



Desk review on trends in the promotion of community-based disaster risk reduction through legislation

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In the 2005 “Hyogo Framework for Action,” states, development and humanitarian organizations and other stakeholders affirmed that the adoption of appropriate legislation is a key means to achieve their first priority for collective action: “ensuring that disaster risk reduction is a national and a local priority with a strong institutional basis for implementation.” This goal was considered an important starting point for progress on the other priorities.

In the years since the adoption of the Hyogo Framework, a number of states have reported progress in the adoption of new laws and a growing satisfaction that their legislative frameworks are now much more supportive of the prevention of disasters. However, the literature also reveals some doubt among risk reduction professionals about whether even the new legislation is making enough of a difference – in particular at the community level.

This short desk review will examine some of the literature and recently adopted laws to see how they support the goals of the Hyogo Framework. It will focus in particular on how disaster management legislation may promote tangible results at the community level and why it sometimes fails to do so. It is part of an ongoing study project by the International Federation of Red Cross and Red Crescent Societies (IFRC), which will include more comprehensive case studies, field work and expert consultations to be completed in 2011.

Trends in the development of new legislation on risk reduction

In 2007, the United Nations International Strategy for Disaster Reduction’s (UNISDR) Global Assessment Report noted that many states had indicated their interest in “realign[ing] their legislation and institutions to adopt an integrated approach for reducing and managing disaster risk, which goes beyond traditional preparedness and response approaches” and that a number of them were currently considering new legislative and institutional frameworks (UNISDR, 2007). Nevertheless, the report cautioned against “overstating the trend”, inasmuch as it detected in the states’ self-reporting that many still had not progressed far beyond preparedness for response. Moreover, it is noteworthy that the Report was able to cite many more new initiatives to develop non-binding “policies” or “plans” than laws.

In 2009, the Global Assessment Review reported that states generally felt that they had made progress in developing supportive legislative frameworks for disaster risk reduction (with an average self-rating of 3.5 on a 5 point scale, indicating “institutional commitment attained, but achievements are neither comprehensive nor substantial”). The Review found “an overall improvement of capacities, policy, legislation, plans and mechanisms for the reduction of mortality risk, in particular for weather-related hazards” (UNISDR, 2009). Nevertheless, participants at the Second Global Platform on Disaster Risk Reduction concluded that year that “there is a pressing need to build institutions, including legal frameworks, to sustain disaster risk reduction action as an ongoing concern” (Global Platform, 2009).

To our knowledge, a baseline survey has not yet been carried out to precisely map the level of progress among states toward risk-inclusiveness in their disaster management legislation. Still, it is clear that many still have some distance to cover along this spectrum. As noted in a

recent internal survey of National Red Cross and Red Crescent Societies and IFRC disaster management experts about progress the Hyogo Framework for Action, “government policies and actions in many countries continue to focus on disaster response, often with disaster management being handled by civil protection ministries” (IFRC HFA Review, 2010). Moreover, a number of disaster-prone states like Uganda, Kenya, and Cambodia and Vietnam, still lack any central disaster management law. On the other hand, it also seems quite fair to say that progress is being made, as evidenced by the paradigm-changing amendments to disaster management legislation in countries such as India, Pakistan, Indonesia, South Africa, and several Central American states over the last decade. In Ecuador, the notion of risk-focused disaster management was rooted directly into its new constitution adopted in 2008.

It should also be borne in mind that disaster management acts are never the only legislation related to reducing risks. Even those states that have adopted what they refer to as “comprehensive” DM acts also regulate various aspects of risk reduction through a myriad of sectoral laws both at the national and the provincial/local levels (e.g., with respect to fire prevention, water management, environmental protection, building and land management codes, risk transfer, among others). While there have recently been some helpful comparative studies of best practices across regions in some of these sectors (FAO, 2009; WMO, 2006), they have not been extensively studied together as a group internationally. Some examples are discussed in more detail below.

Trends related to community-level impact of disaster risk reduction

The Hyogo Framework also underlined the importance of seeing the impact of disaster risk reduction activities at the community level. In this respect, it asserted the importance of community participation, capacity-building for community-level institutions, devolution of authority and resources, and the role of community-based institutions as “vital stakeholders”.

