



Better laws, safer communities?

Emerging themes on how legislation
can support disaster risk reduction

May 2013

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Cover photo: Community meeting, Brickaville Madagascar. Karen Da Costa, 2012.

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Better laws, safer communities?

Emerging themes on how legislation can support disaster risk reduction

Better laws, safer communities?

Today, it is well accepted that our own actions – as individuals, communities and nations – make all the difference between a natural event and a natural disaster. We may not be able to stop the earth from shaking, or storms from striking, but our choices can determine the extent of death and damage they cause.

There is widespread agreement at an official level that legal frameworks are a critical tool for governments to shape those choices – both for themselves and for others. This was recognised by states when they approved the *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters* (HFA) in 2005. HFA's first priority is to “ensure that disaster risk reduction is a national and a local priority with a strong institutional basis for implementation,” notably through “policy, legislative and institutional frameworks for disaster risk reduction.”

Privately, however, some disaster risk reduction (DRR) experts and activists have expressed doubts and disappointment with the legislative route. They argue that the many new laws and policies that have been developed to address DRR seem not to have made the difference they promised – particularly at the community level.

This family in Auya Pinhi, Nicaragua, built their house on stilts to avoid damage from frequent flooding.



Some also worry that the time, effort and political capital devoted to developing such legislation may detract from the achievement of more concrete steps.

Do better laws lead to safer communities? If so, do we have the laws we need in place? What are the differences between effective and ineffective legislative frameworks for DRR?

The International Federation of Red Cross and Red Crescent Societies (IFRC) and the United Nations Development Programme (UNDP) are currently engaged in a global research project seeking answers to these and related questions. The study seeks to identify best practice in legislation for DRR and its implementation, as well as common gaps or issues that need additional focus. It will draw on desk studies of the laws of 26 countries and more comprehensive analyses of both laws and their implementation in 15 countries from all regions of the globe.

A synthesis report setting out the detailed findings is scheduled for release in October 2013. This pamphlet sets out some of the preliminary findings that the IFRC is noticing from the joint research. Comments and reactions to these preliminary findings are very welcome and will be taken into account in the completion of the partners' analysis.



Families in the Boer district, Managua, Nicaragua, squat in unsafe buildings destroyed by the 1972 earthquake.

Emerging themes on legislation and DRR

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The following is a preliminary analysis based on:

- 24 of a planned 26 desk surveys of national laws that map existing areas of coverage in national legislation; and
- 9 of a planned 15 country in-depth case studies that examine stakeholder perceptions of domestic legislative systems and their implementation.

These studies take as a point of departure that regulatory frameworks for DRR cut across the usual categories of sectoral regulation, such as emergency response, building & construction, environmental management, development planning, or the more recent 'sector' of climate change adaptation. In other words, DRR legislation is an ensemble of laws and rules, not all of which refer directly to disasters. Moreover, the country case studies look not only at national legislation but also at provincial and local laws and rule-making.

The following themes have emerged from the work done thus far:

A. While there have been many new laws and policies adopted, thus far, the resulting legal reforms seem to be less comprehensive than is generally assumed.

B. The development of new legislation on disaster risk management can be a key enabler for DRR awareness through the public process of law-making, as well as by providing the content for clear institutional mandates and implementation of DRR.

C. Safety legislation in sectors outside disaster management laws holds the key to long-term reduction of underlying risks (as identified in "Priority Four" of the HFA), but their implementation needs more support. To establish an integrated approach to DRR, these sectoral laws also need to include DRR criteria, and to be coordinated with disaster risk management systems.

D. Partnerships between local government and communities are needed for effective implementation of DRR safety regimes at local level. Challenges in implementation of safety regulations at the local level, such as land use planning and building codes, emerges as the most common barrier to effectiveness.

A. While there have been many new laws and policies adopted, thus far, the resulting legal reforms seem to be less comprehensive than is generally assumed

How much have the HFA priorities for action been integrated into national legislation? Despite a great deal of discussion, a number of draft laws under consideration, and the formulation of many DRR policies and strategies, the resulting legal reforms thus far seem to be less comprehensive than is often assumed. A particular challenge in the countries studied so far appears to be mainstreaming DRR into other sectors and coordination between those sectors and the disaster management systems. Relevant sectors include land use planning, building and construction, environmental management and climate change adaptation.



