



International Disaster Response Law (IDRL) in Afghanistan

A study for strengthening the legal and policy framework for international disaster response in the Islamic Republic of Afghanistan

Prepared by



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2. Enable healthy and safe living.
3. Promote social inclusion and a culture of non-violence and peace.

About this report

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

About the Disaster Law Programme

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

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Cover photo: Afghan Red Crescent Society (ARCS) with the support of International Federation of Red Cross and Red Crescent Societies (IFRC) distributed clothes and blankets to 1,900 vulnerable and snow-affected families in Kabul on 12 February, 2012. Ali Hakimi/IFRC

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Acronyms and Abbreviations

ANDMA	Afghanistan National Disaster Management Authority
ANDS	Afghanistan National Development Strategy
ARCS	Afghan Red Crescent Society
CBO	Community based organization
DM	Disaster management
DRR	Disaster risk reduction
EOC	Emergency Operation Center
HFA	Hyogo Framework for Action
IAEA	International Atomic Energy Agency
IDRL	International Disaster Response Law
IFRC	International Federation of Red Cross and Red Crescent Societies
MAIL	Ministry of Agriculture, Irrigation and Livestock
MoCI	Ministry of Commerce and Industries
MoE	Ministry of Economy
MoF	Ministry of Finance
MoFA	Ministry of Foreign Affairs
MoPH	Ministry of Public Health
NDMC	National Disaster Management Commission
NDMP	National Disaster Management Plan
NDRRP	National Disaster Risk Reduction Plan
NDRRP	National Disaster Response and Recovery Plan
NEOC	National Emergency Operation Center
NGO	Non-governmental organization
OECD	Organization for Economic Co-operation and Development
PDMC	Provincial Disaster Management Commission
SNAP	Afghanistan Strategic National Action Plan for Disaster Risk Reduction
VAT	Value-added tax
WHO	World Health Organization

Acknowledgements

The Afghan Red Crescent Society, on behalf of the Government of the Islamic Republic of Afghanistan and in partnership with the International Federation of Red Cross and Red Crescent Societies (IFRC), gratefully acknowledge Australian Red Cross and AusAID for their financial support.

The IDRL study was planned and initiated by the Afghan Red Crescent Society, and Mr. Hashmat Khalil Nadirpor, an independent legal researcher, was assigned to undertake the research accordingly.

The research was undertaken with inputs from the Afghan Red Crescent Society and the Afghan National Disaster Management Authority, with oversight and technical guidance from Ms. Tessa Kelly and Mr. David Fisher of the IFRC, and Mr. Abdul Rahman Kalantary of the Afghan Red Crescent Society.

Executive Summary

This report was prepared to review Afghanistan's legal framework for receiving international disaster assistance. It contains an assessment of how the current legal framework facilitates international disaster relief during a disaster as well as an analysis of the legal capacity of government to supervise the coordination, organization, and quality of such international assistance. The report also examines the legal preparedness of Afghanistan while acting as an assisting State for another disaster-affected country or serving as a transit State for international humanitarian relief items.

In this report, the relevant Afghanistan laws, policies and practices were assessed against the recommendations contained in the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (also known as IDRL Guidelines). The IDRL Guidelines were adopted by the state parties to the Geneva Conventions at the 30th International Conference of the Red Cross and Red Crescent Societies in 2007, as a set of recommendations for governments on how to prepare their domestic legal frameworks for international relief operations.

In reviewing the current legal framework of Afghanistan, this report finds a number of strengths in the existing rules relevant to international disaster assistance. The Disaster Management Law is, in comparison to many countries in the region, advanced in terms of containing provisions relating to the facilitation on international assistance. For instance, the Disaster Management Law provides that air and land vessels carrying international relief items, equipment or operational teams enjoy certain flight privileges and are exempted from landing, transit, airport and customs service fees and other customs duties. The Non-Government Organization Law waives the requirement to obtain prior permission from relevant authorities for the recruitment of foreign workers by organizations in emergencies. The Law on Telecommunication Services provides exemptions for the use of telecommunication equipment in the event of natural disasters, without requiring prior approval by the Afghanistan Telecom Regulatory Authority.

Despite having a number of aspects that align with the IDRL Guidelines, Afghanistan's legal framework can be further improved in certain areas to ensure it is better prepared for international disaster assistance. This report makes a number of findings, including:

- There is no clear procedure for calling international assistance and determining when and how assistance may be terminated.
- Further guidance within the legal framework is needed to address the coordination and facilitation of international assistance in the event of a disaster.
- The legal framework does not provide any measure to screen potential international humanitarian organizations or monitor their relief operations to ensure quality and accountability standards are complied with.

Executive Summary

Taking note of these findings, this report sets out a series of recommendations. Primarily, the report recommends the development of a new law for international disaster assistance. While consideration was given to amending a range of different laws in the development of these recommendations, it was felt that developing a single text incorporating most of the issues relevant to international disaster relief would be the most feasible option for strengthening the legal framework in Afghanistan, given the time it would take to amend a collection of other laws. In order to prevent conflict between existing laws in Afghanistan covering customs, immigration and other relevant topics, it is also proposed that the new law on international disaster relief override the application of other laws during emergency situations. These recommendations can be summarized as follows:

1. A new law on international disaster relief should establish a clear procedure for assessing the need for international disaster assistance and issuing a request. It should include detailed provisions on the process of initiating, coordinating, and terminating international disaster assistance.
2. A new law on international disaster relief should establish a system for assisting international actors to pre-register as Eligible Actors, in order to receive certain legal facilities. Eligibility of assisting actors should be based on certain criteria such as the provision of documents evidencing their legal personality in a foreign jurisdiction, previous experience and current capacity in providing relief assistance, as well as their ability to comply with the responsibilities described in Part 4 of the IDRL Guidelines.
3. The new law on international disaster relief should provide that Eligible Actors will be provided with certain legal facilities, such as expedited entry and transit of relief goods and personnel and exemption from certain restrictions.

By adopting the recommendations provided above, Afghanistan can significantly improve its capacity to properly regulate and facilitate international disaster assistance in emergencies beyond the capacity of the Afghan government. With a strong legal framework in place, people affected by any future disaster in Afghanistan will receive well-coordinated and high quality assistance at the time when they need it most.

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Part 1: Background

1.1 Background to the Review

In October 2012, the Afghan Red Crescent Society (ARCS) and Afghanistan's National Disaster Management Authority (ANDMA) signed a landmark memorandum of understanding (MoU) aiming to improve the government of Afghanistan's legal preparedness for international disaster response. Under this MoU, the two parties assumed certain responsibilities, namely the administration of the current disaster preparedness legal review by ARCS with support from IFRC, and facilitation of meetings and consultations with stakeholders for the enrichment of the legal review by ANDMA.

1.2 Scope and Methodology

The scope of this research focuses on the facilitation and regulation of international assistance in non-conflict disasters, both natural and man-made. However, the legal framework for disaster management in Afghanistan has been taken into consideration as a whole for the purpose of identifying the gaps and barriers in the facilitation and regulation of international disaster relief. Additionally, international frameworks on disaster management have also been reviewed.

This project involves a comprehensive research and review of the following literature:

- All relevant legal instruments such as the constitution, laws, regulations, policies, plans and procedures relating to international disaster response and disaster management in Afghanistan.
- Reports, studies, and statistics on relief operations in Afghanistan.
- Information gathered through interviews with relevant stakeholders from various governmental, non-governmental and international agencies.

At the end of the analysis, recommendations were given in accordance with the Guidelines for the domestic facilitation and regulation of international disaster assistance and initial recovery assistance (the IDRL Guidelines) and the Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance ("the Model Act") (described further in part 3.1 below) with a view to reduce legal restrictions and gaps recognized in the research and improve legal preparedness in emergency situations.

The legal research was undertaken by a consultant, Mr Hashmat Nadirpor, placed within the ARCS, with oversight from the IFRC Afghanistan Delegation and technical input from the IFRC's Disaster Law Programme. Financial support was provided by the Australian Agency for International Development (AusAID), through the Australian Red Cross.

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Part 2: Country Background and Risk Profile

2.1 Country Background

Afghanistan is located in Central Asia. It is a land-locked country bordered with Pakistan to its east and south, Iran in the west, Turkmenistan, Uzbekistan and Tajikistan in the north and China to the northeast. Afghanistan's terrain is dominated by rugged mountains, which generally run from the northeast to the southwest. Mountains occupy all but the north-central and southeast of the country, which are dominated by plains. The main rivers are the Amu Darya (800 km), the Harirud (850 km), the Helmand (1,000 km) and the Kabul (460 km). Afghanistan is believed to have substantial mineral resources of which most remain unexploited. These resources include natural gas, petroleum, coal, copper, chromites, talc, barites, sulfur, lead, zinc, iron ore, salt, and precious and semi-precious stones.¹

Afghanistan has experienced decades of war. The country was invaded by 80,000 Soviet troops in 1979, resulting in a decade-long war. Between 1979 and 1989 the Soviet-sponsored regime failed to defeat the *Mujahideen* who opposed the occupation. Consequently in 1988 the Soviet Union agreed to establish a neutral Afghan state withdrawing its troops in 1989. The agreement ended a war but did not settle differences between the government and the *Mujahideen* which resulted in another decade of civil war and establishment of the Taliban regime in 1996.

After the defeat of the Taliban regime by the United States and its allies in the fall of 2001, Afghan leaders signed the Bonn Agreement forming an interim government under the leadership of Hamid Karzai. Aiming to establish a democratic government, Afghanistan ratified a new constitution in 2004 and Hamid Karzai was elected as president of the Islamic Republic of Afghanistan.

With a population of roughly thirty and half million people,² Afghanistan is one of the poorest countries in the world due to decades of civil war, natural disasters and lack of development. Afghanistan's economy which has always been significantly agricultural was destroyed by the wars of 1980s and 1990s. Since 2001 the economic recovery achieved has been based on large-scale international assistance pledged by donors in multiple conferences on Afghanistan. The recent Tokyo Conference on Afghanistan in July 2012 pledged \$16 billion over four years.

2.2 Country Risk Profile

Afghanistan is prone to natural disasters such as earthquakes, flooding, droughts, landslides, avalanches and sandstorms which cause the loss of lives, livelihoods, and properties. Located in an area of high-seismic activity, earthquakes are relatively frequent particularly in the north and northeast regions and often trigger landslides. The country has experienced 130 events of disaster in the period of 1980 and 2010 which resulted in a death toll of 19,655 and affected more than 6 million people.³

Extreme climate and harsh geo-physical conditions, widespread poverty and underdevelopment together with extensive conflict has brought about high vulnerability and a

1 CIA World Factbook, 2013, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html>

2 Ibid.

3 Afghanistan-Disaster Statistics, available at <http://www.preventionweb.net/english/countries/statistics/?cid=1>

Country Background and Risk Profile

breakdown of coping mechanism at the community level. In addition, more than three decades of conflict has caused huge human loss, resulting in more than 5 million refugees, infrastructure damage, and slow developmental progress.

Earthquake

The north-eastern part of Afghanistan is exposed to medium and large scale earthquakes as the country lies along the active Indo-Eurasian tectonic boundary. Among the 32 provinces, earthquakes generally happen in the provinces of Takhar, Badakhshan, Samangan and Baghlan.⁴ Kabul city, the capital, is also vulnerable to earthquakes. This densely populated city is at high risk of severe impact from earthquakes due to rapid urbanization and population growth leading to unsafe and non-standard construction practices.

Between 1980 and 2010, earthquakes claimed around 8,500 lives and caused serious property and infrastructure damages.⁵ The most destructive earthquake occurred in March 2002 in Baghlan province. According to CNN, the magnitude 6 quake caused around 1,800 deaths and destroyed an estimated 30,000 homes.⁶

Flood

Floods regularly occur in Afghanistan as flash-floods and gradual excess precipitation floods. Winter floods start in January and continue until May.⁷ 21 out of 34 provinces, most of which are western and central provinces are vulnerable to floods.⁸ Since no measurements are being conducted on rainfall intensities, there is no systematic monitoring system and enough information on floods and their causes. In addition, a national database does not exist to predict floods caused by high water accumulation in the mountains, since most of the precipitation in Afghanistan falls in the winter and in the form of snow which accumulates in the high mountains.⁹

The country is mostly vulnerable to flooding during spring. According to ANDMA, between July and August 2010 more than 220,000 individuals were affected by flash floods. A recent flash flood in May 2010 in the northern province of Sari-Pul killed around 50 people and left thousands homeless.

Drought

Drought occurs frequently in Afghanistan which is not uncommon for dry areas in the world.¹⁰ Based on an analysis of climate and drought records by Asian Development Bank (ADB), small area droughts in parts of the country return every 3 to 5 years, whereas droughts covering large areas happen every 9 to 11 years.¹¹ Of the 34 provinces,

⁴ Afghanistan Hazard Profile, available at http://www.saarc-sadkn.org/countries/afghanistan/hazard_profile.aspx

⁵ Afghanistan-Disaster Statistics

⁶ Afghan quake toll uncertain, available at http://articles.cnn.com/2002-03-26/world/afghanistan.quake_1_hindu-kush-nahrin-afghan-quake-toll?_s=PM:asiapcf

⁷ Afghanistan's National Disaster Management Plan 2010, at 8

⁸ South Asia Disaster Report 2008

⁹ CPHD Report 2011, Floods and droughts: the Afghan water paradox by Jelle Beekma and Joel Fiddes

¹⁰ Ibid.

