



- **Charities**
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Guidance

Upholding Human Rights and Charitable Registration

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1. Summary

The Canada Revenue Agency (CRA) Charities Directorate recognizes that activities that uphold human rights can further charitable purposes under all four heads of charity (relief of poverty, advancement of education, advancement of religion, and other purposes beneficial to the community that are considered charitable at law). [\[Footnote 1\]](#)

The Charities Directorate also recognizes that upholding human rights can be a charitable purpose in and of itself under the fourth head (other purposes beneficial to the community that are considered charitable at law).

However, organizations with one or more political purposes, as well as those with political activities that exceed the legal restrictions, are not eligible for charitable registration. Specifically, partisan political activities are completely prohibited and only limited non-partisan political activities (including those that attempt to engage the public in political action or to sway public opinion on social issues) that further a charity's charitable purposes, and are ancillary and incidental to those purposes, are allowed. See [Policy Statement CPS-022, Political Activities](#).

Whether operating within Canada or abroad, registered charities are restricted to carrying out their own activities or funding [qualified donees](#). While registered charities can enlist the support of intermediaries in delivering programs, they must exercise ongoing direction and control over all their activities and resources, including

any activities carried out on their behalf by intermediaries, to ensure the requirements of the *Income Tax Act* are met. Guidelines are provided in [Guide RC4106, Registered Charities: Operating Outside Canada](#). (Guide RC4106 is currently under review. An updated link will be posted once the guide has been revised.)

All charities must comply with Canada's anti-terrorism legislation. As is the case for all individuals and organizations in Canada, charities are responsible for ensuring that they do not operate in association with individuals or groups that engage in or support terrorist activities.

2. Purpose

The Charities Directorate administers the *Income Tax Act* as it applies to registered charities. This document sets out the guidelines that will be used to determine if an organization established to uphold human rights can be registered as a charity.

This guidance document replaces **Summary Policy CSP-H08, Human Rights**, issued on September 2, 2003.

This guidance is intended to be a useful reference point for:

- organizations applying for registration;
- charities seeking to maintain registration;
- CRA officials reviewing applications and auditing operations; and
- the general public.

This document provides general guidance. Applications for registered charity status are decided individually, based on the common law relating to charity, the requirements of the *Income Tax Act*, and the facts of each case. Evidence supporting an organization's actual purposes or activities may come from the organization itself or from other information available to the Charities Directorate.

3. Definitions

3.1 Human rights

For the purposes of this document, the term **human rights** refers to those individual rights and freedoms, within their prescribed limitations, set out in:

Canadian law, including:

- the *Canadian Charter of Rights and Freedoms*
- the *Canadian Bill of Rights*
- the *Canadian Human Rights Act*
- provincial and territorial human rights legislation

International treaties to which Canada is a party that come within the following categories:

- United Nations human rights covenants, conventions, and protocols
- International Labour Organization conventions
- Geneva conventions and protocols

Other human rights references not listed may serve as the basis for a charity's work if the relevant parts of their content are sufficiently similar to the human rights and freedoms recognized by Canada in the above documents.

3.2 Upholding human rights

For the purposes of this document, **upholding human rights** refers to activities that seek to encourage, support, and defend human rights that have been secured by law, both in Canada and abroad. Upholding the administration and enforcement of the law is a well-recognized charitable purpose. However, attempting to change the law in Canada or another country is not a charitable purpose. Only limited non-partisan political activities (including those that attempt to engage the public in political action or to sway public opinion on social issues) that further a charity's formal purposes, and are ancillary and incidental to those purposes, are allowed. Both the *Income Tax Act* and common law place strict limits on the resources that a registered charity can

devote to changing law. Therefore, although part of charitable human rights work may entail seeking to clarify the status of particular rights, advocating for the establishment of new legal rights at the domestic or international level outside these limits disqualifies groups from charitable registration.

