Race, class, and Katrina: human rights and (un)natural disaster

Hope Lewis

Follow this and additional works at: http://lsr.nellco.org/nusl_faculty

Recommended Citation
Lewis, Hope, "Race, class, and Katrina: human rights and (un)natural disaster" (2009). School of Law Faculty Publications. 314.
http://lsr.nellco.org/nusl_faculty/314

This Article is brought to you for free and open access by the Northeastern University School of Law at NELLCO Legal Scholarship Repository. It has been accepted for inclusion in School of Law Faculty Publications by an authorized administrator of NELLCO Legal Scholarship Repository. For more information, please contact tracy.thompson@nellco.org.
ENVIRONMENTAL JUSTICE IN THE NEW MILLENNIUM

GLOBAL PERSPECTIVES ON RACE, ETHNICITY, AND HUMAN RIGHTS

Edited by Filomena Chioma Steady
Addressing the newly formed Organization of Afro-American Unity, Malcolm X called for African-Americans to "internationalize our problem." He hoped to take racism and its progeny—discrimination, poverty, unemployment, lack of access to quality education, housing, health care, and attempted cultural genocide—to the United Nations.

More than four decades later, after Katrina revealed the continuing impact of race and poverty in the United States, is it time to try again? I pose this question from the perspective of a Katrina “outsider”; I do not live in the Gulf Coast. However, I have friends who were and are directly affected, and, like millions across the country and around the world, I watched in horror and disgust as the administration of


This chapter is dedicated to those who lost their lives as a result of the Gulf Coast catastrophe; to the survivors who still struggle to resist, rebuild, and remember; and to the volunteer and professional rescue workers. I appreciate the research assistance of Kaleema Al-Nur, Constance Utada, and Stephanie Woldenberg, as well as that of research librarian Kyle Courtney. I also thank Dr. Filomina C. Steady and my mother, Blossom Stephenson, for their help and encouragement.

An earlier version of this chapter was presented at a symposium on “Environmental Justice Cross-Culturally: Theory and Praxis in the African Diaspora and in Africa” (Wellesley College, November 9–10, 2007). It also draws on talks delivered at the Society of American Law Teachers (Suffolk University Law School, September 9, 2006) and at the Program for Sustainable International Development, Heller School for Social Policy and Management (Brandeis University, March 16, 2007).
President George W. Bush, and many state and local officials, abandoned and mistreated thousands of poor people of color. This chapter therefore raises three related questions in an attempt to “internationalize” the many problems of Katrina from a human rights perspective:

First, where was the “embarrassment effect” most human rights advocates rely on in combating human rights violations? It seemed to be missing in the immediate aftermath of the disaster and still appears to be far too mild years later. Second, where do human rights belong in the activist and legal responses to the catastrophe? Finally, which human rights are implicated by these events?

If we needed reminding, Spike Lee’s 2006 documentary *When the Levees Broke* showed us the unforgettable once again. We watched in horror and disbelief as our people (any people!) were abandoned to suffer or die in overcrowded and poorly supplied arenas, nursing homes, hospitals, and attics, treated with fear and brutality, shot at, condemned as “looters” in the midst of a disaster of unprecedented proportions, and (too late) herded onto buses and planes toward unknown destinations. A large percentage of those who died were elderly; estimates of the number of people displaced ranged from 600,000 to more than one million.

More than two years later, many are still separated from family, friends, community, and culture; they lack access to physical and mental health care, education, and the ability to effectively participate in rebuilding and development plans. Suicide and depression rates are high. Access to jobs is constrained by the lack of affordable housing, the rebuilding of tourist-attractions takes precedence over the right of individuals and families to return. They still experience the environmental effects of the toxic waste that flooded the region (or the fumes given off by toxic Federal Emergency Management Agency [FEMA] trailers).

Although the hurricane and flooding affected people of all races in the region—African American, white, Latino, Native American, and Asian American—the combined effects of racism, classism, nativism, and the neglect of the elderly and people with disabilities had a disproportionately negative impact on poor people of color.

Nevertheless, those who looked for it also saw many of those same poor people of color demonstrate the strength, resilience, resistance, organizing skills, and cultural solidarity necessary to combat these continuing abuses. They were not merely victims. Television cameras documented ordinary men and women lifting the elderly and children onto their backs to avoid the standing water, hacking through attic
roofs to save neighbors, or navigating fishing boats to rescue those otherwise unable to escape. The fact that more did not die is due not only to the bravery of the helicopter pilots and professional rescue workers and volunteers from around the country who risked their lives to help (some without official sanction) but also to the individual and collective acts of bravery and humanity demonstrated to each other by the survivors themselves.

