



<b>Title</b>	International law applicable to urban conflict and disaster
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<b>Publication date</b>	2017-08
<b>Publication information</b>	McDermott, Ronan, Charlotte Luelf, Laura Hofmann, and Patrick F. Gibbons. "International Law Applicable to Urban Conflict and Disaster" 26, no. 5 (August, 2017).
<b>Publisher</b>	Emerald
<b>Item record/more information</b>	<a href="http://hdl.handle.net/10197/9460">http://hdl.handle.net/10197/9460</a>
<b>Publisher's statement</b>	This article is © Emerald Group Publishing and permission has been granted for this version to appear here <a href="https://doi.org/10.1108/DPM-03-2017-0052">https://doi.org/10.1108/DPM-03-2017-0052</a> Downloads:. Emerald does not grant permission for this article to be further copied/distributed or hosted elsewhere without the express permission from Emerald Group Publishing Limited.
<b>Publisher's version (DOI)</b>	10.1108/DPM-03-2017-0052

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## International law applicable to urban conflict and disaster

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### Abstract

- *Purpose:* This article provides a comprehensive overview of the international legal framework governing urban crises arising from conflict, natural and technological disasters.
- *Design/methodology/approach:* The article deploys legal analysis to the most relevant bodies of international law pertaining to urban crises and systematically outlines the key legal issues arising.
- *Findings:* International humanitarian law and international human rights law provide important protections to vulnerable persons in both human-made and natural disaster settings. While the two bodies of law do not draw explicit distinctions between urban and rural settings, their various provisions, and indeed their silence on, crucial issues that would enhance legal protection in urban settings merit greater attention.
- *Research limitations/implications:* The article provides an overview of the sources of international law of most relevance to urban crises. Further research is required into how the urban environment influences their application concretely in urban settings.
- *Practical implications (if applicable):* In an era when international law is being challenged from many sources and attention is turning to the increasing potential for urban violence and vulnerability, this article serves to sensitise the disaster management and humanitarian community to the relevance of international legal frameworks to its activities in urban settings.
- *Originality/value:* This article considers the most salient international legal issues arising during crises and compares and contrasts how the different bodies of international law (international humanitarian law and international human rights law) address each of the kinds of crises (conflict, natural or technological disaster) respectively.

**Keywords:** legal frameworks, disaster law; Urban emergency management; human rights

**Paper type:** Research Paper

**Funding:** This article has been written as part of the Preparedness and Resilience to address Urban Vulnerabilities (PRUV) project. The project has received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement no. 691060.

## **1. Introduction**

Populations living in urban areas are rendered vulnerable due to myriad inter-related factors including rapid and unplanned population growth, organised violence, environmental degradation, precarious livelihoods and resource pressures. These challenges are likely to grow given that the proportion of the world's population living in urban areas is projected to increase to 70% by 2050 (IDMC and NRC, 2014; UNISDR, 2014). Over the past forty years the urban population in lower income and fragile countries has increased by 326% and currently nearly one billion people or a third of the developing world's urban population live in slums (UNISDR, 2014). While urban vulnerability presents an enormous challenge, it is important to acknowledge that urban areas are growing at least in part because of the relative availability of economic, social and other opportunities vis-à-vis rural areas. Nonetheless, it is commonly agreed that there is a pressing need to reshape humanitarian and development interventions undertaken in the urban context so that they harness existing resources and work to support and transform these urban systems to prepare, withstand, and recover from shocks and protracted crises (Knox-Clark and Ramalingam, 2012; Pantuliano, 2012).

Against this backdrop, legal systems can play a crucial role in both strengthening and, potentially, undermining the capacities of persons exposed to urban fragility and vulnerability arising from a variety of sources. Such systems operate at different governance levels; municipal, national, regional and international. While all the government levels are doubtlessly relevant, this article outlines the pertinent "international" legal frameworks in a manner that is sensitive to the particularities of urban crises, including high population densities, the reliance on critical infrastructure, as well the inability and/or unwillingness of public authorities to fulfil their roles in certain areas of cities such as informal settlements, disaster exclusion zones and areas controlled by armed groups. It does so by firstly providing an outline of the key international legal frameworks relevant to addressing both human-made and natural disasters. The legal frameworks explored from this perspective are international humanitarian law (IHL) and international human rights law (IHRL). Secondly, while cognisant that international law tends not to explicitly distinguish between urban and rural areas, some of the key issues that these bodies of international law encounter in the aforementioned urban settings are explored.

