

Legislation

Disaster Legislation: Toward a legal framework in the Americas¹

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Photo: Civil Protection, Haiti

The Americas is a region of great natural wealth, but is also highly vulnerable to disasters arising from natural hazards. Of the 6,417 disasters that took place globally between 1996 and 2005, more than 1,260 affected the Americas. Yet no country in the region has specific legislation that comprehensively addresses the issue of disasters resulting from natural phenomena. In response to the growing number of disasters, countries approved the multilateral instrument known as the Hyogo Framework for Action in 2005, in order to implement the Yokohama Strategy. At the sub-regional level, some countries have established institutions such as the Andean Committee for Disaster Prevention and Response (CAPRADE for its Spanish acronym), the Coordinating Center for Natural Disaster Prevention in Central America (CEPREDENAC), and the Caribbean Disaster and Emergency Response Agency (CDERA) to support efforts in disaster management and mitigation.

While laws relating to natural hazard invoked disasters - which have their origins in humanitarian law – have evolved at the multilateral and sub-regional levels, there are still many opportunities and challenges yet to be addressed. For instance, at the regional level there is only one binding legal instrument in force, the Inter-American Convention to Facilitate Disaster Assistance of 1991. At the national level, legal measures are in most cases scarce and disperse, while most were improvised or came about in response to emergency situations. The countries of the Americas must devote their efforts to strengthen existing institutions and legal instruments, such as the Inter-American Convention, in order to have more and better tools available to face and cope with disasters of natural origin.

¹This article is based on a discussion paper drafted by Claudia S. de Windt, legal specialist for the Department of Sustainable Development of the Organization of American States (OAS), with contributions by Pedro Bastidas, Pablo Gonzalez, Isis Marquez, and Maria del Mar Zavala (<http://www.ifrc.org/Docs/pubs/idrl/idrl-amforum-oea-sp.pdf>). The discussion paper was drafted as a contribution to the Americas Regional Forum on International Disaster Response Laws, Rules, and Principles (IDRL), held in Panama City in April 2007.

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Photo: IPN Stock

The economies of Latin America and the Caribbean are extremely dependent on natural resources. As such, climate change and the increased frequency and intensity of disasters have a devastating impact on the region as a whole. The impact of disasters paralyzes social and economic progress in developing countries, while development is precisely the key to reducing vulnerability.

Trends in the legal approach to disaster response

Until recently, countries had worked exclusively on the design of strategies aimed at addressing disaster response and assistance, and did not include prevention and mitigation. As a result, the most significant part of national legislation has focused on aspects related to response and assistance. The evolution of disaster-related legislation has consistently focused on three areas: (a) state of emergency declarations and emergency authorities; (b) the establishment of civil protection and emergency management agencies; and (c) health.

a) State of emergency declarations and emergency powers

Laws related to states of emergency have been a sensitive issue in the region. In a state of emergency, the executive branch has authority to make decisions that normally fall under parliamentary

scrutiny. However, the scope of these powers is limited by the principle of legality embraced by many constitutions in the region, under which the discretionary powers are subject to the fundamental values of the law, including human rights. Decision makers must justify their decisions. In this sense, it is important to take into account that there are several decrees and resolutions in the region that address specific aspects of previous disasters. These regulatory instruments respond to specific natural events and are considered to be important precedents, despite their isolated nature.

b) The establishment and attributions of civil protection and emergency management agencies

Most countries in the region have established civil protection or emergency management agencies with national, regional, and decentralized programs and systems that operate in conjunction with emergency committees. However, the broad scope of these agencies' authority often exceeds their capacity, as legislation grants them countless powers including the authority to plan and mitigate disasters. These attributions are in addition to disaster management and response activities. This often results in jurisdictions and responsibilities that overlap with other institutions.

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c) Health

In most countries of the region, the national legal framework surrounding health provides effective and comprehensive standards that are usually applicable in disaster situations, in areas such as water management, disposal of bodies, medical assistance and donations of food, drugs and medical supplies. Since most countries do not have specific legal standards related to health concerns in disaster situations, the national health framework applicable under normal circumstances should be, to the extent possible, applicable in these situations.



Photo: Plan Paraguay/Luis Vera

The shift toward an integrated approach: Overview of trends in the legal approach to disaster preparedness

The adoption of the Hyogo Framework for Action has changed the perspective of the legal approach to disasters of natural origin, by including a multi-risk integrated focus that enables the inclusion of disaster mitigation and emergency management.

While most countries in the region have signed and ratified various key agreements, there are very few areas within hazard mitigation planning in which national legislation has evolved significantly. Groups of countries, such as the Caribbean, have worked on model disaster preparedness legislation. Although they have not been successful in implementing these models, there are two areas in which considerable progress has been made: building codes, and insurance and reinsurance. For instance, the Organization of Eastern Caribbean States has designed "The Caribbean Uniform Building Code" and a model emergency shelter management policy and handbook. In other countries of the region, the International Code Council (ICC) has been working to support efforts in this area; as has the OAS in strengthening patterns for buildings through construction norms or retrofitting, that could also be used as emergency shelters, such as schools and hospitals.

Insurance and reinsurance

The main interest of countries in engaging in insurance-related efforts is that by sharing existing risks, the cost associated with risk management is reduced. However, since premiums mostly depend on actions related to mitigation and planning, countries have been analyzing areas where legal frameworks should be strengthened to ensure that mitigation measures are in place, in this way reducing the costs of implementing these mechanisms.

In some countries, efforts have been made at the contractual level, through risk transfer agreements with insurance companies, that base the payments on actual losses or on indicators that do not take into account the losses. Another innovative advance that comprises several binding legal instruments is the Caribbean Catastrophe Risk Insurance Facility (CCRIF) recently launched by the World Bank and Caribbean Community (CARICOM) countries. The Facility will allow CARICOM governments to purchase coverage akin to business continuity insurance. This would provide them with an early cash payment after the occurrence of a major hazard event, thus enabling them to overcome the typical liquidity crunch that follows a disaster.

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Photo: J. Jenkins

Legal challenges resulting from international collaboration in disaster response

The increased number and intensity of natural disasters has called for a greater level of involvement of international organizations, which has also increased the international movement of people for humanitarian disaster assistance. Governments have to deal with new non-governmental organizations that enter foreign countries for relief purposes without having mechanisms in place for proper scrutiny.

Another important challenge is the identification of assistance personnel and compliance with immigration requirements. The import of relief goods and equipment is also challenging, as most countries in the region impose heavy taxes on equipment required for assistance. Telecommunication equipment presents an even greater challenge because such equipment is subject to greater scrutiny by governments due to its strategic value and potential impact on national security.

In emergency situations, countries should be able to foster coordination in three different areas. First, in assessing the impact and damage; second, in assessing the need for assistance and aid; and third, in assessing their capacity to receive and distribute aid and supplies.

Knowledge and institutional strengthening play a key role in all of these areas. A way for countries to address these issues is through the strengthening of legal frameworks for planning and mitigation actions. Existing structures and non-binding (soft law) principles should also be taken into consideration.

One example of an existing structure is the Inter-American Convention. While it is only in force in Panama, Peru and Uruguay, it responds to the need to move away from non-binding instruments and recognizes the potential contribution of international law in the field of disasters. Some provisions of the Convention address the challenges currently faced by countries in the region in disaster situations. The Convention also establishes procedures for all assistance personnel and the supervisory responsibility of the State that receives the assistance. The ratification of the Inter-American Convention should be carefully considered, along with the needs of the countries in the region to be able to address current challenges.

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