

## Helpdesk Research Report

# Influencing laws and guidelines on humanitarian assistance

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06.07.2015

### Question

*In response to an emergency/crisis what experience is there amongst humanitarian partners of successfully influencing the recipient government's stance towards the taxing or imposing other duties/levies on humanitarian assistance?*

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## 1. Overview

International humanitarian law (IHL) and international disaster response laws, rules and principles (IDRL) set out rules and guidance on how to access affected populations, and how to deliver humanitarian assistance, during armed conflicts and disasters. This includes guidance on customs clearance and the taxation of relief, among other areas (Haider, 2013, p.7). IDRL is a fragmented collection of treaties, non-binding resolutions, guidelines and rules which have in many examples been adopted into national laws.

This paper collates information on how humanitarian actors have influenced governments to adopt these treaties, resolutions, guidelines, rules, and the resultant national laws. Where information is available, it focuses on the clauses relating to taxes, duties or levies on humanitarian action. It includes examples of formal influence (i.e. influencing the adoption of a law) and informal influence (i.e. influencing customs

officials to not charge official duties and taxes). There is a **paucity of information** on this subject, and no single sources that examine this question. While there are some country examples, they often do not explore in any depth the role that humanitarian actors played influencing this process, and often do not specify how particular clauses were discussed (e.g. clauses on taxation). The literature is predominantly published by practitioners, with some by think tanks. Information has also been sourced through organisational websites. Due to the lack of available information this query is not comprehensive, but collates the fragmented information that is available. The country case examples may provide useful entry points for further research on this question.

**Findings** include:

**IHL** provides some specific rules on access and delivery of humanitarian assistance during armed conflict. **IDRL** extends rights to disaster settings but is a weaker framework than IHL, and regulatory issues are more problematic. Rights and responsibilities are set out in (non-binding) Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (IDRL Guidelines). The IDRL Guidelines include provisions on taxes and the levying of customs, among other provisions.

A number of **activities and tools** have been used to influence national governments adoption of the IDRL Guidelines including:

- Using the ‘Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance’ as a tool to design national legislation;
- Providing consultations, training and technical assistance to raise awareness in states wishing to implement the IDRL Guidelines;
- Providing ‘readiness planning’ and ‘legal-preparedness’ – including: technical assistance; capacity building; and advocacy, dissemination and research)
- Using the ‘UN Model Customs Facilitation Agreement’ and a ‘one-stop shop’ approach as a basis for customs agreements;
- Using the ‘draft model emergency decree’ to develop regulations for international relief, in post-disaster situations when frameworks are not already in place;
- Legislative advocacy is highlighted as particularly important when national Red Cross/Red Crescent organisations help develop and influence the laws and guidelines of their respective national governments;
- Combining activities at the national, regional and global levels.

A variety of **practical examples** illustrate when these activities have been used in practice in: the Philippines; Indonesia; The Seychelles; Cambodia; The Cook Islands; Botswana; Mozambique; Namibia; Haiti; and Germany.

## 2. International humanitarian law (IHL)<sup>1</sup>

The provision of humanitarian assistance takes place in a variety of settings – under occupation, in international and internal armed conflicts, and in the event of natural or man-made disasters. International legal frameworks for humanitarian action not only provide guidance on how to address such situations,

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<sup>1</sup> See Haider, H. (2013). International legal frameworks for humanitarian action: Topic guide. Birmingham, UK: GSDRC, University of Birmingham - <http://www.gsdr.org/docs/open/ILFHA.pdf>

but can also serve as ‘powerful tools’ in advocating for, and achieving, the protection of affected civilian populations (Haider, 2013, p. 6).

IHL provides some specific rules on access and delivery of humanitarian assistance **in international armed conflicts** – e.g. domestic authority obligations to transfer relief consignments; restrictions on diverting relief consignments; and regulation of humanitarian personnel. The aim is to reduce bureaucratic restrictions as much as possible and allow for the speedy delivery of relief to protected persons (Haider, 2013, p.29). In regards to taxes and levies, relief consignments must be ‘exempt in occupied territory from all charges, taxes or customs duties unless these are necessary in the interests of the economy of the territory’, and the occupying power, and states of transit, must facilitate their free passage and rapid distribution (GCIV, Art 61 in Haider, 2013, p.29).

