



# Legal Preparedness for International Disaster Response in Namibia

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## About this report

This report is the result of a collaboration between the International Federation of Red Cross and Red Crescent Societies (IFRC) and the Namibia Red Cross Society (NRCS). It was prepared by Mr. Udaneka Panduleni Nakamhela, LL.M. of Nakamhela Attorneys, based in Windhoek, Namibia. The report presents the findings of a study assessing Namibia's legal preparedness to facilitate and regulate international disaster response operations.

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## About the Disaster Law programme

The IFRC's Disaster Law Programme seeks to reduce human vulnerability by promoting legal preparedness for disasters. It works in three 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 on disaster law; and (3) dissemination, advocacy and research.

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IFRC/Namibia

# Legal Preparedness for International Disaster Response in Namibia

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# Executive Summary

This report, which is the result of a collaboration between the International Federation of Red Cross and Red Crescent Societies (IFRC) and the Namibia Red Cross Society (NRCS), presents the findings of a study assessing Namibia's legal preparedness to facilitate and regulate international disaster response operations. It is based on a review of Namibian legislation applicable to international disaster response and consultations with the relevant stakeholders. This legal review took place in light of the *Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance* (the 'IDRL Guidelines'). The IDRL Guidelines can be found on the website of the International Federation of Red Cross and Red Crescent Societies ([www.ifrc.org/dl](http://www.ifrc.org/dl)).

To assess the practice of border crossing assistance in Namibia, the IFRC, the Namibia Red Cross Society and the Office of the Prime Minister co-hosted an IDRL Workshop on 14 November 2011 at the Safari Court Hotel in Windhoek, during which valuable information about the actual procedures applied in respect of certain legislative provisions was shared by the officials directly responsible at the various duty stations, be it at customs, immigration, veterinary services, licensing authorities et cetera.

The study shows that the existing framework for disaster risk management in Namibia is established by the National Policy for Disaster Risk Management (2009), read together with the emergency provisions in the Constitution of the Republic of Namibia. At the time of writing of this report, the Government of Namibia was preparing a draft Disaster Risk Management Bill and its supporting Regulations. While this trend of legislation is a positive one, at the time of writing none of the above mentioned documents address the regulation or facilitation of international disaster response. Furthermore, most of the other laws which will be relevant in the event of an international disaster response operation, like those governing, immigration, customs and the Medicines and Related Substances Control Act, do not contain the necessary provisions to enable a swift and effective international disaster response operation. Therefore, the main recommendation of this report is that the Namibian authorities should develop legislation or policy to address the facilitation and regulation of international disaster response.

Through the consultations which formed part of this study, it became apparent that there is a reliance on *ad hoc* goodwill in the co-operation between the Namibian government and international disaster response actors, be it from the international community or neighbouring States. However, as the IFRC's *Desk Study on Law and Legal Issues in International Disaster Response*<sup>1</sup> points out, this *ad hoc* approach may lead to serious delays in the delivery of international humanitarian assistance in an emergency situation, and therefore it is recommended for all governments to prepare legally before a disaster strikes.

This report highlights specific omissions in existing laws from the international disaster response law perspective. The general recommendation from the stakeholders'

<sup>1</sup> Available at <http://www.ifrc.org/PageFiles/41194/113600-idrl-deskstudy-en.pdf>.

conference was that all aspects which require to be addressed legislatively to be addressed centrally in the draft Disaster Risk Management Bill, rather than amending each of the other laws investigated. A comprehensive Disaster Risk Management Act and its supporting Regulations should enable a smooth reception and management of international disaster response, be it from neighbouring states or from humanitarian actors from further away. The report therefore identifies a number of regulatory barriers which require amendment for the authorities to act more effectively in case of a disaster. Legal certainty and precise identification of the officials responsible for certain tasks during a situation in which international assistance is required is a vital aspect of Disaster Risk Management and should be addressed in the Disaster Risk Management framework in Namibia.



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# Acronyms

AIA	Advance Informed Agreement
AIDS	Acquired Immune Deficiency Syndrome
CDRMC	Constituency Disaster Risk Management Committees
CO	Civic Organisation
DDRM	Directorate of Disaster Risk Management
HIV	Human Immuno-deficiency Virus
IAEA	International Atomic Energy Agency
IDRL	International Disaster Response Law
KPA	Key Performance Area
LADRMS	Local Authority Disaster Risk Management System
LMO	Living Modified Organisms
NamVAC	Namibia Vulnerability Assessment Committee
NDRM	National Disaster Risk Management
NDRMC	National Disaster Risk Management Committee
NDRMS	National Disaster Risk Management System
NEWFIS	Namibia Early Warning and Food Information System
NGO	Non Governmental Organisation
NRCS	Namibia Red Cross Society
RDRMC	Regional Disaster Management Committees
SADC	Southern African Development Community
SDRMC	Settlement Disaster Risk Management Committee
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
VAT	Value Added Tax
ZRBI	Zambezi River Basin Initiative

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# Chapter 1

## Background

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## **Background to the Project**

### **Country Context**

Namibia is a stable multiparty parliamentary democracy and has a population of approximately 2.1 million people. Agriculture, pastoralism, tourism and mining of precious stones and metals form the backbone of Namibia's economy. The estimated HIV prevalence rate is 15.3% of people aged 15–49. Access to education and health-care is uneven: even though there are good facilities available in principle, these do not exist in rural or poor urban areas. Major economic challenges facing the Government include reducing the public sector budget deficit, increasing efficiency and creating jobs (unemployment is estimated at between 35% and 55%). There are good prospects for economic diversification in fields like tourism, fisheries and manufacturing, but none has the potential on its own to significantly reduce unemployment.

### **Disaster Risk Context**

Namibia faces increasing levels of disaster risk. It is exposed to a wide range of weather hazards, such as drought, floods and diseases which may trigger widespread hardship and devastation. In addition, Namibia's coastline and proximity to shipping routes may also present numerous marine and coastal threats. Namibia shares its borders with five countries: South Africa, Botswana, Zambia, Zimbabwe and Angola. These shared borders present both natural and human induced cross-boundary risks, and possibly requests for border crossing humanitarian assistance in times of emergency. With increasing industrialization and the exploration of mines and construction of manufacturing plants, the possibilities of other kinds of disasters are not excluded.

