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**Normative frameworks' role in addressing
gender-based violence in disaster settings**

Mireille Le-Ngoc
Intern, Disaster Law Programme

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For more information:

Disaster Law Programme
International Federation of Red Cross and Red Crescent Societies
P.O. Box 372
1211 Geneva 19
Switzerland
Email: disaster.law@ifrc.org
Website: www.ifrc.org/dl

Introduction

The problem of gender-based violence (GBV) in emergencies has recently received increased attention worldwide. The Humanitarian Exchange Magazine dedicated a whole issue on GBV in humanitarian crises.¹ The International Committee of the Red Cross demonstrated its concern for sexual violence in armed conflict, launching a Special Appeal to strengthen its response in 2014.² In non-conflictual emergency settings, such as disasters, there are also issues of gender-based violence: the breakdown of social structures and chaos following a disaster create an environment where women are more vulnerable to GBV. This paper intends to explore GBV in disaster settings from a legal perspective and address how both national and international legal frameworks address this issue or how could they be used to address it.

Part A will attempt to define GBV and describe its scope for the purpose of this paper. Part B will present a brief overview of the international normative framework for GBV, examining selected documents on both the issue of violence against women and the applicability of the human right to be free from it in disaster settings. Part C will then discuss women's increased vulnerability following a disaster. While risk factors are often pre-existing, the disaster itself and its relief operations can exacerbate GBV occurrence. Part C will also explain issues related to the response to GBV incidents. Using Haiti as a case study, Part D will describe GBV prevalence after the 2010 earthquake, analyse Haiti legal framework related to GBV and present an example of legal action undertaken to address the issue. Part E will finally offer suggestions to improve the condition of women in disaster settings.

A. The definition of gender-based violence

The International Federation of Red Cross and Red Crescent Societies (IFRC) defines violence as “the use of force or power, either as an action or omission in any setting, threatened, perceived or actual against oneself, another person, a group, a community that either results in or has a high likelihood of resulting in death, physical injury, psychological or emotional harm, mal-development or deprivation.”³ More specific to our topic, the Inter-Agency Standing Committee, a humanitarian policy-making body of the United Nations, defines GBV as follows:⁴

¹ Humanitarian Practice Network, *Gender-based violence in emergencies*, Issue 60, February 2014, <http://www.odihpn.org/humanitarian-exchange-magazine/issue-60/gender-based-violence-in-emergencies>.

² International Committee of the Red Cross, *Special Appeal: Strengthening the Response to Sexual Violence 2014* (Geneva: ICRC, 2013).

³ IFRC, *IFRC Strategy on Violence Prevention, Mitigation and Response*, https://fednet.ifrc.org/PageFiles/85418/SoV_English/IFRC%20SoV%20REPORT%202011%20EN.pdf, p.5; IFRC, *Issue Brief: Violence prevention and practice: A key component of emergency response*, <https://fednet.ifrc.org/PageFiles/85416/Issue%20Brief/1222600-Issue%20brief%20on%20violence-EN-LR-03.pdf>.

⁴ Inter-Agency Standing Committee, *Guidelines for Gender-Based Violence Interventions in Humanitarian Settings. Focusing on Prevention of and Response to Sexual Violence in Emergencies* (Geneva: IASC, 2005), p.7 (IASC Guidelines).

[GBV] is an umbrella term for any harmful act that is perpetrated against a person's will, and that is based on socially ascribed (gender) differences between males and females. Acts of GBV violate a number of universal human rights protected by international instruments and conventions. Many — but not all — forms of GBV are illegal and criminal acts in national laws and policies.

Around the world, GBV has a greater impact on women and girls than on men and boys. The term “gender-based violence” is often used interchangeably with the term “violence against women.” The term “gender-based violence” highlights the gender dimension of these types of acts; in other words, the relationship between females' subordinate status in society and their increased vulnerability to violence. It is important to note, however, that men and boys may also be victims of gender-based violence, especially sexual violence.

For its part, the United Nations High Commissioner for Refugees (UNHCR) defines GBV as:⁵

The term gender-based violence is used to distinguish common violence from violence that targets individuals or groups of individuals on the basis of their gender. Gender-based violence has been defined by the CEDAW Committee as violence that is directed at a person on the basis of gender or sex. It includes acts that inflict physical, mental or sexual harm or suffering, threat of such acts, coercion and other deprivations of liberty.

According to the literature, GBV includes sexual violence, rape, exploitation, sexual harassment, forced prostitution, domestic violence, trafficking, forced and early marriages, and other harmful traditional practices such as honour killings, female genital mutilation, dowry killings, etc.⁶

Sophie Read-Hamilton suggests three interpretations of GBV.⁷ The most common interpretation is men's violence against women and girls, an interpretation “underscor[ing] the structural nature of male violence against women across the lifespan, and highlight[ing] the gendered power relations that cause and perpetuate it.”⁸ The second interpretation perceives GBV as violence used by men against women, some other men and children. This interpretation enforces gender hierarchies in which men are privileged in relation to women and some groups of men. It includes homophobic violence, sexual exploitation and abuse of children. The third interpretation, the broadest one, refers to violence “directed at an individual, male or female, based on his or her specific role in society.”⁹ This interpretation

⁵ United Nations High Commissioner for Refugees (UNHCR), *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons. Guidelines for Prevention and Response* (UNHCR, 2003), p.10 (UNHCR Guidelines).

⁶ IASC Guidelines, p.7-8; Jacqui True, “The Political Economy of Violence Against Women. A Feminist International Relations Perspective” (2010) 32 *Australian Feminist Law Journal* 39, p. 39 (True's article).

⁷ Sophie Read-Hamilton, “Gender-based violence: a confused and contested term” (2014) 60 *Humanitarian Exchange*, Special feature Gender-based violence in emergencies 5 (Sophie Read-Hamilton).

⁸ Sophie Read-Hamilton, p.7.

⁹ Benjamin, J. and L. Murchison, *Gender-Based Violence: Care & Protection of Children in Emergencies, A Field Guide* (Save the Children, 2004) cited in Sophie Read-Hamilton, p.7.

includes violence against all women, girls, men and boys, and GBV is used to reinforce gender roles and norms.

These definitions differ substantially in scope and wording: some refer only to violence against women; others are broader and include violence against men. There seems to be no agreed formal definition of GBV. However, they all share a main common characteristic: gender and the social differences between women and men as the reason for targeted violence.

This paper specifically explores violence against women, one aspect of GBV, in disaster settings because of their enhanced vulnerability – not as an inherent aspect of their sex but due to their gender, the social construction of women. As highlighted by the IASC Guidelines, the greater impact of GBV on women than men explains why “‘gender-based violence’ is often used interchangeably with the term ‘violence against women.’”¹⁰ This scope is also compatible with the UN General Assembly’s *Declaration on the Elimination of Violence against Women* which explicitly refers to violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”¹¹

B. The international normative framework

Having established the scope of this paper, this section briefly explores the international framework addressing it. It first describes international instruments addressing violence against women and States’ responsibility in regard to the issue. Through a selection of documents, it then connects the application of human rights, including the right to be free from GBV, in disaster settings.

Numerous international instruments address violence against women and more broadly GBV. While not specifically mentioning violence against women, the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention)* prohibits discrimination against women.¹² In 1992, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) concluded that GBV is “a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.”¹³ Arguably, therefore, *CEDAW Convention* establishes obligations for states to act to prevent and respond to GBV. Feride Acar and Gamze Ege’s article discusses how *CEDAW Convention* and its Committee can help improve women’s conditions in

¹⁰ IASC Guidelines, p.7.

¹¹ General Assembly, *Declaration on the Elimination of Violence against Women*, UN Doc A/RES/48/104 (1993), art. 1 (DEVAW).

¹² *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS I-20378 (entered into force 3 September 1981), art. 5 (*CEDAW Convention*).

