



# International Disaster Response Law (IDRL) in Pakistan

A desk review of the legal framework for facilitating and regulating international disaster assistance

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## About this report

This report was commissioned and prepared by the IFRC. It analyses the existing legal and policy frameworks for disaster management and response in the Islamic Republic of Pakistan, with a focus on the facilitation and regulation of international disaster assistance.

## About the Disaster Law Programme

The Disaster Law Programme seeks to reduce human vulnerability by promoting legal preparedness for disasters. The Disaster Law Programme works in three key areas: (1) collaborating with National Red Cross and Red Crescent Societies and other partners to offer technical assistance to governments on disaster law issues; (2) building the capacity of National Societies and other stakeholders in disaster law; and (3) dissemination, advocacy and research.

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Cover photo: Pakistan's southern Sindh province was hit hard by the monsoon spell that started on 9 August 2011. IFRC/PRCS driving through the flooded center of Mirpurkhas. Olivier Matthys/IFRC/PRCS, September 2011.

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# Acronyms and abbreviations

<b>AJK</b>	Azad Jammu and Kashmir
<b>CAA</b>	Civil Aviation Authority
<b>CBO</b>	Community-based Organization
<b>DCO</b>	District Coordination Officer
<b>DDMA</b>	District Disaster Management Authority
<b>DM</b>	Disaster Management
<b>DPO</b>	District Police Officer
<b>ERRA</b>	Earthquake Relief and Rehabilitation Authority
<b>ERRAA</b>	Earthquake Relief and Rehabilitation Authority Act
<b>EOC</b>	Emergency Operation Centre
<b>EDO</b>	Executive District Officer
<b>ERC</b>	Emergency Relief Cell
<b>FATA</b>	Federally Administered Tribal Areas
<b>FAO</b>	United Nations' Food and Agricultural Organization
<b>FBR</b>	Federal Board of Revenue
<b>FRC</b>	Federal Relief Commission
<b>HFA</b>	Hyogo Framework for Action
<b>IDRL</b>	International Disaster Response Laws, Rules and Principles
<b>IFRC</b>	International Federation of Red Cross and Red Crescent Societies
<b>ICT</b>	Islamabad Capital Territory
<b>INGO</b>	International Non-Government Organization
<b>IT</b>	Information Technology
<b>MOFA</b>	Ministry of Foreign Affairs
<b>NDMA</b>	National Disaster Management Authority
<b>NDMC</b>	National Disaster Management Commission
<b>NDRMF</b>	National Disaster Risk Management Framework
<b>NDRP</b>	National Disaster Response Plan
<b>NEOC</b>	National Emergency Operation Centre
<b>NFI</b>	Non-Food Item
<b>NGO</b>	Non-Government Organization
<b>NOC</b>	Non-Objection Certificates

## **Acronyms and abbreviations**

<b>PDMA</b>	Provincial Disaster Management Authority
<b>PMDC</b>	Pakistan Medical and Dental Council
<b>PRCS</b>	Pakistan Red Crescent Society
<b>SAARC</b>	South Asian Association for Regional Cooperation
<b>SOP</b>	Standard Operating Procedure
<b>UN</b>	United Nations
<b>VAT</b>	Value-Added Tax

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# Executive summary

As one of the most disaster prone countries in the world, it is crucial that Pakistan be legally prepared to facilitate and regulate international disaster assistance. The vulnerability of Pakistan to large-scale disasters became all too evident during the devastating floods of 2010, which affected over 20 million people and approximately 70% of the country. During large scale disasters such as these, even the most well-resourced countries may require external assistance to meet the needs of the affected population.

Global research has demonstrated that an absence of a comprehensive regulatory framework addressing international assistance often results in delays in the delivery of relief goods, a lack of accountability of humanitarian responders, and poorly coordinated relief operations. This document provides a review of the existing laws and policies in Pakistan relevant to international disaster assistance, in light of the *Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance* (also referred to as the 'IDRL Guidelines'). This review was undertaken on the basis of desk research of the relevant laws, policies and secondary sources available online at the time of research commencing in 2011. It is based primarily on documentary sources and has not benefited from extensive stakeholder consultation. It may therefore not have captured all relevant legal instruments.

In surveying the relevant laws and procedures, this review identifies a number of strengths of the existing legal framework. The National Disaster Management Act (National DM Act) and the National Disaster Response Plan (NDRP) clearly set out the roles and responsibilities of the relevant ministries and detail how early warning information should be shared with communities, civil society, the Pakistan Red Crescent Society (PRCS) and the international humanitarian community. The National DM Act also provides guidelines for minimum standards, consistent with international standards, to be upheld during disasters and enforced by national, provincial and district authorities. Moreover, the NDRP also sets out a clear procedure for declaring disasters or emergencies at the district, provincial and national levels, and indicates that an appeal for international assistance may be made upon the declaration of a national level emergency.

Another key highlight of the current framework is a policy on the issuance of Non-Objection Certificates (NOC) which provide for the waiver of customs duties and taxes on the import of procured and donated relief goods. This policy reflects a number of elements contained in the IDRL Guidelines, requiring relief agencies to ensure that all medical and food items are 'useable within sufficient expiry dates' and providing preference to those items clearly marked as relief items.

Whilst there are many examples of good practice, in analysing the text of the legal framework against the IDRL Guidelines, this review observes that:

- Procedures for requesting, accepting and terminating international assistance could be more clearly defined in the current legal framework.

## Executive summary

- A focal point for coordinating assisting international actors could be more explicitly identified within the legal framework. While the National Disaster Management Authority (NDMA) is designated to act as the ‘implementing, coordinating and monitoring body for disaster management’<sup>1</sup>, reference could also be made to its role in relation to international assistance.
- Currently there is no procedure within the law for the registration of assisting international actors in emergency situation in order to operate legally in times of disaster and receive certain legal facilities. However, it should be noted that this might be addressed in new legislation relating to the registration of NGOs with the Economic Affairs Division of Pakistan currently under consideration.<sup>2</sup>
- The responsibilities of international assisting actors in providing disaster relief and initial recovery assistance could be set out within the legal framework to ensure they act according to principles of humanity and impartiality and comply with domestic law.
- Provisions could be included within the legal framework for the entry of personnel, the recognition of foreign professional qualifications, the granting of temporary legal status and exemptions from taxes, and the facilitation of transport arrangements in times of disaster.

In conducting the analysis, this review seeks to identify how the legal framework could be improved in accordance with the IDRL Guidelines. In view of the references made in the NDRP and in the NDMA’s ‘Pakistan Floods 2010: Learning from Experience’ publication to the future development of new procedures or guidelines for international assistance,<sup>3</sup> this review frames its recommendations within the context of the development of a new set of rules or guidelines. The development of a set of rules or guidelines could outline new and more explicit measures to be adopted to facilitate and regulate international assistance after disasters in Pakistan. This would not preclude, however, Pakistan from adopting new legislation or amending existing legislation in line with these recommendations as a longer term measure and to provide for strengthened implementation.

The new rules or guidelines could draw from the *Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*<sup>4</sup> (also referred to as the ‘Model Act for International Disaster Assistance’ or the ‘Model Act’), and improve the current regulation of international assistance through the following measures:

- Clearly designating responsibilities regarding the initiation, facilitation and coordination of international humanitarian assistance, including establishing a focal point to liaise between international and government actors at all levels.

1 National Disaster Management Act of Pakistan (2010), Chapter II, Article 9.

2 The Daily Times, *Proposed legislation seeks registration of NGOs with EAD*, 29 January 2014, <http://www.dailytimes.com.pk/islamabad/29-Jan-2014/proposed-legislation-seeks-registration-of-ngos-with-ead>

3 NDMA, *Pakistan Floods 2010: Learning from Experience* (2011), page 101.

4 The *Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2013) was developed by the International Federation of Red Cross and Red Crescent Societies (IFRC), the United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA) and the Inter-Parliamentary Union. Global consultations were also undertaken with key stakeholders in the development of this act, including governments, international organizations, non-government organizations, the corporate sector and civil society. The Model Act is available online at <http://www.ifrc.org/en/what-we-do/idrl/model-act-on-idrl/>

### Executive summary

- As already indicated under the NDRP, establishing a technical committee on preparedness for international disaster assistance, and to provide technical advice on preparedness for international assistance through the preparation of manuals and plans, for example.<sup>5</sup>
- Providing for the establishment of international assistance facilitation teams, comprised of technical level representation from a range of government agencies, which can be deployed to primary points of entry for international disaster assistance.
- Establishing a system for disaster relief agencies to pre-register as an assisting actor in order to receive certain legal facilities. Eligibility of assisting actors should be based on certain criteria, including their ability to comply with the responsibilities described in paragraph 4 of the IDRL Guidelines.
- Including in the legal facilities mentioned above, a special type of visa for the entry of disaster relief personnel; the recognition of certain professional qualifications that are pre-identified by the relevant Pakistan authorities; the waiver of taxes and duties of relief items as currently provided by the NOCs; the granting of a temporary legal status for the exercise of their disaster relief functions and priority treatment for the passage of their land, air and sea vehicles.
- Designating an authority to monitor the compliance of assisting international actors with their responsibilities, and which provides for the revocation of legal facilities for those assisting actors who fail to comply with their responsibilities.

By developing a new procedure for international disaster assistance, Pakistan will be better prepared for any future disasters. The Government of Pakistan will have a greater ability to regulate the entry and operation of international disaster relief providers, and ensure a higher standard of disaster relief. In turn, international assisting actors will also be able to undertake their disaster relief activities with greater speed and efficiency, ensuring that those most vulnerable have access to the relief they need, at the right time.

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<sup>5</sup> See the Model Act for International Disaster Assistance, Article 13.

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# Chapter 1

## Introduction to the project and methodology

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### 1.1 Background and scope of study

This review has been prepared by the International Federation of Red Cross and Red Crescent Societies' (IFRC) Disaster Law Programme, based on initial research undertaken by consultants in 2011-2012 and subsequent online research. It is based primarily on documentary sources and has not benefited from extensive stakeholder consultation. It may therefore not have captured all relevant legal instruments.

The IDRL Guidelines are a product of nearly ten years of extensive research and global consultations led by the IFRC, to identify existing barriers to the provision of international disaster relief. Over two dozen case studies were undertaken which identified a common set of legal problems in disaster response operations, due in large part to the lack of legal preparedness of the disaster-affected state. As a result of these findings, the IFRC spearheaded negotiations to develop the IDRL Guidelines. The Guidelines were adopted in November 2007, at the 30th International Conference of the Red Cross Red Crescent, by all State Parties to the Geneva Conventions. These guidelines are based on a consolidation of existing international norms and principles applicable to disaster situations, and serve as a guide for governments to develop their own national laws pertaining to disaster response.

This study is part of a series of reports and desk reviews commissioned by the IFRC in order to assess legal frameworks for disaster response, with a focus on the facilitation and regulation of international disaster assistance. It is not intended to be an examination of the quality of domestic disaster response efforts or the legal systems which govern domestic response operations, though some of these issues will inevitably overlap. The aim of this research is to examine the existing legal framework for disaster response in Pakistan and how this applies to international assistance, to identify gaps and ways in which this framework can be improved.

### 1.2 Methodology

A disaster management and legal consultant were hired in 2011-2012 to conduct a combination of desktop research and interviews to examine the relevant legal framework and identify problems which have been experienced in previous disaster management operations. The findings of that research provided a basis for this review. These findings were consolidated and a series of recommendations developed as to how the existing legal framework in Pakistan could be improved in accordance with the IDRL Guidelines through the development of a new rule or procedure. In view of the references made in both the NDRP and the NDMA's publication 'Pakistan Floods 2010: Learning from Experience' to the future development of new procedures or guidelines for international assistance,<sup>6</sup> this review frames its recommendations within the context of the development of a new set of procedures or guidelines. This would not preclude, however, Pakistan from adopting new legislation or amending existing legislation in line with these recommendations as a longer term measure. These recommendations also draw upon the IFRC's Model Act for International Disaster Assistance.

<sup>6</sup> NDMA, *Pakistan Floods 2010: Learning from Experience* (2011), page 101.

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# Chapter 2

## Country background and disaster risk profile

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### 2.1 Country background

Pakistan is a land of great topographic and climatic contrasts. The topography varies between coastal beaches and sandy deserts, to high mountains and snow-covered peaks. Pakistan is a constitutional federal state comprising four main provinces: Punjab, Sindh, Khyber Pakhtunkhwa, and Balochistan. Other regions include the Federally Administered Tribal Areas (FATA), and Gilgit Baltistan. The areas of Azad Jammu and Kashmir (AJK) are also administered by Pakistan. The country is divided into three geographic areas: the northern highlands, the Indus river plains (with two major subdivisions corresponding roughly to the provinces of Punjab and Sindh), and the Balochistan plateau.

Pakistan is a country which has felt the effects of severe natural disasters as well as conflict and threats to its security. Tensions in the north of the country in 2009 saw the biggest displacement crisis in Pakistan since its partition from India in 1947, with over two million people internally displaced. While still coping with the effects of this crisis, Pakistan was hit by the most severe floods it has seen to date. The heavy monsoonal rains which occurred in July 2010 created floods affecting over 20 million people, more than that of the 2004 Indian Ocean Tsunami, the 2005 South Asia Earthquake and the 2010 Haiti Earthquake combined. The scale of destruction was unprecedented, and the country is still suffering the effects of this natural disaster.

Pakistan's population in mid-2011 was estimated at approximately 177.1 million, and is expected to reach 210 million by 2020.<sup>7</sup> Due to its troubled political and economic history, Pakistan remains one of the poorest countries in the world, with approximately 62 million people (or 39% of the population) living below the national poverty line.<sup>8</sup>

### 2.2 Disaster risk profile

Pakistan is no stranger to severe weather occurrences. Two of the most severe and high-profile disasters in the South Asia region over the past decade have taken place in Pakistan, namely the 2005 South Asia earthquake and the floods in 2010. Earthquakes, drought, cyclones, floods, communicable diseases and the effects of climate change present some of the main disaster risks in Pakistan. Pakistan has also felt the effects of severe health pandemics, civil unrest, transport and industrial accidents.

#### 2.2.1 Floods

Pakistan has the highest average number of people physically exposed to floods on an annual basis in South Asia. These floods usually occur due to severe storm systems originating from the Bay of Bengal during monsoon season, typically from July to September. These storms pass over lower central India and Rajputana, enter Pakistan, and continue north into Kashmir. The mountain ranges in the far north of Pakistan provide a perennial source of inflow into the rivers. Floods tend to affect the regions of Punjab and Sindh, while hill torrents tend to affect the areas of Khyber Pakhtunkhwa, Balochistan and the Federally Administered Tribal Areas.

