

A large, stylized graphic of a leaf or flame shape, composed of overlapping organic curves in two shades of brown: a darker, muted red-brown and a lighter, golden-brown. The shape originates from the right edge and extends towards the center of the page.

CHINA NATIONAL LAW AND POLICY REPORT

CONSULTATION DRAFT 2020

Displacement in the Context of Disasters and Climate Change

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TABLE OF CONTENTS

| | | |
|----------|---|----------|
| 1 | INTRODUCTION | 1 |
| | 1.1. A human rights-based approach | 1 |
| 2 | Displacement in Numbers | 3 |
| | 2.1. Number of disasters and people affected in the last ten years (2009–2018) | 3 |
| 3 | Recommendations from Human Rights Monitoring Bodies | 5 |
| 4 | Legal and Policy Framework | 7 |
| | 4.1. Prevent and prepare for displacement | 10 |
| | 4.2. Protection during evacuation and throughout displacement | 10 |
| | 4.3. Durable solutions to displacement | 10 |

1 INTRODUCTION

As reflected in the *Sendai Framework for Disaster Risk Reduction* (SFDRR)¹ and the *Paris Agreement*,² and recent statements and declarations at the Global Platform on Disaster Risk Reduction (GPDRR)³ and the Asia Ministerial Conference on Disaster Risk Reduction (AMCDRR),⁴ displacement in the context of disasters and climate change is increasingly being seen by actors concerned with disaster risk management at international, regional and national levels as a phenomenon requiring concerted attention. The series of country reports of which this document is a part address the policy objective of further integrating displacement considerations into wider disaster risk management and climate change adaptation measures at the sub-national level.⁵ The reports present the results of a mapping exercise in which national law and policy was reviewed in order to identify existing references to different aspects of displacement, including prevention of and preparedness for displacement, protection during evacuation and throughout displacement, and facilitation of durable solutions. Setting out the extent to which sub-national law and policy presently addresses these different aspects of displacement provides a helpful starting point for future engagement with relevant actors on ways of further integrating displacement considerations.

Only documents that are expressly related to disasters, climate change and displacement are considered in this report. Due to the cross-cutting, whole-of-society impact of many disasters, a wide range of other legal and policy frameworks may well have relevance for specific kinds of engagements relating to disaster displacement or disaster risk management and climate change adaptation more generally. However, in order to retain the clear focus on addressing the extent to which displacement is already integrated into sub-national law and policy, a restrictive approach was taken in the review.

1.1. A human rights-based approach

In line with Paragraph 19(c) of the SFDRR,⁶ Paragraph 28 of the *Co-Chairs' Summary* of the GPDRR, and Paragraph 11 of the *Ulaanbaatar Declaration* at the AMCDRR, the reports embrace a human rights-based approach to disaster displacement. In brief, this approach sees states as having the primary responsibility for protecting persons from harm associated with displacement in the context of disasters and climate change. It recognises the Universal Declaration on Human Rights, Guiding Principles on Internal Displacement 1998 (Guiding Principles on Internal Displacement), as well as the wider body of international human rights law underpinning those Principles, as foundational. Having a legal and policy framework in place that incorporates core principles and defines roles and responsibilities of responsible

1 *Sendai Framework for Disaster Risk Reduction* (SFDRR), see for example paras. 28(d), 30(l), 33(h, j, m).

2 *Paris Agreement*, see Article 8, which references the Warsaw International Mechanism, under which a Taskforce on Displacement was created, <unfccc.int/wim-excom/sub-groups/TFD>, visited on 27 October 2020.

3 *Global Platform on Disaster Risk Reduction 2019, Co-Chairs' Summary* (GPDRR), see paras. 6, 12 and 28, <www.preventionweb.net/files/58809_chairsummary.pdf>, visited on 27 October 2020.

4 Para. 1 of the *Ulaanbaatar Declaration* at the 2018 Asian Ministerial Conference on Disaster Risk Reduction (AMCDRR) expresses "deep concern at the continuing impact of disasters in the region, resulting in recurrent loss of human lives and livelihoods, displacement of people, and environmental, economic, social and material damages", <www.preventionweb.net/files/56219_ulaanbaatardeclarationfinal.pdf>, visited on 27 October 2020.