The major causes of disaster in Namibia are drought, floods, wild fire and HIV/AIDS. Namibia is classified as an arid to semi-arid country with an average rainfall of less than 500mm. This, coupled with a high degree of variation in rainfall from year to year, renders the country prone to droughts. On the other hand, the country experiences floods caused by river and coastal flooding from immense rainfall or inundation associated with seasonal weather patterns. In February 2009, heavy rains led to flash floods, affecting almost 700,000 people in the northern and north eastern parts of Namibia. Of these, 56,545 people were displaced, an estimated 105 deaths reported and 545,000 people identified to be at risk of food insecurity during the 2009/2010 agricultural season. The Namibia Red Cross Society (NRCS) emergency relief operation's focus was on providing temporary shelter, clean water, sanitation facilities and promoting health and hygiene practices. Causes of wildfire vary from traditional ways of hunting, land clearing for farming as well as the careless discarding of cigarette ends. Major epidemics which have been experienced in Namibia are Malaria and outbreaks of meningococcal meningitis reported in 2001. In the event of pandemic outbreaks, Namibia has cross border agreements with Angola, Mozambique & Zambia regarding Cholera and other pandemics. The NRCS has effectively responded to national disasters such as Polio outbreaks, floods, major road accidents and severe food insecurities. The NRCS is also an active participant in the fight against HIV.

## Background

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### Methodology

For this study, the research consultant was engaged by the Namibia Red Cross Society. The consultant reviewed the legal and policy frameworks pertaining to the regulation and facilitation of international disaster response in place in Namibia from the perspective of the IDRL Guidelines. In addition, the study aimed for a participatory research process through an IDRL workshop, held on 14 November 2011 in Windhoek, with participants from government ministries which are part of the National Disaster Risk Management Committee (NDRMC), UN bodies involved in disaster and humanitarian aid work, at which occasion a first draft of this study was reviewed, which resulted in amendments implemented in the final result. This IDRL workshop was collaboration of the IFRC, the Namibia Red Cross Society and the Office of the Prime Minister.

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# **Chapter 2**

## Overview of Disasters in Namibia



## Disaster and Communicable Disease Scenarios in Namibia

National Disasters can be divided into two main categories: sudden onset and slow onset types. Slow onset hazards include drought, flood and rising sea levels. Sudden onset disasters span a wide range of natural phenomena, such as earthquakes, tropical storms, floods, volcanic eruptions and pest infestations.<sup>1</sup>

### Drought

Drought is a familiar phenomenon in Namibia which has affected the country throughout its history. Considering that Namibia is the driest country in sub-Saharan Africa (using average annual rainfall as the criterion), it is not surprising that drought conditions are so frequently observed.

Over 92 per cent of Namibia is classified as arid to semi-arid which means that the annual rainfall is less than 500 mm. According to the policy of the Ministry of Agriculture, Water and Rural Development, a disaster drought refers to drought conditions so intense or protracted that they are beyond what can reasonably be dealt within the terms of normal risk management practices and which justify state intervention. In such cases public funds need to be mobilized for the provision of drought assistance to poor communal tenure farmers affected by the drought and for targeted programmes to prevent drought induced declines in food security. Farmers or communities will need to apply to the Namibia Early Warning and Food Information System (NEWFIS), using a prescribed form, to have a particular area declared disaster drought stricken. Applicants will have to define the geographical area which they claim to be stricken by a disaster drought, and will have to provide information on the rainfall in the preceding two seasons, as well as on the condition of grazing, water resources, and crop production.<sup>2</sup>

Droughts in Namibia usually occur locally. They can occur as frequently as every two years but are of relatively short duration. Namibia has experienced severe droughts that required state interventions. From 1992 till 2004 the Government of Namibia had to intervene 10 times to aid 369,611 affected people. During 2004 the number of food beneficiaries increased to 642,539 and over 540,000 people required drought relief in the 2008-2009 season.<sup>3</sup>

In the late 1990s, the Southern African Development Community (SADC) also established a regional drought fund from which affected member countries could borrow. The World Bank and other donor agencies were consulted on this matter, and gave their support to the project. As a result, by 2000 the region was much better prepared than in 1992 and most countries had implemented safety measures, such as ensuring that major dams were kept 80 % full, and stockpiling food supplies (or funds that would allow for imports, if necessary).

During this time, the Namibian cabinet also approved the establishment of an inter-ministerial committee comprising of eight government agencies to work on ways to minimise the effects of the expected droughts. The country was certainly putting strategies in place to avoid such a disaster in the future - and with relative success. However, a dry spell in 1998 tested these strategies, as Namibia and southern Angola

<sup>1</sup> National Disaster Plan-Namibia 1998 p.p. 10.

<sup>2</sup> p.p.Ibid.

<sup>3</sup> Namibia Policy for Risk Management in Namibia p.p. 19.

saw crops being wiped out and livelihoods destroyed. International donations of food and funds were called for, and the UN's World Food Programme responded sufficiently.<sup>4</sup>

## Floods

Floods in Namibia are commonly known as *Efundja*, particularly in the North, where flood waters inundate large areas after heavy rains in southern Angola. The northern and southern parts of Namibia have experienced severe flooding over the past 5 years. These floods have had significant impact in areas such as displacement of the population, the loss of life and livestock, destruction of homesteads, crops and infrastructure and generally impacting severely on the livelihoods of the population.

Flooding has a huge impact on the population of Namibia. Frequent seasonal floods are experienced along the Zambezi, Kunene and Okavango rivers. Heavy rainfalls have also occasionally caused floods and considerable damages to lives and properties particularly in Caprivi and Okavango. The overflow of the Hardap Dam has destroyed the irrigated plantation and some infrastructures on many occasions.<sup>5</sup> In February 2006 the overflow, flooded Mariental, displacing 2,100 people (330 households), submerging 122 houses, 80 businesses, invading 30 irrigation schemes. In early 2011 the government declared a state of emergency in northern parts of Namibia due to heavy flooding which displaced nearly 10,000 people and washed away roads. It was established that some 62 people have drowned in Oshakati and 5,000 have been driven from their homes. Furthermore about 247 schools had had to close because of rising water levels, with clinics and homes submerged.

Floods affect crops of maize, which is Namibia's staple food, and the government made available 30 million Namibian dollars (US\$4.37 million) to address the emergency.<sup>6</sup> In 2003 the floods in the Caprivi region displaced some 12,000 people. The floods occurred when the Zambezi River overflowed its banks after few days of torrential rains, and was said to be the worst in 21 years. In April 2011 an estimated 13,000 or more Caprivians were living in emergency camps after they were forced to flee their flooded homes. In 2009 over 23 000 were displaced by floodwater in low-lying areas of the Caprivi while in 2010 close to 15,000 people displaced by floods.<sup>7</sup>

There is also a likelihood of coastal floods along the long Namibian coast. Flood forecasting depends on seasonal patterns, capacity of drainage basin, flood plain mapping, and surveys by air and land. Warnings are possible well in advance of seasonal floods, but only minutes before in case of storm surge, flash flood or tsunami. The factors that have contributed to the severity of flood are vulnerable location of settlements on flood plains lack of awareness of flooding hazards, reduction of absorptive capacity of land (erosion, concrete), non-resistant buildings and foundations and high risk, infrastructural elements.