As with the legislative developments discussed above, the 2009 GAR reflected a generally optimistic assessment by states of their achievements in community participation and decentralization of decision-making on disaster risk reduction (averaging 3.1 on the 5 point scale) (UNISDR, 2009). Still, the report noted that, while “countries from Asia, Africa and Latin America report a substantial number of community-based risk reduction initiatives . . . coverage and quality is often uneven and projects are yet to be linked into a wider risk reduction system integrating the local, provincial and national levels.”

In June 2009, the Global Network of Civil Society Organisations published preliminary results of a survey of representatives of local governments, civil society organisations and community representatives in 48 countries about the implementation of risk reduction at the community level (GNCSO, 2009). These results pointed to a “significant gap between national and local action” with “reports of progress fad[ing] as activities get closer to vulnerable people.” The lowest scores were attributed to the level of attainment of effective community participation in decision-making (between 2.1 and 2.5 on a similar 5 point scale, indicating “very limited progress”). It likewise noted that “many governments have legislation and to some extent structures in support of decentralised ways of working – but with huge gaps in implementation and working culture.” Similarly, the IFRC’s internal survey found that “national prioritisation and profiling is not translating into community level actions, with very limited community participation in national decision-making” (IFRC Hyogo Review 2010).

This may indicate that even where shifts are being made toward a stronger focus on risk reduction in national legislation, they are not always “trickling down” to the community level, whether because of gaps in scope or in implementation. This was illustrated in the Global Network’s report in connection with South Africa’s 2002 Disaster Management Act, which has widely been considered a model for the region: “Research projects reported in 2008 and 2009 revealed that Disaster Risk Management (DRM) in South African local government is still to a very large extent underdeveloped, despite legislation adopted in 2002. Many noted that there is a lack of pro-active behaviour regarding DRR on the part of local government. There seems to be a lot of ignorance in local government regarding DRM.”

Decentralization of responsibility and resources

The Hyogo Framework calls for decentralization of authority and resources to promote community-level disaster risk reduction activities. A number of the recent disaster management laws have adopted this as a goal. For example, Honduras’ Law on the National Disaster Management System of 2010 sets out decentralization as one of the primary “guiding principles” of the country’s disaster management system. Likewise, the Philippines Disaster Risk Reduction and Management Act of 2010 declares it a “policy of the state” to “[r]ecognize the local risk patterns across the country and strengthen the capacity of LGUs for disaster risk reduction and management through decentralized powers, responsibilities, and resources at the regional and local levels.” However, not all new disaster management legislation takes this approach. For example, Thailand’s 2007 Disaster Prevention and Mitigation Act calls for the national Department of Disaster Prevention and Mitigation to prepare national disaster plans and binding “guidelines”, under which “local administrations will operate all their activities.”

Decentralization without supporting legislation has proven very challenging in countries that have attempted it. For example, Timor Leste adopted a new Disaster Risk Management Policy in 2008 emphasizing decentralization, but international and civil society actors have expressed doubts about whether that goal has been met (World Bank, 2010; IRIN, 2010). Moreover, in traditionally centralized states, old habits have sometimes proven difficult to break, even after enactment of new law. For example, Indonesia’s 2007 Disaster Management Act provided for decentralization of certain powers and responsibilities for disaster risk reduction and response. Each region and each city is required to create its own disaster management agencies and committees. However, as of 2009, it was reported that only 18 of the 32 provinces had established their regional DM bodies and that local governments still exhibited a reluctance to dedicate their own resources to disaster risk reduction, preferring to wait for support from the national level (Kuntjaro, 2010). Similarly partial results as to legal mandates to create municipal and community disaster management commissions were reported in El Salvador (UNISDR Local Governments, 2010).

On the other hand, it is important to acknowledge that decentralization can sometimes result in less rather than more activity to reduce disaster risks. For example, in Peru, major responsibility for disaster management was transferred in the 1990s from the national government (in particular from the national civil defense office (INDECI)) to local governments as part of a larger-scale devolution of governmental powers pursuant to the 1993 constitution. However, in a number of cases, local governments failed or were unable to assign resources or dedicated staff to the activities and designated committees, lacked adequate technical expertise and advice, and did not meet or carry out their expected tasks

(Salazar, 2010; ECHO, 2008). Moreover, local voters did not hold their mayors to account on this issue. Draft amendments to the national disaster management law are currently under discussion, in part to introduce some additional elements of support and accountability for local-level risk reduction.