5 GPDRR 2019, *supra* note 3, para. 28: "Governments and the international community must do more to reduce the risk of disaster displacement before disasters strike. Disaster risk reduction strategies and policies should address the drivers and consequences of disaster displacement and contribute to durable solutions."

6 SFDRR, *supra* note 1, para. 19(c) reads: "[m]anaging the risk of disasters is aimed at protecting persons and their property, health, livelihoods and productive assets, as well as cultural and environmental assets, while promoting and protecting all human rights, including the right to development."

actors also contributes to transparency and accountability. Further, a human rights-based approach recognises that disasters do not affect all persons in the same way, and highlights the differential exposure and vulnerability that manifests along intersecting gender, ethnicity, age, disability and other lines. The gendered nature of displacement is emphasised, as is the need to tackle structural barriers to equality in order to strengthen resilience to disaster risk. It follows that consultation, participation and equal access to information are cornerstones of the approach. The approach can be condensed into four elements, namely:

- governance: transparency and accountability
- procedural: participation, consultation and access to information
- substantive: express focus on fundamental rights
- non-discrimination and equality: focus on the particular situation of traditionally marginalised groups.

More details on the international standards and guidelines that reflect this approach are contained in the Background Brief on Key International Standards and Guidelines Relating to Displacement in the Context of Disasters and Climate Change, which accompanies this series of country policy reports.⁷

The report has four substantive sections. First, a snapshot of the numerical scale of disaster displacement in the country is presented, drawing on data from the Internal Displacement Monitoring Centre (IDMC) and the EM-DAT database. Next, in the interests of connecting the analysis to the relevant wider human rights law context, disaster-specific observations from human rights monitoring bodies and mandate holders under the UN system are highlighted. Then, the domestic law and policy framework is presented and analysed against a set of core principles concerning prevention of and preparedness for displacement, protection during evacuation and throughout displacement, and the facilitation of durable solutions. Finally, reflecting on this material, a concluding section summarises strengths and areas inviting closer engagement by relevant actors.

The intended audience of this report series includes domestic actors with responsibility for disaster risk reduction (DRR) and management (DRRM), climate change adaptation (CCA), and protection of persons in situations of climate- and disaster-related displacement at the national and sub-national level. It is hoped that these actors will find value in a consolidated overview of the domestic legal and policy framework from a human rights-based approach, read alongside the Background Brief on international standards and guidelines, not least in light of the imperative under the SFDRR to address disaster risk through “promoting and protecting all human rights”.

It is also hoped that civil society, UN, and intergovernmental and academic actors at (sub) national, (sub)regional and international levels will find the series of country reports of interest and value. The compendium of which this report is a part provides a depth of insight into how different countries across the region are working to address the pressing challenge of displacement in the context of disasters and climate change. It is hoped that the compendium of reports will provide material that contributes to an enhanced appreciation of the relevance of human rights to addressing disaster displacement, the exchange of good practices, and the further integration of displacement into existing disaster risk reduction and climate change adaptation initiatives.

2 Displacement in Numbers

2.1. Number of disasters and people affected in the last ten years (2009–2018)

| Hazard | Number | People affected ⁸ |
|---|------------|------------------------------|
| Drought | 9 | 139,886,000 |
| Earthquake | 50 | 7,928,120 |
| Cold wave | 2 | 4,033,472 |
| Heat wave | 1 | – |
| Severe winter condition | 1 | 50,650 |
| Flood | 100 | 421,741,262 |
| Landslide | 29 | 2,397,337 |
| Mass movement (dry) | 1 | 2 |
| Storm | 111 | 93,891,577 |
| Wildfire | 1 | 3 |
| TOTAL | 305 | 669,928,423 |
| Source: < public.emdat.be >. | | |

Clearly, China faces a range of hazards that together contribute to the displacement of hundreds of thousands of people every year. Indeed, of the 81,673,000 persons displaced in the last ten years,⁹ 15,920,000 were newly displaced in 2010,¹⁰ predominantly as a result of floods in southern China.¹¹ This figure represents 1.19 per cent of the total population of the country.¹²

8 'Affected' means "[p]eople requiring immediate assistance during a period of emergency, i.e. requiring basic survival needs such as food, water, shelter, sanitation and immediate medical assistance", source: *ibid*.