There are few treaty rules that address conditions of access and delivery of humanitarian assistance **in non-international armed conflicts**. The International Committee of the Red Cross’ customary law study argues there is enough practice to justify extending the requirement that the party in control must facilitate free passage and rapid distribution of relief in situations of occupation to other situations of international and internal conflict (ICRC, 2005 in Haider, 2013). In addition, it notes that the freedom of movement of authorised relief personnel is essential to fulfil their humanitarian functions and is therefore required under customary international law. It is still debatable, however, whether there is enough practice to find a ‘right to access’ under customary law (Spieker, 2011 in Haider, 2013, p.29).

### 3. International disaster response laws, rules and principles (IDRL)

IHL focusses on humanitarian assistance during armed conflict. The growing number of disasters and their humanitarian impacts has prompted the need for a framework that addresses the responsibilities of states and humanitarian agencies **in disaster settings**. Haider (2013, p. 6, 40) identifies that IDRL is a new area of focus targeting states and humanitarian agencies operating in disaster areas not subject to IHL. IDRL is a fragmented collection of treaties and non-binding resolutions and guidelines. It is a weaker framework than IHL, and regulatory issues are therefore more problematic in the delivery of assistance in disasters than in armed conflicts. Progress has been made, however, with new guidelines and attempts to develop a more coherent disaster framework. IDRL addresses issues including: visas, travel restrictions, work permits, customs formalities, recognition of domestic legal status, unregistered organisations face various problems, difficulty opening bank accounts, hiring staff, and tax exemptions (Mosquini, 2011; Bannon, 2008; Fisher, 2007 in Haider, 2013, p. 40).

## 4. IHL and IDRL in practice - methods

### IDRL Guidelines

The non-binding Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (IDRL Guidelines) (International Federation of Red Cross and Red Crescent Societies (IFRC), 2007) define the responsibilities of affected states (reinforcing that primary responsibility lies with affected states) and offer a set of recommendations to governments for preparing their domestic laws and systems to manage international assistance during relief efforts. This includes encouraging legal facilities for operation, such as visa, customs and transport facilitation, tax exemptions, and a simplified process for acquiring temporary domestic legal personality (Haider, 2013, p.41).

The IFRC has supported national societies and governments in 52 countries since the 2007 IDRL guidelines were adopted to review their laws and procedures for managing humanitarian assistance. Among these, 19 countries have already adopted new laws or rules drawing in part on the Guidelines' recommendations (which are not limited to tax issues) and 17 others have bills or rules changes currently pending (expert comments). E.g. the UNOCHA website explains that countries that have adopted new laws, regulations or procedures at the national level in line with IDRL Guidelines include: e.g. Indonesia, New Zealand and the Philippines. While, legal review processes and/or IDRL studies conducted by IFRC and National Societies have been completed or are underway in Afghanistan, Cambodia, the Cook Islands, Laos, Nepal, Pakistan, the Philippines, Vanuatu and Viet Nam.<sup>2</sup> Some, like Colombia and Haiti, have also adopted ongoing taskforces or commissions for ongoing discussions about how to prepare for and tackle these issues (expert comments). Figure 1 depicts the locations of: IFRC and National Societies disaster law projects and studies (in blue); laws or rules that have been adopted and which draw on recommendations from National Societies (in green); and countries where new laws or rules drawing on those recommendations are currently pending (in yellow).

**Figure 1: Disaster law projects, laws adopted, laws pending**



Source: IFRC website, 2015, accessed 6 July 2015, <http://www.ifrc.org/dl>; and [https://www.google.com/maps/d/viewer?mid=zwH0csuD3bJQ.kkj\\_Ovg2fuyg](https://www.google.com/maps/d/viewer?mid=zwH0csuD3bJQ.kkj_Ovg2fuyg)

## **Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance**

The Model Act is a tool to help states implement the IDRL Guidelines, and to prepare for possible future international assistance for a disaster. It sets out a legal framework for the entry and coordination of international humanitarian assistance, which is later adapted to the specific context of the state (IFRC, 2011).

Consultations and training are provided to raise awareness and provide technical assistance to states wishing to implement the IDRL Guidelines (IFRC, 2011, p. iv). The IFRC provides training together with regional organisations, and international partners such as the World Customs Organisation, the UN Office

<sup>2</sup> See - <http://www.unocha.org/publications/asiadisasterresponse/ToolsAndServicesForDisasterResponsePreparedness.html>

for the Coordination of Humanitarian Affairs (UNOCHA) and the Inter-Parliamentary Union (IPU) (expert comments).

