



International Disaster Response Law (IDRL) in Kenya

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

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About this Report

This report was commissioned by the **IFRC** and prepared by the Kenya Red Cross Society. It analyses the existing legal and policy frameworks for disaster management and response in Kenya 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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ACRONYMS

ASAL	Arid and Semi-Arid Lands
AU	Africa Union
CBO	Community Based Organizations
CCK	Communication Commission of Kenya
CHE	Commission for Higher Education
COC	Certificate of Conformity
COMESA	Common Market for East and Southern Africa
EAC	East Africa Community
EACCMA	East African Community Customs Management Act
EBK	Engineers Board of Kenya
GOK	Government of Kenya
GMOs	Genetically Modified Organisms
IDPs	Internally Displaced Persons
IDRL	International Disaster Response Law
IFRC	International Federation of the Red Cross Red Crescent Societies
IGAD	Inter-Governmental Authority of Development
IPCC	The Inter-governmental Panel on Climate Change
UNISDR	United Nations International Strategy for Disaster Reduction
KEBS	Kenya Bureau of Standards
KFSM	Kenya Food Security Meeting
KFSSG	Kenya Food Security Steering Group
KRA	Kenya Revenue Authority
KRCS	Kenya Red Cross Society
MCI	Mass Casualty Incident
NCCAP	National Climate Change Action Plan
NDCC	National Disaster Coordinating Committee
NDCF	National Drought Contingency Fund
NDMA	National Drought Management Authority
NDMC	National Disaster Management Centre
NDMP	National Disaster Management Policy
NDOC	National Disaster Operations Centre
NEPAD	New Partnership for Africa Development
NGOs	Non-Governmental Organizations
NPDRR	The Kenya National Platform for Disaster Risk Reduction
NPS	National Police Service
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
PBO	Public Benefits Organization
PPB	Pharmacy and Poisons Board
SOPs	Standard Operating Procedures
UN	United Nations
USD	United States Dollar
VAT	Value Added Tax
WHO	World Health Organization

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EXECUTIVE SUMMARY

This report contains a review of international humanitarian assistance at the time of disasters as governed by the legal and policy framework in place in Kenya. It has also reviewed the existing framework and system for coordination of response to disasters. The study is informed by the “Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance” (also known as the “IDRL Guidelines”) as adopted at the 30th International Conference of the Red Cross and Red Crescent in 2007. The IDRL Guidelines serve as a practical tool to advise governments on how to prepare their disaster laws and plans for international relief operations.

Findings of the Report

One of the main findings of the report is that existing legislation provides for numerous guidelines that apply either directly or indirectly in the regulation of international humanitarian assistance during disasters. However, Kenya does not yet have a comprehensive disaster management policy or law that can provide a basis for this regulation. During the period of the research, the Government was working on a draft disaster management bill, which has not yet been passed into law or presented to parliament. The draft bill has left out key areas of regulation governing international humanitarian assistance. In addition to the bill, there is also a draft National Disaster Management Policy (NDMP) that has also not yet been approved by either the Cabinet or Parliament. The draft NDMP provides for strong guidelines relating to the institutional and normative framework governing disaster management. From the research, it is clear that large portions of the proposed NDMP are already in practice. As such, whereas there is weak legislative and policy architecture, the practice in several aspects of regulation of international humanitarian assistance is strong. This is facilitated by existing executive orders and good will from various concerned departments and officers.

From an institutional perspective, the research findings note that there are multiple public agencies and departments that play critical role in disaster management. However, interviews conducted by the researchers show significant weakness in terms of coordination, risks of duplication and bureaucracy that could negatively hamper international humanitarian assistance.

Key recommendations

The report makes detailed recommendations in the various chapters. However, the following emerge as key recommendations based on the findings of the research:

1. There is need for a comprehensive policy and legislation on disaster management. The framework should not only develop critical areas that have not yet been regulated but also harmonize existing regulations in various legislations that could be applicable to international humanitarian assistance. Areas that need special attention include mechanisms for requesting international assistance; entry of personnel and goods for humanitarian assistance; early warning and information sharing regulation; accountability by agencies and persons engaged in humanitarian assistance.
2. There is need to harmonize and strengthen coordination among agencies charged with disaster management. As it is, multiple institutions exist with no clear mechanism for coordination. Specifically, the report recommends the National Disaster Operations Centre (NDOC) to be strengthened as the coordinating agency for disaster response. The NDOC requires to be institutionalized through law with a clear description of mandate and relationship with other agencies. In addition, the role of the County Governments in coordinating disaster response within their own counties needs to be strengthened. The draft NDMP provides for different classifications of disasters with both the County and National Governments playing a role albeit in different levels. However, the interviews conducted through this research show the need for further clarification on the specific roles of both levels of Government.
3. The report makes a strong case for strengthened coordination and oversight of international humanitarian assistance by the civil society. This includes the need to enhance coordination meetings between the civil society and government and the need to include civil society in key decision-making bodies. There should also be special registration of agencies whose mandate and objective is largely to support in international humanitarian assistance. There is also need for adoption of a mechanism for temporary registration of such agencies during times of disaster.



CHAPTER 1

BACKGROUND AND METHODOLOGY

1.1 Background

Regulation of international disaster response has not been given priority in terms of preparedness and response to disasters. As a result, gaps exist in both national and international law regarding facilitation of international disaster response. International rules in particular are spread in different treaties and agreements with no single reference document in the form of international treaty relating to facilitation of international response in times of disaster.

In November 2007, the 30th International Conference of the Red Cross and Red Crescent adopted a set of recommendations to help governments prepare their regulatory systems for international disaster response in case they are affected by a disaster. The product of the Conference was the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, hereinafter referred to as the "IDRL Guidelines".¹ This was based on extensive studies conducted on the international legal preparedness for disaster response.

Since 2007, the IFRC has been supporting national level studies on how prepared governments are in terms of regulation of international disaster response. In particular, special attention has been given to rules relating to requests for international assistance and entry or exit of foreign personnel and goods. The IFRC has provided technical support to the KRCS in undertaking a project to strengthen legal preparedness for international disaster assistance in Kenya.

This report is a product of this undertaking. The study was conducted during the period of 2012 and 2013. The period of study also coincided with critical moments in the development of a national framework on disaster management including the development of the national policy and law on disaster management. In addition, it provided an opportunity to reflect on critical issues in the development of a national emergency medical services policy and legislation. The report and discussions with critical stakeholders in the development of this report is hoped to contribute to making the national processes successful.

1.2 Methodology

The research leading to this report was conducted under the auspices of the International Centre for Humanitarian Affairs (ICHA) as contracted by the KRCS. A research team comprising of a lead researcher and four research assistants conducted the research to its conclusion.

The study assesses Kenya's legal preparedness in light of the IDRL Guidelines- described above, and the Model Act on International Disaster Relief and Initial Recovery (Model Act on IDRL) developed by IFRC, UN, OCHA and Inter-Parliamentary Union.²

The researchers utilized various methodologies including;

Desk review and studies: This includes review of primary and secondary documents relating to the field of study. In particular, the researchers concentrated on the review of the various legislative and regulatory instruments developed by the Government of Kenya (GOK). Secondary literature reviewed included various studies, reports and publications relating to disaster management in Kenya. Case law as developed by the Kenyan Courts was also analysed as indication of interpretation of pertinent laws. Further, regional and international policies were systematically reviewed to assess application in Kenya.

Surveys and in-depth interviews: After the desk reviews, the researchers conducted interviews targeting key government officials and other stakeholders. The interviews largely sought clarification on application of substantive rules analysed in the desk reviews. As far as possible, information from the interviews was triangulated to assess accuracy and consistency.

Discussions: The researchers participated in various meetings with stakeholders with a view to completing the objectives of the study. Internal meetings of the KRCS staff provided useful insights in framing the issues and understanding gaps and strengths in processes. In particular, meetings of the committee mandated by the GOK to develop the national disaster management law for Kenya provided opportunity to explore gaps in the regulatory system as relating to disaster management.³ This provided researchers with opportunity to reflect on the opinion of other stakeholders. Other important meetings attended include county level meetings developing county legislation and policies on disaster management. In this manner, research findings were continuously being fed back to stakeholders even before completion of the research. Finally, one expert meeting for lawyers in private practice was held to present initial findings for review and criticism.

On completion of the research, the report will be disseminated to stakeholders.

¹ The IDRL Guidelines are available on [http://www.ifrc.org/PageFiles/125652/1205600-IDRL%20Guidelines-EN-LR%20\(2\).pdf](http://www.ifrc.org/PageFiles/125652/1205600-IDRL%20Guidelines-EN-LR%20(2).pdf)

² The Model Act on IDRL is available on <http://www.ifrc.org/en/what-we-do/idrl/model-act-on-idrl/http://www.ifrc.org/PageFiles/125656/MODEL%20ACT%20INGLES.pdf>

³ Counties are the devolved government units provided for under the Constitution of Kenya

CHAPTER 2

OVERVIEW OF DISASTER SCENARIOS, LEGAL AND POLICY FRAMEWORKS FOR DISASTER RISK MANAGEMENT

2.1 Country background and risk profile

2.1.1 Country background

Geography and climate

Kenya is situated in East Africa within latitude 5° north to 5° south, longitudes 34° east to 41.24° west. It has an estimated total surface area of 582,650 km². The neighbouring countries are Ethiopia and South Sudan to the north, Somalia to the east, Tanzania to the south and Uganda to the west. The terrain is varied and comprises low plain rises to central highlands divided by the Great Rift Valley. The country is grouped into geographical zones that include the Savannah Lands covering most of the arid and semi-arid areas, the Coastal Margin, the Rift Valley, the Highlands and the Lake Victoria Basin.

The dry lands of the Horn of Africa are host to about 20 million pastoralists, who mainly rely on their livestock for their livelihood.⁴ In Kenya, pastoralism is also the main economic system in the arid and semi-arid lands (ASALs), which cover the entire northern Kenya ranging from areas in Turkana, Wajir, Marsabit, Garissa, Moyale and Mandera. It also covers parts of Eastern Kenya including Isiolo and Ukambani, and Southern Kenya covering Kajiado, Narok and Pokot. These areas are affected negatively by climatic variability, which has rendered the regions prone to droughts and floods.

Kenya has an estimated population of 43.18 million⁵ with about 28% of the population said to be living in urban areas. The main source of livelihood for the rural population is agriculture and livestock production. The coping mechanisms of poor rural populations have been dependent on natural assets, which continue to be compromised with population growth and climate change.

Economic and political factors

Kenya's economy is the largest in the East African region and has enjoyed considerable growth in the last few years. Kenya is classified as a low-income country with a Gross Domestic Product (GDP) per capita of \$1,808.⁶ The World Bank estimates show that an average of 42% of income in Kenya is accrued by less than 10% of the population, with 45.9% of the population surviving on less than USD 1 per day. Inflation rates have been soaring, rising to the rate of 7.4% by the end of 2013. Kenya's economy is vulnerable to external shocks, especially changes in oil prices. Tourism, which has been the largest source of income, has gradually been declining as a result of insecurity and political instability relating to the 2013 elections. The economy also largely relies on rain-fed agriculture. Poor rainfall associated with climate change means shrinking in agricultural output.

High poverty rates are recorded in parts of the country setting unequal development patterns with nearly 4 of every 10 Kenyans living in poverty.⁷ The ASAL region, which is estimated to be home to about 10 million people, records the highest rates of poverty. A total of 18 of the 30 poorest constituencies in Kenya are in the ASAL districts with an average of 74-97% of the population in these districts living below the poverty line.⁸ The poverty levels are getting worse as a result of high commodity prices associated with inflation and application of value added tax (VAT) on some essential commodities. However, the presence of a skilled labour force, wildlife and coastal beaches make Kenya attractive for investment.

Legal framework and governance structure

The Constitution of Kenya conceives the country as a multi-party democracy based on the rule of law and constitutionalism. The Constitution acknowledges the sovereignty of the people and outlines that the people shall form a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.⁹ Kenya has three arms of government namely the judiciary, the legislature and the executive. These branches of government are required to operate as distinct, separate but interdependent.¹⁰ The Constitution is the supreme law of the land and all other laws must conform to it. Parliament, as the law-making organ, develops and adopts legislation in the form of statutes. Below the statutes, Kenya has an elaborate system of regulations developed pursuant to and as provided for in the statutes adopted by Parliament. These regulations carry the weight of law. In addition, there is a wide margin of latitude given to senior government officials in setting executive directions on certain matters. Kenya has a devolved system of government, where central government functions at a national level and through a decentralised unit referred to as the county. The Constitution provides for separate functions between the national and county governments which are set out in the fourth schedule, although in implementing their functions, there is an expected sense of interdependence.¹¹ Any functions not explicitly assigned to either the county or national governments will automatically be reserved for the national government.¹²

⁴ Courtenay Cabot Venton et al (2012) *The Economics of Early Response and Disaster Resilience: Lesson from Kenya and Ethiopia*

⁵ <http://data.worldbank.org/indicator/SP.POP.TOTL> (accessed on the 29th January 2014)

⁶ World Bank (2013) *Kenya Economic Update*, Edition No. 9

⁷ *Ibid*

⁸ Government of Kenya, *Releasing our Full Potential Sessional Paper on National Policy for the Sustainable Development of Northern Kenya and other Arid Lands*: Office of the Prime Minister

⁹ See, *The Preamble of the Constitution of Kenya*, 2010

¹⁰ *Constitution of Kenya*, 2010, article 6(2)

¹¹ *Ibid* article 186

¹² *Ibid* article 187

2.1.2 Country risk profile

Kenya has a draft National Disaster Management Policy (draft NDMP)¹³ that indicates that droughts, floods, fires, terrorism, technological disasters, diseases and epidemics dominate the disaster management profile of the country. The most common disasters are as a result of hydro-meteorological, seismic and environmental processes.¹⁴ Already, in excess of 70% of disasters are related to extreme climates. The National Climate Change Action Plan (NCCAP) predicts that climate change will lead to more disasters including droughts and floods. In the last few years, the frequency and magnitude of the disasters has increased. The impact of the disasters is felt more among the most vulnerable populations affected by poverty and living in fragile ecosystems.

Like other countries in East Africa, Kenya has inadequate resources and capacities to be able to effectively respond to and deal with disasters.¹⁵ Disasters further erode existing capacities of both government and communities by compromising infrastructure and severely curtailing development projects. A Key sector that is severely impacted is agriculture, which effectively reduces availability of food in the country. For example the 1997/98 floods caused food prices to increase, forcing more people into vulnerability.¹⁶

2.1.2.1 Drought

Drought has been a recurring phenomenon in Kenya. About 80% of the total land in Kenya is classified as ASAL and hence a large population of the country faces constant food insecurity. Due to the vast areas prone to drought, Kenya's vulnerability to food insecurity is highest among the pastoralists and small-scale agriculturalists in the ASAL areas. As such, any experience of drought affects large populations.

Historically, the experiences of drought have been on a cyclic basis with the major droughts being experienced every ten years and the minor ones averaging every three to four years. Generally, severe droughts are said to be experienced every twenty five to thirty years and less severe droughts occur every ten to fifteen years.¹⁷ However, in the past four decades, droughts have become more frequent, more widespread, and more intense. Available records indicate that in the last 100 years the country has experienced over 28 droughts.

Major recent droughts were in 1983/1984, 1991/1992, 1996/1997, 1999/2001, 2005/06, and 2009. It is estimated that drought in Kenya directly affects the household food security of more than 10 million people, mainly in ASAL. However, the 1999-2001 drought affected most parts of the country, including some high rainfall areas. At its peak, 4.5 million people depended entirely on relief food. By its end, approximately USD 416 million has been spent on both food and non-food aid. Further, just a single drought experience of 2008-10 resulted in loss estimated at USD 12.1 billion¹⁸, with the cost of recovery and reconstruction estimated at USD 1.77 billion.¹⁹ The worst drought experienced in recent times occurred in 2011 and 2012, which affected an estimated 3.75 million people countrywide.²⁰

In drought situations, the largest aspect of response has been provision of food relief. In Kenya, between 1999 and 2010 an annual average of 2.6 million people were assisted with emergency food and non-food relief, at an average cost of USD 173.2 million per year. The table below shows average expenditures in drought response as tabulated by the GOK. In 2011, it is estimated that the total international assistance provided in form of aid was USD 427.4 million and the 2009 response prompted aid worth USD 432.5 million.²¹ In addition to international assistance, spending by the GOK in drought response has also been significant. For example, estimates by the United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA) show that the GOK spent about USD 219 million on drought response in 2011. In addition, between 1999 and 2010, the GOK spent an average of USD 173.2 million each year on food and non-food emergency operations.²²

¹³ Government of Kenya, *National Disaster Management Policy, Draft version dated June 2011*

¹⁴ Draft NDMP

¹⁵ East African Community, *Disaster Risk Reduction And Management Strategy p. V*

¹⁶ Otiende Brian (2009) *The Economic Impacts of Climate Change in Kenya: Riparian Flood Impacts and Cost of Adaptation*

¹⁷ East Africa Community, *Disaster Risk Reduction And Management Strategy p. 10*

¹⁸ Government of Kenya (2012) *Kenya Post Disaster Needs Assessment (PDNA): 2008-2011*

¹⁹ Ibid

²⁰ Figure based on assessment conducted by the Kenya Food Security Steering Group (KFSSG)

²¹ Courtenay Cabot Venton et al (2012) *The Economics of Early Response and Disaster Resilience: Lessons from Kenya and Ethiopia*

²² Government of Kenya, as quoted in Catherine Fitzgibbon (2012) *Economics of Resilience Study – Kenya Country Report*

Table 1: Estimated expenditure on drought emergency operations, 1999-2010 (Source: Government of Kenya, National Disaster Management Authority)

Year	Population affected (millions)	Type of Intervention	Cost of Intervention (USD millions)
1999	1.8	Food	50
		Non-food	40
2000	3.7	Food	120
		Non-food	26
2001	4.0	Food	140
		Non-food	40
2004	2.3	Food	76
		Non-food	24
2005	1.2	Food	72
		Non-food	25
2006	3.5	Food	220
		Non-food	50
2007	1.3	Food Aid	48
		Non-food	41
2008	1.0	Food	84
		Non-food	9
2009	3.8	Food	353
		Non-food	167
2010	1.6	Food	60
		Non-food	87

The impact of drought is exacerbated by factors that increase vulnerability and compromise the capacity of those affected to recover, especially in the ASALs. These factors include insecurity, limited livelihood diversification, inadequate social and physical infrastructure, poor marketing systems, and low investment. Vulnerability is likely to deepen as the effects of climate change take hold. As continued cycles of drought bite the country, there will be need for increased international assistance and response.

