



# Legislative Issues in Disaster Management and Epidemic Response

Humanitarian Diplomacy Guidance Note No.2

FINAL CONSULTATION VERSION

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1. Save lives, protect livelihoods, and strengthen recovery from disaster and crises.
2. Enable healthy and safe living.
3. Promote social inclusion and a culture of non-violence and peace.

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## About the IDRL Programme

The IFRC's "International Disaster Response Laws, Rules and Principles" (IDRL) Programme seeks to reduce human vulnerability by promoting legal preparedness for disasters. It works in three areas: (1) collaborating with National Red Cross and Red Crescent Societies and other partners to offer technical assistance to governments on disaster law issues; (2) building the capacity of National Societies and other stakeholders on disaster law; and (3) dissemination, advocacy and research.

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# Introduction

The International Red Cross and Red Crescent Movement is probably best known for its humanitarian assistance to vulnerable people. From our very founding, a key purpose for our existence has been to bring care and comfort to the suffering – originally only on the battlefield, but soon also to those exposed to disasters, health emergencies, extreme poverty and other crises threatening their lives and dignity.

We have also been active from our beginning in legal advocacy – particularly in the sphere of international humanitarian law (IHL). With the leadership of the International Committee of the Red Cross (ICRC), National Red Cross and Red Crescent Societies have built a well-deserved reputation for their work in disseminating IHL, promoting its progressive development, and advocating for its full implementation by their domestic authorities and other parties.

This second edition in the Humanitarian Diplomacy Guidance Note Series seeks to build on that tradition by strengthening our humanitarian diplomacy concerning domestic legislation in the sphere of non-conflict disasters and epidemic control. Some National Societies are already very active in this kind of advocacy. For others, however, legislative advocacy of this kind would be something new, despite their deep operational engagements in disaster management and emergency response.

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## Why we should act

The need for effective laws to mitigate, manage and recover from disasters and health emergencies cannot be doubted. Worldwide, nearly 4 billion persons (over half the world's population) were affected by disasters from 1990 to 2009 alone.<sup>1</sup> As a result of the effects of climate change, both the numbers and intensity of hydro-meteorological disasters have risen nearly two-fold over the last 15 years. In light of the complex array of activities that societies will need to undertake to address this growing danger, and the large number of social actors that need to be involved, an adequate legal basis is growing increasingly indispensable. Likewise, globalization has greatly heightened the speed with which contagious disease can spread around the world. The experiences with SARS, avian flu and, most recently, the A (H1N1) virus have highlighted the critical role of epidemic control mechanisms.

As experienced disaster managers and public health providers, and as representatives of a global movement with 150 years of experience in humanitarian work, National Societies have much to offer to policy-makers in the development of legislation in these areas. Moreover, as auxiliaries to the public authorities in the humanitarian field, National Societies have unique access and a special responsibility to assist their governments in the development of effective and humane disaster laws. This was

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<sup>1</sup> Source: EM-DAT: The OFDA/CRED International Disaster Database, [www.emdat.be](http://www.emdat.be) - Université Catholique de Louvain - Brussels - Belgium.



## Introduction

affirmed by the International Federation of Red Cross and Red Crescent Societies' (IFRC) "Humanitarian Diplomacy Policy," adopted in 2009.

The role of the Red Cross and Red Crescent in providing expert advice to governments on disaster law has been repeatedly affirmed at the international level. Most recently, at the 30th International Conference of the Red Cross and Red Crescent in 2007, the state parties to the Geneva Conventions and the components of the Movement adopted a new set of "Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance" (also known as the "IDRL Guidelines").

In doing so, the participants at the International Conference called on the IFRC and National Societies to promote the IDRL Guidelines. This guidance note is meant to assist them in that ongoing work (see in particular chapter 3). However, they also called on the IFRC and National Societies to continue their research and advocacy on legal preparedness for disasters more broadly. This makes good sense, as international relief is only one component of a much broader spectrum that national law must address. Accordingly this guidance note also touches on a number of areas related to domestic efforts to reduce risks, and to respond to, and recover from disasters and epidemics.

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### Purpose of the guidance note

It is very clear that the circumstances that inform good law on disaster management can vary greatly from country to country. The type and degree of natural hazard risks, the specific factors that render citizens vulnerable, the domestic institutional arrangements, the political and economic realities and the operational role of National Societies are just some of the variables that might affect an advocacy agenda. Nevertheless, consultations with National Societies in various parts of the world have revealed some common areas of interest, which this guidance note attempts to describe.

This guidance note is not intended to represent an official policy instrument or a set of rules dictating what National Societies must or must not do. It is meant only to serve as a reference guide, providing ideas that National Societies may wish to use in support of their legislative advocacy at the national and local levels. Those ideas have been derived from international norms, existing IFRC policy documents, best practice, and the above-mentioned consultations. However, it remains very much up to individual National Societies to decide whether and how to use the information included here.

In both disaster management and the management of epidemics, there is quite a bit of overlap between the questions that may be taken up as a matter of policies and plans on the one hand and those addressed by more formal decrees, statutes and regulations on the other. The guidance note recognizes this, but is mainly aimed at the development of the latter kinds of instrument, i.e. legal instruments.

It is our hope that this guidance note will be useful to any National Society representatives involved in advocating for laws, either at the national or local level. This might include the leadership, heads of disaster management and health programmes and legal advisors. Our intention is to make it a "living document", with periodic updates over time, so as to continue to integrate new ideas and information. Moreover, all legal references cited in this note will be made available online at [www.ifrc.org/idrl](http://www.ifrc.org/idrl).

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## Scope and structure of the guidance note

It is strongly recommended that this guidance note be read in conjunction with Part 1 of the Humanitarian Diplomacy Guidance Note Series: The General Guidelines for the Practice of Humanitarian Diplomacy, which provides background on how National Societies can be most successful in the various kinds of advocacy they undertake as well as critical considerations as to how the Fundamental Principles and the auxiliary role should inform any such advocacy.

This guidance note builds on those general considerations by providing a menu of ideas around potential advocacy messages related to the development of legislation concerning disaster risk reduction, domestic disaster response, international disaster response, disaster recovery and epidemic control. With regard to the latter topic, this guidance note focuses only on response measures once an epidemic has begun to be manifest, on the rationale the surveillance measures may more suitably be combined in a potential future product looking to preventive issues in public health more generally. There is no hierarchy proposed among the various issues listed in each section. Priorities between them will surely differ between National Societies and countries.

For each issue area, potential problem areas are identified, certain relevant international norms are described as well as any indications from existing policy documents about what might be considered a Red Cross/Red Crescent approach to the issue are suggested. (Again, however, this is only intended as background information and not as a definitive interpretation of the meaning of the various policy documents.) Questions that National Societies might ask themselves and/or their authorities about the issue are proposed. Finally, examples of existing legislation or policy approaches relevant to the issue are provided.

It should be noted that it is not always the case that laws and policies with positive aspects on paper are fully implemented in practice. An attempt has been made to seek National Society input as to the effectiveness of the various instruments cited here, but our information is incomplete and it should not be assumed that mere inclusion in this guidance note signals that a particular instrument has been a full success.

Legislative Issues in Disaster Management and Epidemic Response  
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# Chapter 1

## Legislative issues in disaster risk reduction

Good legislation can play a critical role in reducing disaster risks. This has always been clear for man-made hazards, such as oil spills, faulty construction, and industrial accidents, all of which can be greatly reduced through well-enforced rules and standards. Natural disasters, on the other hand, have traditionally been thought of as an inevitable fact of life, beyond the scope of human laws.

These days, however, we know that societies are far from powerless in the face of earthquakes, floods, droughts and other so-called “acts of God,” even if their capacity to prevent them is limited. We can reduce the impact of these kinds of hazards on our communities in many ways, including effective early warning systems, physical protective structures, controls on land use in high-risk areas, and education and involvement of communities in taking steps to reduce their own risks. Effective legislation can help to ensure the success of all of these efforts.

The urgency to take the required steps has increased as the impacts of climate change have grown. Clearly, preventive measures must eventually include controls on the emissions that are understood to be causing the problem. In addition, however, there is a need to strengthen the traditional tools of disaster risk reduction, including early warning, community engagement and adequate institutional and financial mechanisms to support protective activities, such as the strengthening and maintenance of flood walls.

Unfortunately, many existing national disaster management laws still focus almost exclusively on rescue and relief. It is particularly in these situations – where there is a large gap in existing law – that advocacy from the Red Cross and Red Crescent is likely to have the biggest impact.

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## **Key international instruments**

### **Hyogo Framework for Action**

In 2005, an international conference of 168 states adopted the Hyogo Framework for Action for 2005-2015. Following on the UN General Assembly’s dedication of the 1990s as the “International Decade for Natural Disaster Reduction” and the adoption of the “Yokohama Strategy for Safer World” of 1994, the Hyogo Framework has become the flagship (albeit non-binding) instrument on risk reduction at the international level and should be a primary tool for Red Cross/Red Crescent legislative advocacy.

The Hyogo Framework sets out three strategic goals: (a) integration of disaster risk reduction into development policies, planning and programmes, (b) development and strengthening of institutions, mechanisms and capacities to build disaster resilience, and (c) systematic implementation of risk reduction in preparedness response and recovery programmes. To achieve these goals, the Framework identifies five “priorities for action” for governments, civil society and other actors:

1. Ensure that disaster risk reduction is a national and a local priority with a strong institutional basis for implementation
2. Identify, assess and monitor disaster risks and enhance early warning.
3. Use knowledge, innovation and education to build a culture of safety and resilience at all levels.
4. Reduce the underlying risk factors.

5. Strengthen disaster preparedness for effective response at all levels.

In connection with “Priority 1,” the Framework calls on governments to “adopt, or modify where necessary, legislation to support disaster risk reduction, including regulations and mechanisms that encourage compliance and that promote incentives for undertaking risk reduction and mitigation activities.”

### **Agenda for Humanitarian Action: Final Goal 3.1**

Prior to the adoption of the Hyogo Framework, the state parties to the Geneva Conventions and the components of the International Red Cross and Red Crescent Movement sounded some similar notes in the “Agenda for Humanitarian Action,” adopted by the 28<sup>th</sup> International Conference of the Red Cross and Red Crescent in 2003.

Final Goal 3.1 of the Agenda called on states to “review their existing legislation and policies to fully integrate disaster risk reduction strategies into all relevant legal, policy and planning instruments.” It also called on states to take “appropriate operational measures” in a wide range of areas, including “sustainable natural resource, environmental and land-use management, appropriate urban planning, and enforced building codes.”

Final Goal 3.1 also specifically urged states to collaborate with National Societies and other partners in implementing disaster risk awareness and education programmes, early warning systems, training and other mitigation measures, based on risk, vulnerability and capacity assessments. To this end, it asserted that states should “negotiate clearly defined roles and responsibilities with their National Societies in risk reduction and disaster management activities,” which might include “National Society representation on national policy and coordination bodies.” They should also “take specific legal and policy measures to support and assist National Societies in building sustainable volunteer and community capacity” in disaster management.

For their part, National Societies were urged by Final Goal 3.1 to scale up their efforts in disaster risk reduction, including in “awareness raising and advocacy activities at the local, national and regional levels.”

Like the Hyogo Framework, the Agenda for Humanitarian Action is not binding on states, but it does enjoy a high level of moral authority as a resolution of the International Conference.

### **A “right to safety”?**

In addition, in recent years, some advocates have called for the development of an internationally recognized “right to safety.” As asserted by the Federation’s World Disaster Report 2002, such a right “could mark a significant step forward in the way we approach risk reduction because it may strengthen the lines of accountability and build trust between vulnerable people and those who are supposed to help them” (p.31).

At present, there is no international instrument explicitly accepting such a right. However, a state responsibility to take at least some appropriate steps to reduce disaster risks seems to be an obvious implication of the existing rights to life, food, housing, and health (among others), which are embraced by a number of treaties and soft law documents, notably the Universal Declaration of Human Rights of 1948, and the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, of 1966.

It is also noteworthy that the European Court of Human Rights has held in two cases that the right to life imposes a responsibility on governments to act to prevent foreseeable disasters (see *Öneryildiz v. Turkey*, Application no. 48939/99, judgment of 30 November 2004; *Budayeva and others v. Russia*, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, judgment of 20 March 2008).

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## **Issue areas**

### **Role of the National Society in disaster risk reduction**

#### **The problem**

In many countries, National Societies are playing an increasingly important role in reducing disaster risks, particularly at the community level. However, that role is not always reflected in the relevant legislation, beyond very general language in establishing Red Cross or Red Crescent laws.

In some of those cases, a mention in relevant disaster policy or planning documents has been found to be sufficient. In others, however, National Societies have found that a lack of clarity on their role in disaster management law can hamper their access to decision-making bodies, and discourage governmental support for and coordination with them. Some National Societies have also expressed concern about potentially mismatched expectations about the scope of their activities – in particular in the area of early warning – where nothing is mentioned about them in existing legislation.

Inasmuch as National Societies are often expected to play a very special role as auxiliaries to the public authorities in the humanitarian field, a formal acknowledgement in law will often be helpful.

#### **The Red Cross/Red Crescent approach**

The Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (IDRL Guidelines), as adopted by the 31<sup>st</sup> International Conference of the Red Cross and Red Crescent in 2007, provide that, “[a]s an essential element of a larger disaster risk reduction programme, States should adopt comprehensive legal, policy and institutional frameworks and planning for disaster prevention, mitigation, preparedness, relief and recovery, which take full account of the auxiliary role of their National Red Cross or Red Crescent Society[.]”

Likewise, paragraph 3.1.5 of the Agenda for Humanitarian Action adopted by the 28<sup>th</sup> International Conference provides that states should “negotiate clearly defined roles and responsibilities with their respective National Societies in risk reduction and disaster management activities” which “may include National Society representation on relevant national policy and coordination bodies as collaborative partners with States.”

#### **Questions to ask**

- Does your national disaster management act refer to the role of your National Society in disaster risk reduction?
- If so, does it guarantee the participation of the National Society on key decision-making bodies relevant to disaster risk reduction?
- Does it appropriately set out expectations about the National Society’s activities?

### Legislative examples

Bangladesh's Standing Order on Disasters of 1999 sets out specific duties and responsibilities for a large number of governmental agencies, including public radio and television and other actors with regard to early warning. In particular, the order calls on the Meteorological Department of the Ministry of Defence to issue special weather warnings and to provide this information both to relevant ministries and the Bangladesh Red Crescent Society for further dissemination. It also assigns the Bangladesh Red Crescent a critical role in the national Cyclone Preparedness Programme, which includes operation of a central command centre and elaborate arrangements for dissemination of warnings through 33,000 village-based volunteers using megaphones and hand-operated sirens.

Likewise, Djibouti's 2006 Law on the Creation of an Institutional Framework for the Management of Risks and Disasters, the Dominican Republic's 2002 Disaster Management Act, the Philippines' 2010 Disaster Management Act and Colombia's 1998 Law Creating the National System for the Prevention and Response to Disasters all mandate that a representative of the National Red Crescent Society be represented in disaster management committees at the national and local levels.

### Institutional mechanisms for climate change

#### The problem

Experts have identified climate change as a major driver of the worldwide increase in natural disasters. This has sparked a critically important debate about how to reduce the gas emissions that are thought to be leading to the change. At the same time, there is a growing realization that societies must also adapt to the existing impacts of climate change – in particular by accelerating efforts to mitigate the impact of disasters that result. In a few countries, this has led to the development of new laws and institutions to tackle the issue of climate change. There is a danger, however, that these new rules and structures may duplicate existing frameworks for disaster risk reduction if not well integrated.

#### The Red Cross/Red Crescent approach

The "Declaration for Humanity" of the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent in 2007 acknowledged that disaster preparedness and risk reduction are key elements of the adaptation to climate change and called for integrated approaches.

Also in 2007, the Red Cross/Red Crescent Climate Centre, a reference centre for the Movement based in the Netherlands Red Cross, published the Red Cross/Red Crescent Climate Guide, intended as a reference for National Societies about the impacts of climate change and potential operational and advocacy approaches to adaptation measures.

#### Questions to ask

- Does existing disaster management legislation or policy adequately acknowledge the impacts of climate change and provide for integration of efforts with others related to climate change?
- If institutional mechanisms have been created within government for climate change, are there adequate guarantees as to their proper coordination with existing mechanisms for disaster risk reduction and management?

- If funding mechanisms have been created for climate change adaptation, do they also provide support for disaster risk reduction, particularly at the community level?

### **Legislative examples**

- In 2009, the Philippines adopted a Climate Change Act in 2009, which broadly address gas emission matters as well as those related to adapting to climate change, including through disaster risk reduction. The Act creates a Climate Change Commission which is charged among other things, to collaborate with disaster authorities to “[e]nsure the mainstreaming of climate change, in synergy with disaster risk reduction, into the national, sectoral and local development plans and programs.” The following year, the Philippines adopted the Disaster Risk Management Act of 2010, which in turn, makes substantial references to integrating a climate change perspective in disaster risk management tools.

## **National platforms**

### **The problem**

The Hyogo Framework calls on states to develop “national platforms,” defined as “national mechanisms for coordination and policy guidance on disaster risk reduction that need to be multi-sectoral and inter-disciplinary in nature, with public, private and civil society participation involving all concerned entities within a country.” Among other things, these platforms could serve as key forums for developing new legislation along the lines discussed in this guidance note. However, not all countries have created them. As of the date of writing, 73 national platforms had been reported to the UN International Strategy for Disaster Reduction (UNISDR) secretariat.

