



International Disaster Response Law (IDRL) in Botswana

A study on legal preparedness for facilitating and regulating international disaster assistance

Prepared by



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3. Promote social inclusion and a culture of non-violence and peace.

About this report

This report is commissioned by the Botswana Red Cross Society (BRCS) with support from the International Federation of Red Cross and Red Crescent Societies (IFRC). It analyses the existing legal and policy frameworks for disaster management and response in Botswana focusing on facilitation and regulation of international disaster assistance. The report also provides an assessment of strengths and gaps and provides recommendations for strengthening legal preparedness for disasters in Botswana.

About the Disaster Law Programme

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

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Acronyms and abbreviations

BRCS	Botswana Red Cross Society
BURS	Botswana Unified Revenue Service
DC	District Commissioner
DDC	District Development Committee
DDMC	District Disaster Management Committee
DEC	District Emergency Committee
DEOC	District Emergency Operations Centre
DO	District Officer
DRM	Disaster risk management
DR	Disaster risk reduction
EOC	Emergency Operations Committee
ESF	Emergency Support Functions
IC	Incident Commander
ICP	Incident Command Post
IDRL	International disaster response laws
IFRC	International Federation of Red Cross and Red Crescent Societies
IPU	Assistance and the Inter-Parliamentary Union
NCDM	National Committee on Disaster Risk Management
NDMO	National Disaster Management Office
NDMTC	National Disaster Management Technical Committee
NDRMP	National Disaster Risk Management Plan
NEC	National Emergency Committee
NEOC	National Emergency Operations Centre
NPDM	National Policy on Disaster Management
NSO	National Strategy Office
OCHA	United Nations Office for the Coordination of Humanitarian
OP	Office of the President
UNDP	United Nations Development Program
VDC	Village Development Committee

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Executive summary

The Botswana Red Cross Society commissioned this legal audit. The purpose of the legal audit is to review the current legal framework, policies and practices in disaster response preparedness in Botswana.

The report is based on a review of Botswana legislation applicable to international disaster response. This legal review took place in light of the *Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance* (the 'IDRL Guidelines'). The IDRL Guidelines can be found on the website of the International Federation of Red Cross and Red Crescent Societies¹.

The Botswana Red Cross undertook to initiate the process of the audit in response to the call by states made at the 31st International Conference of the Red Cross and Red Crescent for the examination and strengthening of national legal frameworks for the facilitation and regulation of international disaster response.²

In June 2012, the Botswana Red Cross convened a high-level workshop in Gaborone on Botswana's legal preparedness for disaster response. The central question at this workshop was how existing Botswana laws handle common problem areas in international disaster relief operations, the country's role as a receiver of border crossing support as well as an important player in the transit and provision of international humanitarian assistance in the region.

In general, the workshop established that Botswana has a multiplicity of laws relevant to disaster risk reduction. However, the workshop noted that Botswana has no legal instrument that addressed disaster response. The workshop proposed an audit of Botswana's legal preparedness to facilitate and regulate international disaster assistance in the event of a disaster.

In reviewing the relevant legal framework, the report has identified a number of strengths. For example, Botswana has a National Policy on Disaster Management, a National Disaster Risk Management Plan, and a focal point for disaster management being the National Disaster Management Office housed at the Office of the President.

The report identified also the following major gaps:

- Botswana has not acceded to or domesticated most major treaties in Disaster Risk Management
- Botswana has no National Disaster Risk Management legislation
- Botswana has no legislation governing the facilitation and regulation of international disaster assistance

¹ IDRL Guidelines are available at [http://ifrc.org/PageFiles/41203/1205600-IDRL%20Guidelines-EN-LR%20\(2\).pdf](http://ifrc.org/PageFiles/41203/1205600-IDRL%20Guidelines-EN-LR%20(2).pdf)

² Resolution 31IC/11/R7(2011)

Executive summary

- Existing legislation is fragmentary and while it may be used to assist in disaster situations, this may take valuable time and resources and be burdensome on Government and international actors offering assistance.

In light of these findings, this report puts forth a number of recommendations. The rationale for these recommendations is explained in the body of the report. The main recommendations are as follows:

1. Botswana should consider acceding and domesticating relevant treaties in Disaster Response Law in Particular the Tampere Convention on Telecommunications, Specific Annex J.5 to the Kyoto Customs Convention, and Annex B.9 to the Convention on Temporary Admission (The Istanbul Convention). This may be achieved through a single enabling act.
2. Botswana should consider enacting national Disaster Risk Management legislation in order to provide a legal and institutional framework for disaster management in the country.
3. In such a Disaster Risk Management Act, Botswana should consider enacting provisions for the facilitation and regulation on international disaster assistance. The Model Act on IDRL would be of assistance in preparing such legislation.
4. In the short term, clear procedures for receiving of international disaster assistance and coordination national disaster relief efforts with international disaster relief efforts should be included in the National Disaster Risk Management Plan.

By adopting and implementing the recommendations set out above, Botswana will improve its capacity to manage disasters nationally and properly regulate incoming international disaster assistance. A much needed national legal framework will ensure well-coordinated assistance in the event of a disaster. Provisions catering for international disaster assistance will ensure prompt assistance for affected persons and assisting international bodies through a single legislation as a point of reference for the many Government departments that facilitate and respond to disasters.

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Chapter 1

Background and methodology

Background and methodology

1

1. Background

International disaster response laws, rules and principles (IDRL) refers to the regulatory frameworks that govern border crossing humanitarian assistance, either between states or by other components of the international community.

In 2011, at the 31st International Conference of the Red Cross and Red Crescent, the state parties to the Geneva Conventions and the Red Cross and Red Crescent Movement joined a call for the examination and strengthening of national legal frameworks for the facilitation and regulation of international disaster response.³

In response to this call, the Botswana Red Cross convened a high-level workshop in Gaborone on 5 June 2012 on Botswana's legal preparedness. The central question at this workshop was how existing Botswana laws handle common problem areas in international disaster relief operations, the country's role as a receiver of border crossing support as well as an important player in the transit and provision of international humanitarian assistance in the region. Some issues considered were

- coordination of international and regional disaster response
- Customs procedures
- Procedures for obtaining visas and work permits
- Recognition of qualifications of specialised personnel and in particular medical response personnel
- Quality of relief items and services

In general, the workshop established that Botswana has a multiplicity of laws relevant to disaster risk reduction. However, the workshop noted that Botswana has no legal instrument that addressed disaster response. The workshop proposed the following way forward:⁴

1. That the Botswana Government should move towards the ratification of relevant international instruments relating to disaster response.
2. That audit of the current legal framework should take place, to identify any gaps in coverage of IDRL issues. The Botswana Red Cross undertook to initiate the process of the audit; the IFRC pledged its support and the National Strategy Office (NSO) indicated its willingness to participate in the process of the audit.
3. That the results of the audit should lead to the setting up of a legislative committee or task force representing all stakeholders to either strengthen the existing system or, if necessary, to develop a new legal instrument addressing disaster response in general and facilitate and regulate international disaster response specifically.

In response to the workshop's second recommendation, the BRCS commissioned this audit of Botswana's current legal rules on international disaster response.

³ Resolution 31IC/11/R7(2011)

⁴ See the results of the Botswana Red Cross high-level workshop in Gaborone on Disaster Response Preparedness 5 June 2012 (Annex 3 to this report)

Background and methodology

2. Methodology

The methodology adopted for the audit is a desk study of international disaster response instruments, regional agreements and policy documents, the laws of Botswana and relevant municipal policy documents dealing with disaster response management.

The audit assesses Botswana legal preparedness in light of the *Guidelines for the Domestic Facilitation and Regulation on International Disaster Relief and Initial Recovery* (The IDRL Guidelines). These guidelines are described in further in paragraph 2.1.1.

The IDRL Guidelines are the outcome of seven years of global research and consultations undertaken by the IFRC, through its IDRL Programme (now known as the Disaster Law Programme). To date, over two dozen country and regional studies have been commissioned to identify problem areas and best practices in the regulation of international disaster relief. These studies have identified a common set of legal problems arising in international disaster operations, due mainly to a lack of legal preparedness at the national level.

These include issues relating to visas, customs clearance, duties and taxes, as well as poor quality relief items and a lack of coordination of international relief.

This audit also draws on the *Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (Pilot Version)*⁵ (hereinafter the Model Act on IDRL)⁶ which is a tool developed by the IFRC, the United Nations Office for the Coordination of Humanitarian Assistance (OCHA) and the Inter-Parliamentary Union (IPU) to guide law-makers wishing to develop national legislation on IDRL.

At the end of the analysis, recommendations are made geared towards development of Botswana's legal capacity to deal with disasters by minimizing barriers to disaster response.

⁵ The references in this report refer to the pilot version of the Model Act on IDRL. The final version was concluded in March 2013. The pilot version of the Model Act on IDRL is available on [http://www.ifrc.org/PageFiles/86597/Pilot%20Model%20Act%20on%20IDRL%20\(English\).pdf](http://www.ifrc.org/PageFiles/86597/Pilot%20Model%20Act%20on%20IDRL%20(English).pdf)

⁶ Available at <http://www.ifrc.org/docs/IDRL/MODEL%20ACT%20ENGLISH.pdf> (accessed 23 July 2013)

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Chapter 2

Overview of international and regional framework for disaster risk management (DRM)

Overview of international and regional framework for disaster risk management (DRM)

The following chapter outlines international agreements and policy documents in the area of IDRL. These documents form the foundation for the development of national disaster response legislation. The chapter ends with a section discussing the legal status of international treaty law and policy (soft law) in Botswana. An understanding of the status on international law in Botswana's municipal law is essential to evaluating what Botswana's current obligations are at international law with regard to IDRL and the objective distance between those obligations and the current reality of IDRL in Botswana.

2.1 Key International Instruments on Disaster Risk Management

2.1.1 The IDRL Guidelines

In 2007, the state parties to the Geneva Conventions unanimously adopted the IDRL Guidelines at the 30th International Conference of the Red Cross and Red Crescent. The IDRL Guidelines are a set of recommendations for governments wishing to create or enhance their legal frameworks for dealing with problems that may be encountered during an international disaster relief operation. The guidelines provide recommendations for removing legal barriers to disaster response, which compromise effective and timely delivery of international aid. The guidelines also enable governments to monitor incoming aid to ensure that it meets minimum standards and requirements.

The guidelines are non-binding. They draw from United Nations General Assembly (UNGA) Resolutions 46/182 of 1991 and 57/150 of 2002, the Measures to Expedite International Relief of 1977 and the Hyogo Framework for Action of 2005.

The core responsibility of states under the IDRL guidelines is laid out in part 1 of the guidelines as follows:

- Affected states should bear primary responsibility for disaster management in their territory, but should seek assistance when a disaster exceeds national capacity to cope. In this case, they should coordinate the relief and recovery process on their territory.
- Assisting actors are required to abide by the law and provide aid according to the principles of humanity, neutrality and impartiality.
- All states should ensure that only the kind of relief that is needed in a particular disaster is availed.
- Lastly, that states and actors alike should prevent unlawful diversion, misappropriation, or fraud concerning disaster relief goods, equipment or resources.

2.1.2 The Hyogo Framework for Action

The Hyogo Framework for Action (HFA) was adopted in January 2005 by countries gathered at the second World Conference on Disaster Reduction in Kobe, Hyogo, Japan. The HFA is a set of nonbinding guidelines for building resilience of nations and communities to disaster.⁷ The HFA contains five priorities for action. These are:

⁷ Preamble to HFA

Overview of international and regional framework for disaster risk management (DRM)

- To ensure that disaster risk reduction is a national and a local priority with a strong institutional basis for implementation.
- To identify, assess and monitor disaster risks and enhance early warning
- To use knowledge, innovation and education to build a culture of safety and resilience at all levels.
- To reduce the underlying risk factors.
- Strengthen disaster preparedness for effective response at all levels.

Under the first priority for action, states are required to ‘adopt or modify where necessary legislation to support disaster risk reduction including regulations and mechanisms which encourage compliance and that produce incentives for undertaking risk reduction and mitigation activities’. Priority number 5 also encourages states to strengthen policy, technical and institutional capacity in regional national and local disaster management.

2.2 Key International Treaties Relevant To Disaster Response

There is no single over-arching treaty that has been concluded between all states on disaster relief and initial recovery. There are however several treaties at international law that deal with aspects of disaster response.

2.2.1 The Tampere Convention

The Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operation⁸ came into force on 8 January 2005.⁹ States party to the Convention recognised the magnitude, complexity, frequency and impact of disasters, which affected communication facilities and information flows. The states party to the Convention noted that that providing disaster response required reliable and flexible communications in order to respond effectively, reduce loss of life, human suffering and damage to property and the environment. States agreed to ‘cooperate among themselves and with non-State entities and intergovernmental organizations ... to facilitate the use of telecommunication resources for disaster mitigation and relief.’¹⁰

The Tampere Convention also requires states to reduce or remove, in as far as is possible regulatory barriers to the use of telecommunication resources for disaster mitigation and relief, including to the provision of telecommunication assistance.

Botswana has not acceded to the Tampere Convention.¹¹

⁸ Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations, Tampere, 18 June 1998

⁹ Available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXV-4&chapter=25&lang=en

¹⁰ Article 3(1) Tampere Convention

¹¹ See list of states party available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXV-4&chapter=25&lang=en (accessed 3 February 2013)

Overview of international and regional framework for disaster risk management (DRM)

2.2.2 The Kyoto Customs Convention, Specific Annex J.5

Botswana deposited instruments of ratification to the International Convention on the Simplification and Harmonization of Customs Procedures (also known as the revised Kyoto Convention) on 26 June 2006. Botswana has not specifically acceded to Specific Annex J.5.

The Kyoto Convention is geared towards the facilitation of international trade through the streamlining of national customs processes. Specific Annex J.5 of the Kyoto Convention¹² is dedicated to processing of relief consignments. The Convention makes recommendations for the timely and efficient clearance of relief consignments. It provides that relief consignments shall be cleared as a matter of priority,¹³ it makes recommendations for simplified clearing documents for relief goods and provides for inspection and sampling only in exceptional circumstances,¹⁴ it recommends extended clearing hours outside of normal working time¹⁵ and waiver of taxes¹⁶. Special annex J 5 also provides that goods received as gifts by approved organisations for use by or for distribution by such organisations should be admitted free of taxes.¹⁷

2.2.3 Annex B.9 to the Convention on Temporary Admission (The Istanbul Convention)

This convention was concluded in 1990. The purpose of the Istanbul Convention is to simplify and harmonize customs procedures with regard to the temporary admission of certain goods. Temporary admission means that certain goods can be brought into a Customs territory and be conditionally relieved from payment of import duties and taxes provided they are imported for a specific purpose and are re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.¹⁸

Annex B9 is concerned with goods imported for humanitarian purposes such as medical, surgical and laboratory equipment and relief consignments. It provides that goods imported for humanitarian purposes shall be granted temporary admission¹⁹. Further, an inventory of the goods together with a written undertaking to re-export, may be accepted for medical, surgical and laboratory equipment, in lieu of a Customs document and security²⁰ and temporary admission of relief consignments shall be granted without a customs document or security being required. However, the customs authorities may require an inventory of the goods, together with a written undertaking to re-export.²¹

¹² Available at World Customs Organisation Website http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/-/link.aspx?id=EC3DBF4147D14CDE8FDD412AFA604551&z=z

¹³ Article 2 Special Annex J.5

¹⁴ Article 3 Special Annex J.5

¹⁵ Article 3 Special Annex J 5

¹⁶ Article 5 Special Annex J.5

¹⁷ Article 6 Special Annex J.5

¹⁸ Article 1 Istanbul Convention

¹⁹ Article 2 Annex B9 Istanbul Convention

²⁰ Article 4(1) Annex B.9 Istanbul Convention

²¹ Article 4(2) Annex B.9 Istanbul Convention

²² Article 5 Annex B.9 Istanbul Convention

Overview of international and regional framework for disaster risk management (DRM)

The period for the re-exportation of relief consignments shall be at least twelve months from the date of temporary admission.²³

Botswana is not a signatory to this convention.

2.2.4 The Chicago Convention

The Convention on Civil Aviation, 1944 (the Chicago Convention)²³ entered into force on 4 April 1947. Article 8.8 of the Annex 9 to the Chicago Convention provides that states party are to 'facilitate the entry into, departure from and transit through their territories of aircraft engaged in relief flights performed for or on behalf of international organisations recognised by the United Nations or by or on behalf of the states themselves'.²⁴ Article 8.9 of Annex 9 of the Chicago Convention also obliges member states to ensure that personnel and articles arriving on relief flights are cleared without delay.²⁵ The Chicago Convention formed the basis for article 19(2) of the IDRL Guidelines, which shall be considered later in this report.

Botswana acceded to the Chicago on 28 December 1978 and empowered its government to make regulations to give effect to the provisions of the Chicago Convention under the Civil Aviation Act.²⁶

2.2.5 The UN Safety Convention and Optional Protocol

The UN Safety Convention and Optional Protocol impose an obligation on a State hosting a United Nations operation to protect United Nations personnel and property to prevent or reduce any impunity for those who attack United Nations or associated personnel or property. It is a penal legal instrument.

Botswana acceded to this Convention on 1 March 2000 and the Optional Protocol on 13 June 2007. This convention has not been domesticated. Attacks against UN personnel would be prosecuted in the normal course under national criminal laws.

2.2.6 The Framework Convention on Civil Defence

This convention was concluded on 22 May 2000 to provide a legal framework reduce or even eliminate obstacles to effective international collaboration between States in the area of civil defence. Botswana is not a signatory to this convention.

2.3 Regional Treaties and Policies

2.3.1 Africa Regional Strategy for Disaster Risk Reduction

The Africa Strategy for Disaster risk reduction is based on the Hyogo Framework for action. The Africa Strategy formed part of the foundations of the development of Botswana's National Disaster Risk Management Plan.

²³ Available at www.ifrc.org/Docs/idrl/I275EN.pdf

²⁴ Excerpt from Annex 9 to the Convention on International Civil Aviation of 1944, 12th Edition, July 2005 available at <http://www.ifrc.org/Docs/idrl/I275EN.pdf>

²⁵ Excerpt from Annex 9 to the Convention on International Civil Aviation of 1944, 12th Edition, July 2005 available at <http://www.ifrc.org/Docs/idrl/I275EN.pdf>

²⁶ Section 89(2)xxi Civil Aviation Act Chapter 71:01

Overview of international and regional framework for disaster risk management (DRM)

The aim of the Africa Strategy for Disaster Risk Reduction is to reduce social, economic and environmental impacts of disasters on the African people therefore facilitating development. The objectives of the strategy are

- to increase political commitment to disaster risk reduction;
- to improve identification and assessment of disaster risks;
- to enhance knowledge management for disaster risk reduction;
- to increase public awareness of disaster risk reduction;
- to improve governance of disaster risk reduction institutions; and
- to integrate of disaster risk reduction in emergency response management.

2.3.2 Draft SADC Disaster Risk Reduction Strategy

The draft SADC Disaster Risk Reduction Strategy is also guided by the Hyogo Framework for Action. This document also guided the development of Botswana's National Disaster Risk Management Plan.

