

# Legal Issues of Humanitarian Assistance after the 2007 Earthquake in Pisco, Peru

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None.

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**Abstract**

The earthquake that struck the central coast of Peru on 15 August 2007 was a disaster that mobilized international humanitarian assistance to address the needs of the affected people in the regions of Huancavelica, Ica, and Lima. It also was an opportunity to prove the effectiveness of regulations and procedures to facilitate the entry and distribution of donations and medical goods during a major emergency. In the first month after the earthquake, the national government approved new regulations that aimed to reduce waiting time while reducing the number of requisites required by customs. More than 5,500 tons of international donations arrived in Peru in a short period of time. Many donated medicines arrived unsorted, without an international non-proprietary (generic) name on the label, and some medicines did not have any relationship with the diseases that would appear in the aftermath of the event.

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**Introduction**

Most frequently occurring disasters have common characteristics. They often have problems with humanitarian assistance, and the earthquake in Pisco was no exception. The 7.0 Richter-magnitude earthquake struck three regions in Peru (Huancavelica, Ica, and Lima) on 15 August 2007. The national government reported 596 dead; 1,294 injured,<sup>1</sup> and 192,492 homes were affected (78% of the total number of homes).<sup>2</sup> At least 60 primary healthcare facilities were affected (18% of the total number in the disaster area) as well as four Ministry of Health hospitals and three Social Security hospitals had moderate to severe structural and non-structural damages. Sixty-two percent of the total number of beds available in the three Ica provinces were lost in a few minutes due to the earthquake.

The disaster produced great mobilization of national and international resources in order to tend to the needs of the affected population. During the emergency, some weakness and gaps were identified, based on a review of international and national regulations that should be applied in disaster situations.

Although many countries in America, including Peru, have laws and regulations that facilitate the assistance in the aftermath of a disaster, the damage from some extraordinary events, such as the earthquake in Pisco, exceed preparedness and oblige authorities to adjust the regulations and procedures to allow for a more efficient response.

**International Context**

There are several binding instruments. The Universal Declaration of Human Rights, and at least 10 covenants and conventions are focused on health rights—all guarantee the protection of vulnerable groups during a disaster.<sup>3</sup> These instruments should be used to restore human rights of the affected people and their communities. All of these policies have been ratified by Peru, but have not been developed into laws and national regulations.

Together with Nicaragua and Panama, Peru was one of three countries that signed the Inter-American Convention to Facilitate Disaster Assistance in 1991, which was ratified later. This Convention provides a number of facilities to assist states, including simplifying procedures for the entry of personnel, goods, and equipment, providing for their security, and shielding these countries and their personnel from liability in national courts.<sup>4</sup> The Inter-American Convention was enacted in 1996, but to date, only the three above-mentioned countries have implemented the plan.

In the Andean Region, there also are other instruments to facilitate emergency response during disasters. The Andean Committee for the Prevention and Response to Disaster (CAPRADE) has an operative guide for humanitarian assistance that establishes guidelines to mobilize equipment, materials, and human resources among the Andean countries (including Peru) prior to the declaration of a state of emergency. Goods, medicines, and equipment dispatched to a disaster area must be related to the needs of the situation. They also must have a minimum expiration date of one year. Human resources must have provisions for at least seven days before being sent on assignment.<sup>5</sup>

In addition to these regulations, the Guidelines for the Domestic Facilitation and Regulation of the International Disaster Relief and Initial Recovery Assistance of the International Federation of Red Cross and Red Crescent Societies should be useful to strengthen laws, policies, and procedures related to international disaster response; however, they are non-binding.<sup>6</sup>

On the other hand, guidelines, principles, and declarations of the World Health Organization emphasize the importance of the rehabilitation of health services. They drive the assistance of the international community to better cater to the needs of the affected population, ensuring that recovery incorporates local capacity-building in order to reduce public health risks. The Pan-American Health Organization has urged Member States to further strengthen their own disaster preparedness programs to ensure that the health systems remain operational when the affected population needs them most.<sup>7</sup>

### National Context

Like other countries in America, Peru has laws and regulations to declare a state of emergency in order to facilitate the entry of donations as well as to promptly activate fast-track procedures in order to address the needs of the affected people, while also recovering healthcare facilities and other essential services.

### *Declaration of a State of Emergency*

The Law and Regulations of the Civil Defense has established procedures to declare a state of emergency in the case of both natural and human-made disasters. This declaration is based on a damage or risk assessment that can be performed by local committees of the civil defense, by sectors or by scientific public organizations. These reports must be presented to national institutions that have the responsibility to approve or deny the request of the civil defense. Finally, the president of the republic must sign the resolution of the Declaration of a State of Emergency that had been approved by the Council of Ministers.<sup>8-10</sup>

The regional and local civil defense committees should take measures to prevent or mitigate the effects of a disaster based on a resolution that allows the use of emergency funds and activates fast-track procedures to purchase goods and services. In the case of large disasters such as the earthquake in Pisco, the Council of Ministers can directly request that the President of the Republic declares a state of emergency. In this situation, the ministries are responsible for the response to the disaster in coordination with local or regional authorities.

