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ImPPProving Resilience: A Human Rights-Based Approach to Public-Private Partnerships in Disaster Risk Reduction

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Table of contents

Summary	4
Preface.....	5
Abbreviations	6
1 Introduction.....	7
1.1 Topic.....	7
1.2 Motive and Justification	8
1.3 Research Objectives and Question	10
1.4 Method.....	10
1.5 Scope	11
1.6 Outline	12
2 Human Rights and Disasters.....	13
2.1 There is No Such Thing as a Natural Disaster	13
2.2 Disaster and the Core International Human Rights Law Instruments.....	15
2.3 Soft Law Instruments on Human Rights in Disaster	20
3 Private Actors in Disaster Risk Management.....	24
3.1 International Human Rights Law and Non-State Actors.....	24
3.1.1 The State Duty to Protect	25
3.1.2 The State-Business Nexus.....	26
3.2 Engaging the Private Sector in Disaster Risk Management	28
3.3 Why Public-Private Partnerships?	30
3.3.1 Access to Expert Knowledge of the Private Sector	31
3.3.2 Access to Resources of the Private Sector	32
3.3.3 Quick Decision-Making	33
3.3.4 Risk Sharing	33
3.3.5 Combined Efforts for More Efficient Disaster Risk Management	35
4 PPPs - a Recipe for Disaster?	36
4.1 Lack of Democratic Accountability	36
4.2 Lack of Transparency Between the Parties	40
4.3 Breaking Cost-Benefit Promises	42
4.4 The Hollowing Out of the Public Sector	44
4.5 Lack of Accountability for Harm to Third Parties	46
5 Designing and Implementing Human Rights-Based PPPs	48
5.1 Human Rights-Based Approaches to Disaster Risk Reduction	48

5.2	Regulating the Process of Entering into a PPP.....	50
5.2.1	Considering Human Rights Impacts	51
5.2.2	Transparency and Participation.....	52
5.2.3	Accountability	53
5.3	Human Rights-Based PPP Contracts.....	54
5.3.1	Due Diligence Obligations.....	54
5.3.2	Oversight and Monitoring.....	55
5.3.3	Operational-Level Grievance Mechanisms.....	56
6	Conclusion	59
	Bibliography.....	61

Summary

This thesis investigates how States must approach public-private partnerships (PPP) for disaster risk reduction to be in compliance with their obligations under international human rights law.

Increasingly, engaging in PPPs is becoming standard practice in disaster risk management. Existing research on these partnerships focuses primarily on value-for-money questions. The first people-centered approaches to PPPs, based on the 2030 Agenda for Sustainable Development and its sustainable development goals, have been conceptualized and serve as recommendations to States. It is recognized that sustainable development and human rights are intrinsically linked. Approaching the subject from a human rights perspective, as this thesis does, aims to enrich the discussion by introducing human rights to it, to define specific obligations for States, and ultimately to empower rights-holders.

To do so, this thesis adopts a legal doctrinal analysis to examine human rights treaties, their interpretation by treaty bodies, and international soft law instruments on disaster risk reduction and/or collaboration with private actors.

States have obligations under international human rights law to prevent disasters and protect human rights in disaster situations. The thesis demonstrates that they can collaborate with private actors to provide services to fulfil these obligations and are in fact encouraged to do so by international soft law instruments. However, when they engage in public-private partnerships to provide crucial services for disaster risk management, they need to take measures to protect the human rights of those affected from PPP-related human rights abuses. That requires adopting human rights-conscious procedures for the bidding and negotiating processes that lead to the adoption of PPPs, allowing for transparency, participation, and accountability. Furthermore, States should use the PPP contract to promote human rights and to ensure that their private partner is contractually bound to protect human rights in their activities. To fully fulfil their human rights obligations and ensure the delivery of necessary public services, States must oversee the implementation of the PPP and monitor their private partner's compliance with human rights standards. Overall, considerations of human rights impacts of the PPP project and responses thereto must guide its development and implementation.

Preface

I want to express my thanks to my supervisor, Matthew Scott, for his guidance and support in the process of writing this thesis.

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Abbreviations

Acadian	Acadian Ambulance
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CRD	Convention on the Rights of the Child
CRD Committee	Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CRPD Committee	Committee on the Rights of Persons with Disabilities
DRR	Disaster Risk Reduction
HRBA	Human rights-based approach
HRIA	Human rights impact assessment
IASC Guidelines	Inter-Agency Standing Committee Operational Guidelines on the Protection of Persons in Situations of Natural Disasters
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILC	International Law Commission
LUMA	LUMA Energy LLC
P3 Authority	Puerto Rico Public-Private Partnerships Authority
PPP	Public-Private Partnership
PREPA	Puerto Rico Electric Power Authority
SBP	St. Bernard Parish
SDGs	United Nations Sustainable Development Goals
Sendai Framework	Sendai Framework for Disaster Risk Reduction 2015-2030
UNECE	United Nations Economic Commission for Europe
UNGPs	United Nations Guiding Principles on Business and Human Rights

1 Introduction

1.1 Topic

As climate change accelerates, earthquakes, floods, droughts, hurricanes and other natural hazards occur more frequently.¹ Disasters triggered by these hazards greatly affect human rights. Not only do they exacerbate existing vulnerabilities but also create new ones.² Disaster damages, including number of people affected and damage to economic, social, and environmental assets, are increasing globally.³ The total costs of disasters exceed \$2.3 trillion dollars every year.⁴

Considering the damage that disasters cause, States have recognized the importance of disaster risk reduction (DRR)⁵ “aimed at preventing new and reducing existing disaster risk and managing residual risk, all of which contribute to strengthening resilience and therefore to the achievement of sustainable development”.⁶ Fundamentally aimed at the protection of persons, DRR requires a consideration for human rights impacts and protection. The importance of centering human rights considerations in disaster risk management is based on international human rights law and affirmed by the provisions of the Sendai Framework for Disaster Risk Reduction 2015-2030 (Sendai Framework).

Disaster risk reduction is a complex task that requires collaboration with stakeholders from all sectors. Increasingly, States are relying on partnerships with the private sector to manage disaster risks and provide public services related to DRR before, during and after disasters strike. These public-private partnerships (PPPs), which gained prominence in the 1990s,⁷ are seen as an

¹ Intergovernmental Panel on Climate Change (IPCC) (ed), ‘Weather and Climate Extreme Events in a Changing Climate’ *Climate Change 2021 – The Physical Science Basis: Working Group I Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2023) 1517 <<https://doi.org/10.1017/9781009157896.013>> accessed 18 April 2026.

² Mariangela Bizzarri, ‘Protection of Vulnerable Groups in Natural and Man-Made Disasters’ in Andrea de Guttry, Marco Gestri and Gabriella Venturini (eds), *International Disaster Response Law* (TMC Asser Press 2012) 405–406 <https://doi.org/10.1007/978-90-6704-882-8_16> accessed 16 April 2026.

³ Shirin Sultana, ‘International Human Rights Law (IHRL) in Disaster Risk Reduction (DRR) Planning’ in Amita Singh (ed), *International Handbook of Disaster Research* (Springer, Singapore 2023) 1910 <https://doi.org/10.1007/978-981-19-8388-7_132> accessed 15 May 2026.

⁴ UNDRR, *Global Assessment Report on Disaster Risk Reduction 2025: Resilience Pays: Financing and Investing for Our Future* (United Nations 2025) 11.

⁵ UNDRR, ‘Sendai Framework for Disaster Risk Reduction 2015 - 2030’ (2015) UN Doc A/CONF.224/L.2 para 2.

⁶ UNGA, ‘Report of the Open-Ended Intergovernmental Expert Working Group on Indicators and Terminology Relating to Disaster Risk Reduction’ (2016) UN Doc A/71/644 16.

⁷ Juliette Rimlinger and others, ‘Shaping Local Disaster Risk Governance through Multi-Stakeholder Collaboration: Insights from the Public-Private-Civil Partnership Approach - Application to the Case Studies of the Municipality of Egaleo (Greece) and Centro Region

alternative financing mechanism for disaster risk reduction measures and as a way to use the resources and expert knowledge of the private sector to improve resilience.⁸ Throughout the 2010s, private sector involvement in disaster risk management was mostly focused on response and relief activities.⁹ Since then, however, public-private partnerships have become crucial to all types of DRR efforts. Among other things, States have adopted PPPs to provide disaster insurance, to build resilient infrastructure, to provide early warning systems, to create disaster management plans, to handle disaster logistics, and to rebuild better after disasters.

Despite being adopted for their potential in improving DRR efforts, PPPs are a polarizing topic. While some hail them as the answer to the capacity gaps and lack of public resources that prevent efficient DRR,¹⁰ others are skeptical of allowing extensive private sector involvement in the provision of crucial public services.¹¹ Concerns over transparency and accountability are prime reasons for public skepticism¹² and ample cause for an inquiry into human rights protection when PPPs are employed to manage disaster risks.

1.2 Motive and Justification

Existing academic research on public-private partnerships mainly focuses on the economic viability of the partnerships: Compared to other methods of service delivery, do PPPs provide a more cost-efficient and effective way to provide public services?¹³ How must public-private partnerships be organized to

(Portugal)’ (2026) 133 *International Journal of Disaster Risk Reduction* 105973, 3 <<https://doi.org/10.1016/j.ijdr.2025.105973>>.

⁸ Zairul A Auzzir, Richard P Haigh and Dilanthi Amaratunga, ‘Public-Private Partnerships (PPP) in Disaster Management in Developing Countries: A Conceptual Framework’ (2014) 18 *Procedia Economics and Finance* 807, 808–809 <[https://doi.org/10.1016/S2212-5671\(14\)01006-5](https://doi.org/10.1016/S2212-5671(14)01006-5)>.

⁹ Helen Roeth, ‘The Development of a Public-Private Partnership Framework and Action Plan for Disaster Risk Reduction (DRR) in East Asia’ (UNISDR 2009) 3 <https://www.unisdr.org/files/12080_TheDevelopmentofPublicPartnershipFr.pdf> accessed 14 May 2026.

¹⁰ Auzzir, Haigh and Amaratunga (n 8) 808.

¹¹ Eurodad, ‘History RePPeated II: Why Public-Private Partnerships Are Not the Solution’ (Eurodad 2022) <<https://www.cadtm.org/IMG/pdf/history-reppeated-2022-final.pdf>> accessed 5 May 2026.

¹² Olabode Emmanuel Ogunmakinde and Temitope Egbelakin, ‘Enhancing Disaster Resilience: A Review of Public-Private Partnership Models for Secondary Hazard Risk Transfer’ (2025) 1 *CIB Conferences* 2 <<https://doi.org/10.7771/3067-4883.1061>> accessed 1 May 2026.

¹³ See for example Francesca Casalini, Stefano Gatti and Veronica Vecchi, ‘Financing Infrastructure with Public-Private Partnerships’ in George Kararach, Emmanuel Pinto Moreira and Victor Murinde (eds), *The Palgrave Handbook of Development Finance* (Springer Nature Switzerland 2025) <https://doi.org/10.1007/978-3-031-77422-5_14> accessed 22 May 2026.

provide the best value for money?¹⁴ And how can PPPs be used for cost-efficient infrastructure management or public administration?¹⁵

Recognizing this limited research focus on “value-for-money”, the United Nations Economic Commission for Europe (UNECE) set out to formulate guidelines for people-first PPPs for the UN Sustainable Development Goals (SDGs) to make “‘people’ the priority and main beneficiary” of public-private partnerships.¹⁶ In 2018, UNECE issued a set of 10 principles for a model of people-first PPPs that would be “‘fit for purpose’ and oriented towards meeting the needs of the people”.¹⁷ The main goals for PPPs in this model are to increase access to essential services and decrease inequalities, improve economic effectiveness, enhance resilience, promote replicability, and fully involve all stakeholders in the projects.¹⁸ Aimed at achieving non-binding development goals, they are recommendations that depend on the good will of governments to be implemented – they are voluntary policy commitments.¹⁹ And while putting people first is the guidelines’ main goal, they do not ground the recommendations in specific rights and obligations, not fully recognizing affected individuals as rights-holders with actionable rights, rather posing them as the main beneficiary.

Philip Alston, in his role as Special Rapporteur on extreme poverty and human rights, criticized the SDGs and argued that they need to be recalibrated.²⁰ He argued that while the 2030 Agenda for Sustainable Development, in which the SDGs were formulated, mentioned human rights, it failed to make references to specific rights and, overall, kept human rights rather invisible in the SDG context.²¹ UNECE’s guidelines for people-first PPPs broadly mention that “the provision of critical services should be delivered in compliance with international human rights standards” but, similar to Alston’s critique of Agenda 2030, they do not make reference to specific rights or human rights

¹⁴ See for example Weiling Jiang and others, ‘Critical Risk Management Strategies for the Operation of Public–Private Partnerships: A Vulnerability Perspective of Infrastructure Projects’ (2025) 32 Engineering, Construction and Architectural Management 4771 <<https://doi.org/10.1108/ECAM-12-2023-1292>>; Ahmed Ehab and others, ‘Assessing Risk Factors in Infrastructure Public-Private Partnerships’ [2025] Iranian Journal of Science and Technology, Transactions of Civil Engineering <<https://doi.org/10.1007/s40996-025-01947-7>> accessed 22 May 2026.

¹⁵ See for example Tharun Dolla, Boeing Laishram and Ganesh Devkar (eds), *Revisiting Public-Private Partnerships: Lessons from COVID-19* (Springer International Publishing 2023) <<https://doi.org/10.1007/978-3-031-37015-1>> accessed 22 May 2026.

¹⁶ UNECE, ‘Promoting People First Public Private Partnerships (PPPs) for the UN SDGs’ (2016) Issue Brief 1–2 <https://www.un.org/esa/ffd/wp-content/uploads/2016/01/Promoting-People-first-Public-Private-Partnerships-PPPs-for-the-UN-SDGs_UNECE_IATF-Issue-Brief.pdf>.

¹⁷ UNECE, ‘Guiding Principles on Public-Private Partnerships in Support of the United Nations Sustainable Development Goals’ (2022) ECE/CECI/WP/PPP/2022/7 3.

¹⁸ *ibid* 4.

¹⁹ *ibid* 1 (see footnote 1 in the Guiding Principles).

²⁰ Philip Alston, ‘The Parlous State of Poverty: Report of the Special Rapporteur on Extreme Poverty and Human Rights’ (Human Rights Council 2020) UN Doc A/HRC/44/40.

²¹ *ibid* 44–45.

standards.²² The guidelines encourage States to adopt principles such as transparency and participation in PPP processes but fail to make the connection to existing human rights.²³ Grounding the discussion on PPPs in human rights considerations can help articulate clear rights and obligations, rather than recommendations with voluntary implementation, and ultimately strengthen sustainable development efforts.

The Human Rights Council has recognized that the implementation of the SDGs “must be aligned with existing human rights obligations”.²⁴ But the human rights impacts and human rights obligations connected to PPPs in disaster risk reduction remain underexplored. This thesis seeks to address that gap and thoroughly ground the discussion on public-private partnerships for disaster risk management in human rights obligations. It seeks to investigate how to center public-private partnerships for disaster risk reduction in human rights, aligning development efforts with existing human rights obligations.

1.3 Research Objectives and Question

The aim of this thesis is to investigate how States’ human rights obligations interact with the State practice of entering into PPPs for the purposes of disaster risk management. The question is whether a human rights-based approach can contribute to reducing the risk of human rights abuses originating from public-private partnerships in disaster risk reduction. It seeks to frame the discussion on PPPs in disaster risk management in human rights considerations, examining how international human rights law obligations affect States entering into PPPs for DRR. It examines the human rights impacts of engaging in PPPs, tracing how they may contribute to human rights protection and what human rights issues can occur when public-private partnerships are used to manage disaster risks. It further aims to demonstrate what a human rights-based approach to PPPs must look like to prevent those issues.

This leads to the following research question:

How must States approach PPPs in disaster risk management to be in compliance with their obligations under international human rights law?

1.4 Method

This thesis adopts legal doctrinal analysis to investigate the applicability of international human rights obligations to public-private partnerships for disaster risk management. Legal doctrinal research investigates what the law is

²² UNECE, ‘Guiding Principles on Public-Private Partnerships in Support of the United Nations Sustainable Development Goals’ (n 17) 9.

