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Model Emergency Decree on IDRL

DRAFT MODEL EMERGENCY DECREE FOR THE FACILITATION AND REGULATION OF INTERNATIONAL DISASTER RELIEF AND INITIAL RECOVERY ASSISTANCE

INTRODUCTION

Research and consultations over the last ten years have demonstrated that managing international assistance operations has become increasingly complex. The absence of specific domestic procedures can make it difficult for affected states to effectively oversee, regulate and facilitate the entry of life-saving relief. Ad hoc approaches, hastily devised in the wake of a catastrophic disaster, have often led to a loss of state control and the arrival of inappropriate or poor quality relief. They also frequently result in unnecessary restrictions, delays and expenses hampering the right aid, just when it is most urgently needed.

This Draft “Model Emergency Decree for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance” is intended as a reference tool for voluntary use by states faced with a major disaster and the possibility of a large influx of aid providers.

The project partners, the International Federation of Red Cross and Red Crescent Societies (IFRC) and the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), intend to continue consultation on this draft with interested stakeholders in order to produce a final version by the end of 2013.

Origins of the Draft Model Emergency Decree

In November 2007, the 30th International Conference of the Red Cross and Red Crescent (gathering the state parties to the Geneva Conventions and the components of the International Red Cross and Red Crescent Movement) approved the *Guidelines for the Domestic Facilitation of International Disaster Relief and Initial Recovery Assistance* (also known as “the IDRL Guidelines”).¹ These are a set of recommendations to governments on how to prepare their disaster laws and procedures for the common regulatory problems in international disaster operations. The IDRL Guidelines were based on seven years of country case studies, legal research, and consultations with governments and relief specialists, carried out by the International Federation of Red Cross and Red Crescent Societies’ (IFRC) “International Disaster Response Laws, Rules and Principles” (IDRL) Programme (now the Disaster Law Programme).

Key points:

- Managing international disaster assistance is becoming increasingly complex
- Solid domestic procedures are needed
- While normal legislation would be preferable, this model can assist in the development of an emergency decree to address some of the most common problems

Key points:

- The Draft Model Emergency Decree is based on internationally-accepted guidelines
- It responds to requests for sample legislative language
- It has benefitted from the assistance of several international law firms

¹ Available in multiple languages at <http://www.ifrc.org/en/what-we-do/idrl/idrl-guidelines/>

Starting in 2008, and annually thereafter, the UN General Assembly has adopted resolutions encouraging states to make use of the IDRL Guidelines.² Similar resolutions have been adopted by the World Customs Organization,³ the Organization of American States⁴ and the Pacific Islands Forum⁵ and reference to them has been included in the African Union's draft Disaster Management Policy.

Since the approval of the IDRL Guidelines, further consultation and training has been conducted in all regions of the globe, to raise awareness and provide technical assistance to states wishing to implement them. During this process, lawmakers have frequently requested model legislative language to assist them in implementing the IDRL Guidelines in their domestic law and procedures. In response to these requests, in 2009 the IFRC partnered with OCHA and the Inter-Parliamentary Union (IPU) to develop a Model Act based on the IDRL Guidelines.⁶ During the consultation and piloting of the Model Act, some stakeholders expressed that an emergency decree would be better-suited to some states and contexts. This Draft Model Emergency Decree is therefore being developed as a complementary tool to the IDRL Guidelines and the Model Act.

Expert assistance for the development of the Draft Model Emergency Decree was contributed by a number of institutions, including legal research and drafting support from Allen & Overy LLP, Baker & McKenzie, CMS Cameron McKenna LLP, Microsoft Corporation, and the World Customs Organization.

Purposes of the Draft Model Emergency Decree

This Draft Model Emergency Decree, like the IDRL Guidelines and the Model Act, is intended to help states address some of the legal and regulatory issues that commonly arise concerning international assistance following natural and manmade (non-conflict) disasters. These issues relate to the entry and operation of assisting international actors, and also to the coordination of their assistance, especially in the relief and initial recovery period. This model is specifically directed to those situations where a clear legal framework is not in place before the onset of a large-scale disaster, or where the adoption of more comprehensive legislation is not practicable.

Key points:

- The Model Emergency Decree seeks to limit delays, restrictions and costs while ensuring adequate oversight
- It calls for certain legal facilities to be provided to chosen international providers
- It requires those providers to abide by clear standards

² The most recent language can be found in UN GA Res. 66/119 of 15 December 2011 at paragraph 13.