### *Donation Management for Humanitarian Assistance*

Customs sets up the procedures to approve the entry of goods into the country. Laws and regulations include special rules that facilitate the entry of humanitarian dispatches, such as vehicles, food, clothes, shoes, tents, and field hospitals, which are necessary to help those affected by epidemics and disasters caused by natural hazards. They also include controlled products (vaccines, medicines, medical equipment, etc.) that require special permission from the national health authority for their importation, distribution, and purchase in the country.<sup>11</sup>

The importation of medicine and medical equipment is subject to specific restrictions. There are specific regulations that have established requisites that must be solicited by customs in order to allow for the entry of medical goods.<sup>12,13</sup> On the other hand, there are other types of procedures that allow for the entry, registration, and distribution of medicines and medical materials with fewer restrictions. This reduces the time that goods stay in storage before their distribution to the affected area. Although the procedures are simplified using the fast-track method, there still are some conditions which delay the entry of goods into the country. Medicines must be labeled with the international, non-proprietary name (generic), have medical instructions in Spanish, English, or Portuguese, and at least a one year-expiration date from time of arrival.

In addition to these procedures, the Ministry of Health has approved medicine and medical materials (kits) that focus on acute respiratory infections, burns, trauma, acute diarrheal infections, and other diseases that can occur during disasters. These kits are useful because they can help to determine the type and quantity of medical donations that are needed from international and national organizations.

### Humanitarian Missions

Many States require a license, permit, certificate, or some other form of government approval to enable doctors, nurses, and pharmacists to practice.<sup>12</sup> In Peru, the procedure for obtaining these licenses and permits is slow. Many requisites are necessary must be presented to Customs. However, provisional licenses are available in emergency situations or in the case of humanitarian missions. A humanitarian mission may be defined as a team of professionals, technicians, and/or other people who arrive in Peru to assist in the relief and/or recovery.

The Peruvian International Cooperation Agency is responsible to solicit information and coordinate work teams during a mission. In the case of medical missions, the Ministry of Health and a professional board must grant

provisional licenses within a reduced timeframe and with fewer requites. If a medical mission brings equipment and medicine into a country, these goods are able to enter with the condition that the team itemizes the contents. However, the Health Department facility in Lima's International Airport is the only place that can approve the entrance of medical goods that are carried in by these missions.<sup>14,15</sup>

#### *Humanitarian Assistance after the Earthquake*

During a major disaster such as the earthquake in Pisco, the National Government through the Civil Defense, has the right to declare a State of Emergency and appeal for the international cooperation of United Nations agencies or non-governmental organizations. The day after the earthquake, a state of emergency was declared for a period of 60 days in the regions of Huancavelica, Lima, and Ica.<sup>16,17</sup> Then, this declaration was extended for another year. In the aftermath of the earthquake, the national government had a strong presence in field operations, meanwhile, regional and local civil defense committees did not participate in the immediate disaster response. The Emergency State was a unique way to activate shortcuts and fast-track procedures within national organizations. These were necessary for the acceptance of donations and to permit the exoneration of tax and licenses for the importation of medical equipment, medicines, and others goods.

Although, there had been many laws, regulations, and procedures before the earthquake, there were some problems in applying them in the field. Some common problems that had been identified during previous disasters, such as the implementation of procedures, re-occurred. The national authorities acknowledged that further regulations were necessary because some laws were not clear or did not establish effective, fast-track procedures. In the first month after the earthquake, the national government approved new regulations that aimed to reduce waiting time while reducing the number of requisites required by customs. In the aftermath of the disaster, 55 laws and regulations were approved by the Parliament and the national government. Most of them had a relationship with customs and economic issues.<sup>18</sup> New regulations allowed the entry of donations without permission upon arrival. However, the donor had 60 days to present the appropriate documents to customs.<sup>19</sup> A similar situation occurred during the Hurricane Stan emergency in Guatemala in 2005, where customs permitted the entrance of donations without complete documents. At least 60 organizations did not complete the information needed for the entry of the goods.<sup>20</sup>

