

# International Law and Standards Applicable in Natural Disaster Situations

Erica Harper



International Development Law Organization  
Organisation Internationale de Droit du Développement

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International Development Law Organization  
Organisation Internationale de Droit du Développement

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## Message from the Director-General

Natural disasters strike with alarming regularity, taking away lives, homes, businesses and schools, and the destabilizing effect on the social fabric of communities is instant and profound. The immediate priorities must be to save lives, bring medical assistance to the injured and ill, provide temporary shelter and rush clean water and food to the displaced. Domestic and international humanitarian aid groups perform these tasks with admirable determination and speed.

After people's basic needs are met, the priorities shift quickly to recovery. Establishing conditions that restore the dignity of the victims and protect their rights is vital, but more needs to be done in this area. While working in Aceh after the tsunami disaster, IDLO and other organizations saw firsthand how the lack of a legal and human rights framework led to lingering disenfranchisement of people, preventing a return to their normal lives.

Our hope is that this Manual will stimulate thought and action on this issue. While a substantial body of relevant law exists, the law is only effective if disaster recovery planners and the people working in the field know and understand it. By building legal protections into preparedness and response planning, we can shorten the recovery timetable and restore order more quickly and effectively. At the same time, this process will help us uncover and address systemic injustices that cause continuing poverty and social unrest.

I would like to thank IDLO's Erica Harper for her outstanding work developing and drafting the Manual, as well as the other IDLO staff who provided valuable support for the project, including Thomas McInerney (General Counsel and Director, Research and Policy Unit), Miles Young (Program Legal Counsel), Sophie Turner (Editing and Proofreading), Francesca Pispisa (Publications Officer), and Margarita Milikh (Assistant Program Manager). Finally, I would also like to thank our colleagues in the other organizations who contributed to this project. We hope that this resource will benefit all of our groups and the people who rely upon us.



**William T. Loris**

*International Development Law Organization*

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## Foreword

Every year the international humanitarian community provides emergency assistance to populations whose lives have been devastated by natural disasters. Such assistance traditionally has focused upon the delivery of life-saving aid such as emergency shelter, food and medical care. In my capacity as the Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons, I observed that often less attention was paid to ensuring that the rights of affected populations were upheld.<sup>1</sup> Today, however, it is broadly accepted that the need to protect the rights of vulnerable groups must inform all stages of the rehabilitation process – from early recovery through to longer-term reconstruction and development.

In this context, I very much welcome the initiative taken by IDLO to develop the Manual on International Law and Standards Applicable in Natural Disaster Situations. It was borne out of practical experience and lessons learned from the Organization's operations in Indonesia and Sri Lanka following the 2004 Indian Ocean tsunami. Similar to my own observations in the field, IDLO found that the dearth of accessible and practical information on international standards relevant to disaster response limited the capacity of reconstruction and development actors to adopt rights-based approaches and factor protection-related issues into their programming. The Manual responds to this lacuna by providing a comprehensive analysis of the international legal standards pertaining to five key aspects of disaster response: human rights, the rights of vulnerable groups, the rights of children, land and property management, and anti-corruption/funds management. Designed for practical implementation, each chapter contains case studies, checklists and links to useful materials, as well as a matrix of excerpts from international and regional legal instruments. Critically, the Manual recognizes that agencies providing post-disaster relief and reconstruction support will not always have protection mandates or experience in developing solutions to rights-based challenges. I therefore commend the Manual's important contribution to provide users with the tools required to develop situation-specific responses that respect local laws and traditions and at the same time uphold international legal standards.

The Manual is the product of in-depth research, collaboration and discussion between IDLO, its national partner organizations and several international agencies including The Basel Institute on Governance, Displacement Solutions, HelpAge International, the Norwegian Refugee Council, Plan International, Terres des Hommes (Italy), UN-Habitat, UNICEF and UN OCHA. Based on their field experiences, the contributions made by these partners enhance the publication's utility and make it user-friendly for practitioners: it provides concrete examples of how to effectively integrate international protection standards into humanitarian programs and adds to the collection of best practices. I commend all contributing agencies for their cooperation on this project which has strong potential to improve the protection of persons affected by natural disaster worldwide.

**Walter Kaelin**

Representative of the UN Secretary General  
on the Human Rights of Internally Displaced Persons



<sup>1</sup> 'Inter-Agency Standing Committee Operational Guidelines on Human Rights and Natural Disasters: Protecting Persons Affected by Natural Disasters' (2006), 8.



# List of acronyms

## International Conventions

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women (1979)
CERD	Convention on the Elimination of all Forms of Racial Discrimination (1965)
CRC	Convention on the Rights of the Child (1989)
CRPD	Convention on the Rights of Persons with Disabilities (2006)
ICCPR	International Covenant on Civil and Political Rights (1966)
ICESCR	International Covenant on Economic, Social and Cultural Rights (1966)
UNCAC	United Nations Convention Against Corruption (2003)

## International Instruments

DEDAW	United Nations Declaration on the Elimination of all Forms of Discrimination Against Women (1967)
DEFRD	United Nations Declaration on the Elimination of all Forms of Racial Discrimination (1963)
DHRI	Declaration of Human Rights in Islam (1990)
DRCIC	Declaration of the Rights and Care of the Child in Islam (1994)
IASC	Inter-Agency Standing Committee Operational Guidelines on Human Rights and Natural Disasters (2006)
GPID	Guiding Principles on Internal Displacement (1998)
UDHR	Universal Declaration of Human Rights (1948)

## Regional Instruments

ACHPR	African Charter on Human and Political Rights (1986)
ACHR	American Convention on Human Rights (1992)
ACRWC	African Charter on the Rights and Welfare of the Child (1999)
ECHR	European Convention on Protection of Human Rights and Fundamental Freedoms (1950)
ESC	European Social Charter (1961, amended 1996).
PACHPRA	Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (1998)

## Full list of acronyms used in the document

ACHPR	African Charter on Human and Political Rights (1986)
ACHR	American Convention on Human Rights (1992)
ACRWC	African Charter on the Rights and Welfare of the Child (1999)
ADPC	Asian Disaster Preparedness Centre
AIDS	Auto-Immune Deficiency Syndrome
AJK	Azad Jammu and Kashmir
APWLD	Asia Pacific Forum on Women, Law and Development
ASEAN	Association of Southeast Asian Nations
AWID	Association for Women's Rights in Development
BPN	National Land Office (Indonesia)
BRR	Agency for Rehabilitation and Reconstruction Aceh-Nias
CATW	Coalition Against Trafficking in Women
CBR	Community-Based Rehabilitation
CDA	Community Driven Adjudication
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women (1979)
CERD	Convention on the Elimination of all Forms of Racial Discrimination (1965)
CERF	Central Emergency Response Fund
CNIC	Pakistani National Identity Card
COHRE	Centre on Housing Rights and Evictions
CRC	Convention on the Rights of the Child (1989)
CRIN	Child Rights Information Network
CRPD	Convention on the Rights of Persons with Disabilities (2006)
DCI	Defense for Children International
DEDAW	Declaration on the Elimination of All Forms of Discrimination against Women
DHRI	Declaration of Human Rights in Islam (1990)
DRCIC	Declaration on the Rights and Care of the Child In Islam
DROPSS	Development for Rural Oppressed Peoples Service Society (India)
DS	Displacement Solutions
ECHR	European Convention on Protection of Human Rights and Fundamental Freedoms (1950)
ECLAC	United Nations Economic Commission for Latin America and the Caribbean
ECPAT	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
Enable	United Nations Global Programme on Disability
ERRA	Earthquake Reconstruction and Rehabilitation Authority (Pakistan)
ESC	European Social Charter (1961, amended 1996)
FAO	Food and Agriculture Organization of the United Nations
GDACS	Global Disaster Alert and Coordination System
GLTN	Global Land Tools Network
GPID	Guiding Principles on Internal Displacement (1998)
HAP	Humanitarian Accountability Partnership
Helvetas	Swiss Association for International Cooperation
HEWSweb	Humanitarian Early Warning Service
HFH	Habitat for Humanity
HIC	Habitat International Coalition
HIV	Human Immuno-Deficiency Virus
HLP	Housing, Land and Property
HRCP	Human Rights Commission of Pakistan
HRDS	Human Rights Defender's System
IASC	Inter-Agency Standing Committee
IAWJ	International Association of Women Judges
ICCPR	International Covenant on Civil and Political Rights (1966)
ICESCR	International Covenant on Economic, Social and Cultural Rights (1966)
ICG	International Crisis Group
ICLA	Information, Counseling and Legal Assistance of the NRC
ICRC	International Committee of the Red Cross
ICVA	International Council of Voluntary Agencies

IDLO	International Development Law Organization
IDMC	Internal Displacement Monitoring Centre
IDP	Internally Displaced Person
IFRC	International Federation of Red Cross and Red Crescent Societies
IGAC	International Group for Anti-Corruption Coordination
IHL	International Humanitarian Law
IIEP	International Institute for Educational Planning
ILC	International Land Coalition
ILO	International Labour Organization
IMADR	International Movement Against All Forms of Discrimination and Racism
INGO	International Non-Governmental Organization
INSARAG	International Search and Rescue Advisory Group
IOM	International Organization for Migration
IRC	International Rescue Committee
IRIN	Integrated Regional Information Networks
ISDR	International Strategy for Disaster Reduction
IWGIA	International Work Group on Indigenous Affairs
KKTGA	Kelompok Kerja Transformasi Gender Aceh (NGO, Indonesia)
LUV	Land Verification Unit (Pakistan)
MIPAA	Madrid International Plan of Action on Ageing (1991)
MRG	Minority Rights Group International
NADRA	National Database and Registration Authority (Pakistan)
NGO	Non-Governmental Organization
NRC	Norwegian Refugee Council
NWFP	Northwest Frontier Province
PACHPRA	Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (1998)
PHOS	Platform Disability and Development Cooperation
PTF	Partnership for Transparency
RALAS	Reconstruction of Aceh Land and Administration System
RI	Rehabilitation International
SAARC	South Asian Association for Regional Cooperation
SADC	Southern African Development Community
SEEDS	Sarvodaya Economic Enterprises Development Services (Sri Lanka)
STD	Sexually Transmitted Disease
TDH	Terre des Hommes
TI	Transparency International
UNCAC	United Nations Convention Against Corruption (2003)
UNCED	United Nations Conference on Environment and Development
UDHR	Universal Declaration of Human Rights
UNDAC	United Nations Disaster and Assessment Coordination
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UN-HABITAT	United Nations Human Settlements Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNHCHR	Office of the United Nations High Commissioner for Human Rights
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UN OCHA	Office for the Coordination of Humanitarian Affairs
UNHCHR	Office of the High Commissioner for Human Rights
USDOL	United States Department of Labor
WFP	United Nations World Food Programme
WFMH	World Federation for Mental Health
WHO	World Health Organization



# Introduction

## Background

In recent years, a spate of natural disasters has brought the importance of delivering timely, coordinated and needs-responsive humanitarian assistance to the fore. Examples include the Indian Ocean tsunami (2004), the South Asia earthquake (2005), the floods affecting New Orleans (2005) and Gujarat (2006), and most recently, the cyclone that hit Myanmar and the earthquake in China in 2008. In the immediate aftermath of a disaster, a primary challenge is the complexity of managing several critical areas of relief simultaneously: these include organizing evacuations, providing emergency shelter, distributing food and medical supplies, and taking steps to guard against misuse or corruption with respect to humanitarian aid funds. In this context, legal development or judicial rehabilitation is rarely regarded as a priority activity. Understanding the applicable legal framework or the legal principles relevant to emergency intervention is important, however, in two respects.

First, the legal framework will usually have a strong regulatory influence on the pace and nature of reconstruction: for example, those responsible for community and infrastructure reconstruction will need to take account of laws governing planning, development and environmental issues; housing restitution projects will be influenced by land ownership laws; and humanitarian agencies employing local staff will need to be aware of national employment laws. Ignoring or operating outside this framework risks delaying program execution, abrogating the rights of beneficiaries, and jeopardizing the continuity and sustainability of humanitarian aid programs.

Second, a major concern in the immediate aftermath of a natural disaster is the protection of vulnerable groups: risk areas might include the illegal adoption of orphans, trafficking of minors or women, violence against marginalized groups, and discrimination in the distribution of humanitarian aid. The mechanisms and laws in place for preventing such rights violations are relevant not only to protection specialists but also to those involved in reconstruction more generally. Agencies engaged in resettlement or housing restitution, for example, may need to answer questions that have protection-related dimensions, such as whether minors who have inherited property can be registered as landowners, or whether minorities who have acquired land customarily can exercise rights over such property. In such situations, an understanding of the laws regulating inheritance, guardianship of minors and land ownership is essential.

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Accessing and understanding the applicable legal framework presents certain challenges, particularly for international agencies operating in an unfamiliar country context and under pressure to deliver rapid results. Many agencies involved in post-disaster rehabilitation such as construction, mapping or spatial planning are not accustomed to resolving legal issues and are unlikely to have legal experts on their staff. Even when laws are accessible, agencies may have little insight into practical ways of operationalizing such principles. In other situations, the legislative or regulatory framework may be outdated, incomplete, internally inconsistent or in competition with non-state (customary) systems. Finally, where a natural disaster strikes an area affected by civil conflict, as in Sri Lanka and Aceh preceding the 2004 tsunami, basic legal machinery such as courts may not be operating effectively.

In such situations, a further source of guidance for humanitarian actors is the international legal framework, which comprises treaty-based law, international customary law as well as international declarations, standards and recommendations. Having access to this body of law is useful for a number of reasons. First, the state in which the disaster has occurred may have obligations under international law. Second, international jurisprudence provides humanitarian actors with a guiding framework for mounting operations when the domestic legal system is unclear, incomplete or in need of reform. Third, international standards can be used as a basis for advocacy or assistance for authorities in affected countries in developing or amending domestic laws and mechanisms. A major challenge, however, is the difficulty in identifying the rights and procedural standards in international law that are relevant to the needs and risks associated with natural disasters.<sup>1</sup> It is in response to these lacunae that this *Manual on International Law and Standards Applicable in Natural Disaster Situations* has been developed.

## Objectives

This Manual considers international laws, standards and policies pertaining to five areas relevant to rehabilitation following a natural disaster: human rights, the rights of vulnerable groups, the rights of children, land and property management, and anti-corruption/funds management. The Manual aims to:

- provide detailed information on provisions contained in treaty-based law that are relevant to disaster response, the responsibilities such provisions place on state and humanitarian actors, and tools for encouraging and assisting states to act in accordance with their international obligations;
- provide operational and policy guidance to support the development of rights-based approaches to post-disaster rehabilitation and tools to enable actors to integrate international protection standards into humanitarian programs;
- improve understanding of the rights and vulnerabilities of different groups affected by natural disasters, and assist humanitarian actors in responding to gaps in the legal protection framework and to primary protection risks;
- provide practical inspiration for ways in which to undertake rehabilitation in accordance with international standards by examining the experiences of other agencies operating in post-natural disaster environments; and
- provide information and tools that can be used for advocacy or lobbying purposes, or to assist in the development or reform of national legal and regulatory frameworks.

## Audience

This Manual is intended to assist international humanitarian actors, particularly non-lawyers, to develop humanitarian responses to natural disaster situations consistent with international legal norms and standards. Such actors include, but are not limited to, field practitioners and headquarters staff involved in infrastructure reconstruction, land and property restitution, resettlement, livelihoods, human rights monitoring, child welfare, protection of vulnerable groups, trafficking and exploitation, and the replacement of personal documentation. The Manual can also be used by state authorities and national humanitarian actors as a tool for developing rights-based approaches to rehabilitation, for advocacy purposes or for reforming domestic legal, regulatory or policy frameworks.

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## How to use this Manual

The Manual is divided into five chapters:

1. Protecting Human Rights in Disaster Situations
2. Protecting the Rights of Vulnerable Groups in Disaster Situations
3. Protecting Children's Rights in Disaster Situations
4. Land and Property Management in Disaster Situations
5. Curbing the Risks and Opportunities for Corruption in Disaster Situations

Each chapter details the applicable international law and includes a commentary that provides clear guidance for organizations – particularly those that do not have a protection mandate – as to what these obligations mean and how they can be observed in practice. Positive examples of projects implemented by various humanitarian agencies in post-disaster contexts have been included to provide users with insight into ways in which international legal norms and standards can be integrated into humanitarian response programs. These lessons learned and best practices should also help users to overcome new problems and protection risks in a variety of legal contexts. Where appropriate, the authors have provided answers to common questions faced by practitioners when implementing a rights-based approach to post-disaster reconstruction. Finally, links to useful references, websites and agencies are supplied to facilitate further reading and research. At the end of each chapter, users will find a matrix detailing relevant provisions drawn from treaty-based law, international declarations, guidelines and recommendations, and in some cases regional instruments.

It is important to highlight that this Manual does not offer prescriptive guidance that can be applied in every situation. One of the most challenging aspects of planning responses to natural disasters is that they can strike anywhere and at any time. The ways in which this Manual will be utilized will depend upon several context-specific factors:

- **Level of development.** Developed countries generally have accessible and internally consistent legislation, fully functional courts and the means to realize their international legal obligations. In contrast, the legal systems in developing countries are often under-resourced in human and financial terms, are more prone to corruption and dysfunction, frequently operate in parallel with customary systems, and are less likely to have a body of coherent, accessible legislation that is consistent with international norms and standards. Depending on a state's level of judicial development, the Manual can be used as (i) a reference tool for accessing information on an affected state's international obligations, (ii) as an operational planning tool for developing humanitarian responses consistent with international norms and standards when the existing legal framework is unclear or dysfunctional, or (iii) as a capacity-building tool for helping states to develop, reform or replace legislation to respond to gaps in the legal protection framework.
- **Social, religious and cultural context.** International human rights law applies to all persons in all countries. In some contexts, however, national laws or policies may restrict or even contradict the rights and protection guarantees set out in this Manual. In such situations, humanitarian actors may have little scope for requiring affected states to introduce international standards, reform national laws or even implement programs that promote international legal standards. Agencies can and should, however, use the Manual to inform their own policies and programs.
- **The presence of civil conflict.** The laws, principles and examples in this Manual remain equally applicable in contexts where a natural disaster strikes an area that is also affected by civil conflict. It is important to note, however, that there may be further sources of applicable law – principally international humanitarian law (see the International Legal Framework). There are also additional challenges to be overcome when mounting a disaster response in a conflict zone: these include greater difficulty in returning affected populations to their homes, potential secondary displacement, difficulties in accessing affected populations and delivering humanitarian aid, and the security risks posed to humanitarian personnel.
- **Timeframe.** The critical issues in the immediate aftermath of a natural disaster will be markedly different from those most relevant during the reconstruction phase. Emergency housing, family reunification and food distribution, for example, are generally a central focus in the days and weeks following a disaster, whereas resettlement and reconstruction may not be priority activities until much later. In view of this, and depending on the stage in the recovery cycle in which this Manual is being used, certain sections may be more or less relevant. Where possible, the authors have highlighted the topics that are particularly time-bound. It must be stressed, however, that international human rights apply and must be upheld at all times. Users should therefore familiarize themselves with Chapters 1 and 2 on the protection of human rights and vulnerable groups in disaster situations with a view to ensuring that such rights are protected through each stage of the recovery and reconstruction process.

Two final points must be made. First, users of this Manual should remain aware of the interconnectedness of the international legal protection framework. Often, the rights pertaining to one group may be found in more than one chapter. Second, humanitarian actors should be aware that this Manual focuses on legal protection and forms only a small part of the human rights policy framework that applies in natural disaster situations. It must therefore be read in conjunction with other sources of rights and institutional guidelines related to post-disaster relief and humanitarian assistance developed in recent years. Examples include; the *IASC Operational on Human Rights and Natural Disasters* (2006), the voluntary *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief* (1994) and the *Sphere Project Handbook and Humanitarian Charter*.<sup>2</sup> A list of further useful documents and internet resources can be found at the end of this chapter, as well as issue-specific resources at the end of individual chapters.

## **The International Legal Framework**

### **Domestic Law**

The domestic legal system is the principal framework for upholding the rights of persons affected by natural disasters, responsibility for which rests with the state.<sup>3</sup> Rights may be defined in a variety of legal instruments including legislation, policies, regulations or national constitutions. Instruments that are relevant to disaster response may already exist or may be developed in response to the disaster. In either situation, instruments should reflect a state's obligations under international law and ensure that persons affected by disaster enjoy their rights on an equal basis with others.<sup>4</sup> Finally, it should be noted that national humanitarian agencies will always be bound by domestic law, but whether international organizations are similarly bound will depend on any agreements on privileges and immunities that have been negotiated with the government concerned.

As each jurisdiction has a unique legal framework, the laws of individual states are not considered in this Manual. A useful tool in the aftermath of a natural disaster, however, is the development of information resources which detail domestic laws and regulations in key areas. Examples of such resources are provided in Chapter 1 (section 1.9).

### **International Law**

International law governs the conduct of states towards each other and in respect of persons within their jurisdiction. The primary sources of international law are treaties and customary international law.

#### **(a) Treaty-Based Law**

18 International treaties – also known as covenants, conventions, charters or protocols – are agreements between states.<sup>5</sup> Treaties are only legally binding on states that have expressly agreed to be bound, either through signature and ratification<sup>6</sup> or accession,<sup>7</sup> and only once the treaty has entered into force.<sup>8</sup> The *Vienna Convention on the Law of Treaties* (1969) provides that states parties must carry out their treaty obligations in good faith and cannot invoke provisions of domestic law to justify a failure to do so. In practice, this requires that states ensure that their national laws and policies reflect their treaty responsibilities.<sup>9</sup> Matrices detailing the provisions of treaty-based law relevant to natural disaster response can be found at the end of each chapter in this Manual. Users can also access information as to which countries have ratified particular treaties through the website of the United Nations High Commissioner for Human Rights (UNHCHR) ([www.ohchr.org/EN/Countries/](http://www.ohchr.org/EN/Countries/)). It should be noted that even where a state is not party to the treaties referred to, such law remains relevant. Treaties, particularly those that have been adopted by the United Nations General Assembly, have moral authority and as internationally recognized standards can be used to guide operations, to undertake reform or draft new legislation, or form a basis for lobbying and advocacy.<sup>10</sup> Regional instruments are international treaties which are restricted to states in a particular region of the world. Provisions of regional instruments that are relevant to natural disaster situations can be found in the matrices at the end of each chapter.

*Do international treaties need to be incorporated into domestic legislation for a state to have legal obligations?*

No: States Parties have legal obligations under a treaty once it is ratified or acceded to and the treaty has entered into force. The means by which an international treaty enters into national legislation depends, however, on the parliamentary system of the state concerned. Some states require that treaties be ratified nationally before consenting to being bound under international law. Civil law countries, for example, generally require that treaties be considered and approved by parliament prior to ratification or accession; in common law countries, treaty-making is usually vested in the executive. It should be noted that national ratification is not sufficient to create obligations under international law.

*Who can become party to an international treaty?*

States and regional integration organizations such as the European Union, the Association of Southeast Asian Nations (ASEAN) and the Southern African Development Community (SADC) can become parties to an international treaty.

*What is the difference between an international treaty and an optional protocol?*

An optional protocol is a legal instrument annexed to an existing treaty addressing issues that the parent treaty does not cover. Optional protocols are generally open for ratification or accession by states parties to the parent treaty, but such ratification or accession is not compulsory.<sup>11</sup>

*Who is empowered to sign a treaty?*

The process of becoming party to an international treaty will be detailed in the laws of individual states. Authority for signing international treaties generally rests, however, with heads of state, heads of government, and ministers of foreign affairs. Signing usually takes place at the United Nations Office of Legal Affairs in New York.

*What are reservations?*

Reservations are statements that modify the legal effect of a treaty provision with respect to an individual state party. Reservations must be consistent with the objective and purposes of the treaty; other states parties are given a 12-month period in which to reject a proposed reservation.<sup>12</sup>

## (b) Customary International Law

Customary international law is a set of unwritten norms that are binding on all states. To be recognized as customary, a norm must be reflected in state practice, and there must be a conception on the part of the international community that the practice is required as a matter of law (also known as *opinio juris*). State practice can be evidenced by documents such as including domestic legislation, regulations, treaties, and diplomatic communications, or by the practices of non-governmental and intergovernmental organizations. *Opinio juris* can be demonstrated by judicial decisions, executive communications and other documents. An important category of customary law is peremptory norms (*jus cogens*), which are norms regarded by the international community as so fundamental that no derogation can be permitted. These include the right to life, freedom from torture, freedom from discrimination on the grounds of race, gender or ethnic origin, freedom from slavery, and freedom from genocide.

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## (c) International Humanitarian Law

When a natural disaster strikes an area affected by an international or domestic armed conflict, a further source of legal protection is international humanitarian law (IHL). The core IHL instruments are the *Geneva Conventions* (1949) and additional protocols (1977).<sup>15</sup> These documents are not discussed in this Manual, however they can be downloaded from the website of the International Committee of the Red Cross (ICRC; [www.icrc.org/ihl](http://www.icrc.org/ihl)). It should be noted that Security Council resolutions adopted under Chapter VII of the United Nations Charter are binding on all states.<sup>16</sup>

### **Non-Binding International Instruments**

Resolutions, declarations, recommendations and guiding principles adopted by states, regional organizations or United Nations bodies, although of high moral authority, are not generally binding on states. An exception to this is where an international instrument, or provisions within it, are elevated to the status of international customary law and hence becomes binding in nature: a good example is the 1948 *Universal Declaration on Human Rights* (UDHR). In many cases, the provisions of non-binding instruments are drawn from rights contained in existing treaty-based law. There are several non-binding instruments that are highly relevant in natural disaster responses, including; the 1998 *Guiding Principles on Internal Displacement* (GPID), the 2006 *Inter-Agency Standing Committee Operational Guidelines on Human Rights and Natural Disasters* (IASC Guidelines) and the 2007 *Housing and Property Restitution for Refugees and Internally Displaced Persons*. Users will find excerpts from these and other documents in the matrices at the end of each chapter.

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## USEFUL LINKS AND PUBLICATIONS

Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (1995)  
[www.ifrc.org/Docs/idrl/I259EN.pdf](http://www.ifrc.org/Docs/idrl/I259EN.pdf)

Defusing Disaster: Reducing the Risk (Calamity is Unnatural) (International Federation of Red Cross and Red Crescent Societies [IFRC], 2007)  
[www.ifrc.org/Docs/pubs/disasters/resources/reducing-risks/defusing-disaster-en.pdf](http://www.ifrc.org/Docs/pubs/disasters/resources/reducing-risks/defusing-disaster-en.pdf)

Disaster Response and Contingency Planning Guide (IFRC, 2007)  
[www.ifrc.org/Docs/pubs/disasters/resources/preparing-disasters/disaster-response-en.pdf](http://www.ifrc.org/Docs/pubs/disasters/resources/preparing-disasters/disaster-response-en.pdf)

Growing the Sheltering Tree: Protecting Human Rights through Humanitarian Action (UNICEF on behalf of IASC, 2002)  
[www.oxfam.org.uk/resources/downloads/emerg\\_manuals/growingtheshelteringtree.pdf](http://www.oxfam.org.uk/resources/downloads/emerg_manuals/growingtheshelteringtree.pdf)

Handbook for the Protection of Internally Displaced Persons (Global Protection Cluster Working Group, 2007)  
[www.ocha.unog.ch/humanitarianreform/Default.aspx?tabid=294](http://www.ocha.unog.ch/humanitarianreform/Default.aspx?tabid=294)

Humanitarian Charter and Minimum Standards in Disaster Response (2004)  
[www.sphereproject.org/content/view/27/84/lang,English](http://www.sphereproject.org/content/view/27/84/lang,English)

International Emergencies Disaster Database: [www.emdat.be](http://www.emdat.be)

International Disaster Response Laws, Rules and Principles Programme. (IFRC)  
[www.ifrc.org/what/disasters/idrl/research/casestudies.asp](http://www.ifrc.org/what/disasters/idrl/research/casestudies.asp)

Law and Legal Issues in International Disaster Response: A Desk Study (IFRC, 2007)  
[www.reliefweb.int/rw/lib.nsf/db900SID/EVOD-78PH4N/\\$FILE/ifrc-06nov.pdf?OpenElement](http://www.reliefweb.int/rw/lib.nsf/db900SID/EVOD-78PH4N/$FILE/ifrc-06nov.pdf?OpenElement)

ReliefWeb: [www.reliefweb.org](http://www.reliefweb.org)

The Global Alliance for Disaster Risk Reduction: Building Safer, Resilient Communities (IFRC)  
[www.ifrc.org/Docs/pubs/disasters/resources/reducing-risks/global-alliance-reduction.pdf](http://www.ifrc.org/Docs/pubs/disasters/resources/reducing-risks/global-alliance-reduction.pdf)

United Nations Disaster Assessment and Coordination Handbook (2006)  
[www.ochaonline.un.org/Coordination/FieldCoordinationSupportSection/UNDACSystem/Handbook/tabid/1432/Default.aspx](http://www.ochaonline.un.org/Coordination/FieldCoordinationSupportSection/UNDACSystem/Handbook/tabid/1432/Default.aspx)

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## AGENCIES WORKING FOR THE PROTECTION OF HUMAN RIGHTS IN DISASTER SITUATIONS

Asian Disaster Preparedness Centre (ADPC)  
[www.adpc.net](http://www.adpc.net)

ADPC supports the promotion of safer communities and sustainable development by implementing programs and projects that reduce the impact of disasters in Asia and the Pacific, including developing and enhancing sustainable institutional disaster risk management capacities, facilitating the dissemination of disaster risk management expertise, and raising awareness and enhancing disaster risk management knowledge and skills.

International Federation of the Red Cross and Red Crescent Societies (IFRC)  
[www.ifrc.org](http://www.ifrc.org)

The IFRC is the world's largest humanitarian organization, providing assistance without discrimination as to nationality, race, religious beliefs, class or political opinions. The IFRC carries out relief operations to assist victims of disasters, and combines this with development work to strengthen the capacities of its member National Societies. The IFRC's work focuses on four key areas: promoting humanitarian values, disaster response, disaster preparedness and health and community care.

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Humanitarian Early Warning Service (HEWSweb)

[www.hewsweb.org](http://www.hewsweb.org)

The Inter-Agency Standing Committee (IASC) HEWSweb is an inter-agency partnership project aimed at establishing a common platform for humanitarian early warning and forecasts for natural hazards.

International Strategy for Disaster Reduction (ISDR)

[www.umisdr.org](http://www.umisdr.org)

ISDR aims to build disaster-resilient communities by promoting increased awareness of the importance of disaster reduction as an integral component of sustainable development. Its areas of operation include increasing awareness about disaster management, promoting disaster reduction policies, stimulating risk-reduction partnerships and improving scientific knowledge about disaster management.

Reliefweb

[www.reliefweb.int](http://www.reliefweb.int)

ReliefWeb is an on-line gateway to information (documents and maps) on humanitarian emergencies and disasters. An independent vehicle of information, designed specifically to assist the international humanitarian community in effective delivery of emergency assistance, it provides timely, reliable and relevant information as events unfold, while emphasizing the coverage of "forgotten emergencies" at the same time.

UN Office for the Coordination of Humanitarian Affairs (UN OCHA)

[www.ochaonline.un.org](http://www.ochaonline.un.org)

OCHA's mission is to mobilize and coordinate effective and principled humanitarian action in partnership with national and international actors in order to:

- alleviate human suffering in disasters and emergencies
- advocate for the rights of people in need
- promote preparedness and prevention
- facilitate sustainable solutions.

The following programs or services are managed by UN OCHA:

Central Emergency Response Fund (CERF)

<http://cerf.un.org>

CERF is a stand-by fund established by the United Nations to enable more timely and reliable humanitarian assistance for persons affected by natural disasters and armed conflicts.

Global Disaster Alert and Coordination System (GDACS)

<http://www.gdacs.org>

GDACS provides near real-time alerts about natural disasters around the world and tools to facilitate response coordination, including media monitoring, map catalogs and a virtual on-site operations coordination centre.

International Search and Rescue Advisory Group (INSARAG)

<http://ochaonline.un.org/Coordination/FieldCoordinationSupportSection/INSARAG/tabid/1436/Default.aspx>

INSARAG is an inter-governmental network that deals with urban search and rescue and related disaster response issues. It provides a platform for information exchange, defines standards for international assistance and develops methodology for international cooperation and coordination in response.

Joint United Nations Environment Programme (UNEP)/Office for the Coordination of Humanitarian Affairs (OCHA) Environment Unit

<http://ochaonline.un.org/ochaunep>

This partnership between UNEP and OCHA serves as an integrated United Nations emergency response mechanism to provide international assistance in countries facing environmental emergencies.

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United Nations Disaster Assessment and Coordination (UNDAC)

<http://ochaonline.un.org/Coordination/FieldCoordinationSupportSection/UNDACSystem/tabid/1414/Default.aspx>

UNDAC is a stand-by team of disaster management professionals who can be deployed within hours of a disaster to carry out rapid assessment of priority needs and to support national and United Nations authorities coordinate relief.

The following United Nations agencies also work in disaster situations (also see agencies listed in the following chapters):

Food and Agriculture Organization of the United Nations (FAO)

[www.fao.org](http://www.fao.org)

FAO provides agricultural assistance in countries affected by conflict or in areas affected by natural disaster in order to minimize disruption to agriculture.

International Organization for Migration (IOM)

[www.iom.org](http://www.iom.org)

IOM assists in the search for practical solutions to migration problems and provides humanitarian assistance to migrants in need, including refugees and internally displaced people (IDPs).

United Nations Development Programme (UNDP)

[www.undp.org](http://www.undp.org)

UNDP works in 166 countries, helping communities to develop their own solutions to global and national development challenges. Its primary areas of activity are democratic governance, poverty reduction, crisis prevention and recovery, environment and energy, and HIV/AIDS.

Office of the United Nations High Commissioner for Refugees (UNHCR)

[www.unhcr.org](http://www.unhcr.org)

UNHCR guarantees the basic human rights of vulnerable persons and seeks to provide shelter, food, water and medical care in the immediate aftermath of any refugee exodus.

United Nations Population Fund (UNFPA)

[www.unfpa.org](http://www.unfpa.org)

UNFPA assists in emergencies and humanitarian crises to enhance medical assistance and prevent mortality and morbidity in areas affected by wars or natural disasters.

World Food Programme (WFP)

[www.wfp.org](http://www.wfp.org)

WFP is a United Nations agency that works in refugee crises, natural disasters and other emergencies, providing food, water and related supplies.

World Health Organization (WHO)

[www.who.org](http://www.who.org)

WHO promotes emergency immunization campaigns against viruses, provides medical supplies for IDPs and refugees, and helps to rehabilitate primary healthcare facilities in emergency situations.

UN-Habitat

[www.unhabitat.org](http://www.unhabitat.org)

UN-HABITAT is the United Nations agency for human settlements. It is mandated to promote socially and environmentally sustainable towns and cities with the goal of providing adequate shelter for all.

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## UNICEF

[www.unicef.org](http://www.unicef.org)

UNICEF is mandated to advocate for the protection of children's rights, to help to meet their basic needs and to expand their opportunities to reach their full potential. UNICEF works in emergency contexts by protecting children's rights and providing life-saving assistance. UNICEF also provides assistance in the areas of health and nutrition, water and sanitation, protection, education and HIV/AIDS.

## United Nations Environment Programme

[www.unep.org](http://www.unep.org)

UNEP is mandated to provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations.

## United Nations Development Fund for Women (UNIFEM)

[www.unifem.org](http://www.unifem.org)

UNIFEM provides financial and technical assistance aimed at fostering women's empowerment and gender equality. UNIFEM works with countries to formulate and implement laws and policies to eliminate gender discrimination and promote gender equality in areas such as land and inheritance rights, decent work for women and ending violence against women. UNIFEM also aims to transform institutions to make them more accountable to women's rights, to strengthen the capacity and voice of women's rights advocates, and to change harmful and discriminatory practices in society.

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### footnotes

<sup>1</sup> Global Protection Cluster Working Group. 2006. *Handbook for the Protection of Internally Displaced Persons* p 16. Available at: [www.humanitarianreform.org/humanitarianreform/Default.aspx?tabid=294](http://www.humanitarianreform.org/humanitarianreform/Default.aspx?tabid=294)

<sup>2</sup> Launched in 1997, the Sphere Project was an attempt to build on the *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief*. The Project developed a Sphere Handbook, which adopted the Humanitarian Charter and laid down operational guidelines for post-disaster relief.

<sup>3</sup> Global Protection Cluster Working Group [2007] *Handbook for the Protection of Internally Placed Persons* p 15.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> It should be noted that signing a treaty imposes no legal obligations on a state. Signature does, however, indicate the state's intention to be bound by the treaty at a later date and creates an obligation to refrain from acts that are inconsistent with the objectives of the treaty.

<sup>7</sup> Depositing an act of accession with the Secretary-General at the United Nations Headquarters in New York also creates legally binding obligations. Accession has the same legal effect as ratification, but does not need to be preceded by signature.

<sup>8</sup> Treaties may enter into force, for example, after a certain number of states parties have ratified or acceded to it.

<sup>9</sup> IDP Handbook (n 1) 15.

<sup>10</sup> Inter-Parliamentary Union and Office of the United Nations High Commissioner for Human Rights. 2007. *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities*, pp 39-48. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol No. 14. Geneva.

<sup>11</sup> Ibid p 31.

<sup>12</sup> Ibid pp 39-48.

<sup>13</sup> Parry, J. and Barker, J.C. 2003. *Parry and Grant Encyclopaedic Dictionary of International Law*, 2nd edition, p 109. Oceana Publications, Inc., New York; IDP handbook (n 1) 15.

<sup>14</sup> Ibid 17, 15.

<sup>15</sup> For example the *Convention on the Prohibition on the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* (1977) and the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects* (1983).

<sup>16</sup> IDP handbook (n 1) 15.

Erica Harper

Human rights are fundamental freedoms and entitlements that may be enjoyed by all people. International human rights law places a duty upon states and their agents<sup>1</sup> to protect, respect and fulfill these rights without discrimination as to age, gender, ethnic origin, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>2</sup> The only exception to this obligation occurs in the context of public emergencies, where authorities may need to suspend or restrict certain freedoms, usually in order to protect other rights. The circumstances in which this is permissible are strictly regulated under the relevant treaties and are discussed in this chapter. Certain rights, however, can never be derogated from, these include: the right to life, protection from torture or cruel, inhumane or degrading treatment or punishment, freedom from slavery or servitude, freedom of movement, the right to a legal personality, protection from *ex post facto* laws, and freedom of conscience, thought and religion.<sup>3</sup> It is important to highlight that under-development or resource constraints do not allow states to avoid their human rights obligations. Although a lack of resources may prevent states from fully realizing certain human rights, they are still required to guarantee the rights that are essential to survival such as food, water, shelter, sanitation and access to medical assistance; and where this is not possible, they are required to request international assistance.<sup>4</sup>

Protecting human rights in the aftermath of natural disasters is a crucial, albeit somewhat neglected area. The focus on evacuating, organizing emergency shelters, distributing food and ensuring that the injured receive medical care has often meant that protection issues have been overlooked. When human rights considerations are not addressed during the initial stages of a humanitarian response, there is a greater risk that violations will not only occur, but continue to occur after the emergency phase is over. Rights violations might include discrimination in aid distribution, exploitation of vulnerable groups such as women, children, persons with disabilities, minorities and the elderly, and denials of basic legal rights as a result of breakdowns in law and order. Incorporating human rights, or adopting a human rights-based approach, does not necessarily mean that priority must shift away from the primary objective of saving lives: it simply requires that human rights be mainstreamed into each stage of the humanitarian relief effort.

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This chapter is divided into three sections: (1) judicial rights, (2) civil and political rights, and (3) economic, social and cultural rights. The principal human rights instrument is the 1948 *Universal Declaration on Human Rights* (UDHR). Although this document is not binding upon states, many of its provisions have been incorporated into international customary law and treaty-based law such as the 1966 *International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights*.

This chapter discusses other international human rights instruments that can be used to guide States Parties and non-States Parties with regard to internationally accepted norms and standards as they tackle the many rights-based issues that arise during natural disasters. Two are especially relevant: (i) the 2006 *IASC Operational Guidelines on Human Rights and Natural Disasters*, which were designed to assist national and international actors in implementing a human rights-based

approach to humanitarian action in disaster settings, and (ii) the 1998 *Guiding Principles on Internal Displacement*,<sup>5</sup> which identify rights and guarantees relevant to the protection of individuals during displacement and return, resettlement and reintegration. Although neither document is legally binding, they are drawn from binding international law and provide important practical guidance for those working in disaster situations. Documents of a less legalistic nature, such as the *Humanitarian Charter and Minimum Standards in Disaster Response* (Sphere Standards), have not been addressed but remain an important source of reference for protecting the rights of persons affected by natural disasters. Readers should be aware that the rights discussed in this chapter are equally relevant to women, persons with disabilities, older people and minorities. In order to minimize repetition, however, the rights referred to will not be re-examined in Chapter 2, which focuses on international jurisprudence developed specifically for such groups.

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## INTERNATIONAL INSTRUMENTS

Universal Declaration of Human Rights (1948)

[www.unhchr.ch/udhr](http://www.unhchr.ch/udhr)

International Covenant on Civil and Political Rights (1966)

[www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm)

International Covenant on Economic, Social and Cultural Rights (1966)

[www.unhchr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhchr.ch/html/menu3/b/a_ceschr.htm)

Convention on the Elimination of All Forms of Discrimination Against Women (1979)

[www.un.org/womenwatch/daw/cedaw](http://www.un.org/womenwatch/daw/cedaw)

Convention Relating to the Status of Refugees (1951)

[www.unhchr.ch/html/menu3/b/o\\_c\\_ref.htm](http://www.unhchr.ch/html/menu3/b/o_c_ref.htm)

Guiding Principles on Internal Displacement (1998)

[www.unhchr.ch/html/menu2/7/b/principles.htm](http://www.unhchr.ch/html/menu2/7/b/principles.htm)

Inter-Agency Standing Committee Operational Guidelines on Human Rights and Natural Disasters (2006)

[www.humanitarianinfo.org/iasc/content/documents/working/OtherDocs/2006\\_IASC\\_NaturalDisasterGuidelines.pdf](http://www.humanitarianinfo.org/iasc/content/documents/working/OtherDocs/2006_IASC_NaturalDisasterGuidelines.pdf)

United Nations Guidelines for the Prevention of Juvenile Delinquency (1990)

[www.unhchr.ch/html/menu3/b/h\\_comp47.htm](http://www.unhchr.ch/html/menu3/b/h_comp47.htm)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

[www1.umn.edu/humanrts/instree/j1unrjdl.htm](http://www1.umn.edu/humanrts/instree/j1unrjdl.htm)

Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (1984)

[www.unhchr.ch/html/menu3/b/h\\_cat39.htm](http://www.unhchr.ch/html/menu3/b/h_cat39.htm)

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## Part 1: Protecting Judicial Rights

### 1.1 The Right to Equality before the Law

The UDHR<sup>6</sup> and the 1996 *International Covenant on Civil and Political Rights* (ICCPR)<sup>7</sup> provide for equality before the law and equal protection under the law. Legal equality means that persons cannot be discriminated against on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status in terms of their treatment under the law. In practice, this places an obligation on States Parties to ensure that all groups are subject to the same laws and have the same legal rights. Exceptions might occur where indigenous persons are subject to specific laws that were enacted to protect traditional land rights or use. The legal rights of vulnerable groups such as women, minorities, older people, and persons with disabilities are specifically protected under the relevant conventions (see Chapter 2).<sup>8</sup>

### 1.2 The Right to a Legal Personality

The ICCPR<sup>9</sup> and UDHR<sup>10</sup> provide every person with the right to legal capacity.<sup>11</sup> Legal capacity allows people to enjoy rights and be subject to duties and obligations in accordance with the law. Generally, individuals must have legal capacity to enter into contracts such as marriage, exercise legal rights, be responsible for violations of the law and appear before courts. Depending upon the jurisdiction, children and persons with severe disabilities may be regarded as being without legal capacity and in need of representation, for example by guardians. This is particularly relevant in natural disaster situations because minors may have inherited assets or property, or need to appear before the courts to confirm a guardianship application. The appointment of guardians for minors is discussed in Chapter 3.

#### Norwegian Refugee Council (NRC) assisting internally-displaced persons (IDPs) obtain national identity cards following the Pakistani earthquake

The entitlement to documents is rooted in the right of every human being to be recognized as a person before the law.<sup>12</sup> GPID Principle 20 explicitly correlates this right to an obligation on the part of authorities to issue to women and men equally all documents necessary for the enjoyment and exercise of their legal rights.

IDPs often find themselves without documentation, either because they never possessed documentation or because such documentation was lost during the conflict or disaster. In Pakistan, the national identity card (CNIC) plays a vital role in enabling beneficiaries to access entitlements from government and non-government entities. From the perspective of the service or benefit provider, the CNIC is a precondition for beneficiary identification, eligibility assessments and for keeping records updated; it cannot be substituted. The CNIC also allows beneficiaries to open bank accounts, where the cash portion of benefits and entitlements are usually deposited. Pakistan earthquake IDPs without a CNIC hence risked being excluded from government-sponsored assistance schemes such as compensation for death and personal injury, livelihood cash grants, housing reconstruction compensation and distribution of land to the landless.

Laws, directives and procedures intended to secure and regulate the duties of the state and individual with respect to identity documents are often not adapted to situations of forced displacement. This can prevent IDPs from obtaining personal documents or renewing lost or invalid documents through regular procedures.

In Pakistan, the process for obtaining a CNIC includes:

- gathering supporting documents for the application;
- visiting the nearest National Database and Registration Authority (NADRA) office to obtain biological and other recorded data and an application form;
- taking the application form to an elected representative for attestation;
- submitting the completed application form and payment of a prescribed fee; and
- collecting the CNIC, usually after 30 days.

See also: 3.7 The Right to Personal Documentation

Given the complexity and length of the process, NRC partnered with NADRA with a view to providing a one-stop service for IDPs that would facilitate their access to documentation and hence the assistance to which they were entitled. NRC facilitated this by:

- bringing NADRA, elected representatives and IDPs to a single location, usually close to the IDPs place of residence;
- assisting NADRA with logistics and equipment for mobile visits;
- providing clerical assistance for IDPs preparing applications, obtaining attestations, and attaching supporting documents;
- providing payment of fees on behalf of marginalized IDPs;
- providing additional support for IDPs who were unable to produce supporting documents; such cases would be registered after NRC obtained the supporting documents on behalf of the IDP;
- preparing a list of CNIC applications submitted during the mobile operation and following up during the CNIC processing period; and
- obtaining processed CNICs from the NADRA office and delivering them to IDPs.

Compared with assisting IDPs on a one-to-one basis, this initiative dramatically increased the number of CNICs obtained by IDPs: as of April 2008, NRC had obtained 10,292 CNICs from NADRA on behalf of Pakistan earthquake IDPs.

See also: 3.7 The Right to Personal Documentation

### 1.3 The Right to a Remedy

The UDHR guarantees all persons the right to an effective remedy by competent national tribunals for violations of law.<sup>13</sup> This means that even in situations where judicial capacity, courts or police services are limited or not functioning, people are still entitled to a remedy for rights violations, even if not immediately. In the context of natural disasters, the right to a remedy requires effective collection of evidence, record keeping and a swift return to law and order.<sup>14</sup>

#### *Are victims of natural disasters entitled to a remedy for damage to their homes and properties?*

Victims of natural disasters are unlikely to be entitled to a remedy for their losses under national laws. The most common sources of compensation or reparation are personal insurance policies or humanitarian aid programs. Losses incurred through looting, however, are likely to be handled by the formal justice system. One complication, as was found in the aftermath of hurricane Katrina in 2005, is that looting is often widespread and occurs at a time when law enforcement is compromised or non-operational. In such cases, a major stumbling block can be lack of evidence and the absence of a properly documented case.

#### *Is it possible to arrest or detain persons who attempt to enter dangerous areas, even when this is not prohibited by law?*

Article 4 of the ICCPR holds that in times of a proclaimed public emergency, States Parties may derogate from certain obligations, including protection against arbitrary arrest and detention. Such derogations must be limited to the extent strictly required by the exigencies of the emergency and must not involve discrimination on the grounds of race, color, sex, language, religion or social origin. Arrests and detentions, even when they are not based on law, will therefore not constitute a breach of treaty obligations provided that there is a clear link between the measures taken and the need to respond to the emergency situation. Examples might include arresting persons who attempt to enter dangerous areas or return to their homes, or who are suspected of behavior that might trigger a secondary disaster.

#### *What if the circumstances of the disaster prevent such guarantees from being upheld?*

In disaster situations, courts and correctional facilities may have been destroyed; judges, police officers and other law-enforcement personnel may have been killed, missing or be otherwise unable to attend to their duties. In such situations the protections guaranteed to persons deprived of their liberty or standing trial under the ICCPR may be

difficult to fulfill: for example there may not be sufficient space in operational detention facilities to separate persons arrested from those who have been convicted of crimes, and trials may be delayed because courts are not operational. In such situations, authorities will need to balance the need to maintain law and order with the need to protect human rights to the greatest extent possible. However, if the exigencies of the emergency require that persons deprived of their liberty cannot be afforded such rights, derogations will not violate a state party's responsibilities through the operation of Article 4. It is for this reason that a priority in disaster situations must be the restoration of even rudimentary law and order capacity, including prompt judicial review of the cases of incarcerated people.

#### 1.4 Protection Against *ex post facto* Laws

The UDHR<sup>15</sup> and ICCPR<sup>16</sup> protect people from *ex post facto* laws. This means that no person should be found guilty of a criminal offence that did not constitute an offence under national or international law at the time it was committed. Further, individuals are protected from laws which subject them to harsher penalties than those that were applicable at the time the offence was committed.<sup>17</sup>

#### 1.5 Protection Against Arbitrary Arrest and Detention

The ICCPR<sup>18</sup> and UDHR<sup>19</sup> protect people from arbitrary arrest or detention. In practice, this means that a person can only be deprived of liberty in accordance with rules and procedures established by law. The 1998 GPID specifically protect IDPs, including those displaced by natural disasters, from arbitrary arrest and detention. To give effect to this right, IDPs should in principle not be confined to a camp. Where this is absolutely necessary, such confinement should not last longer than required under the circumstances.<sup>20</sup> Such circumstances might include a risk to public health or safety in the aftermath of a disaster. As soon as such dangers have passed, IDPs should be free to remove themselves from a camp, either temporarily or permanently. Such rights are consistent with the freedom of movement and residence clauses guaranteed in the UDHR<sup>21</sup> and ICCPR<sup>22</sup> (see Chapter 4).<sup>23</sup>

#### 1.6 The Rights of Persons Deprived of their Liberty

The ICCPR<sup>24</sup> provides certain protections to persons who are arrested and deprived of their liberty. These include:

- being informed of the reasons for their arrest and charges brought against them;
- a proceeding in court to determine whether the detention is lawful; and
- a trial within a reasonable period of time.

The ICCPR further holds that non-convicted persons should be segregated from convicted persons, save in exceptional circumstances, and that minors should be segregated from adults and accorded treatment appropriate to their age and status.<sup>25</sup> Persons with disabilities deprived of their liberty are entitled to guarantees in accordance with international human rights law and are to be treated in accordance with the objectives and principles laid out in the 2006 *Convention on the Rights of Persons with Disabilities*, including the provision of reasonable accommodation (see Chapter 2).<sup>26</sup>

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#### 1.7 The Right to Protection against Cruel, Inhumane or Degrading Treatment

The ICCPR<sup>27</sup> and UDHR<sup>28</sup> protect all people against torture and cruel, inhumane or degrading treatment or punishment. It should be noted that the ICCPR does not permit any derogation from this provision in times of public emergency. This right is particularly relevant in situations of natural disaster where law and order and the capacity of police services may be compromised. Particular dangers include police detention and other correctional facilities that may be ill-equipped, understaffed and under pressure to cope with increased caseloads.<sup>29</sup> It is also important to ensure that emergency housing facilities, particularly where restrictions on movement are in place, have adequate protection measures for vulnerable groups such as unaccompanied women and children, older people, and persons with disabilities and minorities, who are more susceptible to exploitation and abuse.

## 1.8 The Right to a Fair Trial

The UDHR and ICCPR guarantee all persons the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, and the right to be presumed innocent.<sup>30</sup> The ICCPR lists further guarantees for persons who have been charged with an offence, including the right to:

- prompt information in a language the person understands concerning the nature and cause of the charges;
- adequate time to prepare a defense with counsel selected by the accused person;
- trial without undue delay;
- be present at the trial and to be defended in person or through counsel;
- be provided with legal counsel if such cannot be afforded;
- examine witnesses, either directly or through counsel;
- the assistance of an interpreter if required; and
- freedom from compulsion to testify against oneself or confess guilt.<sup>31</sup>

## 1.9 The Right to Judicial Review

The ICCPR guarantees every person convicted of a crime the right to have their conviction and sentence reviewed by a higher tribunal according to law.<sup>32</sup> This is particularly relevant in disaster situations where large numbers of cases may require that authorities introduce emergency measures to expedite trials or judicial proceedings, for example by referring cases to an administrative or specialist body. As a rule, criminal matters such as secondary occupation, looting or trespass should not be referred outside the judiciary; where this is unavoidable, the right to judicial review should be upheld.<sup>33</sup>

### Raising Community Legal Awareness in Post-Tsunami Aceh, Indonesia

In post-tsunami Aceh, IDLO, in cooperation with the shari'a and state courts, launched a project designed to help people to understand and enforce their legal rights, particularly with respect to tsunami-related disputes. The project involved the publication of a weekly column in the *Serambi* newspaper entitled *Anda dan Hukum dalam Keseharian* (The Law and You in Practice). Through such articles, IDLO profiled different judicial institutions, examined topical legal issues and ran stories on individuals who had resolved cases through the formal justice system. Titles included:

- Inheritance and Guardianship Law in Post-Tsunami Aceh
- The General Courts: Their Role and Responsibilities in Post-Tsunami Aceh
- Understanding Post-Tsunami Housing Assistance for Renters
- Provision of House Repair Grants for Earthquake and Tsunami-Affected Home Owners
- Free Legal Aid from the Legal Aid Foundation *Lembaga Bantuan Hukum*
- Post-Tsunami Legal Cases: Legal Settlement of Guardianship and Inheritance Disputes
- *The Mahkamah Syar'iyah – Aceh: How to File a Case with the Court*
- The Legal Bureau of the Agency for Rehabilitation and Reconstruction Aceh-Nias (BRR)

Topics were selected on the basis of consultation with local legal stakeholders and requests from civil society groups. It is important to note that this project represented the only organized system for transmitting legal information to the public on a regular basis. A related project involved the publication and dissemination of the following practical information resources:

- Guidebook on Land Inheritance and Guardianship in Post-Tsunami Aceh
- 10 Frequently Asked Questions on Land Law in Post-Tsunami Aceh
- 10 Frequently Asked Questions on Inheritance Law in Post-Tsunami Aceh
- 10 Frequently Asked Questions on Guardianship Law in Post-Tsunami Aceh
- 20 Frequently Asked Questions on the Guardianship of Children without Parental Care in Aceh

These publications in English and Indonesian detailed the legal principles, processes and institutions relevant to the resolution of tsunami-related disputes. They were designed to promote awareness and understanding regarding the applicable law, how to access the legal system, and the rights of women and children in judicial processes. Over 4,000 publications were distributed to organizations involved in post-tsunami reconstruction and rehabilitation, legal professionals, courts, government officials, and in tsunami-affected villages. Copies of all articles and other resources in English and Indonesian can be downloaded from [www.idlo.int/bandaacehawariness.htm](http://www.idlo.int/bandaacehawariness.htm) and [www.idlo.int/English/External/IPXpublications-su.asp](http://www.idlo.int/English/External/IPXpublications-su.asp).

### **Establishing a Children's Court in Post-Tsunami Aceh, Indonesia**

Before the 2004 tsunami, children in the Indonesian province of Aceh stood trial alongside adults in criminal proceedings. Humanitarian assistance following the disaster, however, facilitated the establishment of a court specifically for children. This new court, built with the support of the United Nations Children's Fund (UNICEF), has special features to enhance protection of the rights and wellbeing of children. For example, court sessions for juvenile offenders are closed to the public, and children are accompanied by a specially trained correctional institutions worker, a lawyer, and their parents. The Children's Court was also designed with the special needs and vulnerabilities of children in mind: judges and lawyers wear regular clothing as opposed to official gowns, the court is arranged with small desks and chairs, and the court waiting area is supplied with children's books and toys. To ensure that the legal rights of children are upheld and that children are incarcerated only as a last resort, UNICEF also trained judges, prosecutors and police officers, and assisted in the formulation of a new legal code to address the needs of vulnerable children. Desks for women and children have been introduced in police stations in Aceh, with the objective of identifying and responding to cases of abuse, exploitation and trafficking.<sup>34</sup>

### **Legal Aid for Populations Affected by the Earthquake in Pakistan**

Following the 2005 Pakistan earthquake, the Asian Development Bank, the Norwegian Refugee Council (NRC) and the Earthquake Rehabilitation and Reconstruction Agency (ERRA) collaborated to provide legal and administrative assistance for displaced people. The project established legal assistance centers in 18 *tehsils* (administrative district sub-divisions) in Azad Jammu Kashmir and Northwest Frontier Province, each staffed by two or three legal officers. The centers provide earthquake victims with legal advice and in-court representation on a range of issues including landlord-tenant disputes, repossession of property, partition and demarcation disputes, secession and guardianship matters, damage suits and family law matters. Clients are also provided with administrative assistance to access compensation and benefits schemes including landlessness compensation, employment-related compensation, and assistance in replacing personal documentation. Project staff cooperate with the judicial and administrative institutions responsible for issues relating to access to justice and maladministration. Through legislative analysis and the monitoring of judicial and administrative processes, the project aims to identify issues relevant to the protection of earthquake victims and propose appropriate reforms to government authorities.<sup>35</sup>

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## CHECKLIST FOR AGENCIES

### Agencies might establish:

- community legal education programs to disseminate information on disaster-related issues such as personal documentation, land, guardianship and inheritance, using radio, print media, brochures and public gatherings to disseminate information;
- research programs to collect information on legal issues relevant to disasters such as the replacement of personal documentation, land law policy, inheritance laws and guardianship laws; such information should be disseminated in practical and user-friendly formats in all languages used in the area;
- research into the role and relevance of customary legal systems and dispute resolution, taking particular note of the treatment of women and minorities under such systems;
- mobile legal clinics to provide legal information and counseling, technical legal advice and assistance with accessing humanitarian aid or compensation programs;
- legal aid clinics, preferably locally-run, focusing on protecting the rights of women and other vulnerable groups;
- training programs for newly appointed justice-sector workers such as judges, paralegals, lawyers, public defenders and law graduates, particularly in disaster-related issues and in human rights-based approaches;
- programs for the physical re-establishment of law and order, including the rehabilitation of courts and correctional facilities, replacement of legislation and other practical materials, and purchase of office equipment and computers;
- technical assistance programs to facilitate regulatory and legislative reform to bring legal frameworks into compatibility with human rights standards;
- programs of technical assistance, where appropriate, to assist the development of quasi-judicial fora to process land and housing restitution claims;
- monitoring of programs to ensure that legal and quasi-legal proceedings uphold the legal rights of users, particularly where proceedings are expedited or outsourced to a quasi-legal administrative tribunal;
- technical assistance programs to assist in the development of emergency laws and decrees that ensure a human rights-based approach; and
- programs to publicize emergency laws and decrees regulating freedom of movement such as no-go zones and curfews, particularly in temporary shelters.

### Agencies might lobby for:

- compulsory joint land registration and compulsory registration of assets inherited or owned by minors and women in their own names;
- legislative or regulatory reform to protect the land rights of indigenous groups;
- legislative or regulatory reform to facilitate equality in the inheritance rights of women and children;
- emergency minimum standards on the rights of persons incarcerated, and frequent monitoring; and
- emergency provisions to facilitate the judicial review of persons incarcerated.

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## USEFUL LINKS AND PUBLICATIONS

Basic Principles on the Independence of the Judiciary (1985)

[www.unhchr.ch/html/menu3/b/h\\_comp50.htm](http://www.unhchr.ch/html/menu3/b/h_comp50.htm)

Basic Principles on the Role of Lawyers (1990)

[www.unhchr.ch/html/menu3/b/h\\_comp44.htm](http://www.unhchr.ch/html/menu3/b/h_comp44.htm)

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Human Rights Law (2005)

[www.huachen.org/english/law/remedy.htm](http://www.huachen.org/english/law/remedy.htm)

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)

[www.unhchr.ch/html/menu3/b/h\\_comp36.htm](http://www.unhchr.ch/html/menu3/b/h_comp36.htm)

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

[www.unhchr.ch/html/menu3/b/h\\_comp49.htm](http://www.unhchr.ch/html/menu3/b/h_comp49.htm)

ECOSOC36 Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (2005)

[www.un.org/docs/ecosoc/documents.asp?id=95](http://www.un.org/docs/ecosoc/documents.asp?id=95)

ECOSOC Guidelines for Action on Children in the Criminal Justice System (1997)

[www.huachen.org/english/law/pdf/system.pdf](http://www.huachen.org/english/law/pdf/system.pdf)

Guidelines on the Role of Prosecutors (1990)

[www.unhchr.ch/html/menu3/b/h\\_comp45.htm](http://www.unhchr.ch/html/menu3/b/h_comp45.htm)

Handbook on Information, Counseling and Legal Assistance (Norwegian Refugee Council 2004)

[www.nrc.no](http://www.nrc.no)

Housing and Property Restitution for Refugees and Displaced Persons: Implementing the Pinheiro Principles (FAO, IMDC,37 OCHA,38 UN-HABITAT,39 UNHCR 2007)

[www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf)

Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989)

[www.unhchr.ch/html/menu3/b/54.htm](http://www.unhchr.ch/html/menu3/b/54.htm)

Reports of the Special Rapporteur on Independence of Judges and Lawyers

[www.ohchr.org/english/issues/judiciary/index.htm](http://www.ohchr.org/english/issues/judiciary/index.htm)

United Nations Minimum Rules for Non-Custodial Measures (1990)

[www.unhchr.ch/html/menu3/b/h\\_comp46.htm](http://www.unhchr.ch/html/menu3/b/h_comp46.htm)

United Nations Guidelines for the Prevention of Juvenile Delinquency (1990)

[www.unhchr.ch/html/menu3/b/h\\_comp47.htm](http://www.unhchr.ch/html/menu3/b/h_comp47.htm)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

[www1.umn.edu/humanrts/instree/j1unrjdl.htm](http://www1.umn.edu/humanrts/instree/j1unrjdl.htm)

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## AGENCIES WORKING FOR THE PROTECTION OF JUDICIAL RIGHTS IN DISASTER SITUATIONS

IDLO

[www.idlo.int](http://www.idlo.int)

IDLO's post-disaster legal assistance program was developed to address a gap in the current humanitarian relief and recovery framework through specific in-country activities and ongoing policy research. *The Post-Tsunami Legal Assistance Initiative for Indonesia* (2005-2007) and Sri Lanka (2006-2007) and the *Project Supporting the Development of the Justice Sector in Aceh* (2007-2008) aimed to facilitate ordered and timely reconstruction, enhance the protection of vulnerable groups (especially women and children) and promote sustainable growth. Activities included the review of legal frameworks; the development of guidance and procedural manuals; legal aid, assistance and information for survivors (particularly women, children and minority groups); raising community legal awareness; and the provision of support to formal and informal legal and judicial institutions to assist them in resolving disputes more effectively and transparently. Broader efforts include the Manual on International Law and Standards Applicable in Natural Disaster Situations, participation in dialogue processes with key stakeholders, training and ongoing research.

Norwegian Refugee Council

[www.nrc.no](http://www.nrc.no)

The NRC's Information, Counseling and Legal Assistance (ICLA) program aims to help IDPs, refugees and returnees to make free and informed decisions by providing information and free legal assistance to remove legal and other obstacles. Recent initiatives in disaster situations have focused on the recovery/replacement of personal documentation, practical legal skills training and legal advice.

United Nations Development Programme

[www.undp.org](http://www.undp.org)

UNDP's Bureau for Crisis Prevention and Recovery works in crisis situations, which include societies affected by natural disasters, to transform justice and security institutions into more effective, legitimate and transparent structures that support equitable and rights-respecting states which are accountable to their citizens, and uphold the rule of law. UNDP provides technical assistance in the areas of political dialogue on justice and security topics, capacity-building for accountable, transparent and human rights-based institutions, police reform, and training in human rights and the rule of law.

World Bank Justice for the Poor Program

[www.worldbank.org/justiceforthe poor](http://www.worldbank.org/justiceforthe poor)

Justice for the Poor (J4P) is a global research and development program aimed at informing, designing and supporting pro-poor approaches to justice reform. J4P reflects an understanding of the need for demand-oriented, community-driven approach to justice and governance reform, which values the perspectives of the users, particularly poor and marginalized people such as women, young people and ethnic minorities. J4P operates in several countries, including parts of Indonesia affected by the tsunami.

Avocats Sans Frontières

[www.asf.be](http://www.asf.be)

ASF is an international non-governmental organization (INGO) that works to protect the civil, political, economic, social, and cultural rights of vulnerable groups and individuals. ASF works in the areas of advocacy, legal representation, international justice, and country-specific programs that include countries affected by disaster.

