

## Sustainable Post-Disaster Response: Legal Dimensions of the 2004 Indian Ocean Tsunami Crisis

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### IDLO'S RESPONSE TO THE TSUNAMI CRISIS<sup>1</sup> IS AT THE HEART OF THE ORGANIZATION'S MANDATE

*On January 5, 2005 the International Development Law Organization (IDLO) conducted missions to the areas in Indonesia and Sri Lanka worst affected by the Tsunami disaster. The primary objective of these missions was to produce an assessment of the legal dimensions of the problems that the survivors<sup>2</sup> face in both the immediate term and in the reconstruction phase. This assessment included recommendations for an action plan for IDLO to provide legal assistance to Tsunami survivors. IDLO is an intergovernmental organization with more than two decades of experience in countries around the world. While IDLO has substantial know-how in post-conflict reconstruction, 'post-disaster'<sup>6</sup> response is a new avenue for IDLO. In the last decade, more than 200 million people were annually affected by natural disasters—seven times more than those affected by conflict.<sup>4</sup> Although some lessons from IDLO's post-conflict experience may apply, the legal issues that stem from traumatic natural catastrophes are markedly different. The sheer number of dead and displaced individuals within a short period of time—and commensurate loss of legal skills and governance capacity—is dramatic in post-disaster situations. Furthermore, disasters tend to hit developing countries the hardest. In the words of IDLO Director General, William T. Loris, "In Tsunami affected areas and other post-disaster areas, there will have to be a massive increase in the capacity to provide legal aid assistance and advice to the affected communities".<sup>5</sup> IDLO has risen to the challenge of providing such legal capacity building—a challenge that lies at the heart of the organization's mandate: promoting the use of legal resources in the development process.*

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*Children left without parents urgently need protection and placement out of relief agency camps and into homes through effective processes for adoption and foster care placement. A horrifying alternative to such an arrangement is the vulnerability of children to opportunistic criminals engaging in human trafficking for the child sex industry. IDLO takes this threat very seriously and has identified the facilitation of legitimate adoption procedures as a priority.*

**'WHAT WE ARE REALLY LOOKING AT IN THESE AFFECTED COMMUNITIES IS A COMPLETE RECONSTRUCTION OF THEIR [TSUNAMI VICTIMS] LEGAL EXISTENCE.'**

-William T. Loris, Director-General, IDLO, BBC World Today Interview, January 13, 2005

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## A GLOBAL CHALLENGE

Progress towards achieving the eight Millennium Development Goals<sup>6</sup> (MDGs) faces severe setbacks in countries struck by the Tsunami, as in other post-disaster situations. As in many other contexts, the poorest are the most severely



On December 26, 2004 the largest earthquake in forty years occurred between the Australian and Eurasian plates in the Indian Ocean.

Map source: [www.graphicmaps.com](http://www.graphicmaps.com)

affected. IDLO is aware of the MDG targets for 2015 that lie ahead for all developing countries—including the special challenges facing the survivors of the Tsunami—and aims to make a difference through law. In January 2005 a report was released by the UN Millennium Project to provide a roadmap on the goals, which according to the UN Secretary General ‘offers a large number of concrete, practical proposals for reaching the Millennium Development Goals by the agreed date of 2015.’<sup>7</sup> IDLO, for its part, contributes to this effort through law. Rule of law and good governance are important contributors to economic development and peace, which are necessary to break cycles of poverty and conflict. A well-functioning legal system

creates conditions of stability, ensures access to justice, and facilitates orderly change toward economic development and social justice. For example, in post-conflict situations IDLO is implementing capacity building programs designed for jurists, thus contributing to recovery, reconstruction, and reform with the aim of strengthening the rule of law. In the most severe post-disaster situations, legal systems often need to be jump-started or rebuilt.

## BACKGROUND OF THE TSUNAMI CRISIS

On December 26, 2004, an undersea earthquake measuring 9.0 on the Richter scale created a massive wave or ‘tsunami’ approximately 10 meters in height, traveling at 500



km/hour, that swept the western coast of northern Sumatra and hit the coastal areas in countries around the Indian Ocean rim, including Thailand, India, Indonesia, Sri Lanka, Myanmar, Bangladesh, the Maldives, the Seychelles, Yemen, Kenya, Tanzania, and Somalia.<sup>8</sup> The estimated number of dead and missing is nearing 300,000, and roughly 1.5 million people have been displaced from their homes.<sup>9</sup>

The loss of life by itself is astounding. In addition, loss of property and infrastructure has brought immeasurable suffering to entire populations and elicited an outpouring of solidarity and support from around the globe. For example, within just a few days of the disaster, mobile phone users in Italy donated more than €26 million for the survivors of the Tsunami disaster through a text messaging arrangement that set a global trend.<sup>10</sup> According to Rome's daily *Corriere della Sera*, the Italian public contributed one euro to tsunami disaster relief every time they sent a text message, thanks to an agreement between the country's four mobile phone companies and its main television channels.<sup>11</sup> These types of spontaneous gestures of goodwill from around the world were frequent in the days and weeks following the disaster. UN member states and private donors had, by February 10, 2005 pledged US\$4 billion in assistance to Tsunami survivors.<sup>12</sup>

***'WHAT HAPPENED ON 26 DECEMBER 2004 WAS AN UNPRECEDENTED, GLOBAL CATASTROPHE. IT REQUIRES AN UNPRECEDENTED, GLOBAL RESPONSE.'***

*- Secretary-General Kofi Annan, at the Special ASEAN Leaders' Meeting on the Aftermath of the Earthquake and Tsunamis Jakarta, Indonesia, January 6, 2005*

Once pledged funds began materializing, the obvious first step was to deliver food, clean water, medical supplies, survival materials, and shelter to the thousands of survivors at high risk. Local and international communities continue efforts to meet crucial secondary needs of the affected populations including restoration of power and other basic services. Attention to the range of needs of the survivors is also getting underway including efforts to care for orphaned children, identify and reunite survivors, provide loss counseling, and assist survivors in finding temporary refuge in unaffected areas.