Namibia was affected by severe floods in the northern regions of Caprivi, Kavango, Omusati, Oshana, Ohangwena and Oshikoto at the beginning of 2009. The number of affected people rose to 700,000, with 54,581 displaced and approximately 28,234 in relocation camps. In total, 92 flood-related deaths were reported since the onset of the

<sup>4</sup> [http://myfundi.co.za/e/Drought\\_in\\_Namibia](http://myfundi.co.za/e/Drought_in_Namibia).

<sup>5</sup> National Disaster Plan-Namibia 1998 p.p. 12.

<sup>6</sup> <http://reliefweb.int/node/393903>.

<sup>7</sup> <http://allafrica.com/stories/201104180214.html>.

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disaster. At least 544,114 people were identified to be at risk of long-term food insecurity over the 2009/10 period.

The IFRC launched a historic, long-term and cross-border initiative in 2009 to support chronically vulnerable people living along the Zambezi river basin. In Namibia, Namibia joined in this launch with relation to the Caprivi region. The Zambezi River Basin Initiative (ZRBI) is a joint programme of IFRC and the National Societies of Angola, Botswana, Malawi, Mozambique, Namibia, Zambia and Zimbabwe. The target is to support more than 600,000 people living in villages and towns along the river basin over at least the next eight years. The project aims to comprehensively identify the risks, hazards and existing capacities of the communities affected, and will develop appropriate measures to mitigate risks and enhance the capacities of the communities and the Red Cross. The programme further aims to go beyond simply addressing and preventing the impacts of disasters. It seeks to address the broader vulnerabilities of communities including HIV, exposure to water and vector borne diseases and the compounding aggravation of weakened community structures. Strengthening communities' capacities to prevent disasters or cope with impacts of hazards is a concrete way to prevent disasters from retarding the development of the poorest communities.<sup>8</sup>

### Epidemics

Namibia has experienced human disease outbreaks in the past that have warranted state intervention. Epidemic prone disease in Namibia include Meningococcal disease, Meningitis, Malaria, Dysentery, Cholera Tuberculosis, acute respiratory infections, diarrhoea related diseases Hepatitis B and HIV/AIDS.<sup>9</sup> There are frequent Cholera occurrences in many parts of Namibia particularly the border areas. The causes of epidemics are: unsanitary conditions; crowding and poverty; ecological changes that favour breeding of virus; non-immune persons migrating to endemic disease areas; decline in nutritional status; contamination of water or food supply and lack of medicine and vaccinations.

Epidemics may increase due to a rise in travel or migration and long-term dormant symptoms of sexually transmitted diseases. Prediction is assisted by epidemiological studies but may be constrained in newly formed settlements or emergency camps particularly along our borders.

### Earthquakes

Earthquakes are usually slippages of crystal rock along a fault or area of strain and rebound to new alignment which may cause the following effects: surface faulting aftershocks, tsunamis, tremors, vibrations, liquefaction and landslide. The factors that usually contribute to vulnerability are location of settlement in seismic areas, structures which are not resistant to ground motion, dense collections of buildings with high occupancy, and lack of access to information about earthquake risk. Earthquakes are not common in Namibia but they do occur. In August 2009 an earthquake measuring 5,6 on the Richter scale shook the Erongo Region at 09h15 on Friday, with tremors felt in seven areas, namely Windhoek, Otjiwarongo, Okakarara, Henties Bay, Swakopmund,

<sup>8</sup> Namibia Red Cross - Annual Report 2009, p 5 [www.redcross.org.na](http://www.redcross.org.na).

<sup>9</sup> Namibia Policy for Risk Management in Namibia p.p. 22.

Walvis Bay and Oshakati. It was the strongest recorded earthquake in Namibian history.<sup>10</sup> In 2006, Windhoek felt an earthquake which had a magnitude of 4.7 on the Richter Scale.<sup>11</sup>

### **Pest Infestations**

Namibia is experiencing an increase in pest infestations due to one or a combination of ecological factors including temperature, monoculture of crops, introduction of pest species and migration can result in a national disaster. Locusts, army worms and crickets are pests that have caused damage to agricultural plantations in the past. Plants can be damaged in various ways such as consumption of parts of the plant, tunnelling in stems and attack of root systems. Crop losses could lead to food shortages even famine and stress the economic system of the country. Pest forecasting determines whether application of a pesticide will be cost effective, by examining the stage of development of the crop and the pest and by determining the economic threshold.<sup>12</sup>

### **Chemical and Industrial Accidents**

Chemical and Industrial Accidents are caused by, for example, explosions in a plant or storage facilities handling toxic substance, but there are also other kinds of chemical accidents such as accidents during the transportation of chemicals; contamination of food or the environment by misuse of chemicals; improper waste management of toxic chemicals; technological system failures; failures of plant safety design or components; arson or sabotage. Incidents of chemical and industrial accidents are expected to increase in Namibia as industrialization increases.

Chemical and Industrial accidents can create extensive damages. Damage or destruction may occur to structures and infrastructures. Transportation accidents damage vehicles and other objects on impact. Industrial fires may kill or injure people and they could require medical treatment. Contamination of air, water supply, land and animal life may also occur. Areas may become uninhabitable for humans and animals. Ecological systems may be disrupted even on a global scale. Even though the chances of possible chemical contamination are low, this may change in the near future. Major disasters of sea, rail and air are rare in Namibia but if they would occur the number of casualties and the social or economic destruction could be devastating and could certainly be of a scale that might require external assistance to the Namibian authorities.

### **Nuclear Pollution**

Although there are currently no nuclear power plants in Namibia yet, the scenario of nuclear contamination may hold true for the future:

“Namibia is endowed with abundant uranium resources and contributes a significant portion of world uranium production. Namibia is in the process of developing a Nuclear Fuel Cycle Policy to put in place an effective legislative and regulatory framework to administer the uranium cycle from uranium mining, fuel fabrication, safe decommissioning of facilities and disposal of radioactive waste. [...] Namibia, further undertakes

<sup>10</sup> <http://allafrica.com/stories/200908030758.html>.

<sup>11</sup> <http://tamaraswebb.blogspot.com/2009/08/earthquake-shakes-khorixas-by-john.html>.

<sup>12</sup> National Disaster Plan-Namibia 1998 p.p. 14.

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to accede and ratify without delay the Convention on Nuclear Safety and relevant Treaties, before we construct any nuclear power plant.”<sup>13</sup>

<sup>13</sup> Statement by H. E Mr Raphael Dinyando, Ambassador of the Republic of Namibia to Austria and the Permanent Representative to the UN at the IAEA Ministerial Conference on Nuclear Safety, Vienna, Austria 20 – 24 June 2011.