The new Philippine legislation seeks to mitigate some of these dilemmas by specifying a minimal staffing level for local disaster management secretariats and making changes to the local “Calamity Funds”, now known as “Local Disaster Risk Reduction and Management Funds.” Under prior legislation, localities were mandated to set aside 5% of local revenues each year in the Calamity Funds in case of a disaster. However, if no disaster struck that community in a particular year, they were disbursed to local employees as bonuses (IFRC Asia Report, 2010). Pursuant to the new act, these funds can now be made available all year-round for risk reduction and preparedness activities and they are strictly reserved for disaster management purposes. Presumably drawing on this experience, at the 4th Asian Ministerial Meeting on Disaster Reduction in October 2010 participating states pledged to mandate that “5% of local government budgets [be] allocated for climate resilient DRM activities within local authority and community levels” (Incheon Roadmap, 2010).

Of course, the problem of resources is not only at the local level. In many countries, there is little guarantee of dedicated funding for risk reduction even at the national level. This was one of the key findings, for example, of a 2010 legal study of 11 Caribbean countries by the Organization of American States (OAS, 2010), most of which provided clearly designated funding only for the operating expenses of their national disaster management agencies. In contrast, India’s 2005 law requires that every national ministry and department include a budget line item for disaster management. Costa Rica’s 2006 disaster management law similarly requires that “every public institution” dedicate a specific line item in its budget for disaster risk reduction.

In federal states, decentralization is already part of the natural legal order and a major proportion of disaster management responsibility is generally reserved to provincial or regional authorities (Austrian Red Cross, 2010; German Red Cross, 2010; IFRC Australia Report, 2010). This means that the level of activity and priority accorded to disaster risk reduction is likely to vary from region to region, as is the support to, and pressure on, local authorities to implement risk reduction at the community level. However, some federal governments still seek to exert an influence on localities by offering funding with certain conditions.

Promoting community-level risk and vulnerability analysis

A first step for any risk reduction activity is to evaluate risks and vulnerabilities. In some countries, generalized risk analyses are prepared at the national level, but specific analyses are rarely completed at the community level. However, some recent national laws have sought to address this by mandating community level risk and vulnerability mapping.

For example, in 2009, Vietnam’s Deputy Prime Minister issued a decision “approving the scheme of community awareness and community-based management of natural disaster risks.” The scheme calls, *inter alia*, for: “making maps of natural disasters and the vulnerability of each community (the maps will be made by communities themselves based on the guidance of task forces in charge of community-based natural disaster management)[.]”

In the United Kingdom, the flagship disaster management legislation is the Civil Contingencies Act of 2004, which requires local authorities to make risk assessments in conjunction with local “resilience committees” with regard to sectors and timetables developed by regulation. However, the language of the act indicates that the primary goal of these assessments is to ensure greater preparedness for response, rather than prevention. On the other hand, in 2010, the United Kingdom adopted a new Flood and Water Management Act, to respond to one of the greatest natural disaster threats to the country. That law requires local authorities to assess flood risks and develop local risk reduction strategies in line with a national strategy.

As a federal state, the United States took a more indirect approach in its 2000 Disaster Mitigation Act to encourage local risk mapping. The act amended the national disaster management law to provide that, “[a]s a condition of receipt of an increased Federal share for hazard mitigation measures . . . , a State, local, or tribal government shall develop and submit for approval to the President a mitigation plan that outlines processes for identifying the natural hazards, risks, and vulnerabilities of the area under the jurisdiction of the government.”

Promoting adequate information at the community level

Communities are unlikely to become active in reducing their own disaster risks – or in exerting pressure on their authorities to do so – if they are not aware of them. Yet, pertinent information about disaster risk is often known and circulated, but only among technical experts at a national level. Some states have sought to redress this in their disaster management laws.

