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31st International Conference of the Red Cross Red Crescent
Geneva, 28 November–1 December – For humanity



Disaster laws

Discussion paper

Sub-themes proposed for the 31st International Conference of the Red Cross and Red Crescent

Introduction

This informal discussion paper provides an overview of the three sub-topics on disaster laws proposed for the 31st International Conference of the Red Cross and Red Crescent (International Conference), to be convened in Geneva, from 28 November to 1 December 2011. It describes the key substance to be presented for consideration by International Conference participants. This paper will serve as a basis for dialogue in advance of the International Conference and before the official background documents are finalized.

The three disaster laws sub-topics proposed are:

- *Legal preparedness for international disaster response (IDRL)*
- *Enhancing disaster risk reduction, particularly at the community level, through legislation*
- *Regulatory issues impacting the provision of emergency and transitional shelter after disasters*

These three sub-topics certainly do not cover the entire scope of issues addressed by disaster laws and they are not necessarily closely related to each other. However, all three represent areas that have been of special interest to the Red Cross and Red Crescent. With regard to all three, the primary focus at the International Conference will be on **domestic** law, policy and procedure and how states, with support from the Red Cross and Red Crescent Movement, can proactively resolve common regulatory problems and gaps.

The outcome sought from the International Conference will be a single consensus resolution: encouraging states to assess and, as appropriate, fill legal gaps or implement practical solutions to legal problems related to identified issues in disaster management; and inviting National Societies, with the support of the IFRC, to provide their advice and support to governments in these areas.

All participants of the International Conference will also be encouraged to support the resolution with specific commitments relevant to their national contexts, in the form of individual and collective pledges.

Why focus on disaster laws?

Natural disasters are now indisputably among the largest threats to human security and development worldwide. Over the last ten years, they have affected more than 2.4 billion people – the equivalent of one-third of the earth's population – and they have wrought over

USD 910 billion in damages, equivalent to approximately 16% of global GDP. Their numbers and impact have been increasing, with patterns of hydro-meteorological events in particular shifting dramatically.

These increasingly potent disasters are not impartial in the way they spread their impact. The largest human price is consistently borne by the most vulnerable communities, both in wealthy and poor countries. Rapid urbanisation in particular is compounding existing hazards, as disaster-affected populations are increasingly likely to be urban-dwellers living in sub-standard housing, lacking adequate sanitation and with poor access to emergency services.

The confluence of these factors presents new challenges to states, humanitarian actors and disaster-affected populations alike. From the 2010 earthquakes in Haiti and Chile, to the 2010 Pakistan floods, and the 2011 Great East Japan earthquake-tsunami-nuclear crisis, the past two years alone demonstrate these new challenges with stark and tragic clarity.

As pointed out in the Hyogo Framework for Action, legal frameworks are an indispensable tool in addressing these new threats. Experience has shown that, when well crafted, laws can focus and strengthen governmental efforts to prevent and respond to disasters, and they can empower communities and civil society organizations to contribute effectively to these aims. When poorly prepared, legal and regulatory regimes can block and frustrate progress in making populations safer and stall their recovery.

The IFRC Secretariat and its members have been studying the strengths and weaknesses of disaster laws world-wide for ten years. They have found that, while recent decades have seen advances in the strength and coherence of disaster laws in many countries, there are still widespread gaps that can and should be addressed. Unfortunately, however, these issues have received little dedicated attention at the international level.

Why is the 31st International Conference the right forum?

The International Conference of the Red Cross and Red Crescent, as a unique international forum gathering the State Parties to the Geneva Conventions and all components of the International Red Cross and Red Crescent Movement, provides an ideal platform from which to advance these issues of common concern. The engagement of the Movement's components capitalises on its experience in the topic, its global network and community base, and the special and distinctive relationship of National Societies with their public authorities as auxiliaries in the humanitarian field.

Moreover, in addition to its widely-known and respected role in the formation and advancement of international humanitarian law, the International Conference has already begun to play an important role in the development and promotion of normative frameworks for disaster response. In 2003, for example, the 28th International Conference affirmed the importance of strengthening building codes, land use planning and other tools for disaster risk reduction. More recently, in 2007, the 30th International Conference adopted the 'Guidelines for the domestic facilitation and regulation of international relief and early recovery assistance' (also known as the IDRL Guidelines), which set out recommendations to governments as to how to prepare their laws and procedures to solve the most common regulatory issues in international response operations.