In October 2012, Iraq announced the development of a draft National Disaster Risk Reduction Law with assistance from UNDP.

Incorporation of DRR into legislation represents a continuum rather than a simple yes or no. However, some broad categorisation of national legislation according to its support for DRR is helpful – even while recognising that this may miss variations in approach and cannot consider effectiveness of implementation of the laws, or other progress through policy.

A sample of legal frameworks from the desk surveys, completed country case studies and other legal research can be broadly grouped into four categories. These categories are based on special disaster management laws and on key sectoral laws in the overall framework that supports DRR.

Summary Table: DRR integration into a sample of 30 national legal frameworks, including some sub-national laws in federal structures

<p>1. No specific law on natural disasters: There may be policies or strategies on disasters, or general emergency laws that are not tailored to natural hazards.</p>	<p>Angola Ethiopia</p>
<p>2. Response focus: Response-based legislation on natural disasters, usually limited to rapid-onset or specific types of natural hazard, although there may be policies or strategies on broader disaster management and/or DRR.</p>	<p>Albania Italy Kazakhstan Nepal Ukraine</p>
<p>3. Disaster management (DM) focus: DM legislation, including some aspects of prevention, early warning, mitigation, response and/or recovery.</p>	<p>Austria (federal, Burgenland, Salzburg, Tirol, and Vienna) Brazil China – PRC (although Hong Kong has no DM law) Guatemala India (federal, Odisha, Punjab) Madagascar Nicaragua Nigeria USA (federal, Louisiana, Illinois) Vanuatu Vietnam</p>
<p>4. Disaster Risk Management focus: Disaster risk management legislation that includes multi-hazards, or a special DRR law, so that risk reduction is an integral part of the disaster management legal framework from national to local level.</p>	<p>Algeria Australia (federal, Victoria, Queensland) Colombia Dominican Republic Ecuador Indonesia Namibia New Zealand Peru Philippines St Lucia Uruguay</p>

There is potentially a fifth category of legal framework, characterised by having all the elements of a disaster risk management system plus cross-sectoral mainstreaming of DRR. This requires horizontal coordination between disaster risk management systems and other sectoral laws. It also requires risk reduction criteria in the sectoral laws – even if it is not called DRR. While this may be the ideal sought, as yet the research has not identified a country with a legal framework that clearly achieves this level of practical integration.

B. National disaster risk management legislation is a key enabler for DRR

Although law is often thought about as a set of prohibitions, a new generation of national disaster risk management laws plays a strong enabling role in supporting DRR efforts. In part, this is achieved through the content of these laws and in part through the law-making process itself.

- **Well-coordinated consultations can bring benefits regardless of the end product**

Debate around these new laws raises awareness of DRR amongst parliamentarians and government officials. It also brings into play a range of civil society and international actors who make inputs into drafts, as has been seen in Indonesia and the Philippines during their law-making processes, and currently in Vietnam and Ethiopia (albeit with regard to a policy rather than a law). Although passing such legislation can sometimes be slow, it seems that there is a clear positive benefit in the process itself, at least at national level. For example, Nepal has undertaken wide consultations on a draft disaster management law over the last four years, which has not yet resulted in new legislation. Nevertheless, it has generated a high level of engagement and debate from all the relevant stakeholders and has thus contributed to the development of widely supported national plans and strategies on disaster risk management.

- **Legislation and policy uniquely cement roles and responsibilities**

It may not be necessary for all countries to adopt one central disaster risk management law, but many countries have found they need new coordination mechanisms and institutional mandates to implement a coherent national DRR strategy. Legislative reform is often seen to be necessary to ensure clear mandates and responsibilities to support DRR. One example is the 'business re-engineering' process undertaken by Ethiopia under the general mandate of the Ministry of Agriculture to create a better institutional structure.

- **National legislation can promote community-level participation**

National laws can also establish structures for implementing DRR priorities down to the local and community level. These are often new structures that create connections between communities and the national level in implementing DRR policies. For example, they may establish national, sub-national and local committees that include government, the National Red Cross or Red Crescent Society and other civil society representatives. Namibia's new Disaster Risk Management Act of 2012 has broadly representative committees down to the most local level, which are new structures being established as the law is implemented. Vietnam already has a legally mandated committee structure down to local level that was established to ensure early warning and to combat flood and storm risks. These may now be adapted in a pending law to manage a wider range of risks and to play a stronger role in risk reduction.