¹³ Committee on the Elimination of Discrimination against Women, *General Recommendation No 19*, UN Doc. A/47/38 (1992) para 1, 4, 6 (*CEDAW, General Recommendation no 19*). “The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.”

disaster settings, using among other things, the monitoring mechanism established by the Optional Protocol to *CEDAW Convention*, the reporting system, concluding comments, and general recommendations.¹⁴

More explicitly, the UN General Assembly's (non-binding) *Declaration on the Elimination of Violence against Women (DEVAW)* of 1993 provides that States should condemn violence against women and, among other things, suggests different actions to undertake to address the issue.¹⁵

At the regional level, many instruments also address GBV, for example, the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, and the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*. Both of these instruments specifically mention women's rights in time of armed conflict but not disaster settings.¹⁶ The *African Union Convention on Protection and Assistance of Internally Displaced Persons* also protects the rights of internally displaced persons (IDP) from sexual and GBV in all its forms.¹⁷

Of particular interest for the Haiti case study discussed below, the *American Convention on Human Rights* recognizes the right to life and to humane treatment to all persons without discrimination based on sex,¹⁸ and the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Para)* specifically addresses the issue of violence against women. According to the *Convention of Belem do Para*, "every woman has the right to be free from violence in both the public and private spheres."¹⁹ It defines violence against women as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere."²⁰ It states that "violence against women constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms."²¹ Ursula A. O'Hare stresses the importance of the *Convention of Belem do Para* as it "presents violence against women as an enforceable human right for which states may, in principle, be liable regardless of the site of the violence if they fail to meet the obligations imposed upon them to

¹⁴ Feride Acar and Gamze Ege, "Women's Human Rights in Disaster Contexts: How can CEDAW help?" (2001) United Nations, EGM/NATDIS/2001/EP.4 (Acar and Ege).

¹⁵ General Assembly, *Declaration on the Elimination of Violence against Women*, UN Doc A/RES/48/104 (1993), art. 4 (DEVAW).

¹⁶ *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, art 11 (*African Protocol on Rights of Women*); *Council of Europe Convention on preventing and combating violence against women and domestic violence*, preamble (*European Convention on VAW*).

¹⁷ *African Union Convention on Protection and Assistance of Internally Displaced Persons in Africa* (Kampala Convention), art. 9(1)(d); Elizabeth Ferris, "How Can International Human Rights Law Protect Us From Disasters?" (2014) Paper prepared for the American Society of International Law, Annual Meeting, Brookings-LSE Project on Internal Displacement (Ferris).

¹⁸ *American Convention on Human Rights*, opened for signature 22 November 1969, B-32 (entered into force 18 July 1978), art. 1, 4, 5.

¹⁹ *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*, opened for signature 6 September 1994, A-61 (entered into force 3 May 1995), art. 3 (*Convention of Belem do Para*).

²⁰ *Convention of Belem do Para*, 1.

²¹ *Convention of Belem do Para*, preamble.

prevent, punish, and eradicate violence against women.”²² The Convention also recognizes the connection between violence against women and discrimination:²³ gender-based violence is a materialization of the traditionally unequal power dynamic between men and women.²⁴

States have the obligation to not only respect and ensure the rights set out in international conventions, but also to undertake due diligence in order to prevent the violation of rights by non-state actors. Joanna Bourke-Martignoni writes, “the principle of good faith implies that states must go beyond the ‘mere enactment of formal legal provisions’ and take positive measures to fully implement their obligations to prevent, protect, investigate, punish and provide redress for violence against women.”²⁵

Moreover, in 1992, the CEDAW Committee indicated in its General Recommendation number 19 that, according to general international law and treaty obligations, “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”²⁶ Therefore, a violation of human rights might expose the State to its international responsibility, not as a consequence of the violation itself, but because of the State’s lack of due diligence to prevent the right’s abuse or to adequately respond to it as required by the various conventions.²⁷ For that reason, if a state fails to adequately respond to a situation of GBV, it could be accountable for acts perpetrated by both state and non-state actors.²⁸

Other non-binding international instruments specifically mention GBV in emergencies. Both the UNHCR and the IASC have developed specific guidelines to address GBV in crises. The first document was designed for refugees, returnees and IDPs, and the latter, for emergency settings.²⁹ In addition, the UN Guiding Principles on Internal Displacement of 1998 provide for the protection of internally displaced persons from “rape (...) and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault.”³⁰ The IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters and the IASC Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster also provide for protection against violence, including gender-based violence.³¹ The Sphere Charter and Minimum Standards in

²² Ursula A. O’Hare, “Realizing Human Rights for Women” (1999) 21.2 Human Rights Quarterly 364, p.376.

²³ Beth Allison Spratt, *Compounded Discrimination and the Gonzalez v. Mexico Case: Introducing an Anti-Essentialist Framework for Compounded Discrimination/Violence against Women Cases at the Inter-American Court of Human Rights* (Toronto: LLM Thesis, University of Toronto, 2011), p.24.

²⁴ Inter-American Commission on Human Rights, *The Situation of the Rights of Women in Ciudad Juarez, Mexico: The Right to be Free from Violence and Discrimination* (2003) OEA/SerL/V/II117/doc44, para. 7.

²⁵ Joanna Bourke-Martignoni, “The History and Development of the Due Diligence Standard in International Law and Its Role in the Protection of Women against Violence” in Carin Benninger-Budel (ed), *Due Diligence and Its Application to Protect Women from Violence* (Martinus Nijhoff Online, 2009) p. 57 (Bourke-Martignoni).

²⁶ CEDAW, General Recommendation no 19, para 9.

²⁷ Bourke-Martignoni, p. 50 ; O’Hare.

²⁸ Bourke-Martignoni, p. 52.

²⁹ UNHCR Guidelines; IASC Guidelines.

³⁰ United Nations, *Guiding Principles on Internal Displacement* (UN, 2004), principle 11(2)(a).

³¹ IASC, *Protecting Persons Affected by Natural Disaster. IASC Operational Guidelines on Human Rights and Natural Disasters* (Washington: Brookings, 2006), A.4; IASC, *Human Rights and Natural Disasters*.

Humanitarian Response, developed to ensure quality and accountability when responding to humanitarian crisis, also highlights the importance of taking into consideration GBV.³²

C. Women's vulnerabilities in time of disaster

After setting the grounds of this paper by defining its scope and describing the international normative framework that addresses it, this section describes how GBV manifests in disaster settings. Both the disaster itself and also the efforts to respond to it can intensify the incidence of GBV. Several hypotheses are presented to explain this phenomenon. This section also briefly discusses the debate around the sufficiency of data on increased violence, and examines issues related to response to GBV incidents.

GBV in disasters

Many authors point to an increased risk of GBV after disasters.³³ It is important to understand why and how women are at risk of GBV even before disasters in order to adequately address

Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster (Washington: Brookings, 2008), A.3.

³² The Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (Rugby: The Sphere Project, 2011) <http://www.sphereproject.org/handbook/> (Sphere Project).

³³ Ferris; IASC Guidelines; Bureau for Crisis Prevention and Recovery, *Gender and Disasters* (New York: UNDP, 2010)