**A Human Rights Crisis?**

For those of us in the human rights movement, it seemed natural to see Katrina and its aftermath as both a massive international humanitarian disaster and a human rights crisis. This was not just the awful result of a huge storm having hit a densely populated area necessitating the marshaling of public and private humanitarian aid. It also revealed governmental inaction and affirmatively abusive actions before, during, and after the storm hit that implicate international human rights standards.

Shortly after the storm, grassroots activists and lawyers in the region organized hearings at which survivors testified to United Nations and other international officials about their experiences, while other organizers submitted a complaint to the Inter-American Commission on Human Rights. Jeanne Woods, a professor at the Loyola University (New Orleans) School of Law, and I submitted a statement on Katrina to Dr. Arjun Sengupta, the UN official responsible for reporting on poverty and its related human rights violations. He visited the Gulf region as part of his mission to the United States and later issued reports elaborating U.S. failures.

Observing the second anniversary of the disaster, grassroots groups organized an “International Tribunal on Hurricanes Katrina and Rita.” They charged governmental authorities with human rights and humanitarian violations, alleging police brutality, environmental racism, misappropriation of relief, and the destruction of public housing and poor neighborhoods in favor of gentrification. They demanded the right to return, compensation for victims, truly participatory approaches to the rebuilding effort, and the housing, health, and educational services necessary to restore their communities.

By late 2007 and early 2008, U.S.-based nongovernmental organizations (NGOs) used the opportunity created by an official UN review of U.S. law and practices on racial discrimination to draw international and domestic attention to the abuses surrounding Katrina.
They issued "shadow reports" criticizing the United States’ failure to meet its obligations under the UN Convention on the Elimination of All Forms of Racial Discrimination.\(^{20}\) That effort prompted the UN Committee responsible for reviewing U.S. compliance to issue several strong criticisms and to request that the administration of then-President George W. Bush immediately respond to the needs of people in and from the affected region.\(^{21}\)

Despite such encouraging efforts to seek international legal and political attention for abuses and problems within the United States, the international implications of the storm were not self-evident to most Americans at the time of the storm or even much later.

**Superpower to the Rescue?**

The realization that the economically and technologically powerful U.S. government had the capacity to prevent or ameliorate much of the devastation and human suffering intensified the sense of alienation many survivors experienced. As the world’s remaining superpower (for now), the United States has the economic, military, and technological resources necessary to minimize the human impact of natural and man-made disasters almost anywhere within its borders and even outside them. At least that's the story.

In the angry outcry following Katrina, some activists questioned why the United States' response to foreign disasters seemed to have been more quickly and efficiently accomplished. Still, perceptions that U.S. official (as opposed to private charitable) foreign disaster aid is evidence of a particular generosity of spirit by our government are misleading.\(^{22}\) Political, economic, and military alliances, strategic concerns over access to resources and trade routes, our declining reputation in the international community, the threat of popular uprisings or terrorism in "failed states," and the presence of Western tourists and journalists (and their video cameras) in a region all influence the rapidity and amount of U.S. international relief efforts. We saw this demonstrated in the December 2004 South Asian tsunami, a disaster of global proportions.\(^{23}\) The tsunami was a massive disaster, the likes of which had not been seen in modern times, but I dare say it might well have received less attention in the west if European and American tourists and video cameras had not been present.

Nevertheless, the fact that foreign aid may be motivated by political or other nonaltruistic considerations should never serve as a smoke-screen for governmental callousness or incompetence in the face of
emergencies, as illustrated by the Burma/Myanmar catastrophe of early May 2008. The world watched for weeks as the military junta in control of Burma (which they call “Myanmar”) played with the lives of hundreds of thousands of its own people by refusing to accept the human and other assistance necessary to address the disaster.

WHERE WAS THE EARLY “POLITICAL RESPONSE” TO KATRINA?

The international human rights legal system was created with deliberately weak enforcement and implementation mechanisms on the international level. There is no “global government” that will hold state violators fully accountable. The human rights system depends, instead, on national governments to give meaning to the broad rights elaborated in international legal documents and declarations. Such a system is akin to asking the fox to guard the chicken coop, but it is the best we have so far. It reflects deep-seated tensions and conflicting interests that continue today among UN member states. The need for international cooperation to address cross-border or global issues, such as environmental hazards, the sharing of natural resources, transnational violence, global poverty, and pandemics, operates in contrast with each national government’s desire to retain as much sovereignty as possible over its country’s affairs.

