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31st INTERNATIONAL CONFERENCE

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Law and disaster risk reduction at the community level

Background report

Document prepared by the
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in consultation with the International Committee of the Red Cross

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Executive Summary

Disasters, large and small, strike people where they live. It is at the **community level** that disasters are felt and, frequently, it is also where risk reduction steps can make the biggest difference. For this reason, the flagship **Hyogo Framework for Action** emphasizes the importance of community-level results and engagement, insisting that disaster risk reduction (DRR) should be a priority both at the national and the local levels.

Nevertheless, both the experience of National Societies and independent research indicate that DRR outcomes are **lagging behind** at the community level. Whereas good progress has often been made in the establishment of laws, plans, structures and roles for DRR at the national level in many countries, they are often not resulting in perceivable changes in communities. Communities are not well enough informed, engaged or resourced to take an active part in reducing risks, and rules to deter risky behaviours (particularly in construction and land use) often go unenforced.

Some of these problems are attributable, at least in part, to gaps in **legislation** (or its implementation). For others, legislation is not the cause but could be an important part of the solution. However, while there has been a healthy level of attention at the international level to what goes into effective disaster laws and "governance" more generally, much less has been paid to how such laws can more specifically promote DRR activities and engagement at the community level.

While governments are ultimately responsible for the development of legislation, our consultations indicate that **National Red Cross and Red Crescent Societies are closely concerned** by this issue of high humanitarian significance. As practitioners of community-based disaster risk reduction, often with experience in advising their authorities on International Humanitarian Law (IHL) and, more recently, on International Disaster Response Laws, Rules and Principles (IDRL), they can bring a very helpful perspective to the table.

This background document, based on far-ranging consultations within the Movement and with some key partners, case study research and desk review, is meant to facilitate the **opening of a dialogue** on the problems and best practice in this area. It is anticipated that this dialogue will need to continue after the 31st International Conference and it is proposed that states, National Societies and the IFRC consider cooperative work on this issue going forward.

1. Introduction

This report is intended to facilitate dialogue between participants at the 31st International Conference of the Red Cross and Red Crescent ("the International Conference") on:

- key problem areas contributing to gaps in disaster risk reduction (DRR) activities and engagement at the community level;
- how legislation might bridge some of those gaps; and
- how National Societies can support states to develop and (where appropriate) carry out the goals of such legislation.

It is also provided as one of three background documents supporting the proposed International Conference Resolution No. 31IC/11/5.5DR on "strengthening disaster laws".[1]

[1] Those documents are "Progress in the Implementation of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance," Doc. No. 31IC/11/5.5.1 and "Addressing regulatory barriers to providing emergency and transitional shelter in a rapid and equitable manner after natural disasters," Doc. No. 31IC/11/5.5.3.

The report begins with some background, noting the reasons why the International Federation of Red Cross and Red Crescent Societies (IFRC) deems strengthening legislation for community-level impact to be important and surveying international commitments and progress in this area. It will describe common problem areas that have been identified in existing laws and then offer some examples of best practice, finishing with recommendations for future work.

This report draws on several sources of information. They include:

- a review of literature related to comparative legislation and disaster risk reduction and a sample of recent disaster management laws;[2]
- original case study research on several countries with varying sizes, disaster risk profiles, and legislative approaches (Albania, Brazil, the Dominican Republic, Nepal and South Africa) carried out in 2010-11;
- discussions with National Society representatives and external partners at a series of regional and global workshops carried out from 2008-11;[3]
- discussions at a dedicated DRR law experts meeting and a public side event at the Third Global Platform on Disaster Risk Reduction, both held in Geneva in May 2011.

2. Background

a. Why focus on laws and disaster risk reduction at the community level?

Last year, more than 297,000 people died in natural disasters around the world and over 217 million others were affected by them (CRED 2011). Things have hardly slowed down this year, with massive calamities including Japan's tsunami/nuclear emergency, which alone killed over 28,000 people, and the drought in the Horn of Africa, which has generated an intense food crisis for over 3 million. Beyond these calamities are hundreds of smaller disasters that did not reach global headlines but dramatically upended the lives of those they touched. Such events are already on the rise and likely to continue to increase in the coming years due to the effects of climate change.

These disasters, large and small, strike people where they live. It is at the community level that disasters are felt and, frequently, it is also where risk reduction steps can make the biggest difference. As observed by UNDP, "[i]t is being increasingly recognised that disaster risk management at the local level is a key element in any viable national strategy to reduce disaster risks, building on the quality of community networks, the social fabric and effective municipal governance" (UNDP 2005). This is confirmed by preliminary findings of a research project, still under development, that the IFRC has commissioned in order to determine the main characteristics that make a community resilient to disasters. Part of the background research for this study involved consultations with 30 communities in four countries affected by the 2004 Indian Ocean tsunami. Those discussions indicate that the majority of the activities that contribute to a safe and resilient community were undertaken by the communities themselves (IFRC forthcoming; see also Pelling and Holloway 2006).

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[2] A paper summarizing this review was previously submitted to the UNISDR as background to its 2011 Global Assessment Report. See IFRC, Desk review on trends in the promotion of community-based disaster risk reduction through legislation (2011). This report has particularly benefited from the many excellent background papers commissioned by UNISDR in preparation for the Third Global Assessment Report.

[3] These include the findings from dedicated sessions on disaster risk reduction law at regional workshops for National Society representatives (and, in some cases, governmental and humanitarian partners) carried out in Kuala Lumpur (November 2008), Abuja (November 2008), Panama (September 2009), Nairobi (June 2009), Suva (August 2009), Almaty (October 2009), and Vienna (May 2010), as well as discussions at the first annual IFRC "Disaster law short course", conducted in Køge, Denmark in January 2011 and the IFRC "Global community safety and resilience forum," conducted in Damascus, Syria in March 2011.