Now, four years later, the 31st International Conference provides an opportunity to build on this momentum, both by taking stock of progress with the IDRL Guidelines and by highlighting new challenges and best practice in the areas of disaster risk reduction and post-disaster shelter.

1. Legal preparedness for international disaster response

From 2001-2007, the IFRC's "International Disaster Response Laws, Rules and Principles" (IDRL) programme and interested National Societies performed extensive research and consultations on the regulatory issues in international disaster operations. Over two dozen country case studies, surveys and interviews of hundreds of disaster response practitioners and numerous workshops, meetings and discussions built up a comprehensive picture of how legal issues have impacted on whether and how urgent humanitarian needs are met after a major disaster.

They found that a general lack of domestic legal preparedness for international assistance was rendering relief operations slower, less effective and more expensive. Barriers such as those related to entry visas, customs clearance and duties, taxation, transport permissions and registration requirements have become a major and unnecessary drag on operations. Moreover, procedural gaps have hampered domestic authorities' ability to oversee and correct failings in the quality, coordination and complementarity of outside aid. It was on this basis, as well as on existing international instruments and norms, that the IDRL Guidelines were developed through a global consultation process from 2006-07.

"Domestication" of IDRL in Sierra Leone

Sierra Leone was among the first countries in Africa to undertake a project 'piloting' the implementation of IDRL Guidelines, starting 2009. The Sierra Leone Red Cross Society and IFRC were key partners supporting the government in reviewing Sierra Leone's laws and procedures for facilitating and regulating international disaster assistance. Today their cooperation continues, with a view toward including international response aspects in Sierra Leone's disaster management policy instruments and legislation.

"Adequate regulatory frameworks are an essential tool in guaranteeing the speed and effectiveness of the overall disaster response," said Manso Mansaray of the Office of National Security, Sierra Leone's primary coordinator for the management of national emergencies and disasters at a December 2009 workshop in Freetown. "Before aid reaches disaster affected victims, providers of humanitarian relief often face a myriad of legal questions. ...[A]ppropriate regulatory frameworks could play an important role in addressing these."

Much progress has been made since the IDRL Guidelines were adopted at the International Conference four years ago. The IFRC Secretariat and a number of National Societies have been working hard to ensure that the IDRL Guidelines are well disseminated and used. New domestic legislation has already been adopted in Indonesia, Peru and several other states to implement the suggestions of the Guidelines. Twenty other governments are undertaking intensive reviews of their laws and procedures, with technical assistance from the IFRC Secretariat and National Societies.

The IDRL Guidelines have also enjoyed broad endorsement at the international and regional levels. A growing number of regional and international organizations have begun mainstreaming elements of the IDRL Guidelines into their activities. The IDRL Guidelines have also been recognised in no fewer than six resolutions of the UN General Assembly, as well as numerous resolutions, declarations and statements by regional organisations and other

inter-governmental bodies. The IFRC has also forged key partnerships with global bodies such as UN OCHA, the World Customs Organization, and the Inter-Parliamentary Union as well as regional organizations like ASEAN, CAPRADE, ECOWAS and SOPAC, to promote and disseminate the legal preparedness message of the IDRL Guidelines. It is currently working with UN OCHA and the Inter-Parliamentary Union (IPU) to develop model legislation to assist interested states in incorporating the recommendations of the IDRL Guidelines into their laws.

Still, much more remains to be done. The ongoing operations in response to the earthquake-tsunami-nuclear crisis in Japan, as well as 2010's epic floods in Pakistan and the earthquake and cholera outbreak in Haiti serve as reminders of just how complex it can be to manage a large volume of international support. The message is clear: it is in the vital interest of all countries (and of their most vulnerable citizens) to ensure that they are legally prepared for international disaster cooperation.

The 31st International Conference is an important opportunity to build on the progress already made and to renew momentum in the spread of legal preparedness for international assistance. It is also an opportunity to promote stronger links and complementarity between the multiple regional and global normative regimes developing in the area of international disaster cooperation.

Proposed conference documents

1. **A progress report**, as requested by Resolution 4 of the 30th International Conference, highlighting new domestic regulations and regional frameworks for disaster cooperation, as well as the nearly two dozen country projects in which National Societies and IFRC are supporting interested governments to review domestic legislation and procedures.
2. **New tools** to support national governments in these efforts, including a pilot version of model domestic legislation being developed in partnership with UN OCHA and IPU.