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## footnotes

- 1 Including political, military and public sector actors.
- 2 Global Protection Cluster Working Group. 2006. *Handbook for the Protection of Internally Displaced Persons*, pp 16 and 19. Available at: <http://www.humanitarianreform.org/humanitarianreform/Default.aspx?tabid=294>
- 3 Ibid p 20.
- 4 Ibid p 19.
- 5 IASC Principle A.1.5 states that persons affected by natural disasters are covered by the 1998 Guiding Principles on Internal Displacement (GPID).
- 6 Art. 7.
- 7 Art. 26.
- 8 Regional treaties that uphold the right to equality before the law include the 1992 American Convention on Human Rights (ACHR), Art. 24; ACHPR, Art. 3; and Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (PACHPRA, 1998), Art. 8.
- 9 Art. 16.
- 10 Art. 6.
- 11 Regional treaties that uphold the right to a legal personality include the ACHR, Art. 3; and ACHPR, Art. 5.
- 12 UDHR, Art. 6; ICCPR, Art. 16; and CERD, Art. 5.
- 13 Art. 8.
- 14 Regional treaties that uphold the right to a remedy include the ACHR, Art. 25; and the 1950 European Convention on Protection of Human Rights and Fundamental Freedoms (ECHR), Art. 13.
- 15 Art. 11 (2).
- 16 Art. 15.
- 17 Regional treaties that protect against *ex post facto* laws include the ACHR, Art. 9; ACHPR, Art. 7; and ECHR, Art. 7.
- 18 Art. 9.
- 19 Art. 9.
- 20 Principle 12.
- 21 Art. 13.
- 22 Art. 12.
- 23 Regional treaties that protect against arbitrary arrest and detention include the ACHR, Art. 7; ACHPR, Art. 6; and ECHR, Art. 5.
- 24 Art. 9 and 10.
- 25 Regional treaties that protect the rights of persons deprived of their liberty include the ACHR, Art. 5 and 7; and ECHR, Art. 5.
- 26 Art. 14.2.
- 27 Art. 7.
- 28 Art. 5.
- 29 Regional treaties that protect against cruel, inhumane and degrading treatment include the ACHR, Art. 5; ECHR, Art. 3; and ACHPR, Art. 5.
- 30 ICCPR, Art. 14; UDHR, Art. 10 and 11. Note that the ICCPR lists some exceptions to the public nature of the trial such as national security, public order or privacy issues.
- 31 Art. 14. Regional treaties that uphold the right to a fair trial include the ACHR, Art. 8; ECHR, Art. 6; and ACHPR, Art. 7).
- 32 Art. 14 (5).
- 33 Regional treaties that uphold the right to judicial review include the ACHR, Art. 8.
- 34 From: Nettleton, S. 2007. UNICEF helps build a child-friendly justice system in post-tsunami Aceh. The Children's Court in Aceh. IDLO, *Serambi* newspaper article no. 2417. Available at: [www.unicef.org/infobycountry/indonesia\\_42219.html](http://www.unicef.org/infobycountry/indonesia_42219.html)
- 35 From: Norwegian Refugee Council (NRC) *Earthquake victims get legal aid*. Available at: [www.nrc.no/?did=9216687](http://www.nrc.no/?did=9216687)
- 36 Economic and Social Council of the United Nations.
- 37 Internal Displacement Monitoring Centre.
- 38 Office for the Coordination of Humanitarian Affairs.
- 39 United Nations Human Settlements Programme.

## Part 2: Protecting Civil and Political Rights

### 2.1 The Right to Equality and Freedom from Discrimination

The ICCPR,<sup>40</sup> UDHR<sup>41</sup> and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>42</sup> provide that the rights contained in each instrument are to be applied without distinction as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In the context of natural disasters, the rights to equality and freedom from discrimination become most relevant in humanitarian aid programs such as food distribution and housing/resettlement schemes. Gender-based discrimination is discussed in detail in Chapter 2.<sup>43</sup> Ensuring parity in aid distribution becomes more difficult when there is a multitude of humanitarian actors delivering a single product, for example houses, in different communities. In the Aceh Province of Indonesia, this was partly resolved by the government setting minimum standards for housing reconstruction, which all agencies were required to follow.

*Humanitarian action should be based on assessed need and provided to all persons affected by the natural disaster without adverse distinction of any kind other than that of different needs.*

IASC principle B.1.2

*What can national authorities and aid agencies do in situations where customary practices discriminate against women or minority groups?*

In many developing country contexts, societies will be regulated by national laws and also by customary or religious rules and practices. In post-tsunami Aceh, for example, it was common practice for married men to register themselves as landowners, even when such land was jointly owned with their wives. This was a result of the operation of cultural norms whereby men generally handled paperwork and whereby it was considered respectful to register property in the name of male breadwinners. In some communities, customary rules dictated that women were not permitted to own property at all. In response, the Agency for Rehabilitation and Reconstruction Aceh-Nias required that couples provided with new land parcels jointly register such land.<sup>44</sup> IDLO also disseminated materials such as booklets and posters (shown below) that highlighted the benefits of joint titling and women's right to own property under national and Islamic laws.

Posters can be downloaded from [www.idlo.int/English/External/IPAcehPub.asp](http://www.idlo.int/English/External/IPAcehPub.asp)



### 2.2 Freedom from Servitude and other Forms of Violence and Abuse

The ICCPR<sup>45</sup> and UDHR<sup>46</sup> protect all persons from slavery and servitude. The ICCPR goes further to protect against forced labor.<sup>47</sup> It should be noted that this right cannot be derogated from, even in situations of natural disaster.<sup>48</sup>

### 2.3 The Right to Privacy

The ICCPR and UDHR<sup>49</sup> protect all persons from unlawful or arbitrary interference with their privacy, family, home or correspondence.<sup>50</sup> This is relevant to humanitarian actors who have access to personal information, for example those involved in registration programs and the administration of emergency housing shelters and resettlement schemes. In these situations, all records and communications must be guarded, particularly those concerning vulnerable groups such as unaccompanied women and minors.<sup>51</sup>

### 2.4 The Right to Freedom of Conscience, Thought and Expression

The ICCPR<sup>52</sup> and UDHR protect the right of all persons to hold opinions without interference and to seek, receive and impart information. In disaster situations, these provisions protect the right of an individual to express opinions about the disaster, including dissatisfaction with relief efforts and measures taken to prevent the emergency. The ICCPR notes, however, that these rights may be subject to restrictions for the protection of national security, public order or public health. In certain cases, therefore, information that might cause public hysteria, endanger lives or place individuals at risk may need to be restricted.<sup>53</sup>

### 2.5 The Right to Freedom of Religion

The ICCPR<sup>54</sup> and UDHR<sup>55</sup> protect the right of all persons to freedom of religion. This includes the right to change one's religion or beliefs and to manifest their religious beliefs in practice, worship or teaching. The ICCPR notes that parents and legal guardians have the liberty to direct the religious and moral education of their children in conformity with their own convictions.<sup>56</sup>

#### *What steps can agencies and national authorities take to guard against rights abuses in the aftermath of natural disasters?*

In disaster situations, vulnerable groups – particularly unaccompanied women and children – are at increased risk of exploitation and abuse in the form of trafficking, sexual enslavement, bonded labor, or forced prostitution, each of which can be classified as a form of servitude. Such vulnerability is recognized in IASC Principle A.3.3, which states that "...appropriate measures should be taken as early and as quickly as possible to protect affected populations, in particular women and boy and girl children, against trafficking, forced labor and contemporary forms of slavery such as sale into marriage, forced prostitution, and sexual exploitation". The principles recommend that mechanisms appropriate to addressing violence and other human rights violations, and relevant guarantees under international humanitarian law, be quickly established. In particular, the deployment of law enforcement personnel to areas at risk of or experiencing a breakdown of law and order – including sexual and gender-based violence, robberies, or looting – should be requested (A.3.2). Humanitarian actors should also be aware that in times of crisis abuse in the home such as domestic violence, sexual abuse and marital rape can increase significantly. Agencies can take steps such as monitoring families at risk, providing legal aid services catering for women and children, and initiating microfinance and vocational training programs to facilitate self-sufficiency and community education programs highlighting the dangers and illegality of intra-family abuse.

#### *How might the right to religious freedom be relevant in natural disaster situations?*

In the context of natural disasters, the IASC guidelines provide that "...religious traditions should be respected, as appropriate, when planning and implementing humanitarian assistance, in particular in the context of food assistance, health care services, and living and sanitary arrangements" (D.4.2). Examples include ensuring that ration packs and emergency food supplies are consistent with religious obligations – particularly in the case of Muslim, Hindu and Jewish populations – and that living quarters provide minimum standards of privacy; in most situations, unrelated men and women should be segregated. The IASC guidelines also state that "...opportunity should be provided for the exercise of religious faith in a manner that respects the rights and beliefs of others and does not incite discrimination, hostility or violence" (D.4.3). In this regard, humanitarian actors may consider ensuring that emergency shelters, resettlement areas and workplaces have suitable prayer facilities and that working hours, training and community meetings respect prayer times and religious holidays.

## 2.6 The Right to Freedom of Assembly

Freedom of assembly protects the right of persons to associate peacefully with or organize groups, gatherings or organizations, including political parties, special interest groups and unions. The ICCPR states that no restrictions should be placed on the exercise of this right other than those imposed in conformity with national laws and necessary to protect national security, public order, public health and morals and the freedoms of others.<sup>57</sup> Freedom of assembly is also recognized under the UDHR.<sup>58</sup> In disaster situations, freedom of assembly would protect the rights of persons to form, for example, protest, or victims advocacy groups. IASC Principle D.4.1 states:

“Mechanisms should be established to enable communities to give feedback and raise complaints or grievances on the disaster relief, recovery and reconstruction response ... Persons affected by the natural disaster should be protected against adverse reaction for exchanging information or expressing their opinions and concerns regarding disaster relief, recovery and reconstruction efforts. Opportunity should be provided for affected persons to conduct peaceful assemblies or form associations for this purpose.”

## 2.7 The Right to Participation in Government

The ICCPR<sup>59</sup> and UDHR<sup>60</sup> confirm the right of citizens to participate in the conduct of public affairs and government,<sup>61</sup> either directly or through freely chosen representatives.<sup>62</sup>

**2.8 The Right to Property:** See Chapter 4.

**2.9 The Right to Freedom of Movement and Residence:** See Chapter 4.

**2.10 Protection from Internal Displacement:** See Chapter 4.

**2.11 The Rights of Children:** See Chapter 3.

### *How might the right to participate in government be relevant in disaster situations?*

If a national, regional or local electoral process takes place in the aftermath of a disaster, particularly where there is large-scale displacement, there is a risk that people may not be able to exercise their right to vote. IASC Principle D.5.1 recommends that measures be taken to ensure that affected populations can exercise their right to vote and adds that “... such measures may include voter registration and arrangements for absentee voting”.

### *Can the right to participate in government be used to promote the participation of civil society in development-related decision-making?*

Although neither the ICCPR nor the UDHR provide a specific right to participate in development decision-making, the provisions do support the inclusion of civil society in “public affairs”, which might include disaster response. Participation by an affected population in rehabilitation efforts is strongly recommended, however, for a number of reasons: (i) popular consultation will help to ensure that reconstruction plans are viable and responsive to the needs of beneficiaries; (ii) incorporating communities into decision-making processes, even where a consensus cannot be reached or the desires of all people cannot be satisfied, will guard against future resistance, protests and spoilers; and (iii) as stated in IASC principle D.4.1: “... efforts should be made to ensure that women and persons with special needs – e.g. children, older persons, persons with disabilities, single-headed households, and members of religious and ethnic minority groups or indigenous persons – are specially consulted and can participate in all aspects of the disaster response”.

### The ICCPR Complaints Mechanism

The Optional Protocol to the ICCPR was adopted by the United Nations General Assembly on 16 December 1966; it entered into force on 23 March 1976. The protocol establishes the Human Rights Committee, which was formed to monitor the implementation of the Covenant and the Protocols to the Covenant by States Parties. Pursuant to Article 40 of the ICCPR, States Parties are required to submit reports every five years on (i) the measures they have adopted that give effect to the rights recognized in the ICCPR and (ii) on the progress made in the enjoyment of those rights. The committee then communicates a summary of its main concerns and makes suggestions and recommendations to the States Parties concerned. Where States Parties have ratified the Optional Protocol, individuals are allowed to submit complaints regarding violations of the rights guaranteed under the ICCPR to the Human Rights Committee. Pursuant to Article 4.2 of the Optional Protocol, States Parties are required to submit to the committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that state.<sup>63</sup>

#### footnotes

**40** Art. 2.1.

**41** Art. 2.

**42** Art. 2.2.

**43** Regional treaties that uphold the right to equality and freedom from discrimination include the ACHR, Art. 1.1; ECHR, Art. 14; and ACHPR, Art. 2 and 19.

**44** BRR Policy Press Statement on Joint Titling – BRR/BPN Joint Agreement, Banda Aceh, 19 September 2006.

**45** Art. 8.

**46** Art. 4.

**47** Art. 8; there are some exceptions such as military service, imprisonment and, in times of emergency, threatening the life of the community.

**48** Regional treaties that protect persons from servitude include the ACHR, Art. 6; ECHR, Art. 4; and ACHPR, Art. 5.

**49** Art 12.

**50** Art. 17.

**51** Regional treaties that uphold the right to privacy include the ACHR, Art. 11; and ECHR, Art. 8.

**52** Art. 19.

**53** Regional treaties that uphold the right to freedom of conscious, thought and expression include the ACHR, Art. 13; ECHR, Art. 10; and ACHPR, Art. 8 and 9.

**54** Art. 18.

**55** Art. 18.

**56** Art. 18. Regional treaties that uphold the right to freedom of religion include the ACHR, Art. 12; and ECHR, Art. 9.

**57** Art. 21. Regional treaties that uphold the right to freedom of assembly include the ACHR, Art. 15; ECHR, Art. 11; and ACHPR, Art 11.

**58** Art. 20.

**59** Art. 25.

**60** Art. 21.

**61** The ICCPR refers to "...conduct in public affairs..."; the UDHR states "... government...".

**62** Regional treaties that uphold the right to freedom of assembly include the ACHR, Art. 23; and ACHPR, Art. 13.

**63** See also: Global Protection Cluster Working Group. 2006. *Handbook for the Protection of Internally Displaced Persons*, pp 21–22. Available at: [www.humanitarianreform.org/humanitarianreform/Default.aspx?tabid=294](http://www.humanitarianreform.org/humanitarianreform/Default.aspx?tabid=294)

## Part 3: Protecting Economic, Social and Cultural Rights

### 3.1 The Right to Adequate Living Standards

The right to adequate living standards is guaranteed under the ICESCR<sup>64</sup> and UDHR,<sup>65</sup> and in non-binding international instruments such as the 1998 Guiding Principles on Internal Displacement (GPID).<sup>66</sup> The ICESCR refers specifically to adequate food, clothing and housing and the continuous improvement of living conditions; the UDHR includes additional items such as medical care, social services, and to the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood circumstances beyond a person's control. The GPID state that IDPs have the right to adequate living standards and that, as a minimum, competent authorities should provide essential food, potable water and basic shelter and housing.<sup>67</sup>

*What constitutes "adequate living standards" in the aftermath of a natural disaster? What is the procedure if state authorities cannot meet such standards?*

Although the expression "adequate living standards" is not defined in the ICESCR or the UDHR, the concept of "adequate housing" has been discussed in detail by the UNHCHR Committee on Economic, Social and Cultural Rights (see Chapter 4). Humanitarian actors can also refer to the following IASC principle, which provides practical insight into ways of translating the concept of "adequate" into practice:

IASC B.2.1: During and after the emergency phase of the disaster, adequate food, water and sanitation, shelter, clothing and essential health services should be provided to persons affected by natural disasters who are in need of these goods and services. Provision of goods and services should be without any discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, age, disability or other status. Adequacy of these goods and services means that they are (i) available (ii) accessible (iii) acceptable and (iv) adaptable:

- (i) Availability requires that these goods and services are made available to the affected population in sufficient quality and quantity.
- (ii) Accessibility requires that these goods and services (a) are granted without discrimination to all in need (b) are within safe reach and can be physically accessed by everyone, including vulnerable and marginalized groups, and (c) are known to the beneficiaries.
- (iii) Acceptability refers to the need to provide goods and services that are appropriate and sensitive to gender and age.
- (iv) Adaptability requires that these goods and services be provided in ways flexible enough to adapt to the change of needs in different phases of emergency relief, reconstruction and, in the case of displaced persons, return. During the immediate emergency phase food, water, sanitation, shelter, clothing and health services are considered adequate if they ensure survival to all in need of them.

### 3.2 The Right to Adequate Health Care

The ICESCR requires States Parties to recognize every person's right to the highest attainable standards of physical and mental health.<sup>68</sup> It refers specifically to the need for States Parties to prevent, treat and control epidemic diseases, and to create conditions which would assure access to medical service in the event of sickness. The right to adequate health care is also mentioned in the UDHR a component of adequate living standards (see above).<sup>69</sup>

### Resources to Support Mental Health NGOs<sup>70</sup> Operating in Disaster Situations

The World Federation for Mental Health recently launched an initiative to help to address mental health issues in disaster situations. The project seeks to (i) improve understanding of the mental health consequences of disasters, (ii) educate grassroots NGOs in developing appropriate responses and (iii) provide material and financial support for NGOs operating in disaster situations. A major element of the project is a dedicated website through which up-to-date, evidence-based disaster response information, awareness and education materials are available: [www.wfmh.org/00dresponse.htm](http://www.wfmh.org/00dresponse.htm).

Such resources are designed to assist organizations specializing in trauma and disaster research, and in education and program development.

### IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings

Disasters can cause widespread psychological and social suffering which, if not adequately addressed, can lead to long-term mental health and psychosocial illness. The consequences of such illness can include unemployment, loss of livelihoods and intra-family violence and abuse. The difficulty in responding to such issues is that mental health is often a neglected area in the immediate aftermath of disasters. Even when it is prioritized, coordinating support is a complicated matter in large-scale emergencies involving numerous humanitarian actors. It was in response to such concerns that the *Inter-Agency Standing Committee Guidelines on Mental Health and Psychosocial Support in Emergency Settings* were developed. These Guidelines are designed to help national and international humanitarian workers to integrate mental health and psychosocial responses into disaster management initiatives. They outline the essential steps in protecting survivors' mental health by identifying useful – and harmful – practices and showing how different approaches complement one another. They emphasize the importance of local human resources such as teachers, health workers, healers, and women's groups to promote psychosocial well-being, and stress the need to strengthen social networks and build on existing coping mechanisms. The Guidelines emphasize that the way in which humanitarian aid is provided can have a significant impact on survivors' mental health and psychosocial well-being. Treating survivors with dignity and enabling them to participate in and organize emergency support is essential. The Guidelines can be downloaded from:

[www.who.int/mental\\_health/emergencies/guidelines\\_iasc\\_mental\\_health\\_psychosocial\\_june\\_2007.pdf](http://www.who.int/mental_health/emergencies/guidelines_iasc_mental_health_psychosocial_june_2007.pdf)

See also the International Council of Voluntary Agencies (ICVA) *Guiding Principles on the Psychosocial Care and Protection of Tsunami-Affected Children*: [www.icva.ch/doc00001316.html](http://www.icva.ch/doc00001316.html).

### IASC Guidelines: Protecting the Health Needs of Vulnerable Groups in Disaster Situations

*Those affected by the natural disaster should be given access to psycho-social assistance and social services, when necessary. Special attention should be given to the health needs of women, including provision of appropriate clothing and hygienic supplies, access to female health care providers and such services as reproductive health care.*

IASC B.2.5

*Special attention should be given to the prevention of contagious and infectious diseases, including HIV/AIDS, among the affected population, particularly among those displaced by the disaster.*

IASC B.2.7

*Special attention should be given to the provision of psycho-social care for victims of sexual and other abuses.*

IASC B.2.6

### 3.3 The Right to Social Security

Social security generally refers to government programs that provide economic assistance for individuals in the event of unemployment, disability, old age or other circumstances. The ICESCR<sup>71</sup> and UDHR<sup>72</sup> recognize the right of all people to social security. This right is highly relevant in situations of natural disaster where the destruction of livelihoods and mass unemployment are common, and where new family units are created, for example when families expand to care for foster or adopted children.

### 3.4 The Right to Education: See Chapter 3.

### 3.5 Workers' Rights

The ICESCR<sup>73</sup> and UDHR<sup>74</sup> recognize the right of all people to work and to just and favorable working conditions such as fair remuneration, including equal pay for equal work, safe working conditions, equal employment and promotion opportunities, and rest and leisure time.<sup>75</sup> Other relevant international treaties include the 1998 International Labour Organization (ILO) Convention no. 168 *Concerning Employment Promotion and Protection Against Unemployment* and the 1989 Convention no. 169 *Concerning Indigenous and Tribal Peoples in Independent Countries*.

*What steps can be taken to restore the employment rights of populations affected by a natural disaster? Projects to restore economic activities, opportunities and livelihoods that are disrupted by the natural disaster should start as soon and as completely as possible. To the maximum extent possible, such measures should already be taken during the emergency phase.*

IASC C.4.1

*Access to livelihoods and employment opportunities should be ensured when planning temporary camps and relocation sites, as well as permanent re-housing for individuals displaced by the natural disaster.*

IASC C.4.3

*Where individuals are unable to return to precious sources of livelihood due to the natural disaster, appropriate measures – including provision of re-training opportunities or micro-credits – should be taken. Opportunities created by such measures should be available without discrimination of any kind as to race, color, sex, language, political or other opinion, national or social origin, property, birth, age, disability or other status.*

IASC C.4.2

#### **Livelihoods and Microfinance Training in Sri Lanka**

Following the 2004 tsunami, UNDP determined that after resettlement the question of livelihoods was the most important issue faced by the affected population in Sri Lanka. In response, IDLO entered into partnerships with Sarvodaya Economic Enterprises Development Services (SEEDS) and the Sewalanka Foundation, which are local NGOs providing microfinance for poor communities including those in tsunami-affected areas, as well as associated services to assist communities in developing sustainable livelihoods. In 2007, IDLO provided training for over 400 staff and clients of SEEDS and the Sewalanka Foundation on laws and legal issues relevant to establishing and undertaking sustainable businesses and income-generating activities. Topics included business law, microfinance credit law, contract law, employment law, and consumer rights.

IDLO also developed a guidebook entitled *Legal Aspects of Small Business and Economic Livelihoods Development*, which was designed as a reference tool for establishing a sustainable business in accordance with Sri Lankan law. The guidebook was intended to identify and highlight relevant legal considerations rather than provide a complete body of information, given that each business is different and therefore governed by

different laws, procedures and concerns. Chapters included the legal procedures for establishing a business, consumer protection, contracts, labor law, micro-insurance, taxation and dispute resolution. The guidebook also listed applicable laws and relevant authorities, and application forms and information on microfinance institutions in Sri Lanka. The guidebook can be downloaded from: [www.idlo.int/publications/21.pdf](http://www.idlo.int/publications/21.pdf).

### 3.6 The Right to Humanitarian Assistance

Although not mentioned in treaty-based law, the IASC guidelines make multiple references to the right to humanitarian assistance in disaster settings. The guidelines highlight the need for equality in aid distribution<sup>76</sup> and for granting priority access to vulnerable groups including minorities, single-headed households, older people and persons with disabilities.<sup>77</sup> In particular, it is noted that the loss or absence of personal documentation should not be used to deny access to humanitarian assistance.<sup>78</sup> The guidelines highlight the importance of the role of the international community in providing humanitarian assistance, particularly in situations where state authorities are unable or unwilling to do so.<sup>79</sup> In undertaking such a role, international humanitarian actors must ensure that activities are coordinated among themselves and with national authorities.<sup>80</sup>

#### **IASC Guidelines: Emergency Humanitarian Assistance**

*Measures should be taken to ensure that persons affected by natural disasters, in particular those displaced, have unimpeded and non-discriminatory access to goods and services to address their basic needs.*

IASC B.1.1

*If food, water and sanitation, shelter, clothing and health services are not available in sufficient quantities, they should be provided first to those most in need. The definition of need should be based and assessed on non-discriminatory and objective criteria.*

IASC B.2.2

*If the host population, which has not been directly affected by the natural disaster, suffers from similar shortages of water and sanitation, shelter, clothing and essential health services as those affected by the natural disaster, relief should also be provided to it on an equitable basis.*

IASC B.2.3

### 3.7 The Right to Personal Documentation

Loss or destruction of personal identity documentation such as certificates of birth, parentage, marriage, divorce, death or guardianship is a common occurrence in disaster situations. Where civil registries are also destroyed, obtaining replacement copies can be difficult. The absence of personal documentation can impede an individual's ability to access aid, participate in court proceedings such as inheritance or guardianship determinations, access or open bank accounts, enroll in school or benefit from healthcare or social benefits. In serious cases, lack of documentation can limit freedom of movement and result in arbitrary detention. The UDHR,<sup>81</sup> ICCPR<sup>82</sup> and the 1965 *Convention on the Elimination of all Forms of Racial Discrimination (CERD)*<sup>83</sup> all require states to ensure the full, equal and effective enjoyment of rights and freedoms, including the right to equal recognition and protection before the law. To facilitate this, states need to ensure that everyone has a legal identity and the means to prove their identity in order to exercise their rights.<sup>84</sup> The right to personal documentation in disaster settings is also covered under the IASC guidelines and the GPID. The IASC guidelines hold that the loss of personal documentation cannot be used to prevent individuals from returning to their homes or to deny them access to employment opportunities.<sup>85</sup> In this regard, the guidelines recommend that measures be taken, even during the emergency phase, to restore personal documentation as soon as possible, including birth, marriage and death certificates, insurance certificates, passports, personal identification and travel documents, education

and health certificates.<sup>86</sup> The rights of women and unaccompanied or orphaned children to personal documentation issued in their own names are specifically protected under the IASC guidelines,<sup>87</sup> the 1989 *Convention on the Rights of the Child*,<sup>88</sup> and the 1979 *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW).<sup>89</sup> It must be noted that when personal data is collected for the purposes of replacing documentation, privacy must be maintained and records of such data must be protected against misuse.<sup>90</sup>

### **Replacing Personal Documentation in Disaster-Affected Communities**

Following the 2004 tsunami, thousands of families lost documents such as birth, marriage, educational, death and property certificates. Despite government attempts to reissue such documents, unavoidable delays in carrying out this overwhelming task were anticipated. In response, Plan International Sri Lanka supported by local NGO, the Sewalanka Foundation, implemented a project to help affected families in Southern and Western provinces to recover their legal documents. First, an outreach program took the project team to affected villages, schools and temporary camps to raise awareness and collect data. Completed applications were checked by resource lawyers, categorized, and then delivered to local district secretariats. Regular meetings were held with government representatives to address various issues, and equipment and stationary were provided for the district secretariats to help them to cope with the increased demand. More than 20,000 replacement documents were issued either through small community ceremonies or delivered directly to households. By directly contacting affected families, coordinating with government departments and providing legal advice, the document replacement process was expedited without overburdening affected persons or the already strained system. To ensure sustainability of registration services, Plan International worked with the Registrar General to rehabilitate office buildings and funded a feasibility study to assess how the civil registration system could be modernized. The strategic and technical design documents produced under this study are now being implemented by the government.<sup>91</sup>

Through its Information, Counseling, and Legal Assistance and Advocacy (ICLA) program, the NRC has helped communities in tsunami-affected Sri Lanka and flood-affected Pakistan to secure or replace civil documentation. In Sri Lanka, IDLO supported NRC projects with local NGOs, the People's Services Council and Social Aid to train volunteers in the skills required to assist individuals completing and submitting applications for civil documentation such as birth and death certificates, marriage certificates and national identity cards; over 3,500 applications for civil documents were processed. NRC also prepared practical information leaflets addressing civil documentation issues, including procedures for acquiring birth certificates after the statutory deadline, marriage certificates, death certificates, and national identity cards. In Pakistan, the ICLA program has focused on providing 100,000 flood-affected families and 70,000 individuals with identity and property documents. The program also promoted access to compensation schemes by providing information and facilitating applications for bank accounts and supporting documentation.<sup>92</sup>

See also: Norwegian Refugee Council (NRC) assisting internally-displaced persons (IDPs) obtain national identity cards following the Pakistani earthquake

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## CHECKLIST FOR AGENCIES

### Agencies might establish:

- birth registration programs, including retrospective registration, free from onerous financial or administrative impediments;
- documentation recovery or replacement programs, taking particular note of the need to account for and not discriminate against persons who have never had access to personal documentation; it should be noted that personal documentation should never be a prerequisite for accessing humanitarian aid;
- monitoring programs to ensure that humanitarian aid is not distributed in a discriminatory manner, for example through community watchdog committees and follow-up monitoring;
- programs to promote economic rights and self sufficiency, particularly in the context of emergency housing and resettlement; examples include access to bank loans, micro-credit and vocational training;
- voter registration and absentee voting to facilitate the participation of displaced persons in elections;
- protection from violence, especially in the context of emergency shelter and resettlement; agencies can assist particularly in re-establishing law and order by helping to rehabilitate police stations, prisons and correctional facilities, training law and order actors and monitoring the rights of persons arrested or detained;
- guidelines to ensure that workplaces and emergency shelters have suitable prayer facilities; and
- programs promoting access to healthcare, including mental health care.

### Agencies might lobby for:

- cancellation or easing of onerous administrative requirements for the replacement of identity/civil status documents; agencies must take particular account of the need to ensure that personal documentation is not a prerequisite to access humanitarian aid;
  - less stringent proof of ownership requirements for housing restitution programs, where appropriate;
  - guidelines on minimum housing standards and aid distribution to ensure equality and access for all on the basis of the adequacy standards defined in the IASC guidelines;
  - compulsory inclusion of vulnerable groups – women, minorities, older people and persons with disabilities – in development decision-making and aid distribution;
  - cooperation and coordination among government departments, NGOs, civil society and international agencies in the provision of aid;
  - guidelines to protect privacy, particularly of vulnerable groups whose personal details may be provided to aid agencies, for example during the recovery of personal documentation or applications for housing restitution; and
  - state provision of social security, particularly employment and poverty-driven assistance.
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## USEFUL LINKS AND PUBLICATIONS

Assessing the Effectiveness of National Human Rights Institutions (International Council on Human Rights Policy and OHCHR, 2005)

[www.ohchr.org/english/about/publications/papers.htm](http://www.ohchr.org/english/about/publications/papers.htm)

Human Rights Handbook for Parliamentarians (Geneva, Inter-Parliamentary Union and UNHCHR, 2005)

[www.ohchr.org/english/about/publications/papers.htm](http://www.ohchr.org/english/about/publications/papers.htm)

Enhancing Access to Human Rights (International Council on Human Rights Policy, 2004)

[www.ichrp.org/files/reports/2/123\\_report.pdf](http://www.ichrp.org/files/reports/2/123_report.pdf)

Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation (UNHCHR, 2006)

[www.ohchr.org/Documents/Publications/FAQen.pdf](http://www.ohchr.org/Documents/Publications/FAQen.pdf)

Guide Pratique International de l'Etat Civil (Commission Internationale de l'Etat Civil, 2006)

[www.ciec1.org](http://www.ciec1.org)

Performance and Legitimacy: National Human Rights Institutions (International Council on Human Rights Policy, 2004)

[www.ichrp.org/files/reports/17/102\\_-\\_National\\_Human\\_Rights\\_Institutions\\_\\_2004\\_-\\_Main\\_Report.pdf](http://www.ichrp.org/files/reports/17/102_-_National_Human_Rights_Institutions__2004_-_Main_Report.pdf)

Working with the Office of the High Commissioner for Human Rights (OHCHR): A Handbook for NGOs (OHCHR, 2006)

[www.ohchr.org/Documents/Publications/NGOHandbooken.pdf](http://www.ohchr.org/Documents/Publications/NGOHandbooken.pdf)

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## AGENCIES WORKING FOR THE PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Office of the High Commissioner for Human Rights

[www.ohchr.org](http://www.ohchr.org)

OHCHR is the principal human rights body of the United Nations. Its mandate includes preventing human rights violations, securing respect for all human rights, promoting international cooperation to protect human rights, coordinating related activities throughout the United Nations, and strengthening and streamlining the United Nations system in the field of human rights.

Human Rights Watch

[www.hrw.org](http://www.hrw.org)

Human Rights Watch investigates human rights abuses and liaises with governments to promote changes in policy and practice. It works in many areas including children's rights, women's rights, economic, social and cultural rights, health and human rights, international justice and gender rights.

Oxfam International

[www.oxfam.org](http://www.oxfam.org)

Oxfam International is a confederation of 13 organizations working in more than 100 countries to find lasting solutions to poverty and injustice. It works in humanitarian disaster and emergency situations created by war, drought, floods, earthquakes and famine. Its humanitarian work is not limited to crisis response but covers a full range of activities such as advocacy, prevention, preparedness, direct response and rehabilitation.

International Federation of Red Cross and Red Crescent Societies

[www.ifrc.org](http://www.ifrc.org)

Most of IFRC's work involves disaster response in refugee crises and natural disasters in the context of disaster preparedness, emergency response and long-term rehabilitation.

Commission Internationale de l'Etat Civil

[www.ciec1.org](http://www.ciec1.org)

ICCS is an inter-governmental organization whose aim is to facilitate international cooperation in matters of civil status and to improve the operation of national civil status departments.

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### footnotes

**64** Art. 11.1.

**65** Art. 25.1.

**66** Principle 18.

**67** See also: UNHCHR *Declaration on Social Progress and Development* (1969), *Declaration on the Right of Peoples to Peace* (1984) and *Declaration on the Right to Development* (1986). Regional treaties that uphold the right to adequate living standards include the ACHR, Art. 26; and ACHPR, Art. 22.

**68** Art. 12.

**69** Regional treaties that uphold the right to adequate health care include the ACHPR, Art. 16.

**70** Non-governmental organizations.

**71** Art. 9.

**72** Art. 22; see also Art. 24.

**73** Art. 6 and 7.

**74** Art. 23, 24 and 27.

**75** Regional treaties that uphold workers' rights include the ACHPR, Art. 15.

**76** IASC B.1.1 and B.1.3.

**77** IASC B.1.3.

**78** IASC D.1.1 and D.1.5.

**79** IASC B.1.4.

**80** IASC B.1.6.

**81** Art. 6 and 7.

**82** Art. 16 and 26.

**83** Art. 5 (a).

**84** Global Protection Cluster Working Group, 2006. *Handbook for the Protection of Internally Displaced Persons*, p 177. Available at: [www.humanitarianreform.org/humanitarianreform/Default.aspx?tabid=294](http://www.humanitarianreform.org/humanitarianreform/Default.aspx?tabid=294)

**85** IASC D.1.5.

**86** IASC D.1.2 and D.1.1. Note that Principle 20 of the GPID requires that states facilitate the issue of new documents or replacement of lost documents without imposing unreasonable conditions such as requiring that the person return to his or her habitual area.

**87** IASC D.1.3-D.1.4.

**88** Art. 7.1.

**89** Art. 16.2.

**90** IASC D.1.1.

**91** Case study provided by Plan International ([www.plan-international.org](http://www.plan-international.org)).

**92** From Norwegian Refugee Council (NRC) 'NRC responds to the flood', July 2007 [www.nrc.no/?did=9190710](http://www.nrc.no/?did=9190710).

■ **Judicial Rights Relevant in Disaster Situations**

**The Right to Equality before the Law**

All persons shall be equal before the courts and tribunals...

ICCPR, Art. 14(1)

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, Art. 26

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

CEDAW, Art. 15

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

UDHR, Art. 7

All individuals are equal before the law, without distinction between the ruler and the ruled.

DHRI, Art. 19(a)

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

ACHR, Art. 24

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

ACHPR, Art. 3

Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure:

- a) effective access by women to judicial and legal services, including legal aid;
- b) support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid;
- c) the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitize everyone to the rights of women;
- d) that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights;
- e) that women are represented equally in the judiciary and law enforcement organs;
- f) reform of existing discriminatory laws and practices in order to promote and protect the rights of women.

PACHPRA, Art. 8

**The Right to a Legal Personality**

Every human being has the right to enjoy his legal capacity in terms of both obligation and commitment. Should this capacity be lost or impaired, he shall be represented by his guardian.

DHRI, Art. 8

<sup>1</sup> It must be noted that several of the conventions referred to below contain suspension clauses for times of war, public emergency and/or threats to the state. See the ACHR, Art. 27; ECHR, Art. 15; and ICCPR, Art. 4. Note also that some articles have been amended or had provisions deleted if they are inapplicable to disaster contexts. Reference to an authoritative text of each convention is recommended.

Everyone shall have the right to recognition everywhere as a person before the law.

ICCPR, Art. 16

Everyone has the right to recognition everywhere as a person before the law.

UDHR, Art. 6

Every person has the right to recognition as a person before the law.

ACHR, Art. 3

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status...

ACHPR, Art. 5

### **The Right to a Remedy**

The right to resort to justice is guaranteed to everyone.

DHRI, Art. 19(b)

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

UDHR, Art. 8

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

ECHR, Art. 13

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
  - a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
  - b) to develop the possibilities of judicial remedy; and
  - c) to ensure that the competent authorities shall enforce such remedies when granted.

ACHR, Art. 25

### **The Right to a Fair Trial (including presumption of innocence and due process guarantees)**

... In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

ICCPR, Art. 14(1)

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
  - b) to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;
  - c) to be tried without undue delay;

- d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- f) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- g) not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

ICCPR, Art. 14

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

UDHR, Art. 10

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

UDHR, Art. 11(1)

A defendant is innocent until his guilt is proven in a fair trial in which he shall be given all the guarantees of defense.

DHRI, Art. 19(e)

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
  - a) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
  - b) prior notification in detail to the accused of the charges against him;
  - c) adequate time and means for the preparation of his defense;
  - d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
  - e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
  - f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
  - g) the right not to be compelled to be a witness against himself or to plead guilty;
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

ACHR, Art. 8

1. Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.

ACHPR, Art. 7

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic soci-

ety, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
  - a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - b) to have adequate time and facilities for the preparation of his defense;
  - c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ECHR, Art. 6

### ***ex post facto***

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

ICCPR, Art. 15

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

UDHR, Art. 11(2)

There shall be no crime or punishment except as provided for in the shari'a.

DHRI, Art. 19(d)

No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

ACHR, Art. 9

2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

ACHPR, Art. 7

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

ECHR, Art. 7

### ***ne bis in idem***

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No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

ICCPR, Art. 14(7)

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An accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the same cause.

ACHR, Art. 8(4)

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### **The Right to Judicial Review**

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Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

ICCPR, Art. 14(5)

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2. Every person accused of a criminal offense ... is entitled, with full equality, to the following minimum guarantees:

h) the right to appeal the judgment to a higher court.

ACHR, Art. 8

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### **Arbitrary Arrest and Detention**

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1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

ICCPR, Art. 9

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No one shall be subjected to arbitrary arrest, detention or exile.

UDHR, Art. 9

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It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him ... Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.

DHRI, Art. 20

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Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

ACHPR, Art. 6

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1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- a) the lawful detention of a person after conviction by a competent court;
- b) the lawful arrest or detention of a person for non compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
- c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

ECHR, Art. 5

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1. Every person has the right to personal liberty and security.

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

3. No one shall be subject to arbitrary arrest or imprisonment.

ACHR, Art. 7

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.

GPID, Principle 12

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### **The Rights of Persons Deprived of their Liberty**

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2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

ICCPR, Art. 9

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. a) accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;  
b) accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

ICCPR, Art. 10

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

ECHR, Art. 5

4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social re-adaptation of the prisoners.

ACHR, Art. 5

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

ACHR, Art. 7

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### **The Right to Humane Treatment**

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No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

ICCPR, Art. 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

UDHR, Art. 5

No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

Art. 5(2) ACHR

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ECHR, Art. 3

... All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

ACHPR, Art. 5

... It is not permitted to subject him to physical or psychological torture or to any form of humiliation, cruelty or indignity. Nor is it permitted to subject an individual to medical or scientific experimentation without his consent or at the risk of his health or of his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.

DHRI, Art. 20

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### **The Right to Compensation for Miscarriages of Justice**

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When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

ICCPR, Art. 14(6)

Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.

ACHR, Art. 10

See also:

- Standard Minimum Rules for the Treatment of Prisoners (1977)
- Basic Principles for the Treatment of Prisoners (1990)
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)
- United Nations Rules for the Protection of Juveniles Deprived of the Liberty (1990)
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987)

- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002)
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982)
- Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (1984)
- Code of Conduct for Law Enforcement Officials (1979)
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)
- Basic Principles on the Role of Lawyers (1990)
- Guidelines on the Role of Prosecutors (1990)
- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (1990)
- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (1990)
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (1985)
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)
- Basic Principles on the Independence of the Judiciary (1985)
- Model Treaty on the Transfer of Proceedings in Criminal Matters (1990)
- Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released (1990)
- Declaration on the Protection of All Persons from Enforced Disappearances (1992)
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989)

*All instruments can be found on the UNOHCHR website ([www.unhchr.ch](http://www.unhchr.ch))*

## ■ Civil and Political Rights Relevant in Disaster Situations

### The Right to Life

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

ICCPR, Art. 6

Everyone has the right to life, liberty and security of person.

UDHR, Art. 3

- a) life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to protect this right from any violation, and it is prohibited to take away life except for a shari'a-prescribed reason.
- b) it is forbidden to resort to such means as may result in the genocidal annihilation of mankind.

- c) The preservation of human life throughout the term of time willed by God is a duty prescribed by shari'a.
- d) Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a shari'a-prescribed reason.

DHRI, Art. 2

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be reestablished in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offenses or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

ACHR, Art. 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

ACHPR, Art. 4

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
  - a) in defense of any person from unlawful violence;
  - b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - c) in action lawfully taken for the purpose of quelling a riot or insurrection.

ECHR, Art. 2

### The Right to Equality and Freedom from Discrimination

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, Art. 2.1

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

ICCPR, Art. 3

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

ICCPR, Art. 27

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICESCR, Art. 2.2

For the purposes of the present Convention, the term 'the crime of apartheid', which shall include similar policies and practices of racial segregation and discrimination as practiced in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing or maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

- b) deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

d) any measures, including legislative measures, designed to divide the population among racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups ... the expropriation of landed property belonging to a racial group or groups to members thereof.

Art. 2 International convention on the suppression and punishment of the crime of apartheid (1973)

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

UDHR, Art. 1

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

UDHR, Art. 2

It is not permitted to arouse nationalistic or doctrinal hatred or to do anything that may be an incitement to any form of racial discrimination.

DHRI, Art. 22(d)

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

ACHR, Art. 1.1

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

ACHPR, Art.2

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ECHR, Art. 14

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

ACHPR, Art. 19

Humanitarian action should be based on assessed need and provided to all persons affected by the natural disaster without adverse distinction of any kind other than that of different needs.

IASC, B1.2.

Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage.

DHRI, Art. 6(a)

### The Right to Self-Determination

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

ICCPR, Art. 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the

principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

ICESCR, Art. 1

1. All peoples ... have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the States Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

ACHPR, Art. 20

### The Right to Freedom from Servitude

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. a) no one shall be required to perform forced or compulsory labor;  
b) paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labor may be imposed as a punishment for a crime, the performance of hard labor in pursuance of a sentence to such punishment by a competent court;  
c) for the purpose of this paragraph the term "forced or compulsory labor" shall not include:
  - (i) any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
  - (ii) any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
  - (iii) any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
  - (iv) any work or service which forms part of normal civil obligations.

ICCPR, Art. 8

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

UDHR, Art. 4

- a) human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to God the Most-High.

DHRI, Art. 11

1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.
2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.
3. For the purposes of this article, the following do not constitute forced or compulsory labor:
  - a) work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;
  - b) military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;
  - c) service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or
  - d) work or service that forms part of normal civic obligations.

ACHR, Art. 6

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

ACHPR, Art. 5

No one shall be held in slavery or servitude.

2 No one shall be required to perform forced or compulsory labor.

3 For the purpose of this article the term "forced or compulsory labor" shall not include:

- a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
- b) any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;
- c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- d) any work or service which forms part of normal civic obligations.

ECHR, Art. 4

Appropriate measures should be taken as early and as quickly as possible to protect affected populations, in particular women and boy and girl children, against trafficking, forced labor and contemporary forms of slavery such as sale into marriage, forced prostitution, and sexual exploitation.

IASC, A.3.3

Mechanisms that are appropriate to address instances of violence and other violations of human rights, as well as relevant guarantees under international humanitarian law, should be established without delay. In particular, the deployment of law enforcement personnel to areas at risk of or with a breakdown of law and order – including sexual and gender-based violence, robberies, or looting – should be requested.

IASC, A.3.2

See also:

- Slavery Convention (1927)
- Protocol amending the Slavery Convention
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1953)
- Forced Labor Convention (1930)
- Abolition of Forced Labor Convention (1957)
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)

*All instruments can be found on the UNOHCHR website ([www.unhchr.ch](http://www.unhchr.ch))*

### The Right to Freedom from Persecution

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

UDHR, Art. 14

Every man shall have the right, within the framework of shari'a, to free movement and to select his place of residence whether inside or outside his country and, if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure his protection until he reaches safety, unless asylum is motivated by an act which shari'a regards as a crime.

DHRI, Art. 12

### The Right to Privacy

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence ....
2. Everyone has the right to the protection of the law against such interference or attacks.

ICCPR, Art. 17

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence ... Everyone has the right to the protection of the law against such interference or attacks.

UDHR, Art. 12

- b) Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference.
- c) A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.

DHRI, Art. 18

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ECHR, Art. 8

2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

ACHR, Art. 11

### **The Right to a Nationality**

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

UDHR, Art. 15

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

ACHR, Art. 20

*See also Chapter 3*

### **Personal Identity Documentation**

Appropriate measures should be taken as early as possible, including during the emergency phase, to restore personal documentation that has been lost or destroyed in a natural disaster, to persons affected by the natural disaster (e.g. birth, marriage and death certificates, insurance certificates, passports, personal identification and travel documents, education and health certificates).

IASC, D.1.2

Women and men should be treated equally when documents of any kind are issued. Women should be issued documentation in their own names.

IASC, D.1.3

Unaccompanied and orphaned children should be issued documentation in their own names.

IASC, D.1.4

Loss of personal documentation should not be used (a) to justify the denial of essential food and relief services (b) to prevent individuals from traveling to safe areas or from returning to their homes (c) to impede their access to employment opportunities.

IASC, D.1.5

## The Right to Property

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*See Chapter 4.*

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## Freedom of Movement and Residence

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*See Chapter 4.*

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## Protection from Internal Displacement

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*See Chapter 4.*

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## The Right to Freedom of Religion

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1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

ICCPR, Art. 18

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Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

UDHR, Art. 18

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1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

ACHR, Art. 12

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1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ECHR, Art. 9

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Religious traditions should be respected, as appropriate, when planning and implementing humanitarian assistance, in particular in the context of food assistance, health care services, and living and sanitary arrangements

IASC, D.4.2

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Opportunity should be provided for the exercise of religious faith in a manner that respects the rights and beliefs of others and does not incite discrimination hostility or violence.

IASC, D.4.3

See also:

- Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief (1981) (found at [www.unhchr.org](http://www.unhchr.org))

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### The Right to Freedom of Conscience, Thought and Expression

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1. Everyone shall have the right to hold opinions without interference.
  2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
  3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
    - a) for respect of the rights or reputations of others;
    - b) for the protection of national security or of public order (*ordre public*), or of public health or morals.
- ICCPR, Art. 19

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Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

UDHR, Art. 19

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1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
  2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
    - a) respect for the rights or reputations of others; or
    - b) the protection of national security, public order, or public health or morals.
  3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
  4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
  5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

ACHR, Art.13

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Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

ACHPR, Art. 8

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2. Every individual shall have the right to express and disseminate his opinions within the law.
- ACHPR, Art. 9

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1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
  2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ECHR, Art. 10

## The Right of Reply

1. No one shall be subjected to ... unlawful attacks on his honor and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

ICCPR, Art. 17

No one shall be subjected to ... attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

UDHR, Art. 12

Every human being is entitled to inviolability and the protection of his good name and honor during his life and after his death. The state and society shall protect his remains and burial place.

DHRI, Art. 4

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.
2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.
3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.

ACHR, Art. 14

## The Right to Freedom of Assembly

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

ICCPR, Art. 21

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

UDHR, Art. 20

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.

ACHR, Art. 15

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

ACHPR, Art. 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

ECHR, Art. 11

Mechanisms should be established to enable communities to give feedback and raise complaints or grievances on the disaster relief, recovery and reconstruction response. Efforts should be made to ensure that women and persons with special needs – e.g. children, older persons, persons with disabilities, single-headed households, and members of religious and ethnic minority groups or indigenous persons – are specially consulted and can participate in all aspects of the disaster response. Persons affected by the natural disaster should be protected against adverse reaction for exchanging informa-

tion or expressing their opinions and concerns regarding disaster relief, recovery and reconstruction efforts. Opportunity should be provided for affected persons to conduct peaceful assemblies or form associations for this purpose.

IASC, D.4.1

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### The Right to Freedom of Association

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1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

ICCPR, Art. 22

1. The States Parties to the present Covenant undertake to ensure:
  - a) the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
  - b) the right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
  - c) the right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
  - d) the right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

ICESCR, Art. 9

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.
2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

ACHR, Art. 16

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.

ACHPR, Art. 10

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### The Right to Participate in Government

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Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

- b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- c) to have access, on general terms of equality, to public service in his country.

ICCPR, Art. 25

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

UDHR, Art. 21

- b) Everyone shall have the right to participate, directly or indirectly in the administration of his country's public affairs. He shall also have the right to assume public office in accordance with the provisions of shari'a.

DHRI, Art. 23

1. Every citizen shall enjoy the following rights and opportunities:
  - a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
  - b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
  - c) to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

ACHR, Art. 23

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.

ACHPR, Art. 13

Measures should be taken to ensure that persons affected by the natural disaster can exercise their right to vote in elections and to be elected, in particular if they have been displaced. Such measures may include voter registration and arrangements for absentee voting.

IASC, D.5.1

## Rights of the Child

See Chapter 3

## ■ Economic, Social and Cultural Rights Relevant in Disaster Situations

### The Right to Social Security

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

ICESCR, Art. 9

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

UDHR, Art. 22

### The Right to Education

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that

education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
  - a) Primary education shall be compulsory and available free to all;
  - b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
  - c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
  - d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
  - e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

ICESCR, Art. 13

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

ICESCR, Art. 14

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

UDHR, Art. 26

- a) the quest for knowledge is an obligation, and the provision of education is a duty for society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee educational diversity in the interest of society so as to enable man to be acquainted with the religion of Islam and the facts of the Universe for the benefit of mankind.
- b) every human being has the right to receive both religious and worldly education from the various institutions of education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner as to develop his personality, strengthen his faith in God and promote his respect for and defense of both rights and obligations.

DHRI, Art. 9

1. Every individual shall have the right to education.

ACHPR, Art. 17

The return of children, whether displaced or not, to schooling should be facilitated as early and as quickly as possible after the disaster. Education should respect their cultural identity, language and tradition.

IASC, C.1.1

Education should be compulsory and free at the primary level. Measures should be taken to ensure that education is not disrupted at higher levels when students, as a consequence of the disaster, can no longer afford such education.

IASC, C.1.2

Special efforts should be made to ensure the full and equal participation of women and girls, affected by the natural disaster, in education programs.

IASC, C.1.3

### The Right to Adequate Living Standards

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

UDHR, Art. 25

- a) Everyone shall have the right to live in a clean environment, away from vice and moral corruption, an environment that would foster his self-development; and it is incumbent upon the State and society in general to afford that right.
- c) The State shall ensure the right of the individual to a decent living which will enable him to meet all his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs.

DHRI, Art. 17

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

ACHR, Art. 26

- 1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
- 2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

ACHPR, Art.22

- 1. All internally displaced persons have the right to an adequate standard of living.
- 2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
  - a) essential food and potable water;
  - b) basic shelter and housing;

GPID, Principle 18

During and after the emergency phase of the disaster, adequate food, water and sanitation, shelter, clothing and essential health services should be provided to persons affected by natural disasters who are in need of these goods and services. Provision of goods and services should be without any discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, age, disability or other status. Adequacy of these goods and services means that they are (i) available (ii) accessible (iii) acceptable and (iv) adaptable.

- (i) availability requires that these goods and services are made available to the affected population in sufficient quality and quantity.
- (ii) accessibility requires that these goods and services (a) are granted without discrimination to all in need (b) are within safe reach and can be physically access by everyone, including vulnerable and marginalized groups and (c) are known to the beneficiaries.
- (iii) acceptability refers to the need to provide goods and services that are appropriate and sensitive to gender and age;
- (iv) adaptability requires that these goods and services be provided in ways flexible enough to adapt to the change of needs in different phases of emergency relief, reconstruction and, in the case of displaced persons, return. During the immediate emergency phase food, water, sanitation, shelter, clothing and health services are considered adequate if they ensure survival to all in need of them.

IASC, B.2.1

If food, water and sanitation, shelter, clothing and health services are not available in sufficient quantities, they should be provided first to those most in need. The definition of need should be based and assessed on non-discriminatory and objective criteria.

IASC, B.2.2

If the host population, which has not been directly affected by the natural disaster, suffers from similar shortages of water and sanitation, shelter, clothing and essential health services as those affected by the natural disaster, relief should also be provided to it on an equitable basis.

IASC, B.2.3

## Workers' Rights

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

ICESCR, Art. 6

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

- a) remuneration which provides all workers, as a minimum, with:
  - (i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant;
- b) safe and healthy working conditions;
- c) equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- d) rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

ICESCR, Art. 7

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

UDHR, Art. 23

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Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

UDHR, Art. 24

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

UDHR, Art. 27

Work is a right guaranteed by the State and Society for each person able to work. Everyone shall be free to choose the work that suits him best and which serves his interests and those of society. The employee shall have the right to safety and security as well as to all other social guarantees. He may neither be assigned work beyond his capacity nor be subjected to compulsion or exploited or harmed in any way. He shall be entitled – without any discrimination between males and females – to fair wages for his work without delay, as well as to the holidays, allowances and promotions which he deserves. For his part, he shall be required to be dedicated and

meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.

DHRI, Art. 13

Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical production and the right to protect the moral and material interests stemming therefrom, provided that such production is not contrary to the principles of shari'a.

DHRI, Art. 16

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

ACHPR, Art. 15

Projects to restore economic activities, opportunities and livelihoods that are disrupted by the natural disaster should start as soon and as completely as possible. To the maximum extent possible, such measures should already be taken during the emergency phase.

IASC, C.4.1

Where individuals are unable to return to precious sources of livelihood due to the natural disaster, appropriate measures – including provision of re-training opportunities or micro-credits – should be taken. Opportunities created by such measures should be available without any discrimination as any kind as to race, color, sex, language, political or other opinion, national or social origin, property, birth, age, disability or other status.

IASC, C.4.2

Access to livelihoods and employment opportunities should be ensured when planning temporary camps and relocation sites, as well as permanent re-housing for individuals displaced by the natural disaster.

IASC, C.4.3

### **The Right to Adequate Health Care**

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - b) the improvement of all aspects of environmental and industrial hygiene;
  - c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

ICESCR, Art. 12

- b) everyone shall have the right to medical and social care, and to all public amenities provided by society and the State within the limits of their available resources.

Art. 17 DHRI

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

ACHPR, Art. 16

Those affected by the natural disaster should be given access to psycho-social assistance and social services, when necessary. Special attention should be given to the health needs of women, including provision of appropriate clothing and hygienic supplies, access to female health care providers and such services as reproductive health care.

IASC, B.2.5

Special attention should be given to the prevention of contagious and infectious diseases, including HIV/AIDS, among the affected population, particularly among those displaced by the disaster

IASC, B.2.7

Special attention should be given to the provision of psycho-social care for victims of sexual and other abuses.  
IASC, B.2.6

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### **The Right to Humanitarian Assistance**

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Measures should be taken to ensure that persons affected by natural disasters, in particular those displaced, have unimpeded and non-discriminatory access to goods and services to address their basic needs.  
IASC, B.1.1

Safe and non-discriminatory access to available humanitarian assistance should be secured for all persons in need. In particular, measures should be taken to grant priority access to vulnerable groups as minorities, single-headed households, elderly, people with disabilities, and unaccompanied and separated children.  
IASC, B.1.3

Humanitarian action should be carried out in accordance with the principles of humanity, impartiality and, in countries with armed conflict, neutrality. Humanitarian assistance should not be diverted.  
IASC, B.1.5

In particular, when the authorities concerned are unable or unwilling to provide the required humanitarian assistance, international humanitarian organizations and other appropriate actors should offer their services in support of persons affected by natural disasters and in need of humanitarian assistance.  
IASC, B.1.4

International organizations and agencies and other actors providing humanitarian assistance, should ensure coordination of their actions among themselves and with national and local authorities. The responsibilities for certain areas of activities assigned to specific agencies and organizations should be taken into account.  
IASC, B.1.6

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### **The Right to Personal Documentation**

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Organizations providing humanitarian assistance to persons affected by natural disasters should grant access to life-saving goods and services even in the absence of relevant documents or should issue such documents without delay during the emergency phase of the humanitarian action. Personal data collected, and records established in this context, should be protected against misuse of any kind.  
IASC, D.1.1

Loss of personal documentation should not be used (a) to justify the denial of essential food and relief services (b) to prevent individuals from traveling to safe areas or from returning to their homes (c) to impede their access to employment opportunities.  
IASC, D.1.5

In this regard ... 'Appropriate measures should be taken as early as possible, including during the emergency phase, to restore personal documentation that has been lost or destroyed in a natural disaster, to persons affected by the natural disaster (e.g. birth, marriage and death certificates, insurance certificates, passports, personal identification and travel documents, education and health certificates).'  
IASC, D.1.2

Women and men should be treated equally when documents of any kind are issued. Women should be issued documentation in their own names.  
IASC, D.1.3

Unaccompanied and orphaned children should be issued documentation in their own names.  
IASC, D.1.4

Erica Harper  
with Jo Wells and Bridget Sleat (Part 4)

### Part 1: Protecting the Rights of Women

*Natural disasters tend to have a disproportionate impact on women. Women who are primary caregivers, with greater responsibility for household work, will have less time and capacity to mobilize resources for recovery. They are less likely to participate in the public sphere in which relief is organized and delivered. They may be overlooked if relief efforts target programs at household heads, or focus on primary employment as the sole source of livelihoods. And if these relief efforts also fail to collect gender disaggregated data, the disproportionate impacts on women may not even register in monitoring mechanisms.*

*Dr D. Fitzpatrick, Oxfam Policy Paper, 2007<sup>1</sup>*

*... Efforts should be made to ensure that women and persons with special needs – e.g. children, older persons, persons with disabilities, single-headed households, and members of religious and ethnic minority groups or indigenous persons – are specially consulted and can participate in all aspects of the disaster response ...*

*IASC D.4.1*

Protecting the rights of women is particularly important in natural disaster contexts. Breakdowns in law and order and the elimination of natural support and safety mechanisms such as the extended family and village groups as a result of death or separation increase women's vulnerability. The most vulnerable groups are widows, older women, female-headed households and unaccompanied women. Women are also essential elements in the recovery, rehabilitation and development processes, although their role is often under-recognized. It is generally women who care for orphans, the disabled and other vulnerable groups. Women are also valuable economic assets who can contribute greatly to community development and economic growth. The value-added of integrating women into recovery efforts must be effected through consultation, inclusive decision-making and capacity-building, particularly in the context of natural disasters.

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The primary treaty protecting the rights of women is the 1979 *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW) and the 1999 *Optional Protocol to the CEDAW*. Humanitarian actors should also be aware of other relevant international instruments such as the 1967 *Declaration on the Elimination of all Forms of Discrimination against Women* and the 1965 *Recommendations on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*. Regional conventions that also protect the rights of women are not discussed in detail in this section, but are referred to in the footnotes and in the chapter's matrix of laws.

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## INTERNATIONAL INSTRUMENTS

Convention on the Elimination of All Forms of Discrimination against Women (1979)

[www.unhchr.ch/html/menu3/b/e1cedaw.htm](http://www.unhchr.ch/html/menu3/b/e1cedaw.htm)

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)

[www.un.org/womenwatch/daw/cedaw/protocol/index.html](http://www.un.org/womenwatch/daw/cedaw/protocol/index.html)

Universal Declaration of Human Rights (1948)

[www.unhchr.ch/udhr/lang/eng.htm](http://www.unhchr.ch/udhr/lang/eng.htm)

Convention on the Political Rights of Women (1952)

[www.unhchr.ch/html/menu3/b/22.htm](http://www.unhchr.ch/html/menu3/b/22.htm)

International Covenant on Civil and Political Rights (1966)

[www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm)

International Covenant on Economic, Social and Cultural Rights (1966)

[www.unhchr.ch/html/menu3/b/a\\_cesscr.htm](http://www.unhchr.ch/html/menu3/b/a_cesscr.htm)

Declaration on the Elimination of All Forms of Discrimination against Women (1967)

[www.unhchr.ch/html/menu3/b/21.htm](http://www.unhchr.ch/html/menu3/b/21.htm)

Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974)

[www.unhchr.ch/html/menu3/b/24.htm](http://www.unhchr.ch/html/menu3/b/24.htm)

Declaration on the Elimination of Violence against Women (1993)

[www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.48.104.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.48.104.En)

Universal Declaration on Democracy (1997)

[www.ipu.org/cnl-e/161-dem.htm](http://www.ipu.org/cnl-e/161-dem.htm)

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## 1.1 Freedom from Gender-Based Discrimination

The CEDAW specifically guards against gender-based discrimination.<sup>2</sup> To realize this right, States Parties are required to take actions such as incorporating the principle of gender equality into their constitutions and legislation, repealing or amending discriminatory laws, regulations, customs or practices, adopting legislative sanctions to punish acts of discrimination, and eliminating gender-based discrimination by public authorities, organizations or enterprises.<sup>3</sup> In the context of natural disasters, an important tool for preventing gender-based discrimination is the collection of sex-aggregated data and ensuring that aid distribution policies and decision-making does not focus only on heads of households – a practice that has the effect of excluding women.

## 1.2 Protection from Violence and Harmful Traditional Practices

There is no accepted definition as to which traditional practices are harmful, but there is broad consensus that the following acts constitute harmful traditional practices for the purposes of the relevant international conventions:<sup>4</sup>

- female genital mutilation and cutting;
- child marriage and forced marriage;
- preferential feeding and care of male children;
- abandonment and neglect of children with birth defects;
- female infanticide;
- forced feeding of young women and nutritional taboos for pregnant women;
- killing of children for ritual sacrifice;
- gifting of virgin girls to temples, shrines or priests;
- scarring, tattooing, binding and branding of children; and
- honor killings and dowry-related killings.

Women in disaster settings who have inherited assets or been widowed may be more vulnerable to harmful traditional practices, in particular, child/forced marriage and associated female genital mutilation and cutting, widow “cleansing” ceremonies and dowry-related killings.

The CEDAW requires that States Parties take measures to modify social and cultural patterns of conduct with a view to eliminating customary and other practices that are based on perceived inferiority or stereotypes of women.<sup>5</sup> *The Declaration on the Elimination of all forms of Discrimination Against Women* (1967) holds that states should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid this obligation. Actions that states might take to eliminate harmful practices include criminalizing violence against women, training law enforcement officers responsible for investigating and punishing violence against women, and raising community awareness regarding women’s right to be protected against violence and abuse.<sup>6</sup>

*What can be done if a woman is being discriminated against through the operation of a state law, policy or practice?*

1. Examine national legislation to see which laws, if any, protect women from discrimination. If legislation does exist, there may be women’s legal advisory services, national legal aid clinics or law firms that can take appropriate action.
2. If no protective legislation exists, individuals, advocacy groups, NGOs or members of parliament can put pressure on governments to adopt such measures. If the state is a party to the CEDAW, it is obliged under article 2 to repeal discriminatory legislation and adopt legislation that punishes acts of discrimination against women.
3. If the state has ratified the *Optional Protocol to the CEDAW* (1999), individuals or groups of individuals can submit communications to the Committee on the Elimination of all Forms of Discrimination Against Women regarding violations of any of the rights guaranteed under the CEDAW (Art. 2). If the committee receives reliable

information indicating grave or systematic violations by a state party, it can conduct an inquiry. The findings of the investigation will be transmitted to the state party, along with recommendations (Art. 8).

4. It should be recalled that the rights protected under the CEDAW may also be contained in other human rights treaties and international customary law. For example the ICCPR Art. 2.1, UDHR Art. 2 and ICESPR Art. 2.2 each require that their provisions be applied without any distinction as to sex. Other complaints mechanisms may therefore be operative.

### 1.3 Protection from Exploitation

Women in disaster settings become vulnerable to exploitation and abuse, particularly widows, unaccompanied women and women living in poverty. The primary dangers are trafficking, forced marriage, including bride sales, and prostitution because of financial necessity, cultural norms or family pressure. There is also evidence that demand from international aid workers has led to increases in prostitution in disaster settings.<sup>7</sup> The CEDAW requires that States Parties adopt measures to suppress all forms of trafficking, exploitation and prostitution of women.<sup>8</sup>

#### *What happens if an international aid worker is caught engaging in prostitution?*

Generally speaking, international aid workers will be subject to the criminal laws of the state in which they are working, unless a privileges and immunities agreement exists between the state and the organization for which the staff member is working that protects them from personal arrest.<sup>9</sup> In recent years, however, organizations have increasingly withdrawn staff members' immunities in cases of sexual exploitation, prostitution and other unlawful activities. In any event, organizations should apply codes of conduct or zero-tolerance policies that prohibit staff from engaging in, promoting or facilitating any type of sexual exploitation or abuse, including the purchase of sexual services, with strict reporting requirements for known cases. A model code of conduct can be found in Chapter 3.

