Consultative Meeting on Law and Disasters

November 13-14, 2014, Toluca, Mexico

FINAL REPORT (1st draft- English Version)
1. BACKGROUND

The Government of Mexico, the Mexican Red Cross and the International Federation of Red Cross and Red Crescent Societies ("IFRC") convened this consultative meeting to evaluate progress and promote future advances in disaster law. The meeting brought together representatives from 18 countries of Latin America and the Caribbean, including representatives from civil protection departments and foreign ministries. The meeting addressed two main themes: the regulation of international disaster response and legislation for disaster risk reduction.

With regard to the regulation of international disaster response, participants noted that the unanimous adoption of the Guidelines for the domestic facilitation and regulation on international disaster relief and initial recovery assistance ("IDRL Guidelines") \(^1\) at the 30\(^{th}\) International Conference of the Red Cross and Red Crescent in 2007 was the culmination of a broad process of research and consultations begun in 2001. The adoption of the IDRL Guidelines was a key point in the development of a global reference framework for national facilitation and regulation of international disaster assistance operations.

Since then, the governments of more than 40 countries, with support from their National Societies, have evaluated their laws and procedures for managing international assistance in cases of disaster, using the Guidelines as a reference and tool for analysis. Eighteen countries have adopted new laws or regulations based on these recommendations and diverse draft legislation is pending in some 14 countries, representing significant progress but still insufficient to ensure better performance in all relief operations.

With regard to law and disaster risk reduction (DRR), it was pointed out that legal and institutional frameworks were highlighted in “Priority 1” of the Hyogo Framework for Action and it is widely acknowledged that legislation plays a key role in reducing risks. However, there is a very limited specific information available about what works and what does not in legislation relevant to DRR.

In July, the IFRC and UNDP launched a jointly-undertaken comparative study\(^2\) on legislation and disaster risk reduction in 31 countries to begin to fill this information gap. They are currently consulting on a “Checklist on law and disaster risk reductions,” intended mainly as a tool for assessing national laws.

At the time of this meeting, negotiations were ongoing on the development of a successor instrument to the Hyogo Framework, in preparation for the World Conference on DRR to

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\(^1\)http://www.ifrc.org/en/what-we-do/idrl/idrl-guidelines/

\(^2\)IFRC-UNDP. Effective Law and Regulation for Disaster Risk Reduction. Geneva. 2014
take place in Sendai, Japan in March 2015. As yet, the degree of attention that this document would place on legislation was not certain.

2. OBJECTIVES

The discussions and reflections at the Consultative Meeting held in Toluca were based on achieving the following objectives:

- **Consult** the states of the Americas and the Caribbean (Civil Protection and Civil Defense Units, and foreign ministries), National Red Cross Societies, and other key stakeholders regarding possible ways to accelerate progress in the regulation and facilitation of international assistance, including the possibility of developing a binding global instrument in the field of international response facilitation, in light of the project by the International Law Committee and the experience with IDRL Guidelines.

- **Share** the rate of progress in the legislative field and of DRR at the global level after 10 years of implementation of the Hyogo Action Framework and present a Checklist on Law and Disaster Risk Reduction as a tool to achieve better legal development in that field in the Post-Hyogo scenario.

- **Stimulate** global discussion on the legal facilitation of international response and development of efficient DRR legal frameworks.

- **Position** the Americas as an essential and indispensable actor in the development of this intercontinental agenda, in order to place these topics at the 32nd International Conference of the International Federation of the Red Cross and Red Crescent in 2015, the Sendai International Conference of 2015 and the Global Humanitarian Meeting of 2016.
3. ANALYZING THE REGULATORY CHALLENGES FOR INTERNATIONAL RESPONSE

Participants agreed that legal preparedness for international disaster response continues to be a challenge in the Americas. Despite notable national and regional progress, excessive bureaucracy and/or a notable lack of internal norms persist, which continues to allow bottlenecks to hamper international response. These weaknesses have a direct effect on the provision of international assistance and on the coordination among multiple actors, impacting on the protection of communities affected by disasters.

Regulatory atomization or lack of norms are factors that also contribute to a less organized and slower response.

