



International Disaster Response Law (IDRL) in the Cook Islands

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

Prepared by



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2. Enable healthy and safe living.
3. Promote social inclusion and a culture of non-violence and peace.

About this report

This report was commissioned by the IFRC and prepared by the Cook Islands Red Cross Society. It analyses the existing legal and policy frameworks for disaster management and response in the Cook Islands, with a focus on the facilitation and regulation of international disaster assistance.

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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***International Disaster Response Law (IDRL) in the Cook Islands
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Contents

Acronyms and Abbreviations	8
Acknowledgements	9
Executive Summary	10
Chapter 1	
Introduction to the project and its methodology	13
1.1 Background	14
1.2 Scope and methodology	15
Chapter 2	
Overview of the disaster risk management (DRM) international and regional framework	16
2.1 Relevant international policy instruments	17
2.1.1 The IDRL Guidelines	17
2.1.2 Chicago Convention	18
2.1.3 Hyogo Framework for Action 2005-2015 (HFA)	19
2.1.4 United Nations Framework Convention for Climate Change (UNFCCC)	19
2.2 Relevant regional policy instruments	20
2.2.1 Pacific Plan and the Kalibobo Roadmap	20
2.2.2 Pacific Disaster Risk Reduction and Disaster Management Framework for Action 2005 (DRM Regional Framework)	21
2.2.3 Pacific Islands Framework for Action on Climate Change (PIFACC)	21
2.3 Regional organizations and tools	21
2.3.1 Pacific Islands Forum (PIF)	21
2.3.2 Secretariat of the Pacific Community (SPC) and SOPAC	22
2.3.3 Council of Regional Organizations in the Pacific (CROP)	23
2.3.4 Pacific DRM Partnership Network (PDRMPN)	23
2.3.5 United Nations Disaster Assessment and Coordination Teams (UNDAC) and the Pacific Humanitarian Team (PHT)	24

Contents

Chapter 3	
Overview of the Cook Islands DRM framework	25
<hr/>	
3.1 Legal and institutional framework for disaster	26
3.1.1 Institutional provisions concerning disaster response	29
3.1.2 The role of the Cook Islands Red Cross Society in disaster response	33
3.2 Declaration of disaster and requests for international assistance and relief	34
3.2.1 Early warning	34
3.2.2 Declaration – emergency and disaster	34
3.2.3 Disaster response operation	35
3.2.4 Requests for international disaster relief and assistance	36
3.3 Lessons learnt from the last disaster response – Cyclone Pat, Aitutaki	38
3.4 Recommendations	39
Chapter 4	
Legal status of organizations providing assistance	41
<hr/>	
4.1 International organizations with diplomatic status	44
4.2 International NGOs	45
4.3 Civil society organizations – local NGO	46
4.3.1 Civil society	47
4.3.2 Cook Islands Civil Society Organization Incorporated (CISCO)	47
4.4 Recommendations	47
4.5 Legal status of international actors to conduct relief operations	48
4.5.1 Foreign companies carrying on business in the Cook Islands	48
4.5.2 Bank accounts	49
4.5.3 Bringing in currency and foreign bank accounts	51
4.5.4 Ability to enter into a contract or lease	51
4.5.5 Acquiring and disposing of moveable property	52
4.5.6 Issuing legal proceedings	52
4.5.7 Right to hire and terminate local staff	52
4.5.8 Security	52
4.6. Recommendations	53

Contents

Chapter 5	
Border control requirements	54
<hr/>	
5.1 Customs requirements	55
5.1.1 Recommendations	63
5.2 Other government taxes – Value Added Tax (VAT)	64
5.2.1 Recommendations	66
5.3 Telecommunications	67
5.3.1 Recommendations	68
5.4 Biosecurity	69
5.4.1 Recommendations	73
5.5 Entry permits and visas	74
5.5.1 Recommendations	81
Chapter 6	
International humanitarian transport arrangements and telecommunication	83
<hr/>	
6.1 Air transport	84
6.1.1 Recommendations	90
6.2 Maritime transport	91
6.2.1 Recommendations	94
6.3 Land transport	95
6.3.1 Recommendations	96
Chapter 7	
Transparency	97
<hr/>	
7.1 Government Emergency Response Fund	96
7.2 International relief funds	99
7.3 Funds routed through Civil Society Organizations and NGOs	100
7.4 Recommendations	100

Contents

Chapter 8	
Summary of recommendations	101
.....	
Annex 1	112
.....	
Pacific Humanitarian Team – Regional Cluster Structure	
Annex 2	113
.....	
UN Cluster Approach System – Pacific Humanitarian Team	
Annex 3	114
.....	
National laws, policies and plans for Disaster Risk Management in the Cook Islands	
Annex 4	115
.....	
Institutional Arrangement Disaster Management structure in the Cook Islands	
Annex 5	116
.....	
Disaster Risk Management Organizational Structure	
Annex 6	117
.....	
Islands coordination structure	
Annex 7	118
.....	
National Emergency Operation Centre Structure	
Annex 8	119
.....	
Response Executive Structure	
Annex 9	120
.....	
Ad hoc National Coordination structure used during the response to the Cyclone Pat Disaster 2010	

Contents

Annex 10	121
.....	
Bank information and documents requirement for the opening of a bank account	
Annex 11	123
.....	
National Development Framework and links to ODA as seen from an aid management perspective	
Annex 12	124
.....	
Summary of the UNDAC MISSION REPORT from Cyclone Pat 2010 and the Inter-agency contingency planning workshop for humanitarian assistance in the Cook Islands 2010	
Annex 13	127
.....	
Telecom letter of agreement template	
List of key references	129
.....	

Acronyms and Abbreviations

CISCO	Cook Islands Civil Society Organization Incorporated
CIRCS	Cook Islands Red Cross Society
CROP	Council of Regional Organizations in the Pacific
DRM	Disaster Risk Management
EMCI	Emergency Management Cook Islands
ERD	Entry, Residence and Departure
HFA	Hyogo Framework for Action
IDRL	International Disaster Response Law
IFRC	International Federation of Red Cross Red Crescent Societies
IPU	Inter-Parliamentary Union
JNAP	Joint National Action Plan for Disaster Risk Management and Climate Change Adaption
NEOC	National Emergency Operation Center
NGO	Non-governmental organization
NSDP	Nation Sustainable Development Plan
PDRMPN	Pacific DRM Partnership Network
PIDC	Pacific Islands Director's Conference
PIFACC	Pacific Islands Framework of Action for Climate Change
PIF	Pacific Islands Forum
SOPAC	Secretariat of the Pacific Applied Geoscience and Technology Division
SOP	Standard Operating Procedure
SPC	Secretariat of the Pacific Community
UNDAC	United Nations Disaster Assessment and Coordination Team
UNFCCC	United Nations Framework Convention for Climate Change
UNGA	United Nations General Assembly
UNOCHA	United Nations Office for Coordination of Human Affairs
VAT	Value Added Tax
WCO	World Customs Organization
WHO	World Health Organization

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The research was undertaken by Ms. Fine Tu'itupou-Arnold, a legal researcher for the Cook Islands Red Cross, with oversight and technical guidance from Ms. Finau Heuifanga Limuloa, Ms. Helga-Bara Bragadottir, Ms. Tessa Kelly and Mr. David Fisher of the IFRC.

Ms. Tu'itupou-Arnold worked closely with relevant stakeholders, in particular Mr. Charles Carlson from EMCI and the Office of the Prime Minister. The first draft of the report was also presented to and reviewed by stakeholders. With their constructive and thoughtful input this project was finalized for presentation to Cabinet for consideration on 21 August 2012.

Executive Summary

This report was prepared to assist the Cook Islands Government in its commitment to strengthening its legal preparedness for international disaster response, as outlined in the Cook Island Joint Action Plan for Disaster Risk Management and Climate Change Adaptation (JNAP DRM CCA). The JNAP DRM CCA falls under the National Sustainable Development Plan (aka Te Kaiveinga Nui 2020) and aims to improve disaster risk management and climate change adaptation in the Cook Islands.

Although the Cook Islands has historically experienced few major disasters, the effects of climate change on the frequency and magnitude of disasters around the world has served as a catalyst to increase its preparedness for future disasters, especially as a Pacific microstate prone to cyclones and storms. Since 2005 the Cook Islands government has been taking measures to strengthen its national disaster risk management framework, passing a Disaster Risk Management Act (DRM Act) in 2007 and developing a Disaster Risk Management National Arrangement (DRM Arrangement) in 2009. Accounts of experiences arising from Cyclone Pat in 2010 demonstrate however that the implementation of the disaster risk management framework in the Cook Islands still has a long way to go.

While this study does review some general aspects of national disaster risk in the framework of the Cook Islands, the focus of the report is on how well prepared the Cook Islands is for large-scale disaster situations requiring external assistance. The aim of this report is to review the relevant Cook Islands laws, policies and practices against the recommendations contained in the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (also referred to as the IDRL Guidelines). The IDRL Guidelines are the outcome of nearly a decade of global research and consultations undertaken by the International Federation of Red Cross and Red Crescent Societies identifying a common set of legal problems arising in international disaster operations, due mainly to a lack of legal preparedness at the national level. The IDRL Guidelines serve as recommendations for governments on how best to frame their domestic legal frameworks in preparation for international disaster assistance. This report joins one of over two dozen country studies that have been undertaken globally to improve national legal preparedness for international disaster response.

In reviewing the relevant legal framework, this report identifies a number of strengths. For example, the DRM Arrangement 2009 sets out a process for requesting international assistance based on needs assessments, the civil aviation rules describe how to facilitate unscheduled aircraft, and the Telecommunications Act contains provisions specifically on the powers of the Telecommunications Minister in response to a disaster. Stakeholder interviews also revealed that the authorities in the Cook Islands are generally willing and able to find solutions on an ad hoc basis in a disaster situation. Despite these good intentions, however, international experience has also demonstrated that bottlenecks, delays, poor coordination and poor quality or inappropriate

Executive Summary

relief items can result from both under and over regulation and an attempt to respond on an ad hoc basis.

This report finds that the Cook Islands legal framework for international disaster response could be improved in a number of respects. The overall findings of the report are:

- The general framework for DRM does not contain adequate provisions governing the facilitation and regulation of international assistance following a request for international assistance.
- Few legal instruments provide measures to expedite international assistance in the event of a disaster.
- In the past, international response has been coordinated and regulated on an ad hoc basis.
- The legal framework does not provide for measures to regulate and screen potential international humanitarian relief organizations before and after a disaster.
- Lessons learnt from recent disaster response operations demonstrate the need to strengthen legal preparedness for the facilitation and regulation of international disaster response.
- Stakeholders are in consensus that, given the size and current capacity of the Cook Islands, amendments to the existing relevant laws, policies and procedures is the most appropriate action for the Cook Islands.

In light of these findings, this report sets forth a number of recommendations that have been developed in consultation with relevant stakeholders in the Cook Islands. While the detail and reasoning is explained in the body of the report, in summary, it is recommended that:

1. The DRM Act 2007 should be amended to include a chapter on international assistance, clearly designating responsibilities for the initiation, facilitation and coordination of international assistance and establishing a Focal Point Agency for international assistance.
2. The DRM Arrangement 2009 should be amended to reflect the proposed provisions of the new chapter on international assistance under the DRM Act 2007, and set out in more detail the processes for facilitating smooth and expedited entry of relief goods and personnel at the border, ensuring efficient and coordinated response operations and terminating international disaster assistance.
3. The amendments to the DRM Act and DRM Arrangement should establish a system for assisting international actors to pre-register as **Eligible Actors** in order to receive certain legal facilities. Eligibility of assisting actors should be based on certain criteria, including their ability to comply with the responsibilities described in Part IV of the IDRL Guidelines. A regulation should be developed which provides for a set of legal facilities to be provided to actors deemed by the government to be eligible in accordance with the registration system.
4. Relevant legislation and regulations governing different aspects of disaster relief, for example the Customs Act, the Biosecurity Act and the Telecommunications Act, should be amended to reflect and accommodate the amendments to the DRM Act 2007, the DRM Arrangement 2009 and the new regulation.

Executive Summary

5. The reporting system of government agencies that receive international assistance in the response and initial recovery phase should be strengthened, and in the amendments to the DRM Act, an agency should be appointed to be responsible for monitoring the accountability and transparency of humanitarian organizations providing assistance.

Considering the time it will take to amend and develop the various different legal instruments, it is proposed that as an interim measure, an SOP should be developed to facilitate and regulate international disaster assistance. While it is recognized that a new SOP will contain provisions which are inconsistent with existing Acts, section 19(6) of the DRM Act 2007 vests the Prime Minister with the power to suspend any relevant Acts which will inhibit the response or recovery. As this power can only be invoked during a State of Disaster and applies only for that period of the declaration¹ it will not, therefore, substitute proper legislative amendment in the long term.

By adopting the recommendations set out above, the Cook Islands can substantially improve its capacity to properly regulate incoming international assistance in the event of a large-scale disaster. With an improved legal framework, those affected by any future disaster in the Cook Islands are far more likely to receive well-coordinated and high quality assistance at the time that they need it most. Moreover, in further implementing its commitments under the JNAP, the Cook Islands will be able to establish itself as a regional leader and an example to other Pacific microstates on how best to strengthen legal preparedness for international disaster response.

¹ This was suggested by the National Controller at the National Workshop to discuss the first draft of the report and it was supported by the rest of the participants.

International Disaster Response Law (IDRL) in the Cook Islands:
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disaster assistance

Chapter 1

Introduction to the project and its methodology

Introduction to the project and its methodology

1.1 Background

In the wake of the response to Cyclone Pat in 2010, the International Federation of Red Cross and Red Crescent Societies (IFRC) was invited to attend an Inter-Agency Contingency Planning workshop for humanitarian assistance in the Cook Islands. The workshop was held to discuss lessons learnt from the response to Cyclone Pat. One issue identified at this workshop was the need to put in place a more effective system for the request and management of international disaster assistance.

In August 2011 the IFRC, in partnership with the Cook Islands Red Cross Society (CIRCS), approached the Cook Islands government and offered technical assistance in reviewing the national legal framework for disaster response, with a focus on international assistance. The intended outcome of this review was strengthening legal preparedness for the facilitation and regulation of international disaster assistance in the Cook Islands.

On 6 October 2011, the Cook Islands government approved the commission of an International Disaster Response Law (IDRL) study to be carried out by CIRCS, with technical oversight to be provided from IFRC. Later that month, a legal consultant was appointed and the study commenced.

The aim of the IDRL study was to review the relevant domestic laws, policies and practices, using the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (also referred to as the IDRL Guidelines) as a basis for analysis.

The IDRL Guidelines are the outcome of nearly a decade of global research and consultation 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 IDRL study also utilizes the IFRC's Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (hereinafter referred to as the Model Act) as a guidance tool. The Model Act is currently in its pilot form and serves as an example of how States can integrate the recommendations of the IDRL Guidelines into their national laws. The Model Act was developed by IFRC in cooperation with the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) and the Inter-Parliamentary Union (IPU), with pro-bono support from the World Customs Organization (WCO), the law offices of Allen & Overly LLP, CMS Cameron McKenna LLP, Baker & McKenzie and the legal department of Microsoft Corporation.

Given the different legal frameworks for disaster response around the world, the Model Act is intended to serve as a reference tool only. It is designed either to assist lawmakers who may decide to draft their own stand-alone Act, or as the basis for amendments and additions to existing laws in order to address the various regulatory issues surrounding international disaster response.

1.2 Scope and methodology

This IDRL study was conducted between October 2011 and August 2012. Legal research was undertaken by CIRCS with oversight from the IFRC Pacific Disaster Law Programme. Financial support was provided by the Australian Agency for International Development (AusAID), through the Australian Red Cross, and the Icelandic Red Cross.

As mentioned above, this report was prepared to assist the Cook Islands in strengthening their national legal framework for the facilitation and regulation of international disaster relief. The concept of legal preparedness refers to having the key legal instruments in place, such as laws, regulations, policies, plans and procedures, to facilitate rapid response to natural disasters by international relief agencies and foreign governments. Legal preparedness can ensure that logistical support, medical supplies, humanitarian assistance and other forms of relief are provided quickly and effectively to affected populations. It can also ensure international assistance meets quality standards and improve the accountability of international responders.

The scope of this research focuses on legal preparedness for the facilitation and regulation of international disaster relief in the Cook Islands. However, in order to identify the gaps and obstacles in the facilitation and regulation of international disaster relief, the legal framework for disaster risk management in the Cook Islands has been considered as a whole. This was done to provide a broader view of the key weaknesses and gaps in the current legal framework. International frameworks on disaster risk management and climate change have also been considered, as these have provided the basis for the current legal framework for disaster risk management in the Cook Islands.

The legal research undertaken for this study has involved:

- collecting and reviewing all relevant legal instruments, i.e. laws, regulations, policies, plans and procedures, relating to international disaster response and disaster risk management in the Cook Islands
- identifying possible disaster scenarios that might involve international assistance and identifying the relevant stakeholders in each scenario
- consulting with stakeholders as to how their own legal frameworks and normal practices take international response into consideration.

The analysis focuses on the following questions:

- When is international assistance needed?
- How is international assistance requested or initiated?
- What are the gaps and obstacles in the legal and institutional framework for international assistance?
- What are the existing legal facilities for international assistance?

At the end of the analysis, recommendations were developed based on the IDRL Guidelines and the Model Act with an aim to minimize legal barriers identified in the analysis and improve effective national and international response to natural disasters.

A first draft of the IDRL Study was developed and discussed at a national IDRL workshop with key stakeholders in order to review the findings and encourage the development of a multi-stakeholder plan of action for implementing the recommendations.

International Disaster Response Law (IDRL) in the Cook Islands:
A study on legal preparedness for facilitating and regulating international
disaster assistance

Chapter 2

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

As a Pacific microstate, the Cook Islands is already party to a number of international and regional instruments and organizations that inform its approach to DRM. The country's limited resources mean that in the past it has relied heavily on the expertise and resources of international and regional organizations and is likely to continue to do so in the future. For this reason, before considering domestic law and practice – particularly that which aims to reflect existing initiatives and commitments – it is important to consider the international and regional frameworks that have influenced DRM laws and practices in the Cook Islands to date.

This chapter outlines the range of instruments and organizations that are already part of the Cook Islands DRM landscape as a guide to key actors and resources that should be taken into account in any review of IDRL.

2.1 Relevant international policy instruments

2.1.1 The IDRL Guidelines

In 2007, the IFRC spearheaded the effort to create the IDRL Guidelines, which are based on existing international norms and address the most common problem areas. In 2007, the States party to the Geneva Conventions unanimously adopted the IDRL Guidelines at the 30th International Conference of the Red Cross and Red Crescent, and they were welcomed by UN General Assembly resolutions.

The IDRL Guidelines are a set of recommendations for governments on how to pre-prepare legal frameworks to address regulatory problems that may be encountered during an international disaster relief operation. In particular, they provide recommendations for removing legal barriers and unnecessary red tape, which can compromise the timely and effective delivery of international aid. At the same time, the guidelines also encourage governments to regulate incoming assistance to ensure that it meets minimum standards.

The IDRL Guidelines are based on the following four core ideas:

1. Domestic actors have the primary role – the guidelines recognize that it is the responsibility of the government of the affected State to address the humanitarian needs caused by a disaster within its own borders.
2. International relief providers have responsibilities – the guidelines insist that international providers of relief abide by minimum humanitarian standards in their provision of disaster assistance. These include the principles of humanity, neutrality, and impartiality as well as minimum standards of coordination and quality in their relief goods, personnel and programmes.
3. International actors need legal facilities – the guidelines set out specific types of legal facilities or accommodations that governments should provide to international relief organizations in order to provide effective relief. These include expedited visa processing, customs clearance of goods and equipment, facilitation of logistics, exemptions from taxes, and a simplified means of obtaining the temporary legal status to operate within the country.
4. Some legal facilities should be conditional – in order to lend weight to the responsibilities of assisting humanitarian organizations, the guidelines encourage governments to grant legal facilities to these organizations on the condition of their

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

commitment to, and on-going compliance with, the minimum standards described above. The guidelines provide suggestions on how this could be done.

Since the adoption of the IDRL Guidelines by the International Conference of the Red Cross Red Crescent in 2007, significant progress has been made by States and regional organizations in their use and implementation. Nine countries have already adopted new laws, regulations or procedures consistent with recommendations in the guidelines, and IDRL projects such as this one have been undertaken in over two dozen countries in Africa, the Americas, Europe and Asia Pacific.

At the 31st International Conference, which included all 187 National Societies and all States party to the Geneva Conventions, a resolution was adopted on “strengthening normative frameworks and addressing regulatory barriers concerning disaster mitigation, response and recovery” which reiterated the urgency for States to be prepared to facilitate and regulate any international disaster assistance they may require in order to ensure that affected persons receive timely and effective relief.² The resolution also welcomed the efforts to develop the Model Act, referred to above. In response to this resolution, the Pacific National Red Cross Societies, including the Cook Islands Red Cross, collectively pledged to take action to strengthen disaster laws in cooperation with their governments.

A number of United Nations General Assembly (UNGA) resolutions³ have highlighted the importance of the IDRL Guidelines and called upon States to utilize them to strengthen their national legal frameworks for disaster response. Most recently, the UNGA adopted a resolution on the “strengthening of the coordination of emergency humanitarian assistance of the United Nations” (December 2011). This resolution welcomed the initiatives already underway at the regional and national levels in relation to the implementation of the IDRL Guidelines and encouraged States and regional organizations to take further steps to strengthen both their legal and operational frameworks for disaster response and to take into account the IDRL Guidelines when doing so.⁴

2.1.2 Chicago Convention

The Cook Islands is party to the Convention on International Civil Aviation, 1944 (also known as the Chicago Convention). The Chicago Convention recognizes the potential for regulatory problems in relation to the use of aircraft for relief operations and has widespread adherence among States (189). The facilitation and use of air transportation should ideally be undertaken in accordance with the Cook Islands commitments vis a vis the Chicago Convention, which stipulates that all contracting parties are to “facilitate the entry into, departure from and transit through their territories of aircraft engaged in relief flights performed by or on behalf of international organizations recognized by the UN or by or on behalf of States themselves”.

Annex 9 of the Convention also obliges member States to “ensure that personnel and articles arriving on relief flights... are cleared without delay”.⁵ Though the Convention does not pertain specifically to disaster situations, this clause creates a direct obligation for its member States, including the Cook Islands, which can be applied to disasters.

² 31st International Conference Red Cross Red Crescent, Resolution 31IC/11/R7 (2011)

³ UNGA 63/137, 63/139, 63/141, 64/76, 64/251, 65/133, 65/264

⁴ UNGA Resolution A/66/L.28, December 2011, available online at http://www.un.org/ga/search/view_doc.asp?symbol=a/66/l.28

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

Paragraph 19(2) of the IDRL Guidelines draws largely upon the obligations outlined in the Chicago Convention.

2.1.3 Hyogo Framework for Action 2005 – 2015 (HFA)

In January 2005, the United Nations organized the second World Conference on Disaster Reduction in Kobe, Hyogo, Japan. Countries attending (including the Cook Islands) adopted the HFA, a set of non-binding guidelines for building the resilience of nations and communities to disaster.

The HFA identifies the following five main priority areas for action:⁶

1. ensuring that disaster risk reduction is a national and local priority with a strong institutional basis for implementation
2. identifying access, monitoring disaster risks, and enhancing early warning systems
3. using knowledge, innovation and education to build a culture of safety and resilience at all levels
4. reducing the underlying risk factors
5. strengthening disaster preparedness for effective response at all levels.

Legal preparedness for disaster response falls under priority number five. In strengthening disaster preparedness, impacts and losses can be substantially reduced. Preparing legal facilities for authorities, individuals and communities in hazard-prone areas will no doubt strengthen effective response to disasters in the Cook Islands.

The HFA is used by many countries in the Pacific as the main guideline for developing DRM plans and policies and is one of the main sources that the Cook Islands refers to when addressing DRM.

2.1.4 United Nations Framework Convention for Climate Change (UNFCCC)⁷

In 1994 the UNFCCC came into force as an environmental treaty signed by 194 countries, including the Cook Islands, to stabilize greenhouse gas in the atmosphere and to prevent the interference of dangerous chemicals with climate systems.

Under the Convention, member States are encouraged to cooperate in adapting to the impacts of climate change. The most significant cause of natural disasters in the Cook Islands is tropical cyclones as they have long been the dominant natural disaster in this part of the South Pacific. Climate change is expected to make cyclones more frequent and stronger than ever before. Pacific Island nations have therefore developed the Pacific Islands Framework of Action for Climate Change (PIFCC) to reflect the efforts of the UNCCC.

⁵ See Clauses 8.8 and 8.9, Chapter 8, Annex 9, Convention on International Civil Aviation (1944) (hereinafter the 'Chicago Convention').

⁶ United Nations Office for Disaster Risk Reduction website: <http://www.unisdr.com>

⁷ UNFCCC website: <http://www.unfccc.com>.

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

The Cook Islands has responded to this issue by establishing a new Climate Change Unit under the Office of the Prime Minister to coordinate and monitor the implementation of the PIFACC. It has also developed a joint framework on climate change and DRM.

Climate change is specifically mentioned in this analysis as climate change and DRM are now considered jointly for some purposes in the Cook Islands, as will be demonstrated below. This is understandable, as the country has no experience of disaster that is not cyclone-related. Tsunamis are a risk, but cyclones routinely cause flooding, storm surge and similar events (Cyclone Martin in 1997, the only natural disaster causing significant loss of life within the last century, produced a tsunami-type wave that inundated a village). For this reason, planning and preparation focuses largely on cyclone-related events.

2.2 Relevant regional policy instruments

2.2.1 Pacific Plan and the Kalibobo Roadmap

The Cook Islands is a member of the Pacific Islands Forum (PIF) along with 15 other independent and self-governing States around the Pacific.

In October 2005, the PIF country leaders endorsed the Pacific Plan and the Kalibobo roadmap to help strengthen regional cooperation and integration. The Pacific Plan's goal is to "enhance and stimulate economic growth, sustainable development, good governance and security for Pacific countries through regionalism". The plan identified four strategic objectives for member countries to work towards:

1. economic growth
2. sustainable development
3. good governance
4. security

The Kalibobo Roadmap reinforces the above objectives and also guides member countries in implementing the plan for the first three years.

As far as security is concerned, the plan identifies the need for improvement of political and social conditions for stability and safety. One of the initiatives under this objective is "the development and implementation of policies and plans for the mitigation and management of natural disasters."⁸ As part of its measures to increase preparedness, the Cook Islands has integrated IDRL considerations into its Joint National Action Plan for Disaster Risk Management and Climate Change Adaptation (JNAP), as explained below.⁹

⁸ This initiative was first introduced in 2007 under the Kalibobo Roadmap, however, to date there has not been a specific report on how this initiative has been implemented.

⁹ This is further explained in the next chapter

2.2.2 Pacific Disaster Risk Reduction and Disaster Management Framework for Action 2005 (DRM Regional Framework)

The Hyogo Framework was endorsed in January 2005 and in October of that year the DRM Regional Framework was endorsed by PIF leaders along with the Pacific Plan. The DRM Regional Framework reflects the ideas of the HFA and supports the development and implementation of policies and plans for the mitigation and management of natural disasters in the region, one of the key initiatives of the Kalibobo Roadmap.

The vision of the DRM Regional Framework is for a “safer, more resilient Pacific island nations and communities to disasters, so that Pacific peoples may achieve sustainable livelihoods and lead free and worthwhile lives.” With this vision, the DRM Regional Framework outlines six thematic areas:

1. governance – organizational, institutional, policy and decision-making frameworks
2. knowledge, information, public awareness and education
3. analysis and evaluation of hazards, vulnerabilities and elements at risk
4. planning for effective preparedness, response and recovery
5. effective, integrated and people-focused early warning systems
6. reduction of underlying risk factors

Legal preparedness for international disaster response falls under number four: planning for effective preparedness, response and recovery.

2.2.3 Pacific Islands Framework for Action on Climate Change (PIFACC)¹⁰

The PIFACC is a framework of actions for the Pacific Islands to help them tackle the issue of climate change in the Pacific. The vision of the PIFACC is the “Pacific Island people, their livelihoods and the environment resilient to the risks and impacts of climate change.” One of the thematic areas of this framework is the implementation of tangible on-ground adaptation measures that include preparation for the impact of climate change. This framework is key to the Cook Islands joint action plan on climate change and DRM.

2.3 Regional organizations and tools

2.3.1 Pacific Islands Forum (PIF)¹¹

The Pacific Islands Forum is a political grouping of 16 independent and self-governing States including the Cook Islands.¹² The PIF Secretariat is based in Suva, Fiji. The mission of the PIF is to ensure the effective implementation of the leaders’ decisions for the benefit of the people of the Pacific. The governing body is the Forum Officials Committee, which gives policy advice to the Forum leaders and meets every year right before the Forum leaders’ meeting.

¹⁰ Secretariat of the Pacific Regional Environment Programme website: www.sprep.org.

¹¹ Pacific Islands Forum Secretariat website: www.forumsec.org.fj.

¹² Cook Islands was one of the founding members of the PIF.

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

The PIF developed and endorsed the Pacific Plan with the aim of strengthening regional cooperation and integration. The Secretariat is mandated with coordinating the implementation of the Pacific Plan. In December 1975, the PIF established the Regional Natural Disaster Relief Fund (RNDRF) providing member countries with a readily available source of financial relief in the wake of natural disasters.¹³ The PIF also partners with many other regional organizations to help Pacific island countries develop and implement DRM policies and plans.

2.3.2 Secretariat of the Pacific Community (SPC) and SOPAC¹⁴

The SPC is a non-political body working in the Pacific region to help Pacific Islanders position themselves to respond effectively to the challenges they face and to make informed decisions about their future and that of following generations. SPC helps develop national policies and plans in various areas including disaster management.

The founding members of SPC are Australia, New Zealand, the Netherlands, the United Kingdom and the United States. There are currently 22 members including 4 of the original members (the United Kingdom and the Netherlands have withdrawn from the organization). The vision of the organization is for a “secure and prosperous Pacific community, whose people are educated and healthy and manage their resources in an economically, environmentally and socially sustainable way.” The governing body of the organization is the Conference of the Pacific Community, which meets every two years to discuss issues in the Pacific and assist member countries with various areas of concern.

The Applied Geoscience and Technology Division known as SOPAC became a part of SPC in 2011. SOPAC has three major programmes: Oceans and Islands Programme, Water and Sanitation Programme and Disaster Reduction Programme (DRP). These programmes are interactive and are carried out in partnership with regional and international development partners and donors. For example, DRP helps to strengthen DRM practices in the Cook Islands and, working in partnership with the Secretariat of the Pacific Regional Environment Programme (SPREP) and the United Nations Development Programme (UNDP), it sponsors and provides technical and policy advice on the development of the Cook Islands JNAP DRM CCA 2011-2015.¹⁵

The DRM Regional Framework is the overarching policy guidance for DRP. Other significant regional policies are the Pacific Plan and the Pacific Islands Framework for Action on Climate Change 2006-2015. SOPAC administers the following two web portals that collect information related to DRM:

- **SOPAC Geonetwork:** a network to improve access to and interfaced use of SOPAC scientific information and to promote multidisciplinary approaches to sustainable development.¹⁶

¹³ Regional National Disaster Relief Fund, PIFS.

¹⁴ Secretariat of the Pacific Community website: www.spc.org.

¹⁵ The JANP DRR CCA is a National Action Plan that comes under the National Sustainable Development Plan 2006-2015 as the roadmap for building a resilient Cook Islands, and also helps provide a more coordinated approach to dealing with disaster risk reduction and climate change issues by all agencies.

¹⁶ SPC website: www.geonetwork.sopac.org/geonetwork/srv/en/main.home.