¹¹ Afghanistan Hazard Profile available at http://www.saarc-sadkn.org/countries/afghanistan/hazard_profile.aspx

droughts frequently occur in the provinces of Herat, Ghor, Uruzgan, Ghazni, Faryab, Jawazjan, Balkh, Samangan, Kunduz and Badakhshan.¹² The rest of the country is at medium or low risk of drought.

The most recent reported droughts were a long event from 1997 to 2004 and in 2008. The analysis of the drought from 1997 to 2004 was based on a 'running anomaly' of average precipitation records and was reported as one of the most rigorous droughts in climatic history of Afghanistan.¹³ Furthermore, the 2008 drought has been identified as the most severe drought in living memory.¹⁴

Traditionally, agricultural communities affected by drought were compelled to sell livestock and land, migrate to cities or neighbouring countries for paid work, or take loans that they could not repay; hence adding to the cycle of poverty and extreme vulnerability. Drought coupled with conflict have produced internally displaced populations (IDPs) living in very poor conditions. A large number of communities continue to depend on barely sufficient income earned by migrating outside their farmland.

Conflict

Although this report will not be examining regulatory frameworks related to humanitarian assistance in conflict, it is important to acknowledge the major impact conflict has had on Afghanistan. In the last 30 years, armed conflict and general insecurity have resulted in 'conflict-induced' internal displacements throughout the country.¹⁵ According to UNHCR, since the fall of the Taliban regime in 2001, a huge increase in internal displacement has been witnessed in the last few years.¹⁶ The conflict has primarily affected southern, eastern and western regions and continues to produce the majority of 'conflict-induced' internal displacement cases in Afghanistan. In recent years, the relatively safer northern and central regions have also added to the number of internal displacement cases due to the conflict.¹⁷

The number of new 'conflict-induced' IDPs has been increasing gradually since 2009 and it is claimed that 80% of the total reported 'conflict-induced' IDPs were displaced between 2009 and May 2012. The IDP profile shows that an estimated 396,808 persons/62,308 families remained internally displaced because of conflict throughout the country until end May, 2012.¹⁸

¹² Ibid.

¹³ CPHD Report 2011, Floods and droughts: the Afghan water paradox by Jelle Beekma and Joel Fiddes

¹⁴ Ibid.

¹⁵ UNHCR IDP Data Report-May 2012

¹⁶ 2013 UNHCR Country operations profile-Afghanistan, available at <http://www.unhcr.org/pages/49e486eb6.html>

¹⁷ UNHCR IDP Data Report-May 2012

¹⁸ Ibid.

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Part 3: Overview of Relevant International/Regional Laws and Policies

Afghanistan is party to a number of international and regional instruments and organizations relating to international disaster assistance. Article 7 of the Afghan Constitution provides that the State observes international treaties that Afghanistan has acceded to. As explained below, Afghanistan is not party to all treaties facilitating international disaster response. Moreover, not all treaties to which Afghanistan is a party have been translated into domestic laws.

3.1 International Policy Instruments

The IDRL Guidelines

In 2007, States party to Geneva Conventions and Red Cross and Red Crescent actors unanimously adopted the IDRL Guidelines at the 30th International Conference of the Red Cross and Red Crescent. Subsequently, several resolutions of the United Nations General Assembly have encouraged states to use them.

The Guidelines are a set of recommendations to governments on preparing a legal framework responding to the common regulatory problems that may arise during international disaster relief operations. They recommend legal facilities that relief providers need for their timely and effective assistance. Further, they also provide recommendations to ensure minimal quality standards in respect with international disaster relief.

The IDRL Guidelines are based on the following four core ideas:

1. Domestic actors have the primary role—the Guidelines stipulate that it is the responsibility of the government of the affected State to address the humanitarian needs caused by a disaster within its borders.
2. International relief providers have responsibilities—the Guidelines require that international relief providers be accountable for abiding by certain minimum humanitarian standards in their disaster assistance. These include the principles of humanity, neutrality, and impartiality as well as minimum standards of coordination and quality in their relief goods, personnel and programs.
3. International actors need legal facilities—for the effectiveness of relief operations, the Guidelines set out certain types of legal facilities or accommodations that governments should provide to international assisting actors. These include expedited visa processing and customs clearance for relief personnel, goods and equipment, facilitation of relief transport, exemption from taxes, and simplified means of acquiring temporary legal status to operate legally in the country.
4. Some legal facilities should be conditional—in order to hold assisting humanitarian organizations responsible, the Guidelines recommend that governments condition the granting of legal facilities to those organizations on their commitment to, and ongoing compliance with, the minimal standards described above.

The Convention on International Civil Aviation (Chicago Convention)

Afghanistan is a party to the Convention on Civil Aviation (Chicago Convention) of 1944 which regulates civilian flights. Annex 9 of the Convention requires state parties to “facilitate the entry into, departure from and transit through their territories of aircraft engaged in relief flights performed by or on behalf of international organizations

Overview of Relevant International/Regional Laws and Policies

recognized by the UN or by or on behalf of States themselves and shall take possible measures to ensure their safe operations.”¹⁹

Furthermore, the convention also provides that “Contracting States shall ensure that personnel and articles arriving on relief flights... are cleared without delay.”²⁰ The two mentioned clauses bind member states with an obligation to facilitate international assistance in disaster situations.

The Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operation

The Tampere Convention is a treaty intended to ease the use of telecommunication resources and assistance for disaster mitigation and relief. It sets up an international framework for states to collaborate with each other and with non-state entities and intergovernmental organizations.²¹ In order to respond promptly to disaster and facilitate relief operations, the Convention seeks to ease the process for bringing telecommunications equipment across borders during and after emergency situations. It obliges member states to reduce or remove regulatory obstacles and to grant international aid providers with certain privileges, immunities, and facilities necessary for relief operations.

Although it is an important convention on facilitating the use of telecommunication resources in emergencies, Afghanistan is not yet a party to it as of February 2013.

The International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention)

The Kyoto Convention was adopted in 1974 to establish an international instrument proposing provisions to achieve a high degree of simplification and harmonization of the parties’ customs procedures, with a view to effectively contribute to the development of international trade. The Convention was revised in 1999 to meet the current needs of governments and international trade.

The Kyoto Convention recognizes the significance of rapid clearance of relief consignments and supports and contributes to the efforts made in the interest of humanity to assist victims of disasters. The Convention contains a separate chapter on the subject, Annex J, Chapter 5, which outlines the provisions that customs administration should establish. These provisions address clearance of relief items as a priority, waiver of any charges, and examination and sampling of goods in only exceptional circumstances.²² This chapter must be affirmatively adopted as a separate act by a state parties to the Kyoto Convention.

Afghanistan obtained membership of WCO in 2004 but has not acceded to the Kyoto Convention (or, naturally, Annex J.5) as of February 2013.

Convention on Temporary Admission (Istanbul Convention)

The Istanbul Convention of 1990 aims to facilitate temporary admission by simplifying and harmonizing procedures through the adoption of standardized model papers as

¹⁹ Convention on International Civil Aviation (1944), Annex 9, Chapter 8, Clause 8.8

²⁰ Ibid., Clause 8.9

²¹ Tampere Convention 1998, article 3

²² Kyoto Convention 1974, Annex J, Chapter 5, Standards 2&3

international customs documents to contribute to the progress of international trade. The Convention provides for the free movement of goods across borders and their temporary admission into a customs territory with exemption from duties and taxes.

Annex B.9 of the Convention contains provisions for temporary admission of goods imported for humanitarian purposes, namely medical, surgical and laboratory equipment and relief consignments (“all goods, such as vehicles and other means of transport, blankets, tents, prefabricated houses or other goods of prime necessity, forwarded as aid to those affected by natural disaster and similar catastrophes”).²³ As with the Kyoto Convention, the annexes to the Istanbul Convention must be separately adopted by parties that wish to be bound by them. Afghanistan has not acceded to this Convention (nor, naturally, Annex B.9) as of February 2013.

Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel

The Convention on the Safety of United Nations and Associated Personnel (the Convention), which was adopted in 1994 is an important legal instrument in the effort to provide UN and associated personnel the security and environment required for their work. The scope of the Convention covers UN operations carried out for the purposes of maintaining or restoring peace and security.

The Optional Protocol to the Convention expands the scope of the Convention to “all other United Nations operations established by a competent organ of the United Nations in accordance with the Charter of United Nations and conducted under United Nations authority and control for the purpose of: (a) delivering humanitarian, political or development assistance in peace building, or (b) delivering emergency humanitarian assistance”.²⁴ However, host states have the option not to apply the provisions of the Optional Protocol with respect to the delivery of emergency humanitarian assistance conducted in response to a natural disaster.

Afghanistan is neither party to the Convention nor to the Optional Protocol as of February 2013.

Framework Convention on Civil Defense Assistance

The Framework Convention on Civil Defense Assistance of 2000 obliges State parties to promote cooperation between civil defense services and reduce constraints in order to provide assistance when a State is threatened or affected by a disaster. In the context of this Convention, civil defense services means “a structure or any other state entity established with the aim of preventing disasters and mitigating the effects of such disasters on persons, property and environment.”²⁵ The assistance is either explicitly requested by the State at risk of or affected by disasters or offered by a third party State or States with acceptance of the beneficiary State. Afghanistan is not a party to this Convention.

²³ Istanbul Convention 1990, Annex B.9, article 1

²⁴ Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel 1994, article 2, para. 1

²⁵ Framework Convention On Civil Defence Assistance 2000, article 1b

Overview of Relevant International/Regional Laws and Policies

Convention on Assistance in Case of a Nuclear Accident or Radiological Emergency

The Convention on Assistance in Case of a Nuclear Accident or Radiological Emergency was adopted in 1986 after the Chernobyl nuclear plant accident. The Convention lays out an international framework for cooperation among State Parties and with the IAEA to facilitate quick assistance and support in the event of nuclear accidents or radiological emergencies to lessen its consequences aiming to protect life, property and environment.²⁶ It obliges states to notify the IAEA of their available experts, equipment, and other materials for providing assistance.

In case of a request, each State Party decides whether it can provide the requested assistance as well as its scope and terms. The provision of assistance might be offered free of cost considering among others, the needs of developing countries and the specific needs of countries without nuclear facilities. The IAEA functions as a focal point for cooperation among State Parties by providing information, supporting efforts, and making available its services. As of February 2013, Afghanistan is signatory to this Convention but has not ratified it yet.

Hyogo Framework for Action 2005-2015 (HFA)

The Hyogo Framework for Action (HFA), which is a set of non-binding guidelines, was formulated as a comprehensive, action-oriented response to international concern about the growing impacts of disasters on individuals, communities and national development. Afghanistan is among the countries that are signatory to HFA and is committed to take necessary actions for reducing the risks of disasters and making its communities resilient.

The HFA outlines the following five priorities for action:²⁷

1. Ensure that disaster risk reduction (DRR) is a national and local priority with a strong institutional basis for implementation.
2. Identify, assess and monitor disaster risks and enhance early warning.
3. Use knowledge, innovation and education to build a culture of safety and resilience at all levels.
4. Reduce the underlying risk factors.
5. Strengthen disaster preparedness for effective response at all levels.

All the above priorities are reflected in the National Disaster Management Plan 2010 of Afghanistan (NDMP), which targets to accomplish its objectives by 2015. Regarding priority number five, the NDMP states that disaster management committees will be operating at provincial and district levels and their disaster management plans will be prepared.²⁸ As of the date of this report, negotiations were ongoing concerning the successor to the HFA after its expiration in 2015.

²⁶ Convention on Assistance in Case of Nuclear Accident or Radiological Emergencies 1986, article 1, para. 1

²⁷ Hyogo Framework for Action 2005—2015, para. 16

²⁸ National Disaster Management Plan 2010, at 18

3.2 Regional Instruments

SAARC Agreement on Rapid Response to Natural Disasters

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

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

Agreement on Establishing the SAARC Food Bank

Agreement on Establishing the SAARC Food Bank was signed on April 2007 by the foreign ministries of the SAARC. The SAARC Member States that comprise Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, and Sri Lanka have agreed to establish a Food Bank to “act as a regional food security reserve for the SAARC Member Countries during normal time food shortages and emergencies”, and to address regional food scarcity through collective action.²⁹

Based on the Agreement each Member Country is entitled to use food grains (wheat or rice) from the Reserve in the situation of food emergency caused by a severe and sudden natural or man-made disaster and/or food shortage resulting from production shortfall. The Member Country in need is obliged to replace the food grains as soon as possible and not later than two years. Since Afghanistan is a member of SAARC and a party to this Agreement, it can take advantage of the Reserve in emergency situations.

Asia Pacific Disaster Response Fund (APDRF)

The APDRF is a particular fund by ADB designed to provide incremental grant resources to developing member countries (DMC) impacted by a major natural disaster. The grant aims to help ADB DMCs in meeting immediate disbursements to restore life-saving activities to affected populations subsequent to a declared disaster.³⁰ The assistance is only granted when a natural disaster has taken place in a DMC, when the state of

²⁹ Agreement on Establishing the SAARC Food Bank 2007, article 2

³⁰ Establishment of the Asia Pacific Disaster Response Fund 2009, para. 8

³¹ Establishment of the Asia Pacific Disaster Response Fund 2009, para. 12

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national emergency has officially been announced by the affected DMC, and when the UN humanitarian/resident coordinator has verified the scale of disaster suggesting a general amount of funding to help improve the situation.³¹

Assistance by the APDRF will be given in the form of a grant in an amount totalling up to \$3 million per event. The size of the grant may vary based on “(i) geographical extent of damage; (ii) initial estimate of death, injuries, and displaced persons; (iii) the response capacity of key agencies in the country; and (iv) the date and magnitude of the last disaster that affected the country.”³² The APDRF applies to any nationally declared natural disaster separately, therefore does not affect the eligibility of DMCs on the bases of time or geographical limits.