Regulatory problems in the field of international assistance persist in diverse areas, which range from importation of humanitarian goods to the dispatch of inadequate consumables, and include restrictions on professional practice and lack of authorization of the response in key sectors, among others.

Operational bottlenecks do not arise solely in the country receiving the assistance. Organizing the various entities responsible for providing external response to other countries can also be challenging. In this sense, both the affected states and the actors that provide assistance share responsibility in the search for comprehensive regulatory solutions that would resolve persistent regulatory barriers.

Certain elements of solidarity and affinity among states in requests for international assistance continue to be favored. However, the mechanics of such responses collide with regulatory processes developed at the technical level. Maintaining a balance between the political will to assist and be assisted and the technical needs of assistance continues to be a challenge that regulatory frameworks in this field have not yet been able to surmount. It is not only a regulatory process, but also an internal and external pedagogical process.

The regulatory framework within the states of the region has become sophisticated and the IDRL Guidelines over the last seven years have helped to guide these developments, many of which show an extraordinary level of inter-sectorial, inter-institutional and even inter-governmental integration. However, at the time of the response itself and of its applicability, gaps in internal coordination persist that have repercussions in facilitating the response. Closing the gap between the existing norms, protocols, guides and manuals and their effective application is a challenge that goes beyond legal elements and has more to do with systemic and operational elements of national response.

At the national level, the existence of regulatory frameworks that govern visa procedures, importation and exportation of humanitarian goods, equipment or inputs and the issuance of work permits for humanitarian workers, among other aspects, is a guarantee of success as long as these elements are applied under flexible systems of regulatory exceptionality. These must be clear and previously defined and provide protection for government officials who must approve them, thus fostering a high degree
of predictability and low margins of improvisation. The approval of legislation drawing on existing Model Acts\(^3\) can favor this integrating and holistic approach.

At the external level, response continues to show gaps in terms of **coordination, standardization and uniformity**, such as in the deployment of international medical teams (FMT) or search and rescue teams, despite progress made by the INSARAG group.

Communications channels between the affected states and the actors who provide assistance must be predefined through coordination protocols, beyond bilateral diplomatic relations. **Facilitating international humanitarian assistance is a task, above all, of a technical nature, which must mainly be developed through technical preparedness.**

It is in the interest of the states, the National Societies of the Red Cross in their role as auxiliaries for governmental agencies, of international bodies, donors and other actors in the region to continue to improve regulatory frameworks and their effective applicability.

Although each state has a different constitutional base, a different legislative framework and a different political sensitivity in this field, the generation and development of **Inter-institutional national structures**\(^4\) (in the realms of customs, visas, security, foreign relations, national disaster risk management agencies, airport infrastructures, the National Red Cross and other key sectors) is fundamental to foster the connection between the laws and regulations that govern regular processes, exceptional procedures in case of disaster, the operational dynamic of the response, both internal and external, and coordination as a whole. These legally constituted structures must also be conceived as a guarantor and a filter that limits discretion at the time of the response while at the same time serving as an organ that constitutes a framework for **legal security in decision-making.**

In the same sense, **cross-border cooperation** needs to be strengthened. Disasters have no borders and in the region of the Americas there are initiatives that must be reinforced. The objective is not to limit response to areas near borders but rather to **take advantage of geographical proximity, good neighbor relations and common challenges** as elements to develop **regulatory frameworks for mutual assistance in areas of common interest.** These developments must be accompanied by **practical exercises for simulations and drills** that help to grease the wheels of legal mechanisms and their application.

### 4. REFLEXIONS ON WAYS TO ACCELERATE THE PROCESS OF INTERNATIONAL RESPONSE FACILITATION, INCLUDING THE RELEVANCE OF AN INTERNATIONAL IDRL TREATY

Seven years after the approval of the IDRL Guidelines, some 18 states have **transformed their internal legislation** to facilitate international assistance in their territories in case of


\(4\) The development of National IDRL Committees, which bring together national actors with responsibilities in this field, is a preparatory exercise that facilitates interinstitutional dialogue.
disaster, using the IDRL Guidelines and other instruments as the basis\(^5\), which the IFRC has
developed in this field. Those regulatory processes, of a national and also sub regional character\(^6\), have produced positive results, but continue to be insufficient due to lack of
uniformity and because of the delay in developing more comprehensive national systems for
managing international assistance.

