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الاتحاد الدولي لجمعيات الصليب الأحمر والهلال الأحمر

# **Draft Guidelines**

## **for the Domestic Facilitation and**

### **Regulation of International Disaster**

#### **Relief and Initial Recovery Assistance**

**Version of 10 July 2007**

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# **Draft Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance**

## **Introduction**

### **Article 1 Purpose**

1. These Guidelines are non binding. Their purpose is to contribute to national legal preparedness by providing guidance to States interested in improving their domestic legal, policy and institutional frameworks concerning international disaster relief and initial recovery assistance.

2. While affirming the principal role of domestic authorities and actors, these Guidelines recommend minimum legal facilities that should be provided to assisting States and to assisting humanitarian organizations that are willing and able to comply with minimum standards of coordination, quality and accountability. These Guidelines will enhance the quality and efficiency of international disaster relief and initial recovery assistance in order to better serve disaster-affected persons.

3. These Guidelines are not intended to affect existing international law, or agreements, in particular:

- (a) International humanitarian, human rights and refugee law;
- (b) The legal personality and status of States, inter-governmental organizations, the International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross;
- (c) International law related to privileges and immunities;
- (d) The Statutes and regulations of the International Red Cross and Red Crescent Movement and existing legal arrangements between the individual components of the Movement and States; and
- (e) Other existing agreements between States or between States and assisting actors.

### **Article 2 Definitions**

For the purposes of these Guidelines,

1. **“Disaster”** means a serious disruption of the functioning of society which exceeds national coping capacities and poses a significant, widespread threat to human life, health, property or the environment, whether arising from accident, nature or human activity, whether developing suddenly or as the result of long-term processes, but excluding armed conflict.

2. **“Disaster relief”** means goods and services provided to meet the immediate needs of disaster-affected persons.
3. **“Initial recovery assistance”** means goods and services provided to restore or improve, to a defined level, the pre-disaster living conditions of disaster-affected persons, including initiatives to increase resilience and reduce risk, provided for an initial period of time set by the affected State.
4. **“Goods”** means the supplies intended to be provided to disaster-affected persons for their relief or initial recovery.
5. **“Services”** means activities (such as rescue and medical care) undertaken by disaster relief and initial recovery personnel on behalf of disaster-affected persons.
6. **“Equipment”** means physical items (such as vehicles and radios) other than goods necessary to undertake disaster relief or initial recovery operations.
7. **“Personnel”** means the staff and volunteers providing disaster relief or initial recovery assistance.
8. **“Affected State”** means the State upon whose territory persons or property are affected by a disaster.
9. **“Assisting State”** means a State providing disaster relief or initial recovery assistance, whether through civil or military components.
10. **“Originating State”** means the State from which disaster relief and initial recovery personnel, goods and equipment begin travel to the affected State.
11. **“Transit State”** means the State through whose territorial jurisdiction disaster relief or initial recovery assistance passes on its way to or from the affected State in connection with disaster relief or initial recovery operations.
12. **“Assisting humanitarian organization”** means a foreign, regional or international, non-profit entity whose mandate and activities are primarily focused on humanitarian relief, recovery or development.
13. **“Assisting actor”** means any assisting humanitarian organization, assisting State or other foreign entity or person responding to a disaster on the territory of the affected State or sending in-kind or cash donations.

## **Part I: Core Responsibilities**

### **Article 3 Responsibilities of Affected States**

1. Affected States have the primary responsibility to ensure disaster risk reduction, relief and recovery assistance on their territory. National Red Cross and Red Crescent Societies, as auxiliaries to the public authorities in the humanitarian field, and domestic civil society actors play a key supporting role at the domestic level.

2. In order to ensure that the needs of affected persons are met, affected States should seek international or regional assistance, when a disaster situation exceeds national coping capacities.

3. Affected States have the sovereign right to coordinate, regulate and monitor, consistent with humanitarian principles and international law, disaster relief and recovery assistance provided by assisting actors on their territory.