<http://www.undp.org/content/dam/undp/library/crisis%20prevention/disaster/7Disaster%20Risk%20Reduction%20-%20Gender.pdf> (UNDP, Gender and Disasters); Elizabeth Ferris, Daniel Petz and Chareen Stark, *The Year of Recurring Disasters: A Review of Natural Disasters in 2012* (Brookings, 2013) Chapter 4: Disaster Risk Management: A Gender-Sensitive Approach is a Smart Approach (Ferris, Petz and Stark), chapter 4; Luke Juran, "The Gendered Nature of Disasters: Women Survivors in Post-Tsunami Tamil Nadu" (2012) 19(1) *Indian Journal of Gender Studies* 1 (Juran); Debra Parkinson, "Gender, Disaster and Violence" (2011) *Women's Health Goulburn North East*, <http://www.whealth.com.au/documents/environmentaljustice/women-disaster-violence-lit-review.pdf> (Parkinson); UNDP and UNISDR, "Guidance Note on Recovery. Gender," <http://www.unisdr.org/we/inform/publications/16775> (UNDP and UNISDR, Guidance Note on Recovery); Elaine Enarson, "Does Violence against Women Increase in Disasters?" <http://usgdra.org/wp-content/uploads/file/Does%20VAW%20Increase-july2012%20-ee.pdf> (Enarson, Does VAW Increase); Sarah Fisher, "Chapter 18. Sri Lankan Women's Organisations Responding to Post-tsunami Violence" in Elaine Enarson and P. G. Dhar Chakrabarti (eds), *Women, Gender and Disaster. Global Issues and Initiatives* (Los Angeles: Sage, 2009) (Fisher in Enarson and Chakrabarti); Sarah Bradshaw, *Gender, Development and Disasters* (Cheltenham: Edward Elgar, 2013), p.123 (Bradshaw, *Gender, Development and Disasters*); Sally F. Goldfarb, "Article: Disasters, Families, and the Law" (2007) 28(1) *Women's Rights Law Reporter* 35 (Goldfarb); World Bank, *Guidance Note 5: Integrating Gender Issues in Recovery and Reconstruction Planning. Gender and Disaster Risk Management – Guidance Notes* (Washington, DC: World Bank, 2012); Sarah Fisher, "Violence Against Women and Natural Disasters: Finding from Post-Tsunami Sri Lanka" (2010) 16(8) *Violence Against Women* 902 (Fisher, *Violence Against Women*); Adrienne Lockie, "Presentation: Domestic Violence and Disasters" (2007) 28(1) *Women's Rights Law Reporter* 49 (Lockie); Roberta Cohen and Megan Bradley, "Disaster and Displacement: Gaps in Protection" (2010) 1 *International Humanitarian Legal Studies* 95 (Cohen and Bradley); Claudia Felten-Biermann, "Gender and Natural Disaster: Sexualized violence and the tsunami" (2006) 49(3) *Development* 82 (Felten-Biermann); Jacqui True, *The Political Economy of Violence Against Women* (Oxford: Oxford University Press, 2012) (True's book), chapter 9; Eileen Pittaway, Linda Bartolomei and Susan Rees, "Gendered dimensions of the 2004-tsunami and a potential social work response in post-disaster situations" (2007) 50(3) *International Social Work* 307 (Pittaway, Bartolomei and Rees); Oxfam International, "The tsunami's impact on women, Oxfam Briefing Note" (2005) http://www.preventionweb.net/files/1502_bn050326tsunamiwomen.pdf (Oxfam Briefing Note).

these issues in the emergency setting. Moreover, the emergency often exacerbates those vulnerabilities and magnifies the occurrence of GBV.³⁴

There are many examples of pre-existing factors making women vulnerable. Sarah Bradshaw highlights women's pre-existing financial, social, psychological and physical vulnerability in Central America.³⁵ Jacqui True's work draws a correlation between violence against women and socio-economic issues, such as poverty, housing, unemployment, education, etc.³⁶ Some countries are already prone to high levels of GBV because of the socio-cultural context and pre-existing widespread abuse. For example, Sarah Fisher describes the pre-existing framework of vulnerability in Sri Lanka, which was only exacerbated following 2004 tsunami.³⁷

In response to the tsunami in South-East Asia in 2004, the CEDAW Committee pointed out the need for attention to specific vulnerabilities of women in disaster settings, in particular to GBV.³⁸ There were accounts of forced marriages of young girls in the aftermath of the tsunami to replace the numerous wives who perished, accounts of domestic and sexual violence, etc.³⁹ GBV also occurred in other disasters, for example, girls exchanging sex for food or other goods in the Haitian IDP camps.⁴⁰ The list of stories is endless. These instances of violence can occur during rescue operations, as well as in the aftermath, for examples in temporary shelters and displacement camps.⁴¹ Claudia Felten-Biermann argues that an increase of sexual violence occurs immediately after a disaster during the instability and breakdown phase, and subsequently, more traditional forms of GBV, such as forced marriage, honour killings and domestic violence, are prevailing.⁴²

It is important to note that the increase of GBV in post-disaster settings does not occur only in developing countries. Elizabeth Ferris discusses this issue in the aftermath of Hurricane Katrina in the United States,⁴³ and Elaine Enarson's book denounces it using various examples including 1998 ice storm in Canada, Loma Prieta earthquake, Mount St Helens eruption, Exxon Valdez oil spill, Missouri floods, etc.⁴⁴

³⁴ Ferris, Petz and Stark, chapter 4; Bradshaw, *Gender, Development and Disasters*, p.125; Parkinson.

³⁵ Sarah Bradshaw, *Socio-economic impacts of natural disasters: a gender analysis* (Santiago: United Nations, 2004) (Bradshaw, *Socio-economic impacts of natural disasters*). See also John Cosgrave, "Responding to earthquakes 2008: Learning from earthquake relief and recovery operations" (2008) www.alnap.org/pool/files/ALNAPLessonsEarthquakes.pdf; World Bank, *Hazards of nature, risks to development: an IEG evaluation of World Bank assistance for natural disasters* (Washington, DC: World Bank, 2006); Ferris, Petz and Stark, chapter 4; Juran.

³⁶ True's article; True's book.

³⁷ Fisher, *Violence Against Women*; Parkinson.

³⁸ Statement by the Committee on the Elimination of Discrimination against Women in regard to the Tsunami disaster in South East Asia, 26 December 2004, adopted by the Committee at its thirty-second session, 28 January 2005 (CEDAW Committee Statement).

³⁹ Cohen and Bradley; True's book, p.169; Fisher, *Violence Against Women*.

⁴⁰ Ferris.

⁴¹ See for example, Pittaway, Bartolomei and Rees; Felten-Biermann; Fisher, *Violence Against Women*.

⁴² Felten-Biermann.

⁴³ Ferris. See also, Ferris, Petz and Stark, footnote 340.

⁴⁴ Elaine Enarson, *Women Confronting Natural Disaster. From Vulnerability to Resilience* (Boulder: Lynne Rienner Publishers, 2012), Chapter 6 (Enarson, *Women Confronting Natural Disaster*). For other examples, see also Enarson, *Does VAW Increase*; True's book, p.166-167; Parkinson.

Several hypotheses can explain this rise of violence and vulnerability: the breakdown of social structures and infrastructures, psychological distress, trauma, stress, frustration, the increased consumption of alcohol and other substances, the feeling of powerlessness, disruptions of services (police, social, health, education), lack of options, loss of support network and mechanisms, economic hardship, lack of secure housing, absence of rule of law, poor conditions, threat to “gender norms of patriarchal power” such as the men’s role as a provider and protector.⁴⁵ Sarah Fisher also argues that men are more likely to express their emotional suffering through destructive behaviours, such as aggression, violence and alcohol abuse.⁴⁶ The gender norm of patriarchal power is particularly interesting to explore as the sense of powerlessness in the aftermath of a disaster threatens the ideal of “masculinity”. Men then turn to violence as a way to reclaim their masculinity.⁴⁷

The poor conditions in IDP camps, shelters and other temporary accommodation are also a factor leading to increased vulnerability for women. These include: lack of privacy, lack of separate or gender-segregated sanitary facilities, lack of adequate lighting, overcrowded living conditions, long distances required to get water and food, lack of security and safety such as doors without locks and lack of police patrols, continuous sexual demands from partners despite the lack of privacy, etc.⁴⁸ Claudia Felten-Biermann reports an unbalanced ratio of women to men in some camps, which can increase the risk of GBV. For example, in Pengungsi Leupung camp in Aceh, there were only 6 women for 200 men.⁴⁹ Social taboos can constitute another factor increasing women’s vulnerability. For example, to avoid

⁴⁵ Parkinson; Enarson, *Women Confronting Natural Disaster*, p.79-81; IASC Guidelines; True’s book, p.166-167; Bradshaw, *Gender, Development and Disasters*, p.122-123; Goldfarb; Fisher, *Violence Against Women*; Juran; Ferris, Petz and Stark, chapter 4; Blaine Bookey, “Enforcing the right to be free from sexual violence and the role of lawyers in post-earthquake Haiti” (2011) 14 *Cuny Law Review* 255 (Bookey, Enforcing the right to be free from sexual violence); Marcy Hersh, “Philippines: New Approach to Emergency Response Fails Women and Girls,” *Refugee International, Field Report*, March 20, 2014, <http://refugeesinternational.org/sites/default/files/Philippines%20GBV%20New%20Approach%20letterhead.pdf> (Hersh); Sepali Kottegoda (key note address), “Mainstreaming Gender in Disaster Management Policy: Key issues and Challenges in the Asia-Pacific Region,” http://www.apww-slwn.org/index.php?option=com_content&view=article&id=88:mainstreaming-gender-in-disaster-management-policy-key-issues-and-challenges-in-the-asia-pacific-region&catid=10:news&Itemid=17 (Kottegoda); Mary Hope Schwoebel and Geeta Menon, “Mainstreaming Gender in Disaster Management Support Project. A Report for The Women In Development IQC Task Order New and Expanded Opportunities for Vulnerable Groups in India” (2004) http://gdnonline.org/resources/DMS%20Report_WID%20India_6%2007%2004.pdf (Schwoebel and Menon).