## Readiness planning and the legal-preparedness process

UNOCHA's website explains 'readiness planning', where it supports 'policy and legal preparedness, contingency planning, establishment of national incident command systems and other processes that clarify the roles between humanitarian actors.'<sup>3</sup> The '**legal-preparedness process**' is usually initiated by a National Red Cross Red Crescent Society in cooperation with the national government and with support from the IFRC.<sup>4</sup> The IFRC supports reviews of national legislation on disaster management, and the development of new laws.<sup>5</sup>

IFRC's Disaster Law Programme promotes legal preparedness for disasters by: '(1) Technical Assistance - Collaborating with National Red Cross and Red Crescent Societies and other partners to assist governments in strengthening their domestic legal preparedness for disasters; (2) Capacity Building - Building the capacity of National Red Cross and Red Crescent Societies to advise their governments on the development of disaster management law; and (3) Advocacy, dissemination and research - Building partnerships at the international and regional level on legal preparedness, disseminating the IDRL Guidelines and fostering new and innovative research'.<sup>6</sup>

## UN Model Customs Facilitation Agreement

The UN Model Customs Agreement aims to support the import, export and transit of relief consignments and the possessions of relief personnel during a disaster (e.g. containing model provisions for: 'simplified documentation and inspection procedures; temporary or permanent waiving of duties; taxes on imports of relief items and equipment of relief personnel, UN agencies and accredited NGOs; and arrangements for clearance outside official working hours and locations). The UN Model Customs Agreement is signed between a government and the UN. Countries that have signed include: Nepal, Bhutan and Thailand.'<sup>7</sup>

### ***'One-stop shop' approach***<sup>8</sup>

IFRC literature identifies the 'One-Stop-Shop' ('OSS') approach to customs has been successful in past operations (e.g. in the Philippines, see below) (Hofmann, Fisher, Schmidt & Nogra, 2014; expert comments). The One-Stop-Shop approach expedites custom clearance by bringing together the relevant government ministries into one checkpoint, as described in the Model Act (IFRC (2014b); Hofmann et. al., 2014). Originally developed in Central America, this approach has proved successful after recent disasters in Indonesia and the Philippines, and advocacy efforts are spreading the approach (expert comments).

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<sup>3</sup> See -

<http://www.unocha.org/publications/asiadisasterresponse/ToolsAndServicesForDisasterResponsePreparedness.html>

<sup>4</sup> See -

<http://www.unocha.org/publications/asiadisasterresponse/ToolsAndServicesForDisasterResponsePreparedness.html>

<sup>5</sup> See -

<http://www.unocha.org/publications/asiadisasterresponse/ToolsAndServicesForDisasterResponsePreparedness.html>

<sup>6</sup> See - <http://www.ifrc.org/what-we-do/idrl/about-idrl/>

<sup>7</sup> See -

<http://www.unocha.org/publications/asiadisasterresponse/ToolsAndServicesForDisasterResponsePreparedness.html>

<sup>8</sup> The term 'single window international facilitation teams' is also used (IFRC, 2014b).

## Draft model emergency decree

Changing laws for managing humanitarian assistance *pre-disaster* is preferable to engaging *post-disaster* as it is then ‘generally too late to achieve great results’ (expert comments; IFRC, 2011). However, as it is not possible to always have engaged pre-disaster, the IFRC together with OCHA, have developed a ‘model emergency decree’ for use in these circumstances. This has been piloted in the operational deployments of legal advisors (after Typhoon Bopha and Haiyan in the Philippines, Cyclone Pam in Vanuatu and the Nepal earthquake),<sup>9</sup> which have partly sought to advise operational leaders and, where possible, the authorities, on best practice in addressing the regulation of international relief (expert comments). The development of the model emergency decree is a joint project of the IFRC and UNOCHA.<sup>10</sup>

## Legislative advocacy

A large number of country examples found through this query highlight the important role that the national Red Cross/Red Crescent organisations play in developing and influencing laws and guidelines with their respective national governments. To support this work, a Legislative Advocacy Guidance Note on Disaster Risk Reduction has been drafted through the IFRC (e.g. it is mentioned in IFRC, 2014).