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# **Chapter 3**

## Overview of Legal and Policy Frameworks Pertaining to Disasters



## International Instruments

Namibia's main national instrument relating to disaster management, The National Policy for Disaster Risk Management in Namibia (2009)<sup>1</sup> as set out below, aligns itself with the following international instruments of Disaster Risk Management:

- The Hyogo Framework for Action 2005 – 2015: Building the Resilience of Nations and Communities to disaster which was adopted at the World Conference on Disaster Reduction held in Kobe, Hyogo, Japan in 2005;
- The Kyoto Protocol<sup>2</sup>: an agreement made under the United Nations Framework Convention on Climate Change (UNFCCC) which sets binding targets for 37 industrialized countries and the European community for reducing greenhouse gas (GHG) emissions;
- The Africa Regional Strategy for Disaster Risk Reduction of 2004<sup>3</sup>, which aims to contribute to the attainment of sustainable development and poverty reduction by facilitating the integration of disaster risk reduction into development.

In addition, Namibia is a party to the following treaties:

- Kyoto Customs Convention<sup>4</sup> – The Kyoto Convention is an international customs agreement that was established in May 1973 to lay down recommendations for simplifying and harmonising customs procedures worldwide. Specific Annex J5 of the Convention deals specifically with relief consignments, seeking to “ensure that the aid actually reaches the victims in need” (page 4) Namibia is a member of the Kyoto Convention since 4 September 2003
- Convention on International Civil Aviation (the Chicago Convention) (7 December 1944)<sup>5</sup> – The Chicago Convention regulates international civil aviation, with specific reference to safety and orderliness. The Convention establishes rules of airspace, aircraft registration and safety, and details the rights of the signatories in relation to air travel. Namibia's Aviation Act 74 of 1962 incorporates by reference the provisions of the Chicago Convention. Annex 9 of the Chicago Convention calls for specific facilities to be provided to speed up the entry of humanitarian relief flights, as well as well as their crew and cargo.
- Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency of 1986<sup>6</sup> – This Convention requires that States Parties cooperate between themselves and with the IAEA to facilitate prompt assistance in the event of a nuclear accident or radiological emergency to minimize its consequences and to protect life, property and the environment from the effects of radioactive releases. The IAEA is charged with using its best endeavours to promote, facilitate and support the cooperation between the States Parties. Namibia has been a member of the International Atomic Energy Agency since 1983
- SADC Protocol on Transport, Communications and Meteorology 24 August 1996, Maseru<sup>7</sup> – The strategic goals of this Protocol are the integration of regional transport,

<sup>1</sup> Office of the Prime Minister, Directorate of Disaster Risk Management, p 10.

<sup>2</sup> [http://unfccc.int/kyoto\\_protocol/items/2830.php](http://unfccc.int/kyoto_protocol/items/2830.php).

<sup>3</sup> A document produced by the Africa Union (AU)/New Economic Partnership in Development to support efforts by governments and the AU/NEPAD to advance disaster risk reduction and facilitate mainstreaming of disaster risk reduction in all aspects of development in Africa to help achieve Africa's development objectives.

<sup>4</sup> [http://www.globalhand.org/en/browse/global\\_issues/7/resource/document/27207](http://www.globalhand.org/en/browse/global_issues/7/resource/document/27207).

<sup>5</sup> [www.icao.int](http://www.icao.int).

<sup>6</sup> [www.iaea.org](http://www.iaea.org).

<sup>7</sup> [www.sadc.int](http://www.sadc.int).

communications and meteorology networks, to be facilitated by the implementation of compatible policies, legislation, rules, standards and procedures, and the elimination or reduction of hindrances and impediments to the movement of persons, goods, equipment and services among the members of Southern African Development Community. Namibia is a member of SADC.

- Cartagena Protocol on Bio-safety to the Convention on Biological Diversity – The Cartagena Protocol on Bio-safety to the Convention on Biological Diversity was adopted by the Conference of the Parties to the Convention on Biological Diversity on 29 January 2000. The Cartagena Protocol on Bio-safety to the Convention on Biological Diversity is an international treaty governing the movements of living modified organisms (LMOs) resulting from modern biotechnology from one country to another. This introduces a further dimension and set of obligations which must be adhered to whenever a country considers relaxing any food safety provisions. The promulgation of the Bio-safety Act is part of Namibia's responsibilities as party to the Cartagena Protocol.

## Domestic Instruments

### The Constitution of the Republic of Namibia

In the absence of a disaster management law, the primary national legislative instrument to adjudicate overall responsibility for disaster management in Namibia is the Constitution of the Republic of Namibia. The Constitution is the supreme law of the country, and entails *inter alia* the Principles of State Policy.<sup>8</sup> These principles include the obligation on the state to actively promote and maintain the welfare of the people by adopting, *inter alia*, policies aimed at insuring that every citizen has a right to fair and reasonable access to public facilities and services in accordance with the law;<sup>9</sup> and consistent planning to raise and maintain an acceptable level of nutrition and standard of living of the Namibian people and to improve public health.<sup>10</sup>

### The National Policy for Disaster Risk Management in Namibia<sup>11</sup>

The Government of Namibia through the Office of the Prime Minister launched the National Policy for Disaster Risk Management (NDRM Policy) in Namibia in 2009. The introduction to the policy states that it gives effect to the global paradigm shift away from the approach of only responding to disasters after they have occurred to one of total disaster risk management. The aim of this changed approach is to reduce the impacts of and increase the resilience to natural hazards and related environmental, technological and biological disasters. The approach focuses on minimising vulnerabilities and disaster risks throughout a society by building resilience within the broad context of sustainable development.<sup>12</sup>

In pursuance of achieving the goal and applying the broad strategies of the NDRM Policy for Namibia, five policy objectives have been identified. These policy objectives are

<sup>8</sup> Article 95.

<sup>9</sup> Article 95(e).

<sup>10</sup> Article 95(j).

<sup>11</sup> Office of the Prime Minister, 2009; also referred to as: Disaster Risk management (DRM) Policy of the Republic of Namibia.

<sup>12</sup> Disaster Risk Management Policy of Namibia, p 10.

consistent with the priorities for action identified in the Hyogo Framework for Action 2005-2015, to which Namibia was party and are as follows:

- **“Policy Objective 1:** Make disaster risk reduction a priority at all levels in Namibia by establishing sound, integrated, and functional legal and institutional capacity within the established National Disaster Risk Management System, to enable the effective application of the concept of total disaster risk management.
- **Policy Objective 2:** Improve risk identification, assessment and monitoring mechanisms in Namibia.
- **Policy Objective 3:** Reduce the underlying risk and vulnerability factors by improving disaster risk management applications at all levels.
- **Policy Objective 4:** Strengthen disaster preparedness for effective response and recovery practices at all levels.
- **Policy Objective 5:** Enhance information and knowledge management for disaster risk management.”<sup>13</sup>

To give effect to the Policy Objective 1, the institutional and operational arrangements were established to provide a strong basis for the effective implementation of the National Disaster Risk Management System. These institutions consist of Disaster Risk Management Committees at National, Regional Local and Constituency level. The committees consist of stakeholder from the government, the private sector, NGOs and the Red Cross Society.<sup>14</sup>