It was estimated that 14,000 tons of goods were received (5,500 tons from abroad).<sup>1</sup> All of them were received by the Institute of Civil Defense; however, other national organizations, like ministries, could have been able to receive, register, and distribute the donations. Some of the donated goods arrived without any prior coordination with Foreign Affairs or the Peruvian International Cooperation Agency. This situation caused additional costs and delayed the distribution of these goods within affected areas. Other donations were not necessary because they did not have any relationship with the most likely effects of the disaster. Some of the food donated by the international assistance agencies was

was not eaten by those in rural communities. The management of second-hand, international donations requires special permission, and therefore, these kinds of donations are not very effective during a disaster.<sup>1</sup>

There were 38 tons of international medicine and medical materials donated. Many donated drugs arrived unsorted, without an international, non-proprietary (generic) name on the label, and some did not have any relationship with the diseases that would appear during the disaster. Some NGOs and international organizations reported difficulties with the entrance of medical donations. For example, the Pan-American Health Organization imported x-ray equipment for the San Juan Hospital in Pisco. This equipment arrived in Peru on 04 December, but only was received by the hospital one month later because customs solicited a donation letter authorization by the Ministry of Health, and special permission by the Nuclear Energy Peruvian Institute.

Twelve medical missions from Europe, Asia, and America arrived in Pisco and the other cities affected by the earthquake. Eight field hospitals operated during the disaster. More than 170 international professionals were working in three cities in the disaster areas; most of them were physicians who arrived within the first 15 days following the earthquake. No provisional licenses were necessary for the recognition of professional qualifications. In light of the Inter-American Convention, personal assistance was not subject to civil and administrative jurisdiction other than in case of wrongful death due to negligence.

#### **Conclusions**

Based on a review of the international and national regulations for disasters and emergencies during the disaster in Pisco, the following preliminary conclusions were identified:

1. There are regulations and procedures to declare a state of emergency that can activate fast-track procedures to mobilize resources from the national level to regional and local levels;
2. Functions and responsibilities of national and regional civil defense authorities clearly are established for disasters caused by natural hazards. However, the strength of the local civil defense also is necessary to improve the response and recovery during a disaster;
3. Although there were some national regulations and procedures to allow the approval and entry of donations, customs still solicited many documents that were not necessary;
4. Many authorities and workers were not clear on how they could apply the procedures during the emergency. This situation slowed the entry and distribution of donations. A procedure guide is necessary to facilitate the implementation of donation management in the field;
5. National authorities identified some gaps in laws and regulations during the emergency. Based on this, the government quickly approved new procedures to complement the existing regulations;
6. Some human rights issues should be incorporated into national laws and regulations in the case of a disaster; and
7. The estimation of initial needs and gaps was not clear, which delayed the beginning of humanitarian assistance.

tance. In some cases, it was difficult to distinguish between urgent and non-urgent necessities. The identification of urgent priorities was one of the most important tasks that were led by national authorities.<sup>21</sup>

Finally, the following gaps in national laws and regulations were identified:

1. There was no regulation for importing and distributing controlled drug donations during disaster situations;
2. There are not any procedures to facilitate the entry of medical equipment that use non-ionized radiations;
3. There is not a guideline for national and foreign hospitals. A guideline should exist and should include the recognition of foreign professional qualifications, the entry and donation of medical equipment as well as others issues; and
4. The principal issues of the Inter-American Convention are accepted in Peru; but additional information is important about the responsibility of assistance personnel in disasters due to natural hazards.

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# Editorial Comments—Legal Issues of the Humanitarian Assistance after the 2007 Earthquake in Pisco, Peru

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This article reflects a striking trend. A decade ago, the subject of law and international disaster response in peacetime barely existed in medical or legal literature. The law of humanitarian assistance during military conflict has been a subject of interest in professional literature, but until recently, this has not been the case in relation to peacetime emergencies. International humanitarian assistance has been growing in the public and private sectors in a way that has not been seen since the birth of systematic, international, humanitarian assistance in the late nineteenth century. Law and legal frameworks have not caught up with this growth yet, but as this article demonstrates progress has been made.

The article sketches out linkages from the highest (and perhaps most theoretical and controversial) sources of international law that some argue make disaster assistance a human right, down to the operational level where states enact rules for disaster response. Dr. Bambarén provides a close-up look at the operation of Peruvian law and regulation in the wake of the Pisco Earthquake. From a legal perspective, the article is especially enlightening on several counts.

As proactive development of legal and regulatory frameworks for international humanitarian response during disasters due to natural hazards still is an emerging line of effort and inquiry, this article is a pioneering case study—a progress report—on the state of legal preparedness for major disasters. It also provides lessons on the strengths and weaknesses of current legal regimes. Other members of the WADEM community can follow Dr. Bambarén's pioneering example and continue providing similar case studies on the interface of law and humanitarian assistance in other emergencies. Dr. Bambarén's study offers concrete perspective of the kind that is still infrequent, but quite essential to effective development of legal frameworks and guidance for humanitarian assistance.