Afghanistan is a Member Country of ADB and hence may receive the APDRF assistance as long as the country comes under the ADB DMC category.

Memorandum of Understanding between the Republic of Turkey, Islamic Republic of Afghanistan and Islamic Republic of Pakistan on Disaster Management

The DM authorities of the Republic of Turkey, Islamic Republic of Afghanistan, and Islamic Republic of Pakistan signed a MoU on Disaster Management in December 2010. The period of this MoU is for three years, however, it can be extended for another three years with the consent of parties. Aiming to establish an effective framework for disaster management cooperation, the scope of this MoU includes the following:³³

1. Exchange of knowledge, experience, technology, and information, experts and specialists in the field of prevention, mitigation, preparedness, response and rehabilitation and reconstruction after disasters;
2. Conducting of joint conferences, seminars, trainings and research;
3. Enhancing the quality of human resources through practices, trainings and simulation experience in the field of disaster management;
4. Elaboration and implementation of joint exercise programs in the field of disaster response.

According to the MoU, the assistance is provided with the consent of the affected party and the receiving party has the authority to supervise, direct, and coordinate the assistance within its territory.

3.3 Recommendations

- International instruments that have been ratified or acceded to by Afghanistan should be translated into domestic laws and regulation.
- Afghanistan should consider acceding to other relevant international conventions, such as the Tampere Convention.

³² Ibid., para. 13

³³ Memorandum of Understanding between the Republic of Turkey and the Islamic Republic of Afghanistan and the Islamic Republic of Pakistan, 2010, article 2

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Part 4: Overview of Afghanistan's Disaster Management Framework

Overview of Afghanistan's Disaster Management Framework

4.1 Legal and Institutional Framework for Disaster

The IDRL Guidelines recommend that “States should adopt comprehensive legal, policy and institutional frameworks and planning for disaster prevention, mitigation, preparedness, relief and recovery which take full account of the auxiliary role of their National Red Cross or Red Crescent Society, are inclusive of domestic civil society, and empower communities to enhance their own safety and resilience.”³⁴ The Guidelines further recommend that the frameworks should take in hand the initiation, facilitation, transit and regulation of international disaster assistance and provide effective coordination for it.³⁵

National Disaster Management Law (2012)

The current National Disaster Management Law (“DM Law”) was enacted in 2012 to regulate activities related to disaster response, preparedness and risk reduction—both natural and manmade. Pursuant to the DM Law, the regulation and coordination of disaster response activities and enforcement of the DM law are the responsibility of ANDMA.³⁶

In addition, the law establishes National Disaster Management Commission (NDMC) at the national level and designates ANDMA as the secretariat. A separate commission is established at provincial and district levels in order to better implement the decisions made by the NDMC.³⁷ Further detail regarding the roles and responsibilities of the relevant institution is set out in the following section.

Strategic National Action Plan for Disaster Risk Reduction: Towards Peace and Stable Development (SNAP)

In addition to the disaster management law, Afghanistan has some significant policy documents guiding its direction in disaster management and risk reduction. As Afghanistan moves from recovery and reconstruction to sustainable development, the Strategic National Action Plan (SNAP) aims to create a safer and more resilient Afghanistan by lowering the risk of future catastrophes and climate change impacts in an organized way – assembling the potential and occasions offering by stakeholders, and identifying the weak points and gaps. By establishing the National Disaster Risk Reduction Platform (NDRRP), Afghanistan is committed to DRR through a bottom-up approach. Through the National Platform and together with non-government organizations, civil society organizations, and international organizations, the government is aiming to achieve synergy of resources and capacities.³⁸

The timeframe for SNAP is divided into short-term (2011), medium-term (2011-mid 2013), and long-term (2011-2015) aiming to achieve the two following goals:

- Establishing the connection between disaster risk reduction strategies, climate change adaptation processes and resilient development paradigms, focusing on social protection measures in order to support different plans adopted under

³⁴ Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Recovery Assistance (2007) “IDRL Guidelines”, para. 8 (1)

³⁵ IDRL Guidelines, para. 8 (2)

³⁶ Disaster Management Law 2012, article 4

³⁷ Ibid., articles 7, 11 & 12

³⁸ Strategic National Action Plan for Disaster Risk Reduction: Towards Peace and Stable Development 2011, at 8&9

Afghanistan National Development Strategy (ANDS), or United Nations Development Assistance Framework (UNDAF); and

- Minimizing losses brought about by disasters and climate change impacts through policies steered by HFA, with a view to peace and development.³⁹

Under the above goals, the SNAP has six objectives to be achieved in the timeline of 2011 to 2015. The objectives and their relevant programs are as follows:

Strategic Objective 1: having a sound, thorough and contextualized system for disaster management. This objective is aimed to be achieved through the National Disaster Risk Reduction Capacity Building Program.

Strategic Objective 2: enhancing information sharing among all stakeholders. Programs for this objective are the National Disaster Risk Reduction Information Management Initiative, and Research and Evaluation Program.

Strategic Objective 3: strengthening the early warning mechanism which is based on sound vulnerability and capacity assessment. This objective will be achieved by strengthening the National Early Warning System.

Strategic Objective 4: increasing public awareness of DRR throughout the country. The program designed for this objective is the National Disaster Risk Reduction Awareness Campaign.

Strategic Objective 5: building up community resilience by reducing the fundamental elements of risk. This objective will be achieved by the Building Communities through Disaster Resilience Program.

Strategic Objective 6: strengthening government disaster preparedness capacity. This objective is aimed to be reached by the Preparedness for Effective Response.⁴⁰

The SNAP enhances the existing studies and plans regarding disaster risk management, namely ANDS, NDMP, National Adaptation Program for Action (NAPA), and other strategic documents developed since 2001.

Afghanistan's National Disaster Management Plan 2010 (NDMP)

In support of the DM ACT, the NDMP has been developed with a vision for efficient, independent and effective systems aiming to reduce the losses of lives and suffering caused by disasters. Establishing a comprehensive national approach, the Plan is enhancing the country's capacity to handle disasters independently. The NDMP has two major components which are intended to be fully implemented by 2015: the National Disaster Risk Reduction Plan (NDRRP) and the National Disaster Response and Recovery Plan (NDRRP).⁴¹

Each abovementioned plan includes particular interventions, as set out below:

Interventions suggested under the NDRRP

- Assessment of risks;
- Designing "time-bound" programs on risk reduction;

³⁹ Ibid., at 9

⁴⁰ Ibid., at 9 & 10

⁴¹ National Disaster Management Plan 2010, at 6 & 7

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- Providing trainings for actors involved in disaster risk reduction and response;
- Raising public awareness of risk reduction; and
- Incorporation of DRR in development programs by key national stakeholders.⁴²

Interventions suggested under the National Disaster Response and Recovery Plan

- Convening the National Commission sessions in disaster situations;
- Development of cluster approach for sector-wise response to disasters;
- Coordination of humanitarian activities for effective response;
- Issuance of early warning;
- Conducting rapid impact assessment; and
- Funding and resources mobilization for affected areas.⁴³

4.1.1 Institutional Provisions Related to Disaster Response

As previously noted, the DM law establishes the NDMC at the national level and subordinate commissions at provincial and district levels to operate and coordinate disaster response activities. The NDMC has certain structures and activities as follows:

National Disaster Management Commission

The NDMC consists of the following members:⁴⁴

1. Vice President as Chairman
2. Defense Minister as Member
3. Foreign Affairs Minister as Member
4. Interior Affairs Minister as Member
5. Finance Minister as Member
6. Public Health Minister as Member
7. Power and Water Minister as Member
8. Agriculture, Irrigation and Livestock Minister as Member
9. Public Works Minister as Member
10. Rural Rehabilitation and Development Minister as Member
11. Education Minister as Member
12. Transportation and Civil Aviation Minister as Member
13. Refugees and Repatriations Minister as Member
14. Information and Culture Minister as Member

⁴² Ibid., at 18 & 19

⁴³ Ibid., at 22

⁴⁴ Ibid., article 7(1)

15. General Director of Local Governance as Member
16. Head of National Environment Protection Agency as Member
17. General Director of Red Crescent Society as Member
18. Kabul Mayor as Member
19. Head of Chamber of Commerce and Industries as Member
20. General Director ANDMA as Member and Secretary

The NDMC's main duties are to define disaster response strategy and policy; approve preventive, operational, and reconstruction plans; incorporate risk reduction projects in government development plans; declare emergency situations with regard to disasters; request international assistance; allocate funds for risk reduction and rehabilitation projects based on priorities; approve conclusions of bilateral and multilateral agreements on mutual cooperation between Afghanistan and countries in the region; exchange expertise; and assist in emergency situations.⁴⁵ The NDMC holds its sessions in emergency situations at the decision of Chairman or at the request of ANDMA in which representatives of civil society, NGOs and non-member ministries may also be invited.⁴⁶

ANDMA implements the decisions made by the Commission in cooperation with representatives of ministries, government and non-government agencies, local councils, social organizations, and the people from affected areas.⁴⁷

Disaster Management Commissions at Provincial and District Level

In addition to the NDMC, provincial commissions established under the supervision of the governor as well as district commissions under the supervision of the district governor, consist of representatives from member ministries and agencies at provincial and district level.

Afghanistan National Disaster Management Authority (ANDMA)

ANDMA manages all aspects related to emergency response in Afghanistan and it has 34 offices at the provincial level. It is responsible for convening meetings of the NDMC; organizing national and provincial meetings to address disaster related issues; mobilizing a Rapid Response Task Force to carry out assessments, coordinating stakeholders and providing support at the provincial level in the aftermath of a disaster; mobilizing and facilitating humanitarian assistance to affected communities; coordinating disaster response activities with all partners; developing disaster management plans; monitoring the implementation of disaster management principles and reporting to the NDMC; promoting capacity building efforts related to disaster management; and providing recommendations to the NDMC.⁴⁸

In order to provide centralized direction, the National Emergency Operation Centre (NEOC) was established under ANDMA. The NEOC manages emergency operations, communicates warnings and disaster related information, requests resources from multiple provinces to respond to disasters, coordinates international support and provides instructions and information to relevant ministries.⁴⁹

⁴⁸ National Disaster Management Plan 2010, at 15

⁴⁹ *Ibid.*, at 14

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Disaster Response Coordination Structure

One of the objectives of the DM law is to coordinate disaster response activities at every stage. Given that ANDMA is the primary authority to implement the law, it has the duty to coordinate all disaster activities. According to the DM Law, ministries, government and non-government agencies, local councils, social organizations, and communities are obliged to provide necessary support to ANDMA by cooperating and participating in disaster management and risk reduction activities.⁵⁰

In order to prevent the overlap of activities, provide quick and effective assistance, and coordinate disaster response activities with relevant ministries, international organizations and NGOs, the NDMP establishes a cluster system (though it is not reflected in the DM law). This sector-wise approach is a system in which relief operations are implemented in a collaborative manner. According to OCHA, the aim of the cluster approach is to strengthen partnerships and ensure more predictability and accountability in international responses to humanitarian emergencies, by clarifying the division of labor among organizations, and better defining their roles and responsibilities with the key sectors of the response.

The cluster approach promotes very effective partnership and cooperative planning among all stakeholders. Furthermore, this sector-wise scheme divides disaster efforts based on respective sector functions. The NDMP establishes the following different clusters and appoints a relevant government department as a cluster lead:⁵¹

Shelter: Ministry of Rural Rehabilitation and Development and Independent Directorate of Local Governance. The other related agencies support shelter connected reconstruction activities.

Education: Ministry of Education.

Health: Ministry of Public Health.

Water and Sanitation: Ministry of Agriculture, Irrigation and Livestock and Ministry of Public Works.

Nutrition: Ministry of Public Health and Ministry of Rural Rehabilitation and Development.

Agriculture and Livestock: Ministry of Agriculture, Irrigation and Livestock.

DRR: Ministry of Rural Rehabilitation and Ministry of Urban Development.

This cluster system has been operational since 2008, with each cluster being co-led by a relevant UN agency.

The regulation on coordination of activities, information exchange, and communication of ANDMA requires relevant agencies to introduce a permanent focal point to the Secretariat through whom consultation should be done. Additionally, it requires all ministries and other relevant agencies to consider risk reduction and mitigation as a priority in their development projects and share those projects with NDMC and ANDMA. Furthermore, the regulation requires that all assistance by humanitarian organizations and national traders should be coordinated with NDMC and the Secretariat.⁵²

⁵⁰ Disaster Management Law 2012, article 10

⁵¹ National Disaster Management Plan 2010, at 16

4.1.2 Role of Afghan Red Crescent Society (ARCS) in Disaster Response

Established in 1934, ARCS is an independent, humanitarian institution which has been recognized by the government of Afghanistan as an auxiliary to State agencies.⁵³ The DM law expressly introduces the general director of ARCS as a member in the NDMC as well as its representatives in provincial and district DM commissions. Having offices and groups of trained volunteers all over the country, ARCS plays an important role in delivering disaster response services.