For example, Algeria’s 2004 Law on the Prevention of Major Risks and on Disaster Management in the Framework of Sustainable Development guarantees citizens a right to information about disaster risk reduction including:

- The risks and vulnerabilities of their places of residence and work
- The measures in place to prevent major risks in those places
- The measures in place for managing disasters

Likewise, Serbia’s 2009 Law on Emergency Situations lays out a public right to be warned about disaster risks. El Salvador’s 2005 Law on Civil Protection, Prevention and Mitigation of Disasters provides that “all persons living in the country” have the right to “receive information on the imminent or eventual occurrence of a disaster” and that “the Directorate General, the Commissions of the system, and all public security authorities have the obligation to provide this information when it is in their knowledge.”

Promoting community participation

As noted above, the principal finding of the Global Network survey was that communities do not feel adequately engaged in planning and decision-making about disaster risk reduction. Still, recent disaster management laws have sought to foster greater community participation in a number of ways.

Some laws set out community participation as an operative principle of the country’s disaster management system. For instance, Indonesia’s disaster management act sets out certain

“rights of the community” in disaster risk reduction, including “participat[ing] in decision-making on disaster management activities, particularly those related to him/her and to his/her community”. Likewise, Honduras lists citizen participation as a guiding principle and affirms that its disaster management system “respects the equality of opportunities of persons in the adoption, implementation and evaluation of public policies.” However, it is noteworthy that neither of these laws specifies particular disaster management structures beyond the regional level.

Many other disaster management laws mandate the representation of community representatives in local disaster management committees. For example, Zambia’s 2010 disaster management act provides for the creation of “satellite” disaster management committees covering one or several villages. These committees are to be locally elected, but the membership is also specified to include a representative of a traditional authority, at least three local residents trained in disaster management, one representative of a community organization in the area, two women and two men from the area, at least one youth, a businessman or farmer, and a local representative of an NGO.

Similarly, Ecuador’s 2006 Law on Civil Protection and the Prevention and Mitigation of Disasters requires the establishment of committees at the department, municipal and communal levels, including not only elected officials and governmental disaster response agencies but also representatives of civil society and (in the latter two levels) “community leaders”. These committees are charged both with developing plans and carrying out risk reduction and preparedness activities. France’s Law on the Prevention of Technological and Natural Risks and on Recovery from Damages of 2003 mandates the establishment of departmental commissions on major natural risks including local elected officials, disaster management professionals and academics, representatives from various professional private sector and community groups including “victims’ associations”, and media personalities.

In the environmental domain, some states have also found creative ways to provide incentives for communities to become more active managers of disaster risks. For example, in Cambodia, deforestation has been a major environmental problem as well as a growing factor of disaster risk. In 2007, a sub-decree was adopted allowing communities to take direct management control over the management of “community forests” pursuant to agreements with the Forestry Administration, allowing them to make sustainable use of a forest but also tasking them with monitoring the use of the forests by outsiders. Full community engagement with the projects is sought through requirements that a community forestry committee be instituted, elected at a public meeting attended by at least two thirds of the community. A report about how the law was functioning in one community noted that “[v]olunteers now look out for forest fires from a watchtower. The families who tend the forest sell the mushrooms that grow within it and collect leaves for use as cooking fuel... ‘[t]his is the young forest which [a lumber] company wanted to destroy. They thought it would be easy because they had money, but they hadn’t reckoned with the local community. They know the value they get from the forest’” (IPCC, 2007).

Promoting the role of community-based organizations

Traditionally, disaster management laws have focused on defining the roles and responsibilities of various government departments, particularly at the national level. However, an increasing number now also mandate a role for community-based organizations in decision-making and coordination bodies.

As noted in the 2007 Global Review, this trend is most pronounced with regard to National Red Cross and Red Crescent Societies and that is likely thanks to their unique legal status and their organizational profiles as national networks of community-based volunteers. According to the Statutes of the International Red Cross and Red Crescent Movement, National Societies are considered “auxiliaries to the public authorities in the humanitarian field.” This is also acknowledged in national Red Cross and Red Crescent laws establishing National Societies in the countries where they work. Thus, in 2003, the state parties to the Geneva Conventions adopted a resolution “recognizing the importance of the independent and auxiliary role of National Societies with respect to the public authorities in providing humanitarian services in the field of disaster management, should negotiate clearly defined roles and responsibilities with their respective National Societies in risk reduction and disaster management activities. This may include National Society representation on relevant national policy and coordination bodies as collaborative partners with States.”

