




How law and regulation supports disaster risk reduction

Haiti case - study report

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2. Enable healthy and safe living.
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About this report

This report examines the national legal and regulatory frameworks with regard to disaster risk reduction in Haiti. It provides an overview of the relevant laws, policies and regulations that have a bearing on different aspects of disaster risk reduction. It identifies potential gaps, as well as a range of positive developments and initiatives that can enhance disaster risk reduction. Finally, a number of short and long-term recommendations are proposed to improve, strengthen, and develop the Haitian system of law in this matter.

About the Disaster Law Programme

The Disaster Law Programme seeks to reduce human vulnerability by promoting legal preparedness for disasters. The Disaster Law Programme works in three key 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 in disaster law; and (3) dissemination, advocacy and research.

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Cover photo: Aerial view of Baradères - a municipality in the Nippes Department in Haiti's southwest. This region already affected by the quake, was flooded during the recent rains on 27 February 2010. The flooding left behind 12 dead people and damaged over 3000 homes..

Photo by: Jose Manuel Jimenez/IFRC

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Contents

Executive summary	5
.....	
List of abbreviations	12
.....	
Acknowledgements	14
.....	
1. Introduction, background and project objectives	15
1.1 Law and DRR project background	16
1.2 Geography and disaster-risk profile of Haiti	17
1.3 Governmental and law-making structure	19
2. Methodology	21
2.1 Overview	22
2.2 Regional and community visits	23
3. Findings on regulatory frameworks for DRR and their implementation	25
3.1 DRR in disaster management law and institutions	26
3.1.1 <i>Introduction: the legal framework</i>	26
3.1.2 <i>Current institutional structure</i>	27
3.1.3 <i>National risk and disaster management plan</i>	29
3.1.4 <i>National emergency response plan</i>	34
3.1.5 <i>Proposed draft law on the establishment of the National System for Risk and Disaster Management</i>	36
3.1.6 <i>Community level implementation</i>	37
3.1.7 <i>Funding and reporting</i>	38
3.2 Responsibility, accountability and liability for natural disaster-risk reduction	40
3.2.1 <i>Legal framework</i>	40
3.2.2 <i>Private liability</i>	41
3.2.3 <i>Disaster-risk insurance</i>	41
3.3 Early warning systems and risk mapping	43
3.3.1 <i>Early warning systems</i>	43
3.3.2 <i>Risk mapping</i>	46
3.4 Regulation of the built environment	49
3.4.1 <i>Building codes</i>	49
3.4.2 <i>Land-use planning laws</i>	53
3.4.3 <i>Land tenure</i>	58
3.4.4 <i>Informal and precarious settlements</i>	62
3.4.5 <i>Urban water and flood management</i>	66

3.5	Regulation of the natural and rural environment	69
3.5.1	<i>Human risks in environmental change</i>	69
3.5.2	<i>Forest management and exploitation</i>	77
3.5.3	<i>Rivers and watercourses in rural areas</i>	81
3.5.4	<i>Drought and food security</i>	85
3.6	DRR education and awareness	87
4.	Conclusions and recommendations	90
4.1	Good practices and examples	91
4.2	Gaps in the legal framework for DRR	93
4.3	Effectiveness of community-level implementation	94
4.4	Recommendations	95
Annex A: List of persons and groups consulted		101
Annex B: Bibliography		105
B1 List of Laws		106
B.2 List of Secondary Sources		109
Annex C: Meaning of key terms		114



Executive summary

About this study

This study analyses the extent to which legal frameworks in Haiti support national and local efforts towards disaster-risk reduction (DRR). The study covers a broad scope of law and regulation relevant to DRR for natural hazards, including issues such as the integration of DRR into disaster risk management laws and institutional arrangements, responsibility and liability for DRR, early warning systems, infrastructure, building codes, land use planning, environmental management, and awareness-raising and education. Its methodology of speaking with stakeholders at national, sub-national and local levels was also designed to identify gaps, challenges and good practices in the way the legal framework is implemented.

Background and risk profile

Due to its geographical position, Haiti is one of several states in the Greater Caribbean Region exposed to extreme weather conditions that place the country at risk of disaster. Haiti lies in the middle of the ‘hurricane belt’ of the region and generally suffers from storms between July and October of each year, and its placement over several major tectonic faults means that it stands at risk from seismic activity, namely earthquakes.

No modern assessment of Haiti can be made without taking into account the devastating effects of the earthquake of 12 January 2010. The magnitude 7.0 earthquake that struck Haiti on that day resulted in the loss of some 230,000 lives and the displacement of approximately two million people. The earthquake compounded the already severe political, social and economic problems that the country was facing. Just prior to the earthquake of 2010, Haiti ranked 145th in the UN’s Human Development Index;¹ in 2013 it ranked 168th.² The earthquake cost the equivalent of 120 per cent of Haiti’s GDP and set back decades of development of investments. Government capacity was dealt a huge blow as between 17 to 20 per cent of federal employees were killed or injured and about a quarter of official buildings were destroyed, with further damage or destruction affecting almost all major infrastructure in Haiti.

The impact of the earthquake of 2010 has however helped to bring the concepts of disaster-risk reduction (DRR) and disaster-risk management (DRM), as well as the actors involved in these areas, to much greater national prominence. The challenge Haiti now faces is to implement these concepts through an integrated multi-stakeholder, multi-sectoral approach that moves beyond the narrow confines of preparation and response, and takes into account much longer-term development of state and local capacities to reduce disaster risk.

¹ UNDP, Human Development Report, 2010

² UNDP, Human Development Report, 2014

The need to ensure any such actions are sustainable and not dependent on external funding is another major issue that needs to be addressed.

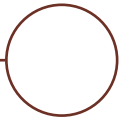
DRR and law in Haiti

Overall, Haiti's sectoral laws (i.e. laws that seek to regulate specific sectors such as land use planning, construction, the environment, water and forestry) do contain many provisions that are relevant to DRR; however in many areas the actual content of laws and policies is not met with effective implementation or enforcement. Funding and capacity constraints have hindered the development of many of the institutional structures and procedures proposed under law, especially at municipal and local levels.

Haiti's key national level documents that govern the national DRM system (the National Risk and Disaster Management Plan and the Emergency Response Plan) have been in place since 2001, but for the first few years of their existence little progress was made towards a robust and coordinated national structure. From 2005, however, Haiti has made significant progress in this regard. A relatively effective structure has been developed and installed at all levels of government (national, departmental, municipal and local), and at national level the Ministry of the Interior and the Directorate of Civil Protection (DPC) coordinate a huge number of different actors, hailing from government, the international community and the private sector. Significant steps have also been made in establishing national early warning systems and risk mapping procedures, and the annual preparations for the hurricane season (and ensuing response efforts) are widely praised by those involved in the system.

However, the national system for DRM has reached a stage where it needs a firmer legal and institutional structure behind it in order to move beyond its current operational focus on preparation and response for disasters, and to spearhead the integration of DRR not only into the activities of the national system but also as a cross-cutting issue in other sectors. Currently the DPC is reliant on the Ministry of the Interior for decision-making and funding, and without legal certainty as to its structure long-term planning is difficult. Furthermore, as the national system is essentially based on policy rather than law, the decisions at national and local levels of its relevant bodies can lack authority. The Haitian state in general is also chronically under-funded and depends on a number of bilateral and multilateral financial arrangements, with more than 50 per cent of the government budget coming from international aid. This is keenly felt in the national system for DRM and the DPC in particular, which would not have been able to maintain its operations without funding from its international partners, notably UNDP. This state of affairs is ultimately unsustainable and as international partners increasingly seek to reduce their financial commitments, difficult questions are raised over what will happen in the long-term.

This report assesses the content and implementation of this DRM framework and its related policy and legislation. Legal frameworks for specific sectors are assessed to review the extent to which they support DRR, and this report and its conclusions highlight the ways in which law and regulation in Haiti are supporting, or may in future support, DRR, and balances this against some of the main gaps that exist



both in law and in practice. The observations and conclusions of this report are set out in full in sections 3 and 4, and are briefly summarized below. This report also seeks to make some basic recommendations that could help improve the legal framework in Haiti for DRR.

Some of the good practices identified within this report are:

National DRM system: since its creation in 2001, this system has sought to decentralise capacity through the creation of DRM committees at departmental, municipal and local levels. Although not provided with a basis in legislation, both national Plans set out in broad strokes the framework of a comprehensive and participatory system. The National Risk and Disaster Management Plan goes beyond the narrow historical focus on disaster response and attempts to address the causes and factors that generate risks in order to reduce the possibility of disasters. At national level, the Permanent Secretariat ensures that inter-ministerial coordination is prioritised, and the DPC is able to bring together a diverse range of stakeholders for vital activities such as planning for the annual hurricane season.

Early warning systems: Haiti has a working national early warning system (EWS) in place for hurricanes as well as a flooding EWS that is technical in nature and covers the highest risk areas in the country. An emerging system of reception and dissemination of alerts for tsunamis is also evident. On the whole the DPC has overseen the development of a widespread and effective system of warnings and alerts that are disseminated via the local DPC structures and the mass media, and has worked together with international partners to put in place effective EWS in many communities.

Building codes: the existence and nascent implementation of the National Building Code is a clear example of good practice in this sector. Notably, the Code deals specifically with the design of structures against wind and seismic risks, and is commendable for its creative use of diagrams rather than simply setting out extremely technical requirements and calculations, to ensure that it can be understood and applied by a much larger proportion of Haitians in the construction industry.

Proposed legal framework for environmental impact assessments: Haiti already possesses a brief but important legal framework for the environmental impact assessment process, and some limited capacity at national level to enforce it. Provided that there is sufficient political will behind the proposals, the establishment of a National Bureau of Environmental Evaluation, backed by a robust legal framework and system of secondary, sector-specific guidance, could help ensure that DRR is considered in relevant projects and overall provide a huge boost to DRR efforts in Haiti.

Forest protection under law: a large body of law relates to protection of forests in Haiti, and whilst enforcement and capacity in the sector is severely lacking, a legal framework exists that seeks to limit human impact on Haiti's depleted forests, and to prevent risks such as forest fires.

DRR education and awareness: although DRR has yet to be included as part of the national education curriculum, a significant amount of good practice exists elsewhere. Environmental education is mandated as part of the curriculum and represents an opportunity to include elements of DRR. NGOs are actively involved in bringing awareness of disaster risks and DRR into schools in some areas. In terms of public awareness raising the DPC oversees a generally effective and widespread network of public information, and there is clearly a large amount of DRR and DRR-related training taking place, led by the DPC and most of its partners.

Some of the gaps that exist in law and practice are as follows:

Lack of a legal framework for DRR and the national system for DRM: many of the gaps and issues in the national system can be traced back to the lack of a firm legal foundation. Furthermore both national plans have proven to be decent framework documents but they lack detail and still overly focus on issues of disaster response. They have also not been adequately updated to integrate the recommendations of the Hyogo Framework for Action (now replaced with the Sendai Framework for Disaster Risk Reduction). The DPC cannot effectively plan its activities due to ongoing concerns over its legal status and dependence on the Ministry of the Interior that impact on its operational capacity; its status also means it is much harder to build inter-sectorial and inter-ministerial consensus, and in the absence of clear legal authority the decisions of committees are often not considered binding.

Responsibility and accountability for DRR: no legal mechanisms exist to ensure the responsibility and accountability of individuals or entities for, for example, failing to act in accordance with their mandates, failing to warn of disasters, or damage to property. Although some general provisions exist in the Constitution and Civil Code, these are not used and doubts remain over their applicability to DRR and disaster management in general.

Early warning systems and risk mapping: overall, efforts to create an EWS and adequately map risks suffer due to a lack of coordination, which can partly be explained by the lack of a legal framework for these important systems. Haiti benefits from a number of different EWS but these are fragmented, under the responsibility of different institutions at different levels, and as with the flooding EWS, are ultimately unsustainable without external funding. There is also no clear legal, policy or institutional mechanism to ensure that risk mapping links in to the EWS.

Informal and precarious settlements: given the extent of informal and precarious settlements in Haiti, and the sheer number of people who live in them, the fact that there is no legislation that seeks to regulate them is a major gap. Some positive assertions are made in policy documents, but these are not clearly enforceable and it is not clear to what extent these will factor into official decision-making, if at all. The government is involved in the regularisation of selected settlements but there is no legal framework to guide this or ensure appropriate accountability.



Summary of the main recommendations of the study:

This report seeks to make some recommendations to the government of Haiti that could help improve the legal framework in Haiti for DRR. The recommendations fall under three main categories: firstly, establishing a cross-sectoral committee and relevant working groups; secondly, revising and updating policies on DRR; and thirdly, developing a new law on DRM and strengthening and consolidating existing laws.

Within these three over-arching recommendations, specific short-term and long-term recommendations are identified. The **short-term recommendations** are proposed specifically to deal, at least on a temporary basis, with the most pressing gaps in both law and practice for DRR in Haiti. Generally speaking these options could be implemented without the need to develop and pass new legislation or to significantly reorganise institutional frameworks and responsibilities. **The establishment of working groups** to investigate certain issues and areas recognises the pressing need to, at least insofar as the thematic areas reviewed for this report are concerned, promote dialogue between the various actors relevant to DRR in Haiti.

The **long-term recommendations**, several of which align with existing government plans for legal and institutional reform (such as those for housing, land tenure and land use planning), focus on possible broad legal and institutional reforms that may be considered necessary to ensure the legal framework better supports DRR in Haiti. **The primary 'long-term' recommendation of this report is that the government takes steps to develop a new national disaster risk management law.**

1. Establish a cross-sectoral committee Short-term

One Across-sectoral committee, including representatives from relevant government agencies and civil society organisations, could be established by the Haitian government with a mandate to oversee the revision of policies on DRR, promote the development of a new law and consolidate existing laws, as set out below.

2. Revise and update policies on DRR Short-term

As the DPC together with its partners is currently planning a review of the National Risk and Disaster Management Plan (PNGRD) and the Emergency Response Plan (PNRU), it is recommended that the cross-sectoral committee consider integrating the relevant short-term recommendations of this report into a revised version of the PNGRD.

3. Develop a new law on disaster risk management and strengthen and consolidate existing laws.

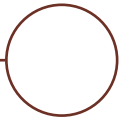
Long-term

Develop and adopt a new disaster risk management law that sets out the complete institutional framework and responsibilities for the SNGRD and integrates relevant updates of the PNGRD mentioned above (e.g. integration of DRR as a concept, Sendai Framework, etc). Ensure a fully consultative drafting process at the national level involving a broad representative spectrum of the State, the private sector and civil society. The mandate, role and area of responsibility of the DPC in DRR should be clarified in this framework. The new disaster risk management law should include, amongst other things:

- provisions requiring transparent reporting and establishing clear parliamentary oversight mechanisms;
- administrative sanctions as well as legal liability (this could include the development of internal government procedures/protocols and access to administrative tribunals) for cases where government officials fail to discharge their duty or act in a grossly negligent manner (and no 'good faith' defence exists);
- clearly define the roles and responsibilities within the DPC and wider SNGRD (at all levels) necessary for a national, multi-hazard EWS and integrated risk mapping process in Haiti, extending from national to community level;
- establish DRR-specific resource streams under the law within DRM budgets; and
- mandate the specific representation of civil society and communities (including women and vulnerable groups and the DRM committees at departmental, municipal and local levels) in DRM institutions and processes at the national and local levels.
-

The recommendations for the strengthening and consolidation of existing laws include the following:

- the cross-sectoral committee should investigate the possible collection and harmonisation of all current Haitian laws, with a view to launching a project to collect, codify and digitise all laws in force. The Ministry of Justice and Public Security could lead the committee with input from key officials and private practitioners working in Haiti's legal system
- in line with the desire for reform expressed by the Haitian government and in particular CIAT, review and streamline the laws relevant to land use planning; and



- undertake a full review of the legal and policy frameworks relevant to informal and precarious settlements, in order to determine how they can be implemented more effectively to reduce disaster risk in informal urban settlements, as well as any potential avenues for future legal reform.

List of abbreviations

ASEC	Assemblée de la Section Communale (Communal Section Assembly)
CAEPA	Comités d'Approvisionnement d'Eau Potable et d'Assainissement (Potable Water and Sanitation Procurement Committees)
CEPA	Comités d'Eau Potable et d'Assainissement (Potable Water and Sanitation Committees)
CASEC	Le Conseil administratif de la section communale (Communal Section Administrative Council)
CIAT	Comité Interministériel d'Aménagement du Territoire (Inter-ministerial Committee for Territorial Planning)
CNBH	Code National du Bâtiment d'Haïti (National Building Code of Haiti)
CNGRD	Comité National de Gestion des Risques et des Désastres (National Committee for Risk and Disaster Management)
CNSA	Coordination Nationale de la Sécurité Alimentaire (National coordination for food security)
COU	Centre d'Opérations d'Urgence (Emergency Operations Centre)
CTE	Centre Technique d'Exploitation (Technical Operations Centre)
DGI	Direction Générale des Impôts (General Directorate of Taxes)
DINEPA	Direction Nationale de l'Eau Potable et de l'Assainissement (National Directorate for Drinking Water and Sanitation)
DPC	Direction de la Protection civile (Directorate of Civil Protection)
EIES	Études d'Impact Environnemental et Social (Environmental and Social Impact Studies)
IASC	Inter-Agency Standing Committee
IFRC	International Federation of Red Cross and Red Crescent Societies
IHRC	Interim Haiti Recovery Commission
IOM	International Organisation for Migration
MARNDR	Ministère de l'Agriculture des Ressources Naturelles et du Développement Rural (Ministry of Agriculture, Natural Resources and Rural Development)
MICT	Ministère de l'Intérieur et des Collectivités Territoriales (Ministry of the Interior and Regional and Local Development)
MDE	Ministère de l'Environnement (Ministry of the Environment)
MPCE	Ministère de Planification et de la Coopération Externe (Ministry of Planning and External Cooperation)



MTPTC	Ministère des Travaux Publics, Transports et Communications (Ministry of Public Works, Transport and Communications)
OAS	Organisation of American States
ONACA	Office National du Cadastre (National Office of Cadastre)
OREPA	Offices Régionaux d'Eau Potable et d'Assainissement (Regional Offices for Drinking Water and Sanitation)
SNGRD	Système national de gestion des risques et des désastres (National System of Risk and Disaster Management)
PNGRD	Plan National de Gestion des Risques et des Désastres (National Risk and Disaster Management Plan), February 2001
PNRU	Plan national de réponse aux urgences (Emergency Response Plan), December 2001 (updated September 2009)
UCLBP	Unité de Construction de Logements et de Bâtiments Publics (Housing and Public Building Construction Unit)
ULCC	Unité de Lutte Contre la Corruption (Anti-Corruption Unit)
UN	United Nations
UNDP	United Nations Development Programme

Acknowledgements

Sponsors

The IFRC wishes to thank the Canadian Red Cross for their financial support for this case study.

Partners

This case study was undertaken by the IFRC in partnership with the Haitian Red Cross Society.

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The case study report could not have been completed without the assistance of all the stakeholders who gave generously of their time and experience in interviews during the consultant's country visits. A full list of those consulted is provided in annex A. However, we wish to thank particularly the Haitian, Swiss and Netherlands Red Cross officials and volunteers and the communities in Jacmel and Leogane who kindly gave their time to arrange and participate in research visits.

How law and regulation supports disaster-risk reduction
Haiti - case study report

Introduction, background and project objectives

1. Introduction, background and project objectives

1.1 Law and DRR project background

The general background for the study dates to January 2005, when a UN conference of over 4,000 representatives of governments, NGOs, the Red Cross and Red Crescent, UN agencies, academic institutes and the private sector adopted the Hyogo Framework for Action (HFA)³ which contains a set of commitments and priorities to take action to reduce disaster risks. The first of these is to “ensure that disaster risk reduction is a national and a local priority with a strong institutional basis for implementation”, notably through “policy, legislative and institutional frameworks for disaster-risk reduction”. Disaster-risk reduction is defined as: “The concept and practice of reducing disaster risks through systematic efforts to analyse and manage the causal factors of disasters, including through reduced exposures to hazards, lessened vulnerability of people and property, wise management of land and environment, and improved preparedness for adverse events.”⁴

Since 2005, a significant amount of legislation has been adopted in various parts of the world aimed at strengthening the focus on disaster risk reduction, yet important gaps remain, particularly with regard to follow-through at community level. This was confirmed in a number of reports prepared around the time of the mid-term review of the HFA⁵ and subsequent country case studies by the IFRC.⁶ Communities were found not to be well enough informed, engaged and resourced to take an active part in reducing risks, and it was noted that rules to deter risky behaviours (particularly in construction and land use) often go unenforced. While legislation is certainly not the only way to address some of the issues, it can be an important part of the puzzle.

In 2011, the state parties to the Geneva Conventions took up this issue at the International Conference of the Red Cross and Red Crescent. Their resolution encouraged states, with support from their National Red Cross and Red Crescent Societies, IFRC, UNDP, and other relevant partners to review the existing legislative frameworks in light of the key gap areas identified in the IFRC report to the Conference, and to assess whether they adequately:

³ Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters, World Conference on Disaster Reduction, 18-22 January 2005, Kobe, Hyogo, Japan.

⁴ UNISDR, Terminology on Disaster Risk Reduction, Geneva, 2009.

⁵ UNDP, A Global Review: UNDP Support to Institutional and Legislative Systems for Disaster Risk Management, 2007; Global Network of Civil Society Networks for Disaster Risk Reduction, “Clouds but Little Rain” Views from the Frontline: A Local Perspective of Progress Towards Implementation of the HFA, 2009 and If We Do Not Join Hands; IFRC, Hyogo Framework for Action: Red Cross and Red Crescent Mid-Term Review, October 2010; UNISDR, Hyogo Framework for Action: Mid-Term Review 2010-2011.

⁶ Available at: <http://www.ifrc.org/en/what-we-do/idrl/research-tools-and-publications/disaster-law-publications/>



- a. make disaster risk reduction a priority for community-level action;
- b. promote disaster risk mapping at the community level;
- c. promote communities' access to information about disaster risk reduction;
- d. promote the involvement of communities, Red Cross Red Crescent National Societies, other civil society and the private sector in disaster risk reduction activities at the community level;
- e. allocate adequate funding for disaster risk reduction activities at the community level;
- f. ensure that development planning adequately takes into account local variability in hazard profiles, exposure, and vulnerability and cost-benefit analysis;
- g. ensure full implementation of building codes, land use regulations and other legal incentives; and
- h. promote strong accountability for results in reducing disaster risks at the community level.

1.2 Geography and disaster-risk profile of Haiti

Haiti occupies about 28,000 square kilometres on the westernmost third of the island of Hispaniola, bordering the Dominican Republic to the east, and possessing a total of 1,771km of coastline. The terrain is largely mountainous, with approximately 65 per cent of the land classing as mountainous territory, and more than half of all land is on a slope greater than 40 degrees. Forest covers only 2 per cent of the territory due to enormous deforestation over the last century. Approximately 28 per cent of the land is arable, and agriculture is still the main income-generating activity for the population.

Haiti ranks as one of the countries with the highest exposure to multiple hazards⁷, and was recently assessed as the 21st most 'at risk' country in the World Risk Report for 2014 (as well as being the 2nd highest country in the world in terms of its vulnerability)⁸. It has also been ranked as the third most affected country in the world in the Global Climate Risk Index for 2015⁹. Although the country has gained notoriety for the extremely severe impact of the earthquake of January 2010, it has been heavily exposed to multiple natural hazards, with the consequences in terms of loss of human life and damage caused set out in Table 1 below.

⁷ World Bank, Natural Disaster Hotspots, undated

⁸ United Nations University Institute for Environment and Human Security and Alliance Development Works, World Risk Report 2014, 2014

⁹ Germanwatch, Global Climate Risk Index 2015, November 2014

Table 1: Impact of natural disasters in Haiti, 1900 – 2014

		# of Events	Total Killed	Total Affected	Damage ('000 US\$)
Drought	Drought	7	-	2,305,217	1000
	ave. per event		-	329,316.7	142.9
Earthquake (seismic activity)	Earthquake	2	222576	3,700,000	8,020,000
	ave. per event		111,288	1,850,000	4,010,000
Epidemic	Bacterial Infectious Diseases	3	6,958	519,814	-
	ave. per event		2,319.3	173,271.3	-
	Parasitic Infectious Diseases	1	-	2,724	-
	ave. per event		-	2,724	-
	Viral Infectious Diseases	1	40	200	-
	ave. per event		40	200	-
Flood	Unspecified	21	828	1,80434	959
	ave. per event		39.4	8,592.1	45.7
	Flash flood	5	70	70,717	1000
	ave. per event		14	14,143.4	200
	General flood	22	3,046	451,848	-
	ave. per event		138.5	2,0538.5	-
	Storm surge/ coastal flood	1	-	4,690	-
	ave. per event		-	4,690	-
Mass movement wet	Landslide	2	262	1,060	-
	ave. per event		131	530	-
Storm	Unspecified	3	1,188	1,587,270	50,000
	ave. per event		396	529,090	16,666.7
	Local storm	1	6	73,122	-
	ave. per event		6	73,122	-
	Tropical cyclone	35	1,4137	3,390,620	1,236,906
	ave. per event		403.9	96,874.9	35,340.2

Estimates suggest¹⁰ that 96% of Haiti's population live at risk from natural disasters¹¹. It is particularly vulnerable to hydrometeorological hazards, namely cyclones, and their effects include wind damage, flooding landslides, torrential debris flows, and coastal surges. Haiti is also located in a seismically active zone, with several major tectonic faults underneath the land. Haiti's vulnerability is

¹⁰ Source: EM-DAT: The OFDA/CRED International Disaster Database, accessed 30 November 2014, www.emdat.be

¹¹ GFDRR and the World Bank, Disaster Risk Management in Latin America and the Caribbean Region: GFDRR Country Notes, 2010



compounded by its high urban population density, a large number of informal structures, and relatively weak public and private infrastructure.

1.3 Governmental and law-making structure

The current governmental structure in Haiti was established under the Constitution on 29th March 1987, as amended by a revised version of the Constitution which was approved by Parliament (“Assemblée nationale”) in March 2011, and came into force on 20th June 2012. The Constitution establishes a semi-presidential system of government, dividing power between the president (as the chief of state), the prime minister (the head of the government, appointed from the majority party in the National Assembly by the president), the National Assembly (a bicameral body), and the regional assemblies. The bicameral National Assembly consists of the Chamber of Deputies (with 99 members serving 4 year terms), and the Senate (with 30 seats, one third of which are elected every three years). Executive power is held by the President and the Prime Minister, through the Council of Ministers and the Council of Government.

Haiti is divided into ten departments¹², with each department further divided into between three to ten arrondissements per department (42 in total), which are further divided into communes or municipalities (140 in total), these being further sub-divided into the sections communales (574 in total)¹³. As an example, Delmas in Port-au-Prince is classified as a commune within the Port-au-Prince arrondissement, which itself sits in the Ouest department.

Haiti’s highest court is the Supreme Court (Cour de Cassation), followed by the five appeals courts. There are 15 courts of first instance (tribunaux de première instance) (one for each judicial district), and over 200 peace courts (tribunaux de paix). Judges are appointed by the President of the Republic based on lists prepared by the Senate (for the Supreme Court), departmental assemblies (for the courts of appeal and courts of first instance) and communal assemblies (for the peace courts). In practice the Judiciary is subordinate to the Executive and the judicial budget and appointments are controlled by the Minister of Justice¹⁴. The lowest level of the justice system consists of the justices of peace (juges de paix), who carry out a wide range of functions at the peace courts in civil, criminal and extrajudicial matters, including minor adjudications, mediations and so on. More serious matters are tried in the courts of first instance. These courts have the authority to refer cases upward to the courts of appeal. The Supreme Court deals with questions of procedure and constitutionality.

Following its independence in the early nineteenth century, Haiti adopted the French civil law system, including the French judicial structure and codification system (which includes the Civil Code, Code of Civil Procedure, Criminal Code, Code of Criminal Procedure, and the Commercial Code). These codes remain authoritative, subject to their various amendments over the last two centuries, but their extreme age means that they often do not reflect current Haitian realities

¹² These are Artibonite, Centre, Grand’Anse, Nippes, Nord, Nord-Est, Nord-Ouest, Ouest, Sud-Est, Sud

¹³ Statistics taken from section 3.1, MICT, DPC, Analyse des capacités de préparation et réponse du Système National de Gestion des Risques et Désastres, December 2013

¹⁴ World Bank, Social Resilience and State Fragility in Haiti, April 27, 2006

or address contemporary legal issues.¹⁵ Furthermore, even Haitian lawyers, magistrates and judges are often unable to confirm the exact versions of the law that are in force.