Moreover, some countries that do have platforms only include governmental representatives on them, despite the fact that UNISDR’s “Guidelines for National Platforms for Disaster Risk Reduction” recommend that national platforms should include representatives of the National Red Cross or Red Crescent Society and other key stakeholders.

### **The Red Cross/Red Crescent approach**

The IFRC was an active participant at the World Conference on Disaster Risk Reduction in 2005 and it has embraced the Hyogo Framework that resulted from it, notably through its “Global Alliance” with UNISDR on risk reduction. When such platforms are created, National Societies should be included on them, not only because of their expertise, but also because of their special role as auxiliaries to the public authorities in the humanitarian field, as noted above.

### **Questions to ask**

- Does your country have a national platform on disaster risk reduction?
- If it does not:
  - Which ministry could take the initiative to form one?
  - Would this require amendment to existing law?
  - Is there an existing body that could be designated as a national platform?



- If your country does have a national platform:
  - Is its role reflected in national disaster law or policy in order to provide it with adequate authority?
  - Is your National Society represented on it?
  - Is the platform also inclusive of other key actors from civil society and the scientific community?

### **Legislative examples**

In 2008, the Dominican Republic convened a “National Technical Committee for the Prevention and Mitigation of Risk,” which was designed as its national platform pursuant to the Hyogo Framework. The Committee has representatives of 22 institutions, including relevant ministries and departments of government, the National Red Cross Society and the academic sector. As set out in article 11 of Law 147-02 on risk management and its implementing regulation (Decree no. 932-03), the Committee is charged with developing the national disaster management plan as well as those of the regions.

In 2000, the Czech National Committee for Disaster Reduction was formed as a national platform, including relevant ministries, and institutes, the Czech Red Cross Society and other civil society members. In 2004, it was a registered as a NGO and has been involved in the development of several new laws.

## **Defining disaster risk reduction as a primary governmental responsibility**

### **The problem**

While most governments acknowledge the importance of disaster risk reduction, it is often not accorded a formal priority in law or policy, since both still tend to focus mainly on response after a disaster has struck.

### **The Red Cross/Red Crescent approach**

Final Goal 3.1 of the Agenda for Humanitarian Actions calls on states to ensure that legislation fully integrates disaster risk reduction. The same sentiment was repeated in Priority 1 of the Hyogo Framework.

### **Questions to ask**

- Does your national law state that the government has a responsibility to reduce disaster risks?
- If appropriate, do provincial or local laws state that government has a responsibility to reduce disaster risks?

### **Legislative examples**

Costa Rica’s National Law on Emergencies and Reduction of Risk (art. 25) provides that “[i]t is the responsibility of the Costa Rican State to prevent disasters. To this end, all institutions are required to take account of risk and disaster concepts in their programmes and to include measures to reduce risks in their ordinary work, promoting a culture of risk reduction.”

Indonesia's Law on Disaster Management (para. a) provides that "the Republic of Indonesia has the responsibility of protecting all people of Indonesia and their entire native land in order to protect life and livelihoods, including from disaster[.]"

### **Risk mapping**

#### **The problem**

In the absence of a recent disaster, relevant government ministries and departments may not be pro-active in gathering and updating data about hazards, community vulnerabilities and capacities.

#### **The Red Cross/Red Crescent approach**

Paragraph 3.1.1 of the Agenda for Humanitarian Action called on states to integrate disaster risk reduction into all "legal, policy and planning instruments in order to address the social, economic, political and environmental dimensions that influence vulnerability to disasters." The gathering of appropriate data would clearly be necessary to understand those kinds of vulnerability.

For their part, National Societies committed in the IFRC's Disaster Preparedness Policy of 1999 to "advocate with governments" and other parties about the "need for and effectiveness of disaster preparedness," and in particular to raise awareness of "hazards, levels of risks and coping mechanisms[.]"

#### **Questions to ask**

- Does your national disaster management law mandate specific ministries/departments to gather, update and disseminate information about disaster hazards?
- Does that law provide for multi-hazard risk mapping, or is it specific to only some types of disaster?
- Does your national law mandate specific ministries/departments to gather, update and disseminate information about vulnerabilities for disasters and community coping capacities?
- If these tasks are delegated to the provincial or local level, does the law indicate whether and how the information is to be compiled and shared at the national level?

#### **Legislative examples**

South Africa's Disaster Management Act of 2002 mandates that its "National Disaster Management Centre":

"must act as a repository of, and conduit for information concerning, disasters and disaster management, and must for this purpose-

- (a) collect information on all aspects of disasters and disaster management;
- (b) process and analyse such information;
- (c) develop and maintain an electronic database [whose contents are set out in detail in the law, and include hazards, risks, community capacities]; and
- (d) take steps to disseminate such information, especially to communities that are vulnerable to disasters" (art. 17).

The Act also empowers the Centre to seek information from any organ of state or person, with the power to report to Parliament (through its directing Minister) in the case of a governmental failure to comply – and with the potential criminal sanctions for refusal by other persons (arts. 18 & 60).

Another example is Algeria's Law on Prevention of Major Risks and the Disaster Management in the Context of Durable Development of 2004, which mandates the development of detailed plans for a wide range of enumerated hazard types ranging from earthquakes and floods to pollution and mass population movements. For each type of plan, the Law sets out the kinds of risk data that should be gathered.

## **Risk hazard monitoring and decision-making on warnings**

### **The problem**

The UNISDR has noted that a large number of countries lack clear and robust monitoring systems – particularly for non-meteorological hazards (UNISDR, Global Survey, p.16). As a result, lack of information, confusion and political concerns can hamper the delivery of official warnings.

### **The Red Cross/Red Crescent approach**

The IFRC does not have a specific policy on this question, but paragraph 17(f) of the Hyogo Framework calls on states to “[e]stablish institutional capacities to ensure that early warning systems are well integrated into governmental policy and decision-making processes and emergency management systems at both the national and the local levels, and are subject to regular system testing and performance assessments.”

### **Questions to ask**

- Does your national law mandate specific scientific institutions or departments for ongoing monitoring of natural hazards?
- Does your law set out how information from technical experts is transmitted to decision-makers?
- Does your law define who is responsible for deciding whether a warning should be issued?
- If provincial or municipal authorities have responsibility to issue certain alerts, are their procedures set out in law at the appropriate level?

### **Legislative examples**

A good example (although one requiring a number of steps) is Nicaragua's Law Creating the National System for the Prevention, Mitigation and Response to Disasters (SINAPRED) of 2000 and its implementing regulations (Decree Nos. 53-2000 and 98-2000). They mandate the Nicaraguan Institute of Territorial Studies (INETER) to undertake permanent meteorological, volcanic and seismic monitoring while the Ministries of Health and the Environment are charged with monitoring of health and environmental emergencies, respectively.

These bodies are to inform the SINAPRED Executive Secretary of emerging dangers at the departmental, regional or national levels. The Executive Secretary then decides whether to recommend one of the designated colour-coded types of warnings (for varying levels of threat) to the President of the National SINAPRED Committee (an inter-ministerial body). The President must then decide whether to convene the Committee,

which has the power to decide to issue the warning. A separate procedure is foreseen for mayors for local-level alerts.

## Formulation and dissemination of warnings

### The problem

Disaster warnings are sometimes ineffective because they are not understood by their target audience or they are not received by them in a timely manner. In many cases, governmental warning mechanisms do not take full advantage of the role that National Societies, the private media and other community groups can play in disseminating timely warnings.

### The Red Cross/Red Crescent approach

The IFRC's 1999 Policy on Disaster Preparedness calls on the IFRC secretariat and National Societies to contribute to "mitigation systems, such as early warning systems, that may reduce the loss of lives and property when a disaster strikes." It also calls on them to "[e]nsure that the knowledge from prediction and early warning systems can be accessed, understood and acted upon by local communities."

In 2003, the Agenda for Humanitarian Action likewise stressed that states "in cooperation with National Societies and other concerned agencies" should "implement . . . early-warning systems."

### Questions to ask

- Does your disaster management law or policy set out simple formats for transmitting disaster warnings?
- Are these formats appropriate for target communities?
- Does disaster legislation in your country set out a chain of dissemination for disaster warnings?
- Does it adequately incorporate the role of the National Society? Does it adequately incorporate the role of other actors, including the private media, civil society and communities themselves?

### Legislative examples

One frequently-cited example is Bangladesh's Standing Order on Disasters of 1999, which sets out specific duties and responsibilities for a large number of governmental agencies, including public radio and television and other actors with regard to early warning. In particular, the order calls on the Meteorological Department of the Ministry of Defence to issue special weather warnings and to provide this information both to relevant ministries and the Bangladesh Red Crescent Society for further dissemination (para. 16.1). It also assigns the Bangladesh Red Crescent a critical role in the national Cyclone Preparedness Programme, which includes operation of a central command centre and elaborate arrangements for dissemination of warnings through 33,000 village-based volunteers using megaphones and hand-operated sirens (IFRC, World Disaster Report, p. 16).

Another interesting example at the sub-national level is Puerto Rico's 2007 "Law establishing the protocol for access to information and education on epidemic diseases and environmental accidents." The law mandates the Department of Health to take

certain actions to disseminate warnings to the public about potential emergencies using mass media organs. In cases where the location, urgency or other circumstances of an emerging disaster make these methods nonviable, the Department is required to take into account other methods of dissemination, including the local Red Cross network (art. 7).

## Preparing community capacity to react

### The problem

Without prior knowledge of the most effective steps they can take, communities may not be able to use disaster warnings, even if they are well framed. Moreover, communities lacking base knowledge of the hazards and vulnerabilities they face are less likely to respond appropriately to official warnings.

### The Red Cross/Red Crescent approach

The IFRC's disaster preparedness policy calls on National Societies to "[r]aise awareness of disaster hazards through public education" and to "[a]dvocate, where necessary, with government ... and the public about the need for and effectiveness of disaster preparedness." The Hyogo Framework (para. 3) further calls for "institutions dealing with urban development [to] provide information to the public on disaster reduction options prior to constructions, land purchase or land sale."

### Questions to ask

- Does your disaster management or education law mandate the provision of instruction to members of the public on how to react to disasters (e.g. through simulations or drills)?
- Is a particular department or agency assigned by law the responsibility to ensure disaster-related training?
- Is the role of the National Society in public education about disasters acknowledged and supported by domestic law?

### Legislative examples

Fiji's National Disaster Management Act of 1998 establishes an inter-ministerial committee (on which the Fiji Red Cross must be represented) on Mitigation and Preparedness, charged (among other tasks) with planning public awareness activities. These activities are to be organized and coordinated at the national level by the National Disaster Management Office, and carried out by identified focal points at the Divisional and District levels. The law also mandates that the committee conduct a "National Disaster Awareness Week" prior to the beginning of the cyclone season.

The Russian Federation's Law on Protection of the Population and Areas from Natural Disasters and Human Created Accidents of 1994 (art. 18.1) provides that "citizens . . . have the right to be informed of hazards they can be exposed to at certain places of their residence within the [Russian Federation's] territory as well as of safety-provision measures." Similarly, Algeria's Law on Prevention of Major Risks and the Disaster Management in the Context of Durable Development of 2004 (art. 11) provides that "the State assures all citizens equal and permanent access to all information concerning major risks" including hazards specific to their homes and work places, applicable preventive measures, and applicable governmental measures and systems. State parties

to the Aarhus Convention (currently only in Europe and Central Asia) are also required to ensure that environmental hazard information is available to citizens upon request.

## Community participation in decision-making

### The problem

The consensus of risk reduction literature suggests that ensuring community participation in decision-making about programme planning and execution is the best way to ensure the success of risk reduction efforts. However, many governmental efforts still retain a “top down” quality.

### The Red Cross/Red Crescent approach

The IFRC Disaster Preparedness Policy “recogniz[es] that a community-based approach is the best guarantee that improvement in disaster preparedness will be realized and sustained” and therefore asserts that “the assisted population must participate in the planning and preparation for disasters.”

The Hyogo Framework also calls on governments to engage communities directly in risk reduction activities, including through “the attribution of roles and responsibilities, and the delegation and provision of the necessary authority and resources.”

### Questions to ask

- Does domestic law mandate the involvement of communities in decision-making and planning for disaster risk reduction activities?
- Are community representatives systematically included in relevant committees and other bodies with responsibility for risk reduction?

### Legislative examples

Zambia’s 2010 Disaster Management Act provides for the creation of “satellite” disaster management committees covering one or several villages. These committees are to be locally elected, but the membership is also specified to include a representative of a traditional authority, at least three local residents trained in disaster management, one representative of a community organization in the area, two women and two men from the area, at least one youth, a businessman or farmer and a local representative of an NGO.

France’s Law on the Prevention of Technological and Natural Risks and on Recovery from Damages of 2003 (art. 565-1) mandates the establishment of departmental commissions on major natural risks including local elected officials, disaster management professionals and academics, representatives from various professional private sector and community groups including “victims’ associations”, and media personalities.

Ecuador’s Law on Civil Protection and the Prevention and Mitigation of Disasters of 2006 (arts. 10-15) requires the establishment of committees at the department, municipal and communal levels, including not only elected officials and governmental disaster response agencies but also representatives of civil society and (in the latter two levels) “community leaders”. These committees are charged both with developing plans and carrying out risk reduction and preparedness activities.

## Land management and urban planning

### The problem

Some disasters – like earthquakes, floods and industrial accidents – are geographically predictable, yet land management and urban planning rules (e.g. zoning regulations) do not always go as far as they should to control their risks, either because they lack updated hazard-related provisions or because of a lack of enforcement.

Moreover, uncontrolled urbanization, in and of itself, has been identified as one of the largest disaster risk factors in many countries. One solution that has been found to the dangers of overcrowded slums and other hazardous settlements is to mandate the removal of persons living there prior to the advent of a disaster. However, this can have enormous consequences for the livelihoods and well-being of affected persons, most of who live in these areas because poverty has left them no other choice.

### The Red Cross/Red Crescent approach

Both the Agenda for Humanitarian Action and Hyogo Framework Priority 4 call on governments to bring a disaster risk reduction lens to their current laws on resource and land management and urban planning.

The Red Cross/Red Crescent does not have a formal policy on evictions, however, according to the UN Guiding Principles on Internal Displacement of 1998 (principle 7), a decision to displace persons from their homes (even for the purpose of protecting them from future disasters) should be considered only in the absence of other safe alternatives and should include minimum procedural guarantees. Moreover, if a decision is made to go forward, authorities should “ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.”

### Questions to ask

- Does your country have zoning regulations to minimize residential and commercial development in high-risk areas and promote other uses (such as agriculture), which are less likely to expose human life and habitation to destruction?
- If so, are those regulations kept regularly up-to-date?
- Are the regulations adequately enforced? If not, are there gaps in existing law concerning the enforcement powers, responsibilities, or funding of responsible authorities?
- Does your law allow for the resettlement of residents living in zones of high disaster risk?
- If so, does it provide adequate protections for the rights and dignity of evicted persons?

### Legislative examples

In the United States, the Federal Flood Insurance Act of 1968 (sec. 4022) provides for affordable flood insurance for homeowners and renters so long as they abide by zoning laws and their state governments implement effective land management laws and policies to lower flooding risks. Special premium rates may be applied in communities that implement effective measures to reduce flood and erosion risks.

Brazil has sought to address the dangers faced by inhabitants of illegal settlements in slums with an innovative national urban policy. The Statute of the City (Law 10, 257)

calls for “Special Social Interest Zones” to be designated in municipal plans or laws. In these zones, homes built in violation of building and land use codes are to be progressively “legalized”, for instance, by being made eligible to receive federal funding for projects to improve their safety (such as water and sanitation projects, which are not only critical for public health reasons, but can also reduce the potential for soil erosion and landslides to which open sewers may contribute). According to the Statute and related policies, evictions are to be considered the last resort, with a preference for other measures to mitigate risks. If communities must be moved for safety reasons, the costs are covered and authorities must seek to keep them close to their original homes so as not to disrupt family and social ties or access to services and work opportunities.

In Bogota, Colombia, Municipal Decrees 619 of 2000 and 296 of 2003 set out procedures for disaster hazard and risk analysis of various parts of the city and allow the authorities to declare certain high-risk zones for intervention, including, as a last resort, resettlement of the population (see EMI, 2005). A study is required prior to the decision to resettle to determine the social, economic and legal situation of potentially affected families and the impacts such a move might have on them. Detailed programmes of information and incentives and support are mandated to seek the voluntary and dignified participation of communities and to ensure safe and legal alternative homes.

## **Building codes**

### **The problem**

A large proportion of the deaths, injuries and losses due to disasters such as earthquakes, windstorms, floods and fires are due to faulty construction practices. A number of countries lack mandatory building codes, particularly in the areas of seismic safety and windstorm and flood resistance. In many others, such codes exist but are badly out of date (Benson and Twigg, Guidance Note 12, 2007; UNISDR, Global Platform Report, 2007).

In some countries, disaster-related construction codes (such as seismic codes) are available for use, but on a voluntary basis. In a great many countries, however, the problem is not a lack of law on safer construction but a lack of enforcement (see UNISDR, *Living with Risk*, p. 344).

### **The Red Cross/Red Crescent approach**

Both the Agenda for Humanitarian Action (Final Goal 3.1) and Priority 4 of the Hyogo Framework call on states to incorporate risk reduction as a central feature of building codes that are properly enforced. Priority 4 of the Hyogo Framework further encourages regular updating of building codes “with the aim of making them more applicable in the local context, particularly in informal and marginal human settlements and to reinforce the capacity to implement, monitor and enforce those codes, though a consensus-based approach.”