2.1.2.2 Floods

Floods are the leading hydro-meteorological disaster in Kenya²³ affecting 5% of the population.²⁴ In addition, flood related fatalities constitute 60% of the total disaster-related deaths in the country.²⁵ Moreover, the significance of floods is likely to increase. The Inter-governmental Panel on Climate Change (IPCC) notes that the impact of climate change will significantly increase the occurrence of floods in many countries.²⁶

Floods affect large parts of the country seasonally and are more pronounced along the flood plains in the Lake Victoria and Tana River basins and other rivers such as the Nyando River in the western region and River Galana on the coast. In summary, large parts of western, eastern, north-eastern, south-eastern and central Kenya are susceptible to flooding in the rainy seasons of March-April-May and October-November-December. As such floods largely follow torrential rainfall, they result in population movement from the lowlands to higher grounds. Kenya experiences two seasons of long and short rains. The long rains are experienced during the months of April to May whereas the short rains occur between October and December. However in 1961/62, 1988 and 1997/98 the short rains were more than expected causing severe flooding which occasioned displacement and destruction of property. The resultant floods were attributed to El Nino weather phenomena. Kenya was among the 16 worst affected countries during the 1997/98 El Nino.²⁷

The floods in Kenya occur as a result of natural factors including flash floods, river flooding and low lying coastal area floods. However, more and more flooding occurs as a result of human interference with drainage basins, flood plains and natural watersheds causing urban and peri-urban locations such as the outskirts of Nairobi to experience floods. The most vulnerable populations are people living in informal settlements near rivers such as Mathare and Kibera slums. Floods

²³ Government of Kenya (2007) Mission Report to Assess the Impacts of Floods in Budalangi and Rachuonyo Districts in Western Kenya

²⁴ Otiende, Brian (2009) The economic impacts of climate change in Kenya: Riparian flood impacts and the cost of adaptation

²⁵ United Nations Environment Programme (UNEP), Government of Kenya (GoK), Regional Centre for Mapping of Resources for Development (RCMRD) and United States Geological Survey (USGS), (2009), Kenya Atlas of Our Changing Environment

²⁶ The Inter-governmental Panel on Climate Change (IPCC) report 2007

²⁷ Mutunga, N. et al (2006), Natural Disaster Hotspots: Case Studies, Reducing the Impacts of Floods through Early Warning and Preparedness: A Pilot Study for Kenya

result in loss of lives, assets and destruction of infrastructure causing economic loss to the country. Thousands of people are internally displaced as a result of occurrence of floods with a large number losing their lives. Disease outbreak is also common during flooding seasons. Common diseases are water related diseases such as diarrhoea, cholera, typhoid and malaria. In terms of the effect on the economy, both floods and droughts have the potential of reducing the country's GDP by 2.4% per annum.²⁸ For example, the 1997/98 floods are estimated to have resulted in economic losses of about USD 800 million with the World Bank putting the estimates at USD 1 billion.²⁹

In addition to flooding, landslides are experienced during the rainy season. They are more pronounced in the highland areas and areas surrounding the Mount Kenya region. Landslides are accelerated by floods and are triggered by rapid saturation of the soil, which in turn reduces cohesion, surface tension and friction. This is largely associated with the loss of tree cover in the country.

2.1.2.3 Fires

In Kenya, fires are a major occurrence as a result of poor planning of infrastructure and under development. They largely occur in industrial areas, and informal settlements such as slums. Two tragic fire incidences occurred in schools at Bombolulu Girls Secondary School in Mombasa in 1998 and Kyanguli Boys Secondary School in Machakos in 2001 killing 25 and 68 students respectively.³⁰ In the recent past, the worst fire related disasters include the 2009 fires in a supermarket in Nairobi and an oil tanker explosion in Molo. The "Nakumatt" fire in Nairobi occurred in a busy supermarket in downtown Nairobi resulting in 14 deaths and 40 people being seriously injured. In the Molo incident, an overturned oil tanker caught fire and exploded killing around 150 people and severely injuring 200 others. In June of the same year, 4 people died and 44 others were injured when another oil tanker exploded after overturning in Kericho. In 2011, another oil tanker overturned and exploded killing 4 people and injuring 37 others. The same year, another 150 people were killed when oil spilled from a refinery into an informal settlement and caught fire.³¹

Other cases of fires are largely experienced in informal settlement areas, where an estimated 60% of the population in urban areas live.³² A key characteristic of the informal settlements is overcrowding and poor planning of housing units. Fire risks increase as a result of poorly constructed houses and lack of essential services such as fire-fighting equipment. Due to the large populations living in the informal settlement, a single case of fire usually engulfs a number of houses displacing large numbers of people at a time. For example, in March 2011, fires in three slums in Nairobi displaced about 25,000 people.³³

2.1.2.4 Mass casualty incidents

Kenya has experienced various hazards that have resulted in mass casualties. These include conflict, road crashes and terrorism. Most incidences have required coordinated response from both local and international agencies. Conflict and other forms of violence have been a major challenge for Kenya. Inter community conflict is largely associated with competition for scarce resources and electoral politics. For example, the 2007/08 post-election violence affected large parts of the country, with an estimated 600,000 people displaced and 1,500 killed. Other notable incidents include the Tana River clashes of 2012/13 and Turbi Massacre in Marsabit in 2004. In the Turbi massacre a total of 53 people were killed and hundreds displaced.³⁴ In Tana River, the period of August 2012 and January 2013 resulted in the death of 100 persons killed and thousands displaced as a result of conflict.³⁵ The availability of weapons and negative election politics make inter-community conflict more deadly. For example, in a single raid on 22nd August 2012, 52 people were killed and over 200 injured in Tana River.

Lately, terrorism has been a major source of concern for response agencies. The 2013 Westgate Shopping Mall attack that resulted in the death of 67 people with 200 injured brings to fore the impact of terrorist incidences in Kenya. Other notable incidences include the 1998 terrorist bombing where 224 people were killed and estimated 5,000 injured.³⁶

Road traffic accidents also result in mass casualties that require coordinated multi-agency response. The World Health Organization (WHO) estimates that between 3,000 and 13,000 persons lose their lives as a result of road accidents in Kenya every year.³⁷ Most of the incidences that occur are said to be caused by the poor public transportation systems. In many of these cases, mass casualties are registered. In addition, Kenya has also reported cases of boats and ferries sinking, resulting in loss of life. For example, the 1994 ferry accident in Mombasa resulted in the death of 270 people. Other accidents include collapsed buildings that have resulted in deaths and injuries.

²⁸ Otiende, Brian (2009) *The economic impacts of climate change in Kenya: Riparian flood impacts and the cost of adaptation*

²⁹ Ibid

³⁰ Marion W. Mutugi and Samuel G. Maingi (2011) *Disasters in Kenya: A major public health concern*, *Journal of Public Health and Epidemiology* Vol. 3(1), pp. 38-42

³¹ Statistics provided by the Kenya Red Cross Emergency Operations Centre.

³² Amnesty International (2009) *Kenya The Unseen Majority: Nairobi's Two Million Slum-Dwellers*.

³³ <http://www.irinnews.org/report/92488/kenya-slum-fires-highlight-urban-preparedness-gap> (accessed on 3rd January 2014)

³⁴ Gakuo Mwangi (2006) *Kenya: Conflict in the 'Badlands': The Turbi Massacre in Marsabit District*, *Review of African Political Economy* Vol. 33, No. 107, *State, Class & Civil Society in Africa*, pp. 81-91

³⁵ Kenya Red Cross Reports

³⁶ Matthew B. Ridgway Center (2005) *Anatomy of a Terrorist Attack An In-Depth Investigation Into The 1998 Bombings of the U.S. Embassies in Kenya and Tanzania*

³⁷ http://www.who.int/violence_injury_prevention/road_traffic/countrywork/ken/en/ (accessed on 8th December 2013)

CHAPTER 3

OVERVIEW OF RELEVANT INTERNATIONAL AND REGIONAL LAWS AND POLICIES APPLICABLE TO KENYA

3.1 International laws and policies

Kenya is a party to a number of treaties and agreements that facilitate international disaster response including the following relevant conventions:

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- The Geneva Conventions and their additional protocols
- Convention Relating to the Status of Refugees
- Cotonou Agreement,
- Vienna Convention on Diplomatic Relations
- Vienna Convention on Consular Relations
- Convention on Privileges and Immunities of the United Nations
- Convention on Privileges and Immunities of the Specialized Agencies
- Convention on Facilitation of International Maritime Traffic
- Convention on International Civil Aviation
- Customs Convention on the Temporary Importation of Private Road Vehicles
- The Customs Convention on Temporary Importation of Commercial Road Vehicles
- Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations
- International Health Regulations
- United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification
- United Nations Framework Convention on Climate Change
- Basel Convention on the Control of Trans- boundary Movements of Hazardous Wastes and their Disposal
- Convention on the Safety of United Nations and Associated Personnel

Kenya has a monist system of international law. Article 2(5) and (6) of the Constitution defines the relationship between international legal instruments and national domestic legislation. Article 2 (5) states “The general rules of international law shall form part of the law of Kenya.” Article 2(6) further states “Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.” Through these provisions, one can argue that beyond provisions of international treaties, what is considered general rules of international law could have application as law in Kenya.

The High Court of Kenya has presented a number of decisions regarding the application of international law in Kenya. In the matter of *Zipporah Wambui Mathara*³⁸ the court argued that “International Treaties, and Conventions that Kenya has ratified, are imported as part of the sources of the Kenyan Law”.³⁹ Whereas the position of the law is clear that international treaties to which Kenya is party to form part of Kenyan law, what is not clear is the position regarding conflict between provisions of international law and domestic statutes. Dealing with this question, Justice Koome in the matter of *Diamond Trust Kenya Ltd v Daniel Mwema Mulwa* stated that “Since however, [a provision of a domestic statute] is at variance with the provisions of an International Convention which is part of the law of Kenya, it follows that we now have two conflicting laws, none of which is superior to the other.” As such, the general conclusion can be made that when a provision of an international agreement is in conflict with a domestic statute, then primacy will be given to the domestic statute, unless such a provision is contrary to the Constitution of Kenya.

3.2 Regional law and policies

Kenya is a member of the **Africa Union (AU)** that is established under the African Union Constitutive Act. Although the AU Act does not specifically refer to disaster response, it provides for member states to work towards “eradication of preventable diseases and the promotion of good health on the continent”.⁴⁰ The Act also provides for a number of decision-making organs within the Union. The highest decision making organ is the Executive Council, which *inter alia* “shall coordinate and take decisions on policies in areas of common interest to the Member States, including environmental protection, humanitarian action and disaster response and relief.”⁴¹

³⁸ BC Cause 19 of 2010

³⁹ See also *Diamond Trust Kenya Ltd v Daniel Mwema Mulwa* HCCC No. 70 of 2012 where the court arrived at the same conclusion

⁴⁰ Africa Union Constitutive Act, Article 3

⁴¹ Ibid article 13

Further, disaster management has been provided for through various agreements and guidelines developed under the AU. In particular, the African Charter on the Rights and Welfare of the Child requires internally displaced children to receive “appropriate protection and humanitarian assistance.”⁴² The AU also adopted the Dar es Salaam Declaration on Feeding of Infants and Young Children in Emergency Situations in Africa in 1999. Other important agreements in Africa that relate to provision of humanitarian assistance include the Convention on Refugees,⁴³ and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). The Africa Regional Strategy for Disaster Risk Reduction was developed through the initiatives of the AU, the New Partnership for Africa Development (NEPAD) and the United Nations International Strategy for Disaster Reduction (ISDR) and adopted by the highest decision making organ of the AU in 2004. The initiative is aimed at assisting AU member states in enhancing disaster risk reduction to reduce the suffering of the communities and destruction of the environment. The strategy provides a framework for a common approach to shared risks in the region.

Another key regional mechanism that Kenya is a member of is the Inter-Governmental Authority of Development (IGAD). IGAD was specifically established in 1996 to work in drought management in the region. Since 1996, the organization has rapidly transformed its mandate extending to general development of the member states, including in conflict management. The IGAD agreement requires member states to “respect the fundamental and basic rights of the peoples of the region to benefit from emergency and other forms of humanitarian assistance”. In addition, member states are required to “facilitate movement of food and medical supplies in the event of both natural and man made disasters.”⁴⁴ IGAD has also developed a number of policies and programmes that touch on disaster management and more specifically drought. For example, in 2002 IGAD adopted the Disaster Risk Management Programme that provides comprehensive policy architecture for disaster management. In particular, the IGAD programme requires member states to establish generic national disaster management agencies in order to ensure coordination between member states in disaster response. In 2012, the member states also adopted a framework for ending drought emergencies in the region through the IGAD Drought Disaster and Sustainability Initiative (IDDRSI). The framework, among other things, provides a mechanism for collaboration regarding mutual support between member states in responding to droughts in the region.

Kenya is also a member of the East African Community (EAC). The EAC was established under the EAC treaty. The treaty in Article 112(1)(d) provides that in co-operating on matters dealing with the environment, partner states will “take necessary disaster preparedness, management, protection and mitigation measures especially for the control of natural and man-made disasters.” The EAC also adopted a Disaster Risk Reduction and Management Strategy that provides the policy architecture for disaster management. The strategy seeks to move disaster management in the region from response-based to a prevention model.⁴⁵ Action is thus required to be focused on prevention and forecasting. In addition to the EAC Disaster Risk Reduction and Management Strategy, the EAC Climate Change Policy, Strategy and Master Plan provides a robust policy framework for disaster management. It provides for measures for building and strengthening ability of communities to deal with the reality of climate change through adaptive measures. The strategy adopted includes early warning, preparedness, emergency response and post-disaster recovery programmes. The EAC Food Security Action Plan also provides a mechanism for coordination and implementation of joint programmes for addressing food insecurity in the region. The plan is developed in line with the EAC treaty requiring member states to work on a mechanism for the establishment of food security and rational agricultural production.⁴⁶

42 African Charter on the Rights and Welfare of the Child

43 Convention Governing the Specific Aspects of Refugee Problems in Africa

44 Agreement Establishing the Inter-Governmental Authority on Development, article 13A

45 East Africa Community, Disaster Risk Reduction And Management Strategy p. 1

46 East Africa Community Treaty articles 105-110

CHAPTER 4

OVERVIEW OF KENYA'S LEGAL, POLICY AND INSTITUTIONAL FRAMEWORK FOR DISASTER RISK MANAGEMENT

Article 8 IDRL Guidelines: Legal, policy and institutional frameworks**8. Legal, Policy and Institutional Frameworks**

1. As an essential element of a larger disaster risk reduction programme, States should adopt comprehensive legal, policy, and institutional frameworks and planning for disaster prevention, mitigation, preparedness, relief and recovery which take full account of the auxiliary role of their National Red Cross or Red Crescent Society, and 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.

4.1 Legal framework for disaster risk management

Kenya lacks a comprehensive statute for disaster management (though one is under development as discussed below). The legal and policy architecture relevant to disaster management is thus currently found in several statutes and policy documents. The first and most critical is the Constitution of Kenya. The broad range of rights enshrined under the Constitution of Kenya provides a framework for delivery of services during disasters, including humanitarian assistance. Every person, by operation of the Constitution, is entitled to the "highest attainable standard of health", "accessible and adequate housing, and to reasonable standards of sanitation", "to be free from hunger, and to have adequate food of acceptable quality" and "to clean and safe water in adequate quantities."⁴⁷

Moreover, the Constitution requires that a "person shall not be denied emergency medical treatment."⁴⁸ The import of this provision is that emergency medical care is a right for every person and that all facilities and institutions, both private and public are required by law to provide medical services in cases that are deemed to be an emergency.