²³ *ibid* 6.

²⁴ OHCHR, ‘Best Practices, Challenges and Lessons Learned Concerning Integrated Approaches to the Promotion and Protection of Human Rights and the Implementation of the 2030 Agenda for Sustainable Development at the Global Level’ (2026) UN Doc A/HRC/61/13 para 8.

on a particular issue by studying the legal doctrine embedded in different legal sources.²⁵ Simply put, it is the study of legal doctrine, which can be defined as the "synthesis of rules, principles, norms, interpretive guidelines and values".²⁶ More than a mere description of the law, legal doctrinal analysis is an argumentative discipline that relies on arguing for specific choices between possible interpretations.²⁷ For the purposes of this thesis, this will require examining the core UN human rights treaties, their interpretations by the respective treaty bodies, as well as international soft law instruments on disaster risk reduction where they touch on human rights and/or partnership with the private sector as well as soft law on business and human rights. Legal doctrinal research allows for the application of concepts, categories, and criteria provided by the legal system to new developments, rearranging and reconstructing existing legal frameworks.²⁸ Even though human rights law does not explicitly mention obligations for States who engage in public-private partnerships for disaster risk management, doctrinal analysis will allow to apply the existing legal frameworks to such PPPs.

Furthermore, this thesis will rely on existing academic research on public-private partnerships from non-legal perspectives to establish the value of and risks inherent to PPPs. Where appropriate, the thesis will use examples of public-private partnerships to demonstrate human rights impacts in practice. As the examples serve to generally demonstrate the potential and risks of PPPs for the protection of human rights rather than criticize the implementation in a specific geographic region or for a particular public service, they have been chosen from a variety of countries and subject matters within the general field of disaster risk reduction.

1.5 Scope

Collaboration in DRR happens with many different actors and in many different forms. This thesis focuses on public-private partnerships with for-profit private actors and will not examine collaborations with other actors, such as non-governmental organizations or international humanitarian organizations.

²⁵ P Ishwara Bhat, 'Doctrinal Legal Research as a Means of Synthesizing Facts, Thoughts, and Legal Principles' in P Ishwara Bhat (ed), *Idea and Methods of Legal Research* (Oxford University Press 2020) 144 <<https://doi.org/10.1093/oso/9780199493098.003.0005>> accessed 15 May 2026.

²⁶ *ibid* 145.

²⁷ Mark Van Hoecke, *Methodologies of Legal Research : What Kind of Method for What Kind of Discipline?* (Hart Publishing 2011) 4 <<https://doi.org/10.5040/9781472560896>> accessed 15 May 2026.

²⁸ Pauline Westerman, 'Open or Autonomous? The Debate on Legal Methodology as a Reflection of the Debate on Law' in Mark Van Hoecke (ed), *Methodologies of Legal Research : What Kind of Method for What Kind of Discipline?* (Hart Publishing 2011) 93–94 <<https://doi.org/10.5040/9781472560896.ch-005>> accessed 15 May 2026.

Other forms of collaboration with the private sector, including traditional procurement contracts or privatization, are also outside of the purview of this thesis.

Since the aim of this thesis is to highlight the applicability of international human rights obligations to public services delivered through partnerships with the private sector, this thesis will also not examine domestic law, other types of international law, or regional human rights instruments that may apply to the partnerships in question.

1.6 Outline

In order to establish a direct link between public-private partnerships in disaster risk reduction efforts and human rights law, Chapter 2 provides an overview of the nature of state obligations regarding the protection of human rights as applicable to disasters. The chapter will demonstrate that international human rights law obliges States to take measures to prevent disasters and protect human rights from disaster impacts. Chapter 3 will then examine the use of public-private partnerships as tools for disaster risk management, highlighting the potential advantages for human rights protection as well as the human rights framework for collaborating with private actors to provide public services. While Chapter 3 will establish PPPs as legitimate tools that may help States meet their obligations under international human rights law, Chapter 4 will highlight how PPPs can undermine rights if unregulated. Chapter 4 will examine the risks of using PPPs in disaster risk management, using examples of human rights abuses that occurred in connection with such PPPs. Chapter 5 will then argue for a rights-based framework and demonstrate what a PPP developed from a human rights-based approach can look like.

2 Human Rights and Disasters

Disasters threaten the freedom, safety, and lives of hundreds of millions of people each year. Forced displacement, loss of life, lack of access to shelter, food, healthcare services and other necessities are only some of the human rights concerns that may arise in a disaster context. While some human rights concerns such as loss of property may result directly from the disaster, secondary impacts such as an increase in crime, gender-based violence or unemployment may also occur. Disasters are devastating and human rights concerns, which are exacerbated by existing inequalities and vulnerabilities, arise during every phase of the disaster cycle. Listing every single human obligation states have to address these concerns is outside of the scope of the thesis, however, this chapter seeks to establish a few general principles that will serve as the foundation for the rest of the argument: Human rights obligations do not cease to apply during disasters, and states must take positive measures to protect human rights in situations of disaster.

2.1 There is No Such Thing as a Natural Disaster

To examine the relationship of international human rights law and disasters, some fundamental terms first need to be discussed. This thesis adopts the definition of disasters as formulated in the Sendai Framework Terminology on Disaster Risk Reduction.²⁹ Thus, for the purposes of this thesis, a disaster is

a serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human, material, economic and environmental losses and impacts.³⁰

Further following the terminology of the Sendai Framework, a hazardous event must be understood as a manifestation of a hazard, a hazard being “a process, phenomenon or human activity that may cause loss of life, injury or other health impacts, property damage, social and economic disruption or environmental degradation”.³¹ Natural hazards are those hazards predominantly linked to natural processes and phenomena such as extreme weather events.³² While a hurricane is a (natural) hazard, the disruption caused by the hurricane interacting with the social conditions of exposure and vulnerability is the disaster.

²⁹ UNGA (n 6).

³⁰ *ibid* 13.

³¹ *ibid* 18, 20.

³² *ibid* 18.

Often the term ‘natural disaster’ is used to describe disasters caused by natural hazards.³³ But speaking of natural disasters paints the wrong image. Calling a disaster natural implies that the disaster, and the disaster damage, is caused by natural phenomena and thus out of human control.³⁴ But while a hazard may be natural, disasters are not. The extent of the damages a disaster causes depends not only on the nature and severity of the hazard, but also on the ability of the affected community to respond to the hazard or to prevent it in the first place. Importantly, that ability is not out of human control. A community that is well informed, well prepared, and has the resources and capacities at its disposal to respond quickly and adequately, will be able to minimize harm and damage. Communities without the necessary resources or access to information, however, will have limited options to protect themselves from the hazard. To be more precise, the risk and extent of damage in the event of disaster mainly depends on three factors: the hazard itself, the exposure to the hazard, and the vulnerability of those affected.³⁵

Vulnerable populations are disproportionately affected by disaster situations and the measures taken to address them. Vulnerability describes “the conditions determined by physical, social, economic and environmental factors or processes which increase the susceptibility of an individual, a community, assets or systems to the impacts of hazards”.³⁶ Examining vulnerability and its root causes helps understand why some communities are disproportionately affected by disasters. Important to note is that, as the definition states, vulnerability is not a natural, inherent characteristic but something that depends on external, human-induced factors and “reflects how power and resources are shared within society”.³⁷ Vulnerability is situational – it is experienced – and not inherent.

Despite a general lack of differentiated data and analysis making it difficult to understand exactly how different groups are affected, Mariangela Bizzarri identifies gender, age, disability, race, and ethnicity as some of the key factors that influence the capacity to anticipate, cope with, resist and recover from

³³ See for example ‘Natural Disasters | Médecins Sans Frontières Australia | Doctors Without Borders’ <<https://msf.org.au/natural-disasters>> accessed 20 April 2026.

³⁴ Ksenia Chmutina, Jason von Meding and Lee Boshier, ‘Language Matters: Dangers of the “Natural Disaster” Misnomer’ *Contributing Paper to GAR 2019* (UNDRR Publications 2019) 13–14 <<https://www.undrr.org/publication/language-matters-dangers-natural-disaster-misnomer#downloads>> accessed 20 April 2026.

³⁵ Omar-Dario Cardona and others, ‘Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation’ (Christopher B Field and others eds, Cambridge University Press 2012) Special Report of the IPCC 69 <<https://doi.org/10.1017/CBO9781139177245.005>> accessed 19 April 2026.

³⁶ UNGA (n 6) 24.

³⁷ Chmutina, von Meding and Boshier (n 34) 6.

disaster impacts.³⁸ Women, children, people with disabilities, people belonging to minorities, and indigenous groups are among those who may be particularly vulnerable and require support adapted to their specific needs³⁹— not because those groups are inherently vulnerable but because they tend to experience structural inequalities and more obstacles to protection. Vulnerability is complex and cannot be broken down quite that easily: these factors interact with one another and a multitude of others, such as socioeconomic status or geographic location, to create a complex web of vulnerabilities and needs.⁴⁰

Disasters result in human rights concerns that disproportionately affect vulnerable communities. Vulnerabilities are amplified and exacerbated in disaster contexts. As Adrien Weibgen argues, disasters do not choose their victims at random: “the truth is far more disturbing – we choose our victims by failing to accommodate their needs”.⁴¹ While hazards may be natural and out of our control, disasters are socially produced and can be prevented.

2.2 Disaster and the Core International Human Rights Law Instruments

Considering the devastation disasters cause and the disproportional effect they have on vulnerable groups, human rights are at risk in disasters. But despite the many human rights concerns in disaster contexts, most international human rights instruments do not explicitly address disasters. Out of the core human rights treaties, only the Convention on the Rights of Persons with Disabilities (CRPD) mentions disasters expressly in its provisions. Article 11 of the CRPD stipulates the state obligation to take all necessary measures to protect persons with disabilities in humanitarian emergencies and natural disasters in accordance with their obligations under international human rights law.⁴² But the silence of the other treaties does not mean that human rights obligations they pose do not apply to disaster contexts.

Derogation clauses, as found for example in the International Covenant on Civil and Political Rights (ICCPR)⁴³ temporarily exonerate States from the

³⁸ Mariangela Bizzarri, ‘Protection of Vulnerable Groups in Natural and Man-Made Disasters’ in Andrea De Guttry, Marco Gestri and Gabriella Venturini (eds), *International Disaster Response Law* (T M C Asser Press 2012) <https://doi.org/10.1007/978-90-6704-882-8_16> accessed 15 April 2026.

³⁹ Bizzarri (n 2) 386.

⁴⁰ *ibid* 387, 388.

⁴¹ Adrien Weibgen, ‘The Right to Be Rescued: Disability Justice in an Age of Disaster’ (Social Science Research Network, 1 May 2015) 2464 <<https://papers.ssrn.com/abstract=2529493>> accessed 18 April 2026.

⁴² Convention on the Rights of Persons with Disabilities (opened for signature 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (‘CRPD’) art 11.

⁴³ International Covenant on Civil and Political Rights (opened for signature 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (‘ICCPR’) art 4.

duty to fully fulfil their human rights obligations in situations of public emergency. These clauses are often triggered during disasters.⁴⁴ However, this does not fully exonerate States from complying with all their human rights obligations under the respective treaty. The ICCPR, for example, stipulates that derogation is only allowed “in time of public emergency which threatens the life of the nation” and only “to the extent strictly required by the exigencies of the situation”.⁴⁵ Furthermore, it lists a number of non-derogable rights from which no derogation may be made in public emergencies, including the right to life.⁴⁶ The International Covenant on Economic, Social, and Cultural Rights (ICESCR) contains no derogation clause. Since the ICESCR stipulates the obligation to progressively realize rights “to the maximum of [the] available resources [of the State]”,⁴⁷ limitations to the full implementation of the rights in disaster contexts may be acceptable considering the serious strains on state resources during disasters.⁴⁸ However, the Committee on Economic, Social, and Cultural Rights identified the “minimum core obligation” for all States Parties “to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights” in the Covenant.⁴⁹ The Committee has identified the core obligations arising from some of the rights in its general comments⁵⁰ and confirmed that these core obligations are non-derogable and continue to exist in situations of disaster.⁵¹ Regarding other human rights treaties that do not contain derogation clauses, scholars suggest that external justifications such as force majeure may justify some derogations in situations of disaster as long as they respect the principles of exceptionality, temporariness, and proportionality.⁵² Generally, it can be said that some core human rights obligations cannot be derogated from, even in situations of disaster. Additionally, the constraints of a disaster that might justify derogations cannot justify

⁴⁴ Silvia Venier, *Human Rights and Disasters: The Role of Positive Obligations in Enhancing Protection* (Edward Elgar Publishing 2023) 8 <<https://doi.org/10.4337/9781802208238>> accessed 16 April 2026.

⁴⁵ ICCPR art 4.

⁴⁶ *ibid.*

⁴⁷ International Covenant on Economic, Social and Cultural Rights (opened for signature 19 December 1966, entered into force 3 January 1976) 993 UNTS 3 (‘ICESCR’) art 2(1).

⁴⁸ Emanuele Sommario, ‘Derogation from Human Rights Treaties in Situations of Natural or Man-Made Disasters’ in Andrea de Guttry, Marco Gestri and Gabriella Venturini (eds), *International Disaster Response Law* (TMC Asser Press 2012) 347 <https://doi.org/10.1007/978-90-6704-882-8_14> accessed 21 May 2026.

⁴⁹ Committee on Economic, Social and Cultural Rights, ‘General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant)’ (1990) UN Doc E/1991/23 para 10.

⁵⁰ For example, see general comment no. 12 for the minimum core obligation arising from the right to food: Committee on Economic, Social and Cultural Rights, ‘General Comment No. 12 on the Right to Adequate Food’ (1999) UN Doc E/C.12/1999/5.

⁵¹ Committee on Economic, Social and Cultural Rights, ‘Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights’ (2001) UN Doc E/C.12/2001/10 para 18.

⁵² Sommario (n 48) 346.

derogations from obligations that have to be in place before the emergency, such as prevention and preparedness.⁵³

It is well recognized that states not only have negative obligations to refrain from violating human rights actively but also derive positive obligations from international human rights law.⁵⁴ States are required to take measures to protect human rights against other influences, both human and natural ones. It is hardly possible to draw up an exhaustive list of all the rights that might be negatively affected by disasters and all the ways that might happen. However, Silvia Venier maps a variety of rights that are particularly relevant to disasters and give rise to positive duties, including the right to non-discrimination, the right to life, the right to private life, the rights to health, food, water, shelter and education, the right to safe working conditions, and the right to a remedy.⁵⁵

While the exact scope of positive duties is not finally defined, it is widely accepted that all human rights give rise to negative and positive obligations.⁵⁶ In human rights law, this is translated to the tripartite typology of respect, protect, and fulfil. States have the negative duty to refrain from violations and the positive duties to take measures to prevent violations by other actors or entities and to progressively realize rights.⁵⁷ The obligation to protect then includes a positive obligation to prevent limitations of the enjoyment of human rights from impending disasters where possible. Widely accepted by scholars, this position has also been assumed by international courts, notably the European Court of Human Rights, which has found a duty to take preventive measures to address situations of disaster in *Öneryildiz v. Turkey* and *Budayeva and Others v. Russia*.⁵⁸

This position is further supported by the interpretations of the treaty bodies in their general comments and recommendations. Albeit legally non-binding, these are authoritative interpretations that serve as informal tools of law-making which shape international human rights law.⁵⁹ As such they are able to give a clearer picture of human rights obligations concerning disasters in the absence of specific treaty provisions.

The Human Rights Committee, tasked with supervising the implementation of the ICCPR, provided some clarification regarding disasters in its General

⁵³ Venier (n 44) 11.

⁵⁴ *ibid* 28.

⁵⁵ *ibid* 38–51.

⁵⁶ *ibid* 29.

⁵⁷ *ibid* 33.

⁵⁸ *Öneryildiz v Turkey* (Merits and Just Satisfaction) (Judgment) [GC] ECtHR App No 48939/99 (30 November 2004); *Budayeva and Others v Russia* (Judgment) [First Section] ECtHR App No 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 (20 March 2008).

⁵⁹ Max Lesch and Nina Reiners, ‘Informal Human Rights Law-Making: How Treaty Bodies Use “General Comments” to Develop International Law’ (2023) 12 *Global Constitutionalism* 378, 383 <<https://doi.org/10.1017/S2045381723000023>>.

