

Disaster Law



Avoid legal issues in large-scale emergency operations

I. Introduction/Background

The response to the 2010 Haiti earthquake met not only enormous logistical, programming and security challenges, but also substantial legal and regulatory problems.

Particularly in the early days after the earthquake, Haitian authorities struggled to exercise effective control over the enormous number of international responders. As a result, large quantities of inappropriate and unnecessary items were shipped to Haiti, clogging already over-stretched storage and distribution channels. Organizations and individuals with doubtful qualifications provided sub-standard and poorly coordinated relief and care.

As the authorities recovered their capacity to enforce rules on relief operations, however, other legal problems emerged. Without a legal status agreement, the legal rules within which the IFRC was operating were unclear, as were those for participating National Societies (PNSs). Both they and other humanitarian actors encountered many legal challenges, ranging from registration requirements, customs clearance bottlenecks and vehicle registration delays to labour law ambiguities among others.

Legal concerns have continued to grow in the recovery period, in particular with regard to the search for shelter solutions for millions of displaced people – seeking space in an environment with very little certainty as to land and property rights.

Addressing operational legal issues

For the first 2 years of the operation, legal support for the IFRC's legal issues was provided remotely from Geneva, with frequent but short visits by legal staff.

To provide more focused and consistent support, a dedicated legal delegate was deployed in March 2012. The delegate was based in Port-au-Prince through March 2013 and is currently based in Americas Zone Office in Panama. She provides advice and support and coordinates with local counsel for the IFRC, and also provides support to the Haitian Red Cross (HRC) and PNSs as needed.

Common issues requiring support have included contractual matters, employment issues, privileges and immunities and legal risk management.

Building national legal preparedness for future disasters

From the very early stages of the operation, it was clear that there was an opportunity to strengthen Haiti's laws and procedures to manage in-coming disaster assistance, both for the recovery period and for future disasters. Since 2001, the IFRC's Disaster Law Programme (DLP) has been researching and promoting best practice in this area, which is often referred to as "international disaster response law" or "IDRL".

In 2010, the IFRC and HRC commenced a research and consultation process on IDRL in Haiti. A report was produced in 2011 and vetted at a national workshop organized by the HRC, for final publication in 2012.

The advice of a consultant was then sought on options to follow up the recommendations in the report and on the need for further support from the DLP. The consultant recommended the deployment of a Disaster Law Delegate to work with the HRC and government counterparts to carry forward the recommendations of the 2012 research report.

The HRC approved this recommendation, and a delegate is currently based in Port-au-Prince providing technical support to the HRC and the government on a number of initiatives aimed at strengthening Haiti's the legal framework on disaster law related issues. The delegate is also engaged in a number of advocacy activities related to legal issues in international disaster response and emergency and transitional shelter.

II. Achievements/Results

On operational legal issues:

- Dedicated legal support for the Haiti operation
- Revised human resources policies adapted to local law and context, and support to resolve employment law issues/cases
- Contracting advice, including support for managing contract relationships
- Legal risk management analysis to support senior management decision-making
- Resolution of legal claims.
- Coordination with local lawyers to provide adequate legal advice
- Training on legal risk management issues for IFRC, PNS and HRC staff
- Support on issues concerning IFRC's legal status in Haiti

On IDRL, the IFRC and HRC's work thus far has resulted in:

- A detailed analysis and several well-attended workshops on Haiti's laws and procedures for international relief and the experience of regulatory issues after the earthquake
- Input provided to 2 bills: one on the importation of medicines during an emergency; and the other on the facilitation of communications during an emergency
- Establishment of an inter-ministerial working group to work on Customs Clearance of Humanitarian Goods during Emergencies, in collaboration with the World Food Programme and the Haitian Department of Civil Protection
- A high-level side event on IDRL organized during the Association of Caribbean States Heads of State Summit
- Launch of a study on regulatory barriers to emergency and transitional shelter in Haiti

Additional work now in progress:

- Support the development a National Action Plan on IDRL in partnership with the Department of Civil Protection



- On-going cooperation with the HRC to support the Haitian government in the development of new laws, regulations and procedures to address the current gaps on IDRL issues
- Organize a bi-national workshop involving the Haitian and Dominican authorities to continue the dialogue regarding mutual cooperation in disaster response and early recovery
- Training the HRC, government, and partner IGOs and NGOs to build greater awareness and knowledge of disaster law

III. Challenges/Opportunities

Challenges:

- Decisions taken in the early days of a large response operation can have important legal ramifications for the IFRC, the host National Society and PNSs – continuing well into the recovery phase
- The need for coordination and a common approach on legal issues
- The range and complexity of legal issues inherent in such a large operation are more effectively addressed by dedicated legal staff in the field, both in terms of capacity and appreciation for the local and operational context
- IFRC and National Societies' IDRL advocacy work is enhanced by fresh examples of good practice and problems in the regulation of international relief – which are unfortunately rarely captured and made available for this purpose
- Developing new laws and procedures can be a lengthy and difficult process, contingent on external political factors

Opportunities:

- Dedicated legal support frees operations managers to focus on managing the operation. Early identification and mitigation of legal risks can save the IFRC, host National Society and PNSs large amounts of time and money (e.g. in employment or procurement disputes), avoid unnecessary conflicts with authorities, and help safeguard the reputation of the RC/RC.

