



Legal Information Sheet for disaster response– Haiti

As in past disasters of this magnitude, the response from the international community has already been great. In the coming days and weeks, it can be anticipated that a large number and variety of international actors will be seeking to provide humanitarian assistance to affected communities, and they will need the support of Haitian authorities to facilitate their access. Facilitating and regulating such a large and complex international operation was very challenging in 2010 after an earthquake registering 7.3 on the Richter scale struck Haiti. It is common for affected states to face difficulties in managing international assistance, particularly when key governmental offices and officials have themselves been affected. This can lead to bureaucratic bottlenecks to life-giving aid on the one hand and/or an overwhelming flood of unneeded and inappropriate relief on the other.

Below are key recommendations based on the experience of the 2010 Earthquake Response and the IDRL Guidelines.

1. Institutional Legal Framework: Current legislation concerning international disaster response is fragmented across various legal instruments, and numerous legal provisions were adopted in an ad hoc manner in the aftermath of the earthquake in 2010. The *National Risk and Disaster Management Plan* and the *Emergency Response Plan* are the main instruments for disaster management in Haiti, although they are not legally binding. These instruments must be considered in conjunction with the State of Emergency Law of April 2010 (repealing the State of Emergency Law of September 2008).

Haiti is party to several treaties related to the provision of international relief assistance; however, although ratified international conventions are self-executing in Haitian law, the Haitian State has yet to adopt the administrative, legislative and regulatory measures required to implement them. These include the *Convention on Privileges and Immunities of the United Nations*, the *Convention on Privileges and Immunities of the Specialized Agencies* (which set out the UN agencies' legal privileges, including in areas related to visas and customs), and the *Chicago Convention on Civil Aviation* (whose Annex 9 includes specific provisions on facilitating relief flights).

Key IDRL recommendations: The government should establish **interim regulations** (e.g. an emergency decree) that could be implemented immediately; they should also detail the procedures applicable to international disaster relief and initial recovery operations in Haiti, and they should be made available publicly in order for international actors to carry out their activities in compliance with Haitian law.

2. Resource liaison: The *National Risk and Disaster Management Plan* and the *Emergency Response Plan* assign the primary role of coordinating disaster response activities carried out by the different ministries, committees and organizations (including disaster preparedness, early warning, response and recovery) to the Civil Defence Department (DPC). The *Emergency Response Plan* assigns functional areas of responsibility for disaster response, rehabilitation and recovery activities to different ministries. The Ministry of Foreign Affairs, among others, is responsible for communicating information about the disaster to international actors and determining the type of aid to be requested from them.

Key IDRL recommendations: The government is advised to ensure that the **roles and responsibilities of government entities** defined in these plans are consistent with the emergency response activities undertaken in practice in response to the disaster.

3. Appeal for international solidarity: Although the State of Emergency Law establishes the government's authority to make an appeal for international solidarity once a state of emergency has been declared, the terms and conditions of a request for external assistance and relief are not defined in Haitian law. The actors consulted in the IDRL study¹ observed that a request for international assistance would be automatic once the state of emergency had been declared and signed by the President of the Republic or the Prime Minister. Following the earthquake in 2010, an oral request for assistance was made.

¹ IDRL in Haiti, A study on the legal framework for the facilitation and regulation of international disaster response in Haiti, International Federation of Red Cross and Red Crescent Societies, 2011. The report is available at:

http://www.ifrc.org/PageFiles/93550/1213600-IDRL_Haiti-EN-LR%20final.pdf



Key IDRL recommendations: As soon as practicable under the circumstances and in light of their own capacities, Haitian authorities should set out a **clear statement of the rules and expectations** for international relief.

4. Military assistance and Transport in the aftermath of the disaster: Shortly after the earthquake in 2010, the US Army took charge of controlling humanitarian air and maritime traffic. In the days following its takeover of air traffic operations at the airport, the US military came under fire for its strategy of refusing to authorize the landing of planes carrying humanitarian aid and giving priority to military flights bringing in military reinforcements. As a result, several planes carrying humanitarian aid were turned away from the airport in the first few days after the earthquake and organizations were forced to divert relief goods to the Dominican Republic, which caused significant delays in the delivery of humanitarian aid.

An air slot system was eventually established to determine priorities leading to a significant increase in the arrival of planes transporting humanitarian aid, which were given priority over those bringing in military reinforcements and rescue equipment.

Key IDRL recommendations: In case assistance of foreign armed forces may be required for this relief operation, the conditions of deployment should be agreed in advance between the States involved. The Haitian government should ensure that **aircraft carrying relief goods be given permission to land as quickly as possible to avoid unnecessary delays and facilitate the prompt delivery of humanitarian aid** to the disaster victims and vulnerable sectors of the population.