For its part, the Red Cross and Red Crescent has long concentrated its DRR efforts at the community level. Drawing on their extensive branch structure and millions of volunteers, an average of 70 per cent of National Societies are now implementing community-based DRR programmes around the world (IFRC 2009). As noted in the IFRC's Strategy 2020, "[w]e encourage comprehensive community action to eliminate disaster risks where possible and to reduce the occurrence and impact of disasters where primary prevention is not feasible."

However, we are well aware that our work is supplemental to that of governmental authorities, inasmuch as they retain both the primary responsibility and, in most cases, the main domestic capacity to provide for the mitigation of disaster risks. It is widely accepted that legislation is among governments' most important tools in doing so. It can clarify responsibilities for risk management, ensure the deployment of adequate resources in the right places, address underlying vulnerability factors, and engage communities and the private sector in reducing their own exposure (UNDP 2007; Llosa and Zodrow 2011; Pelling and Holloway, 2006).

Yet, comparative study and dialogue about what has worked and what has not in DRR legislation remains sparse. This is particularly true with regard to what legislation can specifically accomplish at the community level. At the same time, critical voices have been raised in the risk reduction community (and in some of our consultations) expressing doubts about the value of legislation to solve ongoing gaps in risk management in many countries. They point out that the process of developing laws can sometimes take many years and can have the paradoxical effect of diverting energy away from actually undertaking needed steps on DRR while new legislation is being debated. As discussed further below, the lack of implementation of DRR-related legislation once it has been adopted is also a common complaint. There is a concern about a perceived tendency to "declare victory" upon the adoption of a new law and to then lose interest and momentum.

In part for the considerations mentioned above, some of the experts we consulted expressed a preference for the development of policies and plans over legislation. While there is often a great deal of overlap in the themes addressed by laws and policies, there are some issues that are generally resolved only by binding law. As noted by the UN International Strategy for Disaster Reduction (UNISDR) in its third Global Assessment Report, "Mauritius, the Republic of Moldova, Timor-Leste and Viet Nam all reported on the challenge of implementing well-developed national policy due to the lack of corresponding legislation to enable adequate enforcement and coordination" (UNISDR 2011). In practice, many governments feel that they need both laws and policies, working together. Thus, many DRR laws require the development of policies and many policies specifically call for the development of supporting legislation (UNDP 2007).

b. International commitments on legislation and disaster risk reduction

For their part, states have repeatedly affirmed the importance of DRR legislation at the international level, including at the International Conference of the Red Cross and Red Crescent. In Final Goal 3.1 of its Agenda for Humanitarian Action, the 28th International Conference of 2003 focused on the need to move beyond an approach to disasters centred on post-event response, and the steps that both states and National Societies should take to scale up their DRR activities. In this context, the participants recognized the importance of laws, in particular those related to land management and building codes, in reducing disaster vulnerability.

Accordingly, Final Goal 3.1 declared that "[s]tates should, in accordance with the United Nations International Strategy for Disaster Reduction, review their existing legislation and policies to fully integrate disaster risk reduction strategies into all relevant legal, policy and planning instruments in order to address the social, economic, political and environmental dimensions that influence vulnerability to disasters," and, more particularly, that "[s]tate

authorities should take appropriate operational measures to reduce disaster risks at the local and national levels, including sustainable natural resource, environmental and land-use management, appropriate urban planning, and enforced building codes."

Two years later, a United Nations conference of over 4,000 representatives of governments, non-governmental organizations (NGOs), the Red Cross and Red Crescent, UN agencies, academic institutes and the private sector adopted what has become the flagship international instrument on DRR, the Hyogo Framework for Action 2005-2015 (HFA), consisting of a set of commitments and priorities to take action to reduce disaster risks. The first priority set out by the HFA was to "ensure that disaster risk reduction is a national and a local priority with a strong institutional basis for implementation," notably through "[a]dopt[ing], or modify[ing] 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."

In 2007, Resolution 4 of the 30th International Conference adopted the "Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance" (also known as the IDRL Guidelines). While the IDRL Guidelines mainly address themselves to the specific issues of international disaster response, paragraph 8 declares that, "as 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 and preparedness, relief and recovery which take full account of the auxiliary role of their National Red Cross and Red Crescent Society, are inclusive of domestic civil society, and empower communities to enhance their own safety and resilience."

Similar sentiments have been voiced at a variety of regional fora around the world. For example, the 2004 Africa Strategy of Disaster Reduction called on African states to "ensure the establishment of enabling environments, including by adopting enabling legislation." The "Incheon Regional Roadmap" from the 2010 Asia-Pacific Ministerial Meeting on Disaster Risk Reduction called for states to "develop legislation[] and policies that promote the integrated approaches for [disaster risk reduction] and [climate change adaptation] in development planning and investments," and the Fifth Summit of the Americas in 2009 vowed to "encourage the strengthening of domestic planning and zoning measures and building codes, as appropriate, in order to reduce risks, mitigate impact and enhance the resilience of future residential, commercial and industrial developments."

c. Progress in the development of new laws

How then, are states performing on these commitments?

It is certainly the case that a number of countries have adopted new laws in recent years that specifically address themselves to disaster risk reduction. Most recently, these include Honduras, Peru, Zambia and the Philippines, all of which both adopted landmark revisions to their disaster management acts in 2010. Both India and Indonesia responded to their experience with the 2004 Indian Ocean tsunami by adopting revisions to their disaster laws emphasizing prevention responsibilities, in 2005 and 2007 respectively. In 2007, the European Union adopted a directive on the assessment and management of flood risks, which many member states have now implemented into their national laws and policies (Llosa and Zodrow 2011). In 2008, Ecuador became the most recent state to include provisions on disaster risk reduction directly into its constitution. New risk-focused legislation is currently under discussion in several other countries, including Bhutan, Cambodia, Chile, Jamaica, Maldives, Mozambique, Namibia, Nepal, and Vietnam, among others. In all, 48 states noted in their reports on implementation of the HFA this year that they had made substantial process in the development legislation, policies, and strategies in order to promote and coordinate DRR activities (Llosa and Zodrow 2011).

