

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

ALLIANCE FOR OPEN SOCIETY
INTERNATIONAL, INC. *et al.*,

Plaintiffs,

-against-

UNITED STATES AGENCY FOR
INTERNATIONAL DEVELOPMENT *et al.*,

Defendants.

05-CV-8209 (VM) (DF)

DECLARATION OF
MARK SIDEL

1. This Declaration addresses the legal and practical difficulties of establishing, registering, and operating new nonprofit organizations overseas, in light of the guidelines issued by the government (U.S. Agency for International Development and Department of Health and Human Services) under the U.S. Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (the “Guidelines”). The Guidelines prohibit grant recipients to from engaging in protected expression unless they do so through newly created, privately funded separate organizations that would not be required to follow the Act's policy requirement.¹

2. The Guidelines do not allow American charitable organizations working abroad adequate alternative channels for protected expression because it is simply too

¹ See Acquisition & Assistance Policy Directive (AAPD) 05-04 Amendment 1, Implementation of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 – Eligibility Limitation on the Use of Fund and Opposition to Prostitution and Sex Trafficking, issued July 23, 2007 (U.S. AID Guidelines); Guidance issued by the Office of Global Health Affairs, Department of Health and Human Services, implementing Section 301(f) of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003, issued July 23, 2007.

burdensome for non-profit organizations to create, establish, register, and operate new such organizations everywhere they work overseas.

3. In particular, the extraordinarily stringent requirements for organizational separation and independence – mandating “legally separate entit[ies],” that are completely “physically and financially separate,” judged on factors that include “the existence of separate personnel, management, and governance,” “the existence of separate accounts, accounting records, and timekeeping records,”² and separate signage and identification, are exceptionally burdensome for the Plaintiffs and for other American charitable and nonprofit organizations seeking to provide critical relief and development services that literally keep people alive in some of the world’s most challenging countries.

4. This Declaration addresses whether, and the extent to which, the Guidelines impose burdens on the establishment of affiliates in all of the countries in which these organizations operate, whether with US or private funds. By way of example, this Declaration establishes and details the legal and practical burdens in registering a new and separate nonprofit in five of the countries where Pathfinder International and CARE, which are members of InterAction and Global Health Council, operate outside the United States: India, Bangladesh, Mozambique, Ethiopia, and Peru.

I. Background and Statement of Qualifications

5. I currently serve as Professor of Law and Faculty Scholar at the University of Iowa, where I teach, conduct research and publish scholarly work on the law affecting

² Id. This wording appears in both the U.S. AID and Department of Health and Human Services guidance.

nonprofit organizations and philanthropy, particularly in international and comparative perspective.

6. I am President-elect of the International Society for Third Sector Research (ISTR), the international scholarly association promoting research and education on the nonprofit sector, philanthropy and civil society, and will serve as President in 2009-2011. In 2009-2010, I will also serve as Chair of the Section on Nonprofit and Philanthropic Law of the American Association of Law Schools (AALS), the group of law professors and legal scholars teaching, conducting research, and publishing scholarly work on the law of nonprofit and philanthropic institutions.

7. I have conducted research and published on the law affecting nonprofit and philanthropic institutions, particularly in international and comparative perspective, for many years. My publications in this area, detailed in my Curriculum Vitae, which is attached hereto as Exhibit A, include work published in the Michigan Law Review, UC Davis Law Review, Pittsburgh Law Review, Voluntas: International Journal of Voluntary and Nonprofit Organizations, and other major journals. In 2008 I will publish a scholarly volume on the impact of counter-terrorism law and policy on nonprofit organizations titled Regulation of the Voluntary Sector: Freedom and Security in an Era of Uncertainty (Routledge, forthcoming 2008).

8. I have consulted for government agencies, international agencies, foundations and charitable organizations, and other institutions on law and policy affecting nonprofit and philanthropic institutions. These institutions include the Ford Foundation, World Bank, United Nations Development Programme, Asia Foundation, Luce Foundation, Oxfam, and other institutions. In other areas I have served as a

consultant for the U.S. Department of Justice (human trafficking); U.S. Department of State (human trafficking and forced labor in Asia, and other matters); the U.K. Serious Organized Crime Agency (SOCA); the Refugee Legal Centre (U.K.); the Vietnamese Ministry of Justice; Vietnamese Union of Science and Technology Associations; and other institutions.

9. I hold the A.B. degree from Princeton University, the M.A. degree from Yale University, and the J.D. degree from Columbia Law School, where I studied Asian law. I read and speak Chinese and read Vietnamese. Earlier I served in senior program positions with the Ford Foundation in Beijing, Bangkok, Hanoi, and New Delhi, including directing and managing the Ford Foundation's programs in Vietnam, and developing a regional program to strengthen the nonprofit sector and philanthropy in South Asia.

10. I have worked very extensively in several of the countries discussed in detail in this Declaration. In India, I served as Program Officer for the Nonprofit Sector and Philanthropy with the Ford Foundation, developing and managing a regional program to strengthen the nonprofit sector and philanthropy in South Asia, based at the Ford Foundation's regional office in New Delhi. In Bangladesh, I served as consultant to the Ford Foundation with full responsibility for the establishment of Bangladesh's first national private foundation, the Bangladesh Freedom Foundation. I have written and published extensively on the nonprofit sector and philanthropy in India and Bangladesh,

including co-editing a volume titled Philanthropy and Law in South Asia³ and publishing several scholarly law articles and book chapters.⁴

II. The Guidelines Impose Substantial Burdens on the Establishment and Operations of U.S.-based Nonprofit Organizations that Operate Abroad

11. The burdens of providing humanitarian assistance in most of the countries in which the members of InterAction and Global Health Council (collectively “members”) operate become exceptionally burdensome when they must be shouldered twice, for new and separate organizations. In virtually every country abroad, including those in which the members operate, those burdens include those described below.

A. Burdens of Registering a New, Legally Separate Entity in Multiple Countries

³ Philanthropy and Law in South Asia (Mark Sidel and Iftexhar Zaman (eds.), Asia Pacific Philanthropy Consortium, 2004), updated as Philanthropy and Law in South Asia: Recent Developments in Bangladesh, India, Nepal, Pakistan, and Sri Lanka (Asia Pacific Philanthropy Consortium, 2007, www.asianphilanthropy.org).

⁴ These include Mark Sidel, *Recent Research on Philanthropy and the Nonprofit Sector in India and South Asia*, 12 Voluntas: International Journal of Voluntary and Nonprofit Organizations 171 (2001); Mark Sidel, *Resource Mobilization and the New Indian Philanthropy*, in Richard Holloway (ed.), Towards Financial Self-Reliance: Resource Mobilisation for Citizens’ Organisations in the South (Earthscan, 2001); Mark Sidel, *Philanthropy in India’s High Technology Communities and the Complex Search for Social Innovation*, Harvard Asia Quarterly (Summer 2001); Mark Sidel, *Courts, States, Markets and the Nonprofit Sector: Judiciaries and the Struggle for Capital in Comparative Perspective*, 78 Tulane Law Review 1611 (2004); Mark Sidel, *The Guardians Guarding Themselves: Nonprofit Self-Regulation in Comparative Perspective*, 80 Chicago-Kent Law Review 803 (2005); Mark Sidel and Iftexhar Zaman, *Philanthropy and Law in South Asia: Key Themes and Key Choices*, International Journal of Not-for-Profit Law 7:2 (2005); Mark Sidel, *Diaspora Philanthropy to India: An American Perspective*, in Geithner, Johnson and Chen (eds.), Diaspora Philanthropy and Equitable Development in China and India (Global Equity Initiative, Harvard University, 2005); Mark Sidel, *Focusing on the State: Government Responses to Diaspora Philanthropy and Implications for Equity*, in Merz, Geithner and Chen (eds.), Diasporas and Development 25-54 (Global Equity Initiative, Harvard University, 2007).

12. The Guidelines would impose significant, often exceptional difficulties in securing permission to register and operate a new nonprofit entity in a foreign country. These difficulties are substantially exacerbated by the fact that organizations will have to explain to local government authorities (often multiple authorities, and at different levels) why a second, separate and new registration for another entity is necessary.

13. In many countries in which the members operate, for example, approval and registration of a new and separate foreign affiliated organization is a long, cumbersome and exceptionally difficult procedure, involving substantial costs. It will be even longer, more cumbersome and difficult where it involves the second, new, and separate organization related to an American charitable organization and where the American parent must shoulder the additional burden of explaining to the foreign government why this arrangement is necessary. In some countries, government agencies responsible for approval and registration of foreign charities or their local counterparts may only allow each organization to have one address, or only to work in defined, pre-approved areas of the country. As the International Center for Not-for-Profit Law (ICNL) has noted, there is currently “a regulatory backlash against NGOs that has caused growing concern among commentators and practitioners throughout the world. In the past 2 years alone, more than twenty countries have introduced restrictive regulations aimed at undermining civil society. These countries join scores of others with existing laws, policies, and practices that stifle the work of civil society organizations.”⁵

⁵ David Moore, *Safeguarding Civil Society in Politically Complex Environments*, 9:3 International Journal of Not-for-Profit Law (July 2007), at www.ijnl.org. On the government-caused problems of registration in a disaster-ridden nation, see also International Federation of Red Cross and Red Crescent Societies (IFRC), Law and Legal Issues in International Disaster Response: A Desk Study (2007), at 13.

B. Difficulties Securing Visas and Work Permits for Foreign Employees of New Entity

14. Members will face difficulties securing visas and/or work permits for American or other foreign employees of the new entity, difficulties exacerbated because many countries may not issue visas or work permits for additional foreign personnel in a new and separate entity – and where the government Guidelines appear clearly to prohibit the “dual use” of personnel across both affiliates.

15. As the International Red Cross has found, governments frequently limit the number of visas and/or work permits that can be given to foreign nongovernmental organizations, impose substantial waiting times or approval procedures, and require that the organizations to whom such foreign individuals will be assigned be fully registered and approved. In fact, some 77% of international humanitarian organizations responding to an International Red Cross survey reported significant difficulties in this area.⁶ All of these processes would become considerably more difficult and complex under the Guidelines.

C. Expenses of Paying for Separate Office Space, Staff, and Equipment

16. Members will face expenses – sometimes exorbitant expenses – of paying for new and separate office space, local staff, foreign staff, necessary vehicles (including

⁶ See International Federation of Red Cross and Red Crescent Societies (IFRC), Law and Legal Issues in International Disaster Response: A Desk Study (2007), Sec. 10.1, p. 116, at <http://www.reliefweb.int>, (attached in relevant portion as Exhibit C hereto).

customs and tax costs as well as vehicle costs),⁷ office equipment, security, telephone and Internet access, and other services.⁸ These expenses would be exacerbated because, according to the Guidelines, they cannot be shared by the organizations, which must remain separate in all ways.

D. Problems Opening Bank Accounts

17. Members will face particular problems associated with opening bank accounts by nonprofit and nongovernmental organizations in many countries. Banks may require evidence of registration with and approval by the government, and national laws or regulations may limit the number of bank accounts or even prohibit multiple accounts per organization, per donor, or per project (as has been the case in India under the Foreign Contribution (Regulation) Act).⁹ These already complex and difficult provisions would be exacerbated by implementation of the Guidelines.

E. Tax Burdens

18. The procedural tax burdens on branches, affiliates or grantees of American charitable organizations in developing countries are already burdensome, and the addition of a requirement for new and separate organizations is likely to significantly confuse the issues of tax exemption and tax deductibility for domestic affiliates, and to re-raise with

⁷ For example, the same International Red Cross study cited above noted that 40% of international humanitarian organization headquarters reported that customs problems with importing telecommunications equipment were “always or frequently present.” *Id.* at 199.

⁸ In yet another example, the Red Cross study found that 85% of international humanitarian organization headquarters reported barriers to hiring local staff. *Id.* at 120.

⁹ The International Red Cross also reported that 85% of international humanitarian organization headquarters had difficulties in opening bank accounts in the countries where they work. *Id.* at 126.

government officials the question of the tax treatment of organizations related to American charities and nongovernmental organizations, resulting in substantial additional burdens. In certain cases, national governments may even question whether existing organizations, operating on a tax exempt basis, should be re-classified or reexamined, causing exceptional burdens not only for the new and separate affiliate but potentially for the existing organization as well.¹⁰

F. Additional Political and Security Suspicion of New and Separate Establishments in Foreign Jurisdictions

19. Members will face substantial risk of significantly enhanced suspicion by government, security, intelligence and police authorities in countries concerned that new and separate organizations are being created in order to evade tax, customs, or other government regulations. In a number of countries, government authorities, service providers, the media and other institutions are likely to believe that new and separate groups are being established in order to separate grantmaking and programs from advocacy, and thus to substantially increase advocacy activities, support for dissidents, and other activities that may be highly unpopular to government authorities.

20. Such “doubling up” would also cause, in many countries, increased foreign country intelligence targeting of the American organizations, and increased suspicion in some countries that the new and separate groups are being formed to engage in destabilizing activities or activities in support of armed or other dissidents.

¹⁰ For examples of the significant tax burdens and difficulties that can be encountered, see the International Red Cross study, *id.* at secs. 12.1, 12.3, pp. 125-29.

G. Fundraising Difficulties

21. The Guidelines will also make it more difficult – perhaps considerably more difficult – for institutions to raise funds for two reasons.

22. First, in a highly competitive fundraising environment, the newly-formed separate organizations would have no track record of accomplishment on the ground on which to raise funds. Because of the exceptionally detailed separation requirement, the new and separate affiliates are unlikely to be able to rely on the track record in effective work on the ground established by the already-existing organization.

23. Second, the increased administrative costs incurred from dividing the work that a member does in dozens of countries into new and separate organizations would likely downgrade a member's ranking by independent certification organizations that rank charitable organizations.

24. In response to concerns about effectiveness and efficiency in the American charitable sector, a number of rating and ranking organizations evaluate non-profit administrative costs and the ratio of administrative to program costs. This burgeoning sector includes the Better Business Bureau Wise Giving Alliance (www.give.org), Charity Navigator (www.charitynavigator.org), Guidestar (www.guidestar.org), Charity Watch (American Institute of Philanthropy) (www.charitywatch.org), and others.

25. Less favorable rankings or ratings, in turn, can have a distinctly negative impact on the ability of organizations to raise funds from the public. They may even impact the ability to obtain funds from the government. In my own experience as a grantmaker with a major private foundation, and as a consultant to other foundations and scholar of philanthropy as documented earlier in this Declaration, I am of the opinion that

the requirements of the Guidelines and the implications of those requirements for administrative expenses, ratings and related issues would negatively impact fundraising by affected institutions.

H. All of These Factors Impose Substantial Burdens on Members' Operations in the United States

26. The cumulative effect of these burdens in multiple countries is likely to be very substantial. But beyond the burdens on the new and existing related organizations in many developing countries, the various burdens, in dozens of countries, will in turn cause substantial burdens for the home offices of American charitable institutions, adding substantial administrative costs that neither government funding nor private donors are likely to cover because these expenses do not contribute directly to the resolution of hunger, poverty, illness and other problems in developing countries, but must be managed solely in response to the government's Guidelines.

III. Examples of the Burdens the Guidelines Impose in Five Key Identified Countries in Which Plaintiffs are Active

A. India

27. Requiring American charitable organizations to establish new and separate affiliates in India, in addition to the operations that they have established through long and assiduous effort, is likely to be exceptionally burdensome and result in long delays, expensive processes, and government refusal to allow the registration and establishment of new and separate organizations.

28. The process for registering and establishing Indian affiliates of foreign charitable organizations, or foreign branches of charitable organizations, in India is already exceptionally complex and cumbersome, beginning with a difficult choice between registering and establishing as a society, trust, company or in some other form.

29. Registration and establishment in India takes months or years of application and seeking government approval, including consideration of the activities that the organization will carry out, examination of the proposed board, and other procedures. For foreign organizations establishing affiliated organizations in India, these processes are complicated by the required clearances that must be obtained from the Indian Intelligence Bureau (IB), Ministry of Foreign Affairs, and other government authorities.

30. Beyond the complexities and cumbersome process, it is possible or even likely that the Indian authorities, concerned with tracking and understanding the activities of foreign charitable and nonprofit affiliates in India, will merely refuse to allow the registration and establishment of parallel organizations. Such refusals are likely to take place on an organizational basis, and it would be in keeping with past Indian government practice for the government to make such decisions based in part on the advocacy activities of specific organizations.

31. Visas for foreign personnel are always complex and time-consuming to obtain. The government often imposes limits on the number of foreign personnel that can be employed by the affiliate of a foreign charitable organization, and it may well be impossible to convince the government to loosen that limit for new and separate affiliates of American charitable organizations.

32. The burdens of operations are particularly problematic in India. Affiliates and branches of foreign charitable and nonprofit organizations must engage in the highly cumbersome and time-consuming process of obtaining government authorization for duty-free import of vehicles and office equipment (because the government may not permit duty-free purchase of existing goods held by other charities in the country), and it may well be very difficult to obtain those permissions for two affiliates of the same foreign organization. Securing appropriate office space, telephone and Internet access and other necessary services can take months or longer. Accomplishing these tasks twice, for separate affiliates of the same American organization, is likely to be exceptionally difficult and spark suspicion that cheating, fraud, illicit or anti-government activities are at work.

33. There are other restrictions at work as well. The U.S. State Department noted in the most recent (March 2007) Country Reports on Human Rights Practices that “NGOs must secure approval from the Ministry of Home Affairs before organizing international conferences. Human rights groups contended that this provided the government with substantial political control over the work of NGOs and restricted their freedom of assembly and association. NGOs alleged that some members from abroad were denied visas arbitrarily.”¹¹ In addition, “[s]ome domestic NGOs and human rights organizations faced intimidation and harassment by local authorities.”¹²

34. There is a long history of government suspicion of the foreign charitable sector in India, documented by the U.S. Department of State as recently as March 2007 in

¹¹ See the India section of the U.S. Department of State, Country Reports on Human Rights Practices 2006 (issued March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78871.htm.

¹² Id.

the most recent annual Country Reports on Human Rights Practices.¹³ These historical influences increase the burdens on organizations establishing new and separate organizations, for the Indian government authorities at central and state levels will be suspicious that the new organization is being established to evade tax or customs requirements, or to engage in advocacy or political activities. The government ministries most likely to hold and act on these suspicions include the Ministry of Home Affairs, the Intelligence Bureau, and the Ministry of Finance.¹⁴

35. The establishment of new and separate affiliates of American charitable organizations in India would also almost certainly cause havoc and long delays in the receipt of funds from abroad for charitable work in India. This is because India has a long-standing and strictly applied process by which Indian nonprofits and charitable affiliates can receive and use foreign charitable donations, known in India as foreign contributions. The strict Foreign Contribution (Regulation) Act (FCRA) (attached as Exhibit C hereto), first adopted during the Indian Emergency in the mid-1970s, governs the receipt and use of foreign donations and requires organizations based in India to apply for approval as a foreign donation-receiving entity or to apply for special permission to receive funds on a one time basis.

36. Each of these alternatives – approval of organizations to receive foreign charitable donations, or approval of donations on a one-time basis – is exceptionally difficult and cumbersome. Indian government authorities – particularly the Ministry of

¹³ For extensive information on suspicion of foreign religious and human rights organizations in India, for example, see the India section of the U.S. Department of State, *Country Reports on Human Rights Practices* (2006), at www.state.gov/g/drl/rls/hrrpt/2006/78871.htm.

¹⁴ The U.S. Department of State has extensively tracked and documented these issues. See, e.g. the India section of the U.S. Department of State, *Country Reports on Human Rights Practices 2006* (issued March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78871.htm.

Home Affairs, which administers the FCRA system, and the Intelligence Bureau, which conducts FCRA-related investigations of charitable and nonprofit organizations for the Indian government – remain suspicious that foreign charitable funds will be used for destabilizing religious, political, corrupt or other purposes in India. The U.S. State Department has noted multiple instances in which these suspicions have resulted in denials of approval for foreign charitable funds to be used in India.¹⁵

37. In addition, as the most recent State Department country report on human rights in India points out, “[i]n February [2006], the Ministry of Home Affairs barred 8,673 organizations from seeking foreign funds under the Foreign Contribution and Regulation Act (FCRA), reportedly for failing to provide the proper paperwork. Under the ruling, these organizations need government approval before seeking aid from abroad. NGOs called the FCRA flawed and extremely restrictive and claimed that the government failed to notify organizations when the requisite paperwork was needed. Some human rights groups contended that FCRA was a means of intimidation and substantial political control by the government over the work of NGOs. NGOs expressed concern that the Home Ministry, which is normally not responsible for financial matters, was tasked with monitoring the finances of NGOs. The act has a clause that states the NGOs must also secure approval from the government before organizing international conferences, and some NGOs alleged that the government has denied visas to prevent

¹⁵ See the India section of the U.S. Department of State, Country Reports on Human Rights Practices 2006 (issued March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78871.htm. I have discussed this problem in India (as well as in Bangladesh) extensively in Sidel, *Courts, States, Markets and the Nonprofit Sector: Judiciaries and the Struggle for Capital in Comparative Perspective*, 78 Tulane Law Review 1611 (2004).

members from holding conferences paid for with foreign funds.”¹⁶ The State Department report also pointed out that “[i]nternational human rights organizations were restricted, and foreign human rights monitors historically have had difficulty obtaining visas to visit the country for investigative purpose.”¹⁷

B. Bangladesh

38. Requiring American charitable and nonprofit organizations to establish new and separate organizations in Bangladesh, under a system in which even the normal, seemingly uncontroversial establishment of a single charitable affiliate can cause enormous burdens and delays, is likely to be exceptionally burdensome and to result in long delays, expensive processes, and even government refusal to allow the registration and establishment of the new and separate organizations.