4. Rationale

4.1 Legal context

On the issue of human rights, Canadian courts have followed the direction established by the English courts in the 1981 *McGovern* case. In this case, the court refused charitable status to the Amnesty International Trust on the grounds that seeking to put pressure on governments to uphold human rights and, in particular, to stop using torture or imposing the death penalty were “political” purposes in the sense of seeking to change the law. However, the court did hold that, “a trust for the relief of human suffering and distress would be capable of being charitable in nature,” within the spirit and intendment of the preamble to the *Statute of Elizabeth*. Therefore, it was not the subject matter (human rights) itself that was not charitable, but the political nature of the organization’s activities that fell outside the scope of charity law. [\[Footnote 2\]](#) The Amnesty International charity was registered by the Charity Commission for England and Wales in 1986.

Further, it should be noted that this decision was rendered in a particular legal context. When the English court decided the *McGovern* case in 1981, the United Kingdom had not yet ratified certain key human rights conventions or enacted measures to uphold the relevant human rights. The Amnesty International Trust’s activities were therefore aimed at changing the law and determined to be political as a consequence. Since that time, many countries, including Canada, have signed treaties and passed legislation protecting human rights, therefore changing the legal context significantly.

Although Canada had already passed the *Canadian Human Rights Act* in 1977, the subsequent entrenchment of the *Canadian Charter of Rights and Freedoms* in the *Constitution Act, 1982* reinforced the importance of human rights in the Canadian legal context. As a result

of these changes in Canada, and similar legislative changes in many countries around the world, activities that were considered political at the time of the *McGovern* decision are no longer so, since no attempt to change the law is implied. To the contrary, such activities have become charitable as upholding the administration and enforcement of the law, which is a recognized charitable purpose under the fourth head.

Canadian cases have also provided some insight into upholding human rights as a charitable purpose. For example, in *Lewis v. Doerle* (1898), the Ontario Court of Appeal was clear in holding that a trust to promote, aid, and protect U.S. citizens of African descent in the enjoyment of their civil rights was clearly a charitable trust.

In the more recent case of *Action by Christians for the Abolition of Torture (ACAT) v. The Queen* (2002), the Federal Court of Appeal was equally clear, declaring "it is evident, on its face, that the abolition of torture is an objective that is itself eminently laudable and that an organization devoted to it is, *prima facie*, a charity".[\[Footnote 3\]](#) However, the organization's appeal of its revocation was dismissed because the organization was held to have political purposes, since it was both trying to change the law, particularly in relation to the death penalty, and engaging in political activity that exceeded the limits allowed by the *Income Tax Act*.

It is clear that upholding human rights is consistent with existing, broadly based legislation and public policy. This establishes it as undoubtedly beneficial to the public, and not political, as long as charities respect the prohibition on political purposes and the limitations on political activities.

4.2 Approaches in other jurisdictions

Upholding human rights and freedoms has also been recognized as a charitable purpose in other countries, based in part on the evolution of the law. For example, the United States recognizes "defending human and civil rights secured by law" as a charitable purpose.[\[Footnote 4\]](#) In the United Kingdom, the advancement of human rights was added as a charitable purpose through statutory changes to the [Charity & Trustee Investment \(Scotland\) Act 2005](#), the [Charities Act 2006](#) in England and Wales, and the [Charities Act \(Northern Ireland\) 2008](#). Before these

statutory changes, the Charity Commission for England and Wales had accepted the [promotion of human rights](#) as a charitable purpose by analogy to other existing purposes.

4.3 Conclusion

The Charities Directorate recognizes that activities that uphold human rights can further charitable purposes under all four heads of charity (relief of poverty, advancement of education, advancement of religion, and other purposes beneficial to the community that are considered charitable at law).

In particular, under the fourth head, upholding human rights can be considered a charitable purpose coming under one of the following established subcategories: moral and ethical development of the community, upholding the administration and enforcement of the law, and preserving human life. When a purpose or purposes relating to upholding human rights fall into more than one of these subcategories, it can be considered as coming under a charitable purpose subcategory of its own, namely upholding human rights.