Comment on the right to life, enshrined in article 6 of the Covenant.⁶⁰ It confirmed the existence of positive obligations to protect the right to life, derived from the general duty to ensure the rights recognized in the treaty read in conjunction with the right to life.⁶¹ The Committee specified that this includes the duty to take positive measures addressing general conditions that may threaten the enjoyment of the right to life, requiring states to take measures to ensure access to essential goods and services as well as to develop disaster management plans to prepare for and respond to disasters.⁶² Violations of the right to life occur when the state fails to take measures to address foreseeable and preventable life-terminating harm or injury.⁶³ So while not all deaths during disasters are inherently violations of the right to life, the State does violate its obligations under article 6 of the ICCPR where it fails to address the foreseeable and preventable risk of death caused by natural hazards.

Regarding the increased vulnerabilities of certain groups, the Committee on the Elimination of Discrimination against Women (CEDAW Committee), the Committee on the Rights of Persons with Disabilities (CRPD Committee), and the Committee on the Rights of the Child (CRD Committee) have issued general comments on the specific needs of women, persons with disabilities and children in disasters and states' obligations to address them.

In its general recommendation on the core obligations under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the CEDAW Committee affirmed the obligation of States Parties to take measures to address the particular impacts of disasters on women and girls.⁶⁴ In a more recent general recommendation on gender-related dimensions of disaster risk reduction, the CEDAW Committee outlined a gender responsive approach to disaster risk reduction grounded in human rights.⁶⁵ Gender inequalities are amplified in situations of disaster which means that women and girls are more likely to experience human rights issues due to disaster.⁶⁶ Due to this increased vulnerability, the CEDAW Committee pointed out the importance of rooting any measures addressing disaster impacts in equality and non-discrimination, participation and empowerment,

⁶⁰ ICCPR art 6.

⁶¹ Human Rights Committee, 'General Comment No. 36' (2019) UN Doc CCPR/C/GC/36 para 21.

⁶² *ibid* 26.

⁶³ *ibid* 6.

⁶⁴ Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' (2010) UN Doc CEDAW/C/GC/28 para 11.

⁶⁵ Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 37 (2018) on the Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change' (2018) UN Doc CEDAW/C/GC/37.

⁶⁶ *ibid* 2.

and accountability and access to justice.⁶⁷ As specific areas of concern the CEDAW Committee points out gender-based violence, education, work and social protection, health, adequate standard of living, and freedom of movement.⁶⁸ These rights are likely to be affected in situations of disaster, disproportionately so for women and girls, and must therefore be especially safeguarded by States Parties.

Similarly, the CRD Committee pointed out the particular needs of children in disaster contexts and affirmed that states must account for those needs in disaster management.⁶⁹ The Committee especially considered the right to non-discrimination, children's right to access to information, the right to education, and the right to rest, play, leisure and recreation and affirmed state obligations to ensure these rights in relation to disasters.⁷⁰ Based on the right to access to information and the right to education, states must ensure that children have access to information about disaster risks and the measures they can take to protect themselves.⁷¹ Unique to children is the right to rest, play, leisure and recreation enshrined in article 31 of the Convention on the Rights of the Child (CRD). Essential to children's health and overall well-being, play, leisure and recreation fall short in situations of disaster. In its general comment, the CRD Committee affirmed the obligation of States Parties to restore and protect these rights in disasters by creating safe spaces and encouraging children to play and rest.⁷²

As the CRPD explicitly obliges states to take all measures to protect persons with disabilities in disasters, it is not surprising that the Committee on the Rights of Persons with Disabilities has also discussed disaster in a general comment on equality and non-discrimination.⁷³ The Committee pointed out the increased risk of discrimination against persons with disabilities and the intersectional discrimination often experienced by women and girls with disabilities.⁷⁴ Resulting from the state obligation of non-discrimination, the Committee affirmed that States must engage with and consider the needs of persons with disabilities at all phases of disaster management, including during the drafting of emergency plans, the implementation of the disaster response, and in the aftermath of the disaster.⁷⁵

⁶⁷ Committee on the Elimination of Discrimination against Women (n 65) 26.

⁶⁸ *ibid* 16.

⁶⁹ Committee on the Rights of the Child, 'General Comment No. 26 (2023) on Children's Rights and the Environment, with a Special Focus on Climate Change' (2023) UN Doc CRC/C/GC/26 para 14.

⁷⁰ *ibid* 14, 32, 53, 62.

⁷¹ *ibid* 14, 53.

⁷² *ibid* 62.

⁷³ Committee on the Rights of Persons with Disabilities, 'General Comment No. 6 (2018) on Equality and Non-Discrimination' (2018) UN Doc CRPD/C/GC/6.

⁷⁴ *ibid* 43–45.

⁷⁵ *ibid* 46.

These treaty body interpretations show clearly that human rights obligations continue to apply in situations of disaster. Based on their positive obligation to protect and fulfil human rights, States must take steps to prevent disasters and take measures to ensure the protection of human rights during and after disasters.

Additionally, international human rights law sets out certain standards that must govern the development and implementation of these measures, such as the right of people to participate in the conduct of public affairs as guaranteed by article 25 of the ICCPR, the right of access to information enshrined in article 19 of the ICCPR, the right to non-discrimination in article 26 of the ICCPR, and the principle of accountability which is the “cornerstone of the human rights framework” and requires States “to take responsibility for their actions, to answer for them to those affected, and to be subject to some enforceable sanction”.⁷⁶ The implications of these principles for the PPP process will be further examined in Chapter 5.

2.3 Soft Law Instruments on Human Rights in Disaster

Many soft law instruments support these findings and elaborate state obligations in disaster situations even further.

The Sendai Framework for Disaster Risk Reduction 2015 – 2030 (Sendai Framework) is a landmark soft law instrument that outlines how to reduce hazard exposure and vulnerability to disaster and increase resilience, reducing disaster risk overall.⁷⁷ It was adopted in 2015 at the UN World Conference on Disaster Risk Reduction and later endorsed by the UN General Assembly.⁷⁸ In contrast to previous disaster risk reduction instruments, it explicitly grounds disaster risk reduction in human rights in its guiding principles:

Managing 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.⁷⁹

Naming the protection of human rights as the goal for disaster risk reduction clearly spells out the linkage between disasters and human rights and affirms that state obligations under international human rights law do not cease to exist during disasters. Rather, it is these obligations that must guide states in all phases of the disaster cycle.

⁷⁶ OHCHR, ‘Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda’ (2014) UN Doc HR/PUB/13/1/Add.1 4.

⁷⁷ UNDRR (n 5) paras 16–17.

⁷⁸ UNGA, ‘Resolution Adopted by the General Assembly on 3 June 2015’ (2015) UN Doc A/RES/69/283.

⁷⁹ UNDRR (n 5) para 19.

Another soft law instrument to affirm human rights obligations in disasters are the Draft Articles on the Protection of Persons in the Event of Disasters, published by the International Law Commission (ILC) in 2016. In these draft articles, the ILC proposes an explicit right for persons affected by disaster to the respect for and protection of their human rights in accordance with international law.⁸⁰ In its commentary on the draft articles, the ILC calls this broad entitlement to human rights protection a “reminder of the duty of States to ensure compliance with all relevant human rights obligations applicable both during the disaster and the pre-disaster phase”.⁸¹ Despite the draft articles themselves not being legally binding, this wording demonstrates that the ILC intends to recognize an already existing obligation rather than create a new one. The ILC also contends that it is not feasible to draw up a list of all potentially applicable rights, rather referring to the whole of international human rights law, including its rights and limitations.⁸² The Committee did however list a number of rights of particular interest during disasters: the right to life, the minimum core obligations of the economic and social rights, the right to receive humanitarian assistance, the rights of particularly vulnerable groups to special protection, the rights of communities to be consulted, and the rights of displaced persons regarding durable solutions to their displacement.⁸³ The rights of vulnerable groups are also enshrined in the draft article on humanitarian principles.⁸⁴ Lastly, the non-discrimination article, rather than including a list of particularly vulnerable groups, focuses on the broader principle that non-discrimination creates a positive obligation to give specific attention to those who are most vulnerable and their specific needs.⁸⁵

In its commentary, the ILC points to two other instruments for best practices regarding the required human rights protection in disasters, namely the Inter-Agency Standing Committee Operational Guidelines on the Protection of Persons in Situations of Natural Disasters (IASC Guidelines) and the Guiding Principles on Internal Displacement.⁸⁶

The IASC Guidelines were adopted by the Inter-Agency Standing Committee to promote and facilitate a field-tested rights-based approach to international and non-governmental humanitarian organizations, as well as governments.⁸⁷ The guidelines recognize that persons affected by disaster are entitled to the

⁸⁰ ILC, ‘Report of the International Law Commission on the Work of Its Sixty-Eighth Session’ (International Law Commission 2016) UN Doc A/71/10 ch IV, para 48, art 5.

⁸¹ *ibid* ch IV, para 49, commentary to art 5.

⁸² *ibid*.

⁸³ *ibid*.

⁸⁴ ILC (n 80).

⁸⁵ *ibid* 13.

⁸⁶ *ibid*.

⁸⁷ Inter-Agency Standing Committee, *IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters* (The Brookings - Bern Project on Internal Displacement 2011) 7,8 <https://www.ohchr.org/sites/default/files/Documents/Issues/IDPersons/OperationalGuidelines_IDP.pdf>.

same rights and freedoms under international human rights law as others in their country without any discrimination and propose four categories of rights that are affected and must be protected in situations of disaster.⁸⁸ The first two categories of rights related to the protection of life, security and physical integrity, and the protection of family ties in the context of evacuations and the provision of food, health, shelter, and education must be considered at all stages of the disaster, including the immediate emergency phase.⁸⁹ The other two categories of rights concerning the protection of rights related to housing, land and property, and livelihoods as well as the documentation, free movement in the context of durable solutions for internally displaced persons, re-establishment of family ties, expression and opinion, and elections are indispensable for the full protection of the human rights of those affected by disaster but may be limited during the immediate emergency phase and become particularly relevant when the disaster lasts longer and during the recovery phase.⁹⁰

Lastly, the Guiding Principles on Internal Displacement, adopted by the Commission on Human Rights in 1998, recognize disasters as one of the key causes of internal displacement.⁹¹ While the Guiding Principles on Internal Displacement are not a legally binding instrument, they claim to reflect and to be consistent with international human rights law.⁹² Similar to the IASC Guidelines, the first principle declares the entitlement of internally displaced people to enjoy the same rights and freedoms as other persons in their country without any discrimination.⁹³ The guiding principles also include protection from displacement, including in cases of disaster unless evacuation is required to protect the health and safety of those affected,⁹⁴ protection during displacement,⁹⁵ and concerning the return, resettlement and reintegration of internally displaced people.⁹⁶

Defining the exact scope of international human rights law as applicable to disasters is outside the scope of this thesis. However, this discussion has demonstrated that human rights do not cease to apply in situations of disaster. States have a positive obligation to protect those affected from disaster from preventable and foreseeable harm. This includes an obligation to plan for and respond to disasters, to consider the particular needs of vulnerable groups

⁸⁸ Inter-Agency Standing Committee (n 87) 9, 11.

⁸⁹ *ibid* 9,10.

⁹⁰ *ibid* 9–10.

⁹¹ Commission on Human Rights, 'Report of the Representative of the Secretary-General, Mr. Francis M. Deng, Submitted Pursuant to Commission Resolution 1997/39 Addendum Guiding Principles on Internal Displacement' (1998) UN Doc E/CN.4/1998/53/Add.2 5.

⁹² *ibid*.

⁹³ *ibid*.

⁹⁴ *ibid* 7.

⁹⁵ *ibid* 8–13.

⁹⁶ *ibid* 14.

during all disaster phases, and to protect human rights during all phases of the disaster cycle.

3 Private Actors in Disaster Risk Management

Even though it is the responsibility of States to reduce and manage the risks of disasters, that does not mean that the private sector is not or should not be involved in disaster risk management. This chapter will discuss the human rights implications of engaging with the private sector in the delivery of public services and demonstrate that private sector involvement can be beneficial for successful disaster risk reduction efforts and thus the protection of human rights in disaster contexts.

3.1 International Human Rights Law and Non-State Actors

While the actions of non-state actors can certainly affect the enjoyment of human rights, international human rights law places direct legal obligations only on States.⁹⁷ But while the treaties may not pose obligations on non-state actors directly, positive human rights law obligations require the State to protect individuals from human rights abuses by non-state actors.

The most useful guidance pertaining to international human rights law and the collaboration with businesses are the UN Guiding Principles on Business and Human Rights Law (UNGPs). The UNGPs were developed by the UN Secretary-General's Special Representative for Business and Human Rights, John Ruggie, and endorsed by the Human Rights Council in 2011.⁹⁸ The UNGPs outline the state duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy.⁹⁹

The UNGPs are not legally binding, however they have had and continue to have a great impact on the field of business and human rights, having inspired the adoption of national laws by several states and serving as the foundation for negotiations for the adoption of a global treaty.¹⁰⁰ They are generally considered to be authoritative. For example, Dutch courts in the famous *Milieudefensie v Royal Dutch Shell* case on corporate responsibility to reduce greenhouse gas emissions held that “the UNGP constitute an authoritative and internationally endorsed ‘soft law’ instrument, [...] reflect current insights

⁹⁷ Robert McCorquodale, “Non-State Actors and International Human Rights Law” (Social Science Research Network, 2009) <<https://papers.ssrn.com/abstract=2065391>> accessed 14 May 2026.

⁹⁸ OHCHR, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (2011) HR/PUB/11/04 iv.

⁹⁹ OHCHR, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (n 98).

¹⁰⁰ Peter Muchlinski, *Advanced Introduction to Business and Human Rights* (Edward Elgar Publishing 2022) 1.

[and] [...] do not create any new right”, going as far as describing the content of the UNGPs as “universally endorsed”.¹⁰¹

3.1.1 The State Duty to Protect

The UNGPs recognize that international human rights impose direct obligation on states but not on private actors. This is clear in the language the UNGPs use: businesses commit human rights *abuses*, and not *violations*, in recognition that they are not directly bound by international human rights law.¹⁰² And while the UNGPs discuss the state *duty* to protect human rights, it stipulates a corporate *responsibility* rather than obligation. The primary responsibility to protect from human rights abuses by private companies lies with States.

Beyond underlying the general language of the UNGPs, this is also explicitly acknowledged and stipulated. The first foundational principle in the UNGPs recognizes the positive human rights obligations of States and reiterates that States must protect individuals against human rights abuses committed within their jurisdiction by third parties, including businesses.¹⁰³ In the accompanying commentary, it is explained that States are not responsible per se for the human rights abuse by third parties but rather for their failure to take appropriate steps to prevent, investigate, punish and redress the abuse.¹⁰⁴ This has both procedural and substantive consequences, requiring states to ensure informed decision-making procedures as well as a substantive duty to monitor, regulate and control the conduct of businesses to prevent any human rights abuses.¹⁰⁵

In the second foundational principle, the UNGPs stipulate that States should clearly set out the human rights expectations for activities of business enterprises domiciled in their jurisdiction or territory.¹⁰⁶ While this certainly also applies to public-private partnerships with businesses domiciled within a State’s jurisdiction, this principle more generally sets out the state duty to regulate all business enterprises in its jurisdiction, serving as a foundation for mandatory human rights due diligence or human rights reporting laws.¹⁰⁷

¹⁰¹ *Milieudefensie v Royal Dutch Shell* [2021] The Hague District Court C/09/571932 / HA ZA 19-379 [4.4.11].

¹⁰² Daniel Augenstein, ‘Guiding Principle 1: Scope of Obligations’ in Barnali Choudhury (ed), *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing 2023) 13.

¹⁰³ OHCHR, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (n 98) 3.

¹⁰⁴ *ibid.*

¹⁰⁵ Augenstein (n 102) 16.

¹⁰⁶ OHCHR, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (n 98) 3.

¹⁰⁷ Claire Methven O’Brien, ‘Guiding Principle 2: Expecting Business to Protect Human Rights’ in Barnali Choudhury (ed), *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing 2023) 24,26.