Red Cross teams after the Guatemala earthquake, November 2012. Guatemala has relevant building codes but they are not legally enforceable.

C. Safety legislation in sectors outside disaster management laws holds the key to long-term reduction of underlying risks

The concept of disaster risk management tends to be limited to shorter term measures, even when it includes DRR as well as response and recovery. It also tends to focus on major hazards that may occur, whether predictable or not. This is a necessary part of reducing risk. But broader laws about human safety – on buildings, fires, land zoning and environmental management – are more important in reducing the underlying risk of the most vulnerable people. Coordination between these regulatory frameworks and disaster risk management systems is necessary to achieve long-term risk reduction.

Brazil's Statute of the City seeks to regularise and make safe informal settlements such as the favela, Rocinha, in Rio de Janeiro.

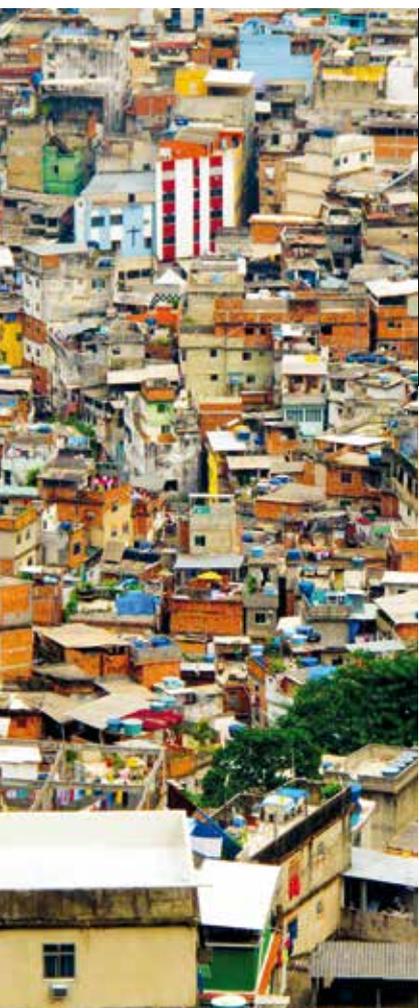
- **The potential of planning laws to reduce underlying risk is not yet being realised.**

Land use planning laws are a key mechanism for governments to reduce underlying risk and to prevent the creation of new man-made risks. The pressures of rapid migration to urban centres means that development planning in many cities is inadequate to ensure that people have access to necessary infrastructure (water & sanitation, social services, roads/transport) and that they are not living on high-risk land (unstable, toxic) or facing seasonal threats, such as floods.

The evolution of large informal settlements and the challenges of making them safe have emerged as major sources of risk in many countries. One of the few positive examples for addressing this dilemma identified so far has been Brazil's Statute of the Cities, which empowers local government to slowly regularise informal urban settlements. However, even legal settlements may suffer from elevated risks. The poor rural coastal settlements in eastern Madagascar, for example, are subject to cyclones and flooding, and have no access to safe water other than rivers that become additionally polluted during floods. Some of these communities are using customary law rules and sanctions to prevent pollution from waste disposal during normal times (a service not available through their local government) but these do not bind neighbouring communities and cannot prevent the larger risk of flood-related water pollution.

- **The importance of environmental planning and climate change adaptation measures in reducing risk is only just emerging. Few countries have made the necessary links with disaster risk management institutions.**

Environmental management laws could be used not only to prevent the creation of new man-made hazards, but also to reduce exposure to natural hazards, including those influenced by climate change. However, environmental impact assessments rarely include sufficient criteria to assess risks posed to new developments by natural hazards, including those accelerated by climate change. They also may not include practical means for affected communities to participate in such impact as-



Benoit-Malaisha Carpentier/IFRC

assessments. For example, in Madagascar, communities said they had no voice in decisions about new mining ventures in their local areas (many of which were not approved). In Ethiopia, some communities said they were not included in the environmental impact assessment processes even though the law provided for community participation.