39. American charitable organizations have spent decades negotiating the byzantine and conflict-filled processes of government regulation of the foreign charitable sector in Bangladesh, and remain concerned that a conflict-ridden, often violent political culture marked by an impasse between two powerful political parties and military rulers will result in further erosion of the work that charitable organizations can do in Bangladesh.¹⁸ Under these tenuous and difficult circumstances, where “the relationship between nonprofits and the government has nearly always been characterized by tension

¹⁶ See the India section of the U.S. Department of State, Country Reports on Human Rights Practices 2006 (issued March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78871.htm.

¹⁷ Id.

¹⁸ See, e.g., the discussion of charitable activities and dangers in Philanthropy and Law in South Asia: Recent Developments in Bangladesh, India, Nepal, Pakistan, and Sri Lanka (Asia Pacific Philanthropy Consortium, 2007, www.asianphilanthropy.org). See also The World Bank, Economics and Governance of Nongovernmental Organizations in Bangladesh (World Bank, April 2006, at www.worldbank.org.bd).

and mistrust,”¹⁹ requiring that American charities establish parallel organizations in Bangladesh is likely to prove exceptionally burdensome.

40. Registration and establishment in Bangladesh, as in India, takes months or years of application and seeking government approval, including consideration of the activities that the organization will carry out, examination of the proposed board, and other procedures. For foreign organizations establishing groups in Bangladesh, these processes are complicated by the required clearances that must be obtained from multiple government agencies, including the bureaucratic and politically driven NGO Affairs Bureau (NGOAB) and other government institutions. A report funded partly by U.S. AID found that “delays by NGOAB are frequent and often prolonged...NGOAB lacks capacity in the most fundamental aspects of its ability to perform its functions.”²⁰

41. Beyond the complexities and cumbersome process, it is likely that the Bangladesh authorities, as in India, concerned with tracking and understanding the activities of foreign charitable and nonprofit organizations, will merely refuse to allow the registration and establishment of parallel organizations. Such refusals are likely to take place on an organizational basis, and it would be in keeping with past Bangladeshi government practice for the government to make such decisions based in part on the advocacy activities of specific organizations. A 2005 report partly funded by U.S. AID

¹⁹ Philanthropy and Law in South Asia, *supra* note 21, p. 5.

²⁰ Leon Irish, Karla Simon, and Fawzia Karim Feroze, Legal and Regulatory Environment for NGOs in Bangladesh (17 April 2005), funded by NORAD, SIDA, and U.S. AID and contracted by UNDP, at <http://www.iccsl.org/pubs/bangladeshfinalreportmay15.pdf>, p. 10.

commented on the “much bad will and suspicion ... between the NGOs and the GOB [Government of Bangladesh].”²¹

42. The U.S. State Department, in its most recent report (March 2007) on human rights practice in Bangladesh, noted that “[t]here were many examples of harassment [of foreign and domestic NGOs] by the [Bangladeshi] intelligence agencies.”²² “In September [2006], according to local human rights organizations, in anticipation of opposition protests in Dhaka, the government indiscriminately arrested hundreds of persons, including opposition activists and NGO supporters, on old cases or false charges such as theft. Most detainees were released within a few days. ... In mid-September police throughout the country arrested 172 workers at different offices of the NGO Proshika, according to press reports.”²³

43. Visas for foreign personnel are usually complex and time-consuming to obtain, as the U.S. Department of State has documented with respect to foreign religious personnel in Bangladesh as recently as March 2007.²⁴ The government often imposes limits on the number of foreign personnel that can be employed by an organization related to a foreign charitable organization, and it may well be impossible to convince the government to loosen that limit for new and separate affiliates of American charitable organizations.

²¹ Id., p. 19.

²² See the Bangladesh section of the U.S. Department of State, Country Reports on Human Rights Practices 2006 (issued March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78869.htm.

²³ Id. The State Department also reported that “No action was taken nor charges filed related to the July 2005 deaths of two employees of the Christian Life Bangladesh NGO who were allegedly killed because they showed an evangelical film. Police initially arrested several suspects for the killing, but they were later released, and no charges had been filed at year's end.”

²⁴ Id.

44. The burdens of operations are particularly problematic in Bangladesh. Affiliates of foreign charitable and nonprofit organizations must often engage in a highly cumbersome and time-consuming process of obtaining government authorization for duty-free import of vehicles and office equipment (since the government may not permit foreign charities or their local affiliates to purchase existing, in-country goods on a duty-free basis), and it may well be very difficult to obtain those permissions for two groups related to the same foreign organization. Securing appropriate office space, telephone and Internet access and other necessary services can take months or longer. Accomplishing these tasks twice, for separate affiliates of the same American organization, is likely to be exceptionally difficult and spark suspicion that cheating, fraud, illicit or anti-government activities are at work.

45. Given the already heightened suspicions of the Bangladeshi authorities toward foreign charitable and nonprofit organizations, the authorities in Dhaka, like those in India, are likely to be highly suspicious that attempts to establish parallel groups in Bangladesh are being undertaken to evade tax or customs requirements, or to engage in advocacy or political activities. The government bodies most likely to hold and act on these suspicions are the NGO Affairs Bureau, Ministry of Home Affairs, and ministries and agencies concerned with security and intelligence.²⁵

46. As in India, the establishment of new and separate related organizations of American charitable organizations in Bangladesh would also almost certainly cause havoc and long delays in the receipt of funds from abroad for charitable work in

²⁵ See the Bangladesh section of the U.S. Department of State, Country Reports on Human Rights Practices 2006 (issued March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78869.htm, for further information on suspicion of foreign NGOs.

Bangladesh. Bangladesh has a regulated system for approval of receipt and use of foreign charitable donations by Bangladeshi affiliates of foreign charities, and a separate system of approval of the activities of foreign charitable and nonprofit organizations working directly in Bangladesh.

47. The Foreign Donation (Voluntary Activities) Regulation Act 1978, revised in 1982 (attached hereto as Exhibit D), provides the legislative framework for this intensive regulation. The Act has been used to deny release of foreign donated funds to Bangladeshi NGOs allegedly because they were “involved in political activities” among other alleged transgressions, according to the government of Bangladesh.²⁶ Recently, the government has proposed strengthening and tightening the Act on several occasions. To cite but one example, the government proposed prohibiting “political activity” by nonprofits, defined so broadly that advocacy activities by charitable organizations could well be included if government authorities disapproved of such activities.²⁷

48. Bangladeshi government authorities remain suspicious that foreign charitable funds will be used for destabilizing religious, political, corrupt or other purposes in Bangladesh.

C. Mozambique

49. In Mozambique, requiring American charitable organizations to establish new and separate organizations for work there would be a highly burdensome task. The

²⁶ PRIP Trust Signs Undertaking to Get Back Fund, New Age (Dhaka), April 25, 2005, at <http://www.newagebd.com/2005/apr/25/front.html>.

²⁷ Philanthropy and Law in South Asia: Recent Developments in Bangladesh, India, Nepal, Pakistan, and Sri Lanka (Asia Pacific Philanthropy Consortium, 2007, www.asianphilanthropy.org), pp. 5-7.

situation for American charitable organizations seeking to register and work in Mozambique is already very difficult. As the U.S. State Department recently reported, “[a] government decree regulates the registration and activities of foreign NGOs. Nonpolitical foreign NGOs and religious groups must register with the Ministry of Foreign Affairs and Cooperation and are required to provide significant details on their organization's projects, staffing, and finances. ... The registration process for foreign NGOs and religious groups reportedly involved significant discretion on the part of government officials and regularly took several months.”²⁸

50. Human Rights Watch has documented that authorization under this decree, Decree 55/98 (attached hereto as Exhibit E), “is provided to NGOs whose activities conform with the Government program.... The Ministry issues two-year renewable permits to those NGOs who are authorized to register.”²⁹ Under these difficult circumstances – where registration and establishment of a single foreign charitable office is risky and complex at best – expecting and requiring foreign charitable organizations to establish new and separate organizations in Mozambique under Mozambican law would be exceptionally difficult to well-nigh impossible.

51. Beyond the complexities and cumbersome process, it is likely that the Mozambican authorities concerned with tracking and understanding the activities of foreign charitable and nonprofit groups, will, at least in some cases, merely refuse to allow the registration and establishment of parallel organizations. Such refusals are

²⁸ U.S. Department of State, Country Reports on Human Rights Practices 2006 (March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78748.htm.

²⁹ Human Rights Watch, *NGO Laws: Malawi, Mozambique, Namibia, South Africa and Tanzania*, at <http://hrw.org/backgrounder/africa/zimbabwe/2004/12/6.htm>.

likely to take place on an organizational basis, perhaps penalizing those charitable organizations more involved with advocacy activities that challenge the government.

52. Permission to work and visas for foreign personnel are complex and time-consuming to obtain. As Human Rights Watch has reported, “Foreign employees working for foreign NGOs must conform with the Labor Law, Decree 8/98 [attached in relevant part hereto as Exhibit F]. Inter alia, the partner organization and the foreign NGO must verify that no Mozambican has the necessary qualifications before an expatriate may be hired....”³⁰ Under these already difficult circumstances it may be difficult or impossible to convince the government to loosen those limits for new and separate affiliates of American charitable organizations.

53. The burdens of operations are particularly problematic in Mozambique. Securing appropriate clearances for import of vehicles and office equipment, and securing office space, telephone and Internet access and other necessary services can take months or longer. Accomplishing these tasks twice, for separate groups related to the same American organization, is likely to be exceptionally difficult and spark suspicion that cheating, fraud, illicit or anti-government activities are at work.³¹

54. Given the already heightened suspicions of the Mozambican authorities toward foreign charitable and nonprofit organizations, the authorities in Maputo are likely to be highly suspicious that attempts to establish parallel related organizations in

³⁰ Human Rights Watch, *NGO Laws: Malawi, Mozambique, Namibia, South Africa and Tanzania*, at <http://hrw.org/backgrounder/africa/zimbabwe/2004/12/6.htm>.

³¹ For multiple examples of these difficulties in Mozambique in the customs and import context as recently as 2007, see International Federation of Red Cross and Red Crescent Societies (IFRC), Law and Legal Issues in International Disaster Response: A Desk Study (2007), at 99, 100, 109, 112 (attached in relevant part as Exhibit B hereto).

Mozambique are being undertaken to evade tax or customs requirements, to engage in advocacy or political activities. The government agencies most likely to hold and perhaps act on these suspicions include the Ministry of Interior, Ministry of Planning and Finance, Ministry of Foreign Affairs and Cooperation, and government bodies responsible for security and intelligence.

55. The establishment of new and separate related organizations of American charitable organizations in Mozambique would also almost certainly cause significant problems and long delays in the receipt of funds from abroad for charitable work in Mozambique.

56. For each of these reasons, requiring American charitable and nonprofit organizations to establish new and separate groups in Mozambique, under a system in which even the normal, seemingly uncontroversial establishment of a single charitable affiliate can cause enormous burdens and delays, is likely to be exceptionally burdensome to the American organizations.

D. Ethiopia

57. The situation for American charitable organizations seeking to register and work in Ethiopia is already very difficult, as it is for Ethiopian organizations seeking to carry out autonomous civil society activities. The U.S. State Department has reported in recent years on government “limitations on freedom of association.”³² In such an environment, requiring American organizations to entirely double their establishment and

³² See the Ethiopia report in U.S. Department of State, Country Reports on Human Rights Practices 2005 (March 2006), at www.state.gov/g/drl/rls/hrrpt/2005/61569.htm; U.S. Department of State, Country Reports on Human Rights Practices 2006 (March 2007), www.state.gov/g/drl/rls/hrrpt/2006/78734.htm.

registration activities would be both very difficult and makes no sense, mandating significant new establishment, registration and operating expenses while causing government suspicions of the motivations behind dual organizational arrangements.

58. Since the Ethiopian elections in 2005, the Ethiopian civil society and nongovernmental sector has been “fragmented and weakened.”³³ In recent years, the U.S. State Department as well as reputed American and international organizations such as Freedom House (U.S.), the Christian Relief and Development Agency (CRDA) and the International Center for Not-for-Profit Law (U.S.), have reported increasing interference with the registration of charitable and nonprofit organizations.

59. The International Center for Not-for-Profit Law reports, for example, that in Ethiopia, “regulations governing the registration process are vague and leave great discretion to the registration officials. As a result, CSOs [civil society organizations] have difficulty registering – they are sometimes denied registration and other times experience long delays or repeated requests for information.”³⁴ The Christian Research and Development Agency (CRDA), an international aid agency working actively in Ethiopia, reported in a lengthy study of the operating environment for nonprofit and charitable organizations in Ethiopia that the “registration process [is] onerous, subjective and open for abuse and provides ample room for denial of registration.”³⁵

³³ Christian Relief and Development Agency, Assessment of the Operating Environment for CSO/NGOs in Ethiopia (December 2006), at www.crdaethiopia.org, p. 4.

³⁴ International Center for Not-for-Profit Law, Recent Laws and Legislative Proposals to Restrict Civil Society and Civil Society Organizations, 8:4 International Journal of Not-for-Profit Law (August 2006), at www.ijnl.org.

³⁵ Christian Relief and Development Agency, Assessment of the Operating Environment for CSO/NGOs in Ethiopia (December 2006), at www.crdaethiopia.org, p. 14.

60. The problems, in fact, well exceed registration. The Christian Relief and Development Association reported as recently as December 2006, for example, that “[i]n Ethiopia ... the mandate of the government ... has gone beyond registration as far as closing down organizations, dictating what goes or does not go into an organization’s Memo of Association ... thus contravening the very principle of ‘freedom of associational life’. There is also concern that ... NGOs/CSOs will soon have to first present project documents from regions prior to seeking basic agreements....In other words, Government now wants to know what precisely NGOs/CSOs want to do before providing legal certificates. Furthermore, there was strong feeling that the government is monitoring the ‘political’ actions of NGOs /CSOs.”³⁶

61. The U.S. State Department has also reported on restrictions on foreign NGO electoral observers, domestic human rights organizations, and foreign religious workers, among other groups. The State Department states: “The government generally was distrustful and wary of domestic human rights groups and some international observers. After the November [2005] protests the government restricted human rights groups from visiting or investigating detention camps. In April [2005] the government expelled representatives of several foreign-based NGOs conducting electoral work.”³⁷ The situation remained problematic when the most recent State Department human rights report on Ethiopia was issued in March 2007: “The government generally was distrustful and wary of domestic human rights groups and some international observers. NGOs

³⁶ Christian Relief and Development Agency, Assessment of the Operating Environment for CSO/NGOs in Ethiopia (December 2006), at www.crdaethiopia.org, p. 12.

³⁷ See the Ethiopia report in U.S. Department of State, Country Reports on Human Rights Practices 2005 (March 2006), at www.state.gov/g/drl/rls/hrrpt/2005/61569.htm.

continued to complain of restrictions on their importation of published materials and complained that they were prevented from bringing foreigner visitors into the country.”³⁸ In both 2006 and 2007, the State Department reported that the Ethiopian government also restricted visas for foreign religious organizations.³⁹

62. Representatives of foreign charitable organizations have been caught up in the government’s repression of the charitable and nonprofit sector. In 2007, for example, the director of the policy department at ActionAid International Ethiopia, the Ethiopian branch of the major international charitable agency ActionAid was put on trial for treason in Addis Ababa, along with another defendant who headed the Organisation for Social Justice in Ethiopia, which had conducted election monitoring. The arrests of these nonprofit personnel and over 120 others had earlier prompted international donors, including the World Bank and the European Union, to threaten to withhold \$375 million in desperately needed foreign aid for Ethiopia.⁴⁰

63. Under these circumstances in which the charitable, nonprofit and civil society sector already faces substantial pressure in a country in which the effective and efficient provision of aid is critical, requiring American charitable organizations to establish new and separate organizations would be a highly burdensome and entirely counter-productive task. The creation of such related organizations would mandate significant new establishment, registration and operating expenses while causing

³⁸ See the Ethiopia report in U.S. Department of State, Country Reports on Human Rights Practices 2006 (March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78734.htm.

³⁹ See the Ethiopia report in U.S. Department of State, Country Reports on Human Rights Practices 2005 (March 2006), at www.state.gov/g/drl/rls/hrrpt/2005/61569.htm; U.S. Department of State, Country Reports on Human Rights Practices 2006 (March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78734.htm.

⁴⁰ International Center for Civil Society Law Newsletter, January 2006 and July 2007, at www.iccs.org.

government suspicions of the motivations behind dual organizational arrangements, and siphoning urgently needed resources away from addressing Ethiopia's immense problems of poverty, food insecurity, and conflict.

E. Peru

64. In Peru, requiring American charitable organizations to establish new and separate organizations would be a highly burdensome task in a situation where the charitable and nonprofit sector is already under significant pressure.

65. Freedom House reported in 2007 that “[c]ooperation between the state and NGOs has diminished significantly under the [current] government, which is perceived as wary of NGO motivations. Given the lack of a coherent opposition in congress, NGOs are seen by the government almost as opposition political parties. This puts them in a difficult position: the more vigorously they oppose government actions, the more the government view that they are political entities is validated.”⁴¹

66. These suspicions and harassment took a more ominous form in December 2006, when “final amendments were passed to a new law that imposed new registration rules on all NGOs operating in the country. The law [Ley No. 28875]... requires that all NGOs register with [the Peruvian Agency for International Cooperation] and divulge details of the provenance and intended use of all donated funds. For money channeled through [the Agency], the agency – which as an arm of the foreign affairs ministry is an executive branch institution – will have the ability to “prioritize” spending in line with national development goals, as well as impose sanctions on organizations that are deemed

⁴¹ Freedom House, Countries at the Crossroads 2007 (Peru), at www.freedomhouse.org.

noncompliant with the new regulations.”⁴² This new law was perceived as a direct threat by the Peruvian nonprofit and charitable sector.⁴³

67. In such an environment, requiring American organizations to entirely double their establishment and registration activities would be both very difficult and makes no sense, mandating significant new establishment, registration and operating expenses while causing government suspicions of the motivations behind dual organizational arrangements, and siphoning urgently needed resources away from addressing Peru’s continuing issues of poverty, food insecurity, and conflict.

IV. Conclusion

68. In summary, the government’s Guidelines impose very substantial burdens on American charitable organizations working abroad in each of these areas. The Guidelines do not allow American charitable organizations working abroad adequate alternative channels for protected expression because it is simply too burdensome for non-profit organizations to create, establish, register, and operate new related entities everywhere they work overseas.

Executed on February 5, 2008
Iowa City, Iowa



Mark Sidel

⁴² Id.

⁴³ Id. The law was challenged before the Peruvian Constitutional Court, which held parts of it unconstitutional on August 29, 2007. International Center for Civil Society Law Newsletter, October 2007, at www.iccsl.org.