The Constitution of Haiti (adopted in 1987, and most recently amended in 2012) is the supreme law of the land, overriding all other legislation apart from international agreements that have been formally ratified by Haiti.¹⁶ It has been recognised as a modern, democratic and progressive document but the consensus of commentators suggests that many of its provisions remain non-operational.¹⁷

The other sources of legal authority in Haiti are as follows:

- **bills of law (lois):** the main source of law, these must be adopted by Parliament;
- **decrees:** made by the President of the Republic and signed by all ministers, but does not require the approval of the Parliament;
- **decree-laws:** decrees that have been approved by the Parliament, and have the same force as a law passed by Parliament; and
- **orders (arrêté):** made by the President of the Republic or by the Prime minister but does not require the signatures of any minister (although some ministers may sign). Orders provide detailed procedures on the operationalisation of existing laws.

The process for the passage of legislation in Haiti helps explain why so few laws are actually passed. Draft legislation commences with the Executive, and must be proposed by a ministry: the first draft is submitted to the Office of the Prime Minister, which may make initial amendments. This office decides on which stakeholders will be affected by the legislation and invites them to a round-table for comments and revisions. In practice, unless those behind the draft legislation have spent significant time lobbying relevant ministers and officials (for example, sharing initial drafts with those who would likely be invited to the round-table), then this process could cause extreme delay, and indeed many laws never make it past this stage. If the draft legislation is approved by the round-table, it is formally submitted by the Office of the Prime Minister to either the Senate or the Chamber of Deputies. Both Chambers will review the legislation but the decision over who to submit to first is a strategic one, often depending on levels of alliance and support in the two Chambers. The draft legislation is then studied in committee, to decide whether to further amend and/or endorse it. Again, this stage could encounter difficulty and delay without appropriate sensibilisation and lobbying of relevant persons beforehand. Once a draft law has been approved by both Chambers it still requires the Presidential approval, and after that it only enters into force once it is published in the government's official Gazette Le Moniteur. Publication is the 'last hurdle' as it is not unknown for approved laws to remain unpublished for years.

¹⁵ Leah Mueller for the Interim Haiti Recovery Commission, Haitian Law as it applies to Housing and Reconstruction: A Legal Summary, 3rd June 2011

¹⁶ Article 276-2, Constitution of Haiti: this states that once approved and ratified, international treaties and agreements become part of Haiti's legislation and abrogate any laws in conflict with them.

¹⁷ Jurist Legal Intelligence, Haiti; Constitution, Government, and Legislation, <http://jurist.law.pitt.edu/world/haiti.htm>

How law and regulation supports disaster-risk reduction
Haiti - case study report

Methodology

2. Methodology

2.1 Overview

Detailed legal research for this study was undertaken by the consultant in advance, based on online resources, as part of the preparation for the field research mission to Haiti.

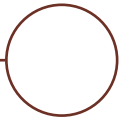
Given the relatively short timeframe for this study, it does not attempt to be a comprehensive study of all the legal and institutional frameworks of relevance to DRR in Haiti. This report instead aims to provide an overview and analysis of the legal framework for DRR in Haiti, drawing out specific examples of good practice as well as the major gaps and challenges for both legislation and implementation.

During the in-country mission the project consultant met with and interviewed a wide range of stakeholders in Haiti (a full list of which is available at Annex A). These interviews were vital in firstly providing the project consultant with copies of laws, policies and other documents which were not available online, and secondly for first-hand information regarding the institutional arrangements for, and implementation of, DRR and DRM activities in Haiti. These interviews with stakeholders were the primary means of achieving the assigned objectives for the in-country mission, which were as follows:

1. To identify and obtain copies of laws and regulations relevant to DRR, including key national laws that were not found during initial online research, as well as any sub-national laws and regulations in the sample areas visited.
2. To assess the extent to which the existing legal framework for DRR is both adequate for the needs of the subject country and whether there is sufficient institutional support and other resources for effective implementation.
3. To identify good practices and gaps in the law and its implementation.

The project consultant met with government officials at the federal, departmental, municipal and local levels, as well as with the IFRC and other Red Cross Movement representatives, stakeholders from intergovernmental organisations (particularly UN agencies and international donors), non-governmental organisations (NGOs) and disaster-affected communities and their representatives. Given the timeframe and the large amount of development and humanitarian activity in Haiti it was not possible for the project consultant to meet with all major government, national and international actors, and the absence of an organization from the list in annex A may simply mean that their representative was not available in Haiti at the relevant time.

The interviews were held as structured discussions, based on the information and guideline questions developed with the project consultant on the basis of the terms of reference. The interviews focused on legal issues surrounding DRR in



Haiti, the legal framework and its implementation, and current disaster risks and DRR practices, with special consideration of any good practices and gaps in the legal framework or implementation.

The majority of the interviews were held in the capital of Haiti, Port-au-Prince, to meet with the relevant government officials, as well as intergovernmental agencies, national, international and foreign NGOs and other stakeholders, whose headquarters were generally based there. As such the project consultant spent three weeks in Port-au-Prince interviewing stakeholders and researching legal issues.

For the meaning of key terms used in this report, and general notes on translation and use of acronyms, please see annex C.

2.2 Regional and community visits

The essential purpose in reviewing legal frameworks for DRR is to help reduce communities' risks from disasters, and therefore an important part of the study was to gain the views of communities as to gaps or good practices in legal frameworks and their implementation, and to consider within each sector of regulation relevant to DRR how the concerns of communities and civil society are taken into account.

In accordance with the terms of reference, which required analysis of law, regulation and implementation within at least one department outside the capital, the project consultant visited Jacmel in the South-East department and Léogâne in the West Department in order to interview local government officials and community focus groups, and to provide a sample 'vertical profile' of the law and its implementation. Five focus groups were interviewed (three in Jacmel, two in Léogâne), as follows:

- Community members from the commune of Bainet, Bainet arrondissement, South-East department;
- Notables (community leaders) and community members from the commune of Bainet, Bainet arrondissement, South-East department;
- Women's group from the Organisation des Femmes de Bainet, commune of Bainet, Bainet arrondissement, South-East department;
- Community members of the Equipe d'Intervention Communautaire, in the section communale of Cormier, commune of Léogâne, West department;
- Community members of the Equipe d'Intervention Communautaire, in the section communale of Palmiste-à-Vin, commune of Léogâne, West department.

Jacmel and Léogâne were chosen for several key reasons. Firstly, the IFRC components have a strong presence in both areas, through local offices of the Haitian Red Cross as well as offices of the Netherlands Red Cross in Jacmel and

the Swiss Red Cross in Léogâne. This meant the community focus groups and meetings with local government stakeholders could be organised and facilitated within the relatively tight timescale. Secondly both of these areas have been, and continue to be, badly affected by the major natural hazards of Haiti, namely earthquakes, cyclones and floods; Léogâne was the nearest town to the epicenter of the catastrophic 7.0 Mw earthquake of 12 January 2010.

How law and regulation supports disaster-risk reduction
Haiti - case study report

Findings on regulatory frameworks for DRR and their implementation

3. Findings on regulatory frameworks for DRR and their implementation

3.1 DRR in disaster management law and institutions

Introduction: the legal framework

Haiti lacks any dedicated legislation that provides a formal, legal backing for the institutional structure, obligations and responsibilities of the national system for DRM (in Haiti, the national system is referred to as le Système national de gestion des risques et des désastres, and will hereinafter be referred to as the **SNGRD**). The State of Emergency law passed in September 2008 provided that, on publication, the government should submit the National Risk and Disaster Management Plan (Plan National de gestion des risques et des désastres (**PNGRD**)) and the National Emergency Response Plan (Plan national de réponse aux urgences (**PNRU**)) to the Parliament within three months.¹⁸ However this did not happen; the law was repealed by a new State of Emergency law in 2010 (just after the earthquake) and although this mentioned both the PNGRD as well as the National Intervention Plan (Plan national d'intervention),¹⁹ no further mention was made of ensuring a legal foundation for the SNGRD. The lack of a legal framework for DRM and DRR remains a concern to this day: the PNGRD and PNRU, although adopted in 2001, are not legally binding and, strictly speaking, can only be considered as guidelines for the country's DRM structure.

Be that as it may, although not adopted officially both plans are used in practice, and the principal technical, strategic and coordination bodies under them are in place. The only other law that refers specifically to DRM is a decree of 17 May 1990 that sets out the organisation and operation of the Ministry of the Interior:²⁰ the relevant provisions are brief, and simply emphasise the essential role that the MICT must play in the coordination of disaster management, notably to facilitate assistance to affected populations and the enforcement of all laws relating to civil protection.²¹

Both the PNGRD and the PNRU were developed prior to the international community's adoption of the Hyogo Framework for Action. Therefore they do not adopt the term "disaster risk reduction" in their text or apply it as defined by UNISDR or proposed by the Hyogo Framework. Instead both refer to the more general term 'risk management' (gestion du risque) to refer to activities used to minimize the harmful effects of disaster on communities. Risk management is differentiated from disaster management (gestion du désastre), which refers to

¹⁸ Article 14, State of Emergency Law of September 2008,

¹⁹ Articles 3 and 7(1), Law Amending the State of Emergency Law of September 2008

²⁰ Decree of 17 May 1990 setting the rules to define the organisation and functions of the Ministry of the Interior

²¹ Article 2(c), Ibid



the management and organisation of resources and responsibilities for dealing with all aspects of disasters.²²

Current institutional structure

The Haitian Red Cross (founded 29 May 1932) was the first officially recognised humanitarian institution in Haiti, established with the aim of providing assistance to members of the population affected by disasters. An ad-hoc government committee was created to support the Haitian Red Cross, and it was only 50 years later that the Haitian government established a permanent structure responsible for preparation and response for disasters, the Pre-Disaster and Relief Organisation (Organisation pré-désastre et de secours)²³. To better address the government's response to disasters as well as the reduction and management of disaster risk, the government established the Directorate of Civil Protection in 1997, responsible for the coordination of all response activities and the promotion of risk management.²⁴

Currently, the highest level of institutional responsibility for DRR and DRM rests with the Ministry of the Interior and Regional and Local Development (Ministère de l'intérieur et des collectivités territoriales (**MICT**)). A decree on environmental management in 2006 established this under law, obliging the State to prepare and implement plans for prevention and response to environmental disasters and stipulating that the SNGRD is under the control of MICT.²⁵ The Directorate of Civil Protection (**DPC**) remains in control of the coordination of disaster response as well as risk and disaster management in general. Under the PNGRD several key bodies were created that remain in effect (and are described in more detail below). The National Committee for Risk and Disaster Management is the highest decision-making body in the SNGRD and consists of government ministers and the president of the Haitian Red Cross; they are tasked with defining policy, guiding, coordinating and evaluating all programmes, and promoting regional integration on the issue of DRM. A Permanent Secretariat for Risk and Disaster Management is responsible for technical coordination and includes representatives from most ministries. Two other bodies theoretically feed into the Permanent Secretariat: the Civil Society Consultative Committee (Comité consultatif de la société civile), and the International Cooperation Support Group (Groupe d'appui à la coopération internationale). The former no longer exists, and has been replaced by the Alliance for Risk Management and Business Continuity (Alliance pour la gestion des risques et la continuité des activités commerciales), which functions as an information-sharing platform rather than a decision-making body, but only for the private sector. The latter consists of representatives from NGOs, donors and international organisations operating in Haiti, and is only truly operational in times of emergency, when its meetings are organised by UNDP and UN-OCHA in order to share information and status updates and to mobilise international assistance.

²² See Annex 2 (Glossary), PNRU, December 2001

²³ DPC, SNGRD Historique, <http://protectioncivilehaiti.net/index.php/sngrd/historique>, accessed 27 October 2014

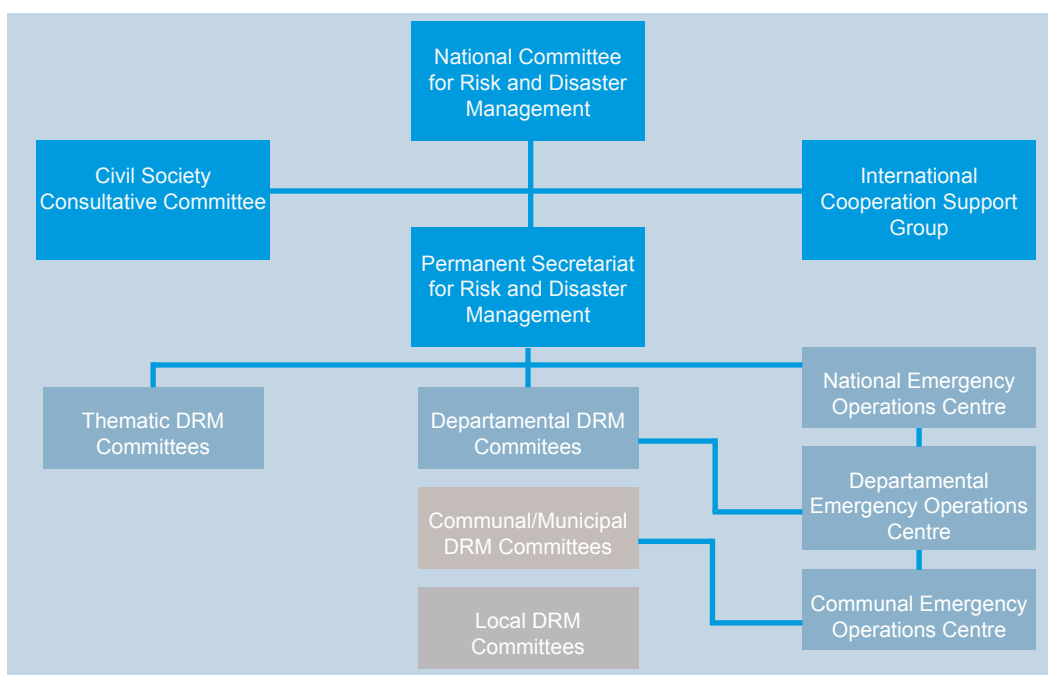
²⁴ Law of 21 September 1983 regarding the creation of the Pre-Disaster and Relief Organisation

²⁵ Article 148, Decree on Environmental Management, 2006

Underneath the Permanent Secretariat, a network of thematic (inter-institutional) committees should exist;²⁶ however only two such committees are currently operational: Education and Public Awareness, and Temporary Shelter Management.²⁷ The committee for early warnings and risk mapping should have been reactivated by 2014,²⁸ although this had not taken place by the time that the research for this report was undertaken. Overall the system of thematic committees suffers from a lack of oversight and organisation; notably, the role of supervising and monitoring the system has not been assigned. Under the PNGRD, government ministries and other institutions are also required to prepare risk and disaster management plans (specific to their sector) and establish their own committees; very few have yet been established, although several departments have reported that they are actively working on the terms of reference for their committees.

At sub-national level, the key institutional structures established for DRM are the departmental, communal and local risk and disaster management committees. All ten departments have active committees; as of 2013, at communal (municipal) level, 130 committees are in place out of a total of 144 municipal administrations; at local (communal section) level, 176 committees have been installed out of a total of 575 communal sections. The efficacy of committees varies greatly throughout the country. Membership of the committees is voluntary. At departmental level members are drawn from decentralised line ministries, community organisations and other civil society entities. Far fewer government agencies and institutions are represented at communal level; generally the police and the Ministries of Health and Education have at least some presence but capacity is often low.

Figure 1: current institutional structure for DRM in Haiti²⁹



²⁶ Section 4.4, PNGRD, February 2001

²⁷ Section 4.3, MICT, DPC, Analyse des capacités de préparation et réponse du Système National de Gestion des Risques et Désastres, December 2013

²⁸ Ibid

²⁹ Source: Figure 10, Ibid



National risk and disaster management plan

The National risk and disaster management plan (PNGRD) was developed in 2001 by the Haitian government in cooperation with the international community, and it establishes the National Response System and defines the roles, responsibilities and framework for coordination among the main bodies making up the system.³⁰ The PNGRD's aim is to create a "participatory system, with responsibilities shared between the government, local authorities, civil society and the general population,"³¹ and is notable for its ambitious language (at least in its introductory sections) regarding the reality of disasters facing the Haitian population and the need to extend an outreach program and the means for implementation of the PNGRD to the smallest administrative levels. The PNGRD also notes that the system faces institutional and political instability, for example in its lack of coordination mechanisms, and notes the lack of mainstreaming of risk management in areas such as construction codes, planning policy and environmental analysis.³² Although Haiti is making good progress in addressing these issues, the fact remains that many, if not all, of these issues remain significant challenges. These will be explored in later sections of this report.

The PNGRD has two general objectives: firstly, to address the causes and factors that generate risks to reduce the possibility of disasters, and secondly to reinforce the capacity to respond to needs at all levels (central, departmental, communal and local).³³ To these ends, the PNGRD focuses largely on establishing a robust and detailed organisational system, with roles and responsibilities clearly listed and allocated. At the apex of the organisational structure sits the National Committee for Risk and Disaster Management (CNGRD), responsible for directing, coordinating and evaluating the implementation of all the PNGRD's activities.³⁴ Its membership brings together top-level state officials and civil society representatives. Its official members are nine ministers and the president of the Haitian Red Cross (although in practice, ministers will generally send senior representatives to meetings unless the issues are of sufficient national importance; as a general rule, if an emergency is important for enough for the Prime minister or even President of the Republic to chair a meeting, then the sectoral ministers will be in attendance).³⁵ The CNGRD is chaired by MICT, with the Director General of the DPC acting as executive secretary. The CNGRD's key responsibilities are divided between three thematic areas: pre-disasters, during-disasters, and post-disasters. As well as the more general requirements to develop and guide policy, some selected responsibilities of the CNGRD, useful for highlighting the elements of DRR in its role, are as follows:³⁶

³⁰ Section 4.1, PNGRD, February 2001

³¹ Foreword, Ibid

³² Section 1.1, Ibid

³³ Section 2.1, Ibid

³⁴ Section 4.1, Ibid

³⁵ From the following Ministries: Interior and Regional and Local Development; Health and Population; Public Works, Transport and Communication; Agriculture, Natural Resources and Development; Environment; Planning and External Cooperation; Social Affairs; Justice and Public Security; and Education, Youth and Sports.

³⁶ Section 4.1 (a) to (c), PNGRD, February 2001

Pre-disasters:

- Coordinate scientific and technical research, and (from the results of this research) promote the establishment of a normative framework for the prevention and mitigation of disasters.
- Promote normative reform necessary for risk and disaster management.
- Create a civil society advisory committee, composed of non-governmental, international and national organisations, private companies, etc.

During-disasters:

- Decision-making on conduct of emergency operations (in the event that the scale or nature of the disaster exceeds established plans) and supervision of actions of other implementing bodies.
- Analysing scope of damage and reporting to the Prime minister and the President of the Republic.
- Announcing the commencement of the recovery phase.

Post-disasters:

- Establishing priority actions.
- Recommending restrictions on land use necessary to guarantee security of affected communities and areas.
- Authorising and supervising actions of other implementing bodies.

The list of responsibilities is long and ambitious and certainly reflects the appropriate areas of concentration for such an institution. However in reality the CNGRD is almost entirely reactive and only meets when a large emergency is threatening or under way, and at present it takes no part in DRR or DRM issues. Outside of these meetings the only contact the CNGRD has with DPC is when it is invited to the presentation of DPC's contingency plan for the cyclone season and the 'lessons learned' meeting after the cyclone season has ended.

A Permanent Secretariat for Risk and Disaster Management is established as a technical coordination body, chaired by the Director General of the MICT and consisting of representatives of the same ministries mentioned above (as well as the Haitian Red Cross) for the CNGRD.³⁷ Importantly in the context of DRR, the responsibilities of the Secretariat include analysing the existing legal framework for disaster risk management and submitting proposals to the National Council with a view to implementing the necessary reforms, and promoting the effective implementation of existing provisions by the relevant institutions. Although under the PNGRD the Permanent Secretariat is chaired by the Director General of MICT,³⁸ in practice it is the Director of DPC and a senior official of the Ministry of

³⁷ Section 4,2 Ibid

³⁸ Ibid



Social Affairs and Labour who fulfil this function for the weekly meetings. Whilst the Secretariat has an important strategic role in the coordination of programmes and SNGRD activities, it is also apparent that it lacks a clearly defined mandate and the necessary authority to enforce its decisions; and for these reasons its decisions do not necessarily reach policymakers.

Operational responsibility is delegated to the Emergency Operations Centre (Centre d'opérations d'urgence (COU)), which is not a permanent institution but is instead activated in the event of disasters (imminent or ongoing).³⁹ Again, the same nine ministries and the Haitian Red Cross are represented, as with the CNGRD and the Permanent Secretariat, and their main responsibilities are planning, inter-institutional coordination, the control of operations, communications and public information and evaluation. The PNGRD also assigns responsibility for preparing the declaration of a state of emergency by the President of the Republic to the COU. Feedback from interviewees suggested that the COU is an effective operational structure that has been activated for all major recent natural disasters (such as hurricanes Sandy, Isaac and Chantal, and flooding towards the end of 2014), although mention was also made of it as still requiring a further strengthening of its leadership and coordination.

Under the PNGRD each state institution (namely, each ministry) must establish an institutional or sectoral committee.⁴⁰ These committees are responsible for establishing an institutional plan for risk and disaster management, focusing on institutional/sectoral activities that are: (a) vulnerable, (b) contribute to vulnerability, and (c) reduce vulnerability or increase response capacity. A Civil Society Advisory Committee is also established, convened by the Permanent Secretariat.⁴¹ Its exact role and responsibilities are not clarified, although a representative of the Advisory Committee may participate in meetings of the Permanent Secretariat (whether or not the representative has any decision-making powers is not mentioned). The Permanent Secretariat is also required to form an international cooperation support group to bring together the different international and foreign organisations that play a role in risk management, both intergovernmental and non-governmental.⁴² Again, this group is entitled to send a representative to participate in the meetings of the Permanent Secretariat, with no mention as to their status. Although not mentioned in the PNGRD, the private sector has now also been included in the SNGRD, through the Alliance for Risk Management and Business Continuity,⁴³ but in practice this appears to be more of a conduit for information-sharing rather than an opportunity for the private sector to participate in the government's risk management strategy and operations.

The PNGRD also contains a specific section referring to the legal framework.⁴⁴ This states that development of this area will proceed on two fronts: firstly, development of new legal texts; secondly, application and adaptation of existing laws, rules and norms. The PNGRD recommends that pending the development

³⁹ Section 4.3, Ibid

⁴⁰ Section 4.4, Ibid

⁴¹ Section 4.6, Ibid

⁴² Section 4.7, Ibid

⁴³ MICT, DPC, Analyse des capacités de préparation et réponse du Système National de Gestion des Risques et Désastres, December 2013

⁴⁴ Section VIII, PNGRD, February 2001

of a comprehensive regulatory framework for risk and disaster management, that an inventory be made of all the legal texts directly or indirectly concerned with disaster-risk management, with a view to adapting and updating them.

The PNGRD also contains a good deal of information relating to the anticipated programmes for risk management at both central and local levels (and distinguishes these programmes from those aimed at disaster management, which focus on preparation, alert, response, rehabilitation and reconstruction). At central level it is stated that the programme should include “all activities designed to prevent or reduce the impact of disasters”, and should engage all relevant governmental and non-governmental actors.⁴⁵ The coordination of the programme falls to the Permanent Secretariat, and the programme is an important part of the National Plan for Sustainable Development, comprising thematic, institutional and sectorial axes as follows:

Thematic axes:

- Planning and construction norms
- Land use planning
- Private and public investments
- Vulnerability analysis and mapping
- Decentralisation
- Mainstreaming risks and disasters
- Natural resource management

Institutional and sectoral axes:

- Economic sector:
 - o agriculture; finance; industry; public works
- Social sector
 - o education; health; food security; and housing
- Environmental sector

That such broad and ambitious axes are scheduled for inclusion in a national-level risk management programme is commendable but the PNGRD suffers from a lack of even basic implementation mechanisms or proposals in this regard. There is no secondary documentation that sets out in more detail how these axes will be developed, and as confirmed in stakeholder interviews, the SNGRD suffers from a lack of coordination between ministries. As such, efforts to mainstream risk management into other areas have been largely unsuccessful, or where such projects exist these are often instigated by the relevant ministry with little to no coordination with MICT or the DPC. At best, the PNGRD can only be seen as setting out a brief ‘way forward’ and a major gap remains in terms of integrating DRR and risk management into other sectors.

⁴⁵ Section V, Ibid



The PNGRD's provisions regarding the programme for risk management at local level tells a similar story. It rightly acknowledges that the basis of the SNGRD is local capacity for risk and disaster management. The programme content is set out as follows:

1. **Structuring and strengthening of departmental, communal and local committees:**
 - a. Creation and training of departmental committees
 - b. Support for creation and training of communal committees
 - c. Support for creation and training of local committee
2. **Training and education:**
 - a. Training in risk and disaster management
 - b. Specific training: evacuation, first aid, etc
 - c. Training in control of operations
 - d. Formal education
3. **Development of maps of threats and risks**
4. **Development of plans of action and implementation**
5. **Preparation**
6. **Exercises**
7. **Early Warning Systems**
8. **Response⁴⁶**

Interestingly, the PNGRD states that local level activities are not included in the overall risk and disaster management programme; instead they will constitute a component of a 'specific programme'.⁴⁷ Interviews with both stakeholders and community focus groups revealed no knowledge of any such specific programme, and community members involved in disaster management noted that support for their efforts is haphazard at best. Whilst many of the actions set out above are ongoing, the approach has been piecemeal and heavily reliant on external donor funding. For example departmental and communal committees are all largely in place but not all local committees are established. Furthermore, their efficacy varies from department to department and commune to commune. Another example is the risk mapping process, which is not established in law or policy and risk maps are generally only created as part of donor-backed programmes (and are often not shared with DPC in any event).

One of the most important provisions of the PNGRD concerns the establishment of departmental, communal and local level DRM committees.⁴⁸ This is part of the

⁴⁶ Section VII, Ibid

⁴⁷ Ibid

⁴⁸ Section 4.5, Ibid

‘decentralised national design’ that the PNGRD seeks to achieve. The committees are required to be participatory in nature and contain representatives of local authorities and organisations, and each committee is responsible for establishing a plan of action regarding management of risks and disasters. The PNGRD sets out the responsibilities of the committees, which include:

- Developing, maintaining and disseminating the departmental, communal and local plans.
- Performing threat identification and vulnerability analysis.
- Establishing necessary actions to manage, as far as possible, the causes and factors of risks.
- Developing response plans.
- Developing early warning systems.

National emergency response plan

While the PNGRD establishes the various bodies forming the national system for DRM and their respective roles and obligations, the National Emergency Response Plan (PNRU) defines the Haitian government’s emergency response process, nationwide emergency response activities and the role and functions of government institutions involved in disaster response.⁴⁹ Due to its major focus on response to disasters, and the fact that it has also been well analysed in a recent IFRC publication that focuses specifically on laws relating to disaster-response in Haiti,⁵⁰ it will only be analysed for this report insofar as its content has relevance to DRR or the risk management framework more generally in Haiti.

One interesting point to note about the PNRU is that includes a relatively full definitions section,⁵¹ which the PNGRD does not. It is probable that these definitions were inserted into the document after its revision in 2009 (the PNGRD has never been revised). However the definitions do not include disaster risk reduction (in French, *reduction des risques de catastrophe*). Instead, elements of what is generally accepted as the definition of DRR are spread across a number of different terms, including:

- Capacity to cope with disasters
- Capacity for risk management
- Capacity development
- Risk management
- Disaster management

⁴⁹ Page 4, PNRU, December 2001

⁵⁰ IFRC, IDRL in Haiti, 2012

⁵¹ Annex 2, PNRU, December 2001



- Mitigation
- Vulnerability

The definition of the term risk management is relevant for the purposes of this report:

The systematic process for the realisation of administrative decisions, organisation, operational skills, capabilities and the implementation of policies and strategies to reduce the impact of natural hazards and environmental degradation of anthropogenic origin. This includes all forms of activity, including the application of the results of scientific research, observation and monitoring of natural hazards, and structural and non-structural measures to avoid (prevent) or to limit (mitigation and preparedness) the adverse effects of hazards.⁵²

This aligns broadly with the widely accepted UNISDR definition of the same.⁵³ It is important to note that the term DRR (or its French equivalents RRD (réduction des risques de désastres) or RRC (réduction des risques de catastrophe)) is not adopted, despite the 2009 amendments to the PNRU coming after Haiti took account of the recommendations of the Hyogo Framework for Action. Although the use of the term risk management has key similarities to the term DRR (insofar as the latter is defined by UNISDR) it does not align fully with the term as used. The exact reasons for using defined terms in this way are not clear but the terms themselves are not used in the PNRU or the PNGRD, nor are they referred to with any consistency in other secondary documentation.