The level of developments in the region of the Americas has diverse speeds and
dynamics. The states and sub-regional entities have made internal progress, improving
their legal preparation, whether in specific aspects such as visas or customs, as in Mexico
or Peru, generating collegial bodies in the field of IDRL within their respective countries, as
in the case of Colombia, promoting comprehensive processes based on the
OCHA/IFRC/IPU Model Act on IDRL, as in Guatemala, or generating sub-regional
instruments to facilitate cross-border response, as in UNASUR, CDEMA, CEPREDE
AC or CAPRADE. These sub-regional developments and systems to promote mutual assistance
among countries must still improve their connectivity with assistance provided from outside
the region.

Over the same period of time, the International Law Commission (ILC), an organ of the
United Nations General Assembly, has been working on a set of “Draft articles on the
protection of persons in the event of disasters.” The ILC completed its “first reading” of the
draft articles this year and the document has been sent to states for their comment. It is
expected that the final version of the draft articles will be presented to states with a
recommendation that they form the basis of a new global treaty in 2016.

Participants considered the development of a global treaty as a strategic step in the
promotion of regulations to facilitate assistance. However, an initiative of this type implies
risks and challenges both in advocacy work to obtain a broad international consensus,
as in future implementation at the national level. A treaty is considered a starting point to
enable states to modernize their internal legislation. It is a means rather than an end,
considering the nature of the work that it should promote.

In that sense, the development of a global instrument or treaty would be a strategic step in
the promotion of regulations to facilitate assistance. Participants felt that the main added
values of a new global instrument would be:

- It would establish regulations of a binding nature for the states and the international
  humanitarian community.
- It would organize apolitical-technical dialogue between the affected states and the
  actors providing assistance.

\(^5\) In this regard see Model Act for the Facilitation and Regulation of International
Disaster Relief and Initial Recovery Assistance. IFRC. 2013. \text{http://www.ifrc.org/docs/}
IDRL/LEY\%20MODELO\%20ESPA\%cc\%83\%OL.pdf
See also Model Emergency Decree. IFRC2013. \text{http://www.ifrc.org/what-we-do/disaster-
law/international-disaster-response-laws-rules-and-principles/draft-model-emergency-decree/}

\(^6\) It is worth pointing out the 1991 OAS Inter-American Convention to Facilitate Assistance in Cases of Disaster,
which is binding. In the sub-regional and nonbinding realm, CDEMA, CEPREDE
AC, CAPRADE and UNASUR have developed or are developing Manuals, Guides and Protocols to facilitate international response within the
countries of the region and in the realm of cross-border cooperation.
It would favor a more uniform regulatory development from the global to the local and from the local to the global levels.

It would favor greater homogenization in regional and sub-regional realms, along with better cross-border cooperation.

It would promote and guide states in developing their internal regulations to facilitate international humanitarian assistance.

It would give states affected by a disaster a binding global legal mechanism to clarify roles, duties and rights in the field of assistance.

It would facilitate channeling solidarity from the international community based on more recognizable international processes and standards without losing sight of the implicit perspective of rights.

It would favor accountability to a global and national society that demands a transparent and coordinated response based on humanitarian needs and with recognizable and measurable impact.

It would support the role of the National Societies of the Red Cross and Red Crescent as an auxiliary of government agencies in their respective states.

To gain approval of any regulation of this kind, it would be advisable to:

- Offer states an attractive text that maintains sufficient thresholds in terms of sovereignty, identifying sensitive points for carrying out a frank dialogue.
- Make the argument to the states on behalf of the virtues of an instrument of this kind so that it would be perceived as an opportunity and not as a threat.
- Develop a broad consultative process at the national, regional and global levels to show the comparative advantages and address diverse sensitivities, seeking global consensus in this field.
- Use humanitarian diplomacy as the strategy for persuasion in this process, with support from the National Societies of the Red Cross and Red Crescent.

In this sense, meeting participants expressed that a global treaty would offer substantial added value and an essential point in the global dialogue at the next Conference of the International Federation of the Red Cross and Red Crescent in 2015 and at the World Humanitarian Summit in 2016.