### The Namibia Red Cross Act<sup>15</sup>

This Act establishes the Namibian Red Cross as voluntary aid society which serves as an auxiliary to the public authorities, for the purposes of the Geneva Conventions, in line with the Fundamental Principles of the of the Red Cross and Red Crescent Movement.<sup>16</sup>

The Act further stipulates that the independent and voluntary nature of the Namibia Red Cross shall at all time be respected in accordance with the resolution relating to National Red Cross Societies adopted by the General Assembly of the United Nations of 19 November 1946.<sup>17</sup>

### The Draft Disaster Risk Management Bill

The National Disaster Risk Management Policy sets out five Key Performance Areas which are derived from the Policy Objectives of the NDRM Policy mentioned in the above. The Five Key Performance Areas expand on the Policy Objectives to provide the parameters within which the implementation of total disaster risk management as envisaged by the National Disaster Risk Management Policy, must take place in Namibia. Key Performance Area 1 reads: *Establishing sound, integrated and functional legal and institutional capacity for total disaster risk Management in Namibia.*

Key Performance Area 1 concentrates on three imperatives which must be implemented to create an enabling institutional environment to ensure that disaster risk reduction remains a priority in Namibia. These three imperatives provide the parameters for

<sup>13</sup> Ibid, p. 27.

<sup>14</sup> National Policy for Disaster Risk Management in Namibia, chapter 5, p. 28.

<sup>15</sup> Act 16 of 1991.

<sup>16</sup> Namibia Red Cross Act, section 2(1).

<sup>17</sup> Ibid, section 2(2).

establishing a legal framework and functional institutional mechanisms to sustain political commitment and to facilitate the strengthening and transformation of the established Disaster Risk Management System in order to enable the effective application of the concept of total disaster risk management.

The three imperatives which must be applied to achieve the objective of KPA 1 are:

1. Identify and establish mechanisms to ensure that political commitment to the application of total disaster risk management is enhanced and maintained.
2. Develop and promulgate a Disaster Risk Management Act for Namibia.
3. Strengthen and transform the existing National Disaster Risk Management System to enable it to implement total disaster risk management.

In order to meet the second imperative under Key Performance Area 1, there is a disaster Risk Management Bill in the making, which, once passed and promulgated as an Act of Parliament, will establish the more precise legislative provisions and procedures to be applied in disaster risk management, within the framework of the above mentioned instruments. The draft Bill concentrates little on putting in place actual procedures to be adhered to in the event of a disaster scenario and rather emphasises establishing institutions for disaster risk management in Namibia, as well as on providing an integrated and coordinated disaster management approach that focuses on preventing or reducing the risk of disasters.

Legal Preparedness for International Disaster Response in Namibia

# Chapter 4

## Detailed Findings

## **Institutional Arrangements for Disaster Risk Management, Coordination of Relief and Information Exchange**

### **Definition of Disaster**

According to the National Policy for Disaster Risk Management in Namibia a disaster is a serious disruption of the functioning of a community or a society causing widespread human, material, economic or environmental losses, which exceed the ability of the affected community, or society to cope using its own resources. A disaster is a function of the risk process. It results from the combination of hazards, conditions of vulnerability and insufficient capacity or measures to reduce the potential negative consequences of risk.<sup>1</sup>

### **Declaration of Disaster**

The President of the Republic of Namibia may by proclamation in the government gazette declare a state of emergency in Namibia or in any part thereof<sup>2</sup>. The Constitution further sets out the President's powers to make regulations during a state of emergency and to suspend certain rules of common law or statutory law, including any fundamental rights and freedoms protected by the Constitution.<sup>3</sup>

The current draft Disaster Management Bill stipulates that in the event of a disaster the Prime Minister may recommend to Cabinet that a state of disaster be declared.<sup>4</sup> On receipt of the recommendation the Cabinet must consider it and advise the president on whether he or she should take action in terms of Article 26(1) of the Namibian Constitution, which deals with declaring a state of emergency and the powers which the president has to suspend any law and certain civil rights and freedoms.

The Stakeholder's Workshop on 14 November 2011 recommended that the power to declare disasters at local or regional level should vest in the administrative heads of these levels. This principle is in fact already incorporated in the draft Disaster Risk Management Bill. In terms of the Bill, local disasters can be declared by the head of the local authority,<sup>5</sup> provided that the risk exceeds the capabilities of the single local authority to manage it effectively,<sup>6</sup> and the risk is of a recurring nature with significant cumulative impacts on lives, property and the natural environment.<sup>7</sup>

The same principle is applied for regional disasters, in that a regional governor is empowered to declare a disaster in the region,<sup>8</sup> provided that the risk affects more than one local authority area, constituency or settlement area, or exceeds the capabilities of a single local authority, constituency or settlement to manage it effectively.<sup>9</sup> It is also a precondition for the declaration of a regional disaster that the risk be of a recurrent nature with significant cumulative impacts on lives, property and the environment.<sup>10</sup>

<sup>1</sup> Paragraph 7.1, p 44.

<sup>2</sup> Constitution of the republic of Namibia, chapter 4, section 26.

<sup>3</sup> Ibid, section 26(5).

<sup>4</sup> Section 33 of Disaster Risk Management Bill.

<sup>5</sup> Para.41(2).

<sup>6</sup> Para.41(3)(a).

<sup>7</sup> Para.41(3)(b).

<sup>8</sup> Para.38(2).

<sup>9</sup> Para.38(3)(a).

<sup>10</sup> Para.38(3)(b).



### Institutional Framework for Disaster Risk Management

According to the IDRL Guidelines, affected states have the primary responsibility to ensure disaster risk reduction, relief and recovery assistance in their territory. National Red Cross and Red Crescent Societies, as auxiliaries to the public authorities in the humanitarian field, and domestic civil society actors play a key supporting role at the domestic level.<sup>11</sup> Furthermore, the IDRL Guidelines recommend that the institutional framework of a country should allow for effective coordination of international disaster relief and initial recovery assistance. The framework should also clearly designate domestic government entities with responsibility and authority in these areas. Consideration should also be given to establishing a national focal point to liaise between international and government actors at all levels.<sup>12</sup>

### Overarching Framework: the National Disaster Risk Management System

The above mentioned Key Performance Area 1 of the Disaster Risk Management Policy has as its third imperative the aim to strengthen and transform the existing National Disaster Risk Management System to enable it to implement total disaster risk management. The aim is therefore that Disaster Risk Management Act, once passed will provide a legislative basis for the various disaster risk management committees established by the policy.