2.3.3 The SADC Regional Water Policy

The SADC Regional Water Policy contains a strategy for providing security from water related disasters in the region. The policy recognises the importance of developing specific policies to protect communities in the SADC region from floods and droughts by developing a regional plan for prevention and preparedness.²⁷

2.4 The Place of International Law in Botswana's Municipal Law

Botswana is a dualist state. Dualism treats international law and municipal law as separate spheres of law.²⁸ In order for international obligations undertaken by states by way of treaty to form part of national laws, dualism propounds that the international law rules would have to be transformed into national law rules through the use of enabling legislation.²⁹ Enabling legislation simply gives effect to the international rules on a municipal level creating enforceable rights and duties. In order international treaties that Botswana has ratified to form part of Botswana's national laws, there is a requirement of domestication.³⁰ Tshosa characterises the ratification of a treaty in a dualist country as a "purely executive act".³¹ The domestication of treaties gives the legislature the opportunity to endorse the treaty rules that will, from the point of domestication onwards, affect the rights and liberties of individuals in the jurisdiction.³²

The status of undomesticated treaties in Botswana is that they are not enforceable under domestic law. In *Kenneth Good v The Attorney General*³³ Tebbutt JP stated:

²⁷ Section 6 SADC Regional Water Policy

²⁸ OB Tshosa, "The Status and Role of International Law in the National Law of Botswana" in *Essays on the Law of Botswana*, 229 – 246 at page 230

²⁹ *Ibid* at 234 – page 235

³⁰ *Ibid* at page 237

³¹ *Ibid* at page 234

³² *Ibid* at page 235

³³ Botswana Court of Appeal 2005 (2) BLR 337 (CA) at pages 345 – 346.

Overview of international and regional framework for disaster risk management (DRM)

‘Botswana...is a signatory to a number of international treaties. It is trite that signing such a treaty does not give it the power of law in Botswana and its provisions do not form part of the domestic law of this country until they are passed into law by parliament. Those treaties do not confer enforceable rights on individuals within a state.’

International instruments with non-binding status have no force of law in Botswana. They are recommendations or guidelines meant to steer a country towards legislation on practices recognised as valuable by the international community. A failure to abide by such international guidelines on disaster relief and initial recovery would not be justiciable; however development of the law in the particular areas addressed by such non-binding international instruments like the IDRL Guidelines would mean that Botswana may lag behind in its management of disasters and its capacity to help other states in recovery from disasters.

2.5 Recommendations

The following gaps exist in ratification, acceptance and implementation of key existing treaties.

TREATY	AREA	STATUS
Tampere Convention	Telecommunications	Not state party
Specific Annex J.5 to the Kyoto Customs Convention	Customs clearance of Relief goods	Not a signatory to specific annex J.5
Annex B.9 to the Convention on Temporary Admission (The Istanbul Convention)	Admission of humanitarian goods	Not a state party to Annex B9

The following recommendations are made:

- Botswana should consider acceding to the Tampere Convention on telecommunications in times of disaster.
- Botswana should consider acceding to Specific Annex J.5 to the Kyoto customs convention which contains rules on customs clearance of relief goods
- Botswana should consider acceding to annex B9 to the Istanbul Convention on the admission of humanitarian goods.

Full implementation of these treaties should be pursued through a comprehensive piece of legislation on Disaster Response Management.

Alternatively, Botswana may consider enacting comprehensive Disaster Risk Management Act, which will achieve the same objective of ensuring legal preparedness for disasters.

International Disaster Response Law (IDRL) in Botswana

A study on legal preparedness for facilitating and regulating
international disaster assistance

Chapter 3

Botswana's legal and institutional framework for DRM

Article 8 IDRL Guidelines: Legal, policy and institutional frameworks

8. Legal, Policy and Institutional Frameworks

1. As an essential element of a larger disaster risk reduction programme, States should adopt comprehensive legal, policy, and institutional frameworks and planning for disaster prevention, mitigation, preparedness, relief and recovery which take full account of the auxiliary role of their National Red Cross or Red Crescent Society, are inclusive of domestic civil society, and empower communities to enhance their own safety and resilience. States, with the support, as appropriate, of relevant regional and international organizations, should devote adequate resources to ensure the effectiveness of these frameworks.
2. These frameworks should also adequately address the initiation, facilitation, transit and regulation of international disaster relief and initial recovery assistance consistent with these Guidelines. They should allow for effective coordination of international disaster relief and initial recovery assistance, taking into account the role of the United Nations Emergency Relief Coordinator as central focal point with States and assisting humanitarian organizations concerning United Nations emergency relief operations. They should also clearly designate domestic governmental entities with responsibility and authority in these areas. Consideration should be given to establishing a national focal point to liaise between international and government actors at all levels.
3. Where necessary and appropriate, national governments should encourage other domestic actors with authority over areas of law or policy pertinent to international disaster relief or initial recovery assistance, such as provincial or local governments and private regulatory bodies, to take the necessary steps at their level to implement the Guidelines.

3.1 Legal Framework for Disaster Risk Management

3.1.1 National Policy on Disaster Management 1996

Botswana's National Policy on Disaster Management (NPDM) was approved in August 1996. The Government of Botswana recognised that Botswana was vulnerable to disasters like drought, flooding, veld fires epidemics, pest infestations, transport and industrial accidents, and chemical spills. In the NPDM, the Government of Botswana proposed a comprehensive disaster management program, which would focus on reducing the impact of future disasters, mitigating the damage of disasters on vulnerable populations, ensuring effective disaster preparedness measures were put into place for effective emergency response and recovery in the event a disaster struck.

The objectives of the NPDM are

- To establish and maintain optimum systems for dealing with disasters other than drought/famine in Botswana and to integrate these systems into normal ongoing development activities at national, district and local levels, achieving these, as far as possible, within national resource capacity.

Botswana's legal and institutional framework for DRM

- To create a framework that facilitates the preparation of plans and legislation for the effective implementation of disaster management in Botswana and its legitimacy.
- To outline the responsibilities of different personnel at different levels in the implementation of the disaster management program.
- To establish a set of working definitions for the disaster management program in Botswana.
- To ensure that the disaster management policy is consistent with policies from other sectors and the objectives of the national development plan.

3.1.2 National Disaster Risk Management Plan 2009

The National Disaster Risk Management Plan (NDRMP) was concluded in October 2009. The plan provides a framework that guides all sectors and stakeholders in preparing their own disaster risk reduction and emergency management plans. The aim of the NDRMP is to provide a framework for coordinated and proactive actions to meet existing and potential disaster risks in Botswana. The plan is developed on the foundation of the Constitution and the National Policy on Disaster Management 1996 as well as the various existing laws that address disaster risk reduction and the Hyogo Framework for Action. The guiding principles of the NDRMP are

- Building the resilience at national and community level to withstand the impact of disasters
- Safe and secure development planning which entails managing and reducing disaster risks through appropriate and precautionary development planning.
- A multi hazard approach that can enhance the effectiveness of disaster risk management planning since substantial disaster risk reduction cannot be achieved if actors of this plan only focus on few selected hazards.
- A decentralised approach to planning. This requires that disaster risk management activities be premised on a high level of decentralisation based on local initiatives, with the active participation of district and community levels as well as other actors.

3.1.3 Emergency Powers Act³⁴

In the absence of any specific legislation for disaster risk management, the declaration of disasters is currently under the Emergency Power Act. Although the Act does not contain guidelines specific to disaster induced emergency, the Act empowers the President to make emergency regulations. Consequently, whenever an emergency proclamation is made it specifies matters that may be provided for in the emergency regulation.

3.1.4 Finance and Audit Act of 1996

The Finance and Audit Act of 1996 provides for the National Disaster relief Fund (NDRF). This is the fund from which assistance to disaster victims to meet life sustenance needs such as shelter, food and provision of sanitary facilities draws from.

³⁴ Chapter 22:04 Laws of Botswana

3.1.5 Recommendation on the Need for Comprehensive Legislation for Disaster Risk Management

There is no single comprehensive legislation for DRM in Botswana. There are some pieces of legislation that address aspects of disaster relief and initial recovery, but these are fragmentary and secondary rules.

The absence of legislation to buttress and guide disaster relief planning in Botswana is a serious limitation that should be urgently addressed. Existing policy, plans and laws are fragmentary and have many gaps as will clearly emerge in the sectoral discussion in subsequent chapters.

Such a comprehensive statute is envisaged by the National Policy on Disaster management, 1996, which provides as follows:

‘The establishment of emergency powers and the declaration that a disaster has occurred and thereby the process of response has been activated are enshrined in special legislation which also gives authority to the National Disaster Plan. Such legislation sets down the requirements for disaster management in Botswana and cements the structures, mechanisms and relationships that are essential to make it function effectively. The disaster management legislation takes cognisance of aspects of disaster management contained in other legal instruments in order to avoid confusion and duplication.’³⁵

The International Federation of the Red Cross, OCHA and IPU have developed a Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, (Model Act), which may serve as a useful tool to guide the drafting of any part of such legislation specific to international response.

It should be noted that the Model Act does not provide for disaster management nationally but deals with international disaster response. Botswana does not have a comprehensive Disaster Management Act. It would therefore be necessary in drafting legislation to make provision for disaster response both nationally and internationally.

3.2 Institutional Framework for Disaster Risk Management

This institutional framework for Disaster Risk Management in Botswana is not created by legislation but by The National Disaster Risk Management Plan.

Chapter three of the National Disaster Risk Management Plan explains institutional frameworks for disaster relief management in Botswana. The NDRMP contains provisions that address coordination and operation of a response to a disaster. The NDRMP uses a committee system as described below.³⁶

³⁵ National Policy on Disaster Management at [13]

³⁶ What follows is a description of the organisation of the institutional framework for disaster response in Botswana including responsibilities of each committee as set out in Chapter three of the NDRMP.

Botswana's legal and institutional framework for DRM

3.2.1 The National Level

Office of the President

At the national level, the Office of the President (OP) bears overall responsibility for ensuring security, safety, and social and economic well-being of the citizens of Botswana. The Minister for Presidential Affairs and Public Administration oversees the implementation of national disaster risk reduction strategies, policies and programmes, including advising the President when to declare a state of disaster in terms of the Emergency Powers Act.

The Permanent Secretary for Presidential Affairs and Public Administration is the accounting officer on Disaster Risk Reduction (DRR) issues and activities. The Permanent Secretary also chairs the National Committee on Disaster Management (NCDM).

The National Disaster Management Office (NDMO)

In the Office of the President resides the National Disaster Management Office (NDMO), the organ responsible for implementation and monitoring of DRM activities in the country. Specifically NDMO is responsible for the following:

- Providing overall coordination of DRR activities in Botswana.
- Development of tools, techniques and systems to ensure effective implementation of DRM implementation for components such as hazard identification, vulnerability, and risk assessment, emergency operations in conjunction with all other levels of government, NGOs, the private sector and communities.
- Facilitation of the development and implementation of disaster risk reduction activities at sector as well as district and community levels.
- Coordinating/facilitating capacity development activities to ensure disaster resilience among all the sectors and communities in the country.
- Mobilisation of resources for disaster risk reduction and response activities.

National Committee on Disaster Management (NCDM)

The National Committee on Disaster Management (NCDM) is the principal policy formulation and coordination body in the country. It has a mandate to facilitate implementation of Disaster Risk Reduction under the guidance of the HFA National Platform for Botswana. The Secretary of the Ministry for Presidential Affairs and Public Administration chairs the NCDM. The NDMO provides secretarial support to the NCDM. Membership of NCDM includes:

1. Deputy Permanent Secretaries of all the Ministries
2. Deputy Commander of BDF
3. Deputy Commissioner of Botswana Police Service
4. Deputy Clerk of National Assembly
5. Secretary General of Botswana Red Cross Society
6. Representative of the Botswana Council of Non-governmental Organisations

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7. Representative of the Botswana Confederation of Commerce, Industry and Manpower
8. Secretary of the Rural Development Council
9. Assistant Resident Representative of the United Nations Development Programme in Botswana.

The functions and responsibilities of the Committee are to:

1. Advise the Office of The President (OP) on disaster situations requiring a declaration of a state of disaster-induced emergency.
2. Serve as a reference committee and recommend the OP for approval of the national policies, plans and strategies related to disaster risk reduction.
3. Facilitate and monitor the implementation of HFA and DRM related activities in the country and make recommendations as may be required.
4. Endorse and recommend funding for the costs related to disaster preparedness and relief.
5. Participate in emergency operations activities during a state of disaster-induced emergency, including staffing the National Emergency Operations Centre (NEOC) when activated.

NCDM members act as focal persons for DRM in their respective Ministries and take lead actions in ensuring that their Ministries integrate disaster risk reduction in their respective planning processes and operations.

The National Disaster Management Technical Committee (NDMTC)

The NDMTC is a multi-sector technical advisory body composed of professionals and specialists from various development areas. Chaired by the Director of NDMO, NDMTC provides advisory support to the NCDM and NDMO on various aspects related to disaster risk reduction.

Membership of the NDMTC may be drawn from all Ministries including Departments of Meteorological Services, Geological Surveys, Mines, Forestry and Range Resources, Factories Inspectorate, Central Transport Organisation, Information Services, Animal Health and Production, Botswana Defence Force, Botswana Police Service, University of Botswana, Botswana Red Cross Society, non-governmental organisations, community-based organisations, youth, the private sector, and a representative of the United Nations Development Programme (UNDP). Other relevant offices would be co-opted on a need basis. Secretariat support is provided by NDMO.

The functions and responsibilities of the NDMTC are

1. Advise the NDMO and the NCDM on all disaster operations, issues and activities.
2. Participate in emergency operations activities during a state of disaster-induced emergency, including staffing Emergency Operations Centers (EOC) once activated.
3. Provide technical support to the NDMO in developing and implementing DRM related activities and building of District and village level disaster management teams and stakeholders.

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4. Represent the NDMO in various forums and events as may be assigned.

Technical sub-committees of NCDM can be established on a permanent or ad hoc basis as and when necessary. They can be called upon for advice on specific issues, for example epidemics, and early warning, and damage assessment.

3.2.2 The District Level

The District (City/ Town) Disaster Management Committee (DDMC)

Each District Administration has a multi-sectoral District Disaster Management Committee (DDMC). The District Commissioner (or his representative) chairs the disaster management committee at the district/sub-district level. Though DDMC is a subcommittee of District Development Committee (DDC), DDMC may include other members who are not part of the DDC.

The terms of reference for the DDMC are:

1. Develop and implement a district Disaster Risk Management Plan, considering all hazards, vulnerability and capacity of resources required to reduce disaster risk.
2. Build capacity of all the key actors to implement Disaster Risk Management, which is inclusive of Disaster Response and Recovery.
3. Identify disaster prone geographic locations in the district and propose structural measures to reduce the risk to the District Development Committee.
4. Facilitate the preparation of community-based or Village Disaster Risk Management Plans, by providing guidance and technical support to the Village Development Committee (VDC) and other stakeholders.
5. Scrutinize project proposals from the Village level and ensure that the said projects are reducing disaster risks.
6. Prepare reports to be used in assessing drought conditions by a Drought Assessment Inter-Ministerial Committee.
7. Discuss and approve reports on drought relief implementation for submission to the Ministry of Local Government.
8. Discuss and approve reports on implementation of disaster risk management activities for submission to the DDC and NDMO.

3.2.3 The Village Level

Village Development Committees assume responsibility for coordinating disaster risk management activities in the village. The VDC chairperson is responsible for reporting to the DC/DO on matters related to disaster risk management. Under the leadership of DiKgosi³⁷ and VDC chairperson, VDC will implement following activities:

³⁷ Tribal Chiefs in Botswana are referred to as DiKgosi (singular Kgosi). In some communities the position of chief is hereditary. In some areas DiKgosi are appointed by Government in consultation with the communities. They are highly respected individuals in the community. The Government recognises their office and they play an invaluable role in local administration.

1. Prepare a community-based Village Disaster Risk Management Plan by involving all the households in the village with a consideration of traditional and indigenous knowledge of disasters and response existing in the village.
2. Develop and maintain an inventory of resources that can be mobilised within the village and another list of resources that would be required from external suppliers.
3. Support the District Administration and NDMO in organising training of village volunteers for disaster response and preparedness.
4. Coordinate with other VDCs in the district in preparing and responding to disasters.
5. Identify structural or non-structural measures to mitigate and reduce the risk of disasters in the village and in turn suggest these to the DDMC.

3.3 Coordination of Disaster Response

The National Disaster Risk Management Plan³⁸ provides that when an emergency occurs, a National Emergency Operation Centre (NEOC) is established at any suitable place. NEOC is the national level hub for overall coordination of emergency operations.

The chairperson of NCDM commands all operations of NEOC as the National Emergency Coordinator (NEC). NEC reports to the Minister who in turn informs the President of the situation.

When emergency occurs at a magnitude that can be handled at District level, the District Commissioner / Officer takes charge of operational command as the District Emergency Coordinator (DEC) reporting to the NEOC. There is no indication in the plan of who makes the determination that an emergency should be handled at district level.

Working together with emergency coordinators, an Incident Commander (IC) establishes an Incident Command Post (ICP). The ICP is established at the location or epicenter of the disaster. An Incident Commander is the most informed person of the hazard and its geographic location.

During emergency operations, government resources are at the disposal of the NEC or DEC. All sectors (Departments and assisting NGO's) are subordinate to the emergency coordinator.

3.3.1 Disaster Response at the National Level

The NDMO, with the help of NDMTC and NCDM and under the supervision of the NEC, exercises overall command of the coordination and direction of the emergency as follows:

- Activates the National Emergency Operations Centre (NEOC) ensuring staffing and maintenance requirement on a 24-hours response capacity at the EOC.
- Coordinates and directs the activities of all sectors as required for emergency response.
- Liaises with all the DEC's and DEOCs for information from districts and affected areas, and ensures DEOCs are operating around the clock.

³⁸ Chapter Five pages 27 to 47

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- Based on information and requests, mobilises and provides personnel, equipment and materials to assist affected areas.
- Undertakes preliminary surveys and impact assessments of stricken areas. This includes arrangements for aerial surveys by employing military aircrafts, chartered aircrafts or seeking external assistance with the help of the NEC.
- Disseminates information to all relevant stakeholders including the media.
- Coordinates all international assistance requested by the Minister of Foreign Affairs and International Cooperation.

3.3.2 Disaster Response at the District Level

Emergency operations will largely be implemented at the District level. The District Commissioner will assume responsibility of District Emergency Coordinator (DEC) and, working with the DDMC, will establish a District Emergency Operation Centre (DEOC) to undertake the following activities:

- Notify and advise the National Disaster Management Office or NEOC on the occurrence of a disaster and keep an active communication on the developments of the situation.
- Convene emergency response meetings with all the DDMC members including Private Sector and Non-Governmental actors.
- Mobilise all available resources from NGOs and the private sector i.e. personnel, equipment and material, as is necessary.
- Communicate with Dikgosi and VDC members to be prepared in high risk prone areas.
- Establish an Incident Command Post (ICP) for on-site coordination of operations for evacuation, relocation, search and rescue operations, first aid, and health care with the help of officials and volunteers.
- Activate Emergency Support Functions (ESFs) to provide all essential relief items i.e. water, food shelter, clothing and sanitation, as required.