5. Determining eligibility for charitable registration

5.1 General requirements

To qualify for registration, an applicant organization must meet a number of general requirements. A few key issues are covered below. For detailed information on charitable purposes and activities, the factors that will disqualify an organization from registration, the drafting of governing documents, and public benefit requirements, please refer to the following documents:

- [Guide T4063, Registering a Charity for Income Tax Purposes](#)
- [Policy CPS-024, Guidelines for Registering a Charity – Meeting the Public Benefit Test](#)
- [Summary Policy CSP-P13, Public Policy](#)

5.2 Purposes and activities

Charities must be established for exclusively charitable purposes. It is important that charitable purposes be clearly worded to ensure that non-charitable purposes are not included. The organization will also need to identify the activities that it will undertake to achieve each of the formal purposes listed in its governing document.

To show that their purposes and activities satisfy the criteria in this guidance, human rights organizations should include in their applications:

- the source or concept of human rights that will be applied to their activities (specific human rights codes, treaties, conventions, or laws);
- a detailed description of all the current and proposed activities they plan to undertake to fulfill their purposes; and
- the specific location, country, or range of countries in which each activity will be carried out.

To ensure that a registered charity does not jeopardize its registration status, it should consult the Charities Directorate before changing (deleting or adding to) its purposes. It is also recommended that a charity consult with the Charities Directorate if it plans to undertake new activities, particularly if it plans to work in a country not identified previously to the Directorate.

Purposes that are illegal in Canada and purposes that are contrary to Canadian public policy are prohibited. [\[Footnote 5\]](#)

5.3 Public benefit

An organization that wants to become registered as a charity under the *Income Tax Act* must show that it operates for the benefit of the public. This is especially important for those charities whose purposes and activities fall under the fourth head of charity (other purposes beneficial to the community that are considered charitable at law). The existence of public benefit is presumed for the first three heads of

charity, but it must be demonstrated under the fourth head.[\[Footnote 6\]](#)

The public benefit requirement involves two parts: a) there must be a tangible benefit, and b) the benefit must be directed to the public or a sufficient section of the public. An intangible public benefit may also be acceptable when there is clear general consensus that the benefit exists. Any private benefit arising from the purposes and supporting activities a registered charity undertakes must be reasonable, necessary, and incidental.

Securing human rights or providing relief for individuals whose human rights have been violated clearly provides an immediate and tangible benefit. An intangible benefit, as well as the benefit to the public, is achieved through the public knowledge that the fundamental rights of all members of the community are being protected.

5.4 Restricting benefits

Given the broad scope of human rights issues, human rights organizations can choose to focus on specific issues, geographical regions, or certain vulnerable segments of the population. This should not affect the organization's ability to become registered as a charity, provided that the restriction is justifiable while still benefiting a sufficient segment of the public. See sections **3.2.1** and **3.2.2** of [Policy CPS-024, Guidelines for Registering a Charity: Meeting the Public Benefit Test](#) for more information.

6. Acceptable ways of upholding human rights

There are many potential charitable purposes and activities that can uphold human rights. Given the range of possibilities, not all can be listed here. For simplicity, examples are given under each of the four heads of charity separately; however, an organization may have purposes that qualify under more than one of the four heads.

The Charities Directorate will evaluate an application as a whole and determine if the applicant satisfies all the requirements for registration. The following examples show some of the ways in which

an organization can uphold human rights and be eligible for registration as a charity. For registration purposes, a more detailed description of the proposed activities will be required. Charities Directorate officials may examine an organization's practices to determine whether all the legal requirements relating to registration are satisfied. They may also obtain and consider information from applicants or other reliable sources for this purpose.

6.1 Relief of poverty

The relief of poverty generally includes programs or services that provide the necessities of life (such as clothing, food, or shelter) to those in need (anyone lacking essential amenities available to the general population).

Common law has established that the relief of poverty is not limited strictly to providing the necessities of life but is expanded to include relieving human suffering and distress.[\[Footnote 7\]](#) In terms of human rights, organizations whose purposes come under this head will focus on activities that address the needs of the poor who are affected by human rights abuses.

Purposes to relieve poverty for victims of human rights abuses may include, but are not limited to:

- relieving the suffering of war-affected children, refugees, or other such groups; and
- providing legal services to the poor to help them access human rights protection and remedies.