<sup>7</sup> Dawn.com, *Pakistan's population to reach 210m by 2020*, October 31, 2011, <http://www.dawn.com/news/670162/pakistans-population-to-reach-210m-by-2020>

<sup>8</sup> The Nation, *62 million people fall below poverty line*, October 31, 2009, <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Business/31-Oct-2009/62-million-people-fall-below-poverty-line>



## Country background and disaster risk profile

In recent years, frequent flash flooding has occurred in the southern provinces of Sindh and Balochistan. The worst of these years was 2010, which saw major, unprecedented flooding in Pakistan in late July as a result of heavy rains in the Khyber Pakhtunkhwa, Sindh, Punjab and Balochistan regions. Approximately one-fifth of Pakistan's total land area was underwater, and according to government data, the floods directly affected around 20 million people, causing major destruction to property, livelihoods and infrastructure.<sup>9</sup> The Asian Development Bank placed the total damage of these floods at more than \$USD10 billion.

2011 saw another surge of monsoonal rains late in the year, affecting approximately 9.3 million people who were largely concentrated in Sindh's 23 districts.<sup>10</sup> Housing and agricultural crops were particularly affected, with 34% of households losing their houses and 60% of the houses partially damaged.<sup>11</sup>

### 2.2.2 Earthquakes

The territory of Pakistan is spread across a seismic belt, and therefore suffers from frequent earthquakes of small magnitudes.<sup>12</sup> Two thirds of Pakistan lies on fault lines, with Pakistan's capital city Islamabad situated on five major fault lines.<sup>13</sup> It is also prone to larger, more destructive earthquakes, as witnessed during the 2005 South Asia earthquake.

The mountain ranges of Koh-e-Sulieman, Hindu Kush and Korakoram are particularly vulnerable areas, and the devastation is often so immense due to the poor quality of buildings. One of Pakistan's first major earthquakes was in Quetta, Balochistan, in 1935 when the entire city was destroyed. From 1974 to 1990, approximately 5669 people were killed due to earthquakes in the Gilgit Baltistan, Khyber Pakhtunkhwa and Balochistan areas.

The 2005 South Asia earthquake has been Pakistan's worst earthquake to date. The earthquake struck a mountainous area spanning 28,000 square kilometres across the North West Frontier Province (NWFP – renamed Khyber-Pakhtunkhwa in April 2010) with its epicentre in Pakistan-Administered Kashmir. Approximately 3.5 million people were affected by the earthquake, of which 1.8 million people were left homeless. The death toll was an estimated 80,000 people, with over 40,000 children orphaned and 17,000 women widowed. In October 2008, another earthquake of a lesser magnitude struck Balochistan Province, yet still affected almost 70,000 people across seven districts. Balochistan province was struck again more recently, in October 2013. The 7.7 magnitude earthquake caused severe damage, killing over 500 people. It has also been reported that some foreign aid agencies were being denied access to the affected

<sup>9</sup> Singapore Red Cross, *Pakistan Floods: The Deluge of Disaster – Facts & Figures as of 15 September 2010*, 15 September 2011, <http://reliefweb.int/node/368203>

<sup>10</sup> OCHA, *Pakistan Floods Rapid Response Plans 2011*, September 2011, [http://www.ndma.gov.pk/Documents/flood\\_2011/Pakistan\\_RRP\\_Floods2011.pdf](http://www.ndma.gov.pk/Documents/flood_2011/Pakistan_RRP_Floods2011.pdf)

<sup>11</sup> WFP, OCHA and, NDMA, *Multi-Sector Damage Needs Assessment, 2011 Flood in Sindh and Balochistan Provinces, Pakistan*, October 2011, [http://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report\\_450.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report_450.pdf)

<sup>12</sup> National Disaster Management Authority, *Pakistan's approach to disaster risk reduction and its management*, <http://nidm.gov.in/Workshop%20in%20PDF/Day%201/Country%20Presentation/Mr.Khan%20-%20Pakistan.pdf>

<sup>13</sup> The Nation, *Two-thirds of Pakistan lies on fault-lines*, October 30, 2008, <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Politics/30-Oct-2008/Twothird-of-Pakistan-lies-on-fault-lines>; See also [http://www.pmd.gov.pk/Ziarat\\_Report\\_2009.pdf](http://www.pmd.gov.pk/Ziarat_Report_2009.pdf)

## Country background and disaster risk profile

population during the earthquake response, with allegations of gaps in the aid being provided by those actors already on the ground.<sup>14</sup>

### 2.2.3 Drought

Extreme variations in temperature and rainfall characterize the climate in Pakistan. 59.3% of the total land area is classified as rangelands, which receive less than 200mm of annual rainfall. The southern slopes of the Himalayas and the sub-mountainous tract receive higher rainfall from 760 to 1270 mm. As a result, drought has become another major problem in Pakistan.

In recent years, droughts have occurred in Balochistan, Sindh and Southern Punjab, where the average rainfall has been as low as 200 to 250 mm. Severe drought periods in 2000 and 2002 have affected the livelihoods of many, and also resulted in human deaths. The effects of these droughts have forced tens of thousands people to migrate, largely due to loss of cattle. The most arid lands in Pakistan are Thar, Cholistan, Dera Ghazi Khan, Tharparkar, Kohistan, and western Balochistan. Except for Balochistan, all of these areas are within the range of an occasional monsoon rainfall; however these rainfall patterns are unpredictable. Therefore, out of every ten years, two to three of these years suffer from severe drought.<sup>15</sup>

### 2.2.4 Cyclones

Although cyclones are not a frequent phenomenon in Pakistan, they occasionally occur in the coastal areas of Sindh and Balochistan, and can cause large-scale damage. During the period 1971 to 2001, 14 cyclones were recorded in Pakistan, the most vulnerable and exposed area being Sindh province.<sup>16</sup> In 1999, a major cyclone in the Thatta and Badin districts wiped out 73 settlements, resulting in the loss of 168 lives, 11,000 cattle, and affecting over 600,000 people. This cyclone destroyed nearly 3,000 boats in the area, causing a loss of approximately 380 million rupees. The total losses to infrastructure were estimated at 750 million rupees. In 2007, Pakistan was hit by another severe cyclone. Cyclone Yemyin hit the Southern provinces of Pakistan, killing 420 people and destroying 6,500 villages.<sup>17</sup>

### 2.2.5 Communicable Diseases

Communicable diseases remain a major public health concern in Pakistan, and are a primary cause of mortality. At the same time there remains a rising trend of non-communicable diseases such as heart disease, stroke, diabetes, hypertension and cancer, which also present significant risks. Pakistan is at high risk of epidemics because of its over-crowded cities, unsafe drinking water, inadequate sanitation, poor socio-economic conditions, low health awareness and inadequate vaccine coverage. The large number of refugees from neighbouring countries, as well as internally displaced people, has

<sup>14</sup> See Bhalla, N., *Foreign aid agencies seek access to Pakistan quake victims*, Thomson Reuters Foundation, 2013, <http://www.trust.org/item/20131009143446-vuo93/>

<sup>15</sup> Ahmad S. et. al., *Drought Mitigation in Pakistan: Current Status and Options for Future Strategies*, 2004, [http://www.iwmi.cgiar.org/Publications/Working\\_Papers/working/WOR85.pdf](http://www.iwmi.cgiar.org/Publications/Working_Papers/working/WOR85.pdf)

<sup>16</sup> Pakistan Space and Upper Atmosphere Research Commission, *Impact of Arabian Sea Cyclones on Pakistan*, a study by Hazards Monitoring Group.

<sup>17</sup> IFRC, *Cyclone Yemyin/Floods*, Operations Update No. 18, 20 May 2010.

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brought susceptible populations into contact with diseases which are endemic, causing outbreaks in many parts of the population.<sup>18</sup>

Communicable diseases which continue to be rife in Pakistan include gastroenteritis and dengue fever. Thousands of cases of gastroenteritis and dengue fever were reported in various cities of Pakistan, particularly during flood seasons. However, provincial governments have allocated little funding for the prevention and control of these diseases.<sup>19</sup>

### 2.2.6 Climate Change

Pakistan is one of the most highly ranked countries in the world in terms of suffering from, and being vulnerable to, the effects of climate change.<sup>20</sup> Recent reports recognize that Pakistan faces climate impacts that are not only happening in real time but also in a widely diverse pattern, ranging from extreme events such as glacial melting and floods to indirect impacts such as drought.<sup>21</sup> The floods in 2010 and 2011 were partially fuelled by global warming, and there is a real danger that Pakistan, and the Indian subcontinent in general, will be subject to more frequent, catastrophic flooding.<sup>22</sup>

Pakistan's policy on climate change acknowledges that the country has diverse ecosystems which include coastlines, deserts, arid zones, mountains and glaciers. These areas are in danger due to population growth, lack of planning and mismanagement of resources. The policy also states that temperature data from the last 100 years shows a visible increase in heat in several regions of Pakistan, and that over the last two decades, extreme weather events such as heavy rains and droughts have also increased.<sup>23</sup>

<sup>18</sup> World Health Organization, *Disease Early Warning System (DEWS): Flooding Response in Pakistan*, August 2010, [http://www.who.int/hac/crises/pak/pakistan\\_operational\\_guidance\\_flooding\\_august2010.pdf](http://www.who.int/hac/crises/pak/pakistan_operational_guidance_flooding_august2010.pdf)

<sup>19</sup> The News, *Pakistan facing burden of infectious diseases*, 3 January, 2011, <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=23591&Cat=6>; See also World Health Organization, *Communicable disease risk among populations affected by flooding in Pakistan*, August 2010, [http://www.who.int/diseases-control\\_emergencies/publications/Pakistan\\_floods2010\\_08\\_04a.pdf](http://www.who.int/diseases-control_emergencies/publications/Pakistan_floods2010_08_04a.pdf)

<sup>20</sup> Harmeling, S., *Global Climate Risk Index 2012*, Germanwatch, November 2011.

<sup>21</sup> United Press International (upi.com), *Pakistan most affected by climate change*, 1 December, 2011, [http://www.upi.com/Business\\_News/Energy-Resources/2011/12/01/Pakistan-most-affected-by-climate-change/UPI-78911322758377/](http://www.upi.com/Business_News/Energy-Resources/2011/12/01/Pakistan-most-affected-by-climate-change/UPI-78911322758377/)

<sup>22</sup> Hunt, J. and Srinivasan, J., *Pakistan floods show Asia's vulnerability to climate change*, Reuters, 11 October 2011. <http://blogs.reuters.com/great-debate-uk/2011/10/11/pakistan-floods-show-asias-vulnerability-to-climate-change/>; See also The News, *Are Sindh monsoon rains linked to climate change?*, 11 September, 2011, <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=8717&Cat=13>

<sup>23</sup> Yusuf, S., *Pakistan's first climate change policy ready*, Dawn.com, 26 May, 2011, <http://www.dawn.com/2011/05/26/pakistan%E2%80%99s-first-climate-change-policy-ready.html>

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# **Chapter 3**

## Government and legislative structure in Pakistan

## Government and legislative structure in Pakistan

### 3.1 Pakistan's Constitutional Framework

#### 3.1.1 Territories included in Pakistan

Pakistan is a federal republic<sup>24</sup> with a powerful Parliament at its centre. Pakistan's Constitution, adopted in 1973, is the supreme law of the country and regulates the jurisdiction of state institutions. Chapter 1, part V, of the Constitution outlines the distribution of legislative powers between the federal government and provinces. Legislation in Pakistan is developed at multiple levels, including at the national and provincial levels.

Islamabad is the federal capital of Pakistan, referred to as Islamabad Capital Territory (ICT).<sup>25</sup> Gilgit-Baltistan, previously referred to as the 'Northern Areas' due to its geographic location in the far north of Pakistan, has not been admitted into the federation under any law, but it is de facto under Pakistan's control.<sup>26</sup> Azad Jammu and Kashmir (AJK), bordering with the Indian administered State of Jammu and Kashmir, are not formally part of Pakistan but are effectively under Pakistan's administrative control.<sup>27</sup>

#### 3.1.2 Executive authority and levels of government

Pakistan is divided into two main levels of government: federal and provincial. The executive authority of the Federation is exercised in the name of the President by the Federal Government, consisting of the Prime Minister and a Cabinet of Federal Ministers. The President of Pakistan acts upon the advice of the Cabinet or the Prime Minister.<sup>28</sup> At the provincial level, the chief executive of each province is the Chief Minister. The provincial governments exercise executive authority over their province in the name of the Governor, who represents the province at the federal level. The provincial cabinet consists of the Chief Minister and provincial ministers.

#### 3.1.3 The legislative process

The federal and provincial governments are the top two tiers of governance in Pakistan. At the federal level, legislation is the responsibility of the Parliament. Being a federal state, Pakistan's Constitution has distributed the subjects of governance and legislating powers between the federal government and provincial governments.

<sup>24</sup> See the Constitution of Pakistan, Article 1(1), available on the National Assembly website, <http://www.na.gov.pk/en/downloads.php> or [http://www.na.gov.pk/uploads/documents/1308922472\\_189.pdf](http://www.na.gov.pk/uploads/documents/1308922472_189.pdf)

<sup>25</sup> See the Constitution of Pakistan, Article 1(2).

<sup>26</sup> For more details see International Crisis Group Asia, *Discord in Pakistan's Northern Areas*, Report No. 131, 2 April, 2007, [http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/131\\_discord\\_in\\_pakistan\\_s\\_northern\\_areas.pdf](http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/131_discord_in_pakistan_s_northern_areas.pdf)

<sup>27</sup> Pakistan's Ministry of Kashmir Affairs and Gilgit-Baltistan is the supervising body for the two regions; See also the official website of the ministry at <http://www.kana.gov.pk/>; Azad Jammu and Kashmir Interim Constitution Act, 1974, available at AJK Government website [http://www.ajkassembly.gok.pk/AJK\\_Interim\\_Constitution\\_Act\\_1974.pdf](http://www.ajkassembly.gok.pk/AJK_Interim_Constitution_Act_1974.pdf); Article 257 of the Constitution of Pakistan that indirectly recognises the independent status of Jammu and Kashmir including Pakistan-administered AJK. It reads that: "When the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and the State shall be determined in accordance with the wishes of the people of that State". However, apart from the decisions on foreign affairs and defence, most of the administrative decisions are also made in Islamabad by the Ministry for Kashmir Affairs and Northern Areas.

<sup>28</sup> See the Constitution of Pakistan, Article 48.

## Government and legislative structure in Pakistan

Article 142 of the Constitution, as amended under the Constitution Act (2010 – 18th Amendment), prescribes that subjects within the domain of the federal government are listed in the Federal Legislative List in the Fourth Schedule to the Constitution, and legislation on these subjects is the responsibility of the Parliament. Subjects that are not enumerated in the Federal Legislative List fall in the domain of provincial governments, and legislation on such subjects is the responsibility of respective provincial assemblies.<sup>29</sup> The Pakistan Federal Legislative List does not include the subject of disaster management.<sup>30</sup>

Article 144 of the Constitution of Pakistan, however, outlines that if one or more provincial assemblies pass a resolution to the effect that the Parliament may by law regulate any matter not enumerated in the Federal Legislative List, then the Parliament may pass an Act for regulating that matter. However, the provincial assemblies maintain the power to amend or repeal that act for their particular province. Such is the case for the subject of disaster management, where the Provincial Assemblies of Balochistan, the North-West Frontier Province, and the Punjab passed resolutions under article 144 of the Constitution of the Islamic Republic of Pakistan to the effect that

“Majlis-e-Shoora (Parliament) may, by law, regulate the national disaster management system to overcome unforeseen situations”.<sup>31</sup>

All ordinary laws (Acts of Parliament) on subjects within the competence of federal government must be passed by each one of the two houses of Parliament by a ‘simple majority’. Constitutional amendments must be passed by each house of the Parliament by two-thirds majority. Provincial laws must be passed by a simple majority of members of the concerned provincial assembly.