Under Article 54 of the Constitution, a state of emergency may be declared in the context where the state is "threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency". Whenever a state of emergency is declared, the law provides that it shall not subsist for longer than fourteen days from the date of the declaration of the emergency, unless the National Assembly by a resolution of the majority extends the declaration, which may not exceed two months at a time.⁴⁹ A state of emergency might mean that certain rights and freedoms enshrined under the Constitution can be limited as provided for in international law and for necessity of the specific context of the emergency.⁵⁰

Kenya has adopted a system of devolved government as provided for under Chapter 11 of the Constitution of Kenya. In this form of government, the country has two levels of government, which is the national and the county government. Functions of the respective governments are provided for under the fourth schedule of the Constitution.⁵¹ These are either functions of a single level of government as stipulated in the relevant schedule of the Constitution or they are concurrent, meaning they are shared between the two levels of governments. In addition, the Constitution requires that any function

⁴⁷ Constitution of Kenya, 2010, Article 43

⁴⁸ Ibid article 43 (2)

⁴⁹ Ibid article 54 (3)

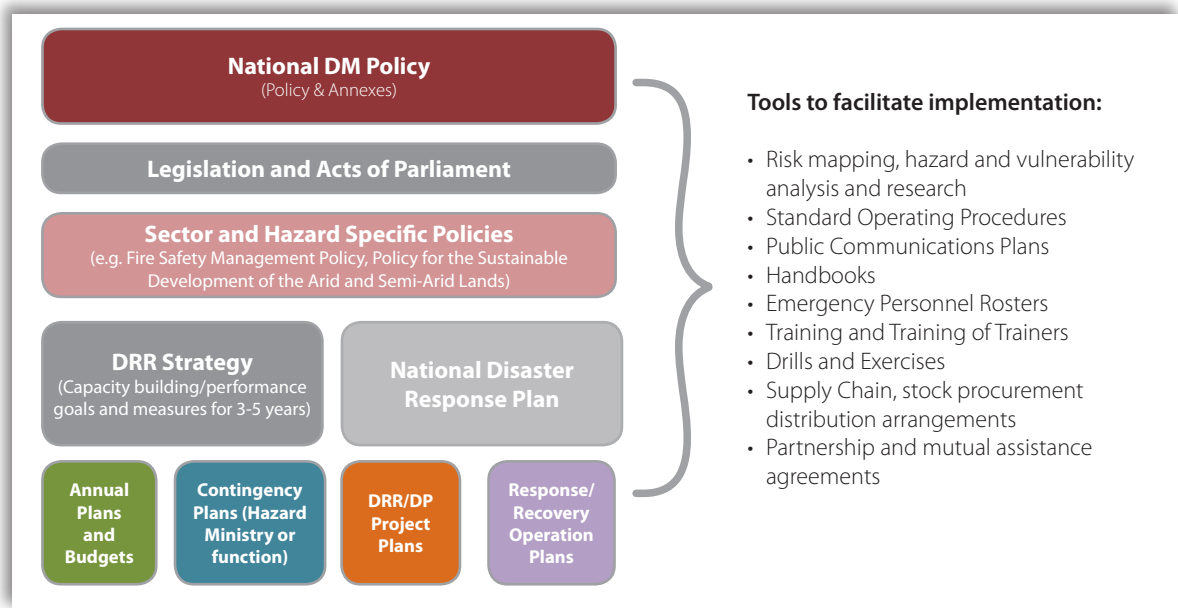
⁵⁰ Ibid article 54 (5)

⁵¹ Ibid article 186 (1)

that is not allocated to either levels of government explicitly is assumed to be a function of the national government.⁵² Under the fourth schedule of the Constitution, the role of disaster management is a concurrent function with both levels of government being listed as having jurisdiction.⁵³

In the absence of a comprehensive disaster management framework, regulations that may be relevant to different elements of disaster management are spread through various policy documents and legislations. Most of these rules do not specifically refer to disaster management and apply in general to other situations. However, the practice of disaster management lies beyond law and policy to include decision making at administrative levels as shown in the figure below.

Figure 1.
Conceptual View of the Disaster Management Policy in Kenya (Source National Disaster Management Policy)



As of the writing of this report, a draft National Disaster Management Bill has been developed, but not yet presented to Parliament. Likewise, a draft National Disaster Management Policy (NDMP) has been developed. While the NDMP is also still awaiting parliamentary approval, many of its provisions are nevertheless already in use and will therefore be described here.

The central purpose of the draft NDMP is to institutionalize disaster management in Kenya and mainstream disaster risk reduction in the country's development effort in a coordinated manner. It provides for the institutional architecture, roles, responsibilities, authorities and key processes required to achieve a coordinated, coherent and consistent approach. Through the proposed framework, a coordinated decision making structure involving government, civil society, international organizations and the private sector is proposed.

The draft NDMP is based on three key policy approaches, which are:

- To make a paradigm shift from the conventional disaster response and relief practices to the more comprehensive risk reduction culture.
- To strengthen the country's disaster management system through improvement of response and recovery management at all levels.
- To develop a cooperative approach to disaster management through collaboration with all stakeholders to build strategic, scientific, implementation and partnership with all government departments and agencies, non-governmental organizations (NGOs), academic and technical institutions, the private sector, the media, donors, etc.

⁵² Ibid article 186 (2)

⁵³ See the Constitution of Kenya, 2010 fourth Schedule

The NDMP builds on international and regional effort and action plan on disaster risk reduction. Specifically, the NDMP states that the policy builds on initiatives such as Yokohama Strategy and Plan of Action for a Safer World of 1994, the Johannesburg Plan of Implementation issued at the World Summit on Sustainable Development of 2002 and the Millennium Development Goals, the Copenhagen Conference of 2009 and Mexico Conference of 2010 on Climate Change and the Hyogo Declaration and Hyogo Framework of Action 2005—2015.⁵⁴

As such, the objectives of the draft NDMP are:

- a. Preventing disasters and their impact on families, infrastructure and the environment;
- b. Building the resilience of families and communities by reducing vulnerability and increasing their ability to withstand and minimize the effects of disasters and complex emergencies including adaptation to climate change through increased preparedness;
- c. Responding to disasters and complex emergencies in a rapid, well-coordinated, effective and appropriate manner;
- d. Recovering from disasters and complex emergencies in a timely manner, leaving communities and families in a better position to withstand future hazards.

The draft NDMP adopts an “all hazards” approach meaning that coordination mechanisms established under the policy seek to be relevant to all hazards and different disaster scenarios that may affect Kenya. The institutions are required to be designed to offer a level of flexibility depending on the type of disaster occurring. In addition, the NDMP adopts a “subsidiarity” approach with disasters being handled first and foremost by the communities affected and local institutions present at the community level. When a disaster’s response needs exceed the capacity of local communities, the next level of administration assume response roles. As such, response needs are delegated to the “least centralized level that has the capacity to respond to needs.”⁵⁵

The draft NDMP establishes that the following key guiding principles will inform all response efforts to disasters in Kenya:

- Promotion and protection of rights of all citizens during disasters
- The primacy of the State responsibility to ensure safety and well-being of all citizens
- The primacy of coordination, collaboration and communication in effective disaster management
- Devolution and public participation
- Lesson learning and knowledge management
- Multidisciplinary and multi-sectoral approach
- Effective management of emerging and troubling issues, such as drug abuse, food supply chain contamination, child abuse, the displaced and homeless, street families, girls
- Factoring of climate into disaster risk reduction
- Research and dissemination of information and main-streaming disaster management through education
- Making provision to mainstream systematic management of cross cutting issues in disaster management issues

4.2 Conclusion

The draft NDMP does not provide strong provisions that capture the IDRL Guidelines recommendations on request, facilitation and entry of international personnel and goods in times of disaster response. More specifically, the draft NDMP is inward focused concentrating on coordination of government agencies’ response to disasters. Very few provisions have been made in relation to coordination with non-state actors and more specifically with regards to international assistance. For example, whereas the draft policy contemplates that certain disasters that cannot be managed using exclusively national resources will require international support, the procedures and guidelines for providing this support have not been elaborated except for reference to the Ministry of Foreign Affairs taking the key role in coordinating international assistance.

However, the draft Disaster Management Bill does include a number of provisions that seek to provide regulation of, among other things, facilitation of international assistance including requests, early warning and entry of personnel and goods in disaster response.

⁵⁴ See the National Disaster Management Policy

⁵⁵ Ibid

CHAPTER 5

DETAILED FINDINGS

▲ 5.1 Institutional arrangements, coordination of relief and information exchange

▲ 5.1.1 Institutional arrangements for disaster management

Depending on the type of hazards, the draft NDMP has classified roles of different institutions as primary and secondary agencies for emergency response. Agencies listed are expected to provide emergency assistance and response in line with their mandate and areas of competence to the respective hazards/emergencies identified. For each hazard, the primary role is to be taken by a lead agency, which is a government department/ministry/institution, with the support roles being shared between different agencies both governmental and non-governmental.⁵⁶ As such, response institutions are classified into sectoral/cluster working groups to form an effective inter-agency response system as shown in annex one.

In terms of national institutions for disaster management, Kenya has over a period of time utilised different disaster management institutions. Whereas a large part of the effort to coordinate disasters has focused on droughts, a central coordinating agency applicable to all disasters beyond drought has been elusive. In the last few years, a number of ad hoc institutions have been developed with a mandate to respond to disasters. These include the following:

The National Executive

At the apex of the framework is the National Executive (NE) comprising of the National Cabinet and chaired by the President of Kenya. The NE is the highest decision making organ in relation to disaster management (and, of course, many other issues). In addition, the NE advises the President in taking executive decisions relating to disasters including declaration of emergencies/disasters, international appeals for assistance. The members of the NE include, but are not limited to, Cabinet secretaries (ministers) responsible for; national security, county governments, disaster management, foreign affairs, health, water and irrigation, agriculture, livestock, defence, environment, and information. The NE is envisaged to meet at least twice a year, but with possibility of more frequent meetings during periods of disasters. In terms of practice, the functions of the NE are carried out as part the usual functions of the Cabinet.

The National Disaster Coordinating Committee

An executive arm, the National Disaster Coordinating Committee (NDCC), assists the NE in discharging its functions. The NDCC is comprised of principal secretaries of relevant ministries. The core function of the NDCC is the execution of the policy decisions of the NE relating to disaster management. The draft NDMP envisions the NDCC to meet at least quarterly with more frequent meetings during disasters.

Kenya National Platform for Disaster Risk Reduction

The Kenya National Platform for Disaster Risk Reduction (NPDRR) is a coalition of institutions and organizations involved in disaster risk reduction in Kenya. NPDRR is a framework for coordinating national efforts on disaster risk reduction and provides the opportunity for different agencies to exchange information and data. As such, it forms a critical institution to provide technical guidance to higher decision-making authorities including the NE and the NDCC.

National Disaster Operations Centre

In 1998, the GOK through an executive order established the National Disaster Operations Centre (NDOC). The NDOC was a response to the 1997/98 flooding caused by the El Nino rains and as such the institution had the responsibility of coordinating response to the floods. The work of NDOC was institutionalized the same year following the 1998 terrorist bombing in Nairobi. Since then, NDOC has been retained as the government agency that coordinates response to all disasters in the country.

The core functions of the NDOC are:

- a. Monitor all disasters on a 24 hrs, 7 days-per-week, 365 days-per- year basis
- b. Mobilize national resources to combat rapid onset disasters
- c. Coordinate and respond to disaster management activities
- d. Collaborate and network with other stakeholders
- e. Sensitize and inform the public on disaster related issues
- f. Serve as the "National Drought Management Authority"

⁵⁶ Draft National Disaster Response Plan 2008 p. 45

The National Drought Management Authority

In 2012, the government established a specialised institution to deal with drought issues on a continuous basis referred to as the National Drought Management Authority (NDMA).⁵⁷ The NDMA is tasked with the general supervision and coordination over all matters relating to drought management. It is also the principal instrument of government in the implementation of all policies relating to drought management. Whereas the NDMA operates at a national level, special focus is on the arid and semi-arid areas, which are more vulnerable to the impacts of drought.

The objectives of the NDMA are to:

1. Sustain and strengthen the institutional framework for undertaking and coordinating drought management in Kenya
2. Formulate structures for mobilizing resources to fund drought management activities
3. Strengthen drought preparedness through innovative early warning systems planning, investment and awareness
4. Strengthen drought response mechanisms and operations for mitigation, relief and recovery activities
5. Develop a contingency funding mechanism for emergency drought operations
6. Develop processes, standards, principles and operational codes for drought management and response to be adopted by all drought management agencies

The NDMA is supported through a dedicated fund known as the National Drought Contingency Fund (NDCF), the Kenya Food Security Meeting (KFSM) and the Kenya Food Security Steering Group (KFSSG).

The KFSM is a coordinating mechanism between the Government, UN agencies, International Organizations and NGOs in management of food insecurity in the country. The KFSM operates through its secretariat-the KFSSG, using an early warning system that collects data on food availability through assessment of rainfall patterns. The KFSM being an inter-agency coordinating mechanism works through sector working groups dealing with different thematic areas such as food security/aid, water and sanitation, the agriculture and livestock sector, health and nutrition and the coordination sector.

Strategic Grains Reserve

The National Cereals and Produce Board Act Cap 338 Laws of Kenya and the Exchequer and Audit (Strategic Grain Reserve Trust Fund) Regulations 2002 requires the GOK to maintain at least eight million bags of 90 kilograms (720,000 MT) of grains in physical stock or cash equivalent at any given time.⁵⁸ The reserve forms a critical element of disaster management especially drought situations and is administered by a number of trustees serving as senior officers (cabinet secretaries) in various ministries.

Kenya Defence Forces

Since the 1998 bombing of the US embassy in Nairobi, the Kenya Defence Forces (KDF) have played a prominent role in disaster management in Kenya. The KDF is established under Article 241 of the Constitution of Kenya, with further legislation provided for under the Kenya Defence Forces Act, Cap 25 of 2012 Laws of Kenya. The primary role of the KDF is the "Defence and protection of the sovereignty and territorial integrity of the Republic."⁵⁹ However, the KDF also has a secondary role in assisting civilian authorities in times of "emergency or disasters" and also "to restore peace in any part of Kenya affected by unrest or instability."⁶⁰ In deploying the KDF in disaster management, the law provides for the forces to work with the National Police Service.⁶¹ Further, the statute provides that "whenever the Defence Forces are deployed pursuant to subsection (2), the Inspector-General of the National Police Service shall be responsible for the administration, command, control and overall superintendence of the operation."⁶² The KDF may also be deployed in other international operations including disaster response.⁶³

The KDF has engaged in providing disaster response and preparedness services including in search and rescue, medical services, and construction works including construction of dams and water works.⁶⁴

⁵⁷ National Drought Management Authority Order, 2011, Legal Notice Number 171 of 2011

⁵⁸ The National Cereals and Produce Board Act Cap 338 Laws of Kenya, section 13

⁵⁹ Constitution of Kenya, 2010 article 241 (2)

⁶⁰ Ibid article 241 (3) and section 8 and 31 of the Kenya Defence Forces Act, Cap 25 of 2012

⁶¹ Section 33 of the Kenya Defence Forces Act, Cap 25 of 2012

⁶² Ibid Section 33(3)

⁶³ Ibid Section 36

⁶⁴ http://www.mod.go.ke/army/?page_link=disastermgmt (accessed on 30th November 2013)

National Police Service

The National Police Service (NPS) has also played a prominent role in responding to sudden onset disasters and other emergencies. The NPS is established under Article 243 of the Constitution of Kenya. The operational scope of the police is further provided for under the National Police Service Act Cap 11A Laws of Kenya.⁶⁵ The NPS has general powers to maintain law and order in the country. In addition, the NPS could be deployed in times of emergency, including disasters. Through practice, the police play the role of incident commanders in any sudden onset disasters.⁶⁶ This role could be delegated to any other agency or person. In 2013, the NPS created a unit referred to as the National Disaster Management Unit (NDMU). The core function of the unit is to coordinate with other agencies and service providers in proper management of disaster response in the country. Since its establishment, the NDMU acts as a response team for quick onset disasters, in coordination with the NDOC.

Civil Society Organizations

A number of community based organizations (CBOs) and NGOs play a critical role in disaster management in Kenya. Largely, these organizations supply resources to provide support to government in all phases of disaster management cycle. There is a weak framework for coordinating the effort of the civil society, which results in duplication of functions and competition.

International Organizations

Kenya is host to a number of international organizations. Nairobi hosts the head office of United Nations in Africa. In addition to UN and its specialised agencies, other international organizations provide support to government in disaster management in Kenya. Largely, these organizations provide technical support in terms of personnel and resources for disaster management.

5.1.2 Conclusion and key recommendations

Kenya lacks comprehensive legal, policy and institutional mechanisms for disaster management. Existing regulations are fragmented and seem in some cases to be poorly understood by relevant institutions. A large element of disaster coordination is administrative, ad hoc and based on the good will and discretion of officials. During the period of the research, a specific attempt has been made at developing a legislation and this is still in the works. In particular, the research noted that the Model Act on IDRL developed by the IFRC in collaboration with UN-OCHA has been available for guidance to the Committee developing the legislation.

Further, a draft NDMP has been drafted in 1998 and is yet to be adopted. There are multiple institutions and government agencies dealing with different elements and issues in the disaster management cycle with no clear mechanism for coordination. This results in bureaucracy and inefficiency in terms of resource utilisation and service delivery. Therefore, the key recommendations include:

1. Adoption of the draft NDMP by Cabinet. However, the policy should be reviewed for relevance and coherence in terms of institutional arrangements.
2. Development of a comprehensive national disaster management law. The law should specifically establish a single institution with coordinating authority over all other government agencies and ministries.
3. The NDOC should be elevated and empowered to have an overall coordinating mechanism in disaster response, including coordinating with non-governmental agencies. The agency should also be allocated more resources.
4. The overall coordinating mechanism is largely government oriented involving few non-governmental entities that in practice play a strategic role in disaster management. Moreover, there is need to expand representation, especially in the highest decision making organ, to engage key non-governmental agencies including the KRCS and United Nations agencies.

⁶⁵ National Police Service Act Cap 11A Laws of Kenya.

⁶⁶ Ibid section 6

▲ 5.2 Role of civil society organisations

▲ 5.2.1 Role of Kenya Red Cross Society

The Kenya Red Cross Society (KRCS) is established under the Kenya Red Cross Society Act Cap 256 Laws of Kenya. Section 5 of the Act provides for the objectives of the Society in relation to disaster management and response. Specifically, KRCS is mandated to provide assistance to the sick and wounded in times of war, to respond to natural disasters by aiding the victims and to promote health and prevention of diseases.

