



A study on legal preparedness for international disaster assistance in Colombia

Towards the application of the IDRL
Guidelines - Summary version

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About this report:

This report was drafted at the request of the IFRC and the Colombian Red Cross Society in cooperation with the Department of Risk Management of the Colombian Ministry of Justice and the Interior. The full report (of which the present document is a summary) was written by Teresa Camacho, a consultant for the IDRL Project of the Colombian Red Cross. The report analyzes the legal and policy framework relating to Colombian regulations on international assistance in the event of disaster.

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About the Disaster Law programme

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

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Editor's Note

The research and consultations underlying this report were undertaken in 2010-2011. The full report (of which the present document is a summary version) presents and analyzes Colombian legislation on international assistance in the event of disaster, on the basis of the legal framework in force up to the end of 2011.

In April 2012, a new disaster management law (Act 1523) was adopted, making important structural changes in the prior national system as well as reorienting it toward a stronger focus on preventing disasters rather than merely responding to them. Whereas some of the recommendations of this report were partially addressed in the new act, its provisions on international relief (as described below) remain brief, while pointing to further future development. The new institutional structures and innovations in domestic risk management under the new act are not comprehensively reflected in the current report.

Note also that this report looks only to international assistance in non-conflict disasters and does not address rules that might apply in a situation where a conflict and disaster might overlap.

Introduction

This report is the result of collaboration between the Colombian Red Cross Society, with support from the International Federation of Red Cross and Red Crescent Societies (IFRC), and the Department of Risk Management of the Colombian Ministry of Justice and Interior. It is intended to support the Government of Colombia in assessing its legislation related to the facilitation and regulation of international humanitarian assistance in the event of natural disasters.

The project included a review of applicable national legislation as well as a consultation process with a multitude of governmental offices, civil society organizations and international partners about procedures and experiences with the management of international disaster assistance. The study used the *Guidelines for the facilitation and regulation of international disaster relief and initial recovery assistance* (the 'IDRL Guidelines') as its basis for analysis. The IDRL Guidelines were adopted by the state parties to the Geneva Conventions in 2007 and can be found on the website of the International Federation of Red Cross and Red Crescent Societies (www.ifrc.org/dl).

This is a summary version of the report. The full version is available (in Spanish) at www.ifrc.org/dl.

Main findings of the report

Colombia's vulnerability to disasters

Colombia is subject to a wide variety of disasters, the frequency and severe impacts of which are such that the need for disaster preparedness is abundantly clear. An important example arose in the course of this study project, as the 2010 rainy season and “La Niña” took their toll in Colombia. The resulting flooding affected over 2.4 million individuals in 905 municipalities and was considered one of the country's worst disasters.

The National System for Disaster Prevention and Response's (SNPAD) Country Document of 2010 identified nine priority threats affecting Colombia: floods, volcanoes, forest fires, tropical cyclones, tsunamis, earthquakes, droughts, windstorms and mass movements.

Main legal frameworks for disaster management

Previously, the primary national legislation on disaster management in Colombia was Law 46 of 1988 and Law-Decree 919 of 1989, which established and defined the SNPAD as the official mechanism for disaster prevention and response in the country. With the passage of Act 1523 of 24 April 2012, the SNPAD has been replaced by the “National System for Disaster Risk Management” (the “National System”). The new National System seeks to organize public and private efforts in a highly participatory manner, focusing not only on disaster response but also on prevention. Act 1523 also created the National Council for Risk Management, which is tasked with developing relevant policies and approving the National Plan for Disaster Management and the Strategy for the National Response to Emergencies.

Article 43 of the Act sets out some broad principles on international disaster assistance. It states that international cooperation should have a central objective of strengthening of the National System and the entities within it. Additionally, it establishes that humanitarian aid should be provided in accordance with principles of quality, opportunity, pertinence and efficiency.

Article 43 also requires that the Ministry of Foreign Affairs and the National Disaster Risk Management Unit (UNGRD) (the central institutional focal point on disaster risk management) to develop a strategic plan for the coordination of international assistance within a 180-day period from the passing of the Act, which is to cover legal, economic, physical, human and technical aspects of international cooperation. Accordingly, a more detailed set of rules and procedures for international assistance should soon be developed.

With respect to public health emergencies such as epidemics, Law 9 of 1979 charges the Ministry of Health (now known as the Ministry of Social Protection) with overall organizing and regulatory responsibility. Decree 3518 of 2006 created the Public Health Monitoring System (SIVIGILA), which includes a network of relevant public actors involved in the detection and control of disease.