### **THE ROLE OF LAW IN POST-DISASTER SITUATIONS**

Initial relief for the survivors of the Tsunami that came so quickly from all corners of the globe is—according to some major NGOs—beginning to wind down.<sup>13</sup> Now the complex *legal* problems stemming from the disaster are more

evident as a crucial next phase of activity. IDLO assessment teams met with survivors in affected areas who will increasingly need to rely on the law in order to rebuild their lives.

Take law for example, 'Ibrahim,' a Tsunami survivor and Indonesian national, lost his entire business. He was a contractor building a road between two towns in the Aceh Province, at a cost of 1.2 billion rupees. The Tsunami swept away the road and the company building, resulting in the death or disappearance of the majority of the laborers. Ibrahim was left with no documentation of his work, no contracts, and no evidence of financial obligations, including accrued salaries payable to employees. In addition, the bank was also swept away, thus, he had nowhere to submit claims. Indeed, when he tried to do so in the bank branch in Medan, no one recognized him. Furthermore, his own bank account was blocked pending central bank authorization. In any event, he has no documentation to rely upon in his interactions with the bank. His main concern and question is what legal recourse is available to him under these circumstances.<sup>14</sup>

Solutions to a myriad of legal problems, demonstrated in the case of Ibrahim, are necessary as survivors attempt to reorder their lives. Failure to deal with these problems in an orderly way could lead to great injustices and conflict at local and national levels. Reports from Sri Lanka

indicate that foreign aid destined for Tsunami survivors is becoming a precious and contentious commodity. The Sri Lankan government estimates it needs US\$3.5 billion to rebuild, while its principle enemies, the Liberation Tigers of Tamil Eelam, guerillas who control substantial portions of the north and east, demand a hand in spending-decisions over these resources.<sup>15</sup> Local powers and governments require capacity building in order to absorb and manage aid funds. Indonesia is the fourth most populous country in the world and has faced substantial challenges, including severe economic collapse in 1997 that left thirty-five million Indonesians unemployed and one hundred million living at or near poverty level.<sup>16</sup> According to some analysts, the answer to Indonesia's previous crisis lay firmly in establishing the 'rule of law and institutions,' a type of legal reform that deals with political, economic, and social issues.<sup>17</sup> The need for rule of law and institutions are relevant today in the face of this recent crisis.

Along with the areas of law outlined in Box no. 1, IDLO has identified five priority areas to address the Tsunami survivors' needs:

#### *Family Law*

Family Law encompasses such subjects as adoption, amendment, divorce, separation, paternity, custody, child support, and child-care.<sup>18</sup> The protection of orphans and regulation of child adoption procedures is a critical legal issue in

Tsunami affected areas. Children left behind without parents urgently need protection and placement out of relief agency camps and into homes through effective processes for adoption and foster care placement. This is especially necessary since there are predatory elements ready to use orphans for the region's child sex industry.

The United Nations Children's Fund (UNICEF) Executive Director warns that the illicit trafficking of children is big business, not unlike trafficking in drugs or arms, with real money at stake and powerful interests involved.<sup>19</sup> According to UNICEF, special national measures are already underway to address this issue in affected countries. Concerned about the prospect of child trafficking from the Tsunami zone, Indonesia put a temporary moratorium on travel outside the country by Aceh children without parental accompaniment. The government also put a temporary moratorium on the adoption of children from Aceh until all children can be properly identified and a process of family tracing completed.<sup>20</sup> In addition to these positive responses, legal assistance is key to ensure the protection of orphans, whether through the facilitation of legitimate adoption procedures or through solutions which propose moratoriums on sham adoptions.

In either case, proper legal procedures are essential for the protection of Tsunami orphans.

### AREAS OF LAW AFFECTING TSUNAMI VICTIMS (BOX NO. 1)

- ✓ **Family Law**
  - Inheritance Law
  - Adoption Law
  - Custody Law
  - Tutorship/trusteeship
- ✓ **Administrative provisions and Laws affecting civil status**
  - Declaration of presumed death
  - Issuance of titles and certificates
- ✓ **Property Law**
- ✓ **Insurance Law**
- ✓ **Commercial Law**
  - Loss of business records and documents
  - Outstanding business licenses
  - Rights and obligations under existing contracts
  - Outstanding loans
  - Credit and micro-credit
- ✓ **Labor Law**
- ✓ **Investment Law**
- ✓ **Legal Aid Law**
- ✓ **Access to Justice**
- ✓ **Laws on internally displaced persons (IDPs)**

*Source: IDLO Legal Questionnaire for Tsunami Missions 2005*

#### *Property Law*

Property is defined in the strict legal sense as an aggregate of rights, protecting membership, title, inheritance, etc., which are guaranteed and protected by the government.<sup>21</sup> In developing country post-disaster situations, systems for allocation, use, and registration of land and property need to be rationalized<sup>22</sup> and often re-instituted. In many of the Tsunami affected countries a woman's right to own land is not unequivocal, an issue that further complicates



*Refugee Camp in Aceh, Indonesia, a typical camp where mobile legal aid teams could help the population rebuild their lives.*

inheritance procedures if a female is the sole survivor in a family. In Java, Indonesia, for example, only about one-third of land title certificates reflect ownership by women and land registration processes do not effectively advance ownership rights granted under the nation's family laws.<sup>23</sup>

Property issues are in some sense a vicious cycle. In many developing countries there is a lack of institutions for the protection of private property, for example, real estate and credit provision. In the absence of security of tenure there is little reason for communities to invest in upgrading housing or infrastructure standards.<sup>24</sup>

Thus, when natural or human-made disasters strike, those living outside of a regulated legal system are even more vulnerable. This has been the case in Tsunami affected countries.