Example purpose and activities

To relieve poverty by providing assistance to victims of human rights abuses (citing the relevant human rights laws or treaties or humanitarian considerations generally, as the situation requires) through the following activities:

- operating shelters to provide housing and basic necessities for refugees

- providing psychological counselling for victims of torture
- establishing legal clinics for the poor to ensure their access to legal protection and remedies as provided by existing human rights legislation

6.2 Advancement of education

To advance education in the charitable sense means: formal training of the mind, advancing the knowledge or abilities of the recipient, raising the artistic taste of the community, or improving a useful branch of human knowledge through research.

Charities in this category have the basic purpose of increasing human knowledge. While this can be accomplished in a number of ways, a structured attempt at education is required, as well as a clear teaching or learning component that is available to students or the general public. [\[Footnote 8\]](#) Additionally, the content cannot be intended to promote a particular point of view. In terms of human rights, organizations whose purposes come under this charitable purpose category will focus on teaching the wider field of human rights law or adding to the store of knowledge on issues related to human rights.

Purposes to advance education on the subject of human rights may include, but are not limited to:

- establishing/funding a chair, a professorship, or scholarships dedicated to the study of human rights;
- establishing/funding classes for the study of human rights;
- researching and analyzing the development of human rights law through court decisions and government policy;
- researching and analyzing laws, institutions, and practices affecting human rights; and
- publishing or disseminating research on Canadian or international human rights law.

Example purpose and activities

To advance education on the subject of human rights (citing human rights laws or treaties or the academic subject of human rights generally, as the situation requires) through the following activities:

- conducting research and analyses of laws, institutions, and practices affecting human rights
- preparing and disseminating academic reports and research papers on issues related to human rights
- supporting the development of university courses and educational materials for those courses on human rights and holding conferences/workshops for students and faculty to further their education as it relates to human rights issues
- providing scholarships for students doing graduate work on the subject of human rights
- providing structured grassroots human rights education to affected communities [\[Footnote 9\]](#)

6.3 Advancement of religion

To advance religion in the charitable sense means promoting and manifesting the doctrines, observances, and practices of a religion. When a charity is primarily constituted and operated to advance religion, it may also include upholding human rights as one of its purposes.

If a charity wants to be registered with the stated purpose of the advancement of religion while upholding human rights, the connection between the religious doctrines or tenets that support human rights and the purposes and activities of the organization should be made clear in the application.

Example purposes and activities

To advance and promote the religious tenets, doctrines, observances, and practices of the (specify faith or religion) and to uphold human rights (citing the religious reference for the human rights).

These purposes will be achieved through the following activities:

- preparing faith-based resources on upholding human rights for use in places of worship and other religious organizations
- preaching about upholding human rights in places of worship
- preparing worship materials and special liturgies on upholding human rights
- holding workshops, seminars, and study sessions on issues related to upholding human rights as they are expressed in the sacred texts
- providing spiritual counselling and pastoral care for victims of torture and other human rights abuses

6.4 Other purposes beneficial to the community

Generally, the fourth category covers those charities whose purposes do not fall within the other three categories, but which are of benefit to the community in various ways that the law regards as charitable. A wide variety of charitable purpose subcategories have been recognized by the courts within this category. Some examples of fourth head subcategories include: the promotion of aboriginal culture and language, the protection of animals, supporting other charities, offering child welfare programs, providing community facilities and services, the promotion of the armed forces, providing relief for persons with disabilities, and the protection of the environment.

In the field of human rights, many organizations have purposes that already fall under the following established fourth head purposes: moral or ethical development of the community, upholding the

administration and enforcement of the law, and preserving human life and health.

An organization may also have purposes and activities that fall under more than one of the subcategories listed below or other purposes and activities related to human rights not listed. In such a case, the organization can be registered under the fourth head, provided the applicant meets all of the registration requirements. Purposes and activities in support of upholding human rights may include, but are not limited to, the following examples:

Moral and ethical development of the community: Purposes to promote the moral, ethical, and humanitarian motivations for upholding human rights may include, but are not limited to:

- increasing public awareness of human rights issues;
- promoting respect for human rights internationally; and
- establishing libraries or networks to collect and disseminate information on human rights.