- **Good building codes and the capacity to ensure compliance with them is one of the best long-term investments governments can make to reduce underlying risk.**

The vast majority of deaths during earthquakes are caused by the collapse of buildings. For areas of seismic risk, therefore, an important response is to retro-fit schools, hospitals and other public buildings, and to include earthquake resistance in local building codes. But building laws address much more than earthquake risk. They can also be critical in reducing the impact of other hazards such as fires, floods, storm surges and high winds.



Rapid development in many countries is increasing risk every day in the form of new buildings that do not meet safety standards. This happens even in countries that have relevant building codes such as Nepal, which faces significant seismic risk, or Madagascar, where seasonal cyclones regularly devastate eastern coastal towns.

Rapid urban development in Kathmandu, Nepal, is mostly occurring without approvals, despite relevant building codes.

Many non-approved constructions are large commercial premises, or even public infrastructure projects, that are in danger of collapse due to faulty design and construction alone. They may also lack essential fire safety features. Hence, new risks are being built into fast growing cities, even aside from earthquakes, tsunamis, floods or storms. Recent major building collapses include those in Accra, Ghana in November 2012, Alexandria, Egypt in January 2013, Reims, France in April 2013, and Dhaka, Bangladesh in April 2013 (which at the time of writing was known to have caused the deaths of more than 1,000 people).

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To reduce peoples' underlying risk from buildings – whether triggered by natural hazards or a general lack of safe construction – there needs to be a major focus on:

- **establishing relevant building codes (affordable, using local materials, avoiding unnecessary complexity);**
- **improving technical capacity to implement them (local government, construction industry); and**
- **enhancing public awareness and acceptance of their importance (community education and awareness).**

There is a perception by some in the disaster management community that buildings codes are well established in the vast majority of countries and the only real issue is enforcement. However, a number of countries still do not have comprehensive and binding building codes that ensure general safety and meet the local risks from natural hazards. For example, Nepal's national building law does not have regulations to provide for implementation of building codes for smaller buildings in rural areas, and municipal governments lack the resources to supervise compliant construction for larger urban buildings. Likewise, Guatemala has codes, but they are not legally enforceable and apply only in the capital. It is true, however, that lack of compliance is a huge problem in those countries that do have binding codes. Sometimes this is directly related to the text of the codes themselves. For instance, Nicaragua has highly technical building codes but does not have sufficient numbers of qualified engineers who can use them. Madagascar's new cyclone standards increase the cost of building so much that some coastal communities knowingly take on the risk of rebuilding every year in order to use lower cost local materials.

A fragile home destroyed by Hurricane Felix, Nicaragua



D. Partnerships between local government and communities are needed for effective implementation of safety-related rules at the local level

Stronger community-local government partnerships may be the key to improving both the relevance and effectiveness of local regulation that reduces risk. In most countries, local government has primary responsibility for implementing laws and making regulations on public safety, such as building codes and land zoning. However, numerous stakeholders interviewed – and especially communities – have said that their local administration does not currently have the capacity to undertake these responsibilities.



Community meeting, Brickaville, Madagascar.

In some cases they also say there is a lack of local government accountability to the communities they serve. Although stakeholders identify a need for resources, they also indicate that something more is needed to bridge the gap:

- **For local governments to be able to make relevant and usable regulations, they need input and support from their communities, whether through special community structures on risk reduction or more general participatory processes.**
- **In order to foster this support, communities must be made aware of their risks, of the applicable regulations, and of their relevance to their own lives.**

Community focus groups held during the various case studies (including Ethiopia, Guatemala, Madagascar, Nepal and Nicaragua) indicated that many of them had little engagement with their local governments. They often did not know about local safety regulations for building or land zoning, or did not see them as relevant to reducing their risks, whether from natural hazards or other causes.

In their turn, local and provincial government officials frequently reported that they lacked staff, especially qualified staff such as engineers, and that the communities for whom safety regulations existed simply disregarded them. One city engineer in Nepal reported that attempts to enforce building codes against corporations usually resulted in litigation, taking up most of their resources, so that he had concluded the only way forward was through community education. However, there were no immediate incentives for voluntary compliance – especially for commercial buildings where the personal safety of the owners and their families was not at stake – as compliance increased costs, while all around others were building non-compliant structures more cheaply.