5. PROMOTING BETTER LEGAL FRAMEWORKS IN THE FIELD OF DISASTER RISK REDUCTION

The global report entitled “Effective Law and Regulations for Disaster Risk Reduction”7drafted by the IFRC and UNDP made it possible to identify progress and regulatory gaps in the field of laws and regulations and DRR as well as to establish comparative elements between the different types of law and progress in this field, from the perspective of the Hyogo Action Framework process. The report contains 5 major findings.

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7The study has focused on 31 countries.
First of all, regulatory frameworks in the field of DRR tend to place a significant part of the responsibility at the local levels. However, these levels lack specific budgetary allocations and human resources to adequately carry out such work.

Secondly, there is still a tendency to develop regulatory frameworks that allocate more resources for response than to develop comprehensive DRR actions.

Thirdly, gaps persist in terms of legal responsibility for non-fulfillment of regulations in the field of DRR as well as oversight and sanction mechanisms.

Fourthly, existing regulatory frameworks to a great extent lack a process for consultation upwards from the community, including the development of early warning and risk mapping systems.

Finally, the sectorial nature of DRR is present in such areas as the development of earthquake resistant construction codes, regulations about land-use and territorial planning, the drafting of environmental regulations and in regulatory climate change developments. However, there is no holistic and integrating vision of many of these sectorial processes.

All of these aspects, among others, must be addressed and given prominence during the post-Hyogo process.

During the Toluca meeting, progress was presented regarding legal aspects and DRR that Colombia, Jamaica and Mexico have achieved.

The case of Mexico is particularly noteworthy, in that it adopted a national law in 2012 to promote harmonization and homogenization of frameworks between the federal and state levels, which indicates a strong political commitment to this process. This commitment is also found in an allocation of funds in the field of education about risk and in the development of training instruments in risk management.

In the case of Colombia, Law 1523 has shown a renewed impulse in the field of DRR in that country, following the floods of 2010 and 2011. One of its main characteristics is that the structure governing the system (UNGRD) has a nearly ministerial rank and a 360° vision of the entire RRD cycle, based on 3 pillars (knowledge, reduction and response).

The case of Jamaica is a good example of regulatory evolution from a perspective predominantly based on emergencies towards an approach that is more integrated with DRR. This change of paradigm in Jamaica is facilitating progress in developing DRR plans, in their follow-up and in the allocation of funds for their implementation. At the same time, sectorial elements that must be part of DRR, such as the review and adaptation of building codes, are also receiving renewed legal impulse.

To enable states and lawmakers to assess their laws and regulations against key indicators of success, the IFRC-UNDP are developing a “Checklist on Law and Disaster Risk Reduction”, a draft of which was discussed at the Consultative Meeting in Toluca.

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completion of the consultation process in 2015, the promoters plan to “pilot” the use of the checklist in several countries The main points shared regarding this instrument by participants were:

- It is a **practical tool and a good reference guide**.
- It is a **guiding** tool for developing efficient regulatory frameworks in DRR at the national level.
- It facilitates a **cross-cutting multi-sectorial approach** in the development of disaster risk management laws at the national level.
- It strengthens **technical knowledge** of subnational entities regarding regulatory aspects of DRR.
- It contributes to greater **awareness among decision-makers**. It is an **advocacy** tool.
- It can help to generate **common practices** in the field of DRR legislation.
- The verification list must be framed and **adapted to the realities** of DRR in each country.
- It is an instrument that can help to **clarify roles and competences** in this field. It is an instrument with an important **pedagogical** level.
- It is an instrument for building public policy.

The upcoming World Conference on Disaster Risk Reduction in Sendai and the 32nd International Conference of the International Federation of the Red Cross and Red Crescent will be favorable venues for discussion of the legal perspective in terms of DRR. The discussions at the Toluca Meeting presented three lines for advocacy and action at these global forums:

First of all, **DRR regulatory processes must be viewed as a cross-cutting instrument** in relation to diagnosis, planning, budgeting and execution. The significance of a DRR law must go beyond legislating in of itself. The approval of such a law is just the beginning of a process, not an end.