These general regulatory and policy functions of States are elaborated in the operational principles that stipulate that States must enforce, assess, and reform laws requiring businesses to respect human rights, ensure there are no legal obstacles to business respect for human rights, provide guidance to businesses in regards to human rights, and encourage transparent human rights impact assessments.¹⁰⁸ This is once again a recognition of the State as the primary duty-bearer, responsible to protect human rights against abuses by businesses. These principles are relevant to public-private partnerships because they establish the general obligations of States to regulate business operations in order to prevent, investigate and punish human rights abuses.

The UNGPs recognize that business enterprises also play a role in human rights protection “as specialized organs of society performing specialized functions”.¹⁰⁹ But businesses that engage in PPPs are not directly bound by international human rights law. The UNGPs describe a corporate responsibility to protect human rights but affirm that this is “a global standard of expected conduct” rather than a direct obligation.¹¹⁰ Where they cause human rights abuses, human rights holders do not have a legal claim against them based directly on international human rights law. But the State is bound directly by human rights obligations and must take measures to protect them from business-related abuses. Failure to do so constitutes a human rights violation in itself.

3.1.2 The State-Business Nexus

Following these more general stipulations regarding business and human rights, the UNGPs formulate guiding principles for state-business relations. These principles set out how States can and must promote human rights through their commercial relationships with businesses, and as such build the foundation for human rights-based PPPs. As the United Nations Economic Commission for Europe (UNECE) put it in a guidebook on promoting good governance in PPPs, “asking private partners to deliver government services places more, not less, responsibility on public officials.”¹¹¹

Principle 5 stipulates the duty of States to exercise adequate oversight when they enter into contracts with businesses to provide services that may impact upon the enjoyment of human rights.¹¹² The commentary explains that States’ human rights obligations continue to apply when they privatize services and

¹⁰⁸ OHCHR, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (n 98) 4.

¹⁰⁹ *ibid* 1.

¹¹⁰ *ibid* 13.

¹¹¹ UNECE, ‘Guidebook on Promoting Good Governance in Public-Private Partnerships’ (United Nations Publications 2008) ECE/CECI/4 9.

¹¹² OHCHR, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (n 98) 8.

that they must then oversee the businesses' activities through independent monitoring and accountability mechanisms.¹¹³ While the commentary to Principle 5 refers specifically only to privatization,¹¹⁴ PPPs for disaster risk management also fall within the description given in the principle. The PPP contract tasks private businesses with providing public services related to disaster risk reduction. These services are inherently meant to reduce disaster risk and prevent disaster damage in an effort to protect human rights. If the services are designed and implemented well, they contribute to human rights protection. If not, they may cause severe human rights issues. Thus, public services related to DRR certainly also fulfil the 'may impact upon the enjoyment of human rights' criterion. Principle 5 must be read to apply to PPPs for disaster management as well. This means that States must exercise "adequate oversight" over services that are the subject of a PPP to fulfil their obligations under international human rights law.

Principle 6 applies to all commercial transactions between businesses and States, procurement and otherwise, and stipulates the state duty to promote respect for human rights by the businesses they conduct commercial transactions with.¹¹⁵ This principle recognizes the State as a commercial actor and the power that comes with that. States enter into many commercial transactions with private actors and have the power to set human rights requirements in those contracts.¹¹⁶ This principle recognizes States as privileged market actors with the commercial strength to influence human rights compliance through contracts, at least in the activities relevant to the contract in question.¹¹⁷ PPPs are based on contracts. In choosing with what actors to enter into a partnership and by negotiating the contract in a human rights-based manner, the State, as a powerful commercial actor, has enormous influence on the actions of its partners in PPPs. Principle 6 recognizes that power and requires States to put it to use.

The UNGPs also confirm that these obligations apply not only to the State as such but also to other public bodies. Public-private partnerships may be entered into by the state itself, but also by local governments and other public entities. Guiding principle 8 is relevant in that context, stipulating that States should provide information, training and support to ensure that all public actors are aware of the State's human rights obligations and act accordingly.¹¹⁸

¹¹³ OHCHR, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (n 98) 8.

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

¹¹⁶ Annamaria La Chimia, 'Guiding Principle 6: Respecting Human Rights Through Commercial Transactions' in Barnali Choudhury (ed), *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing 2023) 50.

¹¹⁷ *ibid.* 55.

¹¹⁸ OHCHR, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (n 98) 10.

Read together, these principles paint a clear picture: States can collaborate with businesses, including through public-private partnerships, to provide services that may impact upon the enjoyment of human rights. But when the State, or another public entity, enters into public-private partnerships to deliver those services, it does not relinquish its human rights obligations. Rather, it must take measures to promote and protect human rights from PPP-related abuses. In addition to generally legislating to protect human rights, they must promote human rights through the PPP contracts and implement monitoring and accountability mechanisms to ensure compliance.

3.2 Engaging the Private Sector in Disaster Risk Management

Disasters, by definition, are a disruption of the normal functioning of society. They cause a complex web of problems, forcing whole communities to leave their homes, leaving people without access to basic necessities, causing injuries, impacting infrastructure, and interrupting supply chains. Among other things, these challenges require an efficient network design, good information management, appropriate technology, coordination and collaboration between various stakeholders, and strategic transport decisions.¹¹⁹ Managing a disaster is a complex task that often exceeds what any public actor can handle alone.

States have the primary responsibility to prevent and reduce disaster risk.¹²⁰ Due to the complexity of the task, however, the necessity for multi-stakeholder approaches in disaster management, where public actors work together with humanitarian organizations, non-governmental organizations, and businesses, is well recognized. The Sendai Framework calls this coordination between relevant stakeholders across sectors and at all levels “an all-of-society engagement and partnership” and enshrines this approach in its guiding principles.¹²¹ The private sector is one of many participants in such an all-of-society approach. But beyond encouraging the participation of private actors, the Sendai Framework fails to provide detailed guidance on how to design partnerships with the private sector. It does require “a clear articulation of responsibilities across public and private stakeholders, including business [...], to ensure mutual outreach, partnership, complementarity in roles and follow-up” but fails to elaborate how that might happen.¹²² Similarly, the IASC Guidelines offer some guidance for the involvement of humanitarian

¹¹⁹ Katharina Eberhardt and others, ‘Public-Private Partnerships in Disaster Management: A Systematic Review of Incentives and Challenges’ *Engineering Secure and Reliable Systems – A French-German Workshop*. Ed.: Frank Schultmann, Sophia-Antipolis, France, 26th – 28th June 2023 (2023) 2 <<https://publikationen.bibliothek.kit.edu/1000168713>> accessed 22 April 2026.

¹²⁰ UNDRR (n 5) para 19(a).

¹²¹ *ibid* 19(d)-(e).

¹²² *ibid* 19(e).

agencies and non-governmental organizations, particularly to center any humanitarian action in human rights, but fail to shine a light on the role of the for-profit private sector in disaster management.¹²³ It is clear that multisector collaborations are recommended across the board though. The Commentary to the ILC Draft Articles acknowledge that “reducing disaster risk requires action by all actors in the public and private sectors”.¹²⁴ The ILC Draft Articles further establish some guidelines for the collaboration with “other assisting actors”, which is intentionally left broad in recognition of the all-of-society approach required by the Sendai Framework.¹²⁵

Private actors get involved in disaster management for many reasons: goals pursued by disaster risk reduction, like the functioning of supply chains, the continuity of business operations, and the relative stability of the economy, are concerns that the private sector shares. Gustavo González, former UN Resident Coordinator and Humanitarian Coordinator in the Philippines, sees the involvement of the private sector as the way forward for effective disaster response, arguing that

The private sector plays a dual role in disaster response. On the one hand, it’s about philanthropy—saving lives and protecting critical assets. On the other, it’s about restoring value chains and reactivating the economy as quickly as possible.¹²⁶

Cooperation with the private sector is generally encouraged for effective disaster management, including by the Sendai Framework. The Sendai Framework mentions non-State actors as relevant stakeholders that should be included in reducing disaster risk.¹²⁷ It defines their role in disaster risk management as supportive of the efforts of States and highlights the importance in international, regional, subregional and transboundary cooperation.¹²⁸ It states that disaster management depends on coordination mechanisms across sectors, requiring the cooperation with and communication of responsibilities between public and private stakeholders, including businesses.¹²⁹ According to the Sendai Framework, including businesses in disaster management is beneficial for both the public and private sector since collaboration aims to increase the resilience of businesses to ensure business continuity, contributes to sharing disaster risk and knowledge with the private sector, and enables the

¹²³ Inter-Agency Standing Committee (n 87) para II.2.

¹²⁴ ILC (n 80).

¹²⁵ *ibid* 39.

¹²⁶ Annik Tiedt, ‘Case Study: Private Sector Partnerships in Disaster Management in the Philippines - A Story of Resilience Through Relationships’ (Connecting Business initiative (CBI) 2025) 4 <<https://www.connectingbusiness.org/publications/case-study-private-sector-partnerships-philippines>> accessed 23 April 2026.

¹²⁷ UNDRR (n 5) paras 35–36.

¹²⁸ *ibid* 8.

¹²⁹ *ibid* 19(e).

achievement of complex and expensive tasks such as reconstruction in the aftermath of a disaster or the development of innovative technologies.¹³⁰

3.3 Why Public-Private Partnerships?

Private sector participation in disaster management can take many different forms – ranging from contractual, collaborative, neutral, cooperative to unilateral – and is increasing overall.¹³¹ Private sector participation can happen ad hoc, spontaneously in response to a hazard, or be planned in advance for any disaster phase. Ad hoc participation such as the spontaneous donations of supplies or volunteering of existing equipment to clear debris is extremely valuable in disaster management but disaster risk reduction is not just about reacting to disasters.¹³² Preparedness is key to strengthen resilience and reduce disaster risks: capacity-building, knowledge building and sharing, as well as planning for a variety of scenarios are important to build resilience.¹³³ Where participation of private actors will make a meaningful difference to reduce disaster risks, it is preferable to collaborate and coordinate with relevant actors in advance before any hazard has occurred. In the Philippines, local companies had contributed resources in disasters in spontaneous and isolated efforts for years.¹³⁴ However, after Typhoon Haiyan caused serious damages in 2013, long-term cross-sector collaboration agreements were struck in recognition of the value of establishing partnerships in advance to most effectively mobilize resources and coordinate responses.¹³⁵ Building long-term, sustainable partnerships with the private sector to manage disasters collaboratively makes for more efficient disaster management than counting on ad hoc participation.

Increasingly, these long-term public-private partnerships are recognized as valuable tools in disaster management. There is no single definition of a PPP.¹³⁶ The German Federal Ministry for Economic Cooperation and Development, for example, defines PPPs as “collaborations between the public sector and private businesses in the design, planning, construction, financing,

¹³⁰ UNDRR (n 5) 30(o), 31(b),(i), 33(i), 36(c).

¹³¹ Marlies Hesselman and Lottie Lane, ‘Disasters and Non-State Actors – Human Rights-Based Approaches’ (2017) 26 *Disaster Prevention and Management* 526, 534 <<https://doi.org/10.1108/DPM-07-2017-0174>>.

¹³² Maximilian Löffel and others, ‘Improving Disaster Preparedness through Public-Private Collaboration – Dual-Use Warehouses for Food Supply’ (2026) 0 *Production Planning & Control* 1, 19 <<https://doi.org/10.1080/09537287.2025.2583299>>.

¹³³ UNDRR (n 5) para 32.

¹³⁴ Tiedt (n 126) 9, 11.

¹³⁵ *ibid* 12–13.

¹³⁶ Yongjian Ke and others, ‘Making Sense of the Definition of Public-Private Partnerships’ (2023) 14 *Built Environment Project and Asset Management* 4 <<https://doi.org/10.1108/BEPAM-01-2023-0009>>.

management, operation, and exploitation of public services previously provided solely by the state”.¹³⁷ Even without one single definition, PPPs are generally long-term agreements, of sometimes up to 30 years, based on different forms of contracts between public authorities and private entities that, to some extent, involve the transfer of risk related to the project to the private sector.¹³⁸

Importantly, PPPs are not to be equated to privatization. Contrary to privatized services, the public actor remains politically accountable for a service provided through a PPP.¹³⁹ Additionally, privatization makes the private actor quite visible whereas it is not always transparent for the public when a service is being provided by a private actor through a PPP.¹⁴⁰ In a PPP, the public actor might also retain ownership of physical assets that would become permanently privately owned if the service were privatized.¹⁴¹ And lastly, the scope and cost of services is fixed by contract in a PPP whereas they are subject to cost changes and market competition in privatized services.¹⁴² Contrary to privatization the public actor remains involved in the PPP-provided public service to some extent.

PPPs are commonly used to provide a variety of services at all stages of disaster management, including for example the designing and operating of early warning systems,¹⁴³ operating warehouse storage space for disaster relief goods,¹⁴⁴ and rebuilding infrastructure in the aftermath of a disaster.¹⁴⁵ Public authorities choose to engage in PPPs, rather than provide the service themselves, hoping to take advantage of certain benefits the private sector can offer to provide a better service in a more cost-efficient way.

3.3.1 Access to Expert Knowledge of the Private Sector

One advantage of a PPP is the possibility of using the expert knowledge of the private sector. Businesses develop highly specialized skills and

¹³⁷ ‘Public Private Partnership (PPP)’ (*Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung*) <<https://www.bmz.de/de/service/lexikon/public-private-partnership-ppp-14780>> accessed 23 April 2026.

¹³⁸ UNECE, ‘Guidebook on Promoting Good Governance in Public-Private Partnerships’ (n 111) 1.

¹³⁹ ER Yescombe and Edward Farquharson, *Public-Private Partnerships for Infrastructure: Principles of Policy and Finance* (Butterworth-Heinemann 2018) 452 <<https://doi.org/10.1016/C2011-0-04354-5>> accessed 23 April 2026.

¹⁴⁰ *ibid.*

¹⁴¹ *ibid.*

¹⁴² *ibid.*

¹⁴³ Alcade Segnon and Belmira Moustapha, ‘How Nigeria Is Building an Early Warning System for Agriculture’ (*Alliance Bioversity International - CIAT*) <<https://alliancebioversityciat.org/stories/how-nigeria-building-early-warning-system-agriculture>> accessed 23 April 2026.

¹⁴⁴ Löffel and others (n 132).

¹⁴⁵ Luis Ballesteros, Michael Useem and Tyler Wry, ‘Masters of Disasters? An Empirical Analysis of How Societies Benefit from Corporate Disaster Aid’ (2017) 60 *Academy of Management Journal* 1682, 1687 <<https://doi.org/10.5465/amj.2015.0765>>.

knowledge in their respective areas over time. This knowledge can be extremely useful in the context of disaster management where fast and efficient delivery of services is essential to prevent devastating disaster damages. An example of this is humanitarian logistics. Businesses successfully manage commercial supply chains and have developed tools and methods to handle the complex logistics behind them. Humanitarian relief chains and logistics are reasonably similar to their commercial counterparts, which makes most knowledge held by businesses in this regard applicable to disaster relief logistics.¹⁴⁶ PPPs make this knowledge accessible to disaster management operations. Collaborating with private actors who are experts in logistics and supply chain management means sharing knowledge and best practices, leading to better trained and well-prepared staff. This then contributes to a more effective distribution of relief goods, better inventory management and more appropriate use of technology during disasters which can change the extent of the disaster impact drastically.¹⁴⁷

In addition to expert knowledge in their field of work, local businesses might also hold local knowledge and thus better insight into the particular needs of the community, allowing them to respond more appropriately.¹⁴⁸

3.3.2 Access to Resources of the Private Sector

Holding the necessary knowledge to provide a certain service goes hand in hand with the resources, financial and otherwise, needed to implement that knowledge. Often the private sector owns critical resources needed to effectively manage disasters. In the United States, for example, public-private co-operation in disaster management is critical since about 85% of critical infrastructure is owned and operated by the private sector.¹⁴⁹ Among other things, companies may own warehouses, distribution centers, a network of stores, a fleet of vehicles for transport and distribution, or IT systems needed to run large-scale operations required to manage disaster risks.¹⁵⁰

The private sector, particular private technology companies, also owns and operates innovative technologies such as GIS software, used to create data-driven maps that can be used to identify hazards or guide rescue efforts,¹⁵¹

¹⁴⁶ N Nurmala, Sander De Leeuw and Wout Dullaert, 'Humanitarian–Business Partnerships in Managing Humanitarian Logistics' (2017) 22 *Supply Chain Management: An International Journal* 82, 87 <<https://doi.org/10.1108/SCM-07-2016-0262>>.