Still, the human rights movement has deployed at least one significant source of pressure that makes some governments act on human rights priorities—naming, shaming, and the public outrage and “interest convergence” resulting from an “embarrassment effect.” Depending on the political circumstances, NGO and UN reports, accompanied by press releases, media attention, protests, and other direct public actions, occasionally make politicians sit up and take notice or risk the political cost. Yet, even this “embarrassment effect” was, and still is, delayed in the response to Katrina. The scope of the physical and social devastation, the race and class implications, and even the economic and cultural impact on the entire country, should have been obvious early in the crisis. News media covered the events around the clock, op-eds appeared in every mainstream and alternative outlet, and outraged e-mails and blog posts appeared with firsthand accounts of the abuses and chaotic or nonexistent official response. The legendary musicians, artists, and dancers of the New Orleans cultural Mecca had fled or were caught up in the flood.
It was only after several days had passed, when New Orleans Mayor Nagin was literally cursing and shouting for help on the radio, CNN reporters stood crying on air as bodies floated past, and angry survivors were asking whether they were truly going to be left to die in the Superdome and Convention Center, that the Bush administration began to wake up to the political cost.

Years later, that administration still was not sufficiently "embarrassed." It revved up the spin machine in the form of presidential visits to the region, feel-good photo-ops, and promises of billions of dollars in aid that were supposed to trickle down smoothly from the disaster rebuilding industry. Despite this, local activists, recent media reports, and several participants in this symposium let us know that the emergency continues in a very real way for the hundreds of thousands affected. Such Bush administration spinning, accompanied by what Harry Belafonte called "the arrogance of power," was not to be sustained. The American people finally gathered the political will to end it by electing President Barack Obama in late 2008.

WHERE DO HUMAN RIGHTS BELONG?

On the international level, the Hyogo Declaration on Disaster Reduction, issued shortly after the South Asian Tsunami, provides that "states have the primary responsibility to protect the people and property on their territory from hazards and . . . to give high priority to disaster risk reduction in national policy, consistent with their capacities and resources available to them." There was no question, here in the land of plenty, that the United States had the "capacity" and "resources available" to respond to Katrina. Even if that had not been the case, countries from both Global North and Global South, whether allies or enemies, offered help in the form of cash, supplies, medical personnel, and other assistance to the U.S. government; a significant amount was refused.

Similarly, morally and politically authoritative "Guiding Principles" on internal displacement include state obligations to protect people from disaster and to provide for their needs, as well as for the right of return and other human rights. Governments bear the primary responsibility for protection of inhabitants, amelioration of a disaster's effects, and for ensuring that human rights are respected. Those rights include the fundamental panoply of civil, political, economic, social, and cultural rights. Groups that may be particularly vulnerable to discrimination or exploitation, such as women, children, minority
groups, persons with disabilities, and the elderly are to be provided special protections. Displaced persons have the right to participate in the rebuilding process and the right to return to their lands.

Some questioned the relevance of international standards to an American disaster. This is, after all, the United States, is it not? Do not human rights and other international standards belong outside our borders? How could the United States be embarrassed on the international stage as a human rights violator?

Black and poor Americans were struck in the face again with the fact that their "American-ness" was not as solid as might have been expected by the rhetoric of equality. They were called "refugees" and treated as outsiders in their own home. For most African Americans, the long and continuing history of racial discrimination and economic disparity facing people of color in the United States was not new. Still, for a public grown accustomed to reading daily about individual killings of young African-American people, or dry statistics about economic, educational, and health disparities, the stark videos of post-Katrina misery on a mass scale could not be denied.

Those Latinos and other immigrants in the region who did not have formal U.S. "citizenship" status were once again reminded that not even their basic human rights to food, water, a living wage, housing, and health care could be depended on.

Unscrupulous contractors in the tourism and construction industries recruited undocumented workers from Latin America, deliberately overlooking local African Americans and Native Americans from the region who were ready and willing to work so that they could try to avoid wage and labor protections. Many Latino workers were underpaid or not paid at all, exposed to hazardous chemicals and waste without protective gear, and made to live in outdoor camps.

We lawyers and legal academics are trained to see Katrina through specific legal lenses—racial discrimination, elder and disability discrimination and neglect, civil rights, poverty law, property law, labor and employment law, public health, environmental law, juvenile and education law, prisoners' rights, or immigrants' rights.