## Combining activities at the national, regional and global levels

A report from an IFRC (2015) expert meeting concludes that activities at national, regional and global levels complement each other to improve the legal frameworks for disaster response. With:

- At the **country level** the supporting and influencing of national governments especially by the National Societies and the IFRC
- At the **regional level** the promotion of regional IDRL related legislation and establishment of regional fora especially by some countries or regional organisations
- At the **global level** the strengthening of the international legal frameworks

## 5. IHL and IDRL in practice – country examples

### Typhoon Yolanda in the Philippines

A review by humanitarian actors identifies a number of success factors in the cooperation between the Philippines’ government and humanitarian actors’ in response to the 2013 Typhoon Yolanda. First, it finds that the entry of personnel, goods and equipment was ‘remarkably rapid’ in large due to one-stop shops that brought together the different government departments (Hofmann, et. al., 2014, p.6). The review recommends that other countries draw on the Philippines’ successful use of the one-stop shops methodology ‘to speed the clearance and provision of duty and tax exemptions for relief goods and equipment’ and that ‘the Philippines Government consider gathering and codifying the [one-stop shops] OSS and other ad-hoc facilitation procedures used in Haiyan, as part of its review of the 2010 disaster management act’ (Hofmann, et. al., 2014, p.21).

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<sup>9</sup> A quick search online did not find further information related to taxation or customs levied on humanitarian assistance in the examples of Typhoon Bopha and Haiyan in the Philippines, Cyclone Pam in Vanuatu or the Nepal earthquake.

<sup>10</sup> See - <http://ifrc.org/what-we-do/idrl/draft-model-emergency-decree>

Second, main duties and taxes were waived for humanitarian actors, with the initial exception of some minor fees for importers (for import processing and container security). However, subsequently the minor fees were also waived following objections from those being charged. Hofmann, et al., (2014, p.18) do not explain in detail how this happened but note that it was the customs officers in the Cebu province that decided to cover the fees from their own government funds (Hofmann, et al., 2014, p.18). The report notes that the flexibility of these officials meant that the 'in-country regulatory issues that have plagued large operations in other countries, such as issues of taxation of international relief responders and difficulties in NGO registration, were avoided in Haiyan' (Hofmann, et al., 2014, p.6). The taxes and duties waived on behalf of bilateral partners and humanitarian organisations were charged against relevant national budgets with responsibility for regulation (e.g. the Department of Health for medications). Although a customs memorandum established that only registered organisations would be 'eligible for tax exemptions, a decision was later made by the Secretary of the Department of Social Welfare and Development to waive this requirement for the first two months, in order to avoid imposing any barrier to incoming relief' (Hofmann, et al., 2014).

Although work is still ongoing, Hofmann, et al. (2014, p.20) explain that the Philippines Red Cross and IFRC are currently engaged in the Philippines' government reviews of existing laws and procedures for disaster response (including international responses). Also, a bill is pending to integrate many of the IDRL Guidelines recommendations (Hofmann, et al., 2014, p.20).

## Indonesia

The UNOCHA website explains the process by which guidelines and a regulation were devised in Indonesia. The IFRC and the Indonesia Red Cross carried out a series of studies in collaboration with the Government of Indonesia from 2004 to 2006 to identify the legal issues that had affected international relief operations in Indonesia. Following consultations involving a wide range of stakeholders, the Government adopted a new law on disaster management in 2007, a regulation in 2008, and more detailed and specific guidelines in 2010, all drawing on the IDRL Guidelines.<sup>11</sup>

In a separate IFRC background paper based on interviews in Indonesia, the paper identifies that Indonesia's comprehensive legal framework for disaster management (Law 24) 'is unusual in that it came about through the extensive lobbying and inputs of a civil society organization, the Indonesian Disaster Management Society.' (Walker, Rasmussen & Molano, 2011, p.19).

## The Seychelles

The IFRC website reports that the Seychelles Red Cross Society, with support from the IFRC Disaster Law Programme, was closely involved in advising and assisting the Seychelles authorities in the development of the new Disaster Risk Management Act, adopted in 2014. The new Act contains many of the IDRL Guidelines, including provisions on tax exemptions. The IFRC identifies it as an example of legislative advocacy.