Main findings of the report

Early warning

The Institute of Geology and Mining (INGEOMINAS) and the Institute of Hydrology, Meteorology and Environmental Studies (IDEAM) are respectively responsible to monitor systemic and hydro-meteorological phenomena in the country. These entities report any extraordinary event to the UNGRD, which is responsible to support and organize national communication networks in case of disasters. However, communication mechanisms between INGEOMINAS, IDEAM and the local committees responsible for the prevention and attention of emergencies and disasters are unclear. An integrated communication risk awareness system for the general public is also lacking.

As for public health emergencies, the SIVIGILA, with the support of various departments and offices at the national and territorial level, is responsible to detect and report any concern to the National Liaison Centre (CNE) of the Ministry of Social Protection, which implements nationally the International Health Regulations.

Requests for international assistance

Existing legislation does not explicitly describe the process for requesting international assistance, however the Minister of Foreign Affairs (MRE) and the UNGRD have established their own procedure. In the event of a presidential decree of emergency or the declaration of state of public calamity by the Ministry of Justice and Interior, the UNGRD may call on the MRE to make a request for international assistance. This is done by way of official communiqué.

Role of civil society organisations

The auxiliary role of the Colombian Red Cross in support to the Colombian authorities in the humanitarian field is recognised in the law. It was part of the SNPAD and participated in its decision making and operational bodies (National Committee, Operational Committee and the local and regional committees responsible for the prevention and response to disasters), and this should continue with the new National System. The SNPAD also contemplated the participation of civil organisations and private entities involved in disaster preparedness and response. However, their participation was limited.

Registration of foreign disaster response organisations

Colombia has clear rules for the registration and recognition of the legal personality of international organisations and foreign NGOs. In the latter case, however, the time frame for the registration process might prove to be a barrier in an emergency situation.

Entry of foreign relief personnel

Colombia's immigration legislation provides for a number of visa categories that may be relevant to foreign relief personnel, including some that apply to international organisations, others that are geared toward volunteers of non-profit organisations, and more general temporary work and entry permits. The various categories have differing time delays required for processing and levels of associated fees, but there is no specific procedure set out for expedited processing or fee exemptions in case of emergency. In practice, however, responsible authorities have made efforts to prioritise visas for humanitarian workers. Likewise, rules on the recognition of foreign professional

qualifications (for instance, for foreign doctors) do not currently refer to expedited processing in disasters, except in the context of health emergencies.

Entry of relief goods and equipment

Existing customs legislation provides the Office of Customs and Tax the power to waive formalities in the clearance process for specific goods imported by international organisations, diplomatic missions, designated government agencies (including the UNGRD) and registered non-profit agencies as aid to persons affected by disasters. Missing from this list are foreign NGOs not yet legally registered in Colombia; they may not serve as consignees. Certain equipment (including vehicles) imported for this purpose must be re-exported from the country after the need for them for disaster response has been exhausted.

Although Colombia is a party to the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations of 2008, no specific provisions exist in law concerning facilitation of the importation of telecommunications equipment. Likewise, existing legislation on the importation of food does not directly address disaster situations, however, the National Institute of Food and Drug Monitoring (INVIMA) has developed its own simplified procedure for expediting the procedures for importing food in situations of emergency. Special procedures also exist with regard to medications donated in cases of disaster.

Transport

Colombia has ratified the Convention on International Civil Aviation of 1944, which contemplates, in its Annex 9, facilities for the entry, exit, and transit of aircrafts transporting humanitarian assistance. Accordingly, in time of disaster, the Colombian Aeronautic Regulation states that the Special Administrative Unity for Civil Aviation (AEROCIVIL) has the authority to facilitate the entry of air vehicles to the disaster zone. The regulation allows for the possibility to waive applicable fees for foreign states and exempted organisations transporting humanitarian assistance; they must contact the Ministry of Foreign Affairs who will coordinate with the AEROCIVIL and the national airforce.

As for marine transport, Colombia has ratified the Convention on Facilitation of International Maritime Traffic of 1965, which establishes the requirement for ratifying states to facilitate the entry and exit of marine vehicles supporting the response to natural disaster.

For the passage of marine and land vehicles, the law also exempts selected Colombian entities using national transport infrastructure from applicable fees, but this exemption does not apply to international actors providing assistance.

Taxes and other fees

Donations from governments, intergovernmental and international organisations with whom an agreement has been concluded, are exempted from tax and the application of the Value Added Tax, provided they meet the qualification of “common utility” and/or are addressed to the national government. International NGOs can also benefit from tax exemptions under certain circumstances, though many international actors are unaware of the required procedures. There is no general exemption applicable to international actors for humanitarian donations contributing to the relief and early recovery efforts.

