Disaster Law: International Norms, Problem Areas and Future Directions

A workshop on disaster law for Caribbean English-speaking National Red Cross Societies, government representatives and regional and sub-regional organizations.

Barbados
October 19-21, 2011

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Background

In 2001, the International Federation of Red Cross and Red Crescent Societies launched its “International Disaster Response Laws, Rules and Principles” (IDRL) Programme to explore the role of law in the response to disasters. Over the following years, the IFRC secretariat and member National Societies engaged in global research and consultations, with a particular focus on the regulation of international disaster response. In 2006-07, they spearheaded negotiations with governments and other stakeholders to develop the “Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance” (the “IDRL Guidelines”), which were adopted by the State Parties to the Geneva Conventions at the 30th International Conference of the Red Cross and Red Crescent in 2007.

The IFRC has organized a number of workshops and trainings on IDRL at the regional level over the last few years, but the need for a more comprehensive and broad-based approach has become apparent. Accordingly, the IFRC, in cooperation with its partners, offered a three-day workshop for senior officials and policy-makers addressing a range of disaster law issues in order to raise awareness and prompt developments at the national level.

The workshop was specifically addressed to English-speaking countries of the Caribbean as there was evidence of an increasing interest in disaster law issues in government and National Societies, and it was a region where the IDRL programme had not yet had a specific disaster law capacity-building activity.

The workshop aimed to:

- Equip participants with an overview of existing international law and norms relevant to disaster management;
- Identify major problem areas in disaster law across the disaster management spectrum;
- Highlight best practices at the national and regional levels in development and implementing legal solutions; and,
- Assist participants in assessing how to make best use of these norms and international experiences in their own contexts.

Organisers and Sponsors

This event was co-organised by the International Federation of Red Cross and Red Crescent Societies (IFRC) through the efforts of IDRL programme units of the Americas Zone and Geneva, the IFRC Caribbean Regional Representation Office, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations Development Program Barbados office and the Barbados Red Cross Society.

Funding was provided by the United Kingdom’s Department for International Development (DFID).

Participants

A total of 34 participants joined in the workshop including representatives from 13 National Societies, 5 governments, the Caribbean Disaster and Emergency Management Agency, the Organisation of American States, the UN Office for the Coordination of Humanitarian Affairs, the UN High Commissioner for Refugees (UNHCR), the University of Puerto Rico, the International Strategy for Disaster Reduction, the Association of Caribbean States and the Caribbean Policy Development Center. The participants list is attached as annex 1.

Workshop Proceedings

Opening Session

On October 19, 2011, the workshop was opened with welcoming words from the following esteemed guests:

Mr. Stein Hansen, UNDP Deputy Resident Representative
Dr. Raymond Forde, President, Barbados Red Cross Society
The opening comments provided participants with encouragement for discussions on the complex and wide-reaching areas of disaster law, greater cooperation and coordination among participant’s institutions, and the relevance of disaster law capacity-building and development in the Caribbean context. Additionally, there were references to the opportunity for important contributions of governments and National Societies in the upcoming 31st International Conference of Red Cross and Red Crescent Societies.

I. Thematic Sessions

International Norms in International Disaster Response

David Fisher, IDRL Programme Coordinator of the IFRC, opened the workshop with an introduction to the history and content of the international legal framework of disaster law and key legal documents. Reference was made not only to international conventions and treaties, but also to regional instruments. Mr. Fisher highlighted the contribution of the Red Cross Movement in the development of the IDRL Guidelines, and the emerging areas of regulatory barriers to shelter and community-based disaster risk reduction.