Both federal and provincial governments can issue ordinances for a temporary period in order to meet urgent needs when neither of the two houses of Parliament is in session. An ordinance issued by the President on the advice of the Federal Government is valid for a maximum period of 120 days after which the National Assembly can provide a one-time extension for another 120 days. For an ordinance to acquire permanence it must be passed into an Act with a simple majority by the Parliament. The Constitution cannot be amended through an ordinance.<sup>32</sup>

<sup>29</sup> See Articles 142(c) and Articles 141-159 under Part V of the Constitution, dealing with the relations between the Federation and Provinces.

<sup>30</sup> Article 142 of the Constitution provides that the Parliament has exclusive power to make laws with respect to any matter in the Federal Legislative List. The residuary powers (i.e. subjects not mentioned in the Federal Legislative List) fall within the competence of the provincial legislatures subject to Article 142(b), as outlined in section 3.1.3 above.

<sup>31</sup> See Ordinance No. LIII of 2007, ‘An Ordinance to provide for the establishment of a National Disaster Management System for Pakistan.’, and the preamble of the National Disaster Management Act 2010.

<sup>32</sup> The reason why some laws continue to be referred to as ordinances is that such ordinances have been given protection under one constitutional amendment or the other. For example, the Local Government Ordinance (2001) was granted protection under the Seventeenth (Constitution) Amendment Act (2003).

## Government and legislative structure in Pakistan

At the provincial level, an ordinance issued by the Governor on the advice of the provincial government will lapse after 90 days and may only be reissued with the approval of the provincial assembly. For a provincial ordinance to acquire permanence, it must be passed into an Act of the Assembly with a simple majority by the provincial assembly.<sup>33</sup>

Apart from primary legislation passed by the Parliament and provincial assemblies, federal and provincial governments are allowed to issue Orders (a form of executive decree) and adopt rules and regulations on certain matters. Similarly, the Federal Government and provincial governments may make rules of procedure for conducting their business.<sup>34</sup>

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<sup>33</sup> There are many existing ordinances which were issued in the past by military rulers. They acquired permanence as a result of validation by Parliament and by provincial legislatures elected later in time that found it necessary to maintain continuity in order to avoid a legal vacuum. It must also be explained that permanence does not mean that such ordinances cannot be amended by simple majority in the parliament or the provincial legislatures. It is also worth mentioning that the requirement of an ordinance to be approved by the national assembly for one time extension was introduced through the 18th Amendment to the Constitution only in 2010. Prior to that there was no such constitutional bar.

<sup>34</sup> See the Constitution of Pakistan, Article 99(3).



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# **Chapter 4**

## Overview of applicable international and regional instruments

## Overview of applicable international and regional instruments

### 4.1 International obligations

Pakistan is a party to several treaties relevant to the facilitation and regulation of international disaster assistance. These include, but are not limited to;

- The Convention on International Civil Aviation (the ‘Chicago Convention’), Annex 9
- The Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations
- The Convention on the Simplification and Harmonization of Customs Procedures (‘Kyoto Convention’)<sup>35</sup>
- The Convention on Temporary Admission (‘Istanbul Convention’)<sup>36</sup>
- The Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency
- The Convention on the Privileges and Immunities of the United Nations

These conventions outline a variety of commitments for member states to expedite certain procedures and facilities in the case of disasters, including the use of air transportation and waiving of applicable fees and levies, temporary customs admission of relief goods and personnel, the entry and use of specialized telecommunications equipment and the accordance of certain privileges and immunities for international actors working on the ground.

In 2007, the IFRC spearheaded negotiations on the IDRL Guidelines, which are based on existing international norms and address the most common problem areas in international disaster response. In 2007, the state parties to the Geneva Conventions, including Pakistan, unanimously adopted the IDRL Guidelines at the 30th International Conference of the Red Cross and Red Crescent,<sup>37</sup> and several subsequent UN General Assembly resolutions encouraged states to use them.<sup>38</sup>

The IDRL Guidelines provide a set of recommendations to governments on how to prepare their existing legal framework to address any regulatory problems during an international disaster relief operation. In particular, they provide recommendations for removing legal barriers and unnecessary red tape, which can compromise the timely and effective delivery of international aid. At the same time, the Guidelines also encourage governments to regulate incoming assistance to ensure that it meets minimum standards. These Guidelines provide the key basis on which the regulatory

<sup>35</sup> Note that Pakistan is not a signatory to Specific Annex J.5 of the Kyoto Convention, which provides guidelines for national customs administrations on the use of relief consignments. For more information see [http://www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Procedures%20and%20Facilitation\\_2/Natural\\_Disaster/J5e\\_November\\_2011.pdf](http://www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Procedures%20and%20Facilitation_2/Natural_Disaster/J5e_November_2011.pdf)

<sup>36</sup> Pakistan is not a signatory to Annex B.9 of the Istanbul Convention, which specifically concerns goods imported for humanitarian purposes. For more information see [http://www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Procedures%20and%20Facilitation/Istanbul\\_legal\\_text\\_Eng.pdf](http://www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Procedures%20and%20Facilitation/Istanbul_legal_text_Eng.pdf)

<sup>37</sup> See International Conference of the Red Cross Red Crescent, Resolution 4 on *Adoption of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, 2007. Available online at <http://www.ifrc.org/PageFiles/102485/Resolution%204.pdf>

<sup>38</sup> For a list of these resolutions, see <http://www.ifrc.org/en/what-we-do/idrl/research-tools-and-publications/key-resolutions/un-general-assembly-resolutions-on-the-idrl-guidelines/>

## Overview of applicable international and regional instruments

framework for disaster management and response in Pakistan will be examined in this review.

The core ideas of the IDRL Guidelines are as follows:

- a. Domestic actors have the primary role in disaster response: it is the responsibility of the affected state to address the humanitarian needs caused by a disaster within its borders;
- b. International relief providers have responsibilities: international providers of relief have to abide by minimum standards of humanitarian assistance and provide quality relief items. Key principles by which these actors should abide include humanity, neutrality, and impartiality;
- c. International actors need legal facilities: assisting actors require specific types of legal facilities or accommodations, as set out in the IDRL Guidelines, which the governments of affected states should provide in order to facilitate an effective response to requests for disaster relief. These include expedited visa processing, customs clearance of goods and equipment, facilitation of logistics, exemptions from taxes, and a simplified means of obtaining temporary legal personality to operate within the country;
- d. Some legal facilities should be conditional: in order to lend weight to the responsibilities of assisting humanitarian organizations, the IDRL Guidelines encourage governments to condition the granting of legal facilities to these organizations on their commitment to, and on-going compliance with, minimum humanitarian standards. Suggestions on how this can be implemented are provided in the IDRL Guidelines.<sup>39</sup>

Since the adoption of the IDRL Guidelines by the International Conference of the Red Cross Red Crescent in 2007, significant progress has been made by states and regional organizations in their use and implementation. Many countries have already adopted new laws, regulations or procedures consistent with recommendations in the guidelines, and IDRL projects such as this one have been undertaken in Africa, the Americas, Europe and Asia Pacific.

In cooperation with UN Office for Coordination of Humanitarian Affairs (OCHA) and Inter-Parliamentary Union (IPU) and with support from the World Customs Organization, the IFRC developed a Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, designed to help States integrate the recommendations of the IDRL Guidelines into their national laws. The pilot version of the Model Act was made available to states and National Societies at the 31st International Conference of the Red Cross and Red Crescent in November 2011. In March 2013, the final version of the Model Act was officially launched at the General Assembly of the IPU and is the primary source for the recommendations in this review.

At the 31st International Conference, which included all 187 National Societies and all States party to the Geneva Conventions, a resolution was adopted on “strengthening

<sup>39</sup> For more information on the IDRL Guidelines, and for a copy of the full text, go to [www.ifrc.org/dl](http://www.ifrc.org/dl)

## Overview of applicable international and regional instruments

normative frameworks and addressing regulatory barriers concerning disaster mitigation, response and recovery” which reiterated the urgency for States to be prepared to facilitate and regulate any international disaster assistance they may require in order to ensure that affected persons receive timely and effective relief.<sup>40</sup>

The various agreements, resolutions and guidelines referred to in this second provide a framework of international norms relating to international assistance which Pakistan should consider, and in some cases follow, when working to strengthen its domestic legal framework for international disaster assistance.

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### 4.2 Regional commitments

Pakistan also has regional commitments to undertake joint disaster preparedness and response efforts under the new South Asian Association for Regional Cooperation (SAARC) Agreement on Rapid Response to Natural Disasters. This agreement was signed by SAARC Member States at the 17th annual SAARC Summit in the Maldives in November 2011. It obliges Member States to take legislative and administrative measures (including the development of standard operating procedures) to implement the various provisions on disaster preparedness and response contained therein. These include measures for requesting and receiving disaster assistance; conducting needs assessments; mobilizing equipment, personnel, materials and other facilities; making regional standby arrangements, including emergency stockpiles; and ensuring quality control of relief items.

The SAARC Agreement also accords assisting parties with exemptions from taxation, duties and other charges on the importation and use of disaster relief equipment, including vehicles and telecommunications equipment, as well as exemptions to facilitate the movement of disaster relief personnel and visa and customs formalities. However, the agreement does not address the facilitation of assistance from states outside the SAARC region, or any other international actors such as the IFRC or the UN. Once each of the states have ratified the agreement, Pakistan and its fellow SAARC Member States will have to assume the obligations contained in the agreement.<sup>41</sup>

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<sup>40</sup> 31st International Conference Red Cross Red Crescent, Resolution 31IC/11/R7, 2011.

<sup>41</sup> For further information on the SAARC agreement, see Cipullo, Lucia, *New SAARC treaty aims to strengthen disaster cooperation in South Asia*, 27 February 2012. Available from: <http://www.ifrc.org/en/what-we-do/idrl/latest-news/disaster-law-newsletter-february-2012/saarc-agreement-aims-to-strengthen-disaster-cooperation-in-south-asia/>

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## **Chapter 5**

Overview of national laws,  
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response in Pakistan

## Overview of national laws, policies and plans for disaster management and response in Pakistan

### 5.1 Legislative domain regarding disaster management

Historically, disaster management was mainly focused on flooding and rescue and relief operations, with little emphasis on preparedness. Despite the ability of provinces to legislate on issues of disaster management, at present, the disaster management framework in Pakistan is dependent on the interplay of national bodies working under the following legislative instruments:

- The National Calamities (Prevention and Relief) Act (1958)
- National Disaster Risk Management Framework (NDRMF) (2007)
- The National Disaster Management Act (2010)
- The Earthquake Reconstruction and Rehabilitation Authority Act (ERRAA) (2011)

At the national level, the NDRMF is the main instrument which provides a broad outline for the role played by various institutions in disaster situations. However, it is a non-binding policy framework and carries no legal weight. Prior to the establishment of the National Disaster Management Authority (to be outlined below), the Emergency Relief Cell (ERC), as part of the Federal Cabinet Secretariat, was primarily responsible for organizing disaster response operations led by the federal government.<sup>42</sup> In practice, it constituted the federal government's disaster support organ for provincial areas.

### 5.2 Legal and policy framework for disaster management

#### 5.2.1 National Disaster Management Act (2010)

The National Disaster Management Act (2010) (hereinafter referred to as the 'National DM Act') was developed in order to replace the National Disaster Management Ordinance (2006), which lapsed in 2010.<sup>43</sup> The National DM Act provides a legal framework not only at the federal level but also for the provinces, and is the main legal framework for disaster management and response in Pakistan. The provisions contained in the National DM Act have effect, notwithstanding any other law in force, but subject to the condition that any provincial assembly may alter or repeal them, as mentioned above.

The National DM Act provides for the establishment of disaster management authorities at three tiers of governance: federal, provincial and district. It also enables the Federal Government to call for the assistance of armed forces for disaster management

<sup>42</sup> The Emergency Relief Cell has traditionally been responsible for providing relief assistance to the provinces in cases of major disasters, as well as coordinate relief activities carried out by the Federal Division of the Pakistan Army, Provincial Governments, International Agencies, Non-governmental Organizations (National and International). For functions of the ERC, see the Government of Pakistan Cabinet Secretariat website, <http://www.cabinet.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L2NhYmluZXQvZnJtRGV0YVlscy5hc3B4P29wdD1taXNjbGlua3MmaWQ9MjQ%3D>

<sup>43</sup> The Parliament that was elected in 2008 did not validate the ordinances and orders issued in 2007 before or after the promulgation of emergency by then General Pervez Musharraf. In 2009, the Supreme Court directed the Parliament to reconsider the ordinances in order to avoid legal vacuum. The Parliament then either abandoned ordinances or passed them as Acts with or without amendment(s).

## Overview of national laws, policies and plans for disaster management and response in Pakistan

and response,<sup>44</sup> to take measures to coordinate with UN agencies, international non-government organisations and donors in the case disaster relief and response operations,<sup>45</sup> and to create a “National Disaster Response Force”.<sup>46</sup>

### 5.2.2 National Disaster Risk Management Framework (2007)

The National Disaster Risk Management Framework (NDRMF) is a policy document containing the roles and responsibilities for all stakeholders in the implementation of national strategies and policies regarding disaster management and response. It provides that the National Disaster Management Authority (NDMA), Pakistan’s central coordination agency for disasters, will work in nine priority areas, which stem from the five priority areas identified in the 2005 Hyogo Framework for Action (HFA). These priority areas include hazard and vulnerability mapping, promoting multi-hazard early warning systems, strengthening institutional arrangements for risk reduction and response, emphasising local risk reduction, awareness and capacity building, and strengthening emergency response mechanisms. In articulating these action points, the NDRMF endorses a multi-stakeholder, multi-sectoral and multi-disciplinary approach in formulating risk reduction strategies, aimed at reducing vulnerability and strengthening communities’ resilience in disaster management and response.

The NDRMF also provides for provincial and district level disaster management authorities (also known as PDMA and DDMA respectively – as referred to in section 5.6 below) to establish Technical Committees in order to facilitate coordination and enable optimum use of available skills and resources in post-disaster situations.<sup>47</sup>

Technical Committees are tasked with focusing on specific disaster threats and issues, which may not have been covered as part of other stakeholder responsibilities within the NDRMF. Technical Committees can assist local, provincial or national authorities in identifying issues and problems and in creating solutions. The specific areas that could be covered through the establishment of Technical Committees include:

- Cyclones, storms, winds
- Disaster risk communication
- Drought
- Early warning systems
- Earthquakes
- Epidemics
- Floods
- Industrial and mines accidents
- Landslides, earth slides and avalanches
- Laws, procedures and standards
- Locust/pest infestation

<sup>44</sup> National DM Act (2010), Section 23(2)(c).

<sup>45</sup> National DM Act (2010), Section 23(2)(d).

<sup>46</sup> National DM Act (2010), Section 27.