Main findings of the report

Freedom of access

Freedom of movement is guaranteed in the Colombian constitution, and the National Police Code. Moreover the Colombian Red Cross is legally guaranteed facilities in accessing affected zones when providing humanitarian assistance. However, Colombian law allows the national police as well as governors and mayors to limit freedom of access to disaster affected areas, either to circumscribe the effects of the disaster or for safety reasons. The UNGRD coordinates operations in cases of disaster and although the territorial authorities are primarily responsible for the evacuation of persons at risk, the UNGRD may also organize evacuations in an emergency situation. Access to communities at risk must be conditioned to their collaboration and acceptance. In cases of public health emergencies, freedom of access can be further limited by measures such as quarantine.

Responsibility and transparency

Goods donated for disaster assistance are administered by the National Calamity Fund. The UNGRD is responsible for ordering the expenditures. Applying the norms of donation to international cooperation for humanitarian assistance, goods cannot be used for another purpose than that of humanitarian assistance. In general, goods donated to a certain community or beneficiaries through the state of Colombia are not considered to become part of the national budget, as the state only acts as an intermediary distributing the assistance to the beneficiaries. Moreover in the execution of the mandate of humanitarian assistance, the operational partners are subjected to disciplinary, financial and penal disciplinary measures for the moneys and goods received as humanitarian assistance.

Additional special measures, for the 2010-2011 rainy season, to promote transparency have also been introduced, such as a website containing details of all donations made for disaster assistance as well as a phone line available for denunciations of acts of corruption. Moreover a committee on ethics and transparency was created to audit the use of humanitarian assistance during the 2010-2011 rainy season. Mechanisms of citizen-led oversight were also put in place to increase the efficiency of assistance operations.

Colombia as a donor and transit state for humanitarian assistance

The Customs act implies, although not very clearly, that goods destined for disaster assistance transiting through Colombia will benefit from a preferential treatment when dispatched. The International Cooperation and Assistance Fund (FOCAI) is responsible for Colombia's financial humanitarian assistance in favour of developing countries. Exportations of medication produced in Colombia do not require sanitary registration if they have been produced by laboratories respecting production standards. When the receiving state requires it, the sanitary authority can accelerate the issuance of sanitary inspection certificate for food exportations. Movable goods exported for assistance purposes are exempted of VAT.

Main recommendations of the report

The main recommendations from the present study can be summarised as follows:

Mechanism dealing with disaster response and public health emergency

- Ensure that the National System has the capacity to adequately respond to disasters of a great magnitude, not as an ad hoc measure during disaster response but as a structural reinforcement of the system.
- Replenish the National Calamity Fund with resources, technical and human capacities to adequately develop disaster risk reduction, response and recovery.

Preparedness for the control of health emergencies

- Establish protocols of behaviour for each disease, allowing for quick assessment of its stage of development and prompt response in the case of propagation.
- Involve public health authorities in the prevention, attention and recovery stages of a disaster.
- Encourage inter-institutional coordination and efficient sharing of responsibilities.
- Keep written records of actions taken during public health emergencies to enable lessons to be learnt for future experiences.
- Develop simulations as a mechanism to prepare responses in cases of public health emergencies.

Early warning in cases of disasters

- Establish communication channels among national institutions in charge of early warning systems with the local and regional committees responsible for the prevention and attention of emergencies and disasters, civil society organisations and academia, in order to facilitate sharing of information for informed decision-taking.
- Establish standardised criteria for different types of warnings in the different territorial entities.
- Include Short Message Service (“SMS”) or other mechanisms as an early warning method to communicate with the population at risk.

Early warning in public health emergencies

- Coordinate with Ministries and other entities to facilitate the delivery of assistance in a region affected by a public health emergency.
- Despite the fact that the Ministry of Social Protection is part of the SNPAD, the vigilance system in public health should be included in local and regional committees responsible for the prevention and attention of emergencies and disasters.

Main recommendations of the report

- Establish clear deadlines to report public health emergencies to the authorities and criteria to categorise these according to the level of the response required (local, national or international).
- Disseminate the protocols for inter-sectorial coordination in the community.