Key regulatory instruments in the Caribbean Region

Andria Grosvenor, Technical Manager, Preparedness & Country Support Caribbean Disaster Emergency Management Agency (CDEMA) presented a brief history and overview of CDEMA’s structure, mandate, and experience in the Caribbean using a comprehensive disaster management framework. Ms. Grosvenor explained the evolution of the Disaster Preparedness Model Legislation of 1996 to the recent 2010 publication of the Comprehensive Disaster Preparedness Model Legislation and Regulations, including an invitation to submit comments upon review of the new document. The presentation was followed by a brief plenary session facilitated by Mr. Howard Arfin. Discussion topics included the best use of legislation versus policy in disaster preparedness in allocating procedures and the process for disaster law development at the domestic level including observations on limited resources in legislative drafting expertise in the region, and the challenge in timely legislative change.

International norms in domestic disaster response

On October 20, 2011, Lara Zunelli, Associate Protection Officer of UNHCR in Haiti began the morning sessions with a lecture on a human rights perspective to disaster response with explanations of the fundamental human rights conventions and treaties, and explanatory soft law documents including the Guidelines Principles on Internally Displaced Peoples, the Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles), and the Inter-Agency Standing Committee Guidelines on Human Rights and Natural Disaster: Protecting Persons Affected by Natural Disasters. Key points included the primary role of governments in protection, the principle of non-discrimination and the complexities of every context. Discussion points arising from Ms. Zunelli’s presentation were based on the role of customary law in human rights mechanisms and the principle of self-determination in humanitarian assistance operations.

Key regulatory issues in domestic disaster response

Douglas Reimer of OCHA provided a review of key issues in national disaster legislation. Using UNDAC and ISDR evaluations from 8 recent operations in the Americas. Mr. Reimer illustrated patterns of frequent issues, broader themes and recommendations. Trends arising from the study were the prevalence of fragmented legislation, the need for improved accountability, and an imbalance between resources and responsibilities of disaster context actors. Overall, disaster risk reduction needs to be mainstreamed throughout the operations, and there needs to be better coordination among international actors and local authorities as well as a better definition
of roles and responsibilities. Discussion revolved around the balance between legislation and policy, and how to best find a balance that was formalized yet flexible.

**Caribbean Emergency Legislation Project**

The work of the Organisation of American States in Caribbean legislation project was presented by Mr. Pablo Gonzalez, Principal Disaster Risk Management Specialist and Section Chief Disaster Risk Management and Adaptation to Climate Change. The project consists of analysis of legislative and institutional frameworks of each Caribbean state pertaining to State of Emergency declaration as well as budget appropriation and execution during disasters. Mr. Gonzalez emphasised the main findings of the project, echoing Mr. Reimer’s comments on need for adequate funding for disaster prevention, mitigation and response, and the need to define roles and responsibilities among agencies. Mr. Gonzalez also highlighted weaknesses in human resources and coordination, and the lack of consistency and clarity in declaration of States of Emergency throughout the region.

Mr Gonzalez also presented the Inter-American System for Disaster Risk Reduction introducing the participants to the legal and soft law instruments existing the OAS contexts, specially the Inter-American Convention to facilitate Disaster Assistance of 1991, ratified by 5 countries.

Comments arising from the presentation included the multiple factors influencing decisions to declare of states of emergency (consequences in the economy of a highly touristic country), and the challenges in policy and legislative development in an area cross-cutting many government ministries.

**Key regulatory issues in disaster risk reduction**

Ricardo Mena, Chief of Office of the International Strategy for Disaster Reduction for Latin America and the Caribbean presented trends in domestic legislation for disaster risk reduction highlighting the need for increased institutional capacity in implementation of DRR processes, and the importance of community-based risk reduction, risk is localized, therefore, the responsibilities should rest at the local level. Mr. Mena pointed out the importance of not only having good DRR regulation, but to apply it and look for eco-friendly solutions for DRR.

Mr Mena also presented the Global Assessment Reports findings in the progress towards achieving the Hyogo Framework for Action.