Exhibit A

Mark Sidel

Curriculum Vitae

Professor of Law and Faculty Scholar
Lauridsen Family Fellow
University of Iowa College of Law

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University of Iowa
Iowa City, Iowa 52242 USA
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Education

J.D., Columbia University School of Law, 1985

Foreign Language and Area Studies Fellowship (China), 1983 – 1984
Certificate, Parker School of Foreign and Comparative Law

M.A., Yale University, 1982 (History)

Overbrook Fellowship in History
Fellow, Jonathan Edwards College

A.B., Princeton University, 1979 (History)

Academic and Professional Positions

Visiting Professor of Law, Harvard Law School, 2005 – 2006

Courses: Philanthropy and the Law; Law and Society in Asia;
Reading Group on Human Trafficking and Involuntary Servitude

Professor of Law and University Faculty Scholar, University of Iowa

Professor of Law, 2005 – present
University Faculty Scholar, 2006 – 2009
Lauridsen Family Fellow, 2007 – present

Research Scholar, Obermann Center for Advanced Studies
(1998 - present, multiple semesters)

Chair, University of Iowa Research Council, 2004 – 2005

Board member, University of Iowa Center for Human Rights, 2006 – present
Advisory Board member, University of Iowa Press, 2003 – present

Faculty affiliate: International Programs; Center for Asian and Pacific Studies;
South Asian Studies Program; Confucius Institute; Institute for Inequality
Research

Associate Professor of Law, University of Iowa, 2000 – 2005

Courses: Contracts; Nonprofit and Philanthropic Institutions; Philanthropy and
the Law; Law and Development; Law in Asia; Human Trafficking and
Involuntary Servitude; Chinese Law (in Chinese)

President-elect, International Society for Third Sector Research (ISTR) (2007 – 2009;
President, 2009 – 2011)

Visiting Professor of Law, University of Victoria Faculty of Law (Canada), 2007 (co-
teaching with Professor Andrew Harding on Human Rights and Civil Society in Asia)

Senior Fellow and Visiting Professor, University of Melbourne Law School (Australia),
2005 and 2008 (Civil Society and the Law in Asia)

Holder of the “chaire Asie” and Visiting Professor of Asian Law, Institute d’Etudes
Politiques de Paris, 2004 (Vietnam and China)

W.G. Hart Lecturer in Law, Faculty of Law and Social Sciences, School of Oriental and
African Studies, University of London, 2003

Academic Director, Philanthropy and the Law in South Asia (five nation major research
project funded by Ford, Rockefeller, Myer and Himalaya foundations), 2000 – present

Program Officer for Philanthropy and the Nonprofit Sector, The Ford Foundation,
1999 – 2000 (New Delhi)

Lecturer in Law, Harvard Law School, 1998
(Law and the Socialist Transition in Vietnam and China)

Consultant, The Ford Foundation, United Nations Development Programme, World
Bank, Asian Development Bank, Oxfam, American Council of Learned Societies, Asia
Foundation, McKnight Foundation, U.S. State Department and numerous other
philanthropic and development institutions, 1995 – present

Lecturer in Law, University of Iowa College of Law, 1996 – 1999

Program Officer for Vietnam (and director of Vietnam programs), The Ford Foundation, 1992-1995 (Bangkok and Hanoi)

Assistant Professor of Law, Lewis and Clark Law School, 1990 – 1992 (Portland)

Program Officer for Law and Legal Reform, The Ford Foundation, 1988 – 1991 (Beijing)

Associate, Baker & McKenzie, 1985 – 1988 (New York, Hong Kong, Beijing)

Teaching, Beijing Foreign Languages Institute Middle School, 1979 – 1981

Major Consultancies and Assistance to International Institutions, Governments, and Foundations (2002 – present)

Asia Pacific Philanthropy Consortium (Overview paper and keynote on diaspora philanthropy to Asia, 1998-2008: The state of the field), 2007 – 2008

United Nations Development Programme (Strategic development of legal reform program in Vietnam), 2007

Hewlett Foundation and The Philanthropic Initiative, 2007 (Report on diaspora philanthropy)

Government of Canada, Commission of Enquiry into the Investigation of the Bombing of Air India Flight 182, 2006 – 2007 (Consultancy study and testimony on charities and terrorist finance in the U.K., U.S. and Australia)

U.S. Agency for International Development (MSI), 2007 (Strategic priorities in Vietnamese law and governance reform)

Refugee Legal Centre (United Kingdom), 2007 (Assistance on refugee and asylum law)

Serious Organised Crime Agency (United Kingdom), 2006 – 2007 (Assistance on Vietnamese law)

Baker and Hostetler, Denver Foundation v. Wells Fargo Bank (Community foundation variance and investment power issues), 2006 – 2007

United Nations Development Programme and Vietnam Union of Science and Technology Associations (Advice on Vietnamese Law on Associations and nonprofit law), 2006

United Nations Development Programme (Asia regional programme) (Research study on social science institutions in Asia), 2005 – 2006

U.S. Department of State (Office to Monitor and Combat Trafficking in Persons)

(Labor law and labor export in Vietnam), 2004

U.S. Justice Department (Civil Rights Division) (Labor law and labor export in Vietnam, U.S. v. Kil Soo Lee et al (Daewoosa Samoa)), 2002 – 2003

Other consultancies (1995-present, selected): Aga Khan Foundation, American Council of Learned Societies (ACLS), Asia Foundation, Asia Pacific Philanthropy Consortium, Asian Development Bank, Center for Educational Exchange with Vietnam, Cooperation Committee for Cambodia, Economics Institute (Boulder), Ford Foundation, Global Equity Initiative (Kennedy School of Government, Harvard), Luce Foundation, McKnight Foundation, National Foreign Affairs Training Center/Foreign Service Institute (Washington), Oxfam International, Oxfam America, Oxfam Hong Kong, Pakistan Centre for Philanthropy, Refugee Legal Centre (London), SNV (Dutch overseas aid), United Nations Development Programme (UNDP), U.S. Department of Justice, U.S. State Department, Stanley Foundation, University of Iowa, Vietnamese Ministry of Justice, World Bank, and other institutions

Honors, Fellowships, Significant Lectureships, Other Positions Held

Lauridsen Family Fellow, University of Iowa, 2007 – present

University Faculty Scholar, University of Iowa, 2006 – 2009

Member, Committee on Nonprofit Self-Regulation of the Advisory Panel on the Nonprofit Sector, Independent Sector (Washington), 2006 – 2007

Richard B. Lillich Memorial Lecture, Florida State University, November 2007

Twelfth Annual James Leahy Freedom Lecture, Moorhead, MN and Fargo, ND
February 2007

Keynote Address, Seventh International Conference of the International Society for Third Sector Research (ISTR), Bangkok, July 2006

Senior Fellow and Visiting Professor, University of Melbourne Law School, 2005

Visiting Professor of Asian Law in the “chaire Asie,” Institute d’Etudes Politiques de Paris, 2004

Keynote Address, 20th Annual Mansfield Conference, University of Montana, 2004

W.G. Hart Lecturer in Law, Faculty of Law and Social Sciences, School of Oriental and African Studies, University of London, 2003

Old Gold Fellowships (University of Iowa), 2001 and 2004

University of Iowa College of Law Summer Research Fellowships, 2001, 2002, 2003, 2004, 2005, 2006, 2007

Stanley Foundation/Obermann Center for Advanced Studies/University of Iowa Research Fellowship, 2006 – 2007

University of Iowa International Summer Fellowship, 2001 (declined), 2003, 2006

Publications

Books (published and in press)

Law and Society in Vietnam (Cambridge University Press, forthcoming 2008)

Cinema, Law, and the State in Asia (ed. with Corey Creekmur) (Palgrave Macmillan, 2007)

Vietnam's New Order: International Perspectives on the State and Reform (ed. with Stephanie Balme) (Palgrave Macmillan, 2006)

More Secure, Less Free? Antiterrorism Policy and Civil Liberties Since September 11 (University of Michigan Press, 2004, revised paper edition 2006)

Philanthropy and the Law in South Asia (ed. Mark Sidel and Iftekhar Zaman) (Asia Pacific Philanthropy Consortium, 2004)

Old Hanoi (Oxford University Press, 1998)

Forthcoming and Contracted Volumes

The Regulation of the Voluntary Sector: Freedom and Security in An Era of Uncertainty (contracted with Routledge, publication expected 2008)

A Contextual Analysis of the Vietnamese Constitution (contracted with Hart Publishing (Oxford) in the series on comparative constitutionalism, and publication expected 2009)

Islands of Oppression: Human Trafficking in the United States and the Trial of Kil Soo Lee (contracted with University of Michigan Press, publication expected 2009)

Other book-length work in progress

Struggling with Reform: Rights, Equity, and the State in Vietnam (ed. Sidel and Matthieu Salomon (Institut d'Etudes Politiques de Paris))

Articles, Book Chapters, Monographs and Other Publications

Vietnamese-American Diaspora Philanthropy to Vietnam, in Paula Johnson (ed.), Diaspora Philanthropy: Existing Models, Emerging Applications (The Philanthropic Initiative and Global Equity Initiative, Harvard University, 2007)

Focusing on the State: Government Responses to Diaspora Philanthropy and Implications for Equity, in Merz, Geithner and Chen (eds.), Diasporas and Development 25-54 (Global Equity Initiative, Harvard University, 2007)

Philanthropy and Law in South Asia: Recent Developments in Bangladesh, India, Nepal, Pakistan, and Sri Lanka (Asia Pacific Philanthropy Consortium, 2007, www.asianphilanthropy.org)

The Third Sector, Human Security, and Anti-Terrorism: The United States and Beyond, 17 Voluntas: International Journal of Voluntary and Nonprofit Organizations 199-210 (2006)

Après le Patriot Act: la seconde vague de l'antiterrorisme aux États-Unis, Critique Internationale no. 32: 26-37 (Institut d'Études Politiques de Paris, September 2006)

Diaspora Philanthropy to India: An American Perspective, in Geithner, Johnson and Chen (eds.), Diaspora Philanthropy and Equitable Development in China and India (Global Equity Initiative, Harvard University, 2005)

The Guardians Guarding Themselves: Nonprofit Self-Regulation in Comparative Perspective, 80 Chicago-Kent Law Review 803 (2005)

Philanthropy and Law in South Asia: Key Themes and Key Choices (with Iftekhar Zaman), International Journal of Not-for-Profit Law 7:2 (2005)

Courts, States, Markets and the Nonprofit Sector: Judiciaries and the Struggle for Capital in Comparative Perspective, 78 Tulane Law Review 1611 (2004)

Philanthropy and Law in South Asia: Key Themes and Key Choices (with Iftekhar Zaman), in Philanthropy and the Law in South Asia (ed. Sidel and Zaman) (Asia Pacific Philanthropy Consortium, 2004)

Law, Philanthropy and Social Class: Variance Power and the Battle for American Giving, 36 U.C. Davis Law Review 1145 (2003)

Abridged version published in Proceedings of the National Council of Voluntary Organisations (U.K.) Researching the Voluntary Sector Conference (2002)

The Struggle for Hershey: Community Accountability and the Law in Modern American Philanthropy, 65 Pittsburgh Law Review 1 (2003)

The Nonprofit Sector and the New State Activism, 100 Michigan Law Review 1312 (May 2002) (Review of Norman Silber, A Corporate Form of Freedom: The Emergence of the Nonprofit Sector (New Perspectives on Law, Culture and Society, Westview Press, 2001)

Understanding Constitutional Amendment in Socialist Transitional Societies: The Case of Vietnam, Singapore Journal of International and Comparative Law symposium on *Comparative Constitutionalisms: The Remaking of Constitutional Orders in Southeast Asia*, 6 Singapore Journal of International and Comparative Law 42 (2002)

Review of Eleanor L. Brilliant, Private Charity and Public Inquiry: A History of the Filer and Peterson Commissions, 13 Voluntas: International Journal of Voluntary and Nonprofit Organizations 326 (2002)

Philanthropy in India's High Technology Communities and the Complex Search for Social Innovation, Harvard Asia Quarterly (Summer 2001)

An Eye Single for Righteousness, 99 Michigan Law Review 1637 (May 2001) (Review of John Culver and John Hyde, American Dreamer: The Life and Times of Henry A. Wallace, New York: W.W. Norton, 2000)

Resource Mobilization and the New Indian Philanthropy, in Richard Holloway (ed.), Towards Financial Self-Reliance: Resource Mobilisation for Citizens' Organisations in the South (Earthscan, 2001)

Recent Research on Philanthropy and the Nonprofit Sector in India and South Asia, 12 Voluntas: International Journal of Voluntary and Nonprofit Organizations 171 (2001)

Vietnam in 1998: Reform Confronts the Regional Crisis, Asian Survey (1999)

Translations of *Regulations on the Registration and Management of Social Organizations* (PRC State Council, 1989), *Regulations on the Management of Foundations* (1988), and *Interim Provisions for the Administration of Chambers of Commerce in China* (1989) (each with Yu Hui), in Tom Silk (ed.), Philanthropy and Law in Asia (Jossey-Bass, 1999)

Law, the Press, and Police Murder in Vietnam: Media and the Trial of Nguyen Tung Duong, in David Marr (ed.), The Mass Media in Vietnam (Australian National University, 1998)

The Translation of Foreign Social Science Literature in Vietnam (with David Marr), in David Marr (ed.), The Mass Media in Vietnam (Australian National University, 1998)

A Research Guide to Law in the Democratic Republic of Vietnam (1945-1976) and Early Socialist Republic of Vietnam (1976-1986), *Harvard Research Guides to the Legal Systems of East and Southeast Asia*, Harvard Law School, 1998

Introduction to and translation of Le Thi, *How I Came to the Vietnamese Revolution*, Signs: Journal of Women in Culture and Society (Summer 1998)

Vietnam in 1997: A Year of Challenges, 28 Asian Survey (1998)

The Emergence of a Voluntary Sector and Philanthropy in Vietnam: Functions, Legal Regulation and Prospects for the Future, 8 Voluntas 283 (1997)

Institutional and Generational Transition at the Eighth Congress of the Vietnamese Communist Party, 27 Asian Survey 481 (1997)

The New Corporate Philanthropy in Vietnam, 2 Alliance 77 (1997)

Vietnam: The Ambiguities of State-Directed Legal Reform, in Tan (ed.), Asian Legal Systems: Law, Society and Pluralism in East Asia (Butterworths, 1997)

The United States and Vietnam: The Road Ahead (New York: The Asia Foundation, 1996)

Vietnam's America Specialists: Policy Research, Strategy Formulation and Scholarly Activity for a New Era, 26 SAIS Review 43 (School of Advanced International Studies, Johns Hopkins University, Summer/Fall, 1996)

Corporate Philanthropy in Vietnam: Initial Data and Initial Problems, in North Viet Nam Now: Fiction and Essays from Hanoi (Viet Nam Forum 15) (Council on Southeast Asian Studies, Yale University) 246 (1996)

New Directions in the Study of Vietnamese Law, 17 Michigan Journal of International Law 705 (1996) (Review of Carl Thayer and David Marr (eds.), Vietnam and the Rule of Law, Canberra: Australian National University, 1993)

Translations of *Those Fifty Years* and *The America I Know*, essays by the Vietnamese scholar Nguyen Khac Vien, North Viet Nam Now: Fiction and Essays from Hanoi (Viet Nam Forum 15) (Council on Southeast Asian Studies, Yale University) 246 (1996)

The Reemergence of China Studies in Vietnam, 142 The China Quarterly 521 (June 1995)

Research Institutions in the Socialist Republic of Vietnam Focusing on the Asia-Pacific Region, in Yamamoto (ed.), Emerging Civil Society in the Asia Pacific Community 477-490 (Tokyo and Singapore, 1995)

The Emergence of a Nonprofit Sector and Philanthropy in the Socialist Republic of Vietnam, in Yamamoto (ed.), Emerging Civil Society in the Asia Pacific Community 293-304 (Institute of Southeast Asian Studies (Singapore) and Japan Center for International Exchange (Tokyo), 1995)

Dissident Legal Scholars in China's Cities, Their Organizations, and the Chinese State in the 1980s, in Bullock, Kraus, Perry (eds.), Urban Spaces: Autonomy and Community in Post-Mao China (Cambridge University Press, 1995)

Review of Vietnam: The Politics of Bureaucratic Socialism (Gareth Porter), 26(2) Journal of Southeast Asian Studies 465 (1995)

The Reemergence of Legal Discourse in Vietnam, 43 International and Comparative Law Quarterly 163 (1994)

Law Reform in Vietnam: The Complex Transition from Socialism and Soviet Models in Legal Scholarship and Training, 11 UCLA Pacific Basin Law Journal, 221 (1993)

Review of Vietnam at the Crossroads (Michael C. Williams) and Political Economy in Vietnam (Kathleen Gough), 24(2) Journal of Southeast Asian Studies 468 (1993)

Enterprise Bankruptcy and the Development of Bankruptcy Law, in Campbell, Child and Lockett, eds., Advances in Chinese Industrial Studies: Reform Policy and the Chinese Enterprise (Manchester University Press, 1990)

Recognition and Enforcement of [Chinese] Foreign Arbitral Awards under the New York Convention (with Mao Tong), East Asian Executive Reports (May 1988)

Maritime Courts in the Middle Kingdom: China's Great Leap Seaward (with Curtis Pew and Robert Jarvis), 11 The Maritime Lawyer 237 (1987)

The Maritime Arbitration Commission of the People's Republic of China: Past, Present and Future (with Curtis Pew and Robert Jarvis), 18 Journal of Maritime Law and Commerce 351 (1987)

Recent and Noteworthy Legal Works Published in the People's Republic of China, 1 Journal of Chinese Law 257 (1987)

Copyright, Patent and Trademark Law in the People's Republic of China, 21 Texas International Law Journal 259 (1986)

The Legal Protection of Copyright and Authors' Rights in the People's Republic of China, 1949-1981: Prelude to a Chinese Copyright Law, 9 Columbia Journal of Art and the Law 477 (1985)

Graduate Education in the People's Republic of China: New Steps, New Challenges, 12 Higher Education 155 (1983)

Latin American Studies in the People's Republic of China, 18(1) Latin American Research Review 143 (1983)

Translated as *Estudios latinoamericanos en la Republica Popular China*, 20(3) Estudios de Asia y Africa (Mexico City) 470 (1985)

University Enrollment in the People's Republic of China, 1977-1981: The Examination Model Returns, 18 Comparative Education 257 (1982)

Adult Education in the People's Republic of China, 15 Convergence 37 (1982)

Education in the People's Republic of China, in The Health of China (Beacon Press, 1982)

Introduction to and translation of *Shanghai Steam-Turbine Works Staff and Workers College Specialty Teaching Plan* 15(1-2) Chinese Education 134 (1982)

Norman Bethune, in Sidel, Serve the People: Observations on Medicine in the People's Republic of China (Macy Foundation, 1973)

Lectures, Conference Papers, and Reports to Governmental Bodies and Professional Associations (selected, primarily 2000 – 2007)

Terrorist Financing and the Charitable Sector: Law and Policy in the United Kingdom, the United States, and Australia

Testimony to the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 (Major Commission), Government of Canada, November 2007

New Directions in the Struggle against Human Trafficking

Richard B. Lillich Memorial Lecture, Florida State University, November 2007

Resistance, Compliance, Alliance, and Self-Regulation: Nonprofit Sector Responses to Counter-Terrorism Law and Policy in the United States

Paper presented at the Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA), Atlanta, November 2007

Federated Organizations: Research Issues and Policy Problems

Colloquy presentation at the Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA), Atlanta, November 2007

Research Methods and Strategies in South Asian Legal Studies
Presentation at the South Asian Legal Studies Workshop, University of Wisconsin
(Madison), October 2007

Strategic Issues and Priorities in Vietnamese Legal Reform
Prepared for U.S. Agency for International Development/Management Sciences
International, September 2007

The Debate on Constitutional Rights and Enforcement in Vietnam
University of Victoria Conference on New Courts in the Asia Pacific Region, June 2007
(Victoria)

Resistance, Compliance, Alliance, and Self-Regulation: Nonprofit Sector Responses to Counter-Terrorism Law and Policy in the United States
Workshop on Aid, Security and Civil Society in the Post-911 Context, London School of Economics Centre for Civil Society, June 2007

The Impact of Post-Sept. 11 Anti-Terrorism Law and Policy on the Nonprofit Sector
University of Iowa Stanley – International Programs – Obermann Center Colloquium,
May 2007

Debate and Conflict in the Drafting of Vietnam's Nonprofit Code (Law on Associations)
Association for Asian Studies annual meeting, March 2007 (Boston)

Terrorist Financing and the Charitable Sector: Law and Policy in the United Kingdom, the United States, and Australia
Research paper prepared for the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 (Major Commission), Government of Canada, 2007

The New Nonprofit Self-Regulation Imperative: Comparative Perspectives from Asia
Harvard Law School, March 2007

Nonprofit Self-Regulation in Asia
University of Washington, Symposium on Nonprofit Self-Regulation in Comparative Perspective, Evans School of Public Affairs, March 2007

More Secure, Less Free? Anti-Terrorism Policy and Civil Liberties after September 11
Twelfth Annual James Leahy Freedom Lecture (Fargo, North Dakota and Moorhead, Minnesota), hosted by Concordia College and a consortium of local institutions, February 2007

Nonprofit Self-Regulation in Comparative Perspective
American Association of Law Schools annual meeting, January 2007

Dangerous Charities? Antiterrorism Policy and the Nonprofit Sector in the United States, the United Kingdom, and Canada after September 11

University of Iowa International Programs International Mondays, October 2006

Self-Regulation of the Voluntary Sector in Asia, and Nonprofit Law in Asia in Comparative Perspective

Presentations at seminars organized by the Cooperation Committee for Cambodia, Phnom Penh, July 2006

Keynote address, *The Third Sector, Human Security, and Anti-Terrorism Regulation in Comparative Perspective*

Biannual international conference of the International Society for Third Sector Research (ISTR), July 2006 (Bangkok)

The Debate on Constitutional Rights and Enforcement in Vietnam

Harvard University workshop on urbanization in Vietnam, May 2006

Bringing the State Back In: Government Responses to Diaspora Philanthropy and the Problem of Equity

Conference on Diaspora Philanthropy and Global Equity, Global Equity Initiative, Harvard University, May 2006

Getting to Rights: Current Research on Vietnamese Law

Harvard University Vietnam Study Group, Kennedy School of Government, May 2006

Balancing National Security and a Culture of Giving: Anti-Terrorism Policy and its Effects on American Philanthropy since September 11

Law and the Liberal Arts Lecture, Dartmouth College, April 2006

Current Research on Philanthropy and the Nonprofit Sector, and on Law in Asia

Vermont Law School Faculty Speaker Series, April 2006

Vietnamese Legal Reform at a Crossroads, Council on Foreign Relations (New York), March 2006

Current Research on Comparative and International Law

Harvard Law School International Law Society, March 2006

My Motorcycle is Constitutionally Protected: The Debate on Constitutional Rights and Enforcement in Vietnam

Harvard Law School, March 2006

Current Research on Philanthropy and the Nonprofit Sector, and on Law in Asia

Case Western Reserve University Law School, February 2006

Conference co-organizer and speaker on *Workers, Entrepreneurs, Enterprises and the State in Vietnam*
Institut d'Etudes Politiques de Paris Conference on Vietnam, December 2005

Law and Asian Studies
Dartmouth College Asian Studies Program, November 2005

Commentator for University of Iowa Shambaugh conference on state-supported non-governmental organizations in Asia, November 2005

Law Reform, State-Society Relations, and Social Organizations in Asian Comparative Perspective
Paper commissioned by the United Nations Development Programme (UNDP/Vietnam), delivered at UNDP and the Vietnamese Academy of Social Sciences (VASS) in June 2005 and expected to be published by UNDP

Beyond Mellon: Foundation Support for University Presses and Scholarly Publishing
Annual meeting of the Association of American University Presses, June 2005

The Legacy of Catherine Hope
Remarks at the dedication of the Hope Tango Tower, YMCA Camp Wapsie, Coggon, Iowa, June 2005

Diaspora Philanthropy from Indian and Chinese Communities in the United States to Countries of Origin
The Asia Society, New York, May 2005.