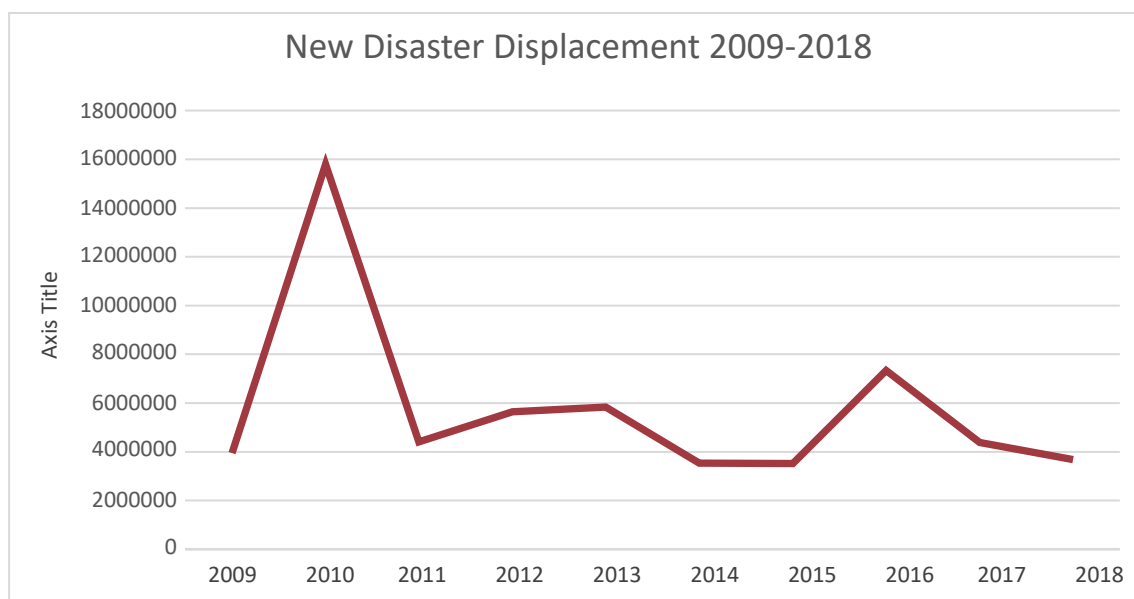
9 Source: EMDAT, *supra* note 8.

10 Sources: Internal Displacement Monitoring Centre (IDMC), <www.internal-displacement.org/database>, visited on 27 October 2020, and <www.theguardian.com/world/2010/jun/20/china-devastated-floods>, visited on 27 October 2020

11 Source: <www.theguardian.com/world/2010/jun/20/china-devastated-floods>, visited on 2 November 2020.

12 Source: <data.worldbank.org/indicator/sp.pop.totl>, visited on 27 October 2020.

The annual number of new displacements over the last ten years is reflected below.



Source: <www.internal-displacement.org/database/displacement-data>.



ADBC (Agriculture Development bank of China) Branch in Bei Chuan after earthquake in 2008 photo by Wikimedia Commons

With substantial displacements triggered by a variety of hazards, how China approaches the protection of persons from displacement, during evacuation, and throughout displacement and the facilitation of durable solutions has implications for the enjoyment of a range of human rights, including the rights to life, shelter, property, food, health, physical security, livelihoods and many more. Section 3 considers what human rights treaty monitoring bodies

and mandate holders have recommended in terms of China's approach to disaster risk reduction and climate change adaptation generally. Section 4 then considers in closer detail the legal and policy framework currently in force in the country, with a focus on measures that address all phases of the displacement cycle.