Moreover, in 2011, the IFRC published a “Participatory Approach to Safe Shelter Awareness” (PASSA) Manual, with the goal of assisting National Societies to support community-led approaches to addressing risks related to construction.



### Questions to ask

- Does your country have building codes specifically targeted to ensuring disaster-resistant structures?
- Are those codes regularly updated, with reference to current hazard risks and vulnerabilities?
- Are those codes too complex and expensive for low-income builders to meet?
- Are especially strict rules in place for hospitals and schools?
- Do your country's laws require actions to be taken to make buildings constructed under older building codes safer (for example, retrofitting)? If so, are the potential economic impacts on low-income home-owners, renters and residents adequately taken into account?
- Are existing building codes adequately enforced? If not, are there gaps in existing law concerning the enforcement powers, responsibilities, or funding of responsible authorities (particularly at the local level)?

### Legislative examples

Algeria's Law on Prevention of Major Risks and the Disaster Management in the Context of Durable Development of 2004 (art. 19-20) requires that all National Disaster Management Plans (required for each major hazard area set out in the legislation) set out areas where construction will be prohibited due to the level of risk and also the specific measures that are to be taken for buildings already constructed in high risk zones.

### Funding mechanisms

#### The problem

It is often the case that a given institution has adequate legal authority to undertake disaster risk reduction activities, but those activities do not take place because the authority is not matched with adequate resources. This is a particularly common problem in situations of recently devolved authority from the central to the local level.

#### The Red Cross/Red Crescent approach

Final Goal 3.1.4 of the Agenda for Humanitarian Action provides that "States are strongly encouraged to prioritize and provide resources to implement compressive disaster risk reduction measures [.]". Similarly, Priority 1 of the Hyogo Framework calls on states to "[a]llocated resources for the development and implementation of disaster risk management policies, programmes, laws and regulations on disaster risk reduction in all relevant sectors and authorities at all levels of administration and budgets on the basis of clearly prioritized actions."

### Questions to ask

- Does your national disaster management legislation make reference to sources of funding to match the authority it provides to specific ministries or levels of government to undertake disaster risk reduction activities?
- If the law in your country assigns disaster risk reduction authority to local authorities, do they also have legal means to obtain appropriate resources?

### **Legislative examples**

The United States adopted the Disaster Mitigation Act in 2000, establishing a “Hazard Mitigation Grant Program”. This Programme provides grants to states, territories, local governments, tribal governments and NGOs for risk reduction measures and planning. The Programme directly funds reduction activities but also incorporates an incentive for ongoing investment at the state/local level by including, among the criteria for selection of applications, “the degree of commitment by the State or local government to support ongoing non-Federal support for the hazard mitigation measures to be carried out using the technical and financial assistance.”

The Philippines’ Disaster Risk Management Act specifically mandates that local government dedicate 5% of their income for disaster mitigation and response, with 70% of this set-aside available for mitigation and preparedness measures. The legislation also sets out the means for supplying that fund, including both local taxes and allotment from the national government.

In Guatemala, the 1996 Law on the National Coordinator for the Reduction of Natural or Man-Made Disasters (art. 15) provides for the creation of a dedicated “National Fund for Disaster Reduction,” for the use of the coordination system.

Costa Rica’s National Law on Emergencies and the Prevention of Risks of 2002 (arts. 43-46) not only created a national disaster fund, but also required all departments and levels of government to maintain a separate budget line for disaster risk reduction activities. Moreover, it required all national agencies to direct 3% of any budget surplus they might have each year into the national disaster fund. Likewise, Madagascar allocates an annual budget line for disaster risk and management activities and requires each national ministry to allocate a proportion of its annual budget to disaster risk reduction and response activities (UNISDR, Global Review, p. 46).

## **Integration into development plans**

### **The problem**

In many countries, development and disaster risk reduction processes remain separate. In light of the overwhelming priority often placed on the former issue, this means that a risk reduction agenda may not be able to find a sustained footing on the national agenda.

### **The Red Cross/Red Crescent approach**

Final Goal 3.1.3 of the Agenda for Humanitarian Action urged states, in cooperation with National Societies, “to incorporate risk reduction as a central feature of national development plans, poverty reduction strategies and post-disaster recovery policies[.]” Likewise, Priority 4 of the Hyogo Framework urges government to incorporate disaster risk reduction into mainstream development planning as a way of ensuring that political will endures over time. States will be more likely to achieve this consistently if legislation requires it.

### **Questions to ask**

- Does the law in your country require that development plans include an element of disaster risk reduction?

### **Legislative examples**

India's Disaster Management Act (art. 36.b) requires "every Ministry or Department of the Government of India to . . . integrate into its development plans and projects, the measures for prevention or mitigation of disasters in accordance with the guidelines laid down by the National Authority[.]" Likewise, Indonesia's disaster management law (arts. 6-7, 9 & 40) requires both the national and regional governments to incorporate disaster risk elements into their development programming, and to ensure that "[e]very development activity involving high disaster risks is equipped with disaster risk analysis as part of disaster management effort in accordance with power vested."

South Africa's 2002 Disaster Management Act requires risk management plans, particularly strategies on mitigation and prevention, to form an integral part of national, provincial and municipal development plans, programmes and initiatives. The National Disaster Management Centre is mandated to develop guidelines to lead this integration (Art. 19).

### **Reporting and oversight**

#### **The problem**

While many countries have positive laws on disaster risk reduction, in the absence of adequate reporting and oversight, many of their provisions can go unheeded.

#### **The Red Cross/Red Crescent approach**

The Hyogo Frameworks calls on states to "develop procedures for reviewing national progress against this Framework for Action [.]"

#### **Questions to ask**

- Does your country's disaster management law require periodic reporting by agencies responsible for disaster risk reduction to parliamentary or other bodies?

### **Legislative examples**

South Africa's disaster management law (arts. 24, 36, 50) calls on the national, provincial and municipal disaster centres to submit annual reports to their legislative bodies on their activities, the results of their monitoring of prevention and mitigation initiatives, any disaster that occurred and problems experienced, evaluating disaster plans and strategies and making recommendations. Similarly, Pakistan's 2010 national disaster management law (art. 41) requires the National Disaster Management Authority as well as equivalent provincial and district authorities make annual reports of their activities to their representative assemblies.

The Philippines' 2010 Disaster Risk Management Act establishes a specific parliamentary oversight committee to monitor and evaluates the organization of disaster management (Art. 14). It comprises "a. relevant government officials and b. professional community members"; the latter are selected by the House of People's Representatives (Art. 14).

## Legal remedies (liability)

### The problem

The question of legal liability for disaster risk reduction obligations can be very sensitive, in light of the political impulse to assign blame in the aftermath of any disaster. It can also have direct ramifications for National Societies themselves – particularly where they take on an official role in early warning activities. On the other hand, enforcement of disaster risk reduction rules (including building code and zoning rules, as noted above) is notoriously weak in many countries. Individual remedies can be a powerful tool for combating this.

### The Red Cross/Red Crescent approach

International instruments have not addressed the issue of liability on a global scale, however, the Hyogo Declaration (adopted at the same conference as the Hyogo Framework), affirms that “States have the primary responsibility to protect the people and property on their territory from hazards [.]”

### Questions to ask

- Does the law in your country allow for court intervention in case of gross failures by governmental actors to undertake necessary actions to reduce disaster risk?
- Does the law in your country provide liability protections to the National Society for its early warning activities (e.g. by limiting claims only to wilful misconduct) or at least clearly define the limits of its responsibility?

### Legislative examples

South Africa’s Disaster Management Act of 2002 offers liability protection both to officials and to “any other person exercising a power or performing a duty in terms of” the Disaster Management Act for any acts “done in good faith in terms of, or in furthering the objects of, this Act” (art. 61). Similar language appears in Sri Lanka’s Disaster Management Act of 2005 (art. 23). This offers a degree of protection, but leaves the door open for certain types of claims, such as for wilful misconduct.

Indonesia’s Disaster Management Act of 2007 foresees fines and even jail terms for persons who out of negligence (Art. 75) or with intent (Art. 76) “implements high risk development without disaster risk analysis as mentioned in Article 40 [3] that causes disaster”.

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Legislative Issues in Disaster Management and Epidemic Response  
Humanitarian Diplomacy Guidance Note No.2

## **Chapter 2**

Legislative issues in  
the domestic response  
to disasters

Nearly every country already has overarching disaster management legislation underpinning its systems for the response to disaster, in particular with regard to rescue and relief services. However, in many cases, this legislation has important gaps, for example, in guidance for the contingency planning process, protections for vulnerable populations, and necessary legal facilities for National Societies and other relief providers.

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## **Key international instruments**

### **Hyogo Framework for Action**

As noted in Chapter 1, in 2005, an international conference of 168 states adopted the Hyogo Framework for Action for 2005-2015. Following on the UN General Assembly's dedication of the 1990s as the "International Decade for Natural Disaster Reduction" and the adoption of the "Yokohama Strategy for Safer World" of 1994, the Hyogo Framework has become the flagship (albeit non-binding) instrument on risk reduction at the international level and should be a primary tool for Red Cross/Red Crescent legislative advocacy.

The Hyogo Framework is mainly concerned with preventing disasters and reducing the vulnerability and resilience of communities to disasters. However "Priority 5" of the Framework calls on governments to "strengthen disaster preparedness for effective response at all levels." The Framework recommends a number of activities under this heading, including the following:

"(d) Prepare or review and periodically update disaster preparedness and contingency plans and policies at all levels, with a particular focus on the most vulnerable areas and groups. Promote regular disaster preparedness exercises, including evacuation drills, with a view to ensuring rapid and effective disaster response and access to essential food and non-food relief supplies, as appropriate, to local needs.

(e) Promote the establishment of emergency funds, where and as appropriate, to support response, recovery and preparedness measures.

(f) Develop specific mechanisms to engage the active participation and ownership of relevant stakeholders, including communities, in disaster risk reduction, in particular building on the spirit of volunteerism."

In 2008, the UN Office for the Coordination of Humanitarian Assistance (OCHA) and UNISDR published a Guidance and Indicator Package for Implementing Priority Five of the Hyogo Framework. The Package recommends that states develop disaster legislation support institutional arrangement for disaster preparedness, including financing, community involvement and accountability measures (p. 11).

### **Human rights instruments**

The Universal Declaration on Human Rights of 1948 and a large number of treaties at the global and regional levels (including the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights of 1967) recognize the rights to life, food, housing, clothing, and health as well as the right to be free from discrimination, all of which are at the heart of humanitarian relief.

Several human rights instruments pay specific attention to displaced persons, including those displaced by disasters. The Guiding Principles on Internal Displacement of 1998 calls on governments to provide humanitarian relief to internally displaced persons and



to promote and facilitate relief activities by humanitarian organizations. The African Charter on the Rights and Welfare of the Child of 1990 specifically requires member states to “take all appropriate measures” to ensure that displaced children (including those displaced by disaster) are provided necessary assistance and protection. Similar duties are included in the Great Lakes States’ Protocol on the Protection and Assistance to Internally Displaced Persons of 2006 and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009). Moreover, the Convention on the Rights of Persons with Disabilities (2006) recognizes the right of the disabled to protection in disaster situations.

In order to improve understanding of how all these instruments would apply in a practical sense in a disaster setting, the Inter-Agency Standing Committee (IASC), a policy making body of the United Nations, which the IFRC, ICRC and several NGO groups attend as observers, adopted the “Operational Guidelines on the Protection of Persons in Situations of Natural Disasters” in 2006 and an amended version in 2011. The Operational Guidelines are meant to guide relief agencies with regard to rights issues in disaster operations but they can also be shared with states as an interpretive approach to human rights obligations. Of course, since the Guidelines have not been adopted by states, they are not bound by them.

### Quality standards

The most well known international instruments on the quality of relief are the Code of Conduct of the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief of 1994 and the Sphere Project Humanitarian Charter and Minimum Standards in Disaster Relief, as revised in 2011. Both were developed primarily with international relief in mind. However, by their terms, they can both also be used by states, though neither is binding on them.

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## Issue areas

### Role of the National Society in disaster response

#### The problem

In many countries, the National Society is among the primary responders to disasters, large and small. However, as noted above with respect to disaster risk reduction, this role is not always reflected in disaster management legislation or policy documents of the government. This can lead to gaps in coordination and clarity with regard to the respective roles of the National Society and of government and may hamper National Societies’ access to decision-making bodies as well a discouraging governmental support. Inasmuch as National Societies are expected to act as auxiliaries to the public authorities in the humanitarian field, a formal and acknowledgment of their role in disaster management is an appropriate step.

#### The Red Cross/Red Crescent approach

The Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, as adopted by the 31<sup>st</sup> International Conference of the Red Cross and Red Crescent in 2007, provide that, “[a]s an essentially element of a larger disaster risk reduction programme, States should adopt comprehensive legal, policy and institutional frameworks and planning for disaster prevention, mitigation,

preparedness, relief and recovery, which take full account of the auxiliary role of their National Red Cross or Red Crescent Society[.]”

Likewise, paragraph 3.1.5 of the Agenda for Humanitarian Action adopted by the 28<sup>th</sup> International Conference provides that states should “negotiate clearly defined roles and responsibilities with their respective National Societies in risk reduction and disaster management activities” which “may include National Society representation on relevant national policy and coordination bodies as collaborative partners with States.”

### **Questions to ask**

- Does your national disaster management act refer to the role of your National Society’s role in disaster preparedness and response?
- If so, does it guarantee the participation of the National Society on key decision-making bodies relevant to disaster management?
- Does it appropriately set out expectations about the National Society’s activities?

### **Legislative examples**

Article 204 of United States’ Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 provides that the American Red Cross is a permanent member of the “Interagency Taskforce” created for the purpose of coordinating disaster preparedness activities of the Federal Government. Moreover, the operational role of the American Red Cross, particular in mass care, is described in the United States’ National Response Framework and its annexes, among other key policy instruments.

Dominican Republic’s 2002 Disaster Management Act requires that regional, provincial and municipal committees on disaster management all include a representative of the National Red Cross Society. Likewise, Djibouti’s 2006 Law on the Creation of an Institutional Framework for the Management of Risks and Disasters mandates that a representative of the National Red Crescent Society participate both on national and regional committees.

## **Relationship between legislation and national contingency planning**

### **The problem**

In many countries, the language of disaster management legislation is very vague, leaving most of the substance of the national disaster response framework to be set by less formal plans. To some extent, this makes good sense. Contingency planning is clearly essential for an effective and well-coordinated national response to disasters and health emergencies. Given their flexibility, these plans can and should cover a great deal more detail than legislation, which is slow to change. However, without a minimum of legislative authority to underpin the planning process, there is a danger of lack of compliance and/or lack of inclusiveness.

### **The Red Cross/Red Crescent approach**

In 1969, the 21<sup>st</sup> International Conference of the Red Cross “urge[d] all Governments which have not already done so to prepare and to pass the necessary legislation enabling immediate and adequate action to be taken, in conjunction with the Red Cross, along the lines of a pre-established plan based on the disaster relief rules adopted by this Conference.”

### Questions to ask

- Does your country's disaster legislation set out a process and framework for contingency planning? If so:
  - Does it require planning that addresses multiple hazards?
  - Does it require periodic updates?
  - Does it mention that the National Society's expected activities should be reflected in national contingency plans (with due consideration of their capacity)?
  - Does it also call for inclusiveness of other civil society actors in contingency planning?

### Legislative examples

South Africa's Disaster Management Act of 2002 provides for the establishment of contingency plans at national, provincial and municipal levels and also provides direction on their content. For example, the act requires that each national organ of state identified in the national disaster management framework prepare a disaster management plan, which, among other things, sets out contingency strategies and emergency procedures in the event of a disaster, including measures to finance these strategies (art. 25). It also requires that provinces and municipalities establish contingency plans that allocate responsibilities to all stakeholders, provide for the co-ordination of their actions, and ensure prompt disaster response, the procurement of essential goods and services, the establishment of strategic communication links, the dissemination of information and "other matters that may be prescribed" (arts. 39 & 53).

The Algerian Disaster Management Act of 2004 also contains detailed instructions as to the establishment of contingency plans at the national, regional and local levels (Art. 51-57). Each plan must, among other things, search and rescue, temporary shelter, management of relief, the security and health of affected persons and their property, food and water, and energy needs.

## States of emergency and states of disaster

### The problem

Most states have laws (usually constitutional provisions) allowing the head of state to declare a state of emergency in crises threatening the fundamental security of the nation, including both armed conflict and disasters. The consequence of these declarations is usually an extraordinary set of powers vested in the executive branch to set aside certain laws and civil rights in order to address the emergency. For this reason, safeguards are usually included to ensure that such a declaration is not made lightly. At the same, this can lead to hesitation and confusion when rapid action is needed in response to a disaster.

In some, but not all states, disaster management statutes allow for an additional and different kind of declaration, (for example of a "state of disaster") – which does not entail the same sweeping emergency powers for the executive but does allow for certain specific authority related to disaster response as well as the activation of disaster plans and procedures. This would generally be a preferred solution in a natural disaster context, since it does not require such a large imposition on the normal legal order.

### **The Red Cross/Red Crescent approach**

There is currently no specific policy document on this subject within the Red Cross/Red Crescent.

### **Questions to ask**

- Does the law in your country differentiate between “states of emergency” that might be applicable to situations of civil unrest and “states of disaster” for natural disasters?
- If not, must a state of emergency be declared before the government can take necessary responsive actions (e.g. enforcing mandatory evacuations, using certain extraordinary funds)?
- What are the consequences of an emergency declaration?
- If it allows for powers that are too sweeping to be used comfortably, could a more restrained “intermediate” type of declaration be created?