Urgent legal assistance needs are evident in the areas of personal property loss and damage. The loss of property by thousands of survivors requires critical substantive legal review and the drafting and implementation of procedures for claims compensation and inheritance issues. On a related note, identity determination and registration—including the expedited issuance of death certificates, civil status records, business records, among other matters—will require immediate re-institution through extraordinary municipal and local government action. In Aceh, the Indonesia IDLO Assessment Mission noted from interviews that about 90% of survivors lack identification records, a fact that has implications for legal identity and inheritance issues. Property claims are linked

to identity determination procedures.

#### *Laws on internally displaced persons (IDPs)*

Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.<sup>25</sup> Unlike refugees, IDPs have no legal status and therefore no protection of their rights. There are roughly 1.5 million IDPs as a result of the Tsunami disaster.<sup>26</sup>

The relocation of Tsunami IDPs currently living in camps has legal dimensions that relate to both identity reconstitution and compensation for property loss discussed in the section above. International law plays a role in the case of the IDPs, since recent history has shown that international norms have been the only mechanisms to address such situations. With respect to IDPs, several local and international legal issues overlap and therefore need to be addressed simultaneously. However, international law, non-binding in this case, can at least offer a guideline for governments.



What is left of the High Court in Galle, Sri Lanka.

The Guiding Principles defined above on IDPs identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set forth guarantees for safe return, resettlement and reintegration. Although they do not constitute a binding instrument, these Principles reflect and are consistent with international human rights and humanitarian law and analogous refugee law.<sup>27</sup>

According to UN-HABITAT: "The first pre-condition for achieving sustainable recovery and resettlement of displaced populations is the challenge of ensuring security and protection, and the elimination of the circumstances and occurrences that generate dispute and conflict. In this respect, the restoration – or where it

did not exist before, the institution – of an effective and sympathetic law-keeping police service, backed by an impartial and equally effective judiciary, is crucial."<sup>28</sup> Thus law as it related to local security and justice rules on one hand, and international norms on the other, are inextricably linked to the plight of IDPs.

#### *Rebuilding of Legal Libraries and Institutions*

The rebuilding of law libraries and institutions are a glaring need after a natural catastrophe of this magnitude. According to an Indonesian legal expert, 'diverse interests in land recognized by maybe hundreds of different *adat* (traditional customary legal systems) coexist with a Dutch-derived system of land title.'<sup>29</sup> Thus, the rich and varied legal culture of Indonesia—and of many of the countries affected by Tsunami—require preservation both in their own right as well as for the enormous task of re-establishing justice procedures. The physical infrastructure of the courts—including court records—has been devastated in the affected countries. IDLO has unique experience in this area gained from work leading up to its Afghanistan Judicial Training Program. Here IDLO, with the assistance of legal libraries around the world, collected and made accessible to Afghans over 2000 of their laws previously lost as a

result of decades of conflict. Another area of IDLO experience that can be applied to the tsunami disaster is the re-establishment of judicial procedures.

#### *Legal Aid Law and Access to Justice*

Legal aid is broadly defined as a countrywide system administered locally by which legal services are rendered to those in financial need and who cannot afford private counsel.<sup>30</sup> There is a clear need for legal aid in post-disaster situations.

Legal awareness campaigns go hand in hand with legal aid. Public information campaigns educate civil society about their legal rights—a fundamental part of the development process. Many survivors are unaware that they have legal recourse to what they have lost—be it identity or property—or alternatively they are not properly informed about the procedures for obtaining compensation. 'Access to justice,' under the overall heading of Judicial Reform, has long been key to IDLO's work and is relevant in the case of the Tsunami survivors who found themselves practically disenfranchised overnight. Equally important is the need for extensive public awareness campaigns aimed at central and local government officials on the modalities of re-instituting legal rights and obligations of survivors. Through mass communication and the



*From left to right, K. P. D. Gunaratne, Representative of Legal Aid Commission in Galle, Sri Lanka, Dr. Nejib Boussedra, IDLO Director of Training and Technical Assistance and Sri Lanka Mission Head, Sharmaine Gunaratne, IDLO Alumna*

dissemination of legal information, these efforts can be implemented without delay. Legal aid is an essential part of both the first line humanitarian response to address the pressing needs of the Tsunami survivors, as well as longer-term reconstruction efforts, including judicial reform and good governance.

## **IDLO ACTIVITIES IN THE INDIAN OCEAN RIM AND ALUMNI ASSOCIATIONS**

In early December 2004, IDLO conducted an Intellectual Property training workshop for Indonesian jurists in Jakarta. Part of IDLO's regular training program, such workshops are coordinated throughout the year with IDLO's extensive global Alumni Association network. Some 135 lawyers from Indonesia have attended IDLO programs and have

formed an active local Alumni Association based in Jakarta, also known as the IDLO Indonesia Alumni Association (IAA). When disaster struck in Asia in late December, it was the IAA that mobilized to assist IDLO's post-disaster missions. Sri Lanka's IDLO Alumni Association groups over 150 Sri Lankan lawyers with a range of legal skills and experience. It was the Sri Lanka Alumni Association who also rose to the occasion when disaster struck on that island.

IDLO has been active for years in the areas affected by the Tsunami disaster and has concomitant in-house expertise. IDLO has developed a strategy that creates a legacy of self-sustaining capability and local competence within developing, transitioning, and post-conflict countries. Over 14,000 legal professionals from 164 countries have participated in IDLO

training programs, a significant human resource. IDLO Alumni Associations have been established in thirty-eight countries, a number that continues to grow.