Secondly, it is advisable for regulatory frameworks to define the **creation of a monitoring and evaluation system based on process and impact indicators**. Social transformations in the field of DRR generated by regulations need to be measured, which is one of the gaps perceived at the end of the 2015 Hyogo Action Framework.

Finally, DRR regulatory constructions must be conceived based on knowledge of the **territorial realities** and translating **community practices and wisdom**.

### 6. CONCLUSIONS

The following are the most important conclusions from the Consultative Meeting:

**On the elimination of regulatory barriers in the facilitation of international disaster assistance:**
There is a need to continue to promote greater technical-political dialogue to mitigate discretionary decisions in the field of international assistance, both within states and in their relations with international assistance providers.

Exceptional regulatory frameworks, which regulate international humanitarian assistance in case of disasters, must reinforce their connection to practical and operational elements of the response to guarantee effective application of the regulations.

The development of interinstitutional and inter-sectorial organic coordination structures within the states, which involve key institutions and foster connections between regulatory and operational aspects, is indispensable during the preparation period.

Promoting comprehensive regulations on IDRL favors internal–external dialogue and its application.

Increased legal preparedness from a cross-border perspective through simulations and/or drills (or other initiatives) taking advantage of regional structures and common interests, must be a constant practice.

The National Societies of the Red Cross and Red Crescent are strategic partners of the states, societies and communities in disaster response and in building resilience.

On measures to accelerate the process, including the relevance of a binding global IDRL instrument:

The development of a binding global instrument is relevant to strengthen the commitment by the states to a coordinated and measurable quality response based on common standards that would guarantee accountability and ensure protection for individuals and communities affected by disasters.

At the same time, the development of an obligatory global framework would be very helpful in supporting the states in their process of internal regulatory development.

Interest has been expressed in positioning this topic at the upcoming global, regional and national forums, to create a consultative process that would produce a proposal for a binding global treaty or instrument.

On promoting legal frameworks in the field of DRR:

Each state has specific particularities when developing its regulatory framework in this field, in response to political, economic, social and cultural factors. This makes it impossible to develop a shared framework at the global and regional levels.

There is a need, however, to develop common instruments, based on international experience gained, which would facilitate and guide lawmakers and decision-makers at the national level in building more efficient regulatory frameworks in this field.

The Checklist on Law and Disaster Risk Reduction drawn up by IFRC and UNDP is valued as a useful tool for guiding DRR regulations in the Americas.

The Checklist on Law and Disaster Risk Reduction is more focused on advocacy at the national levels.