5. Customs provisions: The Customs Code of 5 March 1987 does not establish emergency measures for disasters. After the Haiti earthquake and cholera epidemic, all goods were initially allowed to enter the country without any controls or charges; these procedures, established for a three-month period, temporarily suspended certain customs formalities for a list of items required for the beneficiaries of international aid. Once the three months were up, the normal customs clearance procedure was resumed.

In spite of the special procedures put in place after the earthquake, many organizations were affected by significant delays in the entry of relief supplies into the country. Among other problems, the large number of humanitarian organizations providing assistance after the earthquake and the massive influx of 'non-essential' relief items caused delays and bottlenecks at customs. Other factors causing delays included the large amount of undeclared relief goods entering the country after the earthquake, failure to present the proper paperwork for customs clearance and the Customs Department's limited resources. Items not eligible for clearance by means of the special procedures, particularly vehicles, caused serious problems.

The re-establishment of the normal procedures led to further delays and blockages in the handling of essential humanitarian aid for earthquake victims. The fact that the official working hours of customs officers at the terminals were not extended was a serious constraint hindering the rapid clearance of relief goods through customs.

Key IDRL recommendations: Critical **legal facilities should be provided as a package to trusted international relief providers** in the emergency and initial recovery periods, including reducing legal and administrative barriers to the importation, transit and re-exportation of special equipment such as telecommunication resources, vehicles, medications and food. Provisions should also be made to carry out customs controls and clearance outside the normal business hours of government offices.

6. Entry of humanitarian personnel: Haitian law contains no specific provision for visas for disaster relief and initial recovery personnel. Nationals from almost all countries are allowed to enter the country and stay for a period of 90 days without a visa and at no cost, a practice that is ripe for abuse.

Indeed, after the 2010 earthquake, any organization, association, religious group or individual was able to enter the country freely and operate outside the established control and coordination mechanisms, outside the existing legal framework and without registering with the government or meeting international standards for humanitarian aid.



Key IDRL recommendations: International relief should be monitored to ensure that it abides by humanitarian principles, minimum quality and coordination. The government should also **establish the criteria and conditions required for assisting humanitarian organizations to be eligible to receive legal facilities** in the country (right to open a bank account, hire local personnel, obtain a visa, benefit from tax exemptions, clear relief goods through customs, etc.). **For qualified international actors eligible to receive legal facilities, faster procedures should be established** for granting visas and residence permits.

7. Recognition of professional qualifications: The Ministry of Public Health and Population is the authority responsible for the recognition of the credentials of foreign personnel, particularly medical qualifications; however, there is no provision for the recognition of qualifications of foreign personnel after a disaster. Pursuant to the decree of 25 March 1974 concerning the professional association of Haitian engineers and architects, foreign engineers and architects are only authorized to work in Haiti in areas in which there are no or insufficient Haitian professionals. Nevertheless, this rule does not seem to have been applied in practice.

Key IDRL recommendations: Legal provision should be made to grant **temporary recognition of professional qualifications** in disaster settings in the case of organizations that are considered to be reliable.

8. Quality of aid and coordination: In the response to the 2010 earthquake, the quality of aid provided by different international actors varied greatly. Many international actors arrived in Haiti totally unprepared, and the lack of expertise and self-sufficiency among aid providers seriously hindered humanitarian efforts. Massive, but uncoordinated donations of relief goods caused the same kind of difficulties and bottlenecks. The arrival of relief supplies in the country that did not correspond to identified needs or meet international quality standards crowded out essential aid that was consistent with international standards and appropriate for emergency relief operations.

The lack of coordination caused problems for the Haitian authorities, who did not always know exactly who was operating in their country; this hampered their leadership role in the emergency response provided by local authorities, and it directly affected other international actors trying to perform their work in accordance with the established coordination mechanisms.

Moreover, it seems that most of the aid was delivered by a small number of international actors, the so-called 'professional' international actors with extensive experience in providing international emergency assistance.

Key IDRL recommendations: In order to avoid heavy congestion caused by the large number of actors carrying out operations after a disaster, it is recommended that control procedures be established to **give precedence to the entry of relief goods corresponding to priority humanitarian needs** identified in the appeal. **Eligible (qualified) humanitarian organizations should be given priority** over non-eligible ones.

The IDRL Guidelines: In 2007, the government of Haiti joined the other parties to the Geneva Conventions in adopting the **"Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance"** (also known as the "IDRL Guidelines") at the 30th International Conference of Red Cross and Red Crescent Societies. These Guidelines are drawn from existing international laws and best practices and are designed to help governments solve the most common legal issues faced during international operations. The Guidelines may be helpful to Haitian authorities when developing new emergency decrees, procedures and regulations to facilitate and oversee the influx of international disaster assistance². In 2011 and 2015, governments reiterated the "urgency" to strengthen legal frameworks for the management of international disaster assistance.

² The Guidelines are available at <http://www.ifrc.org/idrl>.