But what went on in the Gulf Coast of the United States, as should now be clear, was also a wholesale and multidimensional failure to respect, protect, and fulfill any number of internationally recognized human rights and protections for internally displaced persons (IDPs). When everything is at stake, a multidimensional approach is not just natural, it is crucial. Each discipline must bring whatever it has to offer to the table. Critical race theorists and other Third World scholars
have argued for such a complex, textured intervention to global issues facing people of color.\textsuperscript{40}

International human rights legal activism is one more tool among other social justice efforts. The advantage of this particular tool is that it is broad enough to take in the amazing variety of complex abuses that occurred, as well as to set them in global context. Is applying human rights strategies to Katrina just a “pie in the sky” exercise? Although I am a wholehearted advocate for human rights, the truth is that the ultimate answer will depend on whether the people of the region, wherever they now are, will embrace such an approach. They must be in the lead in deciding where to go from here.

There is reason for hope that international human rights strategies might make a difference. Organizations like the Mississippi Workers’ Center for Human Rights\textsuperscript{41} had already been working in the Deep South against racial discrimination and violent abuses in the workplace using a human rights framework. As previously noted, coalitions of NGOs and grassroots groups have documented the stories of survivors on video or in testimony to panels and tribunals such as those held at the U.S. Social Forum in Atlanta\textsuperscript{42} or at the International Tribunal on Hurricanes Katrina and Rita in New Orleans in 2007.\textsuperscript{43} The U.S. Human Rights Network, representatives of indigenous peoples, and other NGOs have taken the issues to UN bodies in Geneva. Rather than staid recitations of bloodless human rights violations, these events have involved dramatic, survivor-driven, expressions of lived personal experience, outrage, and healing.\textsuperscript{44}

In early 2007, the United States submitted a report on its legal and policy responses to racial discrimination to the UN Committee on the Elimination of Racial Discrimination.\textsuperscript{45} The official U.S. report made very little mention of Katrina.\textsuperscript{46} An NGO coalition shadow report therefore detailed the discriminatory impact of the post-Katrina response among other abuses; their work resulted in promising official reactions by the UN Committee.\textsuperscript{47}

\textbf{Which Human Rights Are Implicated by the Katrina Catastrophe?}

Americans are used to hearing about civil and political rights violations in the domestic context: racial and gender discrimination, voting rights violations, abuses that imprison disproportionate numbers of African-American and Latino men and women, and racially motivated violence. Since the founding of the United Nations, officials under
most U.S. administrations were more comfortable talking about (if not protecting) such civil and political rights.48

Because international human rights documents that address civil and political rights, such as the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, could fit more comfortably with American legal traditions, it was said, the United States ratified them after much hand-wringing and decades of resistance.49 Historians situate this initial resistance squarely in post–cold war fears that African Americans and Native Americans would be provided the legal support to charge the U.S. government with attempted genocide, given its bloody treatment of racial minorities.

For many human rights activists in the United States, therefore, it seemed natural to focus first on the many and outrageous civil and political violations associated with Katrina. Freedom of movement was implicated when survivors were forcibly stopped from attempting to reach safety outside New Orleans. The basic rights to life and the prohibition against torture and cruel treatment were involved when prisoners were left in flooding jails. The broken criminal justice system allowed others to languish in jails without due process. The voting rights of displaced survivors were threatened. And the racial discrimination that infected many aspects of the response remains the subject of civil rights analysis.

But it is those "other," even more threatening, human rights—clean water, food, physical and mental health care, a safe place to sleep, a living wage, education, the enjoyment of our cultures in community with one another—that the United States has the most trouble accepting.50 It is not a party to the International Covenant on Economic, Social, and Cultural Rights,51 which explicitly protects those rights. Some human rights activists also failed to directly articulate the need for such rights.

Even many countries that have ratified the Economic and Social Covenant treat these socioeconomic and cultural rights as the stepchildren of the human rights movement. Courts can not adjudicate such rights, they say.52 Domestic and regional courts from South Africa to Europe to Latin America are proving the naysayers wrong.53 For those rights to be fully realized, however, more than court decisions are necessary. People at the grass roots must see these basics as fundamental rights that should be protected for all. It is ultimately those same people who must then hold governments and other actors accountable.
Some such economic, social, and cultural rights also appear in the Race Convention, but U.S. administrations have so far taken the position that even ratified international human rights treaties should not be interpreted as directly actionable in U.S. courts without domestic implementing legislation. Some argue that we already provide for these things to all who need them in the United States. Even though such social and economic needs are not generally provided in the U.S. as a matter of affirmative "right" that can be enforced in the private sphere, it is said that they are adequately addressed through our social welfare system. Katrina gave the lie to that notion as well.

**CONCLUSION: THE EYES OF THE WORLD?**

Katrina has been placed on the international agenda, and we are only beginning to see formal reactions in international legal and political bodies. But formal international petitions, reports, and concluding observations can have no real impact on the ground unless the spotlight is kept bright and pressure is maintained.