#### *What can states and aid agencies do to protect women from exploitation in post-disaster situations?*

States and aid agencies can:

- monitor women at risk – widows, unaccompanied women, older women, minorities and orphans – in emergency shelters and follow up their return to their communities;
- ensure that unaccompanied women in emergency shelters are housed together, and separately from unrelated males. Women should also have safe access to food and water; washing and toilet facilities could, for example, be floodlit;
- provide vocational training programs or access to microcredit to facilitate women's self-sufficiency or entry into the workforce;
- implement programs to secure women's property rights;
- educate women as to their rights under national and international law, and show them how to access assistance and uphold their rights;
- support women's legal aid facilities and free legal advisory services;
- implement programs through which women can report cases of sexual exploitation, abuse or domestic violence, particularly in rural areas;
- implement programs to ensure that women who have survived of sexual exploitation have access to female police officers and trained teams of police, counselors and medical personnel to receive and investigate complaints;
- train police, judges and other protection workers such as teachers in the gravity of sexual exploitation and the special needs of survivors; and
- implement programs for women survivors of sexual exploitation such as skill-building, alternate employment opportunities and back-to-school incentives.

## 1.4 Consent to Marriage

As noted above, women in natural disaster situations are vulnerable to exploitation in the form of non-consensual marriage. Women living in poverty, those who have inherited property, unaccompanied women and orphans are at particular risk. The requirement of consensual marriage is protected in several international treaties including the ICESCR,<sup>10</sup> ICCPR,<sup>11</sup> the *Convention on Consent to Marriage* (1962),<sup>12</sup> and the UDHR.<sup>13</sup>

Child marriage is one of the most prevalent forms of non-consensual marriage in that consent cannot be free and full when one of the parties is not sufficiently mature to make an informed decision.<sup>14</sup> Although the UN human rights instruments do not specify a minimum age for marriage, there is tendency to interpret these standards as prohibiting marriage under the age of 18.<sup>15</sup> Parents may consent to or facilitate child marriage because of economic necessity – brides can be sold to generate income or relieve economic burdens – or because they believe that marriage may provide protection from sexual assault or trafficking. It must, however, be emphasized that child marriage can be used as a means of obtaining children for the purposes of bonded labor, enslavement, or commercial sexual exploitation.<sup>16</sup> The consequences of underage marriage include separation from family, isolation, and lack of freedom to interact with peers. As child marriage often leads to premature pregnancy, the girls involved have reduced access to education, leading to decreased income-earning potential and increased dependency on the spouse.<sup>17</sup> Child brides are unlikely to be able to abstain from sex or insist on condom use, therefore they are exposed to health risks such as premature pregnancy, sexually transmitted diseases (STDs) and HIV/AIDS.<sup>18</sup>

*What can states and aid agencies do to guard against child marriage in post-disaster situations?*

States and agencies can:

- ratify or lobby for the ratification of the *Convention on Consent to Marriage* (1962) and the *Convention on the Rights of the Child* (1989);
- adopt or lobby for legislation that sets the minimum age of marriage at 18 years;
- monitor the welfare and safety of orphans and other children at risk such as children living in poverty, children living in single-headed households and children who have inherited assets;
- support the parents of children at risk and those living in alternate care arrangements in obtaining self-sufficiency, for example through vocational training and access to micro-credit or assistance vouchers;
- provide community education programs highlighting the risks of and dangers associated with child marriage, particularly in societies where cultural norms and attitudes foster abuse;
- facilitate the education and schooling of girls at risk; and
- train police and border guards in the correlation between child marriage and trafficking.

### Global Fund Grants to Assist Disaster-Affected Women

Following the 2004 tsunami, the 2005 Kashmir earthquake and the 1998 hurricanes Stan and Mitch which struck Central America, the Global Fund for Women has provided grants and has worked in partnership with women struggling to rebuild their lives and communities in:

**Indonesia:** US\$15,000 was provided for the Asia Pacific Forum on Women, Law and Development (APWLD), a group of more than 1,500 members representing women's organizations and individuals from the Asia and Pacific region. In Banda Aceh, Indonesia, APWLD is bringing together women working in tsunami-affected regions to discuss post-tsunami challenges and women's human rights violations.

**Indonesia:** US\$5,000 was provided for Flower Aceh, which is assessing women's needs, providing basic necessities and running a women's crisis centre in conjunction with other local women's groups. Using their experience from empowering women during the pre-tsunami conflict, Flower Aceh is working to include women in the reconstruction process.

**India:** US\$5,000 was provided for the Development for Rural Oppressed Peoples Service Society (DROPSS) in Sivagangai, India. DROPSS is working in Tamil Nadu to combat the harmful effects of the tsunami on young women in coastal fishing communities, for example providing trauma counseling, food and shelter, and training in income-generation for young women who are vulnerable to sexual exploitation and trafficking.

**Guatemala:** US\$15,000 was provided for the New Horizons Home Association in Guatemala, which is working with local women to seed economic empowerment projects to support long-term community development.

**Costa Rica:** In partnership with the Global Fund for Women, the Feminist International Radio Endeavor (FIRE) has launched the “Woman to Woman, with Affected Communities” campaign, through which a Latin American coalition led by FIRE is building the capacity of women’s organizations to be involved in disaster preparedness and recovery.<sup>19</sup>

### 1.5 Equality and Protection of Women’s Rights in Marriage

The CEDAW holds that States Parties must take measures to eliminate discrimination against women in matters relating to marriage, for example by ensuring the same rights and responsibilities for both spouses:

- during marriage and its dissolution;
- in matters regarding their children;
- with regard to guardianship, trusteeship, wardship and adoption of children; and
- with regard to the ownership, acquisition, management and disposal of property.<sup>20</sup>

The ICCPR<sup>21</sup> and UDHR<sup>22</sup> also protect the equality of rights of spouses during marriage and its dissolution.

### 1.6 Women’s Economic, Social and Cultural Rights

The CEDAW provides that States Parties must take measures to ensure that women enjoy fundamental rights and freedoms in political, social, economic and cultural fields on a basis of equality with men.<sup>23</sup> It is of particular relevance is that States Parties are required to take steps to ensure that women in rural areas participate in and benefit from rural development<sup>24</sup> and ensure that women have, among other rights, the right to participate in development planning, benefit directly from social security programs, have access to agricultural credit and loans, have equal treatment in land resettlement schemes, and enjoy adequate living conditions particularly in relation to housing.<sup>25</sup> States Parties must also take steps to ensure that women and men enjoy equality of rights with respect to family benefits, bank loans, mortgages and other forms of financial credit.<sup>26</sup>

#### *Can the CEDAW be used to enforce equal inheritance rights?*

The ways in which inheritance is distributed in any society will depend on national laws and practices. In some situations, inheritance may not be regulated at all, and individuals are free to dispose of their property. In other situations, religion and traditional customs regulate inheritance practices. Although the CEDAW does not place any direct obligations upon States Parties with respect to the inheritance rights of women, inheritance laws or practices that favor male over female children, as in the Islamic legal tradition, could be deemed to be discriminatory and hence in breach of Art. 1 of the CEDAW. It is important to note, however, that proponents of such inheritance systems argue that women and girls are accorded additional rights of maintenance by male relatives and that this offsets unequal rights of inheritance. This issue is discussed in greater detail in chapter 4.

#### *Can the CEDAW be used to introduce compulsory joint registration of matrimonial property?*

The CEDAW accords spouses equal rights with respect to property acquisition, ownership and disposal. Although this right does not in itself require that all joint matrimonial property be registered under the names of both spouses, laws or practices that require that land or property be registered only in the name of the male

spouse would be deemed discriminatory. Humanitarian actors aiming to encourage joint property registration might consider the experience of post-tsunami Aceh, where couples provided with new land parcels by the BRR<sup>27</sup> were required to register such land jointly. Another approach is to educate communities with regard to the benefits of joint registration of property and the protection this provides to women in the event of marriage dissolution or widowhood.<sup>28</sup>

*Can the CEDAW be used to ensure that widows automatically become guardians of their own children?*

In some cultures, in the event of the death of a father, mothers do not automatically become the guardians of their children, and a male guardian is appointed. The CEDAW makes clear, however, that spouses have equal rights with respect to matters relating to their children.<sup>29</sup> This implies that a mother's rights over her child, which are the same as a father's, continue after the death of her spouse.

### Supporting Women's Legal Aid in Post-Tsunami Aceh, Indonesia

Following the 2004 tsunami, women in the Aceh Province of Indonesia had profound difficulty in accessing legal information and solutions. Issues included a scarcity of women-focused legal advice and support services, lack of awareness of women's legal rights among decision-makers and community leaders, particularly in relation to guardianship and inheritance law, and the small number of practicing female lawyers. In response, IDLO entered into a partnership with local NGO *Kelompok Kerja Transformasi Gender Aceh* (KKTGA) to facilitate increased availability of women's legal representation and counseling services and to disseminate information promoting women's legal rights in the areas of land, inheritance and guardianship.

Between June 2006 and April 2007, KKTGA carried out the following awareness-raising activities:

- broadcast 20 radio talk-shows addressing land, inheritance and guardianship law, and violence against women; the talk-shows featured prominent guests such as local judges and women's rights advocates and provided an opportunity for listeners to telephone or SMS questions to guest experts, who would provide answers on air;
- distributed 3,000 stickers highlighting gender-friendly legal messages and placed banners in strategic positions in Banda Aceh;
- distributed 2,000 brochures and ran radio broadcasts highlighting KKTGA's legal aid services;
- delivered 84 days of on-site information dissemination and legal counseling in temporary shelters for tsunami survivors, tsunami-affected villages and government departments in Banda Aceh and Aceh Besar, reaching 1,462 beneficiaries;
- opened a women's crisis centre staffed by two lawyers and six counselors/paralegals; staff provided legal counseling, information and representation services for 131 clients, primarily in the areas of inheritance, guardianship, land ownership, and divorce.<sup>30</sup>

### Raising Legal Awareness on Land, Inheritance and Guardianship Law Through Film

In post-tsunami Aceh, women faced particular challenges in protecting their legal rights. There were concerns that women had little access to information regarding their legal rights, that they were often denied their entitlements under Islamic inheritance law, were rarely recognized as land-owners, and were caring for orphans without the protection of legalized guardian status. Legal stakeholders believed that a lack of awareness regarding the applicable law and procedures was the primary impediment to overcoming these issues. In response, IDLO produced a 30-minute educational film *The Stories of Aisha, Rauda and Ainun: Protecting Women's Legal Rights Post-Tsunami*. The film tracks the lives of three women, each of whom are struggling to overcome some of the most common legal issues affecting communities in the aftermath of the tsunami. Through these narratives, the film examines the law relevant to land, inheritance and guardianship, and the possible solutions to problems arising in those areas. Peer review by local stakeholders, the recruitment of a local director and the use of Acehnese actors ensured that the film was accurate, corresponded to the realities of village life and was consistent with Acehnese norms and values. A significant component was a two-minute endorsement of the film by the Chief Justice of the *Mahkamah Syar'iyah* in which he notes its compatibility with Islamic and Indonesian law. It is believed that this promoted acceptance of the film among legal stakeholders and community members.

Beginning in February 2007, a team comprising Acehese experts in Islamic Law and philosophy (*Aqidah*) screened the film in 173 tsunami-affected villages in Banda Aceh and Aceh Besar, reaching approximately 5,650 women, followed by half-day information training sessions. The film generated considerable interest from other agencies, particularly those working on housing and land issues. The Canadian Red Cross, World Vision, Oxfam and local organizations have incorporated the film into their programs as a community education tool or have used the film in workshops.

To request a copy of the film please contact [idllo@idllo.int](mailto:idllo@idllo.int)

### 1.7 Freedom of Residence and Domicile

The CEDAW guarantees women equal rights with men with respect to the freedom to choose their residence and domicile.<sup>31</sup>

### 1.8 Right to Participate in Government

The CEDAW requires that States Parties take steps to guarantee women the right, on equal terms with men, to vote, participate in the formulation of government policy, hold public office and participate in non-government organizations concerned with public and political life.<sup>32</sup> The *Convention on the Political Rights of Women* (1952) contains similar protections.<sup>33</sup> Although not directly relevant in natural disaster settings, such provisions reiterate the need to facilitate the participation of all persons in elections, particularly displaced populations. The provisions also provide a basis for a gender-sensitive approach to development planning and reconstruction through the participation of women.

### 1.9 Employment Rights

The CEDAW requires that States Parties ensure that men and women enjoy equality of rights in the field of employment, particularly with respect to the rights to: (i) work; (ii) employment opportunities, including promotion and vocational training; (iii) free choice of profession; (iv) job security; (v) benefits and conditions of employment; (vi) equal remuneration; (vii) social security, particularly in case of retirement, unemployment, sickness, invalidity, old age and incapacity to work; (viii) paid leave; and (ix) safe working conditions.<sup>34</sup> It further provides that States Parties take measures to: prohibit dismissal on the grounds of pregnancy, maternity leave or marital status; introduce maternity leave; encourage the provision of social services to enable parents to combine family obligations with work responsibilities; and provide special protection for pregnant women from work-related hazards.<sup>35</sup> The ICESCR requires that special protection be accorded to working mothers for a reasonable time before and after childbirth, during which they should be given paid leave or adequate social security benefits.<sup>36</sup>

*Do the CEDAW provisions regarding freedom of residence mean that women have the right to choose their place of resettlement in housing programs?*

No, article 13 of the CEDAW provides that women should be accorded the same rights as men with respect to choice of residence. In practice, this means that if men are allowed to decide between alternate resettlement locations or other matters relating to their domicile, women must be provided with the same opportunities. In the context of resettlement programs, women's right to freedom of residence and domicile highlights the importance of ensuring that decision-making is not restricted to heads of households – a practice that excludes women. It should be kept in mind that unaccompanied women are particularly vulnerable, so attempts should be made to resettle such persons in areas of their choice, preferably in locations close to extended family, support services or other single women.

*Do the employment rights contained in the CEDAW apply to international agencies and NGOs?*

National and international humanitarian aid organizations will generally be required to follow the laws of the state in which they are operating, unless a privileges-and-immunities agreement between the state and organization lifts such responsibilities. Alternatively, states may have special laws that regulate the employment of staff of international aid organizations. Even where organizations are not required to follow domestic legislation, however, it is generally deemed prudent to follow national standards or to provide more generous benefits, particularly when dealing with national staff.

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## CHECKLIST FOR AGENCIES

### Agencies might establish:

- appropriate emergency housing arrangements in post-disaster situations that safeguard the welfare and monitor the protection of women, and especially girls, for example by housing unaccompanied women separately from unrelated males;
- awareness-raising and community-education projects that focus on the elimination of discrimination against women, particularly in schools and workplaces, for example by translating the CEDAW into local languages and disseminating it in communities;
- vocational training programs or access to micro-credit for female-headed households to facilitate self-sufficiency or entry into the workforce;
- programs to facilitate the education of women, particularly those who have not completed secondary education or who are illiterate;
- programs to protect women's property rights, either in the context of inheritance or within marriage, for example by requiring that matrimonial property be registered jointly;
- programs through which women can report cases of sexual exploitation, abuse or domestic violence;
- programs to ensure that female survivors of sexual abuse, exploitation or trafficking have access to female police officers and that teams of police, counselors and medical personnel are trained to receive and investigate complaints;
- education programs for training police, judges and other protection workers such as teachers in the gravity of sexual exploitation, abuse, trafficking and domestic violence, and the special needs of survivors;
- programs for women survivors of sexual exploitation, abuse and trafficking including skill-building, alternate employment opportunities and back-to-school incentives;
- codes of conduct that prohibit workers from engaging in, promoting or facilitating any form of trafficking, exploitation or abuse, with strict reporting requirements for known cases; codes of conduct should apply to national and international partner organizations; and
- programs aimed at modifying social and cultural patterns and eliminating harmful customary practices, particularly those based on gender stereotypes.

### Agencies might lobby for:

- ratification of the CEDAW (1979), its *Optional Protocol* (1999) and the *Convention on the Political Rights of Women* (1952);
  - legislation and reform consistent with state party commitments under relevant international conventions, taking particular note of the *United Nations Declaration on the Elimination of all forms of Discrimination Against Women* (1967), the *United Nations Declaration on the Protection of Women and Children in Emergency and Armed Conflicts* (1974) and the *Declaration on the Elimination of Violence against Women* (1993);
  - legislation criminalizing sexual exploitation, abuse, trafficking, domestic violence and violence against women, with penalties to reflect the gravity of such crimes;
  - legislation that sets the minimum age of marriage at 18 years;
  - legislation confirming the right of women to own property;
  - collaboration among governments, NGOs and civil society to develop and implement comprehensive programs aimed at combating sexual exploitation, trafficking, abuse and violence against women;
  - consultation with women or their representatives regarding reconstruction, planning and development strategies;
  - codes of conduct for corporations, businesses and government departments, especially police departments and judiciaries, that prohibit workers from engaging in, promoting or facilitating any form of sexual exploitation or abuse, with strict reporting requirements for known cases; and
  - zero-tolerance policies relating to sexual abuse, exploitation and other sex offences including the purchase of sexual services.
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## USEFUL LINKS AND PUBLICATIONS

Caught in the Storm: The Impact of Natural Disasters on Women (L. Chew and N. Ramdas, The Global Fund, 2005)

[www.globalfundforwomen.org/cms/images/stories/downloads/disaster-report.pdf](http://www.globalfundforwomen.org/cms/images/stories/downloads/disaster-report.pdf)

Prioritizing Women's Human Rights in Times of Disaster: Problems and Solutions (MADRE)

[www.madre.org/articles/int/disasterreliefmodel.html](http://www.madre.org/articles/int/disasterreliefmodel.html)

From Disaster to Development: Community Women's Leadership in Times of Crisis (MADRE)

[www.madre.org/articles/int/disastertodevelopment.html](http://www.madre.org/articles/int/disastertodevelopment.html)

Women 2000 and Beyond: Making Risky Environments Safer: Women Building Sustainable and Disaster-Resilient Environments (UN Division for the Advancement of Women, Department of Economic and Social Affairs, 2004)

[www.un.org/womenwatch/daw/public/w2000-natdisasters-e.pdf](http://www.un.org/womenwatch/daw/public/w2000-natdisasters-e.pdf)

In the Disaster Zone, Women are Key (S. Hunt and D. Steinberg, Christian Science Monitor, January 2005)

[www.csmonitor.com/2005/0124/p09s01-coop.html](http://www.csmonitor.com/2005/0124/p09s01-coop.html)

Socio-Economic Impacts of Natural Disasters: a Gender Analysis (S. Bradshaw, ECLAC,<sup>37</sup> Women and Development Unit, Santiago, May 2004)

[www.unifem.org/campaigns/tsunami/documents/ECLAC\\_gender\\_analysis.pdf](http://www.unifem.org/campaigns/tsunami/documents/ECLAC_gender_analysis.pdf)

The Impact of Disasters on Women (Chapter 2, Handbook for Estimating the Socio-economic and Environmental Effects of Disasters, Vol. IV, Section 5, ECLAC July 2003).

[www.eclac.org/publicaciones/xml/4/12774/lcmexg5i\\_VOLUME\\_IVd.pdf](http://www.eclac.org/publicaciones/xml/4/12774/lcmexg5i_VOLUME_IVd.pdf)

Gender Equality in Disasters: Six Principles for Engendered Relief and Reconstruction (Gender and Disaster Network, 2005)

[www.unifem.org/campaigns/tsunami/documents/GDN\\_GENDER\\_EQUALITY\\_IN\\_DISASTERS.pdf](http://www.unifem.org/campaigns/tsunami/documents/GDN_GENDER_EQUALITY_IN_DISASTERS.pdf)

Hard Lessons Learned: Gender Notes for Tsunami Responders (Gender and Disaster Network, 2005)

[www.unifem.org/campaigns/tsunami/documents/GDN\\_GenderNote\\_1.pdf](http://www.unifem.org/campaigns/tsunami/documents/GDN_GenderNote_1.pdf)

The Gender and Disaster Sourcebook (Gender and Disaster Network, 2005)

[www.gdnonline.org/sourcebook/index.htm](http://www.gdnonline.org/sourcebook/index.htm)

IASC Guidelines on Gender-Based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies

[www.humanitarianinfo.org/iasc/gender](http://www.humanitarianinfo.org/iasc/gender)

Women, Girls, Boys and Men: Different Needs, Equal Opportunities. (IASC Gender Handbook, 2006)

[www.humanitarianinfo.org/iasc/gender](http://www.humanitarianinfo.org/iasc/gender)

80 How to use International Criminal Law to Campaign for Gender-Sensitive Law Reform (Amnesty International, 2004)

[www.amnesty.org](http://www.amnesty.org)

Early Marriage: A Harmful Traditional Practice: A Statistical Exploration (UNICEF, 2005)

[www.unicef.org/publications/files/Early\\_Marriage\\_12.lo.pdf](http://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf)

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## AGENCIES WORKING FOR THE PROTECTION OF WOMEN RIGHTS IN DISASTER SITUATIONS

Amnesty International

[www.amnesty.org/en/campaigns/stop-violence-against-women](http://www.amnesty.org/en/campaigns/stop-violence-against-women)

Amnesty International's "Stop Violence Against Women" campaign works in the following areas: women's empowerment, ending violence against women, abolition of gender-discriminatory laws, promoting the adoption of legislation to protect women's legal rights, and ensuring access to justice.

Association for Women's Rights in Development (AWID)

[www.awid.org](http://www.awid.org)

AWID is an international membership organization that aims to promote gender equality, sustainable development and women's human rights. AWID activities include facilitating debate on women's issues and building the capacity of organizations working for women's empowerment and social justice.

Coalition Against Trafficking in Women (CATW)

[www.catwinternational.org](http://www.catwinternational.org)

CATW is an NGO that promotes women's human rights by working internationally to combat sexual exploitation in all its forms. Its programs include addressing gaps in anti-trafficking programs and policies, and preventing sex trafficking and sexual exploitation by developing best practices and discouraging demand, prostitution law reform, and advocacy.

Gender and Disaster Network

[www.gdnonline.org](http://www.gdnonline.org)

The Gender and Disaster Network is an educational project focusing on gender relations in disaster contexts. It aims to (i) document and analyze women's and men's experiences before, during, and after disasters; and (ii) foster information sharing and resource building among network members.

Global Fund for Women

[www.globalfundforwomen.org/cms](http://www.globalfundforwomen.org/cms)

The Global Fund for Women aims to provide long-term support for local groups in regions affected by natural disasters through grants that help communities to rebuild, prevent sexual violence, and ensure that women and children are accorded their full human rights in all stages of development.

Human Rights Watch - Women's Rights Division

[www.hrw.org/women](http://www.hrw.org/women)

Human Rights Watch works regionally and in thematic areas such as women workers, domestic violence, reproductive rights, sexual violence, women with HIV/AIDS, women and armed conflict, international justice, trafficking, women in state custody, refugee and displaced women, women's status in the family, and legal status.

International Association of Women Judges (IAWJ)

[www.iawj.org](http://www.iawj.org)

The IAWJ is an organization of more than 4,000 members in 87 nations that unites women judges from diverse legal and judicial systems who share a commitment to equal justice and the rule of law. Through its judicial education programs, the IAWJ works to advance human rights, eliminate discrimination on the basis of gender and make courts accessible to all.

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United Nations Development Fund for Women (UNIFEM)

[www.unifem.org](http://www.unifem.org)

UNIFEM provides financial and technical assistance aimed at fostering women's empowerment and gender equality. UNIFEM works with countries to formulate and implement laws and policies to eliminate gender discrimination and promote gender equality in areas such as land and inheritance rights, decent work for women and ending violence against women. UNIFEM also aims to transform institutions to make them more accountable to women's rights, to strengthen the capacity and voice of women's rights advocates, and to change harmful and discriminatory practices in society.

United Nations Population Fund (UNFPA)

[www.unfpa.org](http://www.unfpa.org)

UNFPA supports countries in using population data for policies and programs to reduce poverty and to ensure that every pregnancy is wanted, every birth is safe, every young person is free of HIV/AIDS, and every girl and woman is treated with dignity and respect.

Women's Commission for Refugee Women and Children

[www.womenscommission.org](http://www.womenscommission.org)

The Women's Commission aims to improve the lives and defend the rights of displaced and refugee women and children. Primary activities include the protection of the displaced, reproductive health, providing opportunities for children, and the protection of asylum seekers.

A global list of women's organizations can be found at [www.distel.ca/womlist/womlist.html](http://www.distel.ca/womlist/womlist.html)

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## footnotes

- 1 Fitzpatrick, D. 2007. *Women's Rights to Land and Housing in Tsunami-Affected Indonesia*. Oxfam International Policy Paper 9. Oxford, UK, Oxfam.
- 2 The CEDAW, Art. 1, defines discrimination as "...any distinction, exclusion or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". Regional treaties that protect against gender-based discrimination include the PACHPRA, Art. 2 and ACHPR, Art. 18.
- 3 Art. 2.
- 4 *Protocol on the Rights of Women in Africa to the African Charter on Human and People's Rights* (2003) Art. 1(g) defines harmful traditional practices as "...all behavior, attitudes and/or practices that negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity".
- 5 Art. 5. Regional treaties that protect against harmful traditional practices include the PACHPRA, Art. 5.
- 6 Art. 2 and 4.
- 7 J Hagen, 'Fighting Sexual Exploitation and Abuse by UN Peacekeepers' (2006) Volume XLIII, No. 3 *UN Chronicle*; See also: United Nations Conference Report, High-Level Conference on Eliminating Sexual Exploitation and Abuse by UN and NGO Personnel, 4 December 2006, New York ([www.un.org/Depts/dpka/CDT/HLCreport.pdf](http://www.un.org/Depts/dpka/CDT/HLCreport.pdf)).
- 8 Art. 6.
- 9 See, for example, *Convention on the Privileges and Immunities of the United Nations* (1946). 11 (a).
- 10 Art. 10.
- 11 Art. 23.
- 12 Art. 1.
- 13 Art. 16, see also Principle 1 *Recommendations on Consent to Marriage*. Regional treaties that protect against non-consensual marriage include the ACHR, Art. 17 and ECHR, Art. 12. Note that the ECHR does not require consent to marriage but protects the right of all persons of age to marry in conformity with national laws.
- 14 UNICEF. 2006. *Child Information Protection Sheet*, no. 17.
- 15 The Committee on Elimination of Discrimination Against Women General Recommendation 21 "...considers that the minimum age for marriage should be 18 years for both man and woman." See also UNICEF and Inter-Parliamentary Union. 2004. *Child Protection: A Handbook for Parliamentarians*, no.7, p 97, Geneva.
- 16 UNICEF. 2006. *Child Information Protection Sheet*, no. 17.
- 17 UNICEF and Inter-Parliamentary Union. 2004. *Child Protection: A Handbook for Parliamentarians*, no.7, p 98.
- 18 UNICEF. 2006. *Child Information Protection Sheet*, no. 17; UNICEF and Inter-Parliamentary Union. 2004. *Child Protection: A Handbook for Parliamentarians*, no.7, p 98.
- 19 Information on these and other grants can be found at [www.globalfundforwomen.org/work/programs/natural-disasters.html](http://www.globalfundforwomen.org/work/programs/natural-disasters.html).
- 20 Art. 16 and 9. See also Art. 6 of the 1967 *Declaration on the Elimination of All Forms of Discrimination against Women* (DEDAW). Regional treaties include the PACHPRA, Art. 6, 7 and 21; and ACHR, Art. 17.
- 21 Art. 23.
- 22 Art. 16.
- 23 Art. 3.
- 24 The PACHPRA contains comprehensive clauses regarding the participation of women in planning and development. See Art. 17-19 and 9.1(c).
- 25 Art. 14.
- 26 Art. 13.
- 27 See IDLO. 2005. 10 *Frequently Asked Questions on Land Law in Post-Tsunami Aceh*, p 8. Available at: [www.idlo.int/publications/AcehTEN%20QUESTION%20VOL-3-ENG.pdf](http://www.idlo.int/publications/AcehTEN%20QUESTION%20VOL-3-ENG.pdf)
- 28 See IDLO. 2005. *Guidebook on Guardianship, Inheritance and Land Law in Post-Tsunami Aceh*. Available at: <http://www.idlo.int/publications/19.pdf>
- 29 Art. 16.
- 30 For further information, visit [www.idlo.int](http://www.idlo.int)
- 31 Art. 15.4.
- 32 Art. 7 and 8. Regional treaties that protect women's right to participate in government include the PACHPRA, Art. 9.
- 33 Art. 1-3. See also Art. 4 of the DEDAW.
- 34 Art. 11. See also Art. 10 of the *Declaration on the Elimination of All Forms of Discrimination against Women* (1967). Regional treaties that protect women's employment rights include the PACHPRA, Art. 13.
- 35 Art. 11. See also Art. 12.
- 36 Art. 10. See also regional treaties such as PACHPRA, Art. 14 and 24.
- 37 United Nations Economic Commission for Latin America and the Caribbean.

## Part 2: The Rights of Persons with Disabilities

The primary source of international law protecting persons with disabilities is the 2006 *Convention on the Rights of Persons with Disabilities* (CRPD).<sup>38</sup> The CRPD does not provide a definition of disability. It notes, however, that disability is an evolving concept and that persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments that may hinder their full and effective participation in society on an equal basis with others.<sup>39</sup> Supplementing the CRPD are several international instruments that provide standards, procedural guarantees and protection for persons with disabilities against the worst forms of violation. These instruments include the 1991 *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*,<sup>40</sup> the 1971 *Declaration on the Rights of Mentally Retarded Persons*<sup>41</sup> and the 1975 *Declaration on the Rights of Disabled Persons*.<sup>42</sup> Persons with disabilities are also protected under general human rights treaties such as the ICCPR, ICESCR and UDHR on a basis equal to those without disabilities.

The CRPD provides for national and international monitoring of the rights guaranteed to disabled persons. At the national level, States Parties must appoint focal points to oversee implementation of their convention obligations, and establish or strengthen an existing institution to promote, monitor and protect the rights of persons with disabilities.<sup>43</sup> At the international level, the convention establishes a Committee on the Rights of Persons with Disabilities, which receives and reviews reports submitted periodically by States Parties.<sup>44</sup> The committee makes observations and recommendations based on review of these reports; the findings may be transmitted to United Nations specialized agencies and programs for follow-up through technical cooperation or humanitarian relief. Where states have ratified the Optional Protocol to the CRPD, the committee can receive individual or group complaints regarding breaches of convention rights.<sup>45</sup> The committee will examine complaints and communicate its views and recommendations to the state party concerned. Such communications also appear in the committee's report to the United Nations General Assembly, which is a public document.<sup>46</sup> The Committee may undertake an inquiry to investigate gross or systematic violations of a state's convention responsibilities.<sup>47</sup> Although such inquiries are confidential, the committee will publish a summary of findings in its report to the United Nations General Assembly. It should be noted that other monitoring mechanisms may be relevant to persons with disabilities, for example the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination Against Women. It should be noted that the Human Rights Committee – which monitors compliance with the ICCPR – has considered several complaints from persons with disabilities.<sup>48</sup>

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## INTERNATIONAL INSTRUMENTS

Convention on the Rights of Persons with Disabilities (2006)

[www.un.org/disabilities/convention/conventionfull.shtml](http://www.un.org/disabilities/convention/conventionfull.shtml)

Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991)

[www.unhcr.ch/html/menu3/b/68.htm](http://www.unhcr.ch/html/menu3/b/68.htm)

Declaration on the Rights of Mentally Retarded Persons (1971)

[www.unhcr.ch/html/menu3/b/m\\_mental.htm](http://www.unhcr.ch/html/menu3/b/m_mental.htm)

Declaration on the Rights of Disabled Persons (1975)

[www.unhcr.ch/html/menu3/b/72.htm](http://www.unhcr.ch/html/menu3/b/72.htm)

ILO Convention No. 159 Concerning Vocational Rehabilitation and Employment (Disabled Persons) 1983

[www.iloex.ch:1567/englishconvdisp1.htm](http://www.iloex.ch:1567/englishconvdisp1.htm)

ILO Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation (1958)

[www.iloex.ilo.ch:1567/english/convdisp1.htm](http://www.iloex.ilo.ch:1567/english/convdisp1.htm)

ILO Recommendation No. 168 Concerning Vocational Rehabilitation and Employment (Disabled Persons) (1983)

[www.ilo.org/iloex/english/recdisp1.htm](http://www.ilo.org/iloex/english/recdisp1.htm)

ILO Recommendation No. 99 Concerning Vocational Rehabilitation of the Disabled (1955)

[www.ilo.org/iloex/english/recdisp1.htm](http://www.ilo.org/iloex/english/recdisp1.htm)

ILO Recommendation No. 111 Concerning Discrimination (Employment and Occupation) (1958)

[www.ilo.org/iloex/english/recdisp1.htm](http://www.ilo.org/iloex/english/recdisp1.htm)

The UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

[www.un.org/esa/socdev/enable/dissre00.htm](http://www.un.org/esa/socdev/enable/dissre00.htm)

Copenhagen Declaration on Social Development (1995)

[www.visionoffice.com/socdev/wssdco-0.htm](http://www.visionoffice.com/socdev/wssdco-0.htm)

Tallinn Guidelines for Action on Human Resources Development in the Field of Disability (1990)

[www.wallis.kezenfogva.iif.hu/eu\\_konyvtar/projektek/vocational\\_rehabilitation/instr/un\\_020.htm#Annex](http://www.wallis.kezenfogva.iif.hu/eu_konyvtar/projektek/vocational_rehabilitation/instr/un_020.htm#Annex)

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### 2.1 Economic, Social and Political Rights

Article 4 of the CRPD obliges States Parties to "...undertake to ensure and promote the full realization of human rights and fundamental freedoms for all persons with disabilities without discrimination...".<sup>49</sup> The CRPD also protects a number of economic, civil, social and political rights including:

- the right to adequate living standards and social protection;<sup>50</sup>
- freedom from discrimination in employment;<sup>51</sup>
- freedom of movement and nationality;<sup>52</sup>
- freedom of expression, opinion and access to information;<sup>53</sup>
- freedom from discrimination in education;<sup>54</sup>
- the right to privacy;<sup>55</sup>
- protection of the home and family;<sup>56</sup>
- the right to participate in cultural life;<sup>57</sup> and
- the right to participate in public and political life.<sup>58</sup>

It should be noted that with respect to economic, social and cultural rights, a state party must undertake measures "...to the maximum of its available resources... with a view to achieving progressively the full realization of these rights...".<sup>59</sup> Although this gives states, particularly developing countries, some flexibility in terms of realizing certain convention rights, civil and political rights are not subject to progressive realization and must be protected immediately.<sup>60</sup>

*Does progressive realization mean that states are not under any obligation with respect to the economic, social and cultural rights of persons with disabilities?*

No, the obligations of States Parties fall into three categories: respect of rights, protection of rights and fulfillment of rights. Although States Parties may not have the necessary resources to take legislative, budgetary or administrative action to fulfill economic, social and cultural rights completely, they must still respect the rights of persons with disabilities, for example by not excluding persons with disabilities from schools or social security programs, and protect the rights of persons with disabilities, for example by ensuring that persons with disabilities receive the minimum wage and are not otherwise exploited in the workplace.

## **2.2 Protection from Discrimination**

The CRPD protects all persons with disabilities from discrimination.<sup>61</sup> For the purposes of the convention, discrimination is defined as any distinction, exclusion or restriction on the basis of disability that has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>62</sup> It is significant that the Convention states that specific measures taken to accelerate or achieve *de facto* equality of persons with disabilities are not considered discrimination.<sup>63</sup> This means that States Parties can discriminate in favor of persons with disabilities to ensure that such persons have rights equal to those of persons without disabilities.<sup>64</sup> In the context of a natural disaster, such action might include workplace subsidies to facilitate return to work, prioritized access to humanitarian aid or special consideration during resettlement.

It should be noted that a failure to take steps to reasonably accommodate the special needs of a disabled person constitutes discrimination under the CRPD.<sup>65</sup> Reasonable accommodation is defined as "... necessary and appropriate modification and adjustments ... to ensure that persons with disabilities are able to exercise human rights and fundamental freedoms in equality with others".<sup>66</sup> In practice, this means that persons with disabilities can call upon the state and other actors, including private-sector actors, to accommodate their particular situation so long as such steps do not impose a "disproportionate or undue burden".<sup>67</sup> For example, persons injured as a result of the natural disaster might ask employees to facilitate their return to work by providing wheel-chair access, appropriate toilet facilities and clear corridors. Whether accommodating a disabled person constitutes a "disproportionate or undue burden" will depend on factors such as cost proportional to the entity's size, practical limitations such as whether an office can be easily modified, the length of a disabled employee's contract, impact on the operation of the entity and occupational health and safety implications.<sup>68</sup>

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*In the context of community reconstruction, what are the common areas where "reasonable accommodations" should be made for persons with disabilities?*

Common areas might include construction of temporary and permanent housing, infrastructure planning, and the development or rehabilitation of public buildings such as schools, hospitals, government offices and parks. In each situation, the competent authorities should set out criteria determining what is reasonable for the purposes of an adjustment or accommodation in accordance with national law and practice.

### 2.3 Protection from Exploitation and Abuse

The CRPD upholds the right of persons with disabilities to be free from slavery, servitude and forced or compulsory labor.<sup>69</sup> It requires that States Parties take legislative, administrative or judicial measures to protect persons with disabilities from torture and from cruel, inhuman or degrading treatment,<sup>70</sup> and to ensure that instances of exploitation, violence and abuse in and outside the home are identified, investigated and, where appropriate, prosecuted.<sup>71</sup> It should also be noted that persons with disabilities cannot be deprived of their liberty on the basis of a disability.<sup>72</sup>

### 2.4 Health Care

The CRPD recognizes that persons with disabilities have the right to the highest attainable standard of health care without discrimination on the basis of disability. Under Article 25, they are to receive the same range, quality and standard of free or affordable health services as provided to other persons. States Parties are also required to ensure access to health services specifically for persons with disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disability.<sup>73</sup> The CRPD prohibits discrimination against persons with disabilities in the provision of health insurance and life insurance.<sup>74</sup>

### 2.5 Right to Autonomy and Self-Sufficiency

The CRPD requires that States Parties take measures to enable persons with disabilities to attain and maintain maximum independence, greatest possible physical, mental, social and vocational ability, and full participation in all aspects of life. Specifically, States Parties should provide access to habilitation and rehabilitation services, particularly in the areas of health, employment, education and social services.<sup>75</sup> The CRPD also recognizes the right of persons with disabilities to live in and participate in the community, and holds that such persons should be provided access to community services to facilitate this.<sup>76</sup>

In the context of disaster rehabilitation, those responsible for house reconstruction and resettlement programs should be aware that persons with disabilities must be permitted to choose their place of residence and where and with whom they reside on an equal basis with others; they must not be required to live in a particular living arrangement.<sup>77</sup> The CRPD also requires that measures be taken to ensure that disabled persons have equal access to public transport, communications systems and services such as schools, medical facilities and workplaces.<sup>78</sup> Such measures may include wheelchair access, handicapped parking zones, Braille signage and suitably adapted public transport.<sup>79</sup>

*Can a severely disabled person who is deemed to be without legal capacity inherit property or benefit under a housing replacement program?*

Article 12.5 of the CRPD requires that States Parties ensure the equal right of persons with disabilities to own and inherit property, and to ensure that persons with disabilities are not arbitrarily deprived of their property. One inhibiting factor may be that persons deemed to be without legal capacity are prevented from entering into contracts under national legislation. In such situations, disabled persons should be able to benefit either from inheritance or housing programs through their legal guardian.

*Are employees bound to accept the return to work of persons who have been disabled through a natural disaster? What if disablement prevents the employee undertaking their regular duties?*

CRPD Art. 27.1.A prohibits discrimination on the grounds of a disability with regard to all matters concerning employment, including conditions of recruitment, hiring, continuation of employment and promotion. This provision applies regardless of whether disablement occurs at work or outside of work, for example in the event of a natural disaster. Clearly, some types of disablement will be so severe that employment is no longer possible. To determine whether disablement prevents the employee from continuing in their work, employers should first consider what types of adjustments would need to be made within the workplace to facilitate the employee fulfilling their normal responsibilities. Accommodations might involve changes to the premises, acquiring or modifying equipment, providing a reader or interpreter, providing training or supervision, adapting

testing or assessment procedures, altering standard working hours, or allocating certain duties to another employee. If the adjustments required are considered reasonable, the CRPD requires that the employer undertakes them; if the adjustments would impose a disproportionate or undue burden, then a failure to do so will not constitute discrimination. Relevant authorities should set out criteria determining what is reasonable for the purposes of an adjustment in accordance with national law and practice. Factors might include cost proportional to the entity's size, practical limitations, the length of the employee's contract, impact on the operation of the entity, and occupational, health and safety implications.

## 2.6 Legal Capacity and Protection

The CRPD confirms that persons with disabilities have the right to be recognized as persons before the law, to legal capacity and to enjoy access to justice on equal terms with others.<sup>80</sup> The convention recognizes that some people need assistance exercising their legal capacity,<sup>81</sup> which may take the form of supported or substituted decision-making. In the case of supported decision-making, adequate safeguards must be in place to ensure that the disabled person's rights, will and preferences are respected, and that assistance is free from conflict of interest or undue influence.<sup>82</sup> Substituted decision-making is where a third party has court-authorized power to make decisions without having to prove that such decisions are in accordance with that person's wishes or best interests. Substituted decision-making comes into effect only when a person is determined to be incapable of exercising their legal capacity, for example in cases of severe disablement.<sup>83</sup>

It should be noted that persons who are severely disabled and are deemed to be without legal capacity cannot usually enter into contracts or be held responsible for violations of the law. If judicial proceedings are instituted against a person with a disability, the 1975 *Declaration on the Rights of Disabled Persons* requires that their physical and mental condition be taken into account.<sup>84</sup> Where persons with disabilities are deprived of their liberty, they are entitled, on an equal basis with others, to guarantees in accordance with international human rights law and the objectives and principles of the CRPD, including the provision of reasonable accommodation.<sup>85</sup>

*What specific risks are disabled women and children exposed to in natural disaster situations and what steps can be taken to increase their protection?*

Women and children with disabilities, especially girls, are always at greater risk in and outside the home of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.<sup>86</sup> Such risks are heightened in the case of natural disasters because institutional or private caregivers may have been killed, disabled persons may be separated from their families, and community support services may have ceased to operate. The CRPD requires that States Parties establish legislation and policies to ensure that instances of exploitation, violence and abuse against persons with disabilities, especially women and children, are identified, investigated and where appropriate prosecuted.<sup>87</sup> Humanitarian actors can support the development of such policies, raise awareness on regulatory mechanisms and work to increase the capacity of the justice sector to respond to violations. The humanitarian community can also promote the protection of disabled women and children through the creation of community-based support services, by raising the awareness of teachers and employers regarding the rights of the disabled, and by ensuring ongoing monitoring and vulnerability assessments.

*How do the rights of children with disabilities differ from the rights of children without disabilities?*

Children with disabilities enjoy all human rights and fundamental freedoms on an equal basis with other children.<sup>88</sup> While the primary source of protection for children with disabilities is the 1989 *Convention on the Rights of the Child*, the CRPD does provide disabled children with specific rights that reflect their increased vulnerability. For example, children with disabilities are protected from exclusion from education systems<sup>89</sup> and from separation from their parents because of the child's or the parent's disability<sup>90</sup>. The right of disabled children to retain fertility is specifically protected<sup>91</sup> as is their right to preserve their identity.<sup>92</sup> To prevent the concealment, abandonment, neglect and segregation of children with disabilities, the CRPD requires that States Parties provide information, services and support for such children and their families.<sup>93</sup>

**Making Life Accessible:****Physical Environment**

An accessible physical environment benefits everyone, not just persons with disabilities. The CRPD states that measures should be undertaken to eliminate obstacles and barriers in indoor and outdoor facilities, including schools, medical facilities and workplace.<sup>94</sup> These include not only buildings, but also footpaths, kerbs and obstacles that block the flow of pedestrian traffic. Over time, all new construction should be based on designs that incorporate accommodations for persons with disabilities. The World Bank has concluded that the cost of including these features at the time of construction can be minimal. It has also been shown that making buildings accessible adds less than 1 percent to construction costs.

**Public Facilities and Services**

The CRPD asks governments to set an example in ensuring full participation in society for persons with disabilities by developing guidelines to make public facilities and services accessible.<sup>95</sup> Accessibility may require providing ramps into government buildings, signage in Braille, accessible toilets and sign-language interpreters or closet-captioning on public television. These guidelines should be developed in consultation with persons with disabilities and/or their representative organizations.

**Transport**

Transportation, including air travel, buses, trains and taxis, is vital for independent living. In many instances, persons with disabilities, particular those who are visually impaired or who cannot move around easily are denied access to these essential services and are thus prevented from attending school, having a job or receiving medical treatment. *Reprinted with the permission from the Inter-Parliamentary Union and OHCHR.*<sup>96</sup>

**2.7 Emergencies**

The CRPD holds that States Parties shall take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including in situations of natural disaster.<sup>97</sup> In the aftermath of a disaster, persons with disabilities are at high risk and should be afforded increased protection in terms of their access to humanitarian aid and services. Measures might include assisted evacuation, steps to prevent family separation or priority access to emergency housing. Article 32 of the CRPD requires that development programs be inclusive of and accessible to persons with disabilities. This is consistent with IASC Principle B.1.3, which holds that "... safe and non-discriminatory access to available humanitarian assistance should be secured for all persons in need. In particular, measures should be taken to grant priority access to vulnerable groups such as ... people with disabilities". It is also important to factor the needs of disabled persons into planning processes. In this regard, Articles 8 and 12 of the CRPD are relevant: Article 8 holds that disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning; Article 12 promotes consultation with organizations of disabled persons in all matters regarding the rights of disabled persons.

*... Efforts should be made to ensure that women and persons with special needs – e.g. children, older persons, persons with disabilities, single-headed households, and members of religious and ethnic minority groups or indigenous persons – are specially consulted and can participate in all aspects of the disaster response ...*

IASC D.4.1

### Fact Sheet: The Link Between Poverty and Disability

- 10 percent of the world's population live with a disability, making up the world's largest and most disadvantaged minority.
- Persons with disabilities are less likely to go to school, find employment, own their own home, have a family, or enjoy the right to vote.<sup>98</sup>
- An estimated 20 percent of the world's poorest persons are those with disabilities: 98 percent of children with disabilities in developing countries do not attend school, 30 percent of the world's street children are disabled, and the literacy rate for adults with disabilities is only 3 percent.<sup>99</sup>
- In some countries mortality among children with disabilities is up to 80 percent where the overall under-5 mortality rate is below 20 percent.<sup>100</sup>
- Disability is a doubled edged sword: poor people are significantly more likely to acquire disabilities; similarly, disability can result in poverty because disabled persons are more likely to face discrimination and less likely to attend school.<sup>101</sup>
- Disability is associated with poor nutrition, illiteracy, a lack of access to clean water, low immunization rates, dangerous working conditions, and a lack of pre-natal health care and nutrition.<sup>10</sup>

## CHECKLIST FOR AGENCIES

Agencies might establish:

- programs to safeguard the welfare and monitor the protection of persons with disabilities in emergency shelters;
- programs that promote community care as opposed to institutional care of persons with disabilities, for example vouchers to assist care-givers with increased expenditures or periodic assistance from community health workers;
- awareness-raising and community education projects that focus on the rights and abilities of disabled persons, for example translating the CRPD into local languages and disseminating it in communities;
- mechanisms to receive and respond to complaints regarding the care of persons with disabilities;
- programs to monitor the management of assets belonging to persons with disabilities, for example through asset registrars and public trustees;
- vocational training programs that facilitate entry or re-entry into the workforce;
- programs to facilitate the education of children with disabilities, preferably in regular schools, for example by facilitating the employment of specially trained teaching assistants; and
- training programs on rights under the CRPD for professionals and staff who work with persons with disabilities.

Agencies might lobby for:

- ratification of the CRPD, *ILO Convention No.159 Concerning Vocational Rehabilitation and Employment* (1983) and *ILO Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation* (1958);
- legislation and reform consistent with States Parties' commitments under international conventions, taking particular note of the *United Nations Standard Rules on the Equalization of Opportunities for People with Disabilities* (1993), the *Declaration on the Rights of Disabled Persons* (1975) and the *Declaration on the Rights of Mentally Retarded Persons* (1971);
- legislation to protect the assets of disabled persons, particularly children, and penalties for those who misuse such assets;
- state monitoring of the welfare of disabled persons living independently, with families or in institutions, and in the workplace;
- compulsory periodic review of the wellbeing of all disabled children in alternate care arrangements;
- consultation with persons with disabilities regarding reconstruction, planning and development strategies;
- reconstruction policies that facilitate access of disabled persons to public places such as schools, hospitals, government offices and parks, for example through wheelchair access, elevators, wide access toilets, Braille signage, handicap parking zones; and the availability of specially trained personnel such as guides, intermediaries or sign language interpreters;

- subsidies for employers who employ persons with disabilities; and
- tax or other forms of deductions for employers who meet the costs of renovations to accommodate the special needs of disabled staff.

## USEFUL LINKS AND PUBLICATIONS

Accessibility for the Disabled: A Design Manual for a Barrier Free Environment (SOLIDERE, in collaboration with the ESCWA and with the approval of the Ministry of Social Affairs and the National Committee for the Disabled)

[www.un.org/esa/socdev/enable/designm/](http://www.un.org/esa/socdev/enable/designm/)

Community-Based Rehabilitation (CBR): A Strategy for Rehabilitation, Equalization of Opportunities, Poverty Reduction and Social Inclusion of People with Disabilities (IDLO, WHO and UNESCO, Geneva 2004)

[www.ilo.org/public/english/region/asro/bangkok/ability/download/otherpubl\\_cbr.pdf](http://www.ilo.org/public/english/region/asro/bangkok/ability/download/otherpubl_cbr.pdf)

From Exclusion to Equality: Realizing the Rights of Persons with Disabilities (Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol, No. 14, Geneva, Inter-Parliamentary Union and OHCHR, 2007)

[www.ohchr.org/Documents/Publications/training14en.pdf](http://www.ohchr.org/Documents/Publications/training14en.pdf)

Guidelines for Conducting, Monitoring and Self-Assessment of Community-Based Rehabilitation Programs: Using Evaluation Information to Improve Programs (1996)

[www.who.int/disabilities/publications/cbr/en/index.html](http://www.who.int/disabilities/publications/cbr/en/index.html)

Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability (OHCHR, Geneva, 2002) [www.ohchr.org/english/about/publications/papers.htm](http://www.ohchr.org/english/about/publications/papers.htm)

IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings (2007)

[www.who.int/mental\\_health/emergencies/guidelines\\_iasc\\_mental\\_health\\_psychosocial\\_june\\_2007.pdf](http://www.who.int/mental_health/emergencies/guidelines_iasc_mental_health_psychosocial_june_2007.pdf)

ICVA Guiding Principles on the Psychosocial Care and Protection of Tsunami-Affected Children (2005)

[www.icva.ch/doc00001316.html](http://www.icva.ch/doc00001316.html)

ILO Code of Practice: Managing Disability in the Workplace (ILO, Geneva, 2002)

[www.ilo.org/public/libdoc/ilo/2002/102B09\\_340\\_engl.pdf](http://www.ilo.org/public/libdoc/ilo/2002/102B09_340_engl.pdf)

ILO Guidelines on Achieving Equal Employment Opportunities for People with Disabilities Through Legislation: Guidelines (ILO, Geneva, 2004)

[www.ilo.org/public/english/employment/skills/disability/download/eeofinal.pdf](http://www.ilo.org/public/english/employment/skills/disability/download/eeofinal.pdf)

The Right to Education of Persons with Disabilities: Report of the Special Rapporteur on the Right to Education (V. Muñor, A/HRC/4/29)

[www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm](http://www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm)

WHO Newsletter on Disability and Rehabilitation

[www.who.int/disabilities/publications/newsletter/en](http://www.who.int/disabilities/publications/newsletter/en)

WHO World Report on Disability and Rehabilitation

[www.who.int/disabilities/publications/en/index.html](http://www.who.int/disabilities/publications/en/index.html)

World Programme of Action Concerning Disabled Persons (1982)

[www.un.org/esa/socdev/enable/diswpa00.htm](http://www.un.org/esa/socdev/enable/diswpa00.htm)

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## AGENCIES WORKING FOR THE PROTECTION OF THE RIGHTS OF PERSONS WITH DISABILITIES IN DISASTER SITUATIONS

Handicap International

[www.handicap-international.org](http://www.handicap-international.org)

Handicap International is an international organization that offers persons with disabilities assistance and support in their efforts to become self-reliant. The organization has established programs in approximately 60 countries and has intervened in many emergency situations.

International Labour Organization (ILO)

[www.ilo.org/public/english/employment/skills/disability/iloprog.htm](http://www.ilo.org/public/english/employment/skills/disability/iloprog.htm)

The ILO Disability Programme promotes decent work for women and men with disabilities and facilitates the means to overcome the obstacles preventing people with disabilities from full participation in labor markets. The program involves: (i) improving knowledge on disability-related matters concerning training and employment; (ii) advocacy, guidance and policy advice; and (iii) technical advisory services and cooperation activities.

Platform Disability and Development Cooperation (PHOS)

[www.iddc.org.uk/about/phos.shtml](http://www.iddc.org.uk/about/phos.shtml)

PHOS is a Belgium-based NGO that aims to enhance the opportunities of people with disabilities from the South and to improve their living conditions. Its strategy is to facilitate the mainstreaming of disability in the programs and activities of NGOs and their partners in developing countries by providing research, publications, training and consultation.

Rehabilitation International (RI)

[www.riglobal.org](http://www.riglobal.org)

RI is a global network of people with disabilities, service providers, researchers, government agencies and advocates. It is currently composed of over 700 members and affiliated organizations in nearly 100 nations. RI and its members develop and promote initiatives to protect the rights of people with disabilities and improve rehabilitation and other services for disabled people and their families.

United Nations Global Program on Disability (Enable)

[www.un.org/disabilities](http://www.un.org/disabilities)

The Secretariat for the Convention on the Rights of Persons with Disabilities is the focal point in the United Nations system for matters relating to disability. The secretariat (i) prepares publications and acts as a clearing house for information on disability issues, (ii) promotes national, regional and international programs and activities, (iii) supports governments and NGOs, and (iv) supports technical cooperation projects and activities.

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World Federation for Mental Health (WFMH)

[www.wfmh.org](http://www.wfmh.org)

WFMH is an international organization mandated to advance the prevention of mental and emotional disorders, ensure the proper treatment and care of those with such disorders, and promote mental health. Through its members in more than 100 countries, the federation responds to international mental health crises through its role as a grassroots advocacy and public education organization in the mental health field.

World Health Organization

[www.who.int/disabilities/introduction/en/index.html](http://www.who.int/disabilities/introduction/en/index.html)

The mission of the WHO Disability and Rehabilitation Team is to enhance the quality of life of people with disabilities. Projects include advocacy and awareness-raising, disability policy, medical care and rehabilitation, community-based rehabilitation, technologies and devices for assistance, capacity-building, and the production of the World Report on Disability and Rehabilitation.

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## footnotes

- 38** The Convention entered into force on 3 May 2008 following over 120 signatories and 20 ratifications since 30 March 2007.
- 39** Art. 1. See also Preamble (e).
- 40** Adopted by the General Assembly in 1991.
- 41** Proclaimed by General Assembly resolution 2856 (XXVI) of 20 December 1971.
- 42** Proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975.
- 43** Inter-Parliamentary Union and OHCHR. 2007. *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities*, p 25. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol No. 14. Geneva.
- 44** CRPD Art. 35.1 states that each state party shall submit to the committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the convention and on the progress made in that regard, within two years after the entry into force of the present convention for the state party concerned.
- 45** Art. Optional Protocol to the CRPD, Art. 1.
- 46** *Ibid.*, Art. 3-5.
- 47** Inter-Parliamentary Union and OHCHR. 2007. *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities*, p 26. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol No. 14. Geneva; Optional Protocol to the CRPD, Art. 6 and 7.
- 48** *Ibid.*, p 33.
- 49** Art. 4.1.
- 50** Art. 28.
- 51** Art. 27.
- 52** Art. 18.
- 53** Art. 21.
- 54** Art. 24.
- 55** Art. 21.
- 56** Art. 22.
- 57** Art. 30.
- 58** Art. 29. Note also that Art. 3 of the *Declaration on the Rights of Disabled Persons* (1975) states that "...disabled persons have the same civil and political rights as other human beings..."; and that Art. 1.5 of the *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care* (1991) states that "...every person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and in other relevant instruments...".
- 59** Art. 4.2.
- 60** Inter-Parliamentary Union and OHCHR. 2007. *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities*, pp 19–20. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol No. 14. Geneva.
- 61** Art. 5.
- 62** Art. 2.
- 63** Art. 5.4.
- 64** Inter-Parliamentary Union and OHCHR. 2007. *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities*, p 14. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol No. 14. Geneva.
- 65** Art. 2. Art. 5.3 states that "[I]n order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided."
- 66** Art. 2.
- 67** Inter-Parliamentary Union and OHCHR. 2007. *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities*, p 14. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol No. 14. Geneva.
- 68** *Ibid.*, p 14 and pp 63-65; see also Platform Disability and Development Cooperation. *Accessibility and Barrier Free Environment: A Design Manual for a Barrier-Free Environment*.
- 69** Art. 27.2.
- 70** Art. 15.
- 71** Art. 16.5.
- 72** Art. 14.1 (b).
- 73** Art. 25.
- 74** Art. 25 (e).
- 75** Art. 26.
- 76** Art. 19.
- 77** Art. 19.1.
- 78** Art. 9.1.
- 79** Art. 9.2.
- 80** Art. 12.1 and 12.2.
- 81** Inter-Parliamentary Union and OHCHR. 2007. *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities*, p 89. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol No. 14. Geneva.
- 82** Art. 12.
- 83** Inter-Parliamentary Union and OHCHR. 2007. *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities*, p 90. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol No. 14. Geneva.
- 84** Art. 11.
- 85** Art. 14.2.
- 86** CRPD, Preamble, (q).
- 87** Art. 16.5.
- 88** CRPD, Preamble, (r).
- 89** Art. 24 (2) (a).
- 90** Art. 23.
- 91** Art. 23 (1) (c).
- 92** Art. 3 (h).
- 93** Art. 22.3.
- 94** Art. 9 (1) (a).
- 95** Art. 9 (2) (a).
- 96** Reprinted with the permission from the Interparliamentary Union and OHCHR. 2007. *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities*, p 80. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol No. 14. Geneva.
- 97** Art. 11.
- 98** Inter-Parliamentary Union and OHCHR. 2007. *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities*, pp 1 and 3. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol No. 14. Geneva.
- 99** *Ibid* p 1.
- 100** *Ibid* p 1.
- 101** *Ibid* p 3.
- 102** *Ibid* pp 1-2.
- 103** *Ibid* pp 1-2.

### Part 3: Protecting the Rights of Minority Groups

*Any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous ...*

*Preamble, CERD*

The primary convention protecting the rights of minorities is the 1965 *Convention on the Elimination of all Forms of Racial Discrimination* (CERD).<sup>104</sup> The CERD defines racial discrimination as any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.<sup>105</sup> Significantly, the 1963 *Declaration on the Elimination of all Forms of Racial Discrimination* states that "... discrimination on the grounds of race, color or ethnic origin is both inconsistent with the principles of the Charter of the United Nations (1945) and a violation of the human rights and fundamental freedoms proclaimed in the *Universal Declaration of Human Rights* (1948)".<sup>106</sup> This suggests that the principle of non-discrimination has been incorporated into international customary law and is hence a duty for all states, regardless of their convention status. Practitioners should also be aware of other international instruments relevant to minorities such as the 1963 *Declaration on the Elimination of all Forms of Racial Discrimination*<sup>107</sup> and the 1978 *Declaration on Race and Racial Prejudice*.<sup>108</sup> It should be recalled that minority groups are also entitled to protection of the rights guaranteed under the ICCPR, ICESCR, UDHR and others.

Violations of the CERD can be referred to the Committee on the Elimination of Racial Discrimination, which was established under article 8 of the convention. States Parties are required to submit at specified intervals reports on the legislative, judicial, administrative or other measures that have been adopted to give effect to the provisions of the convention.<sup>109</sup> General recommendations and comments in response to such reports are passed to the United Nations General Assembly.<sup>110</sup> States Parties may recognize the competence of the CERD to receive communications from individuals or groups within its jurisdiction claiming to be victims of a violation by that state party of any of the rights set forth in the convention.<sup>111</sup> In such situations, the state party is required to submit to the committee a written explanation or statement clarifying the matter and the remedy that may have been provided.<sup>112</sup> The committee then communicates its suggestions and recommendations to the state party and petitioner, and includes a summary of these communications in its annual report.<sup>113</sup>

94 Protecting the rights of minorities in emergency contexts is important because such groups are often isolated or disinclined to avail themselves of government services. Minorities may also face discrimination from the state or from society in general, making it more difficult for them to access emergency shelter and humanitarian relief. A further issue is that discrimination, if left unchecked, can be a source of social instability in times of emergency. As stated in the preamble to the CERD: "... discrimination between human beings on the grounds of race, color or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same state ...". International humanitarian actors hence have a vital role to play in ensuring that the rights of minority groups are upheld throughout emergency response and rehabilitation processes.

*Safe and non-discriminatory access to available humanitarian assistance should be secured for all persons in need. In particular, measures should be taken to grant priority access to vulnerable groups such as minorities, single-headed households, elderly, people with disabilities, and unaccompanied and separated children.*

IASC B.1.3

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## INTERNATIONAL INSTRUMENTS

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

[www.unhchr.ch/html/menu3/b/d\\_icerd.htm](http://www.unhchr.ch/html/menu3/b/d_icerd.htm)

ILO Convention No. 169 Concerning Indigenous and Tribal Peoples (1989)

[www.ilo.org/ilolex/cgi-lex/convde.pl?C169](http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169)

ILO Convention No. 107 on the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)

[www.ilo.org/ilolex/cgi-lex/convde.pl?C107](http://www.ilo.org/ilolex/cgi-lex/convde.pl?C107)

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

[www2.ohchr.org/english/law/minorities.htm](http://www2.ohchr.org/english/law/minorities.htm)

Declaration on the Rights of Indigenous Peoples (2007)

[www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

Declaration on Race and Racial Prejudice (1978)

[www.unhchr.ch/html/menu3/b/d\\_prejud.htm](http://www.unhchr.ch/html/menu3/b/d_prejud.htm)

Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live (1985)

[www.unhchr.ch/html/menu3/b/o\\_nonnat.htm](http://www.unhchr.ch/html/menu3/b/o_nonnat.htm)

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)

[www.huachen.org/english/law/religion.htm](http://www.huachen.org/english/law/religion.htm)

UNESCO Universal Declaration on Cultural Diversity (2001)

[www.unesdoc.unesco.org/images/0012/001271/127160m.pdf](http://www.unesdoc.unesco.org/images/0012/001271/127160m.pdf)

UNESCO Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War (1978)

[www.unhchr.ch/html/menu3/b/d\\_media.htm](http://www.unhchr.ch/html/menu3/b/d_media.htm)

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*What steps can be taken to ensure that the rights of minority groups are protected in post-disaster rehabilitation and aid distribution programs?*

- Information on ways of accessing humanitarian aid, particularly housing restitution programs, should be provided in minority languages and disseminated through radio, newspaper, bulletin boards and community meetings.
- Aid programs should target affected minority groups, especially those located in remote areas, taking particular account of the fact that certain groups may be disinclined to avail themselves of state assistance voluntarily.
- Food distribution and emergency shelter programs should take account of cultural mores and religious beliefs, for example dietary restrictions and the appropriateness of housing unrelated families together.
- Minority groups, particularly indigenous groups, may have been displaced from their ancestral lands. Such displacement needs to be taken into account during resettlement and land acquisition programs.

*How might discriminatory laws, policies or practices operate to disadvantage minorities in disaster contexts?*

- Land administration systems that do not recognize customary land rights or ownership rights acquired under customary law may prevent or complicate the reinstatement of property rights.
- Inheritance laws that differ from the customary practices of minority groups may lead to a redistribution of wealth within minority communities.
- Laws that do not allow minority groups to own property may displace groups from their land, resulting in homelessness, landlessness and loss of livelihoods.
- Legal systems that do not recognize customary or religious marriages may prevent minorities from accessing documentation to support inheritance claims.
- Policies whereby access to humanitarian aid or housing restitution requires a command of the national language will limit access by non-speakers because forms are available only in certain languages or because interpreters are not provided in courts.
- There may be laws that require that orphans from minority groups be placed in institutions or with non-minority families.