More Secure, Less Free? Comparative Perspectives on Antiterrorism Policy and Civil Liberties After September 11
Grinnell College, Rosenfield Program on Public and International Affairs, March 2005

The Promise and Perils of Nonprofit Self-Regulation
Plenary Panel on International Trends in Nonprofit Standards – Nonprofit Self-Regulation at the annual U.S. Agency for International Development Conference with Private Voluntary Organizations, Washington, February 2005

More Secure, Less Free? Antiterrorism Policy and Civil Liberties After September 11
Augustana College, Freistat Center for Studies in World Peace, January 2005

Vietnam's Integration – On Whose Terms? Observations on Sovereignities, Double Standards, and Vietnam-US Trade Conflicts
Institut d'Etudes Politiques de Paris Conference on Vietnam and the international system, November 2004

Nonprofit Self-Regulation in Asia

Paper and panel co-organizer, Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA), Los Angeles, November 2004

Anti-Terrorism Law and Policy after September 11

University of Wyoming Law School Law Week, Laramie, October 2004

The Guardians Guarding Themselves: Nonprofit Self-Regulation in Comparative Perspective

Chicago-Kent Law Review symposium on nonprofit accountability, Chicago, September 2004

Law and Legal Reform in Vietnam

Presentation at closed briefing for newly-appointed U.S. Ambassador to Vietnam Michael Marine, organized by the U.S. State Department, Washington, August 2004

Philanthropy, the Nonprofit Sector, and the University Press Community

Plenary presentation to the Association of American University Presses, Vancouver, June 2004

Civil Society, Globalization and the State: China in Comparative Perspective

Keynote Address to the 2004 Mansfield Conference: Plunging Into the Sea: The Complex Face of Globalization in China, University of Montana, Mansfield Center for Asian Studies, Missoula, Montana, April 2004

Law and the Development of Social Organizations in China

Presentation at the 2004 Maureen and Mike Mansfield Center conference at the University of Montana on Plunging Into the Sea: The Complex Face of Globalization in China, April 2004

The Struggle for Hershey: Community Accountability and the Law in Modern American Philanthropy

Panel presentation at the Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA), Denver, November 2003

Angry Donors

Presentation at the University of Montana Annual Tax Institute, October 2003

Legal Reform in Whose Interests? Text, Implementation and Reality in Vietnamese Law: Illuminations from Vietnamese Labor Export and Its Regulation

International Conference on the State of the Law and Rule of Law in post-Doi Moi Việt Nam, Paris (Sciences Po), October 2003

The Struggle for Hershey: Community Accountability and the Law in Modern American Philanthropy

University of Missouri (Columbia) Law School Faculty Workshop, September 2003

The University Press as a Nonprofit Organization: The Mission, the Midwest, the Bottom Line

Midwest University Presses Conference, Iowa City, September 2003

Understanding Foreign Donor Support for Legal Reform in Socialist Transitional States: The Changing Nature and Continuing Dilemmas of Legal Reform Assistance in Vietnam
W.G. Hart Lecture, School of Oriental and African Studies (SOAS), University of London, 2003

Diaspora Philanthropy to India: An American Perspective

Global Equity Initiative, Kennedy School of Government/Harvard University Asia Center
Conference on Diaspora Philanthropy in China and India, 2003

Law, Philanthropy and Social Class: Variance Power and the Battle for American Giving

University of Florida College of Law Faculty Symposium, October 2002

Law, Philanthropy and Social Class: Variance Power and the Battle for American Giving
National Council for Voluntary Organisations Annual Research Meeting, Manchester, England, September 2002

Beyond the Rights Revolution: Reconceptualizing the Role of State-Nonprofit Relations in India

Johns Hopkins University Center for Civil Society Studies, February 2002

Beyond the Rights Revolution: Reconceptualizing the Role of State-Nonprofit Relations in India

Harvard South Asia Seminar symposium on law in India, May 2001

Philanthropy in India's High Technology Communities: The Ambiguous Search for Social Innovation

Harvard University Asia Center and South Asia Seminar, February 2001

Philanthropy in India's New Economy Communities of Bangalore and Hyderabad

Conference on Philanthropy and the City, Center for the Study of Philanthropy, City University of New York and Rockefeller Archive Center, September 2000

Philanthropy and the Law

International Conference on Indigenous Philanthropy, Aga Khan Foundation, Islamabad, Pakistan, October 2000

Social Justice and Poverty Programming in Vietnam
Report prepared for Oxfam Hong Kong/Vietnam Program, 1999

Organizational and Resource Development for Oxfam International
Report prepared for Oxfam International, 1998

Public Funding and Private Voluntary Organizations
Report prepared for Oxfam America, 1998)

Philanthropy and the Nonprofit Sector in Asia
Report with Michael Edwards prepared for the Asia Pacific Philanthropy Consortium
International Conference on Philanthropy, 1998

*Giving Home: Diaspora Giving from the United States as a Funding Source for
Indigenous Philanthropic and Nonprofit Institutions*
Report and background paper prepared for the Ford Foundation worldwide philanthropy
meeting, London, 1997

Law and Development: Seminar Proceedings
Proceedings of the Roundtable Meeting of Chief Justices and Ministers of Justice,
Manila, Philippines, August 1997) (Asian Development Bank, 1997

*Strengthening Judicial Capacity in Vietnam; Strengthening Legislative Capacity in
Vietnam; Strengthening Public Procuratorial Capacity in Vietnam*
Reports prepared for the United Nations Development Programme, Hanoi, 1996

Law Reform and Legal Education and Research in the Socialist Republic of Vietnam
Report prepared for the Ford Foundation, 1992

*Ford Foundation China Program Activities in Human Rights and Governance (Law and
Legal Reform)*
Report prepared for the Ford Foundation, 1991

Legal Education and Research in China
Report prepared for the Ford Foundation, 1987

Op-ed Articles and Other Publications

*Vietnam's Quiet Diplomat: America's Warming Relationship with Vietnam Owes Much
to Le Mai, Wall Street Journal Asia, June 13, 2006*

*Antiterror Tactics Chill U.S. Campuses, International Herald Tribune, June 28, 2005
(available at www.iht.com/articles/2005/06/27/opinion/edsidel.php)*

The Wages of Antiterrorism Policy in the United States: Antiterrorism and the American Academic Sector, YaleGlobal, June 14, 2005 (Yale Center for the Study of Globalization), 2005 (available at yaleglobal.yale.edu)

The YaleGlobal article above was reprinted in Khaleej Times (India) (June 18, 2005); The Nation (Bangkok) (June 22, 2005); The Standard (Hong Kong) (June 17, 2005); Daily Times (Pakistan) (July 3, 2005), the Common Dreams website (commondreams.org), and numerous other websites and blogs.

A Dishonorable Road Home (op-ed article), Chicago Tribune, October 5, 2004

Books for Understanding: Bibliography on the Nonprofit Sector and Philanthropy published by the Association of American University Presses (2004, revised 2007) (available at aaupnet.org/news/bfu/nonprofit/list.html)

Self-Regulation of the Nonprofit Sector in Asia: Experiments and Models (Resource paper prepared for the Asia Pacific Philanthropy Consortium, August 2003) (available at www.asianphilanthropy.org)

Vietnam, in Legal Systems of the World: A Political, Social and Cultural Encyclopedia 1753-1759 (ABC-Clio, 2002)

Laos, in Legal Systems of the World: A Political, Social and Cultural Encyclopedia 846-851 (ABC-Clio, 2002)

New Economy Philanthropy in the High Technology Communities of Bangalore and Hyderabad, India: State Partnership and the Ambiguous Search for Social Innovation, Paper prepared for the Conference and Philanthropy and the City (Center for the Study of Philanthropy, City University of New York, 2001), published at archive.rockefeller.edu/publications/conferences/sidel.pdf

Endowments and Endowment Building in South Asia, Alliance (U.K.) (June 2001)

The United States and Vietnam: Three Years after Normalization, and Some Thoughts on the Vietnam-US Experience (with Sherry Gray), in Emerging from Conflict: Improving U.S. Relations with Current and Recent Adversaries (The Stanley Foundation, 1999)

U.S.-Vietnam: Revitalizing Stagnant Ties (op-ed article), The Des Moines Register (August 25, 1998)

Reviews for Universities, University Presses, and Scholarly Associations

Tenure and promotion reviewer:

University of Washington, 2007-08

University of Melbourne, 2007

Sheffield Hallam University (Professoriate promotion), 2007
University of Iowa College of Law, 2007
Brooklyn Law School, 2006
College of the Holy Cross, 2006
University of Missouri Law School, 2005

Graduate external examiner or committee member:

University of Capetown, 2006 (doctoral)
Australian National University, 2005 (doctoral)
University of Iowa, 2001-03 (doctoral); 2006-07 (master's)

Manuscript reviewer:

Routledge
Routledge Cavendish
University of Michigan Press
Indiana University Press
Journal of Comparative Law (London)
Voluntas: International Journal of Voluntary and Nonprofit Organizations

Proposal reviewer:

Association for Research on Nonprofit Organization and Voluntary Action (Arnova)
(multiple years)
International Society for Third Sector Research (ISTR) (multiple years)

Other Service and Positions Held

Current board member or advisory board member:

University of Iowa Human Rights Center
University of Iowa Press
Community Foundation of Johnson County (Iowa)
YMCA Camp Wapsie (Coggon, Iowa)
YMCA Camp Wapsie capital campaign
CARTHA (international NGO)

Member:

Institute of Current World Affairs (Crane-Rogers Foundation)
National Committee on U.S.-China Relations

American Bar Association legal education accreditation service:

AALS accreditation site team member, University of Montana School of Law, 2002

AALS accreditation site team member, Boston University School of Law, 2004

AALS chair, accreditation site team, Florida State University Law School, March 2008

Languages

Chinese (reading and speaking)

Vietnamese (reading)

Exhibit B



**Law and legal issues
in international disaster
response:** a desk study



International Federation
of Red Cross and Red Crescent Societies

Part I: Background and context



Chapter 1

Background to the study

Before turning to the analysis, it is important to provide some brief background on the origins and primary sources for this study and to explain its scope and limitations.

1.1 Origins and linkages to the International Red Cross and Red Crescent Movement

The origins of this study are linked to the long history of the International Red Cross and Red Crescent Movement, as the world's largest humanitarian network, in disaster relief. The Movement, and especially its founding organ, the International Committee of the Red Cross (ICRC), is well known for its role in promoting the development and implementation of international humanitarian law (IHL) for situations of armed conflict, in particular, the Geneva Conventions of 1949 and their Additional Protocols. However, as early as 1869, the 2nd International Conference of the Red Cross (hereinafter, "International Conference"),³⁸ adopted a resolution calling on National Red Cross Societies to provide relief "in case of public calamity which, like war, demands immediate and organized assistance." This peacetime role was confirmed in practice, emphasized in the 1919 Constitution of the League of Red Cross Societies (now known as the International Federation of Red Cross and Red Crescent Societies) and eventually codified in the Statutes of the International Red Cross and Red Crescent Movement, first adopted in 1928.

Unsurprisingly, the Movement has also been a leading actor in developing the existing norms and standards of international disaster relief. This has included not only instruments concerning its own role and activities, such as the Principles and Rules for Red Cross and Red Crescent Disaster Relief of 1969,³⁹ but also critical instruments for all actors in the field, such as the Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations of 1969, the Measures to Expedite Emergency Relief adopted both by the International Conference and the United Nations General Assembly in 1977, and the Code of Conduct for the Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief of 1994 (hereinafter, "the Red Cross Red Crescent NGO Code of Conduct").

In 2000, a chapter of the International Federation's World Disasters Report highlighted the question of international law on disaster response and urged further research and dialogue in this area.⁴⁰ As a result, in 2001, the Council of Delegates⁴¹ of the Red Cross and Red Crescent adopted a resolution calling upon the International Federation to "advocate for the development and, where applicable, the improvement and faithful application of International Disaster Response Law." The International Federation then established a dedicated programme, now known as the International Disaster Response Laws, Rules and Principles (IDRL) Programme⁴² to initiate research on existing law and the nature of the most common problems. Since its inception, the IDRL Programme has been active in researching and disseminating information about existing international law, preparing case studies of domestic laws and their application in particular disaster settings, and consulting with stakeholders inside and outside the Movement about the problems they have experienced.

In 2003, the 28th International Conference (gathering the components of the Movement and all state parties to the Geneva Conventions) adopted an “Agenda for Humanitarian Action,” including Final Goal 3.2 (attached to this study as Appendix 1), which called upon the International Federation and National Red Cross and Red Crescent Societies to “lead collaborative efforts” to research, analyse and disseminate the existing legal and normative framework for international disaster relief, identify gaps, and develop practical solutions. A similar commitment to find solutions in this area was expressed in regional Red Cross/Red Crescent conference instruments, including the Manila Action Plan of 2002,⁴³ the Santiago de Chile Commitment of 2003⁴⁴ and, most recently, the Singapore Declaration of 2006⁴⁵ and the 2nd Commonwealth International Humanitarian Law Conference of 2007.⁴⁶ Likewise, in November 2005, the Commission of the Council of Delegates on Access to Victims and Vulnerable Persons noted that the International Federation’s work on regulatory frameworks to facilitate the delivery of humanitarian was crucial to ensuring access in disasters.⁴⁷

Also in 2005, the General Assembly of the Red Cross and Red Crescent adopted the “Global Agenda and Framework of Action,”⁴⁸ setting out overarching goals for the Movement for the next five years. Among these are reducing the number of deaths, injuries and impact from disasters (Goal 1) and reducing the number of deaths, illnesses and impact from diseases and public health emergencies (Goal 2).⁴⁹ It also established a number of priorities for action, including “[i]mproving our local, regional and international capacity to respond to disasters and public health emergencies” and “[r]enewing our advocacy on priority humanitarian issues[.]”⁵⁰

The International Federation believes that improving the regulatory environment governing all international disaster response actors will increase the speed and effectiveness of both Red Cross and Red Crescent assistance and the overall response, saving more lives in disasters and public health emergencies, and more completely addressing disaster impact. Sensibly balancing the interest in speed and efficiency of international assistance with the needs for coordination, quality control and complementarity will also help to check the erosion of the roles of local responders that has occurred in some major international operations and that has been regularly criticized in “lessons learned” evaluations of the last two decades.

In accordance with the terms of Final Goal 3.2, the issue of legal regulation and facilitation of international disaster response will again be taken up at the 30th International Conference in November 2007.

1.2 Sources

In addition to desk research, this study draws from four main sources. The first of these is the IDRL database, a collection of several hundred international, regional and national legal instruments pertinent to international disaster relief gathered by the IDRL programme and its contributors since 2001. The database is publicly available online at <http://www.ifrc.org/idrl>.

The second source is the more than two dozen legal and operational case studies conducted by or in coordination with the IDRL programme since 2002, as listed in Appendix 2 to this study. The text of these prior studies is also available on the website above or by request to the International Federation.

The third source is the responses to a series of surveys the IDRL programme sent in 2006 to governments, National Red Cross and Red Crescent Societies, international organizations, and NGOs. These surveys sought respondents' viewpoints and experiences of legal and regulatory issues in international disaster relief operations, as well as exploring the awareness and use of existing international instruments. A summary report on the results of the surveys is included as Appendix 3 to this study.

The fourth, and probably most important, source is the direct consultations and interviews IDRL programme staff have held over the period of the programme's activity with National Red Cross and Red Crescent Societies, logistics and disaster management staff of the International Federation, external humanitarian partners and governments. These include both informal discussions and formal meetings, notably a series of five regional "forums" the International Federation began to organize in 2006 in preparation for the 30th International Conference. These forums convened senior representatives of governments, National Red Cross and Red Crescent Societies, international organizations, NGOs and other stakeholders to discuss current problems and best practices in the regulation and facilitation of international disaster response. Reports from the regional forums are available at <http://www.ifrc.org/idrl>.

1.3 Scope

1.3.1 Which law?

This study examines the effectiveness of legal, regulatory and normative frameworks that govern international disaster response. At the international level, this includes analysing the coverage and implementation of existing "hard law" and "soft law"⁵¹ instruments. At the national level, it includes the examination of how successfully applicable legal and institutional regimes have facilitated and regulated international relief and recovery efforts in recent operations.

The legal scope will be limited in several respects. First, it examines regulatory issues related to international disaster response, to the exclusion of rules related to purely domestic activities. Second, it looks mainly at rules for relief and recovery rather than risk reduction. The omission of these topics is not a reflection of their importance. Indeed, progress in these areas is rightly considered a priority for the international community, with hopes of minimizing the need for international disaster assistance in the first instance. Nevertheless, international assistance will, in all likelihood, remain a necessity in many situations and its associated legal issues have received comparatively little attention.

Third, with a few minor exceptions, this study does not address the issue of customary international law in the area of disaster response. Custom is a well recognized form of binding international law formed by general state practice accompanied by an acceptance of that practice as required ("opinio juris").⁵² Evidence of these two elements have been found both in the verbal and physical acts of states, and can include a wide range of sources, including conforming domestic legislation and case law, diplomatic correspondence, votes on international resolutions, treaty texts or simple physical presence, such as when patrolling territorial waters.⁵³ Thus, many of the instruments and field practices identified here would likely be relevant to this inquiry, though this study will be focusing on problem areas rather than a more general description of practice. However, precisely because proof of customary international law must be pieced to-

gether from a myriad of indications of state intent and belief, it requires a scholarly depth beyond the scope of this introductory desk study⁵⁴ and there is little prior research from which to draw conclusions in this area.⁵⁵ As noted above, the International Law Commission has recently decided to begin examining the legal issues in disaster relief, and the existence of customary law will likely figure large in its inquiry.

1.3.2 Which disasters?

The term “disaster” has been defined in many ways by scholars of various disciplines⁵⁶ and the development and humanitarian communities. It is now widely recognized that all of the varying approaches to the term are imbued with particular political, ideological, cultural and other biases⁵⁷ and a definitive settlement of “what disaster means” appears unlikely anytime soon. As two scholars noted in a recent publication on this topic, “the more we know about specific disasters, the more definitions of disaster are registered in the literature.”⁵⁸

International normative instruments have also approached “disaster” in various ways. Some do so narrowly, focusing exclusively on events of a particular type (e.g., nuclear emergencies⁵⁹ or oil pollution⁶⁰) or category (e.g., natural disasters⁶¹ or industrial accidents⁶²). Some others have deliberately rejected the term “disaster” due to its uncertain nature⁶³ or used it without providing a definition.⁶⁴ However, there seems to be a tendency in newer international instruments to view and define the term “disaster” quite broadly.

For example, in 1998, the Tampere Convention defined “disaster” as “a serious disruption of the functioning of society, posing a significant, widespread threat to human life, health, property or the environment, whether caused by accident, nature or human activity, and whether developing suddenly or as the result of complex long-term processes.”⁶⁵ That same year, the Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation on collaboration in Emergency Assistance and Emergency Response in Natural and Man-Made Disasters of 1998 (hereinafter “the BSEC Agreement”) deemed “disaster” “an event in a definite area that has occurred as a result of an accident, hazardous natural phenomena, catastrophe, natural or man-made, which may or have caused significant physical, social, economic and cultural damage to human lives or environment.”⁶⁶ In 2000, the International Civil Defence Organization’s Framework Convention on Civil Defence Assistance (hereinafter, “the Framework Convention on Civil Defence”) offered this brief definition: “an exceptional situation in which life, property or the environment may be at risk.”⁶⁷ Most recently, in 2005, the ASEAN Agreement on Disaster Management and Emergency Response (hereinafter, “the ASEAN Agreement”) determined that “disaster” “means a serious disruption of the functioning of a community or a society causing widespread human, material, economic or environmental losses.”⁶⁸ Some additional legal definitions are listed below in Box 1.

For its part, the international humanitarian community has also adopted a broad approach to the term disaster in policy documents. For example, in 1992, an “Agreed Glossary of Basic Terms Related to Disaster Management” prepared by the United Nations Department of Humanitarian Affairs (DHA) (a predecessor to the Office for the Coordination of Humanitarian Affairs (OCHA)) defined disaster as “[a] serious disruption of the functioning of society, causing widespread human, material or en-

Box 1: Some international definitions of “disaster”

“Disaster means a serious disruption of the functioning of society, posing a significant, widespread threat to human life, health, property or the environment, whether caused by accident, nature or human activity, and whether developing suddenly or as the result of complex long-term processes.”

Tampere Convention, 1998, art. 1

“Disaster... A serious disruption of the functioning of society, causing widespread human, material or environmental losses which exceed the ability of affected society to cope using only its own resources.”

UN DHA, Agreed Glossary of Basic Terms, 1992

“Disaster” means the sudden event attributable directly and solely either to the operation of the forces of nature or to human intervention or to both of them and characterised by widespread destruction of lives or property accompanied by extensive dislocation of public services, but excluding events occasioned by war, military confrontation or mismanagement.”

CDERA Agreement, 1991 art. 1(d)

“A disaster is a calamitous event resulting in loss of life, great human suffering and distress, and large scale material damage.”

Red Cross/Red Crescent and NGO Code of Conduct, 1995

“The term ‘natural or technological disaster’ means a situation of great distress involving loss of human life or large-scale damage to property, caused by a natural phenomenon, such as a cyclone, tornado, earthquake, volcanic eruption, flood or forest fire, or by a technological accident, such as pollution by hydrocarbons, toxic or radioactive substances.”

International Space Charter, 1999, art. 1

“Disaster’ is an exceptional situation in which life, property or the environment may be at risk.”

Framework Convention on Civil Defence, 2000, art. 1(c)

vironmental losses which exceed the ability of affected society to cope using only its own resources.”⁶⁹ Variants of this definition remain in active use by UN agencies⁷⁰ and other humanitarian actors.

Accordingly, this study also adopts a broad approach to disaster, looking at legal issues of operations in both sudden-onset events (such as earthquakes, typhoons, fires, and particularly volatile diseases) and slow-onset events (such as droughts, creeping floods, and slow-spreading disease), and in so-called “natural”⁷¹ and “man-made” disasters.

Like the approaches in the above instruments, it will not focus on incidents that do not pose a widespread threat to a society, such as airplane or naval emergencies or individual traffic accidents. Unlike these definitions, however, it will expressly exclude “armed conflict” as a type of “disaster” to be examined (except tangentially, in its discussion in Chapter 15 of situations when disasters arise in the context of a conflict).⁷² This is because there is already a comprehensive global legal framework of IHL, including the Geneva Conventions of 1949 and their three Additional Protocols, which governs humanitarian assistance in conflict. The ICRC, which has a universally recognized role as “guardian” and promoter of IHL,⁷³ is actively pursuing initiatives to expand and consolidate IHL and its impact.⁷⁴ Moreover, there is a formidable array of legal research and writing ongoing in this area in universities, research institutes and other fora across the globe. Finally, there are important differences between the context of conflict and peacetime disaster, as discussed in chapter 15.