The PNRU also refers specifically to a legal framework, which revolves around firstly, the existing organisational law (loi organique) of the Ministry of the Interior (MICT),⁵⁴ and secondly a planned law to create the national system of risk management, which the PNRU states is under formulation.⁵⁵ As noted above MICT's organisational law contains only high-level provisions regarding the SNGRD and no law has been passed to formally establish a more detailed structure of the SNGRD.

The PNRU also expands on the committee structures created at departmental, communal and local levels. It provides a little more detail on the composition of the committees, which should include local authorities (e.g. the mayor, CASEC, police, justices of the peace) as well as departmental, municipal and local organisations. It should be noted that there are no specific requirements to include representatives from vulnerable or disadvantaged groups (e.g. women, the disabled), nor are there any more general requirements to encourage community participation in committee affairs or decision-making. The PNRU states that the main obligations

⁵² Ibid

⁵³ United Nations Office for Disaster Risk Reduction (UNISDR), Terminology for Disaster Risk Reduction, May 2009

⁵⁴ Decree setting the rules for the organisation and operation of the Ministry of the Interior [Gazette reference not available], 17 May 1990

⁵⁵ Page 5, PNRU, December 2001

of the committees should be included in a risk management plan.⁵⁶ These include identification of resources, community relations, management of support and volunteers, and risk management activities with a view to reduction of impacts. However none of the PNRU, the PNGRD, or any other government-issued document sets out further detail regarding these risk management plans.

Proposed draft law on the establishment of the National System for Risk and Disaster Management

The current draft bill of law to provide a formal legal structure for Haiti's SNGRD (hereinafter referred to as the **draft law**) has existed in various forms for at least a decade. Interviewees pointed out that given the almost constant political instability in Haiti, and the frequent changes of ministers, directors, other civil servants and non-governmental organisation staff, there has never been a point at which sufficient political momentum has gathered behind the draft law to ensure its passage through the Parliament. For example, five different ministers have been assigned to MICT since 2010. It is worth noting that on average only 5 to 6 laws are passed per year in Haiti, and many laws are passed as 'decree laws' without recourse to the Parliament. Be that as it may, given the extensive risks Haiti faces from natural disasters, the lack of a legal foundation for the SNGRD, and the necessary stability this would provide to key bodies such as the DPC, remains a serious gap in the legal framework that should be rectified as soon as practical.

The latest version of the draft law dates to 2012, when it was reviewed and amended by the DPC together with its major partners, namely UNDP. The draft law will not be analysed in detail in this report for two reasons: firstly, there is a very low likelihood that the draft will be implemented in the near future and in its current form; interviewees confirmed that focus is instead shifting to a review of the PNGRD. Secondly, much of the structure set out in the draft law is actually in effect, albeit without a legal backing. The draft law defines the term 'risk and disaster management' as a three-stage process, with risk reduction forming part of the prevention or mitigation stage.⁵⁷ The structure established under the draft law is broadly the same as that under the PNGRD and PNRU, although importantly the law refers to the DPC as the 'General Directorate of Civil Protection',⁵⁸ rather than its current name, which is simply the Directorate of Civil Protection. Although a relatively small change (the addition of the adjective "general") in the text, this would be a huge change in practice as the DPC would be elevated to the status of a General Directorate attached to MICT, and would therefore have not only a legally fixed role in the SNGRD but also budgetary autonomy and more influence in decision-making at the ministerial level. At present it is a technical directorate and in theory it has no right to attend higher-level meetings (as the DPC director's rank is lower than that of a general director) and has little ability to influence decisions and policy.

⁵⁶ Section 1.7, Ibid

⁵⁷ Article 3(f), Proposed draft law on the establishment of the National System for Risk and Disaster Management, 2012

⁵⁸ Articles 18 to 20, Ibid



Community level implementation

As has been noted above, national policy documents such as the PNGRD rightly emphasise the importance of local capacity in DRM and establish broad ambitions for intervention, as well as providing an institutional structure for the SNGRD that extends down to the level of the communal section. However beyond this little detail is given and whilst the PNGRD is notable for seeking to include all relevant stakeholders in DRM, it lacks detail on how this could or should happen in practice. Although in practice there is quite a large amount of community participation in DRR/DRM and related activities, this is largely as part of development programmes initiated and funded by NGOs and international organisations, and the fact remains that much of the focus remains on disaster response than on true long-term risk reduction efforts. Although these programmes fall broadly within the strategic aims of Haiti's government to reduce risk from natural disasters,⁵⁹ there is no clearly defined legal or policy basis for them, which places their sustainability at risk.

A relatively recent positive development designed to ensure greater community participation in DRR matters is that of the community intervention teams (équipes d'intervention communautaires (EIC)). Designed partly as an intermediary between the 'formal' DPC structures (which end at the communal section level) and the communities themselves, the EICs are established through the technical and financial support of NGOs, but with DPC oversight and limited involvement. Their main activities focus on preparation activities at community level, awareness-raising and mobilising local resources behind DRM and DRR activities. The EIC members are elected to their posts by the local community, with a requirement that at least 40 per cent of members are women. Interviewees pointed out that this transparent selection process ensures representative members of the community are elected, as opposed to the members of the local and municipal DPC committees that are generally chosen by the mayor or CASEC. In cases where EICs are adequately supported by their 'founding' NGOs, and local authorities and DPC representatives are willing to cooperate with the structure, then they have achieved successful results, with communities taking greater ownership of local risk reduction and establishing early warning systems and locally-driven DRR programmes. Several of the community focus groups held for this report were with members of local EICs, and they provided extremely positive feedback on the structure in terms of how they have been able to bring disaster prevention, preparedness and response to the forefront of local awareness. Whilst these community members had been heavily involved in disaster preparation activities and received training in disaster response, knowledge of DRR as a concept was limited, although EIC members in Leogane, for example, were hoping to receive training from the Red Cross in the near future; the exact content of the training was not known, but Red Cross representatives confirmed that it would form part of wider DRR and livelihoods programming, focusing on developing contingency plans and pilot projects on flood-prevention and halting soil erosion.

⁵⁹ See, for example, Government of the Republic of Haiti, Plan Stratégique de Développement d'Haïti (Pays Émergent en 2030), Document de consultation publique, May 2012, and International Monetary Fund, Haiti: Poverty Reduction Strategy Paper, June 2014

The fact that EICs are not part of the formal DPC structure is holding back their development as a key tool for involving communities in DRR. Their links with the DRM committees at section and municipal level are only informal and heavily dependent on personal relationships, and because they are assisted by different organisations and NGOs (although different Red Cross National Societies have helped establish many of the EICs, other NGOs involved include Concern, Welthungerhilfe, and GVC) then there are no consistent rules governing their behaviour, nor has there been any consistent support and monitoring. Many EICs that were established several years ago no longer receive support or funding from the relevant NGOs and as such are either at best continuing to manage their affairs without technical and financial support, or at worst are no longer operational. Such are the inconsistencies within the system that the DPC has requested a moratorium on the establishment of new EICs until a full evaluation has been undertaken, which is currently under way. The issue is complicated by the existence of other voluntary community-based networks such as DPC's Brigadiers, whose role somewhat overlaps with that of the EICs.

Funding and reporting

Funding

While Haiti has specific funds for disaster response, no similar mechanisms exist for DRR activities. A national-level Emergency Fund was established by law as early as 1966,⁶⁰ although to date this fund is only used for emergency response activities. Any funds destined for preparation activities or longer-term DRM or DRR programmes come almost without exception from international organisations and donors, for example UNDP and the World Bank. The 1966 law provides that the Fund is financed by levying a tax on all state employees of 1% of the amount of their salary; for the fiscal year 2012-13 onwards this was also applied to private sector employees.⁶¹ Although the Government is often criticised for its levels of taxation relative to the benefit that citizens see from government services,⁶² this is an interesting and transparent (in terms of ensuring visibility of what one's tax contributions are funding) means to finance the Emergency Fund, and a similar mechanism could be considered for DRR funding. Under the 1966 law the Emergency Fund is not subject to the normal budgetary restrictions, meaning that monies can be carried over from one year to another. In some cases, during hurricane season portions of the Emergency Fund are pre-assigned to the departments and 50 municipalities to help 'kick-start' operations before other funds become available, however feedback suggests that lack of familiarity with procedures means that these funds can be difficult to access for some municipalities, and in other cases funds can be exhausted before hurricanes arrive⁶³ (use of the funds is technically restricted to the period of immediate response to hurricanes).

Although the Government's finance bill for 2013-14 states that one of the main objectives for MICT in the fiscal year 2013-14 is to put in place a system for risk

⁶⁰ Law of 16 September 1966 establishing an Emergency Fund, 1966 [Gazette reference unavailable]

⁶¹ Article 4, Finance Bill 2012-2013, [Loi de Finances de l'Exercice]

⁶² See, for example, AlterPresse, Haiti 2012/Economie: Beaucoup plus de taxes, mais pas plus d'avantages sociaux, <http://www.alterpresse.org/spip.php?article13875#.VLk6P8Ye2S0>, accessed 3 January 2015

⁶³ Section 4.4.2, MICT, DPC, Analyse des capacités de préparation et réponse du Système National de Gestion des Risques et Désastres, December 2013 capacités



mitigation and for the protection of vulnerable populations against natural disasters,⁶⁴ interviewees noted that there is little evidence of this being realised in practice. The breakdown for MICT's finances in this document does not mention the DPC, or any specific finance streams for DRR. However the finance bill for the fiscal year 2012-13 does include a budget line for MICT for a programme for prevention and management of natural disasters;⁶⁵ however this is assigned to the General Directorate of Internal Services rather than to the DPC. This highlights a major gap in Haiti's legal framework for DRR: the lack of financial autonomy for the DPC translates into a lack of financial stability, and in turn a lack of stability in terms of human resources, materials and equipment. It is therefore unsurprising that in this context it is almost impossible to access stable funding for longer-term DRR activities and programmes, or to plan effectively. In reality, the SNGRD, and the DPC with it, only has the financial capacity to deal with disaster response. The absence of a legal framework for the SNGRD and the failure to establish the DPC as a General Directorate as proposed under the draft law mean that the necessary resources for DRR cannot be allocated under the national budget.

Reporting

Although there are some general oversight obligations and reporting lines established under the PNGRD and the PNRU (which largely relate to reporting on emergency situations) there is no provision for official reporting of progress on DRR under Haitian law and policy. In practice, MICT, as the most senior institution in the SNGRD, reports to Parliament on its activities, finances and budgets, and the DPC's activities and budgets are included in this process. However according to interviewees this is not a clearly defined process, particularly regarding the exact format the reporting takes, and the level of analysis and evaluation MICT is subject to. Theoretically MICT should make available its monthly financial statements and annual budgets via its website, but this is not currently the case. Within the SNGRD there is a relatively regular system of reporting related to disaster preparation and response activities, but outside of this context little else happens. Several interviewees noted that the lack of a clear legal or procedural framework for reporting meant that it was both inconsistent and reactive rather than proactive. Even in the event that full reporting on activities is undertaken, this is generally due to the involvement of an external donor or partner, and their requirements to submit monthly reports to the department's technical coordinator.

The bottom line

Since its creation in 2001, the SNGRD was designed to decentralise capacity through the creation of DRM committees at departmental, municipal and local levels. Although not provided with a basis in legislation, the PNGRD and PNRU set out in broad strokes the framework of a comprehensive and participatory system. The PNGRD goes beyond the narrow historical focus on disaster response and attempts to address the causes and factors that generate risks in order to reduce the possibility of disasters. At national level, the Permanent Secretariat ensures that inter-ministerial coordination

⁶⁴ Section 1216, Finance Bill 2013-2014, [Loi de Finances de l'Exercice]

⁶⁵ Page 92, Finance Bill 2012-2013, [Loi de Finances de l'Exercice]

is prioritised and the DPC is able to bring together a diverse range of stakeholders for vital activities such as planning for the annual hurricane season. This is all the more impressive for the fact that the DPC has existed without a proper legal mandate since its inception, and due to the nature of politics in Haiti has had to work with new ministers of MICT, and their different staff and agendas, on an almost annual basis.

However, the national system for DRM has reached a stage where it needs a firmer legal and institutional structure behind it in order to move beyond its current operational focus on preparation and response for disasters, and to spearhead the integration of DRR not only into the activities of the national system but also as a cross-cutting issue in other sectors. Currently the DPC is reliant on the Ministry of the Interior for decision-making and funding, and without legal certainty as to its structure long-term planning is difficult. Furthermore, as the national system is essentially based on policy rather than law, the decisions at national and local levels of its relevant bodies can lack authority. The Haitian state in general is also chronically underfunded and depends on a number of bilateral and multilateral financial arrangements, with more than 50 per cent of the government budget coming from international aid. This is keenly felt in the national system for DRM and the DPC in particular, which would not have been able to maintain its operations without funding from its international partners, notably UNDP. This state of affairs is ultimately unsustainable and as international partners increasingly seek to reduce their financial commitments, difficult questions are raised over what will happen in the long-term.

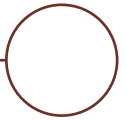
3.2 Responsibility, accountability and liability for natural disaster-risk reduction

Legal framework

Whilst the policy framework outlined above sets out clear roles and responsibilities for DRM in Haiti, the same cannot be said for issues of accountability and liability. There is no specific legal instrument regarding government responsibility and liability linked to natural disasters, nor are there any specific provisions of this sort in any current law or policy. The PNGRD contains a brief section concerning monitoring, evaluation and control, requiring the establishment of a standing committee,⁶⁶ although its main duty is to analyse the institutional and sectoral plans and it is unclear whether it has any role in monitoring performance or decision-making. In practice this does not appear to be the case, and the standing committee is not currently functional. Likewise, no legal provisions exist that deal specifically with affected persons' rights to compensation for damage from natural disasters. However the Haitian constitution provides that government officials and employees are directly liable under civil and administrative law for acts carried out in violation of rights, and in such cases, civil liability extends to the State as well.⁶⁷ Although no evidence could be found for any tests of this provision

⁶⁶ Section IX, PNGRD, February 2001

⁶⁷ Article 27-1, Haiti Constitution, 1987 (as amended in 2012)



under Haitian case law, it presents one possible route to enforce accountability and liability under law in the event that citizens' rights are violated, for example the right to life, health and respect of the human person,⁶⁸ or the right to decent housing, education, food and social security.⁶⁹

The civil code of Haiti contains several relevant provisions in terms of responsibility and liability in the context of natural disasters. Article 1168 states that a person is responsible for any damage he has caused, not only by his acts but also caused by his negligence or recklessness.⁷⁰ Commentary to a 1986 version of the civil code suggests that a government official acting in good faith in accordance with the law will not incur any liability unless malice or bad faith can be shown.⁷¹ It should be noted that under the Constitution, no member of the Parliament can be subject to civil imprisonment during his or her term of office,⁷² and furthermore no member may (during his or her term) be arrested under ordinary law for a crime, minor offence or petty violation, except by authorisation of the chamber of which he or she is a member.⁷³ Taking a theoretical example, in the event that a member of the Parliament acted negligently or recklessly in the discharge of their duties, resulting in damage or losses to citizens (for example, by failing to act on an early warning), then the member would effectively be immune from prosecution unless the relevant chamber ruled to remove their immunity. It is, by all accounts, extremely rare for this to happen in practice, and several commentators have noted how parliamentary seats are sought in order to gain parliamentary immunity (from alleged crimes).⁷⁴ No such immunity appears to exist for government employees and officials, although as noted by most interviewees, in reality there are few legal or practical means of encouraging and enforcing responsibility and accountability on their part.

Private liability

Although no interviewees were aware of the liability of private individuals regarding damage caused to others from their property during natural disasters, the civil code provides that the owner of a building is liable for damage caused by its ruin, provided that this is due to lack of maintenance or defects in construction.⁷⁵ Although this appears to exclude damage caused by force majeure-type events such as earthquakes, it is arguable that if defective construction can be proven then even in the event of a natural disaster, an owner could be held liable to damage caused to others. No interviewees were aware of, or were able to comment on, instances where this has occurred.

Disaster-risk insurance

There are no systems of compulsory insurance against the effects of natural disasters, and in general insurance is left to the discretion of the individual.

⁶⁸ Article 19, *Ibid*

⁶⁹ Article 22, *Ibid*

⁷⁰ Article 1168, Civil Code of Haiti, 1825

⁷¹ Article 1168 (comment 12), Civil Code of Haiti, 1825 (annotated version by Abel-Nicolas Leger, 2nd edition), 1986

⁷² Article 114-2, Constitution of Haiti, 1987 (as amended in 2012)

⁷³ Article 115, Constitution of Haiti, 1987 (as amended in 2012)

⁷⁴ Freedom House, Freedom in the world – Haiti (2012), <https://freedomhouse.org/report/freedom-world/2012/haiti#.VLUL3sYeORk>, accessed 14 December 2014

⁷⁵ Article 1172, Civil Code of Haiti, 1825

It is highly unlikely that the Haitian Government would be able to back any compulsory insurance scheme without donor support, given that it has its own problems meeting national disaster insurance premiums: at the end of 2014 the Caribbean Development Bank paid Haiti's \$2.57 million insurance premium to the Caribbean Catastrophe Risk Insurance Facility⁷⁶ for the 12-month period to 31 May 2015 due to "current social, economic and fiscal challenges."⁷⁷ The Caribbean Development Bank had paid the same amount in 2013. However the proliferation of development actors and activity in Haiti has resulted in several donor-led insurance projects of note. The World Bank notes that Haiti benefits from 'world champions of catastrophe insurance at both the macro and micro-level: the Caribbean Catastrophe Risk Insurance Facility, the Micro-insurance Catastrophe Risk Organization, and the Alternative Insurance Company.'⁷⁸

Taking the Micro-insurance Catastrophe Risk Organization as an example, this initiative began in 2011 via a partnership between, among others, Mercy Corps, local microfinance institution Fonkoze and reinsurer Swiss Re, since which it has made more than 35,000 payments totalling more than \$8.8 million to Haitian families and micro-business owners.⁷⁹ Notably, the insurance scheme focuses on rural female entrepreneurs. In the agricultural sector, which is profoundly affected by seasonal flooding and droughts, Développement international Desjardins is currently partnering with the Canadian Ministry of Foreign Affairs, Trade and Development (as finance partner) and the Haitian Ministry of Agriculture, Natural Resources and Rural Development (as implementation partner) to set up an agricultural finance and insurance system in Haiti to structure the financial services offered to agro-entrepreneurs, with the ultimate goal of rebuilding the rural and agricultural economy, creating jobs and improving food security in Haiti.⁸⁰ As noted by the World Bank, social protection (a key priority for the Government) could be further strengthened with market-mediated mechanisms, for example cash transfers that increase in amount or outreach based on specific populations' needs approximated by disaster loss indices.⁸¹

The bottom line

No legal mechanisms exist to ensure the responsibility and accountability of individuals or entities for, for example, failing to act in accordance with their mandates, failing to warn of disasters, or damage to property. Although some general provisions exist in the Constitution and Civil Code, these are not used and doubts remain over their applicability to DRR and disaster management in general.

⁷⁶ The Caribbean Catastrophe Risk Insurance Facility is owned and operated by the region's governments. It is designed to limit the financial impact of catastrophic hurricanes and earthquakes by quickly providing short-term liquidity when a policy is triggered

⁷⁷ Fox News Latino, Caribbean Development Bank gives Haiti \$2.5 mn for disaster insurance, <http://latino.foxnews.com/latino/politics/2014/10/24/caribbean-development-bank-gives-haiti-25-mn-for-disaster-insurance/>, accessed 14 December 2014

⁷⁸ World Bank, Political Champions – Partnership for stimulating insurance penetration in lower income countries, Initial Market Surveys Summary Note, 2013

⁷⁹ Mercy Corps, Micro-insurance Catastrophe Risk Organisation, January 2013

⁸⁰ Développement international Desjardins, Agricultural financing and insurance systems in Haiti (SYFAAH), <http://www.did.qc.ca/en/our-projects/agricultural-financing-and-insurance-systems-haiti-26/>, accessed 14 December 2014

⁸¹ World Bank, Political Champions – Partnership for stimulating insurance penetration in lower income countries, Initial Market Surveys Summary Note, 2013



3.3 Early warning systems and risk mapping

Early warning systems

There is no legal requirement to establish an early warning system (EWS) in Haiti, however the general requirement for an EWS does appear in the policy framework. Haiti currently has a national EWS in place for hurricanes, a nascent system of early warnings for tsunamis, and a relatively advanced (but geographically limited) warning system for flooding. However the lack of an overall legal foundation and guiding rules and principles, together with confused institutional responsibilities and dependence on international donor support, means that the system suffers from a lack of coordination and consistency. In the PNGRD, the Permanent Secretariat's responsibilities include convening the COU 'according to specific procedures established in the EWS and the Protocols of the COU'.⁸² This indicates that the EWS is established as a unified system with its own set of procedures, which is not currently the case. The project consultant was not able to get a copy of the COU protocols but based on interviewee feedback they do not contain any detailed provisions regarding Haiti's EWS. In the PNRU the EWS is not actually mentioned, although brief references are made to an 'alert-alarm system',⁸³ as part of the general system of emergency management as well as one of the responsibilities of the DPC.

Interviews with stakeholders involved in the DRM system in Haiti, as well as reports from secondary sources, made it clear that a major gap in Haiti's DRM system is the lack of coordination and direction for the national EWS. However, taking the various EWS established, as individual units there are many positive elements in practice. For hurricanes, the early warning system is dependent on information from the National Meteorological Centre, who issue hurricane warnings based on their ongoing monitoring of weather conditions. As with almost all other state institutions in Haiti, the National Meteorological Centre suffers from a lack of funding and capacity. Interviews revealed that as at the end of 2014, Haiti's National Office of Civil Aviation is paying for the salaries of the Centre's meteorologists in order to ensure that the necessary amount of meteorological information is provided for the airport in Port-au-Prince. Without this funding the Centre would essentially be unable to operate.

In the event that the National Meteorological Centre issues a warning, this must first be confirmed and validated by the DPC in consultation with the Permanent Secretariat before a public warning can be issued; as ultimate responsibility for a national warning rests with the President, there is an inherent risk of losing vital time in issuing a warning if the office of the President must make a decision. Warnings are then issued via the SNGRD, the COUs at national, departmental and municipal level, relevant NGO partners and via the media (radio and if thought necessary, television). Warnings are ranked from yellow (low intensity impact), through orange (moderate to severe impact, e.g. from heavy rain and gales) to red (violent to extreme impact), and benefit from annual sensibilisation campaigns via the media. Notwithstanding early warning messages via the media, it is up to

⁸² Section 4.2, PNGRD, February 2001

⁸³ See for example page 3, PNRU, December 2001: the original French term used is système d'alerte-alarne, as opposed to système d'alerte précoce

the department and municipal administrations to warn their communities under their generic mandate of civil protection under law, although in practice there exists some confusion between the role of municipal administrations vis-à-vis the communal sections in terms of who has the authority to warn and when.

Although filling gaps in state provision for EWS, international donor and NGO-led hurricane EWS are currently a double-edged sword: whilst they provide useful and positive tools to local communities, they have been criticised on two major fronts: firstly, they are often not properly integrated with the national EWS described above (although they will generally use the same data from the National Meteorological Centre), and secondly they are simple ‘top-down’ models with little to no input for local communities. Where NGO presence is strong then communities will often receive appropriate training on how to sound alarms once warning messages are received, and how to respond appropriately to alarms. Responses will often dovetail with local plans. For example, in municipalities in the South-East department the Netherlands and Haitian Red Cross activities also involve the development of local contingency plans, assigning local shelter sites and where necessary upgrading these shelters (often local schools) to make them resistant to natural hazards such as hurricanes. However in regions with little to no outside assistance then community organisations are often weaker with little to no planning for emergency situations: for example, even after receiving early warnings of impending hurricanes many people refuse to evacuate in order to protect their personal property.

Haiti’s flooding EWS is fully funded by the Inter-American Development Bank (the total funding is approximately \$6 million), working in partnership with the Ministry of Agriculture, Natural Resources and Rural Development (*Ministère de l’Agriculture des Ressources Naturelles et du Développement Rural* (**MARNDR**)). Financial and technical considerations meant that the flooding EWS could not cover the entire country, so 13 watersheds (out of a total of 30 in the country), and 35 municipalities spread throughout these watersheds, were selected as priority areas. The system is highly technical in nature, involving the installation of meteorological stations on land and water-measuring stations in rivers, together with sirens. If water levels reach certain thresholds this triggers an alert, which is sent via satellite to the operations centre and notified to users, who are then able to activate the warning sirens via the online platform. The issue of responsibility around activation of the alarms is symptomatic of wider issues of coordination and control in Haiti’s SNGRD. Interviews revealed that although the DPC is assigned with the authority to access the online platform and issue alerts, its officials rarely log in and the MARNDR staff do this instead, and then must spend additional time contacting the DPC for authorisation. Furthermore, senators and other senior government officials have occasionally expressed displeasure that they were not consulted for authorisation. The lack of a clear legal framework and, perhaps more importantly, a clear policy, plan or protocol establishing operational and decision-making authority through clear roles and responsibilities, is causing delays in decision-making and reducing the efficacy of the EWS.

The flood EWS is interesting for taking such a technical approach to early warning, but a number of interviewees pointed out that this approach is almost ‘too technical’ for Haiti’s current context and needs. Whilst communities were consulted about



the EWS design, for example in delineating high-risk areas, their involvement is relatively minimal and they are simply considered as end-recipients of warnings rather than possible additional sources of information. Communities often have their own customary forms of EWS but these have not been integrated into the flood EWS (or even considered). Although community training and sensibilisation has taken place, this has not been particularly widespread and other researchers' visits to local communities have revealed a general lack of awareness of the system among both the community members and the local authorities.⁸⁴ This lack of integration has been partly blamed for the high levels of theft and vandalism of measuring equipment: solar panels (used to power most of the equipment) are the major targets due to their high resale value. As a result there are always areas where the equipment is not functioning. However of much more immediate concern for the flooding EWS is future funding: the Inter-American Development Bank programme ends in 2015 with no plans for further financing. Unless the Bank or another donor steps in then the system will cease to function; as it is, all technical staff engaged in the system are consultants rather than government employees whose contracts have either ended or will end shortly. Although at the time of the research visit to Haiti in November 2014 a handover was taking place with government employees, these employees were already overstretched in their roles, and overall the MARNDR lacks the technical capacity to manage the system as effectively as the specialist consultants, and in any event without external financing it will be impossible to maintain existing equipment and pay for satellite transmissions and the operations centre (the system costs approximately \$150,000 per year). For all its benefits, the flooding EWS is sadly unsustainable without the backing of external donors, and demonstrates the need to develop more cost-effective (i.e. less expensive) solutions where local communities and authorities have more 'ownership' in order to achieve sustainability.

Departmental, municipal and community-level EWS

The PNGRD also requires departmental, municipal and local committees to establish their own EWS,⁸⁵ and EWS are included in the lists of programme activities for the management of risks and disasters at both central and local levels.⁸⁶ There are no local laws, regulations or policies that require or establish EWS. However feedback from interviews and community focus groups indicated that although the committee structures at departmental, municipal and local levels are linked in to the national-level EWS, in terms of them being recipients and conduits for information, there are no formal EWS at these levels other than those backed by NGOs and international donors (notably the EIC structures described in section 3.1.6 above), as mentioned above. Although this meant that the communities interviewed had a good understanding of EWS, and indeed many community members interviewed were in some way involved in local DRM structures, this reflected the fact that there were significant Red Cross activities in the area. Outside of the areas of NGO and Red Cross programme activities, community awareness of EWS is relatively low although penetration of early warning information via mass media (namely the radio) appears to be a successful practice.