### **3.1 Prohibition on Discriminatory Laws and Policies**

*The United Nations, the specialized agencies, states and non-governmental organizations shall do all in their power to promote energetic action which, by combining legal and other practical measures, will make possible the abolition of all forms of racial discrimination. They shall, in particular, study the causes of such discrimination with a view to recommending appropriate and effective measures to combat and eliminate it.*

*Art. 10, United Nations Declaration on the Elimination of all Forms of Racial Discrimination (1978)*

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The CERD condemns all forms of racial discrimination. States Parties are required to undertake measures to review government policies and repeal or amend any laws or regulations that have the effect of creating racial discrimination, and to introduce legislative measures prohibiting racial discrimination.<sup>114</sup> This can be important in the context of natural disasters, because rehabilitation and development policies can, either purposefully or accidentally, operate to discriminate against minority groups. For example, laws or policies that fail to restore housing rights, facilitate compulsory land acquisition or facilitate compulsory re-settlement can be discriminatory when the primarily affected people are minorities. Significantly, the convention notes that special measures taken to advance racial or ethnic groups to ensure their enjoyment of human rights and fundamental freedoms are not considered discrimination. Such measures, however, must be discontinued after the objectives they were designed to meet have been achieved.<sup>115</sup> Programs that prioritize the access of minority groups to humanitarian aid or that provide separate emergency shelter for a minority group, would therefore not be deemed discriminatory.

#### *Why might minority groups be particularly vulnerable in the aftermath of disasters?*

- They may not speak national languages.
- They are less likely to have identity documents or proof of land ownership, making it more difficult to reinstate rights.
- They are less likely to have security of tenure, leaving them more vulnerable to landlessness.
- They have small and geographically limited social networks. In the event of a natural disaster, therefore, minority groups are less likely to be able to call upon such networks, for example relatives living in non-affected locations, for assistance and support.
- In emergency situations, police services may be non-operational and law and order may have broken down, leaving minority groups more vulnerable to violence and crime.
- Minority and dominant population groups may need to be housed together in emergency shelters. Where the minority group is discriminated against, such living arrangements can lead to violence, exploitation and abuse.
- Aid distribution may be seen to favor particular minority groups, potentially heightening existing tensions.

### **3.2 Prohibition on Incitement**

The CERD requires that States Parties take steps to eradicate incitement or acts of discrimination by declaring unlawful:

- the dissemination of ideas based on racial superiority or hatred;
- acts of racial violence or incitement;
- organizations that promote and incite racial discrimination; and
- the provision of assistance, including financial assistance, for racist activities.<sup>116</sup>

This is particularly relevant in the aftermath of disasters, when breakdowns in law and order enforcement capability can increase the vulnerability of minority groups to violence and discrimination. In this regard, the CERD requires that States Parties adopt measures to combat prejudice and promote understanding and tolerance among racial and ethnic groups, for example by promoting the purposes and principles of the CERD and other human rights treaties through teaching and information dissemination.<sup>117</sup>

### **3.3 Protection of Human Rights and Fundamental Freedoms**

The CERD acknowledges that minority groups require special protections and requires that States Parties take steps to guarantee the human rights, fundamental freedoms and development of minority groups.<sup>118</sup> The convention separately protects the right of minority groups to security of the person and protection against violence.<sup>119</sup> In the context of emergencies, this may mean that minority groups are provided with emergency housing that is separated from other groups or police-controlled.

### **3.4 Protection of Cultural Practices and Identity**

The ICCPR upholds the rights of national, ethnic, religious and linguistic minorities to enjoy their own culture, profess and practice their own religion, and use their own language.<sup>120</sup> The 1992 *Declaration on the Rights of Persons Belonging to National or Ethnic Minorities* holds that states should enable minority groups to develop their culture, language, religion, traditions and customs, except when these are in violation of national law and contrary to international standards.<sup>121</sup> With respect to harmful traditional practices, the CERD requires that States Parties take measures to eliminate customary practices that are based on inferiority or stereotypes of women.<sup>122</sup> The 1967 *Declaration on the Elimination of all Forms of Discrimination against Women* holds that states should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid this obligation.<sup>123</sup>

### 3.5 Civil, Economic, Social and Cultural Rights

The CERD requires States Parties undertake to protect the rights of minority groups to fundamental civil, economic, social and cultural rights, including the right to:

- freedom of movement and residence within the borders of the state;
- leave any country, including one's own, and to return to one's country;
- nationality;
- marriage and choice of spouse;
- own property alone and in association with others;
- inherit;
- freedom of thought, conscience and religion;
- freedom of opinion and expression;
- freedom of peaceful assembly and association;
- work, free choice of employment, just and favorable conditions of work, protection against unemployment, equal pay for equal work, and just and favorable remuneration;
- form and join trade unions;
- housing;
- public health, medical care, social security and social services;
- education and training;
- equal participation in cultural activities; and
- access to any place or service intended for use by the general public such as transport, hotels, restaurants, cafes, theatres and parks.<sup>124</sup>

#### *Do minority groups have rights to consultation that can be drawn upon in natural disaster contexts?*

Article 2.3 of the 1992 *Declaration on the Rights of Persons Belonging to National or Ethnic Minorities* states that minorities have the right to participate in decisions at the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner compatible with national legislation. Article 5 states that national policies and programs should be planned and implemented with due regard for the legitimate interests of minority groups. Principle D.4.1 of the 2006 *IASC Operational Guidelines on Human Rights and Natural Disasters* states that "... efforts should be made to ensure that women and persons with special needs – e.g. children, older persons, persons with disabilities, single-headed households, and members of religious and ethnic minority groups or indigenous persons – are specially consulted and can participate in all aspects of the disaster response ...".

### 3.6 Right to Participate in Government

98 The Convention protects the political rights of minority groups, in particular the right to vote in elections and stand for election on the basis of universal suffrage, to take part in government and the conduct of public affairs, and to have equal access to public services.<sup>125</sup>

### 3.7 Legal Rights

The CERD guarantees everyone, irrespective of race, color, or national or ethnic origin to equality before the law and the right to equal treatment by tribunals and other organs authorized to administer justice.<sup>126</sup> States Parties are required to provide everyone with access to protection and remedies through national tribunals and other institutions against acts of discrimination that violate the rights guaranteed under the convention. Intrinsic to this is the right to just and adequate reparation for damage caused through discrimination.<sup>127</sup>

*How might the operation of customary legal systems affect the rights of minority groups?*

Minority populations may rely on customary laws to resolve disputes and regulate issues such as land acquisition, marriage and guardianship, particularly in developing countries. In some jurisdictions, customary legal systems will be recognized by the state, and decisions made through customary fora will have equal weight with those handed down by courts. In other situations, customary systems are not recognized. Whether minorities receive better protection under customary or state laws will also vary among jurisdictions. The operation of customary legal systems may have significant implications for humanitarian actors operating in disaster situations. The primary danger for minority groups is that land rights acquired customarily may not be recognized by the state, resulting in displacement. A further risk is that marriages formed under customary law may not be recognized as legally binding. As a result, widows may be denied inheritance rights and children resulting from such marriages may be discriminated against on the grounds of their technical illegitimacy. Humanitarian actors should be aware that multiple non-state legal systems may exist and that understanding their operation will be integral to protecting the rights of minorities.

## CHECKLIST FOR AGENCIES

### Agencies might establish:

- programs to safeguard the welfare and monitor the protection of minorities in emergency shelters;
- awareness-raising and community education projects that focus on the elimination of discrimination, particularly in schools and workplaces, for example by translating the CERD into local languages and disseminating it in communities;
- ensuring that offices employing local staff and emergency shelters have appropriate prayer facilities; and
- programs to translate into minority languages information on ways to access humanitarian aid.

### Agencies might lobby for:

- ratification of the *CERD, ILO Convention No.169 Concerning Indigenous and Tribal Peoples (1989)* and *ILO Convention No. 107 on the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries* (1957);
- legislation and reform consistent with States Parties' commitments under relevant international conventions, taking particular note of the *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)* and the *Declaration on the Rights of Indigenous Peoples (2007)*;
- consultation with minority groups regarding reconstruction, planning and development strategies;
- policies that respect freedom of religion in public schools, universities and workplaces, including the compulsory provision of appropriate prayer facilities;
- availability of translators in court proceedings for those who do not speak national languages; and
- recognition of land rights acquired customarily.

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## USEFUL LINKS AND PUBLICATIONS

Lund Recommendations on the Effective Participation of National Minorities in Public Life (OSCE, 1999)  
[www.osce.org/documents/hcnm/1999/09/2698\\_en.pdf](http://www.osce.org/documents/hcnm/1999/09/2698_en.pdf)

Commentary on the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (2005)  
[www.daccessdds.un.org/doc/UNDOC/GEN/G05/133/85/PDF/G0513385.pdf?OpenElement](http://www.daccessdds.un.org/doc/UNDOC/GEN/G05/133/85/PDF/G0513385.pdf?OpenElement)

Framework Convention for the Protection of National Minorities: Opportunities for NGOs and Minorities (Minority Rights Group International 2006)  
[www.minorityrights.org/?lid=876](http://www.minorityrights.org/?lid=876)

Economic, Social and Cultural Rights: A Guide for Minorities and Indigenous Peoples (Minority Rights Group International, 2005)  
[www.minorityrights.org/?lid=874](http://www.minorityrights.org/?lid=874)

Minority Rights: A Guide to United Nations Procedures and Institutions (Minority Rights Group International, 2004)  
[www.minorityrights.org/?lid=878](http://www.minorityrights.org/?lid=878)

ICERD: A Guide for NGOs (Minority Rights Group International, 2001)  
[www.minorityrights.org/?lid=894](http://www.minorityrights.org/?lid=894)

State of the World's Minorities (Minority Rights Group International, 2008)  
[www.minorityrights.org/?lid=6138](http://www.minorityrights.org/?lid=6138)

United Nations Guide for Minorities  
[www.2.ohchr.org/english/issues/minorities/guide.htm](http://www.2.ohchr.org/english/issues/minorities/guide.htm)

Autonomy and Minority Groups - a Legal Right in International Law? (G. Gilbert, Professor of Law, Human Rights Centre, University of Essex, 2004)  
[www.unhchr.ch/minorities/documents/2004-WP3.doc](http://www.unhchr.ch/minorities/documents/2004-WP3.doc)

The Participation of Minorities in Decision-Making (J.A. Frowein and R. Bank, Max Planck Institute, 2000)  
[www.javier-leon-diaz.com/minorities/participation%20of%20Minorities%20in%20political%20process%20\\_CoE\\_.pdf](http://www.javier-leon-diaz.com/minorities/participation%20of%20Minorities%20in%20political%20process%20_CoE_.pdf)

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**AGENCIES WORKING FOR THE PROTECTION OF THE RIGHTS OF MINORITY GROUPS IN DISASTER SITUATIONS**

Office of the High Commissioner for Human Rights

[www.ohchr.org](http://www.ohchr.org)

OHCHR is the principal human rights body of the United Nations. Its mandate includes preventing human rights violations, securing respect for all human rights, promoting international cooperation to protect human rights, coordinating related activities throughout the United Nations, and strengthening and streamlining the United Nations system in the field of human rights.

UNHCHR Working Group on Minorities

[www.unhchr.ch/minorities/group.htm](http://www.unhchr.ch/minorities/group.htm)

The Working Group on Minorities was established in 1995 pursuant to ECOSOC resolution 1995/31 of July 25, 1995. The working group is a forum for dialogue that aims to facilitate greater awareness of the differing perspectives on minority issues and, consequently, to seek better understanding and mutual respect among minorities and between minorities and governments.

Minority Rights Group International (MRG)

[www.minorityrights.org](http://www.minorityrights.org)

MRG is an international organization that works to secure rights for ethnic, religious and linguistic minorities and indigenous people. The organization works in areas such as education and training for minority communities, advocacy work on behalf of minorities and legal cases to advance the protection of minorities under international law.

International Work Group on Indigenous Affairs (IWGIA)

[www.iwgia.org](http://www.iwgia.org)

IWGIA is mandated to endorse and promote indigenous peoples' right to self-determination, their cultural integrity and their right to development. The organization undertakes projects aimed empowering indigenous peoples to build and develop their own organizations and influence their own future. Capacity-building, education and legal assistance in asserting human rights, land rights and right to sustainable development are the main components of IWGIA projects.

United Nations Permanent Forum on Indigenous Issues

[www.un.org/esa/socdev/unpfii](http://www.un.org/esa/socdev/unpfii)

The forum is an advisory body to ECOSOC with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights.

International Movement Against All Forms of Discrimination and Racism (IMADR)

[www.imadr.org](http://www.imadr.org)

IMADR is an international non-governmental human rights organization devoted to eliminating discrimination and racism, forging international solidarity among minorities that are discriminated against and advancing the international human rights system. IMADR works primarily in the areas of descent-based discrimination, human trafficking and exploitative migration, indigenous peoples' rights, minority rights, United Nations human rights mechanisms and racism in the justice system.

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## footnotes

- 104** Adopted and opened for signature and ratification by General Assembly Resolution 2106 (XX), 21 December 1965.
- 105** Art. 1.1.
- 106** Art. 1.
- 107** Proclaimed by General Assembly Resolution 1904 (XVIII), 20 November 1963.
- 108** Adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) at its 20<sup>th</sup> session, 27 November 1978.
- 109** Art. 9.
- 110** Art. 9.2.
- 111** Art. 14.1.
- 112** Art. 14.6.
- 113** Art. 14 and 7-8.
- 114** Art. 2.
- 115** Art. 1.4.
- 116** Art. 4.
- 117** Art. 7 and 8.
- 118** Art. 2.2.
- 119** Art. 5.
- 120** Art. 27. See also Art. 2 of the 1992 *Declaration on the Rights of Persons Belonging to National or Ethnic Minorities*.
- 121** Art. 4.
- 122** Art. 5.
- 123** Art. 2 and 4.
- 124** Art. 5.
- 125** Art. 5.
- 126** Art. 5.
- 127** Art. 6.

## Part 4: Protecting the Rights of Older Persons

Older women and men are among the poorest groups in the developing world, including areas affected by natural disaster. In Bolivia, more than 63 percent of people aged over 60 live in poverty, compared with 59 percent of the population as a whole.<sup>128</sup> Evidence from Africa shows that households comprising older persons and children are, on average, poorer than other household types. Older women are particularly vulnerable. Longer life-spans combined with lifetime disadvantage increases their risk of poverty. In India, households headed by widows are the poorest social group, with an average per-head expenditure that is 70 percent below the national average. Despite such challenges, older persons often make large contributions to their families and communities by working to provide income, caring for grandchildren, and passing on their skills and experience.

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### International Instruments

The Madrid International Plan of Action on Ageing (United Nations, 2002)

[www.un.org/ageing](http://www.un.org/ageing)

United Nations Principles for Older Persons (1991)

[www.un.org/esa/socdev/ageing/un\\_principles.html](http://www.un.org/esa/socdev/ageing/un_principles.html)

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### 4.1 Older Persons in Disasters

As with other vulnerable groups, older persons face particular hardship following natural disasters, and their rights require special protection. In a context of generalized poverty, older persons have fewer resources to fall back on in the event of a natural disaster. Despite increasing migration of younger generations to urban areas, older persons often choose to remain in familiar surroundings. Natural disasters can thus have a disproportionate effect on older persons, particular those without family networks to support them. Recent research undertaken by HelpAge International, on behalf of the IASC<sup>129</sup> Working Group, shows that the humanitarian community pays scant attention to the needs of older persons in planning for, responding to and supporting recovery following a disaster. Agencies assume that general aid services reach older persons and are appropriate to their needs. One consequence is that programs designed to address the issues faced by older persons are rare: for example, less than 1 percent of funding provided by the three largest government donors in response to the 2004 tsunami went to supporting older persons, even though over-60s comprise 7-10 percent of most populations.<sup>130</sup> A primary reason why older persons are overlooked during emergencies is that humanitarian needs assessments fail to collect data on the age distribution and health status of an affected population. This prevents housebound older persons from being included in rapid assessments, and contributes to older persons' exclusion in all subsequent responses.

**In November 2007, the Inter-Agency Standing Committee (IASC) endorsed the following recommendations relating to older persons in humanitarian crises:**

1. Increase awareness among policy makers, donors and practitioners of:
  - the global growth in the numbers of the old and very old;
  - its impact on disaster-affected populations; and
  - the need to incorporate this understanding into all aspects of contingency and preparedness planning, relief responses and return processes.
2. Strengthen the response of the cluster system to the cross-cutting issue of age, by:
  - developing a training/induction module for all humanitarian coordinators and cluster chairs on the special needs and opportunities that accompany an ageing population, covering both the scale and implications of this trend; and
  - ensuring that considerations of age are integrated into the guidelines and technical resources that are currently being developed to ensure that relief responses reflect the fact that older persons have special requirements and are a social asset.
3. More effective data collection processes should be introduced to ensure that registration, needs assessment, morbidity and mortality figures are collected and disaggregated by age and sex to allow for better understanding of and response to the needs of older persons.
4. Relief agencies should consult with and engage older persons in decision-making and program design and delivery to improve the appropriateness of service delivery. Programs must be inclusive and accessible to all: inter-generational approaches and the use of old people's committees are techniques that can assist in achieving this.
5. Health services should reflect the particular health needs of older persons. Treatment should be given for chronic conditions that reduce older persons's participation in the life of the community.
6. The need for many older persons to earn an income must be acknowledged. Many older persons care for children as a result of displacement, conflict, the HIV pandemic or all three. All livelihood and income-generating interventions should be designed to include them, capitalize on their skills and be realistic about their capabilities.
7. Return, repatriation and reintegration programs should reflect the special requirements of older persons. The challenge and needs of unaccompanied older persons should be addressed as energetically as those of unaccompanied children, with priority placed on strengthening reunification and family-based and community-based solutions.
8. The physical changes in food needs that accompany ageing should be recognized and reflected in any food support being considered.

**104 4.2 Older Persons and International Law**

Despite the importance of older persons' right to equal assistance, few legal instruments refer to older persons as a distinct category. Older persons are, however, implicitly covered by the universality of human rights. The UDHR applies to persons of all ages and specifically protects the right to security in old age.<sup>131</sup> The ICCPR, the CERD, the 1984 *Convention against Torture and other Cruel, Inhuman or Degrading Treatment* and the ICESCR apply to all, regardless of age.<sup>132</sup> Older persons' rights are also protected through their gender or membership of a particular racial, religious or minority group. For example, the CEDAW applies to women of all ages and the committee charged with monitoring its implementation has recognized the importance of the convention as a tool for addressing the rights of older women.<sup>133</sup> The CRPD protects the rights of older disabled people, including their right to special protection<sup>134</sup> and social protection,<sup>135</sup> and calls for the provision of age-sensitive responses throughout. The 1990 *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* lists age as a prohibited ground for discrimination.<sup>136</sup>

### 4.3 The Rights of Older Persons under Regional Human Rights Law

Older persons are also protected under regional human rights law. Although older persons are not specifically referred to in the 1950 *European Convention on Human Rights*, the 1996 revised *European Social Charter* explicitly protects older disabled people. The 2000 Charter of Fundamental Rights of the European Union explicitly prohibits discrimination on the basis of age and recognizes the rights of the elderly. The 1981 *African Charter on Human and People's Rights* refers to the right of older persons to special protection measures in keeping with their physical or moral needs;<sup>137</sup> its 2003 *Protocol on the Rights of Women in Africa* prohibits discrimination against older women and protects their right to freedom from violence and their right to be treated with dignity.<sup>138</sup> The 1988 *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* protects older persons' right to social security<sup>139</sup> and social protection.<sup>140</sup>

### 4.4 Protecting the Rights of Older Persons Post-Disaster

In the absence of an international convention protecting the rights of older persons, humanitarian actors can be guided by the 1991 *United Nations Principles on Older People* and the *Madrid International Plan of Action on Ageing* (MIPAA), which was adopted by the United Nations General Assembly in 2002. The MIPAA was developed as a practical tool to help policy makers to focus on the priorities associated with individual and population ageing.<sup>141</sup> Section 54 relates specifically to the needs of the older persons in natural disasters and other emergencies:

*In emergency situations such as natural disasters and other humanitarian emergencies, older persons are especially vulnerable and should be identified as such because they may be isolated from family and friends and less able to find food and shelter. They may also be called upon to assume primary care-giving roles. Governments and humanitarian relief agencies should recognize that older persons can make a positive contribution in coping with emergencies in promoting rehabilitation and reconstruction.*

#### Madrid International Plan of Action on Ageing: Issue 8 (Emergency Situations)

55. Objective 1: Equal access by older persons to food, shelter and medical care and other services during and after natural disasters and other humanitarian emergencies.

##### Actions:

- (a) Take concrete measures to protect and assist older persons in situations of armed conflict and foreign occupation, including through the provision of physical and mental rehabilitation services for those who are disabled in these situations.
- (b) Call upon Governments to protect, assist and provide humanitarian assistance and humanitarian emergency assistance to older persons in situations of internal displacement in accordance with General Assembly resolutions.
- (c) Locate and identify older persons in emergency situations and ensure inclusion of their contributions and vulnerabilities in needs assessment reports.
- (d) Raise awareness among relief agency personnel of the physical and health issues specific to older persons and of ways to adapt basic needs support to their requirements.
- (e) Aim to ensure that appropriate services are available, that older persons have physical access to them and that they are involved in planning and delivering services as appropriate.
- (f) Recognize that older refugees of different cultural backgrounds growing old in new and unfamiliar surroundings are often in special need of social networks and of extra support and aim to ensure that they have physical access to such services.
- (g) Make explicit reference to, and design national guidelines for, assisting older persons in disaster relief plans, including disaster preparedness, training for relief workers and availability of services and goods.
- (h) Assist older persons to re-establish family and social ties and address their post-traumatic stress.

- (i) Following disasters, put in place mechanisms to prevent the targeting and financial exploitation of older persons by fraudulent opportunists.
- (j) Raise awareness and protect older persons from physical, psychological, sexual or financial abuse in emergency situations, paying particular attention to the specific risks faced by women.
- (k) Encourage a more targeted inclusion of older refugees in all aspects of program planning and implementation, inter alia, by helping active persons to be more self-supporting and by promoting better community care initiatives for the very old.
- (l) Enhance international cooperation, including burden-sharing and coordination of humanitarian assistance to countries affected by natural disasters and other humanitarian emergencies and post-conflict situations in ways that would be supportive of recovery and long-term development.

**56. Objective 2: Enhanced contributions of older persons to the reestablishment and reconstruction of communities and the rebuilding of the social fabric following emergencies.**

**Actions:**

- (a) Include older persons in the provision of community relief and rehabilitation programs, including by identifying and helping vulnerable older persons.
- (b) Recognize the potential of older persons as leaders in the family and community for education, communication and conflict resolution.
- (c) Assist older persons to re-establish economic self-sufficiency through rehabilitation projects, including income generation, educational programs and occupational activities, taking into account the special needs of older women.
- (d) Provide legal advice and information to older persons in situations of displacement and dispossession of land and other productive and personal assets.
- (e) Provide special attention for older persons in humanitarian aid programs and packages offered in situations of natural disasters and other humanitarian emergencies.
- (f) Share and apply, as appropriate, lessons learned from practices that have successfully utilized the contributions of older persons in the aftermath of emergencies.

**4.5 Core Protection and Assistance Needs of Older Persons**

**(i) Health**

Although health consistently ranks as a primary concern among older persons, post-disaster health services rarely focus on treating conditions such as chronic disease that affect older persons, and home visitation services that can identify immobile older persons are rarely prioritized. The loss of assets and deaths of relatives can have particularly devastating effects on the mental health of older persons. Post-tsunami research has revealed that older persons who lost their property felt they had also lost their social standing and dignity in relation to their adult children, leading to feelings of uselessness and depression.

**(ii) Livelihoods**

Older persons in developing countries are more likely to be economically active than those in the developed world. Following a natural disaster, older persons's need for income increases, yet it is this group that is most likely to encounter impediments in returning to work. Despite this, livelihood assessments and support programs run by humanitarian agencies rarely include older persons. In post-tsunami Aceh, Indonesia many older persons expressed a strong desire to go back to work, particularly because the tsunami had pushed their family deeper into poverty. It was in fact the lack of a sustainable livelihood that was the main concern of older persons who had lost family members who previously supported them.<sup>142</sup>

*Older Persons should be given "the opportunity to work or to have access to other income-generating opportunities".*

*2, United Nations Principles for Older Persons*

### (iii) Displacement and Isolation

Of those who died in the wake of Hurricane Katrina in New Orleans in 2005, 71 percent were aged 60 years and older. Many of these people either chose to remain behind or were abandoned as younger generations sought safety. An additional factor was that evacuation plans were not in place for residential care homes housing large numbers of vulnerable older persons.

In disaster situations, family tracing and reunification activities focus primarily on orphans and unaccompanied children rather than older persons. Such programs and structures, however, can easily be used to help older persons to identify surviving family members.

### (iv) Protection

Abuse of those who are frail or live alone is usually committed by strangers through theft or assault – but abuse of older persons committed by family members or other people known to the victim can also occur and is more common when community resources are stretched. In post-tsunami Sri Lanka, for example, there were reports that alcohol abuse by men in IDP camps was having a negative impact on the wellbeing of older persons.<sup>143</sup> Older women, particularly widows and those living alone, are particularly vulnerable in the aftermath of natural disasters. Contrary to popular perceptions, they are at heightened risk of gender-based violence and sexual exploitation; age and gender barriers often exclude them from decision-making, and social and religious restrictions on the movement and speech of women may confine them to their homes.

### (v) Shelter

A primary impediment to returning home following a disaster is lack of support in re-establishing shelter. In many cases, relief efforts provide basic shelter materials and local people contribute labor. This can be problematic for older persons living alone who are unable to rebuild themselves, but who are reluctant to call upon community members to assist them.

#### **Principles of Good Practice from Aceh, Indonesia 2006**

1. Data collection and assessment. Older persons must be included in data collection and assessments: (a) basic data needs to be collected and disaggregated by age and gender as the basis for evidence-based interventions and (b) assessments must highlight the specific needs, vulnerabilities and priorities of older persons.
2. Older persons are legitimate stakeholders for development. At all stages of a project cycle, older persons must be informed, consulted and encouraged to participate and provided with enabling conditions for their empowerment. It is important to recognize older persons as active participants in, for example, livelihoods initiatives, social protection approaches and disaster preparedness planning.
3. Older persons need to be specifically targeted. Humanitarian organizations need to provide specialized interventions for older persons as a specific target group and to promote and integrate age-friendly modalities and components into all their interventions.
4. Mainstream aging. Aging issues need to be integrated into the policies and practices of organizations. This requires more awareness of the particular problems and obstacles that older persons encounter, changes in attitudes amongst humanitarian workers, increased knowledge and skills in addressing issues of aging, developing age-friendly policies, and allocating resources.

Older People in Aceh Indonesia, 18 months After the Tsunami: Issues and Recommendations  
HelpAge International 2006

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## USEFUL LINKS AND PUBLICATIONS

Strong and Fragile: Learning From Older People in Emergencies (W. Day, A. Pirie and C. Roys, HelpAge International, 2007)

[www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Age/IASC%20full%20length%20report%20Feb%202008.pdf](http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Age/IASC%20full%20length%20report%20Feb%202008.pdf)

The Impact of the Indian Ocean Tsunami on Older People – Issues and Recommendations (HelpAge India, HelpAge Sri Lanka, ResAge in Indonesia, HelpAge International, 2005)

[www.helpage.org/Emergencies/IndianOceansunami/News/@23298](http://www.helpage.org/Emergencies/IndianOceansunami/News/@23298)

Older People's Associations in Community Disaster Risk Reduction (HelpAge International Manuals).

[www.helpage.org/Resources/Manuals](http://www.helpage.org/Resources/Manuals)

Older People in Disasters and Humanitarian Crises: Best Practice Guidelines (HelpAge International, 1999)

[www.sheltercentre.org/shelterlibrary/items/pdf/UNHCR\\_OlderPeopleInDisasters.pdf](http://www.sheltercentre.org/shelterlibrary/items/pdf/UNHCR_OlderPeopleInDisasters.pdf)

Building a Global Framework to Address the Needs and Contributions of Older People in Emergencies (Minister of Public Works and Government Services, Canada, 2008)

[www.hc-sc.gc.ca/seniors-aines/pubs/global\\_framework/pdfs/UN\\_GlobalFwk08\\_engPDF\\_web.pdf](http://www.hc-sc.gc.ca/seniors-aines/pubs/global_framework/pdfs/UN_GlobalFwk08_engPDF_web.pdf)

Protecting and Assisting Older People in Emergencies (J. Wells, Humanitarian Practice Network Paper 53, 2005, Overseas Development Institute)

[www.reliefweb.int/rw/lib.nsf/db900SID/OCHA6K4GD3/\\$FILE/networkpaper053.pdf?OpenElement](http://www.reliefweb.int/rw/lib.nsf/db900SID/OCHA6K4GD3/$FILE/networkpaper053.pdf?OpenElement)

Older Persons in Emergencies: Considerations for Action and Policy Development (WHO, 2008)

[www.healthinternetwork.com/bookorders/anglais/detart1.jsp?sesslan=1&codlan=1&codcol=15&codcch=724](http://www.healthinternetwork.com/bookorders/anglais/detart1.jsp?sesslan=1&codlan=1&codcol=15&codcch=724)

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## AGENCIES WORKING FOR THE PROTECTION OF OLDER PEOPLE IN DISASTER SITUATIONS

HelpAge International

[www.helpage.org](http://www.helpage.org)

United Nations Programme on Ageing

[www.un.org/esa/socdev/ageing](http://www.un.org/esa/socdev/ageing)

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## footnotes

- 128** HelpAge International. 2002. *Bolivia 2001 Poverty Map. Unsatisfied Basic Needs Synthesis*. La Paz.
- 129** HelpAge International. 2008. *Strong and Fragile: Learning from Older People in Emergencies*. IASC-WG report.
- 130** Wells, J. 2005. *Protecting and Assisting Older People in Emergencies*. ODI Network Paper 53.
- 131** Art. 25.
- 132** The Committee on Economic, Social and Cultural Rights' General Comment 6 (1995) states that States Parties are obligated to protect the economic, social and cultural rights of older people.
- 133** CEDAW, *Ending Discrimination Against Older Women through the Convention*, 07/05/02, A/57/38 (Part 1), para 430-436 (Decision)
- 134** Art. 17.
- 135** Art. 28b.
- 136** Art. 7.
- 137** Art. 18.4.
- 138** Art. 22.
- 139** Art. 9.1.
- 140** Art. 17.
- 141** Regional strategies for implementing MIPAA have been developed in the African Union Policy Framework and Plan of Action on Ageing, 2002; Macau Plan of Action on Ageing, 1999; Regional Implementation Strategy for the Madrid International Plan of Action on Ageing, Berlin, 2002; Regional Strategy for the Implementation in Latin America and the Caribbean of the Madrid International Plan of Action on Ageing, 2003. Note that the *African Union Policy Framework and Plan of Action on Ageing* (2002) contains recommended actions to ensure the needs of older people in emergency situations are met, Section 4.10, Recommendation II.
- 142** *Mainstreaming Age-Friendliness – a Recapitulation of the Collaborative Efforts between HelpAge International and the British Red Cross Society in Aceh* (2008).
- 143** *Ibid* p 3.

### ■ Rights Relevant to Women in Disaster Situations

#### The Protection of Women Against Gender-Based Discrimination

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- a) to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- b) to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- c) to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- d) to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- e) to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- f) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- g) to repeal all national penal provisions which constitute discrimination against women.

CEDAW, Art. 2

1. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:
  - a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;
  - b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women;
  - c) integrate a gender perspective in their policy decisions, legislation, development plans, programs and activities and in all other spheres of life;
  - d) take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;
  - e) support the local, national, regional, and continental initiatives directed at eradicating all forms of discrimination against women.
2. States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

PACHPRA, Art. 2

3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

ACHPR, Art. 18

Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.

DEDAW, Art. 1

All appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women, in particular:

- a) the principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law;

- b) the international instruments of the United Nations and the specialized agencies relating to the elimination of discrimination against women shall be ratified or acceded to and fully implemented as soon as practicable.

DEDAW, Art. 2

1. The principle of equality of rights of men and women demands implementation in all States in accordance with the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights.
2. Governments, non-governmental organizations and individuals are urged, therefore, to do all in their power to promote the implementation of the principles contained in this Declaration.

DEDAW, Art. 11

### Protection from Exploitation

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

CEDAW, Art. 6

All appropriate measures, including legislation, shall be taken to combat all forms of traffic in women and exploitation of prostitution of women.

DEDAW, Art. 8

### Protection from Harmful Traditional Practices and Violence

States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

- a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programs;
- b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalization and para-medicalization of female genital mutilation and all other practices in order to eradicate them;
- c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counseling as well as vocational training to make them self-supporting;
- d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

PACHPRA, Art. 5

All appropriate measures shall be taken to educate public opinion and to direct national aspirations towards the eradication of prejudice and the abolition of customary and all other practices which are based on the idea of the inferiority of women.

DEDAW, Art. 2

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

- b) refrain from engaging in violence against women;
- c) exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;
- d) develop penal, civil, labor and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;
- e) consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;
- f) develop, in a comprehensive way, preventive approaches and all those measures of a legal, political,

administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

- g) work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counseling, and health and social services, facilities and programs, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;
- h) include in government budgets adequate resources for their activities related to the elimination of violence against women;
- i) take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;
- j) adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;
- k) promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;
- l) adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;
- m) include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;
- n) encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;
- o) recognize the important role of the women's movement and non-governmental organizations world wide in raising awareness and alleviating the problem of violence against women;
- p) facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels;
- q) encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programs, as appropriate.

Declaration on the Elimination of Violence Against Women, Art. 4

States parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of the child.

CRC, Art. 24.3

1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:
  - a) those customs and practices prejudicial to the health or life of the child; and
  - b) those customs and practices discriminatory to the child on the grounds of sex or other status.
2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

African Charter, Art. 21

*See also: [www.ipu.org/wmn-e/fgm.htm](http://www.ipu.org/wmn-e/fgm.htm) (as at January 2003, at least 33 countries had promulgated legislation on harmful cultural practices).*

### **Vulnerable Women**

States Parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions:

- a) that widows are not subjected to inhuman, humiliating or degrading treatment;

- b) a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children;
- c) a widow shall have the right to remarry, and in that event, to marry the person of her choice.

PACHPRA, Art. 20

The States Parties undertake to:

- a) provide protection to elderly women and take specific measures commensurate with their physical, economic and social needs as well as their access to employment and professional training;
- b) ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.

PACHPRA, Art. 22

The States Parties undertake to:

- a) ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access to employment, professional and vocational training as well as their participation in decision-making;
- b) ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.

PACHPRA, Art. 23

The States Parties undertake to:

- a) ensure the protection of poor women and women heads of families including women from marginalized population groups and provide them an environment suitable to their condition and their special physical, economic and social needs;

PACHPRA, Art. 24

## Marriage and Consent

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

ICESCR, Art. 10

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.

UDHR, Art. 16

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.

ICCPR, Art. 23

1. No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.
2. Notwithstanding anything in paragraph 1 above, it shall not be necessary for one of the parties to be present when the competent authority is satisfied that the circumstances are exceptional and that the party has, before a competent authority and in such manner as may be prescribed by law, expressed and not withdrawn consent.

Convention on Consent to Marriage, Art. 1

States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

Convention on Consent to Marriage, Art. 2

- a) no marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person, after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.

b) marriage by proxy shall be permitted only when the competent authorities are satisfied that each party has, before a competent authority and in such manner as may be prescribed by law, fully and freely expressed consent before witnesses and not withdrawn such consent.

Recommendations on Consent to Marriage, Principle 1

Member States shall take legislative action to specify a minimum age for marriage, which in any case shall not be less than fifteen years of age; no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

Recommendations on Consent to Marriage, Principle 2

a) the family is the foundation of society, and marriage is the basis of its formation. Men and women have the right to marriage, and no restrictions stemming from race, color or nationality shall prevent them from enjoying this right.

DHRI, Art. 5

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

ECHR, Art. 12

2. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

ACHR, Art. 17

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Art. 16 CEDAW

'States Parties ... shall enact appropriate national legislative measures to guarantee that ... no marriage shall take place without the free and full consent of both parties [and] the minimum age of marriage for women shall be 18 years ...'

Protocol on the Rights of Women in Africa to the African Charter on Human and People's Rights, Art. 6

### **Equality in Marriage and the Protection of Women's Rights**

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

CEDAW, Art. 9

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

a) the same right to enter into marriage;

b) the same right freely to choose a spouse and to enter into marriage only with their free and full consent;

c) the same rights and responsibilities during marriage and at its dissolution;

d) the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

e) the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

f) the same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

g) the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

h) the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

CEDAW, Art. 16

- (1) Men and women ... are entitled to equal rights as to marriage, during marriage and at its dissolution.

UDHR, Art. 16

States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that:

- a) no marriage shall take place without the free and full consent of both parties;
- b) the minimum age of marriage for women shall be 18 years;
- c) monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected;
- d) every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognized;
- e) the husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;
- f) a married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband's surname;
- g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband;
- h) a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;
- i) a woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;
- j) during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

PACHPRA, Art. 6

States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. In this regard, they shall ensure that:

- a) separation, divorce or annulment of a marriage shall be effected by judicial order;
- b) women and men shall have the same rights to seek separation, divorce or annulment of a marriage;
- c) in case of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children. In any case, the interests of the children shall be given paramount importance;
- d) in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.

PACHPRA, Art. 7

1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.
2. Women and men shall have the right to inherit, in equitable shares, their parents' properties.

PACHPRA, Art. 21

4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.

ACHR, Art. 17

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

ICCPR, Art. 23

1. Without prejudice to the safeguarding of the unity and the harmony of the family, which remains the basic unit of any society, all appropriate measures, particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law, and in particular:
  - a) the right to acquire, administer, enjoy, dispose of and inherit property, including property acquired during marriage;

- b) the right to equality in legal capacity and the exercise thereof;
  - c) the same rights as men with regard to the law on the movement of persons.
2. All appropriate measures shall be taken to ensure the principle of equality of status of the husband and wife, and in particular:
- a) women shall have the same right as men to free choice of a spouse and to enter into marriage only with their free and full consent;
  - b) women shall have equal rights with men during marriage and at its dissolution. In all cases the interest of the children shall be paramount;
  - c) parents shall have equal rights and duties in matters relating to their children. In all cases the interest of the children shall be paramount.
3. Child marriage and the betrothal of young girls before puberty shall be prohibited, and effective action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

DEDAW, Art. 6

### **Economic and Social Rights**

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

CEDAW, Art. 3

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- a) the right to family benefits;
- b) the right to bank loans, mortgages and other forms of financial credit;
- c) the right to participate in recreational activities, sports and all aspects of cultural life.

CEDAW, Art. 13

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- a) to participate in the elaboration and implementation of development planning at all levels;
- b) to have access to adequate health care facilities, including information, counseling and services in family planning;
- c) to benefit directly from social security programs;
- d) to obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
- e) to organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- f) to participate in all community activities;
- g) to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

CEDAW, Art. 14

### **Freedom of Residence and Domicile**

States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

CEDAW, Art. 15.4

## The Right to Participate in Planning and Development

1. Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.
2. States Parties shall take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels.

PACHPRA, Art. 17

1. Women shall have the right to live in a healthy and sustainable environment.
2. States Parties shall take all appropriate measures to:
  - a) ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels;
  - b) promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women's access to, and participation in their control;
  - c) protect and enable the development of women's indigenous knowledge systems;
  - c) regulate the management, processing, storage and disposal of domestic waste;
  - d) ensure that proper standards are followed for the storage, transportation and disposal of toxic waste.

PACHPRA, Art. 18

Women shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to:

- a) introduce the gender perspective in the national development planning procedures;
- b) ensure participation of women at all levels in the conceptualization, decision-making, implementation and evaluation of development policies and programs;
- c) promote women's access to and control over productive resources such as land and guarantee their right to property;
- d) promote women's access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among women;
- e) take into account indicators of human development specifically relating to women in the elaboration of development policies and programs; and
- f) ensure that the negative effects of globalization and any adverse effects of the implementation of trade and economic policies and programs are reduced to the minimum for women.

PACHPRA, Art. 19

## Participation in Government

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- a) to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- b) to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- c) to participate in non-governmental organizations and associations concerned with the public and political life of the country.

CEDAW, Art. 7

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

CEDAW, Art. 8

1. States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:
  - a) women participate without any discrimination in all elections;
  - b) women are represented equally at all levels with men in all electoral processes;
  - c) women are equal partners with men at all levels of development and implementation of State policies and development programs.
2. States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making.

PACHPRA, Art. 9

All appropriate measures shall be taken to ensure to women on equal terms with men, without any discrimination:

- a) the right to vote in all elections and be eligible for election to all publicly elected bodies;
- b) the right to vote in all public referenda;
- c) the right to hold public office and to exercise all public functions.

Such rights shall be guaranteed by legislation.

DEDAW, Art. 4

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Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.

Convention on the Political Rights of Women, Art. 1

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Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.

Convention on the Political Rights of Women, Art. 2

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Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.

Convention on the Political Rights of Women, Art. 3

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## Education

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- a) the same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- b) access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- c) the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programs and the adaptation of teaching methods;
- d) the same opportunities to benefit from scholarships and other study grants;
- e) the same opportunities for access to programs of continuing education, including adult and functional literacy programs, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- f) the reduction of female student drop-out rates and the organization of programs for girls and women who have left school prematurely;
- g) the same opportunities to participate actively in sports and physical education;
- h) access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

CEDAW, Art. 10

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1. States Parties shall take all appropriate measures to:

- a) eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training;
- b) eliminate all stereotypes in textbooks, syllabuses and the media, that perpetuate such discrimination;
- c) protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices;
- d) provide access to counseling and rehabilitation services to women who suffer abuses and sexual harassment;
- e) integrate gender sensitization and human rights education at all levels of education curricula including teacher training.

2. States Parties shall take specific positive action to:

- a) promote literacy among women;
- b) promote education and training for women at all levels and in all disciplines, particularly in the fields of science and technology;

- c) promote the enrolment and retention of girls in schools and other training institutions and the organization of programs for women who leave school prematurely.

PACHPRA, Art. 12

All appropriate measures shall be taken to ensure to girls and women, married or unmarried, equal rights with men in education at all levels, and in particular:

- a) equal conditions of access to, and study in, educational institutions of all types, including universities and vocational, technical and professional schools;
- b) the same choice of curricula, the same examinations, teaching staff with qualifications of the same standard, and school premises and equipment of the same quality, whether the institutions are co-educational or not;
- c) equal opportunities to benefit from scholarships and other study grants;
- d) equal opportunities for access to programs of continuing education, including adult literacy programs;
- e) access to educational information to help in ensuring the health and well-being of families.

DEDAW, Art. 9

## Employment

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- a) the right to work as an inalienable right of all human beings;
- b) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- c) the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- d) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- e) the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- f) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

CEDAW, Art. 11

States Parties shall adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities. In this respect, they shall:

- a) promote equality of access to employment;
- b) promote the right to equal remuneration for jobs of equal value for women and men;
- c) ensure transparency in recruitment, promotion and dismissal of women and combat and punish sexual harassment in the workplace;
- d) guarantee women the freedom to choose their occupation, and protect them from exploitation by their employers violating and exploiting their fundamental rights as recognized and guaranteed by conventions, laws and regulations in force;
- e) create conditions to promote and support the occupations and economic activities of women, in particular, within the informal sector;
- f) establish a system of protection and social insurance for women working in the informal sector and sensitize them to adhere to it;
- g) introduce a minimum age for work and prohibit the employment of children below that age, and prohibit, combat and punish all forms of exploitation of children, especially the girl-child;
- h) take the necessary measures to recognize the economic value of the work of women in the home;
- i) guarantee adequate and paid pre and post-natal maternity leave in both the private and public sectors;
- j) ensure the equal application of taxation laws to women and men;
- k) recognize and enforce the right of salaried women to the same allowances and entitlements as those granted to salaried men for their spouses and children;
- l) recognize that both parents bear the primary responsibility for the upbringing and development of children and that this is a social function for which the State and the private sector have secondary responsibility;
- m) take effective legislative and administrative measures to prevent the exploitation and abuse of women in advertising and pornography.

PACHPRA, Art. 13

1. All appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in the field of economic and social life, and in particular:
  - a) the right, without discrimination on grounds of marital status or any other grounds, to receive vocational training, to work, to free choice of profession and employment, and to professional and vocational advancement;
  - b) the right to equal remuneration with men and to equality of treatment in respect of work of equal value;
  - c) the right to leave with pay, retirement privileges and provision for security in respect of unemployment, sickness, old age or other incapacity to work;
  - d) the right to receive family allowances on equal terms with men.
2. In order to prevent discrimination against women on account of marriage or maternity and to ensure their effective right to work, measures shall be taken to prevent their dismissal in the event of marriage or maternity and to provide paid maternity leave, with the guarantee of returning to former employment, and to provide the necessary social services, including child-care facilities.
3. Measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be regarded as discriminatory.

DEDAW, Art. 10

### **Pregnancy, Maternity and Health Care**

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

CEDAW, Art. 12.1

Those affected by the natural disaster should be given access to psycho-social assistance and social services, when necessary. Special attention should be given to the health needs of women, including provision of appropriate clothing and hygienic supplies, access to female health care providers and such services as reproductive health care.

IASC, B.2.5

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

ICESCR, Art. 10

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
  - a) to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
  - b) to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
  - c) to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
  - d) to provide special protection to women during pregnancy in types of work proved to be harmful to them.
3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

CEDAW, Art. 11

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

CEDAW, Art. 12

The States Parties undertake to:

- b) ensure the right of pregnant or nursing women or women in detention by providing them with an environment which is suitable to their condition and the right to be treated with dignity.

PACHPRA, Art. 24

1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:
  - a) the right to control their fertility;
  - b) the right to decide whether to have children, the number of children and the spacing of children;
  - c) the right to choose any method of contraception;
  - d) the right to self protection and to be protected against sexually transmitted infections, including HIV/AIDS;
  - e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognized standards and best practices;
  - g) the right to have family planning education.
2. States Parties shall take all appropriate measures to:
  - a) provide adequate, affordable and accessible health services, including information, education and communication programs to women especially those in rural areas;
  - b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;
  - c) protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus.

PACHPRA, Art. 14

## ■ Rights Relevant to Persons with Disabilities in Disaster Situations

### Equality of Rights and Right to Dignity

The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.

Declaration on the Rights of Mentally Retarded Persons, Art. 1

All persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person.

Principle 1.2 Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care

Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.

Declaration on the Rights of Disabled Persons, Art. 3

### Economic, Social and Political Rights

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labor market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:
  - a) prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
  - b) protect the rights of persons with disabilities, on an equal basis with others, to just and favorable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
  - c) ensure that persons with disabilities are able to exercise their labor and trade union rights on an equal basis with others;
  - d) enable persons with disabilities to have effective access to general technical and vocational guidance programs, placement services and vocational and continuing training;

- e) promote employment opportunities and career advancement for persons with disabilities in the labor market, as well as assistance in finding, obtaining, maintaining and returning to employment;
  - f) promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
  - g) employ persons with disabilities in the public sector;
  - h) promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programs, incentives and other measures;
  - i) ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
  - j) promote the acquisition by persons with disabilities of work experience in the open labor market;
  - k) promote vocational and professional rehabilitation, job retention and return-to-work programs for persons with disabilities.
2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labor.

CRPD, Art. 27

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:
- a) enjoy access to cultural materials in accessible formats;
  - b) enjoy access to television programs, films, theatre and other cultural activities, in accessible formats;
  - c) enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.
2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.
3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.
4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.
5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:
- a) to encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
  - b) to ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;
  - c) to ensure that persons with disabilities have access to sporting, recreational and tourism venues;
  - d) to ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;
  - e) to ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

CRPD, Art. 30

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honor and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.
2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

CRPD, Art. 21

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:
- a) the right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;
  - b) the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;
  - c) persons with disabilities, including children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.
3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.
4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.
5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

CRPD, Art. 22

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.
2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:
  - a) to ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
  - b) to ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programs and poverty reduction programs;
  - c) to ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counseling, financial assistance and respite care;
  - d) to ensure access by persons with disabilities to public housing programs;
  - e) to ensure equal access by persons with disabilities to retirement benefits and programs.

CRPD, Art. 28

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

- a) ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
  - (i) ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
  - (ii) protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
  - (iii) guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;
- b) promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:
  - (i) participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
  - (ii) forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

CRPD, Art. 29

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information

and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- a) providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- b) accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- c) urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
- d) encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- e) recognizing and promoting the use of sign languages.

CRPD, Art. 21

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

- a) have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
- b) are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
- c) are free to leave any country, including their own;
- d) are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

CRPD, Art. 18

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

- a) the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- b) the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- c) enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

- a) persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- b) persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- c) reasonable accommodation of the individual's requirements is provided;
- d) persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- e) effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

- a) facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
- b) facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
- c) ensuring that the education of persons, and in particular children, who are blind, deaf or deaf-blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille,

and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

CRPD, Art. 24

Every person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and in other relevant instruments, such as the Declaration on the Rights of Disabled Persons and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Principle 1.5

Disabled persons have the right to economic and social security and to a decent level of living. They have the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.

Declaration on the Rights of Mentally Retarded Persons, Art. 7

The mentally retarded person has a right to economic security and to a decent standard of living. He has a right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his capabilities.

Declaration on the Rights of Mentally Retarded Persons, Art. 3

Disabled persons have the same civil and political rights as other human beings ...

Declaration on the Rights of Disabled Persons, Art. 3

### Protection from Discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

CRPD, Art. 5

1. States Parties undertake to adopt immediate, effective and appropriate measures:
  - a) to raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;
  - b) to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;
  - c) to promote awareness of the capabilities and contributions of persons with disabilities.
2. Measures to this end include:
  - a) initiating and maintaining effective public awareness campaigns designed:
    - (i) to nurture receptiveness to the rights of persons with disabilities;
    - (ii) to promote positive perceptions and greater social awareness towards persons with disabilities;
    - (iii) to promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labor market;
  - b) fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;
  - c) encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;
  - d) promoting awareness-training programs regarding persons with disabilities and the rights of persons with disabilities.

CRPD, Art. 8

There shall be no discrimination on the grounds of mental illness. "Discrimination" means any distinction, exclusion or preference that has the effect of nullifying or impairing equal enjoyment of rights. Special measures solely to protect the rights, or secure the advancement, of persons with mental illness shall not be deemed to be discriminatory. Discrimination does not include any distinction, exclusion or preference undertaken in accordance with the provisions of these Principles and necessary to protect the human rights of a person with a mental illness or of other individuals.

Principle 1.4 Principles for the Protection of Persons with Mental Illness  
and the Improvement of Mental Health Care

### The Right to Protection from Violence, Exploitation and Abuse

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labor.

CRPD, Art. 27

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.
2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

CRDP, Art. 15

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.
3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programs designed to serve persons with disabilities are effectively monitored by independent authorities.
4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.
5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

CRDP, Art. 16

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:
  - b) are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

CRPD, Art. 14

The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment. If prosecuted for any offence, he shall have a right to due process of law with full recognition being given to his degree of mental responsibility.

Declaration on the Rights of Mentally Retarded Persons, Art. 6

All persons with a mental illness, or who are being treated as such persons, have the right to protection from economic, sexual and other forms of exploitation, physical or other abuse and degrading treatment.

Principles for the Protection of Persons with Mental Illness and the  
Improvement of Mental Health Care, Principle 1.3

Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.

Declaration on the Rights of Disabled Persons, Art. 10

Whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic review and to the right of appeal to higher authorities.

Declaration on the Rights of Mentally Retarded Persons, Art. 7

The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

ACHPR, Art. 18.4

### Protection of Women and Minors with Disabilities

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.
2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

CRPD, Art. 6

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

CRPD, Art. 7

Special care should be given within the purposes of these Principles and within the context of domestic law relating to the protection of minors to protect the rights of minors, including, if necessary, the appointment of a personal representative other than a family member.

Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care,  
Principle 2

### Legal Capacity and Protection

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

CRPD, Art. 12

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

CRPD, Art. 13

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:
  - a) enjoy the right to liberty and security of person;
  - b) are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.
2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

CRPD, Art. 14

Any decision that, by reason of his or her mental illness, a person lacks legal capacity, and any decision that, in consequence of such incapacity, a personal representative shall be appointed, shall be made only after a fair hearing by an independent and impartial tribunal established by domestic law. The person whose capacity is at issue shall be entitled to be represented by a counsel. If the person whose capacity is at issue does not himself or herself secure such representation, it shall be made available without payment by that person to the extent that he or she does not have sufficient means to pay for it. The counsel shall not in the same proceedings represent a mental health facility or its personnel and shall not also represent a member of the family of the person whose capacity is at issue unless the tribunal is satisfied that there is no conflict of interest. Decisions regarding capacity and the need for a personal representative shall be reviewed at reasonable intervals prescribed by domestic law. The person whose capacity is at issue, his or her personal representative, if any, and any other interested person shall have the right to appeal to a higher court against any such decision.

Principles for the Protection of Persons with Mental Illness  
and the Improvement of Mental Health Care, Principle 1.6

Where a court or other competent tribunal finds that a person with mental illness is unable to manage his or her own affairs, measures shall be taken, so far as is necessary and appropriate to that person's condition, to ensure the protection of his or her interest.

Principles for the Protection of Persons with Mental Illness  
and the Improvement of Mental Health Care, Principle 1.7

Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property. If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account.

Declaration on the Rights of Disabled Persons, Art. 11

## Health Care

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- a) provide persons with disabilities with the same range, quality and standard of free or affordable health care and programs as provided to other persons, including in the area of sexual and reproductive health and population-based public health programs;
- b) provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
- c) provide these health services as close as possible to people's own communities, including in rural areas;
- d) require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human

- rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;
- e) prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;
  - f) prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.
- CRPD, Art. 25

The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.

Declaration on the Rights of Mentally Retarded Persons, Art. 2

1. Every patient shall have the right to receive such health and social care as is appropriate to his or her health needs, and is entitled to care and treatment in accordance with the same standards as other ill persons.
  2. Every patient shall be protected from harm, including unjustified medication, abuse by other patients, staff or others or other acts causing mental distress or physical discomfort.
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Principle 8

Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and orthotic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counseling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration.

Declaration on the Rights of Disabled Persons, Art. 6

### **The Right to Independent Living (and other types of care arrangements)**

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programs, particularly in the areas of health, employment, education and social services, in such a way that these services and programs:
    - a) begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;
    - b) support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.
  2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.
  3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.
- CRPD, Art. 26

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:
  - a) buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
  - b) information, communications and other services, including electronic services and emergency services.
2. States Parties shall also take appropriate measures to:
  - a) develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
  - b) ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
  - c) provide training for stakeholders on accessibility issues facing persons with disabilities;

- d) provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- e) provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- f) promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- g) promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- h) promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

CRPD, Art. 9

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- a) persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- b) persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- c) community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

CRPD, Art. 19

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

- a) facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;
- b) facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;
- c) providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;
- d) encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

CRPD, Art. 20

Every person with a mental illness shall have the right to live and work, as far as possible, in the community.

Principles for the Protection of Persons with Mental Illness  
and the Improvement of Mental Health Care, Principle 3

Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible.

Declaration on the Rights of Disabled Persons, Art. 5

1. Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.
2. The treatment and care of every patient shall be based on an individually prescribed plan, discussed with the patient, reviewed regularly, revised as necessary and provided by qualified professional staff.
3. Mental health care shall always be provided in accordance with applicable standards of ethics for mental health practitioners, including internationally accepted standards such as the Principles of Medical Ethics adopted by the United Nations General Assembly. Mental health knowledge and skills shall never be abused.
4. The treatment of every patient shall be directed towards preserving and enhancing personal autonomy.

Principle 9 Principles for the Protection of Persons  
with Mental Illness and the Improvement of Mental Health Care

### **Institutional Care**

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Whenever possible, the mentally retarded person should live with his own family or with foster parents and participate in different forms of community life. The family with which he lives should receive assistance. If care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life.

Declaration on the Rights of Mentally Retarded Persons, Art. 4

Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. No disabled person shall be subjected, as far as his or her residence is concerned, to differential treatment other than that required by his or her condition or by the improvement which he or she may derive therefrom. If the stay of a disabled person in a specialized establishment is indispensable, the environment and living conditions therein shall be as close as possible to those of the normal life of a person of his or her age.

Declaration on the Rights of Disabled Persons, Art. 9

The mentally retarded person has a right to a qualified guardian when this is required to protect his personal well-being and interests.

Declaration on the Rights of Mentally Retarded Persons, Art. 5

### **The Right to Participate in Planning and Consultation**

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Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.

Declaration on the Rights of Disabled Persons, Art. 8

Organizations of disabled persons may be usefully consulted in all matters regarding the rights of disabled persons.

Declaration on the Rights of Disabled Persons, Art. 12

### **Emergencies**

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States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

CRPD, Art. 11

Safe and non-discriminatory access to available humanitarian assistance should be secured for all persons in need. In particular, measures should be taken to grant priority access to vulnerable groups as minorities, single-headed households, elderly, people with disabilities, and unaccompanied and separated children.

IASC, B.1.3

## **■ Rights Relevant to Minorities in Disaster Situations**

### **Prohibition on Racial Discrimination**

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Discrimination between human beings on the ground of race, color or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, as an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing peace and security among peoples.

Declaration on the Elimination of all Forms of Racial Discrimination, Art. 1

## Prohibition on Discriminatory Laws and Policies

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1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
  - a) each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
  - b) each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
  - c) each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
  - d) each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
  - e) each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

CERD, Art. 2

1. No State, institution, group or individual shall make any discrimination whatsoever in matters of human rights and fundamental freedoms in the treatment of persons, groups of persons or institutions on the ground of race, color or ethnic origin.
2. No State shall encourage, advocate or lend its support, through police action or otherwise, to any discrimination based on race, color or ethnic origin by any group, institution or individual.

United Nations Declaration on the Elimination of all Forms of Racial Discrimination, Art. 2

All States shall take effective measures to revise governmental and other public policies and to rescind laws and regulations which have the effect of creating and perpetuating racial discrimination wherever it still exists. They should pass legislation for prohibiting such discrimination and should take all appropriate measures to combat those prejudices which lead to racial discrimination.

Declaration on the Elimination of all Forms of Racial Discrimination, Art. 4

An end shall be put without delay to governmental and other public policies of racial segregation and especially policies of apartheid, as well as all forms of racial discrimination and separation resulting from such policies.

Declaration on the Elimination of all Forms of Racial Discrimination, Art. 5

1. Particular efforts shall be made to prevent discrimination based on race, color or ethnic origin, especially in the fields of civil rights, access to citizenship, education, religion, employment, occupation and housing.
2. Everyone shall have equal access to any place or facility intended for use by the general public, without distinction as to race, color or ethnic origin.

Declaration on the Elimination of all Forms of Racial Discrimination, Art. 3

## Community Education and Prohibition on Incitement

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States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- a) shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- b) shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

- c) shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

CERD, Art. 4

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

CERD, Art. 7

All effective steps shall be taken immediately in the fields of teaching, education and information, with a view to eliminating racial discrimination and prejudice and promoting understanding, tolerance and friendship among nations and racial groups, as well as to propagating the purposes and principles of the Charter of the United Nations, of the Universal Declaration of Human Rights, and of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

Declaration on the Elimination of all Forms of Racial Discrimination, Art. 8

1. All propaganda and organizations based on ideas or theories of the superiority of one race or group of persons of one color or ethnic origin with a view to justifying or promoting racial discrimination in any form shall be severely condemned.
2. All incitement to or acts of violence, whether by individuals or organizations against any race or group of persons of another color or ethnic origin shall be considered an offence against society and punishable under law.
3. In order to put into effect the purposes and principles of the present Declaration, all States shall take immediate and positive measures, including legislative and other measures, to prosecute and/or outlaw organizations which promote or incite to racial discrimination, or incite to or use violence for purposes of discrimination based on race, color or ethnic origin.

Declaration on the Elimination of all Forms of Racial Discrimination, Art. 9

### **Protection of Human Rights and Fundamental Freedoms of Minority Groups**

States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

CERD, Art. 2.2

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

CERD, Art. 3

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (b) the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

CERD, Art. 5

3. Special concrete measures shall be taken in appropriate circumstances in order to secure adequate development or protection of individuals belonging to certain racial groups with the object of ensuring the full enjoyment by such individuals of human rights and fundamental freedoms. These measures shall in no circumstances have as a consequence the maintenance of unequal or separate rights for different racial groups.

Declaration on the Elimination of all Forms of Racial Discrimination, Art. 1

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

Declaration on the Rights of Persons Belonging to National or Ethnic Minorities, Art. 4

### Protection of Cultural Practices and Identity

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

ICCPR, Art. 27

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.

Declaration on the Rights of Persons Belonging to National or Ethnic Minorities, Art. 2

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Declaration on the Rights of Persons Belonging to National or Ethnic Minorities, Art. 1

2. States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.
5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Declaration on the Rights of Persons Belonging to National or Ethnic Minorities, Art. 4

### Civil, Economic, Social and Cultural Rights

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

d) other civil rights, in particular:

- (i) the right to freedom of movement and residence within the border of the State;
- (ii) the right to leave any country, including one's own, and to return to one's country;
- (iii) the right to nationality;
- (iv) the right to marriage and choice of spouse;
- (v) the right to own property alone as well as in association with others;
- (vi) the right to inherit;
- (vii) the right to freedom of thought, conscience and religion;
- (viii) the right to freedom of opinion and expression;
- (ix) the right to freedom of peaceful assembly and association;

e) economic, social and cultural rights, in particular:

- (i) the rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration;

- (ii) the right to form and join trade unions;
- (iii) the right to housing;
- (iv) the right to public health, medical care, social security and social services;
- (v) the right to education and training;
- (vi) the right to equal participation in cultural activities;
- f) the right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

CERD, Art. 5

4 Persons belonging to minorities have the right to establish and maintain their own associations.

5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Declaration on the Rights of Persons Belonging to National or Ethnic Minorities, Art. 2

### The Right to Participate in Government

No discrimination by reason of race, color or ethnic origin shall be admitted in the enjoyment by any person of political and citizenship rights in his country, in particular the right to participate in elections through universal and equal suffrage and to take part in the government. Everyone has the right of equal access to public service in his country.

Declaration on the Elimination of all Forms of Racial Discrimination, Art. 6

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- c) political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

CERD, Art. 5

### Legal Rights

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- a) the right to equal treatment before the tribunals and all other organs administering justice;

CERD, Art. 5

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

CERD, Art. 6

1. Everyone has the right to equality before the law and to equal justice under the law. Everyone, without distinction as to race, color or ethnic origin, has the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution.
2. Everyone shall have the right to an effective remedy and protection against any discrimination he may suffer on the ground of race, color or ethnic origin with respect to his fundamental rights and freedoms through independent national tribunals competent to deal with such matters.

Declaration on the Elimination of all Forms of Racial Discrimination, Art. 7

### **The Right to be Considered in Planning**

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3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

Declaration on the Rights of Persons Belonging to National or Ethnic Minorities, Art. 2

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1. National policies and programs shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.
2. Programs of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Declaration on the Rights of Persons Belonging to National or Ethnic Minorities, Art. 5

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### **Role of the International Community**

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The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

Declaration on the Rights of Persons Belonging to National or Ethnic Minorities, Art. 9

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The United Nations, the specialized agencies, States and non-governmental organizations shall do all in their power to promote energetic action which, by combining legal and other practical measures, will make possible the abolition of all forms of racial discrimination. They shall, in particular, study the causes of such discrimination with a view to recommending appropriate and effective measures to combat and eliminate it.

Declaration on the Elimination of all Forms of Racial Discrimination, Art. 10

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### **Regional Conventions**

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- Framework Convention for the Protection of National Minorities (1995), Preamble s. 7, Art. 5.1, 6.1, 6.2, 7, 8, 12 and 17.1
- Additional Protocol to the Convention on Cybercrime, Concerning the Criminalization of Acts of a Racist and Xenophobic Nature Committed through Computer Systems (2003), Art. 2.1, 4.1, 5.1 and 6
- European Charter for Regional or Minority Languages (1992), Art. 1-14
- European Convention on Human Rights (1950), Art. 9 and 14
- European Convention for Protection of Human Rights and Fundamental Freedoms, Protocol 1, Art. 1
- European Social Charter (revised 1996), Part V Art. E, and Appendix Art. 21.4 and 24.3 (d)
- American Declaration of the Rights and Duties of Man (1948), Art. III and XXIII
- American Convention on Human Rights (1969), Art. 1, 12, 13, 16, 21, 22 and 27
- Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (1988), Art. 3 and 13
- African Charter on Human and People's Rights (1981), Preamble, Art. 2, 8 and 12, 14, 21
- African Charter on the Rights and Welfare of the Child (1990), Art. 3, 17 and 25
- Protocol on the Rights of Women in Africa (2003), Art. 1 and 2

Erica Harper

In emergency situations, children require special protection. Children who have been orphaned or separated from their families are at higher risk of abuse, violence, neglect and exploitation; without parental protection, they are more vulnerable to illegal adoption, child marriage and trafficking. Even where children are not separated from their families, insecure housing, displacement, loss of employment, destruction of livelihoods and the death of a primary breadwinner, increases their vulnerability in households. Economic destitution in particular triggers additional risks for children, which can surface at any phase of the emergency. In the home, they may be subject to violence and inadequate access to basic needs such as shelter, food, water and health care. Strains on resources also place children at risk of dropping out of school; many children are forced to earn an income – often in high-risk professions such as mining and agriculture. Girls are particularly subject to child pornography and other forms of sexual exploitation.

The principal international treaties concerned with children's rights are the 1989 *Convention on the Rights of the Child* (CRC), the 2000 *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* and the 2000 *Optional Protocol to the Convention on the Involvement of Children in Armed Conflicts*. Other important conventions include the ICCPR, ICESCR, the 1993 *Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption*, and the 2000 *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*. A matrix of relevant international and regional treaties and the obligations contained within can be found at the end of this chapter.