Still, an internal survey of National Red Cross and Red Crescent Societies and IFRC disaster management experts on the occasion of the HFA Mid-Term Review found that "government policies and actions in many countries continue to focus on disaster response, often with disaster management being handled by civil protection ministries" (IFRC 2010). Likewise, UNISDR's Third Global Assessment Review concluded that, in many countries, "both national policy and the institutional and supporting legislative systems remain fundamentally skewed to supporting disaster management, in particular preparedness response, rather than risk reduction."

d. International commitments on community-level implementation and participation

In addition to their commitments on the development appropriate laws and policies on DRR, states have made specific international engagements concerning community participation and community-level implementation of DRR. In the HFA, states acknowledged, as a "general consideration", that "[b]oth communities and local authorities should be empowered to manage and reduce disaster risk by having access to the necessary information, resources and authority to implement actions for disaster risk reduction." Accordingly, the HFA called on adherents to:

- "decentralize responsibilities and resources for disaster risk reduction to relevant subnational or local authorities, as appropriate"
- "promote community participation in disaster risk reduction through the adoption of specific policies, the promotion of networking, the strategic management of volunteer resources, the attribution of roles and responsibilities, and the delegation and provision of the necessary authority and resources;" and
- "promote. . . strong community involvement in sustained public education campaigns and public consultations at all levels of society."

Similar (and sometimes stronger) language on community engagement in DRR can be found in international instruments on the environment. For example, the 1992 Rio Declaration on Environment and Development affirmed that "[e]nvironmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes…."

Likewise, the "Non-legally binding instrument on all types of forests," adopted by UN General Assembly Resolution 62/98 of 2007, called on member states to ensure that "local communities, forest owners and other relevant stakeholders contribute to achieving sustainable forest management and should be involved in a transparent and participatory way in forest decision making processes that affect them, as well as in implementing sustainable forest management, in accordance with national legislation."

The United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa of 1994 applied these principles in the desertification context, requiring affected state parties to "promote awareness and facilitate the participation of local populations, particularly women and youth, with the support of non-governmental organizations, in efforts to combat desertification and mitigate the effects of drought" (art. 5).

Environmental instruments also abound with commitments on public information and participation in decision-making in areas relevant to disaster risk. As its name indicates, the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 1998 is a case in point, engaging its 44 state

parties in Europe and Central Asia to "make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes related to the environment." Similarly, ASEAN's 2002 Agreement on Transboundary Haze requires parties to "involve, as appropriate, all stakeholders, including local communities, non-governmental organizations, famers and private enterprises" and commits members to "promot[e] public education and awareness building campaigns and strengthen[] community participation in fire management[.]"

e. Progress in community-level implementation and participation in DRR

There have been individual success stories in implementing the above engagements, as described further below. Unfortunately, however, overall progress in DRR at the community level has been quite uneven.

As noted in the IFRC's contribution to the Mid-Term Review: "National prioritization and profiling is not translating into community level actions, with very limited community participation in national decision making…. In many countries, the lack of a political and legislative enabling environment, in addition to insufficient local funding and capacities, is limiting the scaling up and sustainability of community-based DRR. While there may be many small local initiatives, full nationwide coverage continues to be a challenge" (IFRC HFA Review, 2011).

This gap was demonstrated in a series of studies undertaken by the Global Network of Civil Society Organisations for Disaster Reduction (GNDR) in 2009 and 2011. In 2009, GNDR members surveyed over 7,000 local officials, civil society groups and community members in 48 countries. Their "headline conclusion" in 2009, as illustrated by the report title "Clouds but little rain," was that "[n]ationally-formulated policies are not generating widespread systemic changes in local practices" (GNDR 2009). In particular, "while frameworks and structures may have been established nationally and locally, many communities remain unaware and are not yet involved."

An even larger study sample (over 20,000 persons in 69 countries) in 2011 came to a similar conclusion: "The local governance indicators show that capabilities are very limited, requiring substantial inputs in terms of skills, capacities, resources and authority. Without this, policies and plans will not be implemented in a participatory way at grassroots level" (GNDR 2011). Thus, "the majority of countries participating in VFL 2011 governance indicates related to participation, accountability and transparency scored in the range "only to a limited extent/some progress but significant scope for improvement." Respondents indicated the least progress in obtaining financial resources at the local level and in accountability and transparency in DRR.

In short, it appears that states are having some success in the HFA commitment to "make disaster risk reduction a national priority" but not as much in its equally important provision to make it a "local priority".

3. Key problem areas

Why is there not greater progress in disaster risk reduction at the community level? Plainly, circumstances differ widely from country to country as well as within countries, but our case study research and consultations found substantial resonance around several common problem areas, several of which are linked together.

a. Lack of sustained political will

The first of these is political will. Disaster risk reduction is a topic with many complexities. Understanding the probabilities that a dyke is high enough to hold back floodwaters, that

rains will exceed or disappoint expectations, or that a certain type of construction will stand or crumble when the earth shakes all requires technical expertise and often a great deal of sophisticated (and expensive) equipment. It touches on many sectors of government and of society and requires many different actors to do many different things in a coherent way. Nevertheless, there is a consensus in the disaster risk reduction community that effective DRR is within the reach of every country, so long as there is sustained political will to achieve it.