³ Resolution of the World Customs Organization on the Role of Customs in Natural Disaster Relief, June 2011.

⁴ OAS General Assembly Res. 2647 (XLI-O/11) June 7, 2011.#

⁵ Communique of the Forty-Third Pacific Islands Forum, Raratonga, Cook Islands, 28-30 August 2012.

⁶ The Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, developed by IFRC, OCHA and the IPU, was launched at the IPU Assembly in Quito in March 2013. The IPU is not a partner in the Model Emergency Decree project, as it is by its nature not addressed to parliamentarians.

Uses of the Draft Model Emergency Decree

This Model Emergency Decree assumes that a more general declaration of emergency has already been issued in the wake of a disaster. This model could then serve as reference for drafting a subsequent decree, based on the special powers of the state of emergency, to provide specific rules for managing international assistance.

Given the diversity of legal systems around the globe, and especially the different domestic approaches to disaster management, it is well understood that this model will need to be adapted to local circumstances. In addition, it may be necessary to add relevant references to other existing instruments which may be implicated or modified by an emergency decree, such as legislation or regulations concerning disaster management, immigration, customs, taxation, health, telecommunications or transport.

Key points:

- This model can and should be adjusted to the circumstances of each country
- The model assumes that a more general emergency declaration has been separately issued
- The model refers only to international assistance – it assumes that other instruments will govern domestic response

Drafting notes

Italicized text within brackets is meant to be replaced with the appropriate domestic equivalent (for example, the name of the country or the name of the national disaster management agency, if one exists), or with the context-specific details of the disaster for which the decree is enacted.

Text within brackets that is not italicized is either proposed as a choice between several options (for example, “President/Prime Minister,” “regional/provincial”) or is an element considered to be especially subject to differing choices between countries (such as the precise length in time of certain deadlines).

**DRAFT MODEL EMERGENCY DECREE FOR THE FACILITATION AND REGULATION
OF INTERNATIONAL DISASTER RELIEF AND INITIAL RECOVERY ASSISTANCE**

WHEREAS, [*description of events precipitating the disaster, e.g. time, magnitude and place of an earthquake*],

WHEREAS, [*description of disaster effects, e.g. resulting loss of lives, property and numbers affected*],

[WHEREAS, the [President/Prime Minister or other authority] under the authority of [*relevant constitutional or other provision providing the authority for the declaration*] declared a state of emergency covering [*territory covered, whether the entire state or certain areas or districts*],]

WHEREAS, in recognition of the extent of humanitarian needs generated by the disaster, and with a view to responding to these needs expediently and appropriately, the [*head of state/government, ministry of foreign affairs, or other authority*] has requested international assistance to complement domestic response efforts ([*reference the relevant communication, if appropriate*]),

WHEREAS, the expediency, effective coordination and quality of the disaster response operation will be enhanced by clear procedures for the facilitation and regulation of incoming international assistance,

NOW, THEREFORE, I, [*name*], [*title*], under the authority set out in [*reference to the relevant constitutional, statutory or other law granting this authority*], hereby declare that the following rules and procedures shall apply [*during the period of the state of emergency or a determined period of time*]:

Coordination of international disaster assistance

1. The [*disaster management authority*] shall serve as the central focal point agency in-country for liaison between the government and assisting international actors, in order to promote the effective facilitation, coordination and oversight of international disaster assistance. The [*disaster management authority*] shall also serve as the main counterpart in-country for any applicable regional or international coordination mechanisms, including those of the United Nations.
2. The [*disaster management authority*] shall maintain and publish a regularly updated list of goods, services and equipment required for the disaster operation.

Offers and acceptance of international disaster assistance

3. Offers of international disaster assistance by states and intergovernmental organisations shall be directed to the Ministry of Foreign Affairs [through the appropriate embassy or diplomatic mission]. The Ministry of Foreign Affairs shall promptly respond to all offers, after conferring with the [*disaster management authority*].
4. International disaster assistance by foreign non-governmental actors shall be notified directly to the [*disaster management authority*] no less than [*** hours/days in advance of the planned shipment of goods or equipment or arrival of personnel*] in order to be considered for eligibility for legal facilities under the terms of this decree.