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

- The Pacific Disaster Net:¹⁷ an information resource centre designed to collect comprehensive information for DRM from the Pacific Islands Countries. International and regional actors and stakeholders can use this web portal to research, collaborate and improve information and knowledge management. It can also be used to disseminate National Action Plans and in-country decisions. Information collected includes governance, risk assessment, early warning and monitoring, disaster risk management and training and tools.¹⁸

The latter could be a useful website for sharing information on international response, what is needed on the ground and the requirements at the border in terms of Customs, Immigration and Biosecurity.

2.3.3 Council of Regional Organizations in the Pacific (CROP)¹⁹

The Council of Regional Organizations in the Pacific was established in 2000 by a group of regional organizations²⁰ to ensure that they pursue their collective aim of achieving sustainable development in Pacific Island countries and territories in the most effective and efficient manner.

CROP aims to keep abreast of existing and emerging issues so that:

- Member organizations are aware of relevant developments.
- Organizations achieve the highest possible returns.
- Activities are complementary and achieve effective results.
- Information and resources are effectively shared.

CROP is a forum where regional organizations can make sure that there are no overlaps or gaps between the work-programmes of its various members.

2.3.4 Pacific DRM Partnership Network (PDRMPN)²¹

In 2006, SOPAC and Pacific leaders facilitated the establishment of the Pacific DRM Partnership Network (PDRMPN). This network aims to provide a collaborative and cooperative mechanism to support DRM capacity building in the region and assist Pacific Island countries and territories adopt and implement the DRM Regional Framework. At its first meeting, the PDRMPN member countries agreed to support the development and implementation of DRM National Action Plans (NAPs) by each member country, including the Cook Islands. The PDRMPN website features various DRM, DRR and DM projects in the Pacific and their partner organizations, including IFRC and the Pacific Red Cross National Societies. The Cook Islands JNAP reflects the principles and themes of the DRM Regional Framework and the Pacific Plan.

¹⁷ Pacific Disaster Net website: www.pacificdisaster.net.

¹⁸ This network collects information from various sources like countries, bodies, organizations and agencies at international, regional and national levels.

¹⁹ Secretariat of the Pacific Community: www.sopac.org.

²⁰ Current members are: PIF Secretariat, SPC, Pacific Islands Forum Fisheries Agency, SPREP, South Pacific Tourism Organization, University of the South Pacific, Pacific Islands Development Program, Fiji School of Medicine and Pacific Power Association.

²¹ Pacific Disaster Risk Management Partnership Network website: www.pdrmpn.net.

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

2.3.5 United Nations Disaster Assessment and Coordination Teams (UNDAC) and the Pacific Humanitarian Team (PHT)

The Cook Islands works closely with the sub-regional office of the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), which has two coordination tools that assist in disaster response around the region. These are as follows:

United Nations Disaster Assessment and Coordination Teams (UNDAC)²²

UNDAC was created in 1993, and aims to help the UN and governments of disaster-affected countries during the first phase of a sudden-onset emergency. These teams can assist in the areas of assessment, coordination and information management.

In the Cook Islands, UNDAC is one of the tools that the government calls upon for help in the first phase of response. In fact, current planning arrangements anticipate that Cabinet is to call upon the UNDAC team to conduct a substantive damage and needs assessment should it be required.²³

Pacific Humanitarian Team (PHT)²⁴

The PHT helps coordinate disaster response by various actors in the region. The PHT includes 150 organizations that undertake relief, recovery and protection activities, and covers 14 Pacific Islands. With their knowledge and vast network, the PHT is well placed to liaise with international responders in coordinating disaster relief into the affected country.

The PHT was used in the last disaster response in the Cook Islands to coordinate international assistance. The PHT uses the cluster system, which is discussed in more detail in the next chapter.

²² UNOCHA website: www.unocha.org/roap/about-us/about-ocha-roap

²³ Cook Islands National Disaster Risk Management Arrangements 2009, pg. 28

²⁴ UNOCHA website www.unocha.org/roap/about-us/about-ocha-roap/rop

International Disaster Response Law (IDRL) in the Cook Islands:
A study on legal preparedness for facilitating and regulating international
disaster assistance

Chapter 3

Overview of the Cook Islands DRM framework

Overview of the Cook Islands DRM framework

IDRL Guideline 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 and institutional framework for disaster

National Disaster Risk Management Policy 2005

At the beginning of 2005, the Cook Islands was hit by five cyclones in quick succession. At the time the Cook Islands did not have an established framework for DRM and was unprepared for multiple events of this nature. Learning from this lesson, in October 2005 the government of the Cook Islands drafted a policy on national disaster risk management, and started to build a culture of risk reduction and preparedness for the country. The result was the National Disaster Risk Management Policy 2005. This policy called for the drafting of DRM legislation along with the development of the DRM National Action Plan (DRM NAP) to mainstream disaster risk reduction and disaster management in national planning and budget management.

Te Kaveinga Nui 2020 and the National Sustainable Development Plan 2011-2015 (NSDP)

In 2007, the Te Kaveinga Nui 2020 (*National Sustainable Development Plan*) was launched by Government as a vision of where the Cook Islands aims to be in 2020. Te Kaveinga Nui 2020 articulates the National Vision and development outcomes and will be implemented in three stages through National Sustainable Development Plans (NSDP).

Each NSDP aims to set national goals and effective strategies to guide policy decisions over a five year period to achieve the Te Kaveinga Nui 2020. The first NSDP was for the period from 2006 to 2010. Goal 9 of this Plan (“Safe, Secure and Resilient Nation”)

requires the passing of the National DRM Act and the formulation of the National Action Plan for DRM. These two strategic actions were also in line with the National Disaster Risk Management Policy 2005. In 2007, the National DRM Act came into force and the first NAP DRM Plan was launched in 2009.

Following completion of the NSDP 2006-2010, the Cook Islands embarked on the implementation of the NSDP for 2011-2015. DRM is dealt with under Priority Area 5 and addresses the need for a resilient and sustainable Cook Islands: “a Cook Islands where our people are resilient to disasters and climate change to achieve sustainable livelihoods.” The objective is to prepare the people of the Cook Islands and reduce the impacts of disasters. Ensuring strong governance arrangements for DRM is identified as one of the strategic actions for achieving this objective.

National DRM Act 2007

The National DRM Act came into force in 2007 in compliance with the National DRM Policy and the NSDP 2006-2010. This is the main act that regulates DRM in the Cook Islands. It establishes a body known as Emergency Management Cook Islands (EMCI).²⁵ EMCI’s main function is to prepare and review, coordinate and facilitate the implementation of the National DRM Action Plan.

Physically situated at the Police national headquarters, EMCI is in fact a division of the Prime Minister’s Office and reports to the National DRM Council and to the Prime Minister.²⁶ EMCI also acts as a secretariat for the National DRM Council and provides the Council with recommendations and advice. It prepares necessary reports for the Council and to Cabinet. EMCI is headed by a Director and currently has one supporting staff member.

The Act also establishes the National DRM Council, Advisory Committee and the post of the National Controller.²⁷

The National DRM Act 2007 is under review to bring it in line with other DRM plans and policies. The review will take into consideration the development of the roles and responsibilities of agencies and other humanitarian organizations working in the area of disaster management.

DRM Regulations 2010

The DRM Regulations were made under the DRM Act 2007. They deal with the DRM reports and the implementation of arrangements by essential agencies to be presented to the Council. They also deal with compensation when private property is used during a state of disaster.

The DRM Regulations also provide for Disaster Response Teams to be established – teams of persons with the skills needed to respond. The regulations allow for members of the public to apply to join a team by making application to the Coordinator.²⁸

²⁵ National DRM Act 2007, section 5.

²⁶ Ibidem.

²⁷ These bodies are explained in detail under the Institutional provisions concerning disaster response on page 20.

²⁸ Regulations for the DRM Act 2007, 2010, s12(1), It is not clear who the Coordinator refers to, but under the DRM Act 2007, there is only one Coordinator that is mentioned, the Disaster Recovery Coordinator.

Overview of the Cook Islands DRM framework

Joint National Action Plan for Disaster Risk Management and Climate Change Adaptation 2011-2015 (JNAP)²⁹

Under the NSDP 2006-2010, the first DRM NAP 2006-2010 was drafted and implemented. In 2011, that DRM NAP was reviewed and amended to include Climate Change Adaptation (CCA) and became the JNAP. The JNAP envisions “a safe, resilient and sustainable Cook Islands” by 2015. It outlines strategic actions that with proper implementation will make this vision a reality. It is a framework that provides guidelines that offer all agencies – governmental and non-governmental – a more coordinated approach to DRM and CCA.

The framework outlines strategic actions and outcomes and identifies the agency responsible for implementation.

One of the strategic outcomes under Strategic area 1 (governance) is “strengthening legal preparedness for facilitation and regulation of international disaster and climate change risk response”. Under this strategic outcome, there are three indicative sub-actions:

1. implementing the National Inter-Agency Contingency Plan for Humanitarian Response
2. reviewing existing legal frameworks and practices in the Cook Islands with reference to the IDRL Guidelines and the IDRL Model Act to identify obstacles to the efficient and effective delivery of international disaster relief
3. developing policies and enacting legislation to provide a central, unified approach for the government in the areas of disaster response, relief, reconstruction etc, including facilitation of international disaster relief.
4. As mentioned above, this report is a response to indicative sub-action 2 and will make recommendations for indicative sub-action 3.

The named leading and supporting agencies for the implementation of this strategic outcome include CIRCS, CLO, MFAI, OPM and EMCI. International Strategic Partners are UNOCHA, SOPAC and IFRC.

National Disaster Risk Management Arrangement 2009 (the Arrangement)

After the National DRM Act came into force in 2007, work began on the National DRM Arrangement 2009. The Arrangement was drafted to reflect the requirements of the National DRM Act. It also reflects other instruments that support the strengthening of policies and plans for the mitigation and management of disasters: the Kalibobo Roadmap, the Pacific Plan and the Pacific Regional Framework for Action for Building the resilience of Nations and Communities to Disasters 2005-2015.³⁰

²⁹ Joint National Action Plan for Disaster Risk Management and Climate Change Adaptation (JNAP) 2011-2015, Jan 2010, Emergency Management Cook Islands and Climate Change Cook Islands, Office of the Prime Minister.

³⁰ This Plan requires the adoption of an “all hazards and integrated approach to disaster risk reduction and disaster management” which is also outlined in the Arrangement.

The Arrangement sets out in detail the policy framework³¹ for DRM, the institutional structure³² and the roles and responsibilities of each agency in response³³. According to the Director of EMCI, the Arrangement is due to be reviewed, as some agencies have moved on to take up other responsibilities in response.

The Arrangement is an overarching framework for the development of specific disaster risk reduction and disaster management plans by government or non-government agencies, essential services and Island Councils.³⁴

3.1.1 Institutional provisions concerning disaster response

The National DRM Act 2007 and the National DRM Arrangement 2009 provide some provisions that address the coordination and operation of response to a disaster. The provisions are not detailed, but the main responsibilities are outlined as follows:

Committee system

National DRM Council

The National DRM Council consists of seven representatives. They are:³⁵

1. Prime Minister (Chairman) or his nominee
2. Financial Secretary
3. Police Commissioner (National Controller)
4. EMCI Director
5. Public Service Commissioner
6. Secretary of Ministry of Works (now MOIP, who is also responsible for outer islands affairs)
7. Director of the Metrological Services

The Council's main function is to formulate DRM policy and to approve all DRM plans and sub-plans.³⁶ It also oversees the functions of the EMCI, especially in coordinating the implementation of the DRM plans and sub-plans.³⁷

The Council should also evaluate and monitor the direction and coordination of the activities of agencies by the Response Executive and the National Controller, not only during the response and recovery phase, but also in the mitigation of and preparedness for an event.³⁸ The Council should advise the Prime Minister in regards to the Declaration of the State of Disaster and subsequent revocation.³⁹

³¹ Cook Islands National Disaster Risk Management Arrangement 2009, page 5.

³² *Ibid.*, page 6.

³³ *Ibid.*, pages 33-37.

³⁴ *Ibid.*, page.10.

³⁵ National DRM Act 2007, section 9.

³⁶ National DRM Act 2007, section 9(3).

³⁷ *Ibid.*, section 9(3)(b).

³⁸ *Ibid.*, section 9(3)(d).

³⁹ *Ibid.*, section 9(3)(f).

Overview of the Cook Islands DRM framework

Advisory Committee

The Council has the power to establish an Advisory Committee to advise the Council as required in all matters relating to mitigation, preparedness, response and recovery.⁴⁰ Members of the Committee shall have three-year terms and the Chairman for the Committee is to be appointed by the Council from the Committee members. The chairman may hold that position for a maximum of three terms.⁴¹ The Council will prepare Terms of Reference for the Committee and the Committee will prepare reports for the Council.⁴²

Response Executive

Under the National DRM Act, the Response Executive shall be convened when any of the following events occur:⁴³

- a State of Disaster
- a State of Emergency
- the DRM Plan calls for the convening of the Response Executive
- a request by the Director

The functions of the Response Executive are to:⁴⁴

- direct the response to an Emergency or Disaster
- appoint the disaster Recovery Coordinator for the event
- approve all contracts with any third parties engaged in providing services relating to an event.

The members of the Response Executive are:⁴⁵

- the National Controller (the Chairman)
- the Police Commissioner (who is currently also the National Controller)
- the Financial Secretary
- the Secretary of Works
- the Director of EMCI

The DRM Act also lists the CEO for the Outer Islands Administration⁴⁶ as a member but that position no longer exists. Outer Islands affairs now fall under the Ministry of Infrastructures and Planning (formerly the Ministry of Works); the Secretary of Works has assumed that responsibility.

⁴⁰ Ibid., section 10 (1)(2).

⁴¹ Ibid., section 10(4).

⁴² Ibid., section 10(5).

⁴³ Ibid., section 11(2).

⁴⁴ Ibid., section 11(3).

⁴⁵ National DRM Act 2007, section 11(4).

⁴⁶ Ibid., section 11(4)(e).

The Response Executive has the ability to appoint extra members or experts to this Committee depending on the nature of the event and the experience and knowledge required to respond effectively to the event.⁴⁷

Outer Islands – Disaster Risk Management Committee

Each Island Council shall establish a Disaster Risk Management Committee.⁴⁸ The main function of this Committee is to prepare and maintain the DRM Plan for its area of responsibility.⁴⁹ In consultation with the Director of EMCI, the Island Council is to appoint four other suitably experienced or qualified members to the Committee.⁵⁰ See Annex 3 for Island Coordination Structure.

Natural disaster response coordination structure

During a State of Disaster or Emergency, there are three main coordination bodies that coordinate the response. They are:

- the National Controller
- the Response Executive
- the Disaster Recovery Coordinator

In the case of the outer islands the Disaster Coordinator coordinates the response.

The Response Executive essentially directs the overall response. The National Controller,⁵¹ in consultation with the Response Executive, carries out those directions. The essential agencies mentioned in the Act take direction from the National Controller.⁵² This means that the National Controller decides on each of their priority roles and is in charge of coordinating their activities. If the National Controller issues directions to a government agency, that agency is required under the Act to comply with that direction as soon as possible.⁵³

Under the Act, the National DRM Council is responsible for evaluating and monitoring the role of the Response Executive and the National Controller.⁵⁴

EMCI should ensure there is effective communication between response agencies.⁵⁵ According to the Director of EMCI, this has not been possible to date because EMCI does not have the capacity to carry out this role effectively. One of the recommendations of the Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands is to employ a full time EMCI staff for one or two years to help implement the recommendations of the workshop and to build the capacity of people within the

⁴⁷ *Ibid.*, section 11(5).

⁴⁸ *Ibid.*, section 15(1).

⁴⁹ *Ibid.*, section 15 (5).

⁵⁰ *Ibid.*, section 15 (3).

⁵¹ Under section 12(1) National DRM Act 2007, the National Controller is the Police Commissioner.

⁵² National DRM Act 2007, s12(2)

⁵³ *Ibid.*, section 12(3).

⁵⁴ *Ibid.*, section 9(3)(d).

⁵⁵ National DRM Arrangement 2009, page 36.

Overview of the Cook Islands DRM framework

Ministries who would be seconded to NEOC in times of emergencies.⁵⁶ There is no doubt that the recommendations from this workshop, if properly implemented, will help EMCI respond in a more effective way in the future.

EMCI's location within police national headquarters and the current role of the Police Commissioner as National Controller means that in practice the police continue to assume a lead role in this area.

The National DRM Arrangement 2009 has a matrix on the roles and responsibilities of each agency during the response phase. In this matrix, the Response Executive and the National DRM Council are the leading agencies for "overseas aid" and are responsible for coordinating emergency external assistance. Supporting agencies are the Development Coordination (formerly known as Aid Management), CIRCS and EMCI. The matrix does not specify what their respective roles are and at present their interrelationship does not seem to be specified in any other document.

In the most recent disaster in the Cook Islands, the Aitutaki Cyclone Pat Disaster Response in 2010, the international response was coordinated by the United Nations Disaster Assessment and Coordination (UNDAC) Team once they arrived in the Cook Islands a few days after the disaster. According to the UNDAC Mission Report, coordination with international and regional actors, including UN and non-UN actors was through the Pacific Humanitarian Team structure and bilateral discussions with specific lead agencies identified by in-country needs and gaps.⁵⁷ Development Coordination played its part in facilitating effective use of funds sent to the government from various foreign donors for the Aitutaki Cyclone Pat Response. CIRCS administered overseas aid received from the IFRC and the New Zealand Red Cross.

In addition, other NGOs that were unable to bring in disaster relief goods through the border used the CIRCS to channel them. The CIRCS agreed to receive the relief goods under its name only if the sending organizations agreed that they would be distributed by CIRCS according to the Red Cross Red Crescent Movement's Fundamental Principles, including impartiality and independence. ADRA, local businesses and the Aitutaki community all channeled their relief through CIRCS.

The Response Executive is also responsible for appointing a Disaster Recovery Coordinator⁵⁸ who should:⁵⁹

- assist in the coordination of all resources and services available for recovery efforts before, during and following an event
- allocate and administer financial and material aid in the recovery period

The Disaster Recovery Coordinator takes over from the National Controller once the immediate response phase is over and the recovery period kicks in. During Cyclone Pat's response, the Minister of Finance was appointed as the Disaster Recovery Coordinator.

⁵⁶ Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands, Avarua, Rarotonga, 1-3 June 2010, pages.4-5.

⁵⁷ UNDAC MISSION Report, Tropical Cyclone Pat, Cook Islands, 12 to 24 February 2010, page 9.

⁵⁸ National DRM Act 2007, section 13(1).

⁵⁹ Ibid., section 13(2).

In the case of emergency or disaster in the outer islands, the relevant Island Council, in consultation with the Director of EMCI, appoints a Disaster Coordinator who will be responsible for:⁶⁰

- implementing the DRM Plan
- assisting the National Controller in coordinating resources to be used in response and recovery relating to an event
- coordinating the Safety Shelter in his or her area

If at any time the National Controller cannot effectively perform his or her functions in the outer islands, the Disaster Coordinator is entitled to exercise the National Controller's powers in his area of responsibility⁶¹ until the National Controller arrives and takes over.

3.1.2 The role of the Cook Islands Red Cross Society in disaster response

In 2002, to recognize the importance of the CIRCS to the lives of Cook Islanders, the Cook Islands Parliament passed the Cook Islands Red Cross Society Act 2002 (CIRCS Act) that formally established the society.

Under the CIRCS Act, the government recognizes the auxiliary (assisting) role of the society. That role deals with the areas of humanitarian services, military defense (through the society's work to protect and give assistance to victims of war) and civil defense (in natural disasters or health epidemics etc). Under the CIRCS Act, the government also promises to respect the independence of the society and the Fundamental Principles of the Red Cross Red Crescent as mentioned above.

Even though CIRCS is an independent organization, stakeholder interviews indicated that it is the government's strongest partner when it comes to disaster response. One of its functions under the CIRCS Act is to organize emergency relief services for the victims of disasters and similar events. This plan should be consistent with any national plan.⁶² CIRCS does its own initial damage and needs assessment of community needs.

The CIRCS (as discussed in Chapter 6 under Customs requirements) is currently the only recognized humanitarian organization in the Cook Islands that is entitled to exemptions at the border on customs duties for relief goods and items for victims of disasters.⁶³

⁶⁰ Ibid., section 15(4)

⁶¹ National DRM Act 2007, section 15(8).

⁶² Cook Islands Red Cross Society Act 2002, section 6(1), Schedule 1(3).

⁶³ Details of how and when the exemption applies to CIRCS are discussed in Chapter 6.

Overview of the Cook Islands DRM framework

3.2 Declaration of disaster and requests for international assistance and relief

IDRL Guideline 7: 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.

3.2.1 Early warning

In any event, whether it is an incident, State of Emergency or a disaster, the National Controller, in consultation with the Council, has the responsibility of activating a national warning.⁶⁴ Each leading agency in the different areas of the response – including Island Councils – is responsible for broadcasting important and appropriate information to the public in a timely manner; information such as the degree of threat and action that should be taken before, during and after the impact.⁶⁵

All supporting agencies should ensure that representatives are contactable at all times, particularly during the cyclone season and after working hours.⁶⁶ During cyclone season each year, vital agencies such as the Airport Authority are on heightened readiness. In such cases the CEO and his assistant are expected to remain in the country.⁶⁷

NGOs and other organizations can assist in warning systems and preparedness by forwarding relevant information to EMCI as soon as possible.⁶⁸ Early warning systems should be in every emergency response plan. EMCI itself is responsible for making sure that all early warning systems are in place, have been tested and disseminated.⁶⁹

3.2.2 Declaration – emergency and disaster

The National DRM Act 2007 refers to two major events: State of Emergency and State of Disaster. Emergency is an event that calls for a multi-agency response. A State of Emergency exists only when one of the following happens:⁷⁰

- It is declared by the Prime Minister.
- The EMCI Director, in exceptional circumstances, determines that an immediate, coordinated, multi-agency response is required to deal with an emergency event.
- The National Emergency Operations Centre is mobilized for an event by the Council.
- An event occurs which the Arrangement specifies should be treated as a State of Emergency.

⁶⁴ Cook Islands National Disaster Risk Management Arrangement 2009, page 21.

⁶⁵ Ibid., page 23

⁶⁶ Ibidem.

⁶⁷ Ibidem.

⁶⁸ Ibidem.

⁶⁹ Ibid., page 21.

⁷⁰ National DRM Act 2007, section 20.

On a more serious level, a disaster is a widespread large-scale event involving national resources leading to the declaration of a State of Disaster.⁷¹

A State of Disaster can only be declared by the Prime Minister and is effective immediately. The declaration may be for the whole of or any part of the Cook Islands.⁷² The public shall be notified immediately of any declaration by television, radio, daily newspaper and the Government Gazette.⁷³ The Prime Minister shall inform Parliament as soon as is possible.⁷⁴

Before the Prime Minister declares a State of Disaster, he or she shall:⁷⁵

- consult with Cabinet when practical
- seek and obtain the recommendations of the Director (of EMCI)
- be satisfied that the disaster is an actual event, or highly probable risk involving serious disruption to the functioning of the community causing widespread human, material, economic and environmental loss and which exceeds the ability of the affected community to cope using its own resources
- be satisfied that the nature and type of disaster requires a coordinated response which cannot be dealt with as a State of Emergency
- be satisfied that the declaration is in the best interests of the Cook Islands

Once the declaration is made, the Prime Minister shall convene the Council for updated reports and to make decisions relating to the response and recovery phase of the disaster.⁷⁶

Under the DRM Act, the Prime Minister has the power to suspend any requirement to comply with any Act or subordinate instrument if he reasonably believes that compliance will inhibit the response to or recovery from the disaster.⁷⁷ This power is very important in the sense that if there are no existing legal facilities in place to expedite international response, the Prime Minister can put temporary ones in place. This is a discretionary power vested solely in the Prime Minister. In the circumstances of disaster response however, such a decision might be delayed due to other priorities.

The Prime Minister, on recommendation of the Director, may at any time revoke or vary the declaration.⁷⁸ As mentioned above, as soon as a State of Disaster is declared the Response Executive convenes and the National Emergency Operation Center is opened.

3.2.3 Disaster response operation

Once a State of Disaster is declared, the Response Executive is convened and operates from the National Emergency Operation Center (NEOC)⁷⁹ at the Telecom Cook Islands

⁷¹ Cook Islands National DRM Arrangement 2009, page 24.

⁷² *Ibid.*, section 19.

⁷³ *Ibid.*, section 19(4).

⁷⁴ *Ibid.*, section 19(7).

⁷⁵ Cook Islands National DRM Arrangement 2009, page 24.

⁷⁶ National DRM Act 2007, section 19(8).

⁷⁷ *Ibid.*, section 19(6).

⁷⁸ National DRM Act 2007, section 19(3).

⁷⁹ *Ibid.*, section 14(1). The National DRM Council is in charge of allocating a place for the NEOC.

Overview of the Cook Islands DRM framework

premises.⁸⁰ The National Controller takes charge and allocates activities, priorities and the roles and responsibilities of each response agency. The National Controller is also responsible for allocating available resources of the Government to effectively respond to the event at hand⁸¹ and takes control of the evacuation of and entry to the Disaster area or Emergency area⁸². The National Controller may take possession and make use of any person's property.⁸³

EMCI maintains and administers the NEOC.⁸⁴ Once the centre is in operation, members of the police force are responsible for the operation of the centre under the supervision of the National Controller.⁸⁵

The initial damage and needs assessment will take place as soon as is convenient following a disaster. The leading agency is EMCI; it coordinates tasks on behalf of the National Controller. The supporting agencies are Ministry of Infrastructure and Planning (formerly the Ministry of Works) and Police⁸⁶

The Cook Islands Red Cross Society conducts its own initial damage and needs assessment of community needs. Each government agency is also given an assessment task according to its area of expertise. For example, the Ministry of Infrastructure and Planning is responsible for assessing impacts on roads.

3.2.4 Requests for international disaster relief and assistance

IDRL Guideline 10: Initiation

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 organizations.
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.

⁸⁰ Ibid., section 14(2).

⁸¹ Ibid., section 12(2)(g)(h).

⁸² Ibid., section 12(2)(j)(k).

⁸³ Ibid., section 12(2)(h) and under section 12 (4) a person whose property is taken off him or her is entitled to compensation as determined by the Director in consultation with the Council.

⁸⁴ Ibid., section 14(3).

⁸⁵ Ibid., section 14(4).

⁸⁶ Cook Islands National Disaster Risk Management Arrangement 2009, page 36.

Overview of the Cook Islands DRM framework

Whether or not there should be a request for international disaster relief and assistance will primarily depend on the initial damage assessment reports.⁸⁷ Which agency should be responsible for the initial damage assessment report is not specified; however the DRM Arrangement stipulates that it must be a group of trained personnel.⁸⁸ Once the assessments are done, the data is passed on to the NEOC where logistics staff collate and analyze the data then report to the Response Executive.

The Response Executive will review the information from the assessments, decide on priorities and assign tasks for appropriate response action and temporary restoration of facilities. The Response Executive will advise the Prime Minister in Cabinet as soon as possible as to whether or not international assistance will be required. The Response Executive must provide the following information to Cabinet:⁸⁹

- the magnitude of the event impact including estimates of numbers killed, injured, or hospitalized
- the estimated numbers made homeless, requiring shelter, clothes, and food
- the general details of damage caused
- the localities affected and limitations on travel to affected areas
- the action already taken by Response Executive

After a State of Disaster is declared, Cabinet will decide whether or not to request international assistance, depending on the result of the damage assessments and the capacity of the country to respond to the disaster. The request comes either directly from Cabinet or from a Minister delegated to make the request.⁹⁰ Foreign Affairs often have the role of requesting foreign assistance, so this will most likely be the Minister for Foreign Affairs.

The requests can include:⁹¹

- immediate humanitarian assistance
- asking an UNDAC team to conduct a more substantive damage and needs assessment should it be required
- asking SOPAC to conduct a post-disaster assessment to document the impact of the hazard

Once the request is sent overseas, coordinating international assistances becomes EMCI's responsibility.

Although the process is set out in detail within the Arrangement, in practice, it has occurred quite differently. In the case of Cyclone Pat, once the initial assessment report was out, EMCI requested assistance from UNOCHA and UNDAC and the PHT team

⁸⁷ Cook Islands National DRM Arrangement 2009, page 28.

⁸⁸ During the last disaster, Cyclone Pat, CIRCS was the first agency to do an initial assessment report, which was used by other Agencies and also UNDAC teams to coordinate response.

⁸⁹ Cook Islands National DRM Arrangement 2009, page 28.

⁹⁰ Ibidem.

⁹¹ Ibidem.

Overview of the Cook Islands DRM framework

arrived a few days later. The reason for this request was mainly the limited resources EMCI had to manage and coordinate the response.⁹²

During the response phase following Cyclone Pat, coordination with international and regional actors including UN and non-UN actors was through the Pacific Humanitarian Team (PHT) structure. This structure is a newly established regional disaster response group, with eight regional clusters,⁹³ each with a designated lead agency.⁹⁴ Within this structure, after the initial coordination for international assistance was done, coordination occurred through bilateral discussion with a specific lead agency based on identified in-country needs and gaps.

3.3 Lessons learnt from the last disaster response – Cyclone Pat, Aitutaki

Tropical Cyclone Pat was a category 3 storm that hit the Southern Cook Islands in the early hours of 10 February 2010. Cyclone Pat brought destructive wind gusts of over 100 knots to the island of Aitutaki (one of the outer islands in the Southern group of the Cook Islands). Some infrastructure – power, water and roads – was seriously damaged. However, the airport, wharf and hospital sustained only minimal damage. There was considerable damage to homes on the island, many of which were not built to withstand winds of the strength encountered. On the same day the cyclone hit, the Prime Minister declared a State of Disaster in Aitutaki.⁹⁵

There was some question as to whether or not Cyclone Pat was a major disaster, as there were no casualties or deaths. However, there was significant damage to property and infrastructure and the Cook Islands did not have the capacity to respond to it alone, hence the request for international assistance by the government.

The UNDAC team was instrumental in helping EMCI deliver a successful response to Cyclone Pat. At the end of the immediate response and initial recovery period, its mission report outlined several areas of concern for the Cook Islands Government to consider,⁹⁶ including a concern that the DRM Arrangement was not being properly implemented. Following the report, in June 2010, an Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands was held in Avarua, Rarotonga to discuss lessons learnt. A number of challenges were identified in regard to international assistance in the Cook Islands, including delays and ambiguities in the process of requesting international assistance, problems in customs clearance for relief items and a need to put in place a system for requesting and managing international support. A more detailed summary of both of the reports can be found in Annex 12.

⁹² UNDAC MISSION REPORT Tropical Cyclone Pat, Cook Islands, 12 to 24 February 2010, page 5.

⁹³ Health/Nutrition, WASH, Shelter/Camp Management, Logistics, Information Management, protection, Education and Early Recovery.

⁹⁴ See Cyclone Pat response Cluster system Structure in Annex 9.

⁹⁵ UNDAC MISSION REPORT Tropical Cyclone Pat, Cook Islands, 12 to 24 February 2010, page 2.

⁹⁶ These areas are: needs assessment, coordination assessments, situation reports (sitreps), disaster management structures, work groups, EMCI/CIRCS, staffing, staff on loan, staff on retainer, public affairs/information movement strategy, whole of government lessons learnt workshops, early recovery.

3.4 Recommendations

1. The National DRM Act should be amended to include a chapter on International assistance. Within the chapter:
 - Responsibilities should be clearly designated regarding the initiation, facilitation and coordination of international humanitarian assistance, including establishing a Focal Point Agency to liaise between international and government actors at all levels (details of which can be specified in the DRM Arrangement).⁹⁷
 - The Prime Minister, on the advice of the Response Executive, should make the decision as to whether or not to request international assistance. The Prime Minister would then direct the Minister of Foreign Affairs to send the request.
 - The role the Cook Islands Red Cross Society plays in humanitarian services should be recognized as is stipulated in the Cook Islands Red Cross Act 2002. Information and disaster response plans should be shared to ensure consistency in disaster response; this should link the two Acts, as they both concern humanitarian services in the Cook Islands.
 - CIRCS should be represented in the National DRM Council, as it is an auxiliary organization to the government in humanitarian services.
 - A specific agency, (for example Police), should take all necessary measures within its capacities to ensure the security and safety of:⁹⁸
 - the personnel of assisting international actors
 - the premises, facilities, means of transport, equipment and goods used for or in connection with the international disaster relief and initial recovery assistance of international actors
2. The DRM Arrangement should be amended to more clearly specify roles and responsibilities in the following areas:
 - Initiation⁹⁹

The Response Executive, immediately after the onset of the disaster and based on the initial damage/needs assessment, should make a determination as to whether or not domestic capacities are likely to be sufficient to attend to the relief and/or initial recovery needs of affected persons.¹⁰⁰ The Prime Minister should then be advised of the decision.