### **Legislative examples**

Nicaragua’s Law Establishing the National System for Prevention, Mitigation and Response to Disasters of 2000 distinguishes between a “State of Disaster” and a “State of Emergency,” the latter providing greater powers to set aside laws, as described by the Constitution and the Law of Emergency of 1973.

In South Africa, the Disaster Management Act contains detailed provisions on the declaration of the national state of disaster, including provisions to restrict the special powers triggered by the declaration (Art. 27). A condition for the declaration is that special circumstances warrant the declaration, which is the case if existing legislation and contingency arrangements do not adequately provide for the national executive to deal effectively with the disaster. The special powers triggered are enumerated conclusively and can only be taken by the minister after consultation with the respective cabinet member.

## **Right to assistance and vulnerable groups**

### **The problem**

In many countries, disaster law merely sets out institutional systems and roles for disaster relief. It hardly mentions affected persons themselves. This may help to foster the traditional tendency to consider aid to disaster victims as charity – in other words, an entirely voluntary act of beneficence. However, as mentioned above, international human rights instruments guarantee the basic rights underpinning humanitarian assistance. Humanitarian aid shouldn’t be considered a favor; it is a right.

Moreover, many existing disaster laws pay little or no specific attention to the needs of particularly vulnerable groups in situations of disaster. These may include women-headed households, children, the elderly, persons with HIV and other debilitating diseases and the disabled. Others – like indigenous communities and immigrants – may be vulnerable due to social marginalization, leaving them less resilient to disasters and also less able to accede to official aid.

Likewise, disaster laws tend not to address one of the most common barriers at the individual level to access to officials assistance. In the wake of the destruction of a natural disaster, affected persons – especially those whose homes have been destroyed – often lose key official documents, such as passports, birth certificates, identification

cards and ownership documents. Without such documents, affected persons often lack access to critical social services and other assistance related to disaster response.

### **The Red Cross/Red Crescent approach**

Pursuant to the Principles and Rules for Red Cross and Red Crescent Disaster Relief, adopted by the International Conference of the Red Cross in 1969 and most recently amended in 1995, the “Red Cross and Red Crescent in its endeavour to prevent and alleviate human suffering, considers it a fundamental right of all people to both offer and receive humanitarian assistance.”

With regard to vulnerable populations, the preamble of the Constitution of the IFRC commits all National Societies “to protective human dignity and to improving the lives of vulnerable people by mobilizing the power of humanity.”

While the Red Cross does not have a specific policy document on the loss of personal identification documents, the Guiding Principles on Internal Displacement (Principle 20) provide that states should provide for a mechanism for speedy replacement of such documents or at least temporary replacements needed to access relief and recovery assistance as well as other services.

### **Questions to ask**

- Does the law in your country clearly provide a right to humanitarian assistance to all persons in need due to a disaster or health emergency?
- Does your disaster management law explicitly forbid discrimination in relief efforts, both by government and other actors?
- Does your disaster management law ensure that needs assessments and relief operations to look for and address the potential for specific needs by vulnerable groups such as those described above?

### **Legislative examples**

Indonesia’s Law Concerning Disaster Management of 2007 (arts. 1.1 & 26.1), provides that “every person affected by a disaster is entitled to assistance fulfilling basic needs.”

Section 308 of the United States’ Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 provides a fairly good example of this, in that it calls on the President to issue regulations “insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, colour, religion, nationality, sex, age, disability, English proficiency, or economic status.” It also requires that the same standards be applied by other agencies and organizations providing assistance in coordination with the government.

Similarly, Pakistan’s National Disaster Management Act of 2010 (art. 37) provides that, “while providing compensation and relief to victims of disaster, there shall be no discrimination on the ground of sex, caste community, descent or religion.”

## Evacuation procedures

### The problem

Evacuation can be a critical means of saving lives in the face of a disaster. Without proper procedures, however, evacuations may be untimely, uncoordinated and uneven (e.g., by failing to attend properly to all persons in danger, including seniors, disabled persons, prisoners). Moreover, important choices must be made (based on appropriate criteria) as to whether evacuations should be mandatory and how evacuated people are to be treated, so as to preserve their dignity.

In order to allow for appropriate flexibility in plans, disaster management legislation will rarely go into great detail about evacuation procedures, however, it can set out general guidance, particularly with regard to responsible officials and agencies, the responsibility to develop, update and disseminate evacuation plans, and safeguards for the dignity of evacuated persons.

### The Red Cross/Red Crescent approach

There are currently no international Red Cross/Red Crescent policy documents on evacuation.

### Questions to ask

- Does disaster management law require that disaster contingency plans set out comprehensive procedures for evacuation, assigning roles and responsibilities?
- Does it require that all endangered people be evacuated without discrimination?
- Does it require that the rights and dignity of evacuated persons be respected in situations of compulsory evacuation?
- Does it provide for the evacuation of livestock or domestic animals?

### Legislative examples

Sri Lanka's Disaster Management Act 2005 makes it a duty of a Ministry or Department designated to respond to a particular disaster to "evacuate people, property and animals from affected or vulnerable areas" (art. 14). The provision emphasizes that this is allowed only in the area(s) in which the organisation has been authorised to operate by the Council. If the appropriate organization, or assisting NGOs, police officer or member of the armed forces, in performance of this duty, causes loss of or damage to someone's property, the affected person is entitled to compensation.

## Assistance by military actors

### The problem

In many countries, a great deal of reliance is placed on military actors to respond to natural disasters. Militaries often offer a number of advantages in this regard, including access to relevant vehicles (especially helicopters) and equipment as well as clear internal hierarchy and the capacity for rapid deployment. On the other hand, there are sometimes quite negative associations among the public with the military and cooperation with military actors can sometimes be difficult for the Red Cross and Red Crescent in light of those associations. Moreover, military assistance is generally more expensive than its civilian counterparts and soldiers are rarely trained to approach disaster settings with the emphasis on humanitarian principles, community

empowerment and links with long-term recovery, which characterizes the approach of humanitarian organizations.

### **The Red Cross/Red Crescent approach**

In 2005, the Red Cross/Red Crescent Council of Delegates adopted a “Guidance Document on Relations between the Components of the Movement and Military Bodies,” which calls for a cautious approach with regard to cooperation with military actors in humanitarian operations. Ten years earlier, the Council of Delegates also adopted a more targeted “Report on the Use of Armed Protection for Humanitarian Assistance. “

It should be noted that there is additionally a non-binding international standard concerned with military disaster assisting, the “Oslo Guidelines for the Use of Foreign Military and Civil Defence Assets in Disaster Relief” (revised in 2007). The Oslo Guidelines call for military assets to be used as a last resort and in a manner complementary to civilian efforts. However, the Oslo Guidelines apply only to the international deployment of military assets in response to disaster – not to the domestic activities of militaries.

### **Questions to ask**

- Does your country’s law or policy seek to prefer civilian methods of delivering humanitarian relief in disaster settings when possible?
- If not, does your country’s law or policy guarantee your National Society the ability to act independently of the military and to take any distance necessary from it to guarantee its independence and neutrality?

### **Legislative examples**

While many laws place primary responsibility for disaster response in the hands of civilian national disaster management agencies, very few provide for any specific checks on the involvement of military forces in relief operations. One very partial exception is the United States, which by virtue of its century-old “Posse Comitatus Act” (18 U.S.C. § 1385), curtails the power of local governments to draw on the national military to enforce laws domestically.

## **Funding for National Societies**

### **The problem**

As auxiliaries, National Societies are often accorded significant responsibilities as part of the overall country plan for disaster response. These activities require resources and while National Societies are sometimes able to access some funds from their community base and from mutual assistance from the other components of the Movement, significant gaps are common.

### **The Red Cross/Red Crescent approach**

While not all National Societies seek financial support from their governments, in resolution 5 of the 26<sup>th</sup> International Conference of the Red Cross and Red Crescent, governments committed to “help create a beneficial environment for the overall development

of National Societies in their own countries” including by providing “financial and fiscal benefits.”

### **Questions to ask**

- Does the law in your country provide for financial support for National Societies when acting in their auxiliary role to assist persons affected by disasters?
- Does the law provide financial support, as appropriate, to other civil society relief providers?

### **Legislative examples**

In Austria, the Federal Law on the Recognition of the Austrian Red Cross and Protection of the Red Cross Symbol of 2008 states, in Section 2 (3), that the Austrian authorities support the Austrian Red Cross financially within their means in the fulfilment of its tasks stated in Section 2 (1), which are obligations resulting from the Geneva Conventions and decisions of the International Conference.

## **Tax exemptions**

### **The problem**

Taxation can be a significant drain on the capacities of National Societies to provide needed relief – particularly when taxes such as VAT and customs duties are directly imposed on relief purchases and imports.

In many countries, National Societies enjoy certain exemptions from taxation simply by virtue of being a not-for-profit organization. However, the exemptions granted to NGOs are sometimes incomplete. In light of their special status as quasi-public institutions and their humanitarian goals, legislation in some, but not all, countries also provides specific tax relief to National Societies in the areas of income tax, VAT, and customs duties, and taxation on donations.

### **The Red Cross/Red Crescent approach**

As noted above, Resolution 5 of the 26<sup>th</sup> International Conference of the Red Cross and Red Crescent calls for “fiscal” (i.e., tax) benefits for National Societies.

This is also in keeping with early resolutions of the International Conference, such as Resolution IV of the 9<sup>th</sup> International Conference, Washington, 1912 which call on “States signatory to the Geneva Convention . . . to be good enough to make legal provision for according privileges and rights to Red Cross Societies, such as exemption from taxes and fiscal charges, postal and telegraphic charges, customs duty and others.”

### **Questions to ask**

- Does the law in your country specifically exempt your National Society from income tax, VAT, customs duties and taxation on donations with respect to its disaster relief activities?
- Are appropriate exemptions also provided to other civil society relief providers?

### **Legislative examples**

In Luxemburg, the National Society is recognised as a charity with a humanitarian aim in Art. I of the Act Establishing Charity Status for the Luxemburg Red Cross Society (“Loi du 16 août 1923 conférant la personnalité civile à la Société de la Croix-Rouge



luxembourgeoise”). This exempts the national society from certain taxes listed in Art. III.2 of the same statute. Therefore, the special role of the National Society is emphasised by exempting it from these taxes in a specific law, instead of in a law that regulates such bodies in general.

The American Red Cross has a mixed fiscal status. It is exempt from taxation because of its status as a “federal instrumentality”, which was declared by the Supreme Court of the United States in 1966 and entitles it to tax immunities similar to those of the government. At the same time it is considered a charitable non-profit organisation, which was established in a ruling of the US Internal Revenue Service in 1938. It states that the American Red Cross is exempt from paying federal income tax and can furthermore receive tax-deductible donations.

In Hungary, tax exemptions for the Hungarian Red Cross are provided for directly in the 1994 Act on the Hungarian Red Cross. It states that the Hungarian Red Cross is entitled to tax concessions and tax and stamp-duty exemptions according to the general rules for social organizations. It furthermore refers to customs laws regarding customs duty concessions.

## Licensing issues

### The problem

In a number of countries with regional-based health regulations, licensing requirements can be a barrier to medical professionals crossing provincial or district lines to assist in an emergency.

### The Red Cross/Red Crescent approach

There is no specific Red Cross or Red Crescent instrument addressing this issue.

### Questions to ask

- Do the laws at the national and/or regional level in your country allow for medical professionals to assist across provincial or district lines in case of emergency?
- If so, do they support a system by which medical credentials can be speedily verified?

### Legislative examples

The United States’ State of Minnesota Statute 12.4 (2011), provides that, in a declared emergency, “a person who holds a license, certificate, or other permit issued by a state of the United States, the District of Columbia, or a province of Canada evidencing the meeting of qualifications for professional, mechanical, or other skills, may render aid involving those skills in this state when such aid is requested by the governor to meet the needs of the emergency. The license, certificate, or other permit of the person, while rendering aid, has the same force and effect as if issued in this state, subject to such limitations and conditions as the governor may prescribe.”

## Liability exemptions

### The problem

As discussed above in chapter 4, liability (i.e. the potential to be sued if something goes wrong) can be a significant risk for National Societies acting in the chaotic and dangerous environment after a disaster. This can be all the more difficult for volunteers,

who must face not only the difficulties of providing relief but also additional personal risks in the event that something goes wrong. Moreover, where there is a perception of a high potential for liability, National Societies may find it difficult to obtain affordable insurance.

### **The Red Cross/Red Crescent approach**

The Red Cross/Red Crescent does not currently have a formal policy instrument about the issue of liability of National Societies acting at home.

### **Questions to ask**

- Does the law in your country provide liability protections to disaster rescue and relief personnel (including volunteers)?
- If so, does this extend beyond governmental officials to National Societies and other civil society actors?

### **Legislative examples**

South Africa's Disaster Management Act of 2002 offers liability protection both to officials and to "any other person exercising a power or performing a duty in terms of" the Disaster Management Act for any acts "done in good faith in terms of, or in furthering the objects of, this Act" (art. 61). Similar language appears in Sri Lanka's Disaster Management Act of 2005 (art. 23).

Likewise, in Hong Kong, the Prevention and Control of Disease Ordinance of 2008 provides immunity from personal liability of health officers and other responders acting in good faith during an emergency. This ordinance states that "no personal liability is incurred by a health officer, or a public officer or a person acting under his direction in respect of anything done or omitted to be done by the health officer, or public officer or person in good faith in the exercise or purported exercise of a power, or performance or purported performance of a function, under this Ordinance." Further, the ordinance states that "the protection conferred [in the above section] does not affect any liability in tort of the Government for that act or omission."

## **Role of the National Society in restoring family links**

### **The problem**

Among the traumas of major natural disasters is the potential for families to become separated. Many National Societies are prepared to assist in the restoration of family links – often in close cooperation with the ICRC's Central Tracing Agency – in disaster situations. In some countries, however, this role is not acknowledged in national disaster legislation or policies. Moreover, privacy rules sometimes impact on the ability of National Societies to gather, store and disclose information for the purpose of reuniting families.

### **The Red Cross/Red Crescent approach**

Resolution 15 of the 25<sup>th</sup> International Conference of 1986 called on governments to "support the efforts of National Red Cross and Red Crescent Societies dealing with the problems of conducting searches and reuniting families." Similarly, Resolution 16

of that conference “ask[ed] governments to facilitate and support the work of the Red Cross and Red Crescent Movement” in tracing and family reunification.

In 2007, the Red Cross/Red Crescent Council of Delegates adopted Strategy on Restoring Family Links (2008-18), committing National Societies, among other things, to “[r]eview national legislation to ensure that family links issues are included in national disaster-preparedness and response plans, and engage with State authorities for their inclusion where necessary. This should include ensuring that such plans set out the role of the National Society in restoring family links.”

### **Questions to ask**

- Does the law in your country ensure that family links issues are included in national disaster-preparedness and response plans?
- Is the role of your National Society in restoring family links set out in national law, policies and/or plans?
- Are there laws on data privacy that would apply to the gathering, storing and sharing of tracing information? If so, are exceptions provided, as appropriate, for tracing activities by National Societies in disaster settings?

### **Legislative examples**

The Federal Law on the Recognition of the Austrian Red Cross and Protection of the Red Cross Symbol of 2008 contains a general exemption from legal restrictions regarding the conduct of family tracing activities. Section 2 (4) states that when the National Society acts during family tracing, transmits information in this role, or reunites families as foreseen in the Geneva Conventions and the Additional Protocols, it is permitted to seek the relevant information and proceed and transmit the relevant data.

## **Unaccompanied children**

### **The problem**

While the separation of family members by disasters is always stressful, the pain is particularly acute for children and their parents. Moreover, unaccompanied children face a number of dangers, ranging from trafficking and exploitation to inappropriate adoption. Many countries lack legal protections for them that are specific to the particular circumstances of disaster situations.

### **The Red Cross/Red Crescent approach**

There is currently no specific Red Cross or Red Crescent policy instrument on this issue.

### **Questions to ask**

- Does the law in your country clearly assign the authority to be responsible for ensuring the placement, the shelter and aftercare of unaccompanied children in disaster settings?
- Does disaster management law, policy or planning set out specific measures to combat heightened risks of trafficking and child exploitation in post-disaster settings?
- Are special protections included in your laws with regard to adoptions (particularly international adoptions) in the aftermath of major disasters?

### **Legislative examples**

The Disaster Management Bill 2010 of Indonesia categorises children in general as a vulnerable group (Art. 55 (2)), which gives them priority treatment regarding social protection and security (Art. 25 (1)), and furthermore rescue, evacuation, security, health services and psychosocial services (Art. 55 (1)).

In the United States, the Federal Emergency Management Agency established a Children's Working Group which works with other Federal agencies and non-governmental stakeholders to ensure that the needs of children are considered and integrated into all disaster planning, preparedness, response and recovery efforts initiated at the Federal level. This includes efforts to meet the special needs of children and support reunification when families are separated.

## **Arrangements for the identification and burial of the dead**

### **The problem**

The mass casualties caused by major disasters often overwhelm the capacity of legal and institutional systems for the registration, identification and burial or disposal of the dead. Moreover, there is often an exaggerated concern about the health hazard posed by human remains. This sometimes induces authorities to resort to speedy mass burials. As a result, the dead remain "missing", denying families critical information about the fate of their loved ones and the capacity to inter them according to cultural norms. There may also be legal consequences of a lack of death registration, for instance with regard to the guardianship of children and inheritance of property.