## **2. The Application of International Humanitarian Law to Urban Violence and (Armed) Conflict**

IHL and IHRL are both prominent fields of public international law that concern and regulate inter alia the outbreak of violence. However, their approaches vary and so do thresholds and ensuing criteria of application. Applying both fields to urban man-made and natural disasters depends first and foremost on the level and nature of the violence and disaster. IHL originally emerged in the mid-nineteenth century to address quite different conflict environments, namely officially declared wars between two or more belligerent states. These wars were fought by the armed forces of states, which were identifiable at first sight by their respective uniforms and emblems. The theatre of war was a defined battlefield, where the armed forces of hostile states fought to achieve military victory. While it is reasonable to doubt whether such a transparent scenario ever existed, it is evident that contemporary armed conflicts take different forms.

The evolution of the nature of warfare reveals itself in the changing nature of the belligerents, who are now often non-state armed actors, in the belligerent's proxies on the battlefield, the geographical scope of the armed conflict, and in the means and methods used to weaken the enemy. The phenomenon of rapid urbanisation carries two important implications for IHL: the shift of hostilities to urban areas and urbanisation as drivers of violence and hostility (Patel and Burkle, 2012; Muggah, 2014). The urban theatre of conflict has always posed a great risk to the fundamental principles of IHL such as the principles of distinction,

proportionality and precaution. These fundamental principles of IHL seek to limit the adverse effects of hostilities on the civilian population and objects by prescribing basic targeting rules for the belligerents. When hostilities shift to the urban sphere, adherence to these principles comes under immense pressure. This essentially stems from the difficulty of observing these principles in densely populated areas, where the civilian population and the civilian infrastructure intertwine with the battlefield. Consequently, it becomes more difficult for the belligerents to distinguish and to conduct their military operations with due regard to proportionality and precaution in areas marked by civilians, whose presence might outweigh any military advantage.

Whereas the scope of IHL is restricted to situations of armed conflict, the complementary application of IHRL conventions has only relatively recently been affirmed by a range of international sources. This means that firstly, IHL and IHRL do not stand in contradiction, but can be viewed as complementary. Their relationship is also conceptualised by reference to general and specialised law. In situations of armed conflict, both branches of law apply. However, IHL will be considered the *lex specialis*, meaning the more specific rule displaces the general rule. Secondly and in contrast to IHL, IHRL is equally applicable to situations of violence below the intensity of an armed conflict.

### *2.1 The Application of Traditional IHL to a New Theatre of War: IHL and the City*

The application of the pertinent rules of IHL depends on one decisive requirement: the existence of an armed conflict. IHL distinguishes between conflicts of an international character (international armed conflicts or IACs) and of a non-international character (non-international armed conflicts or NIACs). In the 1995 landmark decision of *The Prosecutor v Dusko Tadic*, the International Criminal Tribunal for the Former Yugoslavia (ICTY, 1995, para. 70) defined a NIAC, as “whenever there is (...) protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.” Distinguishing NIACs from other internal situations of violence or disaster below the threshold of an armed conflict is, however, challenging and dependent on specific assessment criteria. Subsequent case law further elaborated on this. The judgement in the *Limaj* case (ICTY, 2005, para. 170) stated that “the determination of the existence of an armed conflict is based solely on two criteria: the intensity of the conflict and the organisation of the parties (...).”

Thus, in contradistinction to “other situations of violence”, NIACs must reach a minimum level of intensity and the parties need to have a certain degree of organisation. Other situations of violence remain under the legal regime of domestic criminal, police and security law as well as IHRL. In cases of urban violence, the urban sphere is not so much characterised by traditional armed conflict “simply” moving to the cities, but increasingly by the failing of the city’s governance, rising inequalities and the shift of power to non-state actors.