⁴⁶ Fisher in Enarson and Chakrabarti, p.234-235; Fisher, *Violence Against Women*.

⁴⁷ Bookey, *Enforcing the right to be free from sexual violence*.

⁴⁸ True’s book, p.169-170; Goldfarb; Pittaway, Bartolomei and Rees; Fisher, *Violence Against Women*; Oxfam Briefing Note; Chaman Pincha, *Gender Sensitive Disaster Management. A Toolkit for Practitioners*, Published by Earthworm Books for Oxfam America and NANBAN Trust, 2008; Felten-Biermann; Ferris, Petz and Stark, chapter 4; Juran; Bookey, *Enforcing the right to be free from sexual violence*; Jean Casey and Kelly Hawrylyshyn, “Adolescent girls in emergencies: a neglected priority” (2014) 60 *Humanitarian Exchange*, Special feature *Gender-based violence in emergencies* 33 (Casey and Hawrylyshyn); Benedetta Faedi Duramy, “Women in the Aftermath of the 2010 Haitian Earthquake” (2011) 25 *Emory International Law Review* 1193 (Duramy); Blaine Bookey, “Rape in a Post-Disaster Context: Evolving Jurisprudence of the Inter-American Commission” (2012) 15 *Cuny Law Review* 283 (Bookey, *Rape in a Post-Disaster Context*); Lisa Davis, “Still Trembling: State Obligation Under International Law to End Post-Earthquake Rape in Haiti” (2011) 65 *University of Miami Law Review* 867 (Davis); Payal K. Shah, “Assisting and Empowering Women Facing Natural Disasters: Drawing from Security Council Resolution 1325” (2006) 15(3) *Columbia Journal of Gender and Law* 711 (Shah).

⁴⁹ Felten-Biermann, p.83.

defecating in the open, some women would delay drinking and eating, and wait until night time to relieve themselves.⁵⁰ This example is not only a risk factor for violence, because of the increased risk of assaults in the dark, but also for health issues.

Post-disaster settings also create issues for victims of domestic violence. While the context might provide an opportunity for victims to leave men who abuse them, services of support and counselling might be required for them to actually ‘break free’.⁵¹ In certain cases, the specific needs of domestic violence victims are overlooked.⁵² Because of the lack of alternatives and housing options, some battered women may have no other choice than to stay with or return to their abuser.⁵³ Adrienne Lockie describes how following a hurricane in Hawaii, police forces were not enforcing restraining orders unless the victim presented a copy of it, whereas, of course, such documents could be easily lost in the storm. Likewise, she discusses how services were disrupted as most shelters for victims of domestic violence were destroyed by Hurricane Katrina.⁵⁴ Moreover, evacuation and requesting relief assistance can be challenging for victims of domestic violence. Because they might fear that their abuser could find them, some victims avoid sharing contact information in any sort of databases which can impede application process for assistance from different organisations.⁵⁵ Elaine Enerson even suggests that women sometimes have to choose between receiving assistance and ensuring that they stay hidden.⁵⁶

Some authors question whether there really is an increase of violence in the aftermath of a disaster because of the lack of data on the issue.⁵⁷ For example, Claudia Felten-Biermann mentions the lack of data on GBV before the tsunami which makes it difficult to assess if GVB increased in the aftermath.⁵⁸ Two articles criticize assessments conducted in the aftermath of disasters in the Philippines and Myanmar because they were gender-blind and lacking data on GBV.⁵⁹

Nonetheless, other authors argue that there is indeed an increase of GBV in post-disaster settings.⁶⁰ For example, a research comparing violence reports before and after 2008

⁵⁰ Sarah House, Suzanne Ferron, Marni Sommer and Sue Cavill, “Violence, gender and WASH: a practitioners’ toolkit Making water, sanitation and hygiene safer through improved programming” (2014) 60 Humanitarian Exchange, Special feature Gender-based violence in emergencies 27.

⁵¹ Goldfarb.

⁵² Goldfarb; Lockie.

⁵³ Goldfarb; Lockie.

⁵⁴ Lockie.

⁵⁵ Enarson, *Women Confronting Natural Disaster*, p.83.

⁵⁶ Enarson, *Women Confronting Natural Disaster*, p.83.

⁵⁷ Bradshaw, *Gender, Development and Disasters*, p.120-126; Felten-Biermann; Bradshaw, Socio-economic impacts of natural disasters; Enarson, *Women Confronting Natural Disaster*, p.72; True’s book, p.174; Aisha Bain and Marie-France Guimond, “Impacting the lives of survivors: using service-based data in GBV programmes” (2014) 60 Humanitarian Exchange, Special feature Gender-based violence in emergencies 15 (Bain and Guimond).

⁵⁸ Felten-Biermann.

⁵⁹ Hersh; World Bank, *Guidance Note 8: Gender-sensitive post-disaster assessments. Gender and Disaster Risk Management – Guidance Notes* (Washington, DC: World Bank, 2012) (World Bank, Guidance Note 8).

⁶⁰ See for example, Enarson, Does VAW Increase; True’s book, p.166-167; Michael Anastario, Nadine Shehab, and Lynn Lawry, “Increased Gender-based Violence Among Women Internally Displaced in Mississippi 2 Years Post-Hurricane Katrina” (2009) 3(1) *Disaster Medicine and Public Health Preparedness* 18 (Anastario, Shehab and Lawry).

earthquake in Sichuan found increases in psychological aggression and physical violence.⁶¹ Following Christchurch earthquake in New Zealand, the police reported an increase in domestic violence. This increase was confirmed by women's refugees reports.⁶² A scientific research also concluded in an increase vulnerability to GBV of displaced women after Hurricane Katrina.⁶³

Responding to GBV

Although there are arguments asserting a lack of data, because of the high risk and vulnerability to violence, the provision of services to survivors of GBV should not be dependent on available data. Services should rather be provided on the assumption that violence will likely occur.⁶⁴ The IASC developed guidelines for GBV intervention in humanitarian settings and suggests:⁶⁵

The guidelines are applicable in any emergency setting, regardless of whether the "known" prevalence of sexual violence is high or low. It is important to remember that sexual violence is under-reported even in well-resourced settings worldwide, and it will be difficult if not impossible to obtain an accurate measurement of the magnitude of the problem in an emergency. All humanitarian personnel should therefore assume and believe that GBV, and in particular sexual violence, is taking place and is a serious and life-threatening protection issue, regardless of the presence or absence of concrete and reliable evidence.

Aisha Bain and Marie-France Guimond argue that once services are in place, survivors of violence would be more inclined to come forward and report GBV incidents.⁶⁶ Adequate provision of services for GBV victims creates a safe environment where they can freely talk to trained personnel.⁶⁷ The article provides examples of instances where the introduction of services led to an increase in incident reporting.⁶⁸

Another issue with this increased violence is the lack of efficient response. In response to 2004 tsunami, CEDAW Committee stressed the importance of accountability: to bring perpetrators of GBV to justice and ensure they are severely punished.⁶⁹ Nonetheless, some actors (police officers, judges, lawyers, health workers, etc.) don't take GBV seriously; others are being insensitive, even blaming the victims.⁷⁰ In an extreme case, a women reporting rape was then raped again by the police officer.⁷¹ There have also been instances of corruption

⁶¹ Enarson, Does VAW Increase.

⁶² True's book, p.166-167.

⁶³ Anastario, Shehab and Lawry.

⁶⁴ Bain and Guimond; IASC Guidelines.

⁶⁵ IASC Guidelines, p.2.

⁶⁶ Bain and Guimond.

⁶⁷ Bain and Guimond.

⁶⁸ Bain and Guimond.

⁶⁹ CEDAW Committee Statement.

⁷⁰ True's book, p.170-171; Felten-Biermann; Parkinson; Fisher, Violence Against Women; Bookey, Rape in a Post-Disaster Context.