⁸⁴ Section 6.4.3, MICT, DPC, Analyse des capacités de preparation et réponse du Système National de Gestion des Risques et Désastres, December 2013

⁸⁵ Section IV(B)(4), Ibid

⁸⁶ Sections VI and VII, Ibid

There is no recognition of traditional or community-based EWS practices in Haitian law or policy, even though community interviews revealed their relatively widespread existence and use. Many interviewees noted that customary and traditional practices are often a useful indicator of approaching hazards, but there was no real way of integrating these with the formal systems. Examples were given of local weather observations being fed back from local farmers to the municipal DRM committee, but community members expressed frustration that once this information is provided nothing seems to happen: as a result they often prefer to simply share the information with their families and local community. It also became clear that communities have already developed their own warning systems: for example, in the South-East department some remote communities used a network of drums to sound warnings, whilst others used church bells, and others relied on more modern forms of communication such as mobile telephones. There is no evidence to suggest that these systems are integrated into the more formal EWS networks, despite the benefits they can offer.

Risk mapping

A wide disparity exists between Haitian law and practice in terms of risk mapping. The only mention of risk maps in current Haitian legislation can be found in the Environmental Management Decree of 2006, which states that ‘areas of environmental risk (climatic, seismic or hydrological) will be identified, mapped and made the object of public information programmes under the Ministry of Environment.’⁸⁷ Although useful that a mapping process is required under law, in practice the Ministry of Environment is not currently overseeing any consistent programme of risk mapping, and the law fails to take into account the need to coordinate such a process with other stakeholders such as the DPC and MARNDR. Furthermore no secondary guidance or documentation exists on important aspects such as risk mapping methodology or time frames. Risk maps are not mentioned in any other legislation or under the major policy documents governing the SNGRD, the PNGRD and the PNRU, but in practice a large number of risk maps have been produced at many levels. However there is no overall coordination of the process or any reliable way to ensure that data gathered is shared with the Government and other actors and used effectively. The DPC oversees an annual process of contingency planning for the hurricane season that involves mapping of risks and the identification of vulnerable communities and areas, and the DPC also possesses a baseline of risk and vulnerability information for the country that contributes to decision-making. However in the absence of a strong legal or policy framework and clear institutional direction, the result is that Haiti has not yet moved to a truly integrated multi-hazard risk mapping approach.

At national level, risk-mapping activities are integrated into the annual National Contingency Plan for the hurricane season. The Plan’s fundamental objective is for the DPC and its international partners to organise the inventory and pre-positioning of resources to allow the CNGRD to provide a quick and effective response to populations at risk.⁸⁸ Each plan is ‘commenced’ at the annual review workshop for the previous year’s hurricane season, bringing together government, international and private sector actors in a collaborative environment where work

⁸⁷ Article 149, Decree on Environmental Management, 2006

⁸⁸ Section 8, MICT, DPC, Saison Cyclonique 2013 - Plan de Contingence National, June 2013



focuses on five main themes: general coordination, evacuation and temporary shelter, communications, roles for specific sectors, and logistics. Interviewees were unanimous in their praise for the system, as it works well and has allowed Haiti to effectively prepare for the inevitable impact of hurricanes and floods, and ensuring a good level of coordination between state and non-state actors and that a minimum level of resources are in place.

The National Contingency Plan is a detailed analysis not only of vulnerable zones in each department but also of levels of institutional capacity, evaluations of needs, strengths and weaknesses of the DPC, and provisional budgets. The annexes to the 2013 Plan, for example, lists numbers of communes at risk from flooding per department, as well as providing contact details for all SNGRD members in each department, and other tools including information on rapid evaluation teams and availability of vehicles from the Haitian Red Cross.⁸⁹ These documents are detailed and an extremely useful planning and organisational tool for the response activities necessary during the hurricane season; however for that reason they focus exclusively on shorter term needs in the context of a limited set of hydro-meteorological hazards (i.e. flooding, landslides), rather than taking a fully ‘multi-hazard’ approach. They are also almost totally ‘response-based’ and are not truly integrated with any DRR programmes or activities, although feedback from interviewees suggests that the information on hazards and vulnerabilities has at least helped partners to decide where to site DRR-related programmes. The process has also been criticised for a lack of counterpart contingency planning in other sectors, meaning that in operational terms responsibility is often unclear and left to ad-hoc decision-making. Furthermore the contingency planning process is left isolated from national-level planning activities in general: the DPC has almost no interaction with the Ministry for Planning and External Cooperation (MPCE) despite the clear utility of risk mapping in terms of national-level policy development and planning.

In 2012 a project to develop a national contingency plan for earthquakes was commenced, although the status of this plan remains unclear. Several multi-risk assessments for Haiti have been undertaken, for example by MARNDR together with FEWSNET (Famine early warning systems network) in 2009 and by Oxfam in 2001,⁹⁰ and their results integrated into the DPC’s planning at national level, however there are no regularly updated multi-hazard mapping activities that properly integrate communities into their research framework.

At the departmental level, each department’s DRM committee is responsible for producing an annual contingency plan for the hurricane season, which naturally feeds into the national-level plan mentioned above. Although following the same structure as the national plan, each departmental plan is able to provide much more detail on the particular needs, risks, and vulnerabilities of the department as well as provide useful information on pre-positioned stock, shelter sites and so on. Interviews revealed that the quality and content of the departmental contingency plans varies widely: although all departments have contingency plans in place, this is only a very recent development and as such

⁸⁹ MICT, DPC, Saison Cyclonique 2013 – Annexes du Plan de Contingence National, June 2013

⁹⁰ MARNDR and FEWSNET, HAÏTI: Cartographie de vulnérabilité multirisque Juillet/Août 2009, 2009, and Oxfam, Cartes et étude de risques, de la vulnérabilité et des capacités de réponse en Haïti, 2001

some departments lack detailed information on needs and operational issues. According to government interviewees, contingency plans should theoretically be in place for all municipal-level DRM committees but this is not currently the case, and the DPC is struggling to build the necessary local capacity and momentum to establish municipal contingency-planning as an annual process that would feed upwards into the departmental and national plans. As at the end of 2014, the DPC are currently in discussions with the World Bank regarding financial and technical support for establishing such a system. It also became clear from interviews that the integration of communities and community-level information into the contingency plans is inconsistent. There appears to be no established methodology for assessments of community needs, nor are there any established mechanisms for ensuring that communities are able to feed into the risk mapping process. Although interviewees did emphasise that communities were consulted, no one was able to provide details on how this actually worked and what information was gathered.

The situation is complicated slightly by the numerous mapping exercises undertaken by intergovernmental organisations and NGOs (both national and international), as well as foreign government development organisations as part of their DRM and DRR programmes. Sometimes, as in the case of the national flooding EWS, these processes are undertaken in collaboration with the government. Positive practices also exist that involves new and innovative technology, and can provide extremely useful information for communities as well as DPC and its partners. For example, in 2013 UN-OCHA partnered with CartONG and France's OpenStreetMap community to provide unmanned aerial vehicles (or 'drones') to gather mapping data to feed into community planning and disaster risk reduction efforts.⁹¹ However, more often than not, local-level risk maps will be created with only nominal involvement of the local authorities and SNGRD representatives, if at all; a huge amount of information is being created but it is not then being integrated into the state's own systems. Officials at DPC also confirmed that many risk maps produced by NGOs are lacking important intermediate information that would enable them to be used in the planning process.

The bottom line

Haiti has a working national EWS in place for hurricanes as well as a flooding EWS that is technical in nature and covers the highest risk areas in the country. An emerging system of reception and dissemination of alerts for tsunamis is also evident. On the whole the DPC has overseen the development of a widespread and effective system of warnings and alerts that are disseminated via the local DPC structures and the mass media, and has worked together with international partners to put in place effective EWS in many communities.

However, efforts to create a national multi-hazard EWS and adequately map risks suffer due to a lack of coordination, which can partly be explained by the lack of a legal framework for these important systems. The benefits from the number of different EWS in place must be balanced against the fact that

⁹¹ irevolution.net, Using UAVs for Community Mapping and DRR in Haiti, <http://irevolution.net/2014/07/09/uavs-for-disaster-risk-reduction-haiti/>, accessed 12 January 2015



they are fragmented, under the responsibility of different institutions at different levels, and as with the flooding EWS, are ultimately unsustainable without external funding. There is also no clear legal, policy or institutional mechanism to ensure that risk mapping links in to the EWS.

3.4 Regulation of the built environment

Building codes

Lack of building code provision and enforcement in Haiti has been noted as one of the major reasons why the earthquake of 2010 had such a devastating impact compared to similarly powerful earthquakes in other states.⁹² Interviews also revealed that construction standards enforcement was minimal prior to the earthquake, and the permitting regime only rarely used in urban settings and almost never in rural settings.

In terms of institutional responsibility for construction standards and enforcement in Haiti, the Ministry of Public Works, Transport and Communications (Ministère des Travaux Publics, Transports et Communications (**MTPTC**)), has overall responsibility for establishing technical norms for construction,⁹³ with the Directorate of Public Works responsible for national urban planning standards (but not for individual permits or applications, other than to provide technical advice). Day-to-day matters of implementation are heavily decentralised, and matters such as issuing permits, undertaking building inspections and enforcing the law and regulations are delegated to local authorities at the municipal level. In Leogane, for example, the municipal engineering department undertakes these tasks. In theory, MTPTC through its Directorate of Public Works provides technical overview of all building permits submitted by the municipal authorities, checking the permit applications against the compliance standards. However in practice this service is not always used and has mixed results as MTPTC has limited capacity at national level to deal with the amount of requests it receives.

Integration of construction issues into national-level DRM policy is limited: although the PNGRD notes how the absence of effective codes of construction increases the country's vulnerability,⁹⁴ no further references to construction codes or norms are made in this Plan. The PNRU states that 'in times of peace', the technical, scientific and sectoral committees that inform the Permanent Secretariat should work on the formulation, application and implementation of normative tools including building codes.⁹⁵ Interviewees at the DPC confirmed that the DPC and some members of the SNGRD had limited input to the development

⁹² See, for example, reports in Online Building Safety Journal, Performance of Buildings in the Haiti Earthquake, 2010, available at <http://bsj.iccsafe.org/april/features/haiti.html>, Le Nouvelliste, Logement: la Faiblesse de l'Etat reste patente, 13 July 2012, available at <http://lenouvelliste.com/article4.php?newsid=107134>, and Melissa Lafsky, The Power of Building Codes: Chile Death Toll Less than 1% That of Haiti, *Infrastructurist*, 1 March 2010 <http://www.infrastructurist.com/2010/03/01/the-power-of-building-codes-chile-death-toll-less-than-1-that-of-haiti>

⁹³ Article 2, Organisational Law of the Ministry for Public Works, Transport and Communication, 18 October 1987

⁹⁴ Section 1.1, DPC, PNGRD, February 2001

⁹⁵ Section I(2), DPC, PNRU, December 2001

of the national building code, but that there have never been any formal technical working groups or committees that have looked at this issue.

Standards and rules for building construction in Haiti are spread over a number of older laws and a more recent national building code. There are no laws or regulations issued at departmental, municipal or local level;⁹⁶ all levels are governed by national law. Although some authorities still cite a decree-law of 5 August 1937 on town and countryside planning⁹⁷ as being applicable to construction standards, interviewees suggested that although the law is still technically in place it is hugely out of date and superseded by a law of 1963 establishing special rules regarding housing and planning of towns and countryside areas to develop urban planning.⁹⁸ This situation is symptomatic of a wider problem in Haiti's legal framework, namely that no reliable (or publicly available) information exists regarding the status of many older laws.

Government ministries and other public administrations active in the sector refer to the 1963 law as persuasive.⁹⁹ This establishes a relatively comprehensive system of construction permits, organised under the general provision that all new construction must fulfil certain specific conditions to guarantee the health and security of the inhabitants, neighbours and users of public highways/thoroughfares.¹⁰⁰ Plans must be submitted to the Directorate General of Public Works (i.e. MTPTC), which has the ability to reject or modify plans, and no new construction or modifications of existing buildings may take place without their authorisation.¹⁰¹ Importantly, the law gives the local authorities or MTPTC the right to shut down any works found to be in violation of the law, with the assistance of the police if necessary.¹⁰²

In terms of technical content, the law of 1963 is relatively light, setting certain basic provisions for interior and exterior construction.¹⁰³ However some of its provisions are relevant for DRR purposes: article 3 states clearly that any construction that forms a barrier to the flow of torrential waters during the rainy season (so as to divert the waters to neighbouring properties or to the public road) is prohibited,¹⁰⁴ whilst article 22 prohibits thatched roofing in urban settings due to the risk of fire.¹⁰⁵ Other construction provisions are spread across separate laws although their applicability remains questionable; for example, a decree of 6 January 1982 prohibits construction on slopes greater than 50 degrees, whilst an order of 8 October 1992 prohibits construction in zones declared to be of public utility.

A clear example of recent good practice in terms of strengthening the regulatory framework for construction can be seen with the development of the relatively recent national building code (*Code National du Bâtiment d'Haiti (CNBH)*) in 2012. This code had been in development since before the 2010 earthquake but took on

⁹⁶ Both the political constitution and the administrative system are centralised rather than federal.

⁹⁷ Decree-Law of 22 July 1937 establishing the rules applying to town and countryside planning

⁹⁸ Law of 29 May 1963 establishing special rules regarding housing and planning of towns and countryside areas to develop urban planning

⁹⁹ See, for example, CIAT, MTPTC and UCLBP, *Laws and Regulations for Urban Planning*, July 2013

¹⁰⁰ Article 12, Law of 29 May 1963

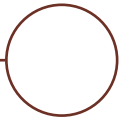
¹⁰¹ Articles 30 to 32, *Ibid.*

¹⁰² Article 33, *Ibid.*

¹⁰³ Articles 1 to 3, 13 to 14, 18 to 29, *Ibid.*

¹⁰⁴ Article 3, *Ibid.*

¹⁰⁵ Article 22, *Ibid.*



a new importance as Haiti engaged in extensive reconstruction. It was developed with an international consortium, with input from government, international and private stakeholders. Given its development in the post-earthquake context it contains a large amount of detail regarding structural safety of buildings and minimum levels of seismic resistance; its overall objectives are to establish minimum requirements in order to ensure safety, health and general welfare for users, and accessibility, structural strength and stability regardless of stresses, fire protection, and so on, for the buildings.¹⁰⁶ The code is divided into two sections: part 1 largely applies to the construction, renovation, rehabilitation and expansion of conventional small residential buildings. Structural elements are pre-designed to resist gravity loads as well as lateral loads from wind and earthquakes, and recommendations deliberately do not involve equations and calculations so that they can be easily used and understood by non-professionals (with a good base knowledge of construction).¹⁰⁷ Part 2 applies to all other types of buildings, where construction professionals are required to be involved at all stages of building, and includes recommendations for, among other things, wind loads and seismic loads. It is however much more general in nature, seeking only to describe in general terms the main objectives of regulation through the CNBH (namely to limit the probability of unacceptable risk). It is an extremely detailed, 200-page document with many relevant provisions for the integration of DRR into construction norms: importantly, this includes considerations for zones at risk (e.g. ravine slopes), seismic considerations, cyclone and anti-hurricane/wind resistance considerations, and construction in flood-prone areas. Building planning considerations include protection against fires and minimum dimensions for passages, and detailed provisions are also set out on quality of materials used for construction, and requirements for foundations in seismic zones.

The CNBH also clarifies the permitting regime for construction, which remains broadly in line with the provisions of the 1963 law described above. The CNBH states that building permits must be obtained from the municipal authorities, who check that the application folder contains all relevant information (including title) and that construction complies with the CNBH.¹⁰⁸ The municipality must then send the application to MTPTC in order to get technical sign-off before issuing a permit; no construction may start until after the permit is issued and the applicant pays all fees. It should be noted that the drafting of the CNBH in this section is wide and would appear to apply to all buildings regardless of size or location; there are, for example, no de minimis provisions that could exempt small, informal rural buildings. An application for a permit must contain, among other things, information on seismic hazards, and risk from hurricanes and flooding.¹⁰⁹ The municipality is also required to undertake a series of inspections in order to verify the construction against the information provided in the application.¹¹⁰

That Haiti now possesses a clear and useable building code that contains a wealth of accessible information regarding standards relevant to DRR is to be commended. Furthermore, placing a clear outline of the permitting regime in the CNBH is extremely useful, and necessary given the apparent confusion over the existing

¹⁰⁶ Section 0.1, MTPTC, CNBH, 2012

¹⁰⁷ Introduction, Ibid

¹⁰⁸ Section 1.2.1, Ibid

¹⁰⁹ Section 1.2.2, Ibid

¹¹⁰ Section 1.2.3, Ibid

law relating to construction permits. However, a number of gaps in the framework must be addressed. Firstly, and for the purposes of this report most importantly, the CNBH has no clear legal footing or mechanisms for enforcement. Although arguably it is issued under the general powers to establish technical norms for construction granted to MTPTC under its organisational law,¹¹¹ it is unclear on what basis it can be enforced, and the code itself contains no information on enforcement, sanctions, fines and penalties for non-compliance, nor any attempt to align it with relevant laws or decrees. For example, the law of 1963 authorises municipalities to shut down construction sites or to demolish buildings if deemed necessary for public security,¹¹² but the procedure and rules for this needs to be greatly expanded. Secondly, there is an enormous gap between the provisions of the law and the CNBH, and the practice in reality. By all accounts, only a tiny minority of buildings are ever the subject of construction permits.

Research and interviews with municipal authorities in Delmas (Port-au-Prince), Leogane and Jacmel revealed the extent to which the system suffers from lack of capacity and enforcement. The municipality of Delmas is relatively well-staffed, with a team of 19 inspectors, six engineers, three secretaries and two police officers available¹¹³, but interviewees confirmed that there are still problems dealing with the sheer amount of construction in the municipality. In contrast, the municipal authorities in Leogane must make do with a total of six employees in the engineering department. The reality is that the majority of buildings are never subject to official oversight and are generally not constructed to standards appropriate to the natural hazards faced in Haiti. Countless commentators and interviewees noted that in the event of a future earthquake with an equivalent scale to that of 2010, the devastation wreaked to buildings could be just as bad. It should be noted, however, that government and NGO-backed reconstruction efforts have consistently applied relevant international building standards (and the CNBH, after its adoption) to their reconstruction programmes. Most NGOs and donors involved in house building or reconstruction programmes have worked hard to ensure that government entities such as MTPTC are included at all relevant stages of projects, and to achieve their authorisation for the construction standards used. However the reality is that the majority of construction in Haiti is private and the willingness to engage with authorities (and pay fees and taxes) in this sphere is limited.

Research with community focus groups revealed a limited awareness of building codes and the construction permitting regime. Focus groups based near towns or villages with a formal local administration (i.e. a town hall) noted that in practice, an application to construct a building should be made to the town hall, but that they will simply check the details of the application and request a relatively minor fee to be paid in order to grant authorisation. It was not clear to what extent this procedure had any legal or official basis, or whether it was simply a customary practice that had developed over time. Outside of towns and villages, interviewees emphasised that there is simply no need to ask anyone for authorisation provided

¹¹¹ Article 2, Organisational Law of the Ministry for Public Works, Transport and Communication, 18 October 1987

¹¹² Articles 21 and 30, Law of 29 May 1963

¹¹³ Statistics from the International Center for Journalists, Trouble enforcing building codes leads to dangers in Haiti, <http://www.icfj.org/news/trouble-enforcing-building-codes-leads-dangers-haiti>, accessed 18 December 2014



you are comfortable that there are no competing rights to the land, although in practice most people will inform the local CASEC or ASEC of their intention to construct a building. It was interesting to note that most community members understood that a more comprehensive system of authorisation for construction existed, but that it was not applied in, or even relevant to, their communities. One focus group in the communal section of Cormier (in the municipality of Leogane) mentioned the example of a large construction project funded by the NGO Norwegian Church Aid, which established a community management committee for the design and construction. The local community were pleased with this approach and their ability to contribute to decision-making, but were unaware to what extent the NGO was liaising with the municipal authorities. The reality is that the municipal authorities lack the resources to be able to monitor and enforce construction throughout their area; as such using collaborative and community-based structures in design and construction could be an effective, and necessary, tool to try and fill these gaps, and their possible integration into the legal framework should not be ignored.

The bottom line

The existence and nascent implementation of the National Building Code is a clear example of good practice in this sector. Notably, the Code deals specifically with the design of structures against wind and seismic risks, and is commendable for its creative use of diagrams rather than simply setting out extremely technical requirements and calculations, to ensure that it can be understood and applied by a much larger proportion of Haitians in the construction industry.

Land-use planning laws

The regulation of land use planning in Haiti is almost wholly directed by the central government,¹¹⁴ although Haitian law devolves a certain amount of powers to regional level. At central level planning activities are overseen by the Ministry of Planning and External Cooperation (Ministère de la Planification et de la Coopération Externe (MPCE)); the mission of its Directorate of Planning and Local and Regional Development consists of developing policies, strategies and programmes plans for development and land use planning, at national, regional and local levels, paying particular attention to equality between men and women.¹¹⁵ Interviewees pointed out that this Directorate does not actually function as a planning department per se: instead it coordinates planning efforts and has overseen multiple ‘master plan’ projects for Port-au-Prince. Evidence suggests that none of these master plans have been either authorised or implemented through regulations.¹¹⁶ MTPTC also possesses a Service de Planification Urbaine (Urban Planning Service) under its Directorate of Public Works,¹¹⁷ whose role appears to

¹¹⁴ UN-Habitat, A Situational Analysis of Metropolitan Port-au-Prince, Haiti – Summary Report, 2010

¹¹⁵ MPCE, Direction de l’aménagement du territoire et du Développement local et régional, <http://www.mpce.gouv.ht/direction-de-lamenagement-du-territoire-et-du-developpement-local-et-regional>, accessed 27 October 2014

¹¹⁶ Cynthia McCoy, University of Pennsylvania, Removing barriers to land security in Haiti, October 2011

¹¹⁷ Articles 26 – 29, Organisational Law of MTPTC, 18 October 1983

overlap with that of MPCE's Directorate of Planning. Finally, the Inter-ministerial Committee for Territorial Planning (Comité Interministériel d'Aménagement du Territoire (CIAT)) was created under a presidential order in January 2009,¹¹⁸ as a coordinating body with responsibility for 'coordinating and harmonizing public intervention in the areas of urban planning and habitat'¹¹⁹ (among other things), with work related to this responsibility including elaboration of the master plans of large urban centres in Haiti. Below national level, responsibilities for development and approval of planning schemes rests with the departmental, municipal and local administrations.

In theory, Haiti's planning system should operate as a bottom-up approach where community needs at the lowest political jurisdiction feed upwards from the communal section to the municipality and then on to the department and national levels; at national level the budget would then be developed and funds would flow back down to local level.¹²⁰ This appears to be the situation as prescribed under the organisational law of MPCE, which requires the integration of departmental planning schemes into the national planning scheme.¹²¹ However it is clear that this is not the case in practice, as lack of funding and capacity as well as confusion over responsibilities and authority mean that planning is either directed from national level or simply happens on an ad-hoc basis in response to proposed developments from NGOs, international organisations and the private sector.

Haiti's legal framework for land use planning is routinely criticised for being outdated and unused. Whilst a surprising amount of law exists that covers land use planning, the law generally only sets out the requirements for the various levels of state administration to put certain plans into place, without venturing into much detail. The legal framework centres on a few key pieces of legislation. Firstly, a law of 1963 establishing special rules regarding housing and planning of towns and countryside areas to develop urban planning requires that every town with more than 2,000 inhabitants must have an urban plan (technically a plan for 'development, beautification and extension') authorised by the Department of the Interior,¹²² which should contain details relating to, among other things, creation and modification of roads, parks, tree conservation, social services, infrastructure, and setting out zoning requirements for residential, industrial, and agricultural areas. The legal and institutional framework can then be set out according to the various four main levels of state administration:

- **At national level**, the constitution states clearly "the law shall set conditions for land division and aggregation in terms of a territorial management plan and the well-being of the communities concerned, within the framework of agrarian reform."¹²³ A general schema d'aménagement du territoire (land-use-planning scheme) as well as an over-arching national plan are required under the decree of 1989 creating the Ministère de

¹¹⁸ Order of 30 January 2009 creating the Inter-ministerial Committee for Territorial Planning (CIAT)

¹¹⁹ CIAT departmental brochure, Toward a sustainable and concerted planning of the Haitian territory, available at http://www.ciat.gouv.ht/download/download.php?val=20_misson+ciat

¹²⁰ Columbia University Earth Institute, CSI Strategic Planning and University Partnership: Brief on Initial Findings, 2011

¹²¹ Article 20, Organisational Law of MPCE, 10 March 1989

¹²² Article 65, Law of 29 May 1963 establishing special rules regarding housing and planning of towns and countryside areas to develop urban planning

¹²³ Article 37, Constitution of the Republic of Haiti, 2012



Planification et de la Coopération Externe (Ministry of Planning and External Cooperation) (MPCE).¹²⁴ A national plan for habitat and housing is required under a decree of 2005, which must establish (environmental) planning constraints which will be further elaborated in urban master plans or urban, municipal or departmental development master plans.¹²⁵

- **At departmental level**, a schema d'aménagement départemental (departmental land use planning scheme) as well as a general development plan are included in the 'competencies' of the departmental administration under a decentralisation decree of 2006;¹²⁶ under a different decree of 2006, the development plan must also be ratified by the Departmental Assembly.¹²⁷
- **At municipal level**, many obligations regarding planning fall to MTPTC, who (through their Urban Planning Service) are responsible for establishing master plans for urban and rural centres, as well as master schemes for detailed planning.¹²⁸ Local authorities must also put in place a land-use plan and a physical layout plan.¹²⁹
- **At communal section level**, Haitian law requires the establishment of master development plans for human settlements, as well as communal action plans for environment and sustainable development,¹³⁰ and the creation of a general development plan for the section.¹³¹

The Haitian State has also passed relatively detailed laws regarding the subdivision of property; the law on subdivision of 1963 requires any subdivision to be approved by the Government's Public Works ministry,¹³² and an urban planning decree of 1982 expands on this as well as setting out various rules relating to traffic control, roads and highways.¹³³ Indeed the decree of 1982 defined relatively extensive standards for the development of new neighbourhoods, including minimum road widths, drainage and sewage, which all are applicable risk reduction in neighbourhoods. Technically this law is still in place but commentators have noted that enforcement has been intermittent, and in practice it is widely disregarded. The application of the decree of 1982 also only applies to subdivisions, creating a 'legislative void' for other types of development, and in any event the expense and bureaucracy of the subdivision procedure meant that only 'high-end' neighbourhood developments followed it.¹³⁴

Some other aspects of land use planning are also delegated to regional levels;

¹²⁴ Article 20, Organisational law of the Ministry of Planning and External Cooperation, 10 May 1989

¹²⁵ Articles 37-39, Decree on Environmental Management, 12 October 2005

¹²⁶ Article 94, Decree setting the general framework of decentralisation and the organisational and functional principles for local authorities, 1 February 2006

¹²⁷ Article 42, Decree setting the organisation and functions of the departmental authorities, 1 February 2006

¹²⁸ Article 27, Organisational law of MTPTC, 18 October 1983

¹²⁹ Article 25, Decree on Environmental Management, 12 October 2005

¹³⁰ Ibid.