- The IFRC, host National Society and PNSs can benefit from common approaches to shared legal challenges.
- Following large disasters, governments are often receptive to offers of advice to improve their legal preparedness for future disasters
- Post-disaster IDRL advocacy can also provide an opportunity to strengthen the role of the host National Society in the national disaster management law, policy and plans
- The IFRC's work and advocacy after a major disaster in one country has the potential to influence other countries as well – other countries are now watching Haiti's experience to see how they are solving the coordination and legal issues faced



IV. Impact

The absence of certain legal facilities was a drain on the IFRC's response operation. For instance, the Red Cross Movement spent 10 million USD renting vehicles over the year following the earthquake, due to lengthy delays in customs clearance and vehicle registration processes.

Delays in obtaining visas were also a problem. IFRC delegates often waited for up to one month for requests to be processed – during which time they were without their passports.

The lack of clarity in land and property rights significantly delayed the provision of emergency and transitional shelter. The IFRC and PNSs developed with innovative solutions to tackle the issue, including the 'attestation sur l'honneur' or rental of land for a number of years for temporary shelter.

The IFRC has still not been able to conclude a status agreement in Haiti. Some activities and facilities therefore have to be channeled through the HRC, which has created an enormous administrative and liability burden for the National Society and resulted in delays in programme delivery.

V. Lessons Learned

In a major international relief operation, legal risks and challenges are inevitable. While the immediate post-disaster period often sees ad hoc relaxation of many rules, this window is short. Failing to integrate legal risk management into operational decision-making at an early stage can lead to large problems in the longer term.

Accordingly, in appropriate cases, an IFRC legal delegate should be deployed for a temporary period onsite in the early days of the operation. This could be accomplished through integration with existing IFRC response tools, such as FACT and RIT/RDRT, or as part of a second-wave support team together with finance and human resources delegates (in any case with a technical management line from the Legal Department in Geneva). This would provide coverage for pressing legal issues pending recruitment and placement of a longer-term legal delegate, when needed.

In addition, many legal issues could be avoided through national legal preparedness prior to a disaster. Particularly in disaster prone countries like Haiti, the IFRC and National Societies should strongly encourage and support governments to develop appropriate rules and procedures in advance.

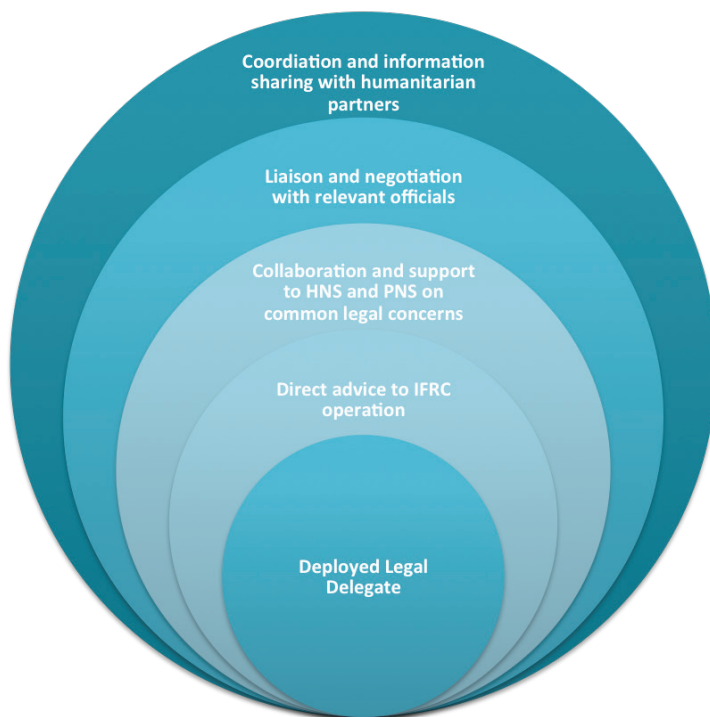
Also, to take advantage of an often unique window of opportunity, the Movement should be prepared to move faster to promote IDRL and other key disaster law issues in the aftermath of a disaster. The recent deployment of DLP staff to support the shelter cluster in the assessment of regulatory issues in the shelter response to Typhoon Bopha in the Philippines – while different in scope and purpose – may be a useful model from which to build.

VI. Conclusions/The way forward

The Legal Department, in cooperation with the relevant operational departments in Geneva and the Zones, is currently developing terms of reference for the deployment of legal delegates in emergency operations. Some options currently being considered:

- Develop TORs and undertake pilot deployments of a legal delegate to support large emergency operations through RIT/RDRT and FACT
 - Starting with existing IFRC legal staff and perhaps extending to a roster of legal experts from interested National Societies

- Assuring that all deployable lawyers have received appropriate training, including FACT and/or ERT
- Develop TORs for future deployments of a disaster law delegate through the Shelter Cluster and other appropriate mechanisms related to the overall relief effort
- Integrate IDRL work as part of the IFRC's standard recovery work in disaster-affected countries, in order to "build back better" legal preparedness for future disasters
- Place special emphasis on IDRL advocacy in disaster prone countries as a preparedness measure
- Providing additional tools to National Societies (checklists, model project TORs, model legislative language)

**For further information:**

Disaster Law Website:
<http://www.ifrc.org/en/what-we-do/idrl/>
 Twitter: @Disaster Law

In Geneva

David Fisher, Global Disaster Law Programme Coordinator
 E-mail: david.fisher@ifrc.org; phone: +41 22 730 4360

In Addis Ababa

Ida Marstein, Africa Disaster Law Programme Coordinator
 E-mail: ida.marstein@ifrc.org; phone: +252 11 551 4571

In Panama City

Isabelle Granger, Americas Disaster Law Programme Coordinator
 E-mail: isabell.granger@ifrc.org; phone: +507 317 3050

In Kuala Lumpur

Tessa Kelly, Asia-Pacific Disaster Law Programme Coordinator
 E-mail: tessa.kelly@ifrc.org; phone: +60 3 9207 5764

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