Historically, one third of IDLO training activities have taken place in Asia and the Pacific. Participants to IDLO training courses—many of whom are from Indian Ocean Rim countries—contribute to development not only as individuals but, more importantly, as part of a global network of professional alumni/ae. These independently established Alumni Associations seek to do at the local and national level the same kind of quality training and legal technical assistance that IDLO does internationally. The empowerment of these institutions has become an important contributor to the long-term impact of IDLO's work. IDLO's Alumni Association network works closely with IDLO's Asia Pacific Training Center in Sydney, Australia. Due to this presence, IDLO has accumulated know-how over the years on the diverse legal systems of the countries affected by the Tsunami and can address these countries' immediate legal needs as well as their long term legal needs related to reconstruction. Annex I provides a list of IDLO work carried out in Tsunami affected countries.

## IDLO COUNTRY FINDINGS: INDONESIA AND SRI LANKA MISSIONS

### *Indonesia*

The approach of the IDLO Indonesia assessment team was to define the modalities to address the legal needs of the survivors for both short-term and medium-term reconstruction processes. The IDLO team identified general civil law, and family law in particular, as most urgent for Tsunami survivors. First, the framework for family law needs clarification and procedural improvements. The competing mandates of religious, customary, and government law complicate the family law system in Indonesia. There is a need to expedite child adoption procedures, in particular streamlining the process initiated by a policy ruling on child adoption. Likewise, laws relating to inheritance and civil status need review to address urgent Tsunami issues. Second, laws governing civil matters, such as damage claims and compensation and the legal framework for small and medium enterprise creation, need clarification. While responsible institutions are engaged in continuing discussions on these issues, concrete actions have yet to be put in place. Technical assistance relating to substantive law and institutional capacity is thus urgently needed.

To address these needs, IDLO has identified four major rule of law activities in Indonesia:

*Creation of extraordinary rules to address legal issues and expedite rulings;*

*Capacity building of local government institutions, mainly by training officers on how to address extraordinary situations;*

*Capacity building of NGOs which provide legal aid services; and*

*A public awareness campaign, which would be addressed both to victims who are unaware of their rights and relevant procedures to claim those rights, as well as to central and local government officials on how to address the re-institution of legal rights and obligations.*

The IDLO Indonesia team met with central and local government officials, university experts, international relief organization personnel, and survivors. They traveled to the province of Banda Aceh in Northern Sumatra, one of the worst affected areas. As a result of discussions with both survivors and government officials, the team was able to understand the extent of the survivors' legal needs. The central issue is the rebuilding of survivors' lives. The Indonesian central government and local authority realize the extent of the needs of their population and are taking active steps to address the problem. The Indonesian government has set up a Joint Disaster

Management Center in conjunction with the United Nations to manage and coordinate international relief efforts for the Tsunami affected areas in Aceh and North Sumatra. At the time of writing, a national conference on legal impact is being planned in Jakarta. Given the complexity and enormity of the legal issues arising from the impact of the Tsunami in Indonesia, IDLO has determined it will be necessary coordinate with the Ministry of Law and Human Rights, the Supreme Court, and local NGOs to provide needed legal aid and also to follow-up with longer term technical legal assistance by conducting more intensive review of the damage.

### *Sri Lanka*

The IDLO team in Sri Lanka identified two priority areas: general civil law and legal aid in particular. First, the need for legal aid for survivors is critical. Local authorities have already recognized this and a level of public awareness is gradually developing. In addition, the Sri Lanka Legal Aid Commission has already carried out a survey on the needs of the survivors. Given the massive number of survivors, domestic institutions will be unable to provide necessary services. Innovative solutions are urgently required to respond to this unprecedented need for legal aid. Second, a variety of legal issues involving loss of documentation; insurance claims; issues relating to the restarting economic activity;



the destruction of courts and registration offices; custody and adoption; legislative amendments need to be addressed.

To this end, IDLO proposes the following activities in Sri Lanka:

*Provision of legal aid by the IDLO Alumni Association in Sri Lanka in support of the Sri Lanka Legal Aid Commission and the Legal Aid Foundation to develop a detailed program for legal aid and public awareness;*

*Deployment of Mobile Legal Aid Teams (MLAT) composed of four-five legal experts to visit the IDP camps, as well as survivors staying with relatives who are still without permanent homes of their own;*

*Assistance in providing office space and equipment through the Sri Lankan Alumni Association for the purpose of providing logistical support to the MLAT;*

*Public Awareness Campaign – it is imperative that the survivors are aware of the legal aid services available to them through television, radio, advertising, leaflets and other media;*

*Inter-Agency Issues - which deal with how the IDLO Alumni Associations, the Legal Aid Commission, and the Legal Aid Foundation, coordinate all legal aid efforts, including the drafting and the establishment of a detailed implementation plan, outlining individual responsibilities.*

IDLO's Sri Lanka team visited a number of government officials and institutions, including a trip to the province of Galle in the south of Sri Lanka, another one of the worst affected areas. The team visited two

IDP camps and discussed legal needs directly with the survivors. Sri Lanka's legal system is a mixture of common, civil, and customary law, owing to its historical legacy of English, Dutch and Muslim law.<sup>31</sup> IDLO has experience working with jurists from mixed legal systems in the provision of technical assistance.