Unfortunately, despite the strong international commitments described above, as well as promising initiatives at the national level and in specific localities in many countries, experience has shown that political will waxes and wanes (as one type of political crisis is replaced by another in the public mind) and is particularly difficult to maintain at the community level, far from the headquarters of national disaster management institutions.

As the HFA affirms, laws can help to concretize good intentions to make DRR a priority (often formed in the immediate aftermath of a major disaster) and reduce the cyclical nature of governmental and public interest. However, even laws replete with the latest internationally-agreed DRR concepts and approaches can also fail to achieve this goal. The reasons are varied and often have to do with the specific political, economic and social contexts of a given country. Still, observers have also noted structural issues within the fabric of certain laws (as discussed in the remaining "key areas" in this section) that can make an important difference in their success or failure.

b. Lack of DRR focus in disaster management laws

Despite the progress described above, many countries have not yet integrated a strong DRR focus into their main disaster management laws. This was also reflected in the case studies examined as background for this report. Three of the countries examined, Albania, Brazil and Nepal, had minimal guidance on DRR integrated in their existing disaster management laws. However, new legislation is already pending in both Albania and Nepal to address this. Both the Dominican Republic and South Africa have adopted national disaster management laws including significant attention to DRR.

Of course, no country can or should regulate all of the various aspects related to DRR in a single law. Even those states that have adopted what they refer to as "comprehensive" DM acts also regulate various aspects of risk reduction through a myriad of sectoral laws both at the national and the provincial/local levels (for example, with respect to fire prevention, water management, environmental protection, building and land management codes, risk transfer, among others). The integration of a strong DRR focus into some of these sectoral laws is also a work in progress in many countries. On the other hand, as described further below, even countries (like Brazil) that lack a strong DRR focus in their main disaster management legislation sometimes see good progress in the action of other sectoral laws.

c. Lack of community engagement and information

An important corollary – both a cause and an effect – of the problem of missing political will at governmental level is the lack of community engagement in disaster risk reduction. Studies have shown that both individuals and communities have difficulty objectively weighing potential losses from future disasters in the face of more present issues, especially those related to their livelihoods. (Williams 2011) As a result, they do not take actions within their own power to reduce risks and they do not pressure their leaders to do so. As noted by one politician, "DRR will become my priority only if it can get me more votes in the next election" (Gupta 2011).

One reason for this is that communities often do not fully understand the risks to which they are exposed or the steps they might be able to take to reduce their vulnerabilities. Even

where disaster risk information is systematically gathered, it is often done at a national level with limited dissemination at the community level. Notably, this information gap cuts both ways – if communities are not engaged in the process of information gathering, critical information, in particular about local capacities, is often missed by authorities. National "mapping" tends to focus on risks only and at the macro level. Meanwhile, National Societies in many countries have embraced a standard methodology of vulnerability and capacity assessments (VCA). Through a participatory approach, VCAs help communities to identify their own risks and priorities. While this information is meant to be shared with the authorities, it is not systematically taken into account in national "maps."

Another reason is that many national and local systems for disaster risk reduction remain the domain of governmental officials and little is done to include community representatives in decision-making and implementation efforts. In others, structures, such as advisory councils are in place, but worries were voiced in our consultations about "coercive consultation", through which communities - lacking the necessary knowledge to take informed decisions - simply "ended up agreeing with what had already been drafted at the central level". It was also noted that failures to take into account gender differences could skew the results of consultation practices.

d. Lack of integration of community organizations and the private sector

"Without innovative local partnerships between civil society, local and central government and other stakeholders, instruments such as public investment planning or conditional cash transfers are unlikely to be effective. Also, . . . without such partnerships, land use management policies and building regulations may actually construct risk rather than reduce it" (UNISDR 2011). Yet, the role of community organizations and the private sector in risk reduction is often not well described in disaster management legislation and opportunities are lost to integrate their efforts into a coherent plan.

In many countries, National Societies are already cooperating with government in risk reduction, but their roles are not well described in either law or policy. Particularly in the area of early warning, where a number of National Societies are currently active or would like to play a greater part in bridging the "last mile" gap to the community level, this ambiguity led to concerns about unfounded public expectations about their role and about the sustainability of their partnerships with the authorities over the long term.

Likewise, IFRC research indicates that the variable of local government involvement can play an important role in the success or failure of community-based disaster risk reduction projects undertaken by National Societies (IFRC forthcoming). Thus, while a great deal of energy (and international support) has gone to direct, civil society-sponsored community activities on DRR in recent years, it appears quite important that local governments also be prepared to incorporate and participate in these efforts.

e. Gaps in local authority, capacity and funding

Experts have long held that excessive centralization of authority over DRR at the national level can contribute to community-level gaps. As a result, both the HFA and many other guidance documents have called for decentralization of responsibility in this area and a number of the recent disaster management laws have adopted this as a goal. For example, Honduras' Law on the National Disaster Management System of 2010 sets out decentralization as one of the primary "guiding principles" of the country's disaster management system. Likewise, the Philippines' Disaster Risk Reduction and Management Act of 2010 declares it a "policy of the state" to "[r]ecognize the local risk patterns across the country and strengthen the capacity of [local government units] for disaster risk reduction and management through decentralized powers, responsibilities, and resources at the regional and local levels." On the other hand, some countries have struggled to effectively

implement the shift of responsibility, particularly when they have done so by means of policy rather than legislation (IFRC 2010).

In other countries, particularly federal states, decentralization is already part of the natural legal order and a major proportion of disaster management responsibility has long been reserved to provincial or regional authorities (Austrian Red Cross 2010; German Red Cross 2010; IFRC Australia Report 2010). However, this means that the level of activity and priority accorded to disaster risk reduction is likely to vary from region to region, as is the support to, and pressure on, local authorities to implement risk reduction at the community level.