<sup>47</sup> See National Disaster Management Framework (2007), page 151-152.



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- Major transportation accidents
- Marine disasters, including oil spills
- Refugees/displaced persons
- Tsunamis
- Urban and forest fires

### 5.2.3 National Disaster Response Plan

The National Disaster Response Plan (NDRP) is a document prepared by the NDMA and approved by the National Commission. It is to be reviewed annually and outlines the measures to be taken for the prevention and mitigation of disasters, for integrating mitigation measures in development plans, and upgrading preparedness for disasters and defining role and responsibilities of line ministries to be implemented throughout the country. It also defines the roles and responsibilities to different ministries and divisions of the federal government<sup>48</sup>

### 5.2.4 National Calamities (Prevention and Relief Act) (1958)

At the provincial level, the National Calamities (Prevention and Relief) Act has been the main legal instrument concerning the organization of emergency response operations in Pakistan, rather than disaster management more holistically. Usually, a Provincial Relief Commissioner is appointed in the affected province, and provides for the maintenance and restoration of law and order in areas affected by disasters and for extending relief to the affected population. This essentially includes:

- Resource mobilisation for handling calamities e.g. hiring of vehicles, machinery, and requisition of premises for shelter and/or maintenance of relief camps;
- Surveying of damages and losses occurred as a consequence of the disaster and ensuring compensation for those affected by the calamities;
- Ensuring preparedness<sup>49</sup> for emergencies by setting up an alarm system and undertaking situation-specific preventive measures.

## 5.3 National institutional arrangements for Disaster Management

### 5.3.1 National Disaster Management Commission

The National Disaster Management Commission (NDMC) is the highest level authority governing disaster management.<sup>50</sup> The Commission comprises the Prime Minister, who heads the Commission; leaders from the opposition in the National Assembly and the

<sup>48</sup> National DM Act (2010), Sections 10 and 17.

<sup>49</sup> Preparedness has been defined in the Act as constituting three aspects, namely, response/recovery, rehabilitation and reconstruction.

<sup>50</sup> National DM Act (2010), Section 3(2)(a).

<sup>51</sup> National DM Act (2010), Section 3(2).

<sup>52</sup> National DM Act (2010), Section 6.

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Senate; key line ministers including the Ministers of Interior, Communications, and Foreign Affairs; Chief Ministers of provinces and Gilgit-Baltistan; the Prime Minister of AJK; the Chairman of the Joint Chiefs of Staff Committee (as a representative of the armed forces) and one representative of civil society nominated by the Prime Minister.<sup>51</sup>

The Commission is mandated to lay down policies on disaster management; approve national disaster management plans prepared by the authorities and line ministries; issue guidelines for all levels of governance regarding disaster management; and arrange funds for the purpose of mitigation measures, preparedness and response efforts.<sup>52</sup> The Commission may also appoint advisory committee(s) consisting of experts in disaster management, where needed.<sup>53</sup> The National DM Act also prescribes that the Commission may provide “such support to other countries affected by major disasters as Federal Government may determine”.<sup>54</sup>

The Chairperson of the National Commission (the Prime Minister), and of the Provincial Commissions (Provincial Chief Ministers) are authorised, ‘in case of emergency’, to exercise all or any of the powers of the National and Provincial Commissions respectively. However, their exercising of these powers shall be subject to ex-post facto ratification by the respective commissions.<sup>55</sup>

### 5.3.2 National Disaster Management Authority

As mentioned above, the National Disaster Management Authority (NDMA) is the primary operational disaster management body in Pakistan. Headed by a Chairman/Director General (appointed by the federal government), its key functions are to:

- Act primarily as the implementing, coordinating and monitoring body for disaster management;
- Prepare the National Plan for approval by the National Disaster Management Commission;
- Coordinate the implementation of national disaster management policies;
- Lay down guidelines for different ministries for preparation of their disaster management plans;
- Coordinate disaster response operations;
- Promote general education and awareness on disaster management issues, and;
- Provide technical assistance to Provincial Authorities to prepare provincial disaster management plans.<sup>56</sup>

The NDMA is also tasked with putting in place the minimum standards of relief to be provided to persons affected by disaster, for example, minimum requirements in relation to shelter, food, drinking water, medical needs, and sanitation.<sup>57</sup>

<sup>53</sup> National DM Act (2010), Section 7.

<sup>54</sup> National DM Act (2010), Section 6(2)(f).

<sup>55</sup> National DM Act (2010), Sections 6(3) and 14(3).

<sup>56</sup> National DM Act (2010), Section 9.

<sup>57</sup> National DM Act (2010), Section 11.

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According to the NDRP, a National Emergency Operations Centre is to be established as part of the NDMA, and should be primarily responsible for issuing warnings, collecting and communicating information to all relevant stakeholders, and managing and coordinating emergency response efforts.<sup>58</sup>

### 5.3.3 Earthquake Rehabilitation and Reconstruction Authority

At the time of the 2005 South Asia Earthquake, Pakistan did not have a central agency to deal with disasters apart from the ERC. To provide immediate relief in the earthquake-affected areas and to coordinate the response efforts for the Earthquake, the Federal Relief Commission (FRC) was established under an executive order. Relief activities were formally ended by the government on March 31, 2006 and the FRC was dissolved.

The unprecedented task of reconstruction and rehabilitation in the earthquake affected areas was then handed over to the newly established Earthquake Reconstruction and Rehabilitation Authority (ERRA), which was also created at short-notice under an executive order issued by the Prime Minister's Secretariat on 24 October 2005. An ordinance issued on the first of November, 2006 granted the ERRA formal legal status. The Authority was kept alive by continually re-issuing the ordinance, until this was converted into an Act of Parliament in 2011, known as the Earthquake Rehabilitation and Reconstruction Authority Act (2011) (or 'ERRA Act').

Section 5 of the 2011 Act prescribes the functions of the ERRA, determines the scope of its work, (which includes "all reconstruction, rehabilitation and early recovery programmes and projects in the affected areas"), and outlines its mandate to:

- a. conduct surveys to assess damage;
- b. carry out future planning and develop programmes for re-construction and restoration of government buildings, utilities and services, roads and bridges, health and education facilities, as well as to look after environmental damage in the affected areas;
- c. prepare resettlement and rehabilitation plans for the affected population in consultation with the respective governments of the affected areas;
- d. approve projects, programmes and schemes identified, prepared and submitted by the respective governments of the affected areas;
- e. take steps for monitoring and evaluation of the approved projects, programmes and schemes;
- f. prescribe cost-effective technology, building codes or construction guidelines, architectural designs, specifications, and construction materials for housing and other buildings in the affected areas to safeguard against future seismic threats;
- g. facilitate the establishment of the re-construction related industry and businesses in the affected areas in consultation with the respective governments;
- h. perform such other functions supplemental, incidental, or consequential to the purposes and functions aforesaid and any other function assigned to it by the Federal Government in accordance with the purposes of this Ordinance;

<sup>58</sup> See NDMA, *National Disaster Response Plan* (2010), page 37.

## Overview of national laws, policies and plans for disaster management and response in Pakistan

- i. keep the two houses of Parliament informed of its activities through six monthly reports of its performance for discussion.

The ERRA is headed by a chairman who is assisted by a deputy chairman and a board consisting of federal and provincial government officials and civil society members from earthquake affected areas. The ERRA Act establishes an Earthquake Re-construction and Rehabilitation Council consisting of the Prime Minister of Pakistan, Prime Minister of Kashmir, chief ministers of all four provinces and Gilgit-Baltistan, the Federal Minister for Finance, Deputy Chairman of the Planning Commission, Chairman and Deputy Chairman of the Authority, two members from the National Assembly and two from the Senate. The Council is tasked with providing policy guidelines and approving the policies, plans, programmes and projects submitted by the ERRA.

The ERRA's jurisdiction is envisaged to be over "affected areas",<sup>59</sup> which may be declared by the federal government. However, since the federal government does not have jurisdiction over provincial territories, it must seek the consent of provincial assemblies to declare provincial territories as "affected areas", in order to allow the ERRA to work under the mandate as described above.<sup>60</sup>

During the development of the NDRMF in 2007, it was envisaged that the ERRA would serve as a key agency within the larger framework of disaster management.<sup>61</sup> It was also envisaged that the NDMA would benefit from the experiences and best practices gained by the ERRA in disaster recovery.

### 5.3.4 National Institute of Disaster Management

The National DM Act also provides for the creation of a National Institute for Disaster Management, which was formally established in February 2010.<sup>62</sup> The Institute's mission is to work as a learning centre for government officials, the private sector, media, NGOs and community organizations in order to develop policy guidelines and enhance capacity building through research and training.<sup>63</sup> The institute also aims to develop a national database of disaster management policies, prevention mechanisms and mitigation measures.

<sup>59</sup> ERRA Act (2011), Section 2(a) read with Section 5.

<sup>60</sup> Declaring an "affected area" is, in legal terms declaring an emergency in that area. Such a declaration/proclamation shall, therefore, be subject to prior permission through a Resolution from the Provincial Assembly of that Province as envisaged under Article 232.

<sup>61</sup> National Disaster Risk Management Framework (2007), page 45.

<sup>62</sup> National DM Act (2010), Section 26.

<sup>63</sup> For further information on the National Disaster Management Institute and its activities, see <http://ndma.gov.pk/nidm.html>

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### 5.4 Sub-national institutional arrangements

#### 5.4.1 Provincial Disaster Management Commissions and Authorities

The Federal structure for disaster management is replicated in each province through the Provincial Disaster Management Commissions (PDMCs),<sup>64</sup> headed by their respective Chief Minister, and the Provincial Disaster Management Authorities (PDMAs),<sup>65</sup> headed by a Director General or the Provincial Relief Commissioner.<sup>66</sup>

The PDMCs' functions include coordinating and monitoring the implementation of the national policy, national plan, and provincial plans; approving provincial disaster management plans prepared by the PDMAs; developing guidelines for district disaster management plans and; maintaining responsibility for managing disasters in provincial areas.<sup>67</sup>

The functions of the PDMAs include formulating provincial disaster management policies; coordinating and monitoring the implementation of these policies; evaluating preparedness; and coordinating provincial level responses in the event of a disaster.<sup>68</sup> An Emergency Operation Centre is also established as part of the PDMA pursuant to the NDRP.

#### 5.4.2 District Disaster Management Authorities

The District Disaster Management Authorities are headed by a District Coordinating Officer (DCO)<sup>69</sup>. They are entrusted with making district disaster management plans as well as the following:

- Coordination and monitoring of national and provincial disaster management plans and policies as they relate to the district;
- Identification and mitigation of disaster risks to the district;
- Preparing guidelines for the development of disaster management plans by the respective departments and monitoring their implementation;
- Reviewing and upgrading local early warning systems.

<sup>64</sup> National DM Act (2010), Section 13.

<sup>65</sup> National DM Act (2010), Section 15.

<sup>66</sup> National DM Act (2010), Section 15(2).

<sup>67</sup> National DM Act (2010), Section 14.

<sup>68</sup> National DM Act (2010), Section 16.

<sup>69</sup> National DM Act (2010), Section 18(2). It may be noted that each District Administration comprises district offices, including sub-offices of the Departments of the provincial government decentralised to the District Government, and other offices set up by the Government and grouped under the Executive District Officers (EDOs). These administrative offices are coordinated by the District Coordination Officer (DCO).

**International Disaster Response Law (IDRL) in Pakistan**  
A desk review of the legal framework for facilitating and regulating  
international disaster assistance

# **Chapter 6**

## Pakistan's regulatory framework measured against the IDRL Guidelines

## Pakistan's regulatory framework measured against the IDRL Guidelines

It is widely recognised that the primary responsibility for providing disaster relief and recovery assistance rests with the affected state. However, any state, including Pakistan, can be stretched beyond its national capacity to cope with the effects of particularly massive disasters. In a number of previous disasters, the government has accepted the assistance of external actors, including other states, international humanitarian organizations and non-government organizations (NGOs).

Chapter 6 of this review analyses Pakistan's legal framework, and takes into account elements of existing practice, in order to identify how the legal framework could be more consistent with the international standards contained in the IDRL Guidelines. The recommendations are directed towards the development of new procedures or guidelines, in light of references to the development of 'guidelines and procedures to receive relief goods from foreign countries' and 'to facilitate the arrival of foreign relief humanitarian workers' as contained in the NDRP. Also considered were the recommendations in the NDMA's 'Pakistan Floods 2010: Learning from Experience', which suggest the development of guidelines to outline roles and responsibilities of national and international actors. It is hoped that if new guidelines or procedures are developed, the recommendations contained in this review will be considered.

### 6.1 Definition of 'disaster'

#### IDRL Guidelines, Paragraph 2: Definitions

"For the purposes of these Guidelines,

1. **"Disaster"** means a serious disruption of the functioning of society, which 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."

The term 'disaster' is not mentioned in Pakistan's Constitution. The National Disaster Management Act defines disaster as "a catastrophe or a calamity in an affected area, arising from natural or man-made causes or by accident which results in a substantial loss of life or human suffering or damage to, and destruction of, property". This definition encompasses a broad range of disasters, including both natural and man-made. The National Disaster Risk Management Framework (NDRMF) goes further in defining what constitutes a disaster:

- "...avalanches, cyclones and storms, droughts, earthquakes, epidemics, floods, glacial lake outbursts, landslides, pest attacks, river erosion and tsunami...A variety of human-induced hazards also threaten the society, economy and environment. They include industrial, transport, oil spills, urban and forest fires, civil conflicts and internal displacements of communities. High priority hazards in terms of their frequency and scale of impact are: earthquakes, droughts, flooding, wind storms and landslides that have caused widespread damage and losses in the past."<sup>70</sup>

<sup>70</sup> National Disaster Risk Management Framework (2007), page 3.



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These broad definitions of disaster are generally consistent with the IDRL Guidelines, as it covers a range of hazards stemming from either natural or human activity. The definition contained in the NDRMF does refer to civil conflicts, however, which is excluded under the definition in the IDRL Guidelines in light of International Humanitarian Law governing situations of armed conflict.

### 6.2 Early warning and preparedness

#### IDRL Guidelines, Paragraph 7: Early Warning

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

According to chapter 2, section 9 of the National DM Act, the NDMA is tasked with preparing the NDRP<sup>71</sup> which contains a comprehensive section on early warning systems and information flow. It states that the “NDMA and PDMAs may work and collaborate with the telecommunication, print and electronic media to ensure effective contributions to early warning at national and local levels to reduce the impact of disasters...”.<sup>72</sup> According to the NDRP, the National Emergency Operation Centre (NEOC), as part of the NDMA, serves as a hub for issuing warnings and information to the public, media, ministries, departments and humanitarian response agencies.<sup>73</sup> Upon the receipt of a warning, the Chief Coordinator of the NEOC is to inform ‘key ministries, the Federal Flood Commission (only in the case of floods), PDMC, PDMA, DDMA, Civil Defence, Emergency Relief Cell, Armed Forces, JS HQ, Pakistan Red Crescent Society, UN Agencies/INGOs, and the Media.’