⁷¹ Felten-Biermann; Fisher, Violence Against Women.

within the system of justice.⁷² Victims sometimes fear reprisals, stigma and social rejection; they are blaming themselves and they do not trust authorities.⁷³ Following the tsunami, the NGO, Coalition for Assisting Tsunami Affected Women, presented reports denouncing GBV but Sri Lankan government was slow and reluctant to acknowledge and address the issue.⁷⁴ These circumstances intensify the issue of GBV under-reporting.⁷⁵ This deficient response to violence against women echoes the perception that GBV is not a serious crime. Therefore, while criminalizing GBV is important, ensuring its implementation is just as essential. Moreover, training and raising awareness of judicial actors as well as the whole society is crucial for the society to understand that GBV is not acceptable.⁷⁶

D. Case study – Haiti in the aftermath of 2010 earthquake

The 2010 Haiti earthquake illustrates an example of women's vulnerability to GBV in the aftermath of a disaster. This section uses this example to explore national judicial system issues related to GBV and present an interesting approach used to address GBV.

Many, including Rashida Manjoo, Special Rapporteur on violence against women, its causes and consequences, and Walter Kälin, Special Rapporteur on the human rights of internally displaced persons, reported on the prevalence of GBV and the increased vulnerability of women in the aftermath of Haiti earthquake.⁷⁷ Blaine Bookey discusses how poverty and displacement made women more vulnerable.⁷⁸ She describes the history of rape in Haiti and links GBV to gender discrimination in Haitian society.⁷⁹ This inequality allowed the

⁷² Bookey, Rape in a Post-Disaster Context; Walter Kälin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, "Human Rights of Internally Displaced Persons in Haiti: Memorandum based on a Working Visit to Port-au-Prince (12-16 October 2010)," <http://ijdh.org/wordpress/wp-content/uploads/2010/11/Kalin-Statement-2010-Haiti-English.pdf>, para 32-43 (Kälin).

⁷³ Parkinson; IASC Guidelines; Duramy; True's book, p.171; Bookey, Enforcing the right to be free from sexual violence; Ferris.

⁷⁴ True's book, p.170; Fisher, Violence Against Women.

⁷⁵ Felten-Biermann; Parkinson; IASC Guidelines; Ferris.

⁷⁶ Bradshaw, *Gender, Development and Disasters*, p.127.

⁷⁷ Statement by Ms. Rashida Manjoo, Special Rapporteur on violence against women, its causes and consequences, 65th session of the General Assembly, 11 October 2010, New York, <http://www.un.org/womenwatch/daw/documents/ga65/vaw.pdf>, p.5-6; Kälin, para 32-43. See also Bookey, Enforcing the right to be free from sexual violence; "An Epidemic of Rape for Haiti's Displaced," The New York Times, 3 April 2011, http://www.nytimes.com/2011/04/04/opinion/04mon2.html?_r=3&ref=global-home&; Lisa Armstrong, "Haiti camps no safe havens for women," USA Today, 22 December 2010, http://usatoday30.usatoday.com/news/world/2010-12-22-haiti_N.htm; Didi Bertrand Farmer, "Bearing Witness: Girls and Women in Haiti's Camps," World Pulse, 4 November 2010, <http://worldpulse.com/magazine/columns/visionary-leaders/bearing-witness-girls-and-women-in-haiti-s-camps>; Bill Varner, "Group: Haiti Earthquake Camps Expose Women to Sex Violence," Bloomberg, 7 October 2010, <http://www.bloomberg.com/news/2010-10-07/haiti-earthquake-camps-expose-women-to-sexual-violence-refugee-group-says.html>; Emilio Godoy, "Haitian Women at Increased Risk of Trafficking," Inter Press Service, 24 September 2010, <http://www.ipsnews.net/2010/09/haitian-women-at-increased-risk-of-trafficking/>; Bookey, Enforcing the right to be free from sexual violence; Duramy; Bookey, Rape in a Post-Disaster Context; Davis; April Marcus, "Grassroots Women's Organizations' Fight for Freedom from Sexual Violence and Recognition under Domestic and International Law" (2010-2011) 14 *Cuny Law Review* 329 (Marcus).

⁷⁸ Bookey, Enforcing the right to be free from sexual violence.

⁷⁹ Bookey, Enforcing the right to be free from sexual violence.

occurrence and acceptance of GBV.⁸⁰ Benedetta Faedi Duramy and Bookey's articles recount various stories of women victims of violence following the earthquake.⁸¹

After a visit of IDP camps in Haiti, UN Special Rapporteur on the Human Rights of Internally Displaced Persons Walter Kälin explained that pre-existing problems of violence in Port-au-Prince were replicated in the camps post-earthquake. He recommended many actions such as ensuring a reporting mechanism, enhancing security in camps, improving Haitian national police practices of investigation, ending impunity, addressing corruption, etc.⁸² Both Benedetta Faedi Duramy and Blaine Bookey denounce Haiti's inability to adequately respond to violence against women.⁸³ Only a small number of incidents were prosecuted.⁸⁴

Legal framework in Haiti

The government of Haiti has ratified many international human rights instruments related to women's rights, including *CEDAW Convention*, the *Convention of Belem do Para* and the *American Convention on Human Rights*.⁸⁵ According to Haiti's constitution, once sanctioned and ratified, international treaties are considered part of the State's legislation.⁸⁶

Haiti's legal framework also prohibits certain GBV crimes.⁸⁷ Its constitution guarantees the right to life, health and respect of human being to all Haitian citizens without distinction.⁸⁸ The Haiti Penal Code includes provisions about rape.⁸⁹ Notably, rape used to be considered as an assault on morals rather than a crime against a person's integrity, which has the effect of minimizing the crime's gravity.⁹⁰ This classification was modified in 2005 and rape was redefined to be recognized as a criminal offense under a new section on sexual assault.⁹¹

Several articles condemn barriers to criminal procedures for violence against women in front of Haitian courts in the aftermath of the earthquake, barriers exacerbated by the breakdown of judicial system and fuelling the climate of impunity.⁹² Meena Jagannath's article gives an overview of Haiti justice system and describes these barriers as follows:⁹³

⁸⁰ Bookey, Enforcing the right to be free from sexual violence.

⁸¹ Duramy; Bookey, Enforcing the right to be free from sexual violence.

⁸² Kälin, para 32-43.

⁸³ Duramy; Bookey, Rape in a Post-Disaster Context.

⁸⁴ Duramy.

⁸⁵ Meena Jagannath, "Barriers to Women's Access to Justice in Haiti" (2011) 15 *Cuny Law Review* 27

(Jagannath). See also *CEDAW Convention*, UNTC,

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en;

Convention of Belem do Para, <http://www.oas.org/juridico/english/sigs/a-61.html>;

American Convention on Human Rights, http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm.

⁸⁶ Haiti, Constitution de 1987, http://www.haiti-reference.com/histoire/constitutions/const_1987.php, art. 276.2 (Haiti Constitution).

⁸⁷ For more detail and analysis, see Davis.

⁸⁸ Haiti Constitution, art. 19.

⁸⁹ Haiti, Code Pénal, http://www.oas.org/juridico/mla/fr/hti/fr_hti_penal.html, art. 279, 280.

⁹⁰ Duramy. Article 279 is placed under the section "Attentats aux Mœurs".

⁹¹ Davis; Duramy.

⁹² Marcus; Bookey, Enforcing the right to be free from sexual violence; Jagannath.

⁹³ Jagannath.

