1948). While this has traditionally applied to arbitrary arrest and detention, it may be arguable that protecting the “security of the person” requires protection from other forms of harm. The Convention on the Rights of the Child is more specific. It requires signatory states to “ensure to the maximum extent possible the survival and development of the child.” The Convention emphasises the right of children to the highest attainable standard of health (Art 24.1), and requires states to “pursue full implementation of this right” (Art 24.2). The International Convention on Economic, Social and Cultural Rights appears to be concerned with many of the constituents of vulnerability: it protects the right to adequate food, nutrition, shelter, clothing, education and health and medical services (Article 11).

However, these fundamental rights for survival are strongly disputed by many governments and ignored by many others, for example the United States has yet to ratify the Convention. Rights may also appear to conflict with commerce: how does a right to health and medical services sit with the reluctance of global drug companies to allow generic drugs for those who cannot afford the branded product? Not surprisingly then, there is now an intense debate on whether rights associated with survival are as important as rights associated with voting (see for example the cover story of The Economist 18-24 August, 2001).

Implementation

There is clearly a massive implementation gap, even if we limit ourselves to the wealthy countries! Enforcement of international law is very limited unless the issue is within the ambit of the WTO (World Trade Organisation) – and the WTO has yet to be generally seen as promoting a rights approach. Sovereignty and perceived national or partisan political interests are more important for most countries. For example, rights can easily be set aside if governments decide they conflict with security issues, and certain groups such as asylum seekers can be excluded from the normal operation of the law.

Few countries embrace the full range of “human rights”, challenging the notion that rights are universal. Many countries and commentators have difficulty with the notion that economic and social issues should be framed as rights (The Economist, 18-24/8/01: 9, 18). The European Union has put in place a fairly detailed set of enforceable social and economic rights in addition to some regulations on emergency planning. However,
Britain has long argued against this trend and obtained exemptions from some key European legislation. The United States has also argued against extension of the rights concept. And under the current Bush administration it has also recently insisted that Americans have a “constitutional right to keep and bear arms” (The Weekend Australian: 14-15/7/01:13) – going against over a century of US judicial opinion arguing just the opposite (www.2ndlawlib.org/other/other/senrpt/senrpt27.html) and scuttling a UN attempt to develop a treaty to control firearms trafficking. In stark contrast, much of the rest of the world sees the proliferation of small arms, and the resulting violence and terror, as a fundamental human rights problem. Other countries argue that human rights are in fact about social and economic well-being, and not about individual political freedom. The case for the latter on the grounds that it supports economic and social well being is elegantly put by Amartya Sen (1999) and others. But this may disguise massive inequalities and malpractice even within wealthy countries and functioning democracies. An exclusive emphasis on individual freedom and choice also suggests that there is no collective responsibility for human well-being – something that numerous individuals and groups around the world reject through their actions. Apart from the theoretical issue of the universality of human rights, this raises the question as to what extent is it reasonable to dictate national priorities to countries and regions with their own distinctive cultural concerns, and their own urgent priorities? For example, east Asian countries are seen as traditionally placing far more emphasis on the perceived collective good than on individual rights and this is reflected in their approach to democracy (Case 1992; Yu 2000; Bauer and Bell 1999. For a different view see De Bary 1998). At a rather different level, it was reported recently that Fife Council in Scotland had decided that having a drink in a local village pub should be treated as a human right under European legislation (Melbourne Express 7/8/01:17).

What does a rights approach do for the most vulnerable?

Through existing law a rights based approach appears to have a lot to offer in terms of reducing vulnerability in a general sense. But what might a rights approach do for the world's most vulnerable people?

For the sake of argument I nominate two groups as the world’s most vulnerable – although of course I recognise that there are many other contenders:

- Victims of warfare or widespread violence which destroys social and economic infrastructure. Currently some 56 countries are affected this way; and
- The invisible and socially excluded. This group would include slaves, currently estimated at about 27 million (www.oneworld.org/ni/index4.html), refugees and displaced people (about 35 million in 2000 World Refugee Survey 2000), and those existing at the margins of mainstream society including the homeless, those without livelihoods and some indigenous groups.

I think that the situation for these groups has actually deteriorated as our awareness and concern for human rights has been increasing. A legalistic rights approach may do little
for these groups. The second group listed above would need to be noticed before the law
could apply – so processes designed to reduce exclusion would be most useful. Once
noticed, governments and media would need to avoid vilifying these groups – as often
happens for local political gain. Unfortunately, the proliferation of war worldwide over
the last decade has seen massive increase in the number of refugees and of people trapped
in areas where government, infrastructure provision, civil society and markets for
essentials such as food, have all but collapsed. The casualties from these modern wars
are almost entirely non-combatants – reinforcing the need for, and weakness of,
international laws intended to protect civilians during conflict. In addition, there are a
few countries ruled by governments or groups whose actions constitute a direct attack on
the rights of their own citizens to have livelihoods and access to community support
during crises.

This is not to say that a rights approach could not help the world’s most vulnerable – only
that it does not appear to have so far. It is particularly disappointing to see some
governments in rich countries vilifying refugees and operating at the margins of domestic
and international human rights laws, while reducing international aid and effort directed
at solving the root causes of the refugee flow.

Conclusion

Many of the constituents of vulnerability come within the ambit of human rights law.
Considerable vulnerability reduction could be achieved by slight increases in compliance
with existing rights law through exhortation, shaming, trade pressure, diplomatic
persuasion and citizen activity. Is there a collective responsibility among all of us to
achieve this, and therefore also for risk and vulnerability management? Past activity in
the form of humanitarian support suggests that there may be.

But I am unsure that much would be achieved by attempts at enforcement through
sanctions or other forms of intervention. Those who think otherwise might like to
consider just how many countries have fully functioning legal systems operating without
constant political interference? Or have the capacity to develop and implement policy?
Without judicial and policy capacity it is difficult to see how a rights approach to
vulnerability reduction would be effective; and I would argue that these points are pre-
conditions to an effective legalistic rights approach.

Governments around the world need to be reminded about what they have signed in good
faith – and they need support to achieve these standards. Much of that support will need
to come from NGOs including religious, professional and community groups, and from
locally based and global commerce. Even in the absence of the key institutions
mentioned above, human rights law can be a powerful advocacy tool in the hands of civil
society.

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References