### **Article 4 Responsibilities of Assisting Actors**

1. Assisting actors and their personnel should abide by applicable national and international law and respect the human dignity of disaster-affected persons at all times.

2. Assisting actors should ensure that their disaster relief and initial recovery assistance is:

(a) Allocated solely in proportion to needs and on the basis of needs assessments;

(b) Provided without any adverse distinction (such as, in regards to nationality, race, ethnicity, religious beliefs, class, gender and political opinions) to all persons in need;

(c) Provided without seeking to further a particular political or religious standpoint or to obtain commercial gain from philanthropic assistance;

(d) Provided by competent and adequately trained personnel;

(e) Commensurate with their organisational capacities;

(f) Provided in coordination with the responsible authorities of the affected State and, to the greatest extent practical, with other relevant domestic and foreign actors; and

(g) Not used as a means to gather sensitive information of a political, economic or military nature that is irrelevant to disaster relief or initial recovery operations.

3. To the greatest extent practicable, their disaster relief and initial recovery assistance should also be:

(a) Responsive to the special needs, if any, of women and particularly vulnerable groups, which may include children, displaced persons, the elderly, persons with disabilities, persons living with HIV and other debilitating illnesses;

(b) Adequate for the needs of affected persons and consistent with any applicable international standards of quality;

(c) Provided in a manner that is sensitive to cultural, social and religious customs and traditions.

(d) Carried out with adequate involvement of affected persons, including women, youth and the elderly, in their design, implementation, monitoring and evaluation;

(e) Building upon and conducted in a manner that strengthens local disaster relief and recovery capacities and reduces future vulnerabilities to disasters;

(f) Carried out so as to minimize negative impacts on the local community, economy, job market and environment; and

(g) Provided in a transparent manner, sharing appropriate information on activities and funding.

#### **Article 5 Additional Responsibilities of All States**

1. States providing funding to other assisting actors should encourage them to comply with the obligations in Article 4.

2. All States should actively encourage members of the public interested in providing direct disaster relief to send only those relief goods expressly requested by the affected State and discourage them from sending unnecessary or inappropriate goods.

#### **Article 6 Responsibilities Concerning Diversion**

States and assisting humanitarian organizations should cooperate to prevent unlawful diversion, misappropriation, or fraud concerning disaster relief or initial recovery goods, equipment or resources and initiate proceedings as appropriate.

### **Part II: Early Warning and Preparedness**

## **Article 7 Early Warning**

In order to minimize transboundary impacts and maximize the effectiveness of any international assistance that might be required, all States should ensure that procedures are in place to facilitate the expeditious sharing of information about disasters, including emerging disasters, with other States and assisting humanitarian organizations as appropriate, including the United Nations' Emergency Relief Coordinator,.

## **Article 8 Legal, Policy and Institutional Frameworks**

1. As an essential element of a larger disaster risk reduction programme, States should adopt comprehensive legal, policy, and institutional frameworks for disaster prevention, mitigation, preparedness, relief and recovery which take full account of the auxiliary role of their National Red Cross or Red Crescent Society, are inclusive of domestic civil society, and empowers communities to enhance their own safety and resilience. States, with the support, as appropriate, of relevant regional and international organizations, should devote adequate resources to ensure the effectiveness of these frameworks.

2. These frameworks should also adequately address the initiation, facilitation, transit and regulation of international disaster relief and initial recovery assistance consistent with these Guidelines. They should allow for effective coordination of international disaster relief and initial recovery assistance, duly taking into account the role of the United Nations Emergency Relief Coordinator as central focal point with States and assisting humanitarian organizations concerning United Nations emergency relief operations. They should also clearly designate domestic governmental entities with responsibility and authority in these areas. Consideration should be given to establishing a central focal point to liaise between international and government actors at all levels.