- The lack of resources as well as the lack of will and diligence from judicial actors is a main issue. Some police officers would reject complaints claiming that they do not have adequate resources to investigate the crime, for example, they do not have a vehicle or gas for the vehicle to get to the crime scene.⁹⁴
- Corruption and bribery is another major issue, and the phenomenon is facilitated by the intense backlogs and wait-times.
- Victims of GBV often face a discriminatory attitude from police officers, judges, clerks, prosecutors, etc. Some of them discredit the victims' story, trivialize their experience, or even blame them for the violent encounter. Meena Jagannath reports however that the increased violence after the earthquake raised awareness among victims and she notes some improvement from police officers who were trained on GBV issues.
- Another issue is the victims' lack of resources. Victims often cannot afford legal services or court fees, for example, they have to pay for the services of bailiffs. Cases of complainants without legal representation are more unlikely to succeed as they are particularly vulnerable to unofficial manoeuvring as well as corruption attempts from the other party.
- The proceedings are conducted in French rather than Haitian Creole, the language mostly spoken by the population.
- There have been complaints about communication problems with victims as they are not always well informed or not informed at all. Police officers and prosecutors could also be difficult to reach.
- Even if a medical certificate is not required by law, judicial actors in Haiti often require it in practice. When a medical certificate is not presented, the case is often declined or dismissed. There are two main issues related to these certificates: the need for the victim to seek medical advice within 72 hours of the rape, and the disparity between different medical certificates issued. Not only the victim has to seek medical advice almost immediately after the incident, which can be difficult for psychological and practical reasons, but also the lack of uniformity between medical certificates creates a disparity between the evidence available for criminal process. Moreover, medical certificates might not always present reliable evidence of rape because the crime itself is not based on violence but on consent which is harder to assess through medical examination. Another issue with the requirement of such a certificate is that it perpetuates the belief that "a woman's testimony alone is unreliable."⁹⁵

The failure to investigate and punish GBV crimes creates a climate of impunity where those crimes are normalized and tolerated.⁹⁶ GBV crimes are also unreported because some women

⁹⁴ See also Marcus; Bookey, Enforcing the right to be free from sexual violence.

⁹⁵ Jagannath, p.44. See also Bookey, Rape in a Post-Disaster Context.

⁹⁶ Davis.

fear retaliation.⁹⁷ This situation reinforces gender inequalities and promotes the perpetuation of these crimes.

Nevertheless, several articles praise the work of different organisations in promoting and enforcing women's rights in the aftermath of the disaster.⁹⁸ For example, Blaine Bookey's article discusses the work of the Bureau des Avocats internationaux (BAI) and the Institute for Justice and Democracy in Haiti (IIDH).⁹⁹ In response to the prevalence of GBV, the BAI and IIDH initiated the Rape Accountability and Prevention Project.¹⁰⁰ Through the project, the organizations instigated legal actions against identifiable perpetrators of rape and against members of the judicial system who failed to provide assistance to victims.¹⁰¹

Request for precautionary measures at the Inter-American Commission on Human Rights (IACHR)

An example of action to respond to the prevalence of GBV in displacement camps in the aftermath of 2010 Haiti earthquake is the request for precautionary measures filed to the Inter-American Commission on Human Rights in October 2010 by grassroots groups and their attorneys. The petition called "on both the Government of Haiti and the international community to take immediate action in addressing the epidemic rise of sexual violence faced by women and girls living in camps and to include their voices in planning."¹⁰² The petition argued that the Haitian government was aware of the instances of rapes in displacement camps but failed to exercise due diligence by permitting camps' poor conditions and not intervening.¹⁰³

On December 22, 2010, the IACHR granted precautionary measures, stressing the importance of "respecting international law, including women's rights to be free from violence."¹⁰⁴ It recognized the dangerous conditions in IDP camps.¹⁰⁵ The decision required the Haitian government "to investigate and document the sexual abuse in the displacement camps."¹⁰⁶ It also requested the Haitian government to adopt a series of measures including: providing medical and psychological services to victims of sexual violence (stressing the importance of privacy, availability of women personnel, and medical certificate issuance); implementing effective security measures (particularly public lighting and adequate patrol); ensuring the training of public agents on how to adequately respond to sexual violence complaints;

⁹⁷ Bookey, Enforcing the right to be free from sexual violence.

⁹⁸ Bookey, Enforcing the right to be free from sexual violence; Davis.

⁹⁹ Bookey, Enforcing the right to be free from sexual violence.

¹⁰⁰ Bookey, Enforcing the right to be free from sexual violence.

¹⁰¹ Bookey, Enforcing the right to be free from sexual violence.

¹⁰² Davis, p.871. See also Bookey, Enforcing the right to be free from sexual violence; Bookey, Rape in a Post-Disaster Context.

¹⁰³ Marcus.

¹⁰⁴ Davis, p.871. See also Bookey, Rape in a Post-Disaster Context; Inter-American Commission on Human Rights, "PM 340/10 – Women and girls residing in 22 Camps for internally displaced persons in Port-au-Prince, Haiti," Organization of American States, <http://www.oas.org/en/iachr/decisions/precautionary.asp> (IACHR, PM 340/10); Inter-American Commission on Human Rights, "RE: Women and girls victims of sexual violence living in 22 internally displaced persons camps Precautionary Measures no. MC-340-10 Haiti," Organization of American States, 22 December 2010 (IACHR's letter).

¹⁰⁵ Davis.

¹⁰⁶ Marcus, p.334.

promoting the creation of special units within police forces in charge of investigating violence against women; and ensuring women's groups full participation and leadership in planning and implementing policies to fight and prevent violence in camps.¹⁰⁷

This decision set a new precedent. It was the first time the IACHR granted precautionary measures to protect a group of unnamed women instead of specific individuals.¹⁰⁸ The decision also recognized that a State could be held accountable for violence perpetrated by a third party because of the government's failure to prevent and act diligently to ensure security and prosecute perpetrators of violence.¹⁰⁹ It also highlighted the shared responsibility of the international community in post-disaster settings.¹¹⁰

This petition at the IACHR presents a great example of what the legal community can do to address and advocate for women's rights in post-disaster settings.

E. Improving the context of GBV in the aftermath of a disaster

In order to better address the issue of GBV in disaster settings, numerous approaches are suggested in this section. These actions comply with international standards stated in different instruments. The IASC also provides guidelines for GBV intervention in humanitarian settings in order to help "humanitarian actors and communities to plan, establish, and coordinate a set of minimum multisectoral interventions to prevent and respond to sexual violence during the early phase of an emergency."¹¹¹

Research and data collection

States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should: [...]

(k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;¹¹²

There is a need for more research and data collection on GBV in emergency settings, including research on prevention, risk factors, access and quality of GBV services, impacts of

¹⁰⁷ IACHR's letter.

¹⁰⁸ Marcus; Bookey, Rape in a Post-Disaster Context; Davis.

¹⁰⁹ Davis. See also Bookey, Rape in a Post-Disaster Context; Marcus; IACHR, PM 340/10; IACHR's letter.

¹¹⁰ Davis.

¹¹¹ IASC Guidelines, p.2. See also for other suggestions, Gina Pattugalan, "Linking food security, food assistance and protection from gender based violence: WFP's experience" 60 Humanitarian Exchange, Special feature Gender-based violence in emergencies 30 (Pattugalan); Australian Red Cross, *Responding to gender-based violence in emergencies* (Melbourne: Australian Red Cross, 2013) (Australian Red Cross); Casey and Hawrylyshyn; True's book; Fisher, Violence Against Women; Schwoebel and Menon; Kälin; Pittaway, Bartolomei and Rees; Fisher in Enarson and Chakrabarti; Davis; Oxfam Briefing Note; Ferris, Petz and Stark; UNHCR Guidelines; Duramy.

¹¹² DEVAW, art. 4(k).

GBV intervention, consequences of GBV, etc.¹¹³ In the aftermath of a disaster, a rapid situation analysis, including gender issues and vulnerabilities, should be conducted.¹¹⁴ The World Bank's guidance note offers suggestions on how to collect information on sensitive topics and key areas for a gender-sensitive analysis.¹¹⁵ In order to prevent and anticipate further violence, data about assaults should also be collected to determine common characteristics, for example, location and timing of attacks.¹¹⁶

Research should also be conducted on the existing legal frameworks and barriers to victims' access to justice.

Women's participation

The Security Council, [...]

1. Urges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict;
2. Encourages the Secretary-General to implement his strategic plan of action (A/49/587) calling for an increase in the participation of women at decision-making levels in conflict resolution and peace processes;¹¹⁷

While the UN Security Council resolution cited is applicable to conflict settings, Payal K. Shah argues that it should apply in disasters or that a similar instrument should be adopted to be applicable in disasters.¹¹⁸ Shah mentions situations where Resolution 1325 was referred to in disaster settings rather than conflict.¹¹⁹ Moreover, many other international instruments also call for women's participation in the public sphere.¹²⁰

Women are seldom involved or consulted in decision-making processes at all levels (community, district and state) and during all phases (before, during, after the disaster).¹²¹ The lack of women's participation is an issue, as without their participation, humanitarian programs would most likely be gender-blind and won't address sources of GBV vulnerabilities.¹²²

¹¹³ Casey and Hawrylyshyn; Australian Red Cross; True's book, p.178; Fisher, Violence Against Women; Schwoebel and Menon; IASC Guidelines; Kälin, para 34; Dale Buscher, "Preventing gender-based violence: getting it right" (2014) 60 Humanitarian Exchange, Special feature Gender-based violence in emergencies 13 (Buscher); Dharini Bhuvanendra and Rebecca Holmes, "Tackling gender-based violence in emergencies: what works?" (2014) 60 Humanitarian Exchange, Special feature Gender-based violence in emergencies 3 (Bhuvanendra and Holmes).