⁹⁷ This recommendation is in line with the recommendation action 1.20 of the Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands after Cyclone Pat, which is to “set up Aid Cell for discussing/coordinating aid both domestic and international”.

⁹⁸ See Model Act for International Disaster Assistance, section 15.

⁹⁹ According to recommendation 1.1 of the Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands EMCI is to “define when international assistance is required and the expected roles of international actors. Once this is clarified, make sure it is communicated to international actors”, page 4.

¹⁰⁰ This was one of the concerns expressed during the Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands, the importance of identifying in-country capacity to respond to the disaster with their own resources before asking for international assistance.

Overview of the Cook Islands DRM framework

■ Requests for international assistance – specifics of the request

Foreign Affairs, upon the direction of the Prime Minister and Cabinet, should issue the request for international assistance. This request may be directed to particular international actors or a general request may go out to the international community as a whole.

The request shall be accompanied by:

- information as to the extent and type of assistance required based on a list prepared by the Response Executives
- information on the procedures for different assisting international actors to make offers or provide assistance

■ Focal Point Agency

The Focal Point Agency suggested in the previous Chapter should take over (from the National DRM Council) the role and responsibility of coordinating and facilitating international assistance in close consultation with the Response Executive.

The Focal Point Agency should consist of representatives from each of the following three agencies: Ministry of Foreign Affairs, Coordination Management and EMCI. This Agency should work closely with UNDAC and the PHT or the regional cluster structure to coordinate international response and information management.

If any international humanitarian organization or individual within the Cook Islands contacts an international actor to seek assistance, that agency must inform the Focal point Agency.

An exception to this would be CIRCS, which has a separate mechanism for receiving assistance from foreign components of the Red Cross Red Crescent Movement. However, CIRCS should work closely with the Focal Point Agency to make sure there is no overlap and duplication in the international assistance received.

At all times, EMCI should have the responsibility of disseminating information regarding the rights and responsibilities of assisting international actors, as well as any other relevant laws, rules and procedures.

The Focal Point Agency, in cooperation with relevant agencies, should be in a position to facilitate the entry and/or departure of relief and initial recovery personnel, goods, equipment and transport into the country. The Focal Point Agency should work in close collaboration with the UNDAC team and the Pacific Humanitarian Team using the Regional Cluster System.

In the case of an outer island being the port of entry, the Focal Point Agency will work together with the Island Coordinator in facilitating the entry and/or departure of relief and initial recovery personnel, goods, equipment and transport into the islands.

The UNDAC and PHT should be called upon to assist the Focal Point Agency in coordinating international assistance and information management.

■ Operational coordination

The Response Executive, in consultation with the Focal Point Agency, should integrate assisting international actors into their planning and mechanisms for operational coordination of disaster relief and initial recovery efforts.¹⁰¹

The assisting international actors should cooperate and coordinate with national authorities. Specifically, they should be required to provide to these authorities whatever information is available to them on the location, type and extent of their assistance.¹⁰²

3. Further detail on the initial assessment system within the DRM Arrangement should be included to speed up requests for assistance and to obtain correct information on what exactly is needed on the ground for the purpose of disseminating information to potential International responders.¹⁰³
4. The DRM Arrangement 2009 should be well disseminated to stakeholders.
5. The use of the Regional Cluster Structure should be strengthened through awareness raising and capacity building amongst relevant stakeholders.
6. Consideration should be given to using the Pacific Disaster Net to disseminate information on emerging hazards and early warnings to help potential International responders prepare for disaster response.¹⁰⁴
7. The DRM Arrangement should be amended to incorporate the recommendations of the UNDAC Mission report in regards to the Response Structure: the Pacific Humanitarian Team Structure, assessment and public affairs/information strategy
8. As an interim measure, a Standard Operating Procedure (SOP) should be developed to facilitate and support international assistance while the amendments to relevant acts are under way. While it is recognized that a new SOP will contain provisions which are inconsistent with existing Acts, section 19(6) of the DRM Act 2007 vests the Prime Minister with the power to suspend any relevant Acts which will inhibit the response or recovery. As this power can only be invoked during a State of Disaster and applies only for that period of the declaration¹⁰⁵ it will not, therefore, substitute proper legislative amendment in the long term.

¹⁰¹ See the Model Act for International Disaster Assistance, article 14(a).

¹⁰² Ibid., article 14(b).

¹⁰³ This recommendation is in line with the recommendation action 1.17 of the Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands, in regards to assessment plan or an SOP, page 5.

¹⁰⁴ According to the recommendation action 1.15 of the Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands, 1-3 June 2010, page 5, EMCI has the role of disseminating updated information (following community meetings) to all key stakeholders; this could be a job that EMCI could be responsible for.

¹⁰⁵ This was suggested by the National Controller at the National Workshop to discuss the first draft of the report and it was supported by the rest of the participants

International Disaster Response Law (IDRL) in the Cook Islands:
A study on legal preparedness for facilitating and regulating international
disaster assistance

Chapter 4

Legal status of organizations providing assistance

IDRL Guideline 4: Responsibilities of assisting actors

1. Assisting actors and their personnel should abide by the laws of the affected State and applicable international law, coordinate with domestic authorities, and respect the human dignity of disaster-affected persons at all times.
2. Assisting actors should ensure that their disaster relief and initial recovery assistance is provided in accordance with the principles of humanity, neutrality and impartiality, and in particular:
 - a) Aid priorities are calculated on the basis of need alone;
 - b) Provided without any adverse distinction (such as in regards to nationality, race, ethnicity, religious beliefs, class, gender, disability, age and political opinions) to disaster-affected persons;
 - c) Provided without seeking to further a particular political or religious standpoint, intervene in the internal affairs of the affected State, or obtain commercial gain from charitable assistance;
 - d) Not used as a means to gather sensitive information of a political, economic or military nature that is irrelevant to disaster relief or initial recovery assistance.
3. To the greatest extent practicable, their disaster relief and initial recovery assistance should also be:
 - a) Responsive to the special needs, if any, of women and particularly vulnerable groups, which may include children, displaced persons, the elderly, persons with disabilities, and persons living with HIV and other debilitating illnesses;
 - b) Adequate for the needs of affected persons and consistent with any applicable international standards of quality;
 - c) Coordinated with other relevant domestic and assisting actors;
 - d) Provided and conducted in a manner that is sensitive to cultural, social and religious customs and traditions;
 - e) Carried out with adequate involvement of affected persons, including women, youth and the elderly, in their design, implementation, monitoring and evaluation;
 - f) Provided by competent and adequately trained personnel;
 - g) Commensurate with their organizational capacities;
 - h) Building upon and conducted in a manner that strengthens local disaster risk reduction, relief and recovery capacities and reduces future vulnerabilities to disasters;
 - i) Carried out so as to minimize negative impacts on the local community, economy, job markets, development objectives and the environment; and
 - j) Provided in a transparent manner, sharing appropriate information on activities and funding.

Legal status of organizations providing assistance

In order to properly analyze the status of organizations providing assistance in the Cook Islands, especially international organizations, it is important to first clarify the status of the Cook Islands as a nation. The Cook Islands is currently still a part of New Zealand, but through the NZ Constitution Act 1965 has been self-governing since 1965. Under this Act, the Cook Islands is free to govern its own internal affairs, while foreign policies, defense and security remain New Zealand's responsibility.

Notwithstanding New Zealand's putative authority over its foreign affairs, in the early 1980's the Cook Islands established its own Ministry of Foreign Affairs and started to conduct foreign affairs with only limited consultation with New Zealand. By the 1990's the Cook Islands was starting to sign international conventions on its own without interference from New Zealand. Nevertheless, the New Zealand Defense Force is still expected to defend the Cook Islands in the event of armed conflict.

In 2001, the relationship between New Zealand and the Cook Islands was taken to the next level. New Zealand and the Cook Islands marked the anniversary of their relationship (New Zealand formally annexed the Cook Islands in 1901) by signing a "Joint Centenary Declaration" which formally gave the Cook Islands the power to manage its own foreign policies, defense and security. Today, while the Cook Islands is not fully independent from New Zealand, the country has almost full power to run its own affairs, internally and internationally.

4.1 International organizations with diplomatic status

Diplomatic privileges and immunities in the Cook Islands are governed by the Diplomatic Privileges and Immunities Act 1968 (the DP Act).¹⁰⁶ The DP Act reflects the Vienna Conventions on Diplomatic Relations 1961 (the Vienna Convention) and confers certain privileges and immunities on personnel of international organizations, tribunals, representatives attending international conferences and consular staff. The DP Act also allows for the withdrawing of privileges and immunities¹⁰⁷ by the Executive Council.

To extend privileges and immunities to the personnel of an international inter-governmental organization, the Executive Council must declare the organization as one of which two or more States or governments are members.¹⁰⁸ The Executive Council can also specify what privileges and immunity may be given to an organization.¹⁰⁹ Schedule 2 of the DP Act specifies the privileges and immunities of international organizations. The Executive Council also has the power to grant exemptions from any tax or duty otherwise applying (with or without conditions) to any organization.¹¹⁰ The Minister of Foreign Affairs, with the concurrence of the Minister of Finance, has a similar power to grant exemptions (with or without conditions) to the official members of any foreign government present in the Cook Islands on an official mission.¹¹¹

¹⁰⁶ Diplomatic Privileges and Immunities Act 1968, section 26 states the application of the Act to the Cook Islands and becomes part of the Cook Islands law although it was passed by the New Zealand Parliament.

¹⁰⁷ Ibid., section 7.

¹⁰⁸ Diplomatic Privileges and Immunities Act 1968, section 9(1).

¹⁰⁹ Ibid., section 9(2)(a).

¹¹⁰ Ibid., section 20.

¹¹¹ Ibidem.

The international organizations to which the Cook Islands has extended diplomatic privileges are:¹¹²

- Commonwealth Fund for Co-operation (CFTC)
- Common Fund for Commodities
- Customs Co-operation Council
- United Nations Food and Agriculture Organization (FAO)
- International Atomic Energy Agency (IAEA)
- International Civil Aviation Organization (ICAO)
- International Labour Organization (ILO)
- Inter-Governmental Maritime Consultative Organization (IMCO)
- International Telecommunication Satellite Organization (INTELSAT)
- International Court of Justice (ICJ)
- International Telecommunication Union (ITU)
- Southeast Asia Treaty Organization (SEATO)
- South Pacific Bureau for Economic Co-operation (SPEC)
- Secretariat of the Pacific Communities (SPC)
- United Nation Education Scientific and Cultural Organization (UNESCO)
- United Nations (UN)
- Universal Postal Union (UPU)
- World Health Organization (WHO)
- World Meteorological Organization (WMO)

Military forces

The Cook Islands has no air force and no large-capacity cargo planes. However, most outer islands do have airstrips. In the past, military aircraft and personnel, capable of onward delivery to the disaster zone, have delivered international relief goods to the Cook Islands during the immediate response phase. Military personnel often stay on to assist with the immediate recovery phase.

¹¹² These are all Orders in Councils in NZ (which enforce in the Cook Islands) except for CFTC, Common Fund for Commodities, and SPEC, which were Executive Council orders in the Cook Islands.

Legal status of organizations providing assistance

The Visiting Forces Act 1992-93, extends privileges¹¹³ to members of visiting forces¹¹⁴ in the Cook Islands. This act applies specifically to New Zealand visiting forces only.¹¹⁵ However, in terms of other countries' visiting forces, if may be necessary to extend privileges to them (in regards to any arrangements for mutual defense to which the Government of the Cook Islands and the Government of that country are party), then an order in Executive Council may be made to define the extent of the privileges.¹¹⁶

4.2 International NGOs

An international humanitarian organization (which is a non-profit organization) that wishes to assist in disaster response in the Cook Islands does not need to formally register as such in the Cook Islands in order to gain legal status and establish an office, assuming it can demonstrate that it is registered as an organization elsewhere.¹¹⁷ This assumes the organization is not “carrying on business in the Cook Islands” in accordance to the Development Investment Act 1995-96.

However, if a foreign *company* that works in disaster response starts working in the Cook Islands and opens a place of business, then the Companies Act 1970-71 requires that it register as an overseas company. Its operations will also need approval from the Business and Trade Investment Board.¹¹⁸

For the international organization to gain some form of formal recognition in the provision of humanitarian goods and services and gain the privileges afforded such organizations by Cook Islands law, there has to be an Order in Executive Council, as discussed in paragraph 5.1 of this report.

In the Cook Islands, very few international organizations have local civil society as operational partners. In the area of disaster management, currently the only recognized civil society organization in the Cook Islands that has an international partner is CIRCS.

4.3 Civil society organizations – local NGOs

Civil society organizations and NGOs have played an important role in the life of the Cook Islands for many years. Most are funded by foreign organizations and donors. Their programmes range widely and include health programmes, climate change and environmental programmes. The Cook Islands government has a track record of recognizing and supporting the important role these organizations play.

¹¹³ Visiting Forces Act 1992-93, section 8.

¹¹⁴ Ibid., section 2 “Visiting Forces” means anybody, contingent or detachment of the forces of a sending country, being a body, contingent or detachment for the time being stationed in the Cook Islands on the invitation or with the consent of the Government of the Cook Islands.

¹¹⁵ Ibid., section 3 (1)(a).

¹¹⁶ Ibid., section 3(2),(3).

¹¹⁷ English Common law principles of private international law that applies in the Cook Islands under s615 of the Cook Islands Act 1915 the High Court of the Cook Islands, will recognize the legal personality of an organization if it can show it has legal personality in another country. The Mormon Church is a good example as it functions in the Cook Islands but it is not registered here. It is registered in Utah, so the church's legal status in the Cook Islands, if it is called into question, is a Utah corporation, the High Court of the Cook Islands has already recognized this on many occasions.

¹¹⁸ This recommendation is also in line with the recommendation action 1.1 of the Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands that states EMCI has the role of defining the expected roles of international actors and making sure it is communicated to international actors.

In the area of disaster management, most programmes are channeled through the government and CIRCS.

4.3.1 Civil society

Civil society in the Cook Islands is regulated by the Incorporated Societies Act 1994. While Cook Islands law recognizes the legal status of an overseas NGO in accordance with the usual principles of private international law, any society formed within the Cook Islands that wishes to have legal status must apply to the Registrar of Incorporated Societies¹¹⁹ to incorporate that society as a body corporate. An incorporated society must consist of not less than 15 people (members) who are associated for any lawful purpose and not for pecuniary gain.¹²⁰

Although there are various incorporated societies in the Cook Islands working in humanitarian areas, very few of them work specifically on disaster response. Some may donate relief items for victims of disaster but that would be a one-off action not specific to the object of its society.

4.3.2 Cook Islands Civil Society Organization Incorporated (CISCO)

CISCO is a recently incorporated society intended to function as an umbrella organization for NGOs. The main aim of CISCO is to coordinate and bring together all existing civil society organizations in the Cook Islands for the purpose of constructive and informative dialogue. The role of CISCO in disaster response is still unclear as it is currently in its formative stages. However, in the past, CISCO's role in disaster response was minimal as most of its member societies do not work in the area of disaster response.

So far, the only local organization that is recognized as an approved organization to bring in relief items under customs legislation is CIRCS. Therefore, if at any time another incorporated society wishes to bring in relief items, it will either have to channel those goods through CIRCS, amend their objectives to include the role of disaster response or have some formal agreement with the government to do so thus gaining recognition as an approved organization for that purpose.

4.4 Recommendations

1. The new chapter on international response in the DRM Chapter and the revised DRM Arrangement should include the following:
 - A system for assisting international actors to pre-register as Eligible Actors in order to receive certain legal facilities. Eligibility of assisting actors should be based on certain criteria, including their ability to comply with the responsibilities described in Part 4 of the IDRL Guidelines.¹²¹ These criteria should be drafted in close collaboration with relevant Ministries and their requirements. All the relevant information on the requirements of each relevant Ministry will be disseminated to registered international responders upon registration.

¹¹⁹ Incorporated Societies Act 1994, section 34, under this section the Minister shall appoint the Registrar of Incorporated Societies, which is currently the Registrar of Companies.

¹²⁰ *Ibid.*, section 3(1).

¹²¹ For more detail, see Model Act on International Disaster Assistance Chapters 4 and 5.

Legal status of organizations providing assistance

- A provision that the registered assisting actors will be granted a number of legal facilities, as described in subsequent recommendations in this report.
- A provision designating EMCI as the responsible entity for the administration of the registration system.¹²²

The registry system will enable the Cook Islands to screen and monitor the responsibilities of the assisting actors.

4.5 Legal status of international actors to conduct relief operations

IDRL Guidelines 20: 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.

4.5.1 Foreign companies carrying on business in the Cook Islands

Cook Islands law draws a clear distinction between activities that are performed for pecuniary gain and those that are non-commercial. It also imposes clear controls on the business activities of any “foreign enterprise” – a foreigner or a company (or other legal person) that falls within the statutory definition of a foreign enterprise.¹²³ The

¹²² This recommendation is also in line with the recommendation action 1.1 of the Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands that states EMCI has the role of defining the expected roles of international actors and making sure it is communicated to international actors.

¹²³ Development Investment Act 1995-96, section 2, foreign enterprise means – “(a) in the case of an enterprise that is a body corporate, an enterprise –(i) in which one third or more of the voting shares or power is held or controlled by persons who are not Cook Islanders or (ii) in which one third or more of the value or number of the shares are beneficially owned or controlled by persons who are not Cook Islanders or (iii) that does not have its central management or control in the Cook Islands (b) in the case of an enterprise other than a body corporate, an enterprise- (i) in which one third or more of the members or partners are not Cook Islanders or (ii) in which one third or more of the beneficial ownership of which is owned by persons who are not Cook Islanders.”

Development Investment Act 1995-96¹²⁴ restricts a foreign enterprise from carrying on business¹²⁵ in the Cook Islands unless it has been registered pursuant to the Act.

If a foreign enterprise is part of an international disaster relief response in any commercial sense, then in order for that foreign enterprise to legally carry on that commercial activity in the Cook Islands, it must apply to the Business and Trade Investment Board for approval to do so.¹²⁶ If approved, a certificate of approval is then issued to that foreign enterprise.¹²⁷

There is no provision that waives or exempts a foreign enterprise from carrying on business in the Cook Islands as a part of an international disaster relief response, though it should be noted that there is an “isolated transaction” exception that may allow short term, one-off interventions. This might be the case if the foreign enterprise is only carrying out a single task (e.g. commissioning a de-salination plant) for a short period of time. A foreign enterprise engaging in the initial recovery phase over a period of weeks or months might not fall under this exception.

On the other hand, if a foreign enterprise forms part of an international response primarily for charitable purposes of a nature approved by the Cabinet, then that enterprise might be exempted under section 2 (2) of the Act. This is quoted as follows:

“(2) Where an activity in which an enterprise is engaged is primarily for a religious, educational, charitable or community purpose of a nature approved by Cabinet, the Board shall refer that application to the Minister for consideration and the Minister may exempt that enterprise from all or any of the provisions of this Act on such conditions as the Minister thinks fit and the Minister shall inform the Board in writing of his decision.”

Even though this allows foreign companies to carry on work in the Cook Islands when it is “primarily” for charitable purposes (and the exact scope of this provision is unclear), this exemption is one given once an application is made, and that can still be a lengthy process. Cabinet approval in turn could take some time, while the response needs to happen immediately following the disaster.

4.5.2 Bank accounts

There are three Commercial Banks in the Cook Islands:

1. Westpac Banking Corporation
2. Bank of the Cook Islands
3. Australia New Zealand Bank

¹²⁴ Ibid., section 17 “No foreign enterprise shall carry on business in the Cook Islands in any activity unless that foreign enterprise is registered pursuant to this Act to carry on business in respect of that activity.”

¹²⁵ Ibid., section 2: Carry on business; means to be engaged in an activity for the principal purpose of deriving a gain from that activity whether such gain is pecuniary or otherwise, but does not include – (a) an isolated transaction, not being one of a number of similar transactions repeated from time to time; (b) maintaining a bank account in the Cook Islands, the principal purpose of which is other than investment for pecuniary gain; (c) taking security for or collecting any debt or enforcing any rights relating to any security; (d) the letting and renting of residential premises where the principal object is not pecuniary gain; (e) the gathering of any information or undertaking a feasibility study.

¹²⁶ Development Investment Act 1995-96, section 18.

¹²⁷ Ibid., section 19.

Legal status of organizations providing assistance

Any natural person in the Cook Islands can apply to open a bank account at any of these Banks. Statutory “know your client” requirements are the only legal restrictions. These requirements are governed by the Financial Transactions Reporting Act 2004, which is administered by the Financial Intelligence Unit.

If any international relief personnel wishes to open a bank account for any purpose in any of the banks mentioned above, the banks will need an official identification or other identification document and verification. The banks will also need to verify the identity of the customer based on a reliable and independent source document, data or information or other evidence as is reasonably capable of verifying the identity of that customer.¹²⁸ The Financial Transaction Reporting Act 2004 further requires the Banks to obtain verification of the following information:

- the person’s name, address and occupation
- the national identity card or passport or other applicable official identifying document¹²⁹

In the case of an international humanitarian organization or a foreign enterprise working in the Cook Islands as part of an international relief response wishing to open a bank account for any purpose, the banks are required to adequately identify and verify its legal existence and structure, obtaining information relating to:¹³⁰

- the entity’s name, legal form, registration number and registered address
- its principal owners and beneficiaries, and its directors and control structure
- provisions regulating the power to bind the entity and to verify that any person purporting to act on behalf of the entity is authorized to do so and identifying those persons

If there is any suspicion of money laundering or financing of terrorism, then the bank is required by the Finance Transaction Reporting Act 2004 to report such transactions to the Financial Intelligence Unit for investigation.¹³¹

Impact of “Know Your Client” law and practice

Know your Client law and practice obviously requires significant information to be provided by a foreign company or international humanitarian organization upon arrival in the country for immediate response, especially if the opening of a bank account is crucial for the immediate response operation. These requirements might be appropriate for the initial recovery period, but the needs of immediate international disaster responders indicates a need to have some flexibility in the above requirements under the Act.

Another way of dealing with this problem, as suggested by banks, is for international responders to use the existing account of a local humanitarian organization (for example CIRCS) to transfer money.

¹²⁸ Financial Transaction Reporting Act 2004, section 4.

¹²⁹ Ibid., section 4(2).

¹³⁰ Ibid., section 4(2)(b)(c).

¹³¹ Ibid., section 11.

Information and document requirements of each bank can be found in Annex 10.

4.5.3 Bringing in currency and foreign bank accounts

There is no Central Bank or control of currency conversion rates in the Cook Islands. This is a matter of private negotiation with the banks and international money transfer agencies such as Western Union.

Even though there is free movement of currency in and out of the country, it is still subject to the Proceeds of Crime Act 2003 section 96 and anti-money laundering legislation (there is a new Currency Declaration Bill being drafted).

Section 96 of the Proceeds of Crime Act 2003 requires any person who leaves or arrives in the Cook Islands with more than 10,000 NZ dollars in cash or negotiable bearer instruments¹³² on his or her person or in his or her luggage to declare it to a Customs officer. In practice this is part of the arrival declaration form at the airport. Failure to declare is an offense under the Proceeds of Crime Act.¹³³

4.5.4 Ability to enter into a contract or lease

As a matter of common law, any person who is over the legal age (18years old)¹³⁴ can enter into a contract in the Cook Islands.

Leases

Under the Cook Islands Act 1915,¹³⁵ a landowner can alienate native freehold land subject to the limitations in that Act – the main one being a limit of 60 years¹³⁶ on all transactions.¹³⁷

The Leases Restrictions Act 1976 also applies to all leasehold arrangements that are for a term that is (or if renewed would be) for five years or more. The purpose of this Act is primarily to protect landowner interests and prevent unauthorized dispositions to foreigners. It has no application to leases for less than five years.

In the Cook Islands, not all islands have native freehold land. In Mangaia, Pukapuka and Mitiaro all lands are customary lands, which means they are uninvestigated land that belong to the “Aronga Mana” or the native chiefs of each island. There are no legal arrangement for creating a legally binding lease or transferring interests in land on those three islands. Instead, any arrangement concerning land is done according to custom. If anyone wishes to use or occupy a piece of land in these islands, they will have to enter into an arrangement with the Aronga Mana of that land. However, this arrangement will be recognized as a matter of custom and not as law.

On other islands, a lease can be entered into with the owner, or owners of land. Usually, there are multiple owners and it is not practical to obtain all of their signatures. In such cases the intending lessee can apply to the High Court to call a meeting of assembled

¹³² Proceeds of Crime Act 2003 section 96(2) the terms negotiable bearer instrument means a document representing ownership of debts or obligations, including bill of exchange, promissory notes, or certificated of deposit, whether made payable to the bearer or not.

¹³³ Ibid., section 96(1).

¹³⁵ Infant Amendment Act 2009, as part of the Infants Act 1908.

¹³⁶ Cook Islands Act 1915, section 466(2)

¹³⁷ Ibid., section 469.

Legal status of organizations providing assistance

owners.¹³⁸ If resolutions are made, the lease document must be prepared and (if for more than five years) must go to the Leases Approval Tribunal (LAT) for approval.¹³⁹ After the LAT approves the draft lease then the resolutions are submitted to the High Court for confirmation.¹⁴⁰ A lease from a single owner can simply be signed in the way provided for by the Cook Islands Act 1915, but it too will require LAT approval and High Court confirmation.

Anyone can lease native freehold land for a period of less than five years.¹⁴¹ So, if any international relief agency or personnel wishes to lease or sublease or have an assignment of a piece of land for the purpose of the response, the Cook Islands Act 1915 (as modified by the Land (Facilitation of Dealings) Act 1970) allows this on the basis that the landowners meet and resolve to lease the land. Resolutions are then confirmed by the High Court of the Cook Islands.

This process is not quick – at the very least it can take between one month and six weeks. Sometimes the process can take considerably longer.

4.5.5 Acquiring and disposing of moveable property

Anyone can acquire and dispose of moveable property in the Cook Islands. If an international humanitarian organization wishes to acquire such property, it can do so. It can also easily dispose of property as long as a contract is in place that allows for that.

4.5.6 Issuing legal proceedings

Anyone can issue legal proceedings in the High Court of the Cook Islands, as long as they are over the age of 18.¹⁴² It is not necessary for a legal entity to be registered in the Cook Islands in order for it to issue proceedings. Non-residents have access to the High Court of the Cook Islands in the same way that other non-resident plaintiffs do. It is usual for non-resident plaintiffs to be required to give security for costs.

4.5.7 Right to hire and terminate local staff

There is currently very little in the way of legislation that affects the hiring and termination of local employees. In practice, the Ministry of Internal Affairs provides an advice and assistance service that can be used by all, and would probably benefit those organizations wishing to hire local staff.

Assisting international actors should be able to terminate local personnel without undue administrative burdens – again, statutory requirements are minimal and the legislation is outdated with plans in place to repeal it.

4.5.8 Security

Apart from the ordinary laws on security for the public and country, there is nothing in place specifically to guarantee the security of international relief workers and their resources. However, the Ministry of Infrastructure and Planning usually assists with

¹³⁸ Native land in the Cook Islands has two categories. One is native freehold land, which are lands that have already been investigated and have lawful owners that have been identified, and customary land, which are lands that have not been investigated.

¹³⁹ Leases Restrictions Act 1976, section 3(3).

¹⁴⁰ Cook Islands Act 1915, section 477 and conditions of confirmation by the court under section 482.

¹⁴¹ *Ibid.*, section 466(2).

¹⁴² Infants Amendment Act 2009, section 2.

the transport of international assistance, provides some equipment and generally facilitates the moving of it. The Cook Islands Investment Corporation is responsible for all government assets and may assist in providing safe and secure premises for international assistance. Security of military forces as part of the international response team is discussed above in Chapter 5.

4.6 Recommendations

1. The Development Investment Act 1995-96 should be amended to include the following:
 - Expedited procedures for the approval of professional workers who are part of an international relief team, and in the case of private companies, only in the event they are providing no-cost relief.
 - Pre-approval procedures should be in place for foreign companies who are Eligible Actors.
2. The new Currency Declaration Bill should have requirements for incoming currency for international disaster relief, particularly in the initial response period, which do not slow the movement of funds.
3. The Financial Transactions Reporting Act 2004 should be amended to allow Eligible Actors to open bank accounts and conduct financial transactions for disaster relief response with very little reporting requirements. The alternative to this is to consider an expedited application to the CEO of Financial Intelligence Unit for exemption.¹⁴³
4. The DRM Act should be amended to extend section 12(2)(h)¹⁴⁴ to specifically include lands that are needed for the work of Eligible Actors in the islands of Mangaia, Mitiaro, Pukapuka and Nassau where there is no land tenure to enable a legally binding lease or use of the land
5. The Land (Facilitation of Dealings) Act 1970 should be amended to allow short term leases of land that is needed for the work of Eligible Actors, provisions similar to that of the Short Term Crop Leases Act 1966 with expedited (make it a priority with minimal procedures) procedures.
6. Consideration should be given to include the security of international relief personnel in the National DRM Arrangement matrix to identify roles and responsibilities of relevant agencies.¹⁴⁵

¹⁴³ Or as recommended by the CEO, as long as they get to screen the funding coming in and make sure it is not some kind of money laundering scam. This will take the obligation to report off the Banks. The Financial Transactions Reporting Act is under review and they are considering inserting such provision.

¹⁴⁴ One of the functions of the National Controller in consultation with the Response Executive is to “take possession and make use of any persons property in order to respond effectively to an event”. Section 12(4) went on to say “If property of a person is taken or used under subsection (2) (h) that person shall be entitled to such compensation as determined by the Director, in consultation with the Council.

¹⁴⁵ IDRL Guideline 22 suggests that “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.”

International Disaster Response Law (IDRL) in the Cook Islands:
A study on legal preparedness for facilitating and regulating international
disaster assistance

Chapter 5

Border control requirements

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 exigencies of the specific disasters and be 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.

5.1 Customs requirements

IDRL Guideline 17: 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

The Revenue Management Division of the Ministry of Finance and Economic Management¹⁴⁶ handles all the customs and tax services in the Cook Islands. Revenue Management consists of the Cook Islands Customs Services (Customs Services) and the Tax Services. Customs Services is headed by the Comptroller of Customs.¹⁴⁷

The role of the Customs Services is to control the movement of goods at the border.¹⁴⁸ Certain items (dangerous goods or similar) are denied entry into the country.¹⁴⁹ Most other goods are liable to some sort of tax at the border; Customs is responsible for collecting that revenue.¹⁵⁰ The three main import taxes are Import Levy,¹⁵¹ Dumping Duty¹⁵² and the Import Value Added Tax¹⁵³ (which is also levied on the supply of goods and services in country).

The role of Customs in disaster response is secondary to the major agencies involved in the local front line response. Customs is traditionally involved in domestic response, alongside other border agencies. At the border, Customs is the key agency in the clearance of goods so Customs clearance is the last step before the release of goods at the border after other border agencies' approvals have been obtained.

Import taxes are governed by the Customs Revenue and Border Protection Act 2012 (the Customs Act), the Customs Tariff Act 2012 (the Tariff Act) and the Value Added Tax Act 1997 (the VAT Act).

