

KEY CONSIDERATIONS RELATED TO LEGISLATION FOR THE POST-2015 FRAMEWORK FOR DISASTER RISK REDUCTION

17 November 2014

Introduction

This discussion paper has been prepared jointly by the International Federation of Red Cross and Red Crescent Societies (IFRC), the United Nations Development Programme (UNDP), and the World Bank (WB), in particular the Global Facility for Disaster Risk Reduction (GFDRR), to consolidate our shared analysis of key issues related to legislative frameworks that we recommend be taken into account in the successor instrument to the Hyogo Framework for Action (referred to here as the “Post-2015 framework for DRR”).

While all three of our agencies have already offered, and will continue to provide, our suggestions across the spectrum of issues to be addressed in the successor instrument, we have come together on this issue due to its importance and our particular roles in supporting states in this area. As requested by states, we have each been active for over a decade in supporting projects related to the development and implementation of effective disaster risk management laws in countries around the world.

Building on this experience, and the research that we have carried out on legal and governance issues, we offer the following reactions to the preparatory documents that have been released thus far in anticipation of the World Conference on Disaster Risk Reduction, and in particular, the zero draft of the Post-2015 framework for DRR .

Rationale

Laws and regulations underpin effective governance for disaster risk management and serve as a foundation for sustainable risk reduction efforts. The Hyogo Framework for Action (HFA) recognised legislative frameworks as a key tool for establishing disaster risk reduction (DRR) as a national and local priority, and called for the adoption or modification of legislation as well as ‘regulations and mechanisms that encourage compliance and that promote incentives for undertaking risk reduction and mitigation activities’.

Many countries have since adopted new legislation, or revised pre-existing legislation, on disaster management to bring a greater focus to DRR. While these disaster risk management (DRM) laws have been critical to establishing new institutions, processes and structures, a number of reports assessing the progress of the HFA indicated that significant gaps still remain, particularly concerning community understanding and engagement in DRR. Additionally, recent multi-country research conducted by IFRC and UNDP¹ demonstrated that comprehensive legal frameworks, extending beyond a flagship DRM law to sectoral laws concerning the environment, climate change,

¹ See IFRC & UNDP, Effective law and regulation for disaster risk reduction: a multi-country report (2014), available at www.drr-law.org.

development and construction, are crucial to both preventing the creation of new risks and managing existing risk.

We are pleased to see that a majority of the indicators (over forty) proposed in the “Post-2015 Framework for Disaster Risk Reduction: a Proposal for Monitoring Progress” (‘Proposed Monitoring Tool’) ask about the existence of certain legislation or legal requirements. These indicators highlight the significance of laws and regulations as a tool to implement obligations under the Post-2015 framework for DRR and as a means to measure progress. Within the zero draft of the Post-2015 framework for DRR, however, this role of laws and regulations is not sufficiently addressed in the same way. As a result, we recommend that the text of the Post-2015 framework for DRR place a greater emphasis on the development, revision and strengthening of legal frameworks for DRR. The issues that have been selected below are those which are not sufficiently addressed in the current draft.

1. An international legal duty

We are disappointed to see there is no reference to an international legal duty in the zero draft. The Post-2015 framework for DRR should acknowledge the international legal duty that states have consistent with existing international instruments to take reasonable measures to reduce disaster risks and to protect persons, their livelihoods and property.² Given the trans-boundary nature of disaster risk, collaborative, concerted and coordinated action is needed internationally to reduce and manage disaster risk, especially to support those countries facing greater exposure and vulnerability, such as small island states. We propose revising **paragraph 15 (a)** to:

- *Consistent with human rights and environmental norms, states have an international duty to take reasonable measures to reduce disaster risks and to protect persons, their livelihoods and property. Individuals and communities should also consider it their responsibility to contribute to their own safety and resilience.*

2. Strengthening sectoral laws to promote safety

Laws and regulations that govern physical planning aspects of safe development and construction, such as building codes, urban and rural planning rules, environmental laws, natural resource management laws and climate change laws, are pillars of effective disaster risk governance. In a significant number of countries, these kinds of laws could benefit from much more specific attention to disaster risk management. An even larger problem, however, is the widespread lack of awareness, compliance and enforcement of existing rules.

Relevant laws and regulations need to be complemented by transparent enforcement mechanisms that promote community participation, incentives from the government and private sector (such as insurance and home finance) for voluntary compliance, as well as initiatives from the construction industry to build a skilled workforce and provide access to materials necessary to meet relevant standards and codes. Additionally, education on relevant rights and obligations, including through

² For a thorough discussion for the legal bases of this duty, see the 2014 report of the Special Rapporteur of the International Law Commission on the “Protection of persons in the event of disasters,” UN Doc. No A/CN.4/668 (2014), available at <http://www.un.org/law/ilc/>.

the school curriculum and public sector training, serves as an important tool to encourage awareness and compliance. Promoting implementation of well-adapted sectoral laws can make people safer and reduce underlying risk factors.