¹¹⁴ IASC Guidelines; Australian Red Cross.

¹¹⁵ World Bank, Guidance Note 8.

¹¹⁶ IASC Guidelines.

¹¹⁷ United Nations Security Council, *Resolution 1325 (2000)*, UN Doc S/RES/1325 (2000).

¹¹⁸ Shah.

¹¹⁹ Shah. See also Davis, 869-870.

¹²⁰ See for example, *African Protocol on Rights of Women*, preamble, art. 9, 18, 19; *CEDAW Convention*, preamble, art. 7, 8; *Convention of Belem do Para*; UN Guiding Principles on Internal Displacement.

¹²¹ Pittaway, Bartolomei and Rees; Schwoebel and Menon; Fisher, Violence Against Women.

¹²² Casey and Hawrylyshyn. See also True's book, p.174

Women should actively participate in designing and implementing policies related to disaster management. Governments should ensure that women are consulted and involved, and that they are offered participation opportunities and even leadership roles at all stages of the disaster cycle.¹²³ Already, several disaster management acts ensure women's participation in disaster management committees.¹²⁴

Furthermore, women's participation stimulates women's empowerment, enhancing their self-esteem and self-confidence.¹²⁵ When empowered, women realize that subordination and violence are not the only alternative, so they would more likely "resist internalising oppression" and "develop their capabilities as autonomous beings".¹²⁶

The legal framework should also take into consideration the particular needs of women and their inclusion in all assistance programs. For example, women should participate in reconstruction and economic programs.¹²⁷ These programs should however take into consideration women's special needs, for example, ensuring their security while travelling from and to work, protect them from superiors and other colleagues' abuse, provide adapted opportunities for pregnant women, etc.¹²⁸ Finally, women's representation should be reflected in the provision of services, such as police, social and health care, in order to, among other things, create a favourable environment for GBV reporting and intervention.¹²⁹

Humanitarian assistance

States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should: [...]

- (1) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;¹³⁰

Because of women's increased vulnerability in disaster settings, gender should be mainstreamed into disaster planning and response, and all programs should be evaluated and

¹²³ Casey and Hawrylyshyn; True's book, p.174; Fisher in Enarson and Chakrabarti; Davis; Fisher, *Violence Against Women*; Oxfam Briefing Note; Ferris, Petz and Stark, chapter 4, section 2; IASC Guidelines; UNHCR Guidelines.

¹²⁴ See for example, Buthan, *Disaster Management Act of Bhutan 2013*, <https://www.ifrc.org/docs/IDRL/Disaster%20Act%20Final.pdf>, art.133 (Buthan, DM Act); Zambia, *Disaster Management Act*, 2010, <https://www.ifrc.org/docs/idrl/785EN.pdf>, art. 26(2)(d); Vanuatu, *National Disaster Act*, 2000, <https://www.ifrc.org/docs/idrl/978EN.pdf>, art.5(1)(d). See also Indonesia, *Draft Law of the Republic of Indonesia number 11 of the year 2006 regarding Governing of Aceh*, <https://www.ifrc.org/docs/idrl/968EN.pdf>, art. 138 (Indonesia, Draft Law).

¹²⁵ See Yakin Ertürk, "The Due Diligence Standard: What Does It Entail for Women's Rights?" in Carin Benninger-Budel (ed), *Due Diligence and Its Application to Protect Women from Violence* (Martinus Nijhoff Online, 2009), p.39 (Ertürk).

¹²⁶ Ertürk, p.39.

¹²⁷ True's book, p.174; Duramy; Bradshaw, *Socio-economic impacts of natural disasters*; World Bank, *Guidance Note 7: Making livelihoods and social protection gender-sensitive. Gender and Disaster Risk Management – Guidance Notes* (Washington, DC: World Bank, 2012) (World Bank, Guidance Note 7).

¹²⁸ Buscher; World Bank, Guidance Note 7.

¹²⁹ IASC Guidelines; True's book, p.174-178.

¹³⁰ DEVAW, art. 4(1).

monitored to ensure their quality.¹³¹ By taking into consideration women's vulnerability to GBV, programs could be developed and designed to reduce this risk. Several laws already highlight the importance of addressing women's special vulnerability.¹³² The Philippines moreover incorporates gender analysis in its needs assessment methods.¹³³ States should adopt legislation not only to ensure minimum quality standards of their own humanitarian assistance programs but also to monitor third-party programs. The Sphere Project can offer guidance on minimum standards for humanitarian response.¹³⁴

Ensuring quality of humanitarian assistance could reduce risks of GBV and offer appropriate services to victims. A priority should be to incorporate women's safety concerns and needs to the design and construction of any infrastructure, for example ensure adequate security patrols.¹³⁵ Conditions in camps and other temporary infrastructures should also be improved and provide adequate lighting, security, privacy, separate sanitary facilities, easy access to clean water, sewage, electricity, locks, etc.¹³⁶ For example, Kenya's National Disaster Response Plan integrates GBV into emergency intervention, and provides for gender balanced staffing in healthcare and gender segregated sanitary facilities.¹³⁷

In post-disaster settings, psychological, social, medical and other services should be available for and accessible to victims of GBV.¹³⁸ Service providers should be trained to respond sensitively and adequately. Also, local organizations should be involved in provision of services and assistance programs as they have a better understanding of local needs and culture.¹³⁹ Psycho-social services should also be offered to men in order to address trauma and destructive coping mechanisms, such as alcohol abuse.¹⁴⁰

Accountability

States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should: [...]

¹³¹ Fisher, *Violence Against Women*; Bhuvanendra and Holmes. See also, Rwanda, *National Disaster Management Policy*, 2012, https://www.ifrc.org/docs/IDRL/RwandaDisaster_Management_Policy_01.pdf, p.14; Kenya, *National Policy for Disaster Management in Kenya*, 2009, <https://www.ifrc.org/docs/idrl/1058EN.pdf>, p.32.

¹³² See for example, Buthan, DM Act, art.134; Indonesia, Draft Law, art 55; Sri Lanka, *Sri Lanka Disaster Management (Amendment) Act, No.13 of 2005*, [https://www.ifrc.org/docs/idrl/Sri%20Lanka%20DM%20\(Amendment\)%20Act%20Nov%202011.pdf](https://www.ifrc.org/docs/idrl/Sri%20Lanka%20DM%20(Amendment)%20Act%20Nov%202011.pdf), art.

8A(2)(f); Philippines, *Philippine Disaster Risk Reduction and Management Act*, 2010, <https://www.ifrc.org/docs/idrl/957EN.pdf>, sec. 3(oo) (Philippines, DRR and DM Act); Afghanistan, *National Disaster Management Plan*, 2003, <https://www.ifrc.org/docs/idrl/759EN.pdf>, p.58.

¹³³ Philippines, DRR and DM Act, sec. 9(m).

¹³⁴ Sphere Project. See also Fisher, *Violence Against Women*.

¹³⁵ UNDP and UNISDR, *Guidance Note on Recovery*; Fisher, *Violence Against Women*; Duramy; Davis; IASC *Guidelines*; Kälin, para 32-43; UNHCR *Guidelines*.

¹³⁶ Fisher in Enarson and Chakrabarti, p.238; Duramy; Fisher, *Violence Against Women*; Buscher.

¹³⁷ Kenya, *National Disaster Response Plan*, 2009, <https://www.ifrc.org/docs/idrl/857EN.pdf>, p.10, 11, 15, 16, 17, 28, 38, 39, 43, 47, 56, 57.