### **The Red Cross/Red Crescent approach**

In 2006, the ICRC in cooperation with the Pan-American Health Organization (PAHO) and the World Health Organization (WHO) published "Management of Dead Bodies after Disasters: A Field Manual for First Responders." The manual is aimed at promoting the proper and dignified management of bodies after mass disasters and to maximize the possibility of their identification, particularly by non-specialists.

### **Questions to ask**

- Does the law of your country give special attention to procedures for handling large numbers of casualties after a disaster?
- Does the law forbid or at least discourage mass burials in such circumstances?
- Does the law require authorities to make best efforts to identify the remains and notify next of kin?
- Does the law require authorities to take into account cultural and religious rights with respect to the disposal of human remains?
- Where the National Society has the capacity to provide assistance with regard to the handling or identification of remains and/or the notification of relatives, is this role affirmed in existing government legislation, policy or plans?

### **Legislative examples**

The Vanuatu National Disaster Management Act of 2000 addresses the presumption of death after a disaster in Section 24. It states that the common law presumption of death of a person is in the case of a natural disaster reduced from seven to two years; this presumption is rebuttable. In the period before these two years have passed, the

Supreme Court can, upon application of an immediate family member of the person who allegedly deceased, declare a person dead if it is satisfied that there is sufficient evidence to establish that a person's death arose out of or was suffered in the course of a disaster.

The Indian Disaster Management Act 2002 allocates the responsibility to make arrangements for the disposal of the unclaimed dead bodies to the District Authority, Section 13 (1) (g).

## Ensuring security of disaster-affected persons and property

### The problem

A major disaster can sometimes lead to a breakdown in law and order. Displaced persons may find themselves the victims of violence and robbery. Women and children may be victims of sexual assault. Damaged homes and property can be the site of looting.

### The Red Cross/Red Crescent approach

There is no current Red Cross or Red Crescent policy on this question.

### Questions to ask

- Does your disaster management law or policy clearly assign responsibility for protection disaster-affected communities from violence, theft and other crimes?
- Does it provide special measures to guard against looting and sexual and gender violence in disaster circumstances?

### Legislative examples

Indonesia's Disaster Management Act of 2010 states that every person is entitled to social protection and a sense of security, in particular vulnerable community groups (Art. 25 (1)). Disaster management shall comprise the protection of vulnerable groups (Art. 48 (e)), which is achieved by prioritizing vulnerable groups in terms of rescue, evacuation, security, health services, and psychosocial service (Art. 55). Infants and children, pregnant or lactating mothers, disabled and elderly persons are considered to be vulnerable groups (Art. 55).

Nicaragua's Law Creating the National System for the Prevention, Mitigation and Response to Disasters (SINAPRED) of 2000 states that it is a principle of the national disaster management system to ensure the security of people and their goods, and of the state as such (Art. 2 (7)). It also provides for the establishment of Security Commissions at national and municipal level (Art. 16 and 20) in order to fulfil this principle.

## Volunteering in Emergencies

### The problem

National Societies and volunteers face uncertainty in many instances, when volunteering in emergencies. This context brings up specific legal issues that need to be addressed, such as heightened health and safety concerns, the impact of declaration of emergency, questions related to insurance, liability, employment law, volunteering by professionals, among others.

In some countries there is a lack of clarity in regard to the definition and scope of volunteering, and legal barriers that may prohibit or restrict volunteering. By way of example, in many jurisdictions, the term “volunteer” is often not clearly defined. Due to this lack of clarity, labour or employment law may apply to volunteers resulting in confusion regarding obligations of organisations as well as rights of volunteers.

While there are many issues that may impact on volunteering in emergencies, one aspect of concern relates to the proper training and management of volunteers. In some instances, laws have provided for rigorous training and management of volunteers, seeking to ensure that volunteers are better prepared and equipped in the course of their volunteering activities, thereby benefitting the community, as well as the volunteer and voluntary organisation. Another issue of concern relates to the health and safety obligations of the organizations deploying volunteers, which may at times be unclear, thereby resulting in inadequate precautions taken for volunteers. Another aspect relates to insurance coverage for accidents or death in the course of volunteering, and the payment of compensation, which is sometime mandated by law.

An example of another issue that has come up and may require clarification, relates to employment at the time of volunteering in an emergency context. Many volunteers who may be deployed in emergencies have regular employment, and they may benefit from additional protection in regard to this employment. In some countries, law protects the volunteer from being fired at the time of deployment for volunteering duties; in other instances, the law enables such activity by expressly providing for a fixed number of days that the person will be able to volunteer for, either with pay or in some cases, without pay. In all these cases, the employer would be unable to dismiss or commence any disciplinary processes.

A last set of issues relates to the liability of organisations as well as volunteers in the course of their activities, and possible immunity from liability which is provided in some jurisdictions, for acts done in good faith. However, in other jurisdictions, organisations deploying volunteers may be strictly liable for the actions of volunteers.

### **The Red Cross/Red Crescent approach**

The Fundamental Principle of Voluntary Service is at the core at the Red Cross and Red Crescent Movement. Over ten million volunteers with the Red Cross Red Crescent provide support and assistance to vulnerable people worldwide.

The IFRC Volunteering Policy reinforces the importance of volunteering, and emphasizes the basic values towards volunteering. The policy also sets out responsibilities of national societies towards their volunteers, and responsibilities of volunteers.

Recognizing the importance of the legal context in creating an enabling environment for volunteers, at the 27<sup>th</sup> International Conference in 1999, Final Goal 3.3 placed the responsibility on States to “review and where necessary, introduce or update legislation so as to facilitate the efficient work of relevant voluntary organizations.”

In follow-up to the 27<sup>th</sup> International Conference, and in keeping with its mandate, the IFRC worked with the Inter-Parliamentary Union (IPU) and United Nations Volunteers programme (UNV) to prepare a guidance document in 2004, *Volunteerism and Legislation: A Guidance Note*. This Guidance Note flags the main issues and considerations that need to be taken into account in examining the legal framework as it relates to volunteering. These documents emphasise the importance of an enabling environment for

volunteering, by providing a clear legal framework which provided proper standards, responsibilities, and safeguards regarding the engagement, performance and management of volunteers.

### Questions to ask

- Does the law in your country provide for a clear definition of the term “volunteer”, including the scope of volunteering activities, restrictions in regard to volunteering and a clear distinction from the status of employees?
- Does your law set clear standards and responsibilities for volunteers and national societies for prior training and adequate supervision of volunteers?
- Is there specific disaster management legislation that applies to volunteers and voluntary organisations?
- Is there clarity in regard to liability of the volunteer and/or the national society in case of violation of standards? Is there immunity for volunteers or national societies?
- Can you identify barriers in particular sectoral laws that may inhibit volunteering in emergencies?

### Good examples

In the Philippines, Section 13 of the Disaster Risk Reduction and Management Act of 2010 stipulates that any volunteer who incurs death or injury while engaged in activities such as those relating to disaster and emergency shall be entitled to compensatory benefits and individual personnel accident insurance.

Mozambique recently adopted a Law on Volunteerism (Law 7/2011 of 11 January 2011), which allows volunteers to be absent from their regular work for up to three days, if their volunteering is required in urgent missions to respond to emergency situations, public calamity or equivalent. The time spent is to be considered as worked days, and shall be paid by the volunteer’s regular employer. (Articles 8(1) & (2))

In Pakistan, the Punjab Emergency Services Act 2006 stipulates that an act or omission committed by a *volunteer* in good faith for the purpose of exercising functions related to the emergency, shall not subject such volunteer personally to “any legal action, liability, claim or demand”, and further, that any such proceedings or claims “shall be defended and indemnified’ by the Punjab Emergency Service.”

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Legislative Issues in Disaster Management and Epidemic Response  
Humanitarian Diplomacy Guidance Note No.2

# Chapter 3

## Legislative issues in the international response to disasters

Although many governments have put in place legislation for the domestic response to disasters, very few have included any great detail about the management of international disaster assistance. This lack of preparedness often results in delays, confusion and a lack of accountability. Since 2001, the IFRC has been studying this issue in depth. Its research in over two dozen countries and consultations around the world have shown that the wake of a major disaster is the wrong time to try to develop new rules and systems to address these kinds of problems.

This issue has been accorded rising prominence, both inside and outside the Movement. Moreover, the role of the Red Cross and Red Crescent as an expert and key proponent of legal preparedness for international disaster response has grown substantially, at the national, regional and international levels.

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## **Key international instruments**

### **IDRL Guidelines**

The main international instrument for this section is the “Guidelines for domestic facilitation and regulation of international disaster relief and initial recovery,” also known as the “IDRL Guidelines”.

#### **Nature and status of the Guidelines**

The Guidelines are a set of recommendations to governments on how to prepare their disaster laws and plans for the common regulatory problems in international disaster relief operations. They advise them as to the minimal quality standards they should insist upon in humanitarian assistance as well as the kinds of legal facilities aid providers need to do their work effectively. While responding to today’s common problems, they are based on existing international legal and policy documents.

#### **Origins of the Guidelines**

In 2001, the IFRC began its International Disaster Response Laws, Rules and Principles (IDRL) Programme to investigate how legal frameworks can contribute to improving the delivery of disaster relief. Through this programme, the Federation gathered information on existing international and national law, prepared or commissioned over two dozen individual case studies around the globe, and consulted widely with relevant stakeholders about their experience of legal issues in disaster operations.

In 2003, the 28th International Conference of the Red Cross and Red Crescent (gathering the state parties to the Geneva Conventions and the components of the International Red Cross and Red Crescent Movement) commended this ongoing work and called on the Federation to work collaboratively with partners to develop “guidelines for practical use in international disaster response activities.”

In 2006-07, the IDRL Programme and its partners organized a series of high-level regional forums, which resulted in the development of the IDRL Guidelines. In all, over 140 governments, 140 National Red Cross and Red Crescent Societies and 40 international organizations, NGOs and NGO networks participated in these forums or otherwise provided input into the drafting of the Guidelines.

### **Status of the Guidelines**

The Guidelines are not binding on states, but they enjoy a high-level of international authority. In November 2007, states and Red Cross and Red Crescent actors unanimously adopted them at the 30th International Conference of the Red Cross and Red Crescent. Moreover, the following year, the United Nations General Assembly also encouraged states to make use of the IDRL Guidelines in three separate resolutions (nos. 63/139, 63/137, and 63/141 of 2008). Since then, the General Assembly has adopted similar resolutions annually (see UN General Assembly Resolutions A/RES/65/264, A/RES/65/133, A/RES/64/251, A/RES/64/76, A/RES/63/141).

In 2011, the 31<sup>st</sup> International Conference of the Red Cross and Red Crescent was called up on to review global progress in the implementation of the Guidelines and redouble participants' efforts to disseminate and promote their use.

### **Normative basis of the Guidelines**

In addition to the collaborative process described above, the language of the IDRL Guidelines borrows a great deal from existing international instruments, including treaties, resolutions of international bodies and internationally-accepted codes and guidance. The IDRL Guidelines thus serve as a summary of those international norms. In light of this, this guidance note will not describe them in greater detail, but a full description can be found in the IDRL Desk Study and Annotations to the Guidelines. Moreover, in 2011, the IFRC, UN OCHA and the Inter-Parliamentary Union produced a "pilot version" of a Model Act on the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance", designed to assist interested states to implement the IDRL Guidelines in domestic law.

### **Core ideas of the Guidelines**

#### **a. Domestic actors have the primary role**

The Guidelines recognize that it is first and foremost the responsibility of the government of the affected state to address the humanitarian needs caused by a disaster within its borders. National Red Cross or Red Crescent Societies and other domestic civil society actors in the affected state play a key supporting role. International disaster assistance should be designed and implemented so as to be complementary to the efforts of these domestic actors, rather than displace them.

#### **b. International relief providers have responsibilities**

The Guidelines also insist that international assistance providers be held responsible for abiding by certain minimum humanitarian standards in their disaster assistance. These include the principles of humanity, neutrality, and impartiality as well as minimum standards of coordination and quality in their relief goods, personnel and programmes, as drawn from sources such as the Code of Conduct of the Red Cross and Red Crescent Movement and NGOs in Disaster Relief and the Sphere Humanitarian Charter and Minimum Standards in Disaster Relief.

#### **c. International actors need legal facilities**

The Guidelines set out specific types of legal facilities or accommodations that governments should provide to assisting states and humanitarian organizations so that they can do an effective job of responding to humanitarian needs. For example, they call for:

- Expedited visa processing and customs clearance for relief personnel, goods and equipment
- Facilitation of relief transport
- Exemptions from taxes, duties and fees on relief activities
- Simplified means for humanitarian organizations to acquire temporary domestic legal personality in order to operate legally in the country

A distinction is made in some of these provisions between “relief” and “initial recovery assistance,” inasmuch as speed is much more critical for the former than the latter type of aid. The Guidelines also encourage states to reduce legal barriers to disaster relief originating within or passing through their territories to another country affected by a disaster, in order to avoid delays.

#### **d. Some legal facilities should be conditional**

In order to lend some weight to the responsibilities of assisting humanitarian organizations in particular, the Guidelines encourage governments (to the extent permissible under international law) to condition the granting of legal facilities to these organizations on their commitment to, and ongoing compliance with, the minimal standards described above. The Guidelines suggest that this could be implemented in various ways, for example, through a simple registration procedure, ideally available not only in the immediate aftermath of a disaster but also as a preparatory measure in advance.

The granting state should then monitor the performance of registered organizations for ongoing compliance with the required standards. The Guidelines note that some states may wish to grant legal facilities to private companies providing charitable relief in a disaster setting. If they do so, they are encouraged to hold them to the same standards as humanitarian organizations. No similar conditionality is suggested for government-to-government aid due to the availability of alternative diplomatic means of redressing quality or coordination issues.

### **Specific norms concerning international disaster assistance by the Red Cross and Red Crescent**

The IDRL Guidelines address the full spectrum of disaster assistance by international actors and thus do not enter into specific detail about assistance by the Red Cross and Red Crescent. Instead, in their preamble and adopting resolution, it is made clear they are meant to supplement and not to displace existing international norms for that assistance.

Pursuant to the Statutes of the Movement (art. 3.3) and the Principles and Rules for Red Cross and Red Crescent Disaster Relief (art. 6) (both adopted by the state parties to the Geneva Conventions through the International Conference of the Red Cross and Red Crescent), the components of the Movement are committed to assist each other internationally in providing disaster aid to affected persons, when the local National Society cannot address the needs alone. As noted above in chapter 1, this is a component of the Fundamental Principle of universality.

For its part, the IFRC has been accorded a key role by the Statutes and the Principles and Rules in supporting member National Societies in carrying out disaster response and in coordinating international efforts. To assist it in this (and other tasks), it has signed “status agreements” with over 70 governments. These agreements provide it will international privileges and immunities similar to those accorded to the UN.

While they have not been adopted by States, the components of the Movement have further regulated their mutual assistance in international relief through the Agreement on the Organization of the International Activities on the Components of the international Red Cross and Red Crescent Movement (Seville Agreement), 1997 and its Supplementary Measures, both adopted by the Council of Delegates.

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## Issue areas

### The duty to seek help

#### The problem

One of the more challenging and sensitive areas of international disaster response is the decision of governments as to whether to request or allow international assistance in the immediate wake of a disaster. Some governments may be reluctant to allow international assistance even when it is needed, for fear it will make them appear inadequate in the eyes of their population or the international community. Nevertheless, governments do have internationally recognised responsibilities in this regard which should be recognised and integrated into domestic legal systems and also into any regional and international instruments and mechanisms for international disaster response.

#### Questions to ask

- Does the national legal and policy framework:
  - Envisage and enable the possibility of requesting or accepting international assistance in event of a disaster situation which exceeds national coping capacities to address the needs of affected persons? [Ref. IDRL Guidelines 3(2)]
  - Recognise the government's role in coordinating, regulating and monitoring disaster relief provided by assisting actors in their territory, consistent with international law? [Ref. IDRL Guidelines 3(3)]

#### Legislative examples

Under Section 16 of the Philippines Disaster Risk Reduction and Management Act of 2010, the President may declare a state of calamity after a recommendation from the National Council. Apart from the President, the local sanggunian can also issue such a declaration after a recommendation from the local disaster committee. This declaration depends on the “scope, magnitude of damage or implications of the adverse effects of a disaster” (according to Rule 14 of the DRRM Act's Implementing Rules and Regulations) and may “warrant international humanitarian assistance as deemed necessary”.

The Manual of Procedures for the Management of International Humanitarian Assistance in Disasters Situation of the Republic of Ecuador of 2004, establishes in its paragraph 2.1.1 the possibility of requesting international humanitarian assistance with the aim of strengthening national efforts, only in those cases which national coping capacities are exceeded, or whenever a special resource that is not available at the state is needed.

## Process for initiating international assistance

### The problem

More frequently, governmental delays in requesting or accepting international assistance come not from a lack of will but are the result of a lack of clear procedures for determining when and how to make such a request or to accept offers.