## **SUSTAINABILITY AND CAPACITY BUILDING: IDLO'S MISSIONS**

The generosity demonstrated thus far by the international community to aid the survivors of the Tsunami disaster will be of little use unless assistance is applied in a sustainable and consistent manner. Sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs.<sup>32</sup> Many in the development community are hoping that foreign aid missions to the Tsunami affected countries will meet the long term needs of affected generations and last longer than the media attention they have received. Typically, as soon as public focus shifts, governments stop sending money, pledges are withdrawn, many private relief organizations pack their bags, and the poor are left to finish reconstruction projects in the face of the same entrenched systems of corruption and neglect.<sup>33</sup>

Six years ago horrific scenes Honduras' Hurricane Mitch filled television screens and newspapers. The international community pledged about US\$9 billion to help rebuild Central America after this disaster, and according to experts most of that money never materialized and half of what did was offered as loans.<sup>34</sup> Similarly, a few weeks after the floods in Mozambique of 2000 and last year's earthquake in Bam, Iran, donors again failed to stay the course. Should the cameras turn away from the countries of the Indian Ocean rim, aid money would begin to stop flowing in, and the effect would be even greater devastation. As previous disaster cases have shown, short-sighted assistance does not lead to long-term sustainable solutions.

IDLO's principal activity is the training of jurists from developing and transition countries in order to contribute to the development process. By its very nature, IDLO's involvement in a country is sustainable. Over the years IDLO has developed a strategy that creates a legacy of self-sustaining capability and local competence. IDLO encourages and aids its alumni to form institutions (Alumni Associations) to provide a working forum at the local level. Furthermore, IDLO training methodology aims to impart best practices gained from global experience to individual lawyers, judges, officials,

and administrators from a given country.

According to the United Nations Development Program (UNDP), capacity development is a concept which is broader than organizational development since it includes an emphasis on the overall system, environment, or context within which individuals, organizations, and societies operate and interact (and not simply a single organization). It includes a consideration of all factors which diminish the effectiveness with which a program is developed, managed, and implemented. Of special concern to development planners and to situations where there are limited resources is the need to build on what exists - to strengthen *existing capacities*, rather than to start from scratch. In most situations, the past cannot or should not simply be negated.<sup>35</sup>

Capacity building of local lawyers, judges, and administrators is one of the key bases for sustainability and consistency. IDLO's approach is to help create local institutions that become resources for training and technical assistance and become components of a global network of individuals and institutions leading societies toward sustainable development. The reduction of vulnerabilities and the protection of citizens and assets from the impacts of disasters should be an

## Lessons Learned: Findings of Missions

*Capacity building, a pillar of IDLO's work over the past twenty plus years, is a thread that runs throughout the lessons learned from both IDLO Legal Assistance to Tsunami Victims Missions:*

*Engagement on the part of the international community cannot replace local community know-how. Thus, the most effective legal assistance the international community can provide is consultative since, in the long-run, local jurists will provide legal services. To this end, IDLO's Alumni Associations constitute a reservoir of sustainable local legal knowledge;*

*In post-disaster situations, extraordinary rules created by central and local governments are necessary to expedite critical legal decisions. Thus, there is a need to strengthen the capacity of government institutions to train officials to address extraordinary situations;*

*NGOs which provide on-the-ground assistance to survivors in re-instituting identities and records and on obtaining access to credits, claims, and compensation, require support and strengthening;*

*MLAT must be coordinated with state or international legal aid efforts. The establishment of MLATs would require trucks to deliver legal aid to IDP camps, perhaps with the logistical support of the United Nations Office for Project Services (UNOPS) or a similar agency with the ability to deploy quickly to remote areas;*

*Due to the massive destruction of infrastructure, substitute office space is a great need in cases where local legal aid offices are damaged. IDLO Alumni Association resources can contribute to this demand; and*

*Legal awareness campaigns are crucial in informing survivors of their fundamental human rights and of legal aid available in their area. Simultaneously, there is a need for extensive public awareness campaigns aimed at central and local government officials on the modalities of re-instituting legal rights and obligations of survivors.*

indispensable part of national plans and strategies for sustainable development. It is equally imperative to grasp the opportunities during post-crisis recovery periods to ensure an effective transition to sustainable development.<sup>36</sup>

## FUTURE IDLO TSUNAMI - RELATED ACTIVITIES

People naturally adapt to crisis, devising creative solutions to unexpected problems that confront them. This is one of the many lessons IDLO has learned over the years working in the developing world. The resilience and capacity of disaster-affected people to cope with

## Recent IDLO Partnerships for Tsunami Survivors (BOX NO. 2)

*The Project of Legal Assistance for the victims of the Tsunami in Sri Lanka and in Indonesia, financed by the Italian Ministry of Foreign Affairs, aims to contribute to resolving the legal problems brought about by the Tsunami disaster. The first phase of the Project consists in an Needs Assessment, essential prerequisite for the subsequent legal and judicial reconstruction phase, which will be addressed once the "humanitarian aid" period ends. During the Indonesia and Sri Lanka missions, IDLO gathered relevant legislation and analyzed the legal systems and regulatory mechanisms of the above-mentioned topics. IDLO learned of all the problems and difficulties that the populations will have to face, and proposed a set of recommendations for an improved management of the legal and judicial consequences of the Tsunami devastation. Separately, IDLO will collaborate with the International Organization for Migration (IOM) on Tsunami related activities.*

situations is the main theme of the World Disasters Report 2004 of the International Federation of Red Cross and Red Crescent Societies.<sup>37</sup>

Supporting resilience means more than simply delivering relief after disaster strikes. Local knowledge, skills, cooperation, and access to resources are all crucial factors enabling people to bounce back from disaster. Individuals and governments deserve the legal tools to sustain themselves even years later as the disaster becomes a distant memory.

IDLO legal assistance—whether in the form of expediting certificates for death, property, or debt, or longer-term legal aid for reconstruction of destroyed judicial ministries, legal libraries and documentation—are all ways to support such resilience.

Apart from its Alumni Associations, IDLO has built a network of approximately 120 in-country partner organizations from both the public and private sectors. These organizations carry out a wide range of activities including policy research, technical assistance, and training activities. They regularly cooperate in the delivery of legal education and promotion of the rule of law.