It is important to note that the CRC established a Committee on the Rights of the Child, which is mandated to monitor the progress made by States Parties towards their obligations under the convention and its optional protocols.<sup>1</sup> States Parties are required to submit regular reports to the committee,<sup>2</sup> and on the basis of such reports the committee is responsible for making suggestions and general recommendations.<sup>3</sup> The committee is unable to receive complaints from individuals or states regarding an abrogation of convention obligations by a state party. Such complaints, however, may fall within the jurisdiction of other human rights bodies, including the Human Rights Committee, the Committee on the Elimination of all Forms of Discrimination against Women, the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of Persons with Disabilities.<sup>4</sup>

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## INTERNATIONAL INSTRUMENTS RELEVANT TO CHILD PROTECTION

Convention on the Rights of the Child (1989)

[www.unhchr.ch/html/menu3/b/k2crc.htm](http://www.unhchr.ch/html/menu3/b/k2crc.htm)

Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (2000)

[www.unhchr.ch/html/menu2/6/crc/treaties/opsch.htm](http://www.unhchr.ch/html/menu2/6/crc/treaties/opsch.htm)

Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (2000)

[www.unhchr.ch/html/menu2/6/crc/treaties/opac.htm](http://www.unhchr.ch/html/menu2/6/crc/treaties/opac.htm)

Convention on the Elimination of all Forms of Discrimination Against Women (1979)

[www.un.org/womenwatch/daw/cedaw](http://www.un.org/womenwatch/daw/cedaw)

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women (1999)

[www.un.org/womenwatch/daw/cedaw/protocol](http://www.un.org/womenwatch/daw/cedaw/protocol)

Minimum Age Convention (ILO Convention No. 138) (1973)

[www.ilo.org/ilolex/cgi-lex/convde.pl?C138](http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138)

Worst Forms of Child Labor Convention (ILO Convention No. 182) (1999)

[www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chic.htm](http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chic.htm)

Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption (1993)

[www.hcch.net/index\\_en.php?act=conventions.text&cid=69](http://www.hcch.net/index_en.php?act=conventions.text&cid=69)

Hague Convention on the Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children (1996)

[www.hcch.e-vision.nl/index\\_en.php?act=conventions.text&cid=70](http://www.hcch.e-vision.nl/index_en.php?act=conventions.text&cid=70)

Hague Convention on the Civil Aspects of International Child Abduction (1980)

[www.hcch.net/index\\_en.php?act=conventions.text&cid=24](http://www.hcch.net/index_en.php?act=conventions.text&cid=24)

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (2000)

[www.unodc.org/unodc/en/treaties/CTOC/index.html](http://www.unodc.org/unodc/en/treaties/CTOC/index.html)

Supplementing the UN Convention Against Transnational Organized Crime (2001)

[www.unodc.org/unodc/en/treaties/CTOC/index.html](http://www.unodc.org/unodc/en/treaties/CTOC/index.html)

United Nations Draft Guidelines for the Protection and Alternate Care of Children Without Parental Care (draft)

[www.iss-ssi.org/Resource\\_Centre/Tronc\\_DI/documents/DraftGuidelinesMay06.pdf](http://www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/DraftGuidelinesMay06.pdf)

United Nations Rules on the Protection of Juveniles Deprived of Liberty (1990)

[www.un.org/documents/ga/res/45/a45r113.htm](http://www.un.org/documents/ga/res/45/a45r113.htm)

138 United Nations Guidelines on the Prevention of Delinquency (1990)

[www.un.org/documents/ga/res/45/a45r112.htm](http://www.un.org/documents/ga/res/45/a45r112.htm)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985)

[www.unhchr.ch/html/menu3/b/h\\_comp48.htm](http://www.unhchr.ch/html/menu3/b/h_comp48.htm)

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## Part 1: Birth Registration

Region	Percentage of Unregistered Births	Number of Unregistered Children
Sub-Saharan Africa	55	Nearly 15 million
Middle East and North Africa	16	Over 1.5 million
South Asia	63	Over 23 million
East Asia and Pacific	19	Nearly 6 million
Latin America and Caribbean	15	Over 1.7 million
CEE/CIS and Baltic States	23	Over 1.2 million
Industrialized Countries	2	Over 0.2 million
<b>World</b>	<b>36</b>	<b>Over 48 million<sup>5</sup></b>

### 1.1 What is Birth Registration?

Birth registration is the official recording of the birth of a child by the state. Most jurisdictions have laws regulating birth registration, but the type of information gathered and coverage will vary depending upon the state's level of infrastructural development, administrative capacity and the accessibility of the population. In developing countries, birth registration is often poorly enforced and insufficiently comprehensive. This becomes exaggerated in situations of natural disaster, where registration may not be regarded as a priority by authorities or families. As a minimum, birth registration should include the child's name, sex, place and date of birth and the name, address and nationality of the parents. In certain states, authorities will collect additional information such as fingerprints and other physical identifiers such as birth marks. This additional information can act as a safeguard against child trafficking and illegal adoption, and can assist in family reunification.<sup>6</sup>

### 1.2 Relevant International Law

Article 7.1 of the CRC states that children "... shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality..."<sup>7</sup>

### 1.3 Why is Birth Registration Important?

According to UNICEF, birth registration "... is fundamental to the realization of children's rights and practical needs..."; including the right to a name and nationality guaranteed under Art. 7 of the CRC. Registration is also a means of protecting other rights. Without documents to prove identity, children may be unable to access health care, education and other social services such as immunization at the correct age. Orphaned children may not be able to access social benefits and entitlements such as pensions or inherit property. Registration is also crucial for preventing child labor, underage marriage, trafficking, premature enlistment into armed forces, and for protecting children in conflict with the law from being treated as adults.<sup>8</sup> In later life, children whose births were not registered may have difficulty applying for a passport or driver's license, opening a bank account, obtaining credit and registering to vote. Accurate data on birth registration allows governments to track population trends and differentials such as gender, social, economic or geographic disparities. Such data can be used to plan and implement more effective development and poverty alleviation policies in the areas of health, sanitation, education, employment and agriculture.<sup>9</sup>

The primary impediments to birth registration include high fees relative to income, administrative requirements – parents may not have the required documents such as their own birth certificates – lack of access to registration facilities, collapse of government infrastructure in times of emergency, discrimination against certain ethnic groups of minorities, and the exclusive use of official languages on registration forms.<sup>10</sup> A further important restriction is lack of awareness regarding the registration process and the benefits and protections stemming from birth registration.<sup>11</sup>

## Plan International: Making Birth Registration Easy in Aceh, Indonesia<sup>12</sup>

*Reprinted with the permission of Plan International.*

Since the beginning of its tsunami response program in 2005, Plan International has been working to ensure that every child in Aceh has a birth certificate. The work started with providing cost subsidies to register 5,000 children in Aceh Besar. To ensure sustainability, Plan International Aceh conducted advocacy targeting communities, local NGOs and district governments to promote free and universal birth registration. This included efforts to introduce a new district *qanun* (local regulation) on birth registration. In December 2006, the new *qanun* was adopted by the local parliament. Significantly, the regulation provided that birth registration would be free for children between 0 and 6 years of age. Some challenges, however, remain – principally the distance and costs associated with families accessing service centers, which are generally located in district capitals. Plan International Aceh is also working with the Aceh Besar Civil Registration Office to support the development and implementation of decentralized procedures of birth registration at the sub-district level. This involves communications and workshops and training for village leaders, midwives and school teachers.

*Reprinted with the permission of Plan International.*

## Plan International: Strategies to Increase Birth Registration<sup>13</sup>

### INFLUENCING POLITICAL PROCESSES

**Influencing Policy and Legislation:** Governments should ensure that birth registration policies and legislation is compatible with the CRC and the UN Statistical Office's four principles of registration – universal, compulsory, permanent and continuous. In many cases, political will need to be generated to change current policy and practice, create new legal frameworks for civil registration, review and amend existing legislation, and adapt the design and operation of birth registration systems.

### HARNESSING RESOURCES AND EXPERTISE

**Effective Cooperation:** Birth registration requires broad, ambitious and long-term work by a range of stakeholders at every level. At the international level, UN agencies and NGOs should work towards a common framework to best harness and harmonize collective efforts. At the country-level, successful partnerships should be galvanized between government entities, child protection services, hospitals, schools and local NGOs.

### IMPROVING DELIVERY PROCESSES

**Involving Communities and Children:** Communities and children should be involved in design and implementation of legislation and programs on birth registration. Such involvement ensures compatibility with local realities, and helps build trust in systems. Children can become directly involved through education, publicity, and child-to-child campaigning.

**Integration into the Child Rights Agenda and Public Services:** Birth registration campaigns are more successful when they are positioned within the wider child rights agenda. Further, integrating birth registration into existing public services such as healthcare, immunisation and school enrolment is cost-effective, efficient and sustainable.

**Responding to Circumstances:** Birth registration systems need to overcome geographical barriers, cater for the needs of hard-to-reach groups (such as indigenous, nomadic, refugee and immigrant populations), and enable retrospective registration to account for historic difficulties in registering births. Decentralized and Mobile registration are effective tools in this regard.

**Removal of Cost:** Free registration and birth certification makes birth registration possible for every part of the population and demonstrates a State's commitment to ensuring the rights of every child.

**Training and Capacity Building:** Training and capacity building of birth registration officials helps to improve motivation and competence, and reduces the possibility of fraud and corruption in the system.

**Monitoring and Sustainability of Birth Registration Systems:** Birth registration systems need to be monitored to ensure that they continue to be responsive to the environment in which they operate.

### LEARNING

**Sharing Best Practices:** For example, regional conferences to bring civil registrars and others together to share their experiences and exchange innovative ideas.

## CHECKLIST FOR AGENCIES

Agencies might establish:

- registration processes that are easy to understand and operate at low or zero cost;
- access to registration facilities in remote areas, for example through mobile birth registration clinics, particularly targeting rural, inaccessible and poor or disaster-affected areas;
- awareness-raising programs highlighting the benefits of birth registration; such programs might operate through schools, midwives – especially where hospital births are less common – in conjunction with immunization programs;
- processes to facilitate the involvement of representatives from all aspects of civil society, including ethnic groups, religious leaders, government officials, international organizations and NGOs, in the development and implementation of registration programs with a view to ensuring accessibility and workability; and
- registration processes that ensure that local registration is integrated with a central database to ensure adequate recording, transmission and safeguarding of data, and backup and confidentiality of information collected.<sup>14</sup>

Agencies might lobby for:

- ratification of the relevant international conventions;
- legislation and reform consistent with States Parties' commitments under relevant international conventions;
- the decentralization of registration processes;
- greater accessibility to registration facilities; and
- facilitation of and removal of fees or fines for late registration.

### footnotes

<sup>1</sup> CRC, Art. 43.

<sup>2</sup> CRC, Art. 44.

<sup>3</sup> CRC, Art. 45.

<sup>4</sup> These monitor the implementation of the ICCPR, CEDAW, CERD and Convention on the Rights of Persons with Disabilities respectively.

<sup>5</sup> Reprinted with the permission of Plan International. See: Plan International. 2006. *Count Me In: The Global Campaign for Universal Birth Registration*, p 5. Available at: [www.plan-international.org/pdfs/count-mein.pdf](http://www.plan-international.org/pdfs/count-mein.pdf)

<sup>6</sup> UNICEF and Inter-Parliamentary Union. 2004. *Child Protection: A Handbook for Parliamentarians*, no. 7, p 42.

<sup>7</sup> General Assembly resolution S-27/2. 2002. A World Fit for Children. This reaffirms a government's commitment to ensure birth registration of all, and to protect children from harm and exploitation; UNICEF. 2005. *The "Rights" Start to Life: A Statistical Analysis of Birth Registration*, p 1.

<sup>8</sup> UNICEF. 2006. *Child Protection Information Sheets*, no. 13; UNICEF The 'Rights' Start to Life (n 7) 1.

<sup>9</sup> UNICEF. 2005. *The "Rights" Start to Life: A Statistical Analysis of Birth Registration*, no. 7, p 1.

<sup>10</sup> UNICEF. *Child Protection Information Sheets*, no. 8, p 43.

<sup>11</sup> UNICEF. 2005. *The "Rights" Start to Life: A Statistical Analysis of Birth Registration*, no. 7, p 2.

<sup>12</sup> Case study provided by Plan International [www.plan-international.org](http://www.plan-international.org)

<sup>13</sup> Reprinted with the permission of Plan International from *Count Me In: The Global Campaign for Universal Birth Registration*. Plan International Interim Campaign Report, 2005-2006, pp 10-18. Available at: [www.plan-international.org/resources/publications/campaigns](http://www.plan-international.org/resources/publications/campaigns).

## Part 2: Guardianship, Fostering and Adoption

### Facilitating the Emergency Protection of Children Separated from their Parents

Soon after the tsunami, an inter-agency tracing network was formed comprising government agencies, UNICEF, and local and international NGOs. The group developed standardized registration forms, trained staff and volunteers and facilitated a regular exchange of caseload information. In addition to tracing, regular follow-up visits on registered cases were progressively organized. These visits were intended to protect separated children and to collect additional family information that could allow further investigation and possibly lead to reunification. UNICEF and its partners also implemented a national communication campaign aimed at:

- raising public awareness of the importance of registering separated children;
- publicizing mass tracing lists;
- informing the public about ways of preventing further separation during secondary population movements into longer-term settlements; and
- promoting family and community-based care for separated children rather than institutionalization.

As of December 2005, the Interagency Tracing Network had registered 2,494 cases of separated, unaccompanied and single-parent children. The majority of these children were living with foster families or relatives in their communities. The few children who had no adult care when registered were placed in residential homes for short periods while tracing was undertaken or an appropriate foster family identified. UNICEF's experience in the tsunami illustrates that a large number of separated children can be effectively protected in a major emergency through strong inter-agency collaboration and the employment of a coherent strategy that includes standardization of registration forms, procedures and approaches to follow-up and monitor cases.

(From: *Indonesia: Emergency Protection of Children Separated from Parents in the Tsunami*, available at: [www.unicef.org/evaluation/files/fa4\\_indonesia\\_emergency\\_protection\(1\).doc](http://www.unicef.org/evaluation/files/fa4_indonesia_emergency_protection(1).doc))

### 2.1 A Child's Right to be Cared for by its Parents

The right of a child to be cared for by its parents is protected under article 9 and 7.1 of the CRC.

*States Parties will ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.*

CRC Art 9

*The child shall [have] ..., as far as possible, the right to know and be cared for by his or her parents.*

CRC Art 7.1

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*Appropriate measures should be taken as early and as quickly as possible to re-establish contacts between members of families that have been separated in the course of the disaster, and to reunite them without delay, particularly when children are involved.*

IASC D.3.2

*Separated and unaccompanied children should be assisted in accordance with the best interests of the child. In particular, the placing of children in institutions should be avoided whenever possible.*

IASC D.3.3

### 2.2 Alternate Care Arrangements

A child whose parents/primary care providers are dead, who is separated from their family/primary care provider, or whose family/primary care provider poses a risk to them, has the right to suitable alternate care. Under the CRC, the options for alternate care include foster care, *kafala*, adoption and institutional placement.

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the state.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care should include, *inter alia*, foster placement, kafala under Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

CRC Art 20

Removal from the family environment should be regarded as a temporary measure of last resort, because children without parental care, particularly those in institutions, are at greater risk of discrimination, inadequate care, abuse, exploitation and early death.<sup>15</sup> Article 20 of the CRC hence implies that alternative care options should be pursued in a hierarchy. The ideal situation is for a child to be temporarily cared for by a family member. If the extended family is unable or unwilling to provide care, the next best option is through a substitute, pre-screened foster family.<sup>16</sup> Only when neither of these options can be utilized should a child be placed in institutional care.<sup>17</sup> There are two exceptions: (i) children under 5 should never be placed in institutional care;<sup>18</sup> and (ii) older children may prefer to live in a small supported group home or in supported independent living arrangements rather than return to a family. In all cases, the views of children and their caregivers should be taken into account when making placement decisions.<sup>19</sup> UNICEF further advises that long-term alternative care decisions should be based on the following principles:

- family-based solutions are generally preferable to institutional placements;
- permanent solutions are generally preferable to temporary ones; and
- national solutions are generally preferable to international solutions.<sup>20</sup>

All children removed from the home, whether they are placed in foster care or in an institution, have the right to periodic review of their treatment. A care plan should be established and reviewed regularly with the aim of facilitating a permanent placement, either with the family of origin or through adoption, and a mechanism should be developed to receive and respond to complaints from the child.<sup>21</sup>

### 2.3 Types of In-Country Alternate Care Arrangements

#### (i) Foster Care

Foster care refers to the placement of a child who has been separated from its family, or who cannot be left with its family, or is in the care of another family or individual. It is generally a temporary arrangement that has no permanent legal consequences for the relationship between the child and its biological parents, although in some cases long-term foster care can become *de facto* adoption.<sup>22</sup>

*In all matters of foster family care, the prospective foster parents and, as appropriate, the child and his or her own parents should be properly involved. A competent authority or agency should be responsible for supervision to ensure the welfare of the child.*

*Art 12 UNGA A/RES/41/85*

#### (ii) Kafala

Kafala is a form of alternative care recognized under Islam.<sup>23</sup> According to UNICEF, all kafala placements should be approved by judicial decision and children, particularly girls, should receive the same social benefits as other family members.<sup>24</sup>

*Islam views the family, based on legal wedlock, as the natural environment for the upbringing of the child, and stipulates that every child has the right to live in a family that is built on mutual amity and compassion, no matter whether it is his or her own natural family or a foster family that provides him*

or her with *kafala* in cases where his or her natural family is lost, or in cases of abandonment by his or her natural family.<sup>25</sup>

Art. 6, Declaration on the Rights and Care of the Child in Islam

(iii) Institutional Placement

Institutional placement refers to the care of unaccompanied and orphaned children through establishments such as orphanages, specialist boarding schools or group houses designed for adolescents. Institutional establishments differ in function, quality and levels of acceptability in different societies.<sup>26</sup> In certain situations, particularly post-emergency environments, parents will voluntarily place their children in institutional care as a poverty coping mechanism or to access schooling. In post-tsunami Aceh, for example, only an estimated 15 percent of children housed in orphanages had actually lost both parents.<sup>27</sup> Research demonstrates, however, that institutionalization leaves children with impaired social and emotional development and at greater risk of exploitation, sexual assault and physical abuse.<sup>28</sup> Research also suggests that investing in families and communities prevents family breakdown and that community-based alternative care is more appropriate and cost effective. For these reasons, UNICEF recommends that children be placed in institutional care only for the shortest possible length of time<sup>29</sup> and that family reintegration be regarded as the ideal long-term solution.<sup>30</sup>

*States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.*

CRC Art 9.3

(iv) Adoption

Adoption is a means of providing a new and permanent family for a child irreparably separated from his or her biological family. According to UNICEF, all adoptions should be preceded by the consent of the child's biological parents if they are alive and competent, and the child should have the right to express its views and have such views taken into account in accordance with their age and development. In selecting a preferable alternative care arrangement for the child, attention should be paid to the desirability of continuity in the child's upbringing, the child's ethnic, religious, cultural and linguistic background and, above all, the best interests of the child.<sup>31</sup>

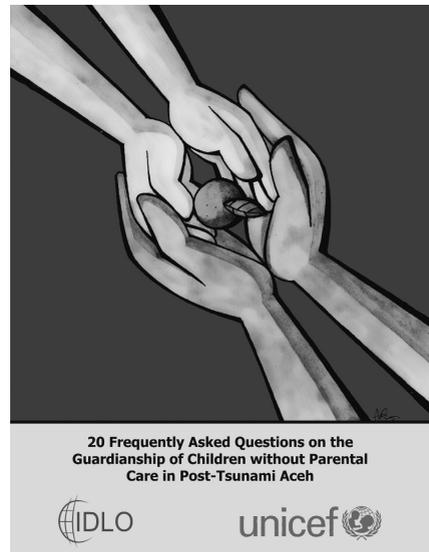
*States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:*

*(f) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary.*

CRC Art 21<sup>32</sup>

### Protecting the Legal Rights of Tsunami Orphans in Aceh, Indonesia

In Banda Aceh, the 2005 Indian Ocean tsunami left approximately 2,800 children orphaned or vulnerable. Although the vast majority of these children were being cared for by a family member, fewer than 10 percent had been assigned a legal guardian by the courts. There was also low community awareness regarding the roles and responsibilities of guardians, inheritance laws, and the procedures for guardianship legalization. In response, IDLO in partnership with UNICEF and the Shari'a courts undertook a project aimed at improving the legal protection afforded to children without primary caregivers and/or living with extended family members in Aceh. IDLO published and disseminated a practical and easy-to-understand guidebook entitled *20 Frequently Asked Questions on the Guardianship of Children without Parental Care in Post-Tsunami Aceh*. The guidebook was designed for ordinary citizens and covered issues such as inheritance, the procedures for legalizing guardianship, the benefits of legalizing guardianship and the obligations of guardians. IDLO then delivered a one-day information and training session for 380 guardians, primary caregivers, and village leaders on the contents of the guidebook. As a final step, IDLO facilitated the legalization of 173 guardianship appointments through a mobile Shari'a court in a simple and cost-free procedure. As part of the legalization process, a judge would explain to the prospective guardian their responsibilities towards their ward under Indonesian law and Shari'a, including the stipulation that guardians must honor their commitment to look after a child's welfare by ensuring good education and health care and that guardians were trustees of their ward's inheritance and other assets and could stand trial for misuse of such wealth. An important outcome was that participants' interaction with judges in informal, community settings helped increase community confidence in the formal justice system: 97 percent of those surveyed after the project stated that they felt more confident in approaching the Shari'a court for assistance in resolving their legal problems, and all 135 respondents believed that legalization had increased the protection afforded to orphans in the community. Such positive engagement with an institution such as the Shari'a court was hence not only advantageous for the protection of children's rights: it was also a small step forward in the transition to a society based on the rule of law. Following the success of this program, IDLO and UNICEF have launched phase two of the project. For more information, visit [www.idlo.int](http://www.idlo.int).<sup>33</sup>



## 2.4 Inter-Country/International Adoption

Inter-country adoption involves the adoption of a child from one country by a person or persons living in another country, regardless of their nationality. International adoption is the adoption of a child by a person or persons who do not have the same nationality as the child, generally the adoption of a child from a developing country.<sup>34</sup> For individual children who cannot be placed in a permanent family setting in their country of origin, adoption can be the best solution. Over the past two decades, however, increased demand for inter-country adoption, coupled with a lack of adequate safeguards and opportunities to make a profit, has led to an increase in the number of irregular and illegal adoptions.<sup>35</sup> In unregulated environments, facilitators and lawyers can charge up to US\$30,000 to find a child, with most of the money going to undisclosed "fees" and "donations".<sup>36</sup>

Illegal adoptions might involve:

- falsifying maternity, paternity or birth registration certificates;
- falsely informing a mother that her child died during birth;

- offering cash or goods in exchange for a child;
- obtaining parental consent to adoption under false pretenses;
- citing or pressuring vulnerable pregnant women to agree to abandon their child at birth;
- child abduction;<sup>37</sup> and
- adoption, which can lead to exploitation of a child and may be considered a form of trafficking.

States are ultimately responsible for inter-country adoption. The best way to ensure that inter-country adoption is used effectively, and for the right children, is through the ratification and implementation of the 1993 *Hague Convention on the Protection of Children in Respect of Inter-Country Adoption*.

## 2.5 Relevant International Law

The CRC states that international adoption may only be considered where the child cannot be placed with an adoptive family or in foster care in their country of origin.<sup>38</sup> The convention also provides that the child must enjoy safeguards and standards equivalent to those existing in the case of national adoption and that all appropriate measures be taken to ensure that placement does not result in improper financial gain.<sup>39</sup> The 2000 *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* requires that States Parties criminalize illegal adoption, whether national or international, and put in place appropriate penalties that take into account the grave nature of the offence.<sup>40</sup> The 1993 *Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption* establishes strict conditions to regulate the adoption process:

*An adoption within the scope of the Convention shall take place only if the competent authorities of the state of origin:*

- a) have established that the child is adoptable;
- b) have determined, after possibilities for placement of the child within the state of origin have been given due consideration, that an inter-country adoption is in the child's best interests;
- c) have ensured that:
  - (i) the persons, institutions and authorities whose consent is necessary for adoption, have been counseled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin;
  - (ii) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing;
  - (iii) the consents have not been induced by payment or compensation of any kind and have not been withdrawn; and
  - (iv) the consent of the mother, where required, has been given only after the birth of the child; and
- d) have ensured, having regard to the age and degree of maturity of the child, that:
  - (i) he or she has been counseled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required;
  - (ii) consideration has been given to the child's wishes and opinions;
  - (iii) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing; and
  - (iv) such consent has not been induced by payment or compensation of any kind.

*Art. 4, Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption (1993)*

### Combating Anti-Trafficking and Illegal Adoption

In the immediate aftermath of the tsunami, the Government of Indonesia issued a moratorium on the adoption of children from Aceh and the movement of children outside of Aceh province without family members. The Indonesian police disseminated information regarding the moratorium in all provinces, and the Department of Social Affairs deployed teams of social workers at airports and ports in Aceh and Jakarta to record the movement of children. In February 2005, the Indonesian Government, supported by UNICEF and Save the Children, developed the "Indonesian Government Policy on Separated Children, Unaccompanied Children and Single-Parent Children Affected by Emergency Situations", which called for the registration of such children, the tracing of family members, and eventual reunification. The policy promoted family and community-based care for separated children, discouraged adoption and foreign adoption during the emergency period, and considered institutionalization a last resort. As a result of these steps, there were no substantiated cases of organized trafficking of children who were separated or orphaned by the tsunami. There were some attempts at the movement of children without parental care to other parts of Indonesia for education purposes, mostly with parental consent, but children who were traveling without appropriate documentation were returned to their homes by the police and the Department of Social Affairs. UNICEF's experience demonstrates that the protection of separated children and prevention of trafficking requires a comprehensive approach to inter-sectoral collaboration and the mobilization of all segments of society around a common goal. Identification and registration are crucial steps to safeguarding children, but it is equally important to ensure that government policy is established with regard to the prevention of foreign adoption and movement of unaccompanied children. (From: Indonesia - Emergency Protection of Children Separated from Parents in the Tsunami, available at: [www.unicef.org/evaluation/files/fa4\\_indonesia\\_emergency\\_protection\(1\).doc.](http://www.unicef.org/evaluation/files/fa4_indonesia_emergency_protection(1).doc.))

## CHECKLIST FOR AGENCIES

### Agencies might establish:

- family-tracing/reunification programs developed with inter-agency cooperation and a standardized approach; activities might include the dissemination of messages through the ICRC or IFRC, mass tracing – displaying or disseminating lists and/or photographs – radio broadcasting of personal information such as name, age, sex and parents, cross-referencing tracing records with other records such as birth or school registers and census databases, and case-by-case tracing; in undertaking such programs, humanitarian actors must remain conscious that the current location of separated children should never be disclosed;<sup>40</sup>
- programs to safeguard against family separation during secondary population movements, such as when moving from emergency to permanent housing;
- advocacy programs which promote family and community-based care and highlight the dangers associated with institutional care, particularly for children under 5;
- programs that facilitate community care such as vouchers to assist care-givers with increased expenditure for example in the areas of school fees, uniforms and clothing, food and vaccinations;
- programs to facilitate legalized guardianship at little or no cost; agencies might consider the use of mobile courts to reach people in remote areas; and
- awareness-raising and community education projects that focus on the rights of children in alternative care arrangements and the responsibilities of guardians, particularly with respect to asset management;
- programs to monitor the management of the assets belonging to children in alternate care such as asset registrars and public trustees;
- mechanisms to receive and respond to complaints from children in alternate care;
- training programs for border control authorities and law enforcement officials who guard against illegal adoption;
- community education programs highlighting the risks of and dangers of illegal adoption; and
- programs to facilitate the exchange of information between law enforcement agencies concerning persons or groups thought to be involved in illegal adoption.

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## Agencies might lobby for:

- ratification of relevant international conventions, particularly the *Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption* (1993) and the *Hague Convention on the Civil Aspects of International Child Abduction* (1980);
  - legislation and reform consistent with States Parties commitments under relevant international conventions, taking particular note of the *United Nations Draft Guidelines for the Protection and Alternate Care of Children Without Parental Care*;
  - moratoriums against international adoption in the immediate aftermath of a disaster;
  - closure of borders and restrictions on the travel of children without parental consent in the immediate aftermath of a disaster;
  - legislation criminalizing illegal adoption with penalties reflecting the gravity of the crime;
  - systems of enforcement and monitoring of illegal adoption networks;
  - systems and procedures to protect the privacy of orphaned and vulnerable children;
  - legislation to protect the assets of orphaned children and penalties against those who misuse such assets; and
  - compulsory periodic review of the wellbeing of all children in alternate care arrangements.
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## footnotes

**14** UNICEF. 2006. *Child Protection Information Sheets*, no 4, p 21.

**15** The aim of these placements is to facilitate permanency for the child, either with their family of origin if the issues affecting the separation can be addressed, or as a pathway to adoption.

**16** UNICEF 2004 *Child Protection Handbook*, no. 6, p 120.

**17** There is extensive research to suggest that children in this age group can suffer significant harm when placed in institutional settings.

**18** United Nations Draft Guidelines for the Protection and Alternate Care of Children without Parental Care.

**19** UNICEF 2004 *Child Protection Handbook*, no. 6, p 115.

**20** *Ibid.*, p 120; see also African Charter 24(f); United Nations Draft Guidelines for the Protection and Alternate Care of Children without Parental Care.

**21** UNICEF 2004 *Child Protection Handbook*, no. 6, p 116.

**22** Adoption is not recognized under Islamic law because it is considered incompatible with the child's right to identity; see principle 4 Declaration of the Rights and Care of the Child in Islam.

**23** UNICEF 2004 *Child Protection Handbook*, no. 6, p 121.

**24** *Ibid* p 117.

**25** *Ibid* p 115.

**26** In 2006, approximately 2,500 children in children's homes in Aceh were identified as being tsunami victims out of just over 16,000 children in institutional care. Of those children, 85 percent still had one parent alive, 10 percent (243 children) were identified as having lost both parents; for the remaining 5 percent (101 children), the whereabouts of the parents was unknown. See: DEPSOS/Save the Children. 2006. *A Rapid Assessment of Children's Homes in Post-Tsunami Aceh*, p. 50.

**27** UNICEF *Child Protection Handbook*, no. 8, p 21.

**28** UNICEF 2004 *Child Protection Handbook*, no. 6, p 120.

**29** *Ibid* p 123. The re-integration process should involve locating members of the family and extended family, analyzing problems of the child, providing financial, social or psychological support for the family, identifying families where reintegration is possible, providing if necessary a transitional period of placement with a foster family or institution in order to give the family time to resolve its problems, and encouraging ongoing contact between family and child during this period.

**30** *Ibid.*, p 121.

**31** See also: African Charter, Art. 24.

**32** See also: Susanti, I. *Protecting the Basic Rights of Orphaned and Vulnerable Children in Banda Aceh*. Available at: [www.unicef.org/infobycountry/indonesia\\_42219.html](http://www.unicef.org/infobycountry/indonesia_42219.html)

**33** UNICEF. *Child Protection Handbook*, no. 6, p 118.

**34** Smolin, D.M. 2006. Child Laundering: How the Inter-Country Adoption Scheme Legitimizes and Incentivizes the Practice of Buying, Trafficking, Kidnapping and Stealing Children. *Wayne Law Review*, 52(1).

**35** UNICEF. *Child Protection Handbook*, no. 6, p 117.

**36** *Ibid.*, p 81.

**37** CRC, Art. 21(f); African Charter, Art. 24(b).

**38** CRC, Art. 21(g) and (h); African Charter, Art. 24(c) and (d); Art 8, *The Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption* (1995).

**39** Art. 3.

**40** Global Protection Cluster Working Group. 2006. *Handbook for the Protection of Internally Displaced Persons*. Available at: [www.humanitarianreform.org/humanitarianreform/Default.aspx?tabid=294](http://www.humanitarianreform.org/humanitarianreform/Default.aspx?tabid=294)

## Part 3: Child Labor

### Fact Sheet

- At least 250 million children aged 5-14 work for a living in developing countries, and almost half are employed full-time.
- Approximately 126 million children aged 5-17 are engaged in hazardous work, excluding domestic child labor.
- Children represent 40-50 percent of all victims of forced labor; 5.7 million children are in forced or bonded labor.
- Asia (excluding Japan) has the highest number of economically active children aged 5-14 years – 61 percent – followed by Africa (32 percent), and Latin America and the Caribbean (7 percent).
- Bangladesh, India and Pakistan account for a disproportionate share of the child labor problem: 7 million children are child laborers in Bangladesh alone.

Source: UNICEF, 2001. *Beyond Child Labor: Affirming Rights*; UNICEF, 2006. *Child Protection Information Sheets*.

### 3.1 Introduction

Child labor is a growing problem in many countries: an estimated 250 million children work for a living – almost half of whom are employed on a full-time basis.<sup>41</sup> Factors likely to give rise to exploitative labor practices include indebtedness, lack of access to or poor quality schools, loss of employment of a primary bread winner, lack of education among parents, cultural expectations concerning the role of children, high fertility rates and consumerism.<sup>42</sup> Such factors are more acute in natural disaster situations, because families may have lost a primary bread winner, unemployment may be high and schools may have been damaged or rendered non-operational. Child labor is not only a consequence, but also a cause of poverty: in the long term, child labor deprives those affected of education and training, poses health risks such as physical disability, and leads to further exploitation and abuse. Girls are at greater risk of being drawn into underage labor because of gender discrimination, the existence of industries such as sexual exploitation or child pornography that demand girl workers, and the heightened vulnerability of girls in most cultures.<sup>43</sup>

### 3.2 Definition of Child Labor

Not all work performed by children is considered detrimental to a child's wellbeing or illegal under international law. According to UNICEF, children can undertake "light work"<sup>44</sup> such as helping their parents in the home, family farm or family business as long as children are over the age of 12, the hours are limited, such work is not dangerous and it does not interfere with school attendance or normal childhood activities.<sup>45</sup> "Child labor" refers only to forms of employment or unpaid work that violate the rights of the child.<sup>46</sup> The 1973 *ILO Convention 138* and the 1999 *ILO Convention 182* define child laborers as:

- all children younger than 12 working in any economic activity;
- children aged 12-14 engaged in more than light work; and
- all children engaged in the worst forms of child labor (discussed below).<sup>47</sup>

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The main purpose of minimum employment ages is to protect a child's right to education.<sup>48</sup> The 1973 *ILO Convention 138* establishes three minimum age limits for employment:

- 18 years: for work that may jeopardize the worker's health, safety or morals;<sup>49</sup>
- 15 years: for full-time work that does not pose a risk to the worker's health nor prejudice school attendance;<sup>50</sup> and
- 13 years: for "light work" that does not pose a health risk nor prejudice school attendance.<sup>51</sup>

It should be noted that States Parties whose economy and educational facilities are insufficiently developed to make the above age limits realistic are permitted to substitute the minimum ages of 14 years for full-time non-hazardous work and 12 years for light work.<sup>52</sup>

### **Child Protection Centers Facilitate School Reintegration**

The Pakistan earthquake of 2005 forced many families to migrate to urban areas in search of better employment opportunities. Many youths, some of them street children, were compelled to enter into exploitative jobs as child laborers. In response, UNICEF and its partner organizations opened two child protection centers in Abbotabad in 2007. A total of 95 children attend the two centers, 25 of them girls. The centers provide children with non-formal education as a means of reintegrating them into government schools. In order to reduce child labor further, child protection staff meet regularly with local employers to raise awareness on children's rights. (From: Bisin, S. *Protection Centers Aim to End the Cycle of Child Labor in Pakistan Quake Zone*, available at: [www.unicef.org/emerg/pakistan\\_41166.html](http://www.unicef.org/emerg/pakistan_41166.html)).

### **3.3 The Worst Forms of Child Labor**

The 1999 *ILO Convention 182* defines the "worst forms of child labor" as:

- a) *all forms of slavery or practices similar to slavery such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;*
- b) *the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;*
- c) *the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and*
- d) *work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.*<sup>53</sup>

States Parties are compelled to design and implement programs of action to eliminate the worst forms of child labor<sup>54</sup> and to take measures to ensure effective enforcement, including the provision and application of penal sanctions.<sup>55</sup> States Parties are required to take "effective and time-bound measures" to:

- a) *prevent the engagement of children in the worst forms of child labor;*
- b) *provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labor and for their rehabilitation and social integration;*
- c) *ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labor;*
- d) *identify and reach out to children at special risk; and*
- e) *take account of the special situation of girls.*<sup>56</sup>

### **3.4 Relevant International Law**

States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

CRC, Art. 32(1)

States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- a) *Provide for a minimum age or minimum ages for admission to employment;*
  - b) *Provide for appropriate regulation of the hours and conditions of employment;*
  - c) *Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.*
- CRC, Art. 32(2)

States shall ensure that child labor is not used or supplied by private employment agencies.

*Private Employment Agencies Convention, ILO 181 (1997)*

*Appropriate measures should be taken as early and as quickly as possible to protect affected populations, in particular women and boy and girl children, against trafficking, forced labor and contemporary forms of slavery such as sale into marriage, forced prostitution, and sexual exploitation.*

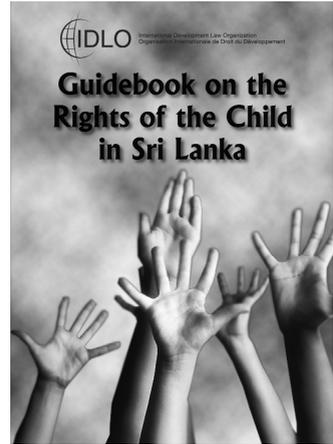
IASC, A.3.3

*Should the natural disaster have occurred in a country with an armed conflict, appropriate measures should be taken as soon as possible to ensure that children affected by the disaster are protected against being recruited or associated with armed forces or groups.*

IASC A.3.4

#### **Vocational Training for Children in Post-Tsunami Aceh, Indonesia**

In Aceh, many children between the ages of 15 and 17 are already in the workforce. The tsunami exacerbated this situation because many adults lost their livelihoods or became unemployed. As a result, children were placed under increased pressure to leave school and become breadwinners, rendering them vulnerable to exploitation. There were also concerns that children could become victims of trafficking or might be employed in dangerous and unsuitable work during the reconstruction process. In response, the International Labour Organization (ILO) facilitated vocational training for children aged 15–17 living in IDP camps. Over eight weeks, 192 children received 12 days of basic training in furniture making, sewing and embroidery, or computer skills. The program aimed to provide participants with practical skills to help them to find employment in non-exploitative and non-hazardous areas. It also emphasized the importance of providing tsunami-affected children with the opportunity to return to school.<sup>57</sup>



#### **Guidebook on the Legal Rights of Children in Sri Lanka**

Following the 2004 tsunami, IDLO produced the *Guidebook on the Rights of the Child in Sri Lanka*. The guidebook is intended to support those working to protect children and their rights, and includes coverage of the Tsunami (Special Provisions) Act No. 16 of 2005. Written as a user-friendly and practical publication, the Guidebook examines the legal issues relevant to tsunami-affected children and children more generally, covering topics such as the duty of protection and support, child abuse, child exploitation and domestic violence. Over 2,500 copies of the guidebook were distributed to humanitarian actors, government workers and communities; copies were also disseminated through nine IDLO-run training workshops on children's rights. The workshops aimed to enhance participants' knowledge about laws and legal issues as relating to the rights and protection of children in Sri Lanka. The recipients of the training were police officers, including staff from the Women and Children's Bureau, probation officers, child rights promotion officers, staff from the offices of divisional secretaries, school principals and teachers, journalists, and others whose work is relevant to the promotion or protection of children and their rights. The Guidebook can be downloaded from the IDLO website at [www.idlo.int/publications/22.pdf](http://www.idlo.int/publications/22.pdf).

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## CHECKLIST FOR AGENCIES

### Agencies might establish:

- reporting mechanisms such as telephone hotlines and programs through which victims can access assistance or report abuse, particularly in rural areas;
- education programs for training police, judges and other protection workers such as teachers in child labor laws, penalties and reporting mechanisms;
- community education programs on the rights of children and the long-term consequences of child labor;
- community education programs designed to eliminate cultural values that encourage child labor such as gender discrimination and lack of prioritization of education;
- data collection and research programs on the incidence of child labor, the sectors in which child labor is prevalent and social and cultural factors that might influence the incidence of child labor;
- programs designed to help families to surmount crises, for example programs aimed at enhancing the earning power of adult family members in sectors and communities where child labor is most prevalent, including mechanisms such as cash transfers, micro-credit or vocational training, because children are often driven into employment as a result of a major event such as a natural disaster or the death of an income earner;<sup>58</sup>
- programs for victim rehabilitation; but it should be noted that experience indicates that programs that remove children from exploitative labor have been unsuccessful without corresponding measures that address root causes of child labor such as poverty, cultural attitudes and lack of employment opportunities; in such situations, children often return to work, but enter less regulated and more secretive forms of employment such as sexual exploitation;<sup>59</sup> programs should therefore centre on skills building, alternative employment opportunities and return-to-school incentives.

### Agencies might lobby for:

- ratification of the relevant international conventions;
- legislation and reform consistent with States Parties' commitments under the relevant international conventions;
- legislation criminalizing the use of child labor, with penalties reflecting the gravity of such crimes;
- introduction and training of labor inspectors to monitor the incidence of child labor;
- committees of government departments, workers unions, NGOs and children's representatives to work together to fight against child labor;
- regulations ensuring that child survivors are not penalized under criminal law for their involvement in under-age labor;
- incentive programs to increase school attendance and the development of alternate education models; and
- codes of conduct for corporations, businesses and government departments, especially police departments and judiciaries that prohibit child labor, with strict reporting requirements for known cases of abuse.

### Agencies might adopt:

- codes of conduct that prohibit child labor in the workplace and in programs, with strict reporting requirements for known cases of abuse; codes of conduct should also apply to national and international partner agencies;
- monitoring systems to ensure that partner agencies are not using child labor; and
- monitoring systems to ensure that development programs such as micro-credit or livelihoods programs do not permit or facilitate child labor.<sup>60</sup>

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### footnotes

<sup>41</sup> UNICEF. 2001. *Beyond Child Labor: Affirming Rights*, p 1.

<sup>42</sup> UNICEF. *Child Protection Handbook*, no. 6, p 142.

<sup>43</sup> UNICEF. 2001. *Beyond Child Labor: Affirming Rights*, p 2.

<sup>44</sup> Defined in ILO Convention 138 (1973), Art. 7.

<sup>45</sup> UNICEF. 2006. *Child Protection Information Sheets*, no. 8, p 15.

<sup>46</sup> UNICEF *Child Protection Handbook*, no. 6, p 140.

<sup>47</sup> UNICEF. 2006. *Child Protection Information Sheets*, no. 8, p 15.

<sup>48</sup> UNICEF. *Child Protection Handbook*, no. 6, p 141.

<sup>49</sup> Art. 3.1. It should be noted that hazardous work can be undertaken as part of necessary vocational training, provided that adequate safeguards are in place.

<sup>50</sup> Art. 7.2.

<sup>51</sup> Art. 7.1.

<sup>52</sup> Art. 7.4.

<sup>53</sup> Art. 3.

<sup>54</sup> Art. 6.1.

<sup>55</sup> Art. 7.1.

<sup>56</sup> Art. 7.

<sup>57</sup> From: New Programme Develops Skills of Acehnese Children and Prevents Child Exploitation. [www.ilo.org](http://www.ilo.org), March 2005.

<sup>58</sup> UNICEF *Child Protection Handbook*, no. 6, p 146.

<sup>59</sup> *Ibid* p 34.

<sup>60</sup> *Ibid* p 146.

## Part 4: Child Sexual Exploitation

### Fact Sheet

- The ILO estimates that of the 12.3 million victims of forced labor, 1.39 million are involved in forced commercial sexual exploitation, and that 40–50 percent of these are children.
- In 1995, UNICEF estimated that 1 million children enter the commercial sex trade industry each year.
- 12,000 Nepalese children, mainly girls, are trafficked for commercial sexual exploitation each year in Nepal or to brothels in neighboring countries.
- There are up to 28,000 child prostitutes working in India, 30,000 in the Dominican Republic and 30,000 in South Africa.

Source: UNICEF. 2006. *Child Protection Information Sheets*; and UNICEF and Inter-Parliamentary Union. 2004. *Child Protection: A Handbook for Parliamentarians*, no.7.

### 4.1 Definitions

Child commercial sexual exploitation is defined as sexual abuse by an adult accompanied by remuneration in cash or in kind to the child or third person(s).<sup>61</sup> The sexual exploitation of children can take many forms including prostitution, the production of pornographic material, employment at brothels and massage parlors, bride sales and trafficking. It should be noted that there is no substantive agreement regarding the distinction between sexual abuse and sexual exploitation; the CRC uses the term sexual abuse to refer to abuse in and outside the home. It is clear, however, that sexual exploitation does not have to be for commercial purposes.<sup>62</sup>

### 4.2 Relevant International Law

The 1999 *ILO Convention 182* refers to "... the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances..." as one of the worst forms of child labor.<sup>63</sup> Under the terms of the convention, States Parties are bound to "... design and implement programs of action to eliminate, as a priority, the worst forms of child labor..."<sup>64</sup> and adopt penal or other sanctions against child prostitution and pornography.<sup>65</sup> States Parties are also required to set in place time-bound measures to "... provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labor and for their rehabilitation and social integration..." and to "... ensure access to free basic education, and, wherever possible, appropriate vocational training ..." <sup>66</sup>

Similarly, the CRC requires that "... States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse".<sup>67</sup> States Parties are further required to take measures to prevent:

- inducement or coercion of a child to engage in any unlawful sexual activity;
- exploitative use of children in prostitution or other unlawful sexual practices; and
- exploitative use of children in pornographic performances or materials.<sup>68</sup>

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The 2002 *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* prohibits child prostitution and child pornography,<sup>69</sup> and requires that States Parties ensure that acts associated with such offences committed either domestically or trans-nationally are fully covered under penal law and that penalties reflect the grave nature of these crimes.<sup>70</sup> States Parties are also required to implement social policies and community awareness programs with a view to preventing child sexual exploitation and provide recovery and reintegration assistance for survivors.<sup>71</sup> States Parties are to protect the rights of children involved in criminal justice processes, for example by adapting procedures to recognize their special needs, providing appropriate support services, ensuring the privacy and safety of children and their families and ensuring that persons dealing with children in the legal process receive appropriate legal and psychological training.<sup>72</sup>

### States Taking Action

- **Sweden.** The *Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism* was initiated in April 1998 by End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT), in cooperation with Scandinavian tour operators and the World Tourism Organization. The code is a project aiming to engage the private tourism sector as a lead partner in the prevention of sexual exploitation of children at tourist destinations. So far, 241 private tourism companies from 21 countries in Europe, Asia, North America and Latin America have signed up to the code, which is available at: [www.thecode.org/dokument/images/downloads/code\\_summary\\_english\\_4.pdf](http://www.thecode.org/dokument/images/downloads/code_summary_english_4.pdf).
- **Togo.** In 2005, the Togolese Parliament passed a law punishing traffickers of children, their accomplices, and in some cases the parents of victims with prison terms of up to ten years – the Law Passed to Crack Down on Child Traffickers, Integrated Regional Information Networks, August 4, 2005.
- **United States of America.** The 2003 Trafficking Victims Protection Reauthorization Act called for the development and dissemination of materials to inform travelers that child sex tourism is illegal, punishable and dangerous to the victims, and distribution of materials to travelers to countries where child sex tourism is significant.
- **Colombia.** The Government of Colombia has instituted a law punishing sex crimes – Crimes Against Sexual Liberty and Human Dignity (Mid-Term Review Conference on US Government Efforts to Combat Commercial Sexual Exploitation of Children. The Protection Project, Johns Hopkins University School of Advanced International Studies, Washington DC, April 3-4, 2006).

### 4.3 Causes and Consequences

Child sexual exploitation is closely linked to poverty, lack of employment opportunities for adult income earners and societal discrimination against women and girls. The following factors might also contribute to child sexual exploitation: (i) accessibility to and promotion of a powerful sex industry; (ii) criminal justice systems that focus on arresting and prosecuting women and children involved in such industries, but not their male customers; and (iii) non-existent, weak, or non-enforced legal interventions combating trafficking. Children, especially those in poverty-stricken and isolated areas, ethnic minorities, and girls are particularly at risk.<sup>73</sup> A further risk factor is the existence of cultural norms and mores that enable, normalize or condone child sexual exploitation. In such situations, parents, caregivers and authorities may be unwilling to intervene in known cases because of lack of knowledge regarding the harm posed by sexual exploitation, fear or intimidation, or for economic reasons.<sup>74</sup>

Child sexual exploitation has become particularly problematic in situations of natural disaster: (i) In the immediate aftermath of a disaster, children may be placed in emergency housing with unrelated adults or with other children of the opposite sex. This may be culturally inappropriate, and it increases the risk of rape, sexual abuse and exploitation. (ii) The stress, trauma and poverty associated with disaster can lead to higher rates of sexual abuse in families or extended families. (iii) Where families have lost a primary breadwinner or unemployment is high, there may be added pressure for minors to engage in "survival sex". (iv) In emergency situations, confusion, inoperative state apparatus and lack of protection monitoring systems may leave gaps through which exploitative activities go undetected or unprosecuted. (v) There is increasing evidence of a correlation between the presence of international humanitarian workers and increased sexual exploitation in post-disaster and post-conflict environments<sup>75</sup>. This disturbing trend may be exacerbated by such workers viewing themselves, or actually having, a level of immunity from investigation or interference from local law enforcement officials.<sup>76</sup> Similarly, an influx of workers from other areas in the affected country to assist with reconstruction may increase the risk of sexual exploitation. Child sexual exploitation is highly dangerous, because such sex is usually unprotected – children are rarely in a position to negotiate safer sex – and hence carries a greater risk of HIV or other STD infection. Children are also at significant risk of long-term social and psychological damage.<sup>77</sup> Engaging in paid sexual work prevents children from attending school, which has longer-term consequences for poverty reduction.

## Protecting Children through Organizational Codes of Conduct

### Sample Clauses on Sexual Exploitation and Abuse

(drawn from the Code of Conduct in Relation to Sexual Abuse and Exploitation of the International Council of Volunteer Agencies)<sup>78</sup>

1. Sexual exploitation and abuse by staff members constitute acts of gross misconduct and are therefore grounds for termination of employment;
2. Sexual activity with children (person under the age of 18) is prohibited regardless of the age of consent locally. Mistaken belief in the age of the child is not a defense;
3. Exchange of money, employment, goods or services for sex, including favors or other forms of humiliating, degrading or exploitative behavior is prohibited. This includes the exchange of assistance that is due to beneficiaries;
4. Sexual relationships between staff members and beneficiaries are prohibited since they are based on inherently unequal power dynamics. Such relationships undermine the credibility and integrity of humanitarian aid work;
5. Where a member of staff develops concerns or suspicions regarding sexual abuse or exploitation by a fellow member of staff, s/he must report such concerns to the relevant organizational authorities;
6. Staff members are obliged to create and maintain an environment which prevents sexual exploitation and abuse and promotes the implementation of this code of conduct;
7. Managers at all levels have particular responsibilities to support and develop systems which maintain this environment.

### Community-Based Watchdogs Protecting Children in India

In the Indian State of Tamil Nadu, the Department of Social Defense established over 12,000 village-level watchdog committees to increase the protection afforded to children. The committees generally consisted of eight to ten people from a variety of professions, including *panchayat* (village councils), teachers, administration workers, women's NGOs and law enforcement personnel. Following the 2004 tsunami, the committees came under severe strain. In response, and following concerns that women and children would be more vulnerable to trafficking and other forms of abuse, UNICEF set about strengthening them. UNICEF provided child-protection training in local dialects in 362 tsunami-affected villages, focusing on the need for community members to be more vigilant in the post-disaster context where child abuse may become more prevalent. Participants were taught how to identify the early signs of child abuse, and rules, procedures and laws were explained. UNICEF also initiated a tracking system to ensure that all tsunami orphans were monitored until the age of 18. Together with the Tamil Nadu government, UNICEF also established village watchdog committees to ensure that tsunami-affected children who remained within their communities were protected and cared for.<sup>79</sup>

### Protecting Children through "Child Safe Spaces" in Pakistan

In August 2007, an estimated 15,000 people remained displaced in Muzaffarabad, an area heavily affected by the 2005 Pakistan earthquake. Many of the most vulnerable IDPs – female-headed households, disabled people, the landless and orphans – were housed in camps. In the Ahle Hadidh Camp, one of 20 camps in the Muzaffarabad area, UNICEF supported the creation of "child-safe spaces". Such spaces provided orphans and other vulnerable children with a safe environment where they could play and interact with other children under the supervision of social workers. As well as helping children deal with the psycho-social impacts of their loss, such child-friendly environments provided an opportunity to impart life skills designed to help children cope with their situation. UNICEF provided 122 child-safe spaces in communities and IDP camps, benefiting over 18,300 children.<sup>80</sup>

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## CHECKLIST FOR AGENCIES

### Agencies might establish:

- child-friendly mechanisms for reporting abuse such as telephone hotlines;
- programs to provide survivors with confidential counseling;
- programs through which survivors can access assistance or report abuse, particularly in rural areas;
- programs ensuring that female survivors have access to female police officers;
- trained teams of police officers, counselors and medical personnel to receive and investigate complaints;<sup>81</sup>
- education programs to enhance awareness among police, judges and other protection workers such as teachers as to the gravity of sexual exploitation and special needs of survivors;
- community education programs on the rights of children and dangers of sexual exploitation targeting adults and children;
- programs that address the causes of child sexual exploitation, for example promoting employment opportunities for adults and improving access to education;
- programs in areas where exploitation is rife that educate survivors or potential survivors on how to protect themselves from sexually transmitted diseases;
- appropriate emergency housing arrangements in post-disaster situations that protect unaccompanied minors and separate adults from children, except when they are in the same family, and boys from girls;
- systems for monitoring and tracking cases of sexual abuse or disappearance;
- programs for victim rehabilitation such as skills building, alternative employment opportunities and return-to-school incentives;
- programs to educate customers of prostitutes about the negative effects and dangers of sexual exploitation; and
- communication and assistance among states in tracking, monitoring and prosecuting cases of child sex tourism.

### Agencies might lobby for:

- ratification of relevant international conventions;
- legislation and reform consistent with States Parties' commitments under relevant international conventions;
- legislation criminalizing child sexual exploitation, with penalties reflecting the gravity of such crimes;
- regulations ensuring that child survivors are not penalized under criminal law for their involvement in paid sexual activities;
- legislation to protect the privacy of survivors and their families;
- elimination of any requirement for parental consent to file a complaint or prosecute an offender;
- incentive programs to increase school attendance;
- states to establish international initiatives to enhance the economic opportunities for survivors of child sexual exploitation;
- governments to collaborate with NGOs and civil society to develop and implement comprehensive programs aimed at combating sexual exploitation of children;<sup>82</sup> and
- codes of conduct for corporations, businesses and government departments, especially police departments and judiciaries, and humanitarian organizations that prohibit workers from engaging in, promoting or facilitating any form of child sexual exploitation, with strict reporting requirements for known cases of abuse.

### Agencies might adopt:

- zero-tolerance policies relating to sexual abuse, child sexual exploitation or other sex offences, including the purchasing of sexual services;<sup>83</sup> and
  - codes of conduct that prohibit workers from engaging in, promoting or facilitating any form of child sexual exploitation, with strict reporting requirements for known cases of abuse; codes of conduct should also apply to national and international partner agencies.
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## footnotes

- 61** Declaration of the First World Congress against Commercial Sexual Exploitation of Children, Stockholm, 1996; UNICEF, *Child Protection Information Sheets*, no. 8, p 23.
- 62** UNICEF and Inter-Parliamentary Union 2004 *Child Protection Handbook*, no. 6, p 63.
- 63** Art. 3b.
- 64** Art. 6.
- 65** Art. 7.1.
- 66** Art. 7.2.
- 67** CRC, Art. 34; African Charter, Art. 27.1; See also UNICEF and Inter-Parliamentary Union 2004 *Child Protection Handbook*, no. 6, p 63.
- 68** CRC, Art. 34; see also African Charter, Art. 27.1.
- 69** Optional Protocol on the Sale of Children, Art. 1.
- 70** Ibid Art. 3.
- 71** Ibid Art. 9.
- 72** Ibid Art. 8.
- 73** UNICEF, 2001. *Beyond Child Labor: Affirming Rights*, p 6.
- 74** UNICEF *Child Protection Information Sheets*, no 8, p 23.
- 75** J Hagen, 'Fighting Sexual Exploitation and Abuse by UN Peacekeepers' (2006) Volume XLIII, No. 3 *UN Chronicle*; See also: United Nations Conference Report, High-Level Conference on Eliminating Sexual Exploitation and Abuse by UN and NGO Personnel, 4 December 2006, New York ([www.un.org/Depts/dpko/CDT/HLCreport.pdf](http://www.un.org/Depts/dpko/CDT/HLCreport.pdf)).
- 76** UNICEF and Inter-Parliamentary Union. 2005. *Combating Child Trafficking: Handbook for Parliamentarians*, no. 9, p 19.
- 77** Ibid pp 9 and 64.
- 78** Reprinted with permission from the International Council of Volunteer Agencies, [www.icva.org](http://www.icva.org).
- 79** From: Bagla, P. 2005. *Effective Child Protection through UNICEF-supported "Village Watchdog Committees*. Available at: [www.unicef.org/india/child\\_protection\\_826.htm](http://www.unicef.org/india/child_protection_826.htm) See also; 2005 *Build Back Better: 12 Month Update on UNICEF's Work to Rebuild Children's Lives and Restore Hope Since the Tsunami*, p 12 Aceh.
- 80** From: Delaney, H. and Manzoor, Z. *Ensuring Protective Environments for Quake Orphans*. Available at: [www.unicef.org/pakistan/reallives\\_3368.htm](http://www.unicef.org/pakistan/reallives_3368.htm).
- 81** UNICEF and Inter-Parliamentary Union 2004 *Child Protection Handbook*, no. 6, p 73.
- 82** United Nations Commission on the Status of Declaration Eliminating Demand for Trafficked Women and Girls for All Forms of Exploitation [3].
- 83** UNICEF and Inter-Parliamentary Union. 2005. *Combating Child Trafficking: Handbook for Parliamentarians*, no. 75, p 32.

## Part 5: Child Trafficking

### Fact Sheet

- Approximately 1.2 million children are trafficked each year.
- In Asia and the Pacific, most children are trafficking for the purposes of sexual exploitation, followed by labor, agricultural work and debt bondage.
- In Europe, children are primarily trafficked from East to West for the purposes of cheap labor and sexual exploitation.

Source: *Child Protection Handbook* (n 6) 9; UNICEF *Child Protection Information Sheets* (n 8).

### 5.1 Introduction

Child trafficking is one of the most lucrative and fastest growing transnational crimes, generating up to US\$10 billion annually.<sup>84</sup> Trafficking violates a child's right to protection, education and exposes children to physical threats such as HIV infection, chronic disease and disablement.<sup>85</sup> Children may be trafficked for any number of purposes including:<sup>86</sup>

- **Child labor.** Children are often used as inexpensive or unpaid labor on plantations, in mines or in other hazardous environments. Minors are increasingly being recruited to work in illicit industries such as arms and drug manufacture, particularly in Asia and Latin America.<sup>87</sup> Children are a preferred form of labor because they consume fewer resources, are less likely to be aware of their rights, and are less inclined to question authority.
- **Bonded labor.** In cases of bonded labor, families usually receive an advance payment, after which expenses are deducted from the child's earnings, making it impossible to repay the loan and "buy back" the child.<sup>88</sup>
- **Child beggars.** Children are often thought to elicit more sympathy.
- **Sporting competitions.** Examples include using children as camel jockeys.
- **Organ trafficking.** This is generally carried out from developing to developed countries.
- **Illicit adoption.** Families either agree to sell their children or are told that their child has died at birth.
- **Child marriage.** Parents may agree to sell their child because of poverty or because they believe that marriage will offer their daughters greater financial and social protection. Child trafficking for this purpose is more common in areas that are heavily HIV-affected and where there are cultural expectations for virgin brides.
- **Sexual exploitation.** Examples include using children in brothels and for the production of pornographic material.<sup>89</sup>

### 158 5.2 Definitions

In the 2000 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children to the United Nations Convention on Transitional Organized Crime*, child trafficking means the recruitment, transportation, transfer, harboring or receipt of a person under 18, by any means, for the purpose of exploitation.<sup>90</sup> It should be noted that trafficking can occur with or without the consent of the victim, in or outside the victim's country of origin, and with or without the use of illicit means such as force or fraud.<sup>91</sup> The 2002 *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* defines the "sale of children" as "... any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration...".<sup>92</sup> It should be noted that the 1999 *ILO Convention 182* includes "... all forms of slavery or practices similar to slavery, such as the sale and trafficking of children..." in its definition of the "Worst Forms of Child Labor".

### 5.3 Causes and Consequences

Those at greatest risk of trafficking include: (i) children living in poverty and in areas where there are limited job prospects; (ii) children with minimal education and vocational skills, particularly those whose parents are also uneducated; (iii) children without parents or primary caregivers such as those in institutions; (iv) children living in refugee camps or emergency housing; and (v) children without birth registration or identity documents. Girl children, minorities and children not attending school are also at statistically higher risk of trafficking.<sup>93</sup>

All children, particularly those mentioned above, become more vulnerable to trafficking in the aftermath of a natural disaster. Increased poverty and lack of employment opportunities are the main pressures on families to generate additional income by any possible means. Traffickers may mislead families by promising better health care and education for the child in return for “light labor”. A further issue is that traffickers take advantage of the chaos, breakdown in law and order enforcement capability, and lack of regulatory mechanisms that accompany natural disasters.<sup>94</sup> Large numbers of orphans and unaccompanied minors, poor controls at borders, and large numbers of persons moving in and out of the disaster area provide prime conditions for illegal abduction.

#### States Taking Action

- **Fiji.** In 1997, the Government of Fiji passed the *Mutual Assistance in Criminal Matters Act*, under which Fiji pledged to cooperate in the investigation of serious trafficking-related crimes with countries such as Australia and New Zealand.<sup>95</sup>
- **The Philippines.** In the Philippines, the *Anti-Trafficking in Persons Act (2003)* protects victims, punishes trafficking with imprisonment for 20 years plus fines, which is converted to a life sentence where the victim is a child who becomes emotionally or psychologically impaired or becomes infected with HIV as a result of the trafficking.<sup>96</sup>
- **Ethiopia.** The Government of Ethiopia adopted the *Private Employment Agency Proclamation (104/1998)* and created an Inter-Ministerial National Committee on the issue of Ethiopian women being trafficked to Gulf states. The aim is to protect Ethiopian women sent abroad through severe penalties for abuses of human rights and the physical integrity of workers.<sup>97</sup>
- **Côte d'Ivoire and Mali.** In February 2000, the ILO assisted in the establishment of a Memorandum of Understanding on Child Trafficking between Cote d'Ivoire and Mali. The memorandum provides for cross-border cooperation in the repatriation of trafficked children and the detection and tracking of child trafficking networks. On March 24, 2000, the Government of Mali adopted the National Emergency Plan to Fight against Child Trafficking.<sup>98</sup>
- Other states that have passed legislation specific to child trafficking are: Benin, Burkina Faso, Cameroon, Gabon, The Gambia, Iraq, the Lao People's Democratic Republic, Mali, Mauritius, the Democratic People's Republic of Korea, Papua New Guinea, South Africa, Togo and Uruguay.