A new Customs Act has been drafted to consolidate and incorporate all the Customs developments over the years since 1913. One feature of the new legislation is the ability to provide flexibility without the need to amend the legislation. The new Customs Act provides wide powers to the Minister and Executive Council to make Customs rules covering various aspects of the Customs Service and Customs Tariff without having to go back to Parliament.

Those active in the area acknowledge it will take a while for the new legislation to "settle down" and for new procedures to be established; when this report was prepared regulations to establish specific procedures were still in the process of being drafted and were yet to be finalized. This report will only look at the aspects of the new Customs Act most relevant to disaster relief and recovery.

¹⁴⁶ Revenue Management and the Development Coordination are the two divisions of MFEM that have dealings with International Response.

¹⁴⁷ Customs Revenue and Border Protection Act 2012, section 7(2).

¹⁴⁸ This is monitored according to the provisions of the new Customs Act 2012 [this new Act will come into force 1 August 2012].

¹⁴⁹ Customs Act, section 90.

¹⁵⁰ Import levies are the second largest source of revenue for the Cook Island Government.

¹⁵¹ Customs Tariff Act 2012, section 3(1).

¹⁵² Ibid., section 7.

¹⁵³ Value Added Tax Act 1997.

Ports of entry

There are 9 declared ports of entry in the Cook Islands:

Main Island

1. Avatiu wharf (Rarotonga)
2. Avarua wharf (Rarotonga)
3. Rarotonga International Airport (Rarotonga)

Outer islands

4. Arutanga wharf¹⁵⁴ (Aitutaki)
5. Taunganui¹⁵⁵ (Atiu)
6. Tauhunu¹⁵⁶ (Manihiki)
7. Tukai¹⁵⁷ (Manihiki)
8. Penrhyn¹⁵⁸ (Penrhyn)
9. Pukapuka¹⁵⁹ (Pukapuka)

In addition, under the Customs Act,¹⁶⁰ the Comptroller of Customs, in consultation with the Minister of Transport and the Principal Immigration Officer (now called the Director of Immigration),¹⁶¹ may designate any airport or port as a Customs place or port of entry.

The head office for Customs is situated on Rarotonga and deals with all goods coming into the Cook Islands through the Rarotonga port facilities and the Rarotonga International Airport. In the outer islands, only Aitutaki has a customs officer in residence on the island that deals with all goods imported and exported out of Aitutaki. Like Rarotonga, Aitutaki has regular visits from international shipping services. Other outer islands do not often receive visits from vessels entering from overseas; almost all goods are received on inter island vessels trading within the country, the goods of which are not subject to Customs clearance. However, there are standing arrangements on most of the outer Islands so that if an international vessel enters that port from overseas, customs revenue can be assessed and collected.

On Atiu, there is no one residing on the island able to clear imported or exported goods; someone from the Customs office in Rarotonga will usually fly over to Atiu to carry out this job. As there are few international vessels that travel to Atiu this rarely happens. The police officer in Manihiki, (Tauhunu and Tukai wharfs) has the responsibility of checking and tallying goods coming off any international vessel and then reporting to Rarotonga. In Pukapuka and Penrhyn, the Island Administration office has this responsibility. In Manihiki, Pukapuka and Penrhyn, all documentation must be lodged for processing with the main office in Rarotonga and the delivery order and other information

¹⁵⁴ Section 2 Customs Ports of Entry Order 1972.

¹⁵⁵ Section 2 Customs Port of Entry (Atiu) Order 1985.

¹⁵⁶ Section 3 Custom Ports of Entry (Manihiki) Order 1993.

¹⁵⁷ Ibidem.

¹⁵⁸ Section 2 Customs Port of Entry Order 1982.

¹⁵⁹ Section 2 Customs Port of Entry (Pukapuka) Order 1989.

¹⁶⁰ Customs Revenue and Border Protection Act 2012, section 12.

¹⁶¹ Ibid., section 12(3).

Border control requirements

is then sent to the police officer in Manihiki and the Island Administration in Pukapuka and Penrhyn.

Although there is not much international shipping into the Northern Group (Pukapuka, Manihiki, Rakahanga, Penrhyn and Suvarrow), the distance of those islands from Rarotonga means that when an opportunity arises for direct importation to those islands from overseas, it is encouraged. At present there is an occasional shipping service from Hawaii, and occasional visits from ships out of Samoa (which is considerably closer to the Northern Group than Rarotonga).

Arrival and departure of crafts¹⁶²

As a matter of the Customs law of the Cook Islands, any craft¹⁶³ en route to the Cook Islands must give advance notice to Customs and provide at least one or more of the following details:¹⁶⁴

- the expected time/date of arrival of the craft
- its voyage details
- its passengers
- its crew
- its cargo for discharge within the Cook Islands (whether commercial or non-commercial)
- its commercial cargo not intended for discharge within the Cook Islands
- the Customs place (upon arrival in the Cook Islands, a craft must proceed directly to that place unless directed elsewhere by a Customs officer)

A craft must arrive at the Customs place declared unless it is compelled by the Comptroller of Customs¹⁶⁵ to land, berth or anchor at a different Customs place or somewhere other than a Customs place.¹⁶⁶ Once at the Customs place or Customs controlled area, no one is to leave or board the craft or discharge any cargo¹⁶⁷ unless authorized to do so by a Customs officer.¹⁶⁸ Upon arrival the person in charge of the craft must present to Customs an inward report in the form of a declaration with supporting documents.¹⁶⁹

The requirements under this Act, should be read in conjunction with other requirements under other relevant Acts concerning the border control in the Cook Islands, for example, Civil Aviation and Maritime Transport. This is discussed in the next Chapter.

¹⁶² Customs Revenue and Border Protection Act 2012, section 2 “craft” includes any aircraft, ship, boat or other machine or vessel, used or capable of being used for the carriage or transportation of persons or goods, or both, by air or water or over or under water.

¹⁶³ An agent of the owner or operator may pass on this information on their behalf under section 24(2) of the Customs Revenue and Border Protection Act 2012.

¹⁶⁴ Customs Revenue and Border Protection Act 2012, section 24(1)(a).

¹⁶⁵ This is in consultation with the Head of Departments of the Ministry of Agriculture, Foreign Affairs and Immigrations, Health, Police, Transport if it is a ship, and other relevant Ministries.

¹⁶⁶ Customs Revenue and Border Protection Act 2012, sections 27 and 28.

¹⁶⁷ Ibid., section 28(5).

¹⁶⁸ Ibid., section 27(2).

¹⁶⁹ Ibid., section 29.

In case of international disaster relief vessels, given the distance between the Cook Islands and the neighboring countries, the assumption is there will be enough time to provide this information and if not, according to the Comptroller of Customs, Customs can relax the timeframe for providing this information (if satisfied it is impractical to provide them earlier due to the urgency of the operation).

In the past, there have not been significant problems in providing the required information in the customary way even for unscheduled aircraft arriving for humanitarian purposes. This is probably because, historically, aircraft that have come in for international response have been military aircraft, and they are always well prepared with all documentation needed at the border.

A craft shall not depart from a Customs place¹⁷⁰ (designated area at the border for Customs purposes) to a point outside the Cook Islands without a certificate of clearance approved by the Comptroller.¹⁷¹

Arrival and departure of persons

Apart from having to report to Customs upon arrival, a person arriving in the Cook Islands must present his or her accompanying baggage for examination to a Customs officer¹⁷² and comply with the Customs officer's direction as to the movement of his or her baggage in the Customs place or Customs controlled area.¹⁷³

Entry and accounting of goods

Customs has control over imported goods from the time of importation until the time the goods are lawfully removed for home consumption or exportation from a Customs controlled area.¹⁷⁴ If goods are legally removed with conditions, Customs is still in control of those goods until the Comptroller is satisfied the conditions are met.¹⁷⁵

Importation of goods

To import goods into the Cook Islands, the following documents must be presented to Customs:

- import entry form
- delivery order
- airway bill or bill of lading
- invoice

¹⁷⁰ Customs Revenue and Border Protection Act 2012, section 2, "Customs place" means a Customs airport designated under section 12.

¹⁷¹ *Ibid.*, section 39.

¹⁷² *Ibid.*, section 32(1)(a).

¹⁷³ *Ibid.*, section 32(1)(b).

¹⁷⁴ *Ibid.*, section 23(1)(a).

¹⁷⁵ *Ibidem.*

Border control requirements

Descriptions and Customs value¹⁷⁶ of all goods that are imported or intended for import to the Cook Islands must be entered by the importer or agent of an importer on the import entry form and at such a time as prescribed.¹⁷⁷ Priority clearance is given to imported goods that have already been entered into the import entry form and have been filed with the Customs services.

Temporary importation

The Customs Act¹⁷⁸ allows for the temporary importation of goods by depositing the amount required for duty and collecting it on re-export or by the goods being disposed of in a manner approved by the Comptroller. Subject to any conditions the Minister may impose, duty is not payable on goods temporarily imported in accordance with any treaty, agreement or arrangement concluded by the Government of the Cook Islands.¹⁷⁹ International disaster relief equipment and vehicles could be exempted from levy under this section if an “arrangement” (a term not defined in the Act) is entered into. The request may be made by the government to the assisting organizations or States and the response might give rise to an “arrangement” – an idea that can be explored with Customs. Again, the new Customs Act has not yet come into force to allow this to be explored.

Exportation of goods

Customs has control over exported goods once they have cleared Customs for export and until they are legally removed for export; there is a provision for goods to be sealed.¹⁸⁰

Customs tariff

The three main import taxes are Import Levy¹⁸¹, Dumping Duty¹⁸² and the Import Value Added Tax¹⁸³ (which is also levied on the supply of goods and services in country). At the border, duties are levied on goods that:

- are imported into the country
- entered into the Cook Islands for home consumption
- entered into the Cook Islands for delivery to a manufacturing area

Dumping duty is a new duty that is charged on goods imported into the Cook Islands that are also produced in the Cook Islands with an actual selling price lower than the price of the local product. This provision is intended to protect local industries from having to compete in price with imported goods from other countries. Its likely impact on future disaster operations is unclear.

¹⁷⁶ Customs values in relation to goods are determined according to Schedule 2 of the Customs Revenue and Border Protection Act 2012.

¹⁷⁷ Customs Revenue and Border Protection Act 2012, section 62(1)(a)(b). At the time this report was prepared, regulations under the new Act were still in draft form.

¹⁷⁸ Ibid., section 148.

¹⁷⁹ Ibid., section 148(5).

¹⁸⁰ Ibid., section 22.

¹⁸¹ Customs Tariff Act 2012, section 3(1).

¹⁸² Ibid., section 7.

¹⁸³ Value Added Tax Act 1997.

Pre-clearance system

The procedure of inspecting documentation needed to clear goods imported to the Cook Islands can be done using a pre-clearance system. All documents required may be submitted, processed by Customs and custom duties may be paid in advance of the goods arrival.

In the case of aid goods donated directly to the government, according to the Comptroller the present procedure is for them to be processed by the Ministry of Finance and Economic Management's Development Coordination division. Its customs clearance officer will bring in all the documentation for Customs to inspect and approve.

Once a disaster has been declared, Customs has historically applied an informal variation of usual procedures. Provided a list of goods being imported is supplied prior to arrival, formal documents can be arranged after import. According to stakeholder interviews, this sort of informal arrangement is common during the immediate response phase.

Transshipment

If goods imported are intended for transit through the Cook Islands, details must be entered in Form 16¹⁸⁴ according to section 40¹⁸⁵ of the Customs Regulations 1959 upon arrival; it is unclear whether this regulation will survive the current revision of regulations. Goods undergoing transshipment are not subject to levy or VAT.

Concessions

Concessions are given to certain goods when they are imported for certain purposes. Part II of Schedule 2 of the Customs Tariff Act 2012 lists all the situations in which such goods are either exempted or have concessions when imported into the Cook Islands for certain purposes.¹⁸⁶ This includes certain goods imported by churches for certain purposes and goods that are for approved public projects.¹⁸⁷ The Minister has the power to alter and modify the concession list, vary the rate of duty or exemption or withdraw or modify any approval given under the Concession section of the Customs Tariff Act.¹⁸⁸

If there is a need for alteration and modification of the tariff¹⁸⁹ or alteration to International Nomenclature (categorization)¹⁹⁰ or International Trade Agreement¹⁹¹ this can be done by an Order in Council. The Order in Council may have retrospective effect.¹⁹²

The importation of disaster relief goods and equipment

Once the Prime Minister declares a State of Disaster,¹⁹³ according to the Comptroller, Customs will as soon as is practical open the border to allow swift importation of

¹⁸⁴ Schedule Customs Regulation Amendment Order 1962.

¹⁸⁵ Pro forma Transshipment.

¹⁸⁶ Customs Tariff Act 2012, Schedule 2 Part II, sections 40 and 41.

¹⁸⁷ *Ibid.*, Schedule 2, Part II, section 19.

¹⁸⁸ *Ibid.*, section 12.

¹⁸⁹ Customs Revenue and Border Protection Act 2012, section 13.

¹⁹⁰ *Ibid.*, section 18.

¹⁹¹ *Ibid.*, section 8(a).

¹⁹² *Ibid.*, section 19.

¹⁹³ Under section 19, Disaster Risk Management Act 2007.

Border control requirements

disaster relief items. Customs will treat disaster relief goods with special consideration on other occasions in accordance with the legislation set out below.

Goods and equipment¹⁹⁴

Under section 26 of the Concessions¹⁹⁵ in the Customs Tariff Act 2012, relief goods are exempted from any duty. These are described as:

“Donated goods under this provision [imported] within one year from the date of disaster sent to an approved organization from overseas for the relief of victims of natural disaster.”

According to the Comptroller, so far only the CIRCS is classified as an “approved organization” under this section, hence during the Cyclone Pat response, some international disaster relief goods were channeled through the CIRCS.

This exemption does not extend to electronic entertainment goods such as televisions, stereos, ships, aircrafts, motorcycles and motor vehicles. This section does not include relief equipment and relief vehicles brought in by international responders for their disaster response operation.

The new Customs Tariff Act has specifically taken into account the role of CIRCS in the Cook Islands and has imposed an exemption specifically for it under section 27 of the Concessions which not only exempts relief goods coming in once the disaster has happened but also pre-positioned relief goods for victims of disaster. Section 27 is quoted as follows:

“Imported goods by or for the Cook Islands Red Cross being donated from any persons or organizations overseas for the relief of victims of natural disasters, including goods for outer islands required for emergency standby. Does not cover electronic entertainment goods, television, stereos, motorcycles, aircraft, ship and motor vehicles. Office goods, stationery and other supplies for use in head office also do not cover.”

Again, this exemption does not, however, cover electronic entertainment goods, television, stereos, motorcycles, aircraft, ship, motor vehicles (including relief vehicles). Office goods, stationery and other supplies for use in head office are also not included.

If at any time CIRCS needs any further exemption from tax on these goods, it can apply for an exemption or a variation of section 27 by the Minister.¹⁹⁶ This may be needed for goods that are not donated or for equipment that is used in response without actually being passed on to victims. There is some question as to whether or not medicine may be regarded as “goods”.

Any disaster relief item that comes into the country, after a State of Disaster has been declared, qualifies under section 27 as being free from Import levy so long as it is imported by an **approved organization** and meets the requirements of that section.

According to the Head of Customs, common practice is for the Minister responsible for the management of the particular disaster to have the discretion of identifying approved organizations; any receiving organization must get the approval of the Minister to obtain the benefit of the exemption under the above section. In practice,

¹⁹⁴ Customs Tariff Act 2012, section 2 “Goods” means all kinds of movable personal property, including animals.

¹⁹⁵ Customs Tariff Act 2012, Part II of Schedule 2.

¹⁹⁶ Customs Tariff Act 2012, section 12.

Customs usually requires a letter from the organization that is sending the relief goods, as part of the verification process.

In the past, Customs has allowed a period of twelve months following a disaster for relief items to be imported into the country and be exempted from any form of taxes. This is regarded as the immediate relief and recovery period.

According to the Head of Customs, when relief goods come into the country, Customs will keep a record of those, and after one year, will go back to the organization that brought in these goods to confirm that all goods have been distributed and/or used in accordance with the terms of the concession. If any excess remains, and if the organization wishes to resell these goods, then the exemption for that excess is declared void and that excess will be taxed accordingly.

The decision as to whether goods are considered to be relief goods or not lies with the Response Executive¹⁹⁷ or Minister responsible for the management of the disaster. For example, in the case of Aitutaki's Cyclone Pat (2010), the Minister that was responsible for the management of disaster had the authority to approve all disaster relief items that were brought into the country. In that case a consent form from the Minister was given to any approved organization that received imported relief items.

Usually the Response Executive will prepare a list of the relief goods that will receive that exemption if brought in either by international responders, through the government, or through other organizations. The list is forwarded to Customs. This list is specifically for relief goods described under section 26 of the Concessions under the Customs Tariff Act 2012. So relief equipment (including office equipment) and relief vehicles brought in by international responders for their disaster response operation (and not for distribution) are not included.

5.1.1 Recommendations

1. A new set of regulations covering Customs procedures in disaster relief should be developed to fall under the new Customs Act, to address the following:
 - A member from the Focal Point Agency or a person delegated by the Focal Point Agency should be required at the border to facilitate the rapid importation of consignments of goods and equipment by registered assisting actors and ensure they are accorded priority treatment in handling.
 - Reduced documentation procedures should be set out, whereby certain documentation may be completed at a later stage.
 - Eligible Actors (determined according to the registration system above) should qualify as an "approved organization" pursuant to the Customs Tariff Act 2012.
 - All relief items, vehicles and equipment imported by registered assisting actors for the purpose of the relief operations should be exempt from all taxes, including re-export taxes.

¹⁹⁷ Section 11 of the National DRM Act 2007, establishes that the Response Executive direct the response to an Emergency or Disaster and approve all contracts with any third parties engaged in providing services relating to an event (during the response phase).

Border control requirements

- Customs Service, upon request and without additional charges, should carry out the functions necessary for the release or clearance of consignments of goods or equipment imported by or on behalf of registered assisting actors outside their designated hours of business and/or away from customs offices when necessary.
 - Customs Service should waive or reduce inspection requirements. If, in an exceptional case, customs security is deemed necessary, provisions should be made for a security/undertaking from the relevant assisting actor or, where appropriate, a general customs security should be provided.
 - The Comptroller, in consultation with Response Executive and the Focal Point Agency, should draft a list of “approved organizations” within the Cook Islands. This information should be displayed on the Customs Service website and also in the registered system of assisting international actors recommended in Chapter 5. It should also clarify whether or not an “approved organization” means local and international humanitarian organizations. The Minister can alter and amend the Concession to accommodate this recommendation.
2. Consideration should be given to having someone in Atiu to handle custom clearance in times of disaster on that island. In terms of other islands, consideration should be given to circumstances where the police officer is not present on the island in time of disaster. This is something that might be best addressed in the National Response plan and the agency response plan.
 3. Information on disaster relief goods, procedures and what is needed in the country at the time should be displayed on the Customs Services website: <http://www.mfem.gov.ck> at all times and should be regularly updated. Given the current changes in law and practice, this website is especially valuable and Customs should give consideration to expanding its information services at this important time.

5.2 Other government taxes – Value Added Tax (VAT)

IDRL Guideline 21: 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.

The government also has a tax charged on imported goods, the Valued Added Tax (VAT). This is a tax on consumption and it is charged and collected at a rate of 12.5 per cent. This tax is governed by the Valued Added Tax Act 1997 (VAT Act) which stipulates the way the Tax Division administers and collects VAT.

Under the VAT Act¹⁹⁸ every person¹⁹⁹ who carries on a taxable activity²⁰⁰ must register for VAT if his/her income exceeds 30,000 NZ dollars.

¹⁹⁸ Value Added Tax 1997, section 12.

¹⁹⁹ Ibid., section 2 “person” includes a company, an unincorporated body of persons and an instrument of the Crown.

²⁰⁰ Ibid., section 4 “taxable activity” means any activity (person, professional, corporate or otherwise) carried on continuously or regularly and involving the supply of goods or services to any other person for a consideration.

VAT is also payable by:

- any registered person on account of any supply²⁰¹ of goods²⁰² or services²⁰³ made in the Cook Islands in the course of carrying on a taxable activity with the amount of tax measured by reference to the value of the supply
- any person importing goods into the Cook Islands

Rates of tax

In the case of supply, the rate is 12.5 per cent.²⁰⁴ In the case of importation, the aggregate of the following is used:

- the value of the goods for the purposes of customs duty
- the amount of import levy and customs duty payable in respect to the goods under the Customs Tariff Act 1980 and excise duty payable in respect to the goods under the Customs Revenue and Border Protections Act 2012 (in practical terms duties no longer apply)
- the amount paid or payable to transport the goods to the Cook Islands and insure the goods for such transport

In other words, when goods are imported into the Cook Islands, the VAT payable is calculated on the CIF (cost insurance freight) value.

International relief goods and services

Under the Act there are exemptions²⁰⁵ from VAT both in terms of supply²⁰⁶ and importation.²⁰⁷

Some international relief supplies – i.e. those “supplied” in-country will be exempt from VAT under section 2 of the First Schedule:

2. *“A supply of donated goods or services by a non-profit body”*

The key words here are “donated” and “non-profit body”. If the relief supplies are donated by a non-profit body then there is no VAT. If goods are donated by some sort of commercial organization this exemption does not apply.

Under the list of exempted importations, international relief goods have some relief under section 5(d) of the Second Schedule:

5. *Goods which the Collector is satisfied are:*

- d) *“goods imported by an approved organization, being gifts by persons resident abroad for the relief of victims of natural disasters.”*

²⁰¹ Ibid., section 2 “supply” includes all forms of supply and the extended meaning in section 3 [wider meaning of supply] of this Act; and “supplies”, “supplier” and “supplied” shall have corresponding meanings.

²⁰² Ibid., section 2 “goods” means all kinds of real or personal property, but does not include choses in action or money.

²⁰³ Ibid., section 2 “services” means anything which is not goods or money.

²⁰⁴ Ibid., section 11(1)(a).

²⁰⁵ Ibid., section 10(3).

²⁰⁶ List of exempted supply on the First Schedule to the Act.

²⁰⁷ List of exempted importation on the Second Schedule to the Act.

Border control requirements

The key to this exemption is that a receiving organization must have evidence showing that they are an approved organization²⁰⁸ and that the goods are donated goods from overseas intended for the victims of disaster.

Export relief goods

Under the Act,²⁰⁹ if a registered person in the Cook Islands supplies relief goods for export overseas, that export will be zero-rated.²¹⁰

1. Any supply of goods if the registered person:
 - b) satisfies the Collector that the goods have been exported from the Cook Islands by the registered person
 - c) satisfies the Collector that the goods have been supplied to a person for consumption or use outside the Cook Islands (including as stores on departing ships or aircraft or where the acquirer of the goods is a departing sea or air traveler.

Again, there is nothing in the VAT Act that exempts equipment and vehicles which are part of an international disaster operation from paying VAT as well as paying when they are exported.

5.2.1 Recommendations

1. The VAT Act 1997 should be amended to include the following:
 - Any Eligible Actor who supplies goods and services to the Cook Islands during the international disaster relief or initial recovery periods or in preparation for a potential disaster by pre-positioning of stock²¹¹ should be fully exempted from registering for VAT and paying VAT on the goods and supplies for the victims of disaster as well as the equipment and other goods as part of their relief operation.²¹²
 - Non-profit organizations and civil society in the Cook Islands should also be exempted (or zero rating) from paying VAT on the goods and services they supply during the international disaster relief or initial recovery periods.²¹³
 - "Approved organizations" should be clearly defined and include Eligible Actors.

²⁰⁸ This is not defined in the VAT Act, however, approved organizations under the Customs Act refers to those that are approved by the Minister responsible for the disaster response. In practise and according to the Comptroller of Customs, the Cook Islands Red Cross Society is recognised as an approved organisation by the Customs services because they have a well-established reputation in disaster response.

²⁰⁹ Value Added Tax 1997, section 11(2).

²¹⁰ Ibid., section 1(b) (c), Third Schedule.

²¹¹ This would be consistent with the Customs Tariff Act 2012, on the exemptions given to the CIRCS on pre-position goods.

²¹² See Model Act for International Disaster Assistance, article 58.

²¹³ Ibidem.

5.3 Telecommunications

IDRL Guidelines 18 (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.

Telecommunications²¹⁴ in the Cook Islands are governed by the Telecommunications Act 1989 (the Telecom Act), and are overseen by the Minister²¹⁵ with responsibility for telecommunications. Under the Telecom Act, the only telecommunications company (network operator) in the Cook Islands is Telecom Cook Islands Ltd,²¹⁶ a private company owned partly by the government with Telecom New Zealand as its majority shareholder. In practical terms, no person other than the Telecom Cook Islands Ltd is allowed to erect, construct, establish, operate or maintain any network.²¹⁷ Telecom (Cook Islands) Ltd provides landline telephone and internet services to all populated islands and, on a number of islands, mobile coverage as well (Aitutaki, Atiu, Mauke, Mangaia, Pukapuka, Palmerston, Manihiki and Rakahanga).

The monopoly of this company does not extend to radio communications. However, any person wishing to operate a radio frequency²¹⁸ in the Cook Islands must apply to the Minister of Telecommunication²¹⁹ for a licence to install, operate or use radio apparatus.²²⁰ Any licence granted by the Minister shall be in such a form and for such period, terms and conditions as the Minister thinks fit.²²¹ Operating radio apparatus without a licence is an offense under the Telecom Act.

The Minister can delegate this power among other responsibilities under the Act.²²² In the past, the Minister has delegated this power to Telecom (Cook Islands) Ltd.

²¹⁴ Telecommunications Act 1989, section 2, “telecommunications” means any transmission, emission or reception of information of any nature including signs, signals, impulse, written matter, images, sounds, instruction, information or intelligence of any kind by wire, radio, optical or other electromagnetic systems.”

²¹⁵ Telecommunication is currently the Minister of Finance and Economic Management’s responsibility.

²¹⁶ Telecommunications Act 1989, section 2, “network operator” means the company, and the “company” means Telecom Cook Islands Limited, a company incorporated under the Companies Act 1970-71.

²¹⁷ Telecommunication Act 1989, section 4.

²¹⁸ Ibid., section 2, “radio frequency” means electromagnetic waves of frequencies between 9 kilohertz and 300 gigahertz propagated in space without artificial guide.

²¹⁹ Ibid., Part V, section 30(2).

²²⁰ Ibid., section 29 “radio apparatus” means any apparatus intended for the purpose of effecting radio communication, whether by transmission or reception, or both.

²²¹ Ibid., section 30(3).

²²² Ibid., section 35.

Border control requirements

Additionally, the Queen's Representative in Executive Council has the power under the Telecom Act to make regulations to give effect to the provisions of this Act and also to grant, prohibit and control the installation, operation, use and supply of and also fees for licensing radio apparatus.²²³

In times of emergency or disaster

The Telecom Act is unusual in that it specifically addresses powers that may be exercised by the Minister with responsibility for telecommunications “*on the occasion of any public emergency or in the interest of public safety*” – expressions not defined but clearly aimed at, among other things, natural disasters and States of Emergency. In these circumstances, the Minister, acting in accordance with the advice of Cabinet, or on the advice of an officer “specifically authorized on that behalf by Cabinet” may order the following:²²⁴

- a. The sending and receiving of any message or messages by a network operator
- b. the use of telecommunications services²²⁵ be prioritized as may be necessary in the circumstances

This indicates a need to liaise with Cabinet or any officer authorized by Cabinet in the event of a disaster.

Although not obligated under the Telecom Act or its Joint Venture Agreement, Telecom Cook Islands maintains the National Emergency Operation Centre (NEOC) at its premises in Parekura. This centre is activated on the instruction of the Commissioner of Police and contains essential communications links for the Commissioner and his or her team to coordinate emergency response (such as cyclone and tsunami alerts).

Even though the Customs Tariff Act 2012 has exemptions for international relief goods entering the Cook Islands from approved organizations, it does not exempt equipment temporarily brought into the country as part of an international disaster relief operation.

5.3.1 Recommendations

1. The Telecommunications Act 1989 should be amended to include the following:
 - Eligible Actors should be permitted to import telecommunications equipment for the purpose of international relief operations without restrictions, except as required for purposes of national security or public order.
 - Eligible Actors should be provided with priority licensing or be exempt from licensing requirements if they provide certain necessary information like names, frequencies and locations of intended use.
 - Telecommunications equipment imported into the country by Eligible Actors should be exempt from all related government taxes.
2. For the time being, before the amendment above is achieved, suggestions from stakeholders that there could be a letter of agreement between Telecom and third

²²³ Ibid., section 37(1).

²²⁴ Ibid., section 45.

²²⁵ Telecommunication Act 1989, section 2 telecommunication services is the offering of a telecommunication facility

party owner/operators of equipment.²²⁶ The suggestion could be the subject of a Memorandum of Understanding between the Minister for Telecommunication and the Telecom Cook Islands.

5.4 Biosecurity

IDRL Guidelines 18(4)

Originating, transit and affected States should consider whether normal requirements regarding fumigation and 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.

The Biosecurity Act 2008 (the Biosecurity Act) regulates and monitors the entry of regulated pests and diseases affecting plants and human beings into the country. Any goods or items that are imported into the Cook Islands, whether by plane or ship, may be subject to quarantine. The Act is administered by the Biosecurity Service.²²⁷ The Biosecurity Service has the role of facilitating the safe movement of animals, plants and their products and related equipment and technology in and out of the Cook Islands.²²⁸

Vessels and aircraft

Every vessel and aircraft arriving in the country is bound by the Biosecurity Act. The Act requires the master or captain of a vessel or aircraft to provide specific information²²⁹ on a biosecurity arrival declaration to the Director or a biosecurity officer at least 24 hours before the arrival time for vessels and 1 hour for aircraft.²³⁰ This can be communicated by electronic means or through a biosecurity clearance agent.²³¹

Every vessel and aircraft must go through biosecurity landing clearance before discharging its crew and cargo on land.²³² According to the Director of Biosecurity, if the above requirements are properly carried out, there will be no delay in discharging the crew and the cargo.

A vessel or aircraft leaving the Cook Islands is not subject to biosecurity measures unless a biosecurity officer has reason to believe that there is any “regulated article”²³³ on board that requires biosecurity export clearance and that has not been declared.²³⁴

²²⁶ See Annex 13 for a Telecom Letter of Agreement template.

²²⁷ Formerly known as the Quarantine Division of the Ministry of Agriculture, until the Biosecurity Act 2008 came into force. It consists of the Director of Biosecurity, Deputy Director, Biosecurity officers and other ancillary staff - section 73, Biosecurity Act 2008.

²²⁸ Biosecurity Act 2008, section 73(2)(a)-(h).

²²⁹ *Ibid.*, section 14(1)(a)-(h).

²³⁰ *Ibid.*, section 14(2)(a).

²³¹ *Ibid.*, section 14(2)(c).

²³² *Ibid.*, section 15.

²³³ Biosecurity Act 2008 section 2, “regulated articles” means, (a) any animal or fish product, (b) any plant or plant product, (c) any living organism, (d) whether modified or not, (e) soil, sand, gravel and aggregated, (f) any genetic material, (f) human remains, (g) any host material, (h) a regulated pest or disease, (i) any clothing, machinery or other article that contains or has adhering to it anything mentioned in paragraph (a),(b),(c) or (d); (j) garbage, (k) any other article, substance, goods or thing declared by the Secretary in writing under subsection (2) to be a regulated article for the purposes of this Act.

²³⁴ *Ibid.*, section 20(1), and section 20(1) (a)-(e) are actions that Biosecurity office may do.

Border control requirements

Goods or articles

As its name suggests, the Biosecurity Act seeks to achieve bio-secure borders for the Cook Islands. It focuses on managing the risks attaching to “regulated articles” – essentially anything of biological origin (whether animal or plant) and certain products of biological origin. So, any regulated article and sea container, and any used machinery or personal effects (items that may contain a regulated article), will need the approval of the Biosecurity Service before it is released from the port.²³⁵

There is an Import Specifications²³⁶ list that specifies the conditions of importation of regulated articles that are permitted as imports into the country. There is also a prohibited list²³⁷ of all goods that are prohibited from being brought into the country.