DRR must be mainstreamed and there must be adequate resources directed to prevention and mitigation measures. Political will and local capacity are two areas of importance for successful DRR operations. Commentary after the presentation highlighted questions surround the level of risk that governments are willing to undertake in urbanization and land use policy (a development issue); the importance of including effective planning, monitoring and evaluation at the governmental level in DRR activities and the value of training and capacity-building versus legislative changes for DRR at the community level.

**International Norms in Disaster Risk Reduction**

Dr. Roberto Aponte Toro of the University of Puerto Rico provided the participants with an overview of the historical progression from Yokohama to the Hyogo Framework for action. Topics included the development of tools for DRR in light of climate change, the links between DRR and development and the responsibility and roles of governments in developing and implementing DRR processes throughout society.

**Key Regulatory instruments in the context of the Association of Caribbean States**

Mathieu Fontanaud of the Association of Caribbean States presented the Agreement between Member States and Associated Members for the Regional Cooperation in Natural Disasters (14 Countries have ratified but it needs 17 ratifications to enter into force) and work of the ACS Special Committee for Disaster Risk Reduction. Initiatives of the Special Committee include addressing urban risk and green responses to disaster in cooperation with the IFRC. Mr. Fontanaud also highlighted the progress of ratification of the ACS agreement and the
agreement content, in particular definitions of highly-vulnerable areas as opposed to declarations of emergency and provisions for mutual assistance were of interest to workshop participants.

Introduction to the Model Act and the Regional Legal Compendium

David Fisher presented the history and methodology behind the Model Act and invited participants to provide comments on the draft model act. As well, Mr. Fisher presented documents on emerging areas of disaster law in regulatory barriers to shelter and community-based disaster risk reduction.

Teresa Camacho Acting IDRL Coordinator for the Americas of the IFRC presented the Regional Legal Compendium, a tool developed using the IDRL Guidelines and aiming to compile the national legislation and policies of the Latin American and the Caribbean countries participating in the Enhancing International Humanitarian Partnership Meetings. Ms. Camacho described the Capacity building workshop held in Panama on October 24 and 25, 2011 for governmental focal points. The results of the completion of the RLC will be presented in next EIHP meeting, taking place in Panama in March 2012.

Discussion on pledges for the XXXI International Conference

David Fisher facilitated a discussion of various draft model pledges for the upcoming international conference. This session was received very positively, and some participants expressed they had already begun to draft pledges in support of continued work on disaster law themes.

Training sessions

Working group sessions were held on the afternoons of October 19 and 20, 2011. Participants were divided into three groups and were introduced to the case study of Incognita, a fictitious country that experiences an earthquake. The working groups were facilitated by David Fisher, Douglas Reimer, and Teresa Camacho. The topics addressed on October 19 were initiation of international relief and entry of international relief. Each group had the opportunity to review various hard law and soft law instruments and apply the documentation to various scenarios.

On October 20 the working groups addresses the themes of protection in disaster response addressing humanitarian principles and quality standards, and protection in reconstruction with emphasis on regulatory barriers to shelter. The working groups on October 20 were facilitated by David Fisher, Douglas Reimer, and Lara Zunelli. Each working group session was complemented with a plenary session where groups shared their analysis, questions and recommendations.

Initiation of international relief

Participants noted the challenges in initiating relief with a lack of a declaration of emergency, and the importance of coordination in appeals, information sharing and cooperation from the early stages of an operation. Also, emphasised the responsibility of local government in coordinating with external actors, and the capacity in the Caribbean region to manage multiple responses from states or agencies.
Entry of international relief

This session instigated discussion on determination of standards of imports and personnel, and procedures for entry to a state. Debate covered a wide variety of topics from who is responsible for determining qualifications for foreign professionals to practice, and the process for exemptions from duties or import taxes. Overall, there was a pattern that participants were not aware of the specific legislative rules in their country, or were aware of only ad hoc measures from previous experiences in operations. The session highlighted the benefit of close relationships with governments in negotiating access where procedures were not formalized, and the importance of the perception of the Red Cross as a reputable agency in accomplishing negotiation for entry of relief.