1.3.3 Which activities?

This study will address disaster preparedness, emergency relief, recovery and rehabilitation. This is a fairly broad scope of activities, and the same rules do not and should not necessarily apply to each stage. However, it quickly became plain in the initial research for the IDRL programme that the scope of its inquiry had to extend beyond the immediate period after a disaster when emergency relief is provided. While a number of existing international legal instruments⁷⁵ are specifically focused on this brief period, many others extend well beyond.⁷⁶ More importantly, as noted by a number of respondents to the IDRL survey, many of the most troublesome legal problems that arise in disaster operations do so not in the initial days but in the several weeks or months that follow, as “normal” rules of business re-emerge, and the consequences of faulty mechanisms of coordination, quality and accountability become more apparent.⁷⁷

It is not always easy to distinguish between recovery/rehabilitation and development. Ensuring an effective continuum of disaster response, which includes development elements from the beginning and which guarantees a smooth transition between relief and development work has been a major goal of the international community in recent years.⁷⁸ A major disaster can have enormous and extremely long-lasting effects on a society, such that subsequent efforts to encourage development must take it into account; likewise, recovery efforts must take long-term development goals into account. Still, at some point, a line is crossed, and existing international instruments do acknowledge a boundary between disaster response and general development.⁷⁹

This dividing line is particularly important for humanitarian actors (i.e., organizations operating according to humanitarian principles, such as those described in the Red Cross Red Crescent NGO Code of Conduct), as their claim for access and “humanitarian space” rests on their independence and commitment to respond impartially, neutrally and solely on the basis of critical need. In contrast, development aid must be intimately tied to the domestic political process of setting long-term goals for the future of the nation.

Without a recognized legal personality, international humanitarian organizations have reported difficulties in a number of areas, ranging from hiring local staff and signing leases for office space as well as opening bank accounts and obtaining tax exemptions (both discussed further below).⁹⁸⁴ Nevertheless, given the complexity of procedures, some international NGOs simply go without official registration and “hope for the best.” However, their uncertain status can also have other consequences. For example, foreign NGOs in both Thailand and Indonesia that had given up on registration reported feeling significant concern that they might be “asked to leave at a moment’s notice” and this impeded their planning and operations.⁹⁸⁵

12.2 Bank accounts

As noted above, one of the important consequences of problems with legal personality is difficulty opening bank accounts in the affected state. However, this is not the only reason for difficulties in this area, and even governments and inter-governmental organizations are sometimes affected. Thus, 30 per cent of National Societies, 85 per cent of international humanitarian organization headquarters, and 36 per cent of governments responding to the IDRL survey reported problems opening bank accounts in the affected state. As noted by some respondents, without a local bank account, humanitarian actors have resorted either to carrying large amounts of cash to fund their projects or to opening accounts in the individual names of their staff members.⁹⁸⁶ Existing IDRL instruments do not directly address this issue.

12.3 Taxation

Many states provide for tax benefits for recognized non-profit organizations, although the degree of exemption and the types of taxes involved varies widely.⁹⁸⁷ There is also some variation in the tax treatment of diplomatic corps and inter-governmental organizations, notwithstanding general rules from the law of privileges and immunities exempting them from direct taxes. Moreover there is important variation in the tax treatment of bilateral aid among states, though some aid providers have made it a condition of their help that taxes be waived.⁹⁸⁸

Overall, 38 per cent of respondents to the IDRL survey (including 32 per cent of National Societies and 82 per cent of international humanitarian organization headquarters) reported problems related to taxes in their operations.⁹⁸⁹ Moreover, although it has been asserted that, “in general, sovereigns do not tax each other,”⁹⁹⁰ 66 per cent of government respondents also reported tax-related problems in their relief activities. As discussed in detail above, these include customs duties and transport-related charges. Additional issues have been reported concerning value-added taxes (VAT) and income tax.

VAT can be an issue both with regard to the goods and services disaster responders import and those they purchase locally.⁹⁹¹ Different states provide differing types of beneficial treatment on VAT to charitable organizations, ranging from exempting them from paying the VAT on their purchases in the first instance, to treating them as “non-taxable persons” (which only exempts their output and does not release them from paying VAT on goods and services they purchase) and “zero-rating” or establishing a low VAT rate for their services and allowing them to apply for a refund on their purchases.⁹⁹² Many also limit VAT exemptions to specific types of goods and services, sometimes but not always, including humanitarian assistance.⁹⁹³ For example, after

the 1999 earthquake in Turkey, imported medications were initially charged VAT, until a specific order was issued creating a special rule.⁹⁹⁴

VAT is generally not considered a “direct tax” under the Convention on the Privileges and Immunities of the United Nations⁹⁹⁵ or the Vienna Convention on Diplomatic Relations⁹⁹⁶ and is therefore not subject to exemption under those instruments. Nevertheless, bilateral agreements between states and with the UN, International Federation and some NGOs provide for VAT exemptions and a number of states also provide for such exemptions directly in their domestic legislation.

Where VAT reimbursement is provided, it can dramatically lower the costs of operations and allow for a greater level of assistance. For example, it was reported that a 2005 VAT reimbursement on International Federation food distribution operations in Belarus allowed for the purchase and distribution of 1,800 additional food parcels.⁹⁹⁷ On the other hand, reimbursement processes can often be quite lengthy and complicated.⁹⁹⁸ Exemptions at the point of purchase are plainly preferable from the point of view of aid providers, especially if they are operating in a particular state only temporarily.

Income tax (both organizational and individual) can also be a complex issue in disaster operations. UN agencies and other inter-governmental organizations, as well as their officials and experts are generally exempt from income taxes by operation of their privileges and immunities.⁹⁹⁹ International Federation status agreements as well as some bilateral agreements between states and with international NGOs provide for similar rights (though usually not extended to local staff). Moreover, many states have entered into bilateral agreements to guard against double taxation on their nationals, and these might be applicable to certain personnel in an operation.¹⁰⁰⁰ This still leaves a number of actors, including non-diplomatic foreign state personnel, and the employees of NGOs and foreign National Red Cross and Red Crescent Societies¹⁰⁰¹ potentially subject to income tax.

Thus, in both Indonesia and Sri Lanka, donations to international NGOs were considered taxable organizational income, though in the latter case exceptions were made for funds associated with selected relief and rehabilitation activities.¹⁰⁰² Moreover, in Indonesia, a number of international NGOs reported consulting with government officials and multiple tax lawyers and still remaining unsure whether they were required to withhold tax from employee salaries or not.¹⁰⁰³

As discussed above in Chapter 9, a great many existing disaster-specific instruments call for the waiver of duties and other taxes on imported relief goods and equipment. Often, the operative language is broad enough to include VAT as well as import-specific taxes. For example, the Inter-American Convention provides that “[t]ransport vehicles, equipment, and supplies... shall be exempt from the payment of taxes, fees, and other charges;”¹⁰⁰⁴ the CDERA Agreement provides that the affected state shall “accord the sending State exemption from taxes, duties or other charges on equipment and property brought into the territory of the requesting State by the sending State for the purpose of rendering assistance;”¹⁰⁰⁵ and the BSEC Agreement provides that goods and equipment shall be “exempt from customs duties, taxes and fees.”¹⁰⁰⁶ Some bilateral agreements also have very sweeping language prohibiting any taxation,¹⁰⁰⁷ and in some instances, United States agreements with some other states have extended these provisions to NGOs carrying out projects funded by USAID.¹⁰⁰⁸

The model agreements appended to the Oslo Guidelines and employed by the NATO EADRU both specifically call for exemption from taxation on locally purchased items.¹⁰⁰⁹ In contrast, both the Nuclear Assistance Convention and the Tampere Convention specifically exclude taxes “normally incorporated in the price of goods or services” from their otherwise general call for immunities from taxation for relief operations and personnel.¹⁰¹⁰ This dichotomy of tax treatment between imported and locally purchased goods could create an odd and counter-productive incentive for international actors to favour the former, to the detriment of the local economy. On the other hand, the Oslo Guidelines, the Nuclear Assistance Convention and Tampere Convention all appear to be on the same page with regard to calling for exemption from organizational and personal income taxes for international relief operations.¹⁰¹¹

In 2005, the International Tax Dialogue (ITD) (a consortium of international development organizations) approached the Committee of Experts on International Cooperation on Tax Matters (an intergovernmental body formed by ECOSOC to identify issues and develop recommendations on tax matters with international dimensions), with the issue of taxation of development aid.¹⁰¹² In its paper, the ITD noted that the World Bank and some large donors had begun to move away from insisting that their development aid not be taxed and urged that the Committee recommend this to other donors. However, it also specifically distinguished situations of disaster, noting that taxation of humanitarian relief “might be considered unreasonable.”¹⁰¹³ The Committee generally concurred with this position, recommending that international guidelines be developed on the taxation of international assistance along

Box 10: Potential elements for guidelines on taxation of disaster assistance mentioned by the committee of experts on international cooperation on tax matters

- *No taxes or duties on the import of goods for humanitarian relief*
- *Physical presence of aid personnel should not be taken into account in determining resident status for purpose of income tax*
- *Government and “public international organisation” aid personnel should be exempt from employment income tax*
- *Foreign private companies and consultants carrying out aid work on behalf of a foreign government should not be subject to income tax for a specific length of time (e.g, six or twelve months)*
- *Tax rules applicable to transactions connected with aid projects financed by governments or public international organizations should “in no cases be discriminatory or unusually burdensome compared with the otherwise applicable tax regime in the recipient country”¹⁰¹⁵*

the lines of the elements described in Box 10.¹⁰¹⁴ However, the strong focus on governmental and inter-governmental aid is evident the Committee's current thinking and it does not yet appear to have addressed issues of VAT in disaster relief.

The Committee is scheduled to continue its consideration of this issue at its 2007 session.

12.4 Security

The security of international relief personnel, goods, and equipment is normally discussed primarily with regard to situations of armed conflict. However, 39 per cent of the respondents to the IDRL survey¹⁰¹⁶ (including 30 per cent of National Societies, 43 per cent of governments and 85 per cent of international humanitarian organization headquarters) reported having encountered security problems in disaster operations.

Such concerns are particularly common when disasters occur in the context of ongoing political instability. For instance, in Somalia, drought relief efforts have been greatly hampered by pervasive banditry and piracy.¹⁰¹⁷ Massive disasters can also sometimes provoke civil disturbances, particularly when emergency relief is delayed or inadequate. For example, after the August 2007 earthquake in Peru, delays in provision of relief supplies led to rioting and looting of shops and relief trucks.¹⁰¹⁸ Likewise, lawlessness and looting wracked New Orleans after Hurricane Katrina in 2005.¹⁰¹⁹

Even in the absence of widespread lawlessness, large relief operations can be a tempting target for criminals. For example, after Tropical Storm Stan in Guatemala, relief workers reported armed assaults on trucks delivering food assistance.¹⁰²⁰ In fact, International Federation statistics in recent years have indicated that International Federation delegates are more at risk of becoming victims of violent attack in high crime areas than in conflict areas.¹⁰²¹ Likewise, a 2003 survey of relief and development workers from various agencies in 39 countries found that even among those working in overall environments of little or no violence, over 15 per cent reported obstacles to their operational access to beneficiaries due to concerns about small arms.¹⁰²²

From the regulatory standpoint, security raises issues both with regard to the efforts that should be expected of authorities to protect relief operations as well as to the restrictions they might impose on humanitarian access. Overall, 51 per cent of respondents to the IDRL survey reported that affected state governments had provided them with free security services at least some of the time,¹⁰²³ but others complained that their personnel were often "on their own." On the other hand, many organizations have chafed against restrictions on their movement justified by security concerns. For example, the Indonesian army imposed military escorts on some humanitarian actors immediately after the 2004 tsunami.¹⁰²⁴ Moreover, in the United States, governmental authorities reportedly ordered the American Red Cross not to enter New Orleans after Hurricane Katrina, in part due to security concerns.¹⁰²⁵

As noted above in section 3.1.15, once it enters into force, the Optional Protocol to the Convention on the Safety of the United Nations and Associated Personnel will apply to disaster settings unless the state concerned "opts out" for that operation. However, it will only apply to UN actors and others acting under UN direction. On the other hand, a number of other IDRL instruments at the global,¹⁰²⁶ regional¹⁰²⁷ and bilateral level¹⁰²⁸ also impose obligations on affected states to protect relief per-

Appendix 3

Report of the IDRL Questionnaire of 2006

1. Background

Since its inception in 2001, the International Federation of Red Cross and Red Crescent Societies (International Federation) has been gathering and disseminating information about legal issues in international disaster response. In addition to legal research and operational case studies, the International Federation has consulted informally with governments, National Red Cross and Red Crescent Societies, NGOs, UN agencies and other stakeholders to better understand how legal issues impact on their disaster relief operations. Through these efforts, the International Federation has received a great deal of suggestive accounts about legal problems in international disaster response and the degree to which international norms are playing a useful role at the national level. However, the information obtained has been mainly anecdotal and it was considered that a more formal survey process would be helpful in identifying broad trends.

Thus, in 2006–2007, the International Federation distributed questionnaires to governments (both as receivers and providers of international disaster assistance), national Red Cross and Red Crescent Societies, NGOs, UN and other inter-governmental entities, and private companies about their experiences of legal issues, their use of certain international instruments, and legal regimes at the national level. Their responses indicate that while legal problems are not central to every relief operation, the common core of issues have been experienced by nearly all stakeholders at one time or another and existing instruments and national laws are not doing as much as might be desired to address them. This report provides an overall summary of the results of the questionnaires and some additional data and information is provided in the text of the IDRL desk study.

1.1 The process

1.1.1 Development

International Federation field delegates with experience in dealing with legal issues in disaster operations were interviewed by telephone in November 2005 in order to develop a set of questions which could be used in questionnaires directed at a broader group of stakeholders. The draft questionnaires were then shared with all relevant departments in the International Federation secretariat; interested national Red Cross and Red Crescent Societies; and a number of humanitarian partners for input on the text.

1.1.2 Dissemination

In January 2006, questionnaires were prepared in English, Spanish, French, and Arabic, made available for response through an online format as well as in Microsoft Word and hard copy¹. They included both closed and open-ended questions, covering a range of issues relating to disaster relief operations, whether undertaken by disaster responders

¹ Blank copies of the questionnaires are available on the IDRL Programme website at <http://www.ifrc.org/what/disasters/idrl/resources/survey.asp>.

in foreign countries or in the respondent's own territory. Some of the target groups were also asked for assistance in assessing and compiling relevant national law. Respondents were invited to answer the questions "officially" on behalf of their government or organization (as appropriate).

The questionnaires were distributed by both regular and electronic mail to all governments (where possible, through their permanent missions in Geneva) and all national Red Cross and Red Crescent societies. All major humanitarian agencies of the United Nations, members of the largest humanitarian NGO networks (including the International Council of Voluntary Agencies (ICVA), VOICE and Interaction), and 25 private companies were also directly solicited for responses. Humanitarian organizations were solicited with specific questionnaires for the headquarters level, regional offices and field offices in selected disaster-prone countries. For the sake of convenience, all non-Red Cross/Red Crescent humanitarian organizations were grouped together and called "international humanitarian organizations" (hereinafter "IHOs") for the purposes of the survey.

In order to maximise the number of responses, the International Federation took the following steps:

- sought the support of governments and individual heads of humanitarian agencies/organisations by sending a letter to them from the Federation Secretary-General
- sought the support of the Inter-Agency Standing Committee Working Group members
- presented the questionnaire to permanent missions in Geneva;
- disseminated information at Red Cross/Red Crescent Council of Delegates and General Assembly meetings
- advertised on the Reliefweb and International Federation websites
- called upon International Federation field offices and national societies to bring the questionnaire to the attention of the government and international humanitarian agencies in their respective countries and
- encouraged participants in all regional IDRL forums organized in 2006 and 2007 were also invited to respond to the questionnaire.

Although the deadline for completion was initially set for early 2006, responses continued to be received through mid-2007.

1.2 The response

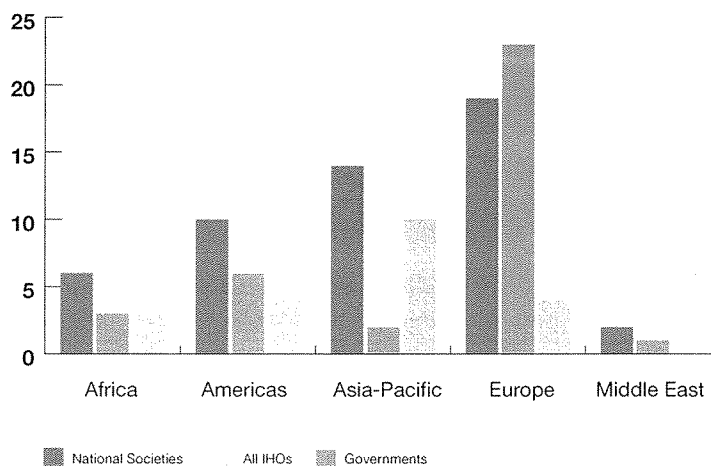
The International Federation received 118 usable responses to its questionnaires, including 35 governments, 51 national Red Cross and Red Crescent societies, 36 IHOs (mostly NGOs, but also 4 UN agencies and the International Organization for Migration) with some overlap between headquarters, regional and field offices, and one private company (for the full list of respondents, see Annex A to this report).

Unfortunately, responses from governments and national societies were not very geographically representative. Particularly among governments, there was a large predominance of replies coming from Europe. Also, many of the governments and national societies that are most active in international relief activities did not respond,

while some of those that did return completed questionnaires had very little experience of international disaster operations, either abroad or in their own countries. Accordingly, it is likely that the overall figures reported here for governments and national societies underestimate the degree to which those active in the field encounter the problems discussed. This may partially explain some of the disparities between the responses of IHOs and national societies.

It is also unfortunate that only one private company provided a full response. Accordingly, no conclusions about the experience of the private sector can be drawn here, although relevant responses from that survey have been included in the overall results.

Regional distribution of respondents



Still, in light of the complexity of the topics addressed and the consequently complicated internal review process many governments and agencies needed to undertake to respond, the overall level of participation was quite positive. There was, in particular, a good cross-section of NGO respondents, including both large and small organizations and NGOs specialized in a number of different sectors.

2. Issues in international disaster response

2.1 Legal and bureaucratic challenges

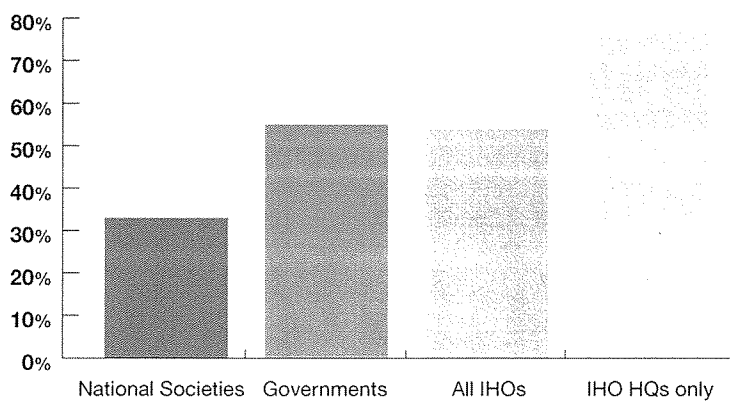
Each category of respondent² reported legal and bureaucratic challenges in international relief operations. IHOs reported the most such problems, particularly their headquarters offices, which drew on experiences of disaster operations around the world.

² Note that not every respondent answered each question posed. Percentages reported here have been tallied counting only those respondents who answered the question at issue.

2.1.1 Entry problems

A significant number of respondents reported difficulties obtaining entry of relief personnel, goods and equipment into disaster-affected states. Surprisingly, this was true even of governments, over half of which reported having experienced entry issues with personnel or materials when seeking to assist other states.

Problems with the entry of personnel



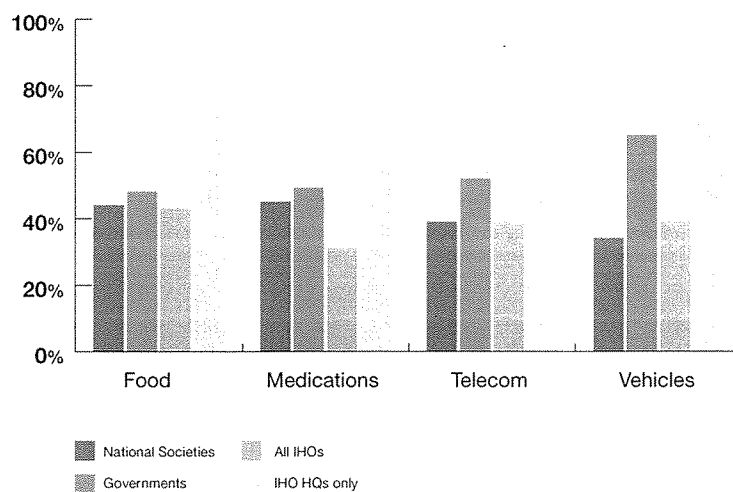
Nearly half (48 per cent) of all respondents reported problems obtaining entry permission (such as visas) for their relief personnel. Somewhat counter-intuitively, governments reported such problems more often for civilian (55 per cent) than military personnel (38 per cent). For both categories, nearly one-fifth (19 per cent for civilian, 17 per cent for military) of governments who answered stated these problems always or frequently occurred. The figures for all IHO respondents (i.e., headquarters, regional and field offices taken together) were similar (54 per cent experienced at least infrequently), but 77 per cent of IHO headquarters offices reported having had such problems at least infrequently.

Thirty-three percent of national societies reported having had visa problems at least once, but none said they were frequent. Several noted that any initial blockages they encountered were quickly solved due to the mediation of the host national society and/or the International Federation.