The Act makes the assumption that the Director will update and amend the Import Specifications. The Ministry maintains a website, which is regularly updated and on which details of goods prohibited, and specifications can be found. At the date of this study, it could be accessed at <http://www.agriculture.gov.ck/index.php/biosecurity>.

In the case of a regulated article that is not the subject of either prohibition or a specification, the importer should contact the Director of Biosecurity for a risk assessment²³⁸ and any prescribed fees.²³⁹

If the import specification requires that an import permit be obtained for a regulated article, then an application for that permit must be made to the Director of Biosecurity in Rarotonga²⁴⁰ accompanied by the required fee of 50.00 NZ dollars.

All regulated articles must go through a biosecurity import clearance inspection by a biosecurity officer at the port of entry.²⁴¹

²³⁵ Ibid., section 23(1) “Every incoming article or consignment of articles is liable to biosecurity entry inspection by a biosecurity officer at the biosecurity point of entry to ascertain whether it is or includes a regulated article. “

²³⁶ Ibid., section 26, it is the role of the Director to produce this Import Specification. Attached to this document is the current biosecurity import specification.

²³⁷ Ibid., section 9, the Director has the power to prohibit certain imports to the country that pose unacceptable biosecurity risk; section 2 of the Act, interprets “prohibited import” as a regulated article. The importation or ownership of which is prohibited under section 9 of the Act.

²³⁸ Ibid., section 27, this application must be made in sufficient time before importation, with adequate information as to the biosecurity procedures of the country of origin, nature of the article and the proposed form of importation.

²³⁹ This fee has not yet been prescribed by the Ministry of Agriculture; however, the Ministry anticipates drafting Biosecurity Regulations, which will include all fees required under the Biosecurity Act 2008.

²⁴⁰ Ibid., section 28(2), “...application shall, (a) include evidence of the country of origin of the regulated article or consignment (b) state the nature and amount of the article or consignment (c) state the expected date of arrival in the Cook Islands and (d) give any other information the Director reasonably required to enable the Director to make an import risk analysis.

²⁴¹ Biosecurity Act 2008, section 24, application for biosecurity import clearance shall (a) be made to a biosecurity officer in the specified manner, (b) be accompanied by the prescribed fee, if any, (c) specify the country of origin of the article or consignment, (d) specify the nature and quantity of the article or consignment; (e) attach any sanitary or phytosanitary certificate issued by the country of origin in relation to the article or consignment, (f) attach any biosecurity import permit relating to the document, (g) attach documentation relating to any other biosecurity measures specified under section 26(1) in relation to the article or consignment.

Exemptions

Under section 31²⁴² the Director²⁴³ has the discretion to exempt from importation controls any regulated article, class of regulated articles or consignment of regulated articles upon application in writing and in consultation with relevant division and technical section heads. The procedure for making application is prescribed under this section. Section 32 of the Act deals with waivers that may be granted in the case of regulated articles in transit.

Even though international relief consignments could be exempted under section 31 of the Act upon application to the Director, its provisions do not specifically address the need for urgency in the case of dealing with disaster relief goods at the border. Also, this exemption only applies for a single importation.²⁴⁴ Therefore, it might not be sufficient to accommodate a series of consignments coming in throughout the period of immediate response and initial recovery.

Transit goods

Goods that are classified as regulated articles and are in transit are liable to biosecurity import control and require biosecurity import clearance at a biosecurity holding area.²⁴⁵ A waiver can be given upon application to the Director accompanied with a prescribed fee²⁴⁶ and specified documents²⁴⁷ and in sufficient time to allow due consideration to the request.²⁴⁸

In practice, all transit articles that are in containers or closed consignments, are not subject to full inspection, as long as they are not opened. The transport of these consignments to and from the biosecurity holding area is monitored to make sure they are not opened or subject to any risk of concern to Biosecurity. Part of the reason for this practice is the capacity to conduct a full inspection of the transit consignment. A different approach will be taken if there is evidence that what is in the consignment might pose a biosecurity threat to the Cook Islands or the receiving country.

There is not enough space for a biosecurity holding area at the airport so inspection is something that is not often done there.

Animals – rescue dogs

On the current Import Specification list, any dog from New Zealand, Australia and Fiji must have an import permit, zoo sanitary certificate, permit from the police for dangerous breeds and inspection upon arrival. The import permit fee for dogs is 50.00NZ dollars. There is nothing in the Biosecurity Act to exempt rescue dogs from biosecurity measures for disaster relief purposes.

²⁴² This section deals with exemptions on importation of regulated articles.

²⁴³ Biosecurity Act 2008, section 2, “Director” means the Director of Biosecurity, which is the Secretary of Agriculture.

²⁴⁴ *Ibid.*, section 31(2).

²⁴⁵ *Ibid.*, section 32.

²⁴⁶ *Ibid.*, section 32(5)(b), the fee for this service has not been prescribed yet.

²⁴⁷ *Ibid.*, section 32(5)(b).

²⁴⁸ *Ibid.*, section 32(5)(c).

Border control requirements

Multilateral and bilateral agreements

Section 89 of the Act does allow the Minister to enter into bilateral and multilateral agreements with other countries and international organizations “for effective international control in biosecurity matters”. This provision might allow for agreements to be entered into with international organizations concerned with the provision of disaster relief, to establish SOP’s that are consistent with the Act but allow the necessary speed and flexibility in the case of relief supplies.

The Secretary of Agriculture has the specific authority to exchange information with other countries and international organizations; this might allow protocols and SOPs to be developed that address disaster relief scenarios.

Biosecurity emergency

The Biosecurity Service has an Emergency Response Plan²⁴⁹ in place for Biosecurity Emergency. This plan is directly relevant to any disaster that involves biosecurity in any way. This plan was developed in consultation with other response agencies.

The Act sets out detailed provisions that outline how the Biosecurity Service is to handle the situation on the ground.²⁵⁰

Under section 69 of the Biosecurity Act, the Secretary of Agriculture may declare a biosecurity emergency upon receiving evidence that a biosecurity emergency has arisen in the whole or any part of the Cook Islands.

When deciding on an appropriate response the Secretary should take the following into account:

- a. any Biosecurity Emergency Response Plan that has been devised by the Service in consultation with other Ministries
- b. as appropriate, consultation and liaison with the Emergency Management Cook Islands Office²⁵¹

In this particular type of emergency or disaster, the Service will be in control of the disaster area including what goes in and out and people’s movements within the area. Transportation of relief items in and out of the area will be the responsibility of the Secretary and the Biosecurity Service.

It is hard to imagine that any disaster relief food coming into the country in this particular disaster scenario could be exempted from biosecurity measures.

So far, there has not been an issue with international relief items during a disaster response in the Cook Islands, so it is hard to tell whether the laws, policies and practices are good enough to facilitate international response to a larger scale disaster in the future.

²⁴⁹ This is a requirement under section 70(2) (a) of the Biosecurity Act 2008, for incursions like food flies, etc. [still waiting to get a copy of this Plan which according to one of the Biosecurity officer, is an emergency response plan for food flies, which they use for other incursions.

²⁵⁰ Ibid., sections 69 -72.

²⁵¹ Biosecurity Act 2008, section 70(2).

5.4.1 Recommendations

1. The Biosecurity Act 2008 should be amended, or a supplementary regulation should be developed to allow the following:
 - The Director of Biosecurity should be given the power to develop Standard Operation Procedures for the expedited approval of food imported by Eligible Actors in the event of a disaster.²⁵² This SOP should be included in the new draft Regulation that the Ministry of Agriculture is currently working on. In developing those procedures consideration shall be given to:
 - whether or not and under what conditions normal legal restrictions or requirements may be modified in order to expedite delivery without compromising public health and security²⁵³
 - pre-approval procedures
 - reduced documentation requirements
 - list of import prohibited articles that have unacceptable biosecurity risk in the Cook Islands
 - list of import specifications of potential international relief food
 - specific exemptions for rescue dogs (documentation required) and an expedited clearance procedure for them
 - any bilateral or multilateral agreement made between the Cook Islands and any other country, especially potential first responders
 - Eligible Actors and their receiving agencies in the Cook Islands should be exempt from all related fees under the Act, during the period of the immediate response and the initial recovery.
2. An additional/alternative approach would be to engage in the process of developing a multilateral or bilateral agreement with the Cook Islands under section 89 of the Biosecurity Act. New Zealand has been and seems likely to continue to be one of the country's first responders to disaster, so a bilateral agreement between the Cook Islands Biosecurity Service and New Zealand on certain relief items to be exempted might speed importation and distribution. With its reference to international organizations, section 89 is broad enough to allow agreements to be negotiated with agencies such as the IFRC. Similar agreements could be made between the Cook Islands and Tahiti.

²⁵² See Model Act on International Disaster Assistance, section 46.

²⁵³ *Ibidem*.

Border control requirements

5.5 Entry permits and visas

IDRL Guideline 16: 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...
 - 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...

Entry permits and visas into the Cook Islands are regulated by the Entry, Residence and Departure Act 1971-2 (the ERD Act) and the Entry, Residence and Departure Fees Regulations 1976 (the ERD Regulations) and are administered by the Immigration Division²⁵⁴ of the Ministry of Foreign Affairs.

It should be noted that although Cook Islanders are New Zealand citizens, as the country is self-governing, New Zealand citizens other than Cook Islanders and permanent residents of the Cook Islands are regarded as foreigners.

International and regional obligations

The Cook Islands is a member of the Pacific Immigration Director's Conference (PIDC), which is a forum for official immigration agencies to discuss issues of mutual interest and to foster multilateral co-operation and mutual assistance aimed at strengthening members' territorial borders and the integrity of their entry systems.²⁵⁵ The PIDC provides policy support to members in accordance with the organization's strategic plan on a regional basis and to individual members.²⁵⁶

One of the areas in which policy support is provided, is the role of immigration in disaster response. In this area of policy,²⁵⁷ the challenge to immigration is ensuring international relief and recovery workers are able to enter a country quickly and legally.

The clear message embedded in this policy is that immigration rules and procedures governing visas, work permits, periods of stay and renewals should not hinder disaster relief operations.²⁵⁸ This policy outlines recommended actions to be considered

²⁵⁴ The Director of Immigration who acts as the Principal Immigration Officer under the Entry, Residence and Departure Act 1971-2 heads this division. The primary role of Immigration is to ensure Cook Islands borders are protected at point of entry by effectively screening visitors to the Cook Islands and facilitating the entry, residence and departure of foreigners in the Cook Islands.

²⁵⁵ Pacific Immigration Director's Conference website: www.pidcsec.org.

²⁵⁶ Ibidem.

²⁵⁷ Disaster response and the role of Immigration Policy Brief No 1/2010, Pacific Immigration Director's Conference website: www.pidcsec.org.

by member countries when addressing the challenge of immigration in performing their roles in disaster response.

One of the main recommendations is to review existing immigration laws, plans and procedures to identify possible obstacles to an effective and expedited international response. According to the Director of Immigration, this policy has been taken into account at least in the Division's practice during disasters. The Immigration Division's policy is currently under review and this Regional policy will then be taken into account more formally.

Immigration requirements for entry into the Cook Islands

There are two types of permits under the ERD Act – the entry permit and the residence permit. A *bona fide* visitor²⁵⁹ to the Cook Islands does not need an entry permit to enter the Cook Islands. Such a visitor can stay up to 31 days.²⁶⁰ Those intending to attend business meetings, conferences, exhibitions and sports activities, including tournaments may travel as *bona fide* visitors. An extension beyond 31 days is available only to those on holiday or recreation.²⁶¹ A *bona fide* visitor can apply for an extension up to 6 months, but those extensions may only be given on a monthly basis.

Those engaged in disaster response *will not*, however, be regarded as entering as *bona fide* visitors, as they do not fall under the definition of a *bona fide* visitor. This means that, unless exempted, they will need some kind of entry permit to enter the country.

Entry permits

An entry permit is intended to allow entry for a person who wishes to enter the Cook Islands, other than as a *bona fide* visitor, for a short period and for a specific purpose. Every person applying for an entry permit to the Cook Islands must do so using the form prescribed by the ERD Act – an entry permit issued only on this basis.²⁶² Applicants are encouraged to apply overseas at a Cook Islands consular office.²⁶³ In some cases, an entry permit may be issued in the Cook Islands at the Immigration Office in Rarotonga.²⁶⁴ Usually this follows an application made overseas prior to inward travel.

The following are situations where a person could be denied entry into the Cook Islands:²⁶⁵

²⁵⁸ Pacific Immigration Director's Conference website: www.pidcsec.org.

²⁵⁹ Entry, Residence and Departure Amendment Act 1995-96, section 2 "Bona fide visitor" means any person who enters the Cook Islands for the purpose of – (a) holidaying or recreation; or (b) exploring investment opportunities where the Principal Immigration Officer is satisfied that such business will be completed within 21 days".

²⁶⁰ There are still some requirements at the border, like a return ticket, financial evidence, and a valid passport up to 6 months beyond the contemplated period of stay. New Zealand citizens traveling on NZ passport do not have to have an onward ticket.

²⁶¹ Ministry of Finance and Economic Management website: www.mfai.gov.ck/index.php/immigration/visitors.html.

²⁶² Entry, Residence and Departure Act 1971-72, section 16.

²⁶³ A list of the Cook Islands Consular's office overseas can be found on the Ministry of Foreign Affairs website: www.ck/govt2.htm#consul.

²⁶⁴ Entry, Residence and Departure Amendment Act 1995-96, section 16.

²⁶⁵ *Ibid.*, section 9.

²⁶⁶ *Ibid.*, section 9 (1)(a).

Border control requirements

- if upon arrival he/she is unable to satisfy an immigration officer that:²⁶⁶
 - a) he or she will be able to leave the Cook Islands at the end of his/her visit
 - b) he or she has reasonable means to look after he/she while in the Cook Islands or after any person depending on him/her
- for health purposes, upon arrival in the Cook Islands, in the opinion of the Secretary of Health
- for character purposes – essentially due to previous convictions either in the Cook Islands or overseas²⁶⁷
- if no entry permit or residence permit duly issued (and an immigration officer is not satisfied that the person is a *bona fide* visitor)

The ERD Act does address the special situation of “distressed persons” – those who find themselves landing or entering the Cook Islands as a result of some sort of accident, disaster, or similar humanitarian grounds. The ERD Act allows these sorts of people rights of entry.²⁶⁸

Exemptions from entry permit

Under section 12 of the ERD Act, an entry permit (and associated need for personal references) is not required in the following cases:²⁶⁹

- NZ government employees entering the Cook Islands for official duty²⁷⁰
- any government employees of any other country entering the Cook Islands either invited by the government of the Cook Islands or with their prior knowledge, for official duty²⁷¹
- UN employees, entering the Cook Islands either invited by the Cook Islands government or with their prior knowledge, for official duty²⁷²
- any employees of regional bodies or organizations as may be specified by Order in Executive Council entering the Cook Islands either invited by the Cook Islands government or with their prior knowledge, for official duty²⁷³
- any *bona fide* visitor to the Cook Islands

The significance of this power of exemption for regional bodies and organizations is considered in Chapter 5.

NZ passport holders

Visitors traveling on NZ passports, who wish to stay up to 90 days, are exempted from entry permit requirements. This policy has been in force since 1 July 2011.²⁷⁴

²⁶⁷ Ibid., section 9 (1)(c).

²⁶⁸ Ibid., section 10 (e).

²⁶⁹ Ibid., section 12(1).

²⁷⁰ Ibid., section 12(1)(a).

²⁷¹ Entry, Residence and Departure Amendment Act 1995-96, section 2.

²⁷² Ibidem.

²⁷³ Ibidem.

²⁷⁴ This information is according to the Director of Immigration, legal authority is not clear, will need to confirm with him.

Exemption certificate

Under section 53 of the ERD Act, an exemption certificate can be issued to anyone who is not in a possession of an entry permit or residence permit. An immigration officer authorized to issue an entry permit²⁷⁵ can issue this certificate, exempting the necessary person. Such a certificate is only valid up to three months from and including the date it was issued.²⁷⁶ The ERD Act also has a prescribed form for this certificate.²⁷⁷

Residence permit

The ERD Act specifies²⁷⁸ the classes of people who are entitled to become lawful residents of the Cook Islands. The Act uses the word ‘residents’ to refer to persons present in the Cook Islands, but each category below will have a different type of visa:

- a) any person who enjoys total exemption (section 3) or a Cook Islander, permanent resident and the children of a permanent resident
- b) any person with entry permit or residence permit duly granted to them
- c) any child of a person with an entry or residence permit
- d) distressed persons,²⁷⁹ crews of ships or aircraft,²⁸⁰ government servants,²⁸¹ *bona fide* visitors²⁸²

No person shall, as of right, be entitled to the grant of a residence permit.²⁸³ It is at the discretion of the government whether or not to grant a residence permit. The Minister of Foreign Affairs, acting through the Immigration Division, can grant residence upon application and in accordance with the provisions of the ERD Act.²⁸⁴

A residence permit can be issued with or without conditions.²⁸⁵ Relevant forms are also prescribed in the ERD Act.²⁸⁶

Total exemption

A limited range of persons enjoy total exemption from the provisions of the ERD Act (except for a requirement to make the usual declaration required from persons entering or leaving the Cook Islands) as follows:²⁸⁷

- a) any person entitled to diplomatic privileges and immunities under Part I or Part [sic] International of the Diplomatic Privileges and Immunities Act 1968²⁸⁸
- b) any person entitled to consular privileges and immunities under the Consular Privileges and Immunities Act 1971
- c) any member of the family of any person referred to in paragraph (a) or (b) of this subsection as part of his household

²⁷⁵ Entry, Residence and Departure Act 1971-72, section 13.

²⁷⁶ *Ibid.*, section 53(1).

²⁷⁷ *Ibid.*, 53(2).

²⁷⁸ *Ibid.*, section 17.

²⁷⁹ Entry, Residence and Departure Act 1971-72, section 19.

²⁸⁰ Entry, Residence and Departure Amendment Act 1995-96, section 20.

²⁸¹ *Ibid.*, section 21.

²⁸² *Ibid.*, section 23.

²⁸³ *Ibid.*, section 24(4).

²⁸⁴ *Ibid.*, section 24 (3).

²⁸⁵ *Ibid.*, section 24(5)

²⁸⁶ *Ibid.*, schedules 1-17.

²⁸⁷ *Ibid.*, section 2.

²⁸⁸ This was drafted by NZ Parliament which is still in force in the Cook Islands. This Act applies to members of Diplomatic missions in a foreign country.

Border control requirements

With the exception of the requirements of section 27 and Part VII,²⁸⁹ the following people are exempted from any provisions of the ERD Act:²⁹⁰

- a) any Judge of the High Court, or of the Land Appellate Court or of the Land Court²⁹¹
- b) any member of the armed forces of the Crown who enters the Cook Islands, is in the Cook Islands or leaves the Cook Islands in the performance of his duties as such a member
- c) the spouse, child (born in or out of lawful wedlock) or other dependent of any person referred to in paragraph (a) or (b)²⁹²

The ERD Act does not speak directly to international relief personnel but some relief personnel may qualify for either the exemption under section 12, from entry permit, or for total exemption above. However, in practice, Immigration tends to require permits for all who enter. Therefore, there is a need to clarify how Immigration might be prepared to apply available exemptions to international relief personnel – and to make sure that the provision of information needed to establish entitlement to the exemption is not more time-consuming than simply seeking entry permit for work purposes in the ordinary way.

Departure

Every *bona fide* visitor must leave the Cook Islands prior to the expiration of 31 days from and including the date of arrival.²⁹³ Those holding an entry permit or a residence permit must leave on or before the date specified in the permit.

Bonds

Section 25 of the ERD Act allows a bond to be required from an aircraft landing and bringing in passengers to the Cook Islands. This requirement of the ERD Act is not being applied and there is no knowledge of when it was last used.

Applicable fees

The applicable fees for entry, residence and departure applications are at present outlined in the Entry, Residence and Departure (Fees) Amendment Regulations 2008.²⁹⁴

²⁸⁹ Declarations required from persons entering or leaving the Cook Islands.

²⁹⁰ Entry, Residence and Departure Act 1971-72, section 4.

²⁹¹ There is no more Land Appellate Court and Land Court, all references in any Act to these two courts is now a reference to the High Court (Land court is now part of the High Court) and Court of Appeal, this is as per Constitution Amendment 1980-81.

²⁹² This sub-section would most likely not be needed for International relief personnel, as they usually travel without their spouses and dependents.

²⁹³ Entry, Residence and Departure Amendment Act 1995-96, section 23 “Bona fide visitors – every bona fide visitor who enters the Cook Islands shall, unless he be granted a residence permit, leave the Cook Islands prior to the expiration of a period of thirty-one days from and including the date upon which he entered the Cook Islands or, if in the circumstances it is unreasonable to require him so to leave the Cook Islands then on or before the expiration of a period of time, after such period of thirty-one days, to be specified in a notification to be given to him by the Principal Immigration Officer, which in the circumstances, constitutes a reasonable period”.

²⁹⁴ The schedule for all applicable fees can be downloaded from the Ministry of Foreign Affairs and Immigration’s website: www.mfai.gov.ck.

Employment in the Cook Islands

To work in the Cook Islands, one must apply for an entry permit²⁹⁵ with permission to work²⁹⁶ in the Cook Islands.

Two possibilities can arise:

1. A person may be self-employed. Unless such a person is a Cook Islander or a permanent resident, Immigration will wish to be satisfied that the provisions of the Development Investment Act 1995-96 have been complied with.
2. A person may be employed by an employer. If that employer is a “foreign enterprise” under the Development Investment Act 1995-96, Immigration may wish to be satisfied as to the employer’s status as a matter of Cook Islands law. If the foreign enterprise is “carrying on business in the Cook Islands” it will need to be registered as such before it will be recognized as an employer, in-country, of an employee. Local enterprises and enterprises that are not “carrying on business” will not need to consider this aspect of Cook Islands law.

An employer must be able to sponsor the foreign employee and must be able to demonstrate an ability to repatriate that employee. The applicant must also hold relevant skills and qualification for the job. There are also health and character requirements. The requirements for foreign workers are outlined in an online publication *Recruitment of Foreign Workers: A guide for employers*.²⁹⁷

Immigration works closely with the Labour Division of the Ministry of Internal Affairs and the Ministry of Health to make sure these requirements are satisfied before a work permit is issued. If the employment is for professional occupation, the applicant will need to provide references and evidence of academic qualification for consideration and to support the application.

Medical professionals’ admission to practice in the Cook Islands is governed by the Medical and Dental Practices Act 1976. Immigration will await approval from the Medical and Dental Council²⁹⁸ before a permit is issued.

Legal professionals’ practice in-country is governed by the Law Practitioners Act 1993-94, and any application for a work permit to practice as a solicitor or barrister in the Cook Islands must be in compliance with it.

According to the Director of Immigration, the requirements and practices currently applied for professional relief personnel to enter the Cook Islands are as follows:

1. name of the person(s)
2. character reference – police record
3. medical report²⁹⁹

²⁹⁵ The entry permit application form can be downloaded from the Ministry of Foreign Affairs and Immigration’s website: www.mfai.gov.ck.

²⁹⁶ The work permit form can be downloaded from the Ministry of Foreign Affairs and Immigration’s website: www.mfai.gov.ck.

²⁹⁷ This Guide can be downloaded from the Ministry of Foreign Affairs and Immigration website: www.mfai.gov.ck.

²⁹⁸ Medical and Dental Practices Act 1976, section 3

²⁹⁹ This form can be downloaded from the Ministry of Foreign Affairs and Immigration website: www.mfai.gov.ck.

Border control requirements

4. the purpose of the trip – the particular role in the response
5. if he/she is a professional worker, then whether he/she is competent – the relevant authority will have to give their consent (e.g. Health Board) and usually credentials will be needed – refer to Medical and Dental Practices Act 1976

Any foreign commercial enterprise that enters the Cook Islands as part of an international response to disaster will have to get approval from the Business and Trade Investment Board³⁰⁰ if it is “carrying on business” in the Cook Islands.

According to the Director of Immigration, any application for international relief personnel is always considered to be priority so long as the required information is provided promptly; failure to provide that information can lead to delays. From past experience, Immigration finds this information is usually not complete, but according to the Director Immigration will try to accommodate requests to the best of its ability. The Director of Immigration will usually allow 48 hours for the information to be provided after arrival. However, this requires the cooperation of the agency that is bringing in the relief personnel in question.

Although the Division talks of “work permits”, the ERD Act does not clearly outline the relationship between permission to work and the two kinds of permits provided for. There needs to be some clarification on where “work permit” sits under the Act.

If, according to the practice of the Immigration Division, a work permit is a type of entry permit, then section 12 will exempt international relief personnel falling under the listed categories from the requirements of a work permit.

In previous disasters, the first responder has most often been the NZ government and the NZ military. Section 12 can be applied to NZ relief personnel. Under the Total Exemption provision it also applies to “any member of the armed forces of the Crown, who enters the Cook Islands, is in the Cook Islands or leaves the Cook Islands in the performance of his duties as such a member”. This total exemption will also deal with the requirement of a work permit.

Section 12 also exempts UN employees. Under the Cook Islands National Disaster Risk Management Arrangements 2009, Cabinet has the role of requesting international assistance including requesting an “UNDAC team to conduct a more substantive damage and needs assessment should it be required.”³⁰¹ This team can be exempted under section 12.

Other UN agencies could also respond to the disaster depending on the nature of the disaster (FAO, WHO, etc.). They should all enjoy some exemption under section 12.

The process of applying for an exemption is not clearly set out in the text of the law, but under section 53 it seems that NZ relief personnel can obtain an exemption certificate from the Cook Islands High Commission in Wellington prior to arrival in the Cook Islands.

Under the current legal framework there may be some scope for the Ministry of Foreign Affairs to consider issuing certificates of exemption to any international humanitarian organization that is willing to respond to a disaster in the Cook Islands. This could be

³⁰⁰ This board is governed by the Development Investment Act 1995-96.

³⁰¹ Cook Islands DRM Arrangement 2009, page 28.

an automatic process that occurs once the Ministry receives basic information on who is coming and when they are expected to arrive in the Cook Islands.

5.5.1 Recommendations

1. The new Entry, Residence and Departure Bill that Immigration is currently working on should align with the proposed amendments to the DRM Act and the DRM Arrangement, in respect to entry and departure of international relief personnel. The new Bill should also specify the following facilities for international relief personnel:
 - Pursuant to DRM Act and associated regulations, a dedicated Disaster Relief Personnel Visa should be given to all international relief personnel of Eligible Actors, if they are not already entitled to exemption under the Act, and if they are not a threat to national security or public health and safety, for an initial period of three months, renewable for period of up to six months from within the Cook Islands, and as often as necessary throughout the international disaster relief and initial recovery periods.³⁰²
 - The Director of Immigration should be directed to draw up guidelines for the criteria needed to preclude international relief personnel from being a threat to national security, public health and safety. The guidelines should have the minimum requirements on documentation and should aim to assist in expediting the issue of the Disaster Relief Personnel Visa rather than slowing it down. The guidelines should be available to registered assisting international actors at the time of registration well before they arrive in the Cook Islands for the relief operation. They should also be available on the Ministry of Foreign Affairs and Immigrations website.
 - The Disaster Relief Personnel Visa shall be made available upon arrival at the point of entry in the Cook Islands to the international relief personnel of Eligible Actors (and not solely through prior application at a consular mission abroad).³⁰³
 - Holders of Disaster Relief Personnel Visas should be allowed to undertake disaster relief and initial recovery work as part of their relief operation without the requirement to seek a separate work permit.³⁰⁴
 - The Director of Immigration, in consultation with the Focal point agency, should have the discretion to grant Disaster Relief Personnel Visas when pre-registration procedures have not been met.
 - Transit Visas should be given to international disaster relief personnel that transit the Cook Islands when responding to a disaster elsewhere. The Director of Immigration should draw up guidelines listing the requirements for this visa. The guidelines should aim to facilitate and expedite the issue of this visa rather than slow it down.
 - The provisions on the requirements for a bond should be clarified to make sure they will not be applied to international relief aircraft.

³⁰² See Model Act for International Disaster Assistance, section 27(a).

³⁰³ Ibid., section 27 (b).

³⁰⁴ See Model Act for International Disaster Assistance, section 27(c).

Border control requirements

- Certificates of temporary recognition of professional qualifications should be granted to professional relief personnel of registered international humanitarian organizations upon confirmation that the sending organization can vouch for their competence. The Director of Immigration should draw up guidelines to expedite the granting of this certificate. The certificate should be given for the whole period of the response as well as the initial recovery period.³⁰⁵

³⁰⁵ Ibid., section 28.

International Disaster Response Law (IDRL) in the Cook Islands:
A study on legal preparedness for facilitating and regulating international
disaster assistance

Chapter 6

International humanitarian
transport arrangements
and telecommunication

IDRL Guideline 19: 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 over-flight, 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

Air transport in the Cook Islands is controlled by the Ministry of Transport and Civil Aviation. The Department was first established in 1987 under the Department of Civil Aviation Act 1986-87. Prior to that time, civil aviation affairs were handled by the New Zealand Ministry of Transport.

International and regional obligations

The close relationship between New Zealand and the Cook Islands in civil aviation matters reflects the fact that the Cook Islands is a signatory to the Chicago Convention on Civil Aviation³⁰⁶ and member State of the International Civil Aviation Organization³⁰⁷ (ICAO) with an extensive suite of modern legislation that deals with civil aviation in great detail.

The ICAO contracting State status of the Cook Islands allows for easy access for aircraft of other contracting states – interoperability. Thus, the Cook Islands do not seek to regulate the planes of another contracting state in areas regulated by that other contracting State.

Civil aviation requirements

The Ministry does not have the resources to be able to fully administer the regime from within the country; oversight and regulation is therefore contracted, in large part, to New Zealand authorities. In practice, this system works well and allows international airlines such as Air New Zealand, Virgin Australia and Air Tahiti to operate to, from and throughout the country. It also allows the country's domestic airline to operate modern, sophisticated turboprop aircraft to all outer islands that have serviceable airstrips. In disaster response situations, the fact that the Cook Islands is an ICAO contracting State with a modern civil aviation regulatory regime closely aligned to New Zealand means most scenarios have already been anticipated with clear procedures and protocols.

³⁰⁶ Chicago Convention on International Civil Aviation 1944.

³⁰⁷ The International Civil Aviation Organization is a specialized agency of the United Nations working to promote the safe and orderly development of international civil aviation throughout the world. It sets standards and regulations necessary for aviation safety, security, efficiency and regularity as well as for aviation environmental protection.

The large amount of law – statutes and subsidiary legislation – will not be detailed here. Instead, the following information is a brief overview of those aspects of Cook Islands civil aviation that directly affect disaster response. Brief consideration is given to the regime of the licensing of commercial air services, domestic or international. It is assumed, however, that disaster response flights will be one-off non-commercial flights for humanitarian purposes. Consideration is also given to those provisions of the Civil Aviation Act 2002 (the Civil Aviation Act) that allow for further flexibility in cases not covered by existing law.

The main functions of the Department of Civil Aviation are to promote and encourage the orderly and economic development of civil aviation,³⁰⁸ to exercise such functions as may be necessary to ensure the safe operation of aircraft,³⁰⁹ and to provide for the investigation of accidents in which aircraft are involved.³¹⁰

It is important to note that the Director of Civil Aviation, Cook Islands, appointed under the Civil Aviation Act is not a person residing in the Cook Islands; the post is occupied under contract to an individual residing in New Zealand whom was previously the Director of Civil Aviation Authority of New Zealand.

The main laws that govern air transport in the Cook Islands are the Civil Aviation Act 2002 and the Air Services Licensing Act 1984. New Zealand regulations, which were adopted by the Cook Islands, apply in the Cook Islands, i.e. the Civil Aviation Regulations 1953 and the Cook Islands Civil Aviation Ordinary Rules which are the New Zealand Civil Aviation Ordinary rules 29 June 2010. There is only one domestic airline, Air Rarotonga Ltd; it uses the Jespersen's Airway Manual as part of its SOP.