¹³¹ Article 92, Decree setting the general framework of decentralisation and the organisational and functional principles for local authorities, 1 February 2006

¹³² Law of 29 May 1963

¹³³ Decree setting the specific rules relating to the housing and planning of cities and rural and urban agglomerations, 6 January 1982

¹³⁴ Elizabeth Blake and Frédérique Siegel, Cross-sector collaboration creates transparent access to land rights for reconstruction and development: how-to guides to buy and sell land and secure land rights in Haiti, March 2014

most recently, a decree of 2006 regarding decentralisation vested a certain amount of authority in the municipalities for urban planning.¹³⁵ Powers granted to the municipalities include the implementation of municipal zoning, preparing municipal development plans and issuing building permits and compliance certificates.¹³⁶ At the communal section level, the CASECs have the responsibility of firstly ensuring the rational development and maintenance of structures established by the municipality (for example, highways and forests) and secondly to help prepare and implement the communal section's development plan. ASECs, meanwhile, have the ability to promote the establishment of zones reserved for forests, and to ensure compliance with other environmental obligations.¹³⁷

It is clear then that Haiti does not lack for legislation on the topic of land use planning. However, as acknowledged by the government, a major gap is the absence of a basic framework law determining the overall principles of urban and land-use planning, and defining the methods of operating and the responsibilities of relevant institutions at all levels.¹³⁸ DRR considerations are currently not factored in to planning legislation or policy and therefore issues relevant to reducing risk are only introduced at the discretion of the relevant authorities, if at all. The Government's recently issued National Housing Policy gives some cause for hope in this regard. Acknowledging that as well as the lack of a clear legal framework, there is also no guiding national plan to give the necessary direction for local authorities when developing their own local plans,¹³⁹ the Policy sets out, at a very high level, the priorities and proposed actions for the government to deal with the issues facing the housing sector. The need for coherent responsibilities and action in national planning is emphasised, as well as the need to factor in natural risk reduction in the planning and approvals processes.¹⁴⁰ However, as already noted the language used in this document is extremely high-level and contains only general actions and ways forward that are not set within any timeframes: for example, the task of aligning the National Housing Policy with other policies relevant to areas such as planning is simply listed, but not clearly assigned to any institution or given a timeframe.¹⁴¹ UCLBP and MPCE are assigned a long list of actions but interviews at national level made it clear that they currently lack the capacity and necessary coordination with other institutions and other actors to realise their ambitious agendas. However, as was made clear during interviews with representatives from UCLBP, the National Housing Policy is a deliberately wide and ambitious document which aims to create an overall direction for future policy and law rather than provide specifics, and there are plans to start developing more detailed policy documents based on the National Housing Policy. As noted by several interviewees from international organisations, the mere fact that an accepted policy is now in place means that there is now a central hub around which specific programmes and policies can be developed.

Stakeholders from humanitarian and developmental organisations and donors at both national and local level were not positive regarding the levels of community

¹³⁵ Decree setting the organisation and functions of the municipal authorities, 1 February 2006

¹³⁶ Chapters I and II, Ibid.

¹³⁷ Articles 11 and 19, Law on the organisation of the local authorities of the communal sections, 28 March 1996

¹³⁸ Context, CIAT, MTPTC and UCLBP, Laws and Regulations for Urban Planning, July 2013

¹³⁹ Section 2.1.1, UCLBP, National Housing Policy (Framework Document), October 2013

¹⁴⁰ Section 4.4, Ibid

¹⁴¹ Section 6, Ibid



participation in the planning process. Based on interviews and legal research there appear to be no formal requirements for the involvement of communities through, for example, participatory planning methods or public hearings for proposed developments. No communities interviewed were aware of, or had ever been involved in, any municipal planning processes. In the ideal situation, large development projects (such as construction of a new road or large commercial building) should be reviewed in accordance with a local plan (which is already aligned with the relevant national plan), impact analyses undertaken and local communities consulted. Interviews revealed that no community members were aware of any such 'formal' consultations taking place, despite there being ongoing projects in some of the areas visited (e.g. road construction near Jacmel and mining activities near Leogane), although they were aware of some limited consultation with groups of individual homeowners to discuss compensation for the destruction of buildings to build roads. Evidence suggests that processes of expropriation and compensation are by no means consistently applied throughout the country and often suffer from lack of clarity over ownership of land, and have caused several large projects to be abandoned in recent years (such as the construction of national road No. 7 in the Grande-Anse area).¹⁴² Furthermore, none of the CASEC or ASEC officials interviewed could confirm the existence of the local schemas and plans that are required under the relevant legislation. In practice, very few planning schemes are in place below national level in Haiti, and the municipalities and communal sections visited were no exception to this. In this context the ability of municipal and sub-municipal administrations (whether in larger urban centres such as Port-au-Prince or smaller centres such as Jacmel) to delimit and control development on high-risk areas is minimal. Gaps in capacity and funding (and by extension, the ability for enforcement) mean that the government is unable to prevent the expanding number of Haitians who live in high-risk areas (such as flood-plains and steep ravine slopes).

The bottom line

Haiti's legal framework for land use planning, whilst relatively extensive, is routinely criticised for being outdated and unused. Whilst a surprising amount of law exists that covers land use planning, the law generally only sets out the requirements for the various levels of state administration to put certain plans into place, without venturing into much detail. Although some aspects of land use planning are delegated to regional levels, lack of funding and capacity as well as confusion over responsibilities and authority mean that planning is either directed from national level or simply happens on an ad-hoc basis.

The recent National Housing Policy is a cause for hope that more detailed policy documents will be developed that will better integrate DRR or at least considerations relevant to DRR into the current planning system. Lack of community participation in the planning process is a cause for concern, however, with little to suggest that this will improve in the near future.

¹⁴² Reuters, Haiti's road to reconstruction blocked by land tenure disputes, <http://www.reuters.com/article/2013/01/26/us-haiti-land-idUSBRE90POBM20130126>, accessed 27 October 2014

Land tenure

Formal land rights

Land-tenure and property rights are perhaps the single most controversial part of Haiti's legal framework relevant to DRR. Issues surrounding land tenure have deep historical and sociological roots, dating back to the period of French colonial slavery and the Haitian Revolution. Indeed, it is arguable that the basic structure of land tenure in Haiti that exists today was already largely in place by the mid-19th century and has remained relatively stable throughout the 20th century.¹⁴³

Haiti's constitution guarantees the right to private ownership of property, stating clearly that "Private property is recognised and guaranteed. The law specifies the manner of acquiring and enjoying it, and the limits placed upon it."¹⁴⁴ Land in Haiti is classified into three categories:

1. **private land;**
2. **State public land:** inalienable land that cannot be privately exploited or altered and includes roads, public places, coasts, rivers, monuments, mines, etc. Such public property is non-transferable and is managed by various State ministries; and
3. **State private land:** land owned by the State and other territorial institutions, which may be sold or rented by the Government and includes government buildings, default land due to inheritance, etc.;¹⁴⁵

Both the constitution and the civil code set out how such land may be dealt with, with the constitution establishing the broad categories and the civil code setting out the legal framework required for dealing with land (namely acquisition and transfer)¹⁴⁶. This legal framework for land ownership originates from French law and land administration, and has since been developed by practice taken from the agricultural economy,¹⁴⁷ meaning that it is not particularly well-suited to the demands of a rapidly expanding and complicated landholding structure in Port-au-Prince and other increasingly urban centres.

As well as private ownership of land, the two other major forms of possession provided for under law are as follows:

- **Lease:** leases are governed by the provisions of the civil code¹⁴⁸, and can be either verbal or written.¹⁴⁹
- **Fermage:** the practice of fermage began as a lease from the state of

¹⁴³ Richard Haggerty, Country Study of Haiti, 1989

¹⁴⁴ Article 36, Constitution of Haiti, 1987

¹⁴⁵ Article 1, Decree of 22 September 1964 on the rent of private assets of the state

¹⁴⁶ See Loi no. 12 and Loi no. 15, Civil Code of Haiti, 1825

¹⁴⁷ HPG Working Paper, Avoiding Reality: Land, institutions and humanitarian action in post-earthquake Haiti, September 2012

¹⁴⁸ Articles 1480 to 1600, Civil Code of Haiti, 1825

¹⁴⁹ Article 1485, Civil Code of Haiti, 1825



agricultural land and has grown in popularity. Essentially it is a longer-term lease of land, with the tenant owning the building on the land (i.e. the house that the tenant will generally have built).¹⁵⁰ Many more modern fermages contain an option to buy the land after a certain time period (often 20 years). Because the lessor must reimburse the tenant for a fair cost of construction in the event that the lessor wishes to discontinue the lease before the fermage period ends, this indirectly contributes to security of tenure for the tenant.

Haitian law also regulates the ways in which people may acquire or inherit land. Many Haitians inherit land from relatives, and the legal obligations and the civil code governs procedure for this process.¹⁵¹ Under Haitian law a deceased person's property must be divided among all children and the remaining spouse, and the transfer cannot be considered legally complete until the land has been surveyed, divided, notarised and registered. Formal sub-division of land (for rent or sale) is also permitted under Haitian law, and the law sets out detailed specifications and procedures, including a permitting regime.¹⁵² However a large amount of regulation on the procedure has not prevented the fact that most subdivisions in Haiti take place informally, both in accordance with customary or ancestral practice or otherwise completely informally.

Acquisitive prescription (also often referred to as adverse possession) is another means in which ownership can be acquired. The requirements are set out in the civil code,¹⁵³ which requires that a person must have resided on a property continuously, peacefully, publicly, and in the capacity of owner for twenty years or more, to become the owner of the land. To confirm this ownership a petitory action must be filed at the local court.

Outside of Port-au-Prince and urban centres, in theory land is governed by the provisions of the Haitian rural code of 1962 (as amended in 1986), which adds little to the legal framework in terms of land rights and tenure other than applying the civil code to rural property.¹⁵⁴ Indeed some commentators have gone so far as to recommend that it be abolished to end a history of establishing two classes of citizens (i.e. urban and rural), and to integrate any useful provisions into the civil code.¹⁵⁵ Both interviewees and commentators show that in rural settings, land ownership is normally governed by customary law and practice as opposed to formal law, even more so than in the urban setting of Port-au-Prince.

Informal / customary land rights

Meetings with community focus groups undertaken for this project confirmed the extent to which property rights and transactions are dealt with under customary frameworks. Only a minority of community members interviewed said that

¹⁵⁰ See the Decree of 22 September, 1964, which sets out the rules for fermage

¹⁵¹ Articles 674 to 700, Law 16 on Succession, Haiti Civil Code

¹⁵² Articles 54 to 57, Law of 29 May 1963 establishing special rules relating to housing and planning in towns and the countryside, and Articles 10 to 17, Law of 19 September 1982 relating to the adoption of a coherent policy of regional planning and development

¹⁵³ Articles 1996 to 2047 (specifically, Articles 1997 and 2030), Civil Code of Haiti, 1825

¹⁵⁴ Article 20, Rural Code of Haiti

¹⁵⁵ Winston W. Riddick, Economic Development and Private Ownership of Immovable Property: a comparison of Louisiana and Haiti, *Electronic Journal of Comparative Law* vol. 12, May 2008

they held title documents to their property and several of these interviewees acknowledged that even having the paper title is not necessarily a guarantee of security due to both general confusion over who owns what and where, and the risk of opportunistic claims and corruption (which is much higher in urban areas). In general the community interviewees' rights over land were, in essence, acknowledged and protected by the community as many families have lived on the same land for generations. Whilst some commentators have rightly pointed out that many citizens view formal, state authorities and procedures with scepticism, interviews with community focus groups were notable not so much for scepticism but more for a realistic acceptance that, due to lack of access and enforcement, the formal system simply cannot exist in any useful form outside of an urban setting, and customary land rights are perceived as more secure (and in many cases probably are more secure).

Whether or not the system of land tenure in Haiti is able to assist or hinder DRR was an issue no interviewees were able to comment on directly, and extensive debate exists over the extent to which Haiti's land tenure system needs to be 'formalised'. Some argue that clearly defined and secured rights of tenure are essential to, for example, provide farmers with incentives to adopt better land use management practices, whilst others believe that title regularisation programmes simply reproduce and maintain the status quo, and can marginalise groups that operate based on customary systems. As one commentator notes, the poor are disadvantaged if they lose the security derived from customary tenure but are unable to complete the bureaucratic process of registration, which in Haiti could be a widespread problem unless the titling programme is accompanied by an effective Creole-language public awareness campaign and a simplification of the bureaucratic steps for formalisation.

Historians and other cultural commentators of Haiti have also emphasised the importance of the Lakou system in ensuring the continued prominence of informal land rights. Under this system, land is shared and passed down through informal inheritance, usually divided equally between all sons and daughters. There was generally no State involvement in this process although occasionally the most senior member of the family (the chef lakou) may hold formal title.¹⁵⁶ Whilst the system is less common today, it nonetheless remains in adapted forms in both rural and urban settings. Patterns and practices of inheritance discussed with community focus groups revealed that they follow the Lakou system in form, if not in name – namely with the elders dividing their land equally for their offspring with no recourse to the formal system.

Land registration

Issues around the registration of land remain one of the major challenges facing Haiti. It is a relatively well-established premise that a strong link exists between security of tenure and resilience against natural hazards. Without the ability to control one's resources, the incentive to use them in a way that promotes risk reduction is greatly reduced.¹⁵⁷ According to estimates, less than 5% of property in

¹⁵⁶ Duke University Franklin Humanities Institute, Law & Housing in Haiti, <http://sites.duke.edu/law-and-housing-in-haiti/>, accessed 30 November 2014

¹⁵⁷ Tran Phong and Bui Duc Tinh, 'Disaster Risk Reduction and Climate Change Adaptation: enabling environment for integration', in Community, Environment and Disaster Risk Management Volume 4,



Haiti has been surveyed for the national cadastre system,¹⁵⁸ and in 2003 Hernando de Soto estimated that around 68% of city dwellers and 97% of rural dwellers in Haiti lived in establishments for which there is no clear title to the land.¹⁵⁹ Current estimates in Port-au-Prince suggest that up to 80% of land is informally held.

The remainder of this section presents a brief overview of key aspects of the system for land registration in Haiti and the challenges it faces. For additional information on this topic, please refer to section [1.1] of the IFRC report [Shelter].

- In terms of the current legal framework and institutional responsibility in Haiti, a decree of 10 December 1984¹⁶⁰ created the National Cadastre Office (Office National du Cadastre (ONACA)) under MTPTC. The law tasks ONACA with providing up-to-date cadastral information on all properties and parcels in Haiti. Whilst ONACA is responsible for cadastre, it is the General Directorate for Taxation (Direction General des Impôts (DGI)) that is responsible for actually titling all public land and for collecting taxes on real estate transactions.
- All land titles must be registered with the DGI's Office of Registration and Land Conservation.¹⁶¹ The DGI is part of the Ministry of Finance and Economy, and it is tax collection that is the office's priority, meaning that the provision of title documentation is incidental (i.e. records cannot be easily used to create a chain of title or establish proof of ownership). The lack of an effective cadastre system means that the formal registration procedure is in practice based on a decentralised system of land administration that depends heavily on notaries and surveyors.¹⁶² However the majority of property transactions in Haiti remain based on customary practices, especially in rural areas, where land transactions 'reflect skepticism of notaries, land surveyors and virtually all agents of the State including the Judiciary', and ownership rights stem primarily from kinship ties and transactions not regulated by law.¹⁶³
- Both ONACA and DGI suffer from a lack of capacity and funding, which impacts on their ability to fulfil their responsibilities under law. There is currently a lack of effective coordination between ONACA and DGI, and the public remains confused as to which entity is responsible for which aspect of land registration. However recent initiatives by the Inter-Ministerial Committee for Territorial Planning (Comité Interministériel pour l'Aménagement du Territoire) hope to change this. It is also hoped that a new law, currently in draft form,¹⁶⁴ will aid the process of cadastre

Climate Change Adaptation and DRR: Issues and Challenges, 2010

¹⁵⁸ Organisation of American States, Modernisation of Cadastre and Land Rights Infrastructure in Haiti Project Proposal, March 2010

¹⁵⁹ Hernando de Soto, *The Mystery of Capital: why Capitalism triumphs in the West and fails everywhere else*, 2003

¹⁶⁰ Decree creating an autonomous organisation named National Office of Cadastre, December 10 1984

¹⁶¹ Articles 1 to 2, Decree of land title registration and conservation, 30 September 1977

¹⁶² Glenn R. Smucker, T. Anderson White, Michael Bannister, *Land Tenure and the adoption of agricultural technology in Haiti*, October 2000

¹⁶³ Ibid

¹⁶⁴ Avant-projet de loi modifiant les décrets du 23 Novembre 1984, du 30 Novembre 1984 et du 28 Août 1986 – government confidentiality meant that a copy of the draft law was not made available to the project consultant, but some key provisions of the law were explained during the interview with

and land-tenure reform as well as provide institutional clarity, and therefore encourage greater investment in Haiti.

- Registration of title in Haiti is a multi-party process with potential gaps in each step. A notary is fundamental to the process of buying and selling property as well as registering it; the notary will prepare the sales agreements, verify existing title documents and submit documents and fees to DGI for registration, among other things. However notaries outside of Port-au-Prince will often fail to visit the DGI there in order to research and review title, meaning that often no research is undertaken (and therefore creating a potential for future disputes). This presents a great risk considering land is often owned by multiple members of a family (normally those who have inherited the land either under formal law or informal law) and the consent of all members is required to a sale.

The bottom line

Failure to commence the necessary legal and institutional reforms together with a distinct lack of capacity and funding for the land registration and cadastre system has resulted in the current weak system of land tenure and registration in Haiti, creating a lack of clarity over ownership of both private and public land. Thus, informal, customary-based practice is the rule rather than the exception. Although customary landholdings are not necessarily a barrier to DRR, in many cases lack of clear and legally enforceable title rights over land means that small-scale landowners and tenants have less incentive to invest in the resilience of their land and buildings. The majority of the Haitian public is largely unaware of the official cadastre system and is reluctant to formally registering title to property, due to complicated procedures, costs for professional fees and taxation.

Informal and precarious settlements

As has been described in section 3.5.3 above, the majority of Haitian citizens lack legal title to their land, and rely on informal or customary forms of landholding. In this context, it is unsurprising that the number of Haitians who also live in informal settlements is extremely high: in Port-au-Prince, for example, the majority of the approximately 2.7 million inhabitants live in informal settlements. This represents an enormous challenge to the Haitian government's efforts to extend basic services and ensure an acceptable level of safety for urban communities. The government's stance on informal settlements over the past few decades has been mixed: a failure to enforce property rights, planning and environmental regulations 'was widely interpreted as a green light to disregard them.'¹⁶⁵ Government administrations created neighbourhoods that ended up becoming slums, or in some cases government officials have encouraged invasions of land owned by political opponents. Following the earthquake in January 2010, the

ONACA staff

¹⁶⁵ Elizabeth Blake and Frédérique Siegel, Cross-sector collaboration creates transparent access to land rights for reconstruction and development: how-to guides to buy and sell land and secure land rights in Haiti, March 2014



informal settlements surrounding the capital suffered some of the worst damage: the unregulated buildings collapsed all too easily and fragile local services were devastated.

There is no legislation in Haiti that seeks to regulate informal or precarious settlements, or addresses DRR in these settlements. There is however a potential legal basis for regularising slums located on state land (through the mechanism of entering into leases with squatters). Although government land cannot be acquired through adverse possession, a decree of 22 September 1964 states that anyone who lives on such land for at least two years has priority to obtain a leasehold right.¹⁶⁶ Furthermore, the many abandoned private landholdings that have been turned into informal settlements should in theory enter the domain of the state (by virtue of their abandonment) and therefore squatters on these sites could also become eligible for leaseholdings. There is no evidence to suggest that such a process has been followed for informal settlements, and indeed to be successful it would require a significant enhancement of administrative and enforcement capacity.¹⁶⁷ However it does present a possible future avenue for reform in this area.

There is, however, a huge amount of development and construction activity in this area involving humanitarian and development organisations (national, international and foreign), which intensified following the earthquake of 2010 and the almost overnight creation of new informal settlements for the many internally displaced persons. Interviewees could not provide a consistent picture of who is responsible for oversight and regulation in this area: although it appears that UCLBP has the clearest mandate in this area, interviewees mentioned several other ministries and organisations who are implicated, including MTPTC, MICT, MPCE, CIAT and the Public Enterprise for the Promotion of Social Housing (l'Entreprise Publique de Promotion de Logements Sociaux, commonly referred to as 'EPPLS'). Many interviewees from NGOs highlighted the lack of clear government mandates and the need to deal with multiple institutions with overlapping responsibilities, resulting in delay and duplication of work. UCLBP are currently engaged in several projects working with international (intergovernmental and non-governmental) and foreign organisations and donors, that specifically focus on the development and rehabilitation of informal and precarious settlements: Project 16/6, for example, was developed to combine the processes of returning displaced Haitians to their homes following the 2010 earthquake, with the rehabilitation of precarious settlements. A major project is currently ongoing in Martissant to regularise the informal settlements based on State-owned land there, aiming to benefit over 50,000 people; the planning process for this project involves developing a plan for risk prevention as well as a focus on tenure security, social development and infrastructure provision.¹⁶⁸

The recent National Housing Policy is also lacking in terms of provisions for informal and precarious settlements, which is surprising given the extent of such settlements in Haiti. The Policy acknowledges that a lack of urban planning has contributed to the spontaneous development of irregular and precarious

¹⁶⁶ Decree of 22 September 1964 on the rent of private assets of the state

¹⁶⁷ Frédérique Siegel, Towards Secure Tenure in Port-au-Prince, 2 August 2014

¹⁶⁸ UCLBP, Programme d'aménagement intégré de quartiers informels de Port-au-Prince: Martissant et Baillergeau (AIQIP), 2012

settlements, and the difficulty for communities in these settlements to access basic services.¹⁶⁹ However, other than the general proposals and suggestions set out in the document, no more mention is made of such settlements, representing a distinct gap in the Policy. Interestingly, the discussion document that was issued as a precursor to the National Housing Policy in April 2012 is slightly more detailed. According to the discussion document, in precarious settlements, the government intends to effectively dissociate rights to land from rights to buildings, and create security of tenure for buildings rather than land. In order to achieve this, the government proposes to, among other things:

- introduce a simplified registration system for buildings, working via an ongoing initiative with the Haitian Institute of Statistics and Informatics based on participatory enumeration and local authority-led censuses;
- recognise rights based on community validation;
- improve identification of community members with a simplified civil registration procedure, accompanied by strengthening of the roles of relevant civil servants/officers;
- implementing a simplified system of conflict resolution and local mediation; and
- development and distribution of user-friendly guides to landlord and tenant relationships based on existing Haitian law and practice.¹⁷⁰

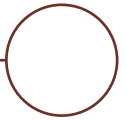
These measures are based on the concept of a ‘continuum of land rights’, where instead of following a regularisation policy that simply awards clear title to land, intermediate forms of tenure will be granted, such as the right to occupy or lease state or private land, and also granting stronger rights over the buildings constructed on said land. Interviews revealed that this is something of a practical compromise to the fact that so many informal settlements are sited on State land, where the State is unable, unwilling or simply unclear on what rights it can offer to inhabitants. However the Government draws a line at ‘non-constructible’ land, i.e. land where exposure to natural hazards is considered too great: no tenure can be offered for such land, instead landowners and inhabitants will be provided with information concerning the degree of exposure. Risk reduction plans will then be developed based on this information.¹⁷¹ What is striking is the fact that these provisions in the discussion document of 2012 did not cross over into the ‘official’ National Housing Policy. Although UCLBP stated that this content is still persuasive and is informing their future actions, and that future versions may integrate more detail on this area, the lack of a strong policy foundation (let alone a legal one) jeopardises the future benefits these actions could have.

Detailed conversations with representatives from UCLBP added further detail regarding the direction that the Haitian Government is taking in regards to

¹⁶⁹ Section 2.1.2, UCLBP, National Housing Policy (Framework Document), October 2013

¹⁷⁰ Section 4, UCLBP, National policy for housing and urban development (document for comments and suggestions), 30 April 2012

¹⁷¹ Ibid



informal and precarious settlements. Whilst acknowledging that there is no real law or policy in place to guide actions in this area, in practice the Government is committing to a general policy of regularisation of slums, and attempting to distance itself from the often-incendiary effects of forced evictions (whether legal or not). The policy is a pragmatic one: interviewees pointed out that even when high-risk areas (e.g. informal housing built on extreme ravine slopes, at risk from flash floods and landslides) are cleared of inhabitants (and the inhabitants relocated), the Government lacks the resources to prevent other groups occupying the land, such is the extreme pressure on urban housing in Port-au-Prince. Whilst capacity and resource levels mean they are only able to focus on certain neighbourhoods, as demonstrated with the project in Martissant the priority is now to try to adapt housing to existing conditions in a way that factors in risk mitigation and access to basic services. There are no plans in place to transfer legal title to residents; instead the aim is to give some legitimacy to previously informal title and ‘leave the door open’ for future developments, which sounds extremely vague. UCLBP also confirmed that it is emphasizing a participatory approach to planning and construction with affected communities, in partnership with its international partners, in order to ensure that redevelopment work is appropriate. However there are no laws, policies or secondary guidance documents that inform this approach, and it seems that strategy is almost entirely determined on a case-by-case basis depending on the nature of the project and the partners involved. This even appears to extend to taking a creative approach to the interpretation of legislation: the example was given of a regulation concerning public stairs that would have necessitated extensive redevelopment and relocation of certain houses, which has been ‘dis-applied’ in selected cases. Exactly how such disapplication works in practice was not clarified. Whilst this pragmatic approach may have its benefits, the risk is that it could result in arbitrary decisions that may be based on, for example, financial concerns rather than risk reduction. Such a situation makes a strong case for a detailed inventory of all law relevant not only to informal settlements but also land use planning in general, with the ultimate aim of streamlining the legal framework and ensuring it is relevant to current needs, and mainstreaming DRR considerations.

The bottom line

Given the extent of informal and precarious settlements in Haiti, and the sheer number of people who live in them, the fact that there is no legislation that seeks to regulate them is a major gap. Some positive assertions are made in policy documents, but these are not clearly enforceable and it is not clear to what extent these will factor into official decision-making, if at all. The government is involved in the regularisation of selected settlements but there is no legal framework to guide this or ensure appropriate accountability.

Urban water and flood management

The current institutional structure for the water sector in Haiti operates with limited resources in a difficult environment: in 2002, Haiti ranked last out of 147 countries in an international assessment of water security.¹⁷² Prior to the earthquake in 2010, only half of the population of Port-au-Prince had access to latrines or other forms of sanitation, whilst a third of the population has no tap water supply.¹⁷³ In 2010, only 12% of the population had access to treated (potable) water.¹⁷⁴

An organisational law of 2009 provides the overarching institutional framework for regulation of the water and sanitation sector in Haiti.¹⁷⁵ This law creates the administrative organisation of the National Directorate for Drinking Water and Sanitation (Direction Nationale de l'Eau Potable et de l'Assainissement (**DINEPA**)), which sits under the authority of MTPTC¹⁷⁶ and is led by an administrative council comprising high-level members from across various ministries and other bodies (for example, MTPTC, MICT, the Ministry of the Economy and Finance, and the Ministry of Environment).¹⁷⁷ DINEPA is tasked with the mission of executing State policy in the water and sanitation sector, in three main ways:

1. development of the water and sanitation sector at national level;
2. regulation of the sector; and
3. control of actors.¹⁷⁸

Underneath these key objectives are a host of subsidiary responsibilities, including the development of national policy, establishing performance criteria, setting tariffs, and applying sanctions against those who violate the sector's norms and regulations.¹⁷⁹

The law of 2009 also establishes the sub-national level institutional structure for the water and sanitation sector. In order to fully exploit the commercial and operational opportunities of the sector, Regional Offices for Drinking Water and Sanitation (Offices Régionaux d'Eau Potable et d'Assainissement (**OREPA**)) are created.¹⁸⁰ The OREPAs are responsible for water supply and sanitation in urban areas and for providing administrative, commercial, technical and financial support for systems managed by individual communities or private groups.¹⁸¹ There are four main OREPA offices in Haiti, covering the areas designated North, South, East and West, and these are further sub-divided into departmental offices.

¹⁷² Lawrence P, Meigh J, Sullivan C, The Water Poverty Index: an international comparison, Natural Resources Forum: a United Nations Journal (3), 2003.

