**HUMAN RIGHTS IN**

 **POST-DISASTER AND POST-CONFLICT SITUATIONS:**

**RESPONSE TO QUESTIONNAIRE BY THE**

**INTERNATIONAL DEVELOPMENT LAW ORGANIZATION**

 *22 November 2013*

*The International Development Law Organization (IDLO) is pleased to submit the following response to the questionnaire relating to human rights in post-disaster and post-conflict situations, transmitted by the Human Rights Council Advisory Committee (Advisory Committee). In doing so, IDLO hopes to provide the Advisory Committee with relevant information for its consideration during the drafting of its research-based report on best practices and main challenges in the promotion and protection of human rights in post-disaster and post-conflict situations, being drafted pursuant to HRC resolution 22/16.*

## About IDLO

As the only intergovernmental organization with a mandate exclusively focused on the rule of law, IDLO enables governments and empowers people to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity. IDLO seeks to promote a culture of justice by supporting responsive legal institutions, empowered citizens, and legal systems that enable fair outcomes. This includes strengthened legal capacity and rule of law frameworks for disaster preparedness and management, particularly at the local level.

## IDLO’s involvement in post-disaster situations

IDLO has operational experience in the provision of legal rehabilitation assistance to the victims of a natural disaster. An example of IDLO’s work in post-disaster situations, is its involvement in the recovery efforts following the 2004 Boxing Day tsunami in Indonesia. IDLO undertook a number of projects, including legal empowerment activities, with the aim of enabling local populations to be able to uphold their rights in the wake of the tsunami. IDLO has also called for a human rights based approach, coupled with the rule of law, to be applied in responding to, and preparing for disasters (see below press release, for example).

**IDLO Press Release (12 November 2013) – Irene Khan, Director-General**

"As evidence mounts of thousands of lives lost and many more wrecked in the Philippine typhoon, our thoughts and most heartfelt sympathy go out to the victims," IDLO Director-General Irene Khan has said.

“At this key post-disaster moment, it is vital that we establish conditions to restore the dignity of the survivors and protect their rights. All aspects of relief and rehabilitation must be structured around the principles of non-discrimination, gender equality and human rights," Ms. Khan added.

“We must also work to ensure that adequate legal preparedness helps minimize such tragedies in future. Rule of law measures -- good governance, transparent planning processes, rational land-use and climate-conscious development -- are all crucial factors. If we are serious about empowering communities to respond to disasters, then the rule of law is our best ally," Ms. Khan concluded.

<http://www.idlo.int/english/Media/Pages/NewsDetail.aspx?IdNews=461>

IDLO has also produced resources relating to legal standards applicable in natural disaster situations in general, as well as resources and lessons from the specific response to the Indonesian tsunami. The resources are listed below and available from IDLO’s website through the accompanying links:

**General – natural disaster situations**

* *International law and standards applicable in natural disaster situations* (2009)

[http://www.idlo.int/publications/natural\_disaster\_manual.pdf](http://www.idlo.int/Publications/Natural_Disaster_Manual.pdf)

The purpose of the publication is to:

* provide detailed information on provisions contained in treaty-based law that are relevant to upholding human rights in disaster response situations;
* provide operational and policy guidance to support the development of rights-based approaches to post-disaster rehabilitation;
* improve understanding of the rights and vulnerabilities of different groups affected by natural disasters;
* provide practical inspiration for ways to undertake rehabilitation in accordance with international standards; and
* provide information and tools that can be used for advocacy, or to assist in the development or reform of national legal and regulatory frameworks.

***Incorporating human rights in post-disaster responses***

“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.”

*International law and standards applicable in natural disaster situations* (2009), p. 25

**Specific – Indonesia post-disaster response**

* *Sustainable post-disaster response: legal dimensions of the 2004 Indian Ocean tsunami crisis* (2005)

[http://www.idlo.int/publications/31.pdf](http://www.idlo.int/Publications/31.pdf)

* *Pilot needs assessment report: protecting and promoting the legal rights of tsunami children without primary caregivers and/or living with extended family members in Nanggroe Aceh Darussalam* (2007)

[http://www.idlo.int/docnews/181doc.pdf](http://www.idlo.int/DOCNews/181Doc.pdf)

* *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* (2007)

[http://www.idlo.int/publications/acehten%20question%20vol-3-eng.pdf](http://www.idlo.int/publications/AcehTEN%20QUESTION%20VOL-3-ENG.pdf)

[http://www.idlo.int/publications/acehten%20question%20vol-1-eng.pdf](http://www.idlo.int/publications/AcehTEN%20QUESTION%20VOL-1-ENG.pdf)

[http://www.idlo.int/publications/acehten%20question%20vol-2-eng.pdf](http://www.idlo.int/publications/AcehTEN%20QUESTION%20VOL-2-ENG.pdf)

* *20 frequently asked questions on the guardianship of children without parental care in post-tsunami Aceh* (2007)

<http://www.idlo.int/publications/20.pdf>

* *Promoting legal empowerment in the aftermath of disaster: an evaluation of post-tsunami legal assistance initiatives in Indonesia - paper no. 3 in the legal empowerment working paper series* (2010)

[http://www.idlo.int/publications/lewp/lewp\_harper.pdf](http://www.idlo.int/publications/LEWP/LEWP_Harper.pdf)

## Response to questionnaire

**Part I: General**

1. Has your country faced a situation of disaster or conflict? If yes, please indicate below which one or both and kindly proceed to answer the following questions.