Unscheduled aircraft entry requirements

The Civil Aviation Act 2002 regulates aircraft carrying on aviation operations in the Cook Islands. It has rules on safety and security³¹¹ and aviation documents.³¹² There are no detailed provisions in the Act for handling non-scheduled or transit air services. However, the Cook Islands Aeronautical Information Publication (AIP) and the Jespersen's Airway Manual, outline the applicable procedures.

Any non-scheduled or transit air services to or through the Cook Islands must obtain the approval of the Secretary of Civil Aviation in Rarotonga at least 14 days before the proposed date of arrival at Rarotonga International Airport.³¹³ The request must have the following information:³¹⁴

1. aircraft type and registration
2. pilot(s) name(s)
3. purpose of flight
4. origin, destination(s) and route
5. time and date of arrival and departure

³⁰⁸ Civil Aviation Act 2002, section 4(1)(a).

³⁰⁹ Ibid., section 4(1)(b).

³¹⁰ Ibid., section 4(1)(d).

³¹¹ Civil Aviation Act 2002, section 10.

³¹² Ibid., section 26.

³¹³ Cook Islands, Jespersen's Airway Manual, page 1.

³¹⁴ Ibid., page 2.

International humanitarian transport arrangements

6. number of persons on board
7. aircraft take-off weight and tire pressure
8. refueling details and time required
9. details of third party insurance cover for flights over or within Cook Islands
10. Certificate of Airworthiness³¹⁵ (faxed copy)
11. pilot's aviation licence and validating medical certificate

A response should be expected within seven days; if there is any change to the above information, it needs to be communicated to the relevant authority immediately.³¹⁶ Obviously, in time of disaster response, some flexibility is needed and emergency rules and exemptions can provide that flexibility.

Power to make emergency rule

The Director³¹⁷ has the power to make emergency rules³¹⁸ necessary to alleviate or minimize any risk of death of or serious injury to any person, or of damage to any property,³¹⁹ but only when the ordinary rule is impracticable in the circumstances of a particular case³²⁰ to achieve the purpose of the emergency rule.

In making emergency rules, the Director must consult all relevant stakeholders including Government Departments and Island Councils.³²¹

Exemption

The Director has the power to exempt any person, aircraft, aeronautical product, aerodrome, or aviation related service from any specified requirement in any ordinary rule made by the Minister under the Civil Aviation Act 2002.³²²

In cases of international relief aircraft coming in, the Director has the power to exempt any requirement in any ordinary rule made by the Minister under the Civil Aviation Act, as long as he is satisfied that:

- a. the prescribed requirements are clearly unreasonable or inappropriate in the particular case
- b. events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case

³¹⁵ Under article 33 Chicago Convention on International Civil Aviation 1944, if the aircraft is registered in a contracting state then article 33 requires the Cook Islands to accept the certificate of airworthiness and certificate of competency and licenses issued as valid provided that the requirement under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to the Convention. This is reflected in the Civil Aviation Rules of New Zealand Part 21, which also applies in the Cook Islands.

³¹⁶ Cook Islands, Jespersen's Airway Manual, page 2.

³¹⁷ Civil Aviation Act 2002, section 3, "Director" means the person who is for the time being appointed as the Director of Civil Aviation under section 8.

³¹⁸ Ibid., section 35 "this rule must be signed by the Minister".

³¹⁹ Ibid., section 34(1).

³²⁰ Ibid., section 34(2).

³²¹ Ibid., section 38.

³²² Ibid., section 40.

International humanitarian transport arrangements

- c. the risk to safety and security will not be significantly increased by the granting of the exemption³²³

Air service licence

If any international aircraft wishes to operate an on-going air service (scheduled or not) within the Cook Islands as part of an international relief operation, its operator must obtain an air service licence³²⁴ to be able to do so. Under the Air Services Licensing Act 1984, every person wanting to establish or operate an air service must apply to the Minister of Transport and Civil Aviation (“the Minister”)³²⁵ for a licence.³²⁶ The application must be lodged with the Secretary of Civil Aviation in Rarotonga.³²⁷ Upon receipt of the application, the Minister shall give public notice of the application and give 21 days³²⁸ in which to receive written representations relating to the application. The licence can be issued with or without conditions, but generally takes more than a month to process.³²⁹

Airport services requirements

Currently, Rarotonga International Airport³³⁰ is the only international airport in the Cook Islands and is operated by the Airport Authority (the Authority). Typically International relief aircrafts will land in Rarotonga before being dispatched to the outer islands, unless of course there is an urgent need to land in the outer islands (aircraft can land on the outer islands airstrip). The Authority also maintains the Aitutaki Airport. The remaining airports in the outer islands are under the responsibility of the respective Island Councils.

The Airport Authority Act 1985 governs how airports are managed and operated by the Authority. The Authority establishes, improves, maintains, operates and manages airports and, subject to section 11(2)(d), services and facilitates in connection with the operation of any airport or with the operation of aircraft engaged in civil aviation.³³¹

The specific role of the Airport Authority in international response is to facilitate relief aircraft coming into the country. Past experience of disasters³³² has shown that most responses are delivered by air. Therefore the airport is a crucial factor in considering the framework of international response in the Cook Islands.

³²³ *Ibid.*, section 40(2)(c)(d).

³²⁴ Civil Aviation Act 2002, section 3 and the Air Service Licencing Act 1984.

³²⁵ *Ibid.*, section 4.

³²⁶ *Ibid.*, section 3 and the Air Services Licencing Act 1984.

³²⁷ *Ibid.*, section 5.

³²⁸ *Ibid.*, section 6, “from the date of the application”.

³²⁹ *Ibid.*, section 8.

³³⁰ The Rarotonga International Airport was first opened in 1974, under the management of the New Zealand Ministry of Transport. In 1985, the Cook Islands Government took over responsibility and established the Airport Authority (Authority) under the Airport Authority Act 1985 to take over the management of the Rarotonga International Airport.

³³¹ Civil Aviation Act 2002, section 10, and the Airport Authority 1985.

³³² Cyclone Sally in 1987, Cyclone Martin in 1997 and Cyclone Pat 2010.

International humanitarian transport arrangements

The Airport Authority uses the following Standard Operation Plans:

1. *Manual of Air Traffic Services, by Airways New Zealand*³³³

This manual depicts actual rules and procedures governing Air Traffic Control, which the Authority uses.

2. *Rarotonga International Airport LOCAL UNIT ORDERS, 26th April 2010*

SOP developed by the Authority focusing on specific Rarotonga operations

3. *Pacific Aeronautical Information Publication*³³⁴

This has been replaced with the Cooks Aeronautical Information Publication (AIP)³³⁵

Enquiries made of Air Rarotonga Limited, the country's only domestic airline reveal that more comprehensive information has been developed by that airline for its operations to the outer islands and is updated on a regular basis. That information is proprietary to Air Rarotonga Limited but its managing director has confirmed that the company's practice is to cooperate fully on aviation matters in times of disaster and that information would be shared as required.

Normal operation of the Rarotonga International Airport

If there are no scheduled flights the Rarotonga International Airport will be closed. During these times, the Auckland International Airport³³⁶ takes care of Cook Islands airspace until the airport's control tower is open.³³⁷

Approval to land in the Cook Islands and related fees

For unscheduled commercial or private aircraft, approval is needed from the Director or his Deputy of Civil Aviation (or the Chief Executive if Deputy is unavailable) for landing.³³⁸ To date, the only aircraft that have been used to deliver disaster relief supplies to the Cook Islands during previous immediate response (apart from air cargo consignments on regular scheduled services) were military aircraft. In order for these military aircraft to land in the Cook Islands, they need approval from the Ministry of Foreign Affairs.³³⁹

³³³ [There is no extra copy available of this lengthy manual, however I have copied the relevant pages].

³³⁴ Ibidem.

³³⁵ This is a manual intended for use by any aircraft that enters or might want to enter the Cook Islands, or Cook Island's airspace. This document is intended to contain information on permits, coordination and civil aviation requirements in the Cook Islands. It also has information on all airports in the Cook Islands.

³³⁶ This is under an agreement between the Government of Cook Islands and the Airway Cooperation NZ – unable to locate a copy of this agreement.

³³⁷ Auckland Airport will report anything that went on in the Cook Islands airspace while the airport is closed.

³³⁸ Rarotonga International Airport, Air Traffic Services-LOCAL UNIT ORDERS, page 44, "5.1.2.2 Non-schedule advises of a general aviation but international nature is to be faxed to the Deputy Director of Civil Aviation for Approval."

³³⁹ Pacific Aeronautical Information Publication (AIP) for the Cook Islands, Airway NZ, pages 11-7, "Approval for Military and Diplomatic Flights shall be requested from: Ministry of Foreign Affairs and Immigration."

Under the Civil Aviation Charges Regulation 1973³⁴⁰ a military aircraft landing in the Cook Islands for its assigned purposes is exempt from any airport or landing charges. However, the practice of the Airport Authority seems to be to issue landing charges for military aircraft. In the case of deliveries of international disaster relief, the Authority might send the bill to the Ministry of Foreign Affairs, and upon receipt, the Ministry of Foreign Affairs would be entitled to seek the benefit of the exemption. Accordingly, at present an ad hoc exemption regime seems to be in place.³⁴¹

For non-military aircraft delivering relief items for immediate response, the Civil Aviation Charges Regulation 1973 does not specifically exclude the imposition of airport and landing fees. However, the regulation does provide an exemption for flights in connection with a search and rescue operation.³⁴²

The Civil Aviation Charges Regulations 1973 do exempt military aircraft from any fees, however, in practice, the Authority has been known to do the opposite. As both New Zealand and Tahiti use military aircraft to deliver disaster relief goods to the Cook Islands in times of disaster, the operation of these regulations should be reviewed.

Coordination of unscheduled flights for international response

All airports in the Cook Islands that are experiencing cyclone conditions are shut down during cyclone or related disasters. International flights are diverted, usually to Papeete, Tahiti. As long as they have not sustained damage, airports will open as soon as conditions have eased.

If the Rarotonga International Airport is not already open, then typically the instruction to open the airport, if it is for military aircraft (which is usually the case in the Cook Islands) comes from Foreign Affairs. However, in recent responses, the instruction has been issued from the Cook Islands High Commission in Wellington.³⁴³

Flight plans and other information must accompany the application for approval to land.³⁴⁴ According to the CEO of Airport Authority, military flights are “the least of their worries”, because these usually have organized flight plans that have been sent to them beforehand.

Auckland Oceanic Control, Airways New Zealand looks after the airspace and the airport for the Cook Islands. If there is an urgent call for landing, the focal point will be Auckland Airport, which will then call the Rarotonga Airport Security (on duty 24/7).

³⁴⁰ Section 3(2), Civil Aviation Charges Regulations 1973, “Nothing in these regulations shall apply: (a) To any aircraft used for the purposes of Her Majesty’s naval, military, or air forces (c) To aircraft used for the military, diplomatic or ceremonial purposes of any Government.”

³⁴¹ The Secretary of Foreign Affairs is not aware of this practice! I am hoping to get to the bottom of this at the workshop.

³⁴² Section 3(2), Civil Aviation Charges Regulations 1973, “Nothing in these regulations shall apply: (a) To any aircraft used for the purposes of Her Majesty’s naval, military, or air forces (c) To aircraft used for the military, diplomatic or ceremonial purposes of any Government.”

³⁴³ The Secretary of Foreign Affairs is not aware of this practice! I am hoping to get to the bottom of this at the workshop.

³⁴⁴ Section 8(e), Civil Aviation Charges Regulations 1973, “provided that landing charges under this regulation shall not be payable in any of the following instances: (e) A flight in connection with a search and rescue operation.”

International humanitarian transport arrangements

Security will call the CEO of Airport Authority or his deputy to come up and open the airport. This practice is not unusual in case of aircraft diversion and in most cases the Authority is able to open the airport within 20 minutes of that call.

The Authority has guidelines for non-scheduled aircraft³⁴⁵ so, once it is informed, it will then inform the Cook Islands border agencies. If the call comes from a commercial airline, such as Air NZ or Pacific Blue, the airlines usually notify the border agencies themselves.

Extended working hours

If the need arises to open the airport for extended working hours to facilitate relief aircraft, the Airport Authority has internal procedures in place for that.³⁴⁶

Transit aircraft

If an aircraft is just passing through Cook Islands airspace, the Airport Authority will only need notification. Its control tower, if open, will take care of that aircraft movement until it has passed on. If the airport is closed then the Auckland tower will look after the movement. If the aircraft needs to land for any reason, then it will have to follow the normal procedures under unscheduled aircraft mentioned above.

Outer islands airports

Apart from Rarotonga International Airport and Aitutaki Airport, an additional seven islands have airports that are currently under the care of the Ministry of Infrastructure and Planning (MOIP).³⁴⁷

According to MOIP, it is still contemplating the idea of training someone in each of the islands mentioned above as Immigration and Custom officers³⁴⁸ so that when there is a need to have these airports act as a gateway for international aircraft, it can be done. This would be especially helpful in cases of international disaster relief to the Northern Group. Airports in Pukapuka, Manihiki and Penrhyn are far from Rarotonga and in some cases closer to airports in Samoa and French Polynesia.

6.1.1 Recommendations

1. The Civil Aviation Act 2002 should be amended to extend the role of Foreign Affairs beyond the existing role of approving military aircraft movements to dealing with the approval for international relief aircraft.³⁴⁹ It should also be amended to specifically give relief aircraft registered in a contracting ICAO State and aircraft of Eligible Actors the following:

³⁴⁵ For the last 10 years, NZ has been the immediate responder to disaster in the Cook Islands and coordination usually between NZ MCDEM and the Cook Islands High Commissioner in Wellington and from them to the Foreign Affairs in the Cook Islands. However, it really depends on how fast they can get the message over to the other side that is important, so obviously in this case, CI High Commissioner's office in Wellington should just contact Airport Authority directly.

³⁴⁶ Rarotonga International Airport LOCAL UNIT ORDER, 26th April 2010.

³⁴⁷ MOIP also takes care of the outer islands affairs.

³⁴⁸ This will be in consultation with Immigration and Customs Services.

³⁴⁹ This was suggested by the Secretary of Civil Aviation at the National Workshop for the presentation and review of the recommendations in the first draft of the report.

- priority in air traffic routing and landing permission in the Cook Islands and especially at the affected area
- a waiver on the 14 day requirement under section 40 of the Civil Aviation Act 2002, subject to the aircraft operator providing any required information to the relevant authority at the earliest opportunity
- an exemption from any applicable fees or taxes under the Civil Aviation Act 2002 or the Customs Act 2012

The relief aircraft shall comply with any directions from the Civil Aviation or Airport Authority as to air traffic control and landing procedures.

2. Amendments to reflect the above should be made to the Rarotonga International Airport in Air Traffic Services-LOCAL UNIT ORDERS and the *Islands Aeronautical Information Publication (AIP)*.
3. In terms of Air Services Licenses, there should either be an exemption for aircraft conducting on-going air services within the Cook Islands as part of an international relief operation or, alternatively, a quick procedure for obtaining the necessary license.
4. Island Councils should have bylaws to exempt international relief aircraft bringing in disaster relief goods and personnel to their islands from landing fees. This should also be included in their Island Councils DRM Plan. Where airport land is privately owned, there should be a process of consultation with the affected landowners.
5. The Cook Islands may benefit from a bilateral agreement with Tahiti, and Samoa (each closer to the Northern Group) in regard to relief aircraft landing in and departing from the Cook Islands.
6. The DRM Arrangement should be amended to mention the coordination of relief aircrafts. The Focal point Agency should have the responsibility for any relevant coordination between the Eligible Actors and Civil Aviation for permission to land and the waiving of requirements under the Civil Aviation Act and with the Airport Authority for the necessary procedures for landing.

6.2 Maritime transport

Maritime requirements

Maritime transport in the Cook Islands is governed by the Maritime Transport Act 2008 (the Maritime Act).

International and regional obligations

The Cook Islands became a member of the International Maritime Organization (IMO) in 2008 and passed the Maritime Act that same year. Some of the roles and obligations under the IMO are reflected in the Maritime Act, which regulates maritime activities in the Cook Islands and addresses safety issues as well as matters affecting the marine environment.

It does not apply to government vessels, warships of any state, aircraft of the defense forces of any other State, or vessels owned or operated by a State other than the Cook

International humanitarian transport arrangements

Islands if the vessel is being used by that state for wholly governmental (not including commercial) purposes.³⁵⁰

In case of international disaster relief, vessels of an organization that wishes to carry on maritime activities in the Cook Islands as part of an international response operation must comply with the provisions of the Act unless falling within the following exemptions or enjoying an exemption from the Secretary.

If any vessel wishes to carry on an on-going operation in Cook Islands water it must apply to the Secretary of Transport for the necessary maritime documents.³⁵¹ This applies to a vessel wishing to operate in the Cook Islands water as part of an international response operation.

Exemption

The Secretary has the power to exempt any person, vessel or maritime product from any specified requirement in any maritime rule.³⁵² The Act also requires Marine safety checks of vessels entering any port in the Cook Islands or operating in the Cook Islands waters.³⁵² The only type of vessel that is exempted from this requirement are pleasure crafts.³⁵⁴ In times of emergency, the Secretary has the power to make emergency maritime rules.³⁵⁵

Ports requirements

The main harbours in the Cook Islands are operated by the Ports Authority,³⁵⁶ which was established and governed by the Ports Authority Act 1994-95. The main role of the Ports Authority is to operate and maintain the main ports of entry in the Cook Islands: the Avatiu Harbour in Rarotonga and Arutanga Harbour in Aitutaki (the port of entry on the island having the second largest population in the country).

It should be noted that Avatiu, Rarotonga is the only port in the Cook Islands able to berth ships of any considerable size; the island of Penrhyn in the far north is able to berth smaller vessels. While Arutanga, Aitutaki, is a port of entry capable of handling container traffic, it has only a small passage; boats are worked from offshore and containers lightered into the wharf. All other islands are only capable of receiving Less Container Load (LCL) break-bulk cargoes, lightered from ships offshore.

At Avatiu, the Harbourmaster and the Assets & Operations Manager (responsible for cargo handling and shore-based activities) are the focal point when it comes to coordination of disaster relief vessels entering the port of Avatiu.

³⁵⁰ Maritime Transport Act 2008, section 4.

³⁵¹ Maritime Transport Act 2008, section 2 “maritime document” (a) means any licence, permit, certificate or other document issued under Part 4 to or in respect of any person, vessel, cargo, maritime procedure, or maritime product and (b) Includes any foreign licence, permit, certificate, or other document recognized by the Secretary under section 24 or accepted by the Secretary under section 25.”

³⁵² Ibid., section 30(2) various circumstances the Secretary must consider before issuing any exemption.

³⁵³ Ibid., section 87(1).

³⁵⁴ Ibid., section 88(1).

³⁵⁵ Ibid., section 20(1), the Secretary must consider that (a) such rules are necessary to alleviate or minimize any risk of the death of or a serious injury to any person, or of damage to any property (b) It is not practicable in the circumstances of the particular case for the Minister to make maritime rules to effectively alleviate or minimize the risk concerned.

³⁵⁶ Ports Authority Act 1994-95, section 5. The Ports Authority is a body cooperate with perpetual succession.

The Ports Authority has bylaws that relate to port user charges; these do not currently address humanitarian vessels or operations. There are currently no other bylaws in force making coordination between the Harbourmaster and senior staff of the port important.

In practical terms, the Ports Authority has control of all cargo within the wharf area, and has the facilities to stack and handle containers and to store LCL/break-bulk cargo in cargo sheds.

The Ports Authority is in charge of goods leaving the wharf, so all documentation regarding Customs, Biosecurity and so forth must be completed and cleared before the Ports Authority will release goods from the wharf.

Provided all paperwork is in place the Ports Authority or any person acting with the approval of the Authority at a place (whether on or off the wharf) approved by the Ports Authority, will offload and disburse all LCL cargo at the wharf.³⁵⁷

There are no exemptions for relief vessels or cargo under the law, nor are there any special procedures for international relief items at the wharf. However, the Ports Authority points to its track record as an indication it will give these items first priority in its cargo-handling role and can turn around ships quickly.³⁵⁸

According to the Harbourmaster interviewed for this report, “it is not in anyone’s interest to delay the disbursement of relief goods, unless the documentation is not completed. Sorting out the Port fees and related paperwork can come along at a later stage, but disbursing the relief goods to receiving agencies will be our priority. All staff will work overtime to achieve this, so everyone is on call 24/7.”³⁵⁹

All border agencies are notified by the Harbourmaster whenever the Ports Authority receives notice of a ship coming in with goods. The Harbourmaster reports that there have not been any problems coordinating and exchanging information with these authorities as required.

Most disaster relief goods for immediate response and initial recovery are delivered by aircraft – during those phases the Ports Authority deals with very little in the way of disaster relief goods (sometimes relief goods do arrive from nearby French Polynesia).

Exemption

Although exemptions from Port charges have been allowed in the past for relief shipments, the legal basis for doing so is unclear.³⁶⁰ Under section 13 of the Ports Authority Act, the Minister may from time to time give the Ports Authority (in writing) such general policy directions as he thinks fit for the policy to be followed by the Ports Authority in the exercise of its functions. The Ports Authority must carry out any directions by the Minister. Section 13A³⁶¹ of the Ports Authority Act allows the Minister to instruct

³⁵⁷ Ports Authority Act 1994-95, section 32.

³⁵⁸ According to the Assets & Operations Manager, if all paperwork is in place, offloading and disbursing relief items will only take one-day maximum. With the Cook Islands distance from other ports, any shipment of relief goods will be in transit for several days (minimum), so steps should be taken to ensure copies of all necessary paperwork is forwarded for processing well in advance of vessel arrival. If disaster relief goods are already pre-cleared, then it is just a matter of offloading and arranging for them to be uplifted from the wharf.

³⁵⁹ Mr. John Cornwell, Harbourmaster, Ports Authority, Rarotonga, Cook Islands.

³⁶⁰ It seems that this is a practice that the Ports Authority Board has put in place, but it is not written in the Act or the bylaws of the Port.

³⁶¹ Ports Authority Amendment Act 1999, section 13A.

International humanitarian transport arrangements

the Ports Authority to give effect or greater emphasis to the government's social policy in the exercise of its functions and powers, compromising its commercial objectives as required by governmental policy.

In the past, "exemptions" have been allowed through the following process:

1. application is made to the General Manager
2. the General Manager passes the application to the Board of the Authority
3. the Board makes a "social responsibility" decision

According to the Assets & Operations Manager, either he or the Harbourmaster can call the members of the Board to get their consent. This is sufficient to approve the application. Under the Act³⁶² the Board has the discretion to regulate its procedure in such a manner as the directors see fit.

Packaging

According to the Assets & Operation Manager, an effective way of bringing in disaster relief goods with minimum delay at the port is to consolidate disaster relief items prior to shipment from the assisting country. Experience at the port shows that - especially with consignments from NZ - a large number of small shipments cause delays due to the need for individual documentation and inspection. Full Container Load (FCL) container consolidation would offer the potential to speed up processing.

Avatiu port is currently being upgraded to allow larger vessels to dock and to cyclone-proof the wharf area. It is regularly cleared when cyclones threaten, and then quickly re-commissioned.

6.2.1 Recommendations

1. The Maritime Transport Act 2008 should be amended to include a provision specifically for vessels of Eligible Actors, granting them automatic exemption from any prohibitions, limitations, restrictions and applicable fees under the Act. Alternatively, the Minister might convey a direction to the Authority dealing with this issue.
2. The Ports Authority Bylaws should be amended to give international relief goods immediate exemption from any kind of port charges. The Ports Authority might want to consider this in its ongoing review of ports charges.
3. The Island Council DRM Plan for each island should exempt international relief goods from port charges.
4. The DRM Arrangement should be amended to require a representative from the Focal Point Agency to attend to the clearance of the disaster relief goods at the Port thus speeding up the process of releasing goods from the wharf and avoiding congesting the wharf with too many receiving agencies.
5. The Response Executive should be directed to allocate a collection point of disaster relief items to be held at a site other than the harbour so it does not congest the Port's operation/storage areas. An additional/alternative approach would be

³⁶² Ports Authority Act 1994-95, section 10(11).

to engage in the process of developing a multilateral or bilateral agreement with neighboring countries such as Samoa/Tahiti etc, as they are closer to the Northern group than the main island Rarotonga.

6.3 Land transport

Land transport in the Cook Islands is governed by the Transport Act 1966 (the Transport Act) which is administered by the Cook Islands Police. There are three main requirements under the Transport Act. Before any vehicle can be used on any road, the following requirements must be satisfied:

1. It must be registered and have registration plates.³⁶³

Application for registration must be made to any Registrar³⁶⁴ appointed by the Minister of Police, on the prescribed form and accompanied with appropriate registration fees.

2. It must have an annual licence.³⁶⁵

Every registered motor vehicle³⁶⁶ must also have an annual licence.³⁶⁷ The application for annual licences must be accompanied by relevant fees.³⁶⁸

3. It must have a current warrant of fitness affixed to the vehicle.

Every motor vehicle must also have a warrant of fitness in the prescribed form³⁶⁹ issued by an authorized person³⁷⁰. The warrant of fitness is issued every six months.³⁷¹ The warrant of fitness also carries fees.³⁷²

It is an offense to drive a motor vehicle on any road if the above requirements have not met. Anyone who affixes or causes to be affixed to a motor vehicle an unauthorized registration plate or licence commits an offense under the Act.³⁷³ Therefore, any overseas motor vehicle used in international response in the Cook Islands must not use unauthorized registration plates or annual licence.

Licensing drivers of motor vehicles

No person is allowed to drive or employ someone to drive a motor vehicle on any road unless he or she has a licence to drive a motor vehicle.³⁷⁴ To obtain a licence one must apply to the Registrar or the Deputy Registrar for a licence to drive.³⁷⁵

³⁶³ Transport Act 1966, section 5(1) and 6.

³⁶⁴ Ibid., section 6.

³⁶⁵ Ibid., section 5(1) and 9.

³⁶⁶ Ibid., section 2 “motor vehicle” is a vehicle drawn or propelled by mechanical power and includes a trailer but does not include (a) vehicles running on rails, or an invalid carriage, or a trailer that is designed exclusively as part of the armament of Her Majesty’s Forces, or a vehicle normally propelled by mechanical power while it is being temporarily towed without the use of its own power; or a pedestrian-controlled grass cutter”.

³⁶⁷ Ibid., section 9-10.

³⁶⁸ Fees are prescribed under First schedule to the Transport Act 1966.

³⁶⁹ Transport Act 1966, section 79.

³⁷⁰ Ibid., section 79(6).

³⁷¹ Ibid., section 79(4).

³⁷² Ibid., section 79(7).

³⁷³ Ibid., section 11(1)(a).

³⁷⁴ Ibid., section 17.

³⁷⁵ Transport Act 1966, section 17(2).

International humanitarian transport arrangements

Equipment

There are general requirements for equipment a motor vehicle must have before it may be used on any road.³⁷⁶

Heavy traffic and hired vehicles

No person shall drive a heavy motor vehicle, whether for the carriage of goods or persons, in excess of the limitations specified in its certificate of annual licence.³⁷⁷ No person shall operate a vehicle for hire unless a fee has been paid as prescribed in the First Schedule to the Act.³⁷⁸

The Act does not allow for exemptions from any requirement of the Act. If a motor vehicle in an international response operation is brought into the country, it will have to be registered and plated in accordance with the Act and must have the necessary annual licence and warrant of fitness before it can operate on the roads of the Cook Islands. This process will take about three to five days maximum.

Failure to comply with these requirements is an offence under the Act. Since the Cook Islands allows actions for personal injury and property damage, there are further liability issues and possible consequences for any insurance otherwise enjoyed by the vehicle or driver.

There is no scheme of statutory third party insurance. The assumption is that vehicles will be operated in compliance with the Act and that people will make their own arrangements for insurance.

6.3.1 Recommendations

1. The Transport Act 1966 should be amended to provide vehicles of Eligible Actors with some form of exemption from the requirements (or some of them) under the Act.
2. Alternatively, the Transport Act 1966 may be amended to allow a speedy process of issuing registration and licenses for disaster relief transportation; recognition of the foreign registration plates and licenses is another solution.³⁷⁹
3. In addition, given that New Zealand, Australia and Tahiti are our closest International responders for initial response phase, a bilateral agreement with these countries might be beneficial.

³⁷⁶ These are, general lighting requirements, headlamps, lights able to be dipped, rear lamps, rear reflectors, brakes, warning devices, stirring, tyres, windscreen protection and rear vision mirrors.

³⁷⁷ Transport Act 1966, section 108.

³⁷⁸ Ibid., section 109.

³⁷⁹ IDRL Guidelines 18 (1) "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."

International Disaster Response Law (IDRL) in the Cook Islands:
A study on legal preparedness for facilitating and regulating international
disaster assistance

Chapter 7

Transparency

IDRL Guidelines 6: 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 initial 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.

The Ministry of Finance and Economic Management (MFEM) administers all public funds. Development Coordination³⁸⁰ is the division of the Ministry of Finance and Economic Management (MFEM) which manages foreign aid to government from different donors around the world, including international disaster response funds received by MFEM.

Development Coordination does not have an enabling Act, however, it has its own policy, the Cook Islands Official Development Assistance³⁸¹ Policy³⁸² (Aid policy), and is bound by the Ministry of Finance and Economic Management Act 1996 (the MFEM Act) and the Cook Islands Government Financial policies and procedures (which are promulgated under the MFEM Act). The Aid Policy aims to ensure aid-effectiveness in achieving national development outcomes. It is also aligned to the National Sustainable Development Plan 2011-2015.

The Cook Islands is a party to the Paris Declaration for Aid Effectiveness 2005, Pacific Aid Effectiveness Principles and Cairns Compact. The Aid Policy is a reflection of these instruments to ensure aid-effectiveness.

7.1 Government Emergency Response Fund

At the time this report was drafted, there was a draft Disaster Funding Policy (DFP) not yet incorporated into the Cook Islands financial policies and procedures but intended to be read with them. The draft DFP allows Parliament to appropriate funding for all government disaster-related expenditures.³⁸³ The power to allocate the funds to appropriate authorities for the expenses incurred lies with the National DRM Council³⁸⁴ and all decisions to approve emergency related funding shall come from Cabinet. The release of those funds shall come from the Response Executive³⁸⁵ as stipulated in section 11 of the DRM Act 2007.

³⁸⁰ Formerly known as Aid Management until 2011.

³⁸¹ Under the Aid Policy, Official Development Assistance (ODA) is another name for aid; ODA is preferred as it carries less of a connotation of dependency and welfare. There is no distinction between ODA received and international disaster relief funds, it seems all foreign Aid is classified as ODA.

³⁸² This Aid Policy was developed in September 2011.

³⁸³ Draft Cook Islands Part D, section 17 (Disaster Funding Policy Financial policies and procedures), subsection 2.1.

³⁸⁴ Draft Cook Islands Part D, section 17 (Disaster Funding Policy Financial policies and procedures), subsection 2.2.

³⁸⁵ Ibid., section 3.1.3.

According to the relevant financial policy and procedures, the government, leading up to and in times of emergency, shall uphold principles of transparency, accountability and good governance at all times where possible, unless extreme circumstances dictate otherwise.³⁸⁶

In times of disaster, the procedures allow for some flexibility in order to effectively accommodate the urgent need of response to disaster, but they aim to ensure that in all circumstances funds are not misappropriated or put at risks of fraud or embezzlement.

7.2 International relief funds

Development Coordination's role in international response is to facilitate funding coming into the country for the disaster at hand. All aid funding sent through the government must be reported to Development Coordination whether it is sent through MFEM or individual Ministries.³⁸⁷ Ministries must account for all aid funding they receive at annual accounts at years-end.³⁸⁸ Aid Revenue and Aid Expenses must always match with the Agency's general ledger.³⁸⁹

According to persons interviewed for this report, the foregoing rules have not always been followed. This may have implications for the willingness of international agencies and other States to make funds available. The whole rationale of Development Coordination is to build confidence on the part of third party stakeholders – including those giving financial assistance in times of disaster response.