### Questions to ask

- Does the national legal and policy framework:
  - Establish a clear process for deciding, in a timely manner, whether or not to request disaster relief and the means for communicating this message promptly? [Ref. IDRL Guidelines 10(1)]
  - Ensure that the decision to request disaster relief is based on an assessment of needs and of national capacities available to respond? [Ref. IDRL Guidelines 10(1)]
  - Include the possibility for Joint Needs Assessments to be undertaken with the United Nations and other assisting humanitarian organisations? [Ref. IDRL Guidelines 10(1)]
  - Ensure that any government request for international assistance is as specific as possible as to the types and amounts of goods, as well as the services and expertise required. This should also include an indication of particular types of goods and services likely to be offered that are not needed? [Ref. IDRL Guidelines 10(2)]
  - Ensure that indications by the government as to the goods, services and expertise required / not required do not limit the ability of National Societies to request goods, services and expertise from the International Federation that have been identified as necessary? [Ref. IDRL Guidelines 1(b) and (d)]
  - Include a process for making adequate information about relevant domestic laws and regulations about the entry and operation of disaster relief available to assisting actors? [Ref. IDRL Guidelines 10(3)]

### Legislative examples

In Greece, Law 3536 of 2006 clarifies the procedure on requesting international assistance in times of emergencies. More specifically, Article 27(2) establishes that all Greek national authorities need to forward any request for international assistance to the General Secretariat for Civil Protection. Following that, the General Secretariat is making the request for international assistance either through international organizations or through the implementation of national agreements.

The 1985 National Disaster Plan of Guyana provides that the Ministry of Foreign Affairs (MFA) forwards the requests for international assistance in the event of an emergency or a disaster. The MFA coordinates the offers of assistance from resident Foreign Missions and from other external sources and agencies either bilateral or multilateral and refers such offers to the Civil Defence Commission through the Office of the Prime Minister. Moreover, the more recent Damage Assessment and Needs Analysis Plan (2010) of Guyana refers to the creation of a National Damage Assessment Team (NDAT) which collects data pertaining to national disasters and, inter alia, estimates the additional support required from local, national and international sources for relief and recovery.

## Entry (visas, customs, transport)

### The problem

As described above, the lack of adequate procedures for facilitating the entry of international disaster response personnel, goods and equipment can be problematic, particularly when there are no clear procedures in place at the national level for managing their arrival.

### Questions to ask

- Regarding the entry of personnel, does national legal and policy framework implement the recommendations of the IDRL Guidelines? In particular,
  - Visas
    - The granting of visas and any necessary work permits, ideally without cost, renewable with their territory, for the time necessary to carry out disaster relief and initial recovery activities? [Ref. IDRL Guidelines 16(1)]
    - In disaster relief operations, waive or significantly expedite the provision of such visas and work permits? [Ref. IDRL Guidelines 16(2)]
  - Customs
    - Exemptions for relief and initial recovery goods and equipment from all customs duties, taxes, tariffs and governmental fees and import, transit and import restrictions? [Ref. IDRL Guidelines 17(1) (a)-(b)]
    - Simplification and minimization of documentation requirements for export, transit and import, as well as permission for the re-exportation of any equipment or unused goods which the owner wishes to retain? [Ref. IDRL Guidelines 17(c)-(d)]
    - In the case of goods and equipment for disaster relief only, the prioritisation, waiver or reducing of inspection requirements – ideally through a pre-clearance process - and the inspection and release outside business hours or at other locations? [Ref. IDRL Guidelines 17(2)].
    - Waive barriers or expedite the import or export of telecommunications and information technology equipment? [Ref. IDRL Guidelines 18(2)]
    - Reduce legal and administrative barriers to the exportation, transit, importation and re-exportation of medications and medical equipment? [Ref. IDRL Guidelines 18(3)]
    - Modify or reduce normal requirements regarding fumigation and prohibitions and restrictions on food imports and exports, where possible? [Ref. IDRL Guidelines 18(4)]
  - Transport
    - Permission for the speedy passage of land, marine and air vehicles transporting disaster relief and initial recovery ideally waive applicable fees? [Ref. IDRL Guidelines 19(1)]
    - Permission for overflight, landing and departure of aircraft and authorisation to operate within the territory for the delivery of assistance? [Ref. IDRL Guidelines 19(2)]
    - Prompt issuing of any exit, transit and entry visas for the operating personnel of transport vehicles? [Ref. IDRL Guidelines 19(3)]

Note that the granting of the above exemptions and facilities should be contingent upon meeting certain standards and quality, as discussed further below.

Additionally, these facilities will be subject to the interests of national security, public order, public and environmental health and public morals of the country concerned, however, these should be tailored to the specific circumstances of each disaster context and be consistent with the humanitarian imperative of addressing the needs of affected communities. [Ref. IDRL Guidelines Part 5]

### **Legislative examples**

The executive regulation for the Egyptian customs legislation issued in 2006 provides for the release of relief consignments in export, transit, temporary admission, and import as a matter of priority.

Regarding export, relief consignment are exempted from the export rule of the Ministry of Trade in order for their release to be facilitated. Regarding import, relief consignments are to be imported regardless rules of import, more over they are subjected to pre-release procedures. Moreover, simplified procedures are to be followed for the admission of relief equipments by relief organizations, as well as News Agencies equipments for coverage.

Kenya's East African Community Customs Management Act 2004 (applicable only on importation of goods from other member states of the East African Community) provides for a general exemption from duties and taxes for relief goods imported for emergency use in specific areas where a natural disaster/calamity has occurred in a Partner State.

Chapter five of the Draft National Disaster Preparedness law of Afghanistan states that the Ministry of Foreign Affairs should create (1) a system for the quick issuance of visas for humanitarian purposes and (2) a quick and simplified customs procedures for actions during emergency situations. Additionally, the law provides for flight privileges and customs and other taxes exemptions for air and land transportations despatching relief assistance along with the operational teams from overseas countries.

## **Legal status and registration**

### **The problem**

Of particular concern to incoming disaster response actors is the need to obtain appropriate legal status to enable them to operate effectively while in the country. Without such status, relief providers find it difficult to conduct basic activities such as open bank accounts, exchange currency, hire local staff and enter into leases and other contracts in the affected country.

The type of legal status available depends on the nature of the organisation concerned.

The United Nations and related specialised agencies benefit from International Conventions granting them legal personality and according a number of privileges and immunities and also from headquarters agreements which provide a greater level of detail regarding the scope of activities within particular countries. Inter-governmental organisations also benefit from international legal personality and individual governments can benefit from diplomatic privileges and immunities in certain circumstances.



Non-government organisations, on the other hand, are often required to register as domestic NGOs in the affected country, a process which can sometimes take months, or even years, and therefore not suitable for emergency situations requiring rapid mobilisation.

The International Federation and International Committee of the Red Cross are considered *sui generis* in character – neither NGOs nor inter-governmental organisations. Legal status to operate in different countries is usually confirmed by the conclusion of legal status agreements with each individual government which grant the same or similar privileges and immunities as enjoyed by the United Nations.

Partner National Societies on the other hand would generally be considered NGOs by host governments and thus subject to NGO registration requirements. However, given the Fundamental Principle of Unity, which requires there to be only one Red Cross or Red Crescent Society in each country, this option is precluded. Thus, Partner National Societies present in an international disaster relief situation usually work under the auspices of the International Federation or through the host National Society. There are however countries where the International Federation and Partner National Societies must operate without a legal status agreement.

To assist in disaster situations where foreign NGOs or at times Components of the Movement may have difficulties in obtaining the necessary legal status, the IDRL Guidelines recommend the issuing of temporary authorization to operate in the territory to enable them to conduct their activities.

### Questions to ask

- Do national legal and policy frameworks:
  - Include a process for granting relevant entities temporary authorization to legally operate on their territory to as to enjoy the rights to open bank accounts, enter into contracts and leases, acquire and dispose of property and instigate legal proceedings? Is this granted upon entry or as soon as possible thereafter? [Ref. IDRL Guidelines 20(1)]
  - Ensure that assisting States and humanitarian organisations are granted the right to freely bring in the necessary funds and currencies in or out of the country through legal means and to obtain legal exchange rates? [Ref. IDRL Guidelines 20(2)]
  - Allow assisting States and humanitarian organisations to legally hire and terminate the contracts of local personnel? [Ref. IDRL Guidelines 20(3)]

### Legislative examples

The Indonesian Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response of 2011 (Chapter II, D.1) states that “the providers of assistance may carry foreign and rupiah currencies to and from Indonesia according to monetary regulations and obtain legal exchange value in accordance with the disaster emergency operations (point e) and that “if foreign personnel need to open “personal bank accounts for operational needs in carrying out their humanitarian activities, a coordination with their respective embassies in Indonesia should be confirmed” (point f). In addition, a more general provision under the same Chapter stresses that “legal domestic facility may be granted for international aids for their activities related to humanitarian assistance.” Moreover, regarding registration, the Indonesian Guideline requires international organizations and foreign NGOs to

register by submitting the list and expertise of their personnel, location of activities and goods (Chapter II, D.2)

## **Taxation, access and professional qualifications**

### **The problem**

In order to deliver cost efficient and effective international assistance, relief providers also require a number of other facilities relating to taxation, access to affected areas and recognition of professional qualifications. Frequently, however, national law lacks specific provisions to handle these questions.

### **Questions to ask**

- Do national legal and policy frameworks:
  - Provide exemptions to assisting States and eligible assisting humanitarian organisations from value-added and other taxes or duties directly associated with disaster relief and initial recovery assistance? [Ref. IDRL Guidelines 21]
  - Ensure freedom of access to and freedom of movement in and from the disaster affected area, bearing in mind the safety of disaster relief and initial recovery personnel? [Ref. IDRL Guidelines 16(d)]
  - Establish expedited procedures for temporary recognition of professional qualifications of foreign medical personnel, architects and engineers, driving licenses and other types of license and certificate necessary for disaster response activities, provided that the sending organisation concerned certifies these licenses as genuine? [Ref. IDRL Guidelines 16(c)]

### **Legislative examples**

The Ethiopian Value-Added Tax (VAT) proclamation No. 285 of 2002 exempts the supply of goods and services in the form of humanitarian aid as well as import of goods transferred to state agencies of Ethiopia and public organizations for the purpose of rehabilitation after natural disasters, industrial accidents and catastrophes.

Likewise, according to Article 2 of Peruvian Law 29081 (2007) on the importation of goods of humanitarian aid following the declaration of state of disaster emergency, donations from abroad are exempt from customs duties, VAT, and excise taxes during an emergency situation caused by a natural disaster.

In Viet Nam, the repair and construction of public infrastructure and residential houses funded by humanitarian aid is a non-taxable object (Article 5, Law on Value-Added Tax No. 13/2008/QH12 of 2008). Moreover, goods imported as humanitarian aid and donations and gifts for Vietnam-based individuals (within the Government prescribed quotas) are also non-taxable objects.

## **Quality, accountability and coordination**

### **The problem**

Of considerable concern in international disaster relief operations, particularly where a large number and variety of relief providers are present, are instances of poor coordination, quality and accountability. Even the actions of only a few can undermine relief efforts and tarnish the reputation of the international humanitarian community

as a whole. While significant efforts have been made by international relief providers and the Red Cross Movement in particular, to develop international codes of conduct and standards for international assistance, these are rarely enforced by governments of affected countries and depend instead mostly on peer and self-monitoring or unfavourable media reports.

The IDRL Guidelines however, propose that adherence to a certain number of these principles and standards should be used as criteria for relief providers to receive the various exemptions and facilities described above. Organisations that adhere to these standards are referred to in the IDRL Guidelines as “eligible assisting humanitarian organisations”.

### Questions to ask

- Do national legal and policy frameworks:
  - Establish criteria for assisting humanitarian organisations seeking legal facilities, which included that organisation’s willingness and capacity to comply with the “Responsibilities of Assisting Actors” described in the IDRL Guidelines para. 4? [Ref. IDRL Guidelines 14(2)]
  - Include a process for ensuring ongoing compliance by assisting organisations in order to retain facilities? [Ref. IDRL Guidelines 14(5)]

### Legislative examples

The Philippine Disaster Risk Reduction and Management Act of 2010 commits the State, in art. 2 (j) to ‘ensure that disaster risk reduction and climate change measures are gender responsive, sensitive to indigenous knowledge systems, and respectful of human rights’.

Indonesia’s Government Regulation No. 23 of 2008, on the Participation of International Agencies and Foreign Non-Governmental Organizations, provides for ‘the regulation of participation of international institutions and foreign non-governmental organizations’ in disaster management in Indonesia ‘... in accordance with the prevailing international and national laws including the law of human rights and humanity.’ Likewise, Indonesia’s ‘Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response’ of 2011 of Indonesia sets out principles concerning meeting the different needs of men and women, caring for vulnerable groups and in particular respecting and protecting the ‘dignity and rights’ of affected persons (Ch.I, F).

## Termination

### The problem

Disaster management laws rarely set out procedures for terminating the legal facilities provided to international disaster responders or for ending their programmes. Often, these decisions are made rather arbitrarily, in a government’s haste to ensure at least the appearance of a return to normality in their countries. On the other hand, it is also the case that many international actors terminate their activities without adequate consultation or provision for hand-over.

### Questions to ask

- Do national legal and policy frameworks provide appropriate notification and ensure consultation with assisting actors, bearing in mind the impact of such termination on disaster affected communities? [Ref. IDRL Guidelines 12]

### Legislative examples

Law No. 147-02 on Risk Management of the Dominican Republic of 2002 provides a procedure to issue a declaration of returning to normality, pursuant to which the National Council for Prevention, Mitigation and Response to Disasters may give its recommendation to conclude the Declaration of Emergency (art. 25).

Chapter V of the Indonesian Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response (2011) provides that “the government may issue a statement for the termination of the emergency response phase” and that “this can also be done before the deadline set at the initiation of the international assistance for the emergency.” At the end of the emergency response phase, the disaster management agency issues a letter terminating international assistance during the emergency response period (Form 10) which should contain: a summary report of latest situation and condition, the progress of emergency response operations (including both domestic and international actors), as well as a fixed date signifying the end of the emergency response phase.

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## Sources and further information

### *International instruments*

- Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 30<sup>th</sup> International Conference of the Red Cross and Red Crescent (2007).
- Principles and Rules for Disaster Relief, 21<sup>st</sup> International Conference of the Red Cross (Istanbul, 1969, as amended up to 1995).
- The Code of Conduct for The International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (1994).
- Agreement on the Organization of the International Activities on the Components of the international Red Cross and Red Crescent Movement (Seville Agreement) (1997) and Supplementary Measures.
- Kyoto Convention on the Simplification and Harmonization of Customs Procedures, (rev 1999) (Kyoto Customs Convention).
- Istanbul Convention on Temporary Admission (1990) (Istanbul Customs Convention).
- Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (1998) (Tampere Convention).
- Hyogo Framework of Action 2005-2015: Building the Resilience of Nations and Communities to Disasters (2005).

### *National laws and policies*

- Afghanistan: Draft National Disaster Preparedness Act (2011).
- Dominican Republic: Law No. 147-02 on the Management of Risks (2002).
- Ethiopia: Value-Added Tax (VAT) proclamation No. 285 (2002).

- Greece: Law No. 3536/2006, Special arrangements for issues of immigration policy and other issues under the competence of the Ministry Interior, Public Administration and Decentralization (2006).
- Guyana: National Disaster Plan (1985).
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- Philippines: Disaster Risk Reduction and Management Act (2010).
- Viet Nam: Law on Value-Added Tax No. 13/2008/QH12 (2008).

**Other sources**

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Legislative Issues in Disaster Management and Epidemic Response  
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## **Chapter 4**

# Legislative issues in disaster recovery and rehabilitation

As time passes after a major disaster, public interest in and attention to the fate of those affected tends to falter. Yet the recovery phase is critical, both for the future of affected communities and for the overall development progress of the country. It is therefore important that legislation ensure adequate follow-through in the “recovery phase.”

## **Key international instruments**

The importance of disaster recovery and rehabilitation mechanisms has been highlighted in various international declarations and resolutions, recognising the role of such programs as essential to the affected community.

### **UN General Assembly Resolution 46/182**

In Resolution 46/182 (1991) on the “Strengthening of the coordination of humanitarian emergency assistance of the United Nations” (“GA Resolution of 1991”), the UN General Assembly laid down guiding principles for the disaster response as well as the transition from relief to rehabilitation.

Principle 9 of that resolution draws the link between the relationship between an emergency, rehabilitation and development, and emphasises the need to provide recovery assistance in a manner that aids long term development. Principle 10 highlights that economic growth and sustainable development are intrinsic to preparedness against disasters and that humanitarian assistance must be provided keeping this link in mind. Principle 41 also states that international cooperation and support for rehabilitation and reconstruction should “continue with sustained intensity” after the relief stage.

### **Red Cross and Red Crescent instruments**

The 2003 Agenda for Humanitarian Action of the 28<sup>th</sup> International Conference of the Red Cross and Red Crescent also sets out goals and actions with regard to recovery and rehabilitation. Final Goal 3.1 refers to “supporting sustainable recovery; and optimizing capacity building opportunities for vulnerable populations.”

Similarly, the Principles and Rules for Red Cross and Red Crescent Disaster Relief (1995) stipulate, as part of the duty to assist, Principle 2.2: “We recognize that in helping disaster victims to survive, relief programmes must also look to the future and ensure that people are not left more vulnerable to the future disasters. Wherever possible, relief programmes should attempt to build upon the capacities of those being assisted, involve them in the management and implementation of the programme and act with a sense of accountability towards the beneficiaries.”

The IFRC’s member National Societies have adopted several policies of particular relevance to the recovery period. The Post-Emergency Rehabilitation Policy of 1999 emphasizes coordination, particularly with governmental authorities, and suggests that “rehabilitation of health care support systems and public health infrastructure, the provision of tracing services, systems to ensure food security and access to potable water, and the rehabilitation of shelter” will often be a particular focus on National Society’s rehabilitation work. That same year, National Societies also adopted the Policy on Integration Relief, Rehabilitation and Development, which called committed them to breaking down conceptual and programmatic barriers between these three objectives and called for a greater link between their work in short-term relief and longer-term recovery. Both also highlighted the importance of National Society advocacy with

outside parties, including with regard to integrating mitigation and recovery into relief programming.