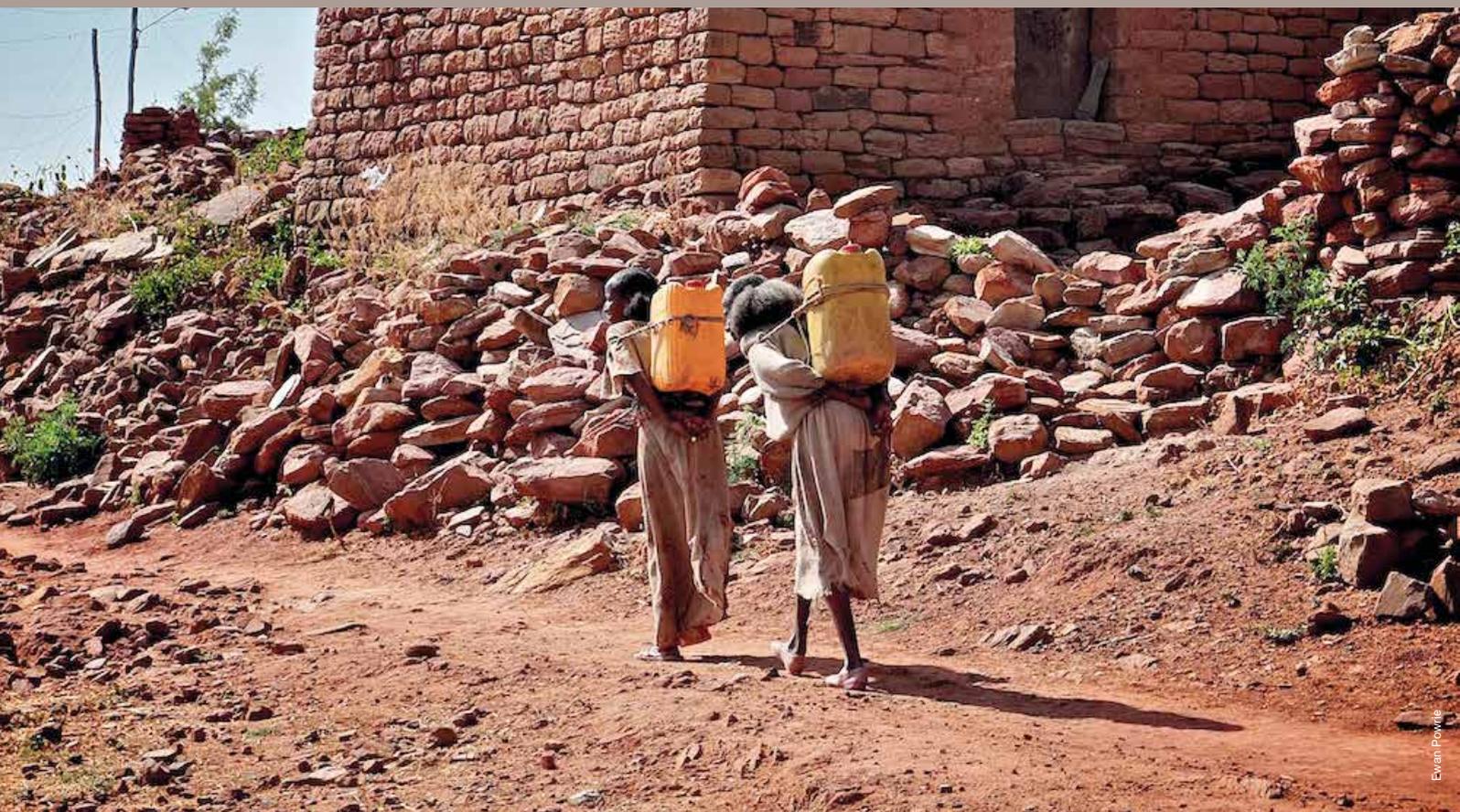
Country case study notes

Ethiopia, an evolving system

Ethiopia is a landlocked country in the Horn of Africa that faces the significant natural hazard of drought – affecting food security and rural livelihoods – and also some seismic activity. Ethiopia has a federal structure with 11 regional states. There is no national disaster management law but, since 2007, Ethiopia has undertaken a ‘business process re-engineering.’ It has established a specialised governmental body dealing with food security and multi-hazard disaster risk management: the Disaster Risk Management and Food Security Sector, under the Ministry of Agriculture. Although Ethiopia has so far taken a policy-based approach to revising its disaster management framework, it is of interest from a regulatory perspective because the adoption of formal policies in Ethiopia is such a rigorous and public process that it is similar to legislative procedures in other countries.