3. Where necessary and appropriate, national governments should encourage other domestic actors with authority over areas of law or policy pertinent to international disaster relief or initial recovery assistance, such as provincial or local governments and private regulatory bodies, to take the necessary steps at their level to implement the Guidelines.

## **Article 9 Regional and International Support for Domestic Capacity**

1. With a view to increasing resilience and reducing the need for international assistance in disaster relief and initial recovery, the international community, including donors, regional and other relevant actors, should support developing States, domestic civil society actors and National Red Cross and Red Crescent Societies to build their capacities to prevent, mitigate, prepare for and respond to disasters domestically.

2. The international community should also support developing States to build the capacity to adequately implement legal, policy and institutional frameworks to facilitate

international relief and initial recovery assistance. This support should be provided to States in a coordinated manner among the relevant actors.

### **Part III: Initiation and Termination of International Disaster Relief and Initial Recovery Assistance**

#### **Article 10 Initiation**

1. Disaster relief or initial recovery assistance should be initiated by the affected State either on the basis of its request or through its acceptance of an offer from an assisting actor. The affected State should decide in a timely manner whether or not to request or accept offers of disaster relief or initial recovery assistance and communicate its decision promptly. In order to make this decision, the affected State should promptly assess needs. Consideration should be given to undertaking joint needs assessments with the United Nations and other assisting humanitarian organisations.

2. Both offers and requests should be as specific as possible as to the types and amounts of goods as well as the services and expertise available or required, respectively. Affected States may also wish to indicate particular types of goods and services likely to be offered that are not needed.

3. Affected States should provide assisting States and assisting humanitarian organizations with adequate information about domestic laws and regulations of particular relevance to the entry and operation of disaster relief or initial recovery operations.

#### **Article 11 Initiation of Military Relief**

Military assets should be deployed in disaster relief or initial recovery operations only at the request or with the specific consent of the affected State, on a time-limited basis, as a last resort and as a tool to complement civilian relief mechanisms where the latter are incapable to address the critical needs of affected persons. Military personnel should be unarmed and in national uniforms of the assisting State, unless otherwise agreed with the affected State.

#### **Article 12 Termination**

When an affected State or an assisting actor wishes to terminate disaster relief or initial recovery assistance, it should provide adequate notification. Upon such notification, the affected State and the assisting actor should consult with each other, bearing in mind the impact of such termination on disaster-affected persons.

## **Part IV: Eligibility for Legal Facilities**

### **Article 13 Facilities for Assisting States**

Transit and affected States should grant, at a minimum, the legal facilities described in Part V to assisting States with respect to their disaster relief and initial recovery assistance.

### **Article 14 Facilities for Assisting Humanitarian Organizations**

1. Originating, transit and affected States should grant, at a minimum, the legal facilities set out in Part V to eligible assisting humanitarian organizations with respect to their disaster relief and initial recovery assistance.
2. In order to be eligible for legal facilities, an assisting humanitarian organization should submit a request to the State concerned and:
  - (i) demonstrate both its willingness and capacity to comply with Article 4 of these Guidelines; and
  - (ii) fulfil any other reasonable requirements of that State, which are not inconsistent with the spirit of these Guidelines.
3. Determination of eligibility by the State granting the facilities should be possible in advance of a disaster or as soon as possible after its onset. Applicable procedures and mechanisms should be as simple and expeditious as possible. They should be clearly described and information about them should be made freely available. They might include the use of a national roster, bilateral agreements or reliance upon international or regional systems of accreditation, if available.
4. Retention of the legal facilities in Part V should be made dependent on ongoing compliance with the obligations in paragraph 2 of this Article. However, entitlement to legal facilities should not be changed arbitrarily, retroactively or without notice appropriate to the circumstances.

### **Article 15 Facilities for Other Assisting Actors**

Affected States may also wish to extend some of the legal facilities in Part V to assisting actors other than those covered by articles 14 and 15, such as private companies providing charitable relief, provided it does not negatively affect operations of assisting humanitarian organizations or assisting States. Any actor receiving such facilities should be required to abide, at a minimum, by the same conditions described in article 14.2.