With regard to relief goods and equipment: food, medications, ground vehicles and telecommunications articles encountered the most problems with customs. Over 40 per cent of all respondents had had problems at some point importing these items, and the figures were substantially higher for IHO headquarters, as indicated on the chart below. Problems cited included delays as well as prohibitive duties and tariffs.

Customs problems were most frequent with telecommunications equipment. Twenty-three percent of all respondents and 40 per cent of IHO headquarters stated such problems were always or frequently present.

Problems with the entry of goods and equipment



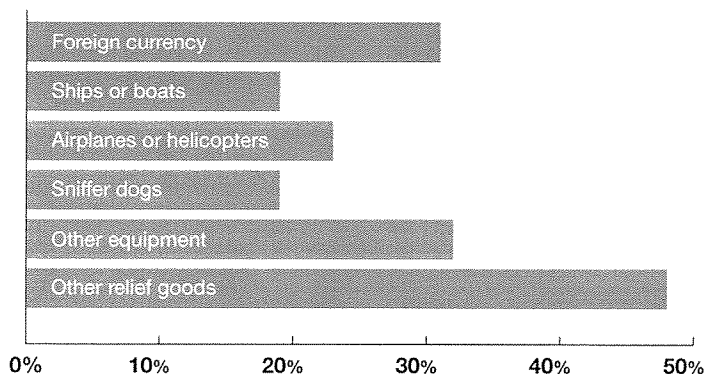
A number of respondents made particular note of the special complexities in importing medications. One government respondent stated that a shipment of medications was blocked for weeks by a tsunami-affected country. Another found that pain-relievers could not be legally imported in a country affected by a major earthquake, making it difficult to treat wounded patients. Other respondents found that medications could not be imported to certain countries unless they had been previously registered there or could not be domestically produced.

National Societies noted not only problems in obtaining entry of relief items provide for relief in foreign states, but also difficulties in receiving internationally-donated items to respond to disasters in their own countries. The most important of these were with medications (for which 40 per cent reported having encountered some importation problems and 12 per cent stated that they occurred frequently or always), vehicles (35 per cent at least infrequently and 14 per cent always or frequently) and food (33 per cent at least infrequently and 8 per cent always or frequently).

Respondents also indicated varying degrees of difficulty in importing other relief items. Governments were the most affected by problems with the entry of ships (33 per cent), aircraft (civilian 37 per cent, military 40 per cent) and sniffer dogs (35 per cent). Issues with foreign currency were most frequently reported by IHO headquarters (67 per cent).

Respondents were asked to estimate the most common time period when entry-related problems arose. Responses varied considerably, but most reported that they occurred in the first several weeks after the disaster.

Other importation problems (all respondents)



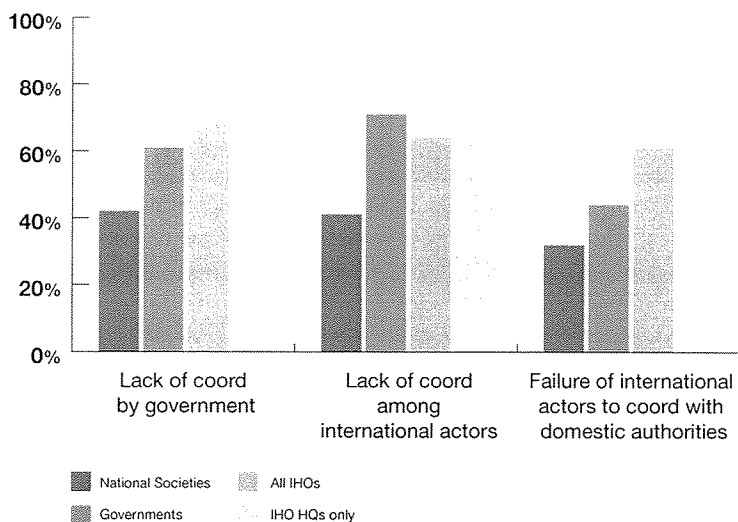
2.1.2 Operational problems

Once relief goods and/or personnel are inside the affected country, a different set of administrative problems arise.

2.1.2.1 Problems encountered by international actors

The problem most frequently cited in this survey was corruption or diversion of aid. Sixty-two percent of respondents had encountered corruption in their operations and 30 per cent encountered it frequently or always. The figures were particularly high for governments (79 per cent, of which 44 per cent frequently or always) and IHO headquarters (85 per cent, of which 15 per cent frequently or always).

Coordination problems



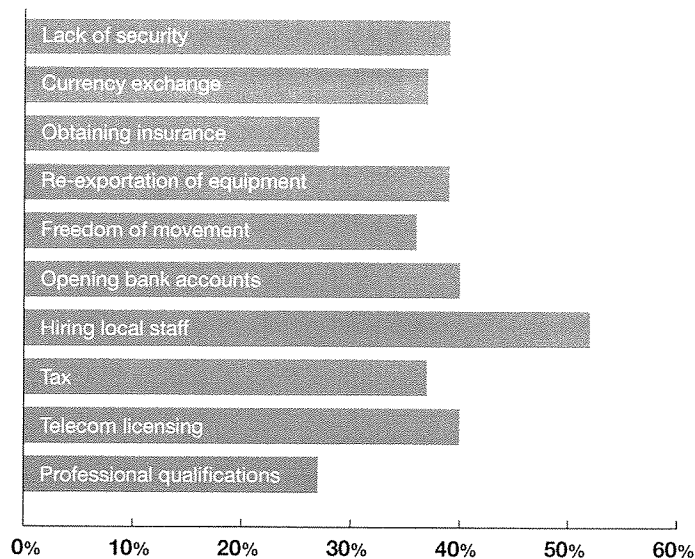
Also very common were problems with coordination, including with regard to failures of the government of the affected state to provide adequate guidance (reported by 58 per cent of respondents, of which 32 per cent frequently or always), failures of coordination between international relief providers (59 per cent, of which 36 per cent frequently or always), and failures of international actors to coordinate with domestic authorities (44 per cent, of which 13 per cent frequently or always). Ninety-two per cent of IHO headquarters reported having experienced coordination problems by governments and the same proportion noted coordination problems among international actors. Eighty-two per cent reported having seen other international actors failing to coordinate with domestic authorities.

National and international coordination problems are plainly linked. As one respondent pointed out, “[t]he responsibility for effective disaster response rests with a stricken country... Without appropriate structures and procedures at the national level, international coordination is bound to fail.” Respondents reported that these gaps in coordination often led to inequitable delivery of aid, including both duplication in some areas and inadequate aid in others.

One respondent pointed out that “some agencies do not invest in understanding and accessing local NGO networks.” Nevertheless, they noted that, in many cases, local and international NGOs have consciously tried to coordinate activities. Another comment received was that differing views regarding whether or not to respond when there is no request for support from a Government creates difficulties in coordinating disaster response operations.

Other commonly cited legal difficulties included barriers to hiring local staff (52 per cent of respondents), opening local bank accounts (40 per cent of respondents) and re-exporting relief equipment and/or unused relief goods (40 per cent of respondents).

Other operations problems (all respondents)

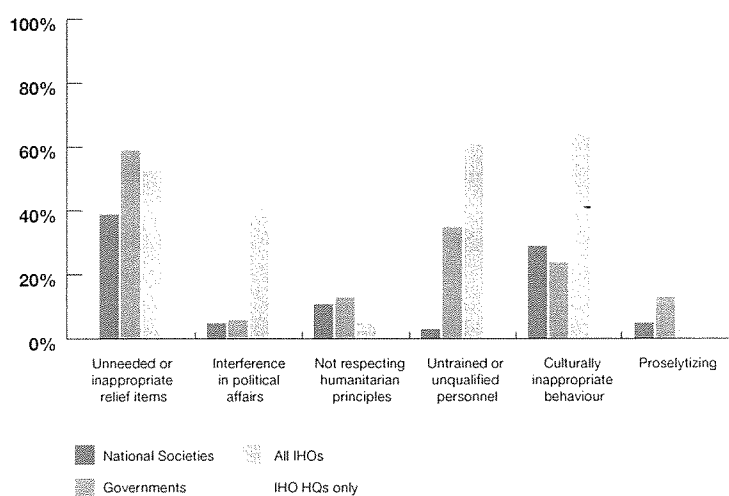


2.1.2.2 Quality problems

Respondents also reported on a number of problems in the quality of the assistance provided by international actors. Even more dramatically than for the types of problems discussed above, many more IHO headquarters reported seeing these behaviours than other respondents, as the chart below makes clear.

The most commonly cited problem overall was the provision of unneeded or inappropriate relief items. Forty-eight per cent of all respondents, 59 per cent of governments and 80 per cent of IHO headquarters had experienced this at some point in an international disaster operation. Many respondents complained of the provision of inappropriate types of clothing, food which was not suitable to local eating habits, and medications that were expired or labelled in a language not locally understood.

Problems with International disaster responders



The use of untrained or unqualified personnel was noted by 42 per cent of respondents and 91 per cent of IHO headquarters. One IHO pointed out that “the use of well-meaning, motivated but untrained volunteers is commonplace in all major disaster responses.” Linked to this was the issue of culturally inappropriate behaviour by international personnel, which was identified by 41 per cent of all respondents and 91 per cent of IHO headquarters. Specific bad behaviours noted included consumption of non-authorized substances, “drinking, boisterous, disrespectful behaviour in Muslim environments,” provocative dress and inappropriate male-female relations. As one respondent observed, “in our commitment to try and get things done, we often overlook the impact of our actions on local norms.”

A number of operating national societies (i.e. those based in the affected state) noted problems of respect by participating national societies of their primary role at the national level. These included:

- the provision of direct assistance, rather than assisting the national society of the affected country

- sending relief goods to the Government, instead of to the national society, which caused a delay in their release and delivery
- a lack of communication with the operating national society in order to establish what is needed in the affected country
- a lack of respect for the volunteers of the operating national society, who were “not considered as the most important operation resource, but as the cheapest work (without any rights)” and
- entry into the field without obtaining permission/an invitation from the local national society, “which was not seen as a coordination counterpart”.

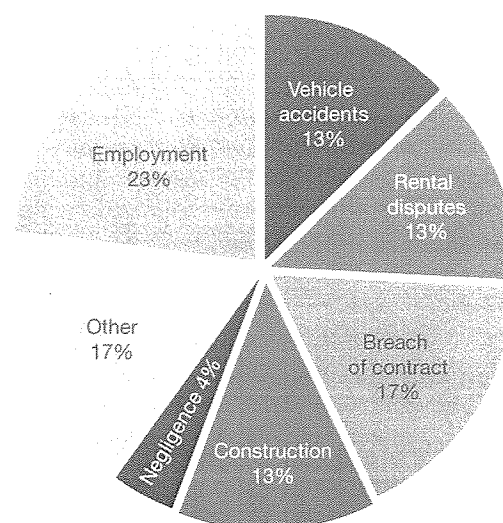
Respondents were asked to identify other challenges that arose with regard to other international disaster responders that were not already addressed in the questionnaire. One IHO noted that “visibility and the need to appear as the first organization to respond” creates situations where there is no possibility to coordinate in timely fashion with other international disaster responders. Other problems identified by national societies included the presence of various IHOs only interested in gaining funds without any genuine commitment to providing relief.

2.1.2.3 Liability issues

Overall, respondents appeared to indicate that neither civil nor criminal liability were a great concern in their operations. Only 4 per cent of all respondents and 10 per cent of IHOs indicated that the potential of civil liability had substantially impeded their operations. Similarly, only 1 per cent of all respondents and 3 per cent of IHOs reported substantial impediments from the potential of criminal investigation or arrest.

Nevertheless, 15 per cent of all respondents and 32 per cent of IHOs (including some UN agencies) had had civil claims brought against them. These were roughly equally divided between employment cases, vehicle accidents, rental disputes, other contractual issues, and construction, in addition to negligence and other types of claims.

Types of claims reported



Moreover, 6 per cent of all respondents and 19 per cent of IHOs reported that a staff member or volunteer had at one point been criminally investigated or jailed in the course of an international disaster relief operation.

2.2 Measures to facilitate

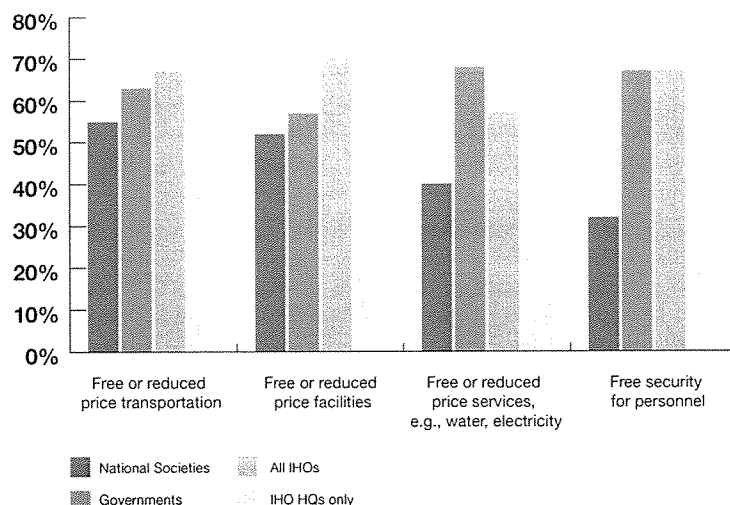
The experience of international relief operations is certainly not only one of obstacles and opposition between international actors and domestic authorities. Respondents also identified a number of efforts by affected state governments that smoothed and facilitated disaster response operations.

Overall, 49 per cent of respondents indicated that affected state governments had at one point made exceptions to normal laws, rules or procedures in order to facilitate their disaster response operations. However, the treatment of the various groups varied substantially, with 87 per cent of governments reporting having benefited from such exceptions, 48 per cent of IHOs and only 23 per cent of national societies.

It was commonly reported that affected state governments had expedited or waived visa processes for relief personnel and that respondents had received tax and customs exemptions. One respondent also noted the facilitation and cooperation it had received from governments in transit states, which simplified border-crossing and customs procedures. Other responses included allowing exceptions concerning laws concerning movement within the territory, the provision of equipment to assist the relief effort and allowing humanitarian agencies free access to disaster sites.

Over half of the respondents had also benefited from affirmative help from the affected state governments, including free or reduced price transportation (59 per cent of respondents), free or reduced price buildings or facilities (57 per cent), free or reduced price services, such as water and electricity (53 per cent), or free security protection for their personnel (51 per cent).

Received from affected State Governments



Respondents were additionally asked if their operations had been facilitated by any regional intergovernmental organization. Fifty-six percent of governments indicated that they had. Specific positive mention was made of the NATO Euro-Atlantic Disaster Response Coordinating Centre, and the Caribbean Disaster and Emergency Response Agency (CDERA). The figures were much lower for the other target groups (26 per cent of national societies, 16 per cent of all IHOs and 27 per cent of IHO headquarters), moreover, it is not clear if all of those who responded positively interpreted this question in the manner intended by the drafters, inasmuch as some of the particular organizations they listed were UN agencies, the International Federation or domestic agencies.

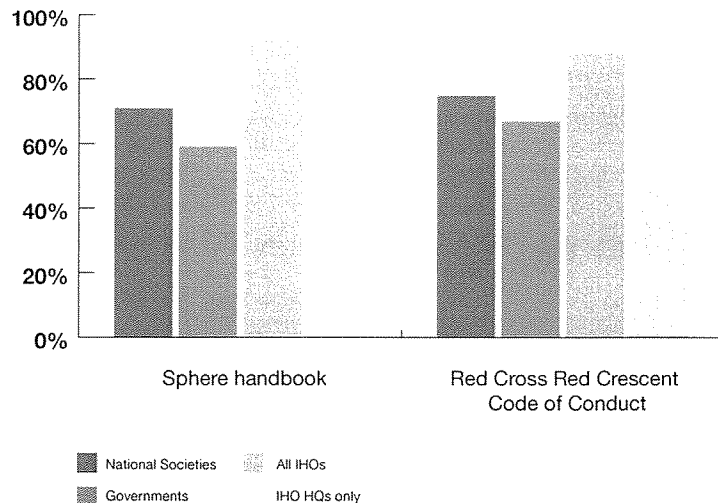
3. Existing legal frameworks

3.1 International instruments

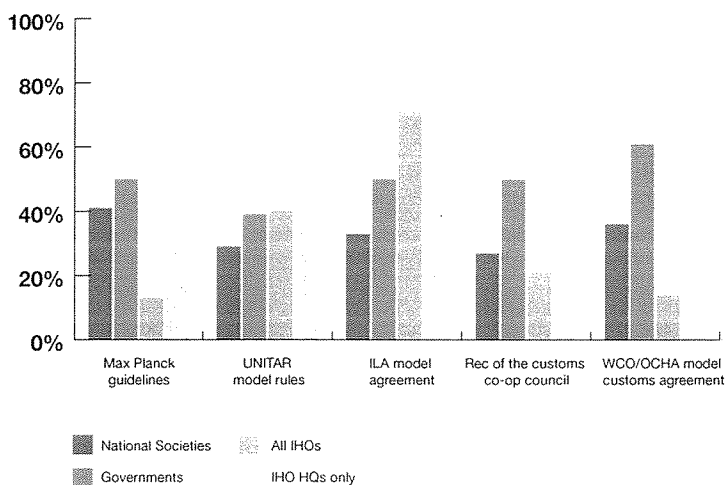
There are a number of international instruments that address legal barriers in international response. The questionnaires referred to several of them, but not all were relevant to each group of stakeholders and a complete comparison was therefore not deemed possible for each instrument. In particular, because of the spotty ratification of most of the relevant treaties, it was considered of little use to ask generally about their employment by governments that might or might not be parties.

- All respondents were asked about their use of several international codes or guides listed on the charts below. Respondents reported great use of both the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (1994) and the Sphere Humanitarian Charter and Minimum Standards in Disaster Response (2000 and 2004). Seventy-six percent of all respondents reported using the Code, and many also stated that they used it frequently or always (61 per cent of national societies, 53 per cent of governments, 82 per cent of IHO headquarters). Likewise, 72 per cent of respondents used the Sphere Handbook, and 50 per cent

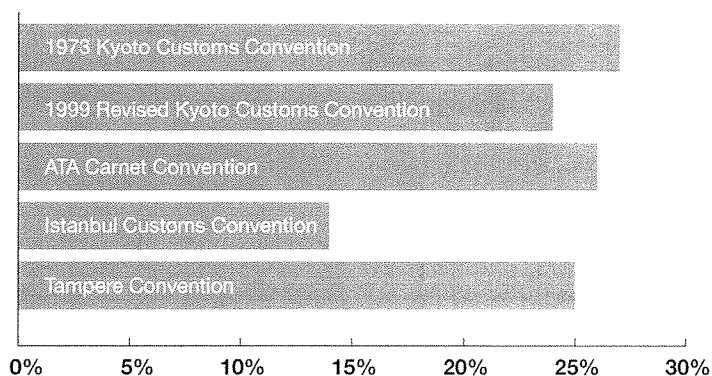
Use of the Code of Conduct and Sphere



Use of models and guidelines



Use of selected conventions (humanitarian respondents only)



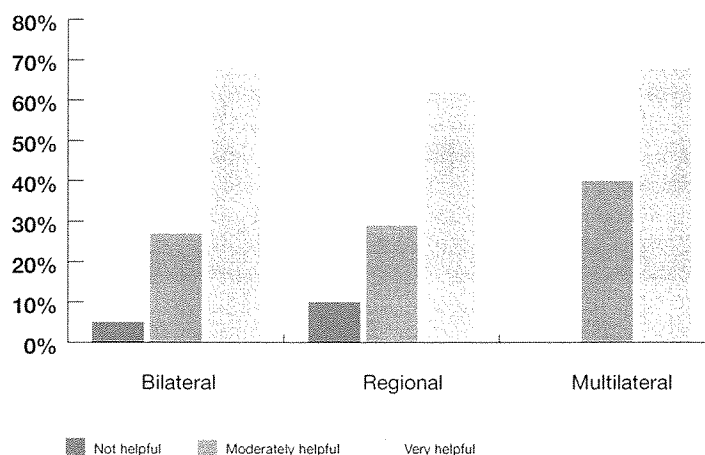
of national societies, 35 per cent of governments, and 82 per cent of IHO headquarters reported using it frequently or always.

Respondents also indicated that they had made use of some of the leading model agreements and draft rules for international disaster operations. Overall, 35 per cent had used the International Guidelines for Humanitarian Assistance Operations (Max Planck Institute, 1991), 33 per cent had used the Model Rules for Disaster Relief Operations (UNITAR, 1982), 46 per cent had used the Draft Model Agreement Relating to Humanitarian Relief Actions (International Law Association, 1982), 32 per cent had used the Recommendation of the Customs Co-operation Council to expedite the forwarding of relief consignments in the event of disasters (T2-423, 1970), and 38 per cent had used the Model Customs Agreement (World Customs Organisation and OCHA, 1996).

National societies and IHOs were also asked about their use of selected conventions related to customs or telecommunications in disaster relief operations. Overall, these were used less often than the above non-binding documents, but 24 per cent reported using Specific Annex F.5 of the Convention on the Simplification and Harmonization of Customs Procedures of 1973 (“Kyoto Convention”), 24 per cent reported using Specific Annex J.5 of the Revised Kyoto Convention of 1999, 26 per cent reported using the Customs Convention on the A.T.A. Carnet for the temporary admission of goods, 14 per cent reported using Annex B.9 of the Convention on Temporary Admission, and 25 per cent reported using the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations.

Questionnaire responses indicate that governments generally, but not invariably, consider their existing treaties and agreements helpful in facilitating and coordinating international disaster assistance in their own countries. The majority found their bilateral (68 per cent), regional (65 per cent) and global multilateral treaties (60 per cent) “very helpful”. However, this left substantial minorities that felt that these treaties were only “moderately helpful” or “not helpful”.