IHL is concerned with two types of actors in conflict situations, state and non-state actors. Well- acknowledged actors are non-state armed groups that position themselves as opponents or allies to the state within the framework of a NIAC. Urban actors whose role has been less considered from a legal perspective are gangs, cartels or other actors of (trans)national organised crime (ICRC and ISS Joint Report, 2012, p. 5). Extremely high homicide rates or casualties in drug wars against or between cartels, parallel those of countries in armed conflict. Regardless of the challenges in conceptualising these urban players as non-state armed actors, the repercussions of such violence are very similar. Quantifiable indicators for violence suggest that even modern cities in countries that are otherwise at peace often become theatres of “de facto warfare” (Koonings in ICRC and ISS Joint report 2012, p. 14). Therefore, the question arises as to whether these situations can benefit from the protections accorded by IHL.

## *2.2 From Urban Violence and Internal Disturbances to Non-International Armed Conflicts – A Challenging Classification*

In seeking to classify urban violence, IHL treaty law only provides limited guidance: Common Article 3 of the Geneva Conventions restricts its scope of application to “armed conflict not of an international character occurring in the territory of the High Contracting Parties”. This proclamation has to be read in accordance with paragraph II, which specifies that it does “not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature”. By establishing two cumulative criteria, Article 1 of Additional Protocol (AP) II extends and develops the rules of IHL to NIACs, albeit more narrowly than Common Article 3. The territorial control and the organisational requirements, set out in Article 1 of AP II, constitute a higher threshold of application and directly address the involved non-state armed party to the conflict. As a third requirement, AP II applies only if the State party has ratified the Protocol. This must be kept in mind, since contrary to the universally applicable four Geneva Conventions, AP II has been ratified by fewer countries and does not enjoy the ratification of major international players such as India, Pakistan, Iran, Israel, Turkey, and the United States (ICRC, 2016).

The ICTY in several judgments further interpreted NIAC, considering inter alia the gravity and duration of the belligerent clashes, the type of weapons and military equipment deployed by the parties, number and caliber of ammunition, types of state authorities involved (i.e. military or law enforcement agencies), the numbers of fighters as well as casualties and the material destruction and displacement due to the hostilities. Similarly, an involvement of the United Nations Security Council can serve as an indicator for the intensity of ongoing hostilities as rising to a NIAC. An assessment of these criteria requires a case-by-case basis and may not be used as a universal blueprint in every situation of violence. NIACs are often characterised by the involvement of a plethora of belligerent groups. Therefore, it is an important yet painstaking task to identify the different parties to the conflict. When several non-state armed groups or actors of a different nature become involved in the hostilities, it is necessary to identify whether they legally constitute a party to the conflict. The ICTY has provided a non-exhaustive set of indicators related to the organisational criterion. These include inter alia the existence of a chain of command; the ability to plan and launch coordinated attacks, give and follow orders, recruit, train, and equip their forces; the existence of a headquarters; and the ability to negotiate cease fire agreements.

### *2.3. The Organizational Requirement and Violent Urban Actors*

Under what circumstances can a gang or other group qualify as an organised armed group within the meaning of IHL? Facing the lack of an international legal definition and further legal considerations of what the term gang implies, this article defines gangs in reference to other non-state armed groups. Research on gangs has strongly suggested that it is usually not their aim to seize state power and that cases in which non-state armed groups create a parallel government whose services extend to social services remain rare (Hazen, 2010, p. 378). Instead, gangs tend to focus on creating a form of parallel security apparatus, but generally exhibit varying “levels of control over and support within the community” (Hazen, 2010, p. 381). In contrast to the law of IAC, the concept of combatant is absent in NIACs, leading to the question of what status “fighters” have in NIACs. APII is silent on defining the term “civilian” and Art. 13(3) APII only recognises that civilians are protected “unless and for such time as they take a direct part in hostilities”. Consequently, there is a considerable uncertainty for the principle of distinction in NIACs. The difficulty in establishing membership in gangs operating in the urban violence setting becomes even more intricate. When assessing non-state armed groups as conflict parties in traditional NIAC scenarios, their quasi-military character is exemplified

through hierarchical command structures, disciplinary or logistical structures such as the existence of a headquarters.