3.3.3 Emergency Support Functions (ESFs)

The NDRMP provides that there are various ESFs that will be conducted by government and non-government actors.

During an emergency, various government departments and agencies are required to function in a coordinated manner. Each ESF is headed by a primary agency designated on the basis of its authorities, resources, and capabilities in the particular function area. Other agencies have been designated as support agencies for one or more activities based on their resources and capabilities with regard to supporting the functional area(s).

3.3.4 Coordination of national and international disaster relief efforts

The NDRMP does not contain any procedures for requesting international assistance for disaster relief or for ensuring coordination of international relief efforts with those

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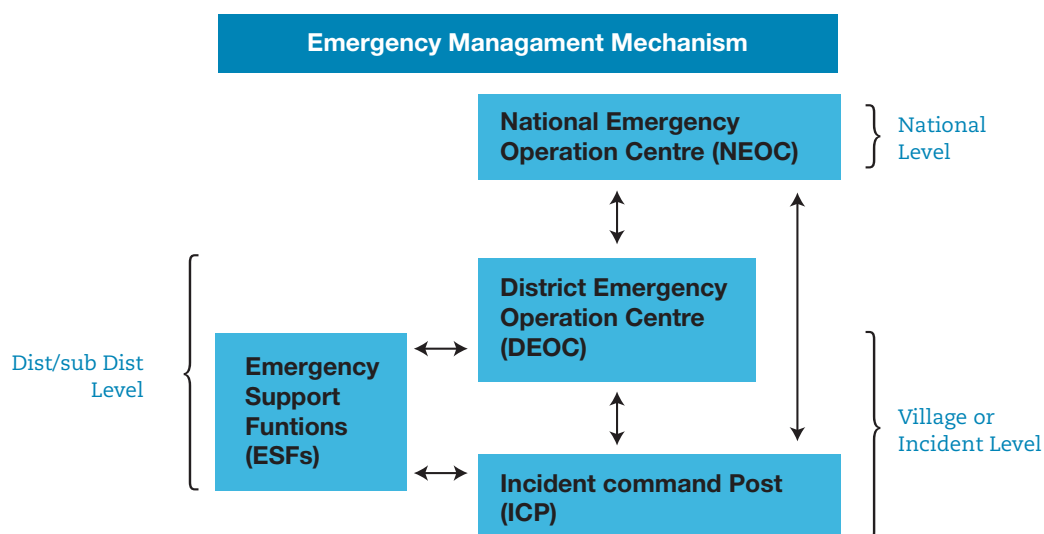


Figure 2: Emergency Support System during Response to a disaster³⁹

at national, district and village level. The NDRMP simply provides that Mutual Aid Agreements, both formal and informal may be concluded to establish relationships between Government and private agencies that pledge to assist during emergency/ disaster operations. At the time of conclusion of this report, the writer had not established if any Mutual Aid Agreements currently exist between Government and private agencies to assist in times of disaster.

3.4 The Role of the BRCS in Disaster Response

The Red Cross Society of Botswana Act of 1968 incorporated the Botswana Red Cross Society.⁴⁰ The objectives of the BRCS are assistance in health, disease prevention and mitigation of suffering in times of peace or war.⁴¹ The BRCS is recognised as a voluntary society, auxiliary to public authorities.⁴² Whilst there is no specific mention of disaster management in the Act, the recognition of the BRCS in the Act as an auxiliary to government in the provision of humanitarian assistance would reasonably be understood to include this activity as well.

The Secretary General represents the BRCS in the National Committee on Disaster Management, a high-level planning committee.⁴³ The inclusion of the BRCS in the National Committee on Disaster Management is essential for coordination of disaster relief efforts. It is noted however that there is no mention in the NDRMP of BRCS representation in Committees at the District/ City/ Town or Village levels.

³⁹ As illustrated in the National Disaster Risk Management Plan at page 30

⁴⁰ Act No. 4 of 1968. The long title of the Act provides that it is an act to incorporate the Red Cross Society of Botswana and for the protection of emblems. Section 3 creates the Red Cross Society as a body corporate in Botswana.

⁴¹ Section 4 of the Red Cross Society of Botswana Act No 4 of 1968

⁴² Section 5 Red Cross Society of Botswana Act No 4 of 1968

⁴³ See composition of National Committee on Disaster Risk Management in the National Disaster Risk Management Plan at page 11

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3.5 The Role of Domestic Civil Society

The institutional framework is also inclusive of domestic civil society. The representatives of the Botswana Council of Non-governmental Organisations (BOCONGO), the Botswana Confederation of Commerce, Industry and Manpower (BOCCIM) and the Secretary of the Rural Development Council are also members of the National Committee on Disaster Management representing local NGOs, business and the rural community respectively.

3.6 Declaration of a disaster and requests for international assistance and relief

Article 3 IDRL Guidelines: Responsibilities of Affected States

1. Affected States have the primary responsibility to ensure disaster risk reduction, relief and recovery assistance in their territory. National Red Cross and Red Crescent Societies, as auxiliaries to the public authorities in the humanitarian field, and domestic civil society actors play a key supporting role at the domestic level.
2. If an affected State determines that a disaster situation exceeds national coping capacities, it should seek international and/or regional assistance to address the needs of affected persons.
3. Affected States have the sovereign right to coordinate, regulate and monitor disaster relief and recovery assistance provided by assisting actors on their territory, consistent with international law.

3.6.1 Definition of a Disaster

A disaster is defined in the National Policy on Disaster Management as 'an event that seriously disrupts the normal pattern of activities in a given area as a result of interaction between a hazard and a human population, that results in loss of life and property, injury and economic and social hardships, as well as the possible destruction and damage to government systems, buildings, communications and essential services, that requires exceptional measures to be taken both from within the affected community and outside.'

A disaster is also described in the National Disaster Risk Management Plan as 'A serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources.'

3.6.2 Early Warning

Article 7 IDRL Guidelines: Early Warning

1. In order to minimize transboundary impacts and maximize the effectiveness of any international assistance that might be required, all States should have procedures in place to facilitate the expeditious sharing of information about disasters, including emerging hazards that are likely to cause disasters, with other States and assisting humanitarian organizations as appropriate, including the United Nations' Emergency Relief Coordinator.

The NDRMP envisions an early warning system through which information about disasters and emerging risks could be shared with other stakeholders. It is proposed that the system should include

- Forecasting and monitoring of physical indicators of hazards from a variety of sources including crop conditions, rainfall, floods and seismic reports
- Risk identification and probability of various types of hazards, their possible timing, duration, intensity and spatial spread.
- Capability for rapid integration and processing of information. Standardisation of early warning information in appropriate form and format that can be easily communicated and understood.
- Standard guidelines to DDMCs and other stakeholders on Dos and Don'ts before, during and after the disaster strikes.

Early warning should be coordinated from one centralised authority to ensure the accuracy of the information flowing between all the sectors and communities. To date there is no agency charged with the management of an early warning system as envisioned by the policy.

3.6.3 Declaration of an Emergency or Disaster

In terms of the Emergency Powers Act,⁴⁴ whenever an emergency proclamation is in force, the President may promulgate emergency regulations necessary or expedient for securing the public safety, the defence of the Republic, the maintenance of public order and the suppression of mutiny, rebellion and riot, and for maintaining supplies and services essential to the life of the community.⁴⁵

It is by the powers conferred on the President by Emergency Powers Act that regulations for the legal management of a disaster may be promulgated. No such regulations exist to date.

The process for making a declaration of a state of emergency is not detailed in the Emergency Powers Act. There are no time lines within which such a Proclamation should be made.

3.6.4 Communication and Information Dissemination

Article 18 IDRL Guidelines: Special Goods and Equipment

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

⁴⁴ Chapter 22:04

⁴⁵ Section 3(1) Emergency Powers Act Chapter 22:04

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There is no specific law in Botswana governing communications in the event of a disaster. The NDRMP provides that in the event of a severe disaster, it is quite likely that some affected districts will not be able to have access to electricity and telephone lines thus communication linkages will be disrupted.

In order to enhance the communication capacity, NDMO, in collaboration with relevant technical institutions, will establish a nationwide alternative communication network to communicate with disaster affected communities and stakeholders.

The NDRMP⁴⁶ provides that the following channels will assist in disseminating disaster related information and establishing communication with stakeholders:

- Mass Messaging Systems (SMS sent to all the cellular phone users in the country).
- Radio and Television: Botswana Television, Radio Botswana and private radio and television stations.
- Print Media: Botswana Daily News and private newspapers.
- Official websites.
- Departments equipped with communication devices (UHF, VHF radios): Botswana Police Service, DFRR and BDF as well as private information channels and other information channels.
- Community gatherings and meetings organised to communicate warnings and messages.
- Other alternative communication systems such as satellite phones, HAM radios, among others, will be used.

3.6.5 Requests for International Disaster Relief and Assistance

Article 10 IDRL Guidelines: Initiation of International Disaster Relief and Initial Recovery Assistance

1. Disaster relief or initial recovery assistance should be initiated only with the consent of the affected State and in principle, on the basis of an appeal. The affected State should decide in a timely manner whether or not to request disaster relief or initial recovery assistance and communicate its decision promptly. In order to make this decision, the affected State should promptly assess needs. Consideration should be given to undertaking joint needs assessments with the United Nations and other assisting humanitarian organisations.
2. Requests and offers for assistance should be as specific as possible as to the types and amounts of goods as well as the services and expertise available or required, respectively. Affected States may also wish to indicate particular types of goods and services likely to be offered that are not needed.
3. Affected States should make available to assisting actors adequate information about domestic laws and regulations of particular relevance to the entry and operation of disaster relief or initial recovery assistance.

⁴⁶ The contents of this section are available in the NDRMP at page 36

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The NDRMP notes that depending on the type of the emergency/disaster, external assistance from the region or further afield may be needed. It is the responsibility of the Office of the President/National Disaster Management Office to request regional or international assistance through the Ministry of Foreign Affairs and International Cooperation.⁴⁷

It is noted that the NDRMP does not indicate the criteria for making a request for international assistance. Further, there are no provisions about the acceptance of foreign offers of assistance. There is no indication of the level of detail to be included in the requests for assistance. There is no indication whether a prior declaration of an official state of emergency or disaster is required before making the request for international assistance.

There are no specific provisions about contacting the UN Emergency Relief Coordinator or any regional body nor the general humanitarian community or for assistance.

3.6.6 Notification, Activation and Cancellation of Emergency Response

The NDRMP provides that upon indication of an imminent or actual emergency/disaster, the District Commissioner/Officer (DC/DO) shall notify the National Disaster Management Office (NDMO). The NDMO can also obtain information about any situation by other sources and verify its credibility with the DC/DO. Depending on the nature, magnitude and severity of the emergency/disaster, the NDMO shall notify critical players/key personnel of agencies whose assistance will be required to coordinate the emergency response.

The NDRMP allows that notification may be done through various means, including telephone, facsimile, e-mail, and engaging a messenger to deliver the note. A telephone directory of key agencies and members of NCDM and NDMTC should be compiled as and when required, considering the nature of disaster. During the disaster response phase, dissemination of information would flow from the scene of the incident to EOCs, and to the President.

National level actors (NDMO, NCDM, and NDMTC among others) should act quickly to determine the impact of the emergency and the need for resources. They should identify, mobilise and deploy resources to support response activities in the affected area.

The National Emergency Coordinator may issue a notification cancellation to indicate that no further action is required either because the anticipated emergency/disaster did not occur or that the actual incident has been controlled.

3.7 Strengths and Gaps

Strengths identified in Botswana's legal and institutional framework are as follows:

- Botswana has a National Disaster Risk Management Policy
- Botswana has a National Disaster Risk Management Plan
- Botswana has a national focal point for Disaster Risk Management and a multi-sectoral approach to responding to disasters

⁴⁷ National Disaster Risk Management Plan at page 47

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The policy and plan ensure that Botswana has already made some strides towards disaster risk management.

Gaps identified are as follows in the legislative and institutional framework are as follows:

- Lack of legislation creating the national institutional framework necessary for Disaster Risk Management
- Lack of a single legislation for disaster risk management
- Fragmented legislative provisions for disaster risk management
- Lack of procedures in the NDRMP for coordination of international relief efforts with those on national, and district level

3.8 Recommendations

- An Act for the Facilitation and Regulation of Disaster Risk Management Act should be promulgated to form the legal basis for domestic regulation and facilitation of disaster relief and initial recovery assistance.
- As described further below, the Act should contain rules on disaster risk management nationally including creating the necessary institutional framework for disaster response.
- The Act should also contain rules for the initiation and termination of international disaster assistance, coordination and preparedness for international disaster assistance, responsibilities of assisting actors, legal facilities for eligible actors, entry of international disaster goods and equipment, legal capacity and employment currency and banking, supervision, reporting and sanctions for non-compliance of assisting actors, transit of international disaster assistance.
- Clear procedures for ensuring coordination of national and international efforts where both are in use should be included.

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A study on legal preparedness for facilitating and regulating
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Chapter 4

Legal status of foreign entities providing assistance

Legal status of foreign entities providing assistance

4.1 Diplomats and International Organisations with Diplomatic Status

Botswana law affords diplomatic immunity to diplomats. Diplomats are identified in the Diplomatic Immunities and Privileges Act⁴⁸ which provides that officers listed in the Diplomatic Immunities and Privileges (Conferment of Personal Immunities and Privileges) Order⁴⁹ shall enjoy immunity from suit and legal process and exemption from income tax.⁵⁰ Officers entitled to immunities under the Act are, as a general rule senior officers in their respective scheduled organisations, although there are a few exceptions.

Organisational immunity is afforded to scheduled organisations.⁵¹ To date, the following organisations are entitled to diplomatic immunity:

- European Economic Community
- International Committee of the Red Cross
- International Red Locust Control Organization for Central and Southern Africa
- Organization of African Unity
- Southern African Development Co-ordination Conference
- Southern African Development Co-ordination Conference Secretariat
- United Nations and every specialized agency or other organ thereof
- Commonwealth Secretariat
- The International Union for the Conservation of Nature
- The Electoral Commissions Forum of SADC Countries (ECF-SADC)

The immunities of scheduled international organisations in Botswana are⁵²

- Immunity from suit and legal process.
- inviolability of official archives and premises
- exemption or relief from taxes and rates⁵³
- exemption from taxes on the importation of goods directly imported by the organization for its official use in Botswana or for exportation, or on the importation of any publications of the organization directly imported by it
- Exemption from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by the organization for its official use and in the case of any publications of the organization directly imported or exported by it

⁴⁸ Chapter 39:01

⁴⁹ Statutory instrument 73 of 2011

⁵⁰ See part II (Immunities and Privileges of Representatives, Members of Committees, High Officers and Persons on Missions) and Part III (Immunities and Privileges of other Officers and Servants) of the second schedule to the Diplomatic Immunities and Privileges Act.

⁵¹ Section 4(a) Diplomatic Immunities and Privileges Act Cap 39:01 as read with Diplomatic Immunities and Privileges Designation of Organisations and Conferment of Immunities and Privileges Order Statutory Instrument no 72 of 2011.

⁵² Second Schedule to the Diplomatic Immunities and Privileges Act Cap 39:01

⁵³ It is not clear from the act if this includes VAT on locally purchased goods.

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- The right to avail itself, for telegraph communications sent by it and containing only matter intended for publication by the press or for broadcasting (including communications addressed to or despatched from places outside Botswana), of any reduced rates applicable for the corresponding service in the case of press telegrams.

There are no provisions in law providing immunity from criminal or civil liability to organisations or foreign personnel working in disaster emergencies unless they are entitled to such immunity under the Diplomatic Immunities and Privileges Act.

4.2 Eligibility and Registration of Foreign Disaster Relief Organisations

Article xx IDRL Guidelines, Part V

13. Facilities for Assisting States

It is recommended that transit and affected States grant, at a minimum, the legal facilities described in Part V to assisting States with respect to their disaster relief or initial recovery assistance.

14. Facilities for Assisting Humanitarian Organizations

1. Subject to existing international law, it is the prerogative of originating, transit and affected States to determine which assisting humanitarian organizations will be eligible to receive the legal facilities described in Part V with respect to their disaster relief or initial recovery assistance.
2. It is recommended that States establish criteria for assisting humanitarian organizations seeking eligibility for legal facilities. These criteria should include a showing by the organization of its willingness and capacity to act in accordance with the responsibilities described in paragraph 4 of these Guidelines.
3. Any additional requirements imposed on assisting humanitarian organizations should not unduly burden the provision of appropriate disaster relief and initial recovery assistance.
4. Determination of eligibility by the State granting the facilities should be possible in advance of a disaster, or as soon as possible after its onset. Applicable procedures and mechanisms should be as simple and expeditious as possible. They should be clearly described and information about them should be made freely available. They might include the use of a national roster, bilateral agreements or reliance upon international or regional systems of accreditation, if available.
5. Retention of the legal facilities in Part V should be made dependent on ongoing compliance with the provisions of subsection 2 of this paragraph. However, entitlement to legal facilities should not be changed arbitrarily, retroactively or without notice appropriate to the circumstances.

There are no special rules for registration of an international organisation that wishes to assist in disaster response in Botswana. As a general rule, the legal personality of an organisation is recognised under the common law provided that it can prove registration in some other jurisdiction. However, proof of registration as a legal entity, whether a company, society or other organisation, would be necessary to accessing certain legal

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facilities like opening bank accounts, connecting to utilities like water and electricity, and telecommunications. Foreign international organisations may seek registration in Botswana if they wish. They could register as

- Societies or
- Companies

4.2.1 Societies

The Societies Act defines a society as a club, company, partnership or association of 10 or more persons, whatever its nature or objects.⁵⁴ This definition excludes companies formed under the Companies Act or any other written law in Botswana as well as trade unions and political parties. The definition of a society would encompass most voluntary organisations of a humanitarian nature. These organisations are usually non-profit.

An international NGO which wishes to open a place of business in Botswana may wish to register under the Societies Act in order to access certain legal facilities like bank accounts, power, water and telecommunications facilities. It is not required to do so. Proof of registration in another jurisdiction would be sufficient.

In terms of the Botswana Societies Act, a society that is organised outside Botswana and has its headquarters outside Botswana shall, upon application, be deemed to be established in Botswana if it has an office bearer or member who resides in Botswana or if any person in Botswana manages or assists in the management of such society or solicits or collects money or subscriptions on its behalf.⁵⁵

If however the society is organized and is operating wholly outside Botswana; has no office, place of business or place of meeting is maintained or used in Botswana by such society or by any person in its behalf; has no register of all or any of the members of such society is kept in Botswana; and has no subscriptions collected or solicited in Botswana by the society or by any person on its behalf, it shall not be deemed to be established in Botswana.⁵⁶ If one of these requirements is not met then the society cannot be deemed to be established in Botswana.

It takes 14 days to register a society. Registration is against a non-refundable fee of P 500.⁵⁷

4.2.2 Companies

Some international organisations wishing to assist in disaster relief in Botswana may be incorporated as a body corporate. Body corporate include companies and close corporations. Partnerships and sole proprietorships are generally not registered. There is no specific law dealing with the registration of such companies for relief purposes in Botswana. Registration for a foreign company would therefore be under the Companies Act, 2003.