Protection in response

Participants raised questions around the independence of the Red Cross in responding to government policy or directions in distribution of humanitarian assistance. As well, there was debate on the practical differences between forced relocation, arbitrary displacement, and the effective provision of humanitarian assistance. Overall, working groups commented that each decision would have to be rooted in the specific context, and it was not simple to arise at a solution that would satisfy all actors, particularly without specific details regarding the scenario government policy decisions.

Protection in reconstruction

This session produced much lively debate and a wide variety of approaches to government roles and responsibilities. There was discussion on what non-discrimination meant in operations, such as the challenges in determining who receives what assistance in which locations. There was also much debate over appropriate levels of compensation, and how to determine who should receive what type of shelter assistance. It was noted that more in-depth knowledge of specific domestic legal frameworks in property law and human rights law would be beneficial. There was also discussion of the Build Back Better initiative and land use or planning programmes in recovery operations, and how to best incorporate these aspects in planning.

Overall, in review of evaluation on the working group exercises the sessions were overwhelmingly well received by participants. Comments included: enlightening, practical, informative, helpful in application of laws, and eye-opening. Other reflections were “[the session] shows how states and NGOs can put heads together for the benefit of victims” and “excellent [way] to learn quickly a large amount of documents”. I’m realizing how embedded Human Rights and disaster response are.

Table top discussions

October 20th began with an assessment of own laws on international response in light of international norms and October 21 featured an assessment of own laws on domestic response in light of international norms. Participants completed a brief questionnaire on their personal knowledge of their domestic laws and then shared their findings with their colleagues. Overall, there was recognition that most did not know the specific details of the legislation of their respective states in regard to disaster response. Some participants were familiar with their
local disaster management law or policy, but very few were aware of details for taxation, immigration, or customs procedures. The few participants who were more knowledgeable in specific areas had learned procedures as the result of operational responses.

Discussion themes included:

- Need to update existing policies;
- Need to ensure domestic budgets reflect need for disaster preparedness and response;
- Overall lack of sufficient funding and human resources for legislative or policy development;
- There exist very real challenges in moving legislative amendments through government;
- Disaster laws are relatively general, they lack reference to other areas of law such as immigration or customs;
- There is high dependency on either ad hoc arrangements or Memorandum of Understanding between actors as opposed to more concrete laws or policy. While this may be useful in some situations it also leads to unpredictability in others;
- A strong relationship between Red Cross and governments is essential in all states, however particularly important where processes, role and responsibilities are less well-defined;
- There is often a relationship of training or capacity-building between the Red Cross and governments which is viewed as a positive step in coordination and may be a departure point for developing policies together;
- Throughout the Caribbean region there is a large variance in the role of the Red Cross in formal decision-making processes; in some cases the Red Cross has a seat on government committees, in other states there is a less-formal relationship;
- There is difficulty in recruiting and retaining volunteers due to inability to insure them;
- There is a lack of knowledge on liability for government and Red Cross actors in various countries;
- Where police play a large role at the community-level response there could be more coordination with them;
- In some states there is a recognition of the need to improve community-level disaster capacities, and there is a move to identify vulnerable groups at the community-level.

The table-top questionnaires were welcomed as they provided a guide for further personal research or institutional development. Evaluation commentary recommended that future individual research and access to the questionnaires prior to the workshop would contribute to a more in-depth analysis. Overall, the table-top discussions were well received as an opportunity for peer-to-peer learning, and identifying areas for legislative development and future cooperation.

**Follow up plans and conclusion**

There was an overwhelmingly positive reception and evaluation of the workshop. Many participants commented on the productivity in learning through case study analysis, as well as the benefit of learning from colleagues and regional agencies. Some participants expressed an interest in Caribbean National Society pledges on disaster law, their auxiliary role and violence prevention at the upcoming International Conference of Red Cross and Red Crescent Societies. Other follow up areas of interest were engaging with CARICOM on disaster law matters, contributing to the CDEMA Model Act review with comments from the National Societies, and potential further engagement of the IDRL Guidelines and Model Act by the ACS member states. At a national level, Jamaica is in the process of reviewing domestic legislation and would welcome comments from the IFRC.