Research on the organisational structure of gangs appears inconclusive with a number of researchers arguing that gangs often follow an organised structure, including a clear hierarchy and others being skeptical towards any formal hierarchy (Bangerter, 2010, p. 394; Peterke, 2010, p. 169). Similarly, decision-making processes in gangs do not necessarily need to be authoritarian (Bangerter, 2010, p. 395). Each gang appears to have their own concept of what membership implies (Hazen, 2010, p. 371). Hence, similar to membership in organised armed groups in a NIAC, membership in gangs is not expressed through formal, i.e. legal, integration into the armed group. Membership is often the outcome of an initiation process, that can range from committing an illegal act, subjecting the selected candidate to severe beatings as a form of initiation to observing youngsters of the particular neighbourhood that “hang out with [the gang]” (Bangerter, 2010, p. 395). Contrary to some organised armed groups that deliberately do not distinguish themselves from the civilian population, gangs often make use of obvious signs, including the wearing of particular colors, clothing or tattoos. These obvious signs, however, present an ill-founded basis to define the gang, let alone to confirm someone’s membership. The organisational structure of territorial gangs is also often characterised by smaller sub-units. In this context, it is unclear to what extent each gang has an identifiable commander at the apex of their structure. While the units generally enjoy independence, they are required to comply with certain rules (Bangerter, 2010, p. 395). It is therefore not easily assessable to what extent a quasi-military chain of command exists and to what extent gangs make use of disciplinary rules or mechanisms.

A number of gang members receive military training, usually by former members of the armed forces or armed groups, and are provided with weapons (Peterke, 2010, p. 170). Gangs apply guerrilla methods and sometimes even resort to terrorist methods (Hauck and Peterke, 2010, p. 433). On this basis, it becomes difficult to argue that this evidences the ability to plan, coordinate and launch military operations (ibid, p. 433). It could even be argued that these tactics suggest a lack of such a capacity. While confrontations with other non-state armed actors may be characterised by the adoption of quasi-military structures (Bangerter, 2010, p. 395), it is open to question to what extent these confrontations can be classified as complex military operations.

#### *2.4. The Intensity Requirement and Urban Violence*

Applying a legal lens to situations of urban violence to assess whether the intensity requirement has been met requires a careful examination of the indicators. One of the most striking indicators in the urban context is applying the number of casualties to it, which prominently refers to the rate of homicides. Duijsens (2010, p. 365) draws on statistical data of different urban situations, including Rio de Janeiro and Juárez that suggest that the number of homicides in both urban contexts lies above the number of casualties in many armed conflict situations.

However, it is questionable if the duration of the belligerent clashes among rival gangs, or between gangs and law enforcement, meet the intensity requirement. Similarly, these contexts may be characterised by fluctuating levels of violence. A comparable rationale applies to the means of engaging in armed conflict. Many urban gangs have undergone a considerable evolution in the means to engage in violence, graduating from steel weapons to handheld firearms and in a number of cases to anti-tank missiles, explosives and heavy machine guns (Bangerter, 2010, p. 393). Nonetheless, the methods used by gangs resemble more guerilla tactics or even terrorist methods (Hauck and Peterke, 2010, p. 433).

#### *2.5. Summary of the Application of International Humanitarian Law to Urban Violence*

Meeting the threshold of a NIAC demands that the outlined requirements are met. Urban violence can, potentially, meet these requirements. The internal disturbances in Benghazi in 2011 constitute one example, where a situation of urban internal disturbance escalated into a NIAC (Kolanowski in ICRC and ISS Joint Report, 2012, p. 26). More frequently however, situations of armed violence will encounter difficulties in being classified as meeting the two criteria and thereby reaching the threshold of a NIAC.

The above analysis has demonstrated these difficulties, particularly with regard to a gang's capacity to exercise concerted military operations, including a unified military strategy. Additionally, the intricate question of membership in such gangs remains. The duration of the hostilities, specifically the fluctuating levels, pose further difficulties. A particular difficulty lies in the conceptualisation of gangs as organised armed groups in the IHL context and in the question of membership. The nature of the non-state armed actor is decisive in the IHL classification context and therefore also indicative of the applicable field of law. One can argue that not classifying these situations of elevated violence as NIACs, risks allowing a legal vacuum and protection gaps for those affected by violence. IHL expands obligations to all parties of the conflict, including non-state armed groups – IHRL does not. The imposition of obligations on all parties to a conflict, state and non-state actors alike, is one essential characteristic of IHL (Lawand in ICRC, 2012). Similarly, classifying a situation of protracted urban violence as a NIAC could provide for an alleviation of the suffering of the civilian population. Yet, the permissive nature of IHL does pose its own protection risks. If applicable, states would no longer need to abide by their law enforcement model and opponents would become enemy fighters and thus targetable, and not remain "simple" criminals that challenge the state and its laws (Hauck and Peterke, 2010, p. 431; Peterke, 2010, p. 186). The analysis has demonstrated what challenges arise when adapting a field of law to new, constantly evolving, factual situation. A general answer to the question of the applicability of IHL in complex urban violence is therefore impossible; such situations must be considered on a case-by-case basis.