⁵⁴ Section 2 Botswana Societies Act Chapter 18:01.

⁵⁵ Section 5 Societies Act Chapter 18:01

⁵⁶ Proviso to section 5 Societies Act Chapter 18:01

⁵⁷ Information available at <http://www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Labour--Home-Affairs-MLHA/Tools--Services/Services--Forms/Registration-of-societies/>

Legal status of foreign entities providing assistance

Registration of such companies is necessary for purposes of accessing legal facilities like opening of bank accounts, and obtaining access to utilities like water, electricity and telecommunications. This is possible where the company incorporated outside Botswana applies for registration as an external company under the companies Act for purposes of “carrying on business” in Botswana.

External companies are defined in the Companies Act, 2003 as bodies corporate registered or incorporated outside Botswana.⁵⁸ External companies that have a place of business or carrying on business in Botswana are required to register in Botswana within a month of commencing their business by lodging with the registrar of companies an application accompanied by its certificate of incorporation, its constitution or memorandum and articles of association, a list of its directors and notice of the location of its registered office in Botswana.⁵⁹ Where the external company ceases to have a place of business in Botswana it shall lodge a notice with the registrar of Companies to that effect and he shall deregister the company.⁶⁰ A registered external company may own immovable property in Botswana.⁶¹

There was no indication of costs of registration of an external company and of how long it takes.

4.3 Assistance from Foreign Private Individuals and Private Sector Organizations

Article 15 IDRL Guidelines: Facilities for Other Assisting Actors

Affected States may also wish to extend, upon request, some of the legal facilities in Part V to assisting actors other than those covered by paragraphs 13 and 14, such as private companies providing charitable relief, provided this does not negatively affect operations of assisting humanitarian organizations or assisting States. Any actor receiving such facilities should be required to abide, at a minimum, by the same conditions described in paragraph 14.

The NDRMP simply provides that Mutual Aid Agreements, both formal and informal may be concluded to establish relationships between Government and private agencies that pledge to assist during emergency/disaster operations.⁶²

⁵⁸ Section 2 Companies Act, 2003

⁵⁹ Section 345 Companies Act, 2003

⁶⁰ Section 352 (2) Companies Act, 2003

⁶¹ Section 354 Companies Act, 2003.

⁶² National Disaster Risk Management Plan at page 47

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4.4 Accessing Legal Facilities in Botswana for Foreign Organisations

Article 20 IDRL guidelines: Temporary Domestic Legal Status

1. Affected States should grant relevant entities of assisting States and eligible assisting humanitarian organizations, upon entry or as soon as possible thereafter, at least a temporary authorization to legally operate on their territory so as to enjoy the rights, inter alia, to open bank accounts, enter into contracts and leases, acquire and dispose of property and instigate legal proceedings, for the purpose of providing disaster relief and initial recovery assistance.
2. Assisting States and eligible assisting humanitarian organizations should also be granted the right to freely bring the necessary funds and currencies in or out of the country through legal means and to obtain legal exchange rates in connection with their disaster relief or initial recovery assistance.
3. Affected States should allow assisting States and eligible assisting humanitarian organizations to legally hire and terminate the contracts of local personnel.

4.4.1 Bank Accounts

There are several commercial banks operating in Botswana.⁶³ The Financial Intelligence Act provides that in order to avail any person of banking services, a bank has a duty to establish and verify the identity of a customer.⁶⁴ Identification for purposes of the Act is an *Omong*⁶⁵ for citizens and a passport for non-citizens.⁶⁶

The Banking (Anti-Money Laundering) Regulations provide the following statutory checks for verification of a bank customer's names and addresses:⁶⁷

- obtaining a reference from a well-known professional, an employer of the customer, a known customer of the bank who, or a customary authority that, knows the applicant;
- in the case of non-residents, obtaining references from their foreign banks, where possible;
- making a credit reference agency search;
- requesting an original recent council rates or utility bill receipt;
- using one of the address validation or verification services on offer; or
- conducting a personal visit to the home of the applicant where appropriate, or possible.

In order to verify the identity of corporate bodies, societies and other business organisations, the law requires a bank to request the following information:⁶⁸

⁶³ Bank ABC, Barclays Bank, Bank Gaborone, Bank of Baroda, First national Bank, Standard Chartered Bank, Stanbic Bank.

⁶⁴ Section 10(1) a Financial intelligence Act Chapter 08:07

⁶⁵ National Identity Card.

⁶⁶ Section 10(3) Financial intelligence Act Chapter 08:01; Section 5 Banking (Anti – Money laundering) Regulations statutory instrument 17 of 2003.

⁶⁷ Section 6 Banking (Anti – Money laundering) Regulations statutory instrument 17 of 2003.

⁶⁸ Section 7 Banking (Anti – Money laundering) Regulations statutory instrument 17 of 2003.

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- the certificate of incorporation or equivalent, details of the registered office and the place of business from the organisations jurisdiction;
- details of the nature of the corporate body's business, the reason for the account being opened, an indication of the expected turnover, the source of funds, and a copy of the last available accounts, where appropriate;
- where there is more than one signatory to the account, satisfactory evidence of the identity of at least two signatories and, where necessary, two directors, one of whom shall be an executive director;
- a copy of the resolution of the Board authorising the account signatories;
- copies of powers of attorney, or any other authority, affecting the operation of the account, given by the directors in relation to the corporate body.

A typical list of requirements for opening a bank account for private companies includes the following:⁶⁹

- The constitution of the company or its memorandum and articles of association
- The certificate of incorporation from the country of incorporation/registration
- The list of Directors
- The physical address of the business
- Share certificates of shareholders
- A resolution authorising the opening of the account
- The directors identity documents
- The directors work and residence permits where they are non-citizens
- The latest financial statement or alternatively cash flow projections for 12 months
- A copy of a utility bill from Botswana Power Corporation, Water Utilities Corporation or a Lease Agreement for the companies physical address in Botswana
- Form 25 signed and stamped by the company secretary
- Initial deposit

A great amount of information must be provided by an organisation wishing to open an account in Botswana. This is compounded by the difficulty of having to prove a physical address in Botswana through a lease agreement or current utility bills. These requirements would pose great difficulties for immediate responders coming from abroad.

4.4.2 Ability to enter into contracts and leases

The contractual capacity of natural persons is generally assumed to exist except where it is proven not to exist by reason of minority, insanity or other legal incapacity of an individual.⁷⁰

⁶⁹ This information is obtained from the First National bank account opening information.

⁷⁰ L F Van Huyssteen, S W J Van der Merwe, C J Maxwell, Contract Law in South Africa, Kluwer international, page 109 at [209]

Legal status of foreign entities providing assistance

The capacity of an alien (foreign national) to contract may be limited by the nature of the transaction. For example, there are special provisions regarding the purchase of land by aliens in Botswana. These limitations will be considered under the next heading.

The capacity of juristic persons to enter into contracts is determined by their proper incorporation and possession of separate legal personality in terms of the law of Botswana or the law of the country of incorporation. Secondly, the capacity of juristic persons to enter into contracts is found in their founding document or constitution.⁷¹

A juristic person that has legal personality and the capacity in terms of its constitution to conclude contracts will be able to contract in Botswana. The legal personality of a juristic person not incorporated in Botswana may have to be proved by provision of the requisite documents of incorporation. Similarly, transactions like the purchase of land of foreign companies are subject to limitations under Botswana law which will be discussed below.

4.4.3 Acquire and Dispose of Movable Property

There are no restrictions to the acquisition of movable property by aliens and foreign corporations in Botswana. The acquisition and disposition of movable property would be completed through a contract of sale or lease.

4.4.4 Acquire and Dispose of Immovable Property

Land in Botswana is in three forms: tribal land which comprises 71% of the land area; freehold land which comprises about 4.2% and the remaining 25.8% being state land.⁷² The acquisition of immovable property in Botswana is a controlled transaction. Formalities regarding land transfer are found in the Deeds Registry Act⁷³ and the Tribal Land Act⁷⁴ and the State Land Act⁷⁵. There are controls on the capacity of aliens and foreign companies to own land in Botswana. It should be noted that an external company properly registered in Botswana will be treated as a citizen company for purposes of owning immovable property.⁷⁶

State land

State land is administered under the State Land Act. The Act empowers the President of Botswana to make and execute grants of any state land or of any interest therein.⁷⁷ This responsibility is delegated to the Minister. In urban areas, land rights are granted under ninety nine (99) year Fixed Period State Grant (FPSG) for residential, and fifty (50) years for commercial and industrial purposes. FPSG is a one off lease where rent is paid once on acquisition and not periodically over the lifetime of the lease. There are no statutory restrictions to the alienation of state land to aliens or foreign companies.

⁷¹ Ibid page 111 at [219]

⁷² M Adams, F Kalabamu and R White, Land Tenure Policy And Practice In Botswana -Governance Lessons For Southern Africa, Für Entwicklungspolitik(Austrian Journal Of Development Studies), Xix, 1, 2003, 55-74 at 2 .

⁷³ Chapter 33:02

⁷⁴ Chapter 32:02

⁷⁵ Chapter 32:01

⁷⁶ Section 354 as read with section 345 Companies Act, 2003.

⁷⁷ Section 3 State Land Act chapter 32:01

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Freehold land

Freehold land may be sold to aliens and foreign corporations. There are no statutory restrictions on the transaction save for usual requirements for registration under the Deeds Registry Act.

Tribal land

Tribal land is held vested in Land Boards who administer the land ‘in trust for the benefit and advantage of the citizens of Botswana and for the purpose of promoting the economic and social development of all the peoples of Botswana.’⁷⁸ The best title that a citizen of Botswana can acquire in tribal land is a long lease, usually 50 years. Most tribal land leaseholders have a certificate of Tribal land rights as their proof of ownership. A lease can be registered with the Deeds Registry.

In terms of section 23 of the tribal land act the land board may grant leases of tribal land on such terms and conditions as it may determine. One of the conditions affecting the acquisition of tribal land by aliens or foreign corporations is found in section 18 of the Tribal land regulations⁷⁹ which provides that any alienation of agricultural or horticultural land to a non-citizen must have the consent of the minister.

The acquisition of tribal land by aliens or foreign corporations in Botswana is common. However, the process is time consuming.

Short term rentals of land

Short term rental of land which does not envisage transfer of land rights from the seller to the purchaser and do not require registration with the Land Board are possible. Short term leases would be the quickest for international humanitarian organisations seeking to acquire premises or staging areas for relief services. The organisation would conclude a simple contract with the lease holder. The proposed use of the land would have to be in keeping with the terms and conditions of the leaseholder’s title.

4.4.5 Initiate Legal Proceedings

Any individual, natural or juristic can issue legal proceedings in the high court or Magistrates Court of Botswana provided they have full legal capacity.

Natural persons with no legal capacity are those “under disability”. This means individual under the age of 21 or who, by reason of age, infirmity, disability or mental disorder, is incapable of managing and administering his property and affairs.⁸⁰

The legal capacity of a juristic person to sue is dependent on their founding document or constitution from the jurisdiction of registration or incorporation coupled with a resolution by the officers of the juristic person to bring a suit.

⁷⁸ Section 10 Tribal Land Act Chapter 32:02

⁷⁹ Statutory Instrument 87 of 2006

⁸⁰ Order 7 rule 1 High Court Rules Statutory Instrument Number 24 of 2009.

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4.4.6 Bringing in foreign currency

There are no foreign exchange controls⁸¹ in Botswana and no restriction on the flow of currency through commercial institutions.⁸²

Even though there is free movement of currency in and out of the country, the country has stiff legislation to identify suspicious activity and prosecute criminal conduct. The banking (Anti-Money Laundering) Regulations⁸³ contain strict and entailed requirements for customer identification discussed above⁸⁴. Opening anonymous bank accounts or accounts in fictitious names is prohibited.⁸⁵ Banks are also required by law to keep records of all transactions, international transfers and receipts and require information on the nature and purpose of such transaction as well as report suspicious activities.⁸⁶ The proceeds of serious crime Act makes money laundering⁸⁷ and the possession of property suspected to be the proceeds of serious crime⁸⁸ offences punishable with strict custodial sentences and fines.

4.4.7 Right to Hire and Terminate Local Staff

Any alien or foreign corporation wishing to hire and terminate local staff may do so in keeping with the provisions of the Employment Act.⁸⁹ The employment act contains detailed provisions guiding the employer and employee on the formation and termination of contracts. The business organisation has to have the right to carry on business in Botswana through relevant licensing. There are no specific provisions for disaster relief organisations hiring local staff for disaster response..

4.4.8 Security

As a general rule, security of international relief workers and their organisations would be governed by ordinary laws for security of the public in Botswana. There are no special laws or regulations in this regard. Inviolability of premises of certain international organisations guaranteed by the Diplomatic Immunities and Privileges Act⁹⁰ and the Consular Conventions Act⁹¹ may limit the capacity of security services to enter upon such premises.

4.4.9 Strengths and Gaps

The strength identified is the availability of legislation governing access to legal facilities in general for any person in Botswana. The major gap identified is that accessing these provisions in a disaster situation may take inordinate amount of time and effort. There are no specific provisions regarding foreign actors offering assistance in disaster response in Botswana in the event of a disaster and the law is fragmentary.

⁸¹ Government of Botswana official website “Fact Sheet” available at <http://www.gov.bw/en/Business/Sub-audiences/Investors/Facts-and-Figures/>

⁸² The Exchange Control Act was repealed in 1999.

⁸³ Statutory instrument 17 of 2003

⁸⁴ Section 6 – 8 Banking (Anti – Money Laundering Regulations) Statutory instrument 17 of 2003

⁸⁵ Section 10 Banking (Anti – Money Laundering Regulations) Statutory instrument 17 of 2003

⁸⁶ Section 12 – 14 Banking (Anti – Money Laundering) Regulations Statutory instrument 17 of 2003.

⁸⁷ Section 14 Proceeds of Serious Crime Act Cap 08:03

⁸⁸ Section 15 Proceeds of Serious Crime Act Cap 08:03

⁸⁹ The Laws of Botswana Chapter 47:01

⁹⁰ Laws of Botswana Chapter 39:01

⁹¹ Laws of Botswana, Chapter 39:02

4.5 Recommendations

In relation to eligibility of assisting international actors for legal facilities it is recommended that

- Botswana promulgate a National Disaster Management Act in terms of which assisting international actors may apply for and be granted certificates of eligibility for legal facilities in Botswana in the event of a disaster requiring foreign assistance. The Act should provide for pre- approval and expedited approval processes.
- In this regard Chapter 5 Article 20 – 24 of the Model Act on IDRL may be instructive.

In relation to legal facilities available to eligible assisting international actors it is recommended that

- Domestic legal status of foreign organisations
- Banking: The Financial Intelligence Act should be amended to allow Eligible Actors to open bank accounts and conduct transactions with greater flexibility. This may include exemptions from provision of some of the documentation currently required under the Act, which may be time consuming and burdensome during a disaster. This may be achieved through an expedited application to the financial intelligence unit for an exemption.
- Ability to enter into contracts and leases
- Ability to acquire and dispose of property
- Right to hire and terminate local staff
- Bringing in foreign currency

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Chapter 5

Border control requirements

5.1 Customs Requirements for Disaster Relief Goods and Donated Goods

IDRL Guidelines Part V: Legal facilities for entry and operations

It is recommended that States provide the legal facilities described in paragraphs 16-24 to assisting States and eligible assisting humanitarian organizations. It is understood that the granting of these facilities will be subject to the interests of national security, public order, public and environmental health, and public morals of the concerned affected, originating and transit States. Measures to protect such interests should be tailored to the exigencies of the specific disaster and consistent with the humanitarian imperative of addressing the needs of affected communities. Where specific facilities recommended here are within the competence of authorities other than the national government, the national government should, where possible and appropriate, encourage those authorities to provide the relevant facilities to assisting States and eligible assisting humanitarian organizations.

Article 17 IDRL Guidelines: Goods and Equipment

1. With regard to disaster relief and initial recovery goods and equipment exported or imported by, or on behalf of, assisting States and eligible assisting humanitarian organizations, originating, transit and affected States should:
 - a) Exempt them from all customs duties, taxes, tariffs or governmental fees;
 - b) Exempt them from all export, transit, and import restrictions;
 - c) Simplify and minimize documentation requirements for export, transit and import;
 - d) Permit re-exportation of any equipment or unused goods which the assisting State or assisting humanitarian organization owns and wishes to retain.
2. With regard to disaster relief goods and equipment only, originating, transit and affected States should additionally:
 - a) Waive or reduce inspection requirements. Where waiver is not possible, clear relief goods and equipment rapidly and as a matter of priority, through a "preclearance" process where feasible; and
 - b) Arrange for inspection and release outside business hours and/or at a place other than a customs office as necessary to minimize delay, in accordance with the safety regulations of the affected State. Assisting States and eligible assisting humanitarian organizations should respect any routes and delivery points prescribed by the affected State.
3. In order to benefit from the facilities above, assisting States and assisting humanitarian organizations should, in accordance with agreed international standards, appropriately pack, classify and mark disaster relief and initial recovery goods and equipment, and include detailed manifests with each shipment. They should additionally inspect all such goods and equipment to ensure their quality, appropriateness for the needs in the affected State, and conformity with the national law of the affected State and international standards.
4. Assisting States and eligible assisting humanitarian organizations should assume responsibility for removing or disposing of any unwanted and unused relief and initial recovery goods, particularly if they may pose a threat to human health or safety, or the environment.

Border control requirements

Article 21 IDRL Guidelines: Taxation

Affected States should provide exemptions to assisting States and eligible assisting humanitarian organizations from value-added and other taxes or duties directly associated with disaster relief and initial recovery assistance.

5.1.1 Customs duty on goods imported to the relief of distress of persons in case of famine or national disaster

In terms of the Customs and Excise Duty Act⁹² goods imported for the relief of persons in case of famine or other national disaster are entitled to a rebate of full duty. The importation of such goods is subject to a certificate issued by the Permanent Secretary, Ministry of Trade and Industry and to any conditions as may be agreed upon by the government of Botswana, South Africa, Lesotho, Swaziland and Namibia (the states party to the Southern African Customs Union (SACU)).

Goods imported under this rebate item may not be sold or disposed of under this rebate item or removed into the territory of SACU states without the permission of the Permanent Secretary, Ministry of Trade and Industry.

The individual applying for a rebate for such goods must fill in Form CE110 – certificate for the importation of goods under 412.11 of the Customs and Excise Duty Act⁹³ and attach an inventory, a bill of lading or air way bill, the name of the vessel carrying the goods, the place of discharge of the goods, the date of arrival, and the purpose of importation. Botswana Unified Revenue Service (BURS) will then approve the goods for a rebate on duty.

5.1.2 Customs duty on donated goods

The Customs and Excise Duty Act⁹⁴ provides that goods (excluding foodstuffs and clothing) forwarded free, as a donation to any educational organisation, hospital (including a clinic, religious organisation or sporting organisation), are entitled to a rebate of full duty. In order to obtain an exemption from duty in terms of this provision, the act requires that the organisation to which the goods have been donated apply for a permit from the Permanent Secretary of the Ministry of trade and industry. Such applications are received and handled by the Department of International Trade. There are no restrictions on the nature of organisation that may apply for a permit.