3 Recommendations from Human Rights Monitoring Bodies

A human rights and gender-equal approach to law, policy and practice on displacement in the context of disasters and climate change may benefit from a grounding in existing recommendations from human rights monitoring bodies. Based on a review of Concluding Observations from the most recent periodic review before treaty monitoring bodies and other mechanism within the UN system, a series of a country-specific recommendations relating to climate change adaptation and disaster risk reduction and management had been consolidated.

China is party¹³ to the following international human rights treaties of relevance to displacement in the context of disasters and climate change:

- Convention on the Elimination of Racial Discrimination 1965 (CERD)
- International Covenant on Economic, Social and Cultural Rights 1966 (CESCR)
- Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)
- Convention on the Rights of the Child 1989 (CRC)
- Convention on the Rights of Persons with Disabilities 2006 (CRPD).

The CERD¹⁴, CEDAW¹⁵ and CRPD¹⁶ committees do not address disasters or climate change, or displacement in those contexts, in their Concluding Observations. The CESCR¹⁷ committee addresses forced evictions, but not in the context of disaster or climate change. The CRC¹⁸ Committee considers disaster and climate change somewhat briefly.

The CRC Committee, in its Concluding Observations, recommends that:

“[s]trategic budgetary lines be defined in mainland China, Hong Kong, China and Macao, China for children in disadvantaged or vulnerable situations that may require affirmative social measures, for example children of ethnic minorities, children with disabilities and migrant children, and that those budgetary lines be ensured protection even in situations of economic crisis, natural disasters or other emergencies”.¹⁹

13 Source: <indicators.ohchr.org/>, visited on 1 November 2020.

14 CERD, Concluding Observations, CERD/C/CHN/CO/14-17 (19 September 2018), <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/CHN/CO/14-17&Lang=En>, visited on 1 November 2020.

15 CEDAW, Concluding Observations, CEDAW/C/CHN/CO/7-8 (14 November 2014), <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CHN/CO/7-8&Lang=En>, visited on 1 November 2020.

16 CRPD, Concluding Observations, CRPD /C/CHN/CO/1/Corr.1, (14 November 2012) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCHN%2fCO%2f1%2fCorr.1&Lang=en>, visited on 1 November 2020.

17 CESCR, Concluding Observations, E/C.12/CHN/CO/2 (13 June 2020), <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/CHN/CO/2&Lang=En>, visited on 1 November 2020

18 CRC, Concluding Observations, CRC/C/CHN/CO 3-4 (29 October 2013), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/CHN/CO/3-4&Lang=En, visited on 1 November 2020.

19 *Ibid.*, para 14..

The Special Rapporteur on Right to Food, in his mission to China,²⁰ addresses some aspects of China's response to climate change in relation to the right to food:

"The message is clear: while the agricultural system has achieved impressive results over the past 30 years, it must now focus on becoming more resilient to climate-related shocks, and on making a more efficient use of scarce resources.

"The Chinese authorities are keeping this issue under close scrutiny, and they should be commended for a number of initiatives that they have taken to mitigate and adapt to ecological damage, including climate change. But more could be done. The social impacts of certain policies, such as *tuigeng huanlin* (returning farmland to forest), which covers more than 32 million farmers' households in 25 provinces, may have been underestimated. The scale of the programmes is considerable: 3.64 million mu of farmland have been afforested between 1999 and 2006. The impacts have been felt by an important number of farmers, who must find new ways to make a living and realize their right to food. In addition, the authorities could further explore the potential of sustainable modes of agricultural production based on the principles of agroecology, in order to increase agricultural productivity in a sustainable manner."²¹

Further, The Special Rapporteur:

"calls on the Chinese authorities to engage in meaningful consultations with herding communities, including in order to assess the results of past and current policies on the realization of the right to food, and to examine all available options, including recent strategies of sustainable management of marginal pastures such as New Rangeland Management, in order to combine the knowledge of the nomadic herders of their territories with the information that can be drawn from modern science".²²

The Special Rapporteur also encourages the Chinese authorities to explore the potential of livestock insurance programmes that have been tested successfully in Mongolia,²³ stating that:

"Such programmes, which pay nomads to restock and recover after a major disaster, encourage nomads to keep herds at a much smaller scale, in effect replacing the "insurance" against disaster traditionally provided by the sheer size of larger herd."²⁴

The Special Rapporteur also recommends that the government:

"[s]uspend the non-voluntary resettlement of nomadic herders from their traditional lands and the non-voluntary relocation of rehousing programmes of other rural residents, in order to allow for meaningful consultation to take place with the affected communities, permitting parties to examine all available options, including recent strategies of sustainable management of marginal pastures".²⁵

20 Special Rapporteur on Right To Food (Special Rapporteur), A/HRC/16/49/Add.3 (20 January 2012), (18 February 2012), <undocs.org/A/HRC/19/59/Add.1>, visited on 1 November 2020.

21 Special Rapporteur, *supra* note 21, paras. 30–31.

22 *Ibid.*, para. 37.

23 *Ibid.*

24 *Ibid.*

25 *Ibid.*, para. 46.

While there are not many recommendations in the context of disaster, displacement and climate change, these may be summarised as:

- Take steps to ensure meaningful participation in addressing environmental challenges, such as the degradation of pasture lands and control disasters in the lowlands of China, to ensure people access to lands.
- Adopt affirmative social measures for children in disadvantaged or vulnerable situations.
- Explore agro-ecology as a means of sustainably adapting to climate change whilst prompting the right to food.
- Explore the possibility to adopt programmes that enable nomads to restock and recover after a major disaster.

4 Legal and Policy Framework

The 2004 Amendments to the Constitution of the People's Republic of China (the Constitution) includes provision of human rights. It stipulates that "[t]he state respects and preserves human rights", and "every citizen is entitled to the rights and at the same time must perform the duties prescribed by the Constitution and other laws".²⁶ Chapter II of the Constitution is dedicated to "[t]he fundamental rights and duties of the citizen" that guarantee freedom of expression, the right to education, the right to a fair trial, and the rights to vote and stand for election, to name a few.²⁷ The Constitution also guarantees the right to material assistance for elderly and ill people, as well as persons with disabilities.²⁸ Under the Constitution, the state owns all mineral resources, waters, forests, mountains, grasslands, unreclaimed land, beaches and other natural resources, with the exception of those owned by collectives.²⁹

The disaster risk reduction and management system in China is mainly regulated under *The Emergency Response Law* (ERL). Under this law, the Chinese government is required to establish a system for administration of emergency responses, characterised by unified leadership, all-round coordination, control according to grades, responsibility at different levels and, chiefly, territorial jurisdiction. The various departments and local governments have their own responsibilities for responding to emergencies. However, China also has several other laws and policies that regulate different types of disasters, such as: *Flood Control Law*, *Law on Protecting Against and Mitigating Earthquake Disasters*, and *Meteorological Law*.

Due to several limitations, this particular research reviewed the following existing Chinese laws:

- *Emergency Response Law of the People's Republic of China 2007* (ERL)
- *Law of the People's Republic of China on Protecting Against and Mitigating Earthquake Disasters 1997* (PAMED Law)
- *Flood Control Law 1997?* (FCL)
- *Regulations on Post-Wenchuan Earthquake Rehabilitation and Reconstruction 2008?* (Regs. P-WERR).

²⁶ The Constitution, Art. 33, the full text can be accessed at <www.npc.gov.cn/zgrdw/englishnpc/Constitution/node_2825.htm>, visited on 10 November 2020.

²⁷ *Ibid.*, Arts. 34–48.

²⁸ *Ibid.*, Art. 45.

²⁹ *Ibid.*, Art. 9.



Ruins of the Earthquake in Sichuan, China photo by pikrepo.com

In relation to the *governance* element, the legal and policy framework in China that has been reviewed does not adopt an expressly human rights-based approach, although there are some provisions, particularly related to substantive rights.

The laws and policies reviewed all attempt to address prevention of and preparedness for disasters and climate risks, and to address various stages of displacement. Most of these laws address evacuation and protection during displacement, but less attention is given to durable solutions, although some *ad hoc* provisions exist.