IDLO seeks strategic partnerships on multilateral and bilateral bases in order to contribute its legal expertise to the Tsunami humanitarian and reconstruction effort. IDLO's strategic partnership goals are pursued by leveraging on: 1) IDLO specificity, 2) experience accrued in more than twenty years of activity, and 3) constant effort to respond to the needs of the international community. Already, IDLO has initiated talks and is beginning to partner with like-minded governments and NGOs to begin addressing the pressing legal matters of the Tsunami survivors. Box no. 2 goes into these initiatives in greater detail. IDLO has been meeting with other international organizations including the International Organization for Migration (IOM), United Nations High Commissioner for Refugees (UNHCR), United Nations Children's Fund (UNICEF), United Nations Interregional Crime and Justice Research Institute (UNICRI) on the legal aspects of the Tsunami disaster. The objective of these discussions is to develop a joint project to implement in Sri Lanka and Indonesia, in order to assist the survivors and local and national governments in a more comprehensive and effective manner.

### IDLO TRUST FUND INITIATIVE FOR TSUNAMI SURVIVORS (BOX NO. 3)

In order to begin immediate implementation of first line humanitarian response legal assistance activities, and to continue with reconstruction activities in the legal aid sector through existing IDLO Alumni Association networks, financial resources are critical. IDLO invites Member States, other governments, and individuals to contribute resources through the IDLO Tsunami Trust Fund Initiative. Any contribution of US\$100,000 per annum, or more, will allow the benefactor to become part of the "Donor Committee", the committee whose membership which allows that country to provide guidance and review progress on project management, activities, and strategy with regard to IDLO's legal assistance activities in the Tsunami affected areas.

To contribute directly, please visit [www.idlo.int](http://www.idlo.int), or contact Mr. Ivan Alippi, Director of Finance  
Tel: (39) 06 69 79 261  
Email: [ialippi@idlo.int](mailto:ialippi@idlo.int)  
for further information and/or documentation.

For further information on the IDLO Legal Assistance Initiative for the Victims of the Tsunami, contact:

Ms. Pia Ximena Rodríguez,  
Program Legal Counsel and  
Coordinator for Tsunami  
Victims' Relief Effort,  
Tel: (39) 06 69 79 261  
Email: [prodriguez@idlo.int](mailto:prodriguez@idlo.int)

Dr. Néjib Boussedra, Director  
of Training and Technical  
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*Tsunami survivors are in dire need of legal assistance in order to reconstruct their lives.*

IDLO places heavy reliance on local partners in countries where there is economic hardship, conflict, or natural disaster. Sadly, in many Tsunami affected countries, all three of these factors co exist.

Coordination of aid efforts is key to achieving integrated results, bringing actors together in the recovery process for sustainable development. "The multi-sectoral and interdisciplinary nature of disaster reduction and response requires continuous interaction, co-operation and partnerships among related institutions and stakeholders to achieve global objectives of disaster mitigation and

sustainable post-crisis recovery."<sup>38</sup>

In order to carry out the recommendations and plans initiated by the IDLO missions in January, a Trust Fund Initiative has been set up so donations may be collected in order for IDLO to begin legal assistance activities without delay. Box no.3 describes the Trust Fund Initiative, whom to contact, and how to contribute.