The permit may be issued provided

- it will not have a detrimental effect on the local industry
- the applicant and persons responsible for distribution of the goods furnishes an undertaking that the goods are for the use of the organisation or for free distribution and
- The goods will not be sold, leased, hired or disposed of for gain without the duty that has been rebated being paid to the commissioner and

⁹² Rebate item 412.11, 4th schedule to the Customs and Excise Duty Act Chapter 50:01

⁹³ This form is attached to the report as annex 4

⁹⁴ Rebate item 405.04, 4th Schedule to the Customs and Excise Duty Act Cap 50:01

Border control requirements

- No donation or counter-performance may be accepted by anyone in respect of such goods.

Once the Permanent Secretary issues a permit, the permit should be presented to the Botswana Unified Revenue Service (BURS). The applicant must then apply for an exemption of the goods under Schedule 4 of the Customs and Excise Duty Act by completing the *Certificate for the Exemption of Goods under Schedule No. 4 and 6 of the Customs and Excise Duty Act*⁹⁵. In this application the applicant details the nature of the goods, the quantity, the value, the vessel carrying the goods and the port of entry and then applies for a rebate of duty. The application must be made by the head of the organisation seeking the rebate. Once the exemption is granted, the goods are released to the applicant. BURS report that this process usually takes 1 day.

5.1.3 Other Government Taxes

Value added tax is charged under the Value Added Tax Act⁹⁶ on the supply of goods or the provision of services by a vendor in the course of doing business or on the importation of goods and services by any person. The current rate of VAT is 12 %. Taxpayers with an annual turnover of P 500 000 must register for VAT.

In terms of the third schedule to the Value Added Tax Act, donations⁹⁷ and goods imported for the relief of distress of persons in cases of famine or other national disaster⁹⁸ are exempt from value added tax.

5.1.4 Strengths and gaps

The current legal framework reveals the following strengths:

- Tax exemption for items imported for the purpose of relief assistance is possible to obtain, and paperwork for applying for a tax exemption is simple and fast.
- An application can be made before the anticipated consignment has arrived
- Donated goods are exempt from all taxes.
- Goods imported for the purpose of relief in a national disaster can be approved for rebate of duty.

Gaps identified are:

- There appears to be no provision for a single permit covering multiple consignments of goods arriving in large volumes over a long period of time. Multiple applications for tax exemption permits would become cumbersome in the long term.
- There is no exemption from VAT for goods and services locally purchased sourced by humanitarian organisations.

Further, there are no specific provisions regarding certain issues that are key in international disaster relief:

⁹⁵ This form is attached as annex 5

⁹⁶ Chapter 50:03

⁹⁷ Schedule 2 section 2(j) Value Added Tax Act Chapter 50:03

⁹⁸ Goods falling under rebate item 412.11 under schedule 4 of the Customs Excise Act Chapter 50:01 that is goods imported for the relief of persons in distress in cases of famine or other national disaster

Border control requirements

- waiver of storage fees pending clearance
- reduction of import, transit or export restrictions during disaster settings
- priority clearance for relief goods and equipment
- clearance outside normal working hours and outside customs premises
- re-exportation of equipment and unused goods
- Disposition of unused humanitarian goods.

5.1.5 Recommendations

It is recommended that

- a Disaster Risk Management Act be promulgated, containing provisions governing the entry of international disaster goods and equipment into Botswana.
- In the alternative, provisions governing the entry of international disaster goods and equipment into Botswana may be placed in the Customs and Excise Duty act.

In particular, the proposed act should legislate for the following:

- The rapid importation of consignments of goods and equipment and priority treatment in the event of a national disaster. [see article 29 Model Act on IDRL]
- Exemption of relief consignments from all duties and taxes and restrictions [see article 32 Model Act on IDRL]
- Extended hours for customs during the disaster relief period only [see article 34 Model Act on IDRL]
- Waiver where possible of inspections and customs security in disaster relief periods only. [See Article 35 Model Act on IDRL]
- Provide for agreements with eligible actors for prepositioning of stocks and preparation for potential disasters [See article 36 Model Act on IDRL]
- Provide for disposition or donation of equipment and unused goods and re-exportation of goods and equipment by eligible actors [see articles 42, 43 and 44 Model Act on IDRL]

5.2 Telecommunications Equipment

Art 18(2) IDRL Guidelines: Telecommunications

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

Border control requirements

The Telecommunications Act⁹⁹ provides that no person shall provide a telecommunications service unless he has a licence from the Botswana Telecommunications Authority (BTA).¹⁰⁰ It also requires a valid licence from BTA to operate a telecommunications system.¹⁰¹ It is possible, on application to BTA to obtain an exemption from these requirements.¹⁰² It is not clear in the Act under what conditions such an exemption would be granted.

The Act requires a licence to possess or operate a radio communication network, to possess or operate radio communication equipment whether in assembled or unassembled form or to erect a radio communication network.¹⁰³ The BTA may exempt a person from this provision by regulation.¹⁰⁴ Sale of radio communications equipment to persons who have no licence is prohibited.¹⁰⁵

There is no specific provision dealing with the importation of telecommunications equipment for purposes of disaster relief. It may be argued that telecommunications equipment may be imported under rebate item 412.11, schedule 4, Customs and Excise Duty Act, which covers goods imported for the relief of distress of persons in cases of famine or national disaster. However, permission to use imported telecommunications equipment would still be required.

Given the strict control of access to and use of telecommunications equipment in Botswana, it is recommended that specific rules be promulgated to cater for the importation of telecommunications equipment as part of a disaster relief operation.

5.2.1 Recommendations

It is recommended that

- a clause providing for the importation and use of telecommunications equipment during a disaster relief operation be included in an act for the facilitation and regulation of international disaster relief and initial recover assistance.
- Alternatively, the Telecommunications Act should be amended to make provision for such a clause. The clause should make provision for the following:
 - Importation of telecommunications equipment by Eligible Actors for the purpose of international relief operations without restrictions except as required for purposes of national security or public order
 - Notification of the band, frequencies and location intended for use of such equipment
 - Waiver of licence requirements and fees
 - Priority of Eligible Actors over domestic users with the exception of security forces, ambulance services and other domestic emergency responders, in access to bandwidth frequencies and satellite use for telecommunications and data transfer in disaster relief operations.

⁹⁹ The Laws of Botswana Chapter 77:03

¹⁰⁰ Section 27(1) Telecommunications Act Chapter 77:03

¹⁰¹ Section 28 (1) Telecommunications Act Chapter 77:03

¹⁰² Section 27(3) e and section 28(2) Telecommunications Act Chapter 77:03

¹⁰³ Section 42 Telecommunications Act Chapter 77:03

¹⁰⁴ Section 42(3) telecommunications Act Chapter 77:03

¹⁰⁵ Section 44 telecommunications Act Chapter 77:03

Border control requirements

- A specific exemption from customs duties and VAT for telecommunications equipment imported into Botswana for the purpose of disaster relief operations.

In this regard, see article 37 Model Act on IDRL and the Tampere Convention whose provisions may be domesticated in recommended legislation.

5.3 Importation of Food

Article 18(4) IDRL Guidelines: Importation of Food

Originating, transit and affected States should consider whether normal requirements regarding fumigation, prohibitions, and restrictions on food imports and exports by assisting States and eligible assisting humanitarian organizations in disaster relief operations can be modified or reduced.

BURS advise that the importation of food for disaster relief would be possible under rebate item 412.11 and would follow similar procedures as those required for other goods imported for disaster or famine relief. If unused food were to be disposed of by sale after the disaster relief period, the rebated duty would have to be paid to BURS. There are no provisions regarding the re exportation of unused food.

The Food Control Act does not contain any provisions on the importation of food for disaster relief. The act is promulgated for the purpose of ensuring provision of clean, safe and wholesome food to customers. The act does envisage the promulgation of regulations to control the importation or exportation of food to ensure compliance with the Act¹⁰⁶ and to exempt any food from all or any of the provisions of the Act and prescribing the conditions of any such exemption.¹⁰⁷ To date no regulations under there two provisions have been promulgated.

5.3.1 Recommendations

It is recommended that a new set of regulations to the Food Control Act be promulgated to allow for

- expedited approval of food imported by eligible actors in a disaster relief operation
- the extent to which normal restrictions for safeguarding clean safe and wholesome food may be modified in order to expedite delivery of food for disaster relief
- pre-approval procedures for eligible actors who wish to import food consignments
- list of prohibited food items that may not be imported under the disaster relief regulations
- list if import specifications of potential disaster relief food.

In the alternative, these provisions may be promulgated in a Disaster Risk Management Act.

¹⁰⁶ Section 13 (h) Food Control Act Chapter 65:05

¹⁰⁷ Section 13(p) Food Control Act Chapter 65:05

Border control requirements**5.4 Rescue Dogs**

Botswana has no specific law dealing with the importation of rescue dogs. Botswana's laws deal generally with the importation of animals. In terms of the Diseases of Animals Act¹⁰⁸ no person shall import or export any animal without the consent of the Director of Veterinary services.

The Director may direct that any imported or exported animal be held in a quarantine station and subjected to such tests, inoculation, treatment or dipping, for such time as he may direct.¹⁰⁹ Liability or the costs of quarantine, testing and treating the animal must be borne by the owner of the animal.¹¹⁰

5.4.1 Recommendations

It is recommended that a new set of regulations to the Diseases of Animals Act be promulgated to allow

- specific exemptions for rescue dogs from quarantine requirements (subject to particular safeguards)
- conditions and documentation required for import
- expedited clearance procedure and
- waiver of fees.

In the alternative, these provisions may be promulgated in a Disaster Risk Management Act.

5.5 Medicines**Article 18(3) IDRL Guidelines: Importation of medicines**

Originating, transit and affected States should reduce legal and administrative barriers to the exportation, transit, importation and re-exportation of medications and medical equipment by assisting States and eligible assisting humanitarian organizations or on their behalf in disaster relief and initial recovery assistance, to the extent consistent with public safety and international law. Assisting States and eligible assisting humanitarian organizations should take all reasonable steps to ensure the quality, appropriateness and safety of any such medications and equipment and in particular:

- a) Any medications they import should be approved for use in the originating and affected State;
- b) Medications they use in their own operations should be:
 - i) transported and maintained in appropriate conditions to ensure their quality and;
 - ii) guarded against misappropriation and abuse.

¹⁰⁸ Section 6, chapter 37:01

¹⁰⁹ Section 7(2) Diseases of Animal Act 37:01

¹¹⁰ Section 7(3) Diseases of Animals Act 37:01

Border control requirements

- c) Any medications they donate for use by others in the affected State should be:
- i) at least twelve months from their expiration date upon arrival, unless otherwise agreed by receiving authorities;
 - ii) transported and maintained in appropriate conditions to ensure their quality until they reach the affected State; and
 - iii) appropriately labelled in a language understood in the affected State with the International Non-proprietary Name or generic name, batch number, dosage form, strength, name of manufacturer, quantity in the container, storage conditions and expiry date.

The import, export and distribution of drugs in Botswana is controlled by legislation. Importation and exportation of drugs is reserved to Central Medical Stores – a government department – and persons licensed to import or export drugs by the Director of Health Services.¹¹¹ There are no provisions on the importation of drugs for disaster relief purposes. However, the Minister does have the power to promulgate regulations for the control and regulation of the manufacture, import, export, distribution and sale of drugs.¹¹²

BURS advise that the importation of medicines for disaster relief would be possible under rebate item 412.11 and would follow similar procedures as those required for other goods imported for disaster or famine relief. Permission to use such imported medicines would still have to be obtained. If unused medicines are to be disposed of by sale after the disaster relief period, the rebated duty would have to be paid to BURS.

5.5.1 Strengths and Gaps

Strengths identified in the area of medicines are:

- The importation of drugs into Botswana is regulated by law
- The minister has power to promulgate regulations regarding import of drugs which could be used to provide for importation of drugs and giving of necessary permissions for use of drugs in a disaster

Gaps identified are:

- There are neither provisions regarding the quality, appropriateness and safety of medications or equipment imported for disaster relief nor any provisions regarding the re-exportation of such supplies.
- There are no provisions regulating import and use of drugs by humanitarian actors.

5.5.2 Recommendations

In relation to medications, it is recommended that a new set of regulations to the Drugs and Related Substances Act be promulgated to allow for:

- Eligible actors to import and use medication and medical equipment for purposes of disaster relief operations

¹¹¹ Section 7, Drugs and Related Substances Act Chapter 63 :04

¹¹² Section 21(d) Drugs and Related Substances Act Chapter 63 :04

Border control requirements

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- That medications and medical equipment imported shall be appropriate for the needs of the country. That medication for direct use by the Eligible Actor in a disaster relief operation be transported and maintained by that eligible actor and guarded by the Eligible actor from misappropriations and abuse
- That medications donated for use be at least twelve months from their expiry date on arrival, be transported by the eligible actor to their destination in order to ensure their quality and that such medications be appropriately labelled.
- In this regard see Article 38 Model Act on IDRL
- In the alternative, these provisions may be promulgated in a Disaster Risk Management Act.

5.6 Importation of Vehicles

Article 18(1) IDRL Guidelines: The importation of vehicles

Affected States should grant temporary recognition to foreign registration and plates with regard to vehicles imported by assisting States and eligible assisting humanitarian organizations or on their behalf in disaster relief and initial recovery assistance.

BURS advise that the importation of motor vehicles that would be used in event of a disaster would be possible under rebate item 412.11. The vehicles would be imported under a full duty rebate. The procedure would follow similar procedures as those required for other goods imported for disaster or famine relief.

There are no special provisions regarding registration of such vehicles during the disaster relief period. There are no special provisions for the registration of foreign registered vehicles assisting in disaster relief and initial recovery.

In terms of the Road Traffic Act¹¹³, all vehicles owned or possessed in Botswana must be registered.¹¹⁴ In order to register a vehicle imported into Botswana the owner of the vehicle satisfies the licensing officer

- that the vehicle has been lawfully exported from its country of origin or the country in which it was last registered; and
- that the vehicle has been lawfully imported into Botswana, and by producing documentary evidence, in the form of a customs clearance certificate issued by the Department of Customs and Excise, that the vehicle has been cleared from customs control.¹¹⁵

In terms of the Customs and Excise Act, evidence of customs clearance of an imported vehicle is form CE 109. Form CE 109 must be provided to the Department of Transport for registration of an imported vehicle. It is unclear whether Customs would issue out form CE 109 in respect of vehicles imported under rebate item 412.11 to aid in disaster relief operations. The preferred course would be to exempt such vehicles from registration. Section 15 of the Road Traffic Act does authorise the minister to promulgate

¹¹³ Chapter 69:01

¹¹⁴ Section 6 Road Traffic Act Chapter 69:01

¹¹⁵ Section 10 Road Traffic Act Chapter 69:01

Border control requirements

regulations exempting any vehicle from registration. There are no regulations to this effect to date.

If the vehicles were to be sold, the rebated duty would have to be paid to BURS. There are no provisions governing the re-exportation vehicles after the disaster relief period.

5.6.1 Recommendations

In relation to the registration of motor vehicles, it is recommended that

- regulations to the Road Traffic Act be promulgated to exempt vehicles imported for disaster relief and initial recovery from registration. Alternatively, such a provision may be included in a Disaster Risk Management Act.

5.7 Entry permits and Visas

Article 16 IDRL Guidelines: Personnel

1. With regard to disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations, affected States should:
 - a) Grant visas and any necessary work permits, ideally without cost, renewable within their territory, for the time necessary to carry out disaster relief or initial recovery activities;
 - b) In disaster relief operations, waive or significantly expedite the provision of such visas and work permits;

Generally, visitors to Botswana are authorised to enter and remain in the country for a period of 90 days as visitors.

Citizens of some countries require visas to enter Botswana. Where a visa is required, an application would have to be made before entry into the country. It usually takes 7 days to obtain a visa.¹¹⁶

The Immigration (Visa) Regulations provide for three types of visa: the continuous visa, the transit visa and the ordinary visa.¹¹⁷ Immigration laws in Botswana do not have any special provisions providing for visas to facilitate entry of disaster relief personnel.

5.7.1 Recommendations

It is recommended that

- a new type of visa – the “disaster visa” – be created under the Immigration Act

¹¹⁶ Citizens from the following countries do not require visas to enter Botswana: all Commonwealth countries (except for Bangladesh, Ghana, India, Nigeria, Pakistan and Sri Lanka), Argentina, Austria, Belgium, Brazil, Bulgaria, Chile, Czech Republic, Costa Rica, Croatia, Denmark, Dominican Republic, Estonia, Federal Republic of Germany, Finland, France, Greece, Holy See, Iceland, Israel, Italy, Japan, Latvia, Liechtenstein, Luxembourg, Mexico, Monaco, Netherlands, Norway and Colonies, Paraguay, Peru, Poland, Portugal, Republic of Ireland, Romania, Russian Federation, San Marino, Slovak Republic, Slovenia, South Korea, Spain, Sweden, Switzerland, United States of America, Uruguay, Venezuela, Zimbabwe. Information on visas to enter Botswana available at <http://www.gov.bw/Ministries--Authorities/Ministries/Ministry-of-Labour--Home-Affairs-MLHA/Tools--Services/Services--Forms/Requirements-for-VISA-application/> (accessed 28 February 2013)

¹¹⁷ Statutory Instrument 15 of 2009

Border control requirements

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- That the disaster visa be issued without fee, at the point of entry for the disaster relief and initial recovery period subject only to national security and public health limitations to employees of eligible actors properly accredited under the proposed Disaster Risk Management Act.
- It is recommended that holders of disaster visas be allowed to undertake disaster relief and initial recovery work for their sponsoring entities during the disaster relief and initial recovery period without the requirement to seek a separate work or residence permit.
- Article 25 of the Model Act on IDRL provides a useful precedent for the proposed disaster visa.

5.8 Work Permits and Exemption Certificates

Article 16 IDRL Guidelines: Personnel

1. With regard to disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations, affected States should:
 - a) Grant visas and any necessary work permits, ideally without cost, renewable within their territory, for the time necessary to carry out disaster relief or initial recovery activities;
 - b) In disaster relief operations, waive or significantly expedite the provision of such visas and work permits;

Persons entering the country as visitors are not authorised to take up a contract of employment.¹¹⁸ Any foreigner employed or self-employed in Botswana is required to hold a work permit. According to the Ministry of Labour and Home Affairs, it takes 30 days to obtain a work permit, but in practice, the waiting period can be significantly longer. In order to obtain a work permit, the applicant will have to provide the following information

- Proof of a job advert
- Submission of original advert should include qualification, experience, employer's address and contact numbers and the closing date.
- Advert should circulate for a minimum of 14 days.
- Advert should not be older than 6 months
- Within the 14-day circulation, applications are only open to Botswana citizens.
- Contract of employment.
- Application letter for employment.
- Letter of offer/appointment letter
- Curriculum vitae (CV).
- Certified copies of certificates (all certificates in foreign languages must be translated to English)

¹¹⁸ Section 4 Employment of Non-Citizens Act Chapter 47:02

Border control requirements

- Medical report
- Certified copies of a valid passport (Passport copies should reflect applicant's picture, passport number, and expiry date)
- Passport size photos.