The ERL, for example, provides a framework for prevention, reducing risks, and regulating responses to emergencies. It provides a framework for how the state should prepare for and respond to disaster displacement, including the prevention and preparedness aspects, evacuation, and protection during displacement. It also stipulates a state obligation to protect the lives and property of people during disaster and displacement, including ensuring living assistance for those affected and availability of shelters and other facilities needed during disaster. It also provides framework for post-emergency rehabilitation and reconstruction.

The PAMED Law regulates obligations and activities of the state to prevent and reduce the human impact of earthquakes. This law provides elements of preparation for emergency, monitoring and early warning, rescue and relief, as well as rehabilitation and reconstruction.

The Regs. P-WERR provide comprehensive provision in rehabilitation and reconstruction post disaster, and address some issue of durable solutions. These regulations also discuss transitional resettlements, that combine several approaches from in-situ, ex-situ, government resettlement and self resettlement. These regulations also stipulate that the government still has an obligation to provide assistance for those who conduct self resettlement.

The laws and policies reviewed do not, however, expressly embrace a systematic human rights-based approach.

In relation to the *procedural* element, all laws include provisions on early warning systems that operate well and reach the community in a timely manner. However, none of them pay much attention to how citizens can proactively access information relating to displacement that might affect their lives, nor do they provide a framework for implementation of the principle of free, prior and informed consent.



The effect of the 2008 Chinese winter storms in Hefei, Anhui Province, China photo by Zhang Yueyang
Wikimedia Commons Benlisquare

The only law reviewed that includes provision related to planned relocation is the FCL. Under this law, local government must make plans to have residents move out of river channels for flood passage, but does not include implementation of the principle of free, prior and informed consent as one of its procedures/requirements.

Participation principles can be found in all the laws reviewed, although they do not all necessarily provide space for active and meaningful participation, particularly in the decision making process. These laws encourage volunteer and public participation, in general, in activities related to disaster prevention and mitigation and emergency rescue, as well as reconstruction and rehabilitation.

The PAMED Law, however, stipulates the obligation to respect the wishes of ethnic and rural communities during the reconstruction and rehabilitation phase. Further, under the Regs. P-WERR, rehabilitation and reconstruction planning should consider the opinions of the disaster-stricken people, in addition to experts and relevant government departments. This regulation also stipulates that rehabilitation and reconstruction in rural areas should also respect the will of farmers. The government is also required to “provide various housing design drawings that can meet the local actualities for villagers to choose”.³⁰

The legal and policy framework, however, does not address the issue of accountability. No complaint mechanism are provided, although in several laws, including the FCL and Regs. P-WERR, mention auditing as an obligatory procedure that must be carried out by the state.

The *substantive* element can be best addressed by breaking it down into measures to prevent and prepare for displacement, protect people during evacuation and throughout displacement, and facilitate durable solutions to displacement. Each is addressed in turn.

4.1. *Prevent and prepare for displacement*

All the laws provide thorough measures to prevent and prepare displacement. Some laws, such as the ERL and the PAMED Law, require urban and rural planning to include the locations of evacuation passages and shelters. All the laws also require measures to reduce risk, such as fortification of buildings against earthquakes, or location of buildings far away from the threat of mountain torrents.

4.2. *Protection during evacuation and throughout displacement*

Comprehensive provisions on issues relating to evacuation and shelters are included in most of the laws and policies reviewed, particularly The PAMED Law. These laws and policies, however, do not specify minimum provisions on protection and throughout displacement, and they mostly include only general provisions on shelter, food and drinking water.

4.3. *Durable solutions to displacement*

The ERL, PAMED Law and Regs. P-WERR include measures that address aspects of durable solutions, particularly related to livelihood and employment. However, they do not address the full range of durable solutions for displacement.

The non-discrimination and equality element is not addressed in any depth under the laws and policies reviewed.

30 Regulations on Post-Wenchuan Earthquake Rehabilitation and Reconstruction, Art.43



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