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## **Issue areas**

### **Community participation**

#### **The problem**

Though it concerns their long-term future, recovery planning often excludes affected communities from the decision-making process.

#### **The Red Cross/Red Crescent approach**

Principle 2.2 of the Principles and Rules for Red Cross and Red Crescent Disaster Relief places emphasis on assessing capacities and planning for the future with the involvement of the affected communities. This would include all sections of the community, including those most vulnerable such as women, children and the aged.

The IFRC's "Emergency Response Policy" adopted in 1997, places emphasis on data and information as a key element, necessary for the involvement of beneficiaries and local organisation.

The IFRC's "Post Emergency Rehabilitation Policy", adopted in 1999, underlines the importance of "active participation of the community in the planning and implementation of [rehabilitation] activities on the basis of a timely and thorough assessment of unmet needs and available response capacity and, ensuring that, should assistance be given, it is targeted to the most needy and most vulnerable groups and complements rather than replaces the responsibilities and activities of government services".

The IFRC "Integrating Relief, Rehabilitation and Development Policy", adopted in 1999 stipulates that in planning and implementation of relief, rehabilitation and development activities "require close consultation with the people affected at the community level and other service providers."

The "Food Security and Nutrition Policy" adopted at the in 2003 stipulates the need to ensure that food security programmes are adequately monitored and evaluated in a participatory manner. It emphasizes the need to acknowledge gender aspects of food insecurity as well as approaches to sensitive to local culture.

#### **Questions to ask**

- Are there provisions regarding consultation of affected communities in rehabilitation planning in the disaster management law of your country?
- If so, what is the method and manner of such consultation?
- Is there a committee of community members, which is involved in the planning of recovery projects?
- Is there any provision for consultation with all members of the community, including those who are most vulnerable, such as women, disabled and the aged?
- Is information regarding relief and recovery projects disseminated to the affected communities, and is there a mechanism for input, prior to the finalisation of these plans?



### **Legislative examples**

In the aftermath of an earthquake in India's Maharashtra state, the government established the "Maharashtra Emergency Earthquake Rehabilitation Program" (MEERP) which necessitated the involvement of the community in reconstruction programs. The program established community groups that participated and were consulted in all stages of the disaster recovery program. This not only facilitated the targeting of programs according to the needs of the community, but also established greater input in the design of the programs. Community input was crucial in the process of redesigning of villages that had been selected for relocation, as well as for those villages that required extensive reconstruction.

Zambia's 2010 Disaster Management Act provides for the creation of "satellite" disaster management committees covering one or several villages. These committees are to be locally elected, but the membership is also specified to include a representative of a traditional authority, at least three local residents trained in disaster management, one representative of a community organization in the area, two women and two men from the area, at least one youth, a businessman or farmer and a local representative of an NGO. Its function is, among others, to oversee disaster preparedness, relief and post-disaster recovery activities of individuals and households in its area.

### **Equality and non-discrimination**

#### **The problem**

Discrimination is a real problem in rehabilitation and recovery settings, though often not in overt form. For example, governments often make available funds, land and other assistance to home-owners to allow them to rebuild their properties. However, renters and especially persons without evidence of legal title to their lands are generally excluded or receive far less. Likewise, rehabilitation aid may be designed so as to make it mainly accessible to men and not women.

#### **The Red Cross/Red Crescent approach**

One of the seven Fundamental Principles of the Red Cross and Red Crescent Movement Principles and Rules is that of Impartiality. This means that there should be no discrimination in the provision of aid and relief.

Final Goal 3.1 of the Agenda for Humanitarian Action also provides: "Of particular importance is directing such efforts towards populations that are most at risk, including those marginalized because of poverty, discrimination or social exclusion, or those that do not have access to disaster preparedness and response services as a consequence of their circumstances or legal status."

#### **Questions to ask**

- Is the provision of aid and assistance conditional upon certain factors, such as membership of a particular community, or social group, ethnicity, religion or gender?
- Is there equity in the assistance provided to persons with and without land title?
- Does the disaster management and or rehabilitation law of your country prevent or the discriminatory provision of rehabilitation assistance?

### **Legislative examples**

An example of greater participation of women and equality is observed in the case of Aceh, Indonesia. In the aftermath of the tsunami in 2005, the Law on Governing Aceh (LoGA) was formulated and entered into force in 2006. In the discussion on the provisions of the law, women's groups advocated for gender specific provisions. One of the most significant of these related to the inclusion of women in land deeds and titles. As a result, the LoGA provides for women to have their names registered as individuals or joint owners, a departure from earlier practice which usually provided for land title to men.

After the Pisco earthquake of 2007 in Peru, the government and humanitarian organizations cooperated to find rapid ways to guarantee recognition of ownership rights with flexible documentation and direct involvement of the community, in order to select reconstruction beneficiaries. The American Red Cross relied on vulnerability criteria, as well as criteria related to the tenure of the land and properties built on it. It carried out a census of the area to collect information on the families living there, and requested proof of possession of land in any form. This proof could be any documents ranging from certificates of property, minutes of purchase contracts, and declarations by parents that they intended to leave the land to their children. The German Red Cross, relying on the Peruvian Red Cross and local authorities for selection of beneficiaries, asked for a guarantee to be provided by the municipalities, but did not assess the validity of the documents itself.

### **Access to shelter support**

#### **The problem**

The loss of housing accompanies many disasters, either as a direct result of the event or due to the relocation of communities. While there are often concerted attempts – both by governmental and non-governmental actors – to provide displaced persons with shelter solutions, access to that assistance is not always provided evenly.

For example, affected persons who have lost legal documents, such as title to land, may find difficulty in receiving support for rebuilding damaged homes. Clarity as to who owns what land may also be lost when landmarks are destroyed or governmental title offices are themselves damaged by a disaster. As noted above, moreover, in many societies, informal claims to title are the norm and these are particularly difficult to sort out in the aftermath of a disaster.

In addition, it is often the case that low-income families provided in an initial stage with temporary or transitional shelter (such as tents) are forgotten for long periods of time after the disaster (in particular after the initial public interest has ebbed).

#### **The Red Cross/Red Crescent approach**

As this document was being finalized, these issues were scheduled to be highlighted at the 31<sup>st</sup> International Conference of the Red Cross and Red Crescent and were the subject of a draft resolution there on strengthening disaster laws.

Moreover, the Guidelines on Human Rights and Natural Disasters adopted by the Inter-Agency Standing Committee (IASC) (rev 2011), a UN policy-making body in which the IFRC and ICRC participate as observers, provides that there should be procedures put in place for owners of land and property to reclaim title to their property as soon as possible (C2.4-C.2.5). There must also be recourse to legal proceedings that take due

process into account in the resolution of competing claims of title. Further, there should be specific recognition and facilitation of the rights of especially vulnerable sections such as women and children, as well as recognition of title of indigenous populations. (IASC Operational Guidelines, C2.6-C.2.7.

### Questions to ask

- Are there legal guarantees for the provision of shelter in case of displacement due to disasters?
- Does the law require that rehabilitation planning proceed with necessary speed to move families from transitional to permanent housing?
- Is there a procedure to take into account legal disputes with regard to title to land and property?
- Is there a legally defined procedure in case of loss of records or documentation?
- How long does the process of reassertion of title and dispute resolution take? Are there any timelines indicated in legislation? Is there any procedure for speedy process in the wake of a disaster (potentially including community-based mapping of land rights)?
- Is there provision of legal aid in case of such disputes?

### Legislative examples

After Chile's earthquake of February 2011, many families were unable to qualify for shelter subsidies to repair or rebuild their houses because they lacked proof of ownership. The government adopted a new law in August 2011 which modified the norms for the regularization of land tenure, speeding the process from an average of two years to six months and passing all costs to the state.

An example of judicial measures to resolve disputes related to title and ownership is the case of Thailand post tsunami. A Special Land Sub-Commission was set up in order to resolve land disputes. This sub-commission ensured that in case of any disputes, no construction could take place till the dispute was resolved. This judicial authority was seen as a success in resolving disputes, and guaranteeing the rights of the local communities.

In Sri Lanka, the National Human Rights Commission established a dedicated "Disaster Relief Monitoring Unit" after the 2004 tsunami. Its role was to independently monitor relief and reconstruction activities in the tsunami operation including "government services and civil society activities in relation to relief, benefits, land titles and livelihood of Tsunami victims from a human rights perspective." In addition to receiving complaints, it organized consultation meetings with disaster affected communities and developed a code of conduct for civil servants. It also intervened with governmental officials and non-governmental relief providers to mediate disputes.

After the 2010 earthquake in Haiti, shelter providers faced the issue of how to obtain documented legal certainty about ownership of land where people had previously lived. The interagency Shelter Cluster created a document requiring the signature of three people, including the local administration, the beneficiary/family, and the legal owner of the land concerned. Effectively, this document created a lease agreement for the three-year life expectancy of transitional shelters.

## Right to choose where to (re)settle

### The problem

For reasons of economy, urban or social planning and convenience, governments often dictate fairly restrictive terms about where and how displaced persons may resettle after their homes have been damaged or destroyed by a disaster. Plainly, this may be justified where the original location is so highly disaster prone as to render preventive measures in reconstruction impracticable. However, where return is not allowed for these reasons, consideration should be given to address the potential loss of community bonds and livelihood opportunities.

### The Red Cross/Red Crescent approach

There is no specific Red Cross or Red Crescent policy on the choice of location for resettlement, but the UN's Guiding Principles on Internal Displacement provide that displaced persons should have the choice about whether to return to their former homes or resettle elsewhere in their country. In particular, they should not be forced to return to areas of high danger to themselves.

### Questions to ask

- Does the law governing disaster rehabilitation in your country provide that affected communities are entitled to return to their original place of residence, or to choose to resettle elsewhere?

### Legislative examples

After the Pakistan earthquake in 2005, due to the loss of housing or land, a vast number of the population were unable to return to their original place of habitation. In order to address this need, the Government of Pakistan, in consultation with other stakeholders such as international organisations, local organisations, and funders, adopted an Earthquake Reconstruction and Rehabilitation Authority Rural Landless Policy. This policy enabled the disbursement of grants in order for the landless to acquire new land and build earthquake resistant homes at the location of their choice. Further, the policy also included households headed by women.

## Quality of shelter provided

### The problem

In some instances persons displaced by disasters have been provided shelter solutions of poor quality, endangering their health, safety and dignity. For instance, non-winterized tents have often been supplied in cold climates, temporary shelters have been constructed in dormitory fashion, without regard to local cultural norms, in particular concerning privacy, and temporary or new settlements have been placed in remote locations making it difficult for residences to maintain contact with their sources of livelihood.

### The Red Cross/Red Crescent approach

The Red Cross and Red Crescent Movement has been an active contributor and user of the Sphere Charter and Minimum Standards in Humanitarian Response (rev. 2011), which provides detailed guidance as to the minimum quality of post-disaster shelter, among other sectors. Although they are voluntary and primarily designed with

humanitarian organizations in mind as end users, the Sphere Standards also invite governments to make use of them

### Questions to ask

- Does domestic law or policy set out minimum standards to be met in providing post-disaster shelter, including with regard to living space, location, and guarantees as to privacy, safety, health and access to essential services?
- If so, are those standards at least as protective as those set out in the Sphere Standards?

### Legislative examples

Guatemala's national disaster coordination agency, CONRED, formally adopted the Sphere Standards, requiring that all requests for assistance address the Sphere Standards. Likewise, in 2009, the Ekurhuleni Metropolitan Municipality in Gauteng Province of South Africa accepted the Sphere Standards as the Council Policy that would guide the implementation of the humanitarian assistance in any emergencies."

For its part, the Philippines Disaster Risk Management Act of 2010 declares it a "policy of the state" to "adhere to and adopt the universal norms, principles, and standards of humanitarian assistance and the global effort on risk reduction as concrete expression of the country's commitment to overcome human sufferings due to recurring disasters" (art. 2).

## Restoration of livelihoods

### The problem

Speedy restoration of productive work is critical at the family, community and national level after a disaster. The means to secure livelihoods are often weakened or destroyed by disasters. This may require replacement of necessary equipment, retraining or other measures of assistance.

### The Red Cross/Red Crescent approach

The "Integrating Relief, Rehabilitation and Development Policy", stipulates that relief activities should lay the foundation for the rehabilitation of livelihoods in a manner that they are more resistant to future disasters. Further, the Policy states the importance of building local capacity, such as the use of local materials and resources, as well as taking measures to regenerate livelihoods.

The IFRC "Emergency Response Policy" states that national societies and the International Federation must design and programs to maximise the possibility of beneficiaries returning to their normal lifestyles as soon as possible, or when this is not possible, to attain a quality of life free from external aid. Further, the Policy stresses on the need to work towards self reliance for the affected community, taking into account the "long term effect of emergency assistance on future development opportunities."

The IFRC "Food Security Policy" of 2003 asserts the need to support asset development as an essential aspect of food security.

### Questions to ask

- Are disaster affected communities entitled to assistance for alternate means of livelihood under existing law or policy?
- Are there provisions in legislation to guide the provision of livelihood assistance after disasters?

### Legislative examples

In the Maldives, the National Economic Recovery and Reconstruction Program (NERRP) has, through the aegis of the Ministry as well as the funding from various donors including the Asian Development Bank, developed and implemented various livelihood restoration programs after the tsunami in 2005. One such program is the livelihood restoration program for tsunami affected farmers.

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## Sources and further information

### *International instruments*

- UN General Assembly Resolution 46/182 (1991).
- Agenda for Humanitarian Action of the 28<sup>th</sup> International Conference of the Red Cross and Red Crescent (2003).
- Guiding Principles on Internal Displacement (1998).
- Principles and Rules for Red Cross and Red Crescent Disaster Relief (1995).
- Hyogo Framework for Action 2005-2015.
- Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005).

### *National laws*

- Pakistan: Earthquake Reconstruction and Rehabilitation Authority Rural Landless Policy (2005).
- Philippines: Disaster Risk Management Act (2010).
- India (Maharashtra): Emergency Earthquake Rehabilitation Program.
- Zambia: Disaster Management Act (2010).

### *Other sources*

- IASC Operational Guidelines on Human Rights and Natural Disasters (2006).
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Legislative Issues in Disaster Management and Epidemic Response  
Humanitarian Diplomacy Guidance Note No.2

## **Chapter 5**

Legislative issues in  
the domestic response  
to epidemics

Like major natural disasters, epidemics have the capacity not only to bring death and disability to large numbers of people but also to powerfully impact on local and national economies and social cohesion. However, they raise even more sensitive regulatory dilemmas in light of the sometimes competing interests of those infected and those seeking to avoid contagion.

## Key international instruments

### International Health Regulations

In 2005, the World Health Assembly adopted a revised version of the International Health Regulations (IHR), a treaty that became binding on all World Health Organization (WHO) member states (which includes nearly every country in the world) in 2007.

The revised IHR created a new international notification and reporting system for any threat to public health which is “of international concern.”<sup>1</sup> States are required to designate a national IHR focal point available to receive inquiries from the WHO at any time. They are also required to provide prompt information to the WHO about disease outbreaks. WHO is also given the authority to seek and rely upon information apart from governmental sources, including civil society actors. A procedure is set out whereby WHO may issue warnings even over the objection of the concerned state, where necessary.

Of equal importance are the commitments of the state parties to the IHR to strengthen their national surveillance and response systems in compliance with the IHR’s standards. The IHR set out particularly detailed procedures for cross-border issues, particularly with regard to inspections for airplanes, ships, cargo and travellers.

In the latter connection, the IHRs provide that states can require from travellers medical examination, vaccination or other prophylaxis or proof of this when necessary to determine whether a public health risk exists; as a condition of entry for any travellers seeking temporary or permanent residence; or as a condition of entry for any travellers to achieve the level of health protection established in the WHO recommendations. Moreover, if there is evidence of an imminent public health risk, states may, in accordance with its national law and to the extent necessary to control such a risk, compel or advise the traveller to undergo the “least invasive and intrusive medical examination that would achieve the public health objective; vaccination or other prophylaxis; other health measures that prevent or control the spread of disease, including isolation, quarantine or placing the traveller under public health observation” (art. 31).

The IHR set out two general considerations of particular importance. The first is the expectation that its provisions are to be implemented with full respect for the dignity, human rights and fundamental freedoms of persons (art. 3(1)). The second is that public health control measures should avoid unnecessary interference with international traffic and trade (art. 2). This means that they should be no more restrictive than necessary (art. 17).

<sup>1</sup> According to the IHR, a public health emergency of international concern” means an extraordinary event which is determined to constitute a public health risk to other States through the international spread of disease, and, to potentially require coordinated international response. (IHR, article 1, definitions.) The process for designating a public health emergency of international concern is found in article 12 of the IHR.



## Human rights instruments

The preamble of Constitution of the World Health Organization (WHO) of 1946 the international community recognized that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.” Two years later, the Universal Declaration on Human Rights recognized the individual’s “right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.” The right to health has subsequently been confirmed in a number of human rights instruments.<sup>2</sup>

In these instruments, states acknowledge the obligation to respect, protect and fulfil the human right to health, including access to a system of health protection (health care and the building of hospitals, access to essential medicines; appropriate prevention, treatment and control of diseases); safe drinking water and adequate sanitation; adequate nutrition and housing; healthy working and environmental conditions; health-related education and information; gender equality.

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## Issue areas

### Declaration of states of emergency

#### The problem

In many states, health emergency laws provide that special response regimes are triggered by an official declaration of state of emergency. The procedures for such a declaration should, therefore, be made clear in the law, with due consideration of the various agencies that might be involved in making such a decision, as well as the apportionment of responsibility, whether at the national, regional or local levels.