In terms of consistency with the IDRL Guidelines, neither the National DM Act nor the NDRP refer to the sharing of information about disasters with other states, including emerging hazards that are likely to cause disasters.<sup>74</sup>

**Recommendations:** To strengthen the existing legal framework, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Clearly identify the NDMA as being responsible for communicating early warning information to other states and the wider international humanitarian community either directly or through diplomatic channels.

<sup>71</sup> See National DM Act (2010), Chapter 2, Section 9(b).

<sup>72</sup> NDMA, *National Disaster Response Plan* (2010), page 26.

<sup>73</sup> NDMA, *National Disaster Response Plan* (2010), page 37.

<sup>74</sup> See IDRL Guidelines, paragraph 7.

## Pakistan's regulatory framework measured against the IDRL Guidelines

### 6.3 Legal, policy and institutional frameworks for international disaster assistance

#### IDRL Guidelines, Paragraph 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 and planning 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 empower 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, 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 national 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.”

#### 6.3.1 Relevant governmental institutions

According to the 2010 National DM Act and the national disaster response plan, the NDMA is the central coordinating, implementing and monitoring body for disaster management, with the Chairman/Director General of the NDMA as the key focal point.<sup>75</sup> The roles and functions of the NDMA as the main focal point during disasters include coordinating with the relevant ministries and departments (e.g. Defence, National Logistics Cell, Emergency Relief Cell, Navy, Foreign Affairs, Pakistan Railways, National Highway Authority, Pakistan International Airlines, Civil Aviation Authority, Social Welfare, Health and Education department etc.) in order to prepare and mobilize resources. The NDMA also coordinates with PDMAs in the affected areas and provides them with the necessary technical and financial assistance for relief operations.

The role of the NDMA, as set out in the National DM Act, includes ‘coordinating response in the event of any threatening disaster situation or disaster’.<sup>76</sup> The National DM Act also stipulates that the federal government is responsible for co-ordinating the disaster management activities of Federal Ministries, Provincial Governments, Provincial Authorities, NGOs and international organizations.<sup>77</sup> The NDRP sets out that

<sup>75</sup> See the National Disaster Response Plan (2010), page 17-18; and National DM Act (2010), Chapter 2, Section 9.

<sup>76</sup> See National DM Act (2010), Chapter 2, Section 9(f).

<sup>77</sup> See National DM Act (2010), Chapter 5.

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the 'NDMA, Support Agencies, Federal Ministries/departments and NGOs...' are responsible for coordinating 'I/NGOs, UN and other international humanitarian organizations and philanthropists for effective response'.<sup>78</sup> The Standard Operating Procedures (SOPs) contained in the NDRP set out the roles of different departments and ministries in disaster response and, in particular, states that the Ministry of Foreign Affairs (MoFA) should:

- “2. Develop guidelines and procedures to receive relief goods from foreign countries in case of a major disaster and share it with the NDMA.
3. Develop procedures to facilitate the arrival of foreign relief humanitarian workers to support disaster response initiatives and to expedite visa renewals, if required.
4. Prepare an inventory of embassies/other aid giving organizations' focal points in order to quickly organize requests for assistance.”

While the National DM Act grants the Federal Government the responsibility to 'take measures as it deems necessary or expedient for the purpose of disaster management' including coordination with UN agencies, international organizations and governments of foreign countries,<sup>79</sup> it does not explicitly identify the responsible authority for coordinating *international assistance*, as within the scope of disaster management. Nor does it designate a clear focal point responsible for liaising with assisting actors.

Furthermore, the NDMA's 'Pakistan Floods 2010: Learning from Experience' also recommends that:

“A set of guidelines must be developed providing clear definition of roles and responsibilities of all stakeholders including Government Ministries/Departments, military, donors, UN agencies, humanitarian organizations, philanthropists and civil defence, in disaster response.”<sup>80</sup>

**Recommendations:** To strengthen the existing legal framework, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Clearly designate responsibilities regarding the initiation, facilitation and coordination of international humanitarian assistance, including establishing a focal point to liaise between international and government actors at all levels.
- Clearly identify an authority responsible for informing assisting actors and relevant national, provincial and district agencies of their rights and responsibilities with regard to international assistance and orient them to other laws, rules or procedures especially relevant to international assistance.
- As already provided for under the NDRP, establish a technical committee on international disaster assistance preparedness, comprised of representatives of a range of relevant government entities (national and provincial), the Pakistan Red Crescent, domestic NGOs and other relevant stakeholders. The committee could be designed to provide technical advice on preparedness for international assistance, through the preparation of manuals and plans, for example.<sup>81</sup>

<sup>78</sup> NDMA, *National Disaster Response Plan* (2010), page 29.

<sup>79</sup> See National DM Act (2010), Chapter 5, Section 23(2)(d).

<sup>80</sup> NDMA, *Pakistan Floods 2010: Learning from Experience* (2011), page 101.

<sup>81</sup> See Model Act for International Disaster Assistance, Article 13.

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- Provide for the establishment of international assistance facilitation teams, comprised of technical level representation from a range of government agencies, which can be deployed to primary points of entry for international disaster assistance.<sup>82</sup>
- Require assisting international actors to cooperate and coordinate with national, provincial and district authorities. In particular, they should be required to provide such information to these authorities as is available to them on the location, type and extent of their assistance.<sup>83</sup>

### 6.4 Declaration of emergency and initiation and termination of international disaster relief

#### **IDRL Guidelines, Paragraph 10: Initiation**

“1. Disaster relief or initial recovery assistance should be initiated only with the consent of the affected State and, in principle, on the basis of an appeal. The affected State should decide in a timely manner whether or not to request 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 organizations.

2. Requests and offers for assistance 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 make available to assisting actors adequate information about domestic laws and regulations of particular relevance to the entry and operation of disaster relief or initial recovery assistance.

#### **IDRL Guidelines, Paragraph 12: Termination**

1. When an affected State or an assisting actor wishes to terminate disaster relief or initial recovery assistance, it should provide appropriate 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 communities.”

The National DM Act does not contain any provisions regarding the declaration of disaster or emergency, or the initiation or termination of international assistance. Instead, the NDRP outlines the process for declaring an emergency or calamity in Pakistan, and categorises emergencies at different levels. A level 1 emergency is a localised emergency in which the DDMA is responsible (and has the capacity) to handle on its own. If a situation exceeds the capacity of the district authorities, then the district authorities may seek assistance of the PDMA and a level 2 emergency may be declared by the Chief Executive of the Province. A national level emergency, or level 3 emergency, is declared by the Prime Minister of Pakistan in the event that a disaster exceeds the capacity of the provincial authorities.<sup>84</sup>

<sup>82</sup> See Model Act for International Disaster Assistance, Article 14.

<sup>83</sup> See Model Act for International Disaster Assistance, Article 15.

<sup>84</sup> See NDMA, *National Disaster Response Plan (2010)*, page 29.

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The NDRP acknowledges that there is currently no legal or policy document which provides guidance or a threshold for determining an area calamity or disaster affected. Accordingly, it states that general practice has been to issue a declaration if there has been more than 50% loss of livelihoods for the affected population.<sup>85</sup> It then sets out a hazard specific table and the basic criteria for declaring an emergency, though it does not set out how such information is collected, the timeline of issuing an emergency, nor the precise effect of a declaration.

In situations of national or level 3 emergencies, the NDRP states that an appeal for international assistance may be launched, and that the NDMA, together with support agencies, Federal Ministries/Departments, and NGOs/CBOs, is responsible for coordinating international humanitarian organizations for 'effective response'.<sup>86</sup> Furthermore, the NDRP identifies the MoFA as the focal point for coordinating with foreign countries, together with the NDMA, to obtain aid in disaster situations, and for preparing an inventory of embassies and 'other aid giving organizations' focal points in order to quickly organize a request for assistance.<sup>87</sup>

While the NDRP contains some strong provisions on international assistance consistent with the IDRL Guidelines, it is still not clear when a situation may be deemed to be of such a scale as to require an appeal for international assistance and whether an official declaration of emergency is a pre-requisite for an appeal. It is also not clear whether offers of international assistance may be accepted without an official appeal or request, and what procedures would apply for these offers of assistance as well as the termination of such assistance. Accordingly, procedures for requesting, accepting and terminating foreign assistance could be more clearly defined in the current legal framework.

**Recommendations:** To strengthen the existing legal framework, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Identify the responsible authority (e.g. the Prime Minister or MoFA as indicated in the NDRP) for issuing a request for international assistance, once a determination has been made that domestic capacities are likely to be insufficient.
- Contain provisions which require requests for international assistance to specify the extent and type of assistance required.
- Address the procedures for assisting actors to make formal offers of assistance once a request has been issued, as well as procedures for assisting actors to make unsolicited offers of assistance in situations where no general request has been made.
- Provide for the termination of international assistance through a formal notification procedure.<sup>88</sup>

<sup>85</sup> See NDMA, *National Disaster Response Plan* (2010), page 29-30.

<sup>86</sup> See NDMA, *National Disaster Response Plan* (2010), page 28-29

<sup>87</sup> See NDMA, *National Disaster Response Plan* (2010), page 116-117.

<sup>88</sup> See Model Act for International Disaster Assistance, Article 9.

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## 6.5 Registration, privileges and immunities of assisting humanitarian organizations

### IDRL Guidelines Part V: Legal Facilities for Entry and Operations

“It is recommended that States provide the legal facilities described in paragraphs 16-24 to assisting States and eligible assisting humanitarian organizations. It is understood that the granting of these facilities will be subject to the interests of national security, public order, public and environmental health, and public morals of the concerned, affected, originating and transit States. Measures to protect such interests should be tailored to exigencies of the specific disasters and be consistent with the humanitarian imperative of addressing the needs of affected communities.

Where specific facilities recommended here are within the competence of authorities other than the national government, the national government should, where possible and appropriate, encourage those authorities to provide the relevant facilities to assisting States and eligible assisting humanitarian organizations.”

There are no provisions in the National DM Act or the NDRP relating to the registration of incoming international disaster relief organizations and their eligibility to receive legal facilities relevant to their relief and recovery work. Instead, the Economic Affairs Division (of the MoFA) has policies related to the subject of registration of foreign entities which are primarily directed towards non-disaster times. It should be noted that at the time of finalisation of this review, new legislation relating to the registration of NGOs with the Economic Affairs Division of Pakistan was under consideration.<sup>89</sup>

**Recommendations:** To strengthen the existing legal framework, and as suggested by the IDRL Guidelines, the new legislation relating to the registration of NGOs, and/or new national guidelines for international assistance for disasters in Pakistan could:

- Establish a system for disaster relief agencies to pre-register as assisting actors in order to receive certain legal facilities. Eligibility of assisting actors should be based on certain criteria, including their ability to comply with the responsibilities described in paragraph 4 of the IDRL Guidelines.<sup>90</sup>
- Establish a set of privileges and immunities for assisting international actors, applicable only in their official capacity. Any privileges and immunities granted to international assisting actors should not replace or supplant those contained in already existing status agreements.
- Provide that registered assisting actors will be granted a number of legal facilities, as set out in the following sections.

<sup>89</sup> The Daily Times, *Proposed legislation seeks registration of NGOs with EAD*, 29 January 2014, <http://www.dailytimes.com.pk/islamabad/29-Jan-2014/proposed-legislation-seeks-registration-of-ngos-with-ead>

<sup>90</sup> For more details, see Model Act for International Disaster Assistance, Chapters 4 and 5.



## 6.6 Entry of personnel

### IDRL Guidelines, Paragraph 16: Personnel

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

- (a) Grant visas and any necessary work permits, ideally without cost, renewable within their territory, 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...”

As indicated above, the NDRP SOPs outline that the MoFA is responsible for developing procedures to facilitate the arrival of foreign relief humanitarian workers and to facilitate the issue of visas to foreign humanitarian relief workers so they may promptly access the affected areas.<sup>91</sup> The MoFA is also tasked with expediting visa renewals for humanitarian actors already working in Pakistan. According to stakeholder interviews, in practice, ad hoc entry visas (e.g. relief work visa, NGO visa, gratis visa etc) have been provided to foreign personnel entering Pakistan during disasters. In the past, processing fees have also been waived or visas on arrival provided for three to six months. During the 2010 floods, the usual visa extension period was relaxed for up to six months. The NDRP also tasks the MoFA with developing guidelines and procedures to “coordinate with foreign countries” to obtain aid in the case of a disaster.<sup>92</sup> To ensure predictability and applicability for future humanitarian actors, these good practices could be included within formal guidelines, procedures or rules.

**Recommendations:** To codify existing good practice, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Provide for a special type of visa to be issued for personnel of registered assisting actors, unless national security or public health and safety concerns related to the particular individual preclude it. These visas should be issued without a fee for an initial period (e.g. three months) and renewable without a fee for certain periods of time (e.g. six months) until the end of the disaster relief period.<sup>93</sup>

<sup>91</sup> NDMA, *National Disaster Response Plan (2010)*, page 116.

<sup>92</sup> NDMA, *National Disaster Response Plan (2010)*, page 116.

<sup>93</sup> See Model Act for International Disaster Assistance, Article 25.



## Pakistan's regulatory framework measured against the IDRL Guidelines

### 6.7 Recognition of foreign professional qualifications

#### IDRL Guidelines, Paragraph 16: Personnel (cont.)

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

- (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 necessary for the performance of disaster relief or initial recovery functions and that have been certified as genuine by the concerned assisting State or eligible assisting humanitarian organization, for the time necessary to carry out disaster relief or initial recovery activities...."

#### 6.7.1 Medical

The recognition of foreign medical qualifications, particularly for doctors, is undertaken by the Pakistan Medical and Dental Council (PMDC) at the national, provincial and local levels. For nurses, this is done by the Pakistan Nursing Council. For paramedics, it is determined by the Director General of Health Services at the provincial level.

The Foreign Qualifications and National Examination Board of the PMDC is tasked to conduct an examination to determine the professional competence or otherwise of a candidate for registration, and determine the equivalent in Pakistan of his or her foreign basic or postgraduate medical or dental qualification.<sup>94</sup>

The National Health Emergency Preparedness and Response Network (established by the Ministry of Health and the World Health Organization) undertakes the emergency review of foreign medical qualifications of doctors, nurses and paramedics, as was practiced during the 2010 floods. At the federal level, the responsibilities of the former Ministry of Health have now been assumed by the newly created Ministry of National Health Services, Regulation and Coordination. This ministry is also responsible for developing Memoranda of Understanding with various medical and pharmaceutical associations for the provision of assistance in emergencies.<sup>95</sup>

#### 6.7.2 Engineering

Pursuant to the Pakistan Engineering Council Act (1976), foreign engineering accreditations granted by engineering institutions outside Pakistan which are included in the Second Schedule of the Act, shall be recognised in Pakistan.

The Engineering Enrolment Committee may grant to any person, domiciled outside Pakistan who does not hold an accredited engineering qualification but who holds an engineering degree or who is a corporate member of an engineering body, society, institute or association accredited by the Council of respective country, a temporary engineering license for a specific project to work as an associate of a professional

<sup>94</sup> See Pakistan's Foreign Qualifications and National Examination Board page on the Pakistan Medical and Dental website at <http://www.pmdc.org.pk/ForeignQualificationsNationalExamination/tabid/129/Default.aspx>

<sup>95</sup> NDMA, *National Disaster Response Plan* (2010), page 106.