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### 5.4 Relevant International Law

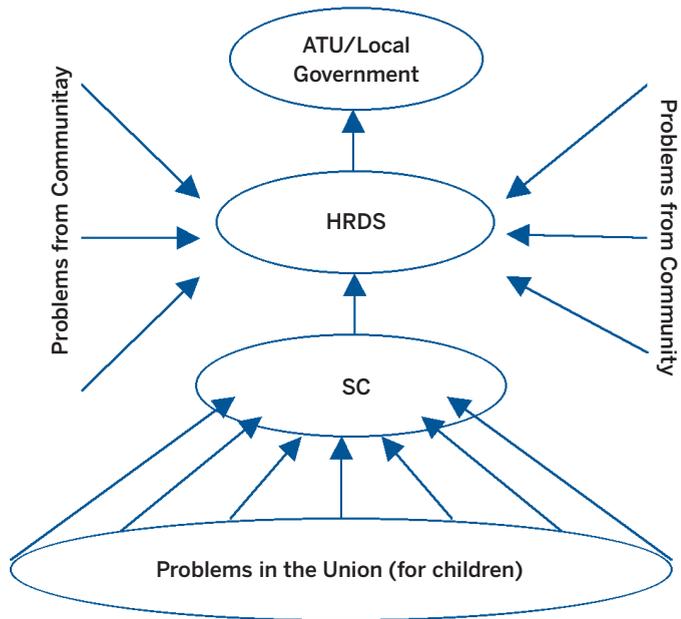
The CRC requires that States Parties “... take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of, or trafficking in children for any purpose or in any form”.<sup>99</sup> Parties to the 2000 *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* are required to criminalize trafficking offences, including attempts to commit trafficking, acting as an accomplice and organizing or directing others to commit trafficking.<sup>100</sup> The Protocol also requires that States Parties criminalize trafficking, including any person who aids or finances trafficking, and to introduce penalties that reflect the gravity of this offense.<sup>101</sup> States Parties are further required to (i)

protect the identity and privacy of trafficking survivors, (ii) introduce measures to assist survivors involved in criminal processes and (iii) provide survivors with appropriate social and rehabilitation assistance, including counseling, housing, medical and psychological assistance, and employment and training opportunities.<sup>102</sup> With respect to survivors of trafficking who are foreign nationals, States Parties are required to consider adopting legislation to allow such persons to remain in their jurisdiction temporarily or permanently, taking into account humanitarian factors.<sup>103</sup> Where the victim of trafficking is outside of his or her country of origin, States Parties should facilitate and accept the victim's repatriation and provide the necessary travel documents or authorization.<sup>104</sup> With respect to prevention, States Parties are required to: (i) establish policies and programs to combat trafficking such as research, information and mass media campaigns; (ii) alleviate the factors that make survivors vulnerable to trafficking such as poverty, discrimination and underdevelopment; and (iii) take legislative or other measures to reduce demand for trafficking.<sup>105</sup>

Parties to the 2002 SAARC<sup>106</sup> *Convention on Preventing and Combating Trafficking in Women and Children for Prostitution* are required to protect the privacy of survivors involved in legal processes and ensure that they receive appropriate counseling and legal assistance.<sup>107</sup> With the assistance of NGOs, states should also establish shelters and provide job training and health care facilities to assist survivors in the recovery and reintegration processes.<sup>108</sup> States Parties are also required to "... sensitize their law enforcement agencies and the judiciary in respect of the offences under this convention and other related factors that encourage trafficking in women and children".<sup>109</sup>

**Developing a Rights-Based Approach for Anti-Trafficking in South Asia**

*Terre des Hommes* (TDH) is a federation of 11 national organizations working for the rights of children and their equitable development. A consortium of five TDH agencies<sup>110</sup> is operating in Bangladesh, India and Nepal with the assistance of nine local partners to contribute to the development of good governance on the issue of trafficking in women and children at the national and regional levels. The project, co-funded by the European Union, aims to create an environment that will hinder the supply and demand dynamics of trafficking across the borders and within countries. The project focuses on promoting a rights-based approach in the development of legal and social measures to combat internal and cross-border trafficking, with particular attention to the rescue, recovery and rehabilitation of the survivors.



In Bangladesh, TDH Italy is implementing the project covering 42 unions in the four districts of Jessore, Rangpur, Dinajpur and Kurigram. Of these unions, 16 are considered to be flood-prone areas where rivers overflow during the monsoon, affecting adjacent settlements. In each union, community groups are motivated to play a watchdog role through the establishment of a human rights defender's system (HRDS). These groups are educated in the reasons for and consequences of trafficking, and in the human rights

of victims. In every union, a school committee is formed consisting of students and teachers. The HRDS and school committees (SC) work on trafficking prevention initiatives such as awareness-raising on trafficking issues, providing information on safe migration, highlighting the importance of birth and marriage registration, and sensitizing communities in gender and child-based discrimination. Communities have also been mobilized to develop a human rights-based approach to anti-trafficking action and protection of victims at the local level.

TDH facilitated the establishment of a community-level complaint mechanism operated by the HRDS and SC. A register is maintained in each union in which the problems of children are recorded by the school committees and followed up by the HRDS. In some cases, anti-trafficking units established by the Government of Bangladesh provide assistance.<sup>111</sup>

### **Combating Trafficking in Andhra Pradesh**

In the Indian State of Andhra Pradesh, the factors that compel women to enter sex work and leave them vulnerable to trafficking, including poverty and widowhood, were exacerbated by the 2004 tsunami. In response, UNICEF in collaboration with the district administration and a local NGO established a database of trafficking routes, traffickers, and trafficked minors and women. UNICEF also facilitated the establishment of village-based anti-trafficking committees consisting of elected representatives, young people, and self-help groups. These committees counsel and monitor girls and women who have been approached with offers of employment, provide livelihoods skills training, and help clients to access development programs. The committees have also taken action against traffickers by filing cases with law enforcement authorities.<sup>112</sup>

### **UNICEF Recommendations for Combating Child Trafficking in Indonesia**

- Adopt special measures such as temporary restrictions on the movement of children.
- Register all displaced children, identify those who are unaccompanied, separated from parents/caregivers or orphaned, and be aware of their exact location.
- Provide immediate safe care. Unaccompanied or separated children should be placed in the temporary care of accountable adults and monitoring mechanisms established.
- Locate relatives. Trace and reunite family members who have been separated.
- Alert and educate police and authorities such as border guards, teachers, health workers regarding the threat of child exportation.
- Utilize community-based patrols and deployment of police officers and social workers at commonly used exit points and trafficking routes.
- Use media campaigns designed to prevent separation, promote family-based care and educate the community regarding the dangers of institutionalization.
- Mobilize public opinion and use the media to promote the momentum and legitimacy of inter-agency work.<sup>113</sup>

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## CHECKLIST FOR AGENCIES

### Agencies might establish:

- programs that address the roots causes of trafficking such as poverty; for example programs aimed at increasing employment opportunities for adults and better access to education;
- training for law enforcement officials and border-control authorities;
- community education programs highlighting the risks of and dangers associated with child trafficking, particularly in societies where cultural norms and attitudes foster abuse such as sex with minors, child marriage and gender discrimination;
- programs to facilitate the exchange of information among law enforcement agencies concerning persons or groups thought to be involved in trafficking;
- programs to combat racial or ethnic discrimination and the low social status of girl children;
- systems for monitoring and tracking cases of trafficking or child disappearances; and
- programs for victim rehabilitation such as skill-building, alternative employment opportunities and return-to-school incentives.

### Agencies might lobby for:

- ratification of relevant international conventions;
- legislation and reform consistent with States Parties' commitments under relevant international conventions;
- legislation criminalizing child trafficking, with penalties reflecting the gravity of such crimes;
- regulations ensuring that child survivors are not penalized under criminal law for their involvement in trafficking activities;
- legislation to protect the privacy of survivors and their families;
- systems for monitoring trafficking networks;
- regulations and bi-lateral agreements aimed at protecting survivors in receiving countries;
- stricter border controls; and
- more comprehensive birth registration programs (see part 1 of this chapter).

### Agencies might adopt:

- codes of conduct that prohibit workers from engaging in, promoting or facilitating any form of trafficking with strict reporting requirements for known cases. Codes of conduct should also apply to national and international partner agencies.
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## USEFUL LINKS AND PUBLICATIONS

Universal Birth Registration Database

[www.ssl.brookes.ac.uk/ubr](http://www.ssl.brookes.ac.uk/ubr)

The “Rights” Start to Life: a Statistical Analysis of Birth Registration (UNICEF 2005)

[www.unicef.org/sowc06/pdfs/BirthReg10a\\_rev.pdf](http://www.unicef.org/sowc06/pdfs/BirthReg10a_rev.pdf)

Inter-Agency Guiding Principles on Unaccompanied and Separated Children

[www.refworld.org](http://www.refworld.org)

Working with Separated Children (Field Guide and Manual) (Save the Children UK, 1998)

[www.savethechildren.org/publications/technical-resources/child-survival/SEPARATED\\_CHILDREN\\_CONTENTS.pdf](http://www.savethechildren.org/publications/technical-resources/child-survival/SEPARATED_CHILDREN_CONTENTS.pdf)

Child Protection: A Handbook for Parliamentarians, no.7 (UNICEF and Inter-Parliamentary Union, 2004)

[www.ipu.org/PDF/publications/childprotection\\_en.pdf](http://www.ipu.org/PDF/publications/childprotection_en.pdf)

UNICEF Child Protection Information Sheets (2006)

[www.unicef.org/publications/index\\_34146.html](http://www.unicef.org/publications/index_34146.html)

Reports of the Special Rapporteur of the Human Rights Council on Trafficking in Persons, Especially in Women and Children

[www.ohchr.org/english/issues/trafficking/index.htm](http://www.ohchr.org/english/issues/trafficking/index.htm)

Combating Child Trafficking: Handbook for Parliamentarians, no. 9 (UNICEF and Inter-Parliamentary Union, 2005)

[www.unicef.org/ceecis/IPU\\_combattingchildtrafficking\\_GB.pdf](http://www.unicef.org/ceecis/IPU_combattingchildtrafficking_GB.pdf)

Guidelines on the Protection of Child Victims of Trafficking (UNICEF)

[www.unicef.org/ceecis/UNICEF\\_Child\\_Trafficking146-198.pdf](http://www.unicef.org/ceecis/UNICEF_Child_Trafficking146-198.pdf)

Toolkit to Combat Trafficking in Persons (United Nations Office on Drugs and Crime, 2006)

[www.unodoc.org/pdf/Trafficking\\_toolkit\\_Oct06.pdf](http://www.unodoc.org/pdf/Trafficking_toolkit_Oct06.pdf)

Child-Friendly Standards and Guidelines for the Recovery and Reintegration of Trafficked Children (ILO, 2006)

[www.ilo.org](http://www.ilo.org)

Beyond Child Labor: Affirming Rights (UNICEF, 2001)

[www.unicef.org/ceecis/pub\\_beyond\\_en.pdf](http://www.unicef.org/ceecis/pub_beyond_en.pdf)

Minimum Standards on Education in Emergencies, Chronic Crisis and Early Reconstruction (Inter-Agency Network for Education in Emergencies, 2004)

[www.ineesite.org/page.asp?pid=1240](http://www.ineesite.org/page.asp?pid=1240)

Technical Kit for Emergency Education (Inter-Agency Network for Education in Emergencies)

[www.ineesite.org/page.asp?pid=1246](http://www.ineesite.org/page.asp?pid=1246)

Guidebook for Planning Education in Emergencies and Reconstruction (International Institute for Educational Planning (IIEP) and UNICEF, 2006)

[www.unesco.org/iiep/eng/focus/emergency/guidebook.htm](http://www.unesco.org/iiep/eng/focus/emergency/guidebook.htm)

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## AGENCIES WORKING FOR THE PROTECTION OF THE RIGHTS OF CHILDREN IN DISASTER SITUATIONS

United Nations Children's Fund

[www.unicef.org](http://www.unicef.org)

UNICEF is mandated to advocate for the protection of children's rights, to help to meet their basic needs and to expand their opportunities to reach their full potential. UNICEF works in emergency contexts by protecting children's rights and providing life-saving assistance. UNICEF also provides assistance in the areas of health and nutrition, water and sanitation, protection, education and HIV/AIDS.

Child Rights Information Network (CRIN)

[www.crin.org](http://www.crin.org)

CRIN is a global network that disseminates information about the CRC and child rights among NGOs, United Nations agencies, inter-governmental organizations, educational institutions, and other child-rights organizations.

International Rescue Committee (IRC)

[www.theirc.org](http://www.theirc.org)

The IRC promotes the protection and development of children and young people from the earliest stages of an emergency, through post-conflict and recovery. Working in over 20 countries, IRC's community-based programs include: (i) education, registration, emergency care, tracing and family reunification; (ii) interim care, rehabilitation and community reintegration of former child soldiers; (iii) psychosocial care and protection; (iv) life skills, recreational and cultural activities; and (v) economic and leadership development for young people.

International Labour Organization (ILO)

[www.ilo.org](http://www.ilo.org)

The ILO is the global body responsible for developing and overseeing international labor standards. The agency works in emergency contexts, and in the areas of child labor, child trafficking and child exploitation.

International Save the Children Alliance

[www.savethechildren.net/alliance](http://www.savethechildren.net/alliance)

Save the Children responds to the needs of children caught up in emergency situations by protecting them, setting up medical centers, reuniting families and rebuilding schools. A significant aspect of its work involves addressing the psychological effects of a disaster, reaching children through school-based programs, establishing child-protection committees and providing specialist training for government agencies.

Terre des Hommes

[www.terredeshommes.org](http://www.terredeshommes.org)

TDH is a federation of 11 national organizations working for the rights of children and their equitable development. It supports 1,207 development and humanitarian aid projects in 67 countries, including emergency contexts. The organization has expertise in the areas of child protection, child labor and child exploitation.

Plan International

[www.plan-international.org](http://www.plan-international.org)

Plan International is a child-centered community development organization that works with children, families, communities, organizations and local governments to bring about positive change. Plan International works in education, water and sanitation, HIV/AIDS, food security, participation, violence against children, and disasters. Plan International runs the Universal Birth Registration campaign.

Defense for Children International (DCI)

[www.dci-is.org](http://www.dci-is.org)

DCI is dedicated to ensuring ongoing, practical, systematic and concerted international action to promote and protect the rights of the child, as articulated in the CRC, its optional protocols and other human rights instruments. DCI has expertise in the areas of child labor and juvenile justice.

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## footnotes

- 84** UNICEF and Inter-Parliamentary Union. 2005. *Combating Child Trafficking: Handbook for Parliamentarians*, no. 75, p 7.
- 85** UNICEF *Child Protection Information Sheets*, p 27.
- 86** UNICEF and Inter-Parliamentary Union. 2005. *Combating Child Trafficking: Handbook for Parliamentarians*, no. 75, pp 14–15.
- 87** UNICEF. 2001. *Beyond Child Labor: Affirming Rights*, p 12.
- 88** UNICEF and Inter-Parliamentary Union. 2005. *Combating Child Trafficking: Handbook for Parliamentarians*, no. 75, p 13.
- 89** *Ibid.*, p 14.
- 90** Art. 3.
- 91** Art. 3; See also: definition of trafficking in: UNICEF 2004 *Child Protection Handbook*, no. 6, p 76; UNICEF. *Child Protection Information Sheets*, no. 8, p 27. It should be noted that the smuggling of migrants is not illegal so long as such migrants freely contract the smugglers and if they are not exploited. Smuggling becomes trafficking if fraud or deception is involved, or if persons smuggled are forced to live and work in conditions of servitude.
- 92** Art. 2.
- 93** UNICEF and Inter-Parliamentary Union. 2005. *Combating Child Trafficking: Handbook for Parliamentarians*, no. 75, p 17.
- 94** *Ibid* p 19.
- 95** *Ibid* p 29.
- 96** *Ibid* p 34.
- 97** *Ibid* p 38.
- 98** *Ibid* p 87.
- 99** Art. 35.
- 100** Art. 5.
- 101** Art. 3 and 4.
- 102** Art. 6.
- 103** Art. 7.
- 104** Art. 8.
- 105** Art. 9.
- 106** SAARC.
- 107** Art. V.
- 108** Art. 9.
- 109** Art. 8.
- 110** The project is run by the TDH consortium from Germany, Italy, Netherlands and Switzerland.
- 111** Case study provided by TDH Italy: [www.terresdeshommes.org](http://www.terresdeshommes.org).
- 112** From *Trafficking - Andhra Pradesh*. Available at: [www.unicef.org/india/child\\_protection\\_272.htm](http://www.unicef.org/india/child_protection_272.htm)
- 113** From Indonesia - Emergency Protection of Children Separated from Parents in the Tsunami. Available at: [www.unicef.org/evaluation/files/fa4\\_indonesia\\_emergency\\_protection\(1\).doc](http://www.unicef.org/evaluation/files/fa4_indonesia_emergency_protection(1).doc); See also: UNICEF and Inter-Parliamentary Union. 2005. *Combating Child Trafficking: Handbook for Parliamentarians*, no. 75, p 32.

## INTERNATIONAL INSTRUMENTS RELATING TO THE RIGHTS OF CHILDREN

### The Definition of a Child

Every human below the age of 18 years, unless under the law applicable to the child majority is attained earlier.  
Art. 1 CRC

For the Purposes of this Charter a child means every human being below the age of 18 years.  
Art. 2 ACRWC

### The Best Interests of the Child

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.  
Art. 3.1 CRC

In all actions concerning the child undertaken by any person or authority the best interests if the child shall be the primary consideration.  
Art. 4.1 ACRWC

### The Opinion of the Child

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely and openly in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.  
Art. 12.1 CRC

For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceeding affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.  
Art. 12.2 CRC

In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, an opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.  
Art. 4.2 ACRWC

### Right to Privacy

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, not to unlawful attacks on his or her honor and reputation.  
Art. 16.1 CRC

No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to the attacks upon his honor or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks.  
Art. 10 African Charter on the Rights and Welfare of the Child

### The Right to a Name and Identity

The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.<sup>1</sup>  
Art. 7.1 CRC

<sup>1</sup> See also GA Resolution 'A World Fit for Children' (2002).

Every child shall be registered immediately after birth.

Art. 6.2 African Charter on the Rights and Welfare of the Child

2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Art. 24 ICCPR

Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.

Art. 18 ACHR

Unaccompanied and orphaned children should be issued documentation in their own names.

IASC D.1.4

### The Right to Health Care

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right to access to such health care services forth in the present Convention and in other international human rights or humanitarian instruments to which the said State are parties.

Art. 24.1 CRC

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:
  - a) to reduce infant and child mortality rate;
  - b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
  - c) to ensure the provision of adequate nutrition and safe drinking water;
  - d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;
  - e) to ensure appropriate health care for expectant and nursing mothers;
  - f) to develop preventive health care and family life education and provision of service;
  - g) to integrate basic health service programs in national development plans;
  - h) to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;
  - i) to ensure the meaningful participation of non-governmental organizations, local communities and the beneficiary population in the planning and management of a basic service program for children;
  - j) to support through technical and financial means, the mobilization of local community resources in the development of primary health care for children.

Art. 14 ACRWC

Islam has given every child the right to health care, physically and psychologically, inside and outside of the family. It calls upon Muslims to seek all the necessary means for ensuring this total care. This includes:

1. Islam's support for breast-feeding over a period of two years, together with the alleviation of some religious obligations of the nursing mother, as well as the postponement of some punishments against her.
2. Ensuring lenient conditions for the working mother, so as to enable her to provide care for her children.
3. Combating diseases and malnutrition and providing the necessary health care for mother and child.
4. Providing information and services to mothers in order to help them improve the health of their children.
5. Protecting children against narcotic and intoxicating materials.

Art. 6 DRCIC

- a) as of the moment of birth, every child has rights due from the parents, society and the state to be accorded proper nursing, education and material, hygienic and moral care. Both the fetus and the mother must be protected and accorded special care.

Art. 7 DHRI

## The Right to Education

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States Parties shall recognize the right of the child to education, and with a view to achieving this right progressively and in the basis of equal opportunity, they shall, in particular:

- a) make primary education compulsory and available free to all;
- b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.

Art. 28 CRC

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1. Every child shall have the right to an education.
3. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:
  - a) provide free and compulsory basic education;
  - b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;
  - c) make the higher education accessible to all on the basis of capacity and ability by every appropriate means;
  - d) take measures to encourage regular attendance at schools and the reduction of drop-out rates;
  - e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

Art. 11 ACRWC

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The return of children, whether displaced or not, to schooling should be facilitated as early and as quickly as possible after the disaster. Education should respect their cultural identity, language and tradition.

IASC C.1.1

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Education should be compulsory and free at the primary level. Measures should be taken to ensure that education is not disrupted at higher levels when students, as a consequence of the disaster, can no longer afford such education.

IASC C.1.2

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Special efforts should be made to ensure the full and equal participation of women and girls, affected by the natural disaster, in education programs.

IASC C.1.3

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Islam has given every child, male or female, an equal right to at least a free basic schooling and to being educated and informed about the principles of Islam, including the Creed and Shariah, besides providing the necessary means for developing his or her mental, psychological and physical capacities. While Islam guarantees Man's freedom to voluntarily adopt Islam without compulsion, it prohibits apostasy of a Muslim afterwards, in view of the fact that Islam is the Seal of Religions and, therefore, the Islamic society is committed to ensuring that the sons of Muslims preserve their Islamic nature and Creed and to protecting them against attempts to force them to relinquish their religion.

Art. 8 DRCIC

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- b) parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of the Shari'ah.

Art. 7 DHRI

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## Freedom from Discrimination

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In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

Art. 30 CRC

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Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the Child's or his/her parent's or legal guardian's race, ethnic group, color, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

Art. 3 ACRWC

Islam emphasizes that equality in treatment among children is obligatory, and prohibits all forms of discrimination among them, because of the negative impact such discrimination brings upon their souls, as well as their future relationships with the family and the society.

Art. 6 DRCIC

### **The Rights of Children Born out of Wedlock**

5. The law shall recognize equal rights for children born out of wedlock and those born in wedlock.

Art. 17 ACHR

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Art. 25 UDHR

### **The Protection of Disabled Children**

States Parties recognize the right of the disabled child to special care and shall encourage and ensure that the extension, subject to the availability of resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

Art. 23.2 CRC

Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

Art. 23.3 CRC

1. Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.
2. States Parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development.
3. The States Parties to the present Charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access to.

Art. 13 ACRWC

### **Harmful Traditional Practices**

States parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of the child.

Art. 24.3 CRC

1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:
  - a) those customs and practices prejudicial to the health or life of the child; and
  - b) those customs and practices discriminatory to the child on the grounds of sex or other status.
2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

Art. 21 ACRWC

## ■ The Rights of the Child in Family Life

### The Responsibilities of Parents

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States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

Art. 18 CRC

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Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development the child and shall have the duty:

- a) to ensure that the best interests of the child are their basic concern at all times-
- b) to secure, within their abilities and financial capacities, conditions of living necessary to the child's development; and
- c) to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.

Art. 20.1 ACRWC

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### Protection Against Violence

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States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Art. 19.1 CRC

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Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Art. 19.2 CRC

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Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

Art. 19 ACHR

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1. Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

Art. 24 ICCPR

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### Removal of a Child from the Home

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1. States parties will ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

Art. 9 CRC

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### Alternate Care Arrangements

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1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care should include, inter alia, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Art. 20 CRC

2. States Parties to the present Charter:
  - a) shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children;
3. When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's up-bringing and to the child's ethnic, religious or linguistic background.

Art. 25 ACRWC

### Foster Care

Persons responsible for foster placement or adoption procedure should have professional or other appropriate training.

Art. 6 UNGA A/RES/41/85<sup>2</sup>

Foster placement of children should be regulated by law.

Art.10 UNGA A/RES/41/85

In all matters of foster family care, the prospective foster parents and, as appropriate, the child and his or her own parents should be properly involved. A competent authority or agency should be responsible for supervision to ensure the welfare of the child.

Art. 12 UNGA A/RES/41/85

### Kafala

Islam views the family, based on the legal wedlock, as the natural environment for the upbringing of the child, and stipulates that every child has the right to live in a family which is built on mutual amity and compassion, no matter whether it is his or her own natural family or a foster family that provides him or her with *kafala* in cases where his or her natural family is lost, or in cases of abandonment by his or her natural family.

Art. 6 DRCIC

### Adoption

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary.
- b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin.
- c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption.
- d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it.
- e) Promote, where appropriate, the objectives of the present article by concluding bi-lateral or multilat-

<sup>2</sup> Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (3 Dec 1986).

eral arrangements or agreements, and Endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Art. 21 CRC

States Parties which recognize the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and they shall:

- a) establish competent authorities to determine matters of adoption and ensure that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if necessary, the appropriate persons concerned have given their informed consent to the adoption on the basis of appropriate counseling;
- b) recognize that inter-country adoption in those States who have ratified or adhered to the International Convention on the Rights of the Child or this Charter, may, as the last resort, be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- c) ensure that the child affected by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- d) take all appropriate measures to ensure that in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child;
- e) promote, where appropriate, the objectives of this Article by concluding bilateral or multilateral arrangements or agreements, and endeavor, within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs;
- f) establish a machinery to monitor the well-being of the adopted child.

Art. 24 ACRWC

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin –

- a) have established that the child is adoptable;
- b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an inter-country adoption is in the child's best interests;
- c) have ensured that
  - (i) the persons, institutions and authorities whose consent is necessary for adoption, have been counseled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
  - (ii) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
  - (iii) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
  - (iv) the consent of the mother, where required, has been given only after the birth of the child; and
- d) have ensured, having regard to the age and degree of maturity of the child, that
  - (i) he or she has been counseled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
  - (ii) consideration has been given to the child's wishes and opinions,
  - (iii) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
  - (iv) such consent has not been induced by payment or compensation of any kind.

Art. 4 Hague Convention (1995)

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Art. 8 Hague Convention (1995)

## Family Reunification

In accordance with the obligations of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.

Art. 10.1 CRC

For this purpose, State Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent nongovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child in order to obtain information necessary for reunification with his or her family.

Art. 22.2 CRC

2. States Parties to the present Charter:

- b) shall take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.

Art. 25 ACRWC

Appropriate measures should be taken as early and as quickly as possible to re-establish contacts between members of families that have been separated in the course of the disaster, and to reunite them without delay, particularly when children are involved.

IASC D.3.2

Separated and unaccompanied children should be assisted in accordance with the best interests of the child. In particular, the placing of children in institutions should be avoided whenever possible.

IASC D.3.3

## ■ Special Protection Issues Relevant to Disaster Situations

### Child Labor

States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Art. 32(1) CRC

States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- a) provide for a minimum age or minimum ages for admission to employment;
- b) provide for appropriate regulation of the hours and conditions of employment;
- c) provide for appropriate penalties or other sanctions to ensure the, effective enforcement of the present article.

Art. 32(2) CRC

1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.
2. States Parties to the present Charter take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labor Organization's instruments relating to children, States Parties shall in particular:
  - a) provide through legislation, minimum wages for admission to every employment;
  - b) provide for appropriate regulation of hours and conditions of employment;
  - c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;
  - d) promote the dissemination of information on the hazards of child labor to all sectors of the community.

Art. 15 African Charter on the Rights and Welfare of the Child

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law.

Art. 10 ICESCR

Appropriate measures should be taken as early and as quickly as possible to protect affected populations, in particular women and boy and girl children, against trafficking, forced labor and contemporary forms of slavery such as sale into marriage, forced prostitution, and sexual exploitation.

IASC A.3.3

Should the natural disaster have occurred in a country with an armed conflict, appropriate measures should be taken as soon as possible to ensure that children affected by the disaster are protected against being recruited or associated with armed forces or groups.

IASC A.3.4

### Child Sexual Exploitation

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.<sup>3</sup> For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- b) the exploitative use of children in prostitution or other unlawful sexual practices;
- c) the exploitative use of children in pornographic performances or materials.

Art. 34 CRC

States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:

- a) the inducement, coercion or encouragement of a child to engage in any sexual activity;
- b) the use of children in prostitution or other sexual practices;
- c) the use of children in pornographic activities, performances and materials.

Art. 27.1 ACRWC

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Art. 1 Optional Protocol

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transitionally or on an individual or collective basis:
  - b) offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
  - c) producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.
3. Each State Party shall make such offenses punishable by appropriate penalties that take into account their grave nature.

Art. 3 Optional Protocol

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programs to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.
2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programs, including at the international level.
3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

Art. 9 Optional Protocol

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:
  - a) recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

<sup>3</sup> Note that in the CRC the term sexual abuse is used to refer to both inside and outside the home, however there is no real agreement as to the distinction between sexual abuse and sexual exploitation. Further, sexual exploitation does not have to be commercial: UNICEF and Inter-Parliamentary Union, 'Child Protection: A Handbook for Parliamentarians No.7' (2004), 89, 129.

- b) informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
  - c) allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
  - d) providing appropriate support services to child victims throughout the legal process;
  - e) protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
  - f) providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
  - g) avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.
2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.
  3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.
  4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

Art. 8 Optional Protocol

Appropriate measures should be taken as early and as quickly as possible to protect affected populations, in particular women and boy and girl children, against trafficking, forced labor and contemporary forms of slavery such as sale into marriage, forced prostitution, and sexual exploitation.

IASC A.3.3

### Child Trafficking

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Art. 35 CRC

States Parties to the present Charter shall take appropriate measures to prevent:

- a) the abduction, the sale of, or trafficking in children for any purpose or in any form, by any person including parents or legal guardians of the child;
- b) the use of children in all forms of begging.

Art. 29 ACRWC

For the purposes of the present Protocol: (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration

Art. 2 Optional Protocol

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transitionally or on an individual or collective basis:
  - a) in the context of sale of children as defined in article 2:
    - (i) offering, delivering or accepting, by whatever means, a child for the purpose of:
      - a) sexual exploitation of the child;
      - b) transfer of organs of the child for profit;
      - c) engagement of the child in forced labor;

Art. 3 Optional Protocol

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programs to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.
2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties

shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programs, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

Art. 9 Optional Protocol

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:
  - a) recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
  - b) informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
  - c) allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
  - d) providing appropriate support services to child victims throughout the legal process;
  - e) protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
  - f) providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
  - g) avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.
2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.
3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.
4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

Art. 8 Optional Protocol

ILO Convention 182 (1999) defines the 'worst forms of child labor' as:

- a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;
- a) "trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b) the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c) the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- d) "child" shall mean any person under eighteen years of age.

Art. 3 Protocol to Prevent, Suppress and Punish Trafficking  
in Persons Especially Women and Children

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
  - a) subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

- b) participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
- c) organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

Art. 5 Protocol to Prevent, Suppress and Punish Trafficking  
in Persons Especially Women and Children

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
  - a) information on relevant court and administrative proceedings;
  - b) assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defense.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
  - a) appropriate housing;
  - b) counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
  - c) medical, psychological and material assistance; and
  - d) employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Art. 6 Protocol to Prevent, Suppress and Punish Trafficking  
in Persons Especially Women and Children

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Art. 7 Protocol to Prevent, Suppress and Punish Trafficking  
in Persons Especially Women and Children

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request

of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

Art. 8 Protocol to Prevent, Suppress and Punish Trafficking  
in Persons Especially Women and Children

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1. States Parties shall establish comprehensive policies, programs and other measures:
  - a) to prevent and combat trafficking in persons; and
  - b) to protect victims of trafficking in persons, especially women and children, from re-victimization.
2. States Parties shall endeavor to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programs and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Art. 9 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children

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1. The State Parties to the Convention shall take effective measures to ensure that trafficking in any form is an offence under the respective criminal law and shall make such an offence punishable by appropriate penalties which take into account its grave nature;
2. The State Parties to the Convention, in their respective territories, shall provide for punishment of any person who keeps, maintains or manages or knowingly finances or takes part in financing of a place used for the purpose of trafficking and knowingly lets or rents a building or other place or any part thereof for the purpose of trafficking;

Art. III SAARC Convention on Preventing and Combating Trafficking  
in Women and Children for Prostitution

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1. The State Parties to the Convention shall ensure that their courts having jurisdiction over the offences committed under this Convention, can take into account factual circumstances which make the commission of such offences particularly grave, viz.
  - e) the victimization of trafficking in children.

Art. 4 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children

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In trying offences under this Convention, judicial authorities in Member States shall ensure that the confidentiality of the child and women victims is maintained and that they are provided appropriate counseling and legal assistance.

Art. v Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children

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The State Parties to the Convention shall sensitize their law enforcement agencies and the judiciary in respect of the offences under this Convention and other related factors that encourage trafficking in women and children.

Art. 8 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children

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1. The State Parties to the Convention shall establish protective homes or shelters for rehabilitation of victims of trafficking. Suitable provisions shall also be made for granting legal advice, counseling, job training and health care facilities for the victims.
2. The State Parties to the Convention may also authorize the recognized non-governmental organizations to establish such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.
3. The State Parties to the Convention shall encourage recognized non-governmental organizations in

efforts aimed at prevention, intervention and rehabilitation, including through the establishment of such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.

Art. IX SAARC Convention on Preventing and Combating Trafficking  
in Women and Children for Prostitution

Appropriate measures should be taken as early and as quickly as possible to protect affected populations, in particular women and boy and girl children, against trafficking, forced labor and contemporary forms of slavery such as sale into marriage, forced prostitution, and sexual exploitation.

IASC A.3.3

### Drug Trafficking

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Art. 36 CRC

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Art. 33 CRC

States Parties to the present Charter shall take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.

Art. 28 ACRWC

## ■ The Rights of Children in Contravention of the Law or in Detention

### Basic Rights of Children Arrested in Contravention of the Law

- b) every child alleged as or accused of having infringed penal law has at least the following guarantees:
- (i) to be presumed innocent until proven guilty according to law;
  - (ii) to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense;
  - (iii) to have matters determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
  - (iv) not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
  - (v) if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent and impartial authority or judicial body according to law;
  - (vi) to have the free assistance of an interpreter if the child cannot understand or speak the language used;
  - (vii) to have his or her privacy fully respected at all stages of the proceedings.

Art. 40.2 CRC

1. Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.
2. States Parties to the present Charter shall in particular:
  - a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;

- b) ensure that children are separated from adults in their place of detention or imprisonment;
  - c) ensure that every child accused in infringing the penal law:
    - (i) shall be presumed innocent until duly recognized guilty;
    - (ii) shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;
    - (iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defense;
    - (iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;
  - d) prohibit the press and the public from trial.
3. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.
4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

Art. 17 ACRWC

Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

Art. 7.1 UN Standard Minimum Rules for the Administration of Juvenile Justice

- 1. The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labeling.
- 2. In principle, no information that may lead to the identification of a juvenile offender shall be published.

Art. 8 UN Standard Minimum Rules for the Administration of Juvenile Justice

### **Right to Legal Aid/Counsel**

Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

Art. 15.1 UN Standard Minimum Rules for the Administration of Juvenile Justice

Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

Art. 18(a) UN Rules on the Protection of Juveniles Deprived of Liberty.

### **Sentencing Principles and Options**

The disposition of the competent authority shall be guided by the following principles:

- a) the reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
- b) restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
- c) deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
- d) the well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

Art. 17.1 UN Standard Minimum Rules for the Administration of Juvenile Justice

A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

- a) care, guidance and supervision orders;
- b) probation;
- c) community service orders;

- d) financial penalties, compensation and restitution;
- e) intermediate treatment and other treatment orders;
- f) orders to participate in group counseling and similar activities;
- g) orders concerning foster care, living communities or other educational settings;
- h) other relevant orders.

Art. 18.1 UN Standard Minimum Rules for the Administration of Juvenile Justice

In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programs, such as temporary supervision and guidance, restitution, and compensation of victims.

Art. 11.4 UN Standard Minimum Rules for the Administration of Juvenile Justice

### Prohibition on Capital Punishment

No child shall be subjected to torture or other cruel, inhumane or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age.

Art. 37(d) CRC

Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

Art. 4.5 ACHR

Capital punishment shall not be imposed for any crime committed by juveniles.

Art. 17.2 UN Standard Minimum Rules for the Administration of Juvenile Justice

### Detention of Children Only as a Last Resort

Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

Art. 13.1 UN Standard Minimum Rules for the Administration of Juvenile Justice

The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.

Art. 1 the UN Rules on the Protection of Juveniles Deprived of Liberty

The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

Art. 19.1 UN Standard Minimum Rules for the Administration of Juvenile Justice

Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.

Art. 2 the UN Rules on the Protection of Juveniles Deprived of liberty.

Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

Art. 13.3 UN Standard Minimum Rules for the Administration of Juvenile Justice

### Minimum Age for Detention<sup>4</sup>

In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

Art. 4.1 UN Standard Minimum Rules for the Administration of Juvenile Justice

<sup>4</sup> Neither the CRC nor related instruments specify the age limit for capacity under criminal law. The committee on the CRC has suggested 15 as an appropriate age limit, and that behavior by younger children should be dealt with by child welfare or protection authorities and procedures; UNICEF and Inter-Parliamentary Union, 'Child Protection: A Handbook for Parliamentarians No.7' (2004), 89) 129.

A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

Art. 11(a) UN Rules on the Protection of Juveniles Deprived of Liberty.

### Alternatives to Detention

Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

Art. 13.2 UN Standard Minimum Rules for the Administration of Juvenile Justice

1. Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.
2. Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

Art. 28 UN Standard Minimum Rules for the Administration of Juvenile Justice

Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centers and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

Art. 29.1 UN Standard Minimum Rules for the Administration of Juvenile Justice

Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

Art. 30 UN Rules on the Protection of Juveniles Deprived of Liberty.

### Basic Rights Accorded to Children Deprived of their Liberty

- a) no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- b) every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- c) every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Art. 37 CRC

Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

Art. 17 UN Rules on the Protection of Juveniles Deprived of Liberty.

The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programs which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

Art. 12 UN Rules on the Protection of Juveniles Deprived of Liberty.

The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

Art. 28 UN Rules on the Protection of Juveniles Deprived of Liberty.

### **Rights of Parents**

Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

Art. 10.1 UN Standard Minimum Rules for the Administration of Juvenile Justice.

The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

Art. 15.2 UN Standard Minimum Rules for the Administration of Juvenile Justice.

In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

Art. 26.5 UN Standard Minimum Rules for the Administration of Juvenile Justice.

Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defense counsel.

Art. 60 the UN Rules on the Protection of Juveniles Deprived of liberty.

### **Rights to Protection and Equality of Treatment While in Detention**

Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

Art. 26.3 UN Standard Minimum Rules for the Administration of Juvenile Justice.

Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

Art. 13.4 UN Standard Minimum Rules for the Administration of Juvenile Justice.

In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special program that has been shown to be beneficial for the juveniles concerned.

Art. 29 UN Rules on the Protection of Juveniles Deprived of Liberty.

Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

Art. 26.4 UN Standard Minimum Rules for the Administration of Juvenile Justice.

Juveniles shall not be subject to corporal punishment.

Art. 17.3 UN Standard Minimum Rules for the Administration of Juvenile Justice.

### **Rights to Visitation and Communication**

Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families,

friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

Art. 59 UN Rules on the Protection of Juveniles Deprived of Liberty.

Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

Art. 61 UN Rules on the Protection of Juveniles Deprived of Liberty.

Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programs and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

Art. 62 UN Rules on the Protection of Juveniles Deprived of liberty.

### **Rights to Education and Vocational Training in Detention**

Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

Art. 24.1 UN Standard Minimum Rules for the Administration of Juvenile Justice.

1. The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.
2. Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development.

Art. 26 UN Standard Minimum Rules for the Administration of Juvenile Justice

Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

Art. 26.6 UN Standard Minimum Rules for the Administration of Juvenile Justice

Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;

Art. 18(b) UN Rules on the Protection of Juveniles Deprived of Liberty.

All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

Art. 79 UN Rules on the Protection of Juveniles Deprived of Liberty.

Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

Art. 80 UN Rules on the Protection of Juveniles Deprived of Liberty.

Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programs integrated with the education system of the country so that, after release, juve-

niles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

Art. 38 UN Rules on the Protection of Juveniles Deprived of Liberty.

Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programs.

Art. 39 UN Rules on the Protection of Juveniles Deprived of Liberty.

Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

Art. 42 UN Rules on the Protection of Juveniles Deprived of Liberty.

Wherever possible, juveniles should be provided with the opportunity to perform remunerated labor, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

Art. 45 UN Rules on the Protection of Juveniles Deprived of Liberty.

### **Rights to Health Care, Nutrition, Recreation and Spirituality in Detention**

While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

Art. 13.5 UN Standard Minimum Rules for the Administration of Juvenile Justice.

The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

Art. 32 UN Rules on the Protection of Juveniles Deprived of Liberty.

Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

Art. 31 UN Rules on the Protection of Juveniles Deprived of Liberty.

Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

Art. 49 UN Rules on the Protection of Juveniles Deprived of Liberty.

Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

Art. 37 UN Rules on the Protection of Juveniles Deprived of Liberty.

Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be

provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programs of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

Art. 47 UN Rules on the Protection of Juveniles Deprived of Liberty.

Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

Art. 18(c) UN Rules on the Protection of Juveniles Deprived of Liberty.

Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counseling or indoctrination.

Art. 48 UN Rules on the Protection of Juveniles Deprived of Liberty.

### **Disciplinary Measures**

Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

Art. 66 UN Rules on the Protection of Juveniles Deprived of Liberty.

All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labor should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

Art. 67 UN Rules on the Protection of Juveniles Deprived of Liberty.

### **Complaints and Investigation**

Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

Art. 75 UN Rules on the Protection of Juveniles Deprived of Liberty.

Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

Art. 76 UN Rules on the Protection of Juveniles Deprived of Liberty.

Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

Art. 77 UN Rules on the Protection of Juveniles Deprived of Liberty.

Every juvenile should have the right to request assistance from family members, legal counselors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

Art. 78 UN Rules on the Protection of Juveniles Deprived of Liberty.

### Training of Personnel Involved with Juvenile Justice Issues

In order to best fulfill their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

Art. 12.1 UN Standard Minimum Rules for the Administration of Juvenile Justice.

Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programs and referral possibilities for the diversion of young persons from the justice system.

Art. 58 the UN Guidelines on the Prevention of Delinquency.

[Detention Facility] Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counselors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

Art. 81 UN Rules on the Protection of Juveniles Deprived of Liberty.

The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

Art. 85 UN Rules on the Protection of Juveniles Deprived of Liberty



Erica Harper and Scott Leckie

Natural disasters lead to population displacement either because the nature of the disaster forces people to flee their homes and lands or because governments decide to relocate populations for reasons – sometimes ostensibly – of public safety and security. In either case, government and/or humanitarian actors face a myriad of challenges such as providing emergency shelter, identifying boundaries, reconstructing housing and infrastructure, adjudicating property and inheritance disputes, and protecting vulnerable groups such as unaccompanied minors, women and non-proprietary rights holders. If the recovery of a person's property is not possible, for example because lands have been so badly damaged that return would jeopardize livelihoods or health, state authorities will also have to consider adequate resettlement and the related issues of restitution and rehabilitation of livelihoods.

How these issues are dealt with will depend upon a variety of factors such as the presence or absence of conflict or land disputes, secondary occupation of lands and homes, and broader political will. On the one hand, because of their less political nature, natural disasters "... can generate the political space to tackle difficult socio-political issues such as land and property rights".<sup>1</sup> On the other hand, authorities may be unwilling to address HLP issues for fear of "... opening up a Pandora's box of pre-disaster social issues".<sup>2</sup> If left unaddressed, HLP issues may impede the reconstruction process, affect economic recovery and possibly result in human rights violations, for example where IDPs remain in temporary shelters or with extended families for several years.<sup>3</sup> There is considerable space for international humanitarian actors to provide technical, legal and policy assistance to ensure that these issues are resolved quickly and comprehensively. Such assistance should focus on short-term goals such as protection and emergency shelter, and should be linked to long-term development objectives such as the universal enjoyment of security of tenure, ecological protection and land reform. This chapter aims to assist affected states and humanitarian actors by considering these challenges in greater detail, with the applicable international law and standards.<sup>4</sup>

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## INTERNATIONAL INSTRUMENTS

Universal Declaration of Human Rights (1948)

[www.unhchr.ch/udhr](http://www.unhchr.ch/udhr)

International Covenant on Civil and Political Rights (1966)

[www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm)

International Covenant on Economic, Social and Cultural Rights (1966)

[www.unhchr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhchr.ch/html/menu3/b/a_ceschr.htm)

Convention on the Elimination of All Forms of Discrimination against Women (1979)

[www.un.org/womenwatch/daw/cedaw](http://www.un.org/womenwatch/daw/cedaw)

Guiding Principles on Internal Displacement (1998)

[www.unhchr.ch/html/menu2/7/b/principles.htm](http://www.unhchr.ch/html/menu2/7/b/principles.htm)

Inter-Agency Standing Committee Operational Guidelines on Human Rights and Natural Disasters (2006)

[www.humanitarianinfo.org/iasc/content/documents/working/OtherDocs/2006\\_IASC\\_NaturalDisasterGuidelines.pdf](http://www.humanitarianinfo.org/iasc/content/documents/working/OtherDocs/2006_IASC_NaturalDisasterGuidelines.pdf)

Housing and Property Restitution for Refugees and Internally Displaced Persons: Implementing the Pinheiro Principles (2007)

[www.reliefweb.int/rw/lib.nsf/db900sid/ASAZ-7F4JCM/\\$file/Pinheiro\\_Principles.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/ASAZ-7F4JCM/$file/Pinheiro_Principles.pdf?openelement)

Vancouver Declaration on Human Settlements (1976)

[ww2.unhabitat.org/campaigns/tenure/legal/van\\_dec.htm](http://ww2.unhabitat.org/campaigns/tenure/legal/van_dec.htm)

Declaration on Rights of Indigenous Peoples (2007)

[www.iwgia.org/sw248.asp](http://www.iwgia.org/sw248.asp)

Indigenous and Tribal Peoples Convention (1989)

[www.ilo.org/ilolex/cgi-lex/convde.pl?C169](http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169)

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### *Who is protected under these international instruments?*

- International treaties such as the ICCPR, ICESCR and CEDAW apply to all states that have signed and ratified or acceded to the instrument. It should be noted that where treaty provisions have been elevated to the status of international customary law, such provisions apply to all states regardless of ratification status (see Introduction).
- The IASC guidelines apply to all people affected by natural disasters.
- The GPID apply to "... persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of ... natural or human-made disasters, and who have not crossed an internationally recognized state border".<sup>5</sup>
- The Pinheiro principles apply to all refugees, IDPs and other displaced persons who have crossed a national border but do not meet the legal definition of refugee, who have been arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence, regardless of the nature or circumstances by which the displacement originally occurred. Displacement can be the direct result of a natural disaster or an indirect result, for example when displacement is caused by development projects, forced eviction or civil conflict.<sup>6</sup>

### *Which of these instruments are legally binding?*

- International treaties are legally binding once States Parties have ratified or acceded to the treaty and the treaty has entered into force (see Introduction). The 1969 *Vienna Convention on the Law of Treaties* holds that "... every treaty in force is binding upon the parties to it and must be performed by them in good faith".<sup>7</sup> It also states that parties "... may not invoke the provisions of its internal law as justification for its failure to perform a treaty".<sup>8</sup> Most treaties have monitoring and complaints mechanisms (see Chapter 1) that individuals or groups can utilize in the case of rights violations.
- Other international instruments – the IASC guidelines, GPID and Pinheiro principles – are generally not legally enforceable. However, many of the rights referred to in such texts are drawn from binding treaties or international customary law. The presumption with all international standards, notwithstanding their formal legal status, is that they will be complied with, and any failure to do so must be justified in terms of law and not be arbitrary in nature.
- Even where operational guidelines or principles are not binding, these facilitating documents are of strong persuasive authority and hence constitute important tools for guiding operational decision-making, legislative and policy reform, and programmatic strategy.

## Part 1: Introduction

### 1.1 Why is Equitable and Efficient Land Management Important?

The restoration of HLP rights is integral to effective recovery and longer-term sustainable development. First, access to HLP ensures economic protection by providing access to livelihoods and limiting dependency on humanitarian assistance. As noted by UNHCR: "... without access to land, housing and property, people are robbed of their main source of physical, economic and livelihood security, including shelter and access to food, safe water and sanitation".<sup>9</sup> Second, HLP rights and security of tenure provide people affected by disaster with physical and social protection, particularly so for vulnerable groups such as single-headed households, women, minorities, older people and people with disabilities, because those who lack safe housing have reduced access to social services such as health care and education and are more vulnerable to abuse such as sexual and gender-based violence.<sup>10</sup> Third, upholding the rule of law by restoring HLP rights and undertaking associated measures such as restitution promotes peace and social stability in the aftermath of disasters. Fourth, addressing a population's HLP needs in a comprehensive and equitable manner is a vital step towards alleviating poverty because it provides access to livelihoods, protection from rights violations and provides capital to access credit.

## 1.2 The Applicable Legal Framework

Rights to HLP and adequate living standards are protected under several international treaties, including the ICCPR, ICESPR and CEDAW.<sup>11</sup> Such law is supplemented by operating standards and guidelines developed and approved by the international community. These include the 2006 IASC *Operational Guidelines on Human Rights and Natural Disasters* (IASC guidelines), the GPID<sup>12</sup> and the 2005 *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (the Pinheiro Principles).<sup>13</sup> While the first two documents are primarily concerned with upholding human rights in situations of disaster and displacement generally, the Pinheiro principles deal specifically with housing and property rights and restitution rights following conflict and disaster.

### footnotes

<sup>1</sup> UN-HABITAT. 2007. *Guidelines and Toolkit for Post-Disaster Land, Tenure and Property*, p 1. Project Profile for Cluster Appeal 2007.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Chaudhry, S. *Implementation of the Guiding Principles on Internal Displacement in Domestic Law and Policy: Study on Shelter, Resettlement, Adequate Housing and Land (draft paper on file with author)*, IDP Legislators' and Policy-Makers' Manual Project: Brookings-Bern Project on Internal Displacement, pp 48-53.

<sup>5</sup> Principle 2.

<sup>6</sup> 2007 *Housing and Property Restitution for Refugees and Internally Displaced Persons: Implementing the "Pinheiro Principles"*, p 17.

<sup>7</sup> Art. 26.

<sup>8</sup> Art. 27.

<sup>9</sup> UNHCR. *Action Sheet: Land, Housing and Property Restitution*, p 1.

<sup>10</sup> Ibid p 1.

<sup>11</sup> See also regional treaties such as the ECHR, ACHR, ACHPR and PACHPRA.

<sup>12</sup> IASC A.1.5 holds that "Persons – including evacuees – who have been ordered or forced to flee or to leave their homes or places of habitual residences as result of a natural disaster or its effects, or have left in order to avoid them, and have not crossed an internationally recognized state border should be treated as belonging to the category of internally displaced persons covered by the 1998 Guiding Principles on Internal Displacement".

<sup>13</sup> Adopted without a vote on 11 August 2005 in Resolution 2005/21 by the United Nations Sub-Commission on Protection and Promotion of Human Rights, Geneva. See also: Pinheiro, S. 2005, *Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons*. Final report of the Special Rapporteur, Paulo Sérgio Pinheiro, submitted in accordance with Sub-Commission resolution 2004/2 (E/CN.4/ Sub.2/2005/17).

## Part 2: The Right to Adequate Housing

### Fact Sheet

- The United Nations estimates that there are over 100 million homeless people worldwide and over 1 billion people who are inadequately housed.
- According to UNDP, nearly 1 billion of the world's citizens still lack improved water sources; an estimated 2.4 billion have inadequate sanitation.
- One third of humanity – more than 2 billion people – live without security of tenure, adequate legal safeguards against forced eviction or access to clean and affordable drinking water in the home.
- Traditionally, less than 5 percent of all international development assistance has been directed towards housing or human settlements.

Sources: The Right to Adequate Housing, Art. 11.1 of the Convention on Economic, Social and Cultural Rights. General Comment 4. Sixth session, 1991 [4] (August 26, 2007). [www.cohre.org/view\\_page.php?page\\_id=88](http://www.cohre.org/view_page.php?page_id=88).

*Access to safe and healthy shelter is essential to a person's physical, psychological, social and economic well-being and should be a fundamental part of national and international action. The right to adequate housing as a basic human right is enshrined in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. Despite this, it is estimated that at the present time at least 1 billion people do not have access to safe and healthy shelter, and that if appropriate action is not taken this number will increase dramatically by the end of the century and beyond.*

*Chapter 7.6, Agenda 21, Adopted by the United Nations World Conference on Environment and Development (1992)*

The right to adequate housing is recognized under the UDHR, ICESCR,<sup>14</sup> the Pinheiro Principles, GDIP and IASC guidelines.<sup>15</sup> The United Nations Special Rapporteur on Adequate Housing has defined the right to adequate housing as "... the right of every woman, man, youth and child to gain and sustain a safe and secure home and security in which to live in peace and dignity".<sup>16</sup> Adequate housing is not only an important right in itself, it is also linked to the realization of other human rights, including the rights to life, health, adequate food, decent work, information, gender equality, security of person and a safe and healthy environment.<sup>17</sup> As stated by the United Nations Committee on Economic, Social and Cultural Rights:

*"The full enjoyment of other rights such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making – is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing".<sup>18</sup>*

### *What Constitutes Adequate Housing?*

At its 6<sup>th</sup> session in 1991 the United Nations Committee on Economic, Social and Cultural Rights stated that "... while adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

**Legal security of tenure.** Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States Parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.

**Availability of services, materials, facilities and infrastructure.** An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.

**Affordability.** Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States Parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States Parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States Parties to ensure the availability of such materials.

**Habitability.** Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The committee encourages States Parties to comprehensively apply the Health Principles of Housing prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates.

**Accessibility.** Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States Parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.

**Location.** Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centers and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.

**Cultural adequacy.** The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, *inter alia*, modern technological facilities, as appropriate are also ensured.<sup>19</sup>

*Does the right to adequate housing mean that the state is required to provide every family with a house?*

State authorities are not legally required to provide every person with a house, although there are many states which do provide housing directly to those in need. According to the *Pinheiro Principles Handbook*, states are required to create through law and policy conditions in society that ensure that everyone can access housing that is affordable, habitable and “adequate”, as defined by international standards. The handbook goes on to say that “... this can – and should – include the direct financing for the construction of new housing stock and budgetary allocations towards this end, to the maximum of a country’s resources, in accordance with international housing rights provisions such as those enshrined in article 11(1) of the Covenant on Economic, Social and Political Rights”.<sup>20</sup>

*Are international humanitarian actors involved in reconstruction required to meet United Nations and IASC standards on adequate housing?*

First, humanitarian agencies are not directly responsible for ensuring a population’s right to adequate housing; such responsibility rests with the state. Second, it is clear that the standards articulated in the United Nations and IASC definitions of “adequacy” may not be capable of being realized in developing country contexts, particularly in the aftermath of a natural disaster. Requirements such as security of tenure, affordability and access to services such as child care and employment opportunities are issues of public policy and may not be in the control of an NGO or United Nations agency. The standards do, however, provide important guidance for those designing and implementing housing programs aimed at providing equitable and sustainable solutions.

*Does the right to adequate housing imply a right to land?*

A right to land is not articulated in international law except in the case of indigenous peoples.<sup>21</sup> According to S. Chaudhry of the Brookings-Bern Institute, however: “... the human right to adequate housing has increasingly been interpreted as including the human right to land as is evident in reports of the United Nations Special Rapporteur on adequate housing”.<sup>22</sup> She notes that the right to land is also integral to the right to livelihood and food<sup>23</sup> and the right to work through the right to access productive land.

## Types of Land Rights

Each state will recognize different forms of rights over land. These may include any of the following:

- **Individual Ownership Rights.** This is generally the strongest form of ownership. Jurisdictions will vary with respect to whether foreign nationals, corporations, social organizations or minority ethnic groups are able to own land.
- **Building Rights.** This right allows its holder to construct and own buildings on another's land for a specified or unspecified period of time. Such rights may accrue from an agreement with a private landowner, or by direct grant from the government.
- **Right of Commercial Exploitation.** This right allows its holder to engage in commercial agriculture over land, which is often state-owned.
- **Statutory Right of Use.** This right allows its holder to use and take the products of state or privately owned land.
- **Rental Rights.** Rental rights arise through agreement with private landowners or the state.
- **Communal Land Rights.** These rights allow land to be held in common, generally on the basis of ongoing use such as cultivation, clearance or access. This group of rights generally encompasses community rights to allocate land, approve land transfers, control land use and determine land disputes in a given area. In some jurisdictions, communal land rights are recognized through legislation and can be transferred to formal title.
- **Customary Rights to Land.** In many developing countries, land ownership is regulated by customary non-state law, particularly in rural areas. Customary rules can regulate the manner in which land is bought and sold, whether land can be sold or leased to non-locals, rights of access, the nature of land use and whether land may be appropriated for community purposes. Customary regulation often takes the form of negotiated interactions between community members and leaders rather than set rules that are applied in all circumstances. Customary law may cover ownership rights and common ownership rights and rights of usage. Agricultural use rights, for example, arise from continuous cultivation of land and in some cases may develop over time into a right of ownership. A related practice is "sharecropping" or "cultivation rights", which arise through agreements with private landowners. Sharecropping generally involves the cultivation of another person's land in return for providing the landowner with a share of the crops harvested. Cultivation rights are akin to rental agreements over agricultural land.

Rights over land may be acquired through a variety of means, depending upon the jurisdiction, including sale, inheritance, gift, grant from the state, and conversion of a customary-use right such as land clearing or through extended use.

### footnotes

- 14 See also: The Right to Adequate Housing, Art. 11.1 of the Convention on Economic, Social and Cultural Rights, General Comment 4, 6<sup>th</sup> session, 1991 [1].
- 15 The right to adequate housing is also recognized in several regional treaties including the *European Social Charter* (1996), the *Charter of the Organization of American States* (1948) and the *American Declaration on the Rights and Duties of Man* (1948) - See Chapter 4 matrix.
- 16 United Nations, 2006. Report of the Special

- Rapporteur on Adequate Housing, Miloon Kothari (E/CN.4/2006/41), p 44.
- 17 [www.cohre.org/view\\_page.php?page\\_id=88](http://www.cohre.org/view_page.php?page_id=88)
- 18 The Right to Adequate Housing (n 14) p 9.
- 19 The Right to Adequate Housing (n 14) [8]. See also IASC Guideline C.3.2.
- 20 *Housing and Property Restitution for Refugees and Internally Displaced Persons* (n 11) 50.
- 21 Chaudhry (n 4) 15.
- 22 Ibid p 15. See also: United Nations 2006. Report of the Special Rapporteur on Adequate Housing, Miloon Kothari,

(E/CN.4/2006/41). Available at [www.ap.ohchr.org/documents/dpage\\_e.aspx?m=98](http://www.ap.ohchr.org/documents/dpage_e.aspx?m=98)

- 23 United Nations. 2006. Report of the Special Rapporteur on the Right to Food (E/CN.4/2006/44/Add.2).

## Part 3: The Emergency Phase

### 3.1 Escape in the Event of a Natural Disaster

The right to relocate to escape a natural disaster is protected through freedom of movement and/or residence clauses found in the UDHR and ICCPR.<sup>24</sup>

*Can government authorities or humanitarian actors compel the evacuation or prohibit the return of persons who are in danger from an impending natural disaster?*

The freedom of movement provisions in the UDHR and ICCPR protect a person's right to leave their home and the right to return. The GPID specifically upholds the right to seek safety and be protected from return where to do so would place the person's life, safety or health at risk.<sup>25</sup> In the case of the ICCPR, this right can be restricted when public safety and order are at risk – factors that might be relevant in the context of a natural disaster.<sup>26</sup> IASC guideline C.2.9 reiterates that any prohibitions on remaining, returning or rebuilding should be based on law and be "... necessary for reasons of safety, health, disaster prevention or the implementation of reconstruction or development schemes". In all cases of prohibitions, owners should be provided with due process guarantees, including the right to be heard and the right of access to an independent court or tribunal, and just compensation. With respect to the involvement of humanitarian actors, IASC guideline A.1.8 recommends that non-voluntary evacuations or prohibitions on return, even when authorized by national authorities, should not be supported by aid organizations except where very serious threats to the lives, physical integrity or health of persons exist.<sup>27</sup>

*If persons fleeing from a natural disaster cross an international border, are such persons classified as refugees?*

In general, people who cross an international border in response to the consequences of a natural disaster do not qualify for refugee status under the 1951 *Convention Relating to the Status of Refugees*. To qualify as a refugee under the convention, a person must have fled their country of nationality, or in the case of stateless persons their country of habitual residence owing to a well-founded fear of persecution for reasons of race, religion, nationality, or membership of a particular social group or political opinion. However, people who do meet these criteria but who have fled their country of origin because of serious threats to life, physical integrity or freedom resulting from violence or events seriously disturbing public order may be eligible for international protection under the mandate of UNHCR. People who have been forced or obliged to leave their homes or places of habitual residence as a result of or in order to avoid the effects of natural disasters, but who have not crossed an internationally recognized state border, are referred to as IDPs. They enjoy the same protection as other citizens or habitual residents of the country under national and international law. Many of the rights of IDPs are summarized in the GPID, which reflects and is consistent with international human rights law and international humanitarian law.

### 3.2 Protecting Homes from Looting in the Aftermath of a Natural Disaster

*States should adopt specific measures to prevent the destruction or looting of contested or abandoned housing, land and property. In order to minimize destruction and looting, States should develop procedures to inventory the contents of claimed housing, land and property within the context of housing, land and property restitution program.*

*Pinheiro Principle 20.4*

*Competent authorities should be requested to protect, to the maximum extent possible, against looting, destruction, and arbitrary or illegal appropriation, occupation or use of property and possessions left behind by persons or communities displaced by the natural disaster* IASC, C.2.1

In the aftermath of a natural disaster, certain groups may take advantage of the disorder to engage in looting or vandalism. Although the right to own and enjoy property is protected under various international instruments,<sup>28</sup> a state's criminal jurisdiction will generally contain provisions relating to

theft and destruction of property that will apply in emergency situations. A complicating factor is that widespread physical destruction coupled with compromised law and order capacity will often make it difficult for police to collect evidence or conduct investigations. In such situations, police or military patrols of evacuated areas can offer some protection against looting. Residents should be encouraged to locate evidence of ownership or other tenancy rights over their homes and lands and make an inventory of household possessions, either before the evacuation or as soon as possible after their arrival at an emergency shelter. Such documentation can be useful if a restitution policy is introduced, if legal action is taken against a suspected looter or when submitting claims under a private insurance policy.

### **3.3 Protection of Housing and Identity Records**

Where buildings housing public records are damaged or destroyed by a natural disaster, steps should be taken during the emergency phase to locate and protect such records. Lost personal documentation must also be replaced, including birth, marriage and death certificates, insurance certificates, passports, personal identification and travel documents, and education and health certificates.<sup>29</sup> Where records are not salvageable, authorities should implement systematized programs to collect personal data relating to identity, residence and property.<sup>30</sup> Such data can be useful in facilitating family reunification and, in later stages, the restoration of public records, the resolution of property disputes, and property restitution claims.

*States and other responsible authorities or institutions conducting the registration of refugees or displaced persons should endeavor to collect information relevant to facilitating the restitution process, for example by including in the registration form questions regarding the location and status of the individual refugee's or displaced person's former home, land, property or place of habitual residence. Such information should be sought whenever information is gathered from refugees and displaced persons, including at the time of flight.*

*Pinheiro Principle 15.6*

### **3.4 Emergency Shelter**

In the immediate aftermath of a natural disaster, displaced people are likely to be accommodated in emergency shelters – generally public arenas, halls, hospitals or schools, although the use of education facilities is not generally advisable as this may interrupt regular schooling. Where buildings are not available or deemed unsafe, tent accommodation may be used. According to the Brookings-Bern Project on Internal Displacement, evacuees should not be housed in emergency shelter for more than three weeks.<sup>31</sup>

Temporary shelters are an interim form of accommodation designed to house the displaced over longer periods while they are waiting to return to their homes or move into alternative permanent accommodation. Although temporary shelters generally offer more privacy and allow families to cohabit, Brookings-Bern has argued that such housing should be used for a maximum period of six months.<sup>32</sup> In constructing temporary shelters, government authorities and international agencies should be guided by the standards for adequate housing, such as those outlined in IASC C.3.2 and enunciated by the United Nations Committee on Economic, Social and Cultural Rights (see Part 2). Finally, it is advisable that construction of temporary shelters be undertaken in consultation with displaced communities as to ensure that their needs, and particularly the needs of women, children, the elderly, minorities and the disabled, are taken into account.<sup>33</sup>

## IASC Camp Management Standards

*... Camps are a last resort and should only be established where, and until, the possibility of self-sustainability or fast rehabilitation assistance do not exist.*

IASC A.4.1

*Members of displaced families who wish to remain together should be allowed or assisted to do so during the emergency phase and in the context of return or resettlement.*

IASC D.3.1

*The location and layout of camps and settlements for persons displaced by the disaster should be situated in areas with a low natural hazard risk. They should be designed so as to maximize the security and protection of displaced persons, including women and others whose physical security is most at risk (e.g. children, older persons, persons with disabilities, single-headed households and members of religious and ethnic minority groups or indigenous peoples).*

IASC A.4.2

*Security should be provided in camps, in particular by monitoring, through law enforcement personnel and camp committees drawn from among the displaced communities. Appropriate mechanisms to address instances of violence and other violations of the human rights of camp residents should be established.*

IASC A.4.3

*Persons affected by the disaster should be able to move freely in and out of camps. Such movement should not be restricted or prohibited unless it is necessary for the protection and of the security or the health of camp residents, or that of the population in the vicinity. If there are restrictions, they should not remain in force any longer than is necessary.*

IASC A.4.4

*In order to maintain the civilian character of camps at all times, appropriate measures should be taken to avoid the presence of uncontrolled armed elements in camps and settlements. Where such elements are present, they should be separated from the civilian population in the camp. The presence of armed state police or security forces should be limited to the extent strictly necessary to provide security.*

IASC A.4.5

*Once the immediate emergency phase is over, camps set up by armed forces or groups should be managed by civilian authorities or organizations. The role of police and security forces should be limited to providing security.*

IASC A.4.6

*As soon as possible, appropriate measures should be taken, without discrimination of any kind, to allow for the speedy transition from temporary or intermediate shelter to temporary or permanent housing, fulfilling the requirements of adequacy in international human rights law.*

IASC C.3.1

## Protection Checklist for Temporary Shelter Accommodation

- **Life and safety.** When choosing the location of emergency shelter camps, authorities should take account of the potential for a secondary disaster.
- **Health and dignity.** Shelters should have access to water, sanitation, solid waste disposal, electricity, and health care facilities.
- **Vulnerable groups.** Families, unaccompanied women, persons with disabilities, minority groups and older people should be grouped together in an appropriate location. Separate toilets for women, access to water and other supplies should be provided close to their residences.<sup>34</sup>
- **Children.** Unaccompanied minors should be assigned a temporary guardian or placed in a safe environment. It should be recalled that children in emergency shelters are at particular risk of abuse, trafficking and exploitation.<sup>35</sup> Children should have access to a local school or on-site schooling.
- **Access to livelihoods.** Where possible, occupants should be provided with basic tools or facilities to enable them to engage in income-generation.
- **Family tracing.** Family tracing services should prioritize the reunification of children, unaccompanied women, and older people with their families.
- **Non-discrimination.** Housing should be allocated without discrimination as to race, color, ethnic origin, religion, sex, age or any other factor.