Many states have taken up this invitation and included National Societies on coordinating bodies. For example, the Dominican Republic’s 2002 Disaster Management Act requires that regional, provincial and municipal committees on disaster management all include a representative of the National Red Cross Society. Likewise, Djibouti’s 2006 on the Creation of an Institutional Framework for the Management of Risks and Disasters mandate that a representative of the National Red Crescent Society participate both on national and regional committees.

Other laws have mandated participation by additional civil society organizations. For example, Madagascar’s 2003 Law, provides for disaster management committees at the provincial, regional, district and local levels, on each of which members of relevant NGOs and civil society organizations are to have representation. Likewise, Nicaragua’s 2000 Law Establishing the National System for Prevention, Mitigation and Response to Disasters calls on mayors to integrate representatives of NGOs, the private sector and the community in municipal disaster management committees.

Other recent laws are somewhat more tepid in their promotion of the role of community organizations. For instance, Samoa’s 2007 law provides that representatives of a number trade groups, as well as NGOs and “villages and other sectors of the community” “may liaise with the Disaster Advisory Committee” in preparing their own disaster management plans.

Empowering individuals to insist on results

It has often been lamented that a “culture of disaster risk reduction” has been difficult to achieve, both among political leaders and the general public. In addition to ensuring the opportunities for information, education and participation, as discussed above, legislation can contribute to this by empowering individuals to insist on compliance with stated goals and plans.

A small but growing number of disaster management laws have begun to enshrine an individual “right to protection” from disasters. This now includes the laws of Bolivia, Honduras, Indonesia, Kosovo, the Philippines, Serbia and Slovenia among others.

For example, Bolivia’s law provides that “all persons who live on the national territory have the right to protection of their physical integrity, productive infrastructure, their goods and

their environment with regard to possible disasters and emergencies.” For its part, the Philippines law declares it “the policy of the State to ... [u]phold the people’s constitutional rights to life and property by addressing the root causes of vulnerabilities to disasters, strengthening the country’s institutional capacity for disaster risk reduction and management and building the resilience of local communities to disasters including climate change impacts.”

These laws are not all clear with respect to the precise legal remedies available in case of violation of this right. However, Indonesia’s law does provide that “anybody shall have the right to receive compensation for losses from disaster due to construction failure” and also states that recourse to the courts is available in case of “dispute about disaster management.” Moreover, several of the laws provide for penal penalties where authorities fail to act. For example, the Slovenian law provides for a fine in case local authorities fail to develop a disaster management plan. An argument may be made that states have a duty under human rights law to provide some sort of remedy for such cases. The European Court of Human Rights has decided several cases in the last few years finding European governments liable for gross failures to prevent disasters (and for failing to provide a national remedy) (Kaelin, 2008).

Still, some governments and disaster management professionals have shied away from providing civil or criminal penalties with regard to governmental negligence in disaster management, for fear of fueling un-productive finger-pointing every time a disaster occurs (Twigg, 2004). This danger is certainly not to be ignored. Many scientists were scandalized earlier this year with prosecutors in Italy opened a criminal case against six government seismologists for failing to predict and warn residents about the 2009 L’Alquila earthquake (HSN Newswire, 2010).

Without a clearly associated remedy, articulations of rights may have more symbolic than legal force. On the other hand, the field of disaster risk reduction is unusual in that the main obstacle to its success tends to be the inability to sustain political will. Where individuals are able to base their arguments on recognized rights, they may carry more weight in the dialogue with authorities – including at the community level.

Conclusion

More specific attention to community-level risk reduction is slowly making its way into disaster management laws in various parts of the world. The legal and cultural transition from a central to a local model of disaster management is not easy – and may be particularly difficult when carried out at the same time as a transition from a response-only to risk-included approach. Recent laws show that the goal of community-level impact and ownership on the path to resilience is taking root. However, the progress is uneven within countries and between regions and the full implementation of normative frameworks remains an ongoing challenge.

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