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engineer. The professional engineer must sign the plans and specifications for the particular project. Any person to whom a temporary license has been granted shall, during the period for which the license is valid, be subject to the provisions of the Act and its by-laws. However, it is not clear how long the procedure to obtain a temporary engineering licence would take in times of emergency.

**Recommendations:** To strengthen the existing legal framework and codify existing good practice, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Provide for a relevant authority to establish lists of countries and/or educational institutions whose health professionals, architectural, engineering and other relevant professionals may be given automatic recognition of their foreign qualifications when certified by a registered assisting actor.
- Require registered assisting actors to certify the validity of the foreign professional qualifications and competence of their personnel.
- Require the relevant authority to establish expedited procedures to be applied for the assessment and recognition of the foreign qualifications of the international personnel originating from countries or institutions not included on the above-mentioned lists (when certified by the associated registered assisting actor).

### 6.8 Customs

#### IDRL Guidelines, Paragraph 17: 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 eligible assisting humanitarian organizations, originating, transit and affected States should:

- (a) Exempt them from all customs duties, taxes, tariffs or governmental fees;
- (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 "preclearance" process where feasible; and
- (b) Arrange for inspection and release outside business hours and/or at a place other than a customs office as necessary to minimize delay, in accordance with the safety regulations of the affected State. Assisting States and eligible assisting humanitarian organizations should respect any routes and delivery points prescribed by the affected State.

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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 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 the national law of the affected State and international standards.

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

### **IDRL Guidelines, Paragraph 18: Special Goods and Equipment**

“In addition to the facilities described in paragraph 17:

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

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 assistance. Without discrimination against or negative impact to domestic relief actors, affected States should also grant (or where, appropriate, encourage other domestic actors to grant) assisting States and eligible 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 eligible assisting humanitarian organizations or on their behalf in disaster relief and initial recovery assistance, to the extent consistent with public safety and international law. Assisting States and eligible assisting humanitarian organizations should take all reasonable steps to ensure the quality, appropriateness and safety of any such medications and equipment and in particular:

- (a) Any medications they import should be approved for use in the originating and affected State;
- (b) Medications they use in their own operations should be:
  - (i) transported and maintained in appropriate conditions to ensure their quality and;
  - (ii) guarded against misappropriation and abuse.
- (c) Any medications they donate for use by others in the affected State should be:
  - (i) at least twelve months from their expiration date upon arrival, unless otherwise agreed by receiving authorities;
  - (ii) transported and maintained in appropriate conditions to ensure their quality until they reach the affected State; and

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(iii) appropriately labelled in a language understood in the affected State with the International Non-proprietary Name or generic name, batch number, dosage form, strength, name of manufacturer, quantity in the container, storage conditions and expiry date.

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 eligible assisting humanitarian organizations in disaster relief operations can be modified or reduced.”

According to the NDRP, the MoFA is responsible for performing the following functions in relation to the receiving and clearance of foreign aid items:

- Develop guidelines and procedures to receive relief goods from foreign countries in case of major disaster and share with the NDMA;
- Prepare inventories of required relief goods for assisting states and organizations in order to quickly organize requests for assistance;

The exemption of custom duties and taxes have generally been facilitated under different bilateral agreements between the government of Pakistan and other states, however most of these agreements are not explicitly applicable to disaster situations.

One pre-established good practice is the issuance of Non-objection Certificates (NOCs) by the NDMA for the waiver of customs duties/taxes on the import of procured and donated relief goods. The Policy for Issuance of NOCs for duty free import of relief items establishes a special procedure whereby the relief agencies can apply for a certificate which will entitle them to a waiver on customs duties/taxes on the import of procured and donated relief goods. The aim of this is to reduce the lengthy paperwork requirements on the importation of relief goods in emergencies. In order to ensure the issuance of NOCs is undertaken in an efficient but transparent manner, the policy sets out a set of Standard Operating Procedures (SOPs) which apply to customs procedures in disaster situations. They include:

**“Eligibility:**

- Government departments/agencies, international organizations, UN Agencies, and international and local NGOs involved in humanitarian activities shall be eligible for NOCs. All such organizations shall be duly registered and legally allowed to undertake such activities under the law of the Islamic Republic of Pakistan.
- The NOC shall only be issued for items used for relief activities/operations.

**Medicines, Medical Equipment and Ambulances:**

- NOCs for medicines shall only be issued if these have a standard life/expiry deadline as per the regulations of the Ministry of Health [now known as the Ministry of National Health Services, Regulations and Coordination). The importing agency shall provide a certificate to this effect.
- The relevant authority shall give preference for facilitating the stores clearly marked as relief items on the packing of medicines.

## Pakistan's regulatory framework measured against the IDRL Guidelines

### *Food Items:*

- Food items imported by relief agencies shall be Halal and the packaging shall be clearly marked as such as per international trading practices. A certificate from the concerned authority of the country of origin shall also be submitted by the importing agency.
- The food items shall be useable with sufficient expiry dates/deadlines.

### *Non-Food Items (NFIs)*

- Quality and relevant Non-Food Items (NFIs) shall be encouraged for entry/import in Pakistan by relief agencies.

### *Used Items:*

- NOCs shall not be issued for the import of used relief items or donations. However, the authority may consider issuing a NOC for relief items such as used machinery and equipment of sophisticated technology on case by case basis.

### *Miscellaneous:*

- Generally, the import of items not available in Pakistan shall be encouraged; however the importing agencies shall generally procure relief items within Pakistan, if available.”

The SOPs also outline the procedure for applying for NOCs. An application must be submitted to the Director of the NDMA and/or Prime Minister's Secretariat, specifying the details of the relief items and their purpose, along with a distribution plan specifying areas of distribution, i.e. the region or district, together with a number of supporting documents. Following the approval of the application and the issuance of a NOC, the relief agency is responsible for collecting its relief goods from the airport/port within a stipulated period of time. The relief agencies who receive NOCs will be subject to monitoring from the NDMA to ensure that relief items are properly distributed and that the relief agency is performing satisfactorily.

The policy on the issuance of NOCs is certainly a key strength of the disaster management system in Pakistan, and takes into account a number of important principles contained in the IDRL Guidelines. However the policy is ambiguous regarding whether such organizations have to be pre-registered or whether there is a registration process specifically for disaster situations. It also makes no mention of the responsibilities of customs authorities to ensure that the NOCs are complied with.

With regard to the provision and facilitation of IT services, the NDRP provides that the Ministry of Information Technology should coordinate with the NDMA and the NEOC to ensure the provision of IT support during disasters, and ensure that private telecommunication service providers develop SOPs for disaster situations. To improve consistency with the IDRL Guidelines, provisions of a new guideline could address the expedited import of telecommunications and information technology equipment and the granting of (temporary) licenses or permits for use of telecommunication equipment.

## Pakistan's regulatory framework measured against the IDRL Guidelines

As outlined above, the SOPs contained in the Policy for Issuance of NOCs policy that a NOC for medicine or medical equipment shall only be issued if these have standard life/expiry deadlines as per the regulations of the government and are clearly marked as relief items. In accordance with the IDRL Guidelines, specific provisions could provide for the pre-approval of medications from the originating state or affected state, and the proper transportation under appropriate conditions to ensure their quality, as is outlined in the IDRL Guidelines, paragraph 18(3).

Provisions should also be made for the importation and use of land vehicles for transporting humanitarian assistance within Pakistan, as required by assisting international actors and in accordance with the IDRL Guidelines, paragraph 19.

The operation hours of customs and immigration offices are also not mentioned specifically in the NDRP. However, in practice, notifications are often issued to provide for extended opening hours of key governmental offices and services during disasters (including for customs inspections, immigration processes, ports and airport management).

**Recommendations:** To strengthen the existing legal framework and codify good ad hoc practice, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Incorporate the provisions of the Policy for Issuance of NOCs and provides that registered assisting actors (in line with registration procedure set out in 6.4.1) will be eligible to receive NOCs.
- Require the customs authority to facilitate the rapid importation of consignments of goods and equipment by registered assisting actors with NOCs and shall accord them priority treatment in handling.
- Provide for the customs authority, upon request, and without additional charges, to carry out the functions necessary for the release or clearance of consignments of goods or equipment imported by or on behalf of assisting hours outside their designated hours of business and/or away from customs offices when necessary.
- Require the customs authority to waive or reduce inspection requirements. If, in an exceptional case, customs security is deemed necessary, provides that the customs authority should accept as security an undertaking from the relevant assisting actor or, where appropriate, a general customs security.
- Contain specific provisions relating to the transportation and use of medicines or medical equipment; the pre-approval of this medicine/medical equipment by both the assisting and affected states; and the import and use of land vehicles to transport disaster assistance and relief personnel.



## Pakistan's regulatory framework measured against the IDRL Guidelines

## 6.9 Domestic legal status of foreign humanitarian organizations

### IDRL Guidelines, Paragraph 20: Temporary Domestic Legal Status

“1. Affected States should grant relevant entities of assisting States and eligible assisting humanitarian organizations, upon entry or as soon as possible thereafter, at least a temporary authorization to legally operate on their territory 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 purpose of providing disaster relief and initial recovery assistance.

2. Assisting States and eligible assisting humanitarian organizations should also be granted the right to freely bring the necessary funds and currencies in or out of the country through legal means and to obtain legal exchange rates in connection with their disaster relief or initial recovery assistance.

3. Affected States should allow assisting States and eligible assisting humanitarian organizations to legally hire and terminate the contracts of local personnel.”

Neither the National DM Act, nor the NDRP, includes special or expedited procedures for the legal registration of not-for-profit organizations in disasters. However, previous practice has been that Pakistan's Economic Affairs Division issues notifications and interim permissions until the registration of these organizations has been formally processed. Once their legal status has been determined, they are able to open bank accounts, sign contracts and leases, and hire local personnel – though this process is not yet clearly set out in the legal framework. The Economic Affairs Division is the only government agency that can register foreign humanitarian organizations and the process usually takes four to five months, which is not ideal for disaster situations. As stated above, new legislation relating to the registration of NGOs with the Economic Affairs Division of Pakistan is under consideration, and this may include an expedited procedure.<sup>96</sup>

**Recommendations:** To strengthen the existing legal framework and codify existing good practice, and as suggested by the IDRL Guidelines, either the new legislation on the registration of NGOs and/or new national guidelines for international assistance for disasters in Pakistan could:

- Provide for the swift granting of a temporary legal capacity to registered assisting actors which is necessary for the exercise of its functions and the fulfilment of its purposes. For example, the registered assisting actor should be able to operate legally, be free to open bank accounts, enter contracts and leases, acquire property, hire local personnel, and to bring in the necessary funds and currencies and obtain legal exchange rates in connection with their disaster relief or initial recovery assistance.

<sup>96</sup> The Daily Times, *Proposed legislation seeks registration of NGOs with EAD*, 29 January 2014, <http://www.dailytimes.com.pk/islamabad/29-Jan-2014/proposed-legislation-seeks-registration-of-ngos-with-ead>



## 6.10 Transport

### IDRL Guidelines, Paragraph 19: 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 eligible assisting humanitarian organization or on its behalf, for the purpose of transporting disaster relief or initial recovery assistance and, ideally, waive applicable fees.

2. In particular, permission should be granted for over-flight, 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.”

Under the SOPs provided in the NDRP, Pakistan's Civil Aviation Authority (CAA) is responsible for preparing “emergency preparedness plans and procedures for sending and receiving relief material during disaster time.” It further outlines that during emergencies and disaster situations, the CAA is to facilitate chartered flights by the UN, assisting states, and other humanitarian organizations to provide space for the storage relief goods.<sup>97</sup> However no further detail is provided.

The facilitation and use of air transportation should ideally be undertaken in accordance with Pakistan's commitments vis a vis Annex 9 of the Convention on International Civil Aviation (also known as the ‘Chicago Convention’), which stipulates that all contracting parties are to “facilitate the entry into, departure from and transit through their territories of aircraft engaged in relief flights performed by or on behalf of international organizations recognised by the UN or by or on behalf of States themselves”. Annex 9 also obliges member states to “ensure that personnel and articles arriving on relief flights....are cleared without delay”.<sup>98</sup> These commitments are also reflected in paragraph 19(2) of the IDRL Guidelines.

Under the National Highway Authority Law, no exemption or waiver is provided to relief vehicles, except ambulances and vehicles on motorways and for the police on highways. However, in practice during emergencies, the NDMA can issue notifications to Pakistan Railways and the Pakistan International Airlines for facilitating the carrying of relief items, free of cost.

**Recommendations:** To strengthen the existing legal framework and to codify existing good practice, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Provide that ground, air and water transport vehicles operated by assisting actors shall be accorded priority treatment for safe passage, including, as appropriate, priority in air traffic routing and landing permissions.

<sup>97</sup> See NDMA, *National Disaster Response Plan* (2010), page 122-123.

<sup>98</sup> See *Convention on International Civil Aviation* (1944) (hereinafter the ‘Chicago Convention’), Annex 9, Chapter 8, Clauses 8.8 and 8.9.

## Pakistan's regulatory framework measured against the IDRL Guidelines

- Exempt the transportation of assisting actors from any applicable taxes, levies, duties, fees or charges normally imposed by governmental entities as well as any prohibitions, limitations or restrictions in respect of their arrival, over-flight, landing, stay and departure, other than those necessary to guarantee national security, public safety or public health.

### 6.11 Taxation

#### IDRL Guidelines, Paragraph 21: Taxation

“Affected States should provide exemptions to assisting States and eligible assisting humanitarian organizations from value-added and other taxes or duties directly associated with disaster relief and initial recovery assistance.”

In practice, upon instruction of the NDMA, the Federal Board of Revenue (FBR) can issue Statutory Regulatory Orders to all tax authorities for exemptions of VAT, income tax, corporate tax and other tax for humanitarian organizations and personnel providing disaster relief.

**Recommendations:** To codify existing good practice, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Provide exemptions to all registered assisting actors from value-added tax and other taxes or duties directly associated with their disaster relief operations.<sup>99</sup>

### 6.12 Accountability of the affected state

#### IDRL Guidelines, Paragraph 3: Responsibilities of Affected States

“1. Affected States have the primary responsibility to ensure disaster risk reduction, relief and recovery assistance in 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. If an affected State determines that a disaster situation exceeds national coping capacities, it should seek international and/or regional assistance to address the needs of affected persons.

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

<sup>99</sup> For more details, see Model Act for International Disaster Assistance, Part 7.

**IDRL Guidelines, Paragraph 6: Responsibilities Concerning Diversion and the Intended Use of Resources**

“1. 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.

2. Affected States should use funds and relief goods donated to them, and which they have accepted in relation to a disaster, in a manner consistent with the expressed intent with which they were given.”

Under chapter 10 of the National DM Act, the following provisions are applicable for any acts of obstruction, including in disaster situations:

“Whoever, without reasonable cause,

- a. Obstructs any officer or employee of the Federal Government or a Provincial Government or a person authorized by the National Authority or Provincial or District Authority in the discharge of his functions under this Act; or
- b. Refuses to comply with any direction given by or on behalf of the Federal Government or Provincial Government under this Act;

Shall be punishable with imprisonment for a term which may extend to one year or with fine or with both and, if such obstruction or refusal to comply with such directions results in loss of lives or imminent danger thereto, shall be punishable with imprisonment for term which may extend to two years, or with fine, or with both.”