The KRCS is recognised as an independent agency that is auxiliary to the public authorities in the humanitarian field.⁶⁷ In executing this mandate, KRCS participates in high level planning and coordinating mechanisms for disaster management. KRCS co-chairs with the GOK on an ad hoc basis coordinating mechanisms for disaster response in Kenya. For example, the KRCS was the co-chair in the 2007/08-post election violence response coordinating committee. In 2003, the GOK, through an executive order, appointed KRCS as the lead agency in sudden onset disasters co-chairing the national sudden onset disasters committee. In addition, KRCS is the lead agency in emergency operations in various districts countrywide. At the district level, the branches are members of the District Steering Group (DSG) and are involved in carrying rapid assessments of vulnerability levels. The regions and branches work closely with the local administration to ensure that relief supplies are distributed effectively to the affected people and internally displaced persons (IDPs). KRCS also sits in coordinating mechanisms that deal with essential aspects of humanitarian work. For example, at the national and county levels, the KRCS is an active participant in the Water and Environmental Sanitation Coordination Forum (WESCOORD), a mechanism that coordinates the efforts of all agencies active in responding to the WASH needs of populations affected by disasters and lack of service in 22 priority districts in both arid and semi-arid areas of Kenya. KRCS also coordinates with other agencies both local and international in relief and response. KRCS provides regular updates on disasters to the Humanitarian Coordination Forum of the UN.

The draft NDMP and Disaster Management Plan include a prominent role for the KRCS. The organization is listed as a response agency for practically all hazards. More specifically, KRCS in collaboration with St. Johns Ambulance, have the role of providing ambulance services in times of disaster. KRCS works closely to complement and support the government's plans to address social challenges both at national and local levels. KRCS has consistently worked towards contributing to the government's economic blueprint covering the period 2008-2030 under the Vision 2030 strategy. Towards this end, in January 2013, KRCS was granted Vision 2030 "Private Sector Flagship Status" in light of its exemplary role in the promotion of the social pillar to economic development in the country through its humanitarian and social economic development initiatives.

▲ 5.2.2 Role of other civil society organisations

The draft NDMP and the disaster management policy provides for an essential role for civil society in disaster management. The draft NDMP takes cognisance of the capacities of the civil society in terms of human resource and technical capacity and is considered as an essential element of all phases of the disaster management cycle. The draft NDMP requires relevant government agencies to audit capacities of the civil society engaged or offering disaster management functions to enhance accountability and service delivery.

▲ 5.2.3 Conclusion and key recommendations

KRCS continues to play a strategic role in disaster management in Kenya. The organization has participated in key decision making committees. However, this role has largely been ad hoc. The auxiliary function of KRCS to the public authorities in the humanitarian field while legislated under the KRCS Act, has not been provided for and sufficiently explored in disaster management policy and response plan. Key recommendations include:

1. Representatives of the KRCS - as auxiliary to the public authorities, should be included in the national disaster management committees beyond the sudden onset committees.
2. Frequency of coordination meetings between the government and the civil society should be increased to enhance preparedness and joint operational plans development.

⁶⁷ Kenya Red Cross Society Act Cap 256 Laws of Kenya, sections 6 and 7

▲ 5.3. Early warning and surveillance for cross-border disaster and communicable disease outbreaks

▲ 5.3.1 Early warning for cross-border disasters

Article 7 IDRL Guidelines: Early Warning

In order to minimize trans-boundary impacts and maximize the effectiveness of any inter- national 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.

Information relating to impending disasters has a constitutional implication. The constitution provides for the "right to information" as a human right. As such, by law information relating to disasters is an entitlement to every citizen. Moreover, Kenya is a member of the WHO and has acceded to the WHO international health regulations requiring sharing of information relating to public health emergencies such as epidemics. Beyond this, there is no legal provision or policy making sharing of information with the public or other governments and international agencies regarding disasters an obligation.

However, the Disaster Management Plan provides for a framework for early warning through provision of information on imminent disasters. It can thus be assumed that such information could also be shared with other governments and international organizations although there is no specific requirement to do so. Under this framework, the key responsibility of coordinating information on warning and alerts lies with the NDOC. Accordingly, all public warnings are required to be distributed through the NDOC.⁶⁸ The draft NDMP does not specifically set out a role for non-government agencies in distributing early warning information relating to disasters. However, it does provide for indemnification for persons and institutions arising out of "any legal process or suit with respect to any activity such as communications related to disaster early warning undertaken professionally and genuinely."⁶⁹

The plan envisages that the NDOC will use the media and other communication channels to distribute the information to the general public and agencies for standby and early action. Sources of early warning information include scientific entities, such as the metrological institutions as well as the Mines and Geology Department of the GOK. All other sources of information are required to be verified before alerts can be issued by the NDOC. The plan also provides for emergency contacts that can be utilized during non-working hours to pass information on early warnings.

The Ministry of Information also has a key role in keeping the population informed during disasters. The Disaster Management Plan provides for media briefing through the Ministry. Part of the process includes provision of regular media updates providing accurate information relating to disasters. However, there is no provision for mechanisms triggering information flow.

Further, the Communication Commission of Kenya (CCK) has the responsibility of ensuring communication services for, among other things, emergency use.⁷⁰ Regulation 43(1) of the Kenya Information and Communications (Broadcasting) Regulations, 2009 provides for regulations on public broadcasting of messages during emergencies. In this provision, "all broadcasting service providers shall provide a public notice of an emergency or a public disaster announcement upon the request of a person authorized by the Government."⁷¹ Further, the ICT policy requires all broadcasting companies to avail their services to serving public interest free of commercial interest during emergencies.⁷² Telecommunication service providers are also required to make available functioning facilities for prediction, monitoring and early warning of disasters.⁷³

▲ 5.3.2 Conclusion and key recommendations

Arrangements and mechanisms for early warning are poorly developed both in law and practice. Information flow is required to be centrally coordinated by the NDOC as per the disaster management policy and plan. Several other institutions such as the Kenya Metrological Department, the Communications Commission of Kenya and the Ministry of Information also have a role to play in information flow and early warning. However, there is no protocol on how to coordinate the information flow. In particular, there is no provision or requirement for sharing information with external agencies and countries regarding disaster alerts. Kenya has adopted the WHO framework for disease surveillance and regular reporting to the coordinating mechanism. The key recommendation is therefore:

1. A national protocol and procedure for early warning should be developed in collaboration between government agencies and local and international organizations involved in disaster management.

⁶⁸ National Disaster Management Plan para 24

⁶⁹ Draft NDMP para 6.3

⁷⁰ The Kenya Information And Communications Act Cap 411A Laws of Kenya, Section 23(1)

⁷¹ Regulation 43(1)

⁷² Government of Kenya, National Information & Communications Technology (ICT) Policy, p. 23

⁷³ Ibid p. 33

▲ 5.4 Requests for international assistance to disasters

▲ 5.4.1 Requests for international disaster relief and initial recovery assistance

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

1. Disaster relief or initial recovery assistance should be initiated only with the consent of the affected State and in principle, on the basis of an appeal. The affected State should decide in a timely manner whether or not to request disaster relief or initial recovery assistance and communicate its decision promptly. In order to make this decision, the affected State should promptly assess needs. Consideration should be given to undertaking joint needs assessments with the United Nations and other assisting humanitarian 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.

Requests for international assistance are largely informed by the magnitude and type of disaster. The draft NDMP and the National disaster response plan both envisage varying emergency levels depending on the type of disaster. The levels are numbered 1 to 4, with the highest being a level 4 emergency, as provided in the table below.

Level of Disaster	Source of Resources
Level 1: Localized emergency events dealt within the regular operating mode of the protective emergency at the village or district level.	Village/district level resources are needed. Resources vary from a single module to several single resources
Level 2: Emergency event that overwhelm the capacity of municipal/district resources, but not the capacity of the provincial resources	District and provincial resources are needed.
Level 3: National disasters that require the mobilizing of national resources to respond and recover.	Provincial and national resources are required to safely and effectively manage the operations.
Level 4: A "Disaster Emergency" event that overwhelms the capacity of the national resources to respond	National and international resources are required to safely and effectively manage the operations.

In the level 4 disasters as provided above, the President declares an emergency or a national disaster if national capacities are overwhelmed. On the basis of this declaration, international assistance and appeals are issued with response being conducted by both national and international teams.⁷⁴ Beyond this categorization of disasters, the detailed procedures for requesting international assistance have not been established with the NDMP although the policy envisages that such procedures should be developed. In the past, assistance offered by other countries and international organizations has been regularly accepted despite there being no formal request for international assistance made by the government. There is also no standard rule guiding termination of international assistance.

⁷⁴ Government of Kenya, National Disaster Management Plan para 29.

As provided in the NDMP, the Ministry of Foreign Affairs as per “agreed procedures” should coordinate the process of requesting international assistance.⁷⁵ The framework presupposes that the GOK would establish prior to disasters a mechanism for requesting and receiving international assistance. The draft NDMP further encourages development of “effective coordination interfaces and professional relationships...avoid well intentioned but ad hoc, uncoordinated and uninvited response as was noted in some earlier disasters around the world, while equally maximising the opportunity to mobilise the beneficial services available.”⁷⁶ However, the draft NDMP also places responsibility on the NDOC to coordinate any foreign assistance towards disaster response. There is no requirement for a standard form of request for assistance and the draft NDMP acknowledges that “at present, the development of such cross border mechanisms remains largely *ad hoc*” while the formation of “standard operating procedures and operational coordination agreements is encouraged.”⁷⁷ As a result of this lack of clarity in procedure, it has been possible to raise international appeals and request for assistance through other institutions including humanitarian agencies and foreign missions. It is thus not uncommon for foreign missions in Kenya to offer support directly to response agencies including civil society.

5.4.2 Conclusion and key recommendations

The procedure for requesting international assistance is not clear either in law or policy. Multiple institutions including NDOC and the Ministry of Foreign Affairs have a key role in receiving international assistance. The strength of the existing system is that international assistance is welcome in responding to disasters albeit formal declaration for assistance. Government orientation has been to welcome foreign entities helping in disaster response in times of emergency. In particular, non-state agencies are free to coordinate international response with other actors outside Kenya. However, the major weaknesses in the system is that it lacks a clear coordinating mechanism between government agencies in facilitating international assistance especially in requesting for such support. Both the Ministry of Foreign Affairs and the NDOC are designated as disaster management actors but neither the law nor the policy clearly states their specific roles. In addition, there are no procedures for the activation or cancellation of requests for international assistance.

The key recommendations are:

1. The national statute on disaster management should contain provisions on requesting and terminating international assistance. Specifically, clear responsibilities, roles and functions between different agencies should be highlighted. Moreover, a specific policy relating to requesting and receiving international assistance should be developed. This policy should, among other things, detail liability for assistance and support given, format of requests, authority and approval matrix for requesting for assistance, and joint coordination mechanisms regarding request for international assistance.
2. Clear procedures should be developed for coordinating requests for assistance by different agencies and institutions, both governmental, non-governmental and international agencies. The existing national operating procedures for disaster management are problematic.
3. A central database and system for data collection relating to international assistance received should be developed. This will facilitate accountability and planning regarding recovery and reconstruction.

⁷⁵ *Ibid*

⁷⁶ *Draft NDMP para 5.5.2*

⁷⁷ *Ibid para 5.5.1*

CHAPTER 6

LEGAL STATUS OF FOREIGN ENTITIES PROVIDING ASSISTANCE

6.1 Privileges and immunities

IDRL Guidelines, Part IV

Article 13 Facilities for Assisting States

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

Article 14 Facilities for Assisting Humanitarian Organizations

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

Kenya is a party to several conventions and agreements governing privileges and immunities. These include the Convention on The Privileges and Immunities of the United Nations,⁷⁸ the General Convention on the Privileges and Immunities of the Organization of African Unity,⁷⁹ the Vienna Convention on Consular Relations,⁸⁰ and the Vienna Convention on Diplomatic Relations.⁸¹ However, Kenya does not have a specific law that extends privileges and immunities solely to foreign organizations and persons engaged in disaster response.

The Privileges and Immunities Act, Cap 179 Laws of Kenya provides the legal framework for extending privileges and immunities to foreign entities in Kenya. This Act consolidates the law on Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations.⁸²

By operation of Section 4 and 5 of the Act, the content of both Vienna Convention on Diplomatic Relations and Vienna Convention on Consular Relations are domesticated and have application in Kenya. In addition, Section 6 provides for the Government to enter into agreements with states to provide such privileges and immunities not covered under the Act. The Government, through the Minister in charge, could also extend such privileges and immunities to representatives of commonwealth countries. It is also worth noting that such privileges and immunities are extended to all states irrespective of whether they are party to the two conventions.

Further, by operation of Section 9 of the Act, the Minister may extend privileges and immunities to certain international organizations and persons connected therewith. Section 11 also authorizes the Minister to extend certain privileges and immunities to agencies and personnel who provide technical assistance in the form of works executed or services rendered to Kenya by that agency. For purposes of applying this section, an agency includes Government of a foreign state, a recognized agency of a foreign Government and an internationally recognized foundation or other body.

The possible privileges and immunities that can be extended to the international organizations under the law include immunity from suit and legal process, inviolability of premises, exemption from rates and taxes, exemption from taxes on

⁷⁸ Ratified on 1st of July 1965

⁷⁹ Ratified 12th January 1967

⁸⁰ Ratified 1963

⁸¹ Ratified 1961

⁸² See sections 4, 5 and 15 of the The Privileges and Immunities Act, Cap 179 Laws of Kenya

the importation of goods directly imported by the organization for its official use in Kenya or for exportation, exemptions from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by organization, immunity from taxes to emoluments received by staff and immunity from immigration restrictions.⁸³

From the above, we can conclude that there is sufficient provision under Kenyan law to extend necessary privileges and immunities to entities working in disaster response and relief. Such privileges and immunities can be extended to government institutions and agencies but also to international organizations and other agencies that engage in facilitating disaster response. However, such arrangements need to be agreed upon in advance as administrative processes to extend privileges and immunities could take time and hamper urgent interventions that could have been made by different agencies had the privileges and immunities been granted at the time of a disaster. Moreover, there is no provision in law to extend privileges and immunities on an emergency basis.

6.2 Access to legal facilities and registration of foreign disaster relief organisations

IDRL Guidelines, Part V

Article 13 Facilities for Assisting States

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

Article 14 Facilities for Assisting Humanitarian Organizations

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

There are no special rules for eligibility and registration of international disaster relief organizations in Kenya. However, the draft NDMP requires the NDOC to maintain a register of organizations based in Kenya, both local and international, that provide disaster response services. The draft NDMP notes that the purpose of accreditation is to maintain quality and accountability in the work of the organizations. Organizations established under various statutes will not be required to be registered for accreditation.

⁸³ Organizations under this section to which privileges and immunities have been extended include the United Nations and related agencies, Inter-African Bureau of Animal Health, International Telecommunication Union, Universal Postal Union, World Meteorological Organization, International Labour Organization, Inter-Governmental Maritime Consultative Organization, Food and Agriculture Organization, International Civil Aviation Organization, Commission for Technical Co-Operation in Africa South of the Sahara, Regional Centre for Services in Surveying and Mapping, Desert Locust Control Organization for Eastern Africa, International Red Locust Control Organization for Central and Southern Africa, African Social Studies Programme, International Union for the Conservation of Nature and Natural Resources, Union of Radio and Television Network of Africa, Commonwealth Secretariat, Inter-Governmental Committee for Migration, International Laboratory for Research on Animal Diseases, International Committee of the Red Cross, International Federation of The Red Cross and Red Crescent Societies, Inter Governmental Authority on Development, Lake Victoria Basin Commission, International Planned Parenthood Federation, The African Wildlife Foundation, Regional Disaster Management Centre of Excellence, International Rescue Committee, The World Vision International, New Partnership for African Red Cross and Red Crescent Societies and The International Criminal Court

6.3 Domestic legal status of foreign organisations

Article 20 IDRL Guidelines. Temporary Domestic Legal Status

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

Registration of foreign organizations engaged in disaster response is critical for undertaking operations in a country. Globally, registration grants organizations legal personality to conduct transactions in the country of operations. Basic facilities such as banking services and ability to rent facilities are pegged on official registration in the country. Kenya does not provide special rules for registering organizations in times of emergency. In the absence of special provisions for registration during emergencies, it can be assumed that such organizations are required to go through the ordinary process for registration. International organizations and specialised agencies requiring registration in Kenya are obligated to establish a status agreement with the Government through the Ministry of Foreign Affairs. The agreement will inter alia provide recognition and registration in Kenya. Organizations registered under this route are not required to have additional registration for recognition in Kenya. Others are required to register under the various general options available for registration of entities seeking legal recognition in Kenya. The options available include registration as companies, societies, foundations, trusts or NGOs.

Companies are registered under the Companies Act Cap 486 Laws of Kenya. Under this option, an entity could be registered as a company limited by shares or limited by guarantee. Both companies are registered through the same process. Most entities seeking to register as a company for purposes of carrying out non-profit functions register as companies limited by guarantee. Ordinarily, a registration of such company could take up to two weeks before a certificate of incorporation is issued. Before incorporation, the applicant is required to pay stamp duty and registration fees.⁸⁴ Issuance of a certificate of incorporation means that the entity has legal personality with perpetual succession, power to sue and be sued and power to hold property.⁸⁵ Upon submission of the certificate of incorporation, such entities can access banking services, own movable and immovable property in Kenya. In terms of foreign representation in directorship of companies, there are no legal restrictions. In particular, there is no requirement for a director to be a resident or citizen of Kenya.

Entities engaged in disaster response can also be registered as trusts under the Trustees (Perpetual Succession) Act Cap 164 Laws of Kenya. Before a certificate of trust can be issued, all the trustees are required to execute a trust deed. There is no limitation on foreigners becoming trustees. However, the Act provides that where a foreign trustee has remained outside Kenya for a period exceeding twelve months, then the remaining trustees may remove the foreign trustee through a resolution.

The registration process of a trust is in two stages. The first stage is registration of the trust deed with the Registrar of Documents.⁸⁶ Upon registration, the applicants will present a petition for incorporation as a trust to the Ministry of Lands. This process can take up to three months before a certificate can be issued. Once a certificate of registration is issued, the trust can operate as an independent legal personality capable of transacting in Kenya.⁸⁷ The law does not provide for any special procedures for fast tracking registration of trusts during emergencies.