## **Part V: Legal Facilities for Entry and Operations**

### **Article 16 Exceptions**

The legal facilities in this Part should be subject to the interests in national security, public order, public and environmental health, and public morals of the affected, originating and transit States granting them. Exceptions to any of these facilities designed to protect such interests should be clearly stated, tailored to the exigencies of a disaster setting, and consistent with the imperative of addressing the needs of affected persons.

### **Article 17 Personnel**

1. With regard to disaster relief and initial recovery personnel of assisting States and assisting humanitarian organizations, affected States should:

(a) Grant multiple entry and exit visas and any necessary work permits without cost, renewable within the affected State, for the time necessary to carry out disaster relief or initial recovery activities;

(b) In disaster relief operations, waive or significantly expedite the provision of such visas and work permits;

(c) Establish expedited procedures for temporary recognition of professional qualifications of foreign medical personnel, architects, and engineers, drivers licences and other types of licenses and certificates that are reasonably necessary for the performance of their functions and that have been certified as genuine by the concerned assisting State or assisting humanitarian organization, for the time necessary to carry out relief or initial recovery activities;

(d) Facilitate freedom of access to and freedom of movement in the disaster-affected area, bearing in mind the safety of relief and initial recovery personnel.

2. Upon request, originating and transit States should likewise waive or promptly issue, without cost, exit or transit visas, as appropriate, for the disaster relief and initial recovery personnel of assisting humanitarian organizations.

### **Article 18 Goods and Equipment**

1. With regard to disaster relief and initial recovery goods and equipment exported or imported by, or on behalf of, assisting States and assisting humanitarian organizations, originating, transit and affected States should:

(a) Exempt them from all customs duties, taxes, tariffs or charges;

(b) Exempt them from all export, transit, and import restrictions;

(c) Simplify and minimize documentation requirements for export, transit and import;

(d) Permit re-exportation of any equipment or unused goods which the assisting State or assisting humanitarian organization owns and wishes to retain.

2. With regard to disaster relief goods and equipment only, originating, transit and affected States should additionally:

(a) Waive or reduce inspection requirements. Where waiver is not possible, clear relief goods and equipment rapidly and as a matter of priority, through a “pre-clearance” process where feasible; and

(b) Arrange for any necessary inspection and release, outside business hours and at a place other than a customs office as necessary, and in accordance with safety regulations of the affected State, to minimize delay.

3. In order to benefit from the facilities above, assisting States and assisting humanitarian organizations should, in accordance with agreed international standards, appropriately pack, classify and mark disaster relief and initial recovery goods and equipment, and should include detailed manifests with each shipment. They should additionally inspect all such goods and equipment to ensure their quality, appropriateness for the needs in the affected State, and conformity with national law and international standards.

4. Assisting States and assisting humanitarian organizations should assume responsibility for removing or disposing of any unwanted and unused relief and initial recovery goods, particularly if those goods may pose a threat to human health or safety, or the environment.

5. If an affected State has received direct donations of in-kind goods from assisting States or assisting humanitarian organizations and considers it necessary to sell or exchange all or some of them, it should first consult with the donating assisting actor. Funds or goods thus obtained should only be used for disaster relief or initial recovery, unless otherwise agreed.

## **Article 19 Special Goods and Equipment**

In addition to the facilities described in Article 18:

1. Affected States should grant temporary recognition to foreign registration and plates with regard to vehicles imported by assisting States and assisting humanitarian organizations or on their behalf in disaster relief and initial recovery operations.

2. Affected States should waive or expedite the granting of any applicable licenses and reduce any other barriers to the use, import or export of telecommunications and information technology equipment by assisting States and assisting humanitarian

organizations or on their behalf in disaster relief and initial recovery operations. Without discrimination against domestic relief actors, affected States should also grant assisting States and assisting humanitarian organizations priority access to bandwidth, frequencies and satellite use for telecommunications and data transfer associated with disaster relief operations.