¹⁷³ Statistics taken from section 5.5.1, MICT, DPC, Analyse des capacités de préparation et réponse du Système National de Gestion des Risques et Désastres, December 2013

¹⁷⁴ WHO/UNICEF, Progress on sanitation and drinking water: 2010 update, 2010

¹⁷⁵ Law of 11 March 2009 regarding the organisation of the drinking water and sanitation sector, Official Gazette of the Republic of Haiti Le Moniteur No. 29, 25 March 2009

¹⁷⁶ Article 3, Ibid

¹⁷⁷ Article 7, Ibid

¹⁷⁸ Article 5, Ibid

¹⁷⁹ Article 6, Ibid

¹⁸⁰ Article 12, Ibid

¹⁸¹ Ibid



In towns with more than 10,000 inhabitants, the OREPA will install a Technical Operations Centre (Centre Technique d'Exploitation (CTE)) to manage the system. It is important to note that, technically, the OREPAs are temporary structures and the intention is that, after an undefined transition period has been completed, all functions and duties of the OREPA offices will transfer to the relevant municipal authorities.¹⁸² No interviewees in the water sector were able to provide details on the status of this process or any anticipated timeframe for completion. Furthermore it is clear that the capacity of municipal authorities to intervene in the water sector is extremely limited, and currently they play almost no role in it. At the rural and/or peri-urban level, responsibility for management and maintenance of water and sanitation systems in centres of less than 10,000 people is assigned to two entities: the potable water and sanitation procurement committees (comités d'approvisionnement d'eau potable et d'assainissement (CAEPA)), and the potable water and sanitation committees (comités d'eau potable et d'assainissement (CEPA)). Their committees are made up of members either elected by users of the local systems or by private operators under the supervision of the local OREPA office,¹⁸³ with OREPA remaining the legal owner of any infrastructure. However, although the law mentions two seemingly separate committees, their differences are not explained, and in practice it appears that only the term CAEPA is used to refer to all user/operator-managed systems.

The legal framework described above does not consider or assign responsibilities to matters relevant to DRR or to specific issues such as flood management, although in the statutes established to govern CAEPA structure and operations, the role of advisor or counsellor includes a responsibility to promote good hygiene practices, notably through proper management of water in homes, and sensibilisation of the local community on environmental issues, namely the preservation and protection of water resources. Interviewees commented that flood mitigation would generally be a responsibility of the municipal or section administrations, although in reality any flood mitigation projects will generally be instigated and funded by international and foreign funding and operational organisations as part of their DRR programming. Reduction of sanitation and environmental risks is mentioned as a strategic theme in the Sectoral Plan for the water and sanitation sector produced in April 2008;¹⁸⁴ however, as this document was produced as a precursor to the institutional reforms of 2009 its validity is questionable and in any event it only mentions risk reduction once.

It is clear that Haiti has a well-defined institutional structure for the water and sanitation sector under law, but the major gap in the framework is a lack of clarity over institutional roles and responsibilities relevant to DRR. For example, it is entirely unclear whether any institutions in the system are mandated to promote DRR, and institutional responsibility for flood mitigation and management is not clarified: interviewees from DINEPA and OREPA were adamant that, other than elements of flood preparedness and response which are covered in the training and sensibilisation activities of DINEPA's Emergency Response Unit (see below,) flood mitigation was not part of their responsibilities, but were unclear as to who is responsible. Interviews at national and local levels with government and non-

¹⁸² Article 19, Ibid

¹⁸³ Article 20, Ibid

¹⁸⁴ Page 11, Government of Haiti and the Inter-American Development Bank, Haiti: Strategic Plan for the Potable Water and Sanitation Sector, April 2008

government stakeholders revealed a common concern regarding the absence of a more detailed legal framework together with accompanying norms, standards and policies: without such a framework decisions are arbitrary and fail to take into account important issues such as DRR. Practical issues are also cause for concern at national level and in urban settings: outside of the institutional structure established by the law of 2009, other ministries are also involved in decision-making in the water and sanitation sector (namely CIAT, the Ministry of Environment, and MARNDR) and no clear division of responsibility exists between these ministries, nor is there any coordinating body who can regulate the relationship. One interviewee provided a particularly pertinent example: the Ministry of Environment and MARNDR have installed water-level measuring apparatus in the same areas, without notifying DINEPA or the relevant OREPA. Better central planning and coordination could remove these types of issues. Interviewees also emphasised the severe funding and capacity constraints that faced the sector, despite the relatively large investment of donors and the international community. On average each ONEPA has two or three trucks that can be used to distribute water in times of emergency, which is nowhere near enough to meet needs. In Leogane, the CTE could afford only four staff, not all of whom are full-time or remunerated appropriately, who have no means to undertake the scale of work needed to, for example, maintain the town's reservoirs or better manage its constrained supply. Leogane's CTE is totally reliant on trucks from NGOs for water distribution. At the local level, many CAEPAs struggle financially and examples were given of committees not being able to afford a single chair or a calculator.

One positive development relevant to DRR in the water sector is the existence of DINEPA's Emergency Response Unit (ERU) at national level. This unit was established after the earthquake in 2010, and focuses largely on training and sensibilisation on disaster preparedness and response for government agencies and communities (through a network of ERU focal points at departmental and municipal levels). The ERU feeds into DPC's contingency planning procedure and is currently trying to develop emergency response plans focusing on water and sanitation for each municipality; interviewees admitted this is an ambitious agenda that may not be realised in the immediate future, however. Interviewees also raised the issue of the extent to which government officials, communities and even external actors such as NGOs do not understand or engage with DRR or DRM as a concept, instead focusing exclusively on disaster response and a very narrow window of 'preparedness' activities. The ERU is attempting to include awareness-raising of DRR in its sensibilisation activities but limited funding and capacity means that it is difficult to do this with so many other priority duties, and with only three permanent staff to manage them. UNICEF wholly funds the ERU, and funding appears to be tied to a cholera response programme rather than any wider DRR programme, which raises inevitable questions of sustainability.

The bottom line

Haiti has a well-defined institutional structure for the water and sanitation sector under law, but the major gap in the framework is a lack of clarity over institutional roles and responsibilities relevant to DRR. There is also evidence to suggest that DRR and DRM are not properly understood and



therefore are side-lined in favour of response and basic preparedness activities. DINEPA's ERU represents a positive step, although in practice its current focus is training and sensibilisation for disaster preparedness and response.

The devolved network of government bodies in the water sector, notably the local level CAEPA committee structures, present an opportunity for locally appropriate DRR considerations to be included in operations, subject to funding and capacity constraints.

3.5 Regulation of the natural and rural environment

Human risks in environmental change

The fundamental legal framework for environmental regulation in Haiti is established through the constitution and a 2006 decree on environmental management and regulation (hereinafter referred to as the 'Environmental Management Decree').¹⁸⁵ Haiti also possesses a wealth of laws relevant to the environment, however they are not part of a comprehensive set of law, but are instead individual responses to particular issues. As with many other sectors confusion exists over to what extent many of these laws are applied and enforced.¹⁸⁶

It is clear from the Haitian constitution that environmental protection is an important priority for the state. Every citizen is required to respect and protect the environment as one of his or her basic civil duties.¹⁸⁷ The constitution also states that, as the environment is the 'natural framework of the life of the people, any practices that might disturb the ecological balance are strictly forbidden.'¹⁸⁸ Obligations are also placed on the state: notably, it is required to "organize the enhancement of natural sites to ensure their protection and make them accessible to all", although the interpretation of the term "enhancement" is not clear it at least places an obligation on the state to ensure protection and accessibility.¹⁸⁹ If necessary, the state may declare a zone of ecological utility.¹⁹⁰ Article 257 establishes that the law shall specify the conditions for the protection of flora and fauna, as well as the punishments for violations.¹⁹¹ The Constitution also contains provisions relating to the protection of forests, which are discussed in more detail in section 3.6.2 below.

The government acknowledges in its environmental management decree that 'the degradation of the Haitian environment has reached alarming proportions

¹⁸⁵ Decree on Environmental Management and Regulation of the conduct of citizens for sustainable development, 12 October 2005 (Official Gazette of the Republic of Haiti Le Moniteur No. 11, 26 January 2006)

¹⁸⁶ For an exhaustive listing of all laws relevant to the environment in Haiti up to 1995, please see Jean André Victor, UNDP, Annotated and Compiled Environmental Laws of Haiti, October 1995

¹⁸⁷ Article 52-1, Constitution of Haiti, 1987

¹⁸⁸ Article 253, Ibid

¹⁸⁹ Article 254, Ibid

¹⁹⁰ Article 256, Ibid

¹⁹¹ Article 257, Ibid

compromising the country's sustainable development and that it is imperative for the State to take appropriate measures to safeguard and protect the environment.¹⁹² The decree was passed during a period when the Haitian Parliament was inoperative, and therefore the President legislated by decree on matters of public interest.¹⁹³ The fact that the decree did not follow the full legislative process may at least partly explain why its implementation has been so weak (which is discussed in further detail below). The decree establishes the legal foundation for Haiti's policy towards the environment and regulates its and its citizens' behaviour regarding environmental management and sustainable development.¹⁹⁴ Its specific aims include the following:

- anticipate and prevent sensitive actions which could have immediate or future impact on the quality of the environment and ensure the harmony between environment and development;
- organise a close and ongoing monitoring of environmental quality and control of any pollution, degradation or damage and the mitigation of its negative effects on the environment and human health;
- promote a policy of protecting and expanding forest cover and agro-forestry land, mostly on slopes;
- develop a management and restoration policy of damaged places and for improving the quality of life;
- encourage environmentally sound use of available natural resources and the use of cleaner technologies; and
- promote education related to environment and development of a national culture of protection and rehabilitation of the environment.¹⁹⁵

In order to achieve these aims, the decree sets out a list of 'collective actions' which should be undertaken by the State together with local government and civil society; these include the prevention and mitigation of disaster risks, as well as other related actions such as prevention of risks to human health due to environmental factors, protection of rural areas, combating all forms of pollution, and so on.¹⁹⁶ Prevention and mitigation of risks linked to meteorological phenomena, climate and seismic conditions is also included in the list of 'priority programs' identified for the period 2005 – 2020.¹⁹⁷ The decree is also notable for containing a relatively long list of well-drafted definitions of key terms relevant to the environment, which is unusual for Haitian legislation.¹⁹⁸

The environmental management decree sets out a detailed institutional structure for the sector. At its apex sits the Inter-Ministerial Council on Territorial Organisation and Environment, consisting of the Prime Minister and the Ministers for Environment and Territorial Organisation, who have overall responsibility

¹⁹² Recitals, Decree on Environmental Management and Regulation, 2006

¹⁹³ Recitals, Ibid

¹⁹⁴ Introduction to Chapter I, Ibid

¹⁹⁵ Ibid

¹⁹⁶ Article 1, Ibid

¹⁹⁷ Article 29, Ibid

¹⁹⁸ Article 2, Ibid



for and oversight of national policy.¹⁹⁹ Below the Inter-Ministerial Council is the National Council for the Organisation of the Territory and the Environment, which brings together representatives from central government, local government and civil society;²⁰⁰ its responsibilities include ensuring that the interests of central and local government and civil society are taken into account in the process of wider territorial planning and the development of environmental standards, and acting as a conduit between government and society (e.g. it is responsible for issuing public notices regarding projects and investments). The Ministry of Environment is in charge of the executive coordination and the drafting and implementation of national environmental policy, specifically ensuring that: programmes and projects comply with national policy; environmental policies are mainstreamed into other sectoral policies; coordinating the preparation of reports on the state of the environment; and defining the rules that govern the use of natural resources.²⁰¹ Responsibilities for environmental management are also assigned to the departmental, municipal and local authorities, including the following:

- develop and guide communal department action plans regarding the environment and sustainable development;
- establish planning schemes for human settlements in their areas;
- ensure the implementation of a soil occupation plan, a physical conditioning plan, and urban planning regulations;
- ensure the protection and restoration of natural resources;
- help create a framework for dialogue with the national, departmental, municipal and local authorities with a view to the integration of environmental policies at all levels and in all sectors.²⁰²

Other bodies created under the environmental management decree include the Inter-Ministerial High-Level Technical Committee for the Environment, which acts as a coordination and information-sharing body (and approves environmental impact studies),²⁰³ and the environmental sector technical units who essentially provide technical support to the Ministry of Environment.²⁰⁴ The establishment of such technical units is a good practice, especially as they are designed to sit within different government institutions and therefore provide a hub for the mainstreaming of environmental policy, however interviews and secondary sources have revealed that only a few institutions have established these units, and that they are often under-funded and/or misnamed, with little influence over policy.

The environmental management decree is notable for containing a chapter on risks associated with natural phenomenon. Although this does little other than to restate roles and activities that are established elsewhere, it is nonetheless useful

¹⁹⁹ Article 16, Ibid

²⁰⁰ Article 18, Ibid

²⁰¹ Article 20, Ibid

²⁰² Article 25, Ibid

²⁰³ Article 24, Ibid

²⁰⁴ Article 21, Ibid

to have these general obligations enshrined in national-level legislation. It would however be appropriate to include them in legislation dealing specifically with the national system for DRM, when such legislation is developed. For example, the decree notes that the State is obliged to prepare and implement plans for prevention and response to environmental disasters and that the SNGRD falls under the control of MICT,²⁰⁵ and that the State is responsible for setting standards for the prevention and reduction of risks in general.²⁰⁶ Areas of environmental risk are required to be identified, mapped and made the object of public information programmes under the Ministry of Environment.²⁰⁷

Environmental impact assessment

The environmental management decree deals specifically with an environmental impact assessment (EIA) process²⁰⁸ in Haiti, requiring any policies, plans, programmes, projects or activities that are likely to have an impact on the environment to be subject to an environmental assessment at the expense of the institution concerned. The EIA process covers the environmental impact study, an environmental impact statement, and the environmental permits and audits.²⁰⁹ The use of the words ‘at the expense of the institution concerned’ in this article appear to indicate that a government institution bears the cost of the assessment process, but “institution” is not defined and it is possible it may be widely interpreted (for example, to include private companies). It would make no sense if the government had to bear the cost of all assessments regardless of the nature of the project; given limited funding across the board in the Haitian government this would act as a strong disincentive to engage in the EIA process.

The environmental management decree states that a list of projects and activities subject to the EIA process, as well as the rules and procedures for the process, are to be established by regulations of the Ministry of Environment. Stakeholders confirmed that such regulations are not yet in place but that their development is ongoing. Projects may only be authorised if the Ministry of Environment issues a statement of non-objection after reviewing the environmental impact statement, on the basis of procedures established by it.²¹⁰ Importantly, an element of public participation is considered here, as the Ministry of Environment’s procedures should include means to involve the public with a view to ensuring the widest participation possible.²¹¹ Exactly how this participation will be assured and factored in to decision-making is not specified but it is hoped that the Ministry will issue secondary documentation on this in the near future. Under a separate law it appears that the departmental governments have the responsibility for verifying the environmental impact studies for large construction, infrastructure, dam and road projects,²¹² but this link is not mentioned in the environmental management

²⁰⁵ Article 148, Ibid

²⁰⁶ Article 150, Ibid

²⁰⁷ Article 149, Ibid

²⁰⁸ The Decree on Environmental Management and Regulation of 2006 refers to an “environmental assessment” (in the original French: *évaluation environnementale*) in the decree, but the acronym EIA is used here, in keeping with accepted norms.

²⁰⁹ Article 56, Decree on Environmental Management and Regulation, 2006

²¹⁰ Article 58, Ibid

²¹¹ Ibid

²¹² Article 98, Decree setting the general framework of decentralisation and the organisational and functional principles for local authorities, 1 February 2006



decree. This is unfortunate as local administrations should be a crucial reference point in the EIA process, not only for their own input but also for coordinating the input of local communities into the process.

Thus, the current Haitian legal framework for EIA establishes important general principles but still has large gaps with regard to roles and means to, for example, ensure community participation. These gaps are also reflected in the current operational capacity. Although legislation requiring EIA procedures has been in place for almost a decade, very little in the way of capacity has been developed for this purpose and secondary regulations and guidance are lacking. Interviewees confirmed that, at national level, the Ministry of Environment has only three staff assigned to oversee the EIA process, who receive support and training from UNDP. This is indicative of the Ministry's difficult financial situation: less than one per cent of the government's budget is allocated to it, and of that 75 per cent goes directly to administrative costs.²¹³

At departmental and municipal level there is currently no capacity to deal with EIAs, and all applications are routed through the Ministry in Port-au-Prince, although consultation with affected local authorities is part of the process. Interviewees revealed that many developers of projects simply do not follow an EIA procedure unless the size of the project makes it unavoidable for political and public relations reasons, due to both confusion over the legal requirements to do so and the fact that the capacity does not exist to enforce the regime; even Ministry of Environment staff are not sure what the exact sanctions should be for non-compliance.

Although little law and documentation exists for the EIA regime there do appear to be established norms of practice for assessments: currently all studies must be undertaken by a study team that has accreditation status with the Ministry of Environment, who must sign off on the study's terms of reference before it commences. The Ministry of Environment should ensure that all EIA studies are distributed to affected government stakeholders, who are able to raise objections and provide comments, or simply to indicate that they have no objections to the proposals. Less detail was provided regarding community participation, although social impact is considered an important deciding factor in any EIA process, and interviewees at the Ministry of Environment referred to recent projects in the North-West Department, where community monitoring centres were established.

A recent initiative between UNDP, the Ministry of Environment and the Institut de la Francophonie pour le développement durable aims to change this situation. UNDP currently funds a capacity building support unit in the Ministry of Environment, which has recently undertaken a consultation and research project to develop suitable laws, regulations, sectoral and technical guides to expand on the relatively minimal legal framework for EIA in Haiti. Importantly, the establishment of a new National Bureau of Environmental Evaluations is proposed, in order to promote and implement the national EIA system.²¹⁴ The Bureau would have separate legal personality and would report directly to the Minister of Environment. At regional

²¹³ Oxfam Research Reports, Climate Change Resilience: the case of Haiti, March 2014

²¹⁴ Ministry of Environment, UNDP, Institut de la Francophonie pour le développement durable, Élaboration du cadre juridique et institutionnel, de procedure generale et guides sectoriels de realisation de l'évaluation environnementale a Haïti (Résumé des principaux résultats), 2014

and/or departmental level the functions of the Bureau would be replicated in separate offices, and it is hoped that the Ministry of Environment may be able to capitalize on the wide network of DPC officials and members of the SNGRD to coordinate public participation in EIA procedures. This development is to be commended for the importance it rightly awards to the EIA system in Haiti, however there are questions over its sustainability, as without the financial backing of donors such as UNDP it is doubtful that the Ministry of Environment would be able to fund the establishment and development of the Bureau.

The consultation process noted above has also produced useful guidance documents that are designed to inform current EIA practice as well as to form the initial ‘working tools’ for the National Bureau of Environmental Evaluations to develop. Although the Ministry of Environment was not able to share the sector-specific guides, they have been developed and will hopefully bolster the Ministry’s currently limited efforts to involve other sectors in the EIA process. A “General Guide” for the realisation of environmental impact studies in Haiti was made available to the project consultant, which contains a large amount of useful detail and guidance. It should be noted that the document refers to *Études d’Impact Environnemental et Social (EIES)*, which translates as Environmental and Social Impact Studies, indicating a prioritisation of how projects may affect communities as well as the environment, and the strong links between the two. Evidence of this can be found in the guidance on public participation,²¹⁵ which emphasises that environmental and social impact assessment must be made with the participation of the populations and public concerned, through consultations and public hearings, and establishes that any person likely to be affected by the activity has the right to be informed and to be heard. Detailed requirements are set out, explaining the stages and timeframes for engagement of affected populations; for example, the requirement for the proposed national bureau to affix key consultation documents in visible public places for a minimum of 15 days following submission of an impact assessment, and ensuring that full documentation is available for viewing at a convenient public place.²¹⁶ Public inquiries and hearings are also required, and even the requirements of presentation materials are specified (for example, drawings, pictures and easily accessible language must be used).²¹⁷

The General Guide fills in many other important gaps left by the national framework. Its content sets it out as an example of good practice that will hopefully be backed by implementation in the near future. It is prescriptive both on the required content of an EIES as well as the criteria against which it must be assessed. These criteria include the intensity or magnitude of the impact relative to the degree of disturbance to the environment, the duration of the impact, and the risks to the health, safety and welfare of the population.²¹⁸ Each proposed project must also submit an environmental management plan; in the event that the project involves major industrial or infrastructure works, then a study on risks and emergency measures is also obligatory.²¹⁹ Although the guidance document

²¹⁵ Section 3.2, Ministry of Environment, General Guide on the realisation of EIES in Haiti (Preliminary draft), 2014

²¹⁶ Section 3.2.1, Ibid

²¹⁷ Sections 3.2.2 and 3.2.3, Ibid

²¹⁸ Article 5.7.2, Ibid

²¹⁹ Section 5.8.5, Ibid



does not mention DRR specifically, its content suggests that DRR considerations could, and may be, integrated naturally into the proposed EIA framework. It is hoped that the guidance document will, as is mentioned in its summary, be issued as a presidential decree in the near future, but interviewees were not optimistic about this happening quickly, given the generally slow rate of development of legislation in Haiti as well as its recurring political crises.

Community-level implementation and participation

The recitals to the environmental management decree clearly state that ‘it is the duty of the State to promote environmental education by allowing citizens better access to information in this respect to enable them to participate in and be aware of the decisions that impact the environment and sustainable development.’²²⁰ However the legal framework does not expand on this assertion. Interviews with community focus groups and other stakeholders revealed the gulf that exists between the noble aims of the government to encourage public participation, and the reality. Gaps in capacity and funding were the main reasons given for this. It is hoped that this gulf may be closed in the future if the above-mentioned institutional and legal reforms for the EIA regime are realised.

Community focus groups in the vicinity of Leogane were notable for the discussions around a local ‘loi-cadre’ (framework law) project, organised by the CASECs of three communal sections and undertaken in consultation with the community. The CASECs have met amongst themselves and with their respective communities to discuss and draft a short document seeking to regulate certain matters directly related to the communities’ exposure to risks. Local notables (namely, respected elderly members), NGO representatives and local Red Cross staff were specifically invited to participate in the development, and meetings were open to all. These include restrictions on the practice of letting goats roam free (as the goats devour many plants and trees, especially those that are newly planted, thereby contributing to soil degradation), local punitive sanctions against illegal tree-felling, and the use and management of local water resources. The fact that these laws or rules were developed and written in Haitian Créole means that they are already far more inclusive than the formal legal system, which works only in French; the CASECs interviewed noted that oral dissemination for illiterate community members has already been organised. Haitian law makes no provision to uphold locally developed laws of this sort but the small team of CASECs were nonetheless hoping to share the project with local authorities including the justices of the peace and the police, to start a discussion on applicability and enforceability as well as to try and develop this as a pilot project that could be replicated in other communities. It is not known whether similar such projects are already underway elsewhere but the fact remains that in the absence of state involvement many communities regulate their own affairs, and local custom and practice represents a potentially untapped source of knowledge and authority that could contribute to community level DRR in Haiti.

In practice, it appears that communities are rarely consulted on environmental matters or as part of a formal EIA process. Projects funded and managed by international organisations, donors and NGOs are an exception to this, as they

²²⁰ Recitals, Decree on Environmental Management and Regulation, 2006

will generally seek to involve local authorities and populations in as collaborative a manner as possible as a key part of the project²²¹ (although not always in the most appropriate manner, as pointed out by several interviewees). Large-scale projects (such as major infrastructure work) will generally be managed by the Ministry of Environment in Port-au-Prince with little input from departmental or municipal environmental authorities or any local communities affected. Furthermore, several interviewees questioned the integrity of the authorisation process, raising the issues of corruption as well as the Haitian government's desire to 'fast-track' any projects that will generate investment and employment, and therefore political capital.

Due to extremely limited government capacity outside the capital, dealings between the various international and foreign development funding and operational organisations and the departmental offices of the Ministry of Environment can often take the form of an 'informal' EIA process which is guided by pragmatism and personality rather than defined rules. This is a double-edged sword, as it allows for useful variations based on local needs and context, but can also lead to cutting corners and failure to adequately consider the needs of affected communities, as well as important local environmental and risk factors. Furthermore, the fact remains that it is rare for the private sector to adequately consult communities in Haiti: a community focus group in the communal section of Palmiste a Vin (Leogane municipality) revealed that nearby sand mine operations started in 2011 with no consultation or warning whatsoever, despite its disruption of access to the community and nearby homes at the time. The community members were not even sure who exactly operated the mine although they were aware that the Ministry of Mines leased the land to the operator; they noted that the community accepts the situation as some of its members work there, shovelling sand onto trucks. Although badly paid, unemployment levels are so high that this is seen as a valuable employment opportunity.

The bottom line

Although evidence suggests weak implementation, the environmental management decree of 2006 nonetheless clearly sets out important provisions relevant to DRR in Haiti, drawing a clear link between environmental hazards, climate change and DRR. In particular, it lists the prevention and mitigation of disaster risks as a 'collective action' that should be undertaken by the State together with local government and civil society. The decree also sets out a comprehensive institutional structure for the environmental sector and establishes the good practice of placing 'technical units' within different government institutions in order to mainstream environmental considerations into other sectors.

Haiti also possesses a brief but important legal framework for the environmental impact assessment process, and some limited capacity at national level to enforce it. Provided that there is sufficient political will behind the proposals, the establishment of a National Bureau of

²²¹ See, for example, USAID, Environmental Assessment of the USAID/Haiti North Park Power Project, June 2011



Environmental Evaluation, backed by a robust legal framework and system of secondary, sector-specific guidance, could help ensure that DRR is considered in relevant projects and overall provide a huge boost to DRR efforts in Haiti.

Forest management and exploitation

Forest management and exploitation in Haiti is governed by a number of different laws, under the general obligations found in the constitution, which provides that as long as the forest coverage remains below 10% of the national territory, 'exceptional measures must be taken with a view to restoring the ecological equilibrium'²²², and that in order to protect forest reserves and expand plant coverage, the State encourages the development of local sources of energy: solar, wind and others.²²³ Additionally, while the constitution recognises private property ownership, it fails to define ownership rights over forests, which may at least partly explain the massive extent of forest degradation in Haiti.²²⁴ In 1923, forests covered nearly 60 per cent of the country; as at 2006 forest cover was estimated to be less than two per cent.²²⁵ More recent estimates place this even lower. Such extensive deforestation has led to wide-scale soil erosion, which not only decreases agricultural yields but, due to the prevalence of mountainous terrain in Haiti, also results in landslides and flooding at lower altitudes. One of the greatest concerns for most of the community focus groups interviewed related to the ongoing deforestation and soil erosion, and the increased risk they face because of it.

As already noted above, the legal framework relevant to forests and their exploitation is scattered throughout a large number of laws of varying ages. Indeed, since 1826, Haiti has enacted more than 100 laws addressing the protection of forests and soil,²²⁶ but the rates of deforestation mentioned above point out clearly that these have not been effective, or at least, not effective enough. Due to confusion over what is applied and in force, only the most pertinent examples will be analysed here – either laws that are unquestionably in force, or those that offer examples of good legislative practice.

The need to regulate illegal felling and logging dates as far back as the first rural code of 1865, which states that all unauthorised logging or clearing of land will result in immediate arrest by the chief of the rural section.²²⁷ The code also prohibits the felling of timber on the crest of mountains, and around the heads and sources of rivers, and requires owners of land irrigated by rivers to plant bamboo and other trees to 'contain' the land and maintain the 'freshness' around the river.²²⁸

The first half of the twentieth century saw a relatively large number of individual

²²² Article 253-1, Constitution of Haiti, 1987 (this Article inserted in 2012)

²²³ Article 255, Ibid

²²⁴ Environmental Law Institute, Haiti – Legal Overview and Environmental Law, 2009

²²⁵ Library of Congress, Federal Research Division, Country Profile: Haiti, May 2006

²²⁶ Environmental Law Institute, Haiti – Legal Overview and Environmental Law, 2009

²²⁷ Article 7.1, Rural Code of Haiti, 1865

²²⁸ Article 14, Ibid

laws passed that sought to either prohibit or control the felling of trees. In fact, most of Haiti's older environmental legislation is aimed at protecting forests, as deforestation was a major environmental issue in Haiti due to wood's use as the main source of fuel. Notable examples of these laws include the following:

- order of 10 January 1933 regarding the protection and conservation of forests
- law of 4 June 1936 setting steps to stop deforestation
- decree-law of 23 June 1937 on the regulation of forests
- law of 17 August 1955 regulating the cutting, transport and trade in timber and lime kilns
- law of 19 September 1958 protecting the soil against erosion and regulating logging.²²⁹

Apart from the law of 17 August 1955, which is more detailed and establishes a basic permitting regime together with accompanying sanctions, these are all short pieces of legislation that seek only to prevent deforestation. Although reduction of risks is not mentioned in any of these laws (unsurprisingly given their age) they are notable for the manner in which many of them seek to prevent the creation or exacerbation of risks, notably by prohibiting felling of trees at riverbanks and on steep slopes.