In conclusion, the workshop achieved the objectives of capacity-building on disaster law themes, identification of gaps in national and regional legislative areas, offering examples of positive developments in legal preparedness, and encouraging participants to analyse their legal frameworks in light of international norms and experiences.
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<th>PARTICIPANT</th>
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<tr>
<td>Mrs. Vindra Amar Past president</td>
<td>Trinidad and Tobago Red Cross Society</td>
<td>TRINIDAD &amp; TOBAGO</td>
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<tr>
<td>Mr. Howard Arfin Caribbean Regional Representative</td>
<td>IFRC</td>
<td>TRINIDAD &amp; TOBAGO</td>
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<td>Mr. Roberto Aponte Toro Professor</td>
<td>University of Puerto Rico</td>
<td>PUERTO RICO</td>
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<td>Ms. Elizabeth Bailey Deputy Permanent Secretary</td>
<td>Ministry of External Affairs, International Trade and Investment</td>
<td>SAINT LUCIA</td>
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<tr>
<td>Mr. Michael Beckles Vice President</td>
<td>Barbados Red Cross Society</td>
<td>BARBADOS</td>
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<tr>
<td>Ms. Teresa Camacho Acting Coordinator IDRL Americas</td>
<td>IFRC</td>
<td>PANAMA</td>
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<tr>
<td>Ms. Melanie Cameron</td>
<td>Barbados Red Cross Society</td>
<td>BARBADOS</td>
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<tr>
<td>Mr. Michel Chebat Legal Advisor</td>
<td>Belize Red Cross Society</td>
<td>BELIZE</td>
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<tr>
<td>Ms. Monica Clayton</td>
<td>Barbados Red Cross Society</td>
<td>BARBADOS</td>
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<tr>
<td>Ms. Michelle Edwards Senior Director Mitigation Planning and Research</td>
<td>Office of Disaster Prevention and Emergency Management (ODPEM)</td>
<td>JAMAICA</td>
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<tr>
<td>Ms. Jill De Bourg Human Resources Officer</td>
<td>IFRC</td>
<td>TRINIDAD &amp; TOBAGO</td>
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<tr>
<td>Mr. David Fisher Coordinator IDRL</td>
<td>IFRC</td>
<td>SWITZERLAND</td>
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<td>Mr. Martin Fitzmorris Director General</td>
<td>Antigua and Barbuda Red Cross Society</td>
<td>ANTIGUA &amp; BARBUDA</td>
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<tr>
<td>Mr. Mathieu Fontanaud Transport and Disaster Risk Reduction Advisor</td>
<td>Association of Caribbean States</td>
<td>TRINIDAD &amp; TOBAGO</td>
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<tr>
<td>Ms. Dorothy Fraser Secretary General</td>
<td>Guyana Red Cross Society</td>
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<tr>
<td>Ms. Laurencia Gaillard</td>
<td>Director General, Saint Lucia Red Cross Society</td>
<td>SAINT LUCIA</td>
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<tr>
<td>Ms. Andria Grosvenor</td>
<td>Technical Manager - Preparedness &amp; Country Support</td>
<td>BARBADOS</td>
</tr>
<tr>
<td>Mr. Pablo González</td>
<td>Chief of Section, Risk Management</td>
<td>UNITED STATES OF AMERICA</td>
</tr>
<tr>
<td>Mr. Martin Hall</td>
<td>Resource Mobilization Specialist</td>
<td>BARBADOS</td>
</tr>
<tr>
<td>Mr. Dormah Harrison</td>
<td>Chair of Emergency Services</td>
<td>JAMAICA</td>
</tr>
<tr>
<td>Mr. Sanjeev Lalla</td>
<td>Legal Advisor</td>
<td>TRINIDAD &amp; TOBAGO</td>
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<tr>
<td>Ms. Katie Lo</td>
<td>Delegate IDRL Trainee</td>
<td>PANAMA</td>
</tr>
<tr>
<td>Mr. Clive Lorde</td>
<td>Disaster Risk Management Specialist</td>
<td>Barbados</td>
</tr>
<tr>
<td>Mr. Bernard Marksman</td>
<td>Director General, Saint Vincent and the Grenadines Red Cross Society</td>
<td>SAINT VINCENT AND THE GRENADINES</td>
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<tr>
<td>Mr. Ricardo Mena</td>
<td>Director</td>
<td>PANAMA</td>
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<tr>
<td>Mrs. Marja Naarendorp</td>
<td>President</td>
<td>SURINAME</td>
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<tr>
<td>Ms. Kathleen Pinard-Byrne</td>
<td>Director General, Dominica Red Cross Society</td>
<td>DOMINICA</td>
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<tr>
<td>Mr. Douglas Reimer</td>
<td>Regional Disaster Response Advisor</td>
<td>PANAMA</td>
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<tr>
<td>Ms. Caroline Turnquest</td>
<td>Director General, Bahamas Red Cross Society</td>
<td>BAHAMAS</td>
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<tr>
<td>Mrs. Clara Walters</td>
<td>Vice President, Saint Kitts and Nevis Red Cross Society</td>
<td>SAINT KITTS AND NEVIS</td>
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<td>Mr. Christopher Williams</td>
<td>President</td>
<td>GRENADA</td>
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<tr>
<td>Ms. Jihan Williams</td>
<td>Crown Counsel</td>
<td>SAINT KITTS AND NEVIS</td>
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<td>Mr. Andreas Wickham</td>
<td>Emergency Supplies Committee – NEMO and Ministry of Foreign Affairs, Foreign Trade &amp; Consumer Affairs</td>
<td>SAINT VINCENT AND THE GRENADINES</td>
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<td>Ms. Lara Zunelli</td>
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ANNEX 2: Workshop Evaluations