In order to demonstrate transparency and accountability and to foster effective Official Development Assistance in national financial reports³⁹⁰ the Cook Islands Audit Office has the responsibility of auditing all government accounts.

Tagged and untagged funds

There are two types of donor money received by Development Coordination for immediate response and initial recovery period in time of disaster:

1. Tagged money

Tagged money is funds that have already been allocated by the donor for a specific purpose. The division will facilitate the use of this money accordingly. For example if 20,000 NZ dollars is sent by an international agency for the purpose of providing medical supplies, the Division will liaise with the Response Executive to see what medical supplies are needed. Usually there will be a meeting between relevant parties immediately after the money is received to decide on how it is to be used. The Division will try to facilitate this as soon as possible especially in the immediate response phase.

2. Untagged money

Untagged money is funds received by the Government for the purpose of the response but without specific allocation. In practice, any drawdown of untagged money has to come from the Response Executive.

³⁸⁶ Ibid., section 2.3.

³⁸⁷ Cook Islands Financial policies and procedures, Part C, section 5, subsection 2.5.

³⁸⁸ Ibid., Part C, section 5, subsection 2.6.

³⁸⁹ Ibid., Part C, Section 5, subsection 2.7.

³⁹⁰ Cook Islands Official Development Assistance Policy, article 2.2(c).

Transparency

Both types of aid funding are reported on at the end of the year, and are subject to audit by the Audit Office. If required by donor agreement, Development Coordination will report back to donors on any money sent to them for the purposes of international response.

7.3 Funds routed through Civil Society Organizations and NGOs

In disaster response, civil society organizations and NGOs in the Cook Islands either use resources held within the society, or use funding or relief goods from foreign donors. In neither case does Cook Islands law require any special treatment of the funds and resources. Instead, accountability is a matter of constitutional documents and empowering legislation (i.e. such as the Incorporated Societies legislation) and, in some cases, the terms of donations and third party contributions. There is not a robust system of Charity Commissioners or something similar in the Cook Islands so, in practice, some civil societies and NGOs have not properly accounted for donor funding in the past. This has the potential to inhibit assistance in the future.

7.4 Recommendations

1. The Cook Islands Financial Rules and Procedures should be amended to include a requirement for Government Ministries to report on and account for international disaster relief funding received by them during disaster response – particularly in their dealings with Development Coordination as the lead agency in this area.
2. The amendment to the DRM Act on international response should also appoint a government agency to monitor the on-going compliance of registered disaster relief agencies with relevant laws and procedures, in order to strengthen financial accountability and build confidence on the part of future potential donors and partners in disaster response.

International Disaster Response Law (IDRL) in the Cook Islands:
A study on legal preparedness for facilitating and regulating international
disaster assistance

Chapter 8

Summary of recommendations

Summary of recommendations

Overview of DRM International and Regional Legal Framework (recommendations from Chapter 3)

1. The National DRM Act should be amended to include a chapter on International assistance. Within the chapter:
 - Responsibilities should be clearly designated regarding the initiation, facilitation and coordination of international humanitarian assistance, including establishing a Focal Point Agency to liaise between international and government actors at all levels (details of which can be specified in the DRM Arrangement).³⁹¹
 - The Prime Minister, on the advice of the Response Executive, should make the decision as to whether or not to request international assistance. The Prime Minister would then direct the Minister of Foreign Affairs to send the request.
 - The role the Cook Islands Red Cross Society plays in humanitarian services should be recognized as is stipulated in the Cook Islands Red Cross Act 2002. Information and disaster response plans should be shared to ensure consistency in disaster response; this should link the two Acts, as they both concern humanitarian services in the Cook Islands.
 - CIRCS should be represented in the National DRM Council, as it is an auxiliary organization to the government in humanitarian services.
 - A specific agency, (for example Police), should take all necessary measures within its capacities to ensure the security and safety of:³⁹²
 - the personnel of assisting international actors
 - the premises, facilities, means of transport, equipment and goods used for or in connection with the international disaster relief and initial recovery assistance of international actors

2. The DRM Arrangement should be amended to more clearly specify roles and responsibilities in the following areas:
 - **Initiation**³⁹³
 The Response Executive, immediately after the onset of the disaster and based on the initial damage/needs assessment, should make a determination as to whether or not domestic capacities are likely to be sufficient to attend to the relief and/or initial recovery needs of affected persons.³⁹⁴ The Prime Minister should then be advised of the decision.

³⁹¹ This recommendation is in line with the recommendation action 1.20 of the Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands after Cyclone Pat, which is to “set up Aid Cell for discussing/coordinating aid both domestic and international”.

³⁹² See IDRL Model Act for International disaster assistance section 15.

³⁹³ According to recommendation 1.1 of the Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands EMCI is to “define when international assistance is required and the expected roles of international actors. Once this is clarified, make sure it is communicated to international actors”, page 4.

³⁹⁴ This was one of the concerns expressed during the Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands, the importance of identifying in-country capacity to respond to the disaster with their own resources before asking for international assistance.

Summary of recommendations

- Requests for international assistance – specifics of the request

Foreign Affairs, upon the direction of the Prime Minister and Cabinet, should issue the request for international assistance. This request may be directed to particular international actors or a general request may go out to the international community as a whole.

The request shall be accompanied by:

- information as to the extent and type of assistance required based on a list prepared by the Response Executives
- information on the procedures for different assisting international actors to make offers or provide assistance

- Focal Point Agency

The Focal Point Agency suggested in the previous Chapter should take over (from the National DRM Council) the role and responsibility of coordinating and facilitating international assistance in close consultation with the Response Executive.

The Focal Point Agency should consist of representatives from each of the following three agencies: Ministry of Foreign Affairs, Coordination Management and EMCI. This Agency should work closely with UNDAC and the PHT or the regional cluster structure to coordinate international response and information management.

If any international humanitarian organization or individual within the Cook Islands contacts an international actor to seek assistance, that agency must inform the Focal point Agency.

An exception to this would be CIRCS, which has a separate mechanism for receiving assistance from foreign components of the Red Cross Red Crescent Movement. However, CIRCS should work closely with the Focal Point Agency to make sure there is no overlap and duplication in the international assistance received.

At all times, EMCI should have the responsibility of disseminating information regarding the rights and responsibilities of assisting international actors, as well as any other relevant laws, rules and procedures.

The Focal Point Agency, in cooperation with relevant agencies, should be in a position to facilitate the entry and/or departure of relief and initial recovery personnel, goods, equipment and transport into the country. The Focal Point Agency should work in close collaboration with the UNDAC team and the Pacific Humanitarian Team using the Regional Cluster System.

In the case of an outer island being the port of entry, the Focal Point Agency will work together with the Island Coordinator in facilitating the entry and/or departure of relief and initial recovery personnel, goods, equipment and transport into the islands.

The UNDAC and PHT should be called upon to assist the Focal Point Agency in coordinating international assistance and information management.

- Operational coordination

The Response Executive, in consultation with the Focal Point Agency, should integrate assisting international actors into their planning and mechanisms for operational coordination of disaster relief and initial recovery efforts.³⁹⁵

³⁹⁵ See the Model Act for International Disaster Assistance, article 14(a).

Summary of recommendations

The assisting international actors should cooperate and coordinate with national authorities. Specifically, they should be required to provide to these authorities whatever information is available to them on the location, type and extent of their assistance.³⁹⁶

3. Further detail on the initial assessment system within the DRM Arrangement should be included to speed up requests for assistance and to obtain correct information on what exactly is needed on the ground for the purpose of disseminating information to potential International responders.³⁹⁷
4. The DRM Arrangement 2009 should be well disseminated to stakeholders.
5. The use of the Regional Cluster Structure should be strengthened through awareness raising and capacity building amongst relevant stakeholders.
6. Consideration should be given to using the Pacific Disaster Net to disseminate information on emerging hazards and early warnings to help potential International responders prepare for disaster response.³⁹⁸
7. The DRM Arrangement should be amended to incorporate the recommendations of the UNDAC Mission report in regards to the Response Structure: the Pacific Humanitarian Team Structure, assessment and public affairs/information strategy.
8. As an interim measure, a Standard Operating Procedure (SOP) should be developed to facilitate and support international assistance while the amendments to relevant acts are under way. While it is recognized that a new SOP will contain provisions which are inconsistent with existing Acts, section 19(6) of the DRM Act 2007 vests the Prime Minister with the power to suspend any relevant Acts which will inhibit the response or recovery. As this power can only be invoked during a State of Disaster and applies only for that period of the declaration³⁹⁹ it will not, therefore, substitute proper legislative amendment in the long term.

³⁹⁶ Ibid., article 14(b).

³⁹⁷ This recommendation is in line with the recommendation action 1.17 of the Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands, in regards to assessment plan or an SOP, page 5.

³⁹⁸ According to the recommendation action 1.15 of the Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands, 1-3 June 2010, page 5, EMCI has the role of disseminating updated information (following community meetings) to all key stakeholders; this could be a job that EMCI could be responsible for.

³⁹⁹ This was suggested by the National Controller at the National Workshop to discuss the first draft of the report and it was supported by the rest of the participants.

Legal Status of Relief Organizations (recommendations from Chapter 4)

9. The Development Investment Act 1995-96 should be amended to include the following:
 - Expedited procedures for the approval of professional workers who are part of an international relief team, and in the case of private companies, only in the event they are providing no-cost relief.
 - Pre-approval procedures should be in place for foreign companies who are Eligible Actors.
10. The new Currency Declaration Bill should have requirements for incoming currency for international disaster relief, particularly in the initial response period, which do not slow the movement of funds.
11. The Financial Transactions Reporting Act 2004 should be amended to allow Eligible Actors to open bank accounts and conduct financial transactions for disaster relief response with very little reporting requirements. The alternative to this is to consider an expedited application to the CEO of Financial Intelligence Unit for exemption.⁴⁰⁰
12. The DRM Act should be amended to extend section 12(2)(h)⁴⁰¹ to specifically include lands that are needed for the work of Eligible Actors in the islands of Mangaia, Mitiaro, Pukapuka and Nassau where there is no land tenure to enable a legally binding lease or use of the land.
13. The Land (Facilitation of Dealings) Act 1970 should be amended to allow short term leases of land that is needed for the work of Eligible Actors, provisions similar to that of the Short Term Crop Leases Act 1966 with expedited (make it a priority with minimal procedures) procedures.
14. Consideration should be given to include the security of international relief personnel in the National DRM Arrangement matrix to identify roles and responsibilities of relevant agencies.⁴⁰²

⁴⁰⁰ Or as recommended by the CEO, as long as they get to screen the funding coming in and make sure it is not some kind of money laundering scam. This will take the obligation to report off the Banks. The Financial Transactions Reporting Act is under review and they are considering inserting such provision.

⁴⁰¹ One of the functions of the National Controller in consultation with the Response Executive is to “take possession and make use of any persons property in order to respond effectively to an event”. Section 12(4) went on to say “If property of a person is taken or used under subsection (2) (h) that person shall be entitled to such compensation as determined by the Director, in consultation with the Council.

⁴⁰² IDRL Guideline 22 suggests that “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.”

Summary of recommendations

Border Control Requirements (recommendations from Chapter 5)

Customs

15. A new set of regulations covering Customs procedures in disaster relief should be developed to fall under the new Customs Act, to address the following:
 - A member from the Focal Point Agency or a person delegated by the Focal Point Agency should be required at the border to facilitate the rapid importation of consignments of goods and equipment by registered assisting actors and ensure they are accorded priority treatment in handling.
 - Reduced documentation procedures should be set out, whereby certain documentation may be completed at a later stage.
 - Eligible Actors (determined according to the registration system above) should qualify as an “approved organization” pursuant to the Customs Tariff Act 2012.
 - All relief items, vehicles and equipment imported by registered assisting actors for the purpose of the relief operations should be exempt from all taxes, including re-export taxes.
 - Customs Service, upon request and without additional charges, should carry out the functions necessary for the release or clearance of consignments of goods or equipment imported by or on behalf of registered assisting actors outside their designated hours of business and/or away from customs offices when necessary.
 - Customs Service should waive or reduce inspection requirements. If, in an exceptional case, customs security is deemed necessary, provisions should be made for a security/undertaking from the relevant assisting actor or, where appropriate, a general customs security should be provided.
 - The Comptroller, in consultation with Response Executive and the Focal Point Agency, should draft a list of “approved organizations” within the Cook Islands. This information should be displayed on the Customs Service website and also in the registered system of assisting international actors recommended in Chapter 5. It should also clarify whether or not an “approved organization” means local and international humanitarian organizations. The Minister can alter and amend the Concession to accommodate this recommendation.

16. Consideration should be given to having someone in Atiu to handle custom clearance in times of disaster on that island. In terms of other islands, consideration should be given to circumstances where the police officer is not present on the island in time of disaster. This is something that might be best addressed in the National Response plan and the agency response plan.

17. Information on disaster relief goods, procedures and what is needed in the country at the time should be displayed on the Customs Services website: <http://www.mfem.gov.ck> at all times and should be regularly updated. Given the current changes in law and practice, this website is especially valuable and Customs should give consideration to expanding its information services at this important time.

Other Government Taxes

18. The VAT Act 1997 should be amended to include the following:

- Any Eligible Actor who supplies goods and services to the Cook Islands during the international disaster relief or initial recovery periods or in preparation for a potential disaster by pre-positioning of stock⁴⁰³ should be fully exempted from registering for VAT and paying VAT on the goods and supplies for the victims of disaster as well as the equipment and other goods as part of their relief operation.⁴⁰⁴
- Non-profit organizations and civil society in the Cook Islands should also be exempted (or zero rating) from paying VAT on the goods and services they supply during the international disaster relief or initial recovery periods.⁴⁰⁵
- "Approved organizations" should be clearly defined and include Eligible Actors.

Telecommunication

19. The Telecommunications Act 1989 should be amended to include the following:

- Eligible Actors should be permitted to import telecommunications equipment for the purpose of international relief operations without restrictions, except as required for purposes of national security or public order.
- Eligible Actors should be provided with priority licensing or be exempt from licensing requirements if they provide certain necessary information like names, frequencies and locations of intended use.
- Telecommunications equipment imported into the country by Eligible Actors should be exempt from all related government taxes.

20. For the time being, before the amendment above is achieved, suggestions from stakeholders that there could be a letter of agreement between Telecom and third party owner/operators of equipment.⁴⁰⁶ The suggestion could be the subject of a Memorandum of Understanding between the Minister for Telecommunication and the Telecom Cook Islands.

Biosecurity

21. The Biosecurity Act 2008 should be amended, or a supplementary regulation should be developed to allow the following:

- The Director of Biosecurity should be given the power to develop Standard Operation Procedures for the expedited approval of food imported by Eligible Actors in the event of a disaster.⁴⁰⁷ This SOP should be included in the new draft Regulation that the Ministry of Agriculture is currently working on. In developing those procedures consideration shall be given to:
 - o whether or not and under what conditions normal legal restrictions or requirements may be modified in order to expedite delivery without compromising public health and security⁴⁰⁸

⁴⁰³ This would be consistent with the Customs Tariff Act 2012, on the exemptions given to the CIRCS on pre-position goods.

⁴⁰⁴ See Model Act for International Disaster Assistance, article 58.

⁴⁰⁵ Ibidem.

⁴⁰⁶ See Annex 13 for a Telecom Letter of Agreement template.

⁴⁰⁷ See Model Act on International Disaster Assistance, section 46.

⁴⁰⁸ Ibidem.

Summary of recommendations

- o pre-approval procedures
 - o reduced documentation requirements
 - o list of import prohibited articles that have unacceptable biosecurity risk in the Cook Islands
 - o list of import specifications of potential international relief food
 - o specific exemptions for rescue dogs (documentation required) and an expedited clearance procedure for them
 - o any bilateral or multilateral agreement made between the Cook Islands and any other country, especially potential first responders
 - Eligible Actors and their receiving agencies in the Cook Islands should be exempt from all related fees under the Act, during the period of the immediate response and the initial recovery.
22. An additional/alternative approach would be to engage in the process of developing a multilateral or bilateral agreement with the Cook Islands under section 89 of the Biosecurity Act. New Zealand has been and seems likely to continue to be one of the country's first responders to disaster, so a bilateral agreement between the Cook Islands Biosecurity Service and New Zealand on certain relief items to be exempted might speed importation and distribution. With its reference to international organizations, section 89 is broad enough to allow agreements to be negotiated with agencies such as the IFRC. Similar agreements could be made between the Cook Islands and Tahiti.

Entry permits and visas

23. The new Entry, Residence and Departure Bill that Immigration is currently working on should align with the proposed amendments to the DRM Act and the DRM Arrangement, in respect to entry and departure of international relief personnel. The new Bill should also specify the following facilities for international relief personnel:
- Pursuant to DRM Act and associated regulations, a dedicated Disaster Relief Personnel Visa should be given to all international relief personnel of Eligible Actors, if they are not already entitled to exemption under the Act, and if they are not a threat to national security or public health and safety, for an initial period of three months, renewable for period of up to six months from within the Cook Islands, and as often as necessary throughout the international disaster relief and initial recovery periods.⁴⁰⁹
 - The Director of Immigration should be directed to draw up guidelines for the criteria needed to preclude international relief personnel from being a threat to national security, public health and safety. The guidelines should have the minimum requirements on documentation and should aim to assist in expediting the issue of the Disaster Relief Personnel Visa rather than slowing it down. The guidelines should be available to registered assisting international actors at the time of registration well before they arrive in the Cook Islands for the relief operation. They should also be available on the Ministry of Foreign Affairs and Immigrations website.

⁴⁰⁹ See Model Act for International Disaster Assistance, section 27(a).

- The Disaster Relief Personnel Visa shall be made available upon arrival at the point of entry in the Cook Islands to the international relief personnel of Eligible Actors (and not solely through prior application at a consular mission abroad).⁴¹⁰
- Holders of Disaster Relief Personnel Visas should be allowed to undertake disaster relief and initial recovery work as part of their relief operation without the requirement to seek a separate work permit.⁴¹¹
- The Director of Immigration, in consultation with the Focal point agency, should have the discretion to grant Disaster Relief Personnel Visas when pre-registration procedures have not been met.
- Transit Visas should be given to international disaster relief personnel that transit the Cook Islands when responding to a disaster elsewhere. The Director of Immigration should draw up guidelines listing the requirements for this visa. The guidelines should aim to facilitate and expedite the issue of this visa rather than slow it down.
- The provisions on the requirements for a bond should be clarified to make sure they will not be applied to international relief aircraft.
- Certificates of temporary recognition of professional qualifications should be granted to professional relief personnel of registered international humanitarian organizations upon confirmation that the sending organization can vouch for their competence. The Director of Immigration should draw up guidelines to expedite the granting of this certificate. The certificate should be given for the whole period of the response as well as the initial recovery period.⁴¹²

International humanitarian transport arrangements and telecommunications (recommendations from Chapter 6)

Air transport

24. The Civil Aviation Act 2002 should be amended to extend the role of Foreign Affairs beyond the existing role of approving military aircraft movements to dealing with the approval for international relief aircraft.⁴¹³ It should also be amended to specifically give relief aircraft registered in a contracting ICAO State and aircraft of Eligible Actors the following:
- priority in air traffic routing and landing permission in the Cook Islands and especially at the affected area
 - a waiver on the 14 day requirement under section 40 of the Civil Aviation Act 2002, subject to the aircraft operator providing any required information to the relevant authority at the earliest opportunity
 - an exemption from any applicable fees or taxes under the Civil Aviation Act 2002 or the Customs Act 2012

The relief aircraft shall comply with any directions from the Civil Aviation or Airport Authority as to air traffic control and landing procedures.

⁴¹⁰ Ibid., section 27 (b).

⁴¹¹ See Model Act for International Disaster Assistance, section 27(c).

⁴¹² Ibid., section 28.

⁴¹³ This was suggested by the Secretary of Civil Aviation at the National Workshop for the presentation and review of the recommendations in the first draft of the report.

Summary of recommendations

25. Amendments to reflect the above should be made to the Rarotonga International Airport in Air Traffic Services-LOCAL UNIT ORDERS and the *Islands Aeronautical Information Publication (AIP)*.
26. In terms of Air Services Licenses, there should either be an exemption for aircraft conducting on-going air services within the Cook Islands as part of an international relief operation or, alternatively, a quick procedure for obtaining the necessary license.
27. Island Councils should have bylaws to exempt international relief aircraft bringing in disaster relief goods and personnel to their islands from landing fees. This should also be included in their Island Councils DRM Plan. Where airport land is privately owned, there should be a process of consultation with the affected landowners.
28. The Cook Islands may benefit from a bilateral agreement with Tahiti, and Samoa (each closer to the Northern Group) in regard to relief aircraft landing in and departing from the Cook Islands.
29. The DRM Arrangement should be amended to mention the coordination of relief aircrafts. The Focal point Agency should have the responsibility for any relevant coordination between the Eligible Actors and Civil Aviation for permission to land and the waiving of requirements under the Civil Aviation Act and with the Airport Authority for the necessary procedures for landing.

Maritime transport

30. The Maritime Transport Act 2008 should be amended to include a provision specifically for vessels of Eligible Actors, granting them automatic exemption from any prohibitions, limitations, restrictions and applicable fees under the Act. Alternatively, the Minister might convey a direction to the Authority dealing with this issue.
31. The Ports Authority Bylaws should be amended to give international relief goods immediate exemption from any kind of port charges. The Ports Authority might want to consider this in its ongoing review of ports charges.
32. The Island Council DRM Plan for each island should exempt international relief goods from port charges.
33. The DRM Arrangement should be amended to require a representative from the Focal Point Agency to attend to the clearance of the disaster relief goods at the Port thus speeding up the process of releasing goods from the wharf and avoiding congesting the wharf with too many receiving agencies.

34. The Response Executive should be directed to allocate a collection point of disaster relief items to be held at a site other than the harbour so it does not congest the Port's operation/storage areas. An additional/alternative approach would be to engage in the process of developing a multilateral or bilateral agreement with neighboring countries such as Samoa/Tahiti etc, as they are closer to the Northern group than the main island Rarotonga.

Land transport

35. The Transport Act 1966 should be amended to provide vehicles of Eligible Actors with some form of exemption from the requirements (or some of them) under the Act.

36. Alternatively, the Transport Act 1966 may be amended to allow a speedy process of issuing registration and licenses for disaster relief transportation; recognition of the foreign registration plates and licenses is another solution.⁴¹⁴

37. In addition, given that New Zealand, Australia and Tahiti are our closest International responders for initial response phase, a bilateral agreement with these countries might be beneficial.

Transparency (recommendations from Chapter 7)

38. The Cook Islands Financial Rules and Procedures should be amended to include a requirement for Government Ministries to report on and account for international disaster relief funding received by them during disaster response – particularly in their dealings with Development Coordination as the lead agency in this area.

39. The amendment to the DRM Act on international response should also appoint a government agency to monitor the on-going compliance of registered disaster relief agencies with relevant laws and procedures, in order to strengthen financial accountability and build confidence on the part of future potential donors and partners in disaster response.

⁴¹⁴ IDRL Guidelines 18 (1) "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."

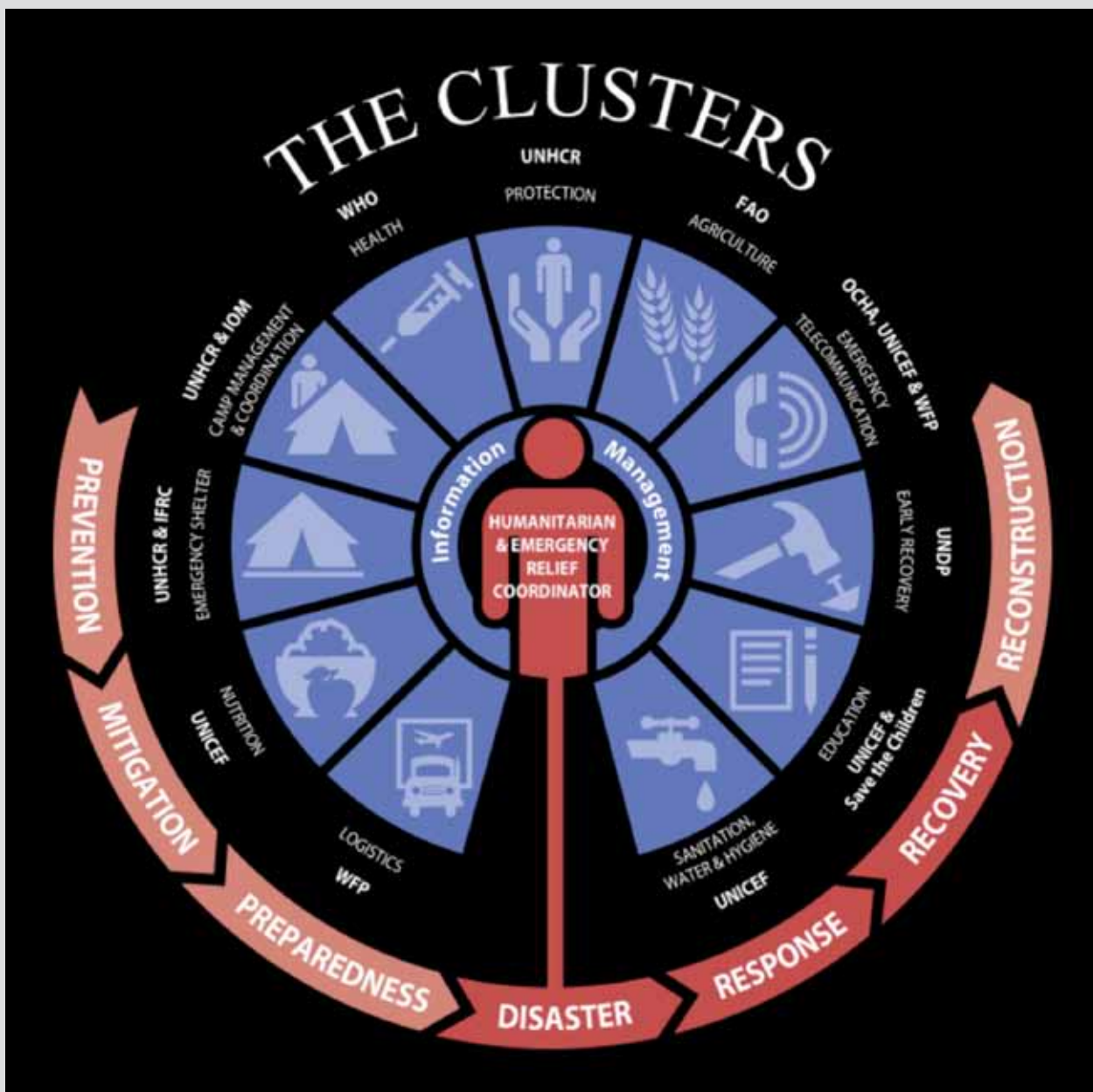
Annex 1

Pacific Humanitarian Team – Regional Cluster Structure

Regional Clusters	
	Water, Sanitation and Hygiene... UNICEF
	Protection OHCHR UNHCR
	Logistics WFP
	Health and Nutrition WHO
	Food Security FAO
	Emergency Shelter International Federation
	Education Save the Children UNICEF
	Early Recovery UNDP

Annex 2

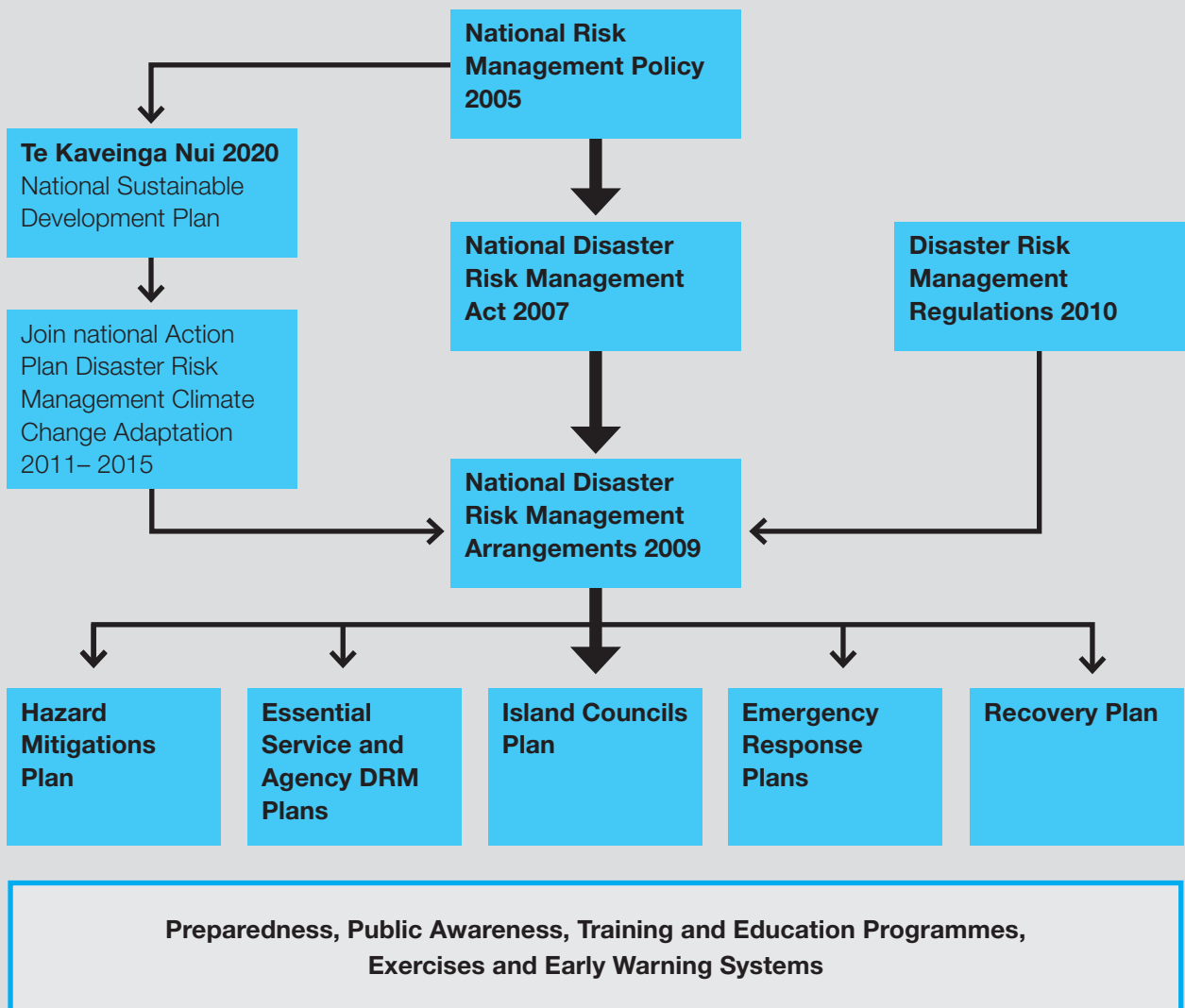
UN Cluster Approach System – Pacific Humanitarian Team