Medics, nurses, extra-heavy duty drivers, accountants and pilots will require further clearance from statutory professional bodies in order to work in Botswana. These requirements are standard for local entities and foreign employers that have a presence in the country.

Some institutions have been provided with exemptions from the requirement to apply for work permits for their employees. The institutions qualifying from exemptions are gazetted. Persons entitled to exemptions must still apply for an exemption certificate. These typically take a shorter time than the one month required for a work permit. The requirements for an exemption certificate are

- Certified copy of a contract
- Support/covering letter from employer
- Certified copy of a passport
- Two identical recent passport size photos(not computer generated)
- Certified copy of Marriage Certificate (if married)
- Certified copy of Birth Certificate for children
- Admission letters from school for children

Applying for a work permit or an exemption certificate as well a renewal of both costs P1500 (approximately USD 183.60). The work permit or exemption certificate will last the duration of the contract, usually two, three or five years and is renewable in a similar manner.¹¹⁹

In terms of section 23 of the Employment of Non-Citizens Act¹²⁰, the Commissioner of Labour is authorised, where he is of the opinion that an emergency exists which required the immediate employment of a non-citizen to order that the provisions of section 4 shall not apply to that non-citizen for a period and under such condition as he deems fit. The Commissioner of Labour may make this order orally or in writing.

5.8.1 Strengths and Gaps

It is a notable strength that the Immigration (Visa) Regulations provide for the waiving of the requirement for a work permit in emergency situations orally or in writing. This provision could be relied on in disaster relief and initial recovery period to enable employees of eligible actors to respond quickly.

The gap identified is the absence of any specific arrangements for emergency responders.

¹¹⁹ Information on work permits and exemption certificates obtained from <http://www.gov.bw/Ministries--Authorities/Ministries/Ministry-of-Labour--Home-Affairs-MLHA/Tools--Services/Services--Forms/Application-for-work-permit/> (accessed 28 February 2013)

¹²⁰ Chapter 47:02

5.8.2 Recommendations

It is recommended that holders of the proposed disaster visa (see section 5.7.1) should be exempt from the requirements to apply for a work permit provided they are international personnel of Eligible Actors.

5.9 Recognition of Professional Qualifications of Foreign Personnel

Article 16 IDRL Guidelines: Personnel

1. With regard to disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations, affected States should:
 - c) Establish expedited procedures for temporary recognition of professional qualifications of foreign medical personnel, architects, and engineers, drivers licences and other types of licenses and certificates that are necessary for the performance of disaster relief or initial recovery functions and that have been certified as genuine by the concerned assisting State or eligible assisting humanitarian organization, for the time necessary to carry out disaster relief or initial recovery activities;

The recognition of qualifications of doctors, nurses and paramedics, engineers and architects is regulated at the national level in Botswana. The Health Profession Act¹²¹ exists to regulate and control the practice of medicine, dentistry, pharmacy and allied health professions, and for matters connected and associated therewith. The Health Profession Act creates the Botswana Health Professions Council which has as one of its functions the registration of health professionals. Section 9(1) provides that no person shall practise as a medical practitioner, dentist, pharmacist, intern or as a member of an allied health profession unless he is registered as such with the Botswana Health Professions Council. The Health Profession Act does allow for registration of itinerant medical practitioners in “very exceptional circumstances” under section 9(3).

The nursing profession is regulated by the Nursing and Midwifery Act of Botswana. The Nursing and Midwifery Act¹²² establishes that Nursing and Midwifery Council of Botswana, which maintains registers of practicing nurses and midwives. In terms of section 10 of the act, no nurse or midwife may practise in Botswana without registration. There is no provision for emergency registration. The Minister does have power under section 12 to make regulations in terms of this Act. This provision could be relied on to make some provision for emergency registration of nurses and midwives in a disaster relief and initial recovery period.

Architects are regulated under the Architects Registration Act¹²³. The Act provides for the registration of architects and the regulation of the practise of architecture. There is provision for temporary registration of non-resident architects who are in Botswana in connection with specified work under section 25. Registration is at a fee. The temporary registration does not envisage disaster relief or initial recovery situations. The Minister does have power under section 51 to make regulations in terms of this Act. This provision could be relied on to make some provision for emergency registration of architects in a disaster relief and initial recovery period.

¹²¹ Chapter 61:02

¹²² Chapter 61:03

¹²³ Chapter 61:06

Border control requirements

Engineers are regulated under the Engineers Registration Act¹²⁴ which provides for the registration of engineers and the regulation of the practice of engineering. Section 9 provides for temporary registration of engineers who are non-resident in Botswana in connection with a specified piece of work. This registration is at a fee and makes no provision for registration for disaster relief or initial recovery assistance. The Minister does have power under section 20 to make regulations in terms of this Act. This provision could be relied on to make some provision for emergency registration of Engineers and midwives in a disaster relief and initial recovery period.

5.9.1 Strengths and Gaps

Strengths identified are that the Health Professions Act, the Architects Registration Act, and the Engineers Registration Act do make provision of the registration for temporary registration. These clauses could be used in an emergency to recognise qualifications of these professionals for disaster relief and initial recovery periods.

Gaps identified are that there are no provisions for emergency registration of nursing professionals under the relevant statute. Further, there may be a need to establish pre qualification procedures for temporary recognition of professional qualifications of foreign medical personnel, architects, and engineers and other types of licenses and certificates that are necessary for the performance of disaster relief and initial recovery functions certified by the assisting state or eligible assisting humanitarian organisation.

5.9.2 Recommendations

Article 26 of the Model Act on IDRL provides that eligible assisting actors wishing to deploy their international personnel for disaster relief and initial recovery assistance should certify the validity of their qualifications. This provision also provides for pre-qualification systems and expedited procedures for emergency review of qualifications.

It is recommended that the recognition of foreign professional qualifications be provided for in a Disaster Risk Management Act in line with Article 26 the Model Act on IDRL.

Alternatively recognition of foreign professionals for disaster relief or initial recovery could be achieved through the promulgation of regulations in line with Article 26 of the Model Act on IDRL to the Nurses and Midwives Act, the Architects Registration Act and the Engineers Registration Act.

5.10 Income Tax

Both resident and non-residents are taxed on Botswana sourced income. Tax rates differ for residents and non-residents. To be resident in Botswana one must reside for a period of 183 days or more in any given tax year. Taxable income in Botswana is income from employment, business, passive income and capital gains. Tax rates are progressive up to 25%.¹²⁵

¹²⁴ Chapter 61:08

¹²⁵ Available at http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Taxation%20and%20Investment%20Guides/2012/dttl_tax_highlight_2012_Botswana.pdf

Border control requirements

5.10.1 Recommendations

In terms of section 38 of the Income Tax Act¹²⁶, provides for exemptions of some persons from income tax. This exemption is presumably because these emoluments are taxed in the person's country of origin.

It is recommended that the salary and emoluments of international personnel of assisting international actors be exempt from income tax. This can be achieved by including such a category to the second schedule to the Income Tax Act.

¹²⁶ Parts I and II of the Second Schedule to the Income Tax Act Chapter 52:01

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Chapter 6

Transport during a disaster

Article 19 IDRL Guidelines: Transport

1. Originating, transit and affected States should grant, without undue delay, permission for the speedy passage of land, marine and air vehicles operated by an assisting State or eligible assisting humanitarian organization or on its behalf, for the purpose of transporting disaster relief or initial recovery assistance and, ideally, waive applicable fees.
2. In particular, permission should be granted for overflight, landing and departure of aircraft. Such aircraft should also be authorized to operate within the territory of the affected State as required for the delivery of assistance.
3. Any applicable exit, transit and entry visas for the operating personnel of such transport vehicles should be promptly issued.

6.1 Air Transport

The 2011 Civil Aviation Act¹²⁷ regulates air transport in Botswana. The Civil Aviation Act has no specific provisions for the overflight, landing and departure rights and fees for aircraft bearing relief goods. It does have provisions that may be used to facilitate relief flights.

In particular, the minister has power in terms of section 89(1) to make regulations for the implementation of the Act. Section 89(2) xxi provides that the minister may make regulations

“giving effect to, and carrying out, the provisions of the Chicago Convention, as amended from time to time”

Botswana is party to the Chicago Convention on International Civil Aviation, Annex 9 which provides that states party are to facilitate the entry into, departure from and transit through their territories of aircraft engaged in relief flights performed for or on behalf of international organisations recognised by the United Nations or by or on behalf of the states themselves¹²⁸ and that member states shall ensure that personnel and articles arriving on relief flights are cleared without delay.¹²⁹ Section 89(2) xxi effectively domesticates the Chicago convention in Botswana. However, to date though there have been no regulations promulgated to give effect to the Convention.

The provisions of section 90 and 91 of the Civil Aviation Act may also be utilised for the facilitation of relief flights. Section 90(1), 90(2) and 90(3) allow the minister to exempt to exempt any person, aircraft, aerodrome, aviation facility or service, from application of any regulations, bye-laws, requirements, directives, notices or information made or issued under this Act, if the exemption is in the public interest and is not likely to affect aviation safety. The exemption and any regulations associated with it must be published in the Government gazette.

¹²⁷ Chapter 71:01

¹²⁸ Excerpt from article 8.8 Annex 9 to the Convention on International Civil Aviation of 1944, 12th Edition, July 2005 available at <http://www.ifrc.org/Docs/idrl/I275EN.pdf>

¹²⁹ Excerpt from article 8.9 Annex 9 to the Convention on International Civil Aviation of 1944, 12th Edition, July 2005 available at <http://www.ifrc.org/Docs/idrl/I275EN.pdf>

Transport during a disaster

It is possible for the Minister to issue such an exemption without publication in the gazette where it would be impractical or temporarily inappropriate to require compliance with particular legal requirements, directives, notices or information. Such a waiver could be issued under section 90(4).

In terms of section 91, the Minister also has power in times of great national emergency to regulate or prohibit the navigation of all flights over Botswana and to order that aviation infrastructure in the country be placed at the disposal of the minister.

Whilst section 90 and 91 do not deal directly with relief flights, these provisions would be readily available for implementation in disaster relief and initial recovery period.

6.2 Strengths and Gaps

The strengths identifiable in air transport are as follows:

- Section 89(2) xxi Civil Aviation Act provides that the Minister may promulgate regulations to give effect to the Chicago convention facilitation relief flights.
- Further section 90 and 91 of the Civil Aviation Act does contain provisions allowing the Minister to waive compliance with laws, directives, notices where it is in the public interest.

The gaps identified in this area are

- The absence of requisite regulations in terms of section 89(2) xxi of the Civil Aviation Act dealing with relief flights
- Fragmentary legislation.

6.3 Recommendations

It is recommended that:

- Regulations in terms of section 89(2) xxi of the Civil Aviation Act be promulgated to give effect to the provisions of the Chicago Convention facilitating relief flights.
- It is recommended that a single comprehensive legislation for disaster risk management be enacted with specific provisions for air transport during a disaster relief and initial recovery period. Articles 45, 46 and 47 of the Model Act on IDRL would be instructive in this regard.

6.4 Land Transport

The law governing land transport in Botswana is the Road Traffic Act.¹³⁰ The Act provides for the licensing of motor vehicles and drivers of motor vehicles. There are no special rules or exceptions for licensing of motor vehicles carrying disaster relief goods, or for drivers of such vehicles.

With regard to validity of foreign driver's licences, Section 11 (1) of the Road Traffic Regulations provides that a driver's licence issued in a foreign country will be valid for

¹³⁰ Chapter 69:01

Transport during a disaster

90 days in Botswana provided it is in English, or is accompanied by an official translation. The licence must also bear the holders signature and picture and have been issued in a country where the holder was resident for 185 consecutive days. In terms of section 11(2) of the road traffic regulations, a foreign driver's licence is valid for 90 days in Botswana. Any person taking up residence in Botswana after 90 days must apply for a Botswana driver's licence.

Motor vehicles bearing foreign licence plates may be used in Botswana for up to 14 days. The original vehicle registration papers or a certified copy must be kept with the driver of the foreign registered vehicle at all times. Where the vehicle papers are not available because the vehicle is still being financed by a bank, a letter to that effect will be necessary. Where the driver is not the owner of the vehicle he will require a letter from the owner, certified by the police authorising him to take the vehicle across the border. One will also have to obtain a temporary Import permit at the border. Fees depend on the type of vehicle.

6.5 Strengths and Gaps

The strengths identified in this area is that provision is made for the recognition of foreign driver's licences and foreign registered vehicles, albeit for a limited period of time

The weakness of current legislation is that no special provision is made to exempt persons assisting in a disaster from registration of vehicles and obtaining of Botswana driver's licences once the grace period has lapsed.

6.6 Recommendations

The Road Transport Act should be amended to make provision for vehicles of Eligible Actors and drivers of such vehicles exempting them from some or all licensing requirements and fees and allowing for expedited registration and licensing.

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Chapter 7

Freedom of movement, access and security

7.1 Freedom of Movement

Article 16(d) IDRL guidelines: Personnel

1. With regard to disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations, affected States should:

- d) Facilitate freedom of access to and freedom of movement in and from the disaster-affected area, bearing in mind the safety of disaster relief and initial recovery personnel.

Freedom of movement is guaranteed in Botswana's Constitution. There are no restrictions on movement anywhere in Botswana save for places listed in the Protected Areas and Places Act for purposes of national security.

There are no rules that would prevent disaster relief workers assisting migrants or impede them from distributing their own relief according to their own humanitarian principles. There are no specific provisions dealing with provision of relief to undocumented migrants.

There is no rule that all relief must be handed over to government. Disaster relief organisations are free to collaborate with local NGO's or civil society organisations of their choice.

7.2 Ensuring the Safety and Security of Assistance

Article 22 IDRL Guidelines: Security

Affected States should take appropriate measures to address the safety and security of disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations and of the premises, facilities, means of transport, equipment and goods used in connection with their disaster relief or initial recovery assistance. Assisting States and assisting humanitarian organizations should also take appropriate steps in their own planning and operations to mitigate security risks.

There are no special laws providing for the safety and security of relief personnel, premises, transport equipment or goods. The security services provided by police and the Botswana Defence Force are currently satisfactory to cover relief personnel goods and equipment. Private security Companies do operate in the country to guard premises. Any organisation requiring a private security services would be able to arrange it on a contractual basis.

¹³¹ Section 14 Constitution of Botswana

¹³² Chapter 22:01

Freedom of movement, access and security

7.3 Additional Facilities

Article 23 IDRL Guidelines: Extended Hours

Affected States should endeavour to ensure, when necessary, that State-operated offices and services essential to the timely delivery of international disaster relief function outside of normal business hours.

Article 24 IDRL Guidelines: Costs

1. The costs of providing international disaster relief or initial recovery assistance pursuant to these Guidelines should normally be borne by the assisting State or assisting humanitarian organization. However, assisting States may agree in advance with the affected State for the reimbursement of certain costs and fees, or for the temporary loan of equipment.
2. Affected States should consider, when it is in their power and to the extent possible under the circumstances, providing certain services at reduced or no cost to assisting States and eligible assisting humanitarian organizations, which may include:
 - a) In-country transport, including by national airlines;
 - b) Use of buildings and land for office and warehouse space; and
 - c) Use of cargo handling equipment and logistic support.

There are no national laws policies or plans that provide for extended opening hours for key governmental officers or services such as customs, inspections, immigration, airports as necessary for international relief.

Further, there are no laws, policies or plans providing for free or reduced price facilities for relief providers for transport, use of buildings land cargo loading and unloading support.

7.3.1 Strengths and Gaps

Strengths identified in sections 7.1, 7.2 and 7.3 are freedom of movement and a secure environment in Botswana. The gap observed in the area of additional facilities is the lack of legislation.

7.3.2 Recommendations

It is recommended that an act on Facilitation and Regulation of Disaster Relief and Initial Recovery Assistance should include provisions on extended opening hours and reduced costs of eligible actors as is necessary for disaster relief.

7.4 Transit of Disaster Relief

Article 16(2) IDRL Guidelines: Transit

Upon request, originating and transit States should likewise waive or promptly issue, ideally without cost, exit or transit visas, as appropriate, for the disaster relief and initial recovery personnel of eligible assisting humanitarian organizations.

Article 17 IDRL Guidelines: Goods and Equipment

1. With regard to disaster relief and initial recovery goods and equipment exported or imported by, or on behalf of, assisting States and eligible assisting humanitarian organizations, originating, transit and affected States should:
 - a) Exempt them from all customs duties, taxes, tariffs or governmental fees;
 - b) Exempt them from all export, transit, and import restrictions;
 - c) Simplify and minimize documentation requirements for export, transit and import;
 - d) Permit re-exportation of any equipment or unused goods which the assisting State or assisting humanitarian organization owns and wishes to retain.

Article 19 IDRL Guidelines: Transport

1. Originating, transit and affected States should grant, without undue delay, permission for the speedy passage of land, marine and air vehicles operated by an assisting State or eligible assisting humanitarian organization or on its behalf, for the purpose of transporting disaster relief or initial recovery assistance and, ideally, waive applicable fees.
2. In particular, permission should be granted for overflight, landing and departure of aircraft. Such aircraft should also be authorized to operate within the territory of the affected State as required for the delivery of assistance.
3. Any applicable exit, transit and entry visas for the operating personnel of such transport vehicles should be promptly issued.

There are no specific rules on the transit of relief goods or relief personnel to other countries or on the sending of international relief goods and personnel from Botswana.

7.4.1 Strengths and Gaps

The gap identified in the area of transit of relief goods is the absence of legislation.

7.4.2 Recommendations

It is recommended that a Disaster Risk Management Act be enacted and include provisions on transit of relief goods and relief personnel and the sending of relief goods and personnel from Botswana.

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Chapter 8

Accountability and transparency

Article 6 IDRL guidelines: Responsibilities Concerning Diversion and the Intended Use of Resources

1. States and assisting humanitarian organizations should cooperate to prevent unlawful diversion, misappropriation, or fraud concerning disaster relief or initial recovery goods, equipment or resources and initiate proceedings as appropriate.
2. Affected States should use funds and relief goods donated to them, and which they have accepted in relation to a disaster, in a manner consistent with the expressed intent with which they were given.

8.1 Government Emergency Response Fund

Botswana has a National Disaster Relief Fund, a special fund created under section 25 of the Finance and Audit Act.¹³³

In terms of section 3 of the National Disaster Relief Fund Order¹³⁴, the purpose of the fund is to provide financial assistance to victims of natural disasters. The fund is administered by the Permanent Secretary to the President.¹³⁵ The fund contains money appropriated by parliament and donations by persons and organisations.¹³⁶

The funds are to be used for reconstruction associated with disaster relief rehabilitation and any other costs as the Minister may approve.¹³⁷ The fund is managed by the National Committee on Disaster Preparedness.¹³⁸ The account must be reconciled monthly and a balance sheet and statement of income and expenditure be presented by the Accountant General to the Auditor General.¹³⁹

8.2 International Relief Funds Routed Through Government

Botswana is transparent in its use of donor funds. According to IDASA – The Institute for Democracy in Africa – Botswana has a well-established and detailed legal framework governing its budget system. The legal framework is the Finance and Audit Act¹⁴⁰ underpinned by the Constitution. This framework provides clear authority and procedures for national budgeting. Parliament approves budget estimates and expenditure. There is no law ensuring public access to information however, government financial reporting is regular reports regularly and government provides information upon request.