¹⁴⁷ *ibid* 88.

¹⁴⁸ Ballesteros, Useem and Wry (n 145) 1686.

¹⁴⁹ Fatih Demiroz and Naim Kapucu, 'Cross-Sector Partnerships in Managing Disasters: Experiences from the United States' in Takako Izumi and Rajib Shaw (eds), *Disaster Management and Private Sectors: Challenges and Potentials* (Springer Japan 2015) 170 <https://doi.org/10.1007/978-4-431-55414-1_11> accessed 28 April 2026.

¹⁵⁰ Löffel and others (n 132) 2.

¹⁵¹ 'How GIS Can Help with Emergency Management' (*USC GIS Blog*, 10 February 2026) <<https://gis.usc.edu/blog/how-gis-can-help-with-emergency-response/>> accessed 18 May 2026.

Probabilistic Risk Assessment technology, and advanced infrastructure management tools that are crucial to assessing risks and building resilience.¹⁵² Combined with the data that the private sector has access to, these technologies can facilitate informed decision-making.¹⁵³

3.3.3 Quick Decision-Making

Time is of the essence in disaster management. A lot of damage can be caused extremely quickly, and the exact effects of a hazard are difficult to foresee. Effective disaster management thus requires fast reactions and flexible decisions. Businesses are often set up under a different organizational structure than governments or other public actors and better suited to this type of decision-making. Where governments often have centralized, bureaucratic decision-making processes, businesses are more likely to function through decentralized decision-making with fewer constraints that prevent rapid action.¹⁵⁴

3.3.4 Risk Sharing

The financial burden linked to disaster risk management is critical, especially for developing countries.¹⁵⁵ The financial risks associated with disasters include both the risks of building, owning, operating, and maintaining necessary infrastructure as well as compensating for damages from disasters and financing rebuilding measures. Risk sharing, a fundamental characteristic of PPPs, means “deciding which party will bear the cost (or reap the benefit) arising from each risk factor” associated with the PPP.¹⁵⁶ Traditionally, public authorities have taken on most of the financial risks associated with disasters, which has created an enormous strain on public budgets.¹⁵⁷

To help communities reduce their financial burden, local governments can build reserve funds they can rely on in case of disaster, but many public authorities do not have the extra resources required to build an emergency fund.¹⁵⁸ The Sendai Framework underlines the importance of developing and promoting risk transfer and sharing mechanisms with businesses among other

¹⁵² UNDRR, ‘Special Report on the Use of Technology for Disaster Risk Reduction | UNDRR’ (2025) 30–31 <<https://www.undrr.org/publication/documents-and-publications/special-report-use-technology-disaster-risk-reduction>> accessed 28 April 2026.

¹⁵³ *ibid* 31.

¹⁵⁴ Ballesteros, Useem and Wry (n 145) 1686–1687.

¹⁵⁵ Zairol A Auzzir, Richard P Haigh and Dilanthi Amaratunga, ‘Public-Private Partnerships (PPP) in Disaster Management in Developing Countries: A Conceptual Framework’ (2014) 18 *Procedia Economics and Finance* 807, 810 <[https://doi.org/10.1016/S2212-5671\(14\)01006-5](https://doi.org/10.1016/S2212-5671(14)01006-5)>.

¹⁵⁶ The World Bank, ‘Public-Private Partnership: Reference Guide - Version 3’ (2017) 141 <<https://ppp.worldbank.org/library/ppp-reference-guide-3-0-full-version>> accessed 15 May 2025.

¹⁵⁷ Ogunmakinde and Egbelakin (n 12) 1–2.

¹⁵⁸ Auzzir, Haigh and Amaratunga (n 155) 810.

relevant stakeholders.¹⁵⁹ PPPs can contribute to sharing the risk with the private sector, relieving some of the burden on the public sector.

Risk distribution differs between different models of PPPs. For example, in Build-Operate-Transfer models well suited for single-facility reconstruction in the aftermath of a disaster, the private sector takes on a moderate amount of risk, bearing only the construction and operational risks while the public sector retains the ownership risks.¹⁶⁰ In Design-Build-Finance-Operate models, the risk transfer is more extensive with the private sector assuming substantial design, construction, and operational risks.¹⁶¹

Insurances can also be effective risk-sharing programs that can support the financing of disaster recovery and response.¹⁶² An example of a public-private insurance program is the French Caisse Nationale de Reassurance, through which the government collaborates with private insurance companies to ensure that all properties are insured against disaster damage.¹⁶³

Whether insurance or other type of PPP, risk-sharing is done well in PPPs when each party is assigned the risks that they have the capacity, resources, and risk appetite to identify, plan for, and mitigate.¹⁶⁴ Risk is allocated in the most efficient way when each party is only faced with risks they can reasonably handle. For example, private entities are allocated risks on the project-level such as delays in production or cost, whereas the public sector assumes responsibility for country-level risks.¹⁶⁵ Ideally, risk allocation can lead to increased project benefits and reduced costs.¹⁶⁶ Public budgets are important economic policy documents and should thus take human rights obligations into account. Human rights budgeting not only requires the allocation of budget to projects that contribute to the protection of human rights, but also that those funds are “fully spent on those areas, are not spent in a wasteful manner, and are not illegally diverted”.¹⁶⁷ To meet their obligation to use the maximum of available resources under the ICESCR, for example, States “should be getting the best quality goods and services for the lowest cost possible”.¹⁶⁸ Opting for high quality and inexpensive modes of delivery for public services, such as well-functioning PPPs with effective risk sharing promise to be, should be one of the goals of human rights-compliant public budgeting.

¹⁵⁹ UNDRR (n 5) para 31(b).

¹⁶⁰ Ogunmakinde and Egbelakin (n 12) 6.

¹⁶¹ *ibid.*

¹⁶² *ibid* 6–7.

¹⁶³ Auzzir, Haigh and Amaratunga (n 155) 810.

¹⁶⁴ Ogunmakinde and Egbelakin (n 12) 7–8.

¹⁶⁵ *ibid* 5.

¹⁶⁶ The World Bank (n 156) 142.

¹⁶⁷ OHCHR, ‘Realizing Human Rights Through Government Budgets’ (OHCHR 2017) UN Doc HR/PUB/17/3 132.

¹⁶⁸ *ibid* 129.

3.3.5 Combined Efforts for More Efficient Disaster Risk Management

Business operations are affected by disaster impacts when supply chains are interrupted, productivity decreases and economic growth halts - disasters can cause severe potential business losses.¹⁶⁹ Additionally, businesses face reputational pressure to demonstrate commitment to corporate social responsibility practices.¹⁷⁰ To prevent damage to their own operations, many businesses, especially larger ones, set up their own disaster contingency plans¹⁷¹ or are willing to contribute spontaneously through donations regardless of whether they are involved in any formal PPPs.

In the absence of coordination between different actors involved in disaster management though, there is a risk of inefficiency. PPPs allow public and private actors to pool their resources, divide responsibilities and draw on the strength of each participant, rather than planning for disasters in isolation and risking unnecessary overlap or gaps in protection.¹⁷² When many actors act at once without communication and coordination between them, it can easily lead to duplications in service, be it serving one region twice and missing others or repeatedly supplying the same material without a real need. A waste of money and time, this ultimately increases the scarcity of relief resources.¹⁷³ But public-private partnerships can bundle those efforts and streamline contingency plans.

When the PPP succeeds in harnessing these advantages, it can contribute to more successful disaster risk management and ultimately better protection for individuals affected by disasters. Thus, they can be a way for States to fulfil their obligation to prevent and reduce disaster risk and protect human rights from negative disaster impacts.

¹⁶⁹ Nurmala, De Leeuw and Dullaert (n 146) 88.

¹⁷⁰ *ibid.*

¹⁷¹ Wei-Ning Wu, 'Business Engagement in Natural Disaster Preparedness' (2024) 120 *Natural Hazards* 5287, 5289 <<https://doi.org/10.1007/s11069-024-06424-4>>.

¹⁷² Tiedt (n 126) 12.

¹⁷³ Ke Ma and others, 'Critical Decision-Making Issues in Disaster Relief Supply Management: A Review' (2022) 2022 *Computational Intelligence and Neuroscience* 1105839, 3 <<https://doi.org/10.1155/2022/1105839>>.

4 PPPs - a Recipe for Disaster?

Public-private partnerships have the potential to improve disaster management through better services that are delivered faster and with less risk to public actors and public budgets – ultimately contributing to the protection of human rights. However, the effect PPPs end up having in disaster management in practice is often not this clear cut and positive for human rights protection. If not designed well, many issues can arise when a service is provided through collaboration with the private sector. In fact, many advocate against the use of PPPs for the provision of public services due to the problems that tend to arise in practice.¹⁷⁴ This chapter will discuss where issues might occur when PPPs are used to provide public services and demonstrate this through a few examples of PPPs in disaster management that have gone wrong.

4.1 Lack of Democratic Accountability

In one of its resolutions, the Commission on Human Rights stated that “democracy, development, and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing” and reaffirmed that human rights can only be fully enjoyed within democratic systems.¹⁷⁵ The principle that public authorities are accountable to their constituents is the core of democratic governance. What public actors do with their budget, how they fulfil their obligations, and who they develop partnerships with are all decisions that require transparency and opportunity for scrutiny. In the process of establishing a partnership with the private sector, transparency about every step contributes to democratic accountability, including the decision to pursue a PPP, the bidding process, the bureaucratic process, the PPP contract, as well as the reviews and benchmarking exercises.¹⁷⁶

It is not unusual for PPP projects to undermine democratic accountability in one way or another, sometimes to the point where those who use the service do not even know a private actor is involved.¹⁷⁷ Transparency is important to

¹⁷⁴ See for example these two reports coordinated by Eurodad but supported by more than 15 other international organizations: Eurodad, ‘History RePPPeated: How Public Private Partnerships Are Failing’ (Eurodad 2018) <<https://www.boell.de/en/2018/12/11/history-repppeated-how-public-private-partnerships-are-failing>>; Eurodad (n 11).

¹⁷⁵ Commission on Human Rights, ‘Further Measures to Promote and Consolidate Democracy: Commission on Human Rights Resolution 2002/46’ (2002) Resolution 2002/46 in E/2002/23-E/CN.4/2002/200.

¹⁷⁶ Gail Sheppard and Matthias Beck, ‘Transparency Trade-Offs in the Operation of National Public Private Partnership Units: The Case of Ireland’s National Development Finance Agency’ (2023) 42 *Journal of Accounting and Public Policy* 107111, 7 <<https://doi.org/10.1016/j.jaccpubpol.2023.107111>>.

¹⁷⁷ Eurodad (n 174) 38.

achieve accountability, increase legitimacy and trust, and reduce corruption.¹⁷⁸ Corruption can lead to inflated prices, biased allocation of resources, and reputational damage,¹⁷⁹ all of which will negatively affect outcomes for affected communities. When a contract is awarded to whoever has offered the highest bribe rather than choosing the “best value for money option”, the result may be goods and services of lesser quality than would have been possible otherwise.¹⁸⁰

A case study demonstrates the consequences of a lack of democratic accountability in PPPs in disaster risk reduction: In 2017, hurricanes Irma and Maria struck Puerto Rico in short succession and caused major storm damage to the electric power system, affecting significant portions of the generation, transmission, and distribution system and leaving homes, businesses, and hospitals without electricity.¹⁸¹ Rather than patching up a grid that would fail again at the next big storm, Puerto Rico decided to rebuild better and make the electrical grid more resilient. For that purpose, Puerto Rico adopted the Puerto Rico Electric Power System Transformation Act, declaring its intention to partner with a private actor with the “operational, technological, and financial capacity to transform the electric power system into one that [...] has efficient and environmentally-friendly energy sources, as well as an infrastructure that is as resistant or resilient as possible to weather and natural events”.¹⁸² Together with the Public-Private Partnership Act, the legislative framework to enter into a PPP for the operation of a resilient electrical grid was given.¹⁸³

In 2020, the Puerto Rico Electric Power Authority (PREPA), the Puerto Rico Public-Private Partnerships Authority (P3 Authority), and LUMA Energy LLC (LUMA) entered into a 15-year PPP.¹⁸⁴ However, this partnership has been criticized by non-governmental organizations since information about it

¹⁷⁸ Anne-Marie Reynaers and Stephan Grimmelikhuijsen, ‘Transparency in Public-Private Partnerships: Not so Bad after All?’ (2015) 93 *Public Administration* 609, 611 <<https://doi.org/10.1111/padm.12142>>.

¹⁷⁹ Jessica Schultz and Tina Søreide, ‘Corruption in Emergency Procurement’ (Anti-Corruption Resource Centre 2026) U4 Issue 7:2006 8 and 9 <<https://onlinelibrary.wiley.com/doi/10.1111/j.1467-7717.2008.01053.x>> accessed 4 May 2026.

¹⁸⁰ *ibid* 8.

¹⁸¹ ‘Build Back Better: Reimagining and Strengthening the Power Grid of Puerto Rico’ (New York Power Authority, Puerto Rico Electric Power Authority, et al 2017) 10–11 <https://www.governor.ny.gov/sites/default/files/atoms/files/PRERWG_Report_PR_Grid_Resiliency_Report.pdf> accessed 7 May 2026.

¹⁸² Puerto Rico Electric Power System Transformation Act 2018 [Act. No. 120 of June 21, 2018, as amended] s 3.

¹⁸³ *ibid* 1.

¹⁸⁴ Puerto Rico Electric Power Authority, Puerto Rico Public-Private Partnerships Authority and LUMA Energy, LLC, ‘Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement’ (2020) <<https://docs.pr.gov/files/P3-PublicaPrivadas/Projects/Projects/TD%20-%20LUMA/OM%20Agreement/executed-consolidated-om-agreement-td.pdf>>.

has become public – which was only after the signing of the contract.¹⁸⁵ The secretive process leading up to the signing allowed for no public participation or scrutiny before the contract was signed and did not foresee the consultation of the affected communities.¹⁸⁶

Public records requests by the NGO CAMBIO later revealed that 4 out of 5 members of the committee tasked with evaluating the bids by the P3 Authority, showed “an inappropriate level of coordination in their evaluations”.¹⁸⁷ CAMBIO voiced concerns over a lack of critical and independent evaluation when 4 committee members arrived at identical scores in 37 out of 38 evaluated categories – half of which were related to financial metrics and were seemingly blindly copied from a report from FTI Consulting, a business consulting firm hired by the P3 Authority.¹⁸⁸ In an additional odd layer for a project related to resilient infrastructure and a switch to renewable energy, FTI Consulting has been criticized for providing communications support for pro-fracking and pro-oil groups and using shady strategies such as “debunking” documentaries and “discrediting” scientific research.¹⁸⁹

Additionally, one member of the evaluating committee played a dual role in the process and was also the chairman of the Puerto Rico Energy Bureau, an independent government agency which needed to issue a certificate of energy compliance for the contract to go ahead.¹⁹⁰ The committee reviewed, rated and approved the PPP contract which was then sent to the Puerto Rico Energy Bureau to receive the required certificate.¹⁹¹ Had the chairman recused himself from the vote due to his potential bias from his prior involvement in the process, the 3 out of 5 majority would not have been reached and the certificate not been awarded.¹⁹²

The result of this untransparent process is a contract that is overwhelmingly in favor of LUMA and a burden for Puerto Rico and its citizens. The most

¹⁸⁵ CAMBIO, ‘House Committee on Natural Resources Hearing: Puerto Rico’s Post-Disaster Reconstruction and Power Grid Development’ (2022) 3 <https://cambiopr.org/wp-content/uploads/2022/11/CAMBIO-Submission-for-the-Record_House-Congressional-Hearing-11_17_22.pdf> accessed 7 May 2026.