Annex 3

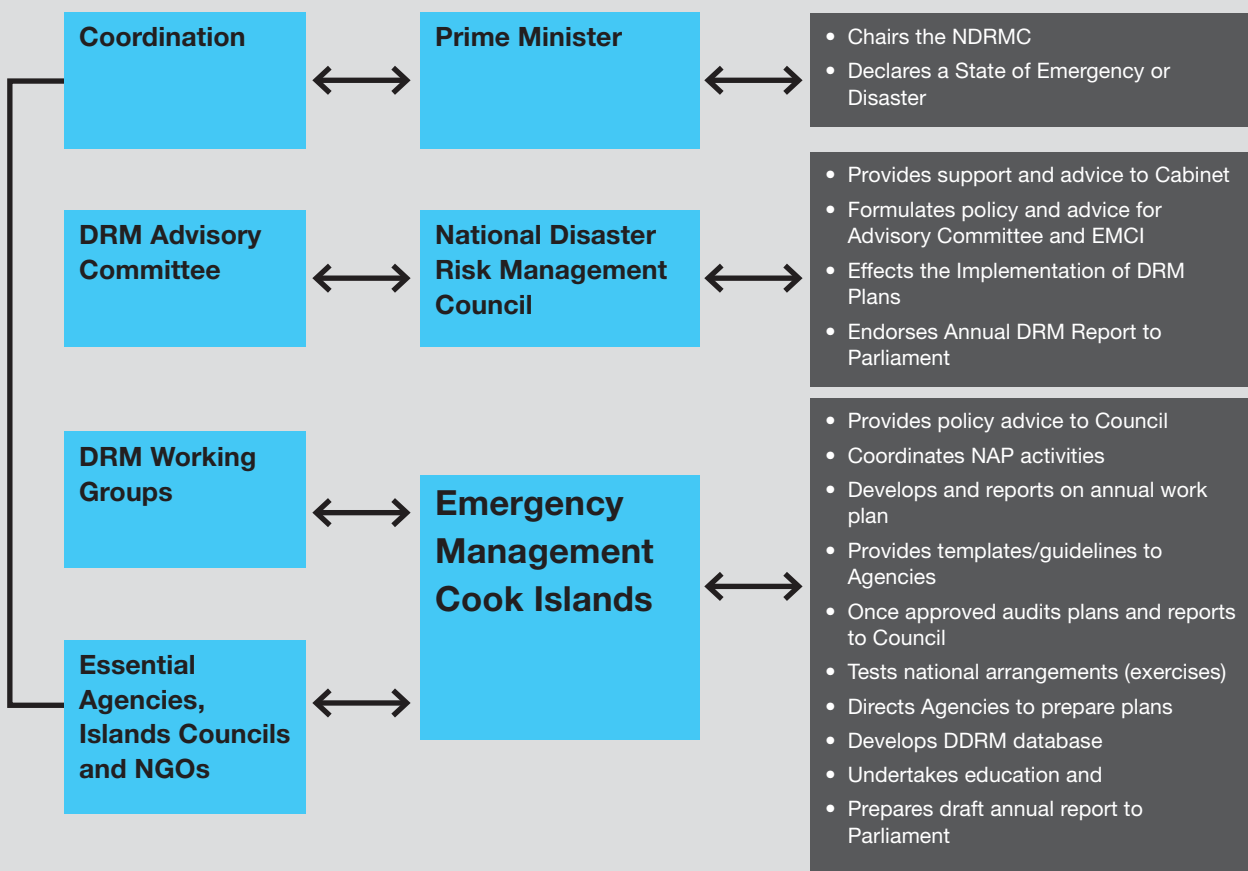
Annex 3

National laws, policies and plans for Disaster Risk Management in the Cook Islands



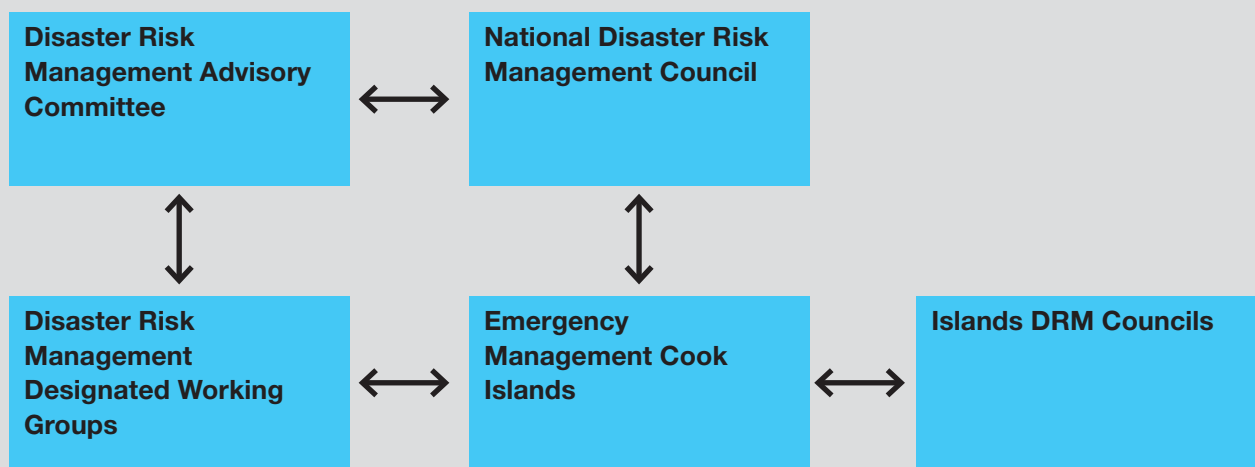
Annex 4

Institutional Arrangement Disaster Management structure in the Cook Islands



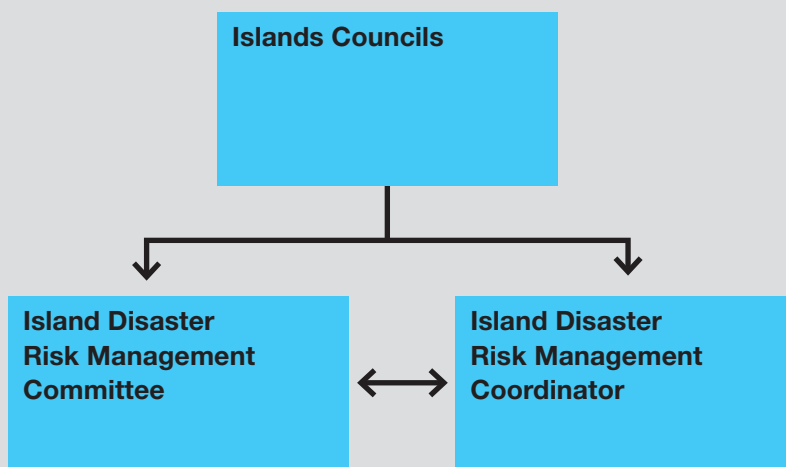
Annex 5

Disaster Risk Management Organizational Structure



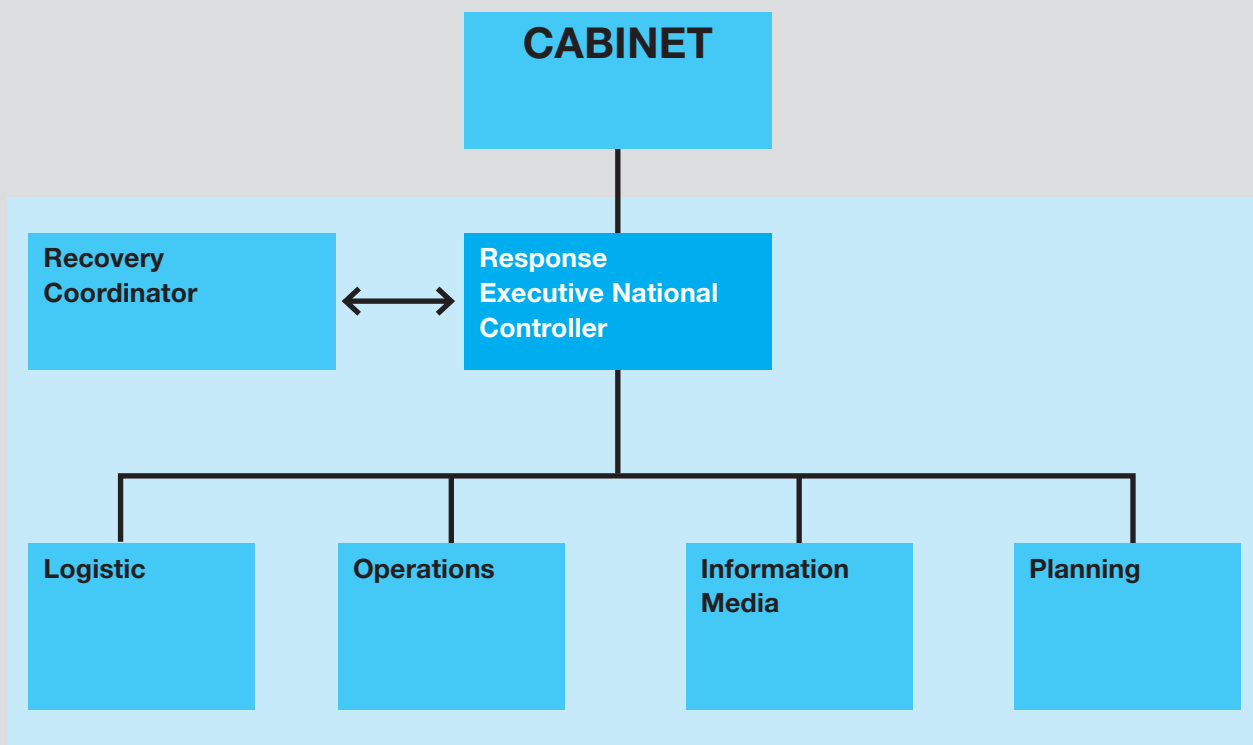
Annex 6

Islands coordination structure



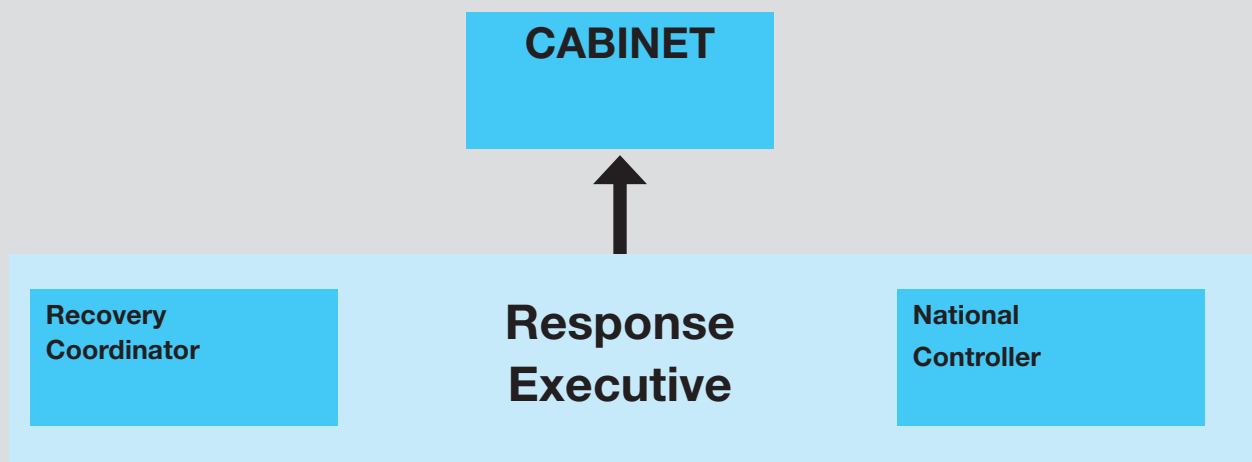
Annex 7

National Emergency Operation Centre Structure



Annex 8

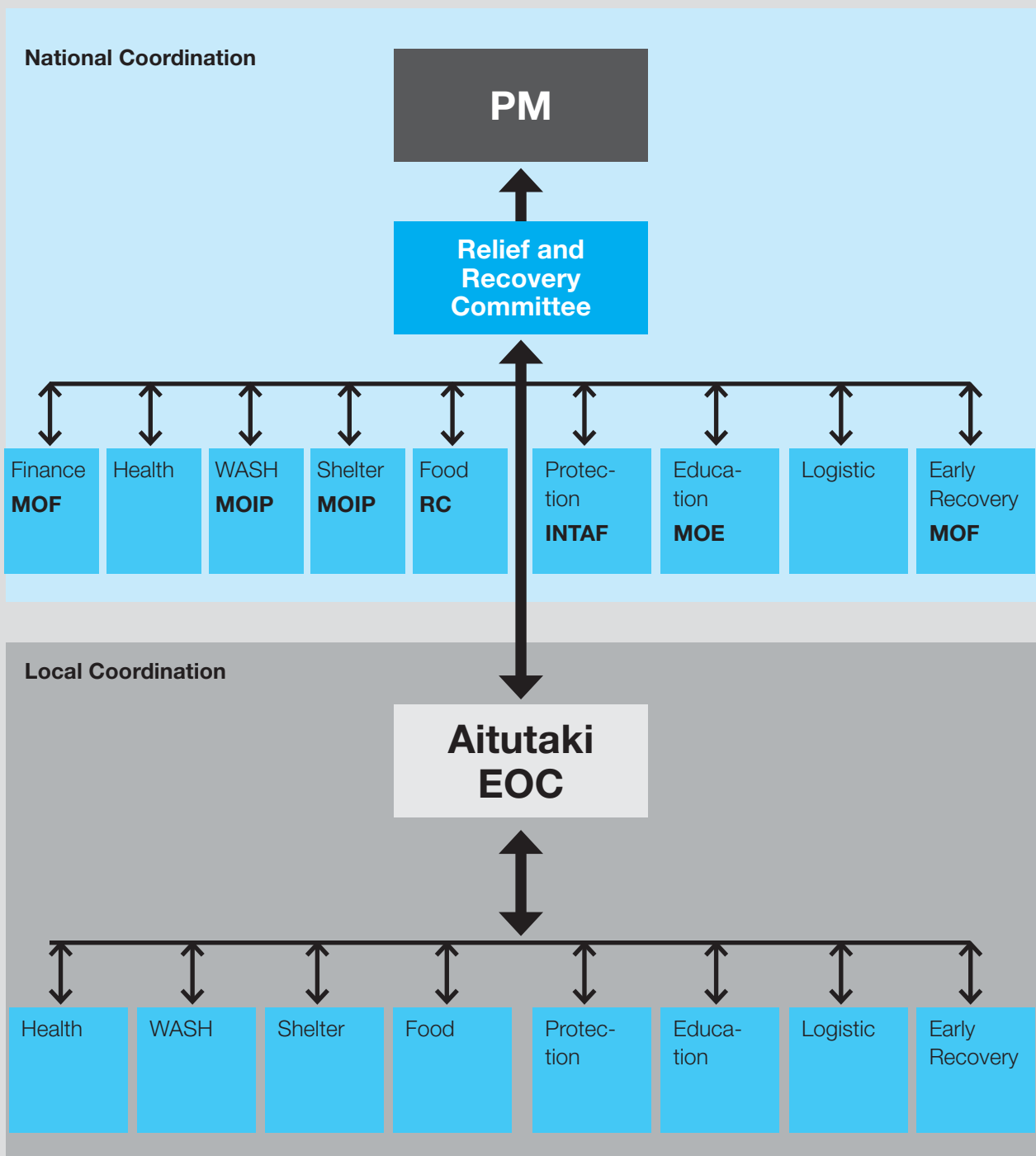
Response Executive Structure



Annex 9

Ad hoc National Coordination structure used during the response to the Cyclone Pat Disaster 2010

This structure shows the cluster approach





Annex 10

Bank information and documents requirement for the opening of a bank account

Westpac Banking Cooperation

To open a bank account the Westpac Bank Cooperation requires the following information from international relief personnel:⁴¹⁵

- proof of immigration status confirming eligibility to live in the Cook Islands, i.e. Entry permit with Work Permit Stamp
- letter from employer on company letterhead confirming employment within the Cook Islands
- proof of overseas address

The following is required from any legal entity including foreign companies:⁴¹⁶

- Certificate of Registration/Incorporation
- Memorandum and Articles of Association
- Business Licence
- company resolution of the board of directors authorizing the individual(s) to operate on the account
- If any directors/owners who are not signing on the account hold more than a 10 per cent share of business, their ID documents states in the ID checklist Individuals is also required.

Australia and New Zealand (ANZ) Banking Group Ltd

To open a bank account for international relief personnel ANZ requires the following documents:⁴¹⁷

- copy of passport
- copy of visa permit and arrival stamp
- drivers licence

⁴¹⁵ Westpac Banking Cooperation, Cook Islands, “ID Checklist Overseas Customers”

⁴¹⁶ Westpac Banking Cooperation, Cook Islands “ID Checklist Company”

⁴¹⁷ Information obtained from ANZ office in Avarua, Rarotonga

Annex 10

A foreign Company that is part of an International disaster relief response operation requires:

- copy of the Articles of Association of the company
- copy of the Memorandum of Association of the company
- copy of Certificate of Incorporation
- copy of passport and drivers' licences of all shareholders or directors who will be authorized to sign on the account (in case of Foreign companies in time of disaster, the person authorize by the Company to sign on behalf of the company)

An International humanitarian organization has the same requirements as for a foreign company plus the minutes of the meeting of the organization board to confirm the authority to open a bank account.

Local companies and incorporated societies or NGOs have the same requirements as foreign companies and international humanitarian organizations.

Bank of the Cook Islands (BCI)

To open a Bank account for international relief personnel the following is required:⁴¹⁸

- copy of passport
- copy of visa permit and arrival stamp
- drivers licence
- copy of employment contract

A foreign company working as part of an international disaster relief response operations requires:

- copy of Memorandum of Association
- copy of Articles of Association
- copy of Certificate of Incorporation
- copy of passport and licences of those who are authorized to sign on behalf of the company

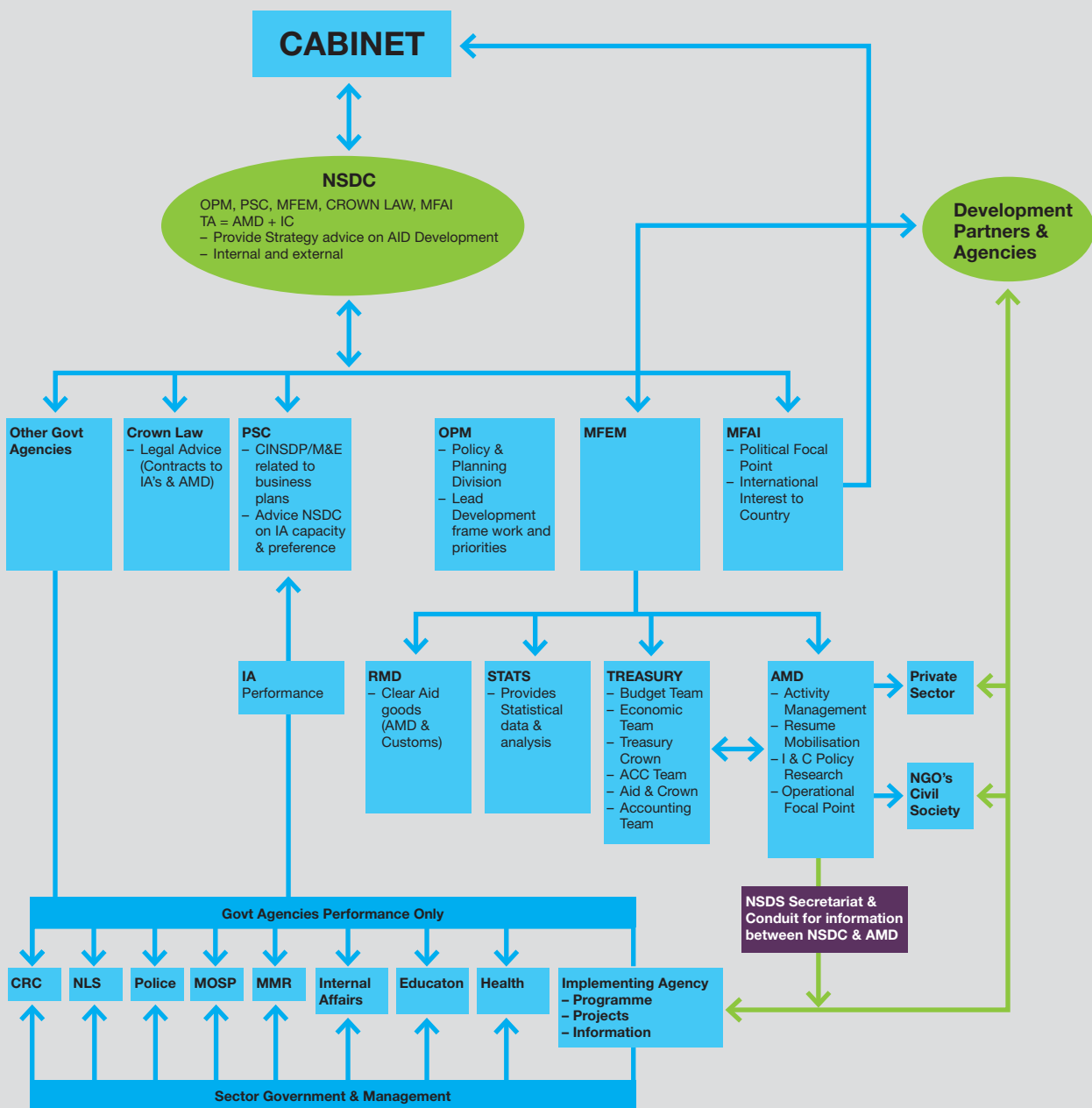
An International humanitarian organization has the same requirements as a foreign company plus cover letter and a copy of the minutes of the meeting of the organization to confirm authority to open the bank account.

Local companies and incorporated societies or NGOs have the same requirements as foreign companies and international humanitarian organizations.

⁴¹⁸ Information obtained from BCI office in Avarua, Rarotonga

Annex 11

National Development Framework and links to ODA as seen from an aid management perspective



Annex 12

Summary of the UNDAC Mission Report from Cyclone Pat 2010 and the Inter-agency contingency planning workshop for humanitarian assistance in Cook Islands 2010

The UNDAC Mission Report recommends further development of the ad hoc structure established during Cyclone Pat's response and its dissemination to relevant stakeholders.

1. Assessment

UNDAC Team suggested that EMCI coordinate a "Joint-Rapid Needs Assessment" to capture a rapid and multi-sectoral overview of humanitarian needs so to inform more detailed sectoral assessments. More coordinated initial assessment between agencies was needed.

It was suggested that CIRCS should inform EMCI of its intention to do an initial needs assessment and advise as to its format and intended areas of assessment, so as to avoid duplication and any waste of resources and time.

The relationship between EMCI and the Cook Islands Red Cross was also a concern, as sometimes the Cook Islands Red Cross is seen by some as having the primary responsibility for the conduct of assessments and provision of relief. There is a lack of coordination between CIRC and EMCI; the danger is that a misunderstanding of the status and roles of each has the potential to lead to conflict and inefficiencies.

2. Public affairs/information management strategy

It was suggested that a media strategy in time of disaster to disseminate critical information the public of the progress of the response and to inform Cook Islanders overseas is needed. With hindsight, this could have been very useful as one issue faced by Cook Islands Customs at the time was a large number of unsolicited and irrelevant relief items sent by Cook Islanders from overseas. Clearly, those overseas either did not have the right information as to what was actually needed on the ground or just assumed that whatever goods they sent would be accepted at the border as relief items.

It should be noted that under the Arrangement, media liaison⁴¹⁹ is already outlined as part of the NEOC team. This observation may therefore simply be a matter of implementing what has already been outlined in existing instruments.

Following the UNDAC MISSION report, in June 2010, UNOCHA, on behalf of the UN Coordinator for the Cook Islands, Niue, Samoa and Tokelau and in collaboration with EMCI, held an Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands in Avarua Rarotonga. There were more than 50 participants from various Ministries, Agencies (including from the outer islands), NGOs, CIRCS, IFRC, UN Agencies and donors based in the Cook Islands and in the region.

⁴¹⁹ Cook Islands National DRM Arrangement 2009, pg.27

The three-day workshop aimed to:⁴²⁰

- strengthen collaboration between international and regional actors with local authorities with a focus on more effective and timely support to affected populations in times of disaster
- familiarize participants with the emergency roles and responsibilities of participating agencies, as well as disaster response and coordination mechanism
- review existing practices and mechanisms in order to provide key recommendations for future disaster preparedness and response activities as lesson learnt from Cyclone Pat.

The main lessons learnt from Cyclone Pat response were as follows:⁴²¹

- According to EMCI, Cyclone Pat response underscored the importance of relevant and timely assessment, which would help the actors take appropriate actions based on the identified needs.
- NZ AID suggested NZ be involved in the first assessment in order to speed up the process of sending relief. Pre-cyclone meetings involving key actors would be useful, and give more clarification to roles and responsibilities.
- CIRCS highlighted the importance of having Aitutaki staff on the team to better communicate and understand the local circumstances. Private sector partnership was also suggested by CIRCS to ensure availability of local equipment for immediate response, like chainsaws, ladders, etc to assist people in clearing their houses.
- The Mayor of Aitutaki (at the time) highlighted the importance of reducing disaster risks during the preparation phase in order to mitigate the disaster impact. The Mayor also emphasized that it is crucial to properly assess what is actually needed. During the Cyclone Pat response, the needs of the island were sometimes not reflected in the response actions. For example, Aitutaki did not need food itself, but required funds to purchase it on the island.

During the recovery phase, some of the key issues presented by the Chair of the Aitutaki Response and Recovery Committee were:

- The Committee highlighted the importance of identifying in-country capacity to respond to the disaster with existing resources before asking for international assistance.
- The role of the Ministry of Finance was not clear at the beginning of the response.
- The role of EMCI under the DRM Act is mainly formulated for the emergency response phase, which means EMCI couldn't play a central role in the recovery phase, except in the transition phase.
- The transition from emergency to recovery should be seamless and continuous.
- There is a need for good linkage between the affected outer island and Rarotonga on a daily basis (two way communication) – daily updates from the affected island should be fed back into Rarotonga meetings.

⁴²⁰ Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands, Avarua, Rarotonga, 1-3 June 2010, pg. 3

⁴²¹ Inter-Agency Contingency Planning Workshop for Humanitarian Assistance in Cook Islands, Avarua, Rarotonga, 1-3 June 2010, pg. 12

Annex 12

- There is a need for the UNDP recovery advisor to arrive earlier in the response phase.

The challenges for International assistance were:

- a delay in requesting international assistance
- a lack of clarity on who asks for international assistance and who is responsible to contact UN agencies, like the UNDAC, FAO, etc
- customs clearance for relief items: variation of custom duties depending on registration
- a lack of centralized coordination
- the need for rapid assessment providing an overview of humanitarian needs rather than in-depth assessment, which delays the request for international assistance at early stage of disaster
- The need to put in place a system for request and management of international support.

Cook Islands UNDAC Team ToR summary⁴²²

The UNDAC Team will:

1. support and facilitate the work of the affected government in the initial phase of the response to tropical Cyclone Pat
2. report to the Regional Coordinator and inform her and the Pacific Humanitarian Team of developments in the relief operation
3. support the provision and dissemination of initial information on the material and human dimensions of the effects of Cyclone Pat with the aim of giving host government and the international community a broad understanding of the nature and magnitude of the event
4. support the host government in facilitating the coordination of assessments with a particular view to ensuring consistent information reporting, accurate needs assessments and subsequent relief interventions
5. establish a specialized on-site operations Coordination Centre (OSOCC) in support of the EMCI EOC and as requested by the affected government
6. maintain links with and regularly report on the progress of its mission to the Regional Coordinator and the Pacific Humanitarian Team and other humanitarian partners
7. not issue appeals – any UN appeal will be managed by the Regional Coordinator and the United Nation Coordination Team (UNCT)

⁴¹⁸ UNDAC MISSION REPORT Tropical Cyclone Pat, Cook Islands , 12 to 24 February 2010, pg.5

Annex 13

[insert date]

Kia Orana

AGREEMENT for short term lease of telecommunications equipment

1. Telecom Cook Islands Limited (“TCI”) wishes to support the Cook Islands Red Cross and the International Red Cross with preparations for national emergencies requiring external assistance and the urgent importation of emergency communications systems.
2. [name of organization] (the “Customer”) is responding to requests from the Government of the Cook Islands and/or the Cook Islands Red Cross to provide emergency assistance, including emergency communications systems.
3. Because TCI may not be able to immediately provide the required service during the emergency situation it wishes to encourage the Customer to use its own telecommunications equipment, [describe the equipment here] for the purpose of emergency response.
4. Under the Telecommunications Act 1989 only TCI is authorised to build and operate telecommunications networks in the Cook Islands.
5. The purpose of this letter is to facilitate the use of the Customer’s equipment in the Cook Islands by temporarily including that equipment in TCI’s network through a short term lease arrangement, and thereby avoiding potential contravention of the law.
6. Therefore, the Customer agrees to lease to TCI the equipment [brief description to be inserted here] (the “Equipment”) for the period [insert date of arrival until expected departure] for one dollar (\$1) and TCI agrees to lease the Equipment back to the Customer for two dollars (\$2) for the same period on the terms and conditions contained in this letter agreement.
7. The Customer retains risk in the Equipment for the full term of the lease.
8. The Customer agrees to use the Equipment for the purpose of emergency communications and not for commercial gain or any other purpose.
9. The Customer agrees to abide by the reasonable instructions of TCI with respect to the operation of the Equipment, to ensure, for example, that no interference occurs with other telecommunications services.
10. TCI is not responsible for operation, repair, or any other support of the Equipment but will respond to any reasonable requests for assistance as resources permit. Support will be charged at TCI’s standard rates for technical support.
11. The parties acknowledge receipt of the lease payments upon signing this letter agreement.
12. Please indicate agreement to the terms of this letter by signing, dating and returning a copy of this letter.
13. This letter agreement is governed by the laws of the Cook Islands. Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of the Cook Islands, and courts hearing appeals from those courts.

Annex 13

14. The waiver of any right arising from a breach of this letter agreement or of any right, power, authority, discretion or remedy arising upon default under this letter agreement must be in writing and signed by the parties granting the waiver.
15. A variation to any term of this letter agreement must be in writing and signed by the parties.
16. Each party must do all things and execute all further documents necessary to give full effect to this letter agreement.
17. Each party warrants and represents that the person signing this letter agreement on its behalf is an authorised representative of the relevant party and is able to legally bind such party to the terms of this letter agreement.
18. This letter agreement confers rights only upon a person expressed to be a party, and not upon any other person.
19. Any provision of this letter agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this letter agreement or the validity of that provision in any other jurisdiction.
20. Except as expressly set out in this letter agreement a party may not assign any of its rights under this letter agreement without the prior written consent of the other parties.
21. Each party must pay its own costs and expenses of and incidental to the negotiation, preparation, execution, performance or registration of this letter agreement.

Signed by the parties:

CEO

Telecom Cook Islands Limited

I agree to the above terms for and on behalf of [insert name of organisation importing the equipment for the period of the emergency]

Title:

Date:

List of key references

International/Regional instruments

- Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (2007) – “IDRL Guidelines”
- Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters (2005)
- United Nations Framework Convention for Climate Change (UNFCCC)
- Vienna Convention on Diplomatic Relations (1961)
- Chicago Convention on Civil Aviation (1944) 9th Edition 2006
- Convention on the Facilitation of Maritime Traffic (1965)
- Pacific Plan and the Kalibobo Roadmap 2005
- Pacific Disaster Risk Reduction and Disaster Management Framework for Action Agreement 2005 (DRM Regional Framework)
- Pacific Islands Framework for Action on Climate Change 2006-2015

National Legal Instruments

Laws

- National Disaster Risk Management Act 2007
- Diplomatic Privileges and Immunities Act 1968
- Visiting Forces Act 1992-93
- Incorporated Society Act 1994
- Cook Islands Red Cross Society Act 2002
- Customs Act 2012
- Customs Tariff Act 2012
- Value Added Tax 1997
- Entry, Residence and Departure Act 1971-72
- Law Practitioners Act 1993-94
- Medical and Dental Practices Act 1976
- Biosecurity Act 2008
- Civil Aviation Act 2002
- Air Services Licensing Act 1984
- Airport Authority Act 1985
- Maritime Transport Act 2008
- Ports Authority Act 1994-95
- Transport Act 1966
- Telecommunication Act 1989
- Development Investment Act 1995-96
- Financial Transactions Reporting Act 2004
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Annex 13

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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
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