Responsibilities of assisting international actors

5. Assisting international actors shall cooperate and coordinate with national[, regional/provincial] and local authorities. In particular, these actors shall provide these authorities with such information as is available to them on the needs of the affected population, and on the location, type and extent of their disaster relief [and initial recovery] activities, as required for a coordinated and effective response. [They shall also cooperate with the [*regional and*] international coordination mechanisms activated for the disaster relief [and initial recovery] operation by the [*regional organization*] and the United Nations.]
6. Assisting international actors shall:
 - a. comply with the principles of humanity, impartiality and neutrality.
 - b. ensure that all goods and services they provide are appropriate to the needs and circumstances of persons affected by the disaster and are in compliance with the requirements of this decree and all applicable laws and standards in [*country*].
 - c. make their best efforts, in light of all of the circumstances, to ensure that the goods and services they provide conform to the Sphere Project Humanitarian Charter and Minimum Standards in Humanitarian Response [2011 edition].

Eligibility for facilities

7. For the purposes of this decree and the facilities granted herein, the following assisting actors shall be “Eligible Actors”:
 - a. states and intergovernmental organizations whose offers have been formally accepted by the Ministry of Foreign Affairs,
 - b. the [*Country Red Cross/Red Crescent Society*] and any components of the International Red Cross and Red Crescent Movement acting in support of the [*Country Red Cross/Red Crescent Society*],
 - c. foreign and domestic non-governmental organizations that are declared eligible by the [*disaster management authority*], on the basis of their experience, reputation and capacity for providing effective relief.
8. A regularly updated list of all Eligible Actors pursuant to this decree shall be maintained and published by the [*disaster management authority*].

International relief [and initial recovery] goods and equipment

9. The importation of all relief goods and equipment [and initial recovery assistance] by or on behalf of Eligible Actors, clearly labelled as such in conformity with such requirements as published by the [*customs and/or other border authority*], shall be facilitated by the [*customs and/or other border authority*], which shall accord priority treatment and handling. The [*customs and/or other border authority*] shall clear or release consignments of relief goods and equipment [and initial recovery assistance] on the basis of simplified documentation requirements, which shall be clearly detailed and published by the [*customs and/or other border authority*].

[Alternate 9. The importation of all relief goods and equipment [and initial recovery assistance], clearly labelled as such, shall be facilitated by the [*customs and/or other border authority*], which

shall accord priority treatment and handling. The [*customs and/or other border authority*] shall clear or release consignments of relief goods and equipment [and initial recovery assistance] on the basis of the following simplified documentation requirements:

- bill of lading or waybill (accepted [electronically] in advance to facilitate immediate release)
 - pro forma invoice
 - packing list]
10. The importation of relief goods and equipment [and initial recovery assistance] by or on behalf of Eligible Actors that are clearly labelled as such in conformity with the requirements published by the [*customs and/or other border authority*] shall benefit from exemption from all customs duties, taxes, tariffs, or governmental fees as well as a waiver of economic prohibitions, geographic and other restrictions, except as required for reasons of public health or security.
 11. Ground, air and water transport of disaster relief goods and equipment [and initial recovery assistance] by or on behalf of Eligible Actors shall be accorded priority of passage, including at any checkpoints and in air-traffic routing and landing permissions, and shall be exempt from all fees and tolls.
 12. The [*telecommunications authority*] shall temporarily waive any licensing requirements or fees for the use by Eligible Actors of telecommunications equipment that is necessary for their disaster relief [and initial recovery] operations. The [*telecommunications authority*] shall grant Eligible Actors priority access to bandwidth, frequencies and satellite use for telecommunications and data transfer for the disaster operations, except over security forces, ambulance services and other domestic emergency responders.
 13. Medications may be imported for direct medical use by Eligible Actors' medical professional personnel provided they are:
 - a. legal for use in the country of origin according to its laws as well as in [*country name*] according to [*appropriate law on pharmaceuticals*],
 - b. transported and maintained by the Eligible Actor in appropriate conditions at all times to ensure their quality; and
 - c. guarded against misappropriation and abuse.
 14. Medications imported by Eligible Actors intended for donation for the use by others shall fulfil the conditions of paragraph 13 and shall also:
 - a. have no less than 12 months remaining before their expiration date unless otherwise specifically agreed by the [*health authority*], and
 - b. be accurately labelled in [*official or widely understood language(s) in the country*] with the international non-proprietary or generic name, batch number, dosage, concentration, manufacturer, quantity, storage conditions and expiry date.
 15. Quarantine requirements shall be waived for search and rescue dogs, provided that the assisting actor responsible for the dog teams in country guarantees compliance with the applicable sections of the INSARAG Guidelines [2012 version].
 16. The [*transportation authority*] shall temporarily waive local registration and license plate requirements for vehicles imported by Eligible Actors for the disaster operation.