Ethiopia’s regulatory framework is currently evolving from a 1993 policy that focuses on response and disaster management, to a new draft National Policy and Strategy on Disaster Risk Management (NPSDRM) that also takes account of resilience and risk reduction. The draft policy has yet to be formally approved, (after 4 years of development), but it has been subject to wide consultation – and implementation is already under way. It takes a multi-hazard and multi-sectoral approach and aims for greater delegation of powers to regional states and local government, as well as community involvement.

Young women in Tigray, Ethiopia, carry water for long distances during drought.



Some good practices in Ethiopia's regulatory framework for DRR so far include the institutional reforms and policy development noted above, as well as:

- a sophisticated national early warning system, which conducts detailed risk mapping with community involvement in data acquisition (although two-way exchange of early warning and risk mapping data between local and national levels is not yet well established);
- a large number of building codes, currently being updated, which have the potential to reduce risk through safer construction; and
- a system of community-designed by-laws that could be used to mainstream DRR into local level law.

However, some remaining gaps in the DRR regulatory framework and its implementation appear to include:

- the absence, thus far, of policy and institutional restructuring in regional laws and mechanisms (which civil society and international donor interviewees were concerned about, feeling they lacked a clear legal and policy framework for their DRR planning and programmes);
- gaps in coordination between the new disaster management system and the Environmental Protection Agency, as well as a divergence in their respective approaches to DRR and climate change adaptation;
- capacity and resource gaps for implementation of key laws, especially at local government level, reported by many stakeholders; and
- despite the empowering language of legislation, some local communities reported they feel insufficiently engaged with government DRR policy and practice, and are not routinely included in legal processes such as environmental impact assessments for local development projects.

There is currently a strong impetus for integrating a risk reduction perspective into disaster management in Ethiopia, especially concerning drought and other agricultural hazards. There is also a recognized need to build national and local capacity to implement relevant laws and policies. A remaining question is whether this more rapidly implementable policy approach (as opposed to legislation) will provide a sufficiently strong basis for roll-out to regional states, and for cross-sectoral coordination.

Country case study notes

Vietnam, taking the next step

Vietnam's long eastern coastline is exposed to frequent sea storms and associated floods and is vulnerable to sea level rises due to climate change. The country also faces moderate risk of drought, fire, earthquakes, tsunamis and diseases and infestations affecting agriculture.

Vietnam has extensive laws and regulations concerning disaster management, and most stakeholders report that they are well implemented down to community level. The sheer number of these laws and regulations, however, makes it complex to understand the overall framework, and this is one reason the National Assembly is currently considering a comprehensive draft national Law on Natural Disaster Preparedness and Prevention. This will supersede some laws and provide umbrella coordination. Current laws also focus mainly on the highest risk hazards – floods and storms in coastal areas – and one aim is to extend attention to a fuller range of hazards. Other elements being considered in the draft law include improving cross-sectoral coordination by clarifying ministerial responsibilities in each sector, establishing disaster management funds and – importantly – incorporating a risk reduction approach into the national legal and policy framework.

*Community risk mapping,
Vietnam*



Good practices:

- The early warning system for floods and storms achieves a high level of implementation at community level, due to clear mandates and a strong institutional framework. The Ministry of Agriculture and Rural Development (MARD) implements this legislation through a system of Committees on Flood and Storm Control, which are established and active at national, provincial, district and commune levels.
- DRR for coastal areas is underpinned by effective structural measures mandated by the Dyke Law (covering maintenance of dykes, construction of water reservoirs and drainage systems). They are also supported by the Forest Law, which protects mangroves against human destruction (as the frontline against sea storms).
- Vietnam's legal framework provides for disaster risk sharing through social safety nets, including compensation for individuals and households who suffer damage from natural hazards, and distribution of basic food requirements across the whole population when necessary. It also includes food security measures – such as land designated for rice production – to maintain national food reserves against the event of drought, storm damage, or insect infestations.
- Existing legislation has ensured that hazards that are considered low to moderate risks, such as earthquakes and tsunamis, are also not ignored.