The ARCS carries out its activities in accordance with the principles of humanity, impartiality, neutrality, independence, voluntary services, unity and universality. Among others, ARCS has the duty to provide assistance to disaster-affected communities, supply emergency shelter, and distribute relief items to vulnerable people.⁵⁴ The NDMP assigns the following specific responsibilities to the ARCS:

- Contribute in damage assessment, identification of vulnerable areas, data collection, and identification of needs;
- Provide emergency assistance including first aid, food and clothing to disaster-affected people;
- Assist affected communities in rescue and evacuation work, temporary shelter through CBCs and volunteers;
- Request IFRC for relief and rehabilitation assistance; and
- Prepare and mobilize volunteers and send them to possible disaster-affected areas.⁵⁵

ARCS has signed cooperation MoUs with neighbouring countries namely with the Red Crescent Society of Islamic Republic of Iran, and a trilateral MoU with the Red Crescent Society of Islamic Republic of Iran and the Red Crescent Society of Tajikistan. Among others, the exchange of expertise and knowledge in the area of DM comes under the scope of cooperation.

With respect to other national civil society organizations, as previously mentioned, the DM law requires all social organizations to cooperate with ANDMA in disaster response activities.

4.2 Emergency Declaration and Request for Disaster Relief Assistance

4.2.1 Early Warning

The IDRL Guidelines recommend that States should put in place certain procedures to facilitate prompt sharing of information about disasters, including emerging hazards that are likely to cause disasters, with other States and relevant humanitarian organizations.⁵⁶ NDMC regular holds preparedness meetings before flood, drought, and winter season to review measures to test early warning systems in the country.⁵⁷ The SNAP, however, recognizes that early warning systems are in need of improvement in Afghanistan.⁵⁸ Under strategic objective 3, SNAP suggests a program to enhance preparedness through a people-centered early warning system backed by competent scientific, technological and media institutions.⁵⁹

⁵⁴ Ibid., article 8

⁵⁵ National Disaster Management Plan 2010, at 24

⁵⁶ IDRL Guidelines, para. 7

⁵⁷ National Disaster Management Plan 2010, at 13

⁵⁸ Strategic National Action Plan 2011, at 45

⁵⁹ Ibid., at 10

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According to the NDMP, ANDMA has a duty to expedite the dissemination of early warnings to the areas that are likely to be affected through the Mobile Rapid Response Task Force (MRRTF).⁶⁰ The NDMP does not define the MRRTF, however according to an Afghanistan Resource Desk article, it is “a group which is expected to enhance the response to natural disasters at the provincial level.”⁶¹

4.2.2 Declaration of Emergency

The DM law empowers the NDMC to declare a state of emergency in the country at the national level,⁶² but does not provide details on what would constitute a state of emergency. However, the NDMP provides that a declaration of an emergency will be made based on the nature and size of a disaster. In practice, and as set out in the NDMP, the governor declares the emergency at provincial level⁶³ and if the disaster is beyond the capacity of provincial management, NDMC declares the emergency at the national level.

In case of an emergency at provincial level, ANDMA is responsible for:⁶⁴

- Activating the provincial Emergency Operation Center (EOC);
- Notifying relevant national Operation Centers of the situation;
- Informing all relevant departments in the concerned area/district;
- Carrying out damage and loss assessment in the affected areas;
- Initiating relief work in the affected area;
- Sharing assessment findings with Provincial Disaster Management Commission (PDMC) and requests for the emergency operation;
- Mobilizing and deploying resources;
- Requesting financial assistance from PDMC; and
- Coordinating and facilitating the work of Community-Based Organizations (CBOs) and NGOs in the relief operation.

If the emergency is determined to be beyond the capacity of the provincial/regional government, NDMC will declare a state of national emergency and ANDMA will ensure the following actions will be undertaken:⁶⁵

- Activate the national Emergency Operation Center;
- Call a meeting of the NDMC;
- Assist province/regions to conduct damage and loss assessments in the affected area;
- Share assessment findings with the NDMC;
- Help provincial/regional and district authorities mobilize relief operations;
- Coordinate with armed forces for assistance;

⁶⁰ National Disaster Management Plan 2010, at 14

⁶¹ Potential Flood Scenarios and Afghanistan's Disaster Management Framework 2012, at 5

⁶² Disaster Management Law 2012, article 8 (5)

⁶³ National Disaster Management Plan 2010, at 22

⁶⁴ Ibid.

⁶⁵ Ibid., at 23

- Provide daily and weekly situation reports and share with stakeholders;
- Request for financial support from the NDMC;
- Coordinate INGOs, NGOs, UN and other international humanitarian organizations to ensure an effective response;
- Update public on the situation through media; and
- Coordinate with clusters for effective response.

The financial resources required to respond during a state of emergency are provided by a special budget as well as the annual budget of the State. The required funding is requested by ANDMA through NDMC, to be approved by the President.⁶⁶ Furthermore, ANDMA is mandated to allocate emergency funds in the centre and provinces to help affected communities during disasters.⁶⁷

4.2.3 Request for International Disaster Assistance

When a disaster situation exceeds the national capacity, affected States may decide to call for international relief assistance. As stated in the IDRL Guidelines, the request should be based on a needs assessment and consent of the affected State. The DM law authorizes NDMC to request for assistance from the international community and humanitarian organizations in disaster situations.⁶⁸ Further, the regulation on coordination of activities of ANDMA states that international assistance is requested following the analysis of capacity and resources.⁶⁹

Although neither the DM Law nor NDMP provides any details for how international assistance is sought, the Deputy Director, UN and International Conferences of MoFA state that it is the MoFA that delivers the NDMC's request for international assistance to foreign governments and international humanitarian organizations, after a state of emergency has been declared.

4.3 Recommendations

- The early warning system should be enhanced as recommended by SNAP and a clear procedure should be enacted on coordination and dissemination of early warning information.

A new law on international disaster relief should be adopted, which:

- Establishes a clear procedure, and designates responsibilities for assessing needs and requesting and accepting international disaster assistance.
- Provides for a specific agency (e.g. MoFA) to disseminate the request to the international community.
- Contains detailed provisions on the process of initiation, coordination, and termination of international disaster assistance as set out in the Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance.ⁱ

⁶⁶ Disaster Management Law 2012, article 15

⁶⁷ *Ibid.*, article 16

⁶⁸ *Ibid.*, article 8

⁶⁹ Regulation on Coordination of Activities, Information Exchange, and Communication of ANDMA

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Part 5: Legal Status of Organizations Providing Assistance

5.1 Privileges and Immunities

Privileges and immunities are a set of rights that apply to certain individuals and entities as a matter of international law. These rights exempt the holder, for instance, from standard migration restrictions, work permit rules, customs regulations and duties, and personal service as well as provide immunity from jurisdiction. Nonetheless, these privileges and immunities are not absolute; States have the right to prohibit an organization from entering or operating in its territory in the first instance. Although privileges and immunities are not directly linked to disasters, they are important means to facilitate the operations of covered entities active in disaster response.

Privileges and Immunities of Diplomatic and Consular Officials

The Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations are essential international instruments in this area. Afghanistan has acceded to the first Convention in 1965,⁷⁰ but not the second one.⁷¹ The Vienna Convention of 1961 gives the diplomatic official certain privileges such as inviolability of diplomatic mission premises, freedom of movement, free communication, immunity from jurisdiction in criminal cases, and exemption from all taxes and custom duties.⁷²

During a disaster, the privileges and immunities provided in the Vienna Convention of 1961 Conventions would only apply to diplomatic staff. The privileges and immunities would not apply to the staff of foreign civil defence services or military responding to a disaster, since this is not stipulated by the conventions. Although Afghanistan has not ratified the Vienna Convention of 1961, the Deputy Director, UN and International Conferences of MoFA state that it fully observes and implements the provisions of this Convention.

Privileges and Immunities of International Organizations

Afghanistan has also acceded to the Convention on the Privileges and Immunities of the United Nations of 1964. The Convention provides UN with juridical personality, inviolability of premises, exemption from taxes and customs duties as well as prohibition on exports and imports, diplomatic immunity of communications, functional immunity of delegates, officials and experts, and recognition of UN Laissez-Passer.⁷³

Besides that, Afghanistan has given diplomatic status to a number of inter-governmental and international organizations as well as UN agencies. These privileges and immunities were given through agreements signed between the organization and the government of Afghanistan. According to the Protocol Department of MoFA, the following agencies have diplomatic status in Afghanistan:

1. European Commission (EU)
2. United Nations Assistance Mission in Afghanistan (UNAMA)

⁷⁰ Status of treaties, available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-3&chapter=3&lang=en

⁷¹ Status of treaties, available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-6&chapter=3&lang=en

⁷² The Vienna Convention of Diplomatic Relations of 1961, articles 22, 26, 27, 28, 31, 34, and 46

⁷³ Convention on the Privileges and Immunities of the United Nations, 1946, articles 1, 2, 3, 4, 5, and 8

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3. United Nations Mine Action Center for Afghanistan (UNMACA)
4. United Nations High Commissioner for Refugees (UNHCR)
5. World Food Organization (WFP)
6. Food and Agriculture Organization (FAO)
7. World Health Organization (WHO)
8. United Nations Development Program (UNDP)
9. International Federation of Red Cross and Red Crescent Societies (IFRC)
10. International Organization for Migration (IOM)
11. United Nations Office for Partnerships (UNOP)
12. Afghanistan Independent Human Rights Commission (AIHRC)
13. International Committee of the Red Cross (ICRC)
14. United Nations Population Fund (UNFPA)
15. North Atlantic Treaty Organization (NATO)
16. Organization of the Islamic Conference (OIC)
17. International Security Assistance Forces (ISAF)
18. International Monetary Fund (IMF)
19. World Bank (WB)
20. Asian Development Bank (ADB)
21. Korea International Cooperation Agency (KOICA)
22. United States Agency for International Development

Other organizations benefiting from this status include GIZ, DED, CIDA, JICA, KFW, AKDN, UNICEF, IDLO, UNODC, UNHABITAT, EUPOL, UNESCO, ICIMOD, OSCE, ISK, and ICARDA.

5.2 Eligibility/Registration

The IDRL Guidelines recommend that affected States should establish an expedited registration system for foreign humanitarian organizations in disaster situations in order to facilitate timely operations. This would enable assisting organizations to legally operate in the country and enjoy certain rights and privileges, such as entering into contracts, opening bank accounts, leasing property or carrying out any other activity relevant to their disaster response mandate.⁷⁴ The IDRL Guidelines also recommend that humanitarian organizations should have the ability to bring funds and currency in and out of the country through legal means without any restriction.⁷⁵

⁷⁴ IDRL Guidelines, para 20 (1)

⁷⁵ Ibid., para 20 (2)

Legal Registration of Non-Governmental Organizations

Non-governmental organizations are defined broadly in the Non-Government Organizations Law to include both domestic and foreign NGOs. A domestic NGO is simply a local NGO which is established to pursue specific objectives.⁷⁶ A foreign NGO is a NGO which is established outside Afghanistan in accordance with the laws of the foreign state and which accepts the provisions of this law.⁷⁷ Both domestic and foreign NGOs are registered with the Ministry of Economy.⁷⁸

Period and Cost of Registration

The registration process for foreign NGOs is a two-tiered administrative process by the MoFA and MoE.⁷⁹ Furthermore, within the MoE, the request for registration is assessed by the Technical Commission and High Evaluation Commission. Article 17(2) of the NGO Law states that the High Evaluation Commission should decide to register or reject registration of an NGO within 15 days from the date of submission of application. However, article 19(2) of the NGO Law provides that if there are errors in an application, the High Evaluation Commission, through the Technical Commission, can return the application to the applicant within 30 days, and the applicant must resubmit the application within 20 days.

While domestic NGOs pay the prescribed fee of 10,000 AFN, equivalent to 200 USD, foreign NGOs are required to pay 1,000 USD as a registration fee.⁸⁰ When the High Evaluation Commission approves the registration, the MoE issues a registration certificate signed by the Minister or his authorized representative and sends the documents of a foreign organization to MoFA and the relevant line ministry.⁸¹

Information Requirement for Obtaining Registration

Organizations are required to submit a registration application to the MoE in the capital and to its provincial departments in the provinces, and are responsible for collecting forms for filling out the required information.⁸² Organizations are required to fill out the registration form and submit their name, acronym, statute, organizational structure, economic objectives, initial capital, exact address in Afghanistan, and a list of their equipment and materials. In addition to these documents, foreign organizations must also provide valid proof of their registration and operation in another country, and attach this proof to the application submitted to the MoFA.⁸³ Furthermore, after receiving confirmation from the MoFA a written statement through an authorized representative of the organization's headquarters, stating the goals and activities of the organization, must be submitted to the MoE.

For the purposes of registration, the statute of the organization should include the:

1. Official name and address;
2. Goals and scope of activities;

⁷⁶ Non-governmental Organization law 2005, article 5 (2)

⁷⁷ *Ibid.*, article 5 (3)

⁷⁸ *Ibid.*, article 4

⁷⁹ *Ibid.*, article 15 (2) & (3)

⁸⁰ *Ibid.*, article 15 (2)

⁸¹ *Ibid.*, article 18 (1) & (2)

⁸² Non-governmental Organization Law 2005, article 15 (1)

⁸³ *Ibid.*, article 15 (2) & (3)

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3. Procedures for election and dismissal of board of directors;
4. Procedures for holding meetings;
5. Power and responsibility of general assembly, and board of directors;
6. Procedures for reporting to general assembly and board of directors;
7. Power and responsibilities of officers and members;
8. Procedures for using assets of the organization;
9. Rules and procedures for amending the statute, merger, separation, transformation and dissolution of the organization;
10. Procedures for use and distribution of assets of the organization in the event of suspension or dissolution, and termination;
11. Procedures for internal supervision of organizational activities; and
12. The beginning and end of the organization's working year.⁸⁴

The information requirements and the assessment process described above are time-consuming and may serve to create delays for international relief organizations arriving to assist during disaster situations. However, with regard to projects, although article 23 of NGO Law requires NGOs to submit committed project documents to the MoE for verification and registration prior to the commencement of work, emergency humanitarian projects are excluded from this requirement.