Example purpose and activities

To improve the moral or ethical development of the community by promoting respect for human rights in accordance with (citing either some specific human rights laws or treaties or humanitarian considerations generally, as the situation requires) through the following activities:

- facilitating debate and discussion through workshops and presentations on human rights
- distributing material that increases the public's knowledge about human rights issues and abuses
- creating and undertaking awareness campaigns for individuals, encouraging them to respect each other's human rights
- devising awareness campaigns for organizations in the private sector, encouraging them to implement ethical codes of conduct established

by the government to ensure human rights are upheld

Upholding the administration and enforcement of the law: In these cases, the human rights law or treaty should be specified exactly. Purposes may include, but are not limited to:

- monitoring and reporting on the fulfillment of human rights obligations (under convention or treaty x, in country or region y, or the whole world);
- upholding human rights law (under convention or treaty x, in country or region y, or the whole world); and
- seeking legal remedies for victims of human rights abuses.

Example purpose and activities

To uphold the administration and enforcement of (specify the international covenant or agreement) throughout the world, through the following activities:

- creating and disseminating reports that outline the progress of signatory countries on the administration and enforcement of the (specified covenant or agreement)
- providing training to government officials, lawyers, and judges in countries that are signatory to the (specified covenant or agreement)
- providing well-reasoned commentary and recommendations to the signatory governments about the implementation of the (specified covenant or agreement)
- providing legal advice and representation to victims of violations of the (specified covenant or agreement) for attempts to obtain remedies through the courts of the country concerned or any available international remedies

Preserving human life and health: In these cases, the focus will tend to be on the victims of human rights abuses. Purposes may include, but are not limited to:

- protecting the lives of those affected by human rights abuses; and
- providing aid and assistance to victims of human rights abuse, including victims of violence, sexual harassment, discrimination, exploitation, slavery, oppression, and torture.

Example purpose and activities

To provide emergency and long-term assistance to victims of human rights abuses (citing either some specific human rights laws or treaties or humanitarian considerations generally, as the situation requires) through the following activities:

- operating an emergency shelter for refugees
- transporting victims of torture to safe locations
- providing medical services to people who have been injured as a result of human rights abuses
- providing psychological counselling for those affected by human rights abuses

Upholding human rights: In these cases, the organization will have purposes and activities that fall under more than one of the subcategories listed above.

Example purpose and activities

To uphold human rights around the world, in accordance with the (specify an international agreement or similar document) and its related conventions and protocols, through the following activities:

- providing shelter, food, clothing, and other necessities for refugees
- providing medical services to people who have been injured as a result of human rights abuses

- establishing legal clinics for the poor to ensure their access to legal protection and remedies as provided for by existing human rights legislation
- preparing and disseminating reports on issues related to human rights
- holding workshops and seminars on human rights around the world that are open to the public
- distributing material that increases the public's knowledge about human rights issues and abuses
- providing well-reasoned commentary and recommendations to the signatory governments about the implementation of the (specify an international agreement or similar document)

7. Special considerations

7.1 Political purposes and political activities

The Charities Directorate's [Policy Statement CPS-022, Political Activities](#) provides registered charities with information on political activities and allowable limits under the *Income Tax Act*. The policy statement outlines a framework that explains how the Directorate distinguishes between political and charitable activities. In addition, it seeks to clarify the extent to which charities can usefully contribute to the development of public policy under the existing law. The following is a summary of the key points; however, charities are strongly encouraged to read the entire policy statement as it outlines the key legal cases and gives useful examples of charitable, political, and prohibited activities.

7.1.1 Political purposes are not charitable

Under the *Income Tax Act* and in common law, an organization established for a political purpose cannot be a registered charity. The courts have determined political purposes to be those that seek to:

- further the interests of a particular political party or support a political party or candidate for public office; or
- retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country.