Criteria and proceedings to request international assistance

- Issue a decree establishing the criteria and procedure to request international assistance, the functions of the National Unit for Disaster Risk Management and the Ministry of Foreign Affairs, and the coordination mechanisms existing at different levels: international, national, departmental and municipal.
- Elaborate within the law a database of civil society organisations, international organisations and regional organisations able and willing to offer humanitarian assistance, which comply with the minimum requirements established by the Government, in order to consider them in the event of an international appeal.
- In its capacity as channel for requests for international assistance, formally include the Ministry of Foreign Affairs as a member of the National Committee for Prevention and Attention to Disasters.
- Develop a tool allowing for the identification of the assistance that has been requested and offered, in order to attend to the real needs during the disaster.
- As a follow-up to the previous recommendation, territorial entities should develop expeditious mechanisms and records prior to disasters, allowing them to rapidly identify basic needs and quantities to be requested in the event of a disaster.

Participation of civil society

- Abide effectively by the dispositions of the National Plan for Prevention and Attention of Disasters (or any successor under the new National System) and reinforce the National System, as well as the Civil Defence, the Colombian Red Cross Society, the Fire Department and the active participation of civil society organisations.
- Increase the role of communities in disaster risk management, not only as beneficiaries but also as co-actors in their own development.

Legal status of international non-profit organisations

- Establish eligibility criteria for NGOs provided with legal facilities in the event of a disaster, based on the principles of humanitarian assistance, international standards, applicable national and international law, respect for local culture, technical capacity, the availability of experienced staff, and transparent functioning.
- In order to keep these records up-to-date, permanent communications channels should be established between the legal department of the Ministry of Justice and Interior in charge of registering non-profit NGOs and the Presidential Agency for International Cooperation, as well as with the National Unit for Disaster Risk Management and the Ministry of Foreign Affairs.
- Pre-registered NGOs should, once they are in Colombia, present the required documentation for registration to the Ministry of Justice and Interior in order to obtain legal facilities to conduct their operations.
- Responsibility to monitor compliance with the eligibility requirements for NGOs should be shared between authorities and communities. Mechanisms for non-compliance should involve surveillance organs and close communication with the community.

Main recommendations of the report

Customs facilitation for international assistance

- Allow importation of donated vehicles and ambulances, be they new or second-hand, when destined to humanitarian assistance according to the eligibility criteria abovementioned, with an exemption from all customs, duties, taxes, tariffs or government fees.
- Establish a list of medications and basic food which can enter expeditiously with no further procedure if they comply with international standards. In addition, accelerate the issuance of sanitary inspection certifications.
- Recognise driver's licences of international personnel entering the country during the relief and initial recovery period.
- Develop covenants in the framework of the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations of 1998, to facilitate the entry of telecommunication equipment and to ensure customs agents comply with its dispositions.
- Make the Ministry of Foreign Affairs aware of the requirements regarding importation of food, medications, vehicles and other equipments, in order to include these in the international appeal.

Management of personnel

- Exempt humanitarian personnel (staff, volunteer or other) entering the country of providing humanitarian assistance in the event of a disaster from the cost of visas.
- Accelerate the procedures to obtain visas for humanitarian personnel with the Migration Office in Colombia.
- For the relief stage, establish for humanitarian personnel an expeditious mechanism to obtain a temporary worker visa without an authorisation from professional associations.
- Facilitate the opening of bank accounts for international personnel entering the country in order to provide humanitarian assistance.

Transport

- Extend the benefit of toll road exemptions to vehicles (regardless of their category) transporting assistance to the disaster zone belonging to registered or eligible international actors operating in the country. The National Unit for Disaster Risk Management could establish a mechanism to identify the vehicles subject to this exemption.
- Waive or reduce duties, taxes and tariffs applicable to vessels or planes entering with humanitarian assistance from eligible international actors.
- Facilitate the obtaining of entrance, exit and overflight permits for vessels and planes carrying humanitarian aid.

Taxes and other fees

- Contemplate introducing a general tax exemption for donations in cash or in kind coming from eligible international actors, regardless of the existence of a treaty or an agreement.
- Establish an expeditious mechanism certifying that donations in cash or in kind will be assigned to humanitarian assistance projects.

Main recommendations of the report

Freedom of access

- Warn eligible organisations and the affected community about the existence of mines, threats of infection or hazardous material.
- Provide, if needed and with the approval of the beneficiaries, support for safe access to the disaster zone.

Responsibility and transparency

- Enforce citizen vigilance mechanisms to empower affected communities and allow for a better follow-up of activities developed by public and private authorities.
- Include minimum accountability standards when providing humanitarian assistance in the eligibility requirements for international humanitarian organisations.

Colombia as a transit state for humanitarian assistance

- Establish expeditious mechanisms for the temporary or definitive exportation of equipments and food assigned to humanitarian assistance.

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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