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- Developing an instrument of this kind focused on the **municipal levels** is viewed with approval.
- This list must be fed with a set of **process indicators** in order to measure its influence on the building of new regulatory frameworks.
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<tr>
<td>1</td>
<td>Vice Presidency Guatemala</td>
<td>Jennifer Scarlett</td>
<td>Guatemala</td>
<td>Legal Advisor</td>
<td><a href="mailto:scarlettgarcia25@gmail.com">scarlettgarcia25@gmail.com</a></td>
</tr>
<tr>
<td>2</td>
<td>CONRED</td>
<td>Juan Pablo Jiménez</td>
<td>Guatemala</td>
<td>Legal Advisor</td>
<td><a href="mailto:ipjimenez@conred.org.gt">ipjimenez@conred.org.gt</a></td>
</tr>
<tr>
<td>3</td>
<td>CENTRO NACIONAL DE EMERGENCIA</td>
<td>Eduardo Mora</td>
<td>Costa Rica</td>
<td>Head of Legal Counsel</td>
<td><a href="mailto:emora@cne.go.cr">emora@cne.go.cr</a></td>
</tr>
<tr>
<td>4</td>
<td>MINREX</td>
<td>Gisela Botello</td>
<td>Panama</td>
<td>Lawyer in International Matters and Assistant to the Director of Treaties</td>
<td><a href="mailto:gbotello@mire.gob.pa">gbotello@mire.gob.pa</a></td>
</tr>
<tr>
<td>5</td>
<td>ONEMI</td>
<td>Bernardo Castro</td>
<td>Chile</td>
<td>Chief of staff</td>
<td><a href="mailto:bcastro@onemigov.cl">bcastro@onemigov.cl</a></td>
</tr>
<tr>
<td>6</td>
<td>National Ministry of Emergency</td>
<td>Joaquí Roa Bustos</td>
<td>Paraguay</td>
<td>Minister</td>
<td><a href="mailto:celeste.lara@cruzroja.org.py">celeste.lara@cruzroja.org.py</a></td>
</tr>
<tr>
<td>7</td>
<td>Ministry of Foreign Relations</td>
<td>Miguel Anibal</td>
<td>Dominican Republic</td>
<td>Director of Legal Matters</td>
<td><a href="mailto:mpichardo@mirex.gob.do">mpichardo@mirex.gob.do</a></td>
</tr>
<tr>
<td>8</td>
<td>SINAPRED</td>
<td>Norman Mora</td>
<td>Nicaragua</td>
<td></td>
<td><a href="mailto:nmora@sinapred.gob.ni">nmora@sinapred.gob.ni</a></td>
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<td>9</td>
<td>INDECI</td>
<td>Oscar Coello</td>
<td>Peru</td>
<td>Director of National Office of Legal Counsel</td>
<td><a href="mailto:ocoello@indeci.gob.pe">ocoello@indeci.gob.pe</a>/lecheverria@indeci.gob.pe</td>
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<td>10</td>
<td>FEMA</td>
<td>Elizabeth Katchka</td>
<td>United States</td>
<td>Advisor</td>
<td><a href="mailto:Elizabeth.Katchka@fema.dhs.gov">Elizabeth.Katchka@fema.dhs.gov</a></td>
</tr>
<tr>
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<td>Chancery</td>
<td>Marcela Medina</td>
<td>Mexico</td>
<td>Legal Advisor</td>
<td>vickордин<a href="mailto:z@gmail.com">z@gmail.com</a></td>
</tr>
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<td>Victoria Ordóñez</td>
<td>Argentina</td>
<td>Legal Advisor</td>
<td>vickордин<a href="mailto:z@gmail.com">z@gmail.com</a></td>
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<td>Gabriel Suárez</td>
<td>Mexico</td>
<td></td>
<td><a href="mailto:vickordinz@gmail.com">vickordinz@gmail.com</a></td>
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<td>Fabiola Almanza</td>
<td>Mexico</td>
<td></td>
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<td>Mexico</td>
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<td>Heber Ariel Romero</td>
<td>Bolivia</td>
<td>Vice minister of Civil Protection of Bolivia</td>
<td><a href="mailto:vickordinz@gmail.com">vickordinz@gmail.com</a></td>
</tr>
<tr>
<td>19</td>
<td>ODPEM</td>
<td>Paula Robinson</td>
<td>Jamaica</td>
<td>Legal Officer</td>
<td><a href="mailto:vickordinz@gmail.com">vickordinz@gmail.com</a></td>
</tr>
<tr>
<td>20</td>
<td>Risk Management National Unit</td>
<td>Fabricio López</td>
<td>Colombia</td>
<td></td>
<td><a href="mailto:vickordinz@gmail.com">vickordinz@gmail.com</a></td>
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**SUB-REGIONAL ORGANIZATIONS**

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<tr>
<td>21</td>
<td>CAPRADE</td>
<td>Blanca L. Aróstegui Sánchez</td>
<td>Peru</td>
<td>Disaster Risk Management Secretary</td>
<td><a href="mailto:barostegui@pcm.gob.pe">barostegui@pcm.gob.pe</a></td>
</tr>
<tr>
<td>22</td>
<td>FOPREL</td>
<td>Félix González</td>
<td>Peru</td>
<td>Legislative Assembly Representative</td>
<td><a href="mailto:juliohectos@yahoo.com">juliohectos@yahoo.com</a> / <a href="mailto:fgon57@yahoo.es">fgon57@yahoo.es</a></td>
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**PRIVATE ORGANIZATIONS AND COMPANIES**

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<td>Juan Pablo Ofabril</td>
<td>Mexico</td>
<td>Disaster Response National Advisor</td>
<td><a href="mailto:alvarez6@gmail.com">alvarez6@gmail.com</a></td>
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<td>Special Rapporteur</td>
<td><a href="mailto:evalenco@hotmail.com">evalenco@hotmail.com</a></td>
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NATIONAL SOCIETIES

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IFRC

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