¹⁸⁶ *ibid.*

¹⁸⁷ *ibid.*

¹⁸⁸ *ibid.*

¹⁸⁹ Michael Fisher, ‘FTI Consulting’ (*DeSmog*) <<https://www.desmog.com/fti-consulting/>> accessed 7 May 2026; Hiroko Tabuchi, ‘How One Firm Drove Influence Campaigns Nationwide for Big Oil’ *The New York Times* (11 November 2020) <<https://www.nytimes.com/2020/11/11/climate/fti-consulting.html>> accessed 8 May 2026; Sharon Kelly, ‘An FTI Consulting Presentation Pulls Back the Veil on Fossil Fuel PR’ (*DeSmog*, 7 February 2022) <<https://www.desmog.com/2022/02/07/fti-consulting-fossil-fuels-pr-energy-in-depth/>> accessed 8 May 2026.

¹⁹⁰ Tom Sanzillo, ‘Contract Between Puerto Rico, LUMA Energy Sets up Full Privatization, Higher Rates for Island Grid’ (Institute for Energy Economics and Financial Analysis 2020) 13 <https://ieefa.org/sites/default/files/resources/Contract-with-LUMA-Energy-Sets-up-Full-Privatization_Higher-Rates_October-2020.pdf> accessed 7 May 2026.

¹⁹¹ *ibid.*

¹⁹² *ibid.*

blatant example is the liability waiver for PREPA and LUMA in the agreement, according to which they cannot be held liable “for any Losses arising in any way out of or in connection with the operation of the T&D System and the provision of Power and Electricity including in any events of [...] ordinary negligence, gross negligence or willful misconduct of Owner, ManagementCo or ServCo, or their respective employees, agents or contractors”.¹⁹³ This overly broad liability waiver practically frees LUMA from liability completely, even in cases of willful misconduct. Additionally, the contract does not actually require LUMA to achieve the goal of switching to renewable energy, affordability goals, or savings promises.¹⁹⁴

6 years since the adoption of the PPP contract, the implementation of the partnership has remained untransparent. Neither LUMA nor PREPA have publicly provided their plan to establish a resilient system.¹⁹⁵ On the contrary, little of the federal funds LUMA is receiving are going towards renewable energy or storage solutions.¹⁹⁶ This is affecting poorer households, who are unable to afford investing in other solutions, more than those above the federal poverty line who are increasingly investing in their own residential solar and storage systems.¹⁹⁷ LUMA’s failure to make the electrical grid more resilient became apparent in the wake of hurricane Fiona, a category 1 hurricane that affected the southwest of the island. The storm caused the shutdown of the electricity of all of Puerto Rico, many residents being left without power for over a week and much longer than had been the case for similar storms before LUMA took over.¹⁹⁸ This was likely at least partly due to the cuts LUMA made to the budgets for vegetation management and the inspection of powerlines.¹⁹⁹

In 2026, Puerto Ricans continue to experience frequent electrical outages, pay increasing prices for electricity and are still mainly dependent on fossil fuels – the partnership has not delivered the resilient electrical grid it was designed for.²⁰⁰ A more transparent process would have allowed for public scrutiny. The organizations and individuals that have been pointing out the failures of the partnership and advocating against it, only had the chance to do so after the contract was already signed and Puerto Rico committed to its new electrical grid operator – before then they had no chance to see the contracts, review the terms, and voice their criticism. The lack of democratic accountability in

¹⁹³ Puerto Rico Electric Power Authority, Puerto Rico Public-Private Partnerships Authority and LUMA Energy, LLC (n 184) s 4.1 (g).

¹⁹⁴ Sanzillo (n 190) 17–19, 26.

¹⁹⁵ CAMBIO (n 185) 9.

¹⁹⁶ *ibid.*

¹⁹⁷ *ibid.*

¹⁹⁸ *ibid.* 5.

¹⁹⁹ *ibid.*

²⁰⁰ Israel Melendez Ayala, ‘Federal Energy Policy Is Deepening Puerto Rico’s Power Divide’ (*TIME*, 28 February 2026) <<https://time.com/7381685/puerto-rico-power-outages-renewable-energy/>> accessed 8 May 2026.

the bidding and negotiating process has led to a contract that is unfavorable for those who are meant to benefit from a stable and resilient electrical grid. Frequent outages and an electrical grid that is not strong enough to withstand the storms that happen regularly adversely impacts the enjoyment of the human rights of Puerto Rican citizens.

4.2 Lack of Transparency Between the Parties

Lack of transparency with the public is not the only problem. Transparency in PPPs is important both externally and internally between the partners.²⁰¹ When public services are taken over by private actors, the expectations about roles and responsibilities need to be clear to ensure the service is provided as foreseen, especially considering that public and private actors usually engage in public-private partnerships for very different reasons. Conflicting objectives have been identified as one of the major challenges for public-private partnerships in disaster management.²⁰² A business looking to form a PPP is profit-driven and will only engage in a PPP if it deems the chance to earn money high enough. A public actor will have completely different expectations of the PPP, including keeping the cost low, providing high quality services – generally ensuring a maximum of protection at a minimum of the cost. If both parties enter a partnership with very different goals, their respective willingness to assume responsibilities will not necessarily match the other party's expectations of them.

With these diverging interests in mind, it is important to promote transparency by asking for and providing all relevant information to the other parties in the PPP. Internal transparency, or “the availability of information [...] about the technical and financial project parameters and service-level expectations” is key to ensure that all parties have the information they need to negotiate, know their partner's capabilities, and ultimately are aware of their respective obligations under the agreement.²⁰³ Specifically, public partners should communicate their expectations of the private party through contract specifications and private partners must give accurate accounts of their capacities and performance.²⁰⁴ Otherwise, there is a much higher potential for conflict at later stages of the partnership and outcomes that do not match expectations.

A practical example of this problem is the collaboration between St. Bernard Parish, the local governing entity, and Acadian Ambulance during hurricane evacuations in 2005. Following the declaration of a Statewide State of emergency on August 26, 2005, due to impending Hurricane Katrina, a state of emergency and evacuation order was issued locally in St. Bernard Parish

²⁰¹ Reynaers and Grimmelikhuijsen (n 178) 609–610.

²⁰² Eberhardt and others (n 119) 7.

²⁰³ Reynaers and Grimmelikhuijsen (n 178) 612.

²⁰⁴ *ibid* 623.

(SBP) early the next morning.²⁰⁵ Prior to the events, SBP had established a PPP with private ambulance operator Acadian Ambulance (Acadian) to provide all ambulance services in the parish, including disaster evacuation assistance.²⁰⁶ During Hurricane Katrina, SBP confirmed and forwarded the Special Needs List, a list of all persons needing assistance for transportation, to Acadian. Acadian then used its staff and ambulances to pick up the affected people and transport them to shelters designated by SBP. The collaboration was established in 2004²⁰⁷ and continues to exist today.²⁰⁸

Russell Embry, a resident of the parish with a disability, and Dorothy Hingle, his elderly mother and caregiver, were registered on the list and received a call from SBP at 10:25am on August 27th.²⁰⁹ Ms. Hingle told her three daughters in phone calls at several different points throughout the weekend to leave the area without her and her son as they would soon be evacuated by ambulance, which had been confirmed to her in several phone calls by Acadian.²¹⁰ Ms. Hingle received a phone call from Acadian in the afternoon on August 28, 2005, to let her know that she and her son would not be evacuated due to high winds and the closure of the Louisiana Superdome as a special needs shelter.²¹¹ Ms. Hingle tried but could not secure alternative evacuation assistance.²¹² Mr. Embry and Ms. Hingle drowned in their home one day later.

In the aftermath of the disaster and particularly through lawsuits filed by Mr. Embry and Ms. Hingle's family against SBP, Acadian, and several insurers, the issues rooted in the design of the PPP became clear.

The contract the collaboration between SBP and Acadian was based on was lost in the floods,²¹³ but subsequent statements from representatives of both entities highlighted disparities in the expectations set for each party. A spokesperson for Acadian stated in an interview after the disaster that disaster evacuations were not "specific to the contract" between Acadian and SBP.²¹⁴ A parish councilman on the other hand pointed out that Acadian had the exclusive right to all ambulance service contracts and was thus the only possible provider for this service.²¹⁵ If roles and responsibilities of the parties are not

²⁰⁵ *Hazel E Cooley, et al v Acadian Ambulance, et al* [2011] La App 4 Cir 2010-CA-1229 2.

²⁰⁶ June Isaacson Kailes, 'Serving and Protecting All by Applying Lessons Learned - Including People with Disabilities and Seniors in Disaster Services' (2006) 26 <https://www.preventionweb.net/files/8874_servingandprotectingall.pdf> accessed 5 May 2026.

²⁰⁷ Isaacson Kailes (n 206).

²⁰⁸ 'Frequently Asked Questions - CivicPlus.CMS.FAQ' pt What if I have special needs? <<https://www.sbp.net/m/faq?cat=16#question-71>> accessed 5 May 2026.

²⁰⁹ *Cooley v Acadian Ambulance* (n 205) 2.

²¹⁰ Isaacson Kailes (n 206) 26–27.

²¹¹ *Cooley v Acadian Ambulance* (n 205) 3 and 28.

²¹² *ibid* 3.

²¹³ Isaacson Kailes (n 206) 27.

²¹⁴ *ibid*.

²¹⁵ *ibid*.

clearly elaborated at the outset of the partnership, this case shows how things can go wrong in the midst of disaster.

The pattern of lack of communication and coordination continued throughout the hurricane. Acadian was directed to take everyone on the Special Needs List to the Louisiana Superdome, which was designated as a special needs shelter. The closure of that shelter, and lack of alternative arrangements, was one of the reasons Acadian gave to Ms. Hingle for the cancelled transport service.²¹⁶ SBP considered to have fulfilled its duty to protect persons with disabilities from hurricanes by compiling the Special Needs List and relaying it to Acadian. But an analysis of the events demonstrates that compiling the list was not enough to prevent the human rights abuses that took place. The utter lack of coordination between the two actors meant that instead of arranging alternative shelter, keeping each other updated so that the affected communities could be informed of status changes as soon as possible, and having contingency plans in place in case there are spontaneous obstacles – as is often the case in disasters – two people were left to drown in their homes. Coordination, communication, and monitoring might have prevented the deaths of Mr. Embry and Ms. Hingle.

4.3 Breaking Cost-Benefit Promises

One reason for public authorities to engage in PPPs is to share financial risk with the private sector. Sharing risk, however, implies that some of the risk remains with the public sector. When sound risk assessments are carried out prior to entering into the contract and each risk is allotted to the respective party that can better address it, the overall project cost goes down with the result of better value for money. However, when risks are not properly identified in advance, risk allocation will not be ideal and cost goes up, most often for the public party of the PPP. Human rights budgeting requires that an adequate share of public budgets be allocated to human rights-related areas but also that the funds are spent in an effective manner.²¹⁷ Wasteful spending, which can easily happen when expenditure is planned inadequately and risks are not assessed properly, constitutes a failure to comply with human rights obligations.²¹⁸

In a report by the European Court of Auditors evaluating the state of PPPs in the EU, most of the audited PPP projects resulted in significant delays and

²¹⁶ *Cooley v Acadian Ambulance* (n 205) 3.

²¹⁷ OHCHR, 'Realizing Human Rights Through Government Budgets' (n 167) 132.

²¹⁸ *ibid.*

cost overruns.²¹⁹ With that, the “potential benefits of PPPs often failed to materialize”.²²⁰ This was often due to a lack of adequate analyses beforehand. The PPP option was chosen without prior comparison of different options or analyzing the attached risks appropriately.²²¹ And even when a decision has been made to collaborate with the private sector, a PPP can come in many different forms with different advantages and disadvantages for the specific projects. The audit found that decision-makers examined PPP projects less carefully in advance than they would scrutinize traditional contracts since the costs for PPPs do not have to be budgeted up front in the same way.²²² But with their long running times and resulting implications for future generations, their selection should require especially robust analysis and justification.²²³

An example shows how not properly investigating and allocating risks in PPPs can turn into a major financial issue: in 2014, the Regional Autonomous Corporation of Rio Grande de la Magdalena, a government agency, entered into a PPP contract with Navalena S.A.S. to improve the navigability of the Magdalena River in Colombia. At the outset of the partnership a “risk matrix” was created, according to which the government agency was allocated demand risk, environmental regulation risk, and risks related to tariff collection.²²⁴ The government agency also took on the risk of any compensation for negative impacts of the project for communities, regions, localities and the natural environment exceeding a budget of approximately 7 million US dollars the company had set aside for this purpose.²²⁵ However, there was no good estimate of whether 7 million dollars would even be remotely enough to cover the likely damages since no thorough environmental impact assessment was carried out before the agency assumed the responsibility for this risk.²²⁶ Without a thorough risk assessment, neither party of the PPP was aware to what extent the project would affect the environment or the communities living in the affected area. Thus, the PPP could have potentially placed an enormous burden on public budgets without transparency, or even awareness, about this possibility up front. Ultimately the PPP was dissolved before

²¹⁹ Oscar Henriks and others, ‘Public Private Partnerships in the EU: Widespread Shortcomings and Limited Benefits’ (European Court of Auditors 2018) EN 2018 no 09 25 <https://www.eca.europa.eu/Lists/ECADocuments/SR18_09/SR_PPP_EN.pdf> accessed 6 May 2026.

²²⁰ *ibid.*

²²¹ *ibid.* 35.

²²² *ibid.*

²²³ *ibid.*

²²⁴ Eurodad (n 174) 28.

²²⁵ *ibid.*

²²⁶ *ibid.*

it could be implemented due to other issues but entering into such an agreement without assessing the risks the government agency assumed was reckless.²²⁷

4.4 The Hollowing Out of the Public Sector

Lastly, the use of PPPs is sometimes said to create a risk of “hollowing out” the state and its capacity to provide the services needed to manage disasters well.²²⁸ State capacity, the ability to effectively implement policies, is crucial for the protection of human rights.²²⁹ The hollowing out effect refers to the idea that contracting out public services will lead to a decrease in the capacity of the public sector to provide those same services. If a government agency relies on outside experts to take over a service, a majority of the organizational knowledge relating to that service will lie with the outside experts. After a long-term partnership, employees of the government agency will no longer know what standards were used, who was involved in the development of the service and how to do it successfully again.²³⁰ The erosion of knowledge can range from simple things like what templates were used and how to find them to complex knowledge absolutely necessary to provide good services.

This can lead to a sort of vicious cycle or self-fulfilling prophecy: One of the reasons to engage in a PPP is the idea that private actors can provide services more effectively. If contracting these services out leads to a further reduction of state capacity, private actors who developed and maintained this capacity will be needed even more.²³¹ The fear is that ultimately the public sector becomes dependent on private actors for disaster management, potentially leading to a loss of control over the services it has to provide.²³² This creates questions for accountability when it is unclear who is in control of the planning, design, and implementation of a service.²³³ It may also reduce the negotiating power of the State to ensure human rights protection, good value for money and high-quality services.

The aforementioned PPP between PREPA and LUMA is a good example of this. In the 6 years since the creation of the partnership, LUMA has not kept

²²⁷ Eurodad (n 174) 30.

²²⁸ Nathan Busch and Austen Givens, ‘Achieving Resilience in Disaster Management: The Role of Public-Private Partnerships’ (2013) 6 *Journal of Strategic Security* 1, 15–16 <<https://doi.org/10.5038/1944-0472.6.2.1>>.

²²⁹ David Cingranelli, Skip Mark and Almira Sadykova-DuMond, ‘Democracy, Capacity, and the Implementation of Laws Protecting Human Rights’ (2023) 12 *Laws* 6, 3 <<https://doi.org/10.3390/laws12010006>>.

²³⁰ Busch and Givens (n 232) 16.

²³¹ Lucia Xiaoyan Liu, Stewart Clegg and Julien Pollack, ‘Power Relations in the Finance of Infrastructure Public-Private Partnership Projects’ (2022) 40 *International Journal of Project Management* 725, 725 <<https://doi.org/10.1016/j.ijproman.2022.08.002>>.

²³² Busch and Givens (n 232) 16.