## ENDNOTES

- <sup>1</sup> On December 26, 2004 the largest earthquake in forty years occurred between the Australian and Eurasian plates in the Indian Ocean. The quake triggered a tsunami—a series of large waves—that spread thousands of kilometers over several hours. The earthquake caused the sea floor to rupture along the fault line, causing a giant wave, which carved a path of destruction across the 4,500 kilometer wide Indian Ocean over a period of seven hours. BBC News, How the Asian Tsunami Disaster Happened. See [http://news.bbc.co.uk/1/hi/in\\_depth/4136289.stm](http://news.bbc.co.uk/1/hi/in_depth/4136289.stm).
- <sup>2</sup> In this article, the term *survivors* refers to those individuals left behind after the devastating Tsunami. The commonly used term ‘tsunami victims’, in the R&P Unit’s view, misrepresents survivors’ active involvement and increasing capacity through assistance efforts towards long-term recovery.
- <sup>3</sup> Post-disaster recovery and rehabilitation refers to efforts aimed at restoring normality in conditions caused by a disaster. See the Disaster Management Bill enacted by the parliament of the Republic of South Africa, <http://www.pmg.org.za/bills/010813disasterbill.htm>.
- <sup>4</sup> ‘Sustainable Recovery in Post-Crisis Situations’, UN-HABITAT, March 2004.
- <sup>5</sup> William T. Loris, BBC, ‘The World Today’ Interview, January 13, 2005.
- <sup>6</sup> Millennium Development Goals are: 1-Eradicate extreme poverty and hunger; 2-Achieve universal primary education; 3-Promote gender equality and empower women; 4-Reduce child mortality; 5-Improve maternal health; 6- Combat HIV/AIDS, malaria, and other diseases; 7-Ensure environmental sustainability; and 8-Develop a global partnership for development.
- <sup>7</sup> Press Release SG/SM/9678 DEV/2497, ‘Development Goals Not Utopian, But Eminently Achievable, Secretary General Says at Launch of Millennium Project Report, January 17, 2005.
- <sup>8</sup> United Nations Environment Program (UNEP), Asian Tsunami Disaster Task Force: Situation Report 3, 11 January 2005.
- <sup>9</sup> Preliminary Assessment of the Macroeconomic Impact of The Tsunami Disaster on Affected Countries, and of Associated Financing Needs, Prepared by the IMF in Cooperation with the World Bank, February 4, 2005.
- <sup>10</sup> ‘25.615.271 1 Euro donations via SMS messages to the 48580 number for Asian Populations, Vodafone, Italy. See <http://www.vodafone.com>.
- <sup>11</sup> ‘December 30, 2004 Millions of Donations Via SMS to Tsunami Victims. See <http://www.codewitch.org/archives/italy/>.
- <sup>12</sup> ‘After the Tsunami: Rapid Environmental Assessment,’ United Nations Environment Program (UNEP), 2005. See [http://mirror.unep.org/tsunami/tsunami\\_rpt.asp](http://mirror.unep.org/tsunami/tsunami_rpt.asp).
- <sup>13</sup> Oxfam, ‘Tsunami Crisis, Situation Update.’ See [www.oxfam.org.uk](http://www.oxfam.org.uk) and ‘Red Cross Winding Down Tsunami Fundraising,’ Ottawa, January 27, 2005. See [www.redcross.ca](http://www.redcross.ca)
- <sup>14</sup> IDLO Initiative for Legal Assistance to Improve State Capacity and Legal Frameworks to Resolve Legal Issues Arising from the 2004 Tsunami, Draft Final Report of the IDLO Mission to Indonesia Conducted Between 7-15 January 2005.
- <sup>15</sup> Sengupta, Somini, ‘Sri Lankan Foes Vie for Reconstruction Aid’, *The New York Times*, February 3, 2005.
- <sup>16</sup> Levinson, Jared, ‘Indonesia’s Odyssey: A Nation’s Long Perilous Journey to the Rule of Law and Democracy’, *Arizona Journal of International and Comparative Law*, 18 Ariz.J.Int’l & Comp. Law 103, Spring 2001.
- <sup>17</sup> *Ibid.*
- <sup>18</sup> *Black’s Law Dictionary*, Sixth Edition, St.Paul: West Publishing Co. 1990.
- <sup>19</sup> UNICEF Press Release ‘How to Protect Children in the Tsunami Zone, January 8, 2005. See [http://www.unicef.org/media/media\\_24771.html](http://www.unicef.org/media/media_24771.html)
- <sup>20</sup> *Ibid.*
- <sup>21</sup> *Black’s Law Dictionary*, Sixth Edition, St.Paul: West Publishing Co. 1990.
- <sup>22</sup> ‘Sustainable Recovery in Post-Crisis Situations’, UN-HABITAT, March 2004, p. 4.
- <sup>23</sup> Brown, Jennifer, ‘Rural Women’s Land Rights in Java, Indonesia: Strengthened by Family Law, But Weakened by Land Registration,’ *Pacific Rim Law and Policy Journal*, May 2003.
- <sup>24</sup> ‘Sustainable Recovery in Post-Crisis Situations’, UN-HABITAT, March 2004, p. 1.
- <sup>25</sup> *Guiding Principles on Internal Displacement*. These Principles, which are based upon existing international humanitarian law and human rights instruments, serve as an international standard to guide governments as well as international humanitarian and development agencies in providing assistance and protection to IDPs, United Nations. See [http://www.reliefweb.int/ocha\\_ol/pub/idp\\_gp/idp.html](http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html).
- <sup>26</sup> Preliminary Assessment of the Macroeconomic Impact of The Tsunami Disaster on Affected Countries, and of Associated Financing Needs, Prepared by the IMF in Cooperation with the World Bank, February 4, 2005.

## ENDNOTES continued

- <sup>27</sup> Deng, Mr. Francis M., Introductory note, *Guiding Principles on Internal Displacement*. See [http://www.reliefweb.int/ocha\\_ol/pub/idp\\_gp/idp.html](http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html).
- <sup>28</sup> 'Sustainable Recovery in Post-Crisis Situations', UN-HABITAT, March 2004, p. 4.
- <sup>29</sup> Lindsey, Timothy, 'Square Pegs & Round Holes: Fitting Modern Title Into Traditional Societies in Indonesia,' *Pacific Rim Law & Policy Journal*, 7 Pac. RimL. & Pol'y 699, June 1998.
- <sup>30</sup> *Black's Law Dictionary*, Sixth Edition, St. Paul: West Publishing Co. 1990.
- <sup>31</sup> 'Legal Systems of Commonwealth Members', University of Ottawa.  
See <http://www.droitcivil.uottawa.ca/world-legal-systems/eng-commonwealthmembers.html>
- <sup>32</sup> United Nations Department of Economic and Social Affairs, Division for Sustainable Development, [www.un.org](http://www.un.org).
- <sup>33</sup> Fathi, Nazila and Ginger Thompson, 'Asia's Deadly Waves: Earlier Disasters, For Honduras and Iran, World Aid Evaporated,' *New York Times*, Foreign Desk, January 11, 2005.
- <sup>34</sup> Fathi, Nazila and Ginger Thompson, 'Aid is Often Fleeting at Scenes of Disasters,' *International Herald Tribune*, January 12, 2005.
- <sup>35</sup> UNDP General Guidelines for Capacity Assessment and Development. See <http://magnet.undp.org/cdrb/GENGUID.htm>.
- <sup>36</sup> 'Sustainable Recovery in Post-Crisis Situations', UN-HABITAT, March 2004, p. 2.
- <sup>37</sup> 'Disaster survivors prove more resilient than aid agencies expect,' 28 October 2004, International Federation of Red Cross and Red Crescent Societies. See [www.ifrc.org/docs/news/pr04/7504.asp](http://www.ifrc.org/docs/news/pr04/7504.asp)
- <sup>38</sup> 'Sustainable Recovery in Post-Crisis Situations', UN-HABITAT, March 2004, p. 7.