### **3. International Human Rights Law and Natural and Technological Disasters**

Unlike the comprehensive body of international law that applies to armed conflict, international law pertaining to natural and technological disasters is considerably fragmented (Sommaro, 2012, p. 324). Despite the obvious nexus between human rights and disasters, there are few explicit references to disaster settings in human rights treaties.<sup>1</sup> However, solid analyses have been undertaken on the application by UN supervisory bodies of human rights law in pre-, post-, and disaster proper phases (Hesselman, 2013; Cubie and Hesselman, 2015). Furthermore, the UN International Law Commission, developed draft articles on the topic of the protection of the person in the event of disasters. Included among its draft articles is draft article 5, which provides that "persons affected by disasters are entitled to the respect for and protection of their human rights in accordance with international law" (UN International Law Commission 2016).

The relationship between natural and technological disasters and human rights is complex (Abebe, 2011, p. 102). Firstly, the enjoyment of human rights is impacted upon heavily by natural and man-made disasters. This is very often the case for those living in urban informal settlements due to the tendency of their being located in exposed disaster-prone areas. Equally, the denial of human rights and their violation contributes to the vulnerabilities/fragilities of disaster-prone individuals and communities. Given government policies that tend to refrain or restrict the provision of essential services in urban informal settlements, such areas are likewise at greater risk of vulnerability. These complex relationships between human rights and disasters highlight that human rights apply and their fulfilment is crucial throughout the disaster management cycle from prevention and mitigation through relief and recovery to rehabilitation and reconstruction.

Beyond explicit references to disasters in legally binding human rights treaties, in recent years several inter-governmental policy initiatives have also increasingly emphasised the importance of the relationship between human rights and disaster management. The Sendai Framework for Disaster Risk Reduction 2015-2030, the World Humanitarian Summit and repeated resolutions of the Conference of the International Red Cross and Red Crescent Movement have emphasised the importance of legal frameworks in disaster settings (International Federation of Red Cross Red Crescent Societies, 2017). For its part the Habitat III New Urban Agenda has emphasised the importance of realising human rights in urban settings and called for action on addressing disaster risk. Nonetheless, it recognised the complexity that disasters generate in pursuing these objectives (UN Habitat, 2016). It should be noted that although human rights law does not comprehensively address the right to protection from disaster, a concern for protection within natural disaster settings can be intuited from within international human rights jurisprudence (Nicoletti, 2012, p. 194). Thus, various aspects of human rights law can be and have been interpreted to guide states' conduct in disaster management. Different sources of human rights law (including customary rules, general principles of international law as well as treaties) place responsibility for disaster management primarily with the territorial State, thus constituting a normative framework against which compliance can be measured. In relation to treaty law, a wide range of international human rights conventions are of relevance to disaster management. Human rights treaty bodies have increasingly recognised the particular situation of vulnerable groups in urban settings, including in disaster contexts. While international law binds states, sub-national authorities, including city authorities, are indirectly subject to international human rights law by virtue of their being public authorities.

### *3.1. IHRL and Urban Disaster Management*

This section focuses on the most salient aspects of international human rights jurisprudence as they relate to urban disaster management. It focuses primarily on the cornerstone international human rights treaties, the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social and Cultural Rights. Relevant recent cases from regional human rights systems will also be addressed. The relevance of these frameworks to urban informal settlements and exclusion zones is discussed.

#### *3.1.2. Positive obligation of public authorities to protect the right to life*

The European Court of Human Rights has found on several occasions that the right to life contained in Article 2 of the European Convention on Human Rights imposes a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction. The 2004 *Öneryıldız v Turkey* judgement concerned a lethal 1993 methane explosion at a municipal rubbish tip in Istanbul that resulted in 26 fatalities in a nearby slum area (European Court of Human Rights 2004). The Court stated that the positive obligation on states to protect the right to life involves the establishment of a legislative and administrative framework “designed to provide effective deterrence against threats to the right to life” (ibid., para. 89). Although the responsible local authority had received expert reports informing them of a risk of a build-up of methane at the refuse tip and the possibility of a landslide, no action had been taken. Turkey was found to have violated the right to life on several grounds, including for its failure to take any measures to provide the inhabitants with information “enabling them to assess the risks they might run as a result of the choices they had made” (ibid., para. 108). This would indicate that not only a refusal by municipal authorities to provide information but also a failure to provide information in situations where populations are exposed to the risk of death could constitute a violation of the right to life.