Opening a Bank Account

The NGO Law requires NGOs to keep their Afghani and foreign currency assets in a designated bank account within the country and requires banks to provide the necessary facilities.⁸⁵ The Banking Law of Afghanistan does not specifically set out requirements for opening a bank account. However, in practice, banks require certain documents for an organization or individual to open a bank account. These required documents are a certificate of registration for organizations and a valid passport and visa for individuals. It should be noted, however, that the Anti-Money Laundering Law of Afghanistan does not allow cash transfers of more than one million Afghani or its equivalent in foreign currency.⁸⁶

Signing Contracts and Leases

The NGO Law states that an organization acquires status as a legal entity in Afghanistan upon the issuance of a certificate of registration by MoE.⁸⁷ Hence, as a legal entity, registered organizations can enter into contracts and sign leases. While the Constitution of Afghanistan states that foreign individuals do not have the right to own immovable property in Afghanistan, lease of immovable property for the purpose of investment is permissible in accordance with the law. Selling immovable property to diplomatic missions or foreign countries, and to those international agencies of which Afghanistan is a member, is also permissible in accordance with the provisions of law.⁸⁸ The Civil

⁸⁴ Ibid., article 14 (1)

⁸⁵ Ibid., article 29

⁸⁶ Anti Money Laundering Law 2004, article 6 (1)

⁸⁷ Non-governmental Organization Law 2005, article 20

⁸⁸ Constitution of Afghanistan 2004, article 41

Law then further provides that land and property can be leased for up to three years, and can be rented for up to a year, and extended as often as necessary.

Hiring of Local Staff

A foreign organization can only hire local staff once it has been registered, as described above. After this, the NGO Law provides that they are subject to standard provisions of the Labour Law and other relevant laws.

Obtaining Work Permit for Foreign Personnel

In recruiting foreign workers, the NGO Law requires organizations to obtain prior permission from relevant authorities and to inform MoFA in writing of their arrival, commencement and termination of work. However, in emergency humanitarian circumstances, the NGO Law provides that the requirement of prior permission for recruitment of foreign workers does not apply.⁸⁹

Foreign Assistance from the Private Sector and Individuals

There is no specific provision in Afghan laws regulating foreign assistance from the private sector or individuals. However, the DM Law states that ANDMA funds its financial needs through its budget and assistance in the form of cash and items, from national and international 'authorities'.⁹⁰ An 'international authority' is not defined in the DM Law, but it would not necessarily appear to be limited to a humanitarian organization and could be a private sector entity. In addition, the Constitution of ARCS provides that assistance from real and legal persons is a source of its income.⁹¹

5.3 Tax, Currency Exchange and Charges

The IDRL Guidelines recommend that affected States should exempt assisting States and humanitarian organizations from value-added tax (VAT) and other taxes or duties directly associated with disaster assistance.⁹²

Income Tax for Humanitarian Organizations

The Income Tax Law provides that the tax obligation of foreign States, international organizations and their non-resident employees in Afghanistan on income derived from sources within the country are determined based on relevant agreements and protocols concluded with the State of Afghanistan.⁹³ As previously mentioned, diplomatic missions, UN, and other international organizations with diplomatic status based on agreements with the government of Afghanistan are exempted from income tax.

Furthermore, contributions and incomes gained from the necessary operations of organizations fulfilling the following conditions are also exempted from income tax:

1. established in accordance with Afghan laws;

⁸⁹ Ibid., article 24 (4)

⁹⁰ Disaster Management Law 2012, article 13

⁹¹ Constitution of ARCS, 2006, article 87

⁹² IDRL Guidelines, para. 21

⁹³ Income Tax Law 2009, article 9

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2. non-profit organizations established only for educational, cultural, scientific, and humanitarian purposes; and
3. contributors, shareholders or employees, either during operations or upon dissolution of the organization, do not benefit from the organization.⁹⁴

Income Tax of Relief Personnel

According to the Income Tax Law, non-resident employees are exempted from income tax so long as their country of origin provides the same exemption for non-resident Afghans.⁹⁵ A person is considered a resident of Afghanistan if he or she (1) has had primary residence through the fiscal year; and (2) spent a total of 183 days within Afghanistan through the fiscal year.⁹⁶ According to foreigners working for humanitarian organizations consulted for the purpose of this study, they are not paying income tax in Afghanistan either because of the legal status of the organization or by being non-residents of Afghanistan.

Again, personnel of organizations that have diplomatic status or UN Privileges and Immunities are exempted from income tax according to bilateral agreements and conventions with the Afghan government.

Value Added Tax

The MoF, in cooperation with the international community, is currently working to draft a new law on VAT. Currently, VAT is not collected.

Currency Exchange

The IDRL Guidelines recommend that affected States should grant assisting states and humanitarian organizations the right to legally transfer the necessary funds and currencies without restraint in or out of the country and to obtain legal exchange rates relevant to their disaster assistance.⁹⁷

There are no prohibitions on bringing funds into Afghanistan. A registered organization can set up its Afghani and foreign currency accounts in a designated bank account within Afghanistan. The only requirements placed on the outflow of funds are to prevent money laundering. The Anti-Money Laundering Law of Afghanistan does not allow cash transfers that exceed one million Afghani or its equivalent in foreign currency (USD 20,000).⁹⁸ Any transfer of more than AFS one million should be carried out through a duly authorized, permitted banking organization or licensed money service provider.

According to the Banking Law, money exchange or selling and buying foreign currency is a legal banking activity in Afghanistan.⁹⁹ The service is also provided by persons or entities that are licensed in accordance with money service providers' regulations. Hence, there is no legal or practical restriction on money exchange by disaster assistance providers. The exchange rate is determined and controlled by the Central Bank of Afghanistan.

⁹⁴ Ibid., article 10 (1)

⁹⁵ Ibid., article 6

⁹⁶ Ibid., article 2 (2)

⁹⁷ IDRL Guidelines, para. 20 (2)

⁹⁸ Anti Money Laundering Law 2004, article 6 (1)

⁹⁹ Banking Law 2003, article 32 (1)

5.4 Recommendations

A new law on international disaster relief should:

- Establish a system for international actors to pre-register as Eligible Actors in order to receive certain legal facilities. Eligibility of assisting actors should be based on certain criteria such as documents evidencing their legal personality in a foreign jurisdiction, previous experience and current capacity in providing relief assistance as well as their ability to comply with responsibilities described in Part 4 of the IDRL Guidelines.
- Provide a temporary legal status to registered Eligible Actors to enter into contracts, sign leases, hire local personnel, open bank account and perform other activities without delay during relief operations.¹⁰⁰
- Exclude the international personnel of Eligible Actors from being resident for tax purposes during disaster situations.
- Waive VAT on all imports and local purchases and transactions of Eligible Actors.
- Set up a procedure for the entry of necessary funds and currencies by Eligible Actors.

¹⁰⁰ See the Model Act, Chapter VI, Part 6.

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Part 6: Border Control Requirements and Transport Arrangements

6.1 Customs and Transportation Requirements

The IDRL Guidelines recommend the exemption of disaster relief and recovery items imported by approved assisting States or international humanitarian organizations from all customs duties, taxes, tariffs or government fees, and import restrictions. Furthermore, they also suggest minimal and simplified documentation requirements, waiver or reduction of inspection requirements, and permission for re-exportation of any equipment or unused goods that the assisting state or humanitarian organization owns or wants to retain.¹⁰¹

Customs arrangements fall under the Customs Law of 2005, and the Customs Department of MoF handles all customs services in Afghanistan. To expedite customs services in disaster situations, the DM Law provides that air and land transports carrying international relief items and equipment or operational teams from abroad enjoy flight privileges (though it does not specify what privileges) and are exempted from landing, transit, airport and customs service fees and other customs duties.¹⁰² The law does not limit the timeframe to emergency situations, so it can arguably be applied at any time on relief items. Additionally, it provides that if any provision of this law is in conflict with other enforceable laws, the provisions of this law will take precedence.¹⁰³

Documentation Requirements

The Customs Law requires the submission of a bill of lading to the customs officers when a consignment enters Afghanistan.¹⁰⁴ A bill of lading should contain information on nationality, flag, and crew members as well as other information on identification of the consignment.¹⁰⁵ There is no provision in the Customs Law on exemption from providing a bill of lading for relief items.

When goods are brought in to customs, the owner or his representative should submit a summary declaration within one hour, which may be extended for one business day. Goods listed in the summary declaration will be placed in temporary storage pending the submission of complete customs declaration, though no further detail is provided on the content of the complete declaration.¹⁰⁶ The complete customs declaration should be submitted within 5 days after submission of the summary declaration.¹⁰⁷ The declaration is acceptable in written or verbal form, or forms in which data-processing techniques are used.¹⁰⁸

Customs Duty on Relief Goods

Consistent with the recommendations in the IDRL Guidelines, relief items are generally exempted from customs duty. The Customs Law provides that the following goods are exempted from customs duty:

1. Goods that are given as loans for government projects; and

¹⁰¹ IDRL Guidelines, para 17

¹⁰² Disaster Management Law 2012, article 24

¹⁰³ *Ibid.*, article 27

¹⁰⁴ Customs Law 2005, article 34 (2)

¹⁰⁵ *Ibid.*, article 34 (4)

¹⁰⁶ *Ibid.*, article 48 (1) & (2)

¹⁰⁷ *Ibid.*, article 54 (1)

¹⁰⁸ *Ibid.*, article 55 (2)

¹⁰⁹ Customs Law 2005, article 27 (5)

Border Control Requirements and Transport Arrangements

2. Goods that are donated from or to organizations involved in the area of humanitarian activities and development.¹⁰⁹

However, unlike the recommendation of the IDRL Guidelines, the law makes no differentiation between approved and non-approved organizations with regard to this exemption. Additionally, equipment and items for diplomatic missions and international organizations as well as items for residencies of foreign diplomats are exempted from customs duty upon approval from relevant authorities.¹¹⁰

While Afghanistan is party to the Vienna Convention of 1961 and Convention on the Privileges and Immunities of the United Nations of 1964, this would not apply to foreign governments or international actors apart from the UN. These two Conventions exempt articles imported for the official use of the UN as well as diplomatic missions from customs duty. A process also exists for 'pre-approving' certain foreign organizations to receive certain exemptions under an agreement with the government. According to the Head of Objection Review of the MoF Revenue Department, where there is an agreement between an assisting state or organization and the government of Afghanistan on the exemption of assisting items from customs duty, the agreement is observed by customs officers provided that it is also passed by the Council of Ministers. Furthermore, when a contractor of humanitarian organization supplies relief items, the contractor can apply for exemption from customs duty if there is an agreement between the foreign actor and the government on such issue.

Overtime Fees and Storage Charges

The Customs Law does not provide any specific provision on fees for clearance of goods outside working hours.

There are three types of warehouses in customs. These are government warehouses built by MoF, public warehouses built by individuals for all exporters and importers, and private warehouses built by traders for their own use.¹¹¹ No additional fee is charged for land rented for public and private warehouses in the customs territory besides the rent collected by government. Any storage fees that are applicable are paid during the clearance process.¹¹²

While the Law does not have any provisions waiving storage fees for relief goods; it is practice that relief items given to the government will not incur storage fees. This leaves relief items meant for dissemination by humanitarian organizations subject to the fees.

Import, Transit, and Export Restriction in Disaster Settings

There are no provisions in the Customs Law which reduce restrictions on the export and import of relief goods. On the contrary, customs authorities may adopt customs prohibitions or restrictions for reasons of public morality; public security; protection of environment, health and life of humans, animals or plants; protection of national

¹⁰⁹ Customs Law 2005, article 27 (5)

¹¹⁰ Ibid., article 27 (2)

¹¹¹ Ibid., article 82

¹¹² Ibid., article 84 (2)

treasures having artistic, historic or archaeological value; protection of industrial and commercial property; and other State policies.^{113, 114}

With regard to reducing import restrictions on relief goods, the Deputy Minister for Administration of MoF stated that MoF has always been cooperative with ANDMA in facilitating relief items during disasters, provided that the necessary documents are presented by ANDMA in advance. Generally speaking, this would involve ANDMA providing MoF with the agreement, MoU or any other documentation relating to the import of relief goods. However, the procedure is not set out within the law.

Clearance of Relief Goods and Equipment

The IDRL Guidelines recommend affected States waive or reduce inspection requirements with regard to disaster relief goods or if possible “clear relief goods and equipment rapidly and as a matter of priority through a ‘preclearance’ process”.¹¹⁵

The Customs Law does not provide a waiver for inspection or give priority to relief goods. The Law states that goods that have gone through customs processes according to law are cleared without delay, and customs officers should ensure that information given in the declaration is correct.¹¹⁶ There is also no provision on preclearance in Afghan laws.

As mentioned above, although there is currently no provision within the legal framework, the Deputy Minister for Administration of MoF stated that MoF, in coordination with ANDMA, will try its best to expedite the entry process of relief goods into the country to promptly address the needs of disaster-affected persons.

Inspection Requirements

The Customs Law defines customs inspection as “performing specific actions such as examining goods, verifying the existence and authenticity of customs documents, inspecting means of transportation, luggage and other goods carried by individuals, seizing goods, reporting suspects to judicial authorities ... and, where appropriate, other provisions applicable to goods subject to customs supervision are respected in the customs territory of the country.”¹¹⁷

The Customs Law also stipulates that in order to secure the state’s interest, customs officials should perform necessary inspections on international shipments and goods that are imported and exported within the customs territory in accordance with customs laws.¹¹⁸ There are no provisions within the Law to reduce or waive inspection procedures for disaster relief goods.