A third option is registration as a society. Registration under this option is governed by the Societies Act Cap 108 Laws of Kenya. A society is defined under the Act as "any club, company, partnership or other association of ten or more persons,

⁸⁴ Stamp duty is calculated at 4% of the total value of the nominal capital

⁸⁵ The Companies Act, section 16

⁸⁶ Registration is done under Registry of Documents Act Cap 285 of the Laws of Kenya

⁸⁷ The Trustees Act, Section 3(3)

whatever its nature or object, established in Kenya or having its headquarters or chief place of business in Kenya.”⁸⁸ This definition excludes inter alia any international organization or a branch of it, which Kenya is a member.⁸⁹ Societies are to be registered under the Act within twenty-eight days of formation. As such, it presupposes that formation of a society is prior to the registration. However, in practice, registration of societies can take up to three months. The law does not also provide for special registration procedures in times of emergency. Upon registration, the society shall become a body corporate with perpetual succession, power to sue and to be sued and own movable and immovable properties.

The broadest and most popular option in Kenya is registration as NGOs. Previously, organizations were generally referred to as NGOs. However, in 2012, Parliament adopted the Public Benefits Organizations Act Cap 18 Laws of Kenya effectively repealing the Non Governmental Organizations Act. Under this law, Public Benefit Organizations include:

“ A voluntary membership or non-membership grouping of individuals or organizations, which is autonomous, non-partisan, non-profit making and which is organized and operated locally, nationally or internationally; Engages in public benefit activities in any of the areas set out in the sixth schedule; and is registered as such by the Authority.”⁹⁰

The sixth schedule lists, among others, functions to include organizations involved in “disaster prevention, preparedness and mitigation” and “relief” in the definition.⁹¹ Section 7 specifically excludes possibility of registering a Public Benefits Organization (PBO) under any other law for purposes of carrying out a public benefit function such as disaster management. Whereas in law one could register a company or a society for purposes of registration, the import of this section is to exclude possibility of engaging in a public benefit function if registered under a different regime. As such, organizations involved in international disaster relief could best be registered and recognized under the PBO Act.⁹²

International organizations requiring registration under the Act must provide evidence of registration in another country. The organization must also provide a general description of activities to be carried out in Kenya.⁹³ There is no express provision waiving the registration fees for organizations involved in international disaster response.

Applications submitted shall be considered and reviewed within sixty days from the date of application.⁹⁴ On consideration, the application may be granted or rejected providing reasons for rejection. The law does not provide for a shorter registration period for organizations engaged in disaster response. However, there is a possibility of administratively reducing the dates through executive action. The PBO Act also provides for organizations registered outside Kenya to be exempt from registration.⁹⁵ In this proviso, such organizations are required to apply for a certificate to operate in Kenya. However, the law prohibits them from directly implementing any programme or project in Kenya. If such an organization intends to do so, an application for registration will have to be made. There are no restrictions on who can be members or officials of a PBO. However, any organization that intends to raise funds in Kenya is required to have “at least one third of its directors who are Kenyan citizens and who are resident in Kenya.”⁹⁶ In addition, the organization must maintain an office in Kenya.

Organizations granted registration would be issued with a certificate of registration.⁹⁷ A certificate of registration so issued under the Act shall be a conclusive proof of registration and shall give authority to operate throughout Kenya and engage in activities detailed in its constitution. Registration of PBO also provides certain benefits to the organization including tax exemptions and preferential treatment.⁹⁸

In conclusion, there are a number of options available for registration of organizations engaged in international relief and response. However, there is no provision for fast tracking registration of the organizations in times of emergency except through administrative action. The IDRL guidelines provides for states affected by disasters to provide mechanism for temporary registration of foreign organizations engaged in international assistance. In the context of Kenya, where registration processes could be long, the absence in law or policy for mechanisms allowing temporary registration is problematic. Moreover, for an organization to operate in the country, legal personality is mandatory through one of the options discussed above. Entities that have duly been registered and with legal personality will be the only bodies capable to set up offices, receive banking and visa services, and own property.

⁸⁸ *The Societies Act, Cap 108 Laws of Kenya, section 2*

⁸⁹ *Ibid*

⁹⁰ *Public Benefits Organizations Act, Cap 18 Laws of Kenya, Section 5*

⁹¹ *Ibid Sixth Schedule*

⁹² *Ibid section 6 and 7*

⁹³ *Ibid section 8(3)*

⁹⁴ *Ibid section 9*

⁹⁵ *Ibid section 11*

⁹⁶ *Ibid section 11(5)*

⁹⁷ *Ibid section 10*

⁹⁸ *Ibid second schedule*

6.4 Foreign assistance from the private sector and individuals

Article 15 IDRL Guidelines: Facilities for Other Assisting Actors

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

The draft NDMP provides for assistance to be provided and received from the private sector and individuals. Such entities are required to “assist with available human and material resources when a disaster strikes” and also play “a significant role in the process of advocacy, public education, scientific and technical knowledge sharing and expertise and awareness.”⁹⁹ The draft NDMP does not distinguish location or place of business of the private actors that can provide assistance when needed. In practice, both domestic and international private entities have provided humanitarian assistance during emergencies. Largely, these are provided through humanitarian actors with operations in Kenya. Previous support has been in the form of material donation, financial support and technical assistance including human resource.

6.5 Conclusion and key recommendations

Kenya has elaborate mechanisms for providing privileges and immunities to foreign agencies and personnel. However, there are no specific provisions relating to provision of privileges and immunities during emergencies. Organizations are expected to have pre-existing arrangements prior to a disaster. This creates bureaucracy in terms of application process and is not useful during emergencies. Further, there is no special mechanism for registering and recognising agencies engaged in response and international relief. Such organizations are required to follow the ordinary registration process which could result in delays.

The key recommendations are :

1. Kenya should consider adopting a mechanism for temporary recognition and registration of entities engaged in international assistance during periods of emergencies. This should include possibility of fast tracking registration and recognition for purposes of opening bank accounts, getting visas and conducting general business in the country.
2. Kenya should also consider having a special registration category for agencies involved in international disaster response.
3. Kenya should adopt a mechanism for continued accreditation of international and local agencies specialising in disaster response. A roster should be maintained to facilitate recognition during emergencies.

⁹⁹ Draft NDMP para 3.8

CHAPTER 7

BORDER CONTROL REQUIREMENTS FOR THE ARRIVAL OF RELIEF GOODS IN DISASTER

IDRL Guidelines Part V: Legal facilities for entry and operations

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

Article 17 IDRL Guidelines: Goods and Equipment

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

Article 21 IDRL Guidelines: Taxation

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

7.1 General customs arrangements

Kenya participates in a single customs union within the framework of the East Africa Community (EAC). The regulatory framework for customs is therefore, established under the East African Customs Management Act, (EACCMA) and Regulations adopted under the Act, the Treaty establishing the EAC, the protocol for establishment of the East African Customs Union, applicable rules developed under the World Trade Organization (WTO) Agreements, various instruments of the World Customs Organization (WCO) and rulings of the Commissioner of the Kenya Revenue Authority (KRA).¹⁰⁰ In addition, the finance bill adopted by Parliament every year after presentation of budget introduces any changes in tariffs for goods imported into Kenya. There are no special provisions applying to importation of consignments for use during emergencies. As such, the general rules apply except where an exception is made by law.

¹⁰⁰ East African Customs Management Act, Section 121(6).

Applicable rules determine that goods under customs control include imported goods for which duty has not been paid by the importers, goods destined for export and are subject to export duty, goods that attract certain restriction or prohibition under law, goods aboard a vessel or aircraft, goods seized by customs for various reasons and goods intended for transfer to state within the EAC union.¹⁰¹ The regulatory framework defines the type of goods that can be imported into Kenya and under what conditions. Prohibited goods, as listed in Part A of the 2nd Schedule of EACCMA, cannot be imported into Kenya whereas restricted goods, as listed in Part B of the 2nd Schedule, can only be imported subject to compliance with certain requirements set by the customs department and related agencies.¹⁰²

The process of importing goods into Kenya generally takes long. Several administrative procedures have to be met between arrival and when goods are cleared and depending on the type of goods, sometimes also involving multiple agencies. However, all cargo is required to be declared to customs in the prescribed form within 21 days indicating the applicable customs regime. Applicable regimes include home consumption, transit, transshipment, warehousing or shipments to an Export Processing Zone (EPZ). Goods not logged for clearance within 21 days will be deposited in a customs warehouse where rent will be charged at applicable rates. Customs will issue notices to importers requiring declaration and clearance of goods while goods not removed from the warehouse will be sold through auction to recover duty and warehouse rent.¹⁰³ The law does not provide for exceptions in terms of process and requirements for goods imported for emergency use. There are no rules for priority clearance of emergency goods although administratively, the same can be provided on request.

All goods imported into Kenya are required to meet specified quality and standards. The Government requires that all consignments entering Kenya must obtain a Certificate of Conformity (CoC), which is a mandatory customs clearance document. The Kenya Bureau of standards (KBS) is mandated to conduct pre-shipment inspections to verify whether goods being imported meet Kenyan standards or approved specifications. Disaster relief goods are not exempted from requirements on quality and standards and consignments not conforming or not accompanied by certification are subject to delays or refusal of admission. Goods inspected at the point of entry found not to comply with all the requirements of relevant Kenya standards shall be immediately shipped to the country of origin, with all the expenses being borne by the importer.

Goods imported into Kenya attract duty unless exempted. All applicable duties are required to be paid at the time of importation and rates applicable are the common external tariff at the time of importing. By operation of the law, the time of importation is considered the time when the goods arrive at the port of importation.¹⁰⁴ Goods imported from EAC and member states of COMESA benefit from preferential treatment if accompanied by a certificate of origin. Duty is generally computed ad valorem. However, some goods are computed on the basis of specificity such as weight, strength, quantity, or specified unit of measurement applicable to the type of good. There is no provision for special computation of duty for goods destined for use in disaster response, unless they are specifically exempt. All duties are paid in local currency at applicable rates prevailing on the date of the transaction and determined by the Central Bank of Kenya.

In cases where any duty for goods imported has not been paid within one month after date duty is due, the Government may authorize distress upon property of the importer.¹⁰⁵ Possible options of recovery include holding imported goods as lien or instituting recovery proceedings in courts of law. Where goods belonging to the importer are retained, they may be sold by auction and the proceeds of the sale shall pay duty and tax due, including fines and expenses incurred in the auction. Any balances remaining are paid to the owner of the goods. In implementing these provisions, there are no exemptions to goods imported for disaster use.

The EACCMA and applicable regulations provide for an exemption regime to certain categories of goods imported into Kenya. The following import categories are exempted from duty:

- Goods remaining on board and thereafter exported in the same aircraft/vessel that imported them
- Goods that are listed in the 5th Schedule of EACCMA as goods exempted
- Goods that enter Kenya under bond for exportation, re-exportation, transshipment, transit or for use as stores for aircraft or vessel
- Re-imported goods on which import duty has been paid for prior to their exportation and on which duty drawback or refund has not been allowed
- Re-imported goods provided their form or character has not changed
- Goods imported for temporary use or purpose

¹⁰¹ *Ibid* sections 15 and 16.

¹⁰² *Ibid* sections 2, 18 – 21 and Regulations 11 – 38.

¹⁰³ *Ibid* sections 34 – 43 and Regulations 39 – 56

¹⁰⁴ *Ibid* sections 110 – 117 and the Fifth Schedule

¹⁰⁵ *Ibid* Sixth Schedule

In order to benefit from exemption, goods have to be accompanied by relevant documentation and verified by a customs officer. However, if goods are exempted and used in a manner inconsistent with the intention of the exemption, they are liable to attract duty.¹⁰⁶ Subject to certain conditions being fulfilled, the Fifth Schedule of the EACCMA provides for types of goods that are exempt from import duty. These exemptions are divided into two categories- special and general exemptions.¹⁰⁷ In addition to the special exemptions to certain institutions and categories of persons, there are general exemptions granted to importation of a certain class of goods.¹⁰⁸

Specifically, the exemption regime provides for importation of goods used in emergency and disaster response and relief. The law does not provide a specific definition for emergency and disaster response; rather, the responsible officer determines qualification of such goods. The exemption regime extended such exclusion from duty to goods imported by Government, its approved agent or a Non-Governmental organization authorized by the officials responsible for disaster management. Such goods can only benefit from tax exemption if imported within 6 months of a disaster or such further period of extension but not exceeding 12 months.¹⁰⁹

7.2 Communications equipment

Article 18(2) IDRL Guidelines: Telecommunications

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

The National Information and Communication Policy provides the policy framework for use of communication equipment and technology in Kenya.¹¹⁰ In addition, the Kenya Information and Communications Act, Cap 41A Laws of Kenya¹¹¹ provides the legislative framework for regulating the communications sector in Kenya. In implementing the provisions of the law, the Communication Commission of Kenya (CCK) is required to implement provisions of international treaties and agreements to which Kenya is a party.¹¹²

Section 38 (1) of the Communications Act empowers the Minister in charge of communication to make inter alia, regulations for “controlling the importation, acquisition, manufacture and sale, letting on hire or other disposition of radio communication apparatus of any kind, or the possession, use or installation of such.” In addition, different provisions may be made by such regulations for different classes of cases.

In line with Section 38 of the Communications Act, the Minister in charge in 2010 published The Kenya Information and Communications (Importation, Type Approval and Distribution of Communications Equipment) Regulations, 2010 or otherwise known as importation regulations. All telecommunication and radio communication equipment shall only be imported into Kenya by an entity registered and licensed by the Commission.¹¹³ It is the duty of the licensed importer to ensure that equipment imported have the requisite approval from the Commission before importation. Before presenting any equipment for use, an importer is required to ensure that equipment has been certified and approved for use in Kenya, through the type-approval system. Type approvals are required for communication equipment that are not yet imported or are held by customs or equipment already in the country.

There are no statutory exemptions provided to organizations engaged in international relief in relation to approvals before importation. However, in practice, the CCK does not require the importing agency to be an approved importer before importation if such an organization is a humanitarian organization.

¹⁰⁶ Ibid sections 110 – 117 and Fifth Schedule

¹⁰⁷ Goods that benefit from special exemptions include goods for use by the President, Armed forces and police, Commonwealth, Personnel of diplomatic missions on their first arrival, UN and related agencies, Diplomatic missions, Institutions with bilateral and multilateral agreements with Kenya, Accredited regional and international organizations, Goods for use by the war graves commission, Specialized goods for disabled, blind or physically handicapped persons, Goods used in aid-funded projects and Goods imported by the national Red Cross society.

¹⁰⁸ These are Goods used in aircraft operations imported by national couriers of country, which have air services agreements with Kenya; Containers and pallets used in importation of consignments into Kenya; Fish, Crustaceans and Molluscs; Deceased Person's Effects; Specified categories of a passengers' Baggage and personal effects; Samples and Miscellaneous Articles; Sample products; Mosquito nets and materials for the manufacture of mosquito nets; Seeds for Sowing; Chemically defined compounds used as fertilizers; Museums, Exhibits and Equipment; Diapers, Urine bags and hygienic bags; Diagnostic Reagents and Equipment; Horticulture, Aquaculture, Agriculture or Floriculture inputs; Packaging Material for Medicaments; Education materials; Splints for use in the manufacture of matches; Inputs for use in the manufacture of agricultural equipment; Relief goods imported for emergency use in specific areas; Hotel equipment; Computer Software; Electrical Energy saving bulbs and solar equipment; Certain category of items used by registered hospitals; Machinery, Spares and Inputs for Direct use in Oil, Gas and Geothermal Exploration; Industrial Spare Parts; Examination gloves; Tsetse fly Traps; Battery operated vehicles

¹⁰⁹ Fifth schedule through Legal notice No. 12 of June 30, 2006

¹¹⁰ The policy was adopted in 2006 with subsequent amendments in 2013

¹¹¹ Cap 41A Laws of Kenya

¹¹² Ibid section 5(4)

¹¹³ Ibid regulation 17

7.3 Food

Article 18(4) IDRL Guidelines: Importation of Food

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

Kenya does not have a specific law applying to importation of food and feeds. All regulatory standards are therefore spread out in various statutes setting different standards, requirements and procedures for importation of food and food products.¹¹⁴ Specifically, the National Food Safety Policy attempts to establish a coordinated mechanism for dealing with food issues in the country including importation of food. In addition, Kenya's food regulatory standards are consistent with international standards established under the World Trade Organization Sanitary and Phyto-sanitary agreements. Kenya also applies other international standards developed under various treaties. Of significance is the CODEX standards developed by Codex Alimentarius Commission, Food and Agriculture Organization (FAO)/World Health organization (WHO) joint committee on food standards.

Similar to all imports into Kenya, food imports are expected to meet set standards and quality before importation. As such, certification is required attesting that food imported is fit for human and animal consumption. The certifying authority is Kenya Bureau of Standards (KEBS) directly or through the appointed international agents. All imported food products must have a minimum remaining shelf life of 75% of the shelf life indicated on the label at the time of arrival in Kenya. Once the product qualifies for importation, KEBS will issue an Import Standardization Mark (ISM).

The standards are for consumer-ready food products to meet minimum labelling requirement. The nutritional labelling must be based on a uniform 100 grams of product and not on portion size. In addition, where the food label carries subjective or descriptive statements, it must be supported by a nutritional breakdown of the specific attribute being described. Kenya has also adopted a regulatory framework for importation of food additives and food supplements.