### *3.1.2 Freedom of movement in disaster settings*

In natural or technological disaster settings, liberty of movement is often curtailed by the exigencies of the disaster or as part of preventative measures adopted by the public authorities. Article 13 of the Universal Declaration of Human Rights provides that:

Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence...

This provision is reinforced by Article 12 ICCPR. Thus, the general rule is that States will guarantee liberty of movement and freedom to choose one's residence within its territory. The Guideline D2.1 of the IASC Operational Guidelines (Inter-Agency Standing Committee, 2011) indicates that the right should be understood as "including the right to freely decide whether to remain in or to leave an endangered zone." However, liberty of movement and freedom to choose one's residence can be limited in "exceptional circumstances" on the basis of the limitation clause contained in Article 12 (3) ICCPR (UN Human Rights Committee, 1999). Article 12 (1) ICCPR states that any such limitation must be provided for by law, be necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and be consistent with the other rights recognised in the ICCPR.

In its General Comment No. 27 the UN Human Rights Committee stressed that any otherwise permissible limitations imposed on the rights protected under Article 12 ICCPR must not completely nullify the principle of liberty of movement and must be necessary as required by the limitation clause contained in Article 12 (3). Freedom of movement and of residence could be restricted through the adoption of forced evacuation orders (Sommaro, 2012, p. 327).

In terms of restitution for those who are denied liberty of movement, General Comment 29 provides that States parties must include detail concerning the remedies provided to those whose rights are restricted in the reports they submit to the Human Rights Committee (*ibid.*, para. 3). This would indicate that should Article 12 ICCPR be restricted, adequate remedies ought to be provided by the State. The right to liberty of movement also includes the liberty to enter or stay in a defined part of the territory and protection against "all forms of forced internal displacement" (*ibid.*, para. 7).

In terms of derogations in times of public emergency, the right to liberty of movement and freedom to choose one's residence contained in Article 12 ICCPR has been derogated from in the past by a number of States parties to the ICCPR in whose territory a natural or technological disaster has occurred (Sommaro, 2012, p. 329).

### *3.1.3 Prohibition of forced evictions in the context of exposure to disasters*

Natural and technological disasters often generate considerable challenges concerning the provision of adequate shelter, not least in the urban context given that in such a context there is often a shortage of land. The right is enshrined in Article 25 (1) of the Universal Declaration of Human Rights and a range of international human rights treaties, including in Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights.

In interpreting Article 11 ICESCR the Committee on Economic, Social and Cultural Rights (CESCR) has clarified that this right ought not to be interpreted narrowly. The Committee has further identified a number of aspects of what adequacy of housing entails, including the requirements of accessibility, affordability, habitability, legal security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education (UN CESCR, 1991). The Committee recognised that the right is to be achieved progressively to the maximum of a State party's available resources (*ibid.*). In terms of accessibility to adequate housing, the CESCR singles out "victims of natural disasters" and "people living in disaster prone areas" as among those disadvantaged groups that should be ensured priority consideration in the housing sphere (*ibid.*, para. 8 (e)). The Special Rapporteur

on the Right to Adequate Housing has also recognised the particular challenges posed by natural disasters (UN General Assembly, 2016).