Importantly, even in countries that have clearly and successfully placed responsibility at the local level, gaps in local capacity and funding often undermine their ability to improve DRR. Indeed, as a recent study commissioned by UNDP made clear, decentralization has sometimes made things worse for progress on DRR (Scott & Tarazona 2011). That study found little evidence to support the idea that decentralization of authority automatically increases DRR activities, community participation in DRR or a greater sense of accountability among authorities. On the contrary, local authorities often lack the expertise and human resource capacity to undertake DRR activities and, in the absence of dedicated budget lines mandated by law, DRR rarely receives adequate funds at the local level. Instead, "un-earmarked funds for DRR are frequently diverted to other areas that have a higher political profile." This lack of resources made available for DRR at the community level was also the most frequently cited complaint in our consultations.

f. Gaps in community-level implementation of laws

After the lack of resources, the second most frequent complaint was that DRR-related laws, even if well drafted on paper, are not implemented. This is particularly the case for rules on land use and construction.

There are multiple reasons for this dilemma. In some countries, there are clear gaps in the regulatory framework. For instance, building codes may be voluntary or only mandatory for certain kinds of construction or in large cities.

Even where there are binding codes, they are often ignored by the authorities and builders alike. The lack of resources mentioned above explains the lack of enforcement to a certain extent. In addition, however, it appears that this is an area in which the great has often become the enemy of the good. Many countries/localities have adopted building codes (sometimes inherited from former colonial powers or otherwise adopted from abroad) that are immensely complex, envisioning materials and/or construction practices that are well out of the economic reach of large segments of their population (Johnson 2011). While international experts insist that safe construction is often possible without significant additional expense, builders (particularly poor families constructing their own homes) are often unaware of the safest methods and believe that they cannot afford the necessary materials.

Moreover permitting procedures are often arcane, expensive and lengthy. Attempts to enforce these extra costs and burdens often generate opposition, include legal disputes (and are liable to cede to corruption). As a result, in some countries, huge proportions (sometimes up to 80%) of construction is out of compliance with existing codes.

Similar problems plague the regulation of land use in many countries, particularly in urban slums or in poor agricultural areas in flood-prone areas. There, the poor see no option but to live in areas subject to significant disaster risk (for example, from floods, fires or landslides) in order to have access to a source of livelihood. Sometimes living on land they do not own, these communities are generally ineligible for public support for infrastructure or services

(Johnson 2011, UNISDR 2011). Rigorously enforcing strict land management rules and building codes can lead to massive evictions, leaving poor families without livelihood options and sometimes inducing them simply to relocate to other equally or more dangerous areas.

g. Lack of accountability

A final point, also interconnected with several of those made above, is that accountability is lacking for delivering community-level results in DRR. With the efforts of multiple ministries and layers of government required, it is sometimes difficult to pinpoint the source of failings. Likewise, the lack of clear and consolidated information on funds and funding requirements for the varied DRR activities leaves the picture of progress murky. Systems are making clear who is expected to act are often lacking. When things fall apart, no one is clearly responsible.

4. How stronger legislation can make a difference

What can laws do to solve these problems? This section provides some examples of states that have taken up one or more of the specific problem areas mentioned above related to law and community-level DRR in recent legislation.[4]

a. Community information and education on DRR

A number of countries have begun to include mandates on informing and educating their citizens about disaster risks in their laws. For example, Algeria's 2004 Law on the Prevention of Major Risks and on Disaster Management in the Framework of Sustainable Development guarantees citizens a right to information about disaster risk reduction including: the risks and vulnerabilities of their places of residence and work; the measures in place to prevent major risks in those places, and the measures in place for managing disasters. Likewise, Serbia's 2009 Law on Emergency Situations lays out a public right to be warned about disaster risks and El Salvador's 2005 Law on Civil Protection, Prevention and Mitigation of Disasters provides that "all persons living in the country" have the right to "receive information on the imminent or eventual occurrence of a disaster" and that "the Directorate General, the Commissions of the system, and all public security authorities have the obligation to provide this information when it is in their knowledge."

This trend is also starting to extend to mandates on public education. For instance, in Albania, draft civil protection legislation would include new requirements that elementary, high-school and university teaching and curricula include information about disaster risks. In the Dominican Republic, the education sector has already been found to play an important role in DRR, and to do so with high rates of community participation and involvement. This is supported by specific language in the General Education Act (Law No. 66-97), which refers to the role of the state in providing and promoting information and training on disaster risk and its reduction, in the promotion of values that serve to conserve and protect the environment, as well as recognizing the role of education centres in the promotion of community organization for the stimulation of positive societal change. On this basis, disaster risk management is included as a strategic and cross-cutting objective of the second ten-year Education Plan (2008-2018), with plans to ensure that schools are protected from natural hazards, that teaching includes hazard awareness and risk reduction, and the consolidation of schools as centres for community-based DRR.

In South Africa, the National Disaster Management Act requires disaster management committees to promote education and training on DRR, including in schools, and there are

[4] For the most part, this section looks to national laws, though it is plain that municipal ordinances and rules are also very important. Additional comparative research of these local laws is certainly warranted (see generally UNISDR and UNDP 2010).

indications that local level education is improving, although there are gaps among municipalities. Moreover, some of South Africa's success in recent disaster awareness campaigns has been attributed by national stakeholders to the firm mandates set out in the Act.

b. Community participation in DRR

Community participation is likewise starting to find its place in a number of disaster management laws. For example, 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. Likewise, France's 2003 Law on the Prevention of Technological and Natural Risks and on Recovery from Damages 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.