Additionally, it is a political purpose, and therefore not legally charitable, to engage in pressure tactics on governments such as swaying public opinion [\[Footnote 10\]](#), promoting an attitude of mind[\[Footnote 11\]](#), creating a climate of opinion[\[Footnote 12\]](#), or exercising moral pressure[\[Footnote 13\]](#) when the aim of those tactics is to obtain a change or prevent a change in the laws and policies of the legislatures and governments. [\[Footnote 14\]](#)

Applicant organizations will be denied registration if their purposes are to oppose or change or retain the law or policy of a government. Further, if the proposed activities indicate that the applicant has an unstated political purpose, registration may be denied. Please refer to sections **4 and 5** of [Policy Statement CPS-022, Political Activities](#) for more details.

Examples of political (unacceptable) purposes for human rights organizations include:

- to pressure the nations of the world to change the body of international human rights agreements;
- to focus on one particular country and pressure its legislature or government to sign an international human rights agreement;
- to focus on one particular country and pressure its legislature or government to enact or alter domestic human rights legislation in the country; or
- to attempt to persuade a number of countries or countries in a region to enact or amend legislation on human rights.

Whether a **purpose** will be considered **political** as a matter of Canadian law will depend on a combination of factors, including:

- the focus of the charity's purposes (national or international);
- the specific legal context of the country or countries in which it wishes to operate; and
- the nature of its proposed activities in support of the purpose.

7.1.2 Political activities

Although political purposes are never charitable, registered charities can participate in, or conduct, some types of political activities within certain limits, as long as those activities do not support or denounce any political party or candidate. Partisan political activities are never permitted.

In general, a registered charity can be involved in non-partisan political activities under the following conditions:

- The charity must devote substantially all of its resources to its charitable activities; that is, no more than 10% of a charity's resources can be used for political activities (up to 20% for smaller charities as outlined in section 9 of [Policy Statement CPS-022](#)).
- The political activities must be connected and subordinate to the charity's purposes.

For example, a campaign to pressure a government of a particular country to adopt particular human rights legislation or policies could be an allowable political **activity** if it:

- uses no more than the allowable limit of the charity's resources under the *Income Tax Act*;
- relates to and supports the charity's purpose(s) and represents a reasonable way to achieve them (connected to);
- is subservient to the charity's dominant charitable purpose or is a minor focus of the charity (subordinate to); and

- does not express support for or criticism of any political party or candidate (non-partisan).

In addition to the restrictions in the *Income Tax Act*, it is important to note that expenses for political activities do not count toward a charity's disbursement quota.

7.2 Canada's Charities and Anti-Terrorism Measures: What you need to know

Charities should also be aware that under the *Charities Registration (Security Information) Act (CRSIA)* and the *Income Tax Act*, a charity's status may be revoked if the charity operates in such a way as to make its resources available, either directly or indirectly, to an entity that is a "listed entity" as defined in subsection 83.01(1) of the Criminal Code of Canada, or to any other entity (person, group, trust, partnership, or fund, or unincorporated association or organization) that engages in terrorist activities or in activities that support them. [\[Footnote 15\]](#)

There are other prohibitions on funding or otherwise facilitating terrorism. For further information see the Criminal Code of Canada, the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism, and the United Nations Al-Qa'eda and Taliban Regulations. Details and web links about these provisions can be found on the Charities Directorate's Web page [Charities in the International Context](#). The Charities Directorate has produced a [Checklist for Charities on Avoiding Terrorist Abuse](#) to help Canadian charities identify how they may be vulnerable to terrorist abuse.

Please refer to the **Questions and Answers** section of this document, which provides additional information in response to specific questions related to this guidance.

Appendix A: Questions and Answers

The answers to the following questions are generic in nature. The individual circumstances of each applicant or registered charity may lead to a different answer.

Q1: Are United Nations (U.N.) declarations accepted as human rights instruments for the purposes of charitable registration in Canada?

A1: Depending on the specific purposes and activities of the charity, and the specific declaration cited, U.N. declarations **may** be accepted as human rights instruments for the purposes of charitable registration in Canada.