3. Originating, transit and affected States should reduce legal and administrative barriers to the exportation, transit, importation and re-exportation of medications and medical equipment by assisting States and assisting humanitarian organizations or on their behalf in disaster relief and initial recovery operations, to the extent consistent with public safety and international law. Assisting States and assisting humanitarian organizations should ensure the quality, appropriateness and safety of any such medications and equipment, and in particular ensure that any medications are:

- (a) Neither expired nor near expiration;
- (b) Appropriately labelled in a language understood in the affected State;
- (c) Inspected, and transported and maintained in appropriate conditions to ensure their quality; and
- (d) Guarded against misappropriation and misuse.

4. Originating, transit and affected States should consider whether normal requirements regarding fumigation and prohibitions and restrictions on food imports and exports by assisting States and assisting humanitarian organizations in disaster relief operations can be modified or reduced.

## **Article 20 Transport**

1. Originating, transit and affected States should grant, without undue delay, permission for the speedy passage of land, marine and air vehicles operated by an assisting State or assisting humanitarian organization or on its behalf, for the purpose of transporting disaster relief or initial recovery assistance and waive applicable fees, except fees for reasonable use.

2. In particular, permission should be granted for overflight, landing and departure of aircraft. Such aircraft should also be authorized to operate within the territory of the affected State as required for the delivery of assistance.

3. Any applicable exit, transit and entry visas for the operating personnel of such transport vehicles should be promptly issued.

## **Article 21 Domestic Legal Personality**

1. Affected States should ensure that assisting States and assisting humanitarian organizations are granted, upon entry or as soon as possible thereafter, at least a temporary form of domestic legal personality as appropriate under national law so as to enjoy the rights, *inter alia*, to open bank accounts, enter into contracts and leases, acquire

and dispose of property and instigate legal proceedings, for the duration of the disaster relief and initial recovery operations.

2. Assisting States and assisting humanitarian organizations should also be granted the right to freely bring funds and currencies in or out of the country through legal means and to obtain the most favourable legal rates at the time of exchange in connection with disaster or initial recovery operations.

3. Affected States should ensure that assisting States and assisting humanitarian organizations may legally hire and terminate the contracts of local personnel in accordance with domestic labour laws.

### **Article 22 Taxation**

Affected States should provide exemptions to assisting States and assisting humanitarian organizations from value-added and other taxes or duties associated with disaster relief and initial recovery operations, with the exception of reasonable usage fees.

### **Article 23 Security**

Affected States should take necessary measures to ensure the security of disaster relief and initial recovery personnel of assisting States and assisting humanitarian organizations and of the premises, facilities, means of transport and equipment used in connection with their disaster relief or initial recovery operations.

### **Article 24 Extended Hours**

Affected States should endeavour to ensure, when necessary, that State-operated offices and services essential to the timely delivery of international disaster relief function outside of normal business hours.

### **Article 25 Costs**

1. The costs of providing international disaster relief or initial recovery assistance pursuant to these Guidelines should normally be borne by the assisting State or assisting humanitarian organization. However, assisting States may agree in advance with the affected State for the reimbursement of certain costs and fees.

2. Affected States should consider, to the extent possible under the circumstances, providing certain services at reduced or no cost to assisting States and assisting humanitarian organizations, including:

- a. In-country transport, including by national airlines;
- b. Use of buildings and land for office and warehouse space; and
- c. Use of cargo handling equipment and logistic support.

## **Article 26 Protection from Liability for Assisting States**

Affected States should hold harmless, defend and indemnify assisting States and their personnel from civil liability for acts or omissions related to disaster relief or initial recovery operations in the territory of the affected State, with the exception of wilful misconduct and gross negligence.