Current import procedures do not distinguish between GM (genetically modified) and non-GM foods; the inspecting authority does not require a declaration of level or presence of GM contents in the food imported.¹¹⁵ However, in 2005, KEBS released standards for importation of food, which requires that a statement of the GM status be included in the labelling of all food imports. Under this system, the words "genetically modified" must be included in all ingredients derived from genetically modified organisms (GMOs). In addition, KEBS in collaboration with the Biosafety Authority released in 2009, with subsequent revisions in 2011, standards for the importation, handling and transfer of GMOs and derived products.¹¹⁶ In determining the normative framework applicable, the code makes reference to a number of other guiding principles and standards previously issued by KEBS.¹¹⁷

In addition to the requirements for clear labelling, the code requires persons importing GM products to package in a safe manner so as to contain the contents. The other requirements include applications by importers to the Biosafety Authority for licensing prior to importation. Importers are required to provide details including products' nature, source of the product, intended use, place of primary storage, risk assessment consistent with international standards and measures to take in case of misuse. Specifically, prior to importation licenses being issued for GM products to be utilized as food or feed, the standards require to be evaluated for safety standards in accordance with the relevant foods safety standards established by KEBS.¹¹⁸

The rules for importation of food are strict both in terms of quality requirement and process for importation. This can result

114 Applicable statutes include Public Health Act Cap.242; Radiation Protection Act Cap.243; Food, Drugs and Chemical Substances Act Cap. 254; The Agriculture Act Cap 318; The Agriculture Produce (Export) Act Cap.319; Plant Protection Act Cap.324; The Seed and Plant Variety (NPT) Regulations, 2009; Suppression of Noxious Weeds Act 325; The Seeds & Plant Varieties Act Cap. 326; Dairy Industry Act Cap. 336; The Meat Control Act Cap. 356; Animal Diseases Act Cap. 364; Customs & Excise Act Cap. 472; The Standards Act Cap 496; Weights and measures Acts Cap.513; The Industrial Property Act Cap. 509; Trademarks Act Cap. 506; Pest Control Products Act Cap. 346; Fisheries Act Cap. 378; Biosafety Act 2009; Alcoholic Drinks Control Act, 2010; Fertilizers and Animal Feedstuff Act Cap 345

115 Virginia Kimani, Guillaume Gruère (2010) Implications of Import Regulations and Information Requirements under the Cartagena Protocol on Biosafety for GM Commodities in Kenya, *AgBioForum*, 13(3): 222-241 at p 232

116 See KEBS. (2009), Kenya Standard. Code of practice for handling, transfer, and use if genetically modified organisms and derived products. KS 2182:2009 ICS 07.080

117 These include Biosafety Act 2009; KS CAC/GL 44-2003, Principles for Risk analysis of foods derived from modern biotechnology; KS CAC/GL 45-2003, The guidelines for the conduct of food safety assessment of foods derived from recombinant-DNA plants; KS CAC/GL 46-2003, The guidelines for the conduct of food safety assessment of foods produced using recombinant DNA micro-organisms; KS CAC/GL 68-2008, The guidelines for the conduct of food safety assessment of foods derived from recombinant-DNA animals

118 KS CAC GL 44: 2003 Kenya Codex principles for risk analysis of foods derived from modern biotechnology; KS CAC GL 45: 2003 Kenya Codex guideline for the conduct of food safety assessment of foods derived from recombinant – DNA plants; KS CAC GL 46: 2003 Kenya Codex standard guideline for the conduct of food safety of foods produced using recombinant – DNA micro organisms and KS CAC GL 68: 2008 Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant – DNA Animals

in delay in customs clearance especially if pre-inspection of food has not been done as required by law before importation of food. Further, because of the involvement of multiple regulatory agencies, the process can appear cumbersome. Due to the sensitive nature of food, very few exceptions are provided for in law for different agencies involved in the importation of food. More specifically, the law does not provide exceptions to food imported for purposes of emergencies. From the experience of humanitarian organizations including the KRCS, the strict importation requirements have to be met before food consignments are imported.

7.4 Medication

Article 18(3) IDRL Guidelines: Importation of medicines

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

- a. Any medications they import should be approved for use in the originating and affected State;
- b. Medications they use in their own operations should be:
 - i. Transported and maintained in appropriate conditions to ensure their quality and;
 - ii. Guarded against misappropriation and abuse.
- c. Any medications they donate for use by others in the affected State should be:
 - i. At least twelve months from their expiration date upon arrival, unless otherwise agreed by receiving authorities;
 - ii. Transported and maintained in appropriate conditions to ensure their quality until they reach the affected State; and
 - iii. Appropriately labeled in a language understood in the affected State with the International Non-proprietary Name or generic name, batch number, dosage form, strength, name of manufacturer, quantity in the container, storage conditions and expiry date.

The importation and use of drugs in Kenya is regulated by Ministry of Health through the Pharmacy and Poisons Board (PPB), which is established under the Pharmacy and Poisons Act.¹¹⁹ Other legislation governing pharmaceuticals includes the Dangerous Drugs Act¹²⁰ and the WHO standards on drugs. The PPB is empowered to make rules under which medicines may be imported into the country as provided for in Section 44 (1) of the Act.

Importation of medicines including for disaster response are therefore governed by the regulations developed by the PPB. All importers are expected to meet certain basic requirements, which include an import permit from the PPB before medicines can be brought into the country. Importers should also be able to meet regulations provided under the National Drug Policy, which is based on WHO guidelines. In addition, all drugs are to meet quality control standards as established by KEBS in collaboration with the PPB. In terms of customs procedure, medicines imported will have to undergo similar procedure as other goods imported. Specifically, before any medicines are allowed into Kenya, it must be registered by the PPB. Such registration is to be done by a wholesale importer. Documents showing proof of registration are then submitted to the PPB together with application forms for import permits. However, even if the importing organization does not hold the registration certificate, the PPB provides for possibility of importing donated drugs if the drug type has been registered in Kenya. In such cases, the PPB will have to certify and note that the drug is registered in Kenya. Unregistered drugs are only allowed for importation during emergencies, such as the existence of life threatening situations where the patient can not survive without the drug and an alternative is not available. In such cases, proof that the drug is registered in a foreign country is sufficient. All drugs imported must also have a remaining shelf life of 75% of total shelf life at the date of entry and no exceptions are provided for medicines meant for disaster response.

An important element in importation of medicines is the importation of generic drugs. Section 58 (2) of the Industrial Property Act, 2001 as read with Rule 37 of the Industrial Property Regulations 2002, allow for the parallel importation of generic drugs into Kenya as exceptions to the protection of patents in Kenya. Medical equipment is generally exempt from both import duties and value added tax (VAT). Exceptions include microscopes and dental chairs, which are charged at 5% duty and liquid-filled clinical thermometers at 15% import duty and 18% VAT. There is no ban against the import of any type of pre-owned (used and refurbished) medical equipment to Kenya as long as the performance characteristics conform to the existing national standards.

¹¹⁹ The Pharmacy and Poisons Act, Cap. 244 Laws of Kenya

¹²⁰ The Dangerous Drugs Act Cap 245 Laws of Kenya

Generally, the standards set for importation of medicines into Kenya is adopted from the WHO standards, which concentrates on safety and quality in line with the IDRL guidelines. The PPB has provided administrative procedures for importation of medicines meant for use during emergencies with the objective of fast tracking applications. Special forms for importation are available for use by importing entities.

7.5 Vehicles

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

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

The process for importing a vehicle is detailed and there are no exemptions to vehicles imported for use in disaster response. All vehicles need to be registered in Kenya before release by customs or in some cases, within thirty days of release from customs.¹²¹ Registration also applies to trailers. Applications are to be made in the prescribed format and submitted to a vehicle-licensing officer with the Kenya Revenue Authority (KRA). Upon registration, a license plate is issued to the vehicle, which is used as the vehicle identification mark. Vehicles leaving Kenya permanently are required to be de-registered with an official certificate to that effect issued to the owner. Vehicles that change ownership are to be presented for new registration.¹²² However, the Minister may exempt certain vehicles from registration.¹²³ Presumably, such exemptions can also be extended to vehicles imported for use in disaster response. In practice some humanitarian agencies including the KRCS have benefited from exemptions under this rule.

In addition, a motor vehicle in respect of which a valid international registration exists is not required to be registered in Kenya for a maximum period of 90 days and 30 days for commercial vehicles. Further, a private vehicle could be allowed entry without registration for a maximum period of 3 months if such vehicle is accompanied by a valid registration from home country.¹²⁴ These rules can be extended to and are useful for vehicles to be used temporarily for purposes of disaster response. Vehicles used as ambulances by the KRCS are also exempt from registration and licensing within the meaning of the Traffic Act.¹²⁵

Before imported vehicles are registered in Kenya, the importer is required to present export permits from the country of origin.¹²⁶ Vehicles imported into Kenya are required to be inspected before they can be licensed and registered. Such inspection is done by KEBS or designated agents.¹²⁷ Vehicles are also required to meet quality standards set by the KEBS both for new and used vehicles.¹²⁸ Specifically, vehicles should not be more than eight years old at the time of importation. There are no exemptions provided in law for importation of vehicles to be used for disaster response. Left hand drive vehicles are not allowed to be imported and registered unless, the vehicle is to be used to provide ambulance services, or for fire management projects or for large construction vehicles. If intended for these uses, left hand drive vehicles can be imported for disaster management. In addition to the requirement of special licenses from the Government for importation of left hand drive vehicle, the law restricts their transfer for private use after importation.

All vehicles imported attract duty unless specifically exempted under the exemption regime. However, vehicles imported for temporary use, including for use in disaster response in Kenya, are exempted from payment of duty and granted temporary admission in line with the IDRL recommendations.¹²⁹ Such vehicles are required to be re-exported within twelve months from the date of importation unless the person is prevented from doing so by force majeure. Any motor vehicle acquired free of duty pursuant to the provisions of this item shall, on re-sale or upon other disposition, whether or not for any material consideration, be liable to duty.¹³⁰ There is no provision in law against the donation of such vehicles for use by humanitarian agencies free of duties although in practice, the Government has not required payment of duty on vehicles donated to organizations that already enjoy exemption from duty.

¹²¹ Traffic Act Cap 403 Laws of Kenya, Section 4

¹²² Ibid section 9

¹²³ Ibid section 11

¹²⁴ Traffic Rules, Rule 7A

¹²⁵ Ibid rule 9

¹²⁶ Traffic Act Section 10

¹²⁷ Ibid Section 17A

¹²⁸ The second hand vehicle being imported must meet the Kenya Bureau of Standards KS 1515:2000- Code of Practice for Inspection of Road Vehicles

¹²⁹ Importation regulations 134

¹³⁰ The EACCOMA fifth Schedule

7.6 Rescue dogs

There are no specific regulations for importing animals for use in emergencies and disaster response such as rescue dogs. As such, the general rules on importing animals into the country are deemed to apply unless the Government grants specific administrative waivers.

The regulatory framework for importing animals is found under various legislations. The main statutes applicable are the Animal Diseases Control Act, Cap 364 and the Rabies Act Cap 365 Laws of Kenya. Under Section 9 of Cap 364, the Minister responsible is empowered to make rules and regulations relating to, among others, prescribing ports and places for the importation or exportation of animals. Accordingly, the Minister issued The Live Animals (Dogs and Cats) Rules and Regulations governing regulations on importation of dogs and cats.

The regulations require that before a cat or a dog is imported into Kenya, it must be accompanied by an international vaccination certificate of a veterinary surgeon, signed not more than five days prior to the date of departure from the country of origin, certifying that the animal is free from clinical symptoms of any contagious or infectious disease. A valid rabies vaccination certificate stating the type, manufacturer and batch number of the vaccine, the apparent age of the animal at the time of vaccination and the date of vaccination must also accompany the animal. Where the animal has been vaccinated against rabies less than six months prior to arrival in Kenya, the importer must present a certificate signed by a Government Veterinary Officer of the country of origin stating that there has been no case of rabies within 30 miles of the place of origin of the animal within the preceding six months. Animals that have, since birth or six months before importation, been in a rabies free country are not required to show evidence of vaccination against rabies. In other cases, a certificate from the Captain of the ship or aircraft, in which the animal travelled to Kenya, certifying that the animal has not left the craft between the place of embarkation and the place of entry into Kenya, and has been isolated from all other canine and feline animals throughout the journey suffices for importation.¹³¹

In addition, importers should present proof of ownership of the animal and a letter requesting for an import permit to be issued. Applicants that meet the requirements set above will be issued an animal import permit from the Department of Veterinary Services. The permit shall be valid for a maximum period of 30 days and only for one consignment. Animals are also required to travel as manifest cargo and only in the freight compartment. Animal imports attract a 25% duty and Value Added Tax (VAT) at 16% on arrival unless exempted under different rules.

7.7 Conclusion and key recommendations

Customs procedures are detailed and cumbersome sometimes being cause for delay in the clearance of goods. There are no special procedures provided for in law or policy for clearance of relief goods. However, from experience, there are administrative and discretionary mechanisms for fast tracking their clearance upon declaration. Unless specifically exempted, all goods attract duty. There are no waivers or facilities provided regarding storage and examination of goods. In addition, there are no procedures for receiving donated goods except where the receiving agency is locally registered as tax exempt. Organizations that are not tax exempt are required to apply to the Ministry of Treasury for tax waiver on a case by case basis. The fact that multiple institutions are involved in clearance of medicines, animals and communication equipment means that the process for such clearance could be long and cause unnecessary delays in disaster response. Specific recommendations are:

1. The KRA should adopt rules of procedure to facilitate entry and exit of relief goods. In particular, these rules should have room for flexibility of procedure and requirement, where such requirements are especially administrative in nature.
2. There should be less restrictions regarding import and export during disasters for entities involved in disaster response.
3. There should be priority clearance procedures for relief goods specifically provided for under law or regulations.
4. The proposed National Disaster Management Law should have provisions regarding importation of relief goods providing, inter alia mechanism for duty waiver and other incentives to facilitate easy entry and exit of relief goods. This could also be provided for under the existing customs legislation.
5. Ministry of Finance and Treasury should consider extending duty waiver and tax exemptions to all goods relating to disaster relief. The case by case waiver in place is not sufficient.

¹³¹ The Live Animals (Dogs and cats) Rules and Regulations, Regulation 1

6. The Government should provide clear rules on mechanisms for exportation or disposal of unused relief goods imported duty free.
7. The CCK should provide in law, an arrangement for waiver of licensing fees related to importation and use of telecommunication equipment.
8. There should be exemptions from quarantine requirements for rescue dogs involved in response. Also, there should be expedited clearance procedures regarding rescue animals.
9. The Pharmacy and Poisons Board should adopt and disseminate clear procedures and guidelines for importation of medicines by organizations involved in disaster management. Specifically requirements for registration of drugs should be relaxed in the context of drugs unregistered in Kenya. Further, licensing periods should be shortened, if not waived altogether, for medicines to be used in disaster response.

7.8 Entry of response personnel

Article 16 IDRL Guidelines: Personnel

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

There are no specific rules that apply to regulating entry and exit in Kenya of personnel engaged in disaster relief; as such, the general rules of immigration apply. As a general rule a person who is not a Kenyan citizen may not enter Kenya without permission. Among other matters, Immigration regulations in Kenya have requirements as it relates to Passports, Visas, Permits and passes. Entry of foreign personnel in Kenya is regulated under the Kenya Citizenship and Immigration Act Cap 12 Laws of Kenya. A person who is not a citizen of Kenya is not allowed entry into the country unless he/she possess a valid entry permit or pass.¹³² However, the Minister in charge may allow certain persons to enter without a valid pass.¹³³

Persons seeking entry are required to have a valid visa. However, the immigration officer at the point of entry may refuse a person permission to enter if he is satisfied that such a visitor is unable to fulfil the immigration requirements despite being in possession of a valid visa. Visas attract application fees, which can be waived by the GOK.¹³⁴ Kenya does not have a special visa for persons engaged in international relief. However, a person could be qualified under the following visa categories issued by the GOK:

- a. **Ordinary Visa:** Issued for single or multiple entries to persons whose nationalities require visas to enter Kenya.
- b. **Transit Visa:** Issued for periods not exceeding three days to persons whose nationalities require visas to enter Kenya and who intend to transit to a different destination through Kenya.
- c. **Diplomatic Visa:** Issued for single or multiple entries to holders of diplomatic passports who are on official duty in Kenya.
- d. **Courtesy Visa:** It is issued to persons holding official or service passports who are entering the country on official duty. It is also issued to ordinary passport holders who are not entitled to a diplomatic visa but officials consider it desirable that such a visa be issued to the person entering the country. Circumstances that may be defined as 'desirable' may include the entry into Kenya of relief workers and experts in disaster response that cannot by law, be accorded a diplomatic status. Previous experience indicates that persons engaged in disaster response are issued with this class of visa.
- e. **Official/ Service Visa:** It is issued to holders of official or service passports on official visits. The visas are issued in accordance with the provisions of Categories 1, 2 and 3 of the Visa Regulations. For example, Category 1 deals with visas issued to nationals of countries that do not require visas to enter Kenya, nationals of countries that have concluded visa abolition agreements with Kenya, specifically Ethiopia, Eritrea and San Marino, and classes of people who do not require visas to enter Kenya. This category of persons includes officials of certain international organizations.

¹³² The Kenya Citizenship And Immigration Act Cap 12 Laws of Kenya, Section 34(1)

¹³³ Ibid section 34(2)(g)

¹³⁴ Ibid

- f. **Multiple Journey Visas:** All persons who are nationals of countries which require visas for entry into Kenya and who by nature of their business or circumstances require to make frequent visits to Kenya, may be issued with multiple journey visas valid for up to twelve months or part thereof as the case may be.