IDASA reports that the Ministry of Finance and Development Planning in Botswana manages donor funding to government in a transparent and accountable way. Donor funds are matched with relevant projects. All donor funds are subject to the approval

¹³³ Chapter 54:01

¹³⁴ Statutory instrument 20 of 1996

¹³⁵ Section 4 National Disaster Relief Fund Order

¹³⁶ Section 5 National Disaster Relief Fund Order

¹³⁷ Section 6 National Disaster Relief Fund Order

¹³⁸ Section 7 National Disaster Relief Fund Order

¹³⁹ Section 8 National Disaster Relief Fund Order

¹⁴⁰ Chapter 54:01

Accountability and transparency

of the legislature and normal budget reporting requirements. Government also releases regular information of the nature, level and use of donor funds.¹⁴¹

8.3 International Relief Funds Routed Through Civil Society Organisations and NGOs

Civil society organisations are free to use their own funds or funds donated directly to them as they choose. Legal oversight over relief funds is based on the organisations responsibility to abide by their own constitutions and reporting requirements under empowering legislation like the Companies Act¹⁴² or the Societies Act¹⁴³. The greater government oversight may strengthen financial accountability and build donor confidence.

8.4 Accountability of Assisting Organisations

There are no specific rules on the accountability of assisting organisations in Botswana. Civil liability of such organisations would be governed by the law of delict for any wrongful acts incurring civil liability committed in the country. It would be for the particular individual who alleges that a civil wrong has been committed against him or her to bring a claim against the assisting organisation under the law of delict.

8.5 Strengths and Gaps

Strengths identified in the area of transparency and accountability are that Botswana's Financial Laws and Procedures are robust providing a reporting and accounting framework for national and international donor funds.

Gaps identified are the lack of oversight over fiscal matters of civil society and local partners using donor funds.

8.6 Recommendations

- It is recommended that an act on Facilitation and Regulation of Disaster Relief and Initial Recovery Assistance should include a government agency created to set minimum standards for disaster relief activities in Botswana and provide enforcement mechanisms. Such an agency could also monitor compliance of registered disaster relief agencies with relevant financial reporting requirements in order to ensure greater fiscal responsibility in the civil society and NGO sector and build donor confidence in local organisations as partners in disaster relief.

¹⁴¹ <http://www.idasa.org/media/uploads/outputs/files/Nine%20African%20Budget%20Transparency%20&%20Participation%20Case%20Studies.pdf>

¹⁴² Chapter 42:01

¹⁴³ Chapter 18:01

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Chapter 9

Summary of recommendations

Summary of recommendations

Recommendations from chapter 2

Overview of International and Regional Legal Framework

1. Botswana should consider acceding and domesticating relevant treaties in Disaster Response Law in Particular the Tempere Convention on Telecommunications, Specific Annex J.5 to the Kyoto Customs Convention on customs clearance for relief goods and Annex B.9 to the Convention on Temporary Admission (The Istanbul Convention)

Responsibility: Attorney General and Relevant Line Ministry

Recommendations from chapter 3

Botswana's Legal Framework for Disaster Risk Management

1. Botswana should consider enacting national Disaster Risk Management Act in order to provide a legal and institutional framework for disaster management in the country.
2. In such an act, Botswana should consider provisions for the facilitation and regulation on international disaster assistance. The IFRC Model Act would be of assistance in preparing such legislation. The Act should contain rules on
 - initiation and termination of international disaster assistance,
 - coordination and preparedness for international disaster assistance,
 - responsibilities of assisting actors,
 - legal facilities for eligible actors,
 - entry of international disaster goods and equipment,
 - legal capacity and employment currency and banking,
 - supervision, reporting and sanctions for non-compliance of assisting actors,
 - transit of international disaster assistance.
3. In the short term, clear procedures for receiving of international disaster assistance and coordination national and international disaster relief efforts should be included in the National Disaster Risk Management Plan.

Responsibility: Attorney General and Relevant Line Ministry

Recommendations from chapter 4:

Legal Status of Foreign Entities Providing Assistance

1. In relation to eligibility of assisting international actors for legal facilities it is recommended that Botswana promulgate a national Disaster RiskManagement act in terms of which assisting international actors may apply for and be granted certificates of eligibility for legal facilities in Botswana in the event of a disaster requiring foreign assistance.
2. It is recommended that the Financial Intelligence Act should be amended to allow Eligible international actors to open bank accounts and conduct transactions with

Summary of recommendations

greater flexibility. This may be achieved through an expedited application to the financial intelligence unit for an exemption.

3. In this regard Chapter 5 [Article 20 – 24] of the Model Act on IDRL may be instructive.

Responsibility: Attorney General and Relevant Line Ministry

Recommendations from chapter 5

Border Control Requirements

1. In relation to customs duty and VAT It is recommended that a Disaster Risk Management Act be enacted. The proposed act should contain provisions governing the entry of international disaster goods and equipment into Botswana. Alternatively, provisions relating to entry of disaster goods and equipment into Botswana may be placed in the Customs and Excise Duty act. In particular the proposed act should legislate for
 - The Rapid importation of consignments of goods and equipment and priority treatment in the event of a national disaster. [see article 29 Model Act on IDRL]
 - Exemption of relief consignments from all duties and taxes and restrictions [see article 32 Model Act on IDRL]
 - Extended hours for customs during the disaster relief period only [see article 34 Model Act on IDRL]
 - Waiver, where possible, of inspections and customs security in disaster relief periods only. [See Article 35 Model Act on IDRL]
 - Provide for agreements with eligible actors for pre-positioning if stocks and preparation for potential disasters [See article 36 Model Act on IDRL]
 - Provide for disposition or donation of equipment and unused goods and re-exportation of goods and equipment by eligible actors [see articles 42, 43 and 44 Model Act on IDRL]
2. In relation to importation of telecommunications equipment it is recommended that a clause providing for the importation and use of telecommunications equipment during a disaster relief operation be included in an act for the facilitation and regulation of international disaster relief and initial recover assistance. Alternatively, the Telecommunications Act should be amended to make provision such a clause. The clause should make provision for
 - Importation of telecommunications equipment by Eligible Actors for the purpose of international relief operations without restrictions except as required for purposes of national security or public order
 - Notification of the band, frequencies and location intended for use of such equipment
 - Waiver of licence requirements and fees for tier use
 - Priority of Eligible actors over domestic users with the exception of security forces, ambulance services and other domestic emergency responders, in access to band width frequencies and satellite use for telecommunications and data transfer in disaster relief operations

Summary of recommendations

- specific exemption from customs duties and Vat for telecommunications equipment imported into Botswana for the purpose of disaster relief operations. In this regard see article 37 Model Act on IDRL.
3. In relation to the importation of food, it is recommended that a new set of regulations to the Food Control Act be promulgated to allow for
- Expedited Approval of food imported by eligible actors in a disaster relief operation
 - The extent to which normal restrictions for safeguarding clean safe and wholesome food may be modified in order to expedite delivery of food for disaster relief
 - Pre-approval procedures for eligible actors who wish to import food consignments
 - List of prohibited food items that may not be imported under the disaster relief regulations
 - List if import specifications of potential disaster relief food.
 - In the alternative, these provisions may be promulgated in an act for the facilitation and regulation of international disaster relief and initial recovery assistance.
4. In relation to rescue dogs it is recommended that a new set of regulations to the Diseases of Animals Act be promulgated to allow
- specific exemptions for rescue dogs from quarantine requirements
 - conditions and documentation required for import
 - expedited clearance procedure and
 - Waiver of fees.
- In the alternative, these provisions may be promulgated in an act for the facilitation and regulation of international disaster relief and initial recovery assistance.
5. In relation to medications, it is recommended that a new set of regulations to the Drugs and Related Substances Act be promulgated to allow for:
- Eligible actors to import medication and medical equipment for purposes of disaster relief operations
 - That medications and medical equipment imported shall be appropriate for the needs of the country. That medication for direct use by the eligible Actor in a disaster relief operation be transported and maintained by that eligible actor and guarded by the eligible actor from misappropriations and abuse
 - That medications donated for use be at least twelve months from their expiry date on arrival, be transported by the eligible actor to their destination in order to ensure their quality and that such medications be appropriately labelled.
- In this regard, see Article 38 Model Act on IDRL.

Summary of recommendations

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6. In relation to the registration of motor vehicles, it is recommended that regulations to the Road Traffic Act be promulgated to exempt vehicles imported for disaster relief and initial recovery from registration alternatively, such a provision also may be included in a Disaster Risk Management Act .
7. In relation to entry permits and visas, it is recommended that
 - a new type of visa – the Disaster visa be created under the immigration Act
 - The disaster visa be issued without fee, at the point of entry for the disaster relief and initial recovery period subject only to national security and public health limitations to employees of eligible actors properly accredited under the proposed Disaster Risk Management Act.
 - Holders of disaster visas be allowed to undertake disaster relief and initial recover work for their sponsoring entities during the disaster relief and initial recovery period without the requirement to seek a separate work or residence permit.

In this regard, article 25 of the Model Act on IDRL is instructive.

8. In relation to work permits, it is recommended that holders of the proposed disaster visa should be exempt from the requirements to apply for a work permit provided they are international personnel of Eligible Actors.
9. In relation to recognition of foreign professional qualifications, it is recommended that the recognition of foreign professional qualifications be provided for in a Disaster Risk Management Act in line with section 26 the Model Act on IDRL. Alternatively, recognition of foreign professionals for disaster relief or initial recovery could be achieved through the promulgation of regulations to the Nurses and Midwives act, the Architects Registration Act or the Engineers Registration Act.
10. In relation to income tax, it is recommended that the salary and emoluments of international personnel of assisting international actors be exempt from income tax. This can be achieved by including such a category to the Second Schedule to the Income Tax Act.

Responsibility: Attorney General and Relevant Line Ministry

Recommendations from chapter 6 Transport During a Disaster

1. In relation to air transport, it is recommended that
 - Specific legislation for facilitation of air transport during a disaster relief and initial recovery period be enacted. Articles 45, 46 and 47 of the Model Act on IDRL would be instructive in this regard.
 - Regulation in terms of section 89(2) xxi of the Civil Aviation Act be promulgated to give effect to the provisions of the Chicago Convention facilitation relief flights.
2. In relation to road transport, it is recommended that the Road Transport Act should be amended to make provision for vehicles of Eligible Actors and drivers of such vehicles exempting them from some or all licensing requirements and fees and allowing for expedited registration and licensing of vehicles and drivers.

Responsibility: Attorney General and Relevant Line Ministry

Summary of recommendations

Recommendations from chapter 7

Freedom of Movement, Access and Security

1. In relation to extended hours and reduced costs for customs clearance, it is recommended that a Disaster Risk Management Act be enacted that includes provisions on extended opening hours and reduced costs of eligible actors as is necessary for disaster relief.
2. In relation to transit of relief goods and personnel through Botswana to some other country it is recommended that a Disaster Risk Management Act should include provisions on transit of relief goods and relief personnel and the sending of relief goods and personnel from Botswana.

Responsibility: Attorney General and Relevant Line Ministry

Recommendations from chapter 8

Accountability and Transparency

1. On transparency, it is recommended that a Disaster Risk Management Act should include a government agency created to set minimum standards for disaster relief activities in Botswana and provide enforcement mechanisms.
2. Such an agency would also monitor compliance of registered disaster relief agencies with relevant financial reporting requirements in order to ensure greater fiscal responsibility in the civil society and NGO sector and build donor confidence in local organisations as partners in disaster relief.

Responsibility: Attorney General and Relevant Line Ministry

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Chapter 10

Annexes

Annex 1 Terms of Reference

ToRs for an audit of Botswana's legal framework pertaining to disasters

Introduction

International Disaster Response Law (IDRL) is the field of law that addresses border crossing humanitarian assistance, either between neighbouring States or by members on the international humanitarian community. Hence, the central question of this workshop was to investigate how existing Botswana law is prepared to handle common problem areas in international disaster operations, both in its role as receiver of border crossing support as well as an important player in the transit and provision of international humanitarian assistance in the region.

Botswana Red Cross Society and the IFRC hosted an interactive high level workshop on the legal preparedness of for the facilitation and regulation of international humanitarian assistance in Botswana. The event saw some 70 delegates convene, all of them representing the relevant stakeholders in issues of disaster management in Botswana.

The workshop provided an overview of the existing international norms related to facilitation and regulation of international disaster response, with a particular focus on Botswana context. It also developed a shared understanding of potential legal problem areas in international disaster assistance and of key international norms and tools, particularly where they apply in Botswana.

The workshop resulted in a set of recommendations by the attending delegates. As it was concluded that there is currently no regulation in place facilitating international disaster response, humanitarian actors coming into Botswana may encounter several regulatory restrictions coming into the country. It was felt that there is a need to address this gap in the legal framework. On the other hand, the concern of certain parties abusing the chaotic time of disasters was raised, and hence it was emphasised that there is also a need to regulate the entry and operation of foreign relief actors – so that the Botswana government will remain the central coordinator of any disaster response operations occurring in its territory. The delegates proposed the following way forward:

The Botswana Government should move towards the ratification of relevant international instruments relating to disaster response;

an audit of the current legal framework should take place, to assess where exactly the gaps are when it comes to international disaster response law. The Botswana Red Cross volunteered to initiate the process of this audit, the IFRC pledged its support to this audit and the National Strategy Office indicated its willingness to participate in the process of the audit;

The results of this audit should lead to the setting up of a legislative committee or task force representing all stakeholders to either strengthen existing legal system or, if necessary, to develop a new legal instrument addressing disaster response in general and facilitate and regulate international disaster response specifically.

These Terms of Reference propose framework for this audit of Botswana's current legal framework for Disaster Management.

Draft Report Outline and Checklist

Executive Summary

Brief description of the audit and summary of the main findings & conclusions. Do this section last.

Acronyms

List of the acronyms used in the report

Part 1 – Background

Background to the audit

Use background from workshop report to explain what “Legal Preparedness” is and why it is important.

Methodology

Briefly describe the process used for the research..

PART 2 – OVERVIEW OF relevant international / regional laws and policies, applicable to Botswana

Convention	Ratified	Implemented
Tampere Convention		
Kyoto Spec. Annex J.5		
Istanbul Ann. B.9		
Chicago Convention		
UN Safety Protocol		
Civil Defence Convention		
Food Aid Convention		
Nuclear Accident Convention		

Part 3 – Detailed Findings

Institutional arrangements for disaster management

IDRL arts 3, 8(2), 14(3)

Are there clear definitions and criteria for what qualifies as a disaster identified within relevant legislation, policies, protocols and procedures?

Is there a clear legal framework for Disaster Risk Management? Does this framework clearly set out roles and responsibilities of institutions pertaining to Disaster Risk Reduction, Disaster Risk Management and Disaster Response?

Annex 1 Terms of Reference

Are there adequate procedures for ensuring information flow and consolidated approaches to situation reports and needs assessments from the various levels of government?

Are there rules about the types of information international relief providers must provide? Are they reasonable? How are they enforceable?

Is there a specific governmental focal point identified in law for:

Requesting international disaster relief?

Liaising with international aid providers (including non-state actors)?

What powers is the focal point accorded in law?

Are there adequate procedures for ensuring coordination of international efforts with those at the national, provincial and municipal levels?

See also IDRL Guidelines para. 3, 8(2), 14(3).

Role of civil society organisations

Role of Botswana Red Cross

Is BRCS's role in DM spelled out in its foundational law?

Is BRCS expressly mentioned in the DM law?

Is BRCS part of a high-level planning/operational committee?

Does BRCS have a role on committees at the provincial/local level?

Are the specific activities of the NRCS described in the DM policy/plan?

Is the BRCS part of coordination mechanisms for international relief?

Role of other civil society organisations

Do laws, policies, institutional frameworks and planning inclusive of domestic civil society and empower communities to enhance their own safety and resilience?

See also IDRL Guidelines para. 3(1), 4(3)(c), 8(1).

Requests for external assistance

Requests for external disaster relief and initial recovery assistance

What are the criteria for requesting international assistance?

Does the law/policy/plan establish a timeline for making such requests?

Are there provisions about the acceptance of foreign offers of assistance?

Does the law/policy/plan specify the level of detail to be included in such requests?

Is there a requirement for a prior official declaration of emergency/disaster before making an official request? If so:

What is the process for making such a declaration?

Annex 1 Terms of Reference

Are the relevant steps and agency responsibilities clearly set out?

Are there safeguards against delay?

What are the potential legal and political consequences of such a declaration?

Might these consequences affect the willingness of a government to go forward when international assistance is needed?

Are there specific provisions about contacting OCHA/ERC for help? How about the general humanitarian community? Are non-state actors (like the RC/RC and NGOs) addressed?

Are there specific provisions about contacting an appropriate regional body (e.g. SADC)?

See also IDRL Guidelines para. 3(2), 7(1), 8(2), 10(1)-(3).

Legal status of foreign entities providing assistance

Privileges and immunities

Does the law provide specific procedures for recognizing the international privileges and immunities of diplomatic and consular officials? How are those categories defined and limited? (In other words – would they apply to foreign civil defence personnel or only to diplomats and consular officers?)

Does the law provide specific procedures for recognizing the international privileges and immunities of international organizations and relevant regional organizations? How is the term defined? Which organizations have been recognized?

Does the law provide liability protections for foreign governmental personnel in disaster emergencies?

Eligibility and registration

Does the law or policy set out any particular system for the registration of foreign disaster relief organizations (like NGOs)? How long does the applicable registration requirements take? What costs are involved?

Would foreign humanitarian organizations have to register with multiple agencies (e.g. local, provincial, national, Ministries of health, labour, etc.)? Are there multiple potential types of registration (e.g., as association, foundation, corporation)? What are the consequences of each?

See also IDRL Guidelines para. 13 and 14.

Domestic legal status of foreign organisations

What options for establishing a legal identity are available to foreign humanitarian organizations? What are the legal consequences of not having such as recognition: Can unregistered organizations (1) open bank accounts? (2) sign contracts and leases? (3) hire local personnel? (4) obtain visas for foreign personnel? (5) acquire and dispose of property? (6) initiate legal proceedings? If not, do any disaster-specific registration procedures allow for these powers?

Annex 1 Terms of Reference

See also IDRL Guidelines para. 20.

Foreign assistance from the private sector and individuals

Do national laws, policies or plans specifically provide for means to facilitate and regulate foreign assistance from private sector or individual sources?

See also IDRL Guidelines para. 15.

Customs arrangements for the arrival of relief goods in disaster

General customs arrangements

Does the customs law have any provisions about:

Simplified paperwork requirements for emergencies?

Waivers of duties, tariffs and fees (including storage fees pending clearance)?