Currently, 25(a) of the zero draft does not adequately highlight the significance of laws and regulations related to development planning, nor does it address the challenges of implementation. We recommend that within priority 2, 'strengthening governance and institutions to manage risk', the following activity be included after **paragraph 25(a) (as a new 25(b))**:

- *Establish necessary mechanisms and incentives to ensure high levels of compliance with existing safety-enhancing provisions of sectoral laws and regulations (including those addressing land use and urban planning, building codes, environmental and natural resource management), and update them, where needed, to ensure an adequate focus on disaster risk management.*

Additionally, we propose that **paragraph 25(a)(i) and (ii)** should be a separate activity, and expanded to include the introduction of financial incentives, public awareness-raising and training initiatives to promote greater voluntary compliance with key sectoral laws and regulations.

3. Risk-informed development planning

A clear message arising from discussions at the 2nd World Reconstruction Conference and regional DRR conferences is that, to reduce underlying risk, development planning must be informed by comprehensive risk mapping and assessments. Legal frameworks have a clear role in requiring thorough risk mapping and assessments to be undertaken, in ensuring that risk information is made publicly available and in requiring risk information to be taken into account by responsible authorities. Additionally, our experience and research has demonstrated that there are clear benefits in collaborative and inclusive risk assessment processes, which incorporate participation and ownership by communities, local authorities and the private sector.

The zero draft does not yet adequately highlight the importance of risk-informed development planning, and as such, it is recommended that the following **new activity be included within Priority 1**, 'Understanding disaster risk' and measured in the monitoring tool:

- *Adopt legal frameworks that promote inclusive risk assessment processes, enable ownership of efforts to mitigate risk, and require risk mapping and analysis information be considered by authorities responsible for development planning, construction and environmental and resource management*

Paragraph **22(c)** could also be strengthened by promoting the establishment of an enforceable right for the public to access risk information.

4. Community engagement and empowerment

Recognising that community level progress remained a significant gap in the HFA, we are disappointed by the absence of provisions related to ensuring community-wide participation in decision-making for disaster risk management. In order to see greater progress and engagement at the community level, reference should be made to the adoption of a legal requirement for community participation and representation of women, minorities and vulnerable groups in disaster

risk management institutions and processes. The implementation of these legal provisions should then be assessed within the monitoring tool to measure their impact. In addition, ensuring consultation and involvement of the community in the development of legislation for disaster risk management will promote better implementation and serve to bridge the gap between local communities and government authorities.

We recommend including the following additional activity within either **Priority 2 or 3**:

- *Develop laws and policies that assign clear roles and tasks to community representatives within disaster risk management institutions and processes, and ensure that the legal framework promotes the representation of women and other vulnerable social groups in decision-making processes. To support future implementation, undertake comprehensive public and community consultations during the development of these laws and regulations.*

5. Accountability

We consider the issue of accountability to be key to promoting stronger governance for risk management. While the zero draft contains a few provisions related to accountability, more substantive provisions are needed to highlight the significance of increased accountability to risk governance.

The environmental sector has taught us that one of the most important ways to promote accountability is through legislation. Laws and regulations can impose administrative, civil or criminal sanctions on institutions, public officials, individuals and businesses for a gross failure to fulfil their duties under law, which results in exposing people to a substantial risk. Such legal mechanisms may include requirements to conduct public hearings for large-scale developments, the imposition of administrative sanctions against grossly negligent government officials, and sanctions for illegally constructing high risk developments. There is a clear need to further explore the role of such legal tools to promote better accountability for disaster risk management across both the public and private sectors.

We recommend adding an additional activity under **Priority 2**, or further developing **paragraph 25 (d) or (e)** to:

- *Promote the effective application of legal and/or administrative sanctions (as appropriate) for public officials, individuals and businesses in cases of gross failure to fulfil duties resulting in a substantial exposure to disaster risk*

6. Preparedness for international response

We consider it essential for the Post-2015 framework for DRR to continue to highlight the need to strengthen preparedness mechanisms and legal frameworks for rapid and effective disaster response. Over 10 years of research by IFRC has demonstrated that a lack of legal preparedness for international disaster response can result in significant delays, costs and coordination gaps, impacting the speed and quality of an operation. The zero draft fails to highlight the value of legal preparedness for an effective response, as well as the importance of respecting the rights and

dignity of affected persons. In light of this, we propose the following **new activities be added under Priority 4:**

- *Review and strengthen national laws and procedures on international cooperation, based on the “Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance” (as adopted by the state parties to the Geneva Conventions at the 30th International Conference of the Red Cross and Red Crescent in 2007 and promoted by the UN General Assembly).*
- *Ensure respect for the rights of affected persons in disaster response operations (for example with regard to information, evacuation, safeguards against discrimination, and attention to the needs of particularly vulnerable groups).*

Conclusion

The Post-2015 framework for DRR will provide an opportunity to promote the development of strong legal foundations to reduce and manage disaster risk. To ensure better implementation of the activities listed in the framework, greater accountability and a clearer allocation of roles and responsibilities, the text of the Framework, together with the indicators, should encourage the further strengthening of legal frameworks, particularly concerning the key areas addressed above. By adopting these collective recommendations, the Post-2015 framework for DRR will provide clearer guidance on how to create the necessary enabling environment to effectively pursue the goal of preventing disaster risk creation, reducing existing risk and strengthening resilience.