¹¹³ *Ibid.*, article 53 (2)

¹¹⁴ More specifically, alcoholic drinks, live pigs and related products, cotton seeds, narcotics, ammonium nitrate, plastic bags (carry bags) are listed as prohibited goods see Customs Tariff 2010, at 1.

¹¹⁵ IDRL Guidelines, para. 17 (2) (a)

¹¹⁶ Customs Law 2005, article 62 (1)

¹¹⁷ *Ibid.*, article 3 (17)

¹¹⁸ *Ibid.*, article 7

Border Control Requirements and Transport Arrangements

Clearance Outside Normal Business Hours and Outside of Customs Offices

The IDRL Guidelines recommend affected States to make arrangements for clearance outside business hours and outside customs offices in order to minimize delay with regard to humanitarian assistance.¹¹⁹

The work schedule for most of the customs offices in Afghanistan is 8:00am to 16:00pm, Saturday to Thursday, whereas for Torkham, Speen Boldak, and Shirkhan Border Customs houses, it is Monday to Saturday.¹²⁰ Notably, based on an agreement between Iran and Afghanistan, the working hours for Islam Qala Border Customs House is 7:30am to 17:30pm, full week.¹²¹

The legal framework does not address clearance outside normal business hours; however, according to Deputy Minister for Administration of MoF, if clearance is urgent, customs officials will work outside their business hours if necessary. Additionally, the Labor Law states that working outside business hours is permissible with the consent of officials and the administration in order to perform tasks that are needed for public services without delay.¹²²

With regards to clearance outside customs offices, the Customs Law states that, based on the trade necessities and request of relevant persons, customs officers may perform part of the customs clearance at the premises of the importer. In this case the head of customs for the area, taking into account the conditions, obtains the fees for the services provided.¹²³

Re-Exportation of Equipment and Unused Goods

The Customs Law does not specifically address the re-exportation of relief equipment and unused goods. Nonetheless, the Law states that exportable “suspended” goods, which come under temporary importation process, are exempted totally or partially from customs duty and commercial policy measures provided that they remain unchanged, except for normal depreciation, while they are in customs territory of the country.¹²⁴ According to the Law, “suspended goods” are those that come under a “suspension process” which means a “customs process (transit, customs warehousing, inward processing, processing under customs control, and temporary importation) which suspends customs debt payment.”¹²⁵ It does not provide a definition of temporary importation. Whether relief equipment would be classified as ‘exportable suspended goods’, is unclear.

Disposal of Unused Humanitarian Goods

The IDRL Guidelines recommend that assisting States and humanitarian organizations should assume the responsibility of disposing unused goods, especially when they may threaten human health or safety, or the environment.¹²⁶

¹¹⁹ IDRL Guidelines, para. 17 (2) (b)

¹²⁰ Inland Customs Depot and Border Crossing Points Work Schedule

¹²¹ Ibid.

¹²² Labor Law 2008, article 38

¹²³ Customs Law 2005, article 14

¹²⁴ Ibid., article 110

¹²⁵ Ibid., article 3 (20)

¹²⁶ IDRL Guidelines, para. 17 (4)

While no reference is made to unused humanitarian goods, according to Customs Law, in normal cases, disposal of bonded goods should be carried out with prior notification to customs officials indicating the reason for disposal, specifications of goods, time, place, and means of disposal. The disposal or destruction process is supervised by customs officials.¹²⁷

In addition, the Environment Law places certain obligations on all individuals when disposing of waste. The Law provides that waste should be disposed of in a manner that prevents significant adverse effects on the environment.¹²⁸

Communication Equipment

The IDRL Guidelines recommend that “affected States should waive or expedite the granting of any applicable licenses and reduce any other barriers to the use, import or export of telecommunications and information technology equipment by assisting States and assisting humanitarian organizations or on their behalf in disaster relief and initial recovery assistance. Without discrimination against or negative impact to domestic relief actors, affected States should also grant (or where, appropriate, encourage other domestic actors to grant) assisting States and eligible assisting humanitarian organizations priority access to bandwidth, frequencies and satellite use for telecommunications and data transfer associated with disaster relief operations.”¹²⁹

The Law on Telecommunication Services provides that the Afghanistan Telecom Regulatory Authority (ATRA) approves telecommunication equipment to be used in Afghanistan consistent with regional and international standards. However, this provision does not apply to equipment that is exclusively used for the purpose of national security, defense, emergency civil services and natural disasters.¹³⁰ This provision waives the approval of ATRA for equipment brought by assisting States or humanitarian organizations in disaster events.

Despite this exemption, the Law does require all telecommunication service providers to get an operation license from the ATRA.¹³¹ Furthermore, the Law states that no radio frequency should be used in the country unless a license or exemption for license is given by ATRA.¹³²

Food

The Law on Food and Quality Control states that all food items imported, including relief items, are inspected and quality-controlled by Food and Quality Control Department of MAIL.¹³³ The Law contains no provision to facilitate the importation of relief food items during disasters.

¹²⁷ Customs Law 2005, article 135 (1) & (2)

¹²⁸ Environment Law 2007, article 30

¹²⁹ IDRL Guidelines, para 18 (2)

¹³⁰ Law on Telecommunication Services 2005, article 46 (4)

¹³¹ *Ibid.*, article 13 (1)

¹³² *Ibid.*, article 37 (1)

¹³³ Law on Food and Quality Control, article 5 & 14

Border Control Requirements and Transport Arrangements

Medicines

The IDRL Guidelines recommend originating, transit and affected states provide legal and administrative facilities with regard to the exportation, transit, importation and re-exportation of medication and medical equipment in disaster situations.¹³⁴

Afghan laws do not provide for the removal or reduction of barriers on the importation of medication during disasters. The Medicine Law requires medicine manufacturers, importers and sellers to obtain licenses from the Ministry of Public Health (MoPH).¹³⁵ The Law further requires that NGOs providing health and humanitarian services can import lawful medication and medical equipment after obtaining permission from the MoPH,¹³⁶ apart from narcotics, which are a prohibited substance.¹³⁷

Furthermore, the Regulation on Manufacturing and Importation of Medicine and Medical Equipment imposes further requirements for non-government humanitarian organizations to import medicine and medical equipment.¹³⁸ These requirements include importation of medicines from registered companies; taking samples for quality control; verification by authorized laboratories; and ensuring that necessary information about the medication, including composition and expiration date, is documented.¹³⁹ In practice, however, MoPH minimizes the requirements needed for the importation of relief medicines and equipment.

Motor Vehicles

The Customs Law of Afghanistan does not have any specific provision on the exemption of foreign relief vehicles from customs duty. However, the Law exempts equipment of diplomatic missions and international agencies from customs duty upon approval by relevant authorities.¹⁴⁰ Additionally, equipment used for official purposes of UN and diplomatic missions are also exempted from customs duty based on the aforementioned conventions that Afghanistan has acceded to.

While the IDRL Guidelines recommend that affected States give temporary recognition to foreign registration and plates of vehicles imported by assisting States and humanitarian organizations during disasters,¹⁴¹ there is no provision in Afghan laws that address this issue. All vehicles are required to be registered and obtain permits from the traffic department.¹⁴² Foreign vehicles entering Afghanistan need to obtain a transit plate from the relevant traffic authority until arrival at customs.¹⁴³

Animals

According to the Veterinary Law, the importation of animals in Afghanistan is not allowed without sanitary certificates and necessary check-ups.¹⁴⁴ No exceptions are provided concerning rescue dogs.

¹³⁴ IDRL Guidelines, para. 18 (3)

¹³⁵ Medicine Law 2008, article 8

¹³⁶ Ibid., article 12

¹³⁷ Customs Tariff 2010, at 1

¹³⁸ Regulation on Manufacturing and Importation of Medicine and Medical Equipment 2007, article 15 (2)

¹³⁹ Ibid., articles 19-23 & 27

¹⁴⁰ Customs Law 2005, article 27 (2)

¹⁴¹ IDRL Guidelines, para. 18 (1)

¹⁴² Road Traffic Law 1982, article 3

¹⁴³ Regulation on Land Vehicle License 2007, article 9 (1)

¹⁴⁴ Veterinary Law 2000, article 19

6.1.1 Recommendations

1. A new law on international disaster relief should provide for:
 - Reduced documentation requirements for disaster relief items and equipment imported by Eligible Actors, as described above in section 5.4.
 - Exemptions from re-export duties for all relief items, vehicles, and equipment imported by Eligible Actors.
 - Expedited processes for the importation of relief goods and equipment and priority clearance for relief consignments of Eligible Actors.
 - Customs services to be carried out for the release or clearance of relief consignments outside business hours when necessary.
 - The waiver or reduction of certain inspection requirements for relief items imported by Eligible Actors.
2. A new law on international disaster relief should:
 - Set out procedures for importation of telecommunication equipment for the purpose of disaster relief.
 - Waive any licensing requirements or fee for the use of equipment and frequencies by Eligible Actors.
3. A new law on international disaster relief should reduce importation requirements for medications imported by Eligible Actors during disasters provided that the medication imported is:
 - Transported in a manner that ensures the quality of medications;
 - Appropriately labelled in languages understood in Afghanistan;
 - At least 12 months from their expiry date upon arrival.
4. A new law on international disaster relief should provide an expedited procedure for granting temporary plates for vehicles imported by Eligible Actors.

6.2 Management of Foreign Personnel during a Disaster

6.2.1 Granting Visas to International Relief Personnel

The IDRL Guidelines recommend that in the case of international disaster relief operations, affected States should waive or expeditiously grant visas and any necessary work permits for the relief personnel of assisting States and humanitarian organizations. The visas and work permits, if required, should be provided preferably without costs and renewable within the territory of affected States for the time required for relief operations.¹⁴⁵

Afghan law does not provide for any special visa requirements for relief personnel. The Law on Migration and Residence of Foreigners states that foreign citizens entering Afghanistan are required to get their visas from embassies or consulates of

¹⁴⁵ IDRL Guideline, para. 16 (a) & (b)

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Afghanistan,¹⁴⁶ however in exceptional cases the entry visa is also given at airports and border with the approval of MoFA.¹⁴⁷ The validation period of entry visa is 15 days which can be extended with the approval of MoFA.¹⁴⁸

While there is no specific provision in the Law on Migration and Residence of Foreigners to expedite the procedures for issuing relief visas, the DM law states that MoFA should cooperate with ANDMA on the issuance of visas for foreign States and international organizations in an expedited manner.¹⁴⁹ The Deputy Head of UN and International Conferences of MoFA affirmed that Afghan embassies and consulates would in practice provide relief personnel with visas in an expeditious manner in disaster situations.

The fee for entrance visas for persons with a work permit is 30 USD, while it is 100 USD for persons without work permits.¹⁵⁰ According to the Law on Migration and Residence of Foreigners, foreign experts who work gratuitously are exempted from visa fees including for their family members.¹⁵¹ As most relief personnel would be paid, however, this exemption would not apply to them.

In addition to visas, relief workers would also need to obtain a work permit, as per normal procedures. The Law states that only those who have entered Afghanistan with work visas have the right to work in the country.¹⁵² The work visa is issued by Afghan embassies and consulates for foreign citizens including those who aim to work with government and NGOs in Afghanistan.¹⁵³ The work permit is extended by the request of host organizations to the MoFA or MoIA depending on the type of passport.

6.2.2 Recognition of Foreign Professional Qualification

The IDRL Guidelines recommend that affected States provide foreign professional responders with an expedited procedure for temporary recognition of professional qualifications including medical personnel, architects and engineers during emergency situations.¹⁵⁴

In Afghanistan, the permission to practice in the area of medicine (medical treatment) or pharmacy is given to those who have education and competence in the relevant specialized field and obtained a license from MoPH.¹⁵⁵ Where necessary, foreign doctors and pharmacists who are residents in Afghanistan may be recruited in their specialized fields only by the permission of MoPH and in accordance with the laws of the country.¹⁵⁶

Health workers are certified and licensed as practitioners of their defined categories after they have successfully completed a recognized program of study and graduated from an accredited health professional educational institution, or passed the MoPH testing and certification examination.¹⁵⁷

¹⁴⁶ Law on Migration and Residence of Foreigners 2000, article 15

¹⁴⁷ Ibid., article 4

¹⁴⁸ Ibid., article 4

¹⁴⁹ Disaster Management Law 2012, article 22

¹⁵⁰ Amendments to Law on Migration and Residence of Foreigners 2009, article 19

¹⁵¹ Law on Migration and Residence of Foreigners 2000, article 20

¹⁵² Ibid., article 28

¹⁵³ Ibid., article 5

¹⁵⁴ IDRL Guidelines, para. 16 (c)

¹⁵⁵ Public Health Law 2009, article 9 (1)

¹⁵⁶ Ibid., article 9 (2)

¹⁵⁷ Ministry of Public Health's Human Resources Policy 2006, at 12

There are no laws and policies in place to give temporary recognition to health personnel of assisting States and humanitarian organization during disasters. According to current procedures, foreign health workers recruited to practice in Afghanistan are required to register with the MoPH and provide documentation of their certification. The MoPH may validate their qualifications based on licenses issued by appropriate authorities of their country of origin or, where necessary, may require health workers to take the MoPH certification test.¹⁵⁸

According to the MoPH, where foreign health personnel provide services through agencies recognized by international organizations such as WHO or MSF, the MoPH would in practice provide facilities for them or waive the need for their professional recognition. However, its power to do so is not entirely clear under existing law.