## ANNEX I

## IDLO Work in Tsunami Affected Countries

November 10-21, 1986, *Legal Aspects of, and Negotiating Techniques for the Conclusion of Commercial Contracts*  
Jakarta, Indonesia

September 21-25, 1987, *Joint Workshop on Current Key Issues in Indonesia Corporate Law*  
Jakarta, Indonesia

November 2-6, 1992, *Enforcement of Pollution Control Legislation in Urban Areas*  
Bangkok, Thailand

July 26-30, 1993, *Training for Trainers on Environment Law*  
Arusha, Tanzania

May 26-30, 1997, *International Commercial Transactions*  
SALumni Association, Yemen  
22-February 7, 1998, *Legal Training on BOT/BOOT Infrastructure Development*  
New Delhi, India

April 13-May 1, 1998, *BOT/BOOT Infrastructures*  
Jakarta, Indonesia

April 12-23, 1999, *Commercial Law*  
Arusha, Tanzania

Nov. 29-Dec. 3, 1999, *Central Banking Law and Practice*  
Dar es Salaam Association, Tanzania

March 27-31, 2000, *WTO/TRIPS*  
Bhopal, India

July 17-21, 2000, *Legislative Drafting Skills and Techniques*  
Arusha, Tanzania

April 16-20, 2001, *Crimes Against the Person*  
Dili, East Timor

May 9-11, 2001, *Crimes Against the Person*  
Dili, East Timor

May 16-18, 2001, *Crimes Against Physical Integrity*  
Dili, East Timor

June 11-15, 2001, *Crimes Against Decency*  
Dili, East Timor

July 24-27, 2001, *Crimes Against Property*  
Dili, East Timor

September 24-28, 2001, *White Collar Crimes*  
Dili, East Timor

November 26-30, 2001, *The Land Regime in East Timor During the Portuguese Administration*  
Dili, East Timor

February 18-22, 2002, *The Preliminary Phase of the Criminal Process*  
Dili, East Timor

April 21-27, 2002, *Training of Trainers*  
Hua Hin, Thailand

May 20-24, 2002, *Managing the NGO*  
Dar es Salaam Association, Tanzania

June 3-7, 2002, *Constitutional Law and General Theory of Civil Law*  
Dili, East Timor

June 24-28, 2002, *Criminal Law*  
Dili, East Timor

July 29-August 2, 2002, *General Theory of Civil Law and Obligation*,  
Dili, East Timor

5-9 August 2002, *General Theory of Civil Law and Obligations*  
Dili, East Timor

19-23 August 2002, *Contracts*  
Dili, East Timor

2-6 September 2002, *Droit des Choses*  
Dili, East Timor

16-20 September 2002, *Family Law*  
Dili, East Timor

30 Sept.-4 Oct. 2002, *Inheritance Law*  
Dili, East Timor

11-15 November 2002, *Managing the NGO*  
Colombo, Sri Lanka

11-15 November 2002, *Criminal Law*  
Dili, East Timor

November 25-29, 2002, *Criminal Law*  
East Timor

2-6 December 2002, *Enforcement of Intellectual Property Rights*  
Dar es Salaam Association, Tanzania

17-21 March 2003, *Enforcement of Intellectual Property Rights*  
Colombo, Sri Lanka

30 April – 1 May 2003, *Legal Electronic Database*  
Bangkok, Thailand

1-8 October 2003, *Role and Status of the Prosecution in East Timor*  
Dili, East Timor

20-27 October 2003, *Role of the Prosecutor in Criminal Investigations*  
Dili, East Timor

5-12 November 2003, *Pre-Trial & Trial Management of Criminal Cases by Prosecutors*  
Dili, East Timor

4-11 February 2004, *Arrest & Pre Trial Detention & Role of Prosecutor*  
Dili, East-Timor

12-19 February 2004, *Preparation & Insurance of Indictment by Prosecutor*  
Dili, East-Timor

14-21 April 2004, *Role of the Prosecutor in Preliminary Hearings*  
Dili, East Timor

22-29 April 2004, *Role of the Prosecutor in Proceedings on Admission of Guilt*  
Dili, East Timor

31 May- 7 June 2004, *Legal Drafting*  
Dili, East-Timor

30 June – 7 July 2004, *Preparation for Trial by the Prosecutor*  
Dili, East-Timor

8-9 July 2004, *Prosecutors Guidelines Manual*  
Dili East-Timor

8-9 July 2004, *Prosecutors Guidelines Manual*  
Dili, East-Timor

28 July – 4 August 2004, *Role of Prosecutor in Trial Proceedings*  
Dili, East-Timor

29 Nov. – 3 Dec., 2004, *Intellectual Property* Jakarta, Indon

## *International Development Law Organization (IDLO)*

Established in 1983, IDLO is the world's leading public organization uniquely dedicated to achieving peace, justice, and improved living standards by reducing the disparity in legal competency between countries and by assisting processes of legal reform consistent with good governance and the rule of law. An inter-governmental organization, IDLO enjoys permanent observer status at the United Nations General Assembly. Seventeen countries presently form the IDLO Assembly of States, the organization's highest governing body. Headquartered in Rome, Italy, IDLO has regional offices in Kabul, Afghanistan and in Sydney, Australia.

### *IDLO's Research & Publications Unit*

IDLO's Research and Publications Unit (R&P Unit) opened its doors in 2003 with the aim of contributing to IDLO's mandate through research and publications. Housed at IDLO's Distance Learning and Research Center (DLRC), the R&P Unit publishes the quarterly newsletter, *Development Law Update* (DLU), an in-depth report on cutting edge topics in the development field, largely based on IDLO lessons learned from Knowledge Sharing videoconference sessions, Rome-based legal training programs, and in-country legal training and technical assistance programs. *Voices of Development Jurists* (VDJ) is a scholarly article published by the R&P Unit directed to developing and transitioning country legal communities, donor organizations, and academics who pursue development law issues. For more information on other R&P activities, visit [www.idlo.int](http://www.idlo.int).

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