Generally, declarations are not legally binding and therefore do not have the force of law. They are primarily viewed as statements of intent or aspirations and do not necessarily create obligations to be upheld by states. Legal obligations are often formulated later through other instruments either internationally or domestically. [\[Footnote 16\]](#)

Organizations whose primary purposes do **not** include upholding the administration and enforcement of the law can use U.N. declarations as human rights instruments as the basis of their work provided that Canada is a signatory to the document or had indicated its acceptance of the principles in some concrete fashion. For example, an applicant whose primary purpose is the advancement of education can use the *Universal Declaration of Human Rights* as its primary focus of study and research.

For the charitable purpose of upholding the administration and enforcement of the law, an organization can use the *Universal Declaration of Human Rights* as the **basis** for its work; however, it will have to show how it is going to uphold the principles in the Declaration by specifying the legally binding instruments (protocols, statutes, or treaties) and the jurisdictions it will be focusing on. Other U.N. declarations relevant to human rights will be considered on a case-by-case basis.

Q2: Is customary international law accepted as a source of human rights law for the purposes of charitable registration in Canada?

A2: Customary international law derives from the widespread and consistent practices of states undertaken by them from a sense of legal obligation. In actual practice, customary international law aids in the interpretation of human rights treaties. When there is a disagreement about what a treaty provision means, one can resort to using customary international law to argue (before an international tribunal or arbiter) which interpretation is more consistent with the world's international customs.

While some aspects of customary international law have been codified in various human rights instruments, in the context of this guidance customary international law refers to those parts of customary international law that have not been codified.

For the purposes of charitable registration, customary international law **may** be accepted as a source of human rights law if the applicant organization provides sufficient detail regarding those aspects of customary international law that have been codified in other legal instruments. A purpose to uphold the administration and enforcement of customary international law **only** will be considered too broad and vague for registration.

Education or research in the use of customary international law in international litigation is consistent with the charitable purpose of upholding of human rights.

Q3: Why are human rights organizations asked to specify the location of their work?

A3: The Charities Directorate takes into account a number of different factors when evaluating an application for charitable status. With regard to human rights, location is an important factor because the legal context in which the charity is operating will determine whether its purposes/activities are or could be political in nature. It is important to understand that what may be a political purpose or political activity in one country may not be considered so in another country. Whether purposes or activities will be considered political will depend on both

the specific legal context of the country or countries in which the organization is operating and the national or international focus of the charity's purposes.

For example, many human rights organizations take strong positions opposing the death penalty on the basis that the penalty is inconsistent with human rights principles. However, many countries still have laws imposing the death penalty for certain crimes. An organization that has as one of its purposes to seek the abolition of the death penalty in these countries could not be registered as a charity because this would be considered a political purpose. However, an organization seeking to uphold human rights principles around the world can occasionally engage in political activities such as pressuring a particular government to abolish the death penalty, provided that these activities are subject to the limits as outlined in [Policy Statement CPS-022, Political Activities](#).

Q4: If a charity wants to assist a government or a collection of governments (such as the United Nations) to establish a new declaration or treaty that does not make new law but is substantially based on existing law, is this a political activity or a charitable activity?

A4: A charity can assist any level of government or any governments acting collectively whether as part of a U.N. process or otherwise in developing a new declaration or treaty that will implement policy decisions already made in principle to amend or clarify current policy or law. The charity can help in a number of ways, including providing expertise on the subject matter through well-reasoned research, sitting on advisory committees or working groups, or providing technical support or expertise in the drafting of documents for consideration. These types of activities would generally be considered charitable, depending on the overall purposes of the organization.

On the other hand, if a charity devotes more than a small amount of resources to convincing a government or a collection of governments, either publicly or privately, to make the initial policy decision to establish a new declaration or treaty, even one based on existing law, the Charities Directorate will likely interpret these activities as political in nature, since in so doing the charity is seeking to change the law or

government policy. As such, the activity will be subject to the limits outlined in [Policy Statement CPS-022, Political Activities](#).

Q5: If my charity thinks a government policy is inconsistent with established human rights law, can my charity:

a: Challenge this policy in court?

A5a: Yes, In general, if a charity has the standing to do so as a party or intervener it can challenge the policy through the court system.

b: Bring the matter to the government's attention?