This chapter may also extend to procedures to guard against diversion, misappropriation or fraud concerning foreign disaster relief and recovery goods/funds.

The National DM Act also calls for annual reporting to be undertaken in order to ensure transparency and accountability of disaster relief operations. Chapter 11 describes the submission of annual reports as follows:

“The NDMA shall prepare once every year, in such form and at such time as many be prescribed by rules, an annual report giving a true and full account of its activities, including details of use of foreign aid, during the previous year and copies thereof shall be forwarded to the Federal Government which shall lay it before the National Assembly and the Senate.

The PDMA shall prepare once every year, in such form and at such time as many be prescribed by rules, an annual report giving a true and full account of its activities, including details of use of foreign aid, during the previous year and copies thereof shall be forwarded to the Provincial Government which shall lay it before the Provincial Assembly”.<sup>100</sup>

With regard to the provision and of maintaining donated funds in interest-bearing accounts, chapter 9 of the National DM Act establishes a National Disaster Management Fund and prescribes donations from international agencies as being a source of that fund. The Fund is to be administered by the NDMA to meet the ‘expenses for emergency preparedness, response, mitigation, relief and reconstruction.’

<sup>100</sup> National DM Act (2010), Section 41.

## Pakistan's regulatory framework measured against the IDRL Guidelines

The National DM Act further describes the maintenance and establishment of such funds by provincial governments. The development of these accountability and reporting measures is a step in the right direction.

**Recommendation:** To strengthen the existing legal framework, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- State that the use of international aid will be subject to audit by the NDMA or appropriate authority within a specific time period (e.g. six months) after the termination of the period of international relief and initial recovery assistance. The result of these audits should be compiled in the annual reports of the NDMA and PDMA, and also made publicly available. Reference could be made to the International Organization of Supreme Audit Institutions standards for the audit of disaster-related aid.<sup>101</sup>

### 6.13 Accountability of assisting actors

#### IDRL Guidelines, Paragraph 4: Responsibilities of Assisting Actors

"1. Assisting actors and their personnel should abide by the laws of the affected State and applicable international law, coordinate with domestic authorities, 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 provided in accordance with the principles of humanity, neutrality and impartiality, and in particular:

- (a) Aid priorities are calculated on the basis of need alone;
- (b) Provided without any adverse distinction (such as in regards to nationality, race, ethnicity, religious beliefs, class, gender, disability, age and political opinions) to disaster-affected persons;
- (c) Provided without seeking to further a particular political or religious standpoint, intervene in the internal affairs of the affected State, or obtain commercial gain from charitable assistance;
- (c) 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 assistance.

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, and 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;

<sup>101</sup> See International Organization of Supreme Audit Institutions, *ISSAI 5520 – The Audit of Disaster-Related Aid*, <http://www.intosai.org/issai-executive-summaries/view/article/issai-5520-the-audit-of-disaster-related-aid.html>

## Pakistan's regulatory framework measured against the IDRL Guidelines

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- (c) Coordinated with other relevant domestic and assisting actors;
- (d) Provided and conducted in a manner that is sensitive to cultural, social and religious customs and traditions;
- (e) Carried out with adequate involvement of affected persons, including women, youth and the elderly, in their design, implementation, monitoring and evaluation;
- (f) Provided by competent and adequately trained personnel;
- (g) Commensurate with their organisational capacities;
- (h) Building upon and conducted in a manner that strengthens local disaster risk reduction, relief and recovery capacities and reduces future vulnerabilities to disasters;
- (i) Carried out so as to minimize negative impacts on the local community, economy, job markets, development objectives and the environment; and
- (j) Provided in a transparent manner, sharing appropriate information on activities and funding.”

The National DM Act provides guidelines for minimum standards, consistent with international standards, to be upheld during disasters and enforced by national, provincial and district authorities. These standards include:

- i. The minimum requirements to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation;
- ii. The special provisions to be made for vulnerable groups;
- iii. Ex-gratia assistance on account of loss of life and also assistance on account of damage to houses and for restoration of means of livelihood; and
- iv. Such other relief as may be necessary.<sup>102</sup>

Having such standards is a good practice to highlight and it is further supported by the Pakistan Humanitarian Forum (a network made up of 40 international non-governmental organisations and 13 observers formed in 2003 to coordinate and strengthen the efforts of INGO's working in Pakistan. Further reference, however, could be made to ensure that disaster relief and initial recovery assistance is provided in line with the internationally recognised principles of humanity, neutrality and impartiality and without adverse distinction in regards to nationality, race, ethnicity, religious beliefs, class, gender, disability, age and political opinions.<sup>103</sup> Key responsibilities for assisting international actors are further outlined in the IDRL Guidelines, paragraph 4. Additionally, to ensure implementation of these standards and responsibilities, a specific authority may be made responsible for monitoring and oversight.

**Recommendations:** To strengthen the existing provisions in the National DM Act, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

<sup>102</sup> National DM Act (2010), Chapter 2, Section 11.

<sup>103</sup> See IDRL Guidelines, paragraph 4

## Pakistan's regulatory framework measured against the IDRL Guidelines

- Explicitly outline the key responsibilities of assisting actors in line with the IDRL Guidelines, paragraph 4.
- Designate an authority (e.g. NDMA/PDMA or MoFA) to monitor the compliance of Assisting Actors with their responsibilities in Pakistan (as referred to in section 6.4.1)
- Provide that if the authority finds that an assisting actor has failed to comply with its responsibilities, it may decide to revoke the assisting actor's registration and associated provision of legal facilities.<sup>104</sup>

### 6.14 Pakistan as a provider of international assistance

The National Commission, under the power and functions described in the National DM Act, may provide support on behalf of Pakistan to other countries affected by major disasters. The Federal Government may extend such support to other countries affected by major disaster as it may deem appropriate.<sup>105</sup>

Issues relating to the reduction of any restrictions on the exit of relief personnel, export restrictions, duties or fees on relief goods and equipment (e.g. telecommunications, food, medicines etc.), reduction of inspection requirements for outgoing goods and equipment and reduction of any departure restrictions for relief flights, trucks or ships, are dealt with through issuance of notifications by the National Authority. It is not considered necessary to provide any recommendations in relation to Pakistan as a provider of international assistance at this stage.

### 6.15 Pakistan as a transit country

The National DM Act does not contain any specific provisions for the facilitation of international assistance through Pakistan, as a transit state. In practice, this is usually agreed upon through bilateral agreements with other states.

**Recommendations:** To codify existing good practice, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Provide that, in the event that a disaster occurs in another country for which international disaster assistance is required the relevant [customs, immigration, and transport] authorities shall facilitate the speedy transit or transshipment across Pakistan's national territory of international relief personnel, goods, equipment and transport.<sup>106</sup>
- These transit facilities should only be available upon declaration by the assisting actor that the international personnel, equipment and goods that they seek to send in transit through Pakistan are for the purpose of providing international assistance to a disaster-affected state.

<sup>104</sup> For more details, see Model Act for International Disaster Assistance, Article 57.

<sup>105</sup> National DM Act (2010), Section 6(f).

<sup>106</sup> For further details, see Model Act for International Disaster Assistance, Chapter VIII.

**International Disaster Response Law (IDRL) in Pakistan**  
A desk review of the legal framework for facilitating and regulating  
international disaster assistance

# Chapter 7

## Summary of Recommendations



## Summary of Recommendations

In reviewing Pakistan's legal framework for international disaster response, this desk study has identified a number of strengths as well as gaps and weaknesses. In order to address these gaps and weaknesses whilst also strengthening and consolidating existing good practice, this review recommends developing a new legislative instrument, ideally a law or decree, but in the interim, at least a regulation, guideline or rule.

On the basis of the desk research undertaken for this review, and the according recommendations, the NDMA may wish to develop a set of rules, guidelines or other legislative instrument to be incorporated in Pakistan's domestic legal framework for disaster management and response. By developing a new legislative instrument specifically for international disaster assistance, Pakistan will be better prepared for any future disasters. With a strong legal framework in place, the Government of Pakistan will have a greater ability to regulate the entry and operation of international disaster relief providers, and ensure a higher standard of disaster relief. In turn, international assisting actors will also be able to undertake their disaster relief activities with greater speed and efficiency, ensuring that those most vulnerable have access to the relief they need, at the right time.

### 6.2 Early warning and preparedness

**Recommendations:** To strengthen the existing legal framework, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Clearly identify the NDMA as being responsible for communicating early warning information to other states and the wider international humanitarian community either directly or through diplomatic channels.

### 6.3 Legal, policy and institutional frameworks for international disaster assistance

#### 6.3.1 Relevant governmental institutions

**Recommendations:** To strengthen the existing legal framework, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Clearly designate responsibilities regarding the initiation, facilitation and coordination of international humanitarian assistance, including establishing a focal point to liaise between international and government actors at all levels.
- Clearly identify an authority responsible for informing assisting actors and relevant national, provincial and district agencies of their rights and responsibilities with regard to international assistance and orient them to other laws, rules or procedures especially relevant to international assistance.
- As already provided for under the NDRP, establish a technical committee on international disaster assistance preparedness, comprised of representatives of a range of relevant government entities (national and provincial), the Pakistan Red Crescent, domestic NGOs and other relevant stakeholders. The committee could be designed

## Summary of Recommendations

to provide technical advice on preparedness for international assistance, through the preparation of manuals and plans, for example.<sup>107</sup>

- Provide for the establishment of international assistance facilitation teams, comprised of technical level representation from a range of government agencies, which can be deployed to primary points of entry for international disaster assistance.<sup>108</sup>
- Require assisting international actors to cooperate and coordinate with national, provincial and district authorities. In particular, they should be required to provide such information to these authorities as is available to them on the location, type and extent of their assistance.<sup>109</sup>

### 6.4 Declaration of emergency and initiation and termination of international disaster relief

**Recommendations:** To strengthen the existing legal framework, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Identify the responsible authority (e.g. the Prime Minister or MoFA as indicated in the NDRP) for issuing a request for international assistance, once a determination has been made that domestic capacities are likely to be insufficient.
- Contain provisions which require requests for international assistance to specify the extent and type of assistance required.
- Address the procedures for assisting actors to make formal offers of assistance once a request has been issued, as well as procedures for assisting actors to make unsolicited offers of assistance in situations where no general request has been made.
- Provide for the termination of international assistance through a formal notification procedure.<sup>110</sup>

### 6.5 Registration, privileges and immunities of assisting humanitarian organizations

**Recommendations:** To strengthen the existing legal framework, and as suggested by the IDRL Guidelines, the new legislation relating to the registration of NGOs, and/or new national guidelines for international assistance for disasters in Pakistan could:

- Establish a system for disaster relief agencies to pre-register as assisting actors in order to receive certain legal facilities. Eligibility of assisting actors should be based on certain criteria, including their ability to comply with the responsibilities described in paragraph 4 of the IDRL Guidelines.<sup>111</sup>
- Establish a set of privileges and immunities for assisting international actors, applicable only in their official capacity. Any privileges and immunities granted

<sup>107</sup> See Model Act for International Disaster Assistance, Article 13.

<sup>108</sup> See Model Act for International Disaster Assistance, Article 14.

<sup>109</sup> See Model Act for International Disaster Assistance, Article 15.

<sup>110</sup> See Model Act for International Disaster Assistance, Article 9.

<sup>111</sup> For more details, see Model Act for International Disaster Assistance, Chapters 4 and 5.

## Summary of Recommendations

to international assisting actors should not replace or supplant those contained in already existing status agreements.

- Provide that registered assisting actors will be granted a number of legal facilities, as set out in the following sections.<sup>112</sup>

### 6.6 Entry of personnel

**Recommendations:** To codify existing good practice, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Provide for a special type of visa to be issued for personnel of registered assisting actors, unless national security or public health and safety concerns related to the particular individual preclude it. These visas should be issued without a fee for an initial period (e.g. three months) and renewable without a fee for certain periods of time (e.g. six months) until the end of the disaster relief period.

### 6.7 Recognition of foreign professional qualifications

**Recommendations:** To strengthen the existing legal framework and codify existing good practice, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Provide for a relevant authority to establish lists of countries and/or educational institutions whose health professionals, architectural, engineering and other relevant professionals may be given automatic recognition of their foreign qualifications when certified by a registered assisting actor.
- Require registered assisting actors to certify the validity of the foreign professional qualifications and competence of their personnel.
- Require the relevant authority to establish expedited procedures to be applied for the assessment and recognition of the foreign qualifications of the international personnel originating from countries or institutions not included on the above-mentioned lists (when certified by the associated registered assisting actor).

### 6.8 Customs

**Recommendations:** To strengthen the existing legal framework and codify existing good practice, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Incorporate the provisions of the Policy for Issuance of NOCs and provides that registered assisting actors (in line with registration procedure set out in 6.4.1) will be eligible to receive NOCs.
- Require the customs authority to facilitate the rapid importation of consignments of goods and equipment by registered assisting actors with NOCs and shall accord them priority treatment in handling.

<sup>112</sup> See Model Act for International Disaster Assistance, Article 25.

## Summary of Recommendations

- Provide for the customs authority, upon request, and without additional charges, to carry out the functions necessary for the release or clearance of consignments of goods or equipment imported by or on behalf of assisting actors outside their designated hours of business and/or away from customs offices when necessary.
- Require the customs authority to waive or reduce inspection requirements. If, in an exceptional case, customs security is deemed necessary, provides that the customs authority should accept as security an undertaking from the relevant assisting actor or, where appropriate, a general customs security.
- Contain specific provisions relating to the transportation and use of medicines or medical equipment; the pre-approval of this medicine/medical equipment by both the assisting and affected states; and the import and use of land vehicles to transport disaster assistance and relief personnel.

### 6.9 Domestic legal status of foreign humanitarian organizations

**Recommendations:** To strengthen the existing legal framework and codify existing good practice, and as suggested by the IDRL Guidelines, either the new legislation on the registration of NGOs and/or new national guidelines for international assistance for disasters in Pakistan could:

- Provide for the swift granting of a temporary legal capacity to registered assisting actors which is necessary for the exercise of its functions and the fulfilment of its purposes. For example, the registered assisting actor should be able to operate legally, be free to open bank accounts, enter contracts and leases, acquire property, hire local personnel, and to bring in the necessary funds and currencies and obtain legal exchange rates in connection with their disaster relief or initial recovery assistance.

### 6.10 Transport

**Recommendations:** To strengthen the existing legal framework and to codify existing good practice, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Provide that ground, air and water transport vehicles operated by assisting actors shall be accorded priority treatment for safe passage, including, as appropriate, priority in air traffic routing and landing permissions.
- Exempt the transportation of assisting actors from any applicable taxes, levies, duties, fees or charges normally imposed by governmental entities as well as any prohibitions, limitations or restrictions in respect of their arrival, over-flight, landing, stay and departure, other than those necessary to guarantee national security, public safety or public health.