#### The Red Cross/Red Crescent approach

There is no specific Red Cross or Red Crescent policy on this question.

#### Questions to ask

- Does your national law set out clear and agile procedures for determining whether a state of emergency should be declared?
- Does it clearly apportion roles and responsibilities in the decision-making chain?
- Does your national law require that such a declaration contain temporal and geographical limitations?
- Does it provide that the declaration of state of emergency contains clear specifications regarding the consequences of it, especially regarding the limitations of constitutional rights?

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<sup>2</sup> Among the international human rights instruments upholding the right to health we find the International Convention on the Elimination of All Forms of Racial Discrimination (1965, art. 5,e,iv); the International Covenant on Economic, Social and Cultural Rights (1966, art. 12); the Convention on the Elimination of All Forms of Discrimination against Women (1979, arts. 11,1,f; 12; 14,2,b); the Convention on the Rights of the Child (1989, art. 24); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990, arts. 28, 43,e; 45,c); the Convention on the Rights of Persons with Disabilities (2006, art. 25).

### Legislative examples

The Canada Emergencies Act of 1985 contains detailed provisions for the Declaration of a public welfare emergency. Regarding the responsible authority, the Act provides that “When the Governor in Council believes, on reasonable grounds, that a public welfare emergency exists and necessitates the taking of special temporary measures for dealing with the emergency, the Governor in Council, after consultation (...) may, by proclamation, so declare.

This declaration of a public welfare emergency shall specify “(a) concisely the state of affairs constituting the emergency; (b) the special temporary measures that the Governor in Council anticipates may be necessary for dealing with the emergency; and (c) if the direct effects of the emergency do not extend to the whole of Canada, the area of Canada to which the direct effects of the emergency extend.” The declaration “is effective on the day on which it is issued, but a motion for confirmation of the declaration shall be laid before each House of Parliament and be considered (...);” and expires “at the end of ninety days unless the declaration is previously revoked or continued in accordance with th[e] Act.”

### Social distancing (such as isolation and quarantine)

#### The problem

Social distancing measures such as isolation, quarantine, limiting public gatherings, closure of institutions (schools, places of work or worship) are critical but also extremely sensitive tools of epidemic control.<sup>3</sup> Without such measures, epidemics may be impossible to contain, however, they can also have dramatic impacts on civil liberties and the dignity of persons and communities, whether or not they have become infected with disease.

In some countries, the powers and procedures for carrying out these measures are not clear enough to allow their rapid deployment in case of emergency. In others, these powers are not adequately tempered with measures to guard against unnecessary restrictions on civil liberties, such as proceedings to review quarantine decisions, or requirements to ensure the dignity and comfort of affected persons. Moreover, quarantine and isolation can have crippling economic impacts on affected persons and communities, which states should be prepared to address.

#### The Red Cross/Red Crescent approach

There is no specific Red Cross or Red Crescent policy on this question.

#### Questions to ask

- Does your national law establish who is the competent authority to issue a quarantine or isolation order?
- Does your national law states the legal procedure for issuing such an order?

<sup>3</sup> As used here, quarantine means the restriction of activities and/or separation from others of suspect persons who are not ill or of suspect baggage, containers, conveyances or goods in such a manner as to prevent the possible spread of infection or contamination. Isolation means separation of ill or contaminated persons or affected baggage, containers, conveyances, goods or postal parcels from others in such a manner as to prevent the spread of infection or contamination.

- Does it indicate that quarantine and other isolation measures are extreme resources and other viable options should be considered before applying it?
- Does it contain a prohibition of discrimination when deciding on quarantine?
- Does your national law establish protection provisions for individual liberties (especially when subjected to detention and or isolation) and minimum standards of health treatment and detention conditions?
- Does it allow affected persons to communicate with their families, legal advocates and the media (if safe means to do so are available)?
- Does it establish a compensation system for economic losses of persons subjected to quarantine or isolation?

### **Legislative examples**

The Public Health Act of Scotland of 2008 contains the criteria to establish the need to have person quarantined. First, it is a health board that “knows or suspects that a person who is present in that board’s area (i) has an infectious disease; (ii) has been exposed to an organism which causes such a disease;” and, second, “it appears to the board that as a result (i) there is or may be a significant risk to public health; and (ii) it is necessary, to avoid or minimize that risk, for the person to be quarantined.”

If these conditions are met, “the board may apply to any sheriff for the board’s area for a (...) “quarantine order.” Such an application must specify, among other things, (i) the person in relation to whom the quarantine order is sought; (ii) why the board considers it necessary for the person to be quarantined; (iii) the place in which it is proposed to quarantine the person; and (iv) the period for which it is proposed to quarantine the person.

Very importantly, the Act includes the duty to review exclusion and restriction orders: accordingly, “[A] health board competent person of the appropriate health board must, during the period of 1 week ending with the relevant day, consider whether the conditions that motivated the quarantine continue to apply; and if such measure “continues to be necessary, to avoid or minimize a significant risk to public health, for the person to be subject to the order.”

Another important mechanism is the possibility of appeal against quarantine and hospital detention orders. According to the Act, a person subjected to quarantine or “any person who has an interest in the welfare of such a person” may appeal to the sheriff principal against (a) the making of the order; (b) in the case of a quarantine order, any conditions imposed by the order; (c) any other measures taken in relation with this provisions.

### **Protection of vulnerable populations**

#### **The problem**

When communities face emergencies like epidemics, not all their members have the same coping capacity and some of them have special needs. Vulnerable populations – such as low-income communities, physically or mentally disabled, minorities, the elderly, children, and the displaced – may not have the same access to coping resources, such as private transportation for evacuation, extra food and water, medical care and safe shelter during emergencies. Moreover the negative impacts of steps taken to control epidemics may often fall disproportionately on the shoulders of disfavoured minorities, whether because of discrimination or because of their lack of resources.

Accordingly, the relevant legal framework for epidemics should take into consideration the needs of people in special circumstances and, to the degree feasible, guard against discriminatory impacts of any response measures.

### **The Red Cross/Red Crescent approach**

While not necessarily referring directly to the situation of epidemics, many Red Cross and Red Crescent policy documents point to the need to pay particular attention to vulnerable populations. For instance, Resolution 20 of the 25th International Conference of the Red Cross “urge[d] governments, National Societies, the League, the ICRC and other relief agencies especially to take care of children when emergency situations occur and to protect them from all forms of physical and mental injury or abuse.” Likewise Resolution 9 of the 1991 Council of Delegates called on the Movement “to act vigorously in favour of refugees, asylum seekers, displaced persons and returnees” and the IFRC’s “Health Policy” of 2005 committed National Societies to “Strive to be a strong voice of social conscience in protecting and promoting the health of the most vulnerable populations.”

### **Questions to ask**

- Do your laws dealing with epidemics and other health emergencies, take in consideration special circumstances which may result in increased vulnerability?
- Do they provide for specific actions to counteract such vulnerability?
- Do they guard against discriminatory impacts of response measures?

### **Legislative examples**

Article 14 of Sweden’s Law 57 on protection against international threats to human health of 2006 notes that “measures for the protection of human health taken under this Act shall be based on science and proven experience and may not be more restrictive than necessary to achieve this protection. Measures shall be taken with respect for every human being and the privacy of individuals. Actions concerning children should pay particular attention to what the interest of the child requires.”

## **Right to information**

### **The problem**

Governments are often hesitant to release information about disease outbreaks to the public. The reasons for this are varied and often compelling, ranging from concern about causing unjustified panic and social ostracism of suspected disease carriers to the potential economic impact (which is often considerable). On the other hand, the public clearly has a right to expect to be given the information it needs to keep itself as safe as possible from life-threatening illness.

### **The Red Cross/Red Crescent approach**

There is no specific Red Cross or Red Crescent policy on this question.

### **Questions to ask**

- Does your national law provide the public with a right to be appropriately informed about disease outbreaks and preventive measures?

- Does it set out specific responsibilities for appropriate agencies regarding the right to information in emergencies?

## Protection of privacy and personal medical information

### The problem

In most countries, personal health information is protected by law. However, those laws often allow for disclosure of information in emergencies or other urgent circumstances, even without the person's consent. Such exceptions can be critical for an effective and speedy response to a budding epidemic, but they should also be carefully controlled so as not to destroy the purpose of privacy protections.

### The Red Cross/Red Crescent approach

There is no specific Red Cross or Red Crescent policy on this question.

### Questions to ask

- Does your national law protect personal health information?
- Does it contain specific provisions on the circumstances where such information can be disclosed, the kind of information that can be disclosed and to whom, and the competent authority to issue such an order?
- Does it contain include liability provisions for health authorities when disclosing private health information?

### Legislative examples

Canada's Personal Health Information Protection Act of 2004, regulates the collection, use and disclosure of personal health information. The Act protects personal health information by stating that "a health information custodian shall not collect, use or disclose personal health information about an individual unless, it has the individual's consent under this Act and the collection, use or disclosure, as the case may be, to the best of the custodian's knowledge, is necessary for a lawful purpose." However, the Act also contains a provision for collection, use and disclosure of such information "if the custodian believes on reasonable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons."

Germany's Law on the prevention and control of infectious diseases lists a number of infectious diseases for which reporting is obligatory (Section 6). The doctor/hospital etc. which diagnoses the disease has to immediately report this to the local health authority (Section 8). The aim of data protection is expressed in the fact that for some diseases the name of the person affected does not need to be transmitted (Sections 9, 10), and the conclusive listing of data to be reported (Section 11). Furthermore the data received can only be used in accordance with the aim of the law (Section 16).

## Need for surge capacity and extraordinary resources

### The problem

To respond to a health emergency, public health agencies will often need quick access to resources, financial, human and physical. There is a need for special legal powers,

therefore, to shift public funds to emergency needs. Moreover, it may be necessary to mandate burden-sharing measures between jurisdictions in a country, for example, by transporting ill people to health facilities in nearby regions or bringing medical supplies and personnel to the emergency area. Other appropriate measures may include regional and national rosters for emergency trained personnel, list medical supplies regional and national stocks ready to be mobilized in emergencies, or even requisition of public or private buildings to increase bed-capacity.

### **The Red Cross/Red Crescent approach**

There is no specific Red Cross or Red Crescent policy on this question.

### **Questions to ask**

- Does your national law establish mechanisms for the automatic release funds and/or reimbursement procedures for coping with emergency situations?
- Does it contain clear provisions on who can access such funds and under what circumstances?
- Does your national law provide for reimbursement mechanisms for the RC/RC resources engaged in the operation?
- Does your national law provide for surge capacity mechanisms, such as inter-state coordination; medical national stocks or health volunteer rosters?
- Does it contain procedures for land, building and vehicles requisition, with appropriate compensation mechanisms, if necessary?

### **Legislative examples**

In 2007, Cambodia developed a National Comprehensive Avian and Human Influenza Plan, which regulates in Chapter 4 the National response (Inter-ministerial cooperation) to a pandemic influenza preparedness. The National Committee for Disaster Management (NCDM) has specific roles and responsibilities related to Pandemic Influenza and its Department of Emergency Response and Rehabilitation is responsible for requesting (under the guidance of the Ministry of Health) the release of emergency relief funds.

The *Guidelines for Public Officials* of Nebraska in the United States, as updated in 2008 contains a reimbursement policy in case of state or federal disaster declaration. According to this Guidelines, “impacted Jurisdictions who have a signed local Declaration of Disaster may be eligible for reimbursement from the beginning of the event when: 1) The Governor declares the jurisdiction a Disaster Area; 2) The Jurisdiction completes an Application for State Assistance that will be part of the documentation received from Nebraska Emergency Management Agency (NEMA); and 3) The Authorized Representative has submitted to NEMA documentation of expenses paid.” Further, the Guidelines explain that, in the absence of an existing Mutual Aid Agreement or where there are no dollar amounts for services in existing Mutual Aid Agreements, there may be a verbal agreement concerning the type, extent, terms, conditions and costs of the assistance when the assistance is requested by the impacted jurisdiction. In this case, “post-event verbal agreements must be documented in writing as soon as possible. The Agreement must be signed and dated by all parties involved no later than 72 hours following the event.”

## Protecting the rights of persons whose property is seized or culled

### The problem

Some of the health emergency response tools or methods described above can impose important economic losses for the population, such as seizing or destroying livestock, taking private property, restricted access to facilities or business, the redirection of resources, or the disruption of other activities and events. If not handled carefully, such measures can not only cripple the financial well-being of affected persons but also lead to resistance and secretiveness to avoid such a result.

Therefore to ensure wide compliance of the population with emergency measures, legal framework should contain prescriptive methodology for seizure of private property and culling and provide adequate regulation and funding for compensations. If the general public is aware of the need for such measures and trust that its losses will be compensated, it will be less inclined to contravene formal emergency procedures.

It is important that such measures are taken only when absolutely needed and have proven positive effects. This should follow guidelines and evidence from acknowledged actors such the WHO or the Food and Agriculture Organization (FAO). When such measures are arbitrarily taken (or seen as arbitrary), they will cause livelihood and loss of trust in public authorities, with negative effects in future actions.

The protection of livestock, and entry and exit control of animals from and to emergency areas should also be contemplated, especially in rural societies, where the population survival depends on these assets.

### The Red Cross/Red Crescent approach

There is no specific Red Cross or Red Crescent policy on this question.

### Questions to ask

- Does your national law contain clear and fair methods for the seizure or destruction of property (including culling of livestock)?
- Does it provide for adequate compensation for property seized and other economic losses due to public health measures?

### Legislative examples

Australia's "Act to provide for the adoption of measures necessary for the protection of life and property from the effects of disasters and emergencies and for other purposes" provides special powers during state of disaster, including property seizure, where necessary.

According to this Act, "during a state of disaster, the Territory Controller, or [other] authorized persons may, for the purposes of carrying out counter disaster operations or for the safety of the public: (a) require the owner or person in possession of any personal property to surrender it or place it under the control and direction of the person making the requisition; (b) require any person to assist in tasks to save life or property in immediate danger; (c) order the owner or person apparently in charge of any place of business, worship or entertainment to close to the public that place (...) for such period as ordered; (d) (...) direct the evacuation and exclusion of any person from any place (...) (e) enter, by reasonable force if necessary, any land or place where he believes, on reasonable grounds, it is necessary to do so: (i) for the saving of human

life or the prevention of injury to a person; (ii) for the rescue of an injured or endangered person; (iii) to remove from or secure anything on that land or in that place the presence or unsecured state of which is, in his opinion, a threat to the life or health of a person in the vicinity (...) or (iv) for facilitating the carrying out of other urgent measures with respect to the relief of suffering and distress; (f) if in his opinion it is necessary to do so for the conduct of counter disaster operations, close to traffic any road within the meaning of the Control of Roads Act or close any other place open to, or used by, the public; and (g) remove from any place, a vehicle that is impeding counter disaster operations.”

The Act further states that a person who suffers loss of or damage to his property by reason of the exercise of the powers conferred by [this Act] shall be entitled to receive fair and reasonable compensation from the Territory for such loss or damage.

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## Sources and further information

### *International instruments*

- The International Health Regulations (IHR)
- Sphere Humanitarian Charter and Minimum Standards in Disaster Response, 2004
- The Code of Conduct for The International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, 1994

### *National laws*

- Australia: Act to provide for the adoption of measures necessary for the protection of life and property from the effects of disasters and emergencies and for other purposes
- Australia: Emergencies Act of 2004 as amended in 2009
- Canada: Emergencies Act of 1985
- Canada: Personal Health Information Protection Act of 2004
- New Zealand: Health Amendment Act of 2006
- Sweden: Law 57 on protection against international threats to human health (2006)
- United Kingdom (Scotland): The Public Health Act of Scotland of 2008
- United States (Nebraska): Guidelines for Public Officials (2008)

### *Other sources*

- Communicable disease risk assessment: protocol for humanitarian emergencies, The World Health Organization, June 2007 (WHO/CDS/NTD/DCE/2007.4)
- Checchi, Francesco, et al., Public health in crisis affected populations A practical guide for decision-makers. Number 61, December 2007, Network Paper Overseas Development Institute, London, UK, 2007.
- “The National Action Agenda for Public Health Legal Preparedness,” Journal of Law, Medicine & Ethics, Special supplement. Vol. 36, 1. USA, Spring 2008.



# Conclusion

One of the key assets of National Red Cross and Red Crescent Societies around the world is the trust they have gained with communities, governmental authorities and their many partners, particularly with respect to their work and expertise in disaster management and epidemic response. With their community-based volunteer structures, National Societies are well situated – and are often invited – to support governments in the development of laws and policies in these areas.

It is hoped that this guidance note will provide some assistance to National Societies taking up that task. While no international reference can replace the central importance of National Societies' own operational experience in formulating their advice to law-makers, this note seeks to capitalize on the IFRC's global networks to bring in ideas, policy positions and examples from various parts of the world. These can be important supplements to arguments based on local circumstances.

Disaster law has traditionally been a fairly obscure topic in many countries. Practitioners have tended to focus on more informal plans and procedures and law-makers have generally devoted little attention to the issue, except in the immediate aftermath of a major event. This is slowly changing, as the incidence and impacts of disasters increase and the evidence rises that good laws can make a real difference. National Societies can play a key role in that change and, in so doing, greatly multiply their potential impact in reducing vulnerabilities and reducing human suffering.

Note: for links to the sources cited in this guidance note, please see [www.ifrc.org/idrl](http://www.ifrc.org/idrl).



# 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.



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