Reduction of import, transit, or export restrictions in disaster settings?

Priority clearance for relief goods and equipment?

Pre-clearance procedures for relief goods and equipment or reduction of inspection requirements?

Clearance outside normal business hours and at outside of customs offices, if necessary?

Re-exportation of equipment and unused goods?

Other disposition of unused humanitarian goods?

See also IDRL Guidelines para. 17.

Communications equipment

Does the DM or telecommunications law provide exceptions to import/export restrictions? Does it allow for speedy licensing or waiver of license requirements in disasters?

See also the Tampere Convention.

See also IDRL Guidelines para. 18 (2).

Food

Does food safety law provide for any special procedures in disaster settings regarding food imports?

See also IDRL Guidelines para. 18 (4).

Medication

Does existing law regulating medications have special rules to facilitate and monitor the import/export of medications for disaster relief?

See also IDRL Guidelines para. 18 (3).

Vehicles

Does the motor vehicle law provide any special provisions for the importation and registration of foreign vehicles for relief and recovery work?

See also IDRL Guidelines para. 18 (1).

Animals

Does the animal quarantine law have any exceptional provisions for rescue dogs?

Management of foreign personnel during a disaster

Entry of Response Personnel

Do the immigration or DM laws have any specific provisions about visas for international disaster relief personnel?

If there are no special visa provisions for relief workers, what existing visa types are they likely to receive and what are their conditions/limitations?

Would a work permit be required for relief workers on immigration law? If so,

Is this issue addressed specifically for relief personnel?

How long would it generally require to obtain one?

What are the durations of available work permits and how are they renewed?

See also IDRL Guidelines para. 16.

Recognition of professional qualifications of foreign personnel

Is the recognition of medical qualifications (esp. for doctors, nurses and paramedics) regulated at the national, provincial or local levels?

Do prevailing laws have specific provisions for emergency review of foreign qualifications?

See also IDRL Guidelines para. 16 (1).

Transport during disaster

Transport of relief goods

Does existing law have special provisions for overflight, landing and departure rights/fees for aircraft bearing relief goods?

Does the law provide exceptions for carriage and other requirements for trucks bearing relief goods?

Does the law provide for waiver of tolls for relief vehicles?

Annex 1 Terms of Reference

Driving licenses

Does the law provide for the recognition or obtaining of valid driving licenses for foreign personnel?

See also IDRL Guidelines para. 16 (c).

Tax, currency exchange and charges

Tax and currency exchange for disaster relief activities

Does existing law provide for exemptions from VAT, income tax, corporate tax and other tax for humanitarian organizations and personnel providing disaster relief?

Does existing law allow humanitarian organizations to freely bring currencies in and out of the country for operations?

See also IDRL Guidelines para. 20(2) and 21.

Freedom of access and security

Freedom of movement during disaster

Do national law/policies or plans provide that approved international disaster relief providers will have freedom of access to disaster-affected persons?

Are there any rules (e.g. in immigration or penal law) that would interfere with the ability of aid providers to assist affected migrants (e.g. undocumented workers) or any other group?

Are there any rules that would impede humanitarian organizations from distributing their own relief according to humanitarian principles (e.g., rules that all relief must be handed over to governmental authorities)?

See also IDRL Guidelines para. 16(1)(d).

Ensuring the safety and security of assistance

Are any domestic institutions specifically charged with ensuring the safety of relief personnel, premises, transport, equipment and goods?

See also IDRL Guidelines para. 22.

Additional facilities and measures

Additional facilities for international disaster relief

Do national laws, policies or plans provide for extended opening hours for key governmental offices/service (such as customs inspection, immigration, dock and airport management) necessary for international relief?

Do national laws, policies or plans provide for free or reduced price facilities for relief providers, such as: in-country transport (inc. by national airlines), use of buildings and land, use of cargo equipment and loading/unloading support?

See also IDRL Guidelines para. 23 and 24.

Accountability and transparency

Accountability and transparency of the government

Are specific procedures/institutions in place to guard against diversion, misappropriation or fraud concerning foreign disaster relief and recovery goods/funds?

Is there clear legal authority for a particular ministry/department to receive and disburse international donations made to the government?

See also IDRL Guidelines para. 3,5,6.

Accountability of assisting organisations

Does national law provide for any minimum standards in disaster relief/recovery?

Is there any mechanism for enforcing those standards? (Note – part IV of the Guidelines recommends conditioning legal facilities on compliance.)

What protections, if any, are there in national law against civil liability of international relief personnel?

See also IDRL Guidelines para. 4

Botswana as a transit or sending state for international assistance

Transit of disaster relief

Does the law provide for:

Reduction of any restrictions on the transit for relief personnel (e.g. exit visas, sanctions regimes)?

Reduction of import/export restrictions, duties or fees on relief goods and equipment (esp. telecoms, food, medicines)?

Reduction of inspection requirements for transiting goods and equipment?

See also IDRL Guidelines para 16(2), 17(1)(b), 19

Sending of international assistance from Botswana

Does the law provide for:

Reduction of any restrictions on the exit for relief personnel (e.g. exit visas, sanctions regimes)?

Reduction of export restrictions, duties or fees on relief goods and equipment (esp. telecoms, food, medicines)?

Reduction of inspection requirements for outgoing goods and equipment?

Annex 1 Terms of Reference

See also IDRL Guidelines para 16(2), 17(1)(b), 19

Part 4 – Summary Of Findings And Recommendations

Summary of key findings and recommendations

Include any ideas for who might be responsible & timeframe.

Annexes

Report from Workshop

List of references

List of legislation and policy documents consulted

Annex 2 List of References

Legislations and Policy Documents

International and Regional Instruments

International Disaster Response Law Guidelines

The Hyogo Framework for Action

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

The Kyoto Customs Convention, Specific Annex J.5

Annex B.9 to the Convention on Temporary Admission (The Istanbul Convention)

The Chicago Convention

The UN Safety Convention and Optional Protocol

The Framework Convention on Civil Defence

Africa Regional Strategy for Disaster Risk Reduction

Draft SADC Disaster Risk Reduction Strategy

The SADC Regional Water Policy

National Legal Instruments

Architects Registration Act Cap 61:06

Banking (Anti-Money Laundering Regulations) Statutory Instrument No. 17 of 2003

Civil Aviation Act Cap 71:07

Companies Act, 2003

Customs and Excise Duty Act Cap 50:01

Deeds Registry Act Cap 33:02

Diplomatic Immunities and Privileges Act Cap 39:01

Diplomatic immunities and Privileges (Conferment of Personal Immunities and Privileges) Order Statutory instrument No. 73 of 2011

Diplomatic Immunities and Privileges (Designation of Organisations and Conferment of Immunities and Privileges) Order Statutory Instrument No. 72 of 2011

Diseases of Animals Act Cap 37:01

Drugs and Related Substances Act Cap 63:03

Employment Act Cap 47:01

Employment of Non Citizens Act Cap 47:02

Emergency Powers Act Cap 22:04

Engineers Registration Act Cap 61:08

Finance and Audit Act Cap 54:01

Annex 2 List of References Legislations and Policy Documents

Financial Intelligence Act Cap 08:01

Food Control Act Cap 18:01

High Court Rules Statutory Instrument No. 27 of 2009

Health Professionals Act Cap 61:02

Immigration Act No. 3 of 2011

Immigration Visa Regulations Statutory Instrument No. 15 of 2009

National Disaster Relief Fund Order SI 20 of 1996

Nursing and Midwifery Act Cap 61:03

Proceeds of Serious Crime Act Cap 08:03

Protected Areas and Places Act Cap 22:01

Red Cross Society of Botswana Act No. 4 of 1968

Road Traffic Act Cap 69:01

Societies Act Cap 18:01

State Land Act Cap 32:01

Telecommunications Act Cap 77:03

Tribal Land Act Cap 32:02

Value Added Tax Act Cap 50:03

National Policy Documents

National Disaster Management Policy

National Plan on Disaster Risk Management

Annex 3 Report of Botswana Red Cross Society High Level Work Shop Disaster Response Preparedness 5 June 2012, Gaborone

Workshop Report

“INTERNATIONAL DISASTER RESPONSE LAW (IDRL) IN BOTSWANA”

Facilitated by the Botswana Red Cross Society (BRCS) and the International Federation of Red Cross and Red Crescent Societies (IFRC) at the President Hotel, Gaborone, 5 June 2012

Introduction

International Disaster Response Law (IDRL) is the field of law that addresses border crossing humanitarian assistance, either between neighbouring States or by members on the international humanitarian community. The central question of this workshop was to investigate how existing Botswana law is prepared to handle common problem areas in international disaster operations, both in its role as receiver of border crossing support as well as an important player in the transit and provision of international humanitarian assistance in the region.

Botswana Red Cross Society and the IFRC hosted this interactive high level workshop on the legal preparedness for the facilitation and regulation of international humanitarian assistance in Botswana. The event saw some 70 delegates convene, all of them representing the relevant stakeholders in issues of disaster management in Botswana.

Opening

The delegates were welcomed by Ms Mabel Rammekwa, Secretary General of the Botswana Red Cross Society. She recalled that in 2011, the 31st International Conference of the Red Cross and Red Crescent, the supreme deliberative body of the Red Cross and Red Crescent Movement, called on States to examine and strengthen their national legal frameworks for the facilitation and regulation of international disaster response. As all States party to the Geneva Conventions, including Botswana, are members of this International Conference, seeking to gain understanding of Botswana's legal framework pertaining to international disaster response operations is a logical step. Ms. Rammekwa wished the delegates fruitful deliberations.

Mr. Alexander Matheou, Regional Representative of the IFRC in Southern Africa, welcomed the delegates on behalf of the IFRC. He set out that, based on the IFRC's worldwide experience at the forefront of international emergency assistance, we see that legal and regulatory barriers may unintentionally get in the way of the operation. Recalling the auxiliary role that national societies have towards their government, he expressed the delight of the IFRC to be collaborating with strong partners like the

Botswana Red Cross Society and the Botswana government in the important field of legal preparedness. Moreover, Mr. Matheou expressed the hope that where Botswana will lead, others may follow – and hence that, in due course, the whole region will be better prepared and therefore safer.

Mr. Stephen Tiroyakgosi, Deputy Secretary for International and Commercial Services at the Attorney General's Chambers, presented a comprehensive overview of the legal instruments relating to disasters in Botswana. At this point in time, there are no instruments that relate specifically to Disaster Management, as most disaster related law focuses on the prevention of the disaster rather than the response.

Introduction to IDRL

Ms. Sanne Boswijk Disaster Law Coordinator for Africa, IFRC, presented an introduction to the topic of International Disaster Response Law (IDRL). Over the last few decades, the number and impact of natural disasters have increased dramatically. This has been evident in recent crises such as the devastating earthquakes in Haiti and Japan, and the recent drought in the Horn of Africa. As a result, there has been an upsurge in the need for international disaster assistance, either between neighbouring States or from the international community. At the same time, the increase in the number and variety of international actors who may be available to provide assistance in major disaster operations is making the task of facilitating and regulating international humanitarian assistance ever more complicated for the governments of affected or transit states. Moreover, few of them currently are legally prepared to address the most common regulatory bottlenecks and problems in international operations, such as:

- Coordination of international and regional disaster response
- Customs procedures
- Obtaining of visa and work permits
- Recognition of certificates of specialized personnel (in particular, medical personnel)
- Quality of relief items and services

Although there are quite some international binding and non-binding instruments that address situations of disaster, the international legal framework is generally not sufficient to meet these challenges. In addition, most domestic legal systems show gaps when it comes to the facilitation and regulation of international disaster response operations entering the territory of the affected state.

To start addressing this issue, the IFRC has developed two tools for Governments to improve their legal preparedness for disasters: (1) the “IDRL Guidelines” and (2) the pilot IDRL Model Act.

The IDRL Guidelines (or “[Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance](#)” in full) are a set of very practical recommendations to governments on how to prepare their disaster laws and plans for the common regulatory problems in international disaster relief operations.

The pilot IDRL Model Act (or “[Model Act for the Facilitation and Regulation of International Disaster Assistance](#),” in full) the Model Act is intended to serve as a reference tool and example to law-makers as they develop legislation appropriate to

their national circumstances. The Model could serve as the basis of a stand-alone act or as the basis for amendments and additions to existing laws addressing the various regulatory questions at issue in international operations.

The IFRC and National Red Cross and Red Crescent Societies have been working in several countries in Africa with both these instruments to improve the legal preparedness.

Workshop Sessions

Ms. Boswijk introduced a fictional disaster scenario in which a large number of international responders arrive at the border of a country affected by large scale flooding. The delegates divided into working groups and proceeded to solve legal issues related to this scenario. In particular, the questions related to the refusal of entry into the country due to visa complications, questions about importation of radio equipment, food aid and unnecessary and inappropriate aid. To solve the complications, the delegates made use of the IDRL Guidelines, international legal instruments like the “Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations” and the “Kyoto Convention on the Simplification and Harmonization of Customs procedures”. In addition, the delegates reviewed the solution that the pilot Model Act proposes to introduce legal preparedness into a domestic legal system.

After very successful deliberations in the working groups, the delegates shared their outcomes in the plenary, which discussion was facilitated by Ms. Boswijk.

Discussion in plenary: disaster law in Botswana and way forward

Mr. Titus Ludzi Makosha, Deputy Secretary General of the Botswana Red Cross Society, facilitated a plenary discussion on the current state of the disaster law in Botswana and ways forward to improve Botswana’s legal preparedness for disasters in the future. He reiterated the conclusion that, although Botswana has a multitude of laws regulating the reduction of risks of disasters occurring, there is currently not a legal instrument that addresses disaster response. He encouraged delegates to use the insights they gained during the Working Groups to advise on ways forward to address the identified gap.

Out of this discussion it is distilled that the majority of delegates felt that, seen as there is currently no regulation in place facilitating international disaster response, humanitarian actors coming into Botswana may encounter regulatory restrictions coming into the country. It was felt that there is a need to address this gap in the legal framework. On the other hand, the concern of certain parties abusing the chaotic time of disasters was raised, and hence it was emphasised that there is also a need to regulate the entry and operation of foreign relief actors – so that the Botswana government will remain the central coordinator of any disaster response operations occurring in its territory. The delegates proposed the following way forward:

- 1) The Botswana Government should move towards the ratification of relevant international instruments relating to disaster response;
- 2) an audit of the current legal framework should take place, to assess where exactly the gaps are when it comes to international disaster response law. The Botswana Red Cross volunteered to initiate the process of this audit, the IFRC pledged its

support and the National Strategy Office indicated its willingness to participate in the process of the audit;

- 3) The results of this audit should lead to the setting up of a legislative committee or task force representing all stakeholders to either strengthen existing legal system or, if necessary, to develop a new legal instrument addressing disaster response in general and facilitate and regulate international disaster response specifically.

Media reports of the workshop:

1. Sunday Standard:

<http://www.sundaystandard.info/article.php?NewsID=14159&GroupID=1>

2. The Botswana Gazette:

http://www.gazettebw.com/index.php?option=com_content&view=article&id=13732: lack-of-emergency-disaster-laws-may-cost-lives&catid=18:headlines&Itemid=2

3. The Boidus Media

<http://boidus.co.bw/blog/?p=3191>

4. Botswana Daily News


http://www.dailynews.gov.bw/cgi-bin/news.cgi?d=20120608&i=Governments_must_be_disaster_ready

5. i botswana

<http://www.ibotswana.co.bw/news/local/item/14379-botswana-does-not-have-disaster-legislation.html>

No Link yet but we advertised it on one of the local newspapers called Echo Newspaper (enlarge to read clearly)

Annex 4



CE 110

CUSTOMS AND EXCISE DIVISION

Certificate for the Importation of Goods under item 412.11 of the Customs and Excise Duty Act, 1970

I hereby certify that the following goods shown on the attached inventory

.....

.....

.....

shipped under Bill of Landing/Air Way-Bill No.

S.S./M.V. (name of ship).....

Arriving at (place of discharge of goods)

On (date of arrival)

Are imported:-

(a) For the relief of distress of person in cases of famine or other national disaster

(b) Under paragraph..... of a Technical Assistance Agreement dated

.....between the Government of Botswana and.....

.....

(c) in terms of an obligation under a multilateral international agreement which Botswana is a party

for the person/official use ofof

Address).....

..... who arrived/will arrive onand

are correctly admissible under item 412.11 of the Customs and Excise Duty Act, 1970.

Date Stamp

Signature - Project Executive

Approved for rebate under Item 412.11 ().

.....

For/Commissioner General

Date Stamp

Annex 5



CUSTOMS AND EXCISE DIVISION
CERTIFICATE FOR EXEMPTION OF GOODS UNDER SCHEDULE NO.4
AND 6 OF THE CUSTOMS AND EXCISE DUTY ACT

I/we hereby certify that a consignment of

Shipped from

Airway Bill/Bill of Landing /Rail Note No

Per (Name of Ship)

Arriving at

Quantity

Value

Importer's Name and Address

I apply for importation to be supplied under rebate of duty in terms of

To the Customs and Excise Act, 1970.

DATE STAMP:

.....
Signature of Head of Organisation

Approved for rebate under item

DATE STAMP:

.....
For/Commissioner General

FOR OFFICIAL USE ONLY

Approved for rebate under items 407.04/407.06 of Schedule No. 4 to the Customs and Excise Duty Act, 1970, subject to

.....

Date Stamp

.....
 For/Commissioner General

Trip to H.Q.	Card Indexed	C.C.C. No.
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NOTES

- (A) This form is to be completed in triplicate and all the copies forwarded to:
- Commissioner General
 Botswana Unified Revenue Service
 Private Bag 0013
 Gaborone
 Botswana
- (B) If the form is sent to any other Botswana Customs address it is to be submitted in quadruplicate.
- (C) SEPARATE FORMS SHOULD BE COMPLETED IN RESPECT OF GOODS/MOTOR VEHICLES ARRIVING AT DIFFERENT PLACES OF ENTRY OR AT DIFFERENT TIMES
- (D) Before forwarding the form please ensure that:
- it is completed on all respects;
 - that deletions are made as appropriate;
 - that you attach lists of new and household effects and values if the spaces provided under items 7 and 8 are insufficient ;
 - that you enclose documentary evidence of ownership and use of your motor vehicle in the form of copy of the Registration Book, Insurance Certificate, etc;
 - that you enclose documentary evidence of change of residence in the form of a letter from your prospective employer and a copy of a work permit or a residence permit /waiver.
- (E) The common customs area comprises the Republic of Botswana, the Kingdom of Lesotho, the Republic of South Africa, the Kingdom of Swaziland and the Republic of Namibia.
- (F) General notes and information of personal and household effects, motor vehicles, and import permit requirements etc are contained in Customs Baggage Declaration brochure obtainable from BURS or by logging onto the BURS website www.burs.org.bw

WARNING

The Customs laws prescribe severe penalties for incorrect or false declarations. Great care should therefore be exercised in completing this form and any case of doubt should be referred to any BURS office before the form is completed.

(Revised May, 2009)

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

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

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

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

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

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

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

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



International Federation
of Red Cross and Red Crescent Societies
www.ifrc.org **Saving lives, changing minds.**