Governments’ assessments of treaties and agreements



3.2 National laws and policies

Governments, national societies and IHO field offices were queried about national laws and policies on international disaster relief³. Overall, 68 per cent of respondents indicated that there was disaster-specific legislation in their countries, 67 per cent stated that there was a national-level disaster response plan, and 70 per cent stated that there was a single national coordinating body for disaster relief within the gov-

³ There was some overlap in responses: 9 national societies and governments replied from the same country as did 10 of the IHO field offices. It is notable that while their responses were mainly consistent, there were also several apparent disagreements. Overall responses provided here count each country only once and, on the assumption that governments are in the best position to describe their own laws, use the government responses in case of disagreement in overlapping answers. In case of disagreement between non-government actors, the answers were not tallied.

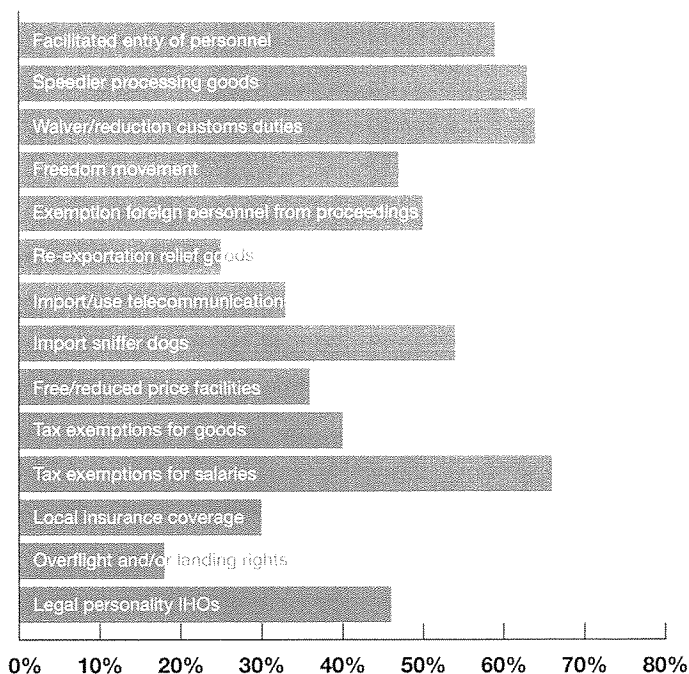
ernment. Fifty percent of respondents indicated that disaster relief was primarily regulated at the national level in their countries, 19 per cent at the provincial level, 24 per cent at the local level, and 7 per cent state that there was no primary level.

Substantially less than half of the respondents indicated that existing disaster-specific laws or policies:

- set out the procedures for requesting and accepting international assistance (38 per cent)
- set out a procedure for determining when international assistance is required (36 per cent) or
- regulated the quality and accountability of international disaster relief operations (25 per cent)

Respondents were also asked to indicate if national law addressed a number of specific issues that might be relevant in disaster operations as indicated on the chart below. Significantly, however, when questioned as to whether disaster-specific laws and/or policies adequately addressed the legal issues of international disaster response, the majority of national societies (54 per cent) and IHO field offices (75 per cent) thought that they did not. On the other hand, 70 per cent of national societies and 60 per cent of IHO Field Offices felt that the relevant provisions of existing laws and policies were adequately implemented when disasters occurred.

Issues covered by national law

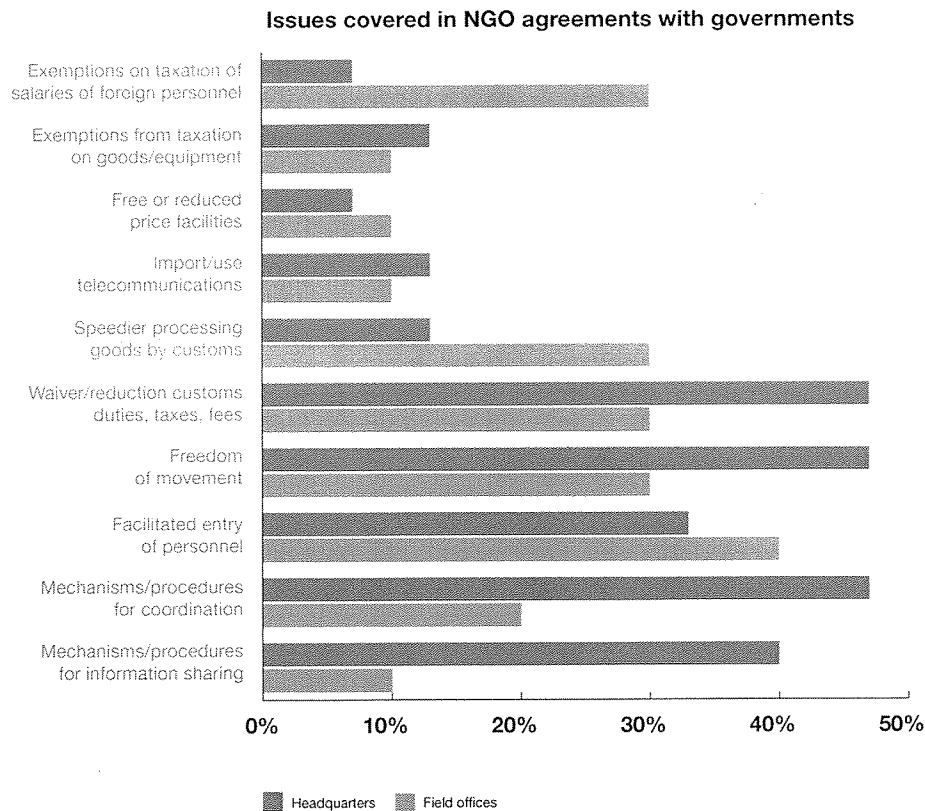


3.3 IHO agreements with governments

IHOs were asked about agreements they had signed with governments of affected states regarding their disaster relief operations. Responses showed that 80 per cent of responding regional offices and 53 per cent of Field Offices had signed specific agreements governing their disaster relief operations with the government of the countries within which they operated. Forty-seven percent of IHO headquarters stated that they frequently or always concluded such agreements.

Sixty-two percent of the IHO headquarters indicated that their agreements were usually made during rather than before disaster relief operations. Twenty-two percent of the IHO headquarters and 67 per cent of the field offices stated that these agreements generally addressed the entire mandate of the organization in the country. Responses from field offices indicated that their agreements are often held with the ministry of health or ministry of foreign affairs. A number of field offices indicated that they had two agreements: a global agreement with the government and also a specific letter of understanding for each emergency operation for the short-term.

The following graph illustrates some of the issues addressed within agreements between governments and IHO headquarters and field offices (for NGOs only).



None of agreements IHO respondents had with governments addressed recognition of foreign diplomas/professional qualifications, local insurance or over flight and/or landing rights

Even where there agreements addressed relevant problem areas, several IHO respondents noted that they were not always effective. One lamented that “nobody really referred to and most probably nobody [ever] read” its agreement. Others pointed out that, notwithstanding the Government’s undertaking in the agreement, they found that they were required to obtain additional permissions from different ministries or that the agreement was not recognized at the provincial or local level.

3.4 Briefings on legal issues

National Societies and IHOs were finally asked whether their organisations generally conducted briefings on relevant international and/or national laws for international disaster relief personnel prior to deployment in disaster relief operations. Fifty per cent of national societies and 29 per cent of IHOs reported that they did so.

Conclusion

While their impact varies by sector and actor, the above findings demonstrate that legal difficulties are a real issue for governments, national societies and IHOs in international disaster response. Particularly for IHOs, administrative barriers to entry and operations are apparently widespread. Disturbingly, a great many IHOs are also aware of other international actors providing poor quality assistance or failing to adequately coordinate with others in their work. While many states have disaster-specific laws and plans, respondents indicate that they are not adequate to address the common issues of international disaster response, and it appears that less than half of them address some of the most central issues. At the same time, many affected state governments have provided special exemptions and facilities to international actors to facilitate their work. While good use is being made of some existing international instruments – in particular non-binding codes of conduct and bilateral agreements – it appears that they are not addressing all the most pressing issues.

Exhibit C

THE FOREIGN CONTRIBUTION (REGULATION) ACT, 1976
No. 49 of 1976

[31st March, 1976.]

An Act to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life may function in a manner consistent with the values of a sovereign democratic republic, and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty – seventh year of the Republic of India as follows:

CHAPTER 1
Preliminary

1. Short title, extent, application and commencement – (1) This Act may be called the Foreign Contribution (Regulation) Act, 1976.

Short title, extent,
application and
commencement

(2) It extends to the whole of India, and it shall also apply to –

(a) citizens of India outside India; and

(b) associates, branches or subsidiaries, outside India, of companies or bodies corporate, registered or incorporated in India.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions - (1) In this Act, unless the context otherwise requires, -

Definitions.

(a) 'association' means an association of individuals, whether incorporated or not, having an office in India and includes a society, whether registered under the Societies Registration Act, 1860, or not, and any other organisation by whatever name called;

21 of 1860.

(b) 'candidate for election' means a person who has been duly nominated as a candidate for election to any Legislature;

(c) 'foreign contribution' means the donation, delivery or transfer made by any foreign source, -

(i) of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, does not exceed one thousand rupees;

(ii) of any currency, whether Indian or foreign;

46 of 1973.

(iii) of any foreign security as defined in clause (i) of Section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973);

²[Explanation. - A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause;]

(d) 'foreign hospitality' means any offer, not being a purely casual one, made by a foreign source for providing a person with the cost of travel to any foreign country or territory or with free board, lodging, transport or medical treatment;

¹ 5-8-1976 vide notification No. G.S.R. 755(E) dated the 5th August, 1976.

² Ins. By Act 1 of 1985, s.2 (w.e.f. 20-10-1984)

(e) 'foreign source' includes –

(i) the Government of any foreign country or territory and any agency of such Government,

(ii) any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification in the Official Gazette, specify in this behalf,

1 of 1956. (iii) a foreign company within the meaning of section 591 of the Companies Act, 1956 and also includes –

(a) a company which is a subsidiary of a foreign company, and

(b) a multi-national corporation within the meaning of this Act,

(iv) a corporation, not being a foreign company, incorporated in a foreign country or territory,

(v) a multi-national corporation within the meaning of this Act,

1 of 1956. (vi) a company within the meaning of the Companies Act, 1956, if more than one-half of the nominal value of its share capital is held either singly or in the aggregate, by one or more of the following, namely: -

(a) Government of a foreign country or territory,

(b) Citizens of a foreign country or territory,

(c) Corporations incorporated in a foreign country or territory,

(d) Trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory,

(vii) a trade union in any foreign country or territory, whether or not registered in such foreign country or territory,

(viii) a foreign trust by whatever name called, or a foreign foundation which is either in the nature of trust or is mainly financed by a foreign country or territory,

(ix) a society, club or other association of individuals formed or registered outside India,

(x) a citizen of a foreign country,

but does not include any foreign institution which has been permitted by the Central Government, by a notification in the Official Gazette, to carry on its activities in India;

(f) 'Legislature' means-

(i) either House of Parliament,

(ii) the Legislative Assembly of a State, or in the case of a State having a Legislative Council, either House of the Legislature of that State,

(iii) Legislative Assembly of a Union territory constituted under the Government of Union Territories Act, 1963,

20 of 1963.

(iv) The Metropolitan Council of Delhi constituted under section 3 of the Delhi Administration Act, 1966,

19 of 1966.

(v) Municipal Corporations in metropolitan areas as defined in the Code of Criminal Procedure, 1973,

2 of 1974.

(vi) District Councils and Regional Councils in the States of Assam and Meghalaya and in the Union territory of Mizoram as provided in the Sixth Schedule to the Constitution, or

(vii) any other elective body as may be notified by the Central Government, as the case may be;

¹[(g) 'political party' means-

(i) an association or body of individual citizens of India-

(1) which is, or is deemed to be, registered with the Election Commission of India as a political party under the Election Symbols (Reservation and Allotment) Order, 1968, as in force for the time being; or

(2) which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968;

(ii) a political party mentioned in column 1 of Table 1 to the notification of the Election Commission of India No. 56/J&K/84 dated the 27th September, 1984, as in force for the time being;]

(h) 'prescribed' means prescribed by rules made under this Act;

(i) 'registered newspaper' means a newspaper registered under the Press and Registration of Books Act, 1867;

25 of 1867.

(j) 'subsidiary' and 'associate' have the meanings, respectively, assigned to them in the Companies Act, 1956;

1 of 1956.

(k) 'trade union' means a trade union registered under the Trade Unions Act, 1926.

16 of 1926.

Explanation- For the purposes of this Act, a corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation if such corporation -

(a) has a subsidiary or a branch or a place of business in two or more countries or territories; or

(b) carries on business, or otherwise operates, in two or more countries or territories;

46 of 1973. (2) Words and expressions used herein and not defined but defined in the Foreign Exchange Regulation Act, 1973, have the meanings respectively assigned to them in that Act.

46 of 1973. 43 of 1950. 43 of 1951. (3) Words and expressions used herein and not defined in this Act or in the Foreign Exchange Regulation Act, 1973, but defined in the Representation of the People Act, 1950, or the Representation of the People Act, 1951, have the meanings respectively assigned to them in such Act.

3. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

Application of other laws not barred.

CHAPTER II

Regulation of foreign Contribution and Foreign Hospitality

4. (1) No foreign contribution shall be accepted by any -

(a) candidate for election,

(b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper,

(c) ²[Judge, Government servant] or employee of any corporation,

(d) member of any Legislature,

(e) political party or office-bearer thereof.

Candidate for election, etc., not to accept foreign contribution.

¹ Subs. By Act 1 of 1985, s.2, for cl.(g) (w.e.f. 20-10-1984)

² Subs. by s.3, *ibid.*, for "Government servant" (w.e.f. 20-10-1984)

1 of 1956.

Explanation. – In clause (c) and in section 9, ‘corporation’ means a corporation owned or controlled by Government and includes a Government company as defined in section 617 of the Companies Act, 1956.

(2) (a) No person, resident in India, and no citizen of India, resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party or any person referred to in sub-section (1), or both.

(b) No person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to any political party or any person referred to in sub-section (1) or both.

(c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to

(i) any political party or any person referred to in sub-section (1), or both, or

(ii) any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.

(3) No person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any association, referred to in sub-section (1) of section 6, shall deliver such currency –

(i) to any association or organisation other than the association for which it was received, or

(ii) to any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to an association other than the association for which such currency was received.

5. (1) No organisation of a political nature, not being a political party, shall, accept any foreign contribution except with the prior permission of the Central Government.

Explanation – For the purposes of this section, “organisation of a political nature not being a political party” means such organisation as the Central Government may, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisation with activities of any political party, by an order published in the Official Gazette, specify in this behalf.

Organisation of a political nature not to accept foreign contribution except with the prior permission of the Central Government.

(2) (a) Except with the prior permission of the Central Government, no person, resident in India, and no citizen of India, resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any foreign currency, on behalf of an organisation referred to in sub-section (1).

(b) Except with the prior permission of the Central Government, no person, resident in India, shall deliver any foreign currency to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to an organisation referred to in sub-section (1).

(c) Except with the prior approval of the Central Government, no citizen of India, resident outside India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to –

(i) any organisation referred to in sub-section (1), or

(ii) any person, if he knows or has reasonable cause to believe that such person intends, or is likely, to deliver such currency to an organisation referred to in sub-section (1).

[6. ¹(1) No association [other than an organisation referred to in sub-section (1) of section 5] having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such association, -
(a) registers itself with the Central Government in accordance with the rules made under this Act; and
(b) agrees to receive such foreign contribution only through such one of the branches of a bank as it may specify in its application for such registration,

Certain associations and persons receiving foreign contribution to give intimation to the Central Government.

and every association so registered shall give within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of each foreign contribution received by it, the source from which and the manner in which such foreign contribution was received and the purposes for which and the manner in which such foreign contribution was utilised by it:

Provided that where such association obtains any foreign contribution through any branch other than the branch of the bank through which it has agreed to receive foreign contribution or fails to give such intimation within the prescribed time or in the prescribed manner, or gives any intimation which is false, the Central Government may, by notification in the Official Gazette, direct that such association shall not, after the date of issue of such notification, accept any foreign contribution without the prior permission of the Central Government.

(1A) Every association referred to in sub-section (1) may, if it is not registered with the Central Government under that sub-section, accept any foreign contribution only after obtaining the prior permission of the Central Government and shall also give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of foreign contribution received by it, the source from which and the manner in which such foreign contribution was received and the purposes for which and the manner in which such foreign contribution was utilised by it.

(2) Every candidate for election, who has received any foreign contribution, at any time within one hundred and eighty days immediately preceding the date on which he is duly nominated as such candidate, shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of foreign contribution received by him, the source from which and the manner in which such foreign contribution was received and the purposes for which, and the manner in which, such foreign contribution was utilised by him.

Recipients of scholarships, etc., to give intimation to the Central Government.

7. (1) Every citizen of India receiving any scholarship, stipend or any payment of like nature from any source shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of the scholarship, stipend or other payment received by him and the foreign source from which, and the purpose for which, such scholarship stipend or other payment has been, or is being, received by him.

(2) Where any recurring payments are being received by any citizen of India from any foreign source by way of scholarship, stipend or other payment, it shall be sufficient if the intimation referred to in sub-section (1) includes a precise information as to the intervals at which, and the purpose for which, such recurring payments will be received by such citizen of India.

¹Subs. by Act 1 of 1985, s.4, for sub-section (1)(w.e.f. 1-1-1985).

(3) It shall not be necessary to give such intimation as is referred to in sub-section (1) or sub-section (2) in relation to scholarships, stipends or payments of a like nature, if the annual value of such scholarships, stipend or other payments does not exceed such limits as the Central Government may by rules made under this Act, specify in this behalf.

Persons to whom section 4 shall not apply.

8. Nothing contained in section 4 shall apply to the acceptance, by any person specified in that section, of any foreign contribution, where such contribution is accepted by him, subject to the provisions of section 10 –

(a) by way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source; or

(b) by way of payment, in the course of international trade or commerce, or in the ordinary course of business transacted by him outside India; or

(c) as an agent of a foreign source in relation to any transaction made by such foreign source with Government; or

(d) by way of a gift or presentation made to him as a member of any Indian delegation, provided that such gift or present was accepted in accordance with the regulations made by the Central Government with regard to the acceptance or retention of such gift or presentation; or

(e) from his relative when such foreign contribution has been received with the previous permission of the Central Government.

Provided that no such permission shall be required if the amount of foreign contribution received by him from his relative does not exceed in value, eight thousand rupees per annum and an intimation is given by him to the Central Government as to the amount received, the source from which and the manner in which it was received and the purpose for which and the manner in which it was utilised by him;

(f) by way of remittance received, in the ordinary course of business through any official channel, post office, or in any authorised dealer in foreign exchange under the Foreign Exchange Regulation Act, 1973.

46 of 1973.

Explanation – In this Act, the expression “relative” has the meaning assigned to it in the Companies Act, 1956.

1 of 1956.

Restrictions on acceptance of foreign hospitality.

9. No member of a Legislature, office bearer of a political party, ¹[Judge, Government servant] or employee of any corporation shall, while visiting any country or territory outside India, accept, except with the prior permission of the Central Government, any foreign hospitality :

Provided that it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India, but, where such foreign hospitality has been received the person receiving such hospitality shall give, within one month from the date of receipt of such hospitality an intimation to the Central Government as to the receipt of such hospitality, and the source from which, and the manner in which such hospitality was received by him.

Power of Central Government

10. The Central Government may –

(a) prohibit any association, not specified in section 4, or any person, from accepting any foreign contribution;

¹Subs. by Act 1 of 1985, s 5, for “Government servant”(w.e.f. 20-10-1984)

(b) ¹[without prejudice to the provisions of sub-section (1) of section 6 require any association specified in that sub-section], to obtain prior permission of the Central Government before accepting any foreign contribution;

to prohibit receipt of foreign contribution, etc., in certain cases.

(c) require any person or class of persons or any association, not being an association specified in section 6, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons or association, as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;

(d) require any person or class of persons, not specified in section 9, to obtain prior permission of the Central Government before accepting any foreign hospitality;

(e) require any person or class of persons, not specified in section 9, to furnish intimation, within such time and in such manner as may be prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received:

Provided that no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such association or persons or class of persons, as the case may be, the acceptance of foreign hospitality by such person, is likely to affect prejudicially –

- (i) the sovereignty and integrity of India; or
- (ii) the public interest; or
- (iii) freedom or fairness of election to any Legislature; or
- (iv) friendly relations with any foreign State; or
- (v) harmony between religious, racial, linguistic or regional groups castes or communities.

Application to be made in prescribed form for obtaining prior permission to accept foreign contribution or hospitality.

11. (1) Every individual, association, organisation or other person, who is required by or under this Act to obtain the prior permission of the Central Government to accept any foreign contribution or hospitality, shall, before the acceptance of any such contribution or hospitality, make an application for such permission to the Central Government in such form and in such manner as may be prescribed.

(2) If an application referred to in sub-section (1) is not disposed of within ninety days from the date of receipt of such application, the permission prayed for in such application shall, on the expiry of the said period of ninety days, be deemed to have been granted by the Central Government:

Provided that, where, in relation to an application, the Central Government has informed the applicant the special difficulties by reason of which his application cannot be disposed of within the said period of ninety days, such application shall not, until the expiry of a further period of thirty days, be deemed to have been granted by the Central Government.

CHAPTER III Miscellaneous

12. Where the Central Government is satisfied, after making such inquiry as it may deem fit, that any person has in his custody or control any article or

Power to prohibit payment of currency received in contravention of the Act.