Can government authorities or international agencies use abandoned property for humanitarian purposes such as shelter in the immediate aftermath of a natural disaster?

IASC guideline C.2.2 states that "... unused private property and possessions may be temporarily, but no longer than absolutely necessary, allocated to those displaced by the natural disaster".<sup>36</sup> In such situations, owners of the affected property should be adequately compensated, and parties should have access to due process guarantees and fair and impartial legal procedures. Where possible, the use of abandoned property to house displaced populations temporarily should be based on a written agreement between the occupier and owner. Such agreements should set out provisions for the reinstatement of the rights holder as soon as circumstances allow and detail sanctions for damage or alterations to the property. Organizations should adopt policies that deal with this question covering the use of unused property for organizational purposes and for staff residences.

*States shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general principles of international law. Whenever possible, the "interest of society" should be read restrictively, so as to mean only a temporary or limited interference with the right to peaceful enjoyment of possessions.*

*Pinheiro Principle 7.2*

*International organizations and peace operations should avoid occupying, renting or purchasing housing, land and property over which the rights holder does not currently have access or control, and should require that their staff do the same. Similarly, international organizations and peace operations should ensure that bodies or processes under their control or supervision do not obstruct, directly or indirectly, the restitution of housing, land and property.*

*Pinheiro Principle 22.7*

### footnotes

<sup>24</sup> See also the ACHR, ACHPR and ECHR.

<sup>25</sup> Principle 15.

<sup>26</sup> Art 12.3. It should be noted that several international treaties contain suspension clauses for times of war, public emergency and/or threats to the state: see the ACHR, Art. 27.; ECHR, Art. 15); and ICCPR, Art. 4.

<sup>27</sup> See also GPID, Principle 6.

<sup>28</sup> Including the UDHR, CERD, and CEDAW. Regional treaties that protect the right to

property include the ACHR, ACHPR, ECHR and the *Charter of Fundamental Rights of the European Union* (2000).

<sup>29</sup> IASC, Guideline D.1.2.

<sup>30</sup> Data might include marital status, age, gender, name, children, address, length of residence, estimated value, tenure status, ownership records and any other personal information related to residency, ownership, and possession or use and loss of property rights.

<sup>31</sup> S Chaudhry (n 4) pp.48-53.

<sup>32</sup> *Ibid.*

<sup>33</sup> GPID, Principle 28.

<sup>34</sup> See further Chaudhry (n 4) 48-53.

<sup>35</sup> *Ibid* pp 43-44.

<sup>36</sup> GPID Principle 21.3 states that "Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use".

## Part 4: Permanent Housing Solutions

Following the emergency phase, finding permanent housing for those displaced by the disaster will be a priority. Such solutions should promote safe and sustainable return processes and social stability, and should be the basis for a functioning property market, factors that are integrally related to economic recovery, growth, and longer-term development. The non-resolution of HLP restitution claims, by contrast, can aggravate social tensions, promote lawlessness and create enduring social problems. It should be noted that the ability of landholders to prove tenure will be central to the reconstruction process, because humanitarian actors may not be willing to commence work rebuilding or repairing houses until beneficiary verification has taken place. It is important to note the need to find permanent solutions for all types of rights holders, whether they be land owners, renters, squatters or customary rights holders. Too often, past efforts have focused solely on formal owners, to the detriment of other tenure sectors. This section discusses the two primary permanent solutions to displacement: restitution – return to one’s original home – and monetary or in-kind compensation. The guiding standard is the Pinheiro Principles (2005). These principles are drawn from rights and regulations that are recognized in binding international law and, having been approved by the United Nations Sub-Commission on Protection and Promotion of Human Rights, constitute an important normative standard for upholding the rights of disaster-affected populations.<sup>37</sup>

### 4.1 The Right to HLP Restitution

The Pinheiro Principles guarantee to people displaced by natural disasters a right to restitution or just compensation. Return to one’s original home is regarded as the preferred solution because it restores rights bearers to their original position, prevents community fragmentation and preserves sources of livelihood. Where return is materially impossible or impractical, the alternate solution is compensation. This might take the form of monetary compensation or in-kind compensation such as resettlement or the repair or reconstruction of a home on existing property.

1. *All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.*
2. *States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.*

*Pinheiro Principle 2*

Although individual states may introduce cutoff dates for restitution claims, restitution rights are not extinguished when states apply arbitrary, unreasonable, disproportionate or unfair date restrictions to restitution processes. Similarly, HLP restitution rights are not rescinded by non-return<sup>38</sup> or by the rights-holder integrating into another community.<sup>39</sup> Principle 18 recommends that states should protect the right to restitution through legislation:

1. *States should ensure that the right of refugees and displaced persons to housing, land and property restitution is recognized as an essential component of the rule of law. States should ensure the right to housing, land and property restitution through all necessary legislative means, including through the adoption, amendment, reform, or repeal of relevant laws, regulations and/or practices. States should develop a legal framework for protecting the right to housing, land and property restitution which is clear, consistent and, where necessary, consolidated in a single law.*
2. *States should ensure that all relevant laws clearly delineate every person and/or affected group that is legally entitled to the restitution of their housing, land and property, most notably refugees and displaced persons. Subsidiary claimants should similarly be recognized,*

*including resident family members at the time of displacement, spouses, domestic partners, dependents, legal heirs and others who should be entitled to claim on the same basis as primary claimants.*

## **4.2 Establishing Restitution Processes**

According to the Pinheiro principles, states should "... establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims".<sup>40</sup> Where they are compatible with international law and standards, such processes may comprise informal dispute resolution mechanisms.<sup>41</sup> If a state is unable to facilitate just and timely restitution, for example where there has been a breakdown in law and order, the authorities may need to call upon international actors to provide technical assistance.<sup>42</sup> In developing restitution processes, the following issues should be taken into account:

### **(i) Compatibility with International Human Rights Standards.**

Restitution policies should be compatible with international law and standards, a task that will be facilitated where the state in question is party to the relevant human rights treaties.

*States should ensure that all housing, land and property restitution procedures, institutions, mechanisms and legal frameworks are fully compatible with international human rights, refugee and humanitarian law and related standards, and that the right to voluntary return in safety and dignity is recognized therein.*

*Pinheiro Principle 11.1*<sup>43</sup>

### **(ii) Equality and Non-Discrimination.**

Restitution should not be undermined by laws or policies that are arbitrary, or discriminatory such as unjust abandonment laws or unreasonable statutes of limitations.<sup>44</sup> There is a particular need to ensure that women and girls are protected from discriminatory restitution laws and policies.<sup>45</sup> Restitution programs should recognize the joint ownership rights of married couples.<sup>46</sup> Experience demonstrates that focusing on heads of household often results in HLP rights being vested in men, leaving women at risk of being denied their property rights in the case of divorce or widowhood. Gender inequality in formal or customary inheritance laws can be a further source of discrimination in restitution. In both situations, women are at heightened risk of homelessness and become more vulnerable to violence, exploitation, social isolation and food or livelihood security. In working to address issues of inequality, international actors can draw on the Pinheiro principles<sup>47</sup> and treaties such as the CEDAW that guarantee the right to equality in housing.<sup>48</sup>

### **(iii) Consultation.**

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In undertaking post-disaster reconstruction planning, it is important that the opinions, needs and cultural concerns of affected communities be taken into account, particularly those of women, orphans, indigenous people, minorities, older people and persons with disabilities.<sup>49</sup> Consultation is a means of managing expectations and ensuring that any processes developed will be fair and accepted by the population. As the Pinheiro principles point out, where expectations cannot be met, explanations and feedback should be provided to minimize frustration and future backlash.<sup>50</sup>

*To ensure sustainable long-term planning of resettlement and reconstruction in the aftermath of a natural disaster, all affected groups and persons, including women, indigenous peoples and persons with disabilities, should be consulted and participate in the planning and implementation.*

*IASC C.3.3*

*Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.*

*28(2) GPID*

#### (iv) Accessibility of Restitution Processes.

An important element in ensuring that restitution processes are non-discriminatory is to ensure they are accessible to all users.<sup>51</sup> Authorities need to take into account the special needs of:

- different linguistic groups, for example by making information available and allowing documents to be submitted in local languages;
- the illiterate and under-educated, for example by designing claim forms in simple and user-friendly formats, and by making assistance freely available;<sup>52</sup>
- orphans, for example by drafting special provisions allowing claims to be submitted through a guardian or state welfare officer;<sup>53</sup>
- women, for example by making female claims officers available and by specifically identifying women landowners;
- the poor, for example by making restitution processes and required documentation free of charge; and
- people outside the country and in inaccessible areas, for example by establishing out-of-country claims offices and mobile claims teams.<sup>54</sup>

Restitution processes should also be well publicized through public information campaigns. Clear and targeted public outreach will discourage ineligible or fraudulent claims and increase the likelihood that claims deadlines are adhered to and properly documented. Authorities should again take account of the needs of vulnerable groups such as women, who may not be able to access all forms of mass media, those living in poverty, who may have lower literacy rates, and minorities, who may speak different languages.

#### (v) Inclusiveness.

Restitution policies should take into account the importance of providing all types of rights-holders with permanent solutions to displacement. Such groups include owners and customary/collective rights holders, renters, squatters and cooperative dwellers.<sup>55</sup>

### 4.3 Restitution

Restitution – the return of a displaced person to his or her original place of residence – is considered to be the most desirable and sustainable solution to displacement.<sup>56</sup> The right to return voluntarily and in safety and dignity is protected under several international treaties as part of freedom of movement/residence provisions (see section 3.1) and exists regardless of time elapsed or statutes of limitations.<sup>57</sup> The only exception to this is where the safety and security of affected populations, public order, public health or morals, or the rights and freedoms of others are at risk, for example if homes are located in an area where there are dangers to life, health or the physical integrity of occupants.<sup>58</sup> In certain situations, rights holders may choose not to exercise their right of return: they may have integrated elsewhere, feel uncomfortable returning to the site of the disaster, or deem it in their best interests to sell or rent their property to a secondary rights holder. In this regard it is important that rights-holders are not forced to return against their will, and that restitution policies are sufficiently flexible to ensure that property rights are not extinguished if former occupants choose not to return.<sup>59</sup> As highlighted in the preamble to the Pinheiro Principles, return should be based on "... a free, informed and individual choice"; and "... displaced persons should be provided with complete, objective, up to date and accurate information, including on physical, material and legal safety issues in countries or places of origin".<sup>60</sup> States are responsible for creating the conditions conducive to such return and for providing the means.<sup>61</sup>

### 4.4 Compensation

Where restitution is materially impossible, otherwise demonstrably proven to be impractical or not consistent with the wishes of the displaced people concerned, state authorities should compensate rights holders for their loss. Situations where compensation may be preferable to restitution include (i) where the remedy becomes available a long period after the disaster and by which time the rights-holder has integrated elsewhere, and (ii) where the rights-holder chooses to relocate, for example to a location where s/he has employment opportunities or family ties.

1. All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.
2. States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.

Pinheiro Principle 21

#### Accountability for Housing Construction

Since the Indian Ocean tsunami in December 2004, international and national aid agencies have constructed more than 100,000<sup>62</sup> new homes in Aceh, Indonesia. The Agency for Rehabilitation and Reconstruction for the Region and Community of Aceh and Nias set minimum standards for house construction, which related to house size, the use of non-toxic materials, inclusion of basic amenities such as water, electricity, shower facilities and a toilet, the quality of materials, and protection from further natural disasters.<sup>63</sup> Despite such standards, one issue that has arisen relates to the rights of beneficiaries and the accountability of aid agencies in cases where houses have been poorly constructed or have not met minimum standards.<sup>64</sup> Aceh's experience demonstrates the importance of developing construction standards and a framework for enforcing such standards, particularly in environments where a large number of humanitarian actors are operating. Standards should be drafted to take account of international norms, local conditions and cultural norms; accountability frameworks should include claims procedures for beneficiaries who have received unsatisfactory houses.

#### (i) Returning to One's Home After it has been Rebuilt or Repaired

Where a place of residence has been damaged by a disaster, authorities may offer a combination of restitution whereby the rights-holder recovers their original home and land, and compensation to assist in rebuilding or repairing the home.

#### (ii) Resettlement

Resettlement involves the relocation of families or communities to a new location where homes and public amenities have been constructed. Generally, resettlement occurs where land has been lost or is no longer suitable for habitation, or where livelihood options are no longer viable. Ideally, the land used for resettlement will be government-owned. In some cases, however, it may be necessary for land to be purchased from private owners. Where this occurs, it is important that land holders sell consensually and are provided with adequate compensation. Assigning a value to such land can be difficult in natural disaster contexts, where it is common for property prices to be subject to high inflation, for example where safe and unaffected land becomes less plentiful or deflation, for example where land close to a disaster site becomes less desirable or high mortality rates reduce demand. Regardless of how land is acquired, resettled people should be entitled to status equivalent to that previously enjoyed, whether it be ownership, rental or other rights. It should also be made clear whether resettled people retain or have to relinquish rights over their old land in order to benefit under resettlement schemes. In parts of tsunami-affected India, for example, village *panchayat* (governing councils) were able to negotiate with authorities to allow displaced people to avail themselves of permanent housing compensation schemes but still retain rights over their inhabitable coastal lands.<sup>65</sup>

Resettlement presents a number of challenges. It involves a secondary displacement, which can have implications for community and family fragmentation, continuity of education and the safety of vulnerable groups such as women, orphans, minorities, people with disabilities and older people who may be removed from social support networks. To guard against such risks, authorities should attempt to facilitate the resettlement of entire villages or communities and, as a minimum, ensure that extended families are not separated.<sup>66</sup> Access to livelihoods is a further important concern: relocated people may be forced to leave paid employment or unable to continue their original occupation, for example if a fishing community is relocated to a mountainous area. To avoid such consequences, people should be moved to a location that is within reasonable commuting distance of their previous place of residence.<sup>67</sup>

### (iii) Monetary and In-Kind Compensation

Compensation should be provided with the same intention as restitution: to return, to the greatest extent possible, land or property holders to their original pre-loss position. Calculating monetary compensation can be highly complex, particularly if land or property prices have shifted considerably in the aftermath of the disaster.<sup>68</sup> In-kind compensation directly linked to housing is often regarded as a more effective means of providing displaced people with permanent solutions. In-kind compensation might include government bonds, reconstruction subsidies, assistance with accessing new housing, tax reductions, or credit for building materials.

#### **UN-HABITAT and the Pakistan Rural Landless Program**

The 2005 Pakistan earthquake resulted in massive destruction, displacement and loss of life. The earthquake also caused the physical disappearance of land through landslides and flooding, affecting approximately 10,000 families. In mounting a response, the Government of Pakistan, NGOs, INGOs and United Nations agencies worked together through a "cluster approach" to streamline funding, policy-making and implementation. Between February and March 2007, seven rounds of stakeholder consultation were held, the outcome of which was the Earthquake Reconstruction and Rehabilitation Authority (ERRA) Rural Landless Policy.<sup>69</sup> Under the policy, the Government of Pakistan provided rural landless families with financial assistance to help them to purchase new land and construct seismic-resistant private homes. A major achievement was that land was provided to entire families, irrespective of whether the land was originally owned by a male or female family member. As a result, many women became co-owners of land for the first time. To implement the policy, land verification units (LVUs) were established in affected areas to provide information, help beneficiaries to complete the necessary paperwork, facilitate registration and verify applications. LVUs are staffed by *tehsildars* (district revenue officials), a retired revenue officer, an accountant, an ERRA social protection coordinator and an army representative. LVUs also include a representative from civil society to facilitate access to vulnerable populations.

Operating through mobile units, LVUs prioritized the registration of landless families living in emergency shelter camps. The second phase focused on the registration of families outside camps and was completed in February 2008. The Rural Landless Program interviewed over 8,000 potential beneficiaries in Pak and North-West Frontier Province. Approximately 3,000 landless cases have been registered; it is expected that a further 2,000 cases will be verified and issued with letters of entitlement by 30 March 2008. The financial entitlement is provided through a "one window" operation whereby money is transferred in the presence of community members to ensure transparency. Applicants can refer complaints to one of seven grievance redress committees (GRCs), which are staffed by representatives of the Revenue Department, a retired UN-HABITAT officer, and representatives of civil society and the army. Approximately 10 percent of rejected cases refer their claims to the GRCs, of which approximately 5 percent have been accepted and declared eligible.

#### **Process**

**Step 1** Landless submit applications to the LVU. Applications go through three verifications: (i) applications are cross-checked with housing grant records; (ii) applications are verified through revenue records; and (iii) destroyed sites are physically inspected. The applicant is provided with a written answer within 15 days of submission.

- Step 2** *Tehsildars* issue certificates of entitlement to certify that the applicant is landless. Lists of verified landless persons are published in newspapers and displayed in public places.
- Step 3** Landless have up to two months following the issue of a certificate of entitlement to negotiate the purchase of new land.
- Step 4** Beneficiaries inform LVUs regarding the details of the land to be purchased.
- Step 5** Financial assistance is transferred to LVUs. Checks must be authorized by the *tehsildar*, all members of the LVU and the accountant.
- Step 6** LVUs arrange dates to disburse checks to beneficiaries through the “one window” operation.
- Step 7** During the “one window” operation, the LVU requests the attendance of various parties including the land buyer, land seller, a representative of a mobile bank and members of the public. Checks are issued to beneficiaries, and sale deeds are registered. Buyers can then cash their check through the mobile bank and purchase their land from the seller. This process is photographed and recorded in the Land Information Management System.

## 4.5 Adjudicating Restitution Claims

Small scale boundary and land ownership disputes are usually resolved through informal measures or under the state legal system. Where courts do not have the capacity to process large numbers of claims, however, utilizing formal legal institutions may lead to delays, compromise the effectiveness of the judicial system, and delay return to the rule of law. In such situations, authorities often introduce expedited processes: these might include legal mechanisms such as specialist or mobile courts, or quasi-legal procedures such as mediation, arbitration or customary dispute resolution.<sup>70</sup> Specialist courts or processes are often preferable because the rules and procedures can be tailored to meet the needs of the affected population and ensure expeditious processing. For example, it may be necessary to adopt more flexible evidentiary standards and burdens of proof in situations where documents proving ownership or other status are likely to have been destroyed. Such courts might be international, national or a combination of both. International solutions are often more appropriate where national court systems are dysfunctional, unpopular, overburdened or lack capacity. Authorities may also offer a variety of dispute-resolution options such as a choice between mediation or court-based adjudication. Where non-judicial mechanisms are utilized, it is important to assess the legal status of outcomes and whether such outcomes can be enforced by local authorities. A further issue is how authorities ensure that non-judicial processes contain minimum safeguards to guarantee due process. Where non-judicial processes are adopted, claimants should always have the opportunity to appeal restitution decisions to the formal legal system.<sup>71</sup>

*Legal procedures should be put in place to consider competing claims to land and property with due process guarantees and without delay. Access to an independent court or tribunal should be guaranteed if the decision is not accepted by both parties.*

IASC C.2.5

1. States should designate specific public agencies to be entrusted with enforcing housing, land and property restitution decisions and judgments.
2. States should ensure, through law and other appropriate means, that local and national authorities are legally obligated to respect, implement and enforce decisions and judgments made by relevant bodies regarding housing, land and property restitution.
3. States should adopt specific measures to prevent the public obstruction of enforcement of housing, land and property restitution decisions and judgments. Threats or attacks against officials and agencies carrying out restitution programs should be fully investigated and prosecuted.

*Pinheiro Principle 20*

*Programs of legal aid and assistance can greatly enhance the speed and quality of restitution claims procedures. Assistance might include the establishment of community education programs to make the claims process easier to understand and less intimidating to increase the likelihood that claimants will submit complete applications. Direct legal aid in the form of dedicated lawyers or paralegals available to assist rights-holders with individual claims can also be highly effective, particularly when dealing with vulnerable populations such as women, orphans or minorities who without assistance might abandon a restitution claim.*

*States should ensure that adequate legal aid is provided, if possible free of charge, to those seeking to make a restitution claim. While legal aid may be provided by either governmental or non-governmental sources (whether national or international), such legal aid should meet adequate standards of quality, non-discrimination, fairness and impartiality so as not to prejudice the restitution claims process.*

*Pinheiro Principle 13.11*

## 4.6 Types of Restitution Claims

(i) Proving a Restitution Claim when Records are Missing or Destroyed

Inability to prove an ownership, rental or other type of right over land does not mean that this right has been extinguished. In situations where state-held or personal documentary evidence has been destroyed by the natural disaster or lost in flight, states will often adopt reduced evidentiary thresh-

olds or allow decision-makers to take into account non-standard documentation such as utility bills or rental receipts in lieu of title deeds or formal lease agreements.<sup>72</sup> In certain situations, authorities may issue interim or qualified property rights whereby rights are granted provided that no restitution claims or counter-ownership claims are filed during a set period of time. The granting of such rights has the advantage of providing some degree of security of tenure to occupants; and it may be a compromise in situations where individuals cannot provide documentation to prove their ownership rights.<sup>73</sup>

5. *States and other responsible authorities or institutions should provide, at the request of a claimant or his or her proxy, copies of any documentary evidence in their possession required to make and/or support a restitution claim. Such documentary evidence should be provided free of charge, or for a minimal fee.*
7. *States may, in situations of mass displacement where little documentary evidence exists as to ownership or rights of possession, adopt the conclusive presumption that persons fleeing their homes during a given period marked by violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution. In such cases, administrative and judicial authorities may independently establish the facts related to undocumented restitution claims.*

*Pinheiro Principle 15*

*Owners, whose land deeds or property documents have been lost or damaged during the natural disaster, or whose land boundaries have been destroyed, should be provided with accessible procedures to reclaim ownership of their original land and property without undue delay.*

*IASC C.2.4*

*Loss of documents proving land tenure and ownership should not be used to impede property rights.*

*IASC D.1.6*

(ii) Proving a Restitution Claim when Land is Unregistered

Although laws differ between jurisdictions, land rights are rarely rescinded simply because ownership has not been registered through a state system. Where land is unregistered, post-disaster registration and mapping programs provide an important opportunity to benefit from the protections offered through registration. In Aceh, the vast majority of tsunami-affected land had been acquired customarily and was hence unregistered. The land mapping process that followed combined the reconstruction and rehabilitation process with land certification. Those who benefited under this program now enjoy greater security of tenure and can use their land as capital for borrowing or investment, stimulating economic growth and development.

1. *States should establish or re-establish national multipurpose cadastral or other appropriate systems for the registration of housing, land and property rights as an integral component of any restitution program, respecting the rights of refugees and displaced persons when doing so.*
2. *States should ensure that any judicial, quasi-judicial, administrative or customary pronouncement regarding the rightful ownership of, or rights to, housing, land and/or property is accompanied by measures to ensure registration or demarcation of that housing, land and/or property as is necessary to ensure legal security of tenure. These determinations shall comply with international human rights, refugee and humanitarian law and related standards, including the right to be protected from discrimination.*

*Pinheiro Principle 15*

(iii) Proving a Restitution Claim when Land is Held under Customary Tenure  
See Chapter 4, Part 5.

### Systematic Land Titling in Post-Tsunami Aceh, Indonesia

In post-tsunami Aceh, determining the legitimate owners of land and property was complicated by the loss of official and customary land ownership records, destruction of boundary markers, land loss through subsidence and the absence of a complete set of cadastral records. Re-establishing a functioning cadastral system was hence regarded as a priority, not only as a means of facilitating timely reconstruction, but also in order to uphold the rule of law, promote economic development, and resolve long-standing land-related conflicts and uncertainties. In response, a mechanism for confirming land rights through systematic land titling – the Reconstruction of Aceh Land and Administration System (RALAS) program<sup>74</sup> – was developed by the National Land Office (BPN) in cooperation with national and international aid agencies. The first step under RALAS was the confirmation of land boundaries through a process of community-driven adjudication. It is important to note that under normal circumstances, all activities involving land mapping would have been undertaken by the BPN, but the tsunami created an unprecedented situation. Homes, roads and other public infrastructure needed to be quickly rebuilt in areas that were either previously unmapped, or whose maps had been destroyed. Replacing these maps was hence regarded as a pre-requisite for implementing reconstruction. To expedite this process, BPN developed a system whereby communities, assisted by specialist NGOs or the BPN, agreed land ownership boundaries and developed their own land maps.<sup>75</sup> The second step involved BPN surveying community-assessed land boundaries and verifying compliance with Community Driven Adjudication procedures. As a final step, parcels of land were registered and land title certificates issued.<sup>76</sup> As at June 21, 2006, 46,740 land parcels had been surveyed, 7,025 titles had been signed and 2,083 land titles had been distributed.<sup>77</sup>

#### Stage 1: Community Driven Adjudication

1. With the assistance of the BPN or NGOs, landowners were required to install boundary stakes and complete an attestation endorsed by neighbors and the village leader regarding their land ownership.
  - where the landowner was deceased, the form could be completed by the deceased's legal heirs.
  - where heirs were minors, the form needed to be completed by a guardian approved by local authorities and confirmed by the Shari'a court; mobile courts would come to villages and conduct hearings free of charge.
2. From these statements, communities would make maps identifying ownership and land boundaries in the village.

#### Stage 2: Surveying and Mapping

3. Communities would inform the BPN that the Community Driven Adjudication process was complete.
4. Accredited BPN surveyors would map agreed land boundaries.
5. BPN would construct a community land map, which would be displayed in the village for 30 days.
6. During the 30 day period, landowners could lodge objections. The BPN adjudication team would investigate and either resolve the dispute through a village meeting or refer the issue to a provincial-level complaints team.

#### Stage 3: Issuance of Land Title Certificates

7. Where no objections were raised in the 30 day period, BPN would issue land certificates to land owners, it should be noted that:
  - where land was jointly owned, parties were encouraged to make land certificates in the name of both the husband and wife; this was compulsory when land was provided by the Agency for Rehabilitation and Reconstruction Aceh-Nias (BRR);<sup>78</sup>
  - where the landowner was deceased, the land certificate was issued in the names of the heirs;
  - where heirs were minors, the "land record" and land certificate were made in the names of such heirs, but a guardian was made responsible for managing such land;
  - where legal heirs had not been identified, or inheritance was contested, only a "land record" was made; the processing of the land certificate was delayed until there was certainty as to the identity of the legal heir(s); and
  - where parcels of land were in dispute, only a "land record" was made and the land boundary was recorded by BPN as a temporary boundary; when ownership was clarified the owner could then register the land at a local BPN office.

(iv) Claims over Abandoned and Unoccupied Land

International standards dictate that the right to return to one's land has no statute of limitations. Some jurisdictions, however, have laws that require active use or continual possession for a property right to remain valid. In times of natural disaster, authorities should consider suspending "abandonment laws", because they can impinge upon a land-holder's right to return voluntarily in safety and dignity. Such laws may also lead to public safety and criminality problems: for example, property users may feel pressured to return to their properties before sites are declared safe. Further, illegal occupation as a means of obtaining ownership rights may increase. International actors should be aware that abandonment laws can be used to facilitate policies of ethnic cleansing or demographic manipulation.<sup>79</sup>

(v) Land-Grabbing and Illegal Land Purchases

The widespread confusion and loss of life that follow a natural disaster can create opportunities for land-grabbing, illegal land purchases and land theft. A particular risk is that the process of constructing or reconstructing official records can be abused by corrupt officials and can equally be used as a motivation to economically or politically strong groups to grab land belonging to refugees and displaced persons and register it as their own. In post-tsunami Aceh, authorities had to rely upon locally reproduced records and attestations of community leaders in order to identify land owners. In certain situations, such leaders registered land belonging to less powerful people, in many cases widows, in their own names, in the names of friends, relatives or powerful community members, or in the names of the actual owner's relatives. Although land acquired illegally does not translate into a land right, the situation becomes more complicated when land is subsequently sold to innocent third parties. In such cases, states may consider extending compensation to include such groups. The primary guard against such practices is the rapid re-establishment of property registration processes.

*States shall not recognize as valid any housing, land and/or property transaction, including any transfer that was made under duress, or which was otherwise coerced or forced, either directly or indirectly, or which was carried out contrary to international human rights standards.*

*Pinheiro Principle 15.8*

*In cases where housing, land and property has been sold by secondary occupants to third parties acting in good faith, states may consider establishing mechanisms to provide compensation to injured third parties. The egregiousness of the underlying displacement, however, may arguably give rise to constructive notice of the illegality of purchasing abandoned property, pre-empting the formation of bona fide property interests in such cases.*

*Pinheiro Principle 17.4*

*Appropriate measures should be taken to protect persons or communities affected by natural disasters – in particularly the poor, women, members of minority groups and indigenous peoples, or those displaced – against undue or illegal attempts by landlords, speculators, local authorities or other actors to deprive them of their property or possessions.*

*IASC C.2.8*

## (vi) The Case of Secondary Occupants

Secondary occupants include persons who take up residence in a home or on land after the legitimate owners or users have fled following a natural disaster. When the original owners wish to take up residence again, the eviction of a secondary occupant may become necessary. Such evictions are not prohibited under international human rights law, provided that legal and procedural safeguards to protect the rights of the secondary occupant are met. IASC principle C.2.10 lists the following procedural protections, which should be met if evictions do take place:

- an opportunity for genuine consultation with those affected;
- adequate and reasonable notice prior to the scheduled date of eviction;
- timely provision of information on the eviction and future use of the land;
- the presence of government officials during the eviction;
- proper identification of all persons carrying out the eviction;
- prohibition of evictions during bad weather or at night;
- provision of legal remedies; and
- provision of legal aid, where needed, to seek redress from the courts.<sup>80</sup>

1. *States should ensure that secondary occupants are protected against arbitrary or unlawful forced eviction. States shall ensure, in cases where evictions of such occupants are deemed justifiable and unavoidable for the purposes of housing, land and property restitution, that evictions are carried out in a manner that is compatible with international human rights law and standards, such that secondary occupants are afforded safeguards of due process, including an opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies, including opportunities for legal redress.*

2. *States should ensure that the safeguards of due process extended to secondary occupants do not prejudice the rights of legitimate owners, tenants and other rights holders to repossess the housing, land and property in question in a just and timely manner.*

*Pinheiro Principle 17*

*States should implement public information campaigns aimed at informing secondary occupants and other relevant parties of their rights and of the legal consequences of non-compliance with housing, land and property restitution decisions and judgments, including failing to vacate occupied housing, land and property voluntarily and damaging and/or looting of occupied housing, land and property.*

*Pinheiro Principle 20.5*

The consequences stemming from forced evictions include job losses and the destruction of livelihoods, interruptions to schooling and the breakup of family and community units. Women and children are particularly vulnerable to the consequences of forced eviction, because they are more vulnerable to exploitation, abuse and trafficking.<sup>81</sup> Forced evictions can also interfere with the enjoyment of other internationally recognized human rights such as the rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, protection from internal displacement, freedom of movement, freedom to choose one's residence, and freedom from arbitrary interference with one's home.<sup>82</sup> Such consequences can be felt even when resettlement options are provided. For these reasons, evictions should only take place as a last resort, and ideally when secondary rights holders have relocation options or can be given assistance with finding alternate accommodation.

*Evictions – in particular those ordered in the context of evacuations and of secondary occupants of property and possessions left behind by the person displaced by the natural disaster – should not render individuals homeless or vulnerable to violation of other human rights. Appropriate measures*

*should be taken to ensure that adequate alternative housing, resettlement, and/or access to productive land is made available to those unable to provide for themselves.*

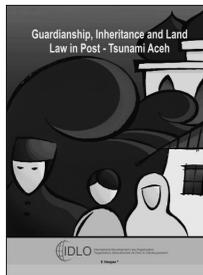
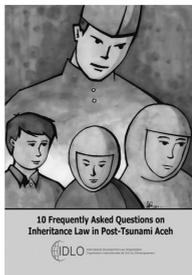
IASC C.2.11

*In cases where evictions of secondary occupants are justifiable and unavoidable, states should take positive measures to protect those who do not have the means to access any other adequate housing other than that which they are currently occupying from homelessness and other violations of their right to adequate housing. States should undertake to identify and provide alternative housing and/or land for such occupants, including on a temporary basis, as a means of facilitating the timely restitution of refugee and displaced persons' housing, land and property. Lack of such alternatives, however, should not unnecessarily delay the implementation and enforcement of decisions by relevant bodies regarding housing, land and property restitution.*

Pinheiro Principle 17.3

### Land Law Training for Village Leaders in Post-Tsunami Aceh, Indonesia

The 2004 tsunami had a crippling effect on Aceh's land sector. Large amounts of land were submerged, boundary markers were destroyed and the vast majority of formal and informal land ownership records in coastal areas were lost. Ensuring clarity of land ownership and protecting land rights were crucial preconditions for the reconstruction process. With approximately 170,000 people either killed or missing, there was uncertainty as to the ownership of land and the inheritance rights of survivors. Compounding this situation was the complexity of inheritance distribution under Islamic law and Acehese custom, coupled with a widespread lack of awareness regarding the substantive aspects of Indonesian inheritance law. In response, IDLO designed the Community Mediation and Legal Skills Training Project – a grassroots response to the numerous and complex legal issues that arose following the tsunami. The project provided four-day training sessions on land, inheritance and guardianship law for up to ten community leaders from 200 villages. Training participants were selected from a cross-section of community leaders, including *geuchik* (village chiefs), *imam meunasah* (religious scholars), *tuha peut* (elders) and women, young people and religious leaders. By raising awareness on important areas of law and building, and enhancing their capacity to resolve disputes fairly and in accordance with legal rights, IDLO helped people to resolve tsunami-related disputes in communities, hence reducing the caseload on the formal justice sector. The resources listed below can be downloaded from the IDLO website at: [www.idlo.int/English/External/IPXpublications-su.asp](http://www.idlo.int/English/External/IPXpublications-su.asp).



#### *What constitutes “forced evictions”, and when are forced evictions acceptable under international law?*

The ICCPR, Art. 17,<sup>83</sup> and the ICESCR, Art. 11.1,<sup>84</sup> provide protection against forced eviction. In its General Comment on ICESCR Art. 11.1, the Committee on Economic, Social and Cultural Rights defines forced evictions as “... the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”. The committee goes on to note, however, that forced evictions can be justified in exceptional circumstances, and when they take place in accordance with human rights law and general principles of reasonableness and proportionality<sup>85</sup>. In the context of natural disasters, “exceptional circumstances” might include (i) the removal of persons from their homes because of a security or public health risk, or (ii) the removal of secondary rights holders from property that is not their own.<sup>86</sup> Where people are removed from their homes for other reasons, for example under policies of ethnic cleansing, in cases of large-scale development projects, or for the purpose of collective punishment, they are illegal. It is important to note that forced evictions can be initiated by state or non-state actors such as private landlords, militia groups or corporations; the principles and standards discussed in this section apply equally to both groups.

#### *Are forced evictions justified when they take place in the context of government acquisition of property for public works or disaster relief?*

Whether a post-disaster construction project would constitute “exceptional circumstances” and hence be considered justifiable as outlined by the Committee on Economic, Social and Cultural Rights will depend upon the individual situation. However, the committee does emphasize that forced evictions can and do take place in the context of development, including land acquisition for infrastructure projects, roads or urban development. It also notes that such projects are undertaken not only by state actors but also by development corporations and international organizations. General Comment 7 goes on to state that if, after exploring all feasible alternatives, evictions must be carried out, the people affected should be provided certain procedural protections, and (i) adequate compensation, (ii) legal remedies, and (iii) alternative housing so that evictees are not rendered homeless or vulnerable to other human rights violations.<sup>87</sup>

## footnotes

- 37** Commentary to Art 1.
- 38** Pinheiro Principle 2.2.
- 39** Housing and Property Restitution for Refugees and Internally Displaced Persons (n 11) 20.
- 40** Pinheiro Principle 12.1.
- 41** Pinheiro Principle 12.4.
- 42** Pinheiro Principle 12.5.
- 43** See also Pinheiro Principle 18.3.
- 44** Pinheiro Principle 19.
- 45** Pinheiro Principle 19.3; See also: Principles 4 and 12.2.
- 46** Pinheiro Principle 4.2.
- 47** Pinheiro Principle 4.1.
- 48** Art. 15.1, 14.2.(h) and 16.1. See also the PACHPRA, Art. 16 and 19.
- 49** Pinheiro Principle 14; See also: Principle 13.
- 50** Housing and Property Restitution for Refugees and Internally Displaced Persons (n 11) 73.
- 51** Pinheiro Principle 13.
- 52** See Pinheiro Principles 13.7, 13.8, and 13.10.
- 53** See Pinheiro Principle 13.3.
- 54** See Pinheiro Principle 13.4-13.5.
- 55** Pinheiro Principle 13.6.
- 56** United Nations 2004. Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons: Progress Report of the Special Rapporteur Paulo Sérgio Pinheiro, Submitted in Accordance with Sub-Commission Resolution 2002/7 (E/CN.4/Sub.2/2004/22) [14].
- 57** Housing and Property Restitution for Refugees and Internally Displaced Persons (n 11) 20.
- 58** IASC, guideline A.1.6.
- 59** Pinheiro Principle 10.3.
- 60** Pinheiro Principle 10.
- 61** See IASC, guideline D.2.2; GPID, Principle 28.1.
- 62** Information supplied by R. Benson, Technical Adviser to BRR; personal communication, 14.11.2007.
- 63** Regulation of Executing Agency Rehabilitation and Reconstruction Agency and the Lives of the People of Nanggroe Aceh Darussalam Province and Nias Island, North Sumatra Province: Number: /KEP/BP-BRR/IV/2006, on Housing and Settlement Proper Construction Standards for the Victims of Earthquake and Tsunami Victims in Nanggroe Aceh Darussalam Province and Nias Island, North Sumatra Province.
- 64** See further Chaudhry (n 4), pp 48-53.
- 65** *Ibid* p 52.
- 66** *Ibid* pp 43-44.
- 67** *Ibid* pp 55-56 for a potential checklist for resettlement.
- 68** Authorities might take into account the following factors when establishing compensation claim criteria: (i) the current market value of land/property, including space for livelihood requirements such as livestock, machinery or workshops; (ii) the replacement value of personal possessions lost, including livestock; (iii) the costs associated with relocation; (iv) increased transport costs from the resettlement site to schools and places of employment; (v) loss of earnings as a result of resettlement; (vi) the increased cost of accessing resources and services such as food, water, healthcare and education; (vii) the monetary value of loss of women's time in the form of extra time spent in accessing resources for daily life; (viii) the value of lost earnings from plants, trees or other vegetation; (ix) the cost of alternative housing, for example where displaced people have had to rent property or stay with extended families before the resettlement location becomes available. S Chaudhry (n 4) p 45.
- 69** In February 2007, the Government of Pakistan requested UN-HABITAT, as chair of the Sub-Committee on Landless of the Social Protection Cluster, to formulate a policy on landlessness in consultation with relevant stakeholders. Between February and March 2007, consultations were undertaken with communities, government officials, experts and NGOs. On 30 March 2007, the ERRA Rural Landless Policy was approved. The Hazardous Lands Policy is expected to be approved and activities to commence in the second quarter of 2008.
- 70** In certain situations, customary systems can deliver effective alternative remedies for resolving disputes or securing restitution rights, particularly where national legal systems are not functioning in a timely, accessible and fair manner. Non-state systems may be more legitimate in the eyes of the population, and more accessible and timely in their decision-making. However, their weaknesses include the risk of discrimination and nepotism, the risk that rules employed may conflict with statutory law, and the risk that procedures may be incompatible with the national legal system and international human rights law.
- 71** Housing and Property Restitution for Refugees and Internally Displaced Persons (n 11) 67.
- 72** These might include verified sale contracts, verified gift contracts, inheritance decisions with legal validity, court decisions on ownership, valid decisions made in administrative procedures, building permits, mortgages or credit agreements, property taxes or income taxes, construction licenses or building permits, usage permits, contracts on use of an apartment, excerpts from official records, decisions on the allocation of an apartment, decisions on apartment rent or rent levels, apartment rent slips, decisions by which apartments are declared abandoned, certifies of place of residence, bills (utility, phone, gas, etc.), pre-war phonebooks, eye-witness testimony, personal identity cards, car registration, census records, personal contracts, dismissal records, photographs, valuation reports and voting records; Housing and Property Restitution for Refugees and Internally Displaced Persons (n 11) 72.
- 73** *Ibid* p 77.
- 74** BPN Decree No. 114-II.2005 On the Land Registration Manual in Post Tsunami Areas, 1.
- 75** To regulate this process and ensure consistency throughout tsunami-affected Aceh, BPN issued Decree No. 114-II.2005 On the Land Registration Manual in Post Tsunami Areas.
- 76** BPN decree no. 114-II.2005, On the Land Registration Manual in Post Tsunami Areas, 1, 5, 7.
- 77** *Multi Donor Fund for Aceh and Nias Project Update June 2006*, p 3 Indonesia, Multi Donor Fund Secretariat.
- 78** "For all land purchased by BRR, men and women's equal rights to land ownership will be protected through joint-titling." BRR Policy Press Statement on Joint Land-Titling, Banda Aceh, 19.09.06. BRR/BPN Joint Agreement.
- 79** Housing and Property Restitution for Refugees and Internally Displaced Persons (n 11) 89.
- 80** The Right to Adequate Housing (Art 11.1 of the Convention on Economic, Social and Cultural Rights); General Comment 7 of the Committee on Economic, Social and Cultural Rights on Forced Evictions, 16<sup>th</sup> session 1997.
- 81** [www.cohre.org/view\\_page.php?page\\_id=90](http://www.cohre.org/view_page.php?page_id=90)
- 82** Annex I, Report of the Special Rapporteur on Adequate Housing, Miloon Kothari, A/HRC/4/18 (5 February 2007), p 6; available at: [www.ohchr.org/english/bodies/hrcouncil/docs/4\\_session/A-HRC-4-18.doc](http://www.ohchr.org/english/bodies/hrcouncil/docs/4_session/A-HRC-4-18.doc); General Comment 7 (n 80).
- 83** Art. 17.
- 84** Art. 11 (1) of the ICESCR has been interpreted as providing legal protection against forced evictions. See General Comment no. 7 (n 80) and General Comment no. 4 (n 14). See also the ECHR and ACHPR.
- 85** ICESCR General Comment no. 7 (n 80) [3 and 14]. See also the procedural protections listed in [15], reproduced in IASC C.2.10.
- 86** ICESCR General Comment no. 7 (n 80) [3].
- 87** *Ibid* [15].

## Part 5: Protecting Vulnerable Groups

### *Can Women Own Land?*

Women's rights to land, property and adequate housing are recognized in a range of international and regional human rights instruments, including the equal right to own, access, use, manage, and control land, housing and property and to take decisions on how such resources should be managed.\*

*States Parties shall ... ensure to such women the right ... (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply*

*Art. 14(2)(h), CEDAW*

*States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights ... to administer property*

*Art. 15(1)(2), CEDAW*

*States Parties shall ... ensure, on a basis of equality of men and women: (a) the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property .... (c) The same rights and responsibilities during marriage and at its dissolution.*

*Art. 16(1), CEDAW*

\*Report of UN Special Rapporteur on Adequate Housing, Miloon Kothari, on Women and Housing, Commission on Human Rights, E/CN.4/2005/43, 25 February 2005. See also CEDAW, Art. 14(2)(h), 15(1)(2) and 16(1).

### 5.1 Women

Disaster-induced displacement removes women from kinship structures that provide basic forms of social insurance against poverty and violence. ... Women require land for a range of needs: housing and physical security, sustenance, livelihoods and access to credit, and social status in times of renegotiated social arrangements.<sup>88</sup>

Lack of security in the area of housing and land deprives women of economic autonomy, physical safety and personal dignity, and serves to marginalize women by contributing to the feminization of poverty and women's continued social subjugation. Without adequate housing, women cannot enjoy other fundamental rights, such as the right to privacy, the right to the highest attainable standard of health, or the right to self-determination.<sup>89</sup>

Women face a variety of risks accessing and protecting rights to land in the aftermath of disaster. First, in some jurisdictions, statutory laws may prevent women from owning, inheriting or leasing land, from renting property or from accessing credit.<sup>90</sup> Even where statutory laws protect women's land rights, these may have little effect in situations where customary law is popularly accepted<sup>91</sup> and such rules place impediments on women's enjoyment of land rights. A further risk is where women cannot benefit from land rights obtained through marriage because they married through a traditional or religious ceremony which is not recognized by the State.<sup>92</sup> Second, even where land rights are protected under law, women are generally less able to assert them. Reasons include lack of access to legal institutions or legal information, particularly for poor and illiterate women, discriminatory formal and informal legal institutions, and social conditioning such as women being pressured by family or communities to give up their rights or to avoid legal action.<sup>93</sup> Third, women may face discrimination, violence and repressive customary practices that deny their property rights: for example, in the aftermath of a natural disaster, women may return to their original homes only to find them occupied by members of their deceased husband's family, or that neighbors have taken advantage of the social turmoil to deny women's claims to land.<sup>94</sup> In some cultures, women

are forced from their homes on divorce or the death of their husbands unless they consent to marry relatives or undergo abusive ritual practices.<sup>95</sup> Fourth, despite most jurisdictions allowing land to be jointly registered to both a husband and a wife or to other joint-owners, in many developing countries joint registration is not widely practiced. Cultural norms such as that men normally handle paperwork and that it is considered respectful to register property in the name of male breadwinners often operate to discourage joint registration. Even where a woman buys, inherits or is gifted land or property, it is often registered in the name of her husband.<sup>96</sup> Registering jointly owned or personally owned property in the name of a husband places women at risk of losing their property rights during inheritance distribution.<sup>97</sup> This risk is particularly high in Islamic societies where property is not automatically inherited by a surviving spouse. Humanitarian actors operating in post-disaster situations should be aware of such practices, particularly when housing or resettlement programs rely on data contained in property registers or documents held by families.

*Specific arrangements should be made to enable women, particularly widows, as well as orphaned children, to (re-)claim housing, land or property and to acquire housing or land title deeds in their own name.*

IASC C.2.6

*Women and men should be treated equally when documents of any kind are issued. Women should be issued documentation in their own names.*

IASC D.1.3

As women are less likely to participate in the public sphere in which relief is organized and delivered, they are at risk of having their unique needs overlooked and their rights abrogated. A common way in which this occurs is where land titles are recorded in the names of heads of household only.<sup>98</sup> In such situations, a woman's access to land is dependent on her link to a husband or male relative, leaving her without access to credit and at greater risk of her land rights being denied in the event that the rights holder dies.<sup>99</sup> For these reasons it is imperative that women are involved in the planning and implementation of housing, resettlement and restitution programs.<sup>100</sup>

### **Women and Inheritance Rights**

Informal and customary inheritance rights play a fundamental role in the transfer of wealth in society; they also relate directly to the protection of women's right to adequate housing and land rights, and are inextricably linked with women's economic autonomy.<sup>101</sup> Almost every society has predetermined rules governing succession of property at its owner's death. In principle, laws of succession and inheritance are designed to counteract the disruptive effect of death on the integrity of the family unit. In many countries, however, discriminatory laws or cultural beliefs and practices prevent women from owning, inheriting, controlling or making use of property following divorce or on the death of a husband, father or other male relative.<sup>102</sup> Under many customary systems, particularly in Africa, inheritance is patrilineal (passing through the male line) or based on primogeniture (inheritance of the estate by the first-born son). Such customs are often based on the assumption that girls do not need property because they will marry and leave the family home.<sup>103</sup> Under Islamic law, women are allowed to own and inherit land, but the shares of women are usually half those of men: a widow is entitled to a fixed 1/8 share of her late husband's estate inheritance if there are children, and 1/4 if there are no children; female children receive half the inheritance of their brothers. It is vital to note, however, that within such systems women and girls are accorded a right to maintenance by male relatives, and hence a right to remain in the home.<sup>104</sup> In some societies, these rules are adapted to meet local needs: for example in the Islamic province of Aceh, Indonesia, customary law has evolved to protect daughters from what are regarded by some to be discriminatory aspects of Islamic inheritance principles. Certain districts, for example Aceh Besar and Aceh Pidie, recognize a form of personal property named *hareuta peunulang*, which is a bequest of non-movable property, either a house or land, to daughters by their parents at marriage. Significantly, although *peunulang* property may be considered "inheritance", it does not form part of the parents' estate, nor does it displace a daughter's normal inheritance rights. In practice, this means that

*peunulang* property is personal property and hence remains under the daughter's complete and exclusive control and should not be shared with other heirs. When such property is factored in to overall inheritance distributions, daughters often receive a greater proportion of inheritance overall than sons.<sup>105</sup>

## 5.2 Children

Vulnerable children such as orphans, child-headed households and girls face unique obstacles with respect to securing and enforcing their rights to land and property. These include a heightened risk of being exposed to property grabbing, illegal land transfer and misuse of land or property assets by guardians. It should be recalled that children inherit restitution rights from their parents, provided they have not accessed an alternate durable solution and have expressly indicated their continued rights associated with the relevant property.<sup>106</sup> If an orphaned child is entitled to inheritance, measures should be taken to ensure that this inheritance is protected, principally by ensuring that land inherited is registered in children's names as opposed to the name of a deceased relative or guardian. Monitoring and safeguards should also be put in place to ensure that guardians do not misuse their ward's property assets.

*Specific arrangements should be made to enable ... orphaned children, to (re)claim housing, land or property and to acquire housing or land title deeds in their own name.*

IASC C.2.6

Children also face obstacles in accessing safe and adequate housing. In the immediate aftermath of a disaster, orphans and children who have been separated from their families are at risk of homelessness, discrimination, violence, trafficking and abduction.<sup>107</sup> Children who are with their families, but who are living in inadequate housing, are more likely to be forced to leave school to earn an income. Such work may involve high-risk activities such as child pornography or prostitution.

### Fact Sheet

- Over 70 percent of the world's inadequately housed people are women.
- Although women account for two-thirds of the world's total working hours, they own less than 1 percent of the world's property.
- In the developing world, one third of children – approximately 640 million – do not live in adequate housing.
- Children living in inadequate housing conditions are too often ravaged by communicable and preventable diseases: each year millions of children suffer from diarrhea, intestinal parasites and acute respiratory infections caused in large part by inadequate housing conditions.
- There are an estimated 150 million street children worldwide. Housing poverty is also a substantial “push factor” for children taking to the streets in order to support themselves and their families.

Sources: [www.cohre.org/view\\_page.php?page\\_id221](http://www.cohre.org/view_page.php?page_id221); [www.cohre.org/view\\_page.php?page\\_id=91](http://www.cohre.org/view_page.php?page_id=91)  
Fact Sheet 1: Women's Rights to Adequate Housing, COHRE, 1.<sup>108</sup>

### 5.3 Non-Proprietary Rights Holders: Renters, Squatters and the Homeless

As compensation is often associated only with land owners, there is a risk that non-proprietary rights holders such as renters will be omitted from restitution processes.<sup>109</sup> The recognition and inclusion of weaker residential rights in remedial programs is important, however, because without access to affordable housing such groups are less likely to reintegrate, find employment and practice livelihoods. In the long-term, such groups may become marginalized, face discrimination and become trapped in the poverty cycle. The Pinheiro Principles clearly state, however, that the rights of "... tenants, social-occupancy rights holders and other legitimate occupants or users of housing, land and property..." be recognized under restitution programs. In the case of renters, the ideal solution is for tenancy agreements to be revived, subject to the same rates and conditions. This can be complicated, however, when inflation has led to increased rental prices or when, in the absence of alternate housing, landlords have reclaimed their houses. When renters are unable to return to their properties, authorities should include renters in alternative housing programs such as resettlement schemes. The case of squatters and homeless people is often more complicated, because restitution is usually not desirable; and in some jurisdictions squatting and homelessness are illegal. The exceptions to this are jurisdictions where squatters enjoy strong rights; in such situations restitution may constitute an adequate solution. It should also be noted that in certain cases people who hold customary land rights may be classified by authorities as squatters or homeless (see Part 5.4). In the absence of any clear policy guidance, decision-makers should be encouraged to develop action plans for providing squatters and homeless people with durable solutions, taking into account the right of all people to adequate housing and the reality that the displacement of such disadvantaged groups will, unless they receive assistance, propel them into further poverty and vulnerability.

*States should ensure that the rights of tenants, social-occupancy rights holders and other legitimate occupants or users of housing, land and property are recognized within restitution programs. To the maximum extent possible, states should ensure that such persons are able to return to and repossess and use their housing, land and property in a similar manner to those possessing formal ownership rights.*

*Pinheiro Principle 16.1*

*States should ensure that users of housing, land and/or property, including tenants, have the right to participate in the restitution claims process, including through the filing of collective restitution claims.*

*Pinheiro Principle 13.6*

#### **Sustainable Solutions for Renters and Squatters in Post-Tsunami Aceh, Indonesia**

In post-tsunami Aceh, renters who were unable to return to their communities because of land subsidence or instability were provided with a number of options. The most attractive was to obtain a free house from a NGO on land provided by BRR or the local government. This would translate into an ownership right under the RALAS program, or to *hak guna bangunan* – a right that could be converted to ownership on payment of a small fee. Alternatively, renters could obtain cash compensation from BRR valued at 40 percent of a basic 36 m<sup>2</sup> house located in Banda Aceh. This cash could be used to rent, build or purchase land on the private land market. It could also be used as a down-payment for subsidized credit through BRR to obtain ownership of BRR-provided housing. Squatters also received similar cash compensation from BRR valued at 25 percent of a basic 36 m<sup>2</sup> house in Banda Aceh.<sup>110</sup>

#### 5.4 Traditional/Customary Rights Holders

Customary tenure<sup>111</sup> is a common form of property ownership in many developing countries, particularly in rural areas. States vary, however, as to the extent to which such rights are recognized and can be converted to statutory title. International standards generally support the registration of customarily held land. The rationale is that the transition from collective tenure to individualized title increases tenure security and optimizes land use. State recognition and protection of individual property rights, for example, encourages owners to make long-term investments in land, increasing its productivity and promoting economic growth.

*States should ensure, where appropriate, that registration systems record and/or recognize the rights of possession of traditional and indigenous communities to collective lands.*

*Pinheiro Principle 15.3*

*Specific arrangements should be made to enable and facilitate recognition of claims to land title and ownership based on prolonged possession, in the absence of formal land titles, especially for indigenous peoples.*

*IASC C.2.7*

It should be noted, however, that schemes requiring the transfer of land held under customary title to individualized property rights can result in inequality, dispossession and conflict.<sup>112</sup> First, the customary rules governing land rights are often complex, fluid, unwritten and may vary significantly over short distances. Without a clear understanding of how such rules operate in society, there is the potential for registration to result in a redistribution or extinguishment of previously held rights. Second, it may be impossible to convert customary rights to modern statutory title. Customary individual land rights, for example, may be inseparable from or intermixed with communal land rights such as agricultural use rights or sharecropping. Third, according to Fitzpatrick,<sup>113</sup> under customary systems "... women are less likely to own land and are more likely to hold usufructuary and access rights e.g. rights to graze livestock and access common property resources".<sup>114</sup> Since land rights formalization programs "... elevate a land owners' ability to exclude outsiders without establishing legal rights of access (easements) that reflect traditional use and access rights", women can be deprived of the rights they previously relied on.<sup>115</sup> Authorities should hence exercise caution when developing land rights conversion schemes, and rather than focusing on individual title, particularly where lands are communally owned, should consider a range of tenure models<sup>116</sup> and employ innovative legal constructs that preserve the rights of users.<sup>117</sup>

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## USEFUL LINKS AND PUBLICATIONS

Vancouver Declaration on Human Settlements  
[www.habitat.igc.org/vancouver/van-decl.htm](http://www.habitat.igc.org/vancouver/van-decl.htm)

Habitat Agenda  
[www.unhabitat.org/content.asp?ID=1176&catid=10&typeid=24&subMenuId=0](http://www.unhabitat.org/content.asp?ID=1176&catid=10&typeid=24&subMenuId=0)

Istanbul Declaration on Human Settlements,  
[www.unhabitat.org/downloads/docs/407-ISTANBUL\\_DECLARATION\\_ON\\_HUMAN\\_SETTLEMENTS-Istanbul\\_Declaration.pdf](http://www.unhabitat.org/downloads/docs/407-ISTANBUL_DECLARATION_ON_HUMAN_SETTLEMENTS-Istanbul_Declaration.pdf)

Islamic Land and Property Research Series (2005)  
[www.unhabitat.org/list.asp?catid=491&typeid=3&AllContent=1&ContentByTheme=277](http://www.unhabitat.org/list.asp?catid=491&typeid=3&AllContent=1&ContentByTheme=277)

Sustainable Relief and Reconstruction - Synopsis from World Urban Forum II & III (UN-Habitat, 2007)  
[www.unhabitat.org/downloads/docs/5501\\_34505\\_SRR%20II.pdf](http://www.unhabitat.org/downloads/docs/5501_34505_SRR%20II.pdf)

Sources 4: Legal Resources for Housing Rights (COHRE, 2000)  
[www.cohre.org/store/attachments/COHRE%20Sources%204.pdf](http://www.cohre.org/store/attachments/COHRE%20Sources%204.pdf)

United Nations Committee on Economic, Social and Cultural Rights, General Comment 4: The Right to Adequate Housing, Art.11 (1) (1991).  
[www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+4.En?OpenDocument)

Sources No. 3: Forced Evictions and Human Rights: A Manual for Action (COHRE, 1999)  
[www.cohre.org/store/attachments/COHRE%20Sources%203.pdf](http://www.cohre.org/store/attachments/COHRE%20Sources%203.pdf)

Basic Principles and Guidelines on Development-Based Evictions and Displacement (E/CN.4/2006/41, appendix). Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living.  
<http://daccessdds.un.org/doc/UNDOC/GEN/G06/118/59/PDF/G0611859.pdf?OpenElement>

United Nations Committee on Economic, Social and Cultural Rights, General Comment no. 7: The Right to Adequate Housing (1997): Forced Evictions.  
[www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+Comment+7.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+Comment+7.En?OpenDocument)

Fact Sheet No. 25: Forced Evictions and Human Rights, 1996. Office of the United Nations High Commissioner for Human Rights.  
[www.unhchr.ch/html/menu6/2/fs25.htm](http://www.unhchr.ch/html/menu6/2/fs25.htm)

Sources 7: Legal Resources on Housing and Property Restitution (2001)  
[www.cohre.org/store/attachments/COHRE%20Sources%207.pdf](http://www.cohre.org/store/attachments/COHRE%20Sources%207.pdf)

220 Tools on Improving Women's Secure Tenure Series 1 (UN-Habitat, 2007)  
[www.glt.n.net/index.php?option=com\\_docman&task=doc\\_details&gid=74&Itemid=19](http://www.glt.n.net/index.php?option=com_docman&task=doc_details&gid=74&Itemid=19)

Women's Rights to Land and Property (UN-Habitat, 2007)  
[www.glt.n.net/index.php?option=com\\_docman&task=doc\\_details&gid=76&Itemid=19](http://www.glt.n.net/index.php?option=com_docman&task=doc_details&gid=76&Itemid=19)

Women's Rights to Land, Housing and Property in Post-Conflict Situations and During Reconstruction (UN-Habitat, 1999)  
[www.glt.n.net/index.php?option=com\\_docman&task=doc\\_details&gid=103&Itemid=19](http://www.glt.n.net/index.php?option=com_docman&task=doc_details&gid=103&Itemid=19)

Gender and Post-Crisis Reconstruction (draft): a Practitioner's Handbook (UN-Habitat, 2007)  
[www.unhabitat.org/downloads/docs/5500\\_35498\\_Gender%20Update%202.pdf](http://www.unhabitat.org/downloads/docs/5500_35498_Gender%20Update%202.pdf)

Mechanisms for Gendering Land Tools: A Framework for Delivery of Women's Security of Tenure (UN-Habitat, 2006)  
[www.unhabitat.org/list.asp?catid=491&typeid=3&AllContent=1&ContentByTheme=277](http://www.unhabitat.org/list.asp?catid=491&typeid=3&AllContent=1&ContentByTheme=277)

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Sources 5: Women and Housing Rights (COHRE 2000)

[www.cohre.org/store/attachments/COHRE%20Sources%205.pdf](http://www.cohre.org/store/attachments/COHRE%20Sources%205.pdf)

Women's Equal Ownership, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing (2005). Commission on Human Rights Resolution, 2005/25.

[http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN\\_4-RES-2005-25.doc](http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-25.doc)

Women and Adequate Housing (E/CN.4/2006/118), February 2006. Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living.

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## AGENCIES WORKING IN LAND AND PROPERTY MANAGEMENT IN DISASTER SITUATIONS

Centre on Housing Rights and Evictions

[www.cohre.org](http://www.cohre.org)

COHRE is an independent NGO that focuses at the international level on the human right to housing and on forced evictions. COHRE's thematic programs include women and housing rights, housing and property restitution, housing rights litigation, the right to water and monitoring, and preventing forced evictions.

Habitat International Coalition (HIC)

[www.hic-mena.org/pnews.asp](http://www.hic-mena.org/pnews.asp)

HIC is an independent international non-profit coalition of organizations and individuals working in the field of human settlements. It works in four thematic areas: housing and land rights, women and shelter, habitat, and sustainable environment.

Habitat for Humanity (HFH)

[www.habitat.org/eca](http://www.habitat.org/eca)

HFH builds and renovates simple homes with the help of home-owner families through volunteer labor and donations of money and materials. HFH works in the post-disaster reconstruction phase to help families to renovate shelters. It is also involved with disaster mitigation and preparedness, building awareness and providing information before disasters strike.

Norwegian Refugee Council (NRC)

[www.nrc.no](http://www.nrc.no)

NRC is a private foundation that works to provide assistance and contribute towards the protection of displaced people. In 1996, NRC launched the Global IDP Survey in recognition of the urgent need for more systematic and regular reporting on the needs of IDPs.

Oxfam International

[www.oxfam.org](http://www.oxfam.org)

Oxfam International works in humanitarian disaster and emergency situations created by war, drought, floods, earthquakes and famine. Its humanitarian work is not limited to crisis response but covers a range of activities such as advocacy, prevention, preparedness, direct response and rehabilitation. Oxfam also supports projects related to land rights and evictions.

Internal Displacement Monitoring Centre (IDMC)

[www.internal-displacement.org](http://www.internal-displacement.org)

IDMC runs an online database providing comprehensive information on internal displacement in 50 countries. On the basis of its monitoring and data collection, IDMC advocates for durable solutions for IDPs in line with international standards, and conducts training to enhance the capacity of local actors to respond to the needs of IDPs.

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Displacement Solutions (DS)

[www.displacementsolutions.org](http://www.displacementsolutions.org)

DS carries out innovative projects focusing on issues of displacement and housing, land and property rights around the world. It also maintains a registry of housing, land and property rights experts with long-term experience in post-conflict and post-disaster contexts.

Global Land Tools Network (GLTN)

[www.gltn.net/index.php?option=com\\_comprofiler&task=registers&Itemid=72](http://www.gltn.net/index.php?option=com_comprofiler&task=registers&Itemid=72)

GLTN works to contribute to poverty alleviation and the Millennium Development Goals through land reform, improved land management and security of tenure.

International Land Coalition (ILC)

[www.landcoalition.org](http://www.landcoalition.org)

ILC is a global alliance of civil society and inter-governmental organizations working to promote secure and equitable access to and control over land for poor women and men through advocacy, dialogue and capacity-building.

United Nations Environment Programme (UNEP)

[www.unep.org](http://www.unep.org)

UNEP is mandated to provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations.

UN-Habitat

[www.unhabitat.org](http://www.unhabitat.org)

UN-HABITAT is the United Nations agency for human settlements. It is mandated to promote socially and environmentally sustainable towns and cities with the goal of providing adequate shelter for all.

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## footnotes

- 88** Fitzpatrick, D. 2007. *Women's Rights to Land and Housing in Tsunami-Affected Indonesia*. Oxford, UK, Oxfam International.
- 89** Fact Sheet 1: Women's Rights to Adequate Housing, p 1. Centre on Housing Rights and Evictions (COHRE).
- 90** [www.cohre.org/view\\_page.php?page\\_id=91](http://www.cohre.org/view_page.php?page_id=91) (17 August 2007).
- 91** Global Land Tools Network. 2006. *Mechanisms for Gendering Land Tools: a Framework for Delivery of Women's Security of Tenure*, p 27.
- 92** Fact Sheet 2: Women's Inheritance Rights, p 3 COHRE.
- 93** Mechanisms for Gendering Land Tools (n 91) 27.
- 94** *Ibid* p 25.
- 95** Fact Sheet 2 (n 92) 1: Mechanisms for Gendering Land Tools (n 91) 25.
- 96** Mechanisms for Gendering Land Tools (n 91) 25.
- 97** Also in the case of divorce, separation, desertion or male migration.
- 98** Fitzpatrick, D. 2007. *Women's Rights to Land and Housing in Tsunami-Affected Indonesia*, p 9. Oxford, UK, Oxfam International.
- 99** Mechanisms for Gendering Land Tools (n 91) 33; Fact Sheet 1 (n 89) 4.
- 100** Mechanisms for Gendering Land Tools (n 91) 29.
- 101** Fact Sheet 2 (n 92) 1.
- 102** Mechanisms for Gendering Land Tools (n 91) 25.
- 103** Fact Sheet 2 (n 92) COHRE, 1. There are other cultures, for example in northeastern Sri Lanka, where the Muslim and Tamil population follows a matrilineal system of property inheritance.
- 104** Fact Sheet 2 (n 92) 2; See also: Mechanisms for Gendering Land Tools (n 91) 3.
- 105** IDLO. 2006. *Guidebook on Guardianship, Inheritance and in Post-Tsunami Aceh*, p 47, Indonesia.
- 106** Housing and Property Restitution for Refugees and Internally Displaced Persons (n 11) 87.
- 107** [www.cohre.org/view\\_page.php?page\\_id=221](http://www.cohre.org/view_page.php?page_id=221) (22 August 2007).
- 108** Centre on Housing Rights and Evictions.
- 109** Chaudhry (n 4). pp 48-53.
- 110** BRR Regulation No 23 on Land Acquisition; BRR Regulation No 21/PER/BP-BRR/VI/2006 on Renters and Squatters, Art. 3.5, 3.6 and 3.9.
- 111** See: 'Types of Land Rights' (Section 1, Chapter 4).
- 112** Williams, R. *Implementation of the Guiding Principles on Internal Displacement in Domestic Law and Policy: Study on Remedies for Violation of Rights to Housing, Land and Property*, p 37. IDP Legislators' Manual, Brookings-Bern Project on Internal Displacement.
- 113** Fitzpatrick, D. 2007. *Women's Rights to Land and Housing in Tsunami-Affected Indonesia*. Oxford, UK, Oxfam International.
- 114** *Ibid* pp 22-23.
- 115** *Ibid*.
- 116** Such as leasehold, rent control, collective occupation, community titling, cooperatives, group land market transactions, shared rentals and adverse possession; See: Mechanisms for Gendering Land Tools (n 91) 25.
- 117** Housing and Property Restitution for Refugees and Internally Displaced Persons (n 11) 79.