Similar requirements were included in the Dominican Republic's 2002 disaster management law. As a result, community representatives and civil society organisations have been encouraged to participate in decision-making and implementation bodies, from the National Council for Disaster Prevention, Mitigation and Response to the municipal-level committees allowing for grass roots advocacy so that, ultimately, community voices can be heard within the national disaster management system. "Communities are no longer passive actors waiting for assistance to arrive," notes Dominican Republic Executive Director Gustavo Lara, "They take measures to reduce their risk. They are prepared to respond and they can respond before teams arrive from the outside. Community participation has been critical in reducing overall losses."

In Cambodia, deforestation has been a major environmental problem as well as a growing factor of disaster risk. In 2007, a sub-decree was adopted allowing communities to take direct management control over the management of "community forests" pursuant to agreements with the Forestry Administration, allowing them to make sustainable use of a forest but also tasking them with monitoring the use of the forests by outsiders. Full community engagement with the projects is sought through requirements that a community forestry committee be instituted, elected at a public meeting attended by at least two thirds of the community. A report about how the law was functioning in one community noted that "[v]olunteers now look out for forest fires from a watchtower. The families who tend the forest sell the mushrooms that grow within it and collect leaves for use as cooking fuel… '[t]his is the young forest which [a lumber] company wanted to destroy. They thought it would be easy because they had money, but they hadn't reckoned with the local community. They know the value they get from the forest'" (IPCC 2007).

While not specific to DRR, flexible systems for the legal establishment of community based organizations can play a significant role in promoting community DRR. For example, in Nepal, community-based DRR programmes have had their lives substantially extended thanks to the capacity of participating members to establish such legal entities, which continue to manage a community revolving relief fund and which can then access government funding for future projects. Such registration is encouraged in community-based DRR projects, especially by the Nepal Red Cross Society and its partners, as a way to structure the DRR committees at the handover point when the external involvement in the project ends.

c. Engaging National Societies and other community organizations

As required by the Statutes of the Movement, National Red Cross and Red Crescent Societies normally benefit from a specific law or decree setting out their roles, sometimes including needed legal facilities (such as tax exemptions) and affirming their capacity to act according to the Fundamental Principles of the Movement. However, since these base laws tend to be quite general, it has been found useful in a number of countries to also specifically integrate the role and activities of National Societies – including at the community level -- in the context of legal instruments on disaster management.

For example, 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 Defense to issues 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.

Some other laws have mandated participation by additional civil society organizations. For example, Madagascar's 2003 disaster management law provides for disaster management committees at the provincial, regional, district and local levels, on each of which members of relevant NGOs and civil society organizations are to have representation. Likewise, Nicaragua's 2000 Law Establishing the National System for Prevention, Mitigation and Response to Disasters calls on mayors to integrate representatives of NGOs, the private sector and the community in municipal disaster management committees.

d. Financial resources at community level

Some national laws are also starting to mandate budget lines for disaster risk reduction activities. For example, India's 2005 law requires that every national ministry and department include a budget line item for disaster management. Costa Rica's 2006 disaster management law similarly requires that "every public institution" dedicate a specific line item in its budget for disaster risk reduction. Paraguay's 2006 Law Creating the National Emergency Secretariat creates a "National Emergency Fund," which, despite its name, must dedicate 50% of its expenditures to mitigation and prevention measures.

As discussed above, however, national-level budget lines do not always result in activities at the local level. In contrast, the Philippines' new disaster management act specifically mandates that local governments dedicate 5% of their income for disaster mitigation and response – with 70% available for mitigation and preparedness measures and 30% reserved in case of need for a quick response. This was a shift from prior rules which had only established "calamity funds" for contingency spending only after a disaster had struck. Importantly, the legislation also sets out the means for supplying that fund – including both local taxes and allotment from the national government. Presumably drawing on this experience, at the 4th Asian Ministerial Meeting on Disaster Reduction in October 2010 participating states pledged to mandate that "5% of local government budgets [be] allocated for climate resilient DRM activities within local authority and community levels" (Incheon Roadmap 2010).

Another recent example of note comes from the United States, which 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 not only directly provides funds for risk reduction activities, it includes 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."

South Africa's disaster act includes another type of incentive/sanction – a provision that allows the national government to limit the allocation of disaster relief and recovery assistance to a local government after a disaster on the basis that it has neglected to invest in risk reduction activities. This is meant to avoid the moral hazard that often arises when localities perceive that they need not spend on prevention if they are likely to be "bailed out" after a disaster. On the other hand, it must be acknowledged that some stakeholders – including some national officials interviewed in our case study – have voiced uneasiness about whether it would be defensible to apply this type of pressure in the event of a large disaster generating substantial needs.

e. Implementation of building codes and land use rules

As noted above, one of the common pitfalls in the enforcement of building codes is the issue of overly complex or overly expensive requirements. One interesting approach to this comes from Nepal. Ten years ago, the government developed the "Mandatory Rules of Thumb" (MRT) for non-engineered construction. Given that over 90% of buildings are owner-built and/or non-engineered, it was recognized that some guidance was better than none (given that the existing Nepal Building Regulations do not cover single-storey dwellings and there is ambiguity as to whether its separate Building Code is binding on municipalities). The MRT are a set of simplified guidelines that, despite the name, are not actually legally binding but are rather voluntary standards designed for ordinary owner-builders of small buildings to achieve a modicum of safety. While it would probably be ideal for there to be simple binding standards, the MRT represents a good example of a provisional solution.

Another dilemma mentioned above is the situation of illegal settlements in slums, with people living in a dangerous situation essentially because they have no other economic choice. Brazil has sought to address this situation through an innovative national urban policy. In 2001, Brazil adopted the Statute of the City (Law 10,257). It 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 (which was previously barred to them) 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 or work opportunities.