6.2.3 Recommendations

A new law on international disaster relief should provide for:

- A disaster relief visa for personnel of Eligible Actors, free of any fees and charges with which they can perform their activities without requiring work permits. Where possible and considering the national security and safety, the disaster relief visas should be given to Eligible Actors upon arrival at the point of entry.¹⁵⁹
- Temporary recognition of professional qualifications of foreign personnel of Eligible Actors during disasters.¹⁶⁰

6.3 Transportation

The IDRL Guidelines recommend that “originating, transit and affected States should grant, without undue delay, permission for the speedy passage of land, marine and air vehicles operated by an assisting State or eligible assisting humanitarian organizations or on its behalf, for the purpose of transporting disaster relief or initial recovery assistance and, ideally, waive applicable fees.”¹⁶¹

Transportation is a vital part of relief supply chain operations. As such, an appropriate legal framework is needed to reduce certain barriers such as vehicle registration, transit charges, flight permission, landing and departure fees and the like for international relief transportation.

6.3.1 Foreign Vehicles in Afghanistan

The Road Traffic Law requires all vehicles to obtain licenses from the Traffic Department. Vehicles transiting through Afghanistan must obtain entry and movement permits from the relevant traffic office and return it when exiting the country. This permit is issued based on the agreement between relevant States.¹⁶² Further, the foreign transporters providing services in the area of trade are also required to get licenses from the Ministry of Commerce and Industries (MoCI).¹⁶³ These transporters

¹⁵⁸ Ibid.

¹⁵⁹ See the Model Act, Chapter VI, Part 1.

¹⁶⁰ Ibid.

¹⁶¹ IDRL Guidelines, para. 19 (1)

¹⁶² Regulation on Land Vehicle License 2007, article 12 (1) & (3)

¹⁶³ Law on International Road Transport and Transit in Afghanistan 1978, article 27

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are charged with certain fees, depending on vehicles, for each entry into or transit through Afghanistan.¹⁶⁴

Apart from licensing requirements, it is important to highlight that the DM law exempts land transport carrying international relief items and equipment from transit and border services fees. However, persons or legal entities that contract foreign vehicles, which are not registered in Afghanistan, are still required to pay a monthly fee of 200 AFN (USD 2) for each tonne of the vehicle to the relevant traffic department. The relevant traffic department, based on written documentation from MoF, will grant a temporary permit to these vehicles until the end of the contract to travel within Afghanistan.¹⁶⁵

6.3.2 Foreign Aircraft in Relief Operations

The DM Law provides that air transport carrying international relief items and equipment or operational teams from abroad should enjoy flight privileges and are exempted from landing, transit and airport fees.¹⁶⁶

According to the Civil Aviation Law, aircrafts are to be charged with certain fees for landing, parking, using air traffic services, using facilities that provide fuel, using premises for passengers and good services, and other services provided in the airports.¹⁶⁷ However, the Regulation on Civil Aviation Fees provides certain exemptions for relief aircrafts. The Regulation states that an aircraft is exempted from landing and parking fees when it provides search and rescue services; operates during emergency situations; belongs to UN, Red Crescent or Red Cross and provides humanitarian services; and delivers health and agricultural services.¹⁶⁸ Additionally these aircrafts are exempted from illumination and air traffic services fees as well.¹⁶⁹ Furthermore, the civil aviation minister, considering the national interest, may waive some of the fees for government air transport institutions.¹⁷⁰

6.3.4 Driving License

The IDRL Guidelines recommend that affected States should develop expedited procedures for temporary recognition of foreign driving licenses for the performance of disaster relief functions by assisting States or humanitarian organizations.¹⁷¹ The Road Traffic Law states that foreign citizens, who have national or international driving licenses issued in accordance with the Convention on Road Traffic of 1968, are permitted to drive within the territory of Afghanistan.¹⁷²

Foreign drivers, based on the Road Traffic Convention, are permitted to drive within Afghanistan with their national driving license for up to one year.¹⁷³ However, the foreign driver holding an international driving license is permitted to drive as long as its validation date allows.¹⁷⁴

¹⁶⁴ Ibid., article 35

¹⁶⁵ Regulation on Land Vehicle License 2007, article 16 (1) & (2)

¹⁶⁶ Disaster Management Law 2012, article 24

¹⁶⁷ Civil Aviation Law 2003, article 36

¹⁶⁸ Regulation on Civil Aviation Fees 2005, article 12 (3), (4), (5) & (9)

¹⁶⁹ Ibid., article 13

¹⁷⁰ Civil Aviation Law 2003, article 88

¹⁷¹ IDRL Guidelines, para 16 (c)

¹⁷² Road Traffic Law 1982, article 16

¹⁷³ Driving License Regulation 1982, article 31 (1)

¹⁷⁴ Ibid., article 32

6.3.5 Recommendations

A new law on international disaster relief should:

- Provide an expedited procedure for granting entry and movement permits for land vehicles of Eligible Actors carrying relief goods.
- Waive restrictions, tolls, fees, and charges on land vehicles of Eligible Actors carrying relief goods, equipment and personnel.
- Provide relief aircrafts, as appropriate, priority for passage, air traffic routing and landing permissions.

6.4 Freedom of Access and Security

The IDRL Guidelines recommend that affected States should provide facilities for relief operation personnel to have freedom of access to and freedom of movement in and from the disaster-affected area.

There is no legal restriction on access to affected persons. According to international organizations such as IOM, WFP, IFRC and Solidarites International, which are active in the area of disaster management in Afghanistan, they have freedom of access to affected persons and can send their teams on the ground alongside ANDMA and ARCS. Given ANDMA and ARCS have local offices across the country, they are able to assist international relief providers to gain access to affected areas.¹⁷⁵

There is no legal restriction on access to affected persons. According to international organizations such as IOM, WFP, IFRC and Solidarites International, which are active in the area of disaster management in Afghanistan, they have freedom of access to affected persons and can send their teams on the ground alongside ANDMA and ARCS. Given ANDMA and ARCS have local offices across the country, they are able to assist international relief providers to gain access to affected areas.

As ANDMA is responsible for coordinating the overall response to disasters, all ministries, government and non-government agencies, local councils, social organizations, and individuals are obliged to provide the necessary support to ANDMA.¹⁷⁶

The IDRL Guidelines also suggest that affected States should take proper steps to ensure the safety and security of disaster relief personnel from assisting States and humanitarian organizations as well as the premises, facilities, means of transport, equipment and goods used in their disaster relief assistance. Assisting actors should also take proper measures in their own planning and operations to reduce security risks.¹⁷⁷

The Constitution of Afghanistan provides that ensuring security is one of the main duties of the State.¹⁷⁸ More specifically, it is the duty of Ministry of Interior to ensure the security within the territory of Afghanistan. Below are some of the duties of the police as stated in Police Law:

- Ensuring and maintaining public order;
- Protecting the governmental and private premises and assets, as well as the premises and assets of local, foreign and international organizations;

¹⁷⁵ IDRL Guidelines, para. 16 (1) (d)

¹⁷⁶ IDRL Guidelines, para. 22

¹⁷⁷ Constitution of Afghanistan 2004, article 5

Border Control Requirements and Transport Arrangements

- Cooperating with government authorities in performing their activities in accordance with limitations provided in laws;
- Taking appropriate measures, in cooperation with other government agencies, to respond to disaster and emergency situations;
- Providing necessary assistance for disaster-affected persons in order to save their lives and property; and
- Taking proper measures in emergency situations to ensure security and public order in accordance with the provision of law.¹⁷⁹

Additionally, according to the Basic Instructions for Departments of Ministry of Defense and National Army in Emergency Situations, regional military corps have a duty to support police and other security forces in the provision of security during disasters. This support includes providing security on highways for transportation of relief personnel and items.

Besides the security provided by Afghan National Security Forces, assisting States and humanitarian organizations have their own security systems which secure their movements and operations during disaster situations.

6.4.1 Recommendations

- With a view to more coordinated relief operations, ANDMA should develop a clear policy for Eligible Actors to access affected persons and ensure their security with the help of national security forces.

6.5 Additional Facilities for International Disaster Relief Providers

The IDRL Guidelines recommend that affected States should make efforts to ensure, when necessary, that government offices and services essential to timely delivery of international disaster relief work outside of normal business hours.¹⁸⁰

The business days in Afghanistan are Saturday to Thursday except in Kabul. State authorities are off in Kabul on Thursdays as a result of the government's decision to reduce air pollution in the city. The Labour Law of Afghanistan defines normal work hours as a maximum of 40 hours per week.¹⁸¹

Working outside normal business hours is subject to necessity and permission of the administration; one of the necessities as defined in the Labour Law is addressing emergency situations that result in delays in social services.¹⁸² While overtime work cannot exceed average normal working hours in a day,¹⁸³ the Overtime Regulation puts the limit of 4 hours in a normal day for State agencies.¹⁸⁴ The hourly overtime fee is an increase of 25% for normal days and 50% for holidays.¹⁸⁵

¹⁷⁹ Police Law 2009, article 5 (1), (6), (10), (12), (13) & (14)

¹⁸⁰ IDRL Guidelines, para. 23

¹⁸¹ Labor Law 2008, article 30 (2)

¹⁸² Ibid., article 38 (1)

¹⁸³ Ibid., article 38 (2)

¹⁸⁴ Overtime Regulation 2011, article 5 (1)

¹⁸⁵ Ibid., 2011, article 6 (1)

Although there is no clear provision in the law with regard to working extended hours for the facilitation of international disaster assistance, according to government authorities consulted for the purpose of this study, government officials will work additional hours during disaster situations. It was added that there is a spirit of collaboration and contribution among State officials when the work is needed during emergencies.

The IDRL Guidelines also recommend that affected States should consider, when it is in their control and if possible under the circumstances, providing certain services at reduced or no cost to assisting States and humanitarian organizations. These services may include in-country transportation including by national airlines, used of buildings and land for office and warehouse space, and use of cargo handling equipment and logistic supports.¹⁸⁶

There is no law or policy in place in Afghanistan to require the provision of these services at a reduced or no cost to assisting states or humanitarian organizations responding to disasters. However, it should be recognised that many of the services needed, such as transportation and cargo, are provided by the private sector and as such the government cannot offer these facilities to humanitarian organizations.

Services within the authority of government could be offered to assisting actors with no cost though. For instance, the use of government facilities, land, and warehouses, if available, could be offered without charge. According to international organizations in Afghanistan, when needed, the ANDMA and ARCS's warehouses have always been available for relief operations at no cost.

6.5.1 Recommendations

A new law on international disaster relief should:

- Provide for the extension of work hours for relevant government agencies specifically in disaster situations.
- Promote the provision of relief-related services to assisting actors at reduced prices and where possible at no cost.

6.6 Accountability of Assisting Actors

The IDRL Guidelines provide that assisting actors and their personnel should comply with the laws of affected States and applicable international law, harmonize their activities with domestic authorities, and respect the human dignity of disaster-affected persons at all times. They also state that assisting actors should make certain that their disaster relief and initial recovery assistance are provided in conformity with the principles of humanity, neutrality and impartiality. Furthermore, assisting actors, to the extent practicable, should provide their assistance consistent with any applicable international standards of quality.¹⁸⁷

At the onset of humanitarian crisis, affected populations are often confronted with a breakdown in governmental and social services, severely diminished infrastructure and life-threatening situations. In order to affect the greatest change and assistance to disaster or conflict stricken populations, assisting actors must be cognizant of

¹⁸⁶ IDRL Guidelines, para. 24 (2)

¹⁸⁷ IDRL Guidelines, para. 4 (1) & (2)

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their power and use it responsibly. In most circumstances, affected populations have little influence or control over decisions that affect their daily lives. Humanitarian quality and accountability emphasizes a focus on principles and mechanisms by which assisting actors account for their actions and are held responsible for them.

Assistance can be harmful if it does not consider the needs or culture of the affected population or meet minimum quality standards. These include poor quality food and expired medications that can be seriously harmful to the health of affected persons. Inappropriate goods and services can also be damaging due to cultural sensitivities. Even if the appropriate relief is provided, wrong means of delivery can be offensive and affect the dignity of affected persons and communities.

The DM Law and Strategy do not address these issues. However, the National Standard Law (a law which regulates quality standards that should be applied when goods are manufactured or imported) prohibits certain commercial goods which are not compliant with compulsory standards. Goods with lower standards than the compulsory ones are stopped or rejected at entry points until a decision is made by relevant authorities.¹⁸⁸ More specifically, imported food items are controlled by Quality Control Department of MAIL in accordance with the national and international principles.¹⁸⁹ Additionally, importation of medication is regulated by the Medicine Law and the Medicine Importation Regulation, although they do not address the quality of medicines imported by humanitarian organizations during disasters.

6.6.1 Recommendations

A new law on international disaster relief should:

- Include a chapter on responsibilities of assisting actors, outlining the principles under which they should provide assistance and requiring them to respect the dignity and privacy of persons affected by disaster as well as meet minimum quality standards for goods and services provided.
- An assisting actor applying for eligibility for the legal facilities outlined in 5.4, should be required to submit an undertaking relating to these responsibilities.

¹⁸⁸ National Standard Law 2010, article 13

¹⁸⁹ Food and Quality Control Law, articles 4 & 34

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Part 7: Afghanistan as an Assisting/Transit State

Afghanistan as an Assisting/Transit State

The IDRL Guidelines recommend that originating and transit States should waive or promptly issue, if possible without cost, exit or transit visas for disaster relief personnel.¹⁹⁰ They further recommend simplification of export, transit, and transportation of goods and equipment.¹⁹¹

7.1 Afghanistan as an Assisting State

The DM Law states that relief assistance of the Islamic Republic of Afghanistan to other countries is provided based on humanitarian cooperation. There are not many examples of Afghanistan assisting other countries in disaster situations. However, when Kashmir, Pakistan was hit by an earthquake in 2005, Afghanistan sent four rescue helicopters from its air force as well as a plane loaded with four tons of medicine and army medical personnel to help the affected persons.