19 evaluation forms were completed out of a potential 34.

Lowest possible score: 19 (1*19)
Highest possible score: 76 (4*19)

Overall rating of the workshop: 74/76

- The workshop was useful because it broke down some particularly difficult areas and made them accessible too all;
- Excellent in conveying to participants IDRL instruments and guidelines
- Very well organized and relevant information;
- Excellent balance between conference, practical exercises, plenary and table top discussions – Outstanding job. Congrats, well-done, thank you!
- Well organized, topics well planned, well executed;
- It dealt with an area of law which requires urgent attention, especially among the Caribbean states;
- Very good in content and quality of presentations, a lot of good material, I liked the agenda, lecture and working group style;
- Excellent organization, very informative and interesting – Congratulations;
- I was introduced to an area where I had very little knowledge, I appreciate the wealth of knowledge and interactions;
- Well-managed, timely workshop. Helped us to think practically and to look jointly at pledges by our National Societies in the Caribbean;
- Good organization, excellent material, very good facility, very accommodating;
- Very timely as Jamaica is in the process of revisiting its DRM law;
- The information is most useful to enable National Societies and governments to address short-comings in this area of law.

Lectures on practical issues in international response, domestic response, and DRR: 70/72 (one gave no response)

- Excellent in the repositioning of those issues that are faced locally and internationally in the face of DRR;
- Most practical case studies that provoked thought and discussion;
- Very well delivered covering key elements and stressing critical issues – outstanding;
- All lectures were well researched and excellently presented;
- A lot of information, very instructive;
- Very good regarding the overall issues and high relevance of the documents provided;
- Timely;
- Useful to see how various actors are embedded in international systems and where domestic laws can be improved;
- An eye opener.