²³³ *ibid.*

its promises and has not delivered the resilient energy grid with affordable prices it has promised. Because of this, Puerto Rico’s government filed a lawsuit in 2025 to cancel the contract with LUMA.²³⁴ But even if the lawsuit succeeds in terminating the contract, there is no viable plan in place to replace LUMA.²³⁵ The continuity of electric service is critical for the people of Puerto Rico, but it is unclear who could take over when LUMA is out of the equation. Before the PPP, it was PREPA, Puerto Rico’s Electric Power Authority, that operated the electrical grid. When LUMA took over, the PPP contract did not require hiring of PREPA’s employees, who accumulated years of experience with and knowledge of Puerto Rico’s electrical system.²³⁶ Unwilling to provide the same level of benefits they were privy to under PREPA and comply with their collective bargaining agreement, LUMA did not hire the majority of experienced employees.²³⁷ In a policy brief, the Center for a New Economy found that since then “most of PREPA’s employees with experience in [transmission and distribution] have either retired or moved to other government agencies“.²³⁸

Thus, there is not only a question of whether operation of the electrical grid should be entrusted to PREPA again – prior to the collaboration with LUMA, PREPA was heavily criticized for inefficiency and corruption²³⁹ – but also whether PREPA would be capable of performing the service at this point. Should Puerto Rico be successful in terminating the partnership with LUMA, it would have to find another solution to operate the electrical grid and make it resilient. Finding a new partner for another PPP, especially a better one that would solve the problems that occurred in the collaboration with LUMA, would be a lengthy and costly process. At the same time, it is likely that – with PREPA – Puerto Rico currently does not have the necessary knowledge and resources to provide that service well itself either. This pressure leaves Puerto Rico in a somewhat disadvantaged position for negotiations with future partners, leading to potentially worse negotiation outcomes. Additionally, being able to create effective and human rights-compliant partnerships

²³⁴ ‘Puerto Rico Sues Luma in First Push to Cancel Contract with Private Power Company’ (*AP News*, 12 December 2025) <<https://apnews.com/article/puerto-rico-luma-sue-contract-government-power-energy-6a5854d17b891f88f56564ed40907b05>> accessed 13 May 2026.

²³⁵ Sergio Marxuach, ‘Another Look at the PREPA-LUMA Agreement’ (Center for a New Economy 2022) 8 <<https://grupocne.org/wp-content/uploads/2022/09/2022.09.14-Another-Look-at-the-PREPA-LUMA-Agreement.pdf>>.

²³⁶ CAMBIO (n 185) 5.

²³⁷ *ibid.*

²³⁸ Marxuach (n 239) 8.

²³⁹ See for example Sergio M Marxuach, ‘Connecting the Dots of the Puerto Rico Electric Power System’ (*CNE – Centro Para Una Nueva Economía – Center for a New Economy*, 9 October 2024) <<https://grupocne.org/2024/10/09/connecting-the-dots-of-the-puerto-rico-electric-power-system/>> accessed 13 May 2026.

and monitoring them throughout their implementation requires organizational knowledge that PREPA likely lost with the employees that left.

4.5 Lack of Accountability for Harm to Third Parties

The right of victims to a remedy for business-related human rights abuses is the third pillar of the UNGPs. When the State causes harm to individuals or communities through its disaster risk management measures or fails to provide necessary services, those affected can generally hold the State responsible. But when harm is caused by private actors that have taken over roles and responsibilities of the State through PPPs, accountability and access to remedy becomes less clear. Described as “molten masses of public, private, domestic, foreign, and international law, [PPPs] can result in an accountability deficit when it comes to the violation of human rights”.²⁴⁰ Where human rights abuses were caused by the private partner, victims often lack formal standing before judicial mechanisms due to the fact that non-State actors do not have direct obligations under human rights law.²⁴¹ In the absence of dedicated mechanisms to hold perpetrators accountable and provide remedies for victims, victims of human rights abuses related to PPPs often have difficulty accessing remedies.

When these issues occur in PPPs for disaster risk management, they reduce the effectiveness of disaster risk management and cause harm to the individuals the PPPs are meant to protect. States are not responsible for the human rights abuses committed by private actors per se. For example, LUMA’s failure to reliably supply electricity and the resulting damages to people and their well-being do not amount to a human rights violation by Puerto Rico per se. But, under international human rights law, States can be responsible for human rights violations where they failed to take measures to regulate the conduct of private actors and allowed human rights abuses to occur.

The example of the PPP between SBP and Acadian for evacuation assistance demonstrates this. No accountability mechanisms were set up that victims of human rights abuses tied to this PPP could turn to. While Acadian conducted a standard post-storm “status review”, no special investigation was set up by

²⁴⁰ Josua Loots, ‘Development, Infrastructure and Human Rights: The Role of Human Rights Impact Assessments’ *Sustainable Public Procurement of Infrastructure and Human Rights* (Edward Elgar Publishing 2023) 123 <<https://www.elgaronline.com/ed-collchap/book/9781802205510/book-part-9781802205510-16.xml>> accessed 16 May 2026.

²⁴¹ Claire Methven O’Brien, Nicole Vander Meulen and Amol Mehra, ‘Public Procurement and Human Rights: A Survey of Twenty Jurisdictions’ (International Learning Lab on Public Procurement and Human Rights 2016) 10 <<https://globalnaps.org/wp-content/uploads/2018/08/public-procurement-and-human-rights-a-survey-of-twenty-jurisdictions.pdf>> accessed 14 May 2026.

the company to look into the deaths that occurred because of their discontinued operations.²⁴² And the standard review that was conducted, was not transparent externally with Acadian refusing to provide phone records between them and Ms. Hingle.²⁴³

Arguing that the parish's duty was fulfilled when the Special Needs List was sent over to Acadian, SBP showed little interest in investigating the conduct of their own officials or of Acadian. The partnership continues, with Acadian still providing all ambulance services in SBP, including for disaster evacuations.²⁴⁴

The surviving family did turn to state courts to achieve some kind of accountability. Ultimately, SBP was held to not be liable, having not acted with willful misconduct and thus being immune from liability under the Louisiana Homeland Security and Emergency Assistance and Disaster Act.²⁴⁵ This legislating away of responsibility hinders accountability and access to remedy. The family reached an out-of-court settlement with Acadian but was not able to hold SBP liable for their failure to protect Mr. Embry and Ms. Hingle.

²⁴² Isaacson Kailes (n 206) 26.

²⁴³ *ibid* 27.

²⁴⁴ 'Frequently Asked Questions - CivicPlus.CMS.FAQ' (n 208) pt What if I have special needs?

²⁴⁵ *Cooley v Acadian Ambulance* (n 205) 16.

5 Designing and Implementing Human Rights-Based PPPs

When States choose to engage in PPPs for disaster risk management, the goal is better protection for individuals from disaster impacts at a better price. But despite these potential advantages for the fulfilment of human rights, in practice, PPPs are often not designed with human rights in mind and end up contributing to human rights abuses in one way or another. While States are not responsible for the conduct of private actors per se, they must regulate their conduct to prevent human rights abuses. Failure to do so then does constitute a human rights violation by the State. This chapter proposes that to be fully human rights compliant, States must adopt human rights-based approaches to PPPs to center the protection of affected individuals and prevent human rights abuses by third parties.

5.1 Human Rights-Based Approaches to Disaster Risk Reduction

States must protect human rights before, during, and in the aftermath of disasters based on their positive obligations under international human rights law and make human rights protection a goal for disaster risk reduction measures. Going beyond merely requiring human rights protection, human rights-based approaches (HRBAs) give practical guidance for the development, implementation and evaluation of measures. They “use the human rights framework to redefine the relationship between stakeholders in society as rights-holders with entitlements and duty bearers with correlative obligations.” Adopting an HRBA ensures that any measures taken are in compliance with rights and obligations under international human rights law.²⁴⁶

In a report on best practices and main challenges in the promotion and protection of human rights in post-disaster and post-conflict situations, the Human Rights Council Advisory Committee outlines basic principles that HRBAs must be guided by:

- the recognition of the universality and indivisibility of human rights,
- participation and consultation of people from all sectors in decision-making,
- non-discrimination,
- accountability,
- transparency about all information and decision-making processes, and

²⁴⁶ Karen Rice, Marc V Felizzi and Duane Hagelgans, ‘Human Rights-Based Approach to Disaster Management: Valparaiso, Chile’ (2017) 2 *Journal of Human Rights and Social Work* 117, 119 <<https://doi.org/10.1007/s41134-017-0040-5>>.

- the principle of do no harm.²⁴⁷

Most importantly, adopting a human rights-based approach to DRR means clearly identifying rights and rights-holders and the corresponding duties and duty-bearers in an effort to empower rights-holders to claim those rights and duty bearers to meet their obligations.²⁴⁸ Every human right in international human rights law entails a claim of entitlement for the rights-holder and a corresponding duty for the duty-bearer toward that right.²⁴⁹ Empowerment of rights holders and their capacity to claim their rights is the very foundation for human rights-based approaches: a claim of entitlement empowers the rights-holders to claim their rights, which requires participation, access to information, and non-discrimination.²⁵⁰

As the Special Rapporteur on the protection of persons in the event of disasters put it,

The essence of a rights-based approach to protection and assistance is the identification of a specific standard of treatment to which the individual, the victim of a disaster, in casu, is entitled. [...] A rights-based approach deals with situations not simply in terms of human needs, but in terms of society's obligation to respond to the inalienable rights of individuals [and] empowers them to demand justice as a right, not as a charity.²⁵¹

When States resort to PPPs, they have an obligation to protect individuals from human rights abuses committed by third parties, including their partners in public-private partnerships. Taking a human rights-based approach to the development and implementation of public-private partnerships in disaster risk management ensures that human rights protection is considered at every stage of the process. The private partner in a PPP can of course independently decide to adopt a human rights-based approach to their participation in disaster risk reduction. Based on their responsibility to protect under the UNGPs, they should adopt an HRBA. But international human rights law only places direct obligations on States, not on businesses, as described above. It is the State's duty to protect human rights and to prevent disaster damages where it can. As the UNGPs stipulate, PPPs provide the opportunity to do so not only through general legislation but also through the contract that the partnership is based on.

²⁴⁷ Human Rights Council Advisory Committee, 'Final Research-Based Report of the Human Rights Council Advisory Committee on Best Practices and Main Challenges in the Promotion and Protection of Human Rights in Post-Disaster and Post-Conflict Situations' (2015) UN Doc A/HRC/28/76 paras 37–43.

²⁴⁸ *ibid* 39.

²⁴⁹ Sultana (n 3) 1913.

²⁵⁰ *ibid*.

²⁵¹ Eduardo Valencia-Ospina, 'Preliminary Report on the Protection of Persons in the Event of Disasters, by Mr. Eduardo Valencia-Ospina, Special Rapporteur' (2008) UN Doc A/CN.4/598 para 12.

International human rights law obliges States to take measures to protect human rights from abuses by third parties, but it does not prescribe exactly what those measures must be. Thus, there is not one specific version of how these principles need to be integrated into a PPP or its contract that is human rights-compliant, while all other options violate human rights obligations. But States do need to actively take measures to prevent human rights abuses from happening throughout the lifetime of the partnership. When PPPs in disaster risk reduction are based on an HRBA, guided by the principles outlined by the Human Rights Council Advisory Committee, it ensures better protection against human rights abuses. The following section will demonstrate where and how a human rights-based approach can guide States in taking those measures when designing and implementing PPPs for disaster risk management. States can regulate the human rights impact of PPPs on two levels: they can regulate the adoption of PPPs through legislation, and they can integrate specific provisions protective of human rights in the PPP contract.

5.2 Regulating the Process of Entering into a PPP

To be fully compliant with their human rights obligations, States must take measures to prevent business-related human rights abuses. To effectively prevent human rights abuses related to the PPP project, States must consider the potential human rights impacts of the partnership from the very beginning and throughout the whole process.

The lifecycle of a PPP generally goes as follows: First, the public actor needs to decide that a service should be provided through a PPP. To do so, the public actor needs to compare the different available options and screen the project for its potential as a PPP.²⁵² Next, the project needs to be developed further, culminating in the preparation of a draft PPP contract that sets out the key elements of the proposed partnership.²⁵³ Different businesses can signal their interest in a bidding process, after which they need to be evaluated, so that the final partner for the PPP can be chosen.²⁵⁴ Lastly, the partners need to negotiate the terms of the contract that will form the base of the PPP, which is when it can be evaluated a final time to ensure it still matches any requirements set out at the beginning of the process.²⁵⁵ The final stage is the managing of the contract throughout its lifetime, which requires monitoring of the risks and the delivery of the agreed obligations as well as managing any changes that may occur.²⁵⁶

²⁵² The World Bank (n 156) 113.

²⁵³ *ibid* 113–115.

²⁵⁴ *ibid* 114.

²⁵⁵ *ibid* 115.

²⁵⁶ *ibid* 114–115.

A human rights-based approach specifically requires clear articulation of rights and obligations, transparency, participation, non-discrimination and accountability. In the context of developing and entering into a PPP, that means assessing human rights impacts as a requirement to move forward, consulting potentially affected individuals and communities, communicating human rights impacts and consequences drawn, and having accountability mechanisms in place. To most effectively prevent human rights abuses, States should ensure that the domestic law that governs the adoption of PPP contracts, whether that be laws on public contracts in general or legislation that serves as the framework for PPPs specifically, requires that human rights impacts of the PPP project are considered and pose a human rights-based approach to the procedures for the adoption of PPP contracts.

5.2.1 Considering Human Rights Impacts

A human rights-based approach to a PPP project requires considering and addressing the human rights impacts the project will have. Human rights impact assessments (HRIAs), where the State assesses whether their activities, in this case the public-private partnership, affect human rights, allow States to “ensure compliance with human rights [...], integrate human rights into policy making, improve accountability, and facilitate empowerment”.²⁵⁷ Especially improving accountability is important for PPPs, where the task sharing between public and private actors “muddies the water” of rights and duties.²⁵⁸

HRIAs confront decision-makers with potential adverse human rights effects of their decisions and require them to provide strong justification for their decisions.²⁵⁹ Making the results of the HRIAs publicly available also ensures that affected individuals and communities are informed about potential adverse impacts on the enjoyment of their human rights.²⁶⁰ This gives them the knowledge required to hold decision-makers accountable for harm that occurred because of a decision they made despite knowing of the human rights risks.

HRIAs identify potential adverse human rights impacts and duty bearers, ensuring that human rights obligations are fulfilled even when duties of the State are transferred to private actors through PPPs.²⁶¹ They should guide States in their decision-making throughout the process of entering a PPP, starting from

²⁵⁷ Gauthier De Beco, ‘Human Rights Impact Assessments’ (2009) 27 Netherlands Quarterly of Human Rights 139, 145–148 <<https://doi.org/10.1177/016934410902700202>>.

²⁵⁸ Josua Loots, ‘Development, Infrastructure and Human Rights: The Role of Human Rights Impact Assessments’ in Olga Martin-Ortega and Laura Treviño-Lozano (eds), *Sustainable Public Procurement of Infrastructure and Human Rights* (Edward Elgar Publishing 2023) 127 <<https://www.elgaronline.com/edcollchap/book/9781802205510/book-part-9781802205510-16.xml>> accessed 15 May 2026.

²⁵⁹ De Beco (n 257) 147.

²⁶⁰ *ibid.*

²⁶¹ Loots (n 258) 127.

the earliest possible stage to ensure that they are able to influence decisions before they are already made.²⁶² Considering the long PPP cycle, when a PPP project is conceived, it may go through many variations between the time the public actor first decides to develop a PPP and the final version agreed to by all partners. Accordingly, HRIAs should not be considered a one-and-done thing. Josua Loots proposes that an initial HRIA focused on the question of the human rights impacts of choosing a PPP over other methods of public service delivery should be conducted before the project is developed any further.²⁶³ Following a positive assessment, the project could then get the green light to go ahead and be prepared in more detail. Loots argues that this is when the most extensive HRIA should be carried out to inform the design of the partnership.²⁶⁴ When human rights risks have been identified, the project should be designed to avoid them where possible, the project should only be continued where the benefits outweigh the costs, and the risks should be allocated to the partner who is better equipped to address them.²⁶⁵ Thoroughly considering human rights risks at this stage allows the public actor to create a human rights-conscious draft contract for the bidding process and to define criteria to select partners.²⁶⁶ In later stages, when the PPP is actually being implemented, a full HRIA can guide human rights impact mitigation and management.²⁶⁷ Since circumstances may change over the course of decades, it is important to consider human rights impacts all throughout the long life cycle of the PPP and to be aware that changed circumstances may change the way the PPP impacts human rights. HRIAs may thus also be important at later points throughout the life cycle of the PPP. They should be carried out when appropriate to identify potential and actual adverse impacts on human rights and should then guide the response.