7.1.1 Exit Visas for Relief Personnel

There are no requirements by law to obtain permission from certain authorities to travel outside the country. The Afghan Constitution states that every Afghan is entitled to travel abroad and return back in accordance with the provisions of law.¹⁹²

7.1.2 Export Process

Customs laws of Afghanistan do not include a reduction of restrictions or exemptions of duties for the export of relief goods and equipment. The Customs Law states that Afghan goods are subject to customs export processes and required to have a bill of lading before exportation.¹⁹³ However, non-Afghan goods are exported without a new bill of lading and exempted from custom export processes.¹⁹⁴

7.1.3 Departure of Relief Flights and Trucks

The Customs Law requires the submission of a bill of lading or customs declaration to customs officers when a consignment is exported from Afghanistan.¹⁹⁵ The export declaration is supported by following documentations:¹⁹⁶

- Bill of lading/airway bill
- Detailed commercial invoices
- Packing list
- Business license
- Tax certificate
- Certificate of origin

¹⁹⁰ IDRL Guidelines, para. 16 (2)

¹⁹¹ Ibid., para 17 (1) (b) & (19)

¹⁹² Constitutions of Afghanistan 2004, article 39

¹⁹³ Customs Law 2005, article 122 (1)

¹⁹⁴ Ibid., article 123

¹⁹⁵ Ibid., article 34 & 38

¹⁹⁶ An Inventory to Exporting Goods from Afghanistan 2013, at 11, 12

This list is not complete and exporters may be required to provide additional documents as necessary to help Customs to verify the declared goods. All documents needed for customs clearance are required in hard copy.

7.1.4 Recommendation

A new law on international disaster relief should provide for the simplification of documentation requirements and for waiver of export duties on outgoing relief goods and equipment.

7.2 Afghanistan as a Transit State

7.2.1 Visas for Transit of Relief Personnel

Transit visas are granted to foreigners passing through Afghanistan in accordance with the provisions of law by Afghan embassies and consulates or international airport officers with consent of MoFA.¹⁹⁷ The visa validation is 72 hours for air transit and 6 days for land transit, counted following the entry date.¹⁹⁸ Afghanistan also grants double transit visas based on certain agreements and reciprocal treatment.¹⁹⁹ There is no provision in the law with regard to transit visas for relief personnel, mitigating the process or reducing restrictions on visa validation.

7.2.2 Restriction on Transit of Relief Goods

The Customs Law does not provide any restrictions on transit goods through Afghanistan. Hence, no restriction is imposed on transit of relief goods.

7.2.3 Duties and Fees on Transit Relief Goods

The Customs Law states that imposition of duties is not allowed in transit process.²⁰⁰ However, transit guarantee is taken in order to secure debts resulting from transit goods.²⁰¹ There is no waiver of transit guarantee for relief goods.

7.2.4 Inspection Requirement for Relief Goods in Transit

The Customs Law provides that the owner of transit goods or a representative is obliged to submit goods and relevant customs documents for their identification within the specified time, to the relevant customs office.²⁰² The Law furthers that goods entering the customs territory of Afghanistan are subject to customs inspection.²⁰³ The law has no provision on reducing the inspection requirement for transiting relief goods and equipment.

7.2.5 Transit Restrictions for Relief Trucks

Foreign vehicles passing through Afghanistan are required to pay transit charges. However, the charges are waived for countries providing free transit for Afghan trucks.²⁰⁴ With respect to countries that Afghanistan has transit or land transport agreements

¹⁹⁷ Law on Migration and Residence of Foreigners 2000, article 8

¹⁹⁸ Ibid., article 8

¹⁹⁹ Ibid., article 9

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with, these fees are charged based on reciprocal treatment.²⁰⁵ For countries that have no transit or land transport agreement with Afghanistan, transit fees are charged as following:

- 2000 AFS (USD 40) for vehicles with two axles;
- 3000 AFS (USD 60) for vehicles with three axles; and
- 4000 AFS (USD 80) for vehicles with four axles or more.²⁰⁶

These fees are collected from international transporters and do not include road transit fees which are charged equally for domestic and international vehicles separately.²⁰⁷ There is no provision in the law that waives the transit fees for relief trucks.

7.2.6 Recommendation

A new law on international disaster relief should provide waivers of applicable fees and/or reduced inspection requirements for relief goods in transit through Afghanistan.²⁰⁸

²⁰⁰ Customs Law 2005, article 75 (3)

²⁰¹ Ibid., article 78

²⁰² Ibid., article 80

²⁰³ Ibid., article 34 (5)

²⁰⁴ Law on International Road Transport and Transit in Afghanistan 1978, article 35 (1)

²⁰⁵ Ibid., article 35 (2)

²⁰⁶ Ibid., article 35 (3)

²⁰⁷ Ibid., article 35 (4)

²⁰⁸ See the Model Act, Chapter VII.

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Part 8: Summary of Recommendations

Summary of Recommendations

The recommendations contained in the body of this report focus on the development of a new law for international disaster relief. While consideration was given to the amendment of a range of different laws in the development of these recommendations, it was felt that developing a single text incorporating most of the issues relevant to international disaster relief would be the most feasible option for strengthening the legal framework in Afghanistan. In order to prevent conflict between existing laws in Afghanistan covering customs, immigration and other relevant topics, it is also proposed that the new law on international disaster relief override the application of other laws during emergency situations.

The detailed recommendations contained in this report are set out below.

Overview of Relevant International/Regional Laws and Policies

1. The following steps should be taken by relevant authorities:
 - International instruments that are ratified or acceded by Afghanistan should be translated into domestic laws and regulations.
 - Afghanistan should consider acceding to other relevant international conventions, such as the Tampere Convention.

Overview of Afghanistan's Disaster Management Framework

2. The Early Warning System should be enhanced and a clear procedure should be enacted on coordination and dissemination of early warning information.
3. A new law on international disaster relief should be adopted, which:
 - Establishes a clear procedure, and designates responsibilities for assessing needs and requesting and accepting international disaster assistance.
 - Provides for a specific agency (e.g. MoFA) to disseminate the request to the international community.
 - Contains detailed provisions on the process of initiation, coordination, and termination of international disaster assistance as set out in the Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance.

Legal Status of Organizations Providing Assistance

4. A new law on international disaster relief should:
 - Establish a system for international actors to pre-register as Eligible Actors in order to receive certain legal facilities. Eligibility of assisting actors should be based on certain criteria such as documents evidencing their legal personality in a foreign jurisdiction, previous experience and current capacity in providing relief assistance as well as their ability to comply with responsibilities described in Part 4 of the IDRL Guidelines.

- Provide a temporary legal status to registered Eligible Actors to enter into contracts, sign leases, hire local personnel, open bank account and perform other activities without delay during relief operations.²⁰⁹
- Exclude the international personnel of Eligible Actors from being resident for tax purposes during disaster situations.
- Waive VAT on all imports and local purchases and transactions of Eligible Actors.
- Set up a procedure for the entry of necessary funds and currencies by Eligible Actors.

Border Control Requirements and Transport Arrangements

5. A new law on international disaster relief should provide for:
 - Reduced documentation requirements for disaster relief items and equipment imported by Eligible Actors.
 - Exemptions from re-export duties for all relief items, vehicles, and equipment imported by Eligible Actors.
 - Expedited processes for the importation of relief goods and equipment and priority clearance for relief consignments of Eligible Actors.
 - Customs services to be carried out for the release or clearance of relief consignments outside business hours when necessary.
 - The waiver or reduction of certain inspection requirements for relief items imported by Eligible Actors.
6. A new law on international disaster relief should:
 - Set out procedures for importation of telecommunication equipment for the purpose of disaster relief.
 - Waive any licensing requirements or fee for the use of equipment and frequencies by Eligible Actors.
7. A new law on international disaster relief should reduce importation requirements for medications imported by Eligible Actors during disasters provided that the medication imported is:
 - Transported in a manner that ensures the quality of medications;
 - Appropriately labelled in languages understood in Afghanistan;
 - At least 12 months from their expiry date upon arrival.
8. A new law on international humanitarian assistance should provide an expedited procedure for granting temporary plates for vehicles imported by Eligible Actors.
9. A new law on international disaster relief should provide for:
 - A disaster relief visa for personnel of Eligible Actors, free of any fees and charges with which they can perform their activities without requiring work permits.

²⁰⁹ See the Model Act, Chapter VI, Part 6.

Summary of Recommendations

Where possible and considering the national security and safety, the disaster relief visas should be given to Eligible Actors upon arrival at the point of entry.²¹⁰

- Temporary recognition of professional qualifications of foreign personnel of Eligible Actors during disasters.²¹¹

10. A new law on international disaster relief should:

- Provide an expedited procedure for granting entry and movement permits for land vehicles of Eligible Actors carrying relief goods.
- Waive restrictions, tolls, fees, and charges on land vehicles of Eligible Actors carrying relief goods, equipment and personnel.
- Provide relief aircrafts, as appropriate, priority for passage, air traffic routing and landing permissions.

11. With a view to more coordinated relief operations, ANDMA should develop a clear policy for Eligible Actors to access affected persons and ensure their security with the help of national security forces.

12. A new law on international disaster relief should:

- Provide for the extension of work hours for relevant government agencies specifically in disaster situations.
- Promote the provision of relief-related services to assisting actors at reduced prices and where possible at no cost.

13. A new law on international disaster relief should:

- Include a chapter on responsibilities of assisting actors, outlining the principles under which they should provide assistance and requiring them to respect the dignity and privacy of persons affected by disaster as well as meet minimum quality standards for goods and services provided.
- An assisting actor applying for eligibility for the legal facilities outlined in 5.4, should be required to submit an undertaking relating to these responsibilities.
- Afghanistan as an Assisting/Transit State

14. A new law on international disaster relief should provide for the simplification of documentation requirements and for waiver of export duties on outgoing relief goods and equipment.

15. A new law on international disaster relief should provide waivers of applicable fees and/or reduced inspection requirements for relief goods in transit through Afghanistan.²¹²

²¹⁰ See the Model Act, Chapter VI, Part 1.

²¹¹ Ibid.

²¹² See the Model Act, Chapter VII.

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- Anti Money Laundering Law 2004
- Banking Law 2003
- Civil Aviation Law 2003
- Constitution of Afghanistan 2004
- Constitution of ARCS 2006
- Customs Law 2005
- Customs Tariff 2010
- Disaster Management Law 2012
- Driving License Regulation 1982
- Environment Law 2007
- Food and Quality Control Law
- Income Tax Law 2009
- Labor Law 2008
- Law on Food and Quality Control
- Law on International Road Transport and Transit in Afghanistan 1978
- Law on Migration and Residence of Foreigners 2000
- Law on Telecommunication Services 2005
- Medicine Law 2008
- Ministry of Public Health's Human Resources Policy 2006
- National Standard Law 2010
- Non-governmental Organization Law 2005
- Overtime Regulation 2011
- Police Law 2009
- Public Health Law 2009
- Regulation on Coordination of Activities, Information Exchange, and Communication of ANDMA
- Regulation on Civil Aviation Fees 2005
- Regulation on Land Vehicle License 2007

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Regulation on Manufacturing and Importation of Medicine and Medical Equipment 2007

Road Traffic Law 1982

Veterinary Law 2000

International/Regional Instruments

Agreement on Establishing the SAARC Food Bank 2007

Convention on Assistance in Case of Nuclear Accident or Radiological Emergencies 1986

Convention on International Civil Aviation (1994), Annex 9

Convention on the Privileges and Immunities of the United Nations, 1946

Establishment of the Asia Pacific Disaster Response Fund 2009

Food Assistance Convention 2012

Framework Convention On Civil Defence Assistance 2000

Hyogo Framework for Action 2005—2015

Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Recovery Assistance (2007) “IDRL Guidelines”

Istanbul Convention 1990, Annex B.9

Kyoto Convention 1974, Annex J, Chapter 5

Memorandum of Understanding between the Republic of Turkey and the Islamic Republic of Afghanistan and the Islamic Republic of Pakistan, 2010

Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel 1994

Tampere Convention 1998

Vienna Convention of Diplomatic Relations of 1961

Plans, Reports, and other Documents

Afghanistan’s National Disaster Management Plan 2010

An Inventory to Exporting Goods from Afghanistan 2013

CPHD Report 2011, Floods and droughts: the Afghan water paradox by Jelle Beekma and Joel Fiddes

Inland Customs Depot and Border Crossing Points Work Schedule

Potential Flood Scenarios and Afghanistan’s Disaster Management Framework 2012

South Asia Disaster Report 2008

Strategic National Action Plan for Disaster Risk Reduction: Towards Peace and Stable Development 2011

UNHCR IDP Data Report-May 2012

List of References

List of Organizations Consulted

Afghan Red Crescent Society (ARCS)
Afghanistan National Disaster Management Authority (ANDMA)
Afghanaid Organization
International Federation of Red Cross and Red Crescent Societies (IFRC)
International Organization for Immigration (IOM)
Ministry of Defense
Ministry of Finance
Ministry of Foreign Affairs
Ministry of Interior
Ministry of Public Health
Ministry of Refugees and Repatriation
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i See Chapter II of the Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (March 2013).
ii See Chapter II of the Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (March 2013).

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

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

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

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

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

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

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

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



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