Lectures on international norms/laws pertinent to international response, domestic response, and DRR: 73/76

- Very precise;
- Amazing how we do not pay attention to these norms and laws especially when we could potentially face a situation when we could need them;
- Well researched and presented;
- Good presentation and information;
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- Excellent;
- Thought provoking, need to consider many factors;
- DRR is the weakest and most difficult area of the DRM laws to integrate. The examples and issues discussed will assist in guiding how Jamaica can incorporate DRR into our DRM law.

**Group work with scenarios and exercises: 71/72 (one gave no response)**

- Very enlightening;
- Very interesting learning experience;
- Very practical and uniquely crafted;
- Although the fact patterns did not provide enough context to make hard decisions, it was interesting to hear the debate from both sides;
- Well-designed and outstanding moderation and facilitation – outstanding;
- Scenarios were real, issues related to real situations, all laws can be applicable to all cases – well thought-out;
- Very informative, provided insight to challenges faced by states. The issues raised in the workshop and questions brought to the forefront of the many areas that need addressing by government where the local laws lack specificity;
- Very helpful to apply the norms seen in the morning (presentations);
- Very interactive, interesting and good learning!
- Excellent to learn quickly a large amount of documents;
- Practical experience is always helpful and eye-opening;
- Excellent way to present and get an overview of the materials provided. Good participation by all and certainly created much more awareness of the need to know various laws, treaties, and their application;
- Excellent exercises – shows how states and NGOs can put heads together for the benefit of victims;
- Eye opener to the various laws that come into a disaster response which will now help as we try to expose the critical push to the area;
- This exercise was really an ideal way of getting this area of IDRL ingrained into our minds.

**Assessment of own laws – table-top discussions: 65/72 (one gave no response)**

- Gives a better idea of what should be included in our domestic law;
- Could have been more focused;
- I did not know much about the disaster law in my country but the workshop forced me to read up on them, and now I am more aware of the existing laws;
- It might have benefitted from some legal research by participants prior to workshop;
- Gave me an opportunity to examine my countries laws with a view to having short-comings addressed – fill very wide gaps;
- It may have been better to have the questions available before the workshop as it would have forced the participant to analyze the domestic law more closely;
- Clearly our local laws are inadequate to treat current disaster management situations, while there are many protocols work needs to be done on developing disaster law;
- Good;
- Very important exercises, I was happy time was allotted for this as a group rather than individually;
- Varying issues discusses and useful to know that we all still have a lot to do;
- Provided an opportunity to learn from others;
- Gave me a chance to look at our laws and a better understanding of them;
- Helpful to highlight new draft law areas that can be improved and linkages that can be strengthened if included in DRM legislation.

**Model Act and Regional Legal Compendium: 64/72 (one gave no response)**
• The problem is to get the full cooperation of the group
• Helpful and timely;
• The model act seems an effective tool to assist countries in reviewing and adapting their legislation towards facilitating international humanitarian assistance. The compendium seems also a good idea but more challenging in keeping up to date;
• Model act will serve as a guideline to review existing laws in my country;
• Informative, however it is important to get all the same country players together to strengthen the capacity to develop disaster law;
• Excellent to learn about the tools recently developed;
• Very informative.

Improvements for future:

• Too intensive
• Provide remote slides in advance and laser pointer
• Incorporating some ‘real’ or ‘practical’ examples
• Allow for more time to revise the treaties – maybe could be done by giving homework
• Allow for greater discussion in the session – maybe have a structured debate further encouraging persons to explore the content of the treaties
• Perhaps providing some of the questionnaires about our own laws to national participants ahead of time so they can come more prepared and informed. This would result in more meaningful table top discussions, but also in an extended training in benefit of national participants;
• Difficult to suggest area of improvement;
• The workshop was excellent, many thanks;
• Make information available in advance for better preparation and contribution – it was an excellent workshop;
• Have a suitable government representative present from more states;
• The inclusion of regional academics with the view of enabling partnerships.