5.2.2 Transparency and Participation

The Committee on Economic, Social and Cultural Rights has affirmed that “good governance is essential to the realization of all human rights”.²⁶⁸ Good governance describes processes of public decision-making that are free of abuse and corruption and adhere to the rule of law.²⁶⁹ That requires transparency and participation when conducting public affairs and managing public resources, including when developing PPPs for disaster risk management

²⁶² De Beco (n 257) 144.

²⁶³ Loots (n 258) 128.

²⁶⁴ *ibid* 129.

²⁶⁵ *ibid* 129–130.

²⁶⁶ *ibid* 131.

²⁶⁷ *ibid* 132.

²⁶⁸ Committee on Economic, Social and Cultural Rights, ‘General Comment 12: The Right to Adequate Food (Art. 11)’ (1999) UN Doc E/C.12/1999/5 para 23.

²⁶⁹ ‘OHCHR and Good Governance’ (OHCHR) <<https://www.ohchr.org/en/good-governance>> accessed 17 May 2026.

which uses public resources and pertains to the provision of crucial public services.

Transparency requires that information be shared with the affected individuals to allow them to meaningfully participate in decision-making processes.²⁷⁰ Generally, States should make information transparent when it affects public interest.²⁷¹ Information pertaining to how public services are and will be operated within disaster risk management, fundamentally aimed at protecting people, certainly affects public interest. Confidentiality may be required to some degree for legitimate reasons during the negotiations and even after the adoption of the contract.²⁷² But where possible, transparency enables participation and better accountability. For example, HRIAs, when available publicly, contribute to transparency as they allow affected individuals to know the potential adverse impacts on their rights²⁷³ – giving them a chance to voice concerns. Similarly, the publication of the draft contract before its final adoption allows those affected by the activities of the partnership to voice concerns and objections while the contract terms are not fixed yet. And once the PPP contract is adopted, its terms should be disclosed as a general rule – all exceptions requiring compelling justifications.²⁷⁴

Transparency and participation go hand in hand. Participation more specifically means “‘active, free, and meaningful’ participation from all parts of [...] society, including impacted communities, grassroots organizations, minorities, rural populations, and women”²⁷⁵ and is enabled by transparent processes. Participation plays a key role in HRIAs, which rely on consultations of affected communities to identify the actual needs to address in the assessment of potential impacts.²⁷⁶ The process of PPP adoption could include participatory mechanisms beyond that, such as open meetings where decisions are made or consultation beyond the HRIAs.

5.2.3 Accountability

Accountability is the “raison d’être of the rights-based approach”, as the OHCHR has explained.²⁷⁷ Requirements for good governance, such as duties

²⁷⁰ Rice, Felizzi and Hagelgans (n 246) 122.

²⁷¹ John Ruggie, ‘Principles for Responsible Contracts: Integrating the Management of Human Rights Risks into State–Investor Contract Negotiations – Guidance for Negotiators’ (Human Rights Council 2011) UN Doc A/HRC/17/31/Add.3 33 <<https://docs.un.org/en/A/HRC/17/31/Add.3>>.

²⁷² *ibid.*

²⁷³ De Beco (n 257) 147.

²⁷⁴ Ruggie (n 271) 32.

²⁷⁵ Beatrice Lindstrom and Brian Concannon, ‘Cheaper, Better, Longer-Lasting: A Rights-Based Approach to Disaster Response in Haiti’ (2011) 25 *Emory International Law Review* 1145, 1176.

²⁷⁶ Loots (n 258) 124.

²⁷⁷ Office of the United Nations High Commissioner for Human Rights, *Claiming the Millennium Development Goals: A Human Rights Approach* (1st ed, United Nations Publications 2011) 15.

to carry out HRIAs and to have transparent and participatory mechanisms, require some form of accountability to reach their full effect. The administrative processes backing up these requirements are equally as important as the requirements in the first place.²⁷⁸ If States fail to comply with the requirements for responsible PPP-contract making, such as not carrying out an HRIA where they had an obligation to do so, there must be a way to hold them accountable. Legislation that poses such requirements should also include the appropriate safeguards to ensure compliance and ways for individuals to hold public actors accountable for non-compliance.

5.3 Human Rights-Based PPP Contracts

A variety of domestic laws, such as non-discrimination, environment or health laws, may directly or indirectly require businesses to respect human rights. But national legal frameworks may lack comprehensive protection from business-related human rights abuses and capacity gaps may prevent States from monitoring effectively.²⁷⁹ States may overcome those issues by setting additional, human rights-based project operating standards in PPP contracts.²⁸⁰ As a “global standard of expected conduct for businesses”,²⁸¹ the corporate responsibility to respect human rights as formulated by the UNGPs is not directly legally binding for businesses. But through the provisions of the PPP contract, States can turn these standards of expected conduct into contractual obligations for their private partners. The PPP contract is also an opportunity to adjust the human rights requirements of their partner to the needs and characteristics of the specific PPP project, the type of PPP chosen, the nature of the public service provided, and the private partner that is engaged. For any human rights clauses in PPP contracts to prove effective, they should be formulated in a clear and precise manner and communicate specific standards and benchmarks to make monitoring and enforcement easier.²⁸²

5.3.1 Due Diligence Obligations

The UNGPs hold that based on the corporate responsibility to respect human rights, business enterprises should have a human rights due diligence process in place.²⁸³ By requiring due diligence from their partners in PPPs through the PPP contract, States can translate the non-binding responsibility to carry out

²⁷⁸ Loots (n 258) 124.

²⁷⁹ Ruggie (n 271) 13.

²⁸⁰ *ibid.*

²⁸¹ OHCHR, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (n 98) 13.

²⁸² Johanna Hoekstra, ‘The Use of Human Rights Clauses in International Commercial Contracts’ in Bruno Zeller and Camilla Baasch Andersen, *Routledge Handbook on Transnational Commercial Law* (1st edn, Routledge 2025) 432, 437 <<https://doi.org/10.4324/9781003394822-28>> accessed 21 May 2026.

²⁸³ OHCHR, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (n 98) 15–16.

human rights due diligence under the UNGPs into a contractual obligation for their private partners in PPPs for disaster risk management. When combined with appropriate remedies, due diligence obligations in PPP contracts can greatly contribute to human rights protection.²⁸⁴

Carrying out human rights due diligence means assessing actual and potential human rights impacts of the business activities, responding to the results and communicating how human rights impacts are being addressed.²⁸⁵ To do so, the private partner should use internal and/or independent external human rights expertise and consult potentially affected groups and other relevant stakeholders.²⁸⁶ The extent of the consultations should be appropriate to the size of the business and their activities.²⁸⁷ PPPs for disaster risk management can cover a range of public services and engage private partners of varying sizes. This should be considered as standards for due diligence are set in any PPP contract. Human rights due diligence should also be ongoing since the impacts of the activities on human rights may change as the operation evolves.²⁸⁸ This is especially important for PPPs, which by their nature are long-term agreements that can run over decades.

Including an obligation to carry out human rights due diligence in PPP contracts forces private partners in PPPs to investigate how their activities do and might affect human rights – and to respond accordingly. It contributes to the implementation of the principles of transparency and participation, as it allows affected communities to voice their concerns and requires the private partner to communicate how they will respond to them. Ideally, due diligence prevents human rights abuses from occurring or catches them at an early stage, allowing them to minimize and remedy harm to third parties.

5.3.2 Oversight and Monitoring

Following Principle 5 of the UNGPs, to effectively protect human rights from business-related abuses, States must exercise adequate oversight when they enter into contracts with businesses to provide services that may impact upon the enjoyment of human rights.²⁸⁹ Adequate oversight requires States to ensure that they are effectively able to oversee the activities of their private partner, including through providing adequate independent monitoring and accountability mechanisms.²⁹⁰

²⁸⁴ Hoekstra (n 282) 436.

²⁸⁵ OHCHR, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (n 98) 17–18.

²⁸⁶ *ibid* 19.

²⁸⁷ *ibid*.

²⁸⁸ *ibid* 18.

²⁸⁹ *ibid* 8.

²⁹⁰ *ibid*.

Published as an addendum to the UNGPs, John Ruggie also developed principles for responsible contracts.²⁹¹ The principles were developed as a guide for contract negotiations on investment projects between host State entities and foreign business investors,²⁹² but can serve as inspiration for human rights-based contracts for PPPs where similar mechanisms are required—such as independent monitoring. The guiding principles for responsible contracts highlight the need to elaborate on monitoring in negotiations and the contracts themselves to ensure that the standards on the prevention, mitigation and remediation of human rights abuses, whose achievement is being monitored, are clearly communicated and that the State has the necessary rights to carry out effective monitoring, such as access to all relevant information or project sites.²⁹³ They also point out that where the State does not have the necessary capacity to monitor compliance, alternative methods of monitoring, like external monitoring or self-reporting, can be agreed upon in the contract.²⁹⁴ However, self-reporting should only be chosen as the monitoring mechanism when the State is truly unable to effectively monitor compliance itself since self-reporting potentially allows businesses to filter out information they do not want to reveal.²⁹⁵ External monitoring mechanisms, such as certification schemes, can also be limited in their effectiveness since many of them do not measure the actions of the business adequately.²⁹⁶ Generally, collaborative approaches to monitoring that go beyond desk-based research and require stakeholder meetings, trainings, and visits will provide the most accurate picture of the activities of the company and its compliance with agreed-upon standards and should thus be favored.²⁹⁷

When developing a monitoring mechanism for a public-private partnership for disaster risk management, States should consider their own capacity to monitor their private partner and set clear project standards in communication with the partner as the base for the monitoring activities. And to ensure accountability for non-compliance, they must also establish what the consequences for non-compliance with agreed upon standards are.

5.3.3 Operational-Level Grievance Mechanisms

Due diligence from the business and monitoring by the State can help to prevent human rights abuses but might not always be able to guarantee full protection. Based on their positive obligations to protect human rights, States must ensure through judicial, administrative, legislative or other appropriate

²⁹¹ Ruggie (n 271).

²⁹² *ibid* 3.

²⁹³ *ibid* 27–28.

²⁹⁴ *ibid* 28.

²⁹⁵ Hoekstra (n 282) 432.

²⁹⁶ *ibid*.

²⁹⁷ *ibid* 432–433.

means that victims of business-related adverse human rights impacts have access to effective remedy.²⁹⁸ In fact, access to remedy is the third of the three pillars of the UNGPs. While the UNGPs state that state-based judicial mechanisms are “at the core of ensuring access to remedy”, they also hold that States should facilitate access to non-judicial and non-state-based mechanisms.²⁹⁹ Individuals and communities are impacted by the activities of a PPP but are not party to the contract it is governed by. An opportunity to facilitate access to a remedy for PPP-related human rights abuses they might experience is to ensure through the PPP contract that third parties affected by the operation of the PPP have access to an effective operational-level grievance mechanism.³⁰⁰ This is recommended in the principles for responsible contracts developed as an addendum to the UNGPs.

An operational-level grievance mechanism allows concerns to be voiced and grievances to be addressed at an early stage.³⁰¹ To ensure that the mechanism is effective, the UNGPs pose effectiveness criteria for non-judicial grievance mechanisms that can serve as a guide in its development.³⁰² The requirements for effectiveness include, for example, that information and assistance be provided for whose use the mechanism is intended and making the procedure transparent and predictable.³⁰³ Furthermore, operational-level grievance mechanisms should not restrict access to other grievance mechanisms, including judicial mechanisms but also other non-State based complaint mechanisms.³⁰⁴ The parties should identify in negotiations whether such a mechanism already exists or whether it needs to be established specifically for the PPP in question and commit contractually to participate fully and in good faith in the mechanism.³⁰⁵ To ensure the independence and effectiveness of these mechanisms, they should be designed through a participatory and consultative process and involve a third-party body.³⁰⁶

States can ensure access to an operational-level grievance mechanism for PPP-related human rights abuses through the PPP contract. This way States can be sure that individuals and communities who are impacted by activities related to the PPP can lodge their grievances at an early stage and despite not

²⁹⁸ OHCHR, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (n 98) 27.

²⁹⁹ *ibid* 27–31.

³⁰⁰ Ruggie (n 271) 21.

³⁰¹ *ibid*.

³⁰² OHCHR, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (n 98) 33–36.

³⁰³ *ibid* 33.

³⁰⁴ Ruggie (n 271) 21.

³⁰⁵ *ibid* 22.

³⁰⁶ International Commission of Jurists, ‘Effective Operational-Level Grievance Mechanisms’ (2019) 13–14 <<https://www.icj.org/wp-content/uploads/2019/11/Universal-Grievance-Mechanisms-Publications-Reports-Thematic-reports-2019-ENG.pdf>> accessed 21 May 2026.

being a party to the contract. Operational-level grievance mechanisms cannot be the only remedy available, as they are operated by the company itself and thus not entirely independent.³⁰⁷ But as a part of the puzzle of various remedies, they can be valuable tools to allow affected individuals to lodge their grievances.

Overall, taking a human-rights based approach to PPP contracts and contract-making requires focusing on recognizing human rights impacts, establishing clear rights and duties, participation, transparency, and non-discrimination. This means ensuring through legislation that the process to enter into a PPP requires the assessment of and response to human rights impacts, is transparent and allows for participation of the affected individuals and communities. This allows for human rights concerns to be recognized and addressed as early as possible and grounds the creation of PPPs in consideration of the affected communities and individuals and their rights. Furthermore, States can require a private partner in a PPP to adhere to certain human rights standards through the PPP contract. Through the PPP contract, States can require their private partners to carry out due diligence and provide operational level-grievance mechanisms and ensure that they are able to monitor their partner's activities – giving effect to the standards of expected conduct set out in the UNGPs. Such a human rights-based approach ensures that the needs of human rights-holders are addressed, but without making them passive beneficiaries. They have access to information needed to participate in decision-making, are consulted in decision-making processes, and are empowered to claim protection of their rights – both during the process of adopting a PPP and throughout its implementation.

³⁰⁷ International Commission of Jurists (n 306) 10.

6 Conclusion

International human rights law does not explicitly provide for a right to be protected from disaster. However, human rights do obligate States to respect, protect, and fulfill human rights. The obligation to protect human rights entails the positive obligation to prevent disasters where possible and protect human rights in disasters where they do occur.

Public-private partnerships are fundamentally meant to provide a higher quality of service for a smaller price for public budgets. They can allow for services to be provided that would otherwise not be possible for a lack of resources and knowledge. If well designed, public-private partnerships can contribute to better disaster risk management. In that way, they can be valuable tools for States to fulfill their human rights obligations to take disaster risk management measures. However, PPPs can also contribute to human rights issues and, in fact, often do so in practice. A lack of democratic governance and transparency between the parties, as well as false cost-benefit promises and reduced state capacities can cause major human rights issues. And when these human rights do occur, accountability is often hard to come by in the absence of a clear articulation of accountability mechanisms and remedies. Especially since PPPs are based on contracts that the affected communities are not parties to.

States' human rights obligations are not simply fulfilled by having private actors provide services to protect individuals from the effects of disasters. Their obligation to protect extends to include the obligation to take measures to prevent, investigate, and punish human rights abuses by private actors. Where the State enters into partnerships with private actors to deliver public services to manage disaster risks, they need to take measures to actively prevent human rights abuses. While international human rights law requires States to take measures to prevent abuses, it does not prescribe exactly what measures to take. However, adopting a human rights-based approach to the design and implementation of PPPs for disaster risk management allows rooting them in human rights considerations and preventing human rights abuses. Taking a human rights-based approach means clearly articulating rights, rights-holders, duties and duty bearers, as well as ensuring participation, access to information, non-discrimination and accountability. Practically, States can do so through human rights-based processes for the adoption of PPPs and in the PPP contract itself. A human rights-based process is guided by human rights impacts assessments that identify and address actual and potential human rights concerns of the PPP project. It should be as transparent as possible and include mechanisms that allow affected individuals and communities to participate in decision-making processes. Based on and guided by human rights considerations, these processes would be more likely to result in human

rights-based PPP contracts that promote and protect human rights in disaster risk management. States must take measures to protect human rights when they enter into PPPs for disaster risk management – failure to do so is a human rights violation. Developing the PPPs through human rights-based approaches and creating PPP contracts whose provisions promote human rights protection constitute such measures – and allow protection and empowerment for rights-holders.

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