## Summary of Recommendations

### 6.11 Taxation

**Recommendations:** To codify existing good practice, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Provide exemptions to all registered assisting actors from VAT and other taxes or duties directly associated with their disaster relief operations.<sup>113</sup>

### 6.12 Accountability of the affected state

**Recommendation:** To strengthen the existing legal framework, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- State that the use of international aid will be subject to audit by the NDMA or appropriate authority within a specific time period (e.g. six months) after the termination of the period of international relief and initial recovery assistance. The result of these audits should be compiled in the annual reports of the NDMA and PDMA, and also made publicly available. Reference could be made to the International Organization of Supreme Audit Institutions standards for the audit of disaster-related aid.<sup>114</sup>

### 6.13 Accountability of assisting actors

**Recommendations:** To strengthen the existing provisions in the National DM Act, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Explicitly outline the key responsibilities of assisting actors in line with the IDRL Guidelines, paragraph 4.
- Designate an authority (e.g. NDMA/PDMA or MoFA) to monitor the compliance of Assisting Actors with their responsibilities in Pakistan (as referred to in section 6.4.1)
- Provide that if the authority finds that an assisting actor has failed to comply with its responsibilities, it may decide to revoke the assisting actor's registration and associated provision of legal facilities.<sup>115</sup>

### 6.15 Pakistan as a transit country

**Recommendations:** To codify existing good practice, and as suggested by the IDRL Guidelines, new national guidelines for international assistance for disasters in Pakistan could:

- Provide that, in the event that a disaster occurs in another country for which international disaster assistance is required the relevant [customs, immigration, and

<sup>113</sup> For more details, see Model Act for International Disaster Assistance, Part 7.

<sup>114</sup> See International Organization of Supreme Audit Institutions, ISSAI 5520 – *The Audit of Disaster-Related Aid*, <http://www.intosai.org/issai-executive-summaries/view/article/issai-5520-the-auditof-disaster-related-aid.html>

<sup>115</sup> For more details, see Model Act for International Disaster Assistance, Article 57.

## Summary of Recommendations

transport] authorities shall facilitate the speedy transit or transshipment across Pakistan's national territory of international relief personnel, goods, equipment and transport.<sup>116</sup>

- These transit facilities should only be available upon declaration by the assisting actor that the international personnel, equipment and goods that they seek to send in transit through Pakistan are for the purpose of providing international assistance to a disaster-affected state.

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<sup>116</sup> or further details, see Model Act for International Disaster Assistance, Chapter VIII.

# Annex 1: The Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (The 'IDRL Guidelines')

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## Introduction

### 1. Purpose and Scope

1. These Guidelines are non-binding. While it is hoped that States will make use of them to strengthen their laws, policies and/or procedures related to international disaster response, as appropriate, the Guidelines do not have a direct effect on any existing rights or obligations under domestic law.
2. They draw from many existing international instruments, including United Nations General Assembly Resolutions 46/182 of 1991 and 57/150 of 2002, the Measures to Expedite International Relief of 1977 and the Hyogo Framework for Action of 2005.
3. 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. While affirming the principal role of domestic authorities and actors, they recommend minimum legal facilities to 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. It is hoped that the use of these Guidelines will enhance the quality and efficiency of international disaster relief and initial recovery assistance in order to better serve disaster-affected communities.
4. These Guidelines are not intended to apply to situations of armed conflict or disasters that occur during armed conflicts, or to imply changes in any rules governing relief in those contexts. They are also not intended to recommend any changes to, or affect the meaning or implementation of, any existing international law or agreements, including but not limited to:
  - 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. Existing agreements between States or between States and assisting actors.



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### 2. Definitions

For the purposes of these Guidelines,

1. **“Disaster”** means a serious disruption of the functioning of society, which 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 communities.
3. **“Initial recovery assistance”** means goods and services intended to restore or improve the pre-disaster living conditions of disaster-affected communities, including initiatives to increase resilience and reduce risk, provided for an initial period of time, as determined by the affected State, after the immediate needs of disaster-affected communities have been met.
4. **“Goods”** means the supplies intended to be provided to disaster-affected communities for their relief or initial recovery.
5. **“Services”** means activities (such as rescue and medical care) undertaken by disaster relief and initial recovery personnel to assist disaster-affected communities.
6. **“Equipment”** means physical items, other than goods, that are necessary for disaster relief or initial recovery assistance, such as vehicles and radios.
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 has received permission to pass on its way to or from the affected State in connection with disaster relief or initial recovery assistance.
12. **“Assisting humanitarian organization”** means a foreign, regional, intergovernmental or international non-profit entity whose mandate and activities are primarily focused on humanitarian relief, recovery or development.
13. **“Eligible assisting humanitarian organization”** means an assisting humanitarian organization determined to be eligible to receive legal facilities pursuant to Part V by the originating, transit or affected State, as applicable.
14. **“Assisting actor”** means any assisting humanitarian organization, assisting State, foreign individual, foreign private company providing charitable relief or other foreign entity responding to a disaster on the territory of the affected State or sending in-kind or cash donations.

## Part I: Core Responsibilities

### 3. Responsibilities of Affected States

1. Affected States have the primary responsibility to ensure disaster risk reduction, relief and recovery assistance in 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. If an affected State determines that a disaster situation exceeds national coping capacities, it should seek international and/or regional assistance to address the needs of affected persons.
3. Affected States have the sovereign right to coordinate, regulate and monitor, disaster relief and recovery assistance provided by assisting actors on their territory, consistent with international law.

### 4. Responsibilities of Assisting Actors

1. Assisting actors and their personnel should abide by the laws of the affected State and applicable international law, coordinate with domestic authorities, 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 provided in accordance with the principles of humanity, neutrality and impartiality, and in particular:
  - a. Aid priorities are calculated on the basis of need alone;
  - b. Provided without any adverse distinction (such as in regards to nationality, race, ethnicity, religious beliefs, class, gender, disability, age and political opinions) to disaster-affected persons;
  - c. Provided without seeking to further a particular political or religious standpoint, intervene in the internal affairs of the affected State, or obtain commercial gain from charitable assistance;
  - d. 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 assistance.
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, and 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. Coordinated with other relevant domestic and assisting actors;
  - d. Provided and conducted in a manner that is sensitive to cultural, social and religious customs and traditions;
  - e. Carried out with adequate involvement of affected persons, including women, youth and the elderly, in their design, implementation, monitoring and evaluation;

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- f. Provided by competent and adequately trained personnel;
- g. Commensurate with their organisational capacities;
- h. Building upon and conducted in a manner that strengthens local disaster risk reduction, relief and recovery capacities and reduces future vulnerabilities to disasters;
- i. Carried out so as to minimize negative impacts on the local community, economy, job markets, development objectives and the environment; and
- j. Provided in a transparent manner, sharing appropriate information on activities and funding.

### 5. Additional Responsibilities of All States

1. States providing funding to other assisting actors should encourage them to act in a manner consistent with the provisions of paragraph 4.
2. All States should actively encourage members of the public interested in contributing to international disaster relief or initial recovery to make financial donations where possible or otherwise donate only those types of relief goods expressly requested by the affected State.

### 6. Responsibilities Concerning Diversion and the Intended Use of Resources

1. 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.
2. Affected States should use funds and relief goods donated to them, and which they have accepted in relation to a disaster, in a manner consistent with the expressed intent with which they were given.

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## Part II: Early Warning and Preparedness

### 7. Early Warning

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

### 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 and planning 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 empower communities to enhance their own safety and resilience. States, with the support, as appropriate, of relevant regional

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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, 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 national 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.

## 9. Regional and International Support for Domestic Capacity

1. With a view to increasing resilience and reducing the need for international disaster relief and initial recovery assistance, 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

### 10. Initiation

1. Disaster relief or initial recovery assistance should be initiated only with the consent of the affected State and in principle, on the basis of an appeal. The affected State should decide in a timely manner whether or not to request 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. Requests and offers for assistance 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 make available to assisting actors adequate information about domestic laws and regulations of particular relevance to the entry and operation of disaster relief or initial recovery assistance.

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### 11. Initiation of Military Relief

Military assets should be deployed for disaster relief or initial recovery assistance only at the request or with the express consent of the affected State, after having considered comparable civilian alternatives. Prior to any such deployment, terms and conditions (including such issues as the duration of deployment, whether they must be unarmed or may be armed the use of their national uniforms, and mechanisms for cooperation with civilian actors) are to be agreed by the affected and assisting States.

### 12. Termination

When an affected State or an assisting actor wishes to terminate disaster relief or initial recovery assistance, it should provide appropriate 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 communities.

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## Part IV: Eligibility for Legal Facilities

### 13. Facilities for Assisting States

It is recommended that transit and affected States grant, at a minimum, the legal facilities described in Part V to assisting States with respect to their disaster relief or initial recovery assistance.

### 14. Facilities for Assisting Humanitarian Organizations

1. Subject to existing international law, it is the prerogative of originating, transit and affected States to determine which assisting humanitarian organizations will be eligible to receive the legal facilities described in Part V with respect to their disaster relief or initial recovery assistance.
2. It is recommended that States establish criteria for assisting humanitarian organizations seeking eligibility for legal facilities. These criteria should include a showing by the organization of its willingness and capacity to act in accordance with the responsibilities described in paragraph 4 of these Guidelines.
3. Any additional requirements imposed on assisting humanitarian organizations should not unduly burden the provision of appropriate disaster relief and initial recovery assistance.
4. 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.
5. Retention of the legal facilities in Part V should be made dependent on ongoing compliance with the provisions of subsection 2 of this paragraph. However, entitlement to legal facilities should not be changed arbitrarily, retroactively or without notice appropriate to the circumstances.

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**15. Facilities for Other Assisting Actors**

Affected States may also wish to extend, upon request, some of the legal facilities in Part V to assisting actors other than those covered by paragraphs 13 and 14, such as private companies providing charitable relief, provided this 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 paragraph 14.

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

It is recommended that States provide the legal facilities described in paragraphs 16-24 to assisting States and eligible assisting humanitarian organizations. It is understood that the granting of these facilities will be subject to the interests of national security, public order, public and environmental health, and public morals of the concerned affected, originating and transit States. Measures to protect such interests should be tailored to the exigencies of the specific disaster and consistent with the humanitarian imperative of addressing the needs of affected communities.

Where specific facilities recommended here are within the competence of authorities other than the national government, the national government should, where possible and appropriate, encourage those authorities to provide the relevant facilities to assisting States and eligible assisting humanitarian organizations.

**16. Personnel**

1. With regard to disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations, affected States should:
  - a. Grant visas and any necessary work permits, ideally without cost, renewable within their territory, 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 necessary for the performance of disaster relief or initial recovery functions and that have been certified as genuine by the concerned assisting State or eligible assisting humanitarian organization, for the time necessary to carry out disaster relief or initial recovery activities;
  - d. Facilitate freedom of access to and freedom of movement in and from the disaster-affected area, bearing in mind the safety of disaster relief and initial recovery personnel.
2. Upon request, originating and transit States should likewise waive or promptly issue, ideally without cost, exit or transit visas, as appropriate, for the disaster relief and initial recovery personnel of eligible assisting humanitarian organizations.
3. Assisting States and eligible assisting humanitarian organizations should consider to what degree disaster relief and initial recovery objectives can be met through hiring local staff.



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### 17. 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 eligible assisting humanitarian organizations, originating, transit and affected States should:
  - a. Exempt them from all customs duties, taxes, tariffs or governmental fees;
  - 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 inspection and release outside business hours and/or at a place other than a customs office as necessary to minimize delay, in accordance with the safety regulations of the affected State. Assisting States and eligible assisting humanitarian organizations should respect any routes and delivery points prescribed by the affected State.
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 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 the national law of the affected State and international standards.
4. Assisting States and eligible assisting humanitarian organizations should assume responsibility for removing or disposing of any unwanted and unused relief and initial recovery goods, particularly if they may pose a threat to human health or safety, or the environment.

### 18. Special Goods and Equipment

In addition to the facilities described in paragraph 17:

1. Affected States should grant temporary recognition to foreign registration and plates with regard to vehicles imported by assisting States and eligible assisting humanitarian organizations or on their behalf in disaster relief and initial recovery assistance.
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 assistance. Without discrimination against or negative impact to domestic relief actors, affected States should also grant (or where, appropriate, encourage other domestic



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actors to grant) assisting States and eligible 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 eligible assisting humanitarian organizations or on their behalf in disaster relief and initial recovery assistance, to the extent consistent with public safety and international law. Assisting States and eligible assisting humanitarian organizations should take all reasonable steps to ensure the quality, appropriateness and safety of any such medications and equipment and in particular:
  - a. Any medications they import should be approved for use in the originating and affected State;
  - b. Medications they use in their own operations should be:
    - i. transported and maintained in appropriate conditions to ensure their quality and;
    - ii. guarded against misappropriation and abuse.
  - c. Any medications they donate for use by others in the affected State should be:
    - i. at least twelve months from their expiration date upon arrival, unless otherwise agreed by receiving authorities;
    - ii. transported and maintained in appropriate conditions to ensure their quality until they reach the affected State; and
    - iii. appropriately labelled in a language understood in the affected State with the International Nonproprietary Name or generic name, batch number, dosage form, strength, name of manufacturer, quantity in the container, storage conditions and expiry date.
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 eligible assisting humanitarian organizations in disaster relief operations can be modified or reduced.

## 19. 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 eligible assisting humanitarian organization or on its behalf, for the purpose of transporting disaster relief or initial recovery assistance and, ideally, waive applicable fees.
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.

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### 20. Temporary Domestic Legal Status

1. Affected States should grant relevant entities of assisting States and eligible assisting humanitarian organizations, upon entry or as soon as possible thereafter, at least a temporary authorization to legally operate on their territory 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 purpose of providing disaster relief and initial recovery assistance.
2. Assisting States and eligible assisting humanitarian organizations should also be granted the right to freely bring the necessary funds and currencies in or out of the country through legal means and to obtain legal exchange rates in connection with their disaster relief or initial recovery assistance.
3. Affected States should allow assisting States and eligible assisting humanitarian organizations to legally hire and terminate the contracts of local personnel.

### 21. Taxation

Affected States should provide exemptions to assisting States and eligible assisting humanitarian organizations from value-added and other taxes or duties directly associated with disaster relief and initial recovery assistance.

### 22. Security

Affected States should take appropriate measures to address the safety and security of disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations and of the premises, facilities, means of transport, equipment and goods used in connection with their disaster relief or initial recovery assistance. Assisting States and assisting humanitarian organizations should also take appropriate steps in their own planning and operations to mitigate security risks.

### 23. 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.

### 24. 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, or for the temporary loan of equipment.
2. Affected States should consider, when it is in their power and to the extent possible under the circumstances, providing certain services at reduced or no cost to assisting States and eligible assisting humanitarian organizations, which may include:
  - 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.

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# The Fundamental Principles of the International Red Cross and Red Crescent Movement

**Humanity** / The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

**Impartiality** / It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

**Neutrality** / In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

**Independence** / The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

**Voluntary service** / It is a voluntary relief movement not prompted in any manner by desire for gain.

**Unity** / There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

**Universality** / The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.



International Federation  
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