In terms of Cabinet Action letter 5<sup>TH</sup>/15.02.94/006, the Government of the Republic of Namibia resolved to establish the National Disaster Risk Management System (NDRMS) in the Office of the Prime Minister. The primary role of the NDRMS is to provide an enabling environment for the development, establishment and maintenance of integrated and coordinated disaster risk management in Namibia. The NDRMS must ensure that the concept of disaster risk reduction is applied through a participatory process of ideas and actions amongst all Government ministries, the private sector, other non-state actors and development partners at national, regional, constituency, local authority and settlement levels in Namibia.<sup>13</sup>

As resolved by Cabinet, the NDRMS comprises the following inter-sectoral structures:

- National Disaster Risk management Committee (NDRMC)
- Directorate of Disaster Risk Management
- Regional Disaster Management Committees (RDRMCs)
- Constituency Disaster Risk Management Committees (CDRMCs)
- Local authority Disaster Risk Management Systems (LADRMS) and
- Settlement Disaster Risk Management Committees (SDRMCs)<sup>14</sup>

The NDRMC, through the office of the Prime Minister, serves in an advisory capacity to Cabinet and makes recommendations to Cabinet on all matters relating to disaster risk management in Namibia.

In order to give effect to Objective 1<sup>15</sup> of the National Disaster Risk Management (NDRM) Policy institutional and operational arrangements were established and maintained

<sup>11</sup> IDRL Guidelines, para.3(1) p. 77.

<sup>12</sup> Ibid, para.8(2) p. 79.

<sup>13</sup> Ibid, para.5.3 p. 29.

<sup>14</sup> Namibia National Disaster Management Policy, 2009 para.5.2 p. 28.

<sup>15</sup> See above section 2.3.2; 'The National Policy for Disaster Risk Management in Namibia', p. 13.

that will provide a strong basis for the effective implementation of the NDRMS. These arrangements must include:

- setting out the mechanisms for the development, adoption, regular review and amendment of the legal and regulatory framework within which the NDRMS must operate;
- sound organisational mechanisms to enable the integrated direction and execution of the NDRM Policy and for the clear allocation of responsibilities for disaster risk management in Namibia;
- establishing multi-stakeholder partnerships at all levels to contribute to the implementation of the NDRMS and to ensuring that disaster risk reduction remains a national, regional, constituency, local authority and local priority; and
- establishing relationships with neighbouring and other states in the southern African region and internationally for the purposes of disaster risk management.<sup>16</sup>

### **The Institutional Framework for the National Disaster Risk Management System (NDRMS)**

#### **Cabinet**

Cabinet is responsible for prescribing, adopting and amending the NDRM Policy for Namibia; for approving disaster risk management plans; and for ensuring the allocation of adequate resources for the establishment and operation of the NDRMS. On the advice of the NDRMC, it determines the release of monies from the National Disaster Fund to support disaster risk management activities. During a state of national disasters, Cabinet is responsible for determining the need for international appeals for assistance for disaster relief and the nature of the assistance that is required.<sup>17</sup>

#### **The Secretary to Cabinet**

The Secretary to Cabinet is the national focal point for disaster risk management in Namibia and is the Convenor of the NDRMC. The Secretary to Cabinet is responsible for motivating all policy issues related to disaster risk management to Cabinet on behalf of the NDRMC and for overseeing the implementation of the decisions of the President in respect of disaster risk management.

The Secretary to Cabinet has authority to make decisions and to mobilise resources for the routine disaster risk management operations in the country as well as for any urgent needs arising from the occurrence of significant events<sup>18</sup> and disasters.

#### **National Disaster Risk Management Committee (NDRMC)**

The National Disaster Risk Management Committee (NDRMC) which is chaired by the Secretary to Cabinet, serves as the national platform that is assigned the responsibility for disaster risk management in Namibia.

The NDRMC has the overall responsibility for the institutional arrangements; and for the development of the Disaster Risk Management Policy and plans for Namibia; and

<sup>16</sup> Ibid, para.5.4 p. 29.

<sup>17</sup> Ibid, para.5.5.2 p. 30.

<sup>18</sup> According to the Namibia Disaster Risk Management Policy, a 'significant event' is an event which does not necessarily justify the classification of a disaster but is of such a magnitude or importance that extraordinary measures are required to deal with it effectively.

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for submitting the policy and plans to Cabinet for approval. The Directorate Disaster Risk Management serves as the secretariat to the NDRMC.

The NDRMC is convened and chaired by the Secretary to Cabinet who has the authority to convene urgent meetings of the NDRMC.<sup>19</sup> This mechanism enables the NDRMC to operate outside the normal government bureaucracy when time is of the essence and critical decisions have to be made at short notice.

The NDRMC must function in accordance with the responsibilities recorded in Appendix II to the NDRM Policy. The Responsibilities include the report to Cabinet quarterly, to ensure that the core concepts of disaster risk reduction are integrated into the activities of each relevant ministry and to support the enhancement of skills and capacities for disaster risk management at national, regional, local and constituency levels. Appendix II to the Disaster Risk Management Policy specifically determines the NDRMC to be a multi-stakeholder platform, as the following composition of government institutions and private sector and non-governmental organisation and the Red Cross Society also confirms.

The NDRMC comprises of the following Permanent Secretaries from the following Offices and Ministries:

- Prime Minister
- Finance
- Health and Social Services
- Labour and Social Welfare
- Agriculture, Water and Forestry
- Defence
- Education
- Information, Broadcasting and Technology
- Mines and Energy
- Regional, Local Government and Housing and Rural Development
- Safety and Security
- Works and Transport
- National Planning Commission
- Foreign Affairs
- Home Affairs
- Justice
- Any other Secretary as the chairperson of NDRMC may appoint

The following organisations and development partners shall also be members of NDRMC:

- The Association of Regional Councils
- The Association of Local Authorities in Namibia
- The United Nations Development Programme
- The World Health Organisation
- The United Nations Children's Fund
- The World Food Programme
- The Food and Agriculture Organisation
- The Namibia Red Cross Society
- The Namibia Non-Governmental Organisations

<sup>19</sup> Cabinet Action Letter 5th/15.02.94/006.

- The Desert Research Foundation
- The University of Namibia
- Recognised Labour Organisations in Namibia
- The Namibia Economic Policy Research Unit
- The Namibia Chamber of Commerce and Industry and
- Any other organisation that the Chairperson may appoint to serve on the NDRMC.<sup>20</sup>

### **The Directorate of Disaster Response Management (DDRM)**

The Directorate of Disaster Risk Management (DDRM)<sup>21</sup> in the office of the Prime Minister is responsible for the execution of the decisions of the NDRMC. In addition, the DDRM must facilitate the establishment of an integrated and coordinated system of disaster risk management in Namibia by:

- all offices, ministries and agencies at national, regional and municipal level;
- relevant statutory organisations;
- the private sector;
- other non-state role-players who are involved in disaster risk management in Namibia; and
- in communities.<sup>22</sup>

If the functions and role of the Directorate of Disaster Response Management in the Office of the Prime Minister are read together with the functions and role of the President in declaring national disasters, it appears as if the functions which should ideally be exercised by one office as sole National Focal Point are in Namibia divided among two offices. The recommendation from the Stakeholders' Workshop on 14 November 2011 is that there should in practice be one focal point which should in practice coordinate and implement disaster response efforts and be the contact person for all parties involved as well as for passing on important information.