Often in the context of pro-active relocation from disaster-prone exclusion zones, including urban informal settlements, public authorities resort to forced evictions. Such evictions are a breach of the obligations to respect the right to legal security of tenure, defined by the CESCR in its fourth General Comment as a factor to be taken into account in assessing the adequacy of housing (*ibid.*, para. 8 (a)). Governments must refrain from executing forced evictions and must ensure that the law is enforced against its agents or against third parties who carry out forced evictions (Barber, 2008, p. 460). Further guidance concerning forced evictions and land tenure security in the context of natural disasters is provided by regional systems for the protection of human rights.<sup>2</sup>

Forced evictions are often undertaken by State or non-State actors during and after natural or technological disasters. Such evictions can occur as part of a short-term disaster response measure or as part of a longer term disaster prevention or mitigation measure. State actors may undertake forced evictions of persons living in their homes as a preparedness or response measure. In the recovery phase forced evictions also occur. For example, during the recovery efforts that followed the 2004 tsunami and earthquake disasters in Aceh, Indonesia, a lack of consultation, information and notice prior to eviction was widespread (Barber, 2008). Equally, newly enacted land management laws in the aftermath of a disaster may require people to relocate from homes situated in newly designated exclusion zones deemed unfit for settlement. Relocation measures occur most frequently in densely populated urban areas.

Forced evictions are considered gross violations of a range of human rights in addition to the right to adequate housing. General Comment No. 7 of the Committee on Economic, Social and Cultural Rights relates specifically to forced evictions as they relate to the right to adequate housing. A forced eviction is defined by the Committee as:

(...) the permanent or temporary removal against their will of individuals, families, and/or communities from their homes and/or lands, which they occupy without the provision of, or access to, appropriate forms of legal or other protection (UN CESCR, 1997, para. 3).

Despite the general prohibition on forced evictions contained in international human rights law, it should be noted that the CESCR recognises that forced evictions may “in the most exceptional circumstances” be justified. Thus, the Committee’s General Comment provides what Gould (2009: 175-176) describes as “procedural protection” to which any forced eviction ought to be subject. Such procedural protection includes:

(...) genuine consultation with those affected, adequate and reasonable notice for all affected persons prior to the eviction, information on the proposed eviction and on the alternative purpose for which the land or housing is to be used, presence of government officials or their representatives during the eviction, proper identification of persons to be evicted, consideration of weather conditions and the time of day, provision of legal remedies and, where possible, provision of legal aid (*ibid.*)

The State Party is responsible for taking ‘all appropriate measures, to the maximum of its available resources,’ to ensure alternative housing or resettlement is available (*ibid.*).

#### **4. Conclusion**

The challenge of implementing the international legal framework within disaster settings has not adequately considered the particularities of urban crises. International legal frameworks such as IHL and IHRL provide important protections to vulnerable persons in both human-made and natural disaster settings. While the two bodies of law do not generally draw explicit distinctions between urban and rural settings, their various provisions, and indeed their silence on, crucial issues that would enhance legal protection in urban settings do merit greater

attention. Against the supportive backdrop of significant international policy developments such as Habitat III's New Urban Agenda and the Sendai Framework for Disaster Reduction, disaster management and humanitarian actors ought to be sensitive to the circumstances under which these bodies of law apply and their key provisions. A minimum threshold of violence and organisation of the non-state warring party must be reached before an internal armed conflict that triggers application of IHL can be deemed to exist.

Similarly, under human rights law, emergency settings allow for states to limit or derogate from many, but not all, human rights standards. Nonetheless, these bodies of law provide important protections to victims of armed conflict and natural and technological disasters. While often difficult to achieve operationally by armed actors in densely populated urban settings, IHL enshrines the principle of distinction; that those not taking part or no longer taking part in armed conflict ought not to be targeted. The cornerstone standard within human rights law, the right to life, cannot be derogated from in any circumstance and imposes a positive obligation on public authorities, including municipal authorities, to take positive steps to prevent disaster risk that threatens lives. Limitation of movement and evictions in disaster settings are also tightly regulated by human rights standards. In an era when international law is being challenged from many sources and attention is turning to the increasing potential for urban violence and vulnerability, it is incumbent on the disaster management and humanitarian community to be sensitive to the relevance of international legal frameworks to their interventions in urban settings.

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<sup>1</sup> An important example in this regard is contained in Article 11, Convention on the Rights of Persons with Disabilities. An obligation is placed on States Parties to take “all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.”

<sup>2</sup> Under powers bestowed on it by the American Convention on Human Rights the Inter-American Commission for Human Rights imposed precautionary measures to prevent the forced evictions of internally displaced persons encamped on lands in Port-au-Prince, Haiti in the aftermath of the 2010 earthquake. Phillips *et al.* (2011, p. 14) claim that the imposition of precautionary measures represented the first time that an international human rights body recognised the harm posed by unlawful forced evictions relating to displacement by a natural disaster.