Similarly, 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.

f. Risk mapping

Some countries have made clear in the legislation that local risk mapping is a requirement. For instance, the Ontario, Canada Emergency Management and Civil Protection Act of 2003 requires all municipalities to identify and rank all risks to community safety. As of 2008, all 444 local governments in Ontario had complied with the requirement (UNISDR and UNDP 2010). Likewise, in the United Kingdom, the 2010 Flood and Water Management Act requires local authorities to assess flood risks and develop local risk reduction strategies in line with a national strategy and Algeria's Law on Prevention of Major Risks and the Disaster Management in the Context of Durable Development of 2004 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. On the other hand, it must be acknowledged that, in other countries, clear mandates in national legislation as to local risk mapping have sometimes been ignored by local governments (UNISDR and UNDP 2010).

As a federal state, the United States took a more indirect approach in its 2000 Disaster Mitigation Act to encourage local risk mapping. The act amended the national disaster management law to provide that, "[a]s a condition of receipt of an increased Federal share for hazard mitigation measures . . . , a State, local, or tribal government shall develop and submit for approval to the President a mitigation plan that outlines processes for identifying the natural hazards, risks, and vulnerabilities of the area under the jurisdiction of the government."

Some governments have also made direct reference to community-driven approaches to risk and vulnerability mapping in their legal instruments. For example, in Vietnam, the Deputy Prime Minister issued a decision in 2009 "approving the scheme of community awareness and community-based management of natural disaster risks." The scheme calls, inter alia, for "making maps of natural disasters and the vulnerability of each community (the maps will be made by communities themselves based on the guidance of task forces in charge of community-based natural disaster management)[.]" Similarly, South Africa's Disaster Management Act and Disaster Management Framework call for the use of indigenous knowledge, requiring, for instance, that "[i]ndigenous knowledge and input from traditional leaders must be included in all of the activities associated with ensuring informed, alert and self-reliant communities,"

g. Increasing accountability

Probably the most obvious step toward increasing accountability for community-level disaster risk reduction is assigning clear roles and responsibilities in law. As discussed in the sections above, some states have done this in their national laws as well as in provincial or municipal laws. Others, however, have yet to clarify this point.

Some states have also created oversight mechanisms. For example, Pakistan and South Africa both require national and sub-national legal authorities to make annual reports to their respective legislative bodies and the Philippines' 2010 law establishes a specific parliamentary oversight committee to monitor compliance.

In additional, some states have specifically established in their laws an individual "right to protection" from disasters. This now includes the laws of Bolivia, Honduras, Indonesia, Kosovo, the Philippines, Serbia and Slovenia among others (Fisher 2010). While the remedy for violating that right is not clear in every jurisdiction where it is announced, Indonesia's law provides for a potential fine or jail time for negligence leading to a disaster. Likewise, in Colombia, criminal sanctions are now possible for mayors who fail to meet DRR responsibilities (Scott and Tarazona 2011) and similar legislation is being considered in

Brazil. Caution is important, however, in the application of criminal law in these situations, in light of the political tendency to seek someone to blame.

5. Role of National Societies in supporting states on DRR laws

As the discussion above demonstrates, states are increasingly recognizing the need to grapple with systemizing and improving their approach to disaster risk reduction, for which legislation is one among a number of important tools. However, there is much work remaining to be done, particularly to ensure results at the community level. While the development of legislation is ultimately a task of governments, the consequences of disaster risk are of strong concern to National Societies in light of their humanitarian mission and, in our consultations, many voiced their intention to be of support to their authorities to develop optimal legislative (and other) solutions. Indeed, a significant number are already doing so.

National Societies can bring to the table their unique experience working through volunteers at the community level to build community resilience. Moreover, as members of a global Movement, and with the support of the IFRC, they have the capacity to gather and effectively share best practice experiences from around the world. They have long played a key role, in cooperation with the International Committee of the Red Cross (ICRC), in providing advice to their authorities on matters related to International Humanitarian Law. More recently, many have also extended this work into the area of International Disaster Response Laws, Rules and Principles (IDRL) (in other words, to questions related to the facilitation and regulation of international disaster response). Accordingly, one important role for National Societies is to provide their advice and support to their governments in strengthening legislation to ensure that it empowers communities and that it delivers results at the community level.

In addition, the preliminary results from the research commissioned by the IFRC is that one key characteristic of a resilient community is public awareness of relevant laws, such as those related to building codes and land use, and about their rights and responsibilities under those laws (IFRC forthcoming). All too frequently, however, this information is not readily available at the community level. However, a number of National Societies are already active in disseminating this kind of information as part of their educational programmes. This is another way in which National Societies can support governments with regard to DRR legislation.

Finally, as discussed above, a number of states have recognized the value that National Societies can add in formulating plans and programmes for community-level disaster risk reduction and have therefore mandated that they must be represented in official decision-making committees. Others, like Bangladesh, have also specifically described the role of National Societies in early warning activities at the community level. Thus, in many states, National Societies are directly involved in helping governments to carry out the goals of their legislation.

6. Conclusion and recommendations

Despite important progress since the 28th International Conference first took up the issue, the urgency of improving our collective work on disaster risk reduction remains high. Particular and troubling gaps have been identified, both in the observations of National Societies and by external research, in following up on the commitments of the HFA at the community level. Legislation can and should play a part in filling those gaps.

It is therefore recommended that National Societies and states consider collaborating in:

- analyzing their existing legislative frameworks to assess their effectiveness in promoting community-level DRR activities and in empowering community involvement;

- disseminating information at the community level about existing laws relevant to DRR and the rights and responsibilities they provide;

- finding ways to promote a better implementation of relevant regulations, such as building codes and land use regulations, in ways that do not impinge unnecessarily on livelihoods or rights.