¹³⁸ UNDP and UNISDR, *Guidance Note on Recovery*; Lockie; Duramy; Fisher, *Violence Against Women*; Bhuvanendra and Holmes; Kälin, para 35. See also Indonesia, *Law of the Republic of Indonesia Number 24 of 2007 concerning Disaster Management*, 2007, <https://www.ifrc.org/docs/IDRL/956EN.pdf>, art. 55.

¹³⁹ Fisher, *Violence Against Women*. See also Kälin, para 35.

¹⁴⁰ UNDP and UNISDR, *Guidance Note on Recovery*; Fisher, *Violence Against Women*.

(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

(d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;

[...]

(i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;¹⁴¹

Accountability mechanisms should be established, implemented and enforced to address GBV.¹⁴² The legal framework should ensure victims' protection and perpetrators' accountability.¹⁴³ Well-established judicial procedures should be accessible to victims of GBV, and legislation and judicial system should endorse international standards.¹⁴⁴ Governments should also address barriers to criminal justice. For example, all actors involved in the process, including police officers, prosecutors, and judges, should be trained on GBV issues;¹⁴⁵ effective police reporting processes should be established;¹⁴⁶ victims should have access to legal aid services;¹⁴⁷ and States should tackle corruption.¹⁴⁸

In disaster settings, the breakdown of social structures can hinder accountability mechanisms. Nonetheless, States should find ways to ensure accountability as a climate of impunity would further perpetuate violence and give the impression that GBV is acceptable and not an important issue. While formal judicial procedures should be available and accessible, it might also be interesting to identify other traditional systems of problem-solving and examine if they would be able to adequately address GBV.¹⁴⁹

Under-reporting issues should also be addressed, for example by ensuring safe and confidential environments for complainants, respecting victims' choices and dignity, ensuring female staffing, etc.¹⁵⁰

In addition to prosecuting perpetrators, as the State bears the main responsibility to protect its civilians, the community should denounce its actions when it fails to do so and ensure it is held accountable.¹⁵¹ Grassroots and international organisations should continue their work in

¹⁴¹ DEVAW, art. 4(c, d, i).

¹⁴² Buscher; IASC Guidelines; UNHCR Guidelines.

¹⁴³ IASC Guidelines; UNDP and UNISDR, Guidance Note on Recovery; Fisher, Violence Against Women.

¹⁴⁴ IASC Guidelines.

¹⁴⁵ Kälin, para 37-39.

¹⁴⁶ Kälin, para 32-43.

¹⁴⁷ Lockie; Duramy; Fisher, Violence Against Women; IASC Guidelines; Jagannath.

¹⁴⁸ Kälin, para 32-43.

¹⁴⁹ IASC Guidelines.

¹⁵⁰ IASC Guidelines; UNHCR Guidelines.

¹⁵¹ IASC Guidelines.

advocating for women's and victims' rights.¹⁵² They should continue denouncing violations, persuading the State to intervene and raising awareness of the public. Information sessions should be available to ensure that all women are aware of their rights and the services offered to respond to GBV.¹⁵³

Educate and raise awareness

4. States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should: [...]

(j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;¹⁵⁴

As already mentioned, pre-existing vulnerabilities are reflected and exacerbated in disaster settings. Therefore, it is important to address the issue before a disaster hits and ensure that people are aware of GBV issues and consequences. This strategy could reduce the risk of violence following a disaster.

Programs should be established to raise awareness, educate and change attitudes of the civil society.¹⁵⁵ People should be informed about GBV, and participate in changing mentalities which allow its perpetuation. Civil society should get involved in the advancement of women equality. CEDAW Committee's General Recommendation no 19 highlights the importance of modifying "attitudes, customs and practices" in order to eradicate prejudices that impede eventual gender equality.¹⁵⁶ Educational institutions, religious groups, cultural standards and practices, mass media, family members, friends, colleagues or peers may influence stereotypical conceptions of gender.¹⁵⁷

Men should also be involved in changing gender stereotypes.¹⁵⁸ As the United Nations Division for the Advancement of Women writes, "[a]chieving gender equality is now clearly seen as a societal responsibility that concerns and should fully engage men as well as women."¹⁵⁹ Kirsten Anderson reveals that in societies where norms of domination and

¹⁵² IASC Guidelines.

¹⁵³ IASC Guidelines.

¹⁵⁴ DEVAW, art. 4(j).

¹⁵⁵ Pattugalan; UNDP and UNISDR, Guidance Note on Recovery; Bradshaw, Socio-economic impacts of natural disasters; Bhuvanendra and Holmes; IASC Guidelines.

¹⁵⁶ CEDAW, General Recommendation no 19, para 24. See also Buscher; UNHCR Guidelines.

¹⁵⁷ Division for the Advancement of Women, *The Role of Men and Boys in Achieving Gender Equality*, UN Doc EGM/MEN-BOYS-GE/2003/REPORT (12 January 2004), para 46 (Division for the Advancement of Women).

¹⁵⁸ See for example, Buscher; Commission on the Status of Women, *The Role of Men and Boys in Achieving Gender Equality*, 1-12 March 2004, para 1, 4.

¹⁵⁹ Division for the Advancement of Women, para 25.

control are associated with masculinity, men tend to be more violent towards women.¹⁶⁰ Since norms of masculinities are fluid and can be reshaped, men can become agents of change and have a positive influence on gender power relations.¹⁶¹ The ‘harmful masculinities’ need to be identified, addressed and modified in order to eliminate GBV.¹⁶² As the UN Division for the Advancement of Women points out, children are likely to learn and imitate the conduct of same sex relatives. Therefore, boys who “observe fathers and other men treating women as inferior or being violent toward women, may believe that this is ‘normal’ male behaviour.”¹⁶³ On the other hand, the interaction of boys with male figures who demonstrate “alternative ways of being men” can influence the boys’ perception about sex roles.¹⁶⁴ Hence, socialization and education becomes an important part of conceptualizing the perception of manhood. In the specific context of post-disaster, different actions can initiate change. For example, trusted men can be appointed to patrol in camps and to accompany women, raising awareness and positively involving men in GBV issues.¹⁶⁵

In addition to educating the whole civil society, it is also important to train specific actors involved in humanitarian relief and judicial procedures on gender-sensitive issues: how to prevent GBV, how to address GBV, how to help victims of GBV, etc.¹⁶⁶ Sensitively trained people would create a secure environment where victims would feel more comfortable discussing GBV.

Conclusion

The aim of this paper was to explore the issue of GBV in disasters and establish strategies to address it. While violence against women should be prevented and addressed according to numerous international instruments, the aftermath of disasters increases women’s vulnerability to GBV. The case of Haiti following 2010 earthquake was widely condemned. There are however many actions humanitarian actors can undertake to address the issue. A multi-sectorial intervention should include further research on the topic, women’s participation in disaster management, consideration of women’s special needs in humanitarian assistance programs, accountability of violence perpetrators, and public awareness on the issue.

From a legal perspective, it is important to promote a comprehensive legal framework for disaster management inclusive of gender-sensitive issues. This legal framework should include provisions for women’s participation in all phases of disaster management, minimum

¹⁶⁰ Kirsten Anderson, “Violence against Women: State Responsibilities in International Human Rights Law to Address Harmful ‘Masculinities’” (2008) 26(2) *Netherlands Quarterly of Human Rights* 173, p.179-180 (Anderson).

¹⁶¹ Division for the Advancement of Women, para 89; Anderson, p.180.

¹⁶² Anderson, p. 196.

¹⁶³ Division for the Advancement of Women, para 44.

¹⁶⁴ Division for the Advancement of Women, para 47.

¹⁶⁵ Davis.

¹⁶⁶ Pattugalan; Fisher, Violence Against Women; Australian Red Cross; IASC Guidelines; Kälin, para 38-39. See also United Nations General Assembly, “Trafficking in women and girls,” 7 November 2006, A/C.3/61/L.11/Rev.1, para 26; United Nations General Assembly, “Trafficking in women and girls,” 1 February 2007, A/RES/61/144, para 26.

standards of humanitarian assistance in order to address women's increased vulnerability to GBV after a disaster and to provide for their security, and accountability mechanisms to prosecute perpetrators. All stakeholders should also be trained and educated in order to remediate to gender stereotypes, one of GBV root causes. There is a need for further research on existing national legal frameworks addressing GBV (quality of humanitarian assistance, accountability, etc.) but more importantly, it is crucial to collect data on its implementation following a disaster.

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