Possible elements for the disaster laws resolution:

[the International Conference. . .]

- welcomes the progress thus far in implementing the IDRL Guidelines at the national and regional levels;
- reiterates the call on states, regional and international organizations to use the IDRL Guidelines to examine and, as appropriate, strengthen their laws;
- welcomes the efforts of National Societies and the IFRC Secretariat in assisting states on the use of the IDRL Guidelines;
- welcomes the growing cooperation between the Movement and the UN and regional organizations on IDRL;
- welcomes the model legislation being developed by the IFRC Secretariat in consultation with its membership and partners, and encourages states to make use of it as a reference tool;
- encourages National Societies, as auxiliaries to their public authorities in the humanitarian field, and the IFRC to continue to assist states in this area.

For more information

(available at <http://www.ifrc.org/idrl>)

- *Law and legal issues in international disaster response (2007)*
- *Introduction to the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance (2008)*
- *The right aid at the right time: Progress report on the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance (2009)*

2. Enhancing disaster risk reduction through legislation

Good legal frameworks and policies are essential to the protection of vulnerable populations. Strong laws can move people out of harm's way and strengthen vital public infrastructure. They can assist communities to understand the risks that they face and to make themselves safe when a disaster strikes.

This role of legislation in setting the stage for disaster risk reduction has been repeatedly affirmed at the international level. In 2005, the Hyogo Framework for Action identified as its first priority 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.” The importance of legislation and institutional frameworks has been repeatedly highlighted in the Global Platforms for Disaster Risk Reduction, including the Third Global Platform convened this May. On that occasion, the Global Network of Civil Society Organizations for Disaster Reduction highlighted in particular the importance of legal commitments and the promotion of participatory approaches in public policy planning and implementation. According to their extensive study of community perspectives on disaster risk reduction ‘Voices from the Frontline’, investment in disaster risk reduction cannot trickle down unless legal guarantees for local level action are made.

Investing before calamity strikes: disaster law in the Philippines

In 2010, with the active involvement and encouragement of the Philippines Red Cross, the Philippines adopted a disaster management act with a new focus on risk reduction. Among the innovations of the new act was its provision on funding for risk reduction activities.

“The previous law provided calamity funds which could be accessed only after a disaster,” noted Catherine Marie Martin, then-director of disaster management services of the Philippine Red Cross. “You needed an official state of calamity before there was money for preparedness. The consequence was that far too little was done at community level.” Under the new law, these funds can now be made available for mitigation and preparation activities at the community level.

Yet, despite the frequency with which these legal gaps are identified, several years of consultations with our members and partners as well as our recent case study research show that there is remarkably little international guidance about best practice in legislation for disaster risk reduction. This is particularly true at the community level, where implementation of the Hyogo Framework for Action is reported to be slowest.

The so-called ‘last mile’ of disaster risk reduction – within communities themselves, where the impact of disasters is felt most immediately and intensely – remains surprisingly under-regulated in many countries. While legislation is certainly not a single solution, it plays an important role in the overall governance of disaster risk reduction and can make an important difference in moving from mere rhetorical support to sustained action.

Legislation can be a critical instrument to establish or solidify an appropriate role for communities in reducing disaster risk. Important issues in this regard include whether and how communities and civil society organizations are legally empowered to take an active role in decision-making about risk reduction at the community level (for example, through mandated community representation on municipal disaster committees, as is the case in the Dominican Republic); whether they have the means to hold their authorities accountable for risk reduction responsibilities (as is the case, for example, in Indonesia’s 2007 disaster management law); and whether key incentives for individual behaviour – such as land management rules and building codes – are effectively implemented at the community level without further burdening the poor and marginalized. Furthermore, legislation is often critical to ensure the prioritisation of resources for investments in risk reduction. The Philippines is a case in point, as noted in the box above.

As community-based volunteer organizations, National Societies can be important resources to their authorities in assessing the impact of their existing legal regimes at the local level. In many countries, they are already closely involved in providing their authorities with advice in this area.

Proposed conference documents

1. **A report** on some best practices and ideas for developing effective laws on disaster risk reduction – laws/legislation for real impact at the community level, where it is most needed.

Possible elements for the disaster laws resolution:

[the International Conference. . .]