### **Decentralised Levels of Disaster Risk Management Institutions**

The Disaster Risk Management Policy establishes decentralised disaster risk management institutions at various levels, in accordance with the administrative levels of local government. These are:

#### **The National Focal Persons Forum for DRM**

Each office, ministry, agency or organisation involved in disaster risk management must appoint an individual who will act as its focal point for disaster risk management. In the case of the offices, ministries and agencies the Director or Deputy Director or their equivalent must serve as the focal point of the relevant office, ministry or agency. The DRM responsibilities together with appropriate key performance indicators must be included in the job descriptions of the relevant focal persons.<sup>23</sup>

#### **The Namibia Vulnerability Assessment Committee (NamVAC)**

The NamVac is a multi-stakeholder committee that conducts vulnerability assessments to identify vulnerable groups, the prevalence and degree of any given risk, and their

<sup>20</sup> Ibid, para.5.5.6.1 p 32

<sup>21</sup> Cabinet Resolution 15.02.94/006.

<sup>22</sup> Ibid, para.5.6.1 p. 34.

<sup>23</sup> para. Ibid.

causes using agreed indicators and assessment tools. NamVac also forms an institutionalised information system to collate vital information and conduct multi-disciplinary analysis of the kind required to tackle vulnerability reduction and food security issues that will inform policy and decision makers.<sup>24</sup> The responsibilities of the Namibia Vulnerability Assessment Committee include the collection of vulnerability information including information on the prevailing good security status and tracking indicators in order to inform early warning on pending disasters. It must further assess disaster risk indicators to assess factors that influence vulnerability such as livelihoods and means of survival for communities in Namibia.<sup>25</sup>

#### **The Regional Disaster Risk management Committee (RDRMC)**

The RDRMC is the multi-stakeholder platform that is mandated with the coordination of disaster risk management amongst sector ministries, municipalities, statutory organisations, communities and other stakeholders involved in disaster risk management at regional level.<sup>26</sup> The Regional Governor in his/her capacity as political head must oversee the activities of RDRMC and must advise government on disasters and disaster risk management matters affecting the region.<sup>27</sup>

#### **The Local Authorities Disaster Risk management System (LADRMS)**

Each local authority must establish and implement a framework for disaster risk management within its area of jurisdiction aimed at ensuring an integrated and uniform approach to disaster risk management. The disaster risk management framework of each local authority must form an integral part of the Regional Disaster Risk Management Plan of the region in which it is located.<sup>28</sup>

#### **The Constituency Disaster risk management Committee (CDRMC)**

The CDRMC is mandated with the coordination, at constituency level, of disaster risk management. The CDRMC must promote an integrated and coordinated system of disaster risk management in its constituency by the sector ministries and other stakeholders involved in disaster risk management and amongst communities.<sup>29</sup> The responsibilities of the CDRMC include conducting community based disaster risk assessments within the constituency, to prepare and update constituency response and recovery plans and to act as the channel of communication for the community on all issues related to disaster risk management.<sup>30</sup>

## **Conclusion and Key Recommendations**

Namibia's overarching institutional framework matches with the model suggested by the IDRL Guidelines, seen as the Government of Namibia has adopted a comprehensive policy and institutional framework and planning for disaster prevention, mitigation preparedness, relief and recovery which take full account of the auxiliary role of the

<sup>24</sup> Ibid.para.

<sup>25</sup> Ibid, Appendix V p. 113.

<sup>26</sup> In terms of Cabinet Resolution 15.02.94/006.

<sup>27</sup> National Policy for Disaster Risk Management in Namibia,para.5.6.4 p. 35.

<sup>28</sup> Ibid,para.5.6.5, p. 36.

<sup>29</sup> Ibid,para.5.6.6, p. 37.

<sup>30</sup> Ibid, Appendix IX.

Namibia Red Cross Society, and one which includes domestic civil society and which empowers communities to enhance their own safety and resilience.<sup>31</sup>

Namibia has a decentralised institutional framework in place, which consists of various Disaster Management Committees at national, regional, local and constituency levels. These committees are tasked with drafting disaster risk management plans and to incorporate disaster risk management policies into all their activities and programmes. The framework is further constituted in such manner that decision making powers are delegated upwards, with the necessary advice given by each instance to the one further up the political hierarchy, so that the ultimate responsibility of declaring a disaster and initiating a disaster response effort becomes that of the president. This is not an efficient manner of ensuring a quick response from international and even local disaster relief organizations, and the recommendations below suggest how the situation can be improved on.

Hence, Namibia has an advanced institutional structure, but at points it is a challenge to determine how one relates to the other and who is responsible for what. The available instruments which determine the institutional arrangements for disaster risk management focus primarily on establishing the fora for cooperation at national, regional, local and constituency level. However, the Policy and the draft Bill are not clear and explicit on which specific tasks must be executed by which particular organisation. This may result in various disaster risk management policies being developed at the various departments of government, and also in the different regions, local authorities and constituencies. This may be confusing in the event of an actual disaster, not only to international disaster relief response organisations, but also to all the local institutions which will have a responsibility in the event of a disaster. The global practice of disaster response efforts shows that the establishment of institutions alone is not enough, in the absence of clearly spelled out procedures which are known and clear at the time of an actual disaster and easily accessible for any international disaster relief organisation which intends to provide disaster relief to the affected country.

From the point of view of upholding the rule of law and avoiding section 26 of the Constitution to be abused for political reasons, it is obvious why the power to declare a National disaster is reserved for the President, with the attendant checks and balances for the National Assembly. However, the national disaster risk management framework should distinguish between a state of emergency of a political nature and a physical disaster with no political implications. If this suggestion were followed, then the Office of the Prime Minister, which is the Focal Point for Disaster Response Operations, should ideally also have the responsibility of declaring national disasters, without the need for parliamentary confirmation and publication in the Government Gazette. This would result in effectively one office as the single National Focal Point for all aspects of disaster risk management and disaster response operations. The role of this single National Focal Point would also include making international appeals for assistance.

Finally, Namibia's institutional framework does not adequately address issues of initiation, facilitation, transit and regulation of international disaster relief and initial recovery assistance, consistent with the IDRL Guidelines, as further explained below.

- It is recommended that the National Disaster Risk Management Committee review the institutional framework currently in place to establish whether it can be simplified;

<sup>31</sup> IDRL Guidelines, Article 8(1).