The IFRC would also be pleased to offer its support to National Societies for any work in this area and to build additional networks with the potential international partners in UN agencies, the NGO community, academic institutions to expand the global knowledge base on law and disaster risk reduction at the community level.

Laws cited

Algeria, Law No. 04-20 on Prevention of Major Risks and on Disaster Management in the Framework of Sustainable Development (2004)

Bolivia, Law for the Reduction of Risks and Response to Disasters (2000)

Cambodia, Sub-Decree on Community Forestry Management (2007)

Colombia, Law No. 46 Creating and Organizing the National System for the Prevention and Response to Disasters, developed by the law decree 919 (1989)

Costa Rica, National Law No. 8488 on Emergencies and Risk Reduction (2006)

Dominican Republic, Law No. 147-02 on the Management of Risks (2002)

Djibouti, Decree n°2006-0192/PR/MID on the Creation of an Institutional Framework for the Management of Risks and Disasters (2006)

Ecuador, Law on Civil Protection and the Prevention and Mitigation of Disasters (2006)

El Salvador, Law on Civil Protection, Prevention and Mitigation of Disasters (2005)

France, Law on the Prevention of Technological and Natural Risks and on Recovery from Damages (2003)

Honduras, Law on the National System for the Management of Risks (2010)

India, Disaster Management Act (2005)

Indonesia, Disaster Management Act (2007)

Madagascar, Decree No. 2005-866 establishing the Modalities of the application of Law No. 2003-10 of 5 September 2003 on the National Policy for Management of Risks and Disasters (2005)

Nicaragua, Law Establishing the National System for Prevention, Mitigation and Response to Disasters (2000)

Philippines, Disaster Risk Reduction and Management Act (2010)

Serbia, Law on Emergency Situations and Civil Protection (2009)

Slovenia, Act on the Protection against Natural and other Disasters (2006)

South Africa, Disaster Management Act (2002)

United Kingdom, Flood and Water Management Act (2010)

United States, Disaster Mitigation Act (2000)

Vietnam, Decision no. 1002/QD-TTg Approving the Scheme of Community Awareness and Community-Based Management of Natural Disaster Risks (2009)

Zambia, Disaster Management Act No.13 (2010)

Bibliography

Austrian Red Cross Society, Analysis of Law in the European Union pertaining to Cross-Border Disaster Relief -- Country Report: Austria (2010)

CRED, EM-DAT Database, University of Louvain (consulted 2011)

Fisher, David, Legal Implementation of Human Rights Obligations to Prevent Displacement Due to Natural Disasters, in Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges (2010).

German Red Cross Society, Analysis of Law in the European Union pertaining to Cross-Border Disaster Relief -- Country Report: Germany (2010)

Global Network of Civil Society Networks for Disaster Reduction, “Clouds but Little Rain” -- Views from the Frontline: A Local Perspective of Progress Towards Implementation of the Hyogo Framework for Action (2009)

Global Network of Civil Society Networks for Disaster Reduction, “If We Do Not Join Hands,” Views from the Frontline (2011)

Pelling, Mark and Holloway, Ailsa, Legislating for Mainstreaming Disaster Risk Reduction (2006)

IFRC, Community Based Disaster Risk Reduction Study; Characteristics of a Safe and Resilient Community (forthcoming)

IFRC, Legal Preparedness for International Disaster Response in Australia: Laws, Policies, Planning and Practices (2010)

IFRC, Legal Preparedness for International Disaster Response in Australia (2010)

IFRC, Analysis of Legislation Related to Disaster Risk Reduction in Albania (forthcoming)

IFRC, Analysis of Legislation Related to Disaster Risk Reduction in the Dominican Republic (forthcoming)

IFRC, Analysis of Legislation Related to Disaster Risk Reduction in Brazil (forthcoming)

IFRC, Analysis of Legislation Related to Disaster Risk Reduction in Nepal (2011)

IFRC, Hyogo Framework for Action, Red Cross Red Crescent Mid Term Review (2010)

IFRC, Disaster: How the Red Cross Red Crescent Reduces Risk (2009)

IFRC, Disasters in the Americas: The Case for Legal Preparedness (2011)

IFRC, Desk Review on Trends in the Promotion of Community-Based Disaster Risk Reduction through Legislation (2010)

IFRC, How Prepared are We?: The Well-Prepared National Society: Phase II of Global Self-Assessment, 2005-2008 (2009)

Interworks, Model for a National Disaster Management Structure, Preparedness, Plan and Supporting Legislation (1998)

IPCC Working Group on Climate Change and Development, Up in Smoke? Asia and the Pacific (2007)

Llosa, Sylvie and Zodrow, Irina, Disaster Risk Reduction Legislation as a Basis for Effective Adaptation Background Paper for the ISDR Global Assessment Review (2011)

Scott, Zoe & Tarazona, Marcela, Study on Disaster Risk Reduction, Decentralization and Political Economy, Background Paper for the ISDR Global Assessment Review (2011).

Johnson, Cassidy, Creating an Enabling Environment for Reducing Disaster Risk: Recent Experience of Regulatory Frameworks for Land, Planning and Building in Low and Middle-Income Countries, Background Paper for the ISDR Global Assessment Review (2011)

UNDP, Reducing Disaster Risk: A Challenge for Development (2005)

UNDP, A Global Review: UNDP Support to Institutional and Legislative Systems for Disaster Risk Management (2007)

UNISDR, Third Global Assessment Report (2011)

UNISDR, Hyogo Framework for Action: Mid-Term Review (2010-2011)

UNISDR and UNDP, Local Governments and Disaster Risk Reduction (2010)

Williams, Gareth, The Political Economy of Disaster Risk Reduction, Background Paper for the ISDR Global Assessment Review (2011)