A5b: Yes; however, depending on the facts of each case, the process of bringing the matter to the government's attention may be considered a political activity and therefore subject to certain limits. The most important consideration will be the legal context in which the government's policy exists. For example, when the government is under a legal obligation to uphold established human rights law in a specific way and the policy under consideration violates this obligation, bringing the government's attention to the matter would be considered a charitable activity because it is an attempt to uphold the law. On the other hand, when such human rights obligations permit a range of policy options, one of which is chosen by the government, activities that seek to oppose, change, or retain the government's policy decision will likely be considered political activity and subject to the limits outlined in the *Income Tax Act*.

c: Encourage people to write to politicians to change the policy?

A5c: Yes; however, this activity will be considered political and subject to the limits outlined in the *Income Tax Act*.

Q6: Can my charity seek a court or tribunal interpretation of an already existing law for clarity?

A6: Yes. Seeking a legal remedy to a human rights issue is an acceptable charitable activity because the intent is not to change the law but to clarify it.

Q7: Can my charity seek intervener status in an important human rights case and, if so, would this be considered a charitable activity?

A7: Yes. It is up to the courts to determine who will be granted intervener status in any particular case; however, a charity can seek intervener status if it wants to do so. This activity will be considered charitable and not political.

Footnotes

[Footnote 1]

The four charitable purposes categories, commonly known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v. Pemsel* [1891] A.C. 531 (P.C.). An organization's purposes **must** fall within one or more of these categories for it to be considered for registration as a charity.

[Footnote 2]

McGovern et al. v. Attorney-General et al., [1982] 1 Ch. 321, [1981] 3 All E.R. 493, applied in Canada in *Positive Action Against Pornography v. M.N.R.*, [1988] 2 F. C. 340 at p. 393, and subsequent cases.

[Footnote 3]

Action by Christians for the Abolition of Torture (ACAT) v. The Queen & al., 2002 FCA 499.

[Footnote 4]

<http://www.irs.gov/charities/charitable/article/0,,id=175418,00.html>.

[Footnote 5]

Canadian Magen David Adom for Israel v. Canada (M.N.R.), (2002) 218 D.L.R. (4th) 718; (FCA) at para. 57.

[Footnote 6]

National Anti-Vivisection Society v. I.R.C., [1948] A.C. 31 at 42: "The test of benefit to the community goes through the whole of Lord Macnaghten's classification, though as regards the first three heads, it may be prima facie assumed unless the contrary appears."

[Footnote 7]

McGovern, supra (note vii), p. 503.

[Footnote 8]

The mere collection or making available of unstructured or untaught information for casual use by the public (that is, libraries, databases, and blogs) is not advancement of education in the sense meant by charity law: *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10; however, it can be recognized as a benefit to the community under the fourth head, depending on the subject matter: *Incorporated Council of Law Reporting v. A.G.*, [1972] 1 Ch. 73.

[Footnote 9]

Education must be provided in a manner consistent with the principles laid out in *Vancouver Society, supra, (note xii)*. "So long as information or training is provided in a structured manner and for a genuinely educational purpose -- that is, to advance the knowledge or abilities of the recipients -- and not solely to promote a particular point of view or political orientation, it may properly be viewed as falling within the advancement of education."

[Footnote 10]

Human Life International in Canada Inc. v. M.N.R., [1988] 2 F.C. 340.

[Footnote 11]

Alliance for Life v. M.N.R., [1999] 3 F.C. 504.

[Footnote 12]

Ibid.

[Footnote 13]

Action by Christians for the Abolition of Torture (ACAT) v. The Queen & al., 2002 FCA 499.

[Footnote 14]

Bowman & al. v. Secular Society Ltd, [1917] A. C. 406; *McGovern & al. v. A.-G. & al.*, [1982] 1 Ch. 321.; *Koeppeler's Will Trusts, Re*[1986] Ch 423.

[Footnote 15]

A list of names is available at http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=525Terrorism%20Financing.

[Footnote 16]

For a more detailed explanation, please visit the U.N. Web site at [United Nations Treaty Collection – Treaty Reference Guide](http://www.un.org/Depts/ctc/treaty/treatyrefguide.htm).

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