* *Not applicable: IDLO is an intergovernmental organization.*

**Part II: Post-disaster situations**

1. What is the role of your organization in attending to disasters? Does it have operational guidelines relating to a human rights-based approach?

* *IDLO has operational experience in the provision of legal rehabilitation assistance to the victims of a natural disaster.*
* *While IDLO does not have institutional operational guidelines relating to a human rights-based approach, the guidance provided by the IDLO publication* International law and standards applicable in natural disaster situations (2009) *provides thorough guidelines on how to respect human rights, including through applying a human rights based approach, in the aftermath of disasters.*

2. Do you have a specialized mechanism to monitor human rights protection and promotion during disasters?

* *No.*

3. Are you involved in capacity-building of Government officials on a human rights-based approach to relief, recovery, reconstruction and rehabilitation after a disaster?

* *During IDLO’s operations in Indonesia, IDLO produced and disseminated numerous resources regarding the rights of local communities. The primary purpose of these were to enhance the awareness of rights among local populations, however a secondary purpose was to improve the knowledge and awareness of the communities’ rights among decision-makers and community leaders.*

4. Have you noticed any discrimination or neglect in provision of services, relief, etc? Are there protections/standards in place by the Government to ensure non-discrimination and the respect of the humanitarian principles of neutrality, independence, impartiality and humanity in the provision of services, relief, etc.?

* *As noted in the IDLO publication* International law and standards applicable in natural disaster situations (2009) *vulnerabilities can be exacerbated in post-disaster situations. For example, where governments have not passed legislation which upholds gender equality, or have failed to repeal or amend discriminatory laws, this may be used against vulnerable groups such as women in times of disaster.*
* *Another issue raised in* International law and standards applicable in natural disaster situations (2009) *is where aid distribution is given on a discriminatory basis, including where sex-disaggregated data is not collected, and aid is provided solely to the heads of households, which can have the effect of excluding women.*
* *Discrimination can also occur against minority groups. These groups can be particularly vulnerable in the aftermath of disasters for a variety of reasons, including because:*
	+ *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 have small and geographically limited social networks, meaning that in the case of a natural disasters, they may be less likely able to call upon such networks, for example from relatives living in non-affected locations, for assistance and support;*
	+ *in disaster 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 populations may need to be sheltered together, and where the minority group is discriminated against, this can lead to violence, exploitation and abuse; and*
	+ *aid distribution may favor particular groups over other groups, which can potentially heighten tensions.*

5. What are the biggest challenges you notice that the Government faces in post-disaster situations?

* *The challenges faced by governments in post-disaster situations will vary greatly depending on the context that the disaster occurred in. While there are many challenges that governments will face in post-disaster situations, IDLO, in accordance with its mandate, would highlight challenges around upholding the rule of law. In particular, these challenges may include difficulties in ensuring:*
	+ *the equal application of laws and regulations;*
	+ *the fair and inclusive operation of both formal and informal disputes resolution mechanisms;*
	+ *that the human rights of all, and particularly vulnerable groups, are upheld; and*
	+ *all entities, including the state, are accountable under the law.*

6. What are the biggest challenges that your organization faces in post-disaster situations?

* *Some challenges for IDLO identified during the post-disaster operations in Indonesia included:*
	+ *Difficulties in accessing remote communities, and providing assistance that could reach all affected populations.*
	+ *Weak rule of law cultures and widespread mistrust of state institutions, coupled with a marginally functional formal legal system, means that interventions must be comprehensive, integrated and long-term. This creates challenges with the limited time and financial resources that many response programs have.*
	+ *Coordination with partners, particularly in regard to many small scale programs, produces wider benefits.*
* *For a broader discussion on the implementing challenges and successes, please see the IDLO publication:* Promoting legal empowerment in the aftermath of disaster: an evaluation of post-tsunami legal assistance initiatives in Indonesia - paper no. 3 in the legal empowerment working paper series (2010).

**Part III: Post-conflict situations**

IDLO works to strengthen the justice sector and judiciary in various post-conflict societies, including Afghanistan and Somalia. Examples of IDLO’s justice sector strengthening include:

* Creating specialized Violence against Women Units, which investigate and prosecute crimes of violence against women and girls in Afghanistan.
* Providing judicial training in South Sudan to increase the judiciary’s capacity to safeguard procedural legal rights, apply substantive laws and articulate judicial reasoning.
* Providing assistance in the drafting of the Somalia Provisional Constitution, and working to strengthen public support for the constitution by ensuring the consultation of Somali refugees. The Constitution gives equal rights to all before the law, outlaws child marriage and bans female genital mutilation.
* Supporting the design and implementation of the 2012 Kenyan Constitution.
* Creating a Judicial Candidate Training Program and implementing training of judges in Kyrgyzstan.

## Further information

For further information please:

* visit IDLO’s website at: [www.idlo.int](http://www.idlo.int/HomeIDLO/index.html); or
* contact IDLO’s Research and Learning Department at rp@idlo.int.