The rural code of 1962 provides additional detail regarding forest issues and protection of the soil, demonstrating the importance of regulating efforts to reduce risks almost half a century ago. It forbids the clearing of land or felling of trees on any land with more than a 30 degree slope in arid areas, more than a 40 degree slope in semi-arid areas, and more than a 50 degree slope in rainfall areas,²³⁰ unless required for defense or public utility works.²³¹ The code also requires that such areas that are already cleared must be replanted.²³² Clearing of the slopes of gorges and ravines, as well as a 15-metre radius around them, is also prohibited, and any such cleared slopes must be replanted under the supervision of a government officer.²³³ The rural code also allows the state to declare 'reserved forests' by presidential decree, with reserved status being assigned to forests that protect catchment areas, mountain ridges and slopes of greater than 60 degrees;²³⁴ furthermore, any such areas that are already completely cleared of trees can be declared restricted areas and administered by the Department of Agriculture (now MARNDR).²³⁵ Although the rural code allows the state to effectively assume control of certain forest areas, its provisions regarding private ownership of forest land are somewhat confusing; it acknowledges that there may be 'owners' of forests and others with enclaved land (*terres enclavées*), but the exact ownership

²²⁹ For a complete list of all laws relevant to forest management and exploitation in Haiti up to 1995, please see Part IV of Jean André Victor, UNDP, Annotated and Compiled Environmental Laws of Haiti, October 1995

²³⁰ Article 62, Rural Code of Haiti, 1962

²³¹ Article 65, *Ibid*

²³² Article 66, *Ibid*

²³³ Article 79, *Ibid*

²³⁴ Article 184, *Ibid*

²³⁵ *Ibid*



rights are not specified and in any event it appears that the state may expropriate any land that is designated as reserved,²³⁶ or require owners to collaborate on reforestation activities.²³⁷

Forest fires receive relatively minimal treatment in Haitian law. Although it cannot be ruled out that more detailed law may exist on this point due to the high proliferation of forestry-related laws in the twentieth century, research for this report only uncovered the following references. The rural code of 1962 devotes two small sections to the protection of trees and forests, that prohibits the lighting of boucans (grills or small fires) in or near the edges of forests,²³⁸ and requires camp fires to only be lit in areas of at least one metre radius where all twigs, leaves, needles etc. have been removed.²³⁹ It is also prohibited to smoke in forests during periods of drought,²⁴⁰ and to throw matches or cigarette butts into forests or bushes.²⁴¹ In terms of more recent law, the environmental management decree of 2006 notes that 'preventing and fighting forest fires' falls under the responsibility of the Ministry of Environment's environment monitoring body.²⁴²

Interviews with community focus groups in Leogane and Jacmel showed that, despite a general lack of community awareness about Haitian law, most communities were aware of the general prohibition on cutting trees, although not of the exact legal authority behind the prohibition. This is unsurprising as institutional responsibilities at departmental, municipal and local levels for forestry are often unclear and in practice often fall to mayors, CASECs and ASECs rather than local Ministry of Environment officials. Most communities noted that incidences of illegal tree cutting would be reported to a CASEC or ASEC as necessary, although sanctions are generally informal and ad-hoc rather than following any clear legal authority. Communities generally understood the need to preserve trees in order to prevent soil erosion and reduce the risk of flooding and landslides, partly due to inherent local awareness and partly due to training provided by the DPC and NGOs on DRR awareness in the regions visited. However communities also pointed out the sheer number of Haitians living in poverty or extreme poverty who are effectively forced into cutting and selling wood and clearing land for crops simply in order to survive. This ties into a much larger discourse in Haiti, that without adequate poverty reduction then a large amount of the population is disincentivised from participating in DRR, due to the need to prioritise subsistence over risk reduction. Several community members made the astute observation that building better roads to remote villages may be able to do more for DRR in the long-term by providing better access to markets and employment opportunities, increasing income and helping to remove the barrier of poverty to risk reduction.

Interviews with officials from the Ministry of Environment for the South and South-East Departments did reveal positive local practices though. The local bureau does its best to enforce a rule that for each tree removed, five should be planted in its place, although it was acknowledged that funding and capacity gaps

²³⁶ Article 185, Ibid

²³⁷ Article 186, Ibid

²³⁸ Article 193, Ibid

²³⁹ Article 194, Ibid

²⁴⁰ Article 196, Ibid

²⁴¹ Article 195, Ibid

²⁴² Article 64(2), Decree on Environmental Management and Regulation, 2006

makes this hard to enforce outside the context of collaborative programme design or approval with, for example, NGOs and willing private sector companies. This rule is apparently based on a law but interviewees were not able to name it, and further research has not shed any light on this issue. In any event, interviewees noted that minimum heights for replanted trees are not specified, resulting in smaller, cheaper saplings being used that are then simply being eaten by goats or washed away in heavy rain. Therefore the bureau is enforcing a minimum size for replanted trees to counter this problem, taking a pragmatic approach rather than simply relying on legislation in order to contribute to risk reduction. Ministry of Environment interviewees also pointed out that although the law only provides for State management of forests, many communities undertake some form of forest management, even if only to the extent of preventing excessive cutting of trees or enforcing prohibitions on fires near villages, and international and foreign development funding and operational organisations have been involved in providing training and capacity-building to communities on some aspects of forest management. Community focus groups corroborated this, as several groups, although not referring to customary law per se, did note that some traditional rules applied to how they dealt with trees and forests: mainly that community members understood the extent of their land and were prohibited from cutting trees on the land of others, nor can they cut down trees that are too young, or too large (the example of older mango trees was given). The point was also made however that such traditional rules are being increasingly disregarded as pressure on land increases.

According to interviewees, Haiti's forests have suffered extensive deforestation due largely to enforcement problems as a result of the weakness of Haiti's ministries, and a lack of capacity at sub-national level. A review of the relevant legislation makes it clear that regulation focuses on prohibitions rather than the promotion of community and stakeholder participation; evidence from other countries clearly shows that taking the opposite approach can create significant improvements in risk reduction through participatory management of natural resources. A failure to deal with land tenure issues over forests has also created problems: since the forests are almost exclusively state property,²⁴³ there are no property rights associated with them, and therefore there is no clear incentive to use forests sustainably or to conserve them. Previous community-focused initiatives have come and gone with mixed success,²⁴⁴ and only point out the pressing need to establish some form of legal foundation for the full inclusion of communities in the management of forests and natural resources.

The bottom line

A large body of law relates to protection of forests in Haiti, and whilst enforcement and capacity in the sector is severely lacking, a legal framework exists that seeks to limit human impact on Haiti's depleted forests, and to prevent risks such as forest fires. In practice, however, deforestation is at a critical level and community use of forest resources is largely governed by customary rules and traditions.

²⁴³ See Food and Agriculture Organisation of the United Nations, Global Forest Resource Assessment 2010, National Report: Haiti, Rome, 2010

²⁴⁴ See, for example, the *Comités d'Appui à la Gestion du Système National d'Aires Protégées*, which ran from 1996 to 2001, and are described in Caribbean Natural Resources Institute, Civil society involvement in forest management: the case of Haiti's terrestrial protected areas, July 2002



Rivers and watercourses in rural areas

The legal framework for rivers and watercourses in Haiti is in part based on the same legislation as for urban water as discussed in section 3.5.5 above, namely the decree of 2009 regulating the drinking water and sanitation sector. Of particular relevance to rural areas are the potable water and sanitation procurement committees (CAEPAs) which are specifically mandated for the management of water and sanitation resources in rural and/or peri-urban areas.²⁴⁵ However institutional responsibility also extends to the Ministry of Environment and MARNDR in the context of watershed management, and as analysed below these institutions have overlapping responsibilities.

The rural code of 1962 contains several provisions that deal specifically with the rural water sector, starting from the general premise that springs, rivers, lakes and other watercourses are part of the domain of the State and may not be privately owned.²⁴⁶ Local landowners and communities do have rights to draw water, fish, and for irrigation subject to oversight by the state and provided that enjoyment of such rights does not prejudice the rights of others²⁴⁷ (exactly how the balance of rights is achieved is not specified). The code also makes it clear that no construction of dams, pumps or other equipment may be established in or on the banks of rivers or other water sources without authorisation from the Department of Agriculture (now MARNDR), and such authorisation will set the exact conditions for use of the water source by the beneficiaries.²⁴⁸ The code also sets out a regulatory framework for irrigation systems, groundwater, and drainage.²⁴⁹

Key to the management of rivers and watercourses in rural areas is Haitian law and policy in regards to watersheds: Haiti is divided into 30 principal watersheds,²⁵⁰ which include over 158 rivers, but most if not all are directly threatened by over-exploitation of forest resources and the erosion of drainage basins, as well as the mismanagement and non-sustainable use of groundwater.²⁵¹ MARNDR issued a Watershed Management Policy in 1999, with the general objectives of firstly, the rehabilitation of degraded watersheds, and secondly, to contribute to an improvement in the socio-economic situation of the communities living below the watersheds, through greater availability of water resources and a reduction in the risk of flooding.²⁵² To achieve this, its specific objectives are to integrate the sub-sector policy of watershed management in both agriculture sector policy and in the global policy of environmental management; to ensure the general coordination of actions linked to the management of watersheds; and to promote a policy of conservation and production in the watersheds.²⁵³ The link made between watershed management and livelihoods is important and essential for sustainable risk reduction. The policy also sets out provisions regarding

²⁴⁵ Article 20, Law of 11 March 2009 regarding the organisation of the drinking water and sanitation sector

²⁴⁶ Article 131, Rural Code of Haiti, 1962

²⁴⁷ Articles 132 to 134, Ibid

²⁴⁸ Articles 137 to 139, Ibid

²⁴⁹ Articles 146 to 181, Ibid

²⁵⁰ Annex 1, Table 1, MARNDR, National Agricultural Investment Plan, May 2010

²⁵¹ Section 2.1.4, Ministry of the Environment, 'Integrating the Management of Watersheds and Coastal Areas in Haiti', Haiti National Report, September 2001

²⁵² Section 1.2, MARNDR, Policy on Watershed Management, 1999

²⁵³ Ibid

responsibilities for watershed management at sub-national levels: interestingly, the MARNDR proposes that a smaller local unit called the community management committee (Unité de gestion communautaire (UGC)) is established. The UGC is defined as being a cohesive community group working in agriculture in an area corresponding to a micro-watershed, and is required to prepare a management plan for its natural resources and an action plan for development.²⁵⁴ These plans are consolidated into a section level resource management plan, which is then consolidated at the municipal level, where each commune will conceive a natural resources management plan, developed based on the plans of the UGCs, and providing a framework for actions to be implemented in the commune.²⁵⁵ The plans feed upwards into department level, where actions are taken to harmonise the communes' plans as well as to integrate them into departmental agricultural and development plans.²⁵⁶

The watershed management policy is an extremely positive document that is to be commended for its 'bottom-up' approach, starting with the identification of needs at the community level and then working up through the administrative levels. However the detail of the process is bureaucratic and time-consuming and although the policy document recognises the principle of decentralisation, the decentralised collectivities (i.e. department, municipal and section levels) are only assigned the responsibility for the implementation of management plans, rather than authority, which remains with MARNDR at department and national levels.²⁵⁷ Interviews with stakeholders in the water sector revealed that most of these plans have not been developed or implemented, and in reality there is minimal coordination between the MARNDR at national and department level, and the local authorities, who lack the means and funding to undertake such ambitious planning work.

In practice, confusion exists over legal and institutional responsibility for rural water management, and watersheds in particular. An Environmental Action Plan, published in 1999, assigned authority for the management of strategic watersheds to the Ministry of Environment, although it appears that most of the actions contained in this plan were never developed or implemented.²⁵⁸ The environmental management decree of 2006, which handed a great deal of control over environmental matters (or at least, executive coordination of environmental matters) to the Ministry of Environment, declares that land-use planning and integrated management of watersheds is a priority for the period 2005 – 2020,²⁵⁹ and that the government has the responsibility for preparing and implementing land-use and environmental management plans for each watershed or hydrographic district in the country. The decree also provides that watersheds are the geographic area to be used for the planning, management and protection of water resources,²⁶⁰ and the Ministry of Environment is charged with creating inter-ministerial and inter-institutional mechanisms for the sustainable coordination

²⁵⁴ Section 2.3(1), Ibid

²⁵⁵ Section 2.3(2), Ibid

²⁵⁶ Section 2.3(3), Ibid

²⁵⁷ Section 2.1, USAID, Watershed Management in Haiti: Recommended Revisions to National Policy, September 2009

²⁵⁸ Section 2.2.1, Ibid

²⁵⁹ Article 29, Decree on Environmental Management and Regulation, 2006

²⁶⁰ Article 114, Ibid



and management of water resources.²⁶¹ It is important to note here that the ‘state functions’ for regulating and managing reserved areas, forests, hydrometeorology, hydrogeology, and water resources are transferred from MARNDR to the Ministry of Environment. As article 114 states that the watershed is the operational planning unit for the management and protection of water resources, it is therefore clear it is the Ministry of Environment, rather than MARNDR, that has legal responsibility in this area.

As noted by commentators, although the environmental legislation issued in 2006 (the Environmental Management Decree and the Organisation law for the Ministry of the Environment) was presumably designed to clarify institutional roles and responsibilities, it has had the opposite effect, and as a result although the Ministry of Environment has most of the responsibility for watershed management it has few resources, whereas the opposite is true for MARNDR. Compounding this issue is the fact that both MARNDR²⁶² and the Ministry of Environment have negligible human and material resources to develop and enforce law and policy, and ‘the reality is that almost no-one in the rural communities pays any attention to the regulations or laws because there is very little or no enforcement.’²⁶³

Longer-term, it is hoped that the Inter-Ministerial Committee for Territorial Planning (CIAT) created in 2009 may be able to cut through the overlapping responsibilities. Its Watershed and Water Resources Management Unit is in charge of defining public policy for the management of watersheds and the integrated management of water resources. CIAT defines the Unit’s task as to ‘develop knowledge tools and elaborate frames of reference aiming at an integrated management of the watersheds from the ridge of the mountains to the littoral’.²⁶⁴ Stakeholders noted that as far as they were aware there was little concrete activity happening in terms of coordinating policy over watershed and water resources management but that due to the high level at which CIAT operates this is unsurprising.

Community participation

The legal framework relating to rivers and watercourses in rural areas is notable for the relative lack of content relating to community participation or management of resources. This is a clear gap in legislative provision as allowing for communities to, for example, manage local riverbeds can free up government resources as well as incentivise risk reduction. In most communities, management continues to be governed by local practices, custom and tradition, as evidenced in the communities visited for this report. For example, in communities with nearby rivers, interviewees pointed out that people will have local fishing ‘rights’ over certain parts of the river, and in some cases rights to access or cross the land of others in order to reach the river and exercise these fishing rights. Interestingly, this corresponds broadly with the provisions of the rural code mentioned above,²⁶⁵ although community members were not aware of this themselves. Focus groups also pointed out that customary rights exist that enable farmers to bring their

²⁶¹ Article 115, Ibid

²⁶² Section 2.7, USAID, Watershed Management in Haiti: Recommended Revisions to National Policy, September 2009

²⁶³ Ibid

²⁶⁴ CIAT, Towards a sustainable and concerted planning of the Haitian territory, undated

²⁶⁵ Specifically Articles 132 to 134, Rural Code of Haiti, 1962

animals (mainly goats and cows) to water sources, and all communities pointed out the shared use of rivers as sources of household water for rural communities (in areas where no wells were available). All communities visited also pointed out that they tried to enforce local prohibitions on dumping litter and waste into the river, with mixed success.

On the whole, feedback from interviewees suggested that the system of CAEPAs in smaller towns and rural settings worked quite well, and enabled some communities to take an active role in management of water resources. However their participatory nature is highly variable: whereas some CAEPAs are established purely as small enterprises designed to generate profit by levying a charge on the provision of water (a common example is the small water points where water is sold by the litre), others are more participatory in nature and their management committees combine local authority figures with representative members of the community. Furthermore application of the CAEPA statutes seems mixed, with some communities reporting that the general meetings of users are held as stipulated in the statutes, whilst others had never heard of this requirement.²⁶⁶ Interviewees from the water sector also pointed out that, with the support of international donors and NGOs, many rural communities have received training on small-scale water treatment activities, and undertaking minor repairs to machinery (e.g. water pumps). This again raises the issue of international and NGO support stepping in to fill gaps in the formal system, however; for example, the Red Cross in Leogane helped to develop and implement a rainwater harvesting system in rural communities, to provide water storage and irrigation for small-scale rooftop gardening, as a solution to the lack of general water storage and reservoirs available in rural areas. Municipal representatives from OREPA confirmed that there was simply no money or capacity available for the government to undertake such projects.

The bottom line

The regulatory framework is spread over various sources, including the Rural Code, and a number of more recent decrees and policies from both the water and environment sectors. There is a lack of clarity in practice over roles and responsibilities in the sector. This is compounded by the low levels of human and financial resources commanded by the two key institutions for the sector, MARNDR and the Ministry of Environment. Longer-term, there is hope that CIATs Watershed and Water Resources Management Unit will be able to develop and ensure implementation of robust public policy, but this has yet to gather momentum.

A gap in legislative provision exists in terms of community participation in the management of rivers and rural watercourses, with customary rules and traditions being the norm in rural communities. Whilst documents such as the Watershed Management Policy propose progressive structures such as the community management committees and take a 'bottom-up' approach to identify local needs, this has not translated across into implementation. There is some evidence to suggest that the system of CAEPAs works well for smaller towns and rural settings and facilitated community management of

²⁶⁶ Section 14, DINEPA, Statutes for CAEPA, 2010



resources, but this depends greatly on local interest and capacity.

Drought and food security

Although drought is a major natural hazard faced by Haiti due to its severe impact on food security, there are no specific laws covering this area. Institutional responsibility for food security rests ultimately with MARNDR. Operational responsibility is delegated to the national food security coordination structure (Coordination nationale de la sécurité alimentaire) (CNSA), with support from the Inter-ministerial Council for Food Security (Conseil Interministériel de la Sécurité Alimentaire), the National Platform for Food Security (Plateforme Nationale de la Sécurité Alimentaire). This institutional structure is supported by a large number of international organisations, local NGOs and foreign government agencies.

Several policy documents show the Haitian government's efforts towards developing a robust institutional and policy framework designed to increase food security that make some clear links between the food security sector and DRM. A 2010 update to 1996's National Plan for Food and Nutrition Security and Nutrition (*Actualisation du Plan National de Sécurité Alimentaire et Nutritionnelle*) notes the risk to agricultural investments posed by natural hazards such as hurricanes and floods, and points out notable weaknesses in the agricultural system, such as the lack of storage infrastructure making the management of food crises extremely difficult during 'lean periods' and disasters.²⁶⁷ A broad framework of strategic objectives and sectoral considerations is set out to provide a way forward for improving the food security situation in Haiti. The adoption of an appropriate legal framework is noted as an important means to realise this but it is left as a general ambition. In 2011, a framework document set out proposed directives for a national observatory for food security, with the objectives of establishing a non-hierarchical and participatory national food security monitoring system through a network of decentralised observatories that would work closely with local actors²⁶⁸. Importantly this document makes a clear link between the management of disaster risk and food security, and puts forward potential inputs for the CNSA in pre-, during and post- disaster situations.²⁶⁹ It was not possible to confirm whether or not the national observatory structure had been established or to what extent the CNSA is operational.

Interviews with stakeholders did reveal some good practices and programmes in place. Field visits to communities in areas around Leogane and Jacmel revealed a number of projects designed not only to contribute to DRR but also to food security. For example, the Netherlands Red Cross in Jacmel are engaged in a pilot project to plant drought-resistant grass or other hardy 'barrier' plants (such as sisal and vetiver) which encourage water absorption and protect crops from flood damage. This is combined with a series of 'check' dams in ravines to prevent flooding and encourage water absorption. Other foreign and international NGOs

²⁶⁷ Section 1.1.3, MARNDR, Conseil Interministériel pour la Sécurité Alimentaire, CNSA, Actualisation du Plan National de Sécurité Alimentaire et Nutritionnelle, (Final version) March 2010

²⁶⁸ MARNDR, CNSA, Document Cadre de l'Observatoire de la Sécurité Alimentaire en Haiti, September 2011

²⁶⁹ Section 3.2.3, Ibid

throughout Haiti are engaged in work with similar objectives. Interviewees were however keen to point out the necessity to combine such projects with community training and education (for all age groups) as well as the challenge of ensuring that communities are appropriately incentivised to maintain such structures. At the national level, the Inter-American Development Bank is currently funding an ambitious programme to reform the agricultural sector in Haiti, which would help to prioritise DRR and related issues.²⁷⁰ Award of future grants for the programme is conditional on approval by the Haitian Parliament of several sectoral reform laws and policies, including the following:

- draft framework law on the Agricultural Health and Food Safety Public Autonomous Body and draft laws on animal and plant health;
- national policy on land tenure security;
- draft bills to modify the existing laws on ONACA (Cadastre National Office) and cadastre;
- draft bills to modify the existing laws on public surveyors, land registration and mortgage registry;
- draft bill on the transfer of irrigation perimeters management to water users associations.

These have been submitted to the Prime Minister's office but progress halted in 2013 and representatives from the Inter-American Development Bank were unsure when, if at all, these drafts may be able to proceed through the Parliament. Part of the concern is that in order to address agricultural reform and food insecurity, fundamental issues of land rights and tenure must be addressed, which as noted above in section 3.5.3 are controversial and are subject to ongoing political debate, with various Government ministries and other institutions possessing overlapping agendas and responsibilities.

The bottom line

There are no specific laws covering drought and food security in Haiti. However the Haitian government has, with external support, made significant efforts towards developing a robust institutional and policy framework to increase food security, highlighting the risks that natural hazards such as hurricanes and floods present to the agricultural sector and assessing the system's weaknesses. Proposals for a national observatory structure for food security represent one realistic option for better aligning management of disaster risk with food security, but will require sufficient political will to be properly implemented. Several good practices and projects exist but as the experience of the Inter-American Development Bank shows, legal and policy reforms in the agricultural sector have stalled and are hard to separate from potentially divisive issues around land rights and tenure.

²⁷⁰ Inter-American Development Bank, Haiti: Institutional Strengthening and Reform of the Agriculture Sector II, 2013



3.6 DRR education and awareness

No law or policy exists that assigns institutional responsibility for DRR education and awareness in schools and/or communities. Projects of this sort are however ongoing in Haiti, although these are almost invariably donor/NGO-led and have no basis in legislation.

References to education relevant to DRR (as opposed to mentioning it specifically) do appear in some law and policy, albeit briefly. The PNGRD provides for the Ministry for Education to be represented in the National Committee,²⁷¹ the Permanent Secretariat,²⁷² and the Emergency Operations Centre,²⁷³ although its exact role is not specified. Furthermore, training and education on DRM as well as on specific issues such as evacuation is listed as part of the risk and disaster management programme at local level.²⁷⁴ The environmental management decree of 2006 stipulates that the state has a duty to provide environment education, and that it should disseminate and support information and awareness programmes on this basis.²⁷⁵ Importantly, environment-related education is declared a mandatory subject in all educational levels of the national educational system, and the same article requires the private mass media to allocate, free of charge, at least 0.6% of their prime time programming to the dissemination of appropriate education and awareness on environmental protection (public media are required to devote at least 0.3% of their programming).²⁷⁶ Interviewees were unable to confirm whether these ambitious standards and targets have been met, but their existence in legislation is a positive practice that could provide an appropriate entry-point for DRR into the national education system.

Several good practices can be noted for the purposes of integrating DRR into education and awareness efforts. An inter-agency thematic committee for public sensibilisation and education has been in place since 2006, and according to the DPC has been extremely busy since the earthquake of 2010. The committee is co-chaired by the Ministry of Education and the DPC, and it includes other government stakeholders as well as the Haitian Red Cross, NGOs and the Alliance for Risk Management and Business Continuity. Responding to the fact that many NGOs and other actors (including government agencies) engage in education and public awareness activities without consulting the DPC or other members of the SNGRD, and therefore not ensuring any consistency of messages or training standards, the committee has created a process of validation and harmonization for education and awareness-raising materials. Once the committee has approved a product, it is then made available for use by the SNGRD throughout the country; although a positive development which ensures consistent messages are delivered and enables knowledge-sharing, interviewees did point out that this may put off some NGOs and actors who would prefer to maintain proprietary rights over their materials. Be that as it may, the committee itself is an extremely positive development that promotes and ensures consistency for DRR in education and awareness-raising efforts.

²⁷¹ Section 4.1, PNGRD, February 2001

²⁷² Section 4.2, Ibid

²⁷³ Section 4.3, Ibid

²⁷⁴ Section VII, Ibid

²⁷⁵ Article 74, Decree on Environmental Management, 2006

²⁷⁶ Article 75, Ibid

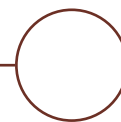
The SNGRD in Haiti also oversees seasonal outreach activities designed to educate and raise awareness. These activities generally commence in February, with many activities planned for the ‘day of civil protection’ (1 March) as well as to prepare for hurricane and flooding season. The DPC partners with government actors such as the Ministry of Public Health, DINEPA and OREPA, and non-government actors such as the Haitian Red Cross and other NGOs, to provide information on, among other things, DRR, cholera and malaria, hygiene and sanitation. Methods of communication include activities in schools, churches and public spaces, door-to-door information sharing, and using local media such as newspapers and radio, although use of the media is often dependent on NGOs paying for newspaper space or airtime. Distribution of printed materials is also generally avoided due to the high cost of printing as well as the need not to exclude illiterate community members.

There is also a large amount of DRR-relevant training that takes place in Haiti through DPC and its partners. DPC has a number of basic key training modules adapted from the United States Office of Foreign Development Assistance. These cover four main topics: DRM, assessment of needs, first aid, and management of temporary shelters. The DPC seeks to ensure that its committees at municipal and local levels receive this training as a matter of course. As part of the annual preparedness activities for hurricane season, a series of seminars is held every year in each of the departments of Haiti together with MINUSTAH, UN-OCHA and other NGOs and UN agencies. The purpose of these seminars is to explain the coordination of disaster preparedness and response at central and departmental levels. Linked to this, an annual simulation exercise is held to test information flows and the coordination mechanisms between actors involved in emergency response; simulation exercises are also held at departmental level. On the whole interviewees were extremely positive regarding the simulation exercises, and noted that they had contributed significantly to developing the capacity of actors to coordinate and deal with disaster risks more efficiently. Outside of the government SNGRD, the Haitian Red Cross is creating two training reference centres to offer courses in subjects including DRM (including micro-projects, training of trainers, DRR, shelter management), first aid, and hygiene and sanitation. In a positive step, the Haitian Red Cross is collaborating with the government to ensure relevant modules are validated; for example, the Ministry of Health has approved the health-related modules, and the DPC is currently reviewing DRM and DRR modules.

DRR has not yet been included in Haiti’s national curriculum for schools, due largely to an already overloaded curriculum and lack of capacity.²⁷⁷ It is also important to note that 80% of education in Haiti is managed by private and religious organisations,²⁷⁸ meaning that even if DRR could be mainstreamed into the national curriculum it would only reach a minority of students. However one positive development is that the thematic committee has developed a manual for teachers entitled ‘Risks and Disasters’, which gives guidance to teachers on how to include DRR issues in several different subjects. Some international organisations and NGOs are also making efforts to provide for DRR in schools. UNHCR’s ‘Land

²⁷⁷ Section 6.6, DPC, *Analyse des capacités de préparation et réponse du Système National de Gestion des Risques et Désastres*, December 2013

²⁷⁸ Ibid



Risk' game has been used successfully by the Red Cross in the Bainet and Côtes-de-Fer areas in the South-East department: a tournament was organised that involved over 180 local schools, which created an opportunity for DRR education at a very low cost. Other NGOs have been involved in the creation of after-school clubs on environmental issues.

The bottom line

Although DRR has yet to be included as part of the national education curriculum, a significant amount of good practice exists elsewhere. Environmental education is mandated as part of the curriculum and represents an opportunity to include elements of DRR. NGOs are actively involved in bringing awareness of disaster risks and DRR into schools in some areas. In terms of public awareness raising the DPC oversees a generally effective and widespread network of public information, and there is clearly a large amount of DRR and DRR-related training taking place, led by the DPC and most of its partners.