As identified in Government discussions towards the draft national law, and in the case study interviews, some remaining gaps are:

- As yet the national framework focuses on disaster management and on floods and storms. It would be enhanced by a clear focus on DRR as well as on a wider range of hazards.
- There is room for better integration of sectoral laws into the national disaster management framework, as well as for mainstreaming DRR into these sectors. For example, the laws on construction, land, and environmental planning, and the climate change strategy, do not include specific criteria for DRR against natural hazards. These and the law on fire-fighting and prevention are also currently managed as quite separate regimes from the national disaster management system, with its focus on floods and storms.
- For some of the sectoral legislation there appears to be insufficient resources and/or capacity for effective implementation at local level, including the law on construction (implemented by the Ministry of Construction) and the law on forests (implemented by MARD).
- Community-based DRR projects enabled by national and international civil society organizations could be 'scaled up' and made more sustainable by mandating relevant government agencies to support community level DRR, and by designating resources for such community initiatives. For example, education and awareness on DRR now mandated only on a project basis could be a model for mainstreaming DRR into the education system curriculum under a broader legal mandate.

Publications from the IFRC-UNDP project on legal frameworks to support DRR

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Global synthesis report

The main common publication by IFRC and UNDP will be a global synthesis report based on all the country research outlined below, as well as published sources on international and national developments in law and DRR. It is scheduled for publication in October 2013.

In addition, the country case studies and country law desk surveys will be published online.

Country case studies

IFRC sponsored country case studies (original group)

Brazil, Nepal, Dominican Republic, South Africa

Published electronically 2011-2012

IFRC sponsored case studies (using the IFRC-UNDP methodology)

Ethiopia, Guatemala, Nicaragua, Madagascar, Vietnam, New Zealand

Published electronically April – June 2013

UNDP sponsored case studies (using the IFRC-UNDP methodology)

Iraq, Kyrgyzstan, Mexico, Namibia, Vanuatu

Publication scheduled from July 2013

IFRC case study reports are published electronically, except for limited print runs in country. Most are available in English and/or the main working language of the relevant country. Those published so far can be downloaded from the Disaster Law Programme website at: www.ifrc.org/dl. Electronic copies may also be requested by email from disaster.law@ifrc.org

National law desk surveys

National law desk surveys of the legal framework for DRR have been undertaken (or are under way) in 26 countries. Most of this research was done by pro bono lawyers and volunteer graduate law students around the world. All were based on a common set of questions.

Region	No. 26	Countries
Africa (sub-Saharan)	6	Angola, Ethiopia, Kenya, Madagascar, Namibia, Nigeria
Americas	6	Ecuador, Guatemala, Nicaragua, St Lucia, USA (federal plus states of Illinois and Louisiana), Uruguay
Asia-Pacific	8	Australia (federal plus states of Victoria and Queensland), China (PRC and Hong Kong), India (federal plus states of Odisha and Punjab), Japan, New Zealand, Philippines, Vanuatu, Vietnam
Europe and Central Asia	4	Austria, Italy, Kyrgyzstan (pending), Ukraine
Middle East and North Africa	2	Algeria, Iraq (pending)

Comments

Reactions and comments on these preliminary findings are very welcome. They may be addressed to the IFRC at disaster.law@ifrc.org or UNDP at bcpr@undp.org

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The Fundamental Principles of the International Red Cross and Red Crescent Movement

Humanity The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

Impartiality It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

Neutrality In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Independence The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

Voluntary service It is a voluntary relief movement not prompted in any manner by desire for gain.

Unity There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Universality The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.

Sponsor:

The IFRC wishes to thank the Norwegian Red Cross for supporting the production of this publication.

About the IFRC Disaster Law Programme:

The IFRC's Disaster Law Programme seeks to reduce human vulnerability by promoting effective legal frameworks for disaster risk reduction and legal preparedness for disasters. It works in three main areas: collaboration with National Red Cross and Red Crescent Societies and other partners to offer technical assistance to governments on disaster law issues; building the capacity of National Societies and other stakeholders on disaster law; and dissemination, advocacy and research.

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