United Nations bodies such as the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Independent Expert on Human Rights and Extreme Poverty, the Special Rapporteur on Housing, and the Independent Expert on Minorities have issued reports and statements unmasking the shameful racial and class implications of U.S. action and inaction before, during, and after Katrina as what they are—human rights violations on par with many of those we condemn elsewhere in the world. The organizers of the International Tribunal on Hurricanes Katrina and Rita were aware of the internal and external functions of the human rights strategy when they stated the following goals:

1. To fully expose to the world the human rights abuses committed by the U.S. government and its agencies and operatives in the aftermath of Hurricanes Katrina and Rita
2. To attain national and international recognition as IDPs for all the survivors of Hurricanes Katrina and Rita
3. To attain comprehensive reparations for all Gulf Coast IDPs (including migrant workers and communities)
4. To strengthen the Gulf Coast Reconstruction Movement and build a broad national and international movement in support of its aims and demands
5. To hold the rogue U.S. government accountable for its human rights abuses and crimes against Gulf Coast IDPs

Lawyers, activists, and ordinary people must continue to use such international platforms wherever they can—in courtrooms, in the media, in state and federal agencies, and in the classroom. Ultimately, even if they did not shame a Bush administration that did not appear to be easily embarrassed, they do empower us to recognize and demand the respect and services that are the rights of every human being.

We know that Katrina was not the last disaster of such devastating proportions. The impact of global climate change, industrial pollution in urban centers, illegal dumping of toxic waste in poor neighborhoods and in the Global South, inequitable agricultural production and high food prices, distribution, and trade policies, the privatization of water, and inadequate building standards all play roles in causing natural and man-made disasters. As this chapter was going to press, the new U.S. administration under President Obama was also facing an economic crisis of global proportions. Still, such events also teach us that such disasters need not be accompanied by the unnatural disaster of abuse, neglect, and racial injustice.

**Notes**

1. "We have to make the world see that the problem that we're confronted with is a problem for humanity. It's not a Negro problem; it's not an American problem. You've got to make it a world problem, make the world aware that there'll be no peace on this earth as long as our human rights are being violated in America" (Malcolm X, 1970[1964], p. 86).
5. U.S. Department of Health and Human Services, 2009, reported 1,800 deaths in the region that were directly related to the storm, but that number does not include subsequent deaths from related illnesses, injuries, or suicides from mental health problems; ACLU, 2007; Muñiz, 2006.
16. We had recently completed a textbook on the use of international economic, social, and cultural rights strategies for addressing poverty and racial discrimination in the United States and globally. Woods & Lewis, 2005a.
24. Estimates are that 84,000 people died, 53,000 are missing, and millions were displaced or injured as a result of Cyclone Nargis and the military junta’s callous response to the emergency. Human Rights Watch, 2009.
31. Phee, 2008. Even during the closing days of his administration, then President George W. Bush caused a public and media furor over his final efforts to defend federal failures in the response to Katrina.
34. CREW, 2007.
35. Deng, 1998 (report of the UN Secretary-General’s Independent Expert on Internal Displacement to the Commission on Human Rights).
36. Lewis, 2006c.
41. Mississippi Workers’ Center for Human Rights, n.d.
42. United States Social Forum, 2007; Peoples’ Hurricane Katrina Relief Fund and Oversight Committee, 2007.
44. Peoples’ Hurricane Katrina Relief Fund and Oversight Committee, A Katrina Reader (n.d.).
52. Roosevelt, 1951, pp. 85–88 (arguing that economic and social rights are not justiciable).
54. ICERD, 1965, article 5(e).
56. Lewis, 2008; United Nations Human Rights Committee, 2006 (Katrina-related concerns under the International Covenant on Civil and Political Rights); CERD, 2008 (Katrina-related concerns under ICERD); Sen-gupta, 2007; United Nations Department of Public Information, 2007 (housing rights and discriminatory evictions).
60. “China anger over ‘shoddy schools’” 2008 (allegations that the deaths of thousands of children during a massive May 12, 2008, earthquake resulted in part from poor school construction due to corruption). The quake killed 87,000 people and an estimated 5 million more were displaced.
REFERENCES


American Psychological Association. (2006, August 7). One year after Katrina, more is known about its mental health effects; Storm’s widespread effect on people of color and children and the need for culturally competent mental health services are evident. Retrieved February 15, 2009, from http://www.apa.org/releases/katrina06.html


250

HOPE LEWIS


U.S. officials: "We're not stingy": Comments on tsunami aid hit a Bush administration nerve. (2004, December 29). *CBSNews.com.* Retrieved February 15,