## INTERNATIONAL INSTRUMENTS RELEVANT TO LAND AND PROPERTY MANAGEMENT

### The Right to Adequate Housing

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and for his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

ICESR, Art. 11(1)<sup>1</sup>

With a view to ensuring the effective exercise of the right to housing, the Parties undertake measures designed:

1. to promote access to housing of an adequate standard
2. to prevent and reduce homelessness with a view to its gradual elimination
3. to make the price of housing accessible to those without adequate resources

European Social Charter (as amended 1996), Art. 31.

To accelerate their economic social development, in accordance with their own methods and procedures and within the framework of the democratic principles and the institutions of the Inter-American System, the Member States agree to dedicate every effort to achieve the following goals... (k) Adequate housing for all sectors of the population.

Charter of the Organization of American States (1948), Art. 34 (k)

Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care to the extent permitted by public and community resources.

American Declaration on the Rights and Duties of Man (1948), Art. 11

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

UDHR, Art. 17.1

Everyone has the right to a standard living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

UDHR, Art. 25(1)

Social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms, through the attainment of the following main goals: ... (f) The provision for all, particularly persons in low-income groups and large families, of adequate housing and community services.

Declaration on Social Progress and Development (1969)

Adequate shelter and services are a basic human right which places an obligation on governments to ensure their attainment by all people. Beginning with direct assistance to the least advantaged through guided programs of self-help and community action. Governments should endeavor to remove all impediments hindering attainment of these goals. Of special importance is the elimination of social and racial segregation, inter alia, through the creation of better balanced communities, which blend different social groups, occupations, housing and amenities.

Vancouver Declaration on Human Settlements (1976), Adopted by the United Nations Conference on Human Settlements, 1976

4. ... calls for clear priority to be given to legal rules concerning the implementation of the right to adequate housing and aid for rehabilitation and consequently for national legal provisions on vagrancy, where they exist, and particularly those on begging and sleeping rough to be adapted to the resulting requirements.

<sup>1</sup> The Committee on Economic Social and Cultural Rights has stated that the right to adequate housing stems from the right to adequate standard of living enshrined in United Nations CESR Art. 11.1, General Comment 4: The Right to Adequate Housing, 6<sup>th</sup> session, 13 December 1991.

6. ... considers it vital that the rights of the homeless to be housed in decent and appropriate housing suited to their needs be recognized, which implies putting an end to all discrimination, whether legal or moral.
7. ... considers that the punitive classification of homeless persons seeking housing as "intentionally homeless" or "not re-housable", for example, contravenes the basic right of the homeless to be housed.
8. Asks that the right to a home be guaranteed by legislation, that Member States should recognize it as a fundamental right and that no person should be evicted without being re-housed.

Resolution on Shelter for the Homeless in the European  
Community Adopted by the European Parliament in Resolution no. C190/39, 16 June 1987.

The Commission on Human Settlements:

Aware of the right of everyone to an adequate standard of living for themselves and their families, including adequate food, housing, water, and sanitation, and to the continuous improvement of living conditions as stated in paragraph 11 of the habitat agenda ...

Reaffirming the commitment of States, as set out in paragraph 39 of the habitat agenda, to the full and progressive realization of the right to adequate housing as provided for in international instruments ...

4. Requests that all States within the overall context of an enabling approach, to take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing, as outlined in paragraph 61 of the habitat agenda.

United Nations Commission on Human Settlements Res16/7:  
The Realization of the Human Rights to Housing, 7 May 1997

3. ...strongly encourages all governments to pursue effective policies and legislation ensuring the full realization of the right to adequate housing of the entire population concentrating on those currently homeless or inadequately housed, and to take into account the particularly negative impact on housing and living conditions that may result from the adoption of economic adjustment and other policies based exclusively upon the dictates of the free-market.

United Nations Sub-Commission on Prevention of Discrimination and Protection of  
Minorities Resolution 1993/36, The Right to Adequate Housing, 26 Aug 1993

ECOSOC recognizes that the universal declaration of human rights and the international convention on economic, social and cultural rights provide that all persons have the right to an adequate standard of living for themselves and their families, including adequate housing, and that States should take appropriate steps to ensure the realization of this right.

ECOSOC Resolution 1987/62, The Realization of the Right to Adequate Housing, 29 May 1987

The commission on human rights reiterates the right of all persons to an adequate standard of living for themselves and their families, including adequate housing.

United Nations Commission on Human Rights Resolution 1986/36,  
The Realization of the Right to Adequate Housing, 12 March 1986

It should be an objective of national [housing] policy to promote, within the framework of general housing policy, the construction of housing and related community facilities with a view to ensuring that adequate and decent housing accommodation and a suitable living environment are made available to all workers and their families. A degree of priority should be accorded to those whose needs are most urgent.

International Labour Organization Recommendation no. 115 on  
Worker's Housing (1961), Principle 2

The Commission on Human Rights reiterates the right of all persons to an adequate standard of living for themselves and their families, including adequate housing.

Commission on Human Rights Resolution 1986/36,  
The Realization of the Right to Adequate Housing, adopted 12 March 1986

The Commission on Human Rights reiterates the need to take appropriate measures, at the national and international levels, for promoting the right of all persons to an adequate standard of living for themselves and their families, including adequate housing.

Commission on Human Rights Resolution 1987/22,  
The Realization of the Right to Adequate Housing, 10 March 1987

3. Urges all States to cease any practices which could or do result in the infringements of the human right to adequate housing, in particular the practice of forced, mass evictions and any form of racial or other discrimination in the housing sphere.

6. Urges all States to comply with existing international agreements concerning the right to adequate housing, and to this end, to establish ... appropriate monitoring mechanisms to provide, for national and international consideration, accurate data and indicators on the extent of homelessness, inadequate housing conditions, persons without security of tenure, and other issues arising from the right to adequate housing and providing insights into policy, structural and other impediments to the efficient operation of the shelter sector.

Commission on Human Settlements Resolution 14/6,  
The Human Right to Adequate Housing, 5 May 1993.

The right to shelter should be understood as the right to live somewhere in security, peace and dignity. These criteria should be used as benchmarks in planning and implementing shelter programs, taking into account the different circumstances during and after the emergency phase.

IASC, B.2.4

The criteria for adequacy are: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education. Respect for safety standards aimed at reducing damage in cases of future disasters is also a criterion for adequacy.

IASC, C.3.2

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
  - a) essential food and potable water;
  - b) basic shelter and housing.

GPID, Principle 18

8.1 Everyone has the right to adequate housing.

8.2 States should adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.

Pinheiro Principle 8

The criteria for adequacy are accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location and access to essential services such as health and education. Respect for safety standards aimed at reducing damage in cases of future disaster is also a criterion for adequacy.

IASC, C.3.2

### The Right to Privacy in the Home

No one shall be subjected to arbitrary or unlawful interference with his [or her] privacy, family, home or correspondence, nor to unlawful attacks on his [or her] honor and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

ICCPR, Art. 17(1)

Everyone has the right to respect for his private and family life, his home and his correspondence.

European Convention on Protection of Human Rights and Fundamental Freedoms (1950), Art. 8(1)

2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

3. Everyone has the right to the protection of the law against such interference or attacks.

ACHR, Art. 11 (1969)

Every person has the right to the inviolability of his home.

Declaration on the Rights and Duties of Man (1948), Art. IX

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence...".

UDHR, Art. 12

1. Everyone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home.

2. States shall ensure that everyone is provided with safeguards of due process against such arbitrary or unlawful interference with his or her privacy and his or her home.

Pinheiro Principle 6

- a) everyone shall have the right to live in security for himself, his religion, his dependents, his honor and his property.
- b) everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference.
- c) a private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.

DHRI, Art. 18

### The Right to Equality and Non-Discrimination

In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin to equality before the law, notably in the enjoyment of the following rights:...(e) in particular...(iii) the right to housing.

CERD, Art. 5(e)(iii)

For the purposes of the present Convention, the term 'the crime of apartheid', which shall include similar policies and practices of racial segregation and discrimination as practiced in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing or maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

- b) deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;
- d) any measures, including legislative measures, designed to divide the population among racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups ... the expropriation of landed property belonging to a racial group or groups to members thereof.

International Convention on the Suppression and Punishment of the Crime of Apartheid (1973), Art. 2

Particular efforts shall be made to prevent discrimination based on race, color or ethnic origin, especially in the fields of civil rights, access to citizenship, education, religion, employment, occupation and housing.

Declaration on the Elimination of All Forms of Racial Discrimination (1963)

Special measures must be taken to ensure equality in dignity and rights for individuals and groups wherever necessary, while ensuring that they are not such as to appear racially discriminatory. In this respect, particular attention should be paid to racial or ethnic groups which are socially or economically disadvantaged, so as to afford them, on a completely different footing and without discrimination or restriction, the protection of the laws and regulations and the advantages of social measures enforced, in particular in regard to housing, employment, health; to respect the authenticity of their culture and values; and to facilitate their social and occupational advancement, especially through education.

Declaration on Race and Prejudice (1978), Art. 9.2, Proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization, 20<sup>th</sup> session, 27 November 1978

States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and fair distribution of income. Effective measures should be taken to ensure that women have an active role in the development process.

Declaration on the Right to Development (1986), Art. 8(1), adopted by UNGA Resolution 41/128 4, December 1986

1. Everyone has the right to be protected from discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status.
2. States shall ensure that de facto and de jure discrimination on the above grounds is prohibited and that all persons, including refugees and displaced persons, are considered equal before the law.

Pinheiro Principle 3

1. States shall ensure the equal right of men and women, and the equal right of boys and girls, to housing, land and property restitution. States shall ensure the equal right of men and women, and the equal right of boys and girls, inter alia, to voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property.
2. States should ensure that housing, land and property restitution programs, policies and practices recognize the joint ownership rights of both male and female heads of the household as an explicit compo-

ment of the restitution process, and that restitution programs, policies and practices reflect a gender-sensitive approach.

3. States shall ensure that housing, land and property restitution programs, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard.

Pinheiro Principle 4,

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## The Right to Property

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1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

UDHR, Art. 17

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- d) other civil rights, in particular:
- v) the right to own property alone as well as in association with others.

CERD, Art. 5

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: ... (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

CEDAW, Art. 16

1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

ECHR, Art. 1. Protocol no. 1

Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

Charter of Fundamental Rights of the European Union (2000), Art. 17.1

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. Usury and any other form of exploitation of man by man shall be prohibited by law.

ACHR (1969), Art. 21

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

ACHPR, Art. 14

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

ACHPR, Art. 16

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral wellbeing.

ACHPR, Art. 18<sup>2</sup>

<sup>2</sup> In Decision 155/96 "The Social and Economic Rights Action Center and the Center for Economic and Social Rights", Nigeria, 27 May 2002, the African Commission recognized that "... the combined effect of Articles 14, 16, and 18(1) reads into the Charter a right to shelter or housing".

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.
4. States Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.
5. States Parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

ACHPR, Art. 21

Every person has the right to own such property as meets the essential needs of decent living and helps maintain the dignity of the individual and of the home.

American Declaration on the Rights and Duties of Man (1948), Art. 23

Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, States Parties shall grant to women, whatever their marital status, access to adequate housing.

PACHPRA, Art. 16

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs, which are needed:
  - a) to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
  - b) taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

ICESCR, Art. 11

1. No-one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
  - a) pillage;
  - b) direct or indiscriminate attacks or other acts of violence;
3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

GPID, Principle 21

1. Everyone has the right to the peaceful enjoyment of his or her possessions.
2. States shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general Principles of international law. Whenever possible, the "interest of society" should be read restrictively, so as to mean only a temporary interference with the right to peaceful enjoyment of possessions.

Pinheiro Principle 7

- a) everyone shall have the right to own property acquired in a legitimate way, and shall be entitled to the rights of ownership, without prejudice to oneself, others or to society in general. Expropriation is not permissible except for the requirements of public interest and upon payment of immediate and fair compensation;
- b) confiscation and seizure of property is prohibited except for a necessity dictated by law.

DHRI, Art. 15

## The Right to Freedom of Movement/Choice of Residence

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Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

Protocol no. 4 of the ECHR, Art. 2(1)

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Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

American Declaration on the Rights and Duties of Man (1948), Art. 8

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1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
2. Every person has the right to leave any country freely, including his own.
3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.
4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.

ACHR, Art. 22

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1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

ICCPR, Art. 12

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1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.

ACHPR, Art. 12

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4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

CEDAW, Art. 15

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1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

UDHR, Art. 13

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1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

GPID, Principle 14

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Internally displaced persons have: (a) The right to seek safety in another part of the country; ... (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

GPID, Principle 15

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- 9.1 Everyone has the right to freedom of movement and the right to choose his or her residence. No one shall be arbitrarily or unlawfully forced to remain within a certain territory, area or region. Similarly, no one shall be arbitrarily or unlawfully forced to leave a certain territory, area or region.
- 9.2 States shall ensure that freedom of movement and the right to choose one's residence are not subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with international human rights, refugee and humanitarian law and related standards.

Pinheiro Principle 9

'Everyone lawfully within the territory of a State enjoys, within that territory, the right to move freely and to choose his or her place of residence.....The right to move freely relates to the whole territory of a State, including all parts of federal States'.

Human Rights Committee on Freedom of Movement, General Comment no. 27

In accordance with their right to freedom of movement, persons displaced by natural disaster should be provided with the information necessary to exercise their right to decide freely where they want to live – whether they want to return to their homes, to integrate where they are staying during their displacement or to resettle in another part of the country.

IASC, D.2.1

Every man shall have the right, within the framework of Shari'a, to free movement and to select his place of residence whether inside or outside his country and, if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure his protection until he reaches safety, unless asylum is motivated by an act which Shari'a regards as a crime.

DHRI, Art. 12

### Migrants

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting States undertake ... (4) to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favorable than that of their own nationals in respect of the following matters ... (c) accommodation.

European Social Charter (1996), Art. 19

Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to: ... (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), Art. 43.1

### Disabled Persons

All disabled persons, whatever be the origin and nature of their disablement, must be entitled to additional concrete measures aiming at improving their social and professional integration. These measures must concern, in particular, according to the capacities of the beneficiaries, vocational training, ergonomics, accessibility, mobility, means of transport and housing.

Community Charter of Fundamental Social Rights (1989), Art. 29

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. d. To ensure access by persons with disabilities to public housing programs.

CRPD (2006), Art. 28

...no disabled person shall be subjected, as far as his or her residence is concerned, to differential treatment other than that required by his or her condition or by the improvement which he or she may derive therefrom.

Declaration on the Rights of Disabled Persons (1975), Art. 9, Proclaimed by UNGA Res 3447  
9 December 1975

### Elderly Persons

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organizations, appropriate measures designed in particular: to enable elderly persons to choose their life-style freely and

to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of: (a) provision of housing suited to their needs and their state of health or of adequate support for adapting their housing.

European Social Charter (as amended 1996), Art. 23

### Indigenous Peoples

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

United Nations Declaration on Rights of Indigenous Peoples, Art. 10

Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status.

The United Nations Declaration on Rights of Indigenous Peoples, Art. 27  
(still awaiting adoption by the General Assembly)

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Indigenous and Tribal Peoples Convention, 1989 (No. 169), Art. 14

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

Indigenous and Tribal Peoples Convention, 1989 (No. 169), Art. 17

Indigenous peoples have the right to control their lands, territories and natural resources and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence.

Draft Declaration on Human Rights and the Environment, 1994, Art. 14

1. Subject to the following paragraphs of this article, the peoples concerned shall not be removed from the lands which they occupy.
2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.
3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.
4. When such return is not possible, as determined by agreement, or in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guidelines.
5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

ILO Convention No.169 Concerning Indigenous and Tribal Peoples (1989), Art. 16

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

GPID, Principle 9

## Women

States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right...(h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

CEDAW, Art. 14(2)(h)

1. States Parties shall accord women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights ... to administer property ...

CEDAW, Art. 15(1)

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property .... (c) The same rights and responsibilities during marriage and at its dissolution; ... (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

CEDAW, Art. 16(1)

Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, States Parties shall grant to women, whatever their marital status, access to adequate housing.

PACHPRA, Art. 16

Women shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to: ... (c) promote women's access to and control over productive resources such as land and guarantee their right to property.

PACHPRA, Art. 19

1. ... affirms that the discrimination faced by women with respect to acquiring and securing land, property and housing, as well as financing for land, property and housing, constitutes a violation of women's human rights to equality, protection against discrimination and the equal enjoyment of the right to an adequate standard of living, including adequate housing;
3. ... urges governments to take all necessary measures in order to amend and/or repeal laws and policies pertaining to land, property and housing which deny women security of tenure and equal access and rights to land, property and housing, to encourage the transformation of customs and traditions which deny women security of tenure and equal access to rights to land, property and housing, and to adopt and enforce legislation which protects and promotes women's rights to own, inherit, lease or rent land, property and housing.

United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities Resolution 1998/15, Women and the Right to Land, Property and Adequate Housing, 21 August 1998

1. Reaffirms the universal nature and existence of the right to adequate housing in terms of its relevance to all human rights with respect to women.
2. Encourages states to comply fully with all their international and regional obligations and commitments concerning the legally recognized rights of women to land, property, inheritance, adequate housing including security of tenure, an adequate standard of living and continuous improvement of living and housing conditions and to create opportunities for women to acquire training, education and information in all matters related to these rights;
3. Reminds governments of the critical importance of providing women with equal resources and human rights information and education to address the violence they experience in relation to housing, and to enact and enforce laws and policies that protect women against violence in this context;

United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1997/19, Women and the Right to Adequate Housing and to Land and Property, 27 August 1997

1. States shall ensure the equal right of men and women, and the equal right of boys and girls, to the enjoyment of housing, land and property restitution. In particular, States shall ensure the equal right of men and women, and the equal right of boys and girls, to inter alia voluntary return in safety and dignity; legal security of tenure; property ownership; equal access to inheritance; as well as the use, control of and access to housing, land and property.
2. States should ensure that housing, land and property restitution programs, policies and practices recognize the joint ownership rights of both the male and female heads of the household as an explicit component of the restitution process, and that restitution Programs, policies and practices reflect a gender sensitive approach.
3. States shall ensure that housing, land and property restitution Programs, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard.

Pinheiro Principle 4

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### Children

State Parties in accordance with national conditions and within their means shall take appropriate measure to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programs, particularly with regards to nutrition, clothing and housing.

CRC, Art. 27(3)

The child shall have the right to adequate nutrition, housing, recreation and medical services.  
Declaration on the Rights of the Child (1959), Principle 4

Specific arrangements should be made to enable women, particularly widows, as well as orphaned children, to (re-)claim housing, land or property and to acquire housing or land title deeds in their own name.

IASC, C.2.6

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### The Right of Return

26 (t) Create the political, legal, material and social conditions that allow for the voluntary repatriation of refugees in safety and dignity to their countries of origin, and the voluntary and safe return of internally displaced persons to their places of origin and their smooth reintegration into their societies.

Copenhagen Declaration, World Summit for Social Development, 1995

1. Reaffirms the right of all refugees, as defined in relevant international legal instruments, and internally displaced persons to return to their homes and places of habitual residence and are indispensable elements of reintegration, reconstruction and reconciliation.
2. ... reaffirms also the universal applicability of the right to adequate housing, the right to freedom of movement, the right to privacy and respect for the home and the particular importance of these rights for returning refugees and internally displaced persons wishing to return to their homes and places of habitual residence.

United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1998/26, Housing and Property Restitution in the Context of Return of Refugees and Internally Displaced Persons, 26 August 1998

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

GPID, Principle 28

...all refugees and displaced persons have a right to voluntary return, in safety and dignity, to their original or former habitual homes and lands...

Pinheiro, Preamble

Voluntary return in safety and dignity must be based on a free, informed, individual choice and that refugees and displaced persons should be provided with complete, objective, up to date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.

Pinheiro, Preamble

1. All refugees and displaced persons have the right to voluntarily return to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up to date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.
2. States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of state succession, nor can it be subject to arbitrary or unlawful time limitations.
3. Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence. Refugees and displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property.
4. States should, when necessary, request from other States or international organizations the financial and/or technical assistance required to facilitate the effective voluntary return, in safety and dignity, of refugees and displaced persons.

Pinheiro Principle 10

After the emergency phase, persons displaced by the natural disaster should be granted the opportunity to choose freely whether they want to return to their homes and places of origin, to remain in the area to which they have been displaced, or to resettle in another part of the country. Their right of choice may not be subjected to any restrictions except those which are provided by law, and are necessary to protect national security, the safety and security of affected populations, public order (*ordre public*), safety, public health or morals or the rights and freedoms of others. In particular, the return of persons displaced by the disaster to their homes and places of origin should only be prohibited if these homes or places of origin are in zones where there are real dangers to the life and physical integrity and health of the affected persons. Restrictions should only last as long as such dangers exist and only be implemented if other, less intrusive, measures of protection are not available or possible.

IASC, A.1.6

Members of displaced families who wish to remain together should be allowed or assisted to do so during the emergency phase and in the context of return or resettlement.

IASC, D.3.1

Appropriate measures should be taken as soon as possible to establish conditions conducive to sustainable return in safety and dignity. Conditions are considered sustainable if:

- (i) people feel safe and secure, free from harassment and intimidation, as well as from unmitigated risks of further calamitous effects produced by natural hazards;
- (ii) people have been able to repossess their properties or homes, and these have been adequately reconstructed or rehabilitated;
- (iii) people can return to their lives as normally as possible, with access to services, schools, livelihoods, employment, markets etc. without discrimination.

IASC, D.2.2

Appropriate measures should be taken to provide the means to enable persons displaced by the disaster to return to their homes or places of habitual residence, or to remain or to resettle voluntarily in another part of the country.

IASC, D.2.3

### Forced Evictions and Security of Tenure

Collective expulsions are prohibited.

Article 19.1 of the Charter of Fundamental Rights of the European Union

People should be protected from by law against unfair eviction from their homes or land.

Agenda 21 Adopted by the UN World Conference on Environment and Development (UNCED), Ch. 7.9(b), Rio de Janeiro, June 1992

The Commission on Human Rights ... affirms that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing; ... urges governments to undertake immediate measures, at all levels, aimed at eliminating the practice of forced evictions ... to confer legal security of tenure on all persons currently threatened with forced evictions; ... recommends that all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land ... to persons or communities that have been forcibly evicted.

Commission on Human Rights resolution 1993/77, Forced Evictions, 10 March 1993

Recognizing that the practice of forced eviction involves the involuntary removal of persons, families and groups from their homes and communities, resulting in the destruction of the lives and identities of people throughout the world, as well as increasing homelessness...

Draws the attention of the Commission on Human Rights to ... (b) The fact that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing; (c) The need for immediate measures to be undertaken at all levels aimed at eliminating the practice of forced eviction; Emphasizes the importance of the provision of immediate, appropriate and sufficient compensation and/or alternative accommodation, consistent with the wishes and needs of persons and communities forcibly or arbitrarily evicted, following mutually satisfactory negotiations with the affected person(s) or group(s).

Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1991/12, Forced Evictions, 28 August 1991

Governments committed themselves to protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided."

Committee on Economic, Social and Cultural Rights on  
The Right to Adequate Housing, Art. 11.1 Forced Evictions, para 2, General Comment 7, 1997.

Owing to the interrelationship and interdependency which exists among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions."

Committee on Economic, Social and Cultural Rights on  
The Right to Adequate Housing, Art. 11.1 Forced Evictions, para 4, 1997.

The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in paragraph 3 above). Moreover, this approach is reinforced by article 17.1 of the International Covenant on Civil and Political Rights, which complements the right not to be forcefully evicted without adequate protection. That provision recognizes, *inter alia*, the right to be protected against "arbitrary or unlawful interference" with one's home. It is to be noted that the State's obligation to ensure respect for that right is not qualified by considerations relating to its available resources.

Committee on Economic, Social and Cultural Rights on  
The Right to Adequate Housing, Art. 11.1 Forced Evictions, para 8, 1997.

States must recognize that the prohibition of forced evictions includes arbitrary displacement that results in altering the ethnic, religious or racial composition of the affected population.

19 Basic Principles and Guidelines on Development-Based Evictions and Displacement  
(E/CN.4/2006/41)

The ideologies of States are reflected in their human settlement policies. These being powerful instruments for change, they must not be used to dispossess people from their homes or land or to entrench privilege and exploitation. The human settlement policies must be in conformity with the declaration of principles and the Universal Declaration of Human Rights.

Vancouver Declaration on Human Settlements (1976), adopted by the United Nations Conference on Human Settlements, 1976, Chapter II (A.3)

All countries should consider developing national and land-resource management plans to guide land-resource development and utilization and, to that end, should ... establish appropriate forms of land tenure

that provide security of tenure for all land users, especially indigenous people, women, local communities, the low-income urban dwellers and the rural poor.

Agenda 21 Adopted by the United Nations World Conference on Environment and Development (UNCED), Ch. 7.30(f), Rio de Janeiro, June 1992

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement:
  - a) When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
  - b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
  - c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
  - d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
  - e) When it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

GPID, Principle 6

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.
2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons (emphasis added), that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

GPID, Principle 7

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

GPID, Principle 8

1. States should ensure that secondary occupants are protected against arbitrary or unlawful forced eviction. States shall ensure, in cases where evictions of such occupants are deemed justifiable and unavoidable for the purposes of housing, land and property restitution, that evictions are carried out in a manner which is compatible with international human rights law and standards, such that secondary occupants are afforded safeguards of due process, including, inter alia, an opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies, including opportunities for legal redress.
2. States should ensure that the safeguards of due process extended to secondary occupants do not prejudice the rights of legitimate owners, tenants and other rights holders to repossess the housing, land and property in question in a just and timely manner.
3. States should, in cases where evictions of secondary occupants are justifiable and unavoidable, take positive measures to protect those who do not have the means to access any other adequate housing other than that which they are currently occupying from homelessness and other violations of their right to adequate housing. States should undertake to identify and provide alternative housing and/or land for such occupants, including on a temporary basis, as a means to facilitate the timely restitution of refugee and displaced persons housing, land and property. Lack of such alternatives, however, should not unnecessarily delay the implementation and enforcement of decisions by relevant bodies regarding housing, land and property restitution.
4. States may consider, in cases where housing, land and property has been sold by secondary occupants to third parties acting in good faith, establishing mechanisms to provide compensation to injured third parties. The egregiousness of the underlying displacement, however, may arguably give rise to constructive notice of the illegality of purchasing abandoned property, pre-empting the formation of bona fide property interests in such cases.

Pinheiro Principle 17

1. Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.
2. States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control.

3. States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.
4. States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.

Pinheiro Principle 5

Evictions – in particular those ordered in the context of evacuations and of secondary occupants of property and possessions left behind by the person displaced by the natural disaster – should not render individuals homeless or vulnerable to violation of other human rights. Appropriate measures should be taken to ensure that adequate alternative housing, resettlement, and/or access to productive land is made available to those unable to provide for themselves.

IASC, C.2.11

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### Right to Housing and Property Restitution

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1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.

ACHPR (1981), Art. 21

1. All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.
2. States shall demonstrably prioritize the right to restitution as the preferred remedy to displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

Pinheiro Principle 2

1. All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only to be used when the remedy of restitution is not factually possible or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.
2. States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.

Pinheiro Principle 21

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### Camp Management

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Persons displaced by the disaster should, to the maximum extent possible, be provided with the means to recover as quickly as possible and become self-sustainable (even in places of temporary displacement) or with fast rehabilitation assistance for return. Camps are a last resort and should only be established where, and until, the possibility of self-sustainability or fast rehabilitation assistance do not exist.

IASC, A.4.1

The location and layout of camps and settlements for persons displaced by the disaster should be situated in areas with a low natural hazard risk. They should be designed so as to maximize the security and pro-

tection of displaced persons, including women and others whose physical security is most at risk (e.g. children, older persons, persons with disabilities, single-headed households and members of religious and ethnic minority groups or indigenous peoples).

IASC, A.4.2

Security should be provided in camps, in particular by monitoring, through law enforcement personnel and camp committees drawn from among the displaced communities. Appropriate mechanisms to address instances of violence and other violations of the human rights of camp residents should be established.

IASC, A.4.3

Persons affected by the disaster should be able to move freely in and out of camps. Such movement should not be restricted or prohibited unless it is necessary for the protection and of the security or the health of camp residents, or that of the population in the vicinity. If there are restrictions, they should not remain in force any longer than is necessary.

IASC, A.4.4

In order to maintain the civilian character of camps at all times, appropriate measures should be taken to avoid the presence of uncontrolled armed elements in camps and settlements. Where such elements are present, they should be separated from the civilian population in the camp. The presence of armed State police or security forces should be limited to the extent strictly necessary to provide security.

IASC, A.4.5

Once the immediate emergency phase is over, camps set up by armed forces or groups should be managed by civilian authorities or organizations. The role of police and security forces should be limited to providing security.

IASC, A.4.6

### **Protection Against Internal Displacement**

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

GPID, Principle 5

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement:
  - c) in cases of large-scale development projects, which are not justified by compelling and overriding public interests;
  - d) in cases of disasters, unless the safety and health of those affected requires their evacuation; and
  - e) when it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

GPID, Principle 6

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.
2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

GPID, Principle 7

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

GPID, Principle 8

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

GPID, Principle 9



Gretta Fenner and Mirella Mahlstein

Corruption is found in various forms and degrees in every country. Its devastating impacts on poverty alleviation, economic growth and political and social stability have been increasingly acknowledged over the last two decades by the international community. With the entry into force in 2005 of the *United Nations Convention against Corruption* (UNCAC), the first truly global treaty that addresses this matter in a comprehensive manner, worldwide efforts to eradicate corruption have gained new momentum. In addition to this and other publicly led anti-corruption campaigns, a number of programs initiated by private-sector and multi-stakeholder groups<sup>1</sup> have developed since the 1990s. Each of these is an acknowledgement of the responsibility and interest of different stakeholders in an effective, coordinated and efficient fight against corruption. These instruments provide useful guidance for governments as well as private-sector and civil society actors who are committed to contributing to the fight against corruption; their strict and comprehensive implementation is of critical importance. However, certain sectors, types of transactions or situations have been found to favor corruption more than others, and consequently additional and more targeted efforts may be required. This is certainly true for natural disaster situations such as the tsunami that hit Southeast Asia in December 2004, and for Hurricane Katrina in the United States of America and the massive earthquakes in Pakistan in 2005. Such situations are particularly vulnerable to corruption and other forms of abuse of funds because they trigger a massive humanitarian response requiring rapid reaction and inducing a sudden and enormous influx of money, goods and services into a country or region which is in a state of chaos and whose institutions and infrastructure are compromised. The aim of this chapter is to build awareness of the increased and particular corruption risks of natural disaster situations, to illuminate individual risks and respective responsibilities among the different involved actors, and to provide guidance on tools and mechanisms to prevent and detect corruption when it occurs.

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## INTERNATIONAL INSTRUMENTS

United Nations Convention against Corruption (2003)

[www.unodc.org/pdf/crime/convention\\_corruption/signing/Convention-e.pdf](http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf)

United Nations Convention against Transnational Organized Crime (2000)

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African Union Convention on Preventing and Combating Corruption (2003)

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## Part 1. Increased Corruption Risk in Natural Disaster Situations

Natural disaster situations feature some typical characteristics:

- Major natural disasters are often followed by a massive regional or worldwide humanitarian response. The Indian Ocean tsunami that hit South and Southeast Asia in December 2004 is a prime example. Peter Walker, Director of the *Feinstein International Famine Center*, has suggested that one reason for such an enormous reaction was the fact that there are seemingly no moral dilemmas in natural disasters: the victims are seen as truly blameless.<sup>2</sup>
- The humanitarian response is often realized through sudden and huge donations of money: millions or billions of dollars are released for emergency aid and longer-term assistance. In addition, the need for large-scale reconstruction that results from massive destruction triggers substantial economic opportunities for potential suppliers and contractors, and an influx of goods and service providers.
- Affected governments and aid agencies are under enormous pressure to assist quickly, particularly in the immediate aftermath of a disaster.

These characteristics of natural disaster situations potentially favor the risks of and opportunities for corruption and mismanagement in relief and reconstruction operations, as follows:

- The sudden and massive influx of money, goods or services multiplies the possibilities for mismanagement, diversion and corruption. The huge financial and in-kind assistance involved is a dangerous enticement for those with access to it. Implicated actors might reason that diversion will be less noticeable the more money and goods are involved. Hence, there may be less inhibition to participate in corrupt practices, and at the same time the money that can be made through corruption is multiplied.
- The urgent requirement for rapid assistance may lead to an improper needs assessment. The resulting poor targeting, over-supply or under-supply of aid, or the launching of inappropriate projects, create opportunities for exploitation.<sup>3</sup>
- Similarly, pressure to deliver aid quickly and to ensure rapid rebuilding can easily lead to the tendency to bypass standard procedures, in particular procurement rules such as genuine competition and transparency in the allocation of contracts. The procurement laws of many countries in fact provide for an emergency exception clause. Although the need for expedited procedures is understandable, the potential for abuse is increased when there is deviation from standard procurement procedures.
- There is usually an asymmetrical power relationship between the beneficiaries, who are economically and politically weak and dependent on external assistance, and the aid agencies and donors, who largely act voluntarily. Humanitarian aid basically consists of a one-sided resource transfer, in the course of which aid recipients have very few sanctioning powers in relation to aid providers. This power imbalance can result in low levels of transparency and accountability to disaster-affected populations, which in turn increases opportunities for corruption.<sup>4</sup>
- As pointed out by Willitts-King and Harvey<sup>5</sup>, the humanitarian relief system is highly competitive, and in this respect not very different from any other business. If a disaster strikes, there are numerous aid providers ready to deliver their services, provided donors are willing to fund them. Admitting to risks of corruption – be it staff involved in corrupt practices or the aid agency being a victim of corruption – may erode donor trust and hence put the aid provider out of business. Competition may also result in humanitarian actors selecting a relief response in order to enhance their organizational reputation rather than on the basis of a proper needs assessment, which must be qualified as indirect abuse of funds.<sup>6</sup>
- The complexity brought about by the multitude of actors involved in a post-disaster situation also helps to camouflage potential corruption. Lack of coordination among donor organizations, aid providers, government agencies, civil society organizations and private contractors, and the multiple policies and guidelines applied by these stakeholders, may lead to double-funding of the same project and other such forms of direct and indirect fraud or abuse.

- Corruption risks are often increased by shortcomings in the financial and administrative systems of affected states and other actors. A high level of pre-crisis corruption can increase corruption risks in disaster situations. Where specific anti-corruption mechanisms do exist, they are potentially weakened as a result of the catastrophe because the responsible authorities may have other policy priorities following a disaster.
- Natural disasters do not happen in a vacuum: they occur in specific settings each with its own complex social and political fabric. Expatriate staff may lack experience with local conditions such as existing power relations or available land rights. The danger in this is that aid programs could unintentionally reinforce inequalities and disparities in wealth and power at the local level.

## Part 2. Types and Actors of Corruption

The types of corruption that can occur in humanitarian relief and reconstruction operations include fraud, embezzlement, misuse of assets, diversion of aid resources and straightforward bribery.<sup>7</sup> The humanitarian response to a natural disaster can be divided into two distinct phases, which may overlap or take place simultaneously. During the relief phase of a natural disaster, the priority is to save lives and restore basic services. The medium- to long-term reconstruction phase encompasses the restoration of livelihoods and communities, the rebuilding of destroyed infrastructure and a focus on long-term development.<sup>8</sup> Both are prone to different forms of corruption, and always to the detriment of the people most affected by the natural catastrophe.

- In the relief phase, relief supplies such as food, medicines or blankets can be diverted away from affected communities or distributed inequitably, and petty bribery may become necessary to ensure a share in the supplies. Both lead to further marginalization of the real sufferers. Because the intended aid does not reach them, they may need to turn to illicit activities to survive. Straightforward theft of relief supplies is also a major issue in this stage of relief operations.
- In the reconstruction phase, the main corruption risks emanate from attempts to bypass procurement and contracting procedures. Improper planning and contracting processes favoring particular interest groups can lead to inappropriate or substandard infrastructure. As a result, the actual needs of affected people and their safety are ignored in favor of personal gain. Large-scale bribery and accounting fraud are also more likely to occur during this second phase.

The form of corruption that occurs during natural disaster relief and reconstruction operations also varies depending on the actors involved. Four groups of actors have been identified and specific examples of corruption are given for each group:

### (i) Governments/Individual Government Officials of Affected Countries

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State authorities in countries affected by natural disasters play a crucial role in the relief and reconstruction process. They can therefore take decisive action to prevent or curb corruption by implementing rigorous transparency and accountability mechanisms and by coordinating the different aid flows and actors involved. But where accountability, transparency and anti-corruption institutions have been weak before a crisis, they are unlikely to be stronger in an emergency situation. Indeed, the central position of the state in much of the reception, coordination and delivery of aid holds great potential for misuse. Repressive regimes may insist on all aid being delivered through government channels only. If they do not agree to civilian or parliamentary oversight over incoming donations and distribution mechanisms, monies and goods can easily be siphoned off. Government agencies and individual officials may abuse their power to withhold permits for the passage of aid workers and humanitarian goods, and demand bribes for access. Another sensitive area in which government officials may be seduced to corrupt practices is the allocation of land for the provision of shelter to disaster victims. Individual officials may, for example, accept bribes to allocate commercially valuable land to non-beneficiaries.<sup>9</sup> Governments may relax standard procedures for the procurement and contracting of restoration activities in order to ensure rapid reconstruction, a situation that officials or other actors could exploit to commit procurement fraud.<sup>10</sup>

### (ii) Donor Organizations and Aid-Implementing Agencies

This category of actors is composed of a variety of agencies with different but partly overlapping responsibilities and roles. It includes (a) domestic NGOs and civil society groups based in the country affected, either directly implementing their own projects or working as implementing partners of international aid agencies, (b) foreign bilateral government aid agencies, (c) foreign development NGOs such as the Swiss Association for International Cooperation (Helvetas) or Oxfam, and (d) international organizations such as UNDP, UNICEF or the World Bank. Most of these agencies act either as donors funding relief and reconstruction projects or as aid-implementing organizations; some of them can be donors and implementers at the same time. The corruption risks that they face differ, depending on their role in a given situation.

Aid-implementing agencies may defraud donors, for example by faking receipts for relief supplies that were not received and using them to support expense claims. They may also inflate overhead costs or contingency funds in their budgets with the aim of diverting project funds. Aid implementers may bribe donor representatives to secure implementation projects or funding. Unethical management staff could attempt to secure financial support for the same project from two or more donors, thus effecting double funding. Unknown entities may raise funds among the donor community seemingly to assist disaster victims, whereas they are actually so-called “bogus NGOs” – fake organizations. Individual donors are most likely to fall victim to this form of fraud because they do not have the means to verify the true nature of the fundraising organization. Individuals in implementing organizations could budget for “phantom staff” and divert the salaries into their own accounts. Field staff may demand payment or sexual favors from beneficiaries for the supply of goods, or they may pilfer relief supplies in order to sell them on the black market. Agency vehicles could be abused for paid transport services, or employees may be bribed by fuel thieves. Staff may accept kickbacks to favor particular relief suppliers or may demand bribes or other favors to include people on beneficiary lists who do not fit the vulnerability criteria. They may also turn a blind eye to illegal activities such as the supply of fake or out-of-date drugs in return for a pay-off. Project managers may falsify monitoring or evaluation reports to hide evidence of corruption.

Donor organizations can fall prey to the corrupt practices of the implementing agencies or contractors they are funding, or may collude with them. Donors may – unwittingly or not – fund bogus NGOs, release funds for phantom field staff or for substandard construction work. Donor representatives may also accept bribes to favor particular aid implementers. Here, too, evaluation reports can be falsified to conceal problems of corruption. Donor organizations may act wrongly by supporting projects according to their publicity impact rather than actual needs, or fall victim to political power games in the recipient country in their distribution of funds.

### (iii) Contractors and Suppliers

Contractors and suppliers may be tempted by the economic opportunities arising from the need for goods and reconstruction services following a disaster. In-kind aid such as food, medicines or temporary shelters must be provided, and damaged office buildings, homes, roads, bridges, and communications facilities need to be restored or rebuilt. Procurement fraud is a common evil under perfectly normal conditions – but, as previously noted, in disaster situations the procurement process and the awarding of major contracts are particularly prone to corruption. Procurement standards may be relaxed under such circumstances to ensure rapid reconstruction, and this may be exploited by corrupt organizations or companies. Given that huge sums may be involved in reconstruction contracts, there is considerable potential for colluding with awarding authorities or donor agencies that offer kickbacks. Contractors may also deliver substandard infrastructure, for example by using materials of poorer quality and lower price than those budgeted for in order to pocket the difference; a typical example is constructors’ use of diluted cement. With regard to the supply of goods, the distribution of expired medicines or food is also a case in point. The use of substandard materials may also involve bribes to awarding agencies or inspection authorities to ensure acceptance, which can lead to dangerous outcomes for the beneficiaries of such inferior workmanship, for example when the constructions later collapse.<sup>11</sup>

(iv) Individuals in affected areas and ultimate beneficiaries

Local people – whether the intended beneficiaries or local actors who are not affected – can also capitalize on the complexity and opportunities of post-natural disaster situations. Community leaders might offer bribes to government authorities or humanitarian agencies in order to be favored in the distribution of relief supplies or otherwise obtain support for their own particular interests. Local politicians may want to ensure that aid is only supplied in areas where they can count on popular support for their party. Elites and powerful individuals in the community may manipulate beneficiary lists or tax ultimate beneficiaries for received relief supplies. People affected by the natural disaster could, as a result of further marginalization, be forced to engage in illicit activities such as registering twice for distribution of aid goods under different identities, or they may have to bribe agency staff or local elites to maintain their place on beneficiary lists. Eventually, people may claim vulnerability in order to benefit from assistance offered, even if they do not meet the criteria.

**December 26, 2004: Tsunami Hits Southeast Asia**

The tragedy triggered by the 2004 tsunami in the Indian Ocean<sup>12</sup> is a prime example of a natural disaster that has raised serious concerns about corruption in the context of humanitarian relief. The flooding that caused over 220,000 deaths and made many more homeless produced an overwhelming humanitarian response. With billions of dollars being released from all corners of the globe, the fear of mismanagement, waste and corruption in post-tsunami relief and reconstruction efforts was immediately addressed. Expert meetings were held to respond to concerns, and a variety of measures were taken by tsunami-affected countries to prevent such fears from becoming reality. The Government of the Maldives, for example, established the Tsunami Relief and Reconstruction Trust Fund to manage incoming aid; internal, external and performance audits were conducted to detect potential corruption, and the country's existing anti-corruption board was tasked with overseeing the reconstruction effort.<sup>13</sup> Other countries have established similar measures, putting in place monitoring and complaints mechanisms, trying to secure a clear division of labor between relevant institutions, and holding consultations with affected communities. The instruments put in place may have prevented worse outcomes, but they did not succeed in halting corruption altogether.

It was mainly after the principal phase of the disaster relief operation that the degree and dimensions of corruption became clear. A large discrepancy between money pledged and tangible results, for instance, is evident in the massive house reconstruction operation: only about 28 percent of the 98,447 houses required in India had been rebuilt two years after the disaster. Other affected countries exhibit similar if not greater discrepancies.<sup>14</sup> Critics targeted governments in the region but did not spare private contractors and high-profile international relief agencies. Reports on the Indonesian province of Aceh suggest that certain local contractors were using substandard materials for building houses for tsunami victims, thus siphoning off some of the money paid for their services. Many such houses subsequently had to be demolished and rebuilt, which resulted in massive write-offs by the funding NGOs. Other relief organizations were also said to be involved in direct bribery to authorities and key individuals for works contracts.<sup>15</sup>

There was another unwitting but equally harmful abuse in post-tsunami reconstruction: aid organizations being tempted to provide extremely quick assistance and supplies in order to increase their organizational reputation. The risk is that such organizations do not check whether the assistance they are providing is really needed, or whether their funds and energy could be better spent in another form or in another location. A report by AidWatch and Eye on Aceh that analyzed post-tsunami aid in Aceh argues that a lack of consultation and communication with the ultimate beneficiaries resulted in ineffective or inappropriate responses. An example given in the report relates to the replacement of fishing boats: numerous boats had been lost during the tsunami, so providing fishermen with new ones was a real and urgent need. But because of the lack of consultation with local fishermen about the type and size of the fishing boats needed, many of the donated "aid boats" turned out to be inappropriate for fishing in the Aceh region and consequently remain unused.<sup>16</sup>

### August 25-30, 2005: Hurricane Katrina Strikes the Southern Coast of the United States of America

The effects of Hurricane Katrina, which hit the southern coast of the United States of America in August 2005, were most severe in greater New Orleans where many areas are below sea level. On August 29, the storm surge caused numerous breaches in the levees and subsequently flooded approximately 80 percent of the city; 1,800 people are said to have lost their lives. The disaster caused damage worth more than US\$81 billion.<sup>17</sup> The government's poor response exacerbated the humanitarian tragedy: most of the affected population was left to its own devices, at least during the critical stage immediately after the hurricane. An inability to restore law and order resulted in widespread looting.

The fact that corruption among local officials and members of the Orleans Levee Board seems to have long predated Katrina did not help matters. Corruption was further fuelled by the enticement of billions of dollars in federal and state assistance arriving in the region after Hurricane Katrina.<sup>18</sup> Specific accusations of corruption and malpractice in the wake of the flooding were made against local politicians and other actors involved in reconstruction. Beutler (2007) critically analyses the role of construction companies in New Orleans, enquiring how such companies profited from massive federal and private contracts that were agreed at the expense of local employees tasked with cleaning up the city. Lack of regulation and oversight mechanisms on the part of the US Federal Department of Labor (USDOL) meant that reconstruction employers and subcontractors were unfettered by rules and consequently abused and exploited their workers. According to Stuckey (2008), numerous building contractors responsible for repairing or rebuilding destroyed homes in New Orleans are now under investigation for contractor fraud as a result of construction defects and poor workmanship. The article suggests that this type of fraud is more common in the wake of Katrina than ever before in Mississippi.

### October 8, 2005: Pakistan Hit by Earthquake

On October 8, 2005 a deadly earthquake measuring 7.6 on the Richter scale hit Pakistan. Entire cities and villages were destroyed in Azad Jammu and Kashmir (AJK) and the Northwest Frontier Province (NWFP), leaving more than 2.5 million people homeless. In the wake of the catastrophe about 120,000 people were injured and there were approximately 75,000 deaths.<sup>19</sup> Despite concerns about transparency and accountability, US\$6.5 billion in the form of loans and grants were pledged by numerous countries and organizations.<sup>20</sup>

In its report about the political impact of the earthquake, the International Crisis Group (ICG) analyzed several shortcomings in the military government's reaction to the disaster.<sup>21</sup> According to ICG, the emergency response was ill-planned and poorly executed and therefore ineffective. Even though the military was neither capable of assessing the needs on ground nor targeting humanitarian priorities, the Government of Pakistan insisted on controlling the process. There were "... complaints that the army not only arrived too late to offer timely rescue, but [complicated] the relief and rehabilitation activities by centrally deciding who need[ed] what and when and by picking and choosing among the stricken people..."<sup>22</sup>

ICG maintains that the military government rejected civilian control and parliamentary oversight over donations channeled through the official President's Relief Fund for Earthquake Victims 2005. The Federal Relief Commission set up to deal with the aftermath of the earthquake and the Earthquake Reconstruction and Rehabilitation Authority (ERRA) tasked with overseeing reconstruction and rehabilitation were both under military control.<sup>23</sup> As a consequence, accountability and transparency were largely inadequate. Civil administration and Pakistani NGOs and civil society organizations were also sidelined in government assistance activities.<sup>24</sup> In its report, ICG criticizes the military government for accepting humanitarian assistance by banned *jihadi* groups instead of cooperating with civilian institutions, secular political parties and NGOs. In this context, ICG also criticized the international donor community for indirectly backing this situation through their open support of the military government's relief work.

The fact finding mission of the Human Rights Commission of Pakistan (HRCP) also identified failings at the local level in which local officials and people responsible for the distribution of relief goods were found to be

favoring their own supporters or selecting better quality articles for themselves and their relatives.<sup>25</sup> Interviews conducted by Transparency International with local individuals with knowledge about the assistance delivered suggested that the greatest perceived risk was the operation of bogus NGOs that applied for funding but provided no assistance.<sup>26</sup>

### Part 3. Recommendations for Curbing Corruption in Natural Disaster Situations

As the examples above illustrate, preventing opportunities for corruption in relief and reconstruction is fundamental to ensuring that aid eventually benefits the people actually affected by natural disasters. The willingness to address and openly discuss the problem of corruption in humanitarian response is an important pre-condition for this. A starting point for all institutional actors involved in post-disaster aid is a thorough assessment of potential corruption risks in their own operations<sup>27</sup> and subsequently the development and enforcement of standard internal anti-bribery systems. With a view to countering the corruption risks in natural disaster relief operations, the following seven areas<sup>28</sup> should be addressed in particular, jointly and individually.

#### (i) Cooperation and Coordination

As previously discussed, there are often numerous actors involved in post-disaster relief and reconstruction. It is hence crucial that government, NGOs, civil society organizations, donors, aid agencies, the private sector and affected communities work together, and that mutual trust and accountability in the use of resources among all stakeholders be strengthened. Aid agencies can reduce opportunities for corruption and enhance the transparency of their assistance by adopting consistent policies and procedures in aid design, implementation and evaluation.<sup>29</sup> Donors have a particular responsibility to foster regular dialogue among themselves to avoid duplication. Different aid activities need to be coordinated in order to channel resources most effectively and transparently to people affected by a disaster.

#### (ii) Country Ownership

Local actors are generally more familiar with the realities on the ground, and consequently are best placed to assess actual needs.<sup>30</sup> Actors from countries affected by a disaster should generally play a lead role in humanitarian relief and reconstruction operations; this will also generate a sense of country ownership. But it requires that governments commit themselves to establishing comprehensive reconstruction strategies with prioritized and results-oriented action plans, take the lead in coordinating incoming aid, and streamline reconstruction strategies with long-term development policies. Donors and aid agencies should respect host countries' leadership and align their own work with the latter's strategies, though of course not blindly.

#### (iii) Capacity Development

Assistance providers should invest in building capacity among local government and non-government actors to enable them to carry out their leadership functions. In particular, capacity-building in the area of financial and administrative management will support institutions more effectively in overseeing and coordinating relief work. Capacity-building should also foster the establishment or reinforcement of clear policies against fraud and corruption. Beyond the immediate benefit in a humanitarian crisis situation, combining short-term humanitarian assistance with this type of capacity development will contribute to longer-term development goals and ensure a higher degree of sustainability.

It is crucial that assistance providers include local actors such as private-sector companies and the media in their capacity-building work. Businesses may be supported in their internal endeavors to prevent fraud, and the media can be strengthened in their function as watchdogs to report openly on corruption.

#### (iv) Broad Participation in Society

Lack of consultation with the ultimate beneficiaries may lead to inappropriate aid projects and further marginalization of the people most affected. The entire aid process should, therefore, be people-centered and participatory. All stakeholders must be involved in decision-making processes, from the initial needs assessment through project design, procurement, implementation, evaluation, and reporting. A good working relationship with local civil society organizations and affected communities can help to reduce targeting and distribution errors and prevent over-supply or under-supply, thereby ensuring that aid is accurately targeted and efficient.<sup>31</sup> Beneficiary involvement can empower affected communities and strengthen their sense of ownership of relief and reconstruction projects. Emphasis should also be placed on the importance of recognizing and incorporating existing local expertise and the economic capacity of affected communities. If trust funds are established to manage incoming assistance, their boards should contain a cross-section of stakeholders to ensure broad representation.

#### (v) Transparency and Accountability

The involvement of all stakeholders in the aid process can only be guaranteed if there are adequate transparency and accountability systems in place. There is a need to establish mechanisms to track and monitor aid flows from source to end-user. The transparency of the initial needs assessment and the identification of potential beneficiaries can be enhanced by having these assessments conducted by teams as opposed to individuals to ensure mutual supervision.<sup>32</sup> All stakeholders need to be enabled to receive appropriate information that is accessible, harmonized and easily understandable as to funding mechanisms and the relief and reconstruction approaches. Aid recipients particularly need to know about relief and compensation benefits that they are entitled to. The use of local languages and popular communication methods may be necessary in order to attain this goal.<sup>33</sup>

The increased risks of bypassing procurement and contracting procedures in disaster situations have already been highlighted. It is hence crucial to pay particular attention to transparency mechanisms in relation to public procurement processes in order to prevent opportunities for corruption. It is helpful for governments and aid providers to agree on uniform procurement procedures instead of applying a multitude of procurement rules. Wherever possible, national procedures should be utilized. Even though some deviation of standard procurement practices may be inevitable given the urgency of action in natural disaster situations, minimal competitive tendering standards need to be maintained and the allocation of contracts properly documented.<sup>34</sup>

Strong accountability mechanisms are another critical factor in curbing corruption. According to Wiehen (2005), full accountability refers to "... the ability of governments and aid providers to account fully to their own institutions, to any external control bodies, and to the ultimate beneficiaries of aid, for the proper utilization of resources, the quality of the end product, and its effective delivery". Yet, besides governments and aid agencies, other stakeholders such as community leaders, too, need to commit themselves to account for all their activities. In this context, internal and external audit mechanisms are indispensable tools. Although audit mechanisms usually come into effect at a later stage, particularly in short-term humanitarian operations, they play an important deterrence role. However, additional and more immediate methods need to be established that allow misappropriation or diversion of funds to be uncovered while a project is still running. In this context, oversight by and the participation of communities may be particularly effective.<sup>35</sup>

In sum, transparent procedures and sound accountability mechanisms allow all stakeholders to appraise the intentions and the actions taken in relief and reconstruction processes, thus ensuring a sense of belonging and fostering mutual trust and confidence. The imperative for all institutions involved to disclose their activities and intentions pressurizes them to act faithfully and to channel aid to the most needy recipients.

#### (vi) Monitoring, Reporting and Evaluation

Monitoring, reporting and evaluation can be critical tools for accountability and the minimization of corruption risks. They are, however, only effective if they are carried out independently of those responsible for program implementation. Although internal control is necessary, this needs to be complemented by an independent external monitoring capacity. Civil society organizations and beneficiary communities should be enabled to monitor aid flows and evaluate the intermediate and end results of relief and reconstruction projects. Effective complaints mechanisms will enable agency staff, the media and the general public to communicate perceived cases of abuse and corruption throughout the aid process. But such community-led monitoring and evaluation approaches, also called "people's audits", can only be effective if the environment allows for freedom of expression and opinion. In the absence of this precondition, it is essential to provide anonymous channels for reporting corruption and effective whistle-blower protection so that people are able to report abuses freely.

#### (vii) Establishment of Enforcement Mechanisms

Corruption complaints and reporting systems can only be fully effective if there are enforcement measures for dealing with allegations of corruption. Governments and aid agencies need to establish policies that clearly define how corruption is to be dealt with internally and designated sanctions need to be effectively enforced. There have been calls for the establishment of an external system such as an international humanitarian ombudsman with specific legal or administrative powers to investigate corruption allegations and incidents of malpractice.<sup>36</sup> Generally speaking, potential wrongdoers need to be given a clear message that corrupt practices will be investigated and sanctioned.

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## AGENCIES INVOLVED IN FIGHTING CORRUPTION

Basel Institute on Governance

[www.baselgovernance.org](http://www.baselgovernance.org)

The Basel Institute on Governance is an independent and non-profit think-tank and technical assistance provider. It offers policy advice and capacity-building support in anti-corruption, anti-money laundering, and public and corporate governance to public authorities as well as companies and non-governmental organizations worldwide. Through its International Centre for Asset Recovery, it further provides training and case consulting services in the field of tracing, confiscating and repatriating the proceeds of corruption and related crimes, and in the requesting and provision of mutual legal assistance in these matters.

International Group for Anti-Corruption Coordination (IGAC)

[www.igac.net](http://www.igac.net)

IGAC is dedicated to strengthening international anti-corruption coordination and collaboration to prevent undue duplication and to ensure effective and efficient use of existing resources, using systems already in place at the regional and national level. It provides a platform for exchange of views, information, experiences and best practices on anti-corruption activities enhancing the impact of these activities, including support for UNCAC.

Humanitarian Accountability Partnership (HAP) International

[www.hapinternational.org](http://www.hapinternational.org)

HAP International is dedicated to making humanitarian action accountable to its intended beneficiaries through self-regulation, compliance verification and quality assurance certification. An agency certified against the HAP Standard, for example, has been examined and tested through a formal third party independent system against the benchmarks and requirements contained within the HAP Standard and found to be in compliance.

Partnership for Transparency (PTF)

[www.partnershipfortransparency.info](http://www.partnershipfortransparency.info)

PTF aims to assist civil society in playing an effective role in the design, implementation and monitoring of national anti-corruption programs. PTF's activities include financing projects aimed at fighting corruption, providing technical assistance to organizations developing anti-corruption tools, and supporting workshops designed to strengthen anti-corruption efforts and build transparency networks.

Tiri<sup>37</sup> Governance Access Learning Network

[www.tiri.org](http://www.tiri.org)

Tiri works with governments, businesses and civil society to find ways of eliminating corruption and enhancing accountability and integrity, with a view to promoting sustainable and equitable development. It works in areas such as corporate responsibility and ethics, and assists organizations in devising strategies for improving accountability.

Transparency International (TI)

[www.transparency.org](http://www.transparency.org)

TI is a global network of more than 90 locally established national chapters and chapters-in-formation. These bodies fight corruption in the national arena by bringing together relevant players from governments, civil society, businesses and the media to promote transparency in elections, public administration, procurement and business. TI's global network of chapters and contacts also use advocacy campaigns to lobby governments to implement anti-corruption reforms.

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## footnotes

- 1** For example: World Economic Forum Partnering against Corruption Initiative (PACI), TI Business Principles, United Nations Global Compact 10<sup>th</sup> principle, and also various sector-specific initiatives involving a different mix of private-sector actors, civil society groups and public actors.
- 2** Walker (2005), p 90.
- 3** Cf. Walker (2005), p 99.
- 4** This has been suggested by Transparency International (2006), p 2, and Ewins *et al.* (2006), p 13 among others.
- 5** Willitts-King and Harvey (2005), p 41.
- 6** Cf. Ewins *et al.* (2006), p 28.
- 7** Cf. Transparency International (2006).
- 8** Cf. Wiehen (2005), p 49.
- 9** Cf. Ewins *et al.* (2006), pp 58f.
- 10** The risk of procurement fraud is explained with regard to contractors and suppliers in section (iii) below.
- 11** This paper cannot address the issue of pre-existing corruption such as the construction of substandard structures and the deadly consequences it can have in a future natural disaster. For an economic analysis of the connection between public-sector corruption and the death toll from natural disasters, see Escaleras *et al.* (2006).
- 12** The countries most affected were India, Indonesia, Malaysia, the Maldives, Sri Lanka, and Thailand.
- 13** Cf. ADB/OECD/TI (2005): Summary of Proceedings, p 9.
- 14** Cf. Macan-Markar (2006).
- 15** See: Guerin (2006); Macan-Markar (2006); Renner (2006); Tanda and Meier (2007); and Sheridan (2006).
- 16** Cf. Eye on Aceh and AidWatch (2006), pp 11-12, 23, 31.
- 17** Cf. website of the US Department of Health and Human Services.
- 18** See e.g. Johnson (2005) and Jervis (2007).
- 19** Cf. Government of Pakistan, Economic Affairs Division. The ICG Asia Briefing no. 46, p 2, gives the death toll as 88,000.
- 20** A detailed compilation of pledges by country and organization is given on the website of the Economic Affairs Division of the Pakistan Government.
- 21** International Crisis Group (2006).
- 22** HRCP (2006), p 2.
- 23** Cf. HRCP (2006), p 2, and International Crisis Group (2006), p 5.
- 24** Cf. International Crisis Group (2006), pp 1-2.
- 25** HRCP (2006), p 12. See also Ewins *et al.* (2006), p 19.
- 26** Cf. Ewins *et al.* (2006), pp 25, 34.
- 27** Ewins *et al.* (2006) examine the risks of corruption in the provision of humanitarian relief in their report for Transparency International and the U4 Anti-Corruption Resource Centre. The report gives a comprehensive picture of where corruption risks may lie in humanitarian action. The authors emphasize that a context-specific risk assessment needs to be carried out by the actors involved in a disaster setting.
- 28** This part of the paper builds on the proceedings of the ADB/OECD/TI Jakarta Expert Meeting in April 2005. The framework for action suggested has, however, been reorganized and amended in the light of other sources in this paper.
- 29** Cf. Transparency International (2006), p 3.
- 30** It is not contested, however, that embeddedness in local circumstances may incur the risk of involvement in political power games, which in turn may lead to diversion and corruption.
- 31** Cf. Transparency International (2006), p 3.
- 32** Cf. Ewins *et al.* (2006), p 29.
- 33** Cf. Transparency International (2006), p 4.
- 34** Ewins *et al.* (2006), p 39, suggest that international competitive tendering standards may not be the best way of getting cost-effective aid and controlling corruption risks, because they may exclude local expertise and labor in favor of foreign contractors.
- 35** See section (vi) for examples.
- 36** Transparency International (2006), p 4.

The IASC Operational Guidelines on Human Rights and Natural Disasters (2006) note that “Human rights are the legal underpinning of all humanitarian work pertaining to natural disasters. There is no other legal framework to guide such activities, especially in areas where there is no armed conflict. If humanitarian assistance is not based on a human rights framework, it risks having too narrow a focus, and cannot integrate all the basic needs of the victims into a holistic planning process.”<sup>1</sup>

This Manual builds upon this argument. It acknowledges that in the immediate aftermath of a disaster, priority will be given to lifesaving interventions such as evacuations, food aid, emergency shelter and medical assistance. It emphasizes, however, that all aspects of relief and rehabilitation must be structured around the principles of non-discrimination, gender equality and human rights, and with respect for the economic, social, cultural, political and civic rights protected under international law. In short, it is only through the adoption of a rights-based approach to disaster relief that the rights of vulnerable groups can be guaranteed.

In natural disaster situations, the legal system of the affected state provides the primary framework for upholding the rights of vulnerable groups. Accessing and understanding this framework, however, can present certain challenges, particularly for agencies without protection mandates, that are inexperienced in dealing with protection issues and that do not have legal experts on staff. Even when laws are accessible, the legislative or regulatory framework may be outdated, incomplete or inconsistent with international legal and human rights standards. This Manual contributes to overcoming such challenges by identifying the rights and procedural standards in international instruments (including treaty-based law, international customary law as well as international declarations, standards and recommendations) that are relevant to the needs and risks associated with natural disasters. Where affected states are party to international instruments, the Manual assists users in understanding the state’s obligations and how they might be realized. Where states do not have treaty-based obligations, the Manual provides users with a guiding framework for mounting operations when the domestic legal system is unclear, incomplete or in need of reform. The principles and standards discussed can also be used as a basis for advocacy or for assisting authorities develop or amend domestic laws and mechanisms.

This Manual is an inter-agency effort. It draws on the experiences of different agencies, many of which have a long history of providing emergency relief in the wake of natural disasters. Through their contributions, IDLO hopes to have achieved its principle objectives of providing operational and policy guidance to support the development of rights-based approaches to post-disaster rehabilitation; enhancing understanding of the rights and vulnerabilities of different groups affected by natural disasters; and providing information that can be used to assist in the development or reform of national legal and regulatory protection frameworks. IDLO would like to extend its sincere appreciation to all agencies which provided research material, offered feedback and editorial advice, and particularly to those which contributed case studies or chapters. IDLO expects to release updated versions of this Manual in the future and welcomes any comments.

<sup>1</sup> Inter-Agency Standing Committee Operational Guidelines on Human Rights and Natural Disasters: Protecting Persons Affected by Natural Disasters’ (2006), 9.