## Cambodia

The UNOCHA website reports that the IFRC in 2008 began to support the Government of Cambodia and the Cambodia Red Cross Society in an IDRL technical assistance project to analyse the national legal

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<sup>11</sup> See -

<http://www.unocha.org/publications/asiadisasterresponse/ToolsAndServicesForDisasterResponsePreparedness.html>

framework for international assistance. Following the review, Cambodia drafted a new disaster management law. The website claims that 'if passed in its current form by Parliament, it will be one of the most comprehensive disaster management laws in the Asia-Pacific region, with an entire chapter dedicated to international assistance.'<sup>12</sup>

## **The Cook Islands**

The UNOCHA website explains that following the completion of an IDRL study in the Cook Islands, the Prime Minister raised the issue with leaders of Pacific Island States during a regional Forum. The resulting Forum Communiqué encourages the Pacific Island States to use the IDRL Guidelines to strengthen national policy and institutional and legal frameworks in collaboration with their National Red Cross Societies, IFRC, the UN and other relevant partners.<sup>13</sup>

## **Botswana**

An IFRC and Botswana Red Cross Society workshop report identifies that Botswana has not acceded to major IDRL treaties, and does not have National Disaster Risk Management legislation or legislation governing international disaster response (IFRC & Botswana Red Cross Society, 2013). The report discusses whether to 'engage political parties in the debate on the discourse for lobbying for IDRL as political leaders are legislators' (2013, p.12). It also identifies that the Botswana Red Cross Society should undertake high level advocacy on this issue. Although warns it should not compromise the organisation's neutrality (IFRC & Botswana Red Cross Society, 2013, p.13).

## **Mozambique**

The Mozambique Red Cross actively engaged in advocacy while the national disaster management law was under discussion. Activities included: advocacy activities in parliament; meetings and workshops discussing the national disaster management; and offering to organise workshops for the government to discuss the implementation of the IDRL Guidelines. In an IFRC (2008, p.4) newsletter the MRC said it believed its advocacy 'has mostly been successful. However, issues such as tax exemptions for humanitarian organisations remain critical, as currently they are dealt with on a case-by-case basis. We also need a better definition of when an official disaster can be declared, and what action [the Mozambique Red Cross] MRC is permitted to take if no declaration is made. This last issue often creates difficulties with resources, as we may not appeal for funds if the government has not officially declared a disaster.

## **Namibia**

Namibia's National Disaster Management Agency experienced significant delays transporting relief goods when heavy floods affected the north of the country due to numerous regulatory barriers at borders. In response, the IFRC (2011) reports that the Namibian government and the Namibia Red Cross initiated a project to investigate how to improve its legal framework for disaster response (for both domestic relief and as a transit route for relief to other countries in the region).

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<sup>12</sup> See -

<http://www.unocha.org/publications/asiadisasterresponse/ToolsAndServicesForDisasterResponsePreparedness.html>

<sup>13</sup> See -

<http://www.unocha.org/publications/asiadisasterresponse/ToolsAndServicesForDisasterResponsePreparedness.html>



## Haiti

The IFRC website reports that an inter-ministerial group in 2014 presented new procedures for emergencies to process humanitarian goods brought into the country by individuals and organisations not registered in Haiti. The group is coordinated by the Directorate of Civil Protection with the participation of the Ministry of Economy and Finances, Ministry of Planning and the Haitian Red Cross. The group receives technical support from the IFRC, UN World Food Programme, UNOCHA and the United Nations Stabilisation Mission in Haiti (MINUSTAH).<sup>14</sup>

## Germany

The German Red Cross (2010) argues that humanitarian organisations in Germany that qualify as non-profit are exempted from taxes, as recommended by the IDRL Guidelines, due to European jurisprudence. However, whether bureaucratic restrictions are relaxed on imports and exports of relief goods depends on 'political will' and 'if needed, relief goods can be transported rather quickly and with high priority' (German Red Cross, 2010, p.45).

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<sup>14</sup> See - <http://ifrc.org/en/what-we-do/disaster-law/news/americas/haiti-develops-new-customs-clearance-procedures-for-international-disaster-relief-65774/#sthash.Z6BBUqFt.dpuf>

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## Key websites

- IFRC - Key disaster law issues - <http://www.ifrc.org/en/what-we-do/disaster-law/about-disaster-law/>
- IFRC Disaster Law Programme publications - <http://www.ifrc.org/Global/Publications/IDRL/Publications/DLP%20publications%20list%20and%20links%2019%20January%202015%20Final.pdf>
- UNOCHA - International Humanitarian Architecture - <http://www.unocha.org/publications/asiadisasterresponse/InternationalHumanitarianArchitecture.html>
- UNOCHA - Tools and Services for Disaster Response Preparedness - <http://www.unocha.org/publications/asiadisasterresponse/ToolsAndServicesForDisasterResponsePreparedness.html>

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## Suggested citation

Herbert, S. (2015). *Influencing laws and guidelines on humanitarian assistance* (GSDRC Helpdesk Research Report 1236). Birmingham, UK: GSDRC, University of Birmingham.

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