17. Assisting actors shall ensure that any goods or equipment they import for the disaster operation, which are or which become unusable, as well as any other waste products produced by them in the course of the disaster operation, are destroyed, recycled or otherwise disposed of in a safe, environmentally sensitive and effective manner and in compliance with [country] law.

Legal status and facilities for Eligible Actors

18. The purchase and supply of disaster relief [and initial recovery] assistance by Eligible Actors during the [state of emergency] shall be exempt from all value-added tax (VAT), service taxes and fees and similar duties, levies and governmental fees. This exemption includes the purchase of goods and equipment for official use by the Eligible Actor. The [tax authority] shall take all practical steps to ensure that local suppliers suffer no negative financial or administrative impact in providing goods and services to Eligible Actors.
19. Eligible Actors may operate bank accounts and hold and exchange funds of any currency without restriction [for the duration of the state of emergency or up to ** weeks/months].
20. Eligible Actors and their personnel shall be permitted freedom of access to disaster-affected areas and populations, subject only to limitations based on national security, public order or public health, weighed in the context of the disaster needs. They shall be permitted to provide goods and services as disaster assistance directly to the affected persons.

International disaster personnel of Eligible Actors

21. The international personnel of Eligible Actors shall be entitled to a waiver of entry visa, work permit or residence permit requirements [for the duration of the state of emergency or up to ** weeks/months].
22. Eligible Actors whose international personnel require legal recognition of their foreign professional qualifications (such as medical professionals, architects, engineers, etc.) shall certify to the [relevant authority] the validity of the foreign qualifications and the competence of such personnel for their work. On the basis of this certification, these personnel shall be exempt from registration [and/or compulsory membership requirements] and all associated fees or charges [for the duration of the state of emergency or up to ** weeks/months]. This temporary waiver may be revoked at any time upon any finding of misconduct sufficient to bar the individual from professional practice in [country].
23. The [relevant authority] shall grant temporary recognition of foreign driving licenses for the international personnel of Eligible Actors for the duration of the disaster period.
24. The salaries and emoluments received by the international personnel of Eligible Actors in connection with their participation in the disaster operation shall be exempt from all income and similar taxes. Provided they would not otherwise be subject to income or similar taxes in [country], international personnel of Eligible Actors shall not be required to make any tax declaration or filing in [country].

Oversight

25. The [disaster management authority] shall monitor the compliance of Eligible Actors with their responsibilities under this decree. To facilitate this oversight, the [disaster management authority] may require Eligible Actors to furnish periodic reports about their activities and

the assistance they have provided. These reports shall be consolidated and published [electronically].

26. If the [*disaster management authority*] suspects that any Eligible Actor has failed to materially comply with its obligations as set out by this decree, it shall consult with the actor to seek clarification or explanation and, where appropriate, may provide an opportunity to come into compliance. If, following consultation, the [*disaster management authority*] determines that an Eligible Actor has failed to materially comply, it may suspend or revoke the entity's entitlement to the facilities granted by this decree and remove its name from the list of Eligible Actors. Such revocation shall take effect after a reasonable period of notice and shall not be applied retroactively. Decisions to suspend or revoke legal facilities may be appealed to [*appropriate authority*].
27. The [*disaster management authority*] may refer suspected cases of fraud or other criminal conduct by Eligible Actors or their personnel to the appropriate authorities. Nothing in this decree precludes prosecution for criminal offense or the imposition of civil liability under the laws of [*country*].

Transparency as to international donations

28. International donations to the Government of [*country*] as assistance for the disaster response operation shall be directed to and received by the [*relevant governmental body*] for deposit to the [*special disaster fund established for this purpose*]. The [*fund*] shall be audited by the [*relevant authority*] no later than [1 year] from the date of this decree, and the audit report shall be published [electronically] and available to the public.
29. International donations received by domestic assisting actors for the disaster response operation shall be maintained in a dedicated account for this disaster operation. All such dedicated accounts shall be audited by a nationally-recognised independent auditor no later than [1 year] from the date of this decree, and all such audit reports shall be published [electronically] and available to the public.

This decree shall not limit or reduce any existing rights, privileges or immunities of any assisting actor as separately determined by other laws or agreements, including the [*international organisations act and the diplomatic/consular relations act*] and any status or headquarters agreement in force in [*country*].

The present decree shall come into force immediately and shall expire on [*date*], [***weeks/ months*] from the date of this decree [or the end of the state of emergency]

[signed]

[date]