Section 34(2) of the Immigration Act also requires persons engaged in work to be holders of such permits and passes as prescribed under Kenyan law. Foreign personnel who are in Kenya to carry out relief work must be issued with a work permit as long as they intend to engage in either voluntary service or gainful employment. Entry and work permits range from Class A to D. Class "A" is issued to persons engaging in mining and mining related activities. Class "B" is permissible for persons who engage in agriculture and animal husbandry and has acquired all requisite permissions. Class "C" permits are issued to members of specific profession who intend to engage in practice of their professions in Kenya. Class "D" permits are for persons offered specific employment by a specific employer and has the requisite qualifications. Class "F" permits are issued to persons engaged in manufacturing. Class "G" is issued to persons engaging in trade, business or consultancy whereas Class "I" is issued to persons engage in missionary and charitable work. Class "K" is issued to ordinary residents who have assured income from outside Kenya and who undertake not to take any form of paid employment. Class "M" is issued to refugees.

Since Kenya does not have a special permit for personnel engaged in international relief, such persons can be admitted under the possible Permits issued under Classes "C", "D", "I" or "K". Any of the classes will only be valid for a maximum renewable period of 90 days from date of issue.¹³⁵ All permits attract varying fees except for Class "M", which are issued gratis to refugees.

7.9 Recognition of Professional Qualifications of Foreign Personnel

Article 16 IDRL Guidelines: Personnel

1. With regard to disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations, affected States should:
2. Establish expedited procedures for temporary recognition of professional qualifications of foreign medical personnel, architects, and engineers, drivers licenses 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;

For professional qualifications to be recognised in Kenya, international personnel have to first seek equation of foreign qualifications. Recognition and equation of academic qualifications conferred by foreign universities is centrally governed through the Commission for Higher Education (CHE). The CHE is established under the Universities Act Cap 42 Laws of Kenya. The functions of the CHE inter alia include advising, "the Government on the standardization, recognition and equation of degrees, diplomas and certificates conferred or awarded by foreign and private universities."¹³⁶ Applicants have to submit an application together with certified copies of certificates and academic transcripts. After payment of the prescribed fees, the applicants can collect letters of recognition after twenty-four hours. There are no waivers or expedited procedures provided for applicants engaged in international relief.

Beyond the equation and recognition, different professions require a process of registration and licensing with the official body regulating that profession. In the field of medicine and dentistry, the professional body regulating practice is The Medical Practitioners and Dentists Board established under the Medical Practitioners and Dentist Board Act Cap 253 Laws of Kenya. Section 6 provides for person intending to practice as medical doctor and dentist to first be registered before being able to practice in Kenya. The Board registers medical professionals from foreign countries once the CHE recognizes the academic qualifications. There is no waiver of licensing for personnel engaged in international disaster response.

However, the Board also authorized to issue temporary license for professionals who seek to provide services for "humanitarian or other valid cause". This option is available to personnel engaged in disaster response. Applicants for temporary license are required to submit an application accompanied by supporting documents. Such licenses to practice as doctor or dentist will be valid for a period of twelve months. There is no indication on how long the process takes in practice, although previous experience indicates that it could be done in less than 24 hours.

¹³⁵ The Kenya Citizenship and Immigration Regulations, 2012, Regulation 20(3)

¹³⁶ The Universities Act Cap 42 Laws of Kenya, Section 6

Engineers are registered and licensed by the Engineers Board of Kenya (EBK) established under the Engineers Registration Act, Cap 530 Laws of Kenya. The Act requires any person who intends to practice as an engineer to be registered and licensed by the EBK. The Act provides for temporary registration for persons with foreign qualifications. For temporary registration to be granted, the applicant has to show that he/she "is not ordinarily resident in Kenya", "intends to be present in Kenya in the capacity of an engineer for the express purpose of carrying out specific work for which he has been engaged", and "is in practice as an engineer in such a capacity" before arrival in Kenya.¹³⁷ Applications are made in the prescribed format accompanied by application fees. There is no provision for waiving fees for personnel engaged in humanitarian work. The law does not provide for details of how long the process would take. Applicants may also be required to appear before the EBK for an interview.¹³⁸

Architects and quantity surveyors are registered and licensed under The Architects and Quantity Surveyors Act Cap 525 Laws of Kenya. Individuals intending to practice in Kenya as architects or quantity surveyors are to be registered under the Act by the Board of Registration of Architects and Quantity Surveyors.¹³⁹ Sections 7 and 8 of the Act provides for the minimum qualifications for registration as an architect and quantity surveyor. For architects, the law requires applicants to have undergone a minimum of five years of approved training and one year of practical experience. Applicants with foreign qualifications are required to be a member of an approved professional institution in a foreign country. In addition, the applicant must possess a minimum of one year of professional experience in Kenya.¹⁴⁰ Applicants are required to pay an application fee; however, there is no time-line for completion of registration or licensing by the Board.

7.10 Conclusion and key recommendations on personnel

Kenya does not have special visas and work permits relating to personnel involved in disaster response. Whereas there is a general category relating to persons engaged in missionary and charitable work, this applies to specific type of work and institutions. Moreover, such visas attract visa fees. Further, recognition of qualification for foreign personnel is certified and given by multiple institutions. Beyond entry visa, personnel engaged in any type of work are required to get permits. There are no waivers provided for relief personnel and therefore, the process could be cause for delay.

The specific recommendations are :

- i. A new visa category relating to disasters and emergencies should be created in the form of "disaster visa" as recommended in the Model Act on IDRL. This category of visa should be given gratis.
- ii. There should also be a special work permit relating to personnel engaged in response which should also be made accessible without cost.
- iii. Kenya should adopt a pre-qualification system for recognition of foreign qualifications in times of disasters. There should be a single office that should certify and recognise foreign qualifications as a temporary measure while other verification processes are taking place.

7.11 Tax and currency exchange

7.11.1 Tax and Currency Exchange for Disaster Relief Activities

All income that accrues to a person, whether resident or non-resident, derived from activities in or outside of Kenya, is taxable for income tax, unless specifically exempted pursuant to existing law. Generally, tax exemptions are extended to persons enjoying privileges and immunities. There is therefore, no general exemption for persons engaged in international relief and disaster response. A tax resident individual is liable to tax on his/her worldwide employment income, regardless of where this is paid or where the services were rendered. Thus, a resident representative of a foreign company, paid in the foreign country, is liable to Kenyan tax on his/her employment income, even if his/her duties cover countries other than Kenya. For purposes of taxation, an individual is:

- Resident if the person has a permanent home in Kenya and was present in Kenya for any period in a particular year of income under consideration; or
- Is not a resident but was present in Kenya for a period or periods amounting in aggregate to 183 days or more in that year of income; or
- Was present in Kenya in that year of income and in each of the two preceding years of income for periods averaging more than 122 days in each year of income.

¹³⁷ Engineers Registration Act, Cap 530 Laws of Kenya, Section 12

¹³⁸ Ibid

¹³⁹ The Architects and Quantity Surveyors Act Cap 525 Laws of Kenya section 4.

¹⁴⁰ Ibid sections 7 and 8

- A non-resident is taxable on any amount paid to him in respect of any employment with or services rendered to an employer who is resident in Kenya or has a permanent establishment thereof but is a not resident and are also not entitled to personal relief.

Other transaction tax paid in Kenya is Value added Tax (VAT). The payment of VAT is provided for under the Value added Tax Act, Cap 476 of the Laws of Kenya. This is applicable on the supply and importation of taxable goods and services into Kenya unless specifically exempted. The current applicable standard rate is 16%. The VAT rates in respect of other services are 12% for electrical energy and residual fuel oils, and 0% for exports and other essential goods. In addition to entities that VAT exemptions have been extended to, VAT may be remitted, subject to some conditions, and if the Minister is satisfied that it is in public interest to do so. This includes new investments or expansion of investments, emergency relief, oil exploration, manufacture of goods in a licensed customs-bonded factory for export, official aided projects, goods imported under bond for manufacture of exports and construction or expansion of private universities amongst others.

Kenya does not have strict exchange controls applicable at present, and foreign currency is freely transferable in Kenya. However, the Proceeds of Crime and Anti-Money Laundering Act Cap 9 Laws of Kenya sets certain limitations and thresholds on foreign currency exchanged in Kenya. Specifically, the act provides for “a person intending to convey monetary instruments from Kenya in excess of the amount prescribed in the Second Schedule shall, before so doing, report the particulars concerning that conveyance to a person authorized by the regulations for that purpose.”¹⁴¹ The Second Schedule to the Act provides that any transaction, which involves the movement of USD 10,000 or more, must be supported by documentary proof of the reason for such a transfer.¹⁴² In terms of application of VAT, transactions on foreign exchange are VAT exempt. There are no exemptions provided for organizations and persons engaged in international response and all requirements have to be complied with.

7.11.2 Conclusion and key recommendations on tax and currency exchange

Unless otherwise exempted, all income derived in Kenya attracts income tax. There are no exemptions generally granted to all international personnel engaged in international response. Ideally, unless personnel are from organizations benefiting from tax exemptions, there is a requirement to submit income tax. Specific recommendations are:

1. Regulations should be adopted providing for taxation of personnel engaged in international response. Specifically, it is recommended that salary and emoluments of international personnel of assisting international actors be exempt from income tax.
2. The VAT Act should be amended to provide a general waiver for organizations engaged in disaster response. A process of pre-registration could be employed.
3. Tax exemption should also be extended to professionals providing services such as consultancies to agencies engaged in international response.

7.12 Additional Facilities and Measures

Article 23 IDRL Guidelines: Extended Hours

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

Article 24 IDRL Guidelines: Costs

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

¹⁴¹ The Proceeds of Crime and Anti-Money Laundering Act Cap 9 Laws of Kenya, Section 12

¹⁴² See also regulation 8 of The Proceeds Of Crime And Anti-Money Laundering Regulations, 2013

▲ 7.12.1 Additional Facilities for International Disaster Relief

Working hours for customs processing facilities may be extended, including working on weekends and public holidays, through an administrative decision of an officer in charge and on application from the importer.¹⁴³ Such applications are required to be submitted at least 24 hours before the service is required. However, depending on need, the hours of notice may be varied giving room for emergency situations. Decision-making on extension of hours of service is delegated to officers in charge of stations making it easier for processing goods required for emergency situations such as disaster relief. Extended working hours attract overtime fees which are payable by the importer unless waived by the authorities. From previous experiences, it is possible to benefit from extended hours of service in times of emergency without attracting extra charges.

No provisions in law or policy exist for free or reduced facilities for personnel engaged in relief and response. However, the draft NDMP envisages provision and use of airport and seaports at priority to emergency response. The Ministry of Transport is required during emergencies to designate road, rail, airport and seaport facilities for use in emergencies.

▲ 7.12.2 Conclusion and key recommendations on additional facilities

The National Disaster Management law should include provisions extending additional facilities to personnel engaged in international relief.

143 EACMMA Regulations 4

CHAPTER 8

TRANSPORT DURING DISASTER

Article 19 IDRL Guidelines: Transport

1. Originating, transit and affected States should grant, without undue delay, permission for the speedy passage of land, marine and air vehicles operated by an assisting State or eligible assisting humanitarian organization or on its behalf, for the purpose of transporting disaster relief or initial recovery assistance and, ideally, waive applicable fees.
2. In particular, permission should be granted for 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.

8.1 Transport of relief goods

There is no specific law that applies to transportation of relief goods. As such, the general rules on movement of goods will apply to transportation of relief goods. General rules on driving a vehicle are provided for under the Traffic Act Cap 403 Laws of Kenya. In relation to transportation of goods, the Act requires that commercial and heavy-duty vehicles require special licenses and operators have to undergo test every three years. All drivers are required to produce a driving license on demand while driving a vehicle. It is an offense not to produce such a license and can lead to detention and prosecution.¹⁴⁴ Drivers of commercial vehicles are not allowed to drive their vehicles for more than eight hours in a period of twenty-four hours.¹⁴⁵

Vehicles driven in Kenya are also required to be road-worthy.¹⁴⁶ Vehicle weights are also required to meet the standards assigned to that vehicle whether laden or not. The Act provides for highway authorities to waive limitation of weight of vehicles. Such exemptions have to be in writing.¹⁴⁷ Further, the law provides for the government to set up weighbridges to measure loads of transport vehicles. Certain categories of vehicles are exempted from going through weighbridges, including vehicles carrying goods for "relief or for emergency infrastructure restoration following a natural disaster."¹⁴⁸ Such exemptions have to be in writing and arrangements must be made before commencement of journey.

Overloading and driving un-roadworthy vehicles, including vehicles that are mechanically faulty is an offense punishable by law.¹⁴⁹ To check on road-worthiness of vehicles, the police are empowered to put up barriers and roadblocks for purposes of stopping and inspecting vehicles.¹⁵⁰ A police officer can stop and inspect any vehicle, board it, commandeer or cause it to be driven if the vehicle is suspected of being driven in breach of traffic regulations.¹⁵¹ Vehicles transporting relief are not exempted from such inspection rules.

The Act also provides for all vehicle operators to follow rules on designated parking. Drivers are required to park only at designated points and parking in restricted areas is an offense. However, exceptions have been provided for under the Act, where drivers of police vehicles, ambulances and fire engines can park in undesignated areas when on duty.¹⁵² Local authorities are empowered under the Act to provide for fees for parking and also toll fees on the roads. Such authorities can determine exemptions for relief goods being transported. From experience, parking fees and toll charges have been exempted for the KRCS vehicles by various local authorities.

Regarding air transport, the Civil Aviation Act Cap 13 Laws of Kenya provides for the regulatory framework on air transport. Largely, the Act domesticates the Chicago Convention on International Civil Aviation, 1944. The Act establishes the Kenya Civil Aviation Authority.¹⁵³ The Authority is the State agency charged with the key responsibility of ensuring aviation safety in Kenya.¹⁵⁴ The Authority has several functions related to disaster management.¹⁵⁵ These functions are the coordination of search and rescue operations including alerting services in cases of disasters and giving effect to the Chicago Convention and other international agreements on civil aviation that Kenya is a party to.¹⁵⁶

¹⁴⁴ Traffic Act Cap 403 Laws of Kenya, Section 36

¹⁴⁵ Ibid section 66A

¹⁴⁶ Ibid Section 55

¹⁴⁷ Ibid Section 57

¹⁴⁸ The Kenya Roads (Kenya National Highways Authority) Regulations, 2013, Regulation 18

¹⁴⁹ Ibid Section 58

¹⁵⁰ Ibid Section 69 and 71

¹⁵¹ Ibid Section 105

¹⁵² Ibid Section 72D

¹⁵³ Civil Aviation Act, Cap13 of Laws of Kenya, Section 4

¹⁵⁴ Ibid Section 4(3)

¹⁵⁵ Ibid Section 7

¹⁵⁶ Ibid Section 7(2)

8.2 Insurance of vehicles

There are no specific rules applicable to insurance of vehicles engaged in disaster response. Insurance of vehicles is regulated under the Insurance (Motor Vehicles Third Party Risks) Act Cap 405 Laws of Kenya. All vehicles operating in Kenya are required to be insured against third party risks.¹⁵⁷ Exemptions are extended to government vehicles and agricultural machinery used purely for agricultural purposes. Foreign registered vehicles with a valid insurance from the home country are not also required to get local insurance.¹⁵⁸ Insured vehicles are issued certificates of insurance¹⁵⁹ and such insurance should be displayed at a prominent place on the vehicle.¹⁶⁰ In addition, applicants for vehicle licenses are required to present a valid insurance before license can be given.¹⁶¹ There are no exemptions given to vehicles transporting relief goods and as such are required to follow the rules on insurance before use in Kenya.

8.3 Driving licenses

Generally, vehicles driven in Kenya are required to be operated by a licensed driver.¹⁶² No exceptions are provided for in cases of disaster response. Licenses are issued after the applicant shows competence in driving the specific class of vehicles registered after a test is taken. Such licenses are issued in Kenya except for licenses of similar class issued in some part of the Commonwealth where such driving licenses are granted only after a prescribed test has been passed or the person is a holder of an international driving permit.¹⁶³

The Traffic Rules provide for recognition of foreign driving licenses in respect of the class or classes of vehicles for which they are issued, and throughout the period of their validity.¹⁶⁴

8.4 Conclusion and key recommendations

There are no special rules regarding transportation of relief goods. However, certain exemptions have been extended to transportation of relief goods. The government is encouraged to develop:

1. A single regulatory framework for transportation of relief goods. This should provide for waivers on procedures and requirements that could delay transportation of relief goods and equipment.
2. The traffic regulations should be amended to recognise valid driving licences from all countries for personnel engaged in disaster response. In addition, alternative registration requirements and procedures for vehicles engaged in relief should be adopted.
3. There should be clear exemptions of freight charges for relief goods being transported. The process of getting such exemptions and clearances should be simplified.
4. The Civil Aviation Act should be amended to give effect and domesticate all provisions of the Chicago Convention facilitating relief flights.

¹⁵⁷ Insurance (Motor Vehicles Third Party Risks) Act Cap 405 Laws of Kenya, Section 4

¹⁵⁸ Ibid Section 9A

¹⁵⁹ Ibid Section 7

¹⁶⁰ Ibid Section 9

¹⁶¹ Ibid Section 14

¹⁶² Traffic Act Cap 403 Laws of Kenya, Section 30

¹⁶³ Ibid Section 31

¹⁶⁴ Traffic Rules, Rule 11. The categories provided for include (a) A valid driving license or driving permit issued in Uganda, Tanzania or Ethiopia; (b) A service driving permit issued by the Naval, Army or Air Force authorities, but only for the purpose of driving Naval, Army or Air Force vehicles on duty and subject to the permit being issued and used in compliance with any regulations or instructions in force in relation thereto; (c) A convention driving permit held by a person resident outside Kenya, that is an international driving permit issued under the authority of a country outside Kenya which is a party to the Geneva Convention on Road Traffic of 1926 and the United Nations Convention on Road Traffic of 1949. (d) A domestic driving permit issued in a country outside Kenya to a person resident outside Kenya, which shall be valid only for a period of ninety days from the date of the holder's entry into Kenya

CHAPTER 9

FREEDOM OF ACCESS AND SECURITY

Article 16(d) IDRL guidelines: Personnel

1. With regard to disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations, affected States should:
2. Facilitate freedom of access to and freedom of movement in and from the disaster-affected area, bearing in mind the safety of disaster relief and initial recovery personnel.