- *welcomes the IFRC’s research on legislation and disaster risk reduction;*
- *affirms the importance of ensuring real community-level impact and community empowerment through legislation on disaster risk reduction;*
- *affirms the importance of ensuring national society involvement in decision-making and planning about disaster risk reduction at the community level;*
- *affirms that, as auxiliaries to the public authorities in the humanitarian field, National Societies are encouraged to share their expertise and advice with the authorities with respect to the development of laws on disaster risk reduction,*
- *invites National Societies and IFRC to continue their research in this area.*

For more information

(available at <http://www.ifrc.org/idrl>)

- *Desk review on trends in the promotion of community-based disaster risk reduction through legislation (2010)*

3. Addressing regulatory barriers to shelter

In the immediate aftermath of major disasters such as the 2010 Pakistan floods or the Haiti earthquake, millions of persons can be displaced at once, creating a massive crisis for governments and an ongoing personal crisis for each affected family.

In many recent disasters, regulatory issues, including those related to land and property, as well as planning and building processes, have posed significant challenges to the provision of rapid and equitable shelter solutions. Over and over again, governments and humanitarian actors have been faced with these questions:

- *How can the temporary use of land be quickly obtained to provide settlement for displaced households?*
- *How can delays in implementing shelter solutions due to ownership clarification or compliance with construction or planning approval procedures be reduced?*
- *How can equity be ensured in shelter assistance efforts, including as between recognized property owners and non-owners (e.g. renters and squatters) and between men and women?*
- *What support should be provided to persons who lack formal documentation or recognized title to homes that have been destroyed?*

Our lack of ready answers has often led to sustained suffering for disaster-affected persons. These issues have become increasingly apparent to the IFRC and its members as they have scaled up capacity and activities in emergency and transitional shelter since 2005. Moreover, as convenor of the Global Emergency Shelter Cluster in disaster situations, the IFRC has increasingly been informed by its partners that they struggle with the same issues.

Fast-track procedures speed recovery: the experience of Chile

In February 2010, an earthquake measuring 8.8 on the Richter Scale struck Chile also unleashing a tsunami causing additional damage. Together, they destroyed or damaged over 200,000 homes and displaced over 800,000 people. Finding shelter solutions for so many raised many challenges, including regulatory problems.

“All reference points have disappeared,” notes Martin Bravo, Head of Property Purchases for the Chilean Ministry of National Property. “It is very difficult to finalise land titles when everything is upside down.”

A new act passed in Chile in August 2010 accelerated the process for regularisation of land title for small properties in both rural and urban areas. The process, which normally takes up to two years, was cut to six months for those urgently requiring shelter assistance following the earthquake and tsunami.

Housing, land and property rights issues and the associated regulatory processes are complex in every country, both from the point of view of the law and of socio-economic relations. Without question, the aftermath of a disaster is a particularly challenging moment to address the barriers that legal and regulatory issues can pose. But experience has shown that, unless creative solutions are found, the emergency shelter needs of the affected population will not be adequately met. A great deal of learning and best practice already exists with regard to

long-term approaches to addressing property issues. Much less attention has been paid to the emergency and interim periods, when needs are often at their height.

Proposed conference documents

1. **A report** *highlighting the key problem areas and some important lessons learned regarding the impact of regulatory measures on the provision of emergency and transitional shelter to those displaced by natural disasters.*

Possible elements for the disaster laws resolution:

[the International Conference. . .]

- *welcomes the compilation of lessons and practices by the IFRC;*
- *expresses concern about the plight of those affected by disasters for whom the provision of adequate shelter and settlement is subject to the resolution of regulatory issues;*
- *calls on disaster-affected states and humanitarian organizations to draw on best practice in the implementation of practical solutions for quickly addressing regulatory barriers related to the provision of emergency and transitional shelter as well as housing reconstruction after disasters;*
- *calls on states and humanitarian organizations to ensure that their shelter assistance is equitable as between all persons in need, including as between those who possess formal legal title to land and those who do not;*
- *invites National Societies and the IFRC to continue their research in this area.*

Process at the International Conference

In addition to the development of a resolution in the drafting committee, it is proposed that the disaster laws agenda items be addressed in a dedicated plenary session of the conference. One or more panels will be organized to stimulate debate on the three subtopics.

Elyse Mosquini, Senior Advocacy Officer, IDRL Programme

elyse.mosquini@ifrc.org; +41 22 730 4409

International Federation of Red Cross and Red Crescent Societies
Chemin des Crêts, 17 | 1211 Petit Saconnex | Geneva | Switzerland
idrl@ifrc.org - <http://www.ifrc.org/idrl>