¹Subs. by s. 6, *ibid.* for “require any association, specified in section 6”(w.e.f., 1-1-1985)

37 of 1967.

currency, whether Indian or foreign, which has been accepted by such person in contravention of any of the provisions of this Act, it may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing with in any manner whatsoever, such article or currency save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the prescribed manner, and thereupon the provisions of sub-section (2), (3), (4) and (5) of section 7 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) shall, so far as may be, apply to, or in relation to, such article or currency and references in the said sub-sections to moneys, securities or credits shall be construed as references to such article or currency.

13. Every association, referred to in section 6, shall maintain, in such form and in such manner as may be prescribed, -
(a) an account of any foreign contribution received by it, and
(b) a record as to the manner in which such contribution has been utilised by it.

Recipients of foreign contribution to maintain accounts etc.

14. If the Central Government has, for any reason, to be recorded in writing, any ground to suspect that any provision of this Act has been, or is being contravened by -
(a) any political party, or
(b) any person, or
(c) any organisation, or
(d) any association,

Inspection of accounts or records.

it may, by general or special order, authorise such gazetted officer, holding a ¹[Group A post], as it may think fit (hereinafter referred to as the authorised officer), to inspect any account or record maintained by such political party, person, organisation or association, as the case may be, and thereupon every such authorised officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of inspecting the said account or record :

Provided that no gazetted officer shall be authorised to inspect the account or record maintained by a political party, unless he has been holding a Group A post in connection with the affairs of the Union, or a State, for not less than ten years.

15. If, after inspection of an account or record referred to in section 14, the authorised officer has any reasonable cause to believe that any provision of this Act or of any other law relating to foreign exchange has been, or is being, contravened, he may seize such account or record and produce the same before the court in which any proceeding is brought for such contravention:

Seizure of accounts or records.

Provided that the authorised officer shall return such account or record to the person from whom it was seized if no proceeding is brought within six months from the date of such seizure for the contravention disclosed by such account or record.

²[15A. Where any organisation or association fails to furnish any returns under this Act within the time specified therefor or the returns so furnished are not in accordance with the law or if, after inspection of such returns, the Central Government has any reasonable cause to believe that any provision of

Audit of accounts.

¹.Subs. by Act 1 of 1985, s.7, for "class I post" (w.e.f. 20-1-1984)

².Ins. by s.8 *ibid.* (w.e.f. 20-10-1984).

this Act has been, or is being, contravened, that Government may, by general or special order, authorise such gazetted officer, holding a Group A post, as it may think fit, to audit any books of account kept or maintained by such organisation or association as the case may be, and thereupon every such officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of auditing the said books of account:

Provided that any information obtained from such audit shall be kept confidential and shall not be disclosed except for the purposes of this Act.]

Seizure of article or currency received in contravention of the Act. 16. If any gazetted officer, authorised in this behalf by the Central government, by general or special order, has any reason to believe that any person has in his possession or control any article exceeding rupees one thousand in value, or currency, whether Indian or foreign, in relation to which any provision of this Act has been, or is being, contravened, he may seize such article or currency.

Seizure to be made in accordance with the Code of Criminal Procedure, 1973. 17. Every seizure made under this Act shall be made in accordance with the provision of section 100 of the Code of Criminal Procedure, 1973. 2 of 1974.

Confiscation of article or currency obtained in contravention of the Act. 18. Any article or currency which is seized under section 16 shall be liable to confiscation if such article or currency has been adjudged under section 19 to have been received or obtained in contravention of this Act.

Adjudication of confiscation. 19. Any confiscation referred to in section 18 may be adjudged –
(a) without limit, by the Court of Session within the local limits of whose jurisdiction the seizure was made; and
(b) subject to such limits as may be prescribed, by such officer, not below the rank of an Assistant Sessions Judge, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Opportunity to be given before adjudication of confiscation. 20. No order of adjudication of confiscation shall be made unless a reasonable opportunity of making a representation against such confiscation has been given to the person from whom any article or currency has been seized.

Appeal 21. (1) Any person aggrieved by any order made under section 19 may prefer any appeal, -
(a) where the order has been made by the Court of Session, to the High Court to which such Court is subordinate; or
(b) where the order has been made by any officer specified under clause (b) of section 19, to the Court of Session within the local limits of whose jurisdiction such order of adjudication of confiscation was made, within one month from the date of communication to such person of the order:

Provided that the appellate court may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of one month, allow such appeal to be preferred within a further period of one month, but not thereafter.

(2) Any organisation referred to in section 5, or any person or association referred to in section 9 or section 10, aggrieved by an order made in pursuance of the Explanation to sub-section (1) of section 5 or by an order of the Central Government refusing to give permission, or by any order made by the Central Government, under section 5 or section 9 or section 10, as the case may be, may within sixty days from the date of such order prefer an appeal against such order to the High Court within the local limits of whose jurisdiction the applicant ordinarily resides or carries on business or personally works for gain, or, where the appellant is an organisation or association, the principal office of such organisation or association is located.

(3) Every appeal preferred under this section shall be deemed to be an appeal from an original decree and the provisions of Order XLI of the First Schedule to the Code of Civil Procedure, 1908, shall, as far as may be, apply thereto as they apply to an appeal from an original decree. 5 of 1908.

Penalty for article or currency obtained in contravention of section 12.

22. If any person, on whom any prohibitory order has been served under section 12, pays, delivers, transfers or otherwise deals with, in any manner whatsoever, any article or currency, whether Indian or foreign, in contravention of such prohibitory order, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both; and notwithstanding anything contained in the Code of Criminal Procedure, 1973, the court trying such contravention may also impose on the person convicted an additional fine equivalent to the market value of the article or the amount of the currency in respect of which the prohibitory order has been contravened by him or such part thereof as the court may deem fit. 2 of 1974.

Punishment for the contravention of any provision of the Act.

23. (1) Whoever accepts, or assists any person, political party or organisation in accepting, any foreign contribution or any currency from a foreign source, in contravention of any provision of this Act or any rule made thereunder, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

(2) whoever accepts any foreign hospitality in contravention of any provision of this Act or any rule made thereunder shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Power to impose additional fine where article or currency is not available for confiscation.

24. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying a person, who, in relation to any article or currency, whether Indian or foreign, does or omits to do any act which act or omission would render such article or currency liable to confiscation under this Act, may, in the event of the conviction of such person for the act or omission aforesaid, impose on such person a fine not exceeding five times the value of the article or currency or one thousand rupees, whichever is more, if such article or currency is not available for confiscation, and fine so imposed shall be in addition to any other fine which may be imposed on such person under this Act. 2 of 1974.

Penalty for offences where no separate punishment has been provided.

25. Whoever fails to comply with any provision of this Act for which no separate penalty has been provided in this Act shall be punished with imprisonment for a term which may extend to one year, or with fine not exceeding one thousand rupees, or with both.

Prohibition of acceptance of foreign contribution.

¹[25A Notwithstanding anything contained in this Act, whoever, having been convicted of any offence under sub-section (1) of section 23 or section 25, in so far as such offence relates to the acceptance or utilisation of foreign contribution, is again convicted of such offence shall not accept any foreign contribution for a period of three years from the date of the subsequent conviction.]

Offences by companies.

26. (1) where an offence under this Act or any rule made thereunder has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this Sub-section shall render such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act or any rule made thereunder has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. —For the purposes of this section, -

(a) “company” means any body corporate and includes a firm, society, trade union or other association of individuals; and

(b) “director” in relation to a firm, society, trade union or other association of individuals, means a partner in the firm or a member of the governing body of such society, trade union or other association of individuals.

Bar to prosecution of offences under the Act.

27. No court shall take cognisance of any offence under this Act, except with the previous sanction of the Central Government or any officer authorised by that Government in this behalf.

Investigation into cases under the Act.

28. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act may also be investigated into by such authority as the Central Government may specify in this behalf and the authority so specified shall have all the powers which an officer -in-charge of a police station has while making an investigation into a cognisable offence.

2 of 1974.

¹ Ins. By Act 1 of 1985, s 9 (w.e.f. 20-10-1984)

Protection of
action taken
in good
faith.

29. No suit or other legal proceedings shall lie against the Central Government in respect of any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or, any rule or order made thereunder.

power to
make rules.

30. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the time within which, and the manner in which, intimation is to be given by an association referred to in section 6, with regard to the foreign contribution received by it;

(b) the limits up to which receipt of scholarships, stipends or payments of

like nature need not be intimated to the Central Government;

(c) the time within which, and the manner in which, intimation is to be given by persons receiving any scholarships, stipend or any payment of a like nature from a foreign source;

(d) the time within which, and the manner in which a candidate for election should give intimation as to the amount of foreign contribution received by him at any time within one hundred and eighty days from the date when he became such a candidate

(e) the form and manner in which an application shall be made for obtaining prior permission of the Central Government to receive foreign contribution or foreign hospitality

(f) the manner of service of the prohibitory order made under section 12;

(g) the form and manner in which account or record referred to in section 13 shall be maintained;

(h) the limits up to which an officer, not below the rank of an Assistant Sessions Judge, may make adjudication of confiscation;

(i) any other matter which is required to be, or may be prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to
exempt.

31. If the Central Government is of opinion that it is necessary or expedient in the interests of the general public so to do, it may, by order and subject to such conditions as may be specified in the order, exempt any association (not being a political party), organisation or any individual (not being a candidate for election) from the operation of all or any of the provisions of this Act and may, as often as may be necessary, revoke or modify such order.

Act not to
apply to
Government
transactions.

32. Nothing contained in this Act shall apply to any transaction between the Government of India and the Government of any foreign country or territory.

Exhibit D



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GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH
MINISTRY OF LAW AND LAND REFORMS

(Law and Parliamentary Affairs Division)

NOTIFICATION

Dhaka, the 8th September, 1982.

No. 541-Pub.—The following Ordinance made by the Chief Martial Law Administrator of the People's Republic of Bangladesh, on the 6th September, 1982, is hereby published for general information :—

THE FOREIGN CONTRIBUTIONS (REGULATION) ORDINANCE, 1982

Ordinance No. XXXI of 1982

AN

ORDINANCE

to regulate receipt of foreign contributions

WHEREAS it is expedient to regulate receipt of foreign contributions ;

Now, THEREFORE, in pursuance of the Proclamation of the 24th March, 1982, and in exercise of all powers enabling him in that behalf, the Chief Martial Law Administrator is pleased to make and promulgate the following Ordinance :—

1. **Short title.**—This Ordinance may be called the Foreign Contributions (Regulation) ordinance, 1982

2. **Ordinance to override all other laws.**—The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract or agreement.

3. **Definition.**—In this Ordinance, unless there is anything repugnant in the subject or context, "foreign contribution" means any donation, grant or assistance, whether in cash or in kind, including a ticket for journey abroad, made by any Government, organisation or citizen of foreign state.

4. **Receipt of foreign contribution without permission prohibited.**—(1) No citizen of, or organisation in, Bangladesh shall receive any foreign contribution without the prior permission of the Government.

(2) No Government, organisation or citizen of a foreign state shall make any donation, grant or assistance, whether in cash or in kind, including a ticket for journey abroad, to any citizen of, or organisation in, Bangladesh without the prior permission of the Government.

(3) Nothing in this section shall apply to an organisation established by or under any law or the authority of the Government.

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5. Penalty etc.—(1) Whoever receives or makes any foreign contribution in contravention of the provisions of section 4 shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding two times the amount or value of the contribution, or with both.

(2) No court shall take cognizance of an offence under this Ordinance except on a complaint made by the Government or any officer authorised by it in this behalf.

DHAKA;
The 6th September, 1982

H. M. ERSHAD, ndc. pse
LIEUTENANT GENERAL
Chief martial Law Administrator.

S. RAHMAN
Deputy Secretary.

Exhibit E

Decree 55/98 of 13 October

Creates the legal framework and defines the criteria governing the authorisation, objectives and methods of operation of foreign non-governmental organisations

The complementary role that non-governmental organisations (NGOs) play alongside the government's initiatives for the rehabilitation and development of the country calls for the creation of a legal framework to define the criteria governing the authorisation, objectives and methods of operation of these organisations.

Therefore, under article 20 of Law 8/91 of 18 July, the Council of Ministers decrees:

Article 1 (Definitions)

For the purposes of this decree:

1. Non-governmental organisations (NGOs) – means not-for-profit corporate persons governed by private law, which are involved, specifically, in emergency, rehabilitation or development programmes. They may be associations, foundations or other forms of corporate person of a similar nature, pursuing objectives of co-operation for social and economic development.
2. Authorisation – means the grant needed for an NGO to be able to begin and carry out its activities in the national territory.
3. Central supervising authority – means the Ministry that oversees the main activity to be carried out by an NGO in the national territory.

Article 2 (General principles)

1. Authorisation to carry out activities in Mozambique will be given to NGOs whose articles of association (byelaws) are compatible with the Government programme, especially with regard to rural and peri-urban development and, specifically, the areas of education, health, water supply and the transfer of know-how and technology.
2. Foreign NGOs shall build national capacity so that their partners can continue projects that have been initiated and ensure their sustainability.
3. In the pursuance of their activities, foreign NGOs shall be barred from carrying out or promoting activities of a political nature.

**Article 3
(Purpose)**

The general objective of NGOs is to devote themselves to assisting the population, irrespective of their ethnic origin, race, religion or social status, and to participate in the eradication of poverty, particularly by means of actions that increase family income and create jobs.

**Article 4
(Scope of application)**

This decree applies to foreign NGOs that carry out activities in the Republic of Mozambique, in the context of national emergency, rehabilitation or development programmes.

**Article 5
(Authorisation)**

1. The Minister of Foreign Affairs and Co-operation is given the power to authorise foreign NGOs to commence their activities, after he or she has consulted the central supervising authority.
2. An application for authorisation referred to in paragraph 1 of this article shall be made by means of a letter of request accompanied by the following documents:
 - a) Authenticated copy of the articles of association, which demonstrate the legal existence of the organisation in its country of origin;
 - b) Proposed general programme of activities that the organisation intends to carry out in Mozambique;
 - c) Description of the organisation's background and its operational experience;
 - d) Staff that the organisation proposes to employ;
 - e) Document demonstrating the organisation's capacity and the availability of financial resources required for carrying out the activities in Mozambique.
3. The letter of request shall also show the name of the NGO and its head office or domicile.

**Article 6
(Commencement of activities)**

1. Non-governmental organisations shall only begin carrying out their activities after authorisation to do so has been granted.

2. The authorisation referred to in paragraph 1 of this article will be valid for two years and it may be extended if the parties so agree.
3. The central supervising authority shall approve the activity programme proposed by the NGO, in accordance with sectoral policy, and it shall check whether the proposal complements the Government programme.
4. The central supervising authority that oversees the activity of the NGO shall have the power to designate which province the activities should be carried out in, taking into consideration the need to apply the principle of equity in the development of the country. Provincial governments shall designate which district or municipality the NGO should operate in, and the NGO shall decide which locations to carry out its projects in.

Article 7
(Filling job positions)

The employment of foreign workers shall comply with the labour legislation in force in Mozambique.

Article 8
(Activity report)

During the performance of their activities, NGOs shall submit annual activity reports in accordance with procedures to be laid down by the Minister of Foreign Affairs and Co-operation.

Article 9
(Tax obligations)

1. Non-governmental organisations shall register with the tax department in their tax area, after the authorisation referred to in article 6(1) has been granted and before they commence activities.
2. Non-governmental organisations shall be subject to tax inspection or audits, strictly in the terms of the tax legislation in force.

Article 10
(NGOs in operation)

Foreign NGOs that already exist on the date upon which this decree enters into force shall make the necessary adjustments to bring themselves into line with the provisions of this decree, within a period of one hundred and twenty days.

Article 11
(Omissions and applicable legislation)

1. Matters not dealt with in this decree shall be governed by Law 8/91 of 18 July, Decree 53/95 of 5 December and other legislation in force.
2. The Minister of Foreign Affairs and Co-operation shall pass regulations to implement this decree.

Approved by the Council of Ministers.

Let it be published.

The Prime Minister, *Pascoal Manuel Mocumbi*.

Exhibit F



In partnership with **GTZ – APSP**

LABOUR

LAW

Law nr 8/98 of 20th July

LABOUR LAW

Law no. 8/98 of 20th July

Having the need to adapt the current juridico-legal framework to socio-economic, political and structural changes in the realm of labour, employment and social security, arising from the provisions of sub-clause 1 of article 135 of the Constitution, the Assembly of the Republic determines:

CHAPTER I GENERAL PROVISIONS

Article 1 (Object)

- 1) The present Law defines the general principles, and establishes the legal regime applicable to individual and collective labour relations.
- 2) The provisions of the present Law may not be derogated from, or modified by, instruments of collective labour regulation, or by an individual employment agreement, except when they establish more favourable regimes.

Article 2 (Extent of Application)

- 1) The present Law is applicable to juridico-labour relations established between employing entities of State, co-operative (in relation to salaried workers), mixed and private sectors, in all areas of activity, and to national workers and foreigners who conduct their activities in the country.
- 2) The present Law is also applicable to juridico-labour relations between public companies and their respective workers, without prejudice to the derogations provided for in specific applicable legislation.
- 3) The juridico-labour relations of State functionaries shall be regulated by a specific statute.

Article 3 (Special Regimes)

Labour relations in the domestic, mining, port, maritime, rural, artistic, home and other sectors whose activities require special regimes, shall be regulated by the present Law in all aspects in which this is shown to be appropriate, having regard to the nature and particular characteristics of the sector.

Article 4 (Sources of Labour Law)

- 1) The Constitution of the Republic, rule-making acts emanating from the Assembly of the Republic and the Government, as well as legal employment norms and instruments of collective labour regulation, constitute the sources of labour law.

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orientation and occupational development, and by means of the operation of free public placement services.

**Article 169
(Methods for Promoting Employment)**

The following shall constitute methods for promoting employment:

- a) The preparation and execution of development plans and programmes, involving all State bodies, in co-operation with social partners, in co-operative, co-ordinated activities in the areas of the creation, maintenance and recovery of posts;
- b) Support for individual and collective initiatives which envisage the creation of employment and work opportunities, as well as the promotion of investments which generate employment in the various sectors of economic and social activity;
- a) Incentives for the occupational and geographic relocation of workers and their families in a manner appropriate to the equilibrium between supply and demand of employment, and considering sectoral and regional investments for the social promotion of social-occupational groups;
- b) The outlining of programmes to provide occupational information and orientation for young people and workers, with a view to building the capacity of citizens and communities to freely choose a profession and a type of work, according to their individual capacities and the needs of the development of the country;
- c) The development of activities of co-operation with foreign countries, in the regime of migrant work;
- d) The organisation of free public placement services;
- e) The regulation and supervision of private placement activities for workers, by licencing, controlling and supervising their exercise.

**SECTION III
FOREIGN WORKERS**

**Article 170
(General Principles)**

- 1) Employing entities shall create conditions for the integration of qualified Mozambican workers in posts of greater technical complexity, and in places of management and administration of firms.
- 2) Foreign workers who perform occupational activities in the country shall have the right to the same treatment and opportunities as national workers, within the framework of the norms and principles of International Law, and in compliance with the clauses of reciprocity agreed to between the Republic of Mozambique and any other country - without prejudice to the provisions of Law which reserve specific functions exclusively for national citizens, or which place restrictions on the recruitment of foreigners, for reasons of public interest.
- 3) Employing entities, whether national or foreign, may only have foreign individuals in their service, even if these are not remunerated, with the prescribed authorisation of the Ministry of Labour, or of its delegated entities.
- 4) The provision of the previous sub-clause shall apply to administrators, directors, managers and agents, as well as to employing entities which represent foreign firms, in relation to those employed or delegated in their representative offices.
- 5) Agents and representatives of employing entities to whom work permits have been issued, shall be exempted from the provisions of sub-clauses 3 and 4 of the present article.

Article 171

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(Conditions for the Contracting of Foreign Workers)

- 1) A foreign worker shall possess such occupational qualifications and specialisations as the country requires, and his admission may only be effected if there are no nationals who have such qualifications, or if their number is insufficient.
- 2) Whenever the entities referred to in sub-clauses 3 and 4 of the previous article intend to make use of the services of foreign individuals, they shall submit an application to the Ministry of Labour, indicating the firm's name, head office and area of activity, the identification of the workers to be admitted, the duties which they shall perform, their envisaged remuneration, their occupational qualifications, duly proved, and the duration of the contract.
- 3) The mechanisms and procedures for the contracting of foreign individuals, as well as the conditions for the performance of the functions of directors and managers, shall be defined in a specific diploma.

Article 172

(Restrictions on the Contracting of Foreign Workers)

- 1) Without prejudice to the provisions of the Law which regulate the granting of residence permits, the contracting of foreign workers shall be prohibited when these have entered the country by means of a diplomatic, courtesy, official, tourist, visitor's, business or study visa.
- 2) A foreign worker with temporary residence shall not remain in the national territory once the period of the contract on the basis of which he entered Mozambique, has expired.

SECTION IV OCCUPATIONAL TRAINING

Article 173 - (Objectives)

- 1) Occupational training, improvement and re-qualification shall be regulated by the State, and shall have as its objectives the guarantee of the development of capacities, and the acquisition of skills and knowledge necessary for the exercise of a qualified profession, by young persons and adults, thereby facilitating access to the labour market.
- 2) It shall be incumbent on the State to promote actions aimed at the occupational training and re-qualification of workers, so as to promote access to higher occupational categories, and to the fulfillment of the demands of posts.

Article 174 (Apprenticeship)

- 1) Firms may give apprentices jobs which are connected to the occupational specialisation to which the apprenticeship pertains, provided that this will grant access to the respective occupational career.
- 2) For the purposes of the previous sub-clause, the apprenticeship shall have a variable duration, depending on the normal practice of the profession.
- 3) Young people of less than twelve years of age may not be admitted to establishments or firms for apprenticeships.

Article 175 (Contracts of Apprenticeship)