9.1 Freedom of movement during disaster

Kenya has not adopted any specific rules related to freedom of movement during disasters. Therefore, the general rules applicable to freedom of movement will apply. Constitutionally, freedom of movement is considered one of the basic human rights.¹⁶⁵ However, certain limitations apply as provided for in law. These limitations can be applied in the context of prevention of crime or protection of the persons from danger. Specifically, the police are empowered to generally limit movement of persons for purposes of prevention of commission of crimes or where in the opinion of the police officer, such movement will result in breach of peace. In this context, the police can set up barriers, stop and search a vehicle.¹⁶⁶ Moreover, the draft NDMP provides for the police to secure a scene of disasters to prevent further danger to the public and to protect property from pillage. There are no exemptions for humanitarian agencies and actors from the application of the general rules restricting movement.

There are also no rules requiring relief material to be handed over to the government for distribution. The draft NDMP requires non-discrimination in the distribution of relief items to affected persons. Relief assistance is required to be delivered in the most urgent manner and in the prescribed quality and standards. The Refugee Act provides for assistance of refugees to be provided in demarcated areas only.¹⁶⁷

9.2 Ensuring the safety and security of assistance

Article 22 IDRL Guidelines: Security

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

There are no specific provisions for ensuring safety and security of relief personnel premises and goods. The general provisions of the Penal Code and other legislations protecting property from theft, vandalism and misuse will apply. The NDMP requires the police to maintain law and order and provide assistance and protection to rescue personnel. Generally, the National Police would provide security services without payment. However, private security through the police is also possible at a cost. For diplomatic missions, the police have established a special wing on diplomatic police. Security services to agencies with privileges and immunities can be provided through the unit.

9.3 Conclusion and key recommendations

The government should adopt a standard operating procedure for disasters in Kenya applicable to all agencies engaged in disaster response. The Standard Operating Procedures (SOPs) should provide for details on movement of personnel during emergencies including special attention to security measures. As it is, organizations operate under their individual SOPs which may create confusion for government agencies involved in security management.

¹⁶⁵ Constitution of Kenya, 2010, article 39.

¹⁶⁶ See National Police Service Act, Section 49 and 57.

¹⁶⁷ The Refugees Act Cap Laws of Kenya, section 17(f) and rule 35 of the Refugees (Reception, Registration and Adjudication) Regulations. In the case of *Kituo cha Sheria & others vs. The Attorney General*, the high court ruled that the policy of preventing movement of refugees only within the designated refugee camps was unconstitutional as it violated the rights of the affected persons and specifically freedom of movement and right to dignity.

CHAPTER 10

ACCOUNTABILITY AND TRANSPARENCY

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

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

10.1 Accountability and transparency of the Government

The NDMP provides devolution and participation as one of the guiding principles for disaster management. The policy states “to promote a culture of accountability and transparency; the policy will enhance the participation of the public.”¹⁶⁸ The Constitution of Kenya provides a strong framework of accountability for government and government agencies. Article 10 of the Constitution lists the national values and principles of governance including principles of “good governance, integrity, transparency and accountability.” These principles bind all State organs, State officers and public officers in the delivery of public service. The Constitution also requires a process of accountability and transparency in the use of public resources.

In addition, the Anti Corruption and Economics Crimes Act Cap 65 Laws of Kenya provides for a framework to combat corruption and economic crimes. Section 11(1) of the Act mandates the Commission established under the Act, “to investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption, economic crimes, or violation of codes of ethics or other matter prescribed under the Act, or any other law enacted pursuant to Chapter Six of the Constitution.”¹⁶⁹ Further, the Leadership and Integrity Act Cap Laws of Kenya provides for a framework for leadership and integrity in relation to public service delivery for government personnel. The Act provides for, inter alia the establishment of General Leadership and Integrity Code; Specific Leadership and Integrity Codes and the Enforcement of the Leadership and Integrity Code.

The cumulative effect of the two statutes and provisions of the Constitution is to require public officers to:

1. Carry out the duties of the office efficiently and honestly;
2. Carry out the duties in a transparent and accountable manner;
3. Keep accurate records and documents relating to the functions of the office; and
4. Report truthfully on all matters of the organization, which they represent.¹⁷⁰

Among the key areas strongly regulated include the public procurement process. In particular, government is required to be transparent in the procurement of goods and services.¹⁷¹ Government is also required to account for public expenditure through regular reporting and oversight by Parliament. Other institutions have also been created to enhance accountability of government including the Office of Auditor General and the Controller of Budgets. Whereas there are no specific rules relating to accountability for funding provided during disasters, the general rules and institutions existing to enhance accountability in government are available for use.

10.2 Accountability of assisting organisations

Generally, the basic approach used in Kenya is assisting organizations are accountable to their donors and to institutions that govern them. However, under the Public Benefits Organization (PBO) Act, organizations registered under the Act are required to implement “internal accounting and administrative procedures necessary to ensure the transparent and proper use of its financial and other resources” and “utilize its financial and other resources for the attainment of its aims, objects and purposes.”¹⁷² The PBOs are required to keep proper books of account indicating income and expenditure. Annually, the organizations are required to submit an audited account, financial statements and narrative report of activities conducted in the year.¹⁷³ Beyond this framework, there is no mechanism for accountability of assisting organizations.

10.3 Conclusion and key recommendations

There should be a mechanisms for reporting for all agencies involved in disaster response. More specifically, there should be a government agency assessing and certifying the minimum standards of service delivery for assisting organizations and entities. Further, national minimum standards of humanitarian service delivery should be adopted.

¹⁶⁸ NDMP para 2.1.5

¹⁶⁹ Anti Corruption and Economics Crimes Act Cap 65 Laws of Kenya section 11(1)(d)

¹⁷⁰ See specifically Section 10 of the Leadership and Integrity Act Cap Laws of Kenya

¹⁷¹ See generally the Public Procurement and Disposal Act Cap. 412c Laws of Kenya

¹⁷² PBO Act Section 29

¹⁷³ Ibid Sections 30 and 31

CHAPTER 11

KENYA AS A TRANSIT OR SENDING STATE FOR INTERNATIONAL ASSISTANCE

Article 16(2) IDRL Guidelines: Transit

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

Article 17 IDRL Guidelines: Goods and Equipment

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

Article 19 IDRL Guidelines: Transport

1. Originating, transit and affected States should grant, without undue delay, permission for the speedy passage of land, marine and air vehicles operated by an assisting State or eligible assisting humanitarian organization or on its behalf, for the purpose of transporting disaster relief or initial recovery assistance and, ideally, waive applicable fees.
2. In particular, permission should be granted for 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.

11.1 Transit of disaster relief

Goods including relief goods can be imported from a foreign place through the territory of Kenya to another foreign destination. Goods could also be transshipped into Kenya. In this case, goods can enter the territory of Kenya using a vessel from a foreign country and transferred to a vessel destined to another country within the territory of Kenya.¹⁷⁴ Where goods are declared to be transit goods, they are required to exit the territory of Kenya within thirty days of entry. In addition, the importer is required to execute a transit bond, which will be forfeited in case the goods are not removed from Kenya within the prescribed period.

There is no provision in the regulations providing for relief goods in transit not to be bonded. As such, at the time of exiting the borders of the country, the importer must get appropriate documentation and there after apply for cancellation of the transit bond. Transit goods can only be moved within the territory of Kenya using specially licensed sealed vehicles with the words "Transit Goods" clearly marked on the body of the vehicle.

Since 2013, Member States of EAC have agreed on a shared single point custom clearance method. Accordingly, goods entering territory of the Member States will be cleared for customs including payment of duty and taxes at the point of entry irrespective of final destination of the goods. Importers are only required to declare the final destination of the goods to an official from the country of destination processing the customs clearance.

11.2 Sending of international assistance from Kenya

Kenya does not have a system for exit visa and personnel with valid visas can freely leave the country. With regards to exportation of goods, the law requires that all goods that attract export duty should have duty paid before exportation.¹⁷⁵ Export licenses are generally not required except in cases relating to public and food security; conservation of wildlife and natural resources and preservation of national heritage. All goods destined for export must have proper documentation depending on types of goods being exported.

11.3 Conclusion and key recommendations

The government should simplify the procedure for exporting relief goods to other countries. There are no exemptions from application of existing procedures in cases of relief goods which can result in delay.

¹⁷⁴ The EACMMA sections 85 and Regulations 104
¹⁷⁵ Ibid section 82

CHAPTER 12

SUMMARY OF RECOMMENDATIONS

RECOMMENDATIONS FOR: CHAPTER 5 -INSTITUTIONAL ARRANGEMENTS FOR COORDINATION OF DISASTER MANAGEMENT

1. The NDMP should be reviewed and strengthened to ensure its relevance and coherence in terms of institutional arrangements and then, be adopted by Parliament.
2. A comprehensive National Disaster Management Law should then be adopted. The law should specifically establish a single institution with coordinating authority over all other government agencies and Ministries.
3. The NDOC should be elevated and empowered to have an overall coordinating mechanism in disaster response, including coordinating with non-governmental agencies. The agency should also be allocated more resources.
4. The overall coordinating mechanism is largely government oriented with few non-governmental entities that play strategic role in disaster management represented in key decision making organs of disaster management. More specifically, there is need to expand representation especially in the highest decision making organ to include key non-governmental agencies, in particular the KRCS and United Nations agencies.

RECOMMENDATIONS FOR: -ROLE OF CIVIL SOCIETIES ORGANISATIONS

5. Representatives of the KRCS as auxiliary role to the public authorities should be included in the national disaster management committees beyond the sudden onset committees.
6. The frequency of coordination meetings between the government and the civil society should be increased to enhance preparedness and development of joint operational plans.

RECOMMENDATIONS FOR -EARLY WARNING AND SURVEILLANCE FOR CROSS-BORDER DISASTER

7. A national protocol and procedure for early warning should be developed in collaboration between government agencies and local and international organizations involved in disaster management.

RECOMMENDATIONS FOR -INTERNATIONAL ASSISTANCE TO DISASTERS

8. The National Disaster Management Law should contain provisions on requesting and terminating international assistance. Specifically, clear responsibilities, roles and functions between different agencies should be highlighted. Moreover, a specific policy relating to requesting and receiving international assistance should be developed. This policy should among other things detail liability for assistance and support given, format of requests, authority and approval matrix for initiating assistance and formation of joint coordination mechanisms regarding request for international assistance.
9. Clear procedures for coordinating requests for assistance by different agencies and institutions, both government, non-governmental and international agencies should be developed. The complete lack of a national operating procedures for disaster management is problematic.
10. A central data base and system for data collection relating to international assistance received should be developed. This will facilitate accountability and planning regarding recovery and reconstruction.

RECOMMENDATIONS FOR: CHAPTER 6 -LEGAL STATUS OF FOREIGN ENTITIES PROVIDING ASSISTANCE

11. Kenya should consider adopting a mechanism for temporary recognition and registration of entities engaged in international assistance during periods of emergencies. This should include possibility of fast tracking registration and recognition for purposes of opening bank accounts, getting visas and conducting general business in the country.
12. Kenya should also consider having a special registration category for agencies involved in international disaster response.
13. Kenya should adopt a mechanism for continued accreditation of international and local agencies specialising in disaster response. A roster should be maintained to facilitate recognition during emergencies.

RECOMMENDATIONS FOR: CHAPTER 7 -BORDER CONTROL REQUIREMENTS FOR THE ARRIVAL OF RELIEF GOODS

14. The Value Added Tax should be amended to provide a general waiver for organizations engaged in disaster response.
15. Tax exemption should also be extended to professionals providing services such as consultancies to agencies engaged in international response.
16. The government should simplify the procedure for exporting relief goods to other countries. There are no exemptions on procedures provided for in cases of relief goods which can result in delay.

RECOMMENDATIONS FOR: CHAPTER 8 -TRANSPORT DURING DISASTER

17. A single regulatory framework for transportation of relief goods is recommended to be developed. This should provide for waivers on procedures and requirements that could delay transportation of relief goods and equipment.
18. The traffic regulations should be amended to recognise valid driving licences from all countries. In addition, alternative registration requirements and procedures for vehicles engaged in relief should be adopted.
19. There should be clear exemptions of freight charges for relief goods being transported. The process of getting such exemptions and clearances should be simplified.
20. The Civil Aviation Act should be amended to give effect and domesticate all provisions of the Chicago Convention facilitating relief flights.
21. Regulations should be adopted providing for taxation of personnel engaged in international response. Specifically, salary and emoluments of international personnel of assisting international actors are recommended to be exempt from income tax.

RECOMMENDATIONS FOR: CHAPTER 9 -FREEDOM OF ACCESS AND SECURITY

22. A new type of visa relating to disasters and emergencies should be created in the form of "disaster visa" as recommended in the Model Act on IDRL. This category of visa should be given gratis.
23. There should also be a special work permit relating to personnel engaged in response which should also be given without cost.
24. Kenya should adopt a pre-qualification system for recognition of foreign qualifications in times of disasters. There should be a single office that should certify and recognise foreign qualifications as a temporary measure while other processes are taking place.
25. The government should adopt a standard operating procedure for disasters in Kenya applicable to all agencies engaged in disaster response. The SOPs should provide for details on movement of personnel during emergencies including special attention to security measures. As it is, organizations operate under their individual SOPs which may create confusion for government agencies involved in security management.
26. The National Disaster Management Law should include provisions extending additional facilities to personnel engaged in international relief.

RECOMMENDATIONS FOR: CHAPTER 10 -ACCOUNTABILITY AND TRANSPARENCY

27. There should be a mechanism for reporting for all agencies involved in disaster response. More specifically, there should be a government agency assessing and certifying the minimum standards of service delivery for assisting organizations and entities. Further, national minimum standards of humanitarian service delivery should be adopted.

ANNEXES

ANNEX 1

List of Referenced Legal Instruments and Policies

International Treaties and Agreements

The African Charter on the Rights and Welfare of the Child
 The African Union Constitutive Act
 The Basel Convention on the Control of Trans- boundary Movements of Hazardous Wastes and their Disposal
 The Convention Governing the Specific Aspects of Refugee Problems in Africa
 The Convention on Facilitation of International Maritime Traffic
 The Convention on International Civil Aviation
 The Convention on Privileges and Immunities of the Specialized Agencies
 The Convention on Privileges and Immunities of the United Nations
 The Convention on the Safety of United Nations and Associated Personnel
 The Convention Relating to the Status of Refugees
 The Cotonou Agreement
 The Customs Convention on Temporary Importation of Commercial Road Vehicles
 The Customs Convention on the Temporary Importation of Private Road Vehicles
 The Geneva Conventions and their additional protocols
 The International Covenant on Civil and Political Rights
 The International Covenant on Economic, Social and Cultural Rights
 The Kampala Convention on Internally Displaced Persons
 The Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations
 The United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification
 The United Nations Framework Convention on Climate Change
 The Vienna Convention on Consular Relations
 The Vienna Convention on Diplomatic Relations

National Legislations

The Agriculture Act
 The Agriculture Produce (Export) Act
 The Alcoholic Drinks Control Act
 The Animal Diseases Act
 The Animal Diseases Control Act
 The Anti Corruption and Economics Crimes Act
 The Architects and Quantity Surveyors Act
 The Biosafety Act
 The Civil Aviation Act
 The Companies Act
 The Constitution of Kenya
 The Customs & Excise Act
 The Dairy Industry Act
 The Dangerous Drugs Act
 The East African Customs Management Act
 The Engineers Registration Act
 The Fertilizers and Animal Feedstuff Act
 The Fisheries Act Cap
 The Food, Drugs and Chemicals Substances Act
 The Industrial Property Act
 The Insurance (Motor Vehicles Third Party Risks) Act
 The Kenya Citizenship and Immigration Act
 The Kenya Defence Forces Act
 The Kenya Information and Communications Act
 The Kenya Red Cross Society Act

The Leadership and Integrity Act
 The Meat Control Act
 The Medical Practitioners and Dentist Board Act
 The National Cereals and Produce Board Act
 The Pest Control Products Act
 The Pharmacy and Poisons Act
 The Plant Protection Act
 The Privileges and Immunities Act
 The Proceeds of Crime and Anti-Money Laundering Act
 The Public Benefits Organizations Act Cap 18 Laws of Kenya
 The Public Health Act
 The Public Procurement and Disposal Act
 The Rabies Act
 The Radiation Protection Act
 The Refugees Act
 The Seeds & Plant Varieties Act
 The Societies Act
 The Standards Act
 The Suppression of Noxious Weeds Act
 The Traffic Act
 The Trademarks Act
 The Trustees (Perpetual Succession) Act
 The Universities Act
 The Weights and Measures Act
 The Value Added Tax Act

National Policies

The Draft National Disaster Management Policy, 2011 Version
 The National Food Policy
 The National Health Policy
 The National Information & Communications Technology (ICT) Policy

Subsidiary Regulations and Legal Notices

The Exchequer and Audit (Strategic Grain Reserve Trust Fund) Regulations
 The Kenya Information and Communications (Broadcasting) Regulations, 2009
 The Kenya Information and Communications (Importation, Type Approval and the Distribution of Communications Equipment) Regulations, 2010
 The Kenya Roads (Kenya National Highways Authority) Regulations
 The Live Animals (Dogs and cats) rules and regulation Regulations
 The National Drought Management Authority Order, 2011, Legal Notice Number 171 of 2011
 The Proceeds of Crime and Anti-Money Laundering Regulations
 The Seed and Plant Variety (NPT) Regulations, 2009
 The Traffic Rules

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.



Kenya
Red Cross

ICHA

International Center ^{for}
Humanitarian Affairs



International Federation
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