How law and regulation supports disaster-risk reduction
Haiti - case study report

Conclusions and recommendations



Although there is no legislation establishing Haiti's national system for Disaster Risk Management, in practice it has a relatively sophisticated system that has clear structures for operations and coordination at each devolved level of government. The deeply tragic effects of the earthquake of January 2010 have also been responsible for bringing the National System of Risk and Disaster Management and the concepts of disaster risk reduction and disaster risk management to the forefront, and whilst many areas for improvement can still be identified, it is nonetheless hard not to be impressed by what has been achieved with limited funding and capacity.

Setting aside the National System of Risk and Disaster Management, Haiti does have a great deal of legislation relevant to disaster risk reduction. As a framework, it is complex and, as noted for many of the thematic areas analysed for this report, it is spread across a number of different laws, often with no clear picture of levels of applicability and enforcement. Nevertheless, there have been some developments worthy of praise as noted below.

4.1 Good practices and examples

Although Haiti lacks a robust legal framework for DRM, this report has identified many examples of good practices across various sectors that, whilst lacking firm legal foundations, nonetheless significantly contribute to DRR in Haiti. The key examples of these are set out below.

National DRM system: since its creation in 2001, the SNGRD was designed to decentralise capacity through the creation of DRM committees at departmental, municipal and local levels. Although not provided with a basis in legislation, the PNGRD and PNRU set out in broad strokes the framework of a comprehensive and participatory system. The PNGRD goes beyond the narrow historical focus on disaster response and attempts to address the causes and factors that generate risks in order to reduce the possibility of disasters. At national level, the Permanent Secretariat ensures that inter-ministerial coordination is prioritised and the DPC is able to bring together a diverse range of stakeholders for vital activities such as planning for the annual hurricane season. This is all the more impressive for the fact that the DPC has existed without a proper legal mandate since its inception, and due to the nature of politics in Haiti has had to work with new ministers of MICT, and their different staff and agendas, on an almost annual basis.

Emergency Operations Centre (COU): it is clear from stakeholder feedback that this element of the SNGRD generally works well and is effective when activated, providing a forum for coordination and decision-making that can deal rapidly with the natural hazards faced by Haiti.

Early warning systems: Haiti has a working national EWS in place for hurricanes as well as a flooding EWS that is technical in nature and covers the highest risk areas in the country. An emerging system of reception and dissemination of alerts for tsunamis is also evident. On the whole the DPC has overseen the development of a widespread and effective system of warnings and alerts that are disseminated via the local DPC structures and the mass media, and has worked together with international partners to put in place effective EWS in many communities.

Responsibility and accountability for DRR: Although there is no specific statutory provision in relation to the accountability and liability of government, corporations and individuals for natural disaster risk reduction, there is scope under the constitution and the civil code to achieve legal redress in the event that government officials violate basic rights, or if badly maintained or built buildings cause damage.

Building codes: The existence and nascent implementation of the National Building Code is a clear example of good practice in this sector. Notably, the code deals specifically with the design of structures against wind and seismic risks, and is commendable for its creative use of diagrams rather than simply setting out extremely technical requirements and calculations, to ensure that it can be understood and applied by a much larger proportion of Haitians in the construction industry.

Water sector institutional structure: The devolved network of government bodies in the water sector, notably the local level CAEPA committee structures, present an opportunity for locally appropriate DRR considerations to be included in operations, subject to funding and capacity constraints.

Environmental management decree of 2006: Although evidence suggests weak implementation, the environmental management decree of 2006 nonetheless clearly sets out important provisions relevant to DRR in Haiti, drawing a clear link between environmental hazards, climate change and DRR. In particular, it lists the prevention and mitigation of disaster risks as a ‘collective action’ that should be undertaken by the State together with local government and civil society. The decree also sets out a comprehensive institutional structure for the environmental sector and establishes the good practice of placing ‘technical units’ within different government institutions in order to mainstream environmental considerations into other sectors.

Proposed legal framework for environmental impact assessments: Haiti already possesses a sparse but important legal framework for the EIA process, and some limited capacity at national level to enforce it. Provided that there is sufficient political will behind the proposals, the establishment of a national bureau of environmental evaluation, backed by a robust legal framework and system of secondary, sector-specific guidance, could help ensure that DRR is considered in relevant projects and overall provide a huge boost to DRR efforts in Haiti.

Forest protection under law: A large body of law relates to protection of forests in Haiti, and whilst enforcement and capacity in the sector is severely lacking, a legal framework exists that seeks to limit human impact on Haiti’s depleted forests, and to prevent risks such as forest fires.

DRR education and awareness: Although DRR has yet to be included as part of the national education curriculum, a significant amount of good practice exists elsewhere. Environmental education is mandated as part of the curriculum and represents an opportunity to include elements of DRR. NGOs are actively involved in bringing awareness of disaster risks and DRR into schools in some areas. In terms of public awareness raising the DPC oversees a generally effective and



widespread network of public information and there is clearly a large amount of DRR and DRR-related training taking place, led by the DPC and most of its partners.

4.2 Gaps in the legal framework for DRR

As a general observation, the Haitian state in general is chronically under-funded and depends on a number of bilateral and multilateral financial arrangements, with more than 50 per cent of the government budget coming from international aid. This presents an overarching challenge for the state and not least in terms of the implementation of existing law and regulation. This state of affairs is ultimately unsustainable and as international partners increasingly seek to reduce their financial commitments, difficult questions are raised over what will happen in the long-term. The lack of stable, long-term funding from within the government means that planning for anything other than emergency response activities is extremely difficult, and therefore DRR efforts are jeopardised.

Closely related to the issue of funding gaps, interviewees for this study often referred to one other practical challenge for the implementation and enforcement of law and regulation, namely the gaps in capacity at national, departmental, municipal and local levels. A lack of trained staff results in poor implementation and enforcement of legislation, and therefore in important sectors such as for building, environment and land planning this results in an inability to contribute to DRR.

Lack of a legal framework for DRR and the national system for DRM: many of the gaps and issues in the national system can be traced back to the lack of a firm legal foundation. Furthermore the PNGRD and PNRU have proven to be decent framework documents but they lack detail and still overly focus on issues of disaster response. They have also not been adequately updated to integrate the recommendations of the Hyogo Framework for Action (and now its successor instrument, the Sendai Framework for Disaster Risk Reduction). The DPC is unable to effectively plan its activities due to ongoing concerns over its legal status and dependence on MICT that impact on its operational capacity; its status also means it is much harder to build inter-sectorial and inter-ministerial consensus, and in the absence of clear legal authority the decisions of committees are often not considered binding.

Minimal integration of DRR as a concept: in general, the SNGRD and other relevant sectors in Haiti are still very much focused on preparation and response activities rather than long-term DRR efforts. There is a distinct lack of integrating DRR into sectoral ministries and development plans. DPC officials at national level understand and, to the extent possible, engage with the concept but outside of this, other ministries and bodies do not currently understand DRR to be a vital part of their own responsibilities.

Responsibility and accountability for DRR: No specific legal mechanisms exist to ensure the responsibility and accountability of individuals or entities for, for example, failing to act in accordance with their mandates, failing to warn of disasters, or damage to property. Although some general provisions exist in the constitution and the civil code, these are not used and doubts remain over their applicability to DRR and disaster management in general. Providing a strong legal framework

to ensure accountability and responsibility for DRR could create confidence in the government as well as encourage the performance of those involved in the sector, and it is hoped that this may be addressed in future legislation.

Early warning systems and risk mapping: Overall, efforts to create an EWS and adequately map risks suffer due to a lack of coordination, which can partly be explained by the lack of a legal framework for these important systems. Haiti benefits from a number of different EWS but these are fragmented, under the responsibility of different institutions at different levels, and as with the flooding EWS, are ultimately unsustainable without external funding. There is also no clear legal, policy or institutional mechanism to ensure that risk mapping links in to the EWS, and there is a lack of regulation and coordination for the collection and publication of baseline population data in high-risk areas.

Land tenure: Failure to commence the necessary legal and institutional reforms together with a distinct lack of capacity and funding for the land registration and cadastre system has resulted in the current weak system of land tenure and registration in Haiti, creating a lack of clarity over ownership of both private and public land. Thus, informal, customary-based practice is the rule rather than the exception. Although customary landholdings are not necessarily a barrier to DRR, in many cases lack of clear and legally enforceable title rights over land means that small-scale landowners and tenants have less incentive to invest in the resilience of their land and buildings. Unfortunately the majority of the Haitian public is largely unaware of the official cadastre system and is reluctant to formally registering title to property, due to complicated procedures, costs for professional fees and taxation.

Informal and precarious settlements: Given the extent of informal and precarious settlements in Haiti, and the sheer number of people who live in them, the fact that there is no legislation that seeks to regulate them is a major gap. Some positive assertions are made in policy documents, but these are not enforceable and it is not clear to what extent these will factor into official decision-making, if at all. The government is involved in the regularisation of selected settlements but there is no legal framework to guide this or ensure appropriate accountability.

4.3 Effectiveness of community-level implementation

Community involvement for the SNGRD primarily revolves around disaster preparedness and response; DRR is a relatively new approach that is yet to be integrated into relevant law and regulation, and to filter down from national level to the community level. Although the PNGRD notes the importance of building and enabling local capacity to ensure implementation of DRM, the government/DPC structure stops at the communal section level, and then must rely on international partners and NGOs to try and engage communities in DRR and DRM activities. The legal and policy framework is notably short on provisions relevant to communities, and does not establish any clear means of ensuring participation or ensuring that communities receive adequate and timely information regarding natural hazards.



Interviews revealed that there was no formal basis on which the views of communities could be adequately represented in the DPC committees, which are not elected and can often favour including local authorities and acquaintances of the CASECs, ASECs and mayors rather than ensuring that representative members of the local community are invited to meetings and can participate in decision-making. Other than in the EICs, women were vastly under-represented in the official committees.

However through developments such as the EIC structures established in many communities, there are positive developments that, if properly supported and integrated with the DPC and backed with stronger coordination requirements, could significantly contribute to community DRR and provide the vital bridge between the formal, DPC structure and local communities. Part of the issue here is how to effectively manage the large amount of international agencies and NGOs who are working on DRR programmes at community level; the State does not have the funding or the capacity to fulfil this role but there is currently a lack of overall coordination on DRR issues and programming at the local level.

Given the relative absence of the presence of the State in the lives of most communities it is unsurprising that many matters are regulated through tradition and custom, not least issues of land ownership and tenure. However as can be seen in the example noted above in section 3.6.1 involving a group of CASECs in Leogane developing local 'laws' in consultation with their communities, seeking to regulate matters that are of local importance, this presents an opportunity to raise awareness of legal issues and DRR in communities as well as involving the communities themselves in the design of locally appropriate legislation. It is hoped that by integrating more senior local authorities and officials into this process this could then be used in other communities to promote DRR and appropriate local legal frameworks for DRR within the communities.

Outside of the SNGRD, the legal framework is similarly minimal in enabling community participation in important processes such as land use planning and environmental impact assessments. Limited participation, and the limited amount of information that is shared with communities, remain major gaps in implementation. For the EIA process it is hoped that the proposed institutional and legal reforms will change this situation. Efforts to reform and improve the land use planning regime in Haiti are ongoing but at present lack impetus and sufficient coordination to get beyond high-level policy. It is vital that the participation of affected communities is properly integrated into how the national and local authorities conceptualise and organise the use of land in order to ensure that risk reduction aims are achieved.

4.4 Recommendations

This report seeks to make some recommendations to the government of Haiti that could help improve the legal framework in Haiti for DRR. The recommendations fall under three main categories:

1. Establish a cross-sectoral committee

2. Revise and update policies on DRR
3. Develop a new law on disaster risk management and consolidate existing laws

Within these three over-arching recommendations, specific short-term and long-term recommendations are identified. **Short-term recommendations** are designed specifically to deal, at least on a temporary basis, with the most pressing gaps in both policy and practice for DRR in Haiti. Generally speaking these options could be implemented without the need to develop and pass new legislation or to significantly reorganise institutional frameworks and responsibilities. Many of the short-term recommendations set out below would benefit from being integrated into a single, national-level document, such as the PNRU or PNGRD.

Long-term recommendations, several of which align with existing government plans for legal and institutional reform (such as those for housing, land tenure and land use planning). These recommendations focus on possible broad legal and institutional reforms that may be considered necessary to ensure the legal framework better supports DRR in Haiti. **The primary ‘long-term’ recommendation of this report is that the government takes steps to develop a new national disaster risk management law.**

However it should be borne in mind that new regulation can often be undertaken for its own sake and the end-result (in this context, increasing the ability of communities to cope with the effects of natural disasters) is forgotten. It is also important to note that legislation should simply be one part of a wider strategy, and that relying on legislation and enforcement alone may actually be among the least effective strategies, in a country that faces widespread institutional and capacity challenges.

Establish a cross-sectoral committee

Short term:

- It is recommended that one overall cross-sectoral committee be established by the Haitian government with a mandate to:
 - Oversee the revision of existing policies in place in the various thematic areas reviewed in this report and work towards the consolidation of policies across the ministries and organisations who are implicated in DRR.
 - Promote the development of a new law on disaster risk management as detailed below.
 - Identify best practices and work with the communities and local actors in promoting better implementation of the laws that already exist.

This recognises the pressing need to, at least insofar as the recommendations listed are concerned, promote dialogue between the various actors relevant to



disaster risk reduction in Haiti in order to avoid duplication of work and to ensure adequate oversight and coordination. Given the current structure of the national system for DRM it would be appropriate for this group to be convened under the authority of MICT and the DPC. This committee should draw together key government representatives from relevant directorates and ministries, as well as Haitian civil society including the Haitian Red Cross, community organisations, NGOs and international humanitarian and development actors.

Revise and update policies on DRR

Short term:

- As the DPC together with its partners is currently planning a review of the PNGRD and the PNRU, it is recommended that the cross-sectoral committee consider integrating the relevant short-term recommendations of this report into a revised version of the PNGRD. Review and update the PNGRD and PNRU to include, amongst other things:
 - Full definition and integration of the concept and principles of DRR;
 - Consideration and, where possible, integration of the recommendations of the Sendai Framework for Disaster Risk Reduction;
 - Promotion of the involvement of civil society and communities (including women and vulnerable groups and the DRM committees at departmental, municipal and local levels) in the SNGRD and in local-level decision-making.
 - Promotion of the sharing of best practices between DRM committees at departmental, municipal and local levels.
 - Summarise the current structure of responsibility and reporting for government-led DRM and DRR activities in Haiti (both within the DPC and across relevant government Ministries).
 - Outline a 'high-level' structure for a national multi-hazard EWS for Haiti, which should describe in broad terms where responsibility for implementation rests, how information and warnings flow between the various levels of the EWS, and in particular should consider how best to integrate community-based custom and practice into the system.
 - Provisions that create clear institutional coordination mechanisms between the DPC and the Ministry of Environment, in order to promote collaboration and inform future policy-making between the two sectors.
 - Provisions that assign responsibility for, and promotion of, community awareness of DRM and DRR at all levels. The PNGRD may also be used as a basis to set out a 'vision' for integration of DRM and DRR awareness and education into the mainstream educational system.

- Consider mapping all current EWS in place in Haiti with a view to assessing their viability, both in practical and financial terms and to ensure that risk mapping links to the EWS.

Develop a new law on disaster risk management and strengthen and consolidate existing laws

Long-term:

- Develop and adopt a new disaster risk management law that sets out the complete institutional framework and responsibilities for the SNGRD and integrates relevant updates of the PNGRD mentioned above (e.g. integration of DRR as a concept, Sendai Framework, etc). Ensure a fully consultative drafting process at the national level involving a broad representative spectrum of the State, the private sector and civil society. The mandate, role and area of responsibility of the DPC in DRR should be clarified in this framework. The new disaster risk management law should, amongst other things:
 - Include provisions requiring transparent reporting and establishing clear parliamentary oversight mechanisms.
 - Establish administrative sanctions as well as legal liability (this could include the development of internal government procedures/protocols and access to administrative tribunals) for cases where government officials fail to discharge their duty or act in a grossly negligent manner (and no 'good faith' defence exists).
 - Introduce legal liability for private individuals and corporations where appropriate, particularly regarding compliance with safety regulations and construction standards as per the national building code.
 - Clearly define the roles and responsibilities within the DPC and wider SNGRD (at all levels) necessary for a national, multi-hazard EWS and integrated risk mapping process in Haiti, extending from national to community level. In particular, the law should include robust means to ensure the integration of communities and customary EWS practice.
 - Consider mandating overall responsibility for DRM/DRR education and awareness to the Ministry of Education, with potential delegation of powers to either an education unit within the DPC or a DRM-focused unit within the Ministry of Education.
 - Set out a requirement to integrate DRM/DRR awareness into the national curriculum as well as into future educational policy.
 - Establish DRR-specific resource streams under the law within DRM budgets. For example, this could be achieved through special national and/or local funds dedicated to DRR gathered from a variety of funding sources.
 - Include provisions that mandate the specific representation of civil society and communities (including women and vulnerable groups



and the DRM committees at departmental, municipal and local levels) in DRM institutions and processes at the national and local levels. Consideration should also be given to including recognition of customary and traditional rules and practice relevant to DRM and DRR.

- Address DRR and DRM not as sectors in themselves, but as horizontal issues that should be integrated into sectoral laws and regulations and in development programming.
- The cross-sectoral committee should investigate the possible collection and harmonisation of all current Haitian laws, with a view to launching a project to collect, codify and digitise all laws in force. The Ministry of Justice and Public Security could lead the committee with input from key officials and private practitioners working in Haiti's legal system. This could initially focus on the civil code, rural code and the code of civil procedure. This would not only serve as the foundation for review, amendment and repeal of relevant laws, but also as a basic building-block for improving the rule of law and ensuring public access to laws.
- In line with the desire for reform expressed by the Haitian government and in particular CIAT, review and streamline the laws relevant to land use planning. As long-term legal solutions, the government should consider the development of either a new overarching law, and/or the repeal or amendment of existing laws, in order to impart clarity and better define institutional roles and responsibilities at all levels of government.
- Within any legal reform, it is recommended that legislation should specify the reduction of natural hazard risks as a requirement for land use planning in disaster-prone areas at all levels.
- Land tenure issues in Haiti form barriers to effective risk reduction and relief from disasters in many areas, from the dis-incentivising of risk reduction measures on land to creating barriers to the provision of emergency shelter. The government of Haiti, and in particular CIAT, is currently working on the nature and implementation of possible future reforms in this area. Through the framework of this reform, the government should consider the following as potential means to support DRR:
 - develop new legislation or guidelines that seek to establish a modern, computerised national land registration and cadastre system. In practical terms, this could initially focus on state land and then expand to private land. Although institutional responsibility for cadastre rests with ONACA, institutional responsibility for managing and providing public access to land title records should also be clarified;
 - consider using new legislation to devolve responsibility for the registration of property to local authorities, partly to preserve capacity at central level but also to benefit from the area-specific knowledge of local authorities. Linked to this the government could consider devolving a reasonable degree of control to local authorities to manage

their systems of registration, such as incorporation of customary systems and practices.

- Undertake a full review of the legal and policy frameworks relevant to informal and precarious settlements, in order to determine how they can be implemented more effectively to reduce disaster risk in informal urban settlements, as well as any potential avenues for future legal reform. This should include analysing issues related to residents' rights, and options for gradual regularisation under local governance, community and civil society participation.
- Ensure that the proposed legal and procedural framework for environmental impact assessment is finalised and adopted as soon as realistically possible.
- Consider establishing the necessary institutional capacity and resources in order to operationalise the proposed new environmental impact assessment system in Haiti. The government should seek to ensure that secondary documentation (such as guidance on assessment criteria) includes specific criteria on natural hazard risks as well as the requirement to fully involve affected communities and civil society organizations in the assessment process.

How law and regulation supports disaster-risk reduction
Haiti - case study report

Annex A

List of persons and groups consulted

Government of Haiti

National

MICT

- Rose Luce Cadot-Prevot, lawyer, Senior Disaster Risk Management Specialist, Directorate of Civil Protection
- Sharina Lochard, Coordinator, Regulation and Control Unit

ONACA

- Joab Thelot, Coordinator, Head of the General Secretariat
- Benedict Sonatus, Assistant Coordinator, Head of Public Relations

MARNDR

- Dr. Heliot Amilcar, Coordinator, National Early Warning System Programme, National Service for Water Resources,
- Emmanuel Moliere, Director, Technical Operations Centre, Regional Office for Potable Water and Sanitation (West department)

UCLBP

- David Odnell, Director, Housing Division,

Ministère de l'Environnement

- Gedeon Charles, Engineer and Town Planner, Housing Division,
- Gagery Bidault, Director, Directorate of Water Resources,
- Marie-Carmel St. Cloud, Head of Unit, Directorate of Water Resources,
- Edna Blanc Civil, National Director, Capacity Building Support Project,
- Tanya Merceron, Technical Assistant, Capacity Building Support Project,

DINEPA

- Raoul Toussaint, Head, Disaster Response Department,
- Roosevelt Pauris, Senior Assistant, Disaster Response Department,

Departmental and Communal

Ministère de l'Environnement

- Arcene Bastin, Director, South and South-East departments,

Commune of Baint

- Pierre-Ironce Bourgoïn, Secretary General, Communal Civil Protection Committee,
- Clive McCalla, Coordinator, Communal Civil Protection Committee, Directorate of Civil Protection,

CASEC

- Pierre-Louis Joseph Voltaire, Coordinator, Cormier
- Augustin Johny, Coordinator, Palmiste à Vin

Directorate of Civil Protection

- Nadia Lochard, Technical Coordinator, West department

OREPA

- Ronald Agervil, Director, Water Technical Centre, OREPA (Léogâne)

Community Focus Groups

- Representative community members from the commune of Baint, Baint arrondissement, South-East department;
- Women's group from the Organisation des Femmes de Baint, commune of Baint, Baint arrondissement, South-East department;



- Community members of the Equipe d'Intervention Communautaire, in the section communale of Cormier, commune of Léogâne, West department;
- Community members of the Equipe d'Intervention Communautaire, in the section communale of Palmiste-à-Vin, commune of Léogâne, West department.

Red Cross Red Crescent Movement

IFRC

- Ines Brill, Representative to Haiti, IFRC Secretariat
- Elisabeth Verluyten, Deputy Representative to Haiti, IFRC Secretariat
- Luis Luna, disaster-law consultant for Hispaniola Island, Port-au-Prince

British Red Cross

- Wendy McCance, Programme Manager,
- Melvin Tubbett, Head of Delegation,
- Jethro Sereme, Communications and Security Coordinator,

French Red Cross

- Ianis Proal, Deputy Head of Delegation,

Haitian Red Cross

- Delice Ronald, Agent Executif,
- Luxarma Ducarmel, Community Mobiliser

Netherlands Red Cross

- Pamphil Claudy, Liaison Officer,
- Ruben Wedel, DRR and Livelihoods Delegate,

Swiss Red Cross

- Harald Bier, DRR and Livelihoods Delegate,

International Organisations and NGOs

UNOPS

- Adriana Navarro-Sertich, Housing and Urban Planning Advisor,
- Claude Andre-Nadon, 16/6 Housing and Urban Rehabilitation Program Manager,
- Nazaire Johnson, Juriste en Chef,

UNDP

- Fenella Frost, Head of Unit for Disaster Risk Reduction,
- Thomas Pitaud, Chief Technical Advisor to the National System for Disaster Management,

UNOCHA

- Johan Peleman, Head of Office,
- Elizabeth Diaz, Head of Unit for Coordination and Communications,

Humanitarian and developmental organisations and other institutions:

- Alex Fischer, Associate Director, Haiti Program, Columbia University Earth Institute
- Paola Kim-Blanco, Research Associate, Haiti Program, Columbia University Earth Institute
- Frédérique Siegel, (Former) Coordinator of the Haitian Property Law Working Group, Architecture for Humanity
- Jane Charles-Voltaire, Lawyer, Cabinet Leblanc et Associés, and Steering Committee Member of the Haitian Property Law Working Group
- Jay Pendergrass, Senior Attorney and Co-Director of Programmes, Environmental Law Institute
- Ben Noble, Project Manager, InterNews Europe

- Bruno Jacquet, Rural Development Specialist, Inter-American Development Bank
- Denis Gravel, Senior Water and Sanitation Specialist, Inter-American Development Bank
- Marie-Claude Jean-Baptiste, Program Director, Cyrus R. Vance Center for International Justice
- Alberto Preato, Head of Durable Housing Solutions, International Organisation for Migration
- Priscilla Phelps, Advisor on Post-disaster Recovery and Reconstruction
- Global Facility for Disaster Reduction and Recovery, World Bank (former Senior Advisor, Housing and Neighborhoods Reconstruction, Interim Haiti Recovery Commission)

Note:

As well as the interviewees named above this report also benefits from the indirect contribution of those stakeholders and groups interviewed for the IFRC case study report on the ‘impact of the regulatory barriers to providing emergency and transitional shelter after disasters’²⁷⁹ ; a full list of persons and groups consulted for that study is listed at Annex A therein.

²⁷⁹ Available at [insert website]

How law and regulation supports disaster-risk reduction
Haiti - case study report

Annex B

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- Decree-Law of 22 July 1937 establishing the rules applying to town and countryside planning
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- Law of 29 May 1963 establishing special rules regarding housing and planning of towns and countryside areas to develop urban planning
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- Decree of 27 September 1969 creating the National Council of Telecommunications (Official Gazette of the Republic of Haiti Le Moniteur No. 105, 30 October 1969)
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- Decree on Environmental Management and Regulation of the conduct of citizens for sustainable development, 12 October 2005 (*Official Gazette of the Republic of Haiti Le Moniteur* No. 11, 26 January 2006)
- Decree setting the general framework of decentralisation and the organisational and functional principles for local authorities, 1 February 2006
- Decree setting the organisation and functions of the departmental authorities, 1 February 2006
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How law and regulation supports disaster-risk reduction
Haiti - case study report

Annex C



Meaning of key terms

This report contains a number of key terms relating to the management and reduction of risks from disasters. These are defined below in accordance with the United Nations Office for Disaster Reduction's (UNISDR) 'Terminology for Disaster Risk Reduction':²⁸⁰

Natural hazards, such as earthquakes, storms and floods are natural processes or phenomena that may cause loss of life, injury or other health impacts, property damage, loss of livelihoods and services, social and economic disruption, or environmental damage.

Disasters are serious disruptions of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources.

Disaster Risk Reduction (DRR) is the concept and practice of reducing disaster risks through systematic efforts to analyse and manage the causal factors of disasters, including through reduced exposures to hazards, lessened vulnerability of people and property, wise management of land and environment, and improved preparedness for adverse events.

Disaster Risk Management (DRM) is the systematic process of using administrative directives, organizations, and operational skills and capacities to implement strategies, policies and improved coping capacities in order to lessen the adverse impacts of hazards and the possibility of disaster.

Emergency management (which is also frequently referred to as disaster management) is the organization and management of resources and responsibilities for addressing all aspects of emergencies, in particular preparedness, response and initial recovery steps.

For the purposes of this study, the terms **legislation, law, legal framework and regulation** refer to acts of parliament, legislation, laws, regulations, decrees or similar, as well as their implementing policies and guidelines, at all levels of government. It also includes binding customary law at community and local levels that may not be formally documented. However the study seeks to make a clear distinction between legislation that is binding and policies that are non-binding.

The project consultant has undertaken **translations from French to English** where relevant or necessary. Whilst every effort has been made to align the translations to the original meaning in French, these cannot be considered to be authoritative or official translations.

DRR as a concept is rarely referred to in Haitian law or policy. The French term used

²⁸⁰ United Nations Office for Disaster Risk Reduction (UNISDR), Terminology for Disaster Risk Reduction, May 2009

by the Haitian government for DRM is *gestions des risques et des désastres (GRD)*, which translates literally as the ‘management of risks and disasters’. The equivalent term in English is DRM, therefore where possible in this report the abbreviation DRM is used instead of GRD, although the two can be read interchangeably.

The abbreviations listed above and used in this report refer to the original French terms where possible, rather than creating a new abbreviation based on the English translation. This has been done to preserve the acronyms used widely throughout legal and secondary texts.

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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