- A focal point for Disaster Risk Management must be established, which has all the powers and authority to be able to operate as a focal point;
- A focal point for the facilitation of incoming disaster assistance should be established;
- The need for quick response must be adequately considered in declaring a disaster. The current provision in the draft Bill, in terms of which the state of emergency is declared by proclamation in the Government Gazette is not appropriate for declaring a disaster which requires local and international actors to respond as quickly as possible to save lives and minimise danger and damage people and property.

## The Role of Civil Society Organisations

The Namibia Disaster Risk Management Policy acknowledges that managing disaster risk is a shared responsibility and that establishing a comprehensive and robust NDRMS requires a multi-disciplinary approach. There is a clear commitment by government, as reflected in the Policy, to involve all stakeholders, Disaster risk management partners include the United Nations organisation in general, and other relevant international and nongovernmental organisations (NGOs), donor agencies, the private sector, faith and community based organisations and the Namibia Red Cross Society.<sup>32</sup> This involvement includes the responsibility to develop and integrate disaster risk management and reduction strategies in all the development policies, strategies and programmes for each of the levels of disaster risk management institutions created in terms of the Policy.

The Office of the Prime Minister on behalf of the Government of Namibia is responsible for facilitating the coordination and integration of the efforts of the various stakeholders before, during and after significant events and disasters. Stakeholders and development partners must collaborate with DDRM in order to integrate their DRM work plans, programmes and activities with each other by participating in the multi-stakeholder planning teams.<sup>33</sup>

## Role of Namibia Red Cross

Namibia passed the Red Cross Act 16 of 1991 in December of 1991, thus in the second year after Namibia's independence in March 1990. In terms of the Act the Namibia Red Cross Society is recognised as an auxiliary to the public authorities<sup>34</sup> for the purposes of the Geneva Convention, the Fundamental Principles of the Red Cross and otherwise. The Namibia Red Cross is also expressly listed in the National Disaster Risk Management Policy as a member of the National Disaster Risk Management Committee which otherwise comprises of government ministries and international development aid organisations.<sup>35</sup> The National Disaster Risk Management Bill lists the Secretary General of the Namibia Red Cross Society as one of the members of the National Disaster Risk Committee.<sup>36</sup> The Namibia Red Cross is thus fully integrated at the highest disaster risk management level in Namibia. As such the Namibia Red Cross would be involved in the coordination mechanisms for any international relief response operations. The Namibia Red Cross in fact engages with government on an

<sup>32</sup> National Policy for Disaster Risk Management in Namibia 2009, para.9 p. 92.

<sup>33</sup> Ibid, p. 92.

<sup>34</sup> Namibia Red Cross Act, section 2.

<sup>35</sup> Section 5.5.6 p. 32.

<sup>36</sup> Disaster Risk Management Act, para.4(2)(d).

ongoing basis in disaster and humanitarian relief efforts, especially in the field of flood relief, food security, tracing and repatriation of families, and health care programmes.<sup>37</sup>

The Disaster Risk Management Policy recognises the role of the Namibia Red Cross and facilitates unimpeded access to enable it to deliver humanitarian assistance to those affected by disaster, as well as the vital role it plays in the mobilisation of both internal and external sources for disaster risk management.

### **Role of the UN and International Non Governmental Organisations**

The NDRM Policy provides mechanisms for the coordination and integration of the contributions of UN agencies and other stakeholders in disaster risk management with those of the Namibian authorities through the NDRMC and similar multi-stakeholder platforms in the regional and local context. For example, Namibia's Disaster Risk Management Policy recommends adopting an inter-agency approach by integrating the individual mandates of the international NGOs to avoid gaps and duplications. The Policy recognises the need to coordinate the influx of international aid in the country in times of significant events and disasters in order to effect a fair distribution of capacities and resources, and at the same time to optimise the assistance they have offered for the purposes of disaster risk management.<sup>38</sup> The office of the Secretary to Cabinet, with the cooperation of the Namibia Red Cross, has in the past coordinated the disaster response activities of various local and international agencies.

The Namibia Disaster Risk Management Policy provides mechanisms for the coordination and integration of the contributions of international NGOs with those of other disaster risk management stakeholders in Namibia through the National Disaster Risk Management Committee and similar multi-stakeholder platforms in the regional and local context.<sup>39</sup>

### **National Non Governmental Organisations, Faith and Community Based Organisations**

The vital role that national NGOs, Faith and Community Based Organisations play in the application of effective disaster risk management activities in the country is acknowledged in the National Disaster Risk Management Policy.<sup>40</sup> The National Focal Persons Forum serves as the platform where the resources of national non-governmental organisations and faith and community based organisations are harnessed and coordinated.<sup>41</sup>

### **Key Recommendations**

As neither the Policy nor the Bill contain a timeline of when the disaster risk management plans and programmes are to be developed by the individual agencies, it is recommended that the Directorate of Disaster Risk Management in the Office of the Prime Minister set such timelines and follows up with all the committees to finalise their plans and programmes. Such plans and programmes should furthermore include procedures to be followed in actual disaster relief response operations, starting from

<sup>37</sup> Namibia Red Cross Society Annual Report 2009.

<sup>38</sup> Ibid, para.9.2, p. 93.

<sup>39</sup> Ibid, para.9.4, p. 94.

<sup>40</sup> Ibid, para.9.4 p. 94.

<sup>41</sup> Ibid, Appendix IV, p. 112.

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the steps to be taken for localised disasters to be declared, up to the conditions and considerations to be taken into account when terminating a disaster relief response effort.

The IDRL Workshop held on 14 November 2011 recommended that regional and local institutions cannot establish disaster risk management plans and programmes in a legislative vacuum. Despite the existence of the National Disaster Risk Management Policy it was recommended that village committees, town councils, and regional councils will only be in a position to establish disaster response plans and programmes, after the draft Disaster Risk Management Bill has been enacted into an Act of Parliament, and after Regulations have been gazetted which regulate the implementation of the Act and various procedural aspects of disaster risk management and disaster response operations.

It was further emphasised by the participants at the IDRL Workshop that the draft Disaster Risk Management Bill should make funds available for building capacity for disaster response at regional and local government level. Although the draft Bill stipulates that the National Disaster Fund may be used *inter alia* for research, capacity building and training programmes to promote and strengthen disaster risk management,<sup>42</sup> it was recommended that the provisions of the draft Bill it should be as explicit as the Policy, which states that training in disaster risk management must be multi-agency, multi-sectoral and multi-level.

Finally, the level of cooperation between government and other disaster risk management stakeholders, including the UN agencies, (international) NGOs and the Namibia Red Cross Society, is well known among disaster response actors in Namibia. There is however insufficient information available for other international disaster risk management organisations, which may have to provide their support in the event of a disaster. Such organisations would not know where to obtain information about the procedures to be followed. It is thus recommended that in addition to establishing very clear guidelines in the Disaster Risk Management Bill, the government should also produce and disseminate information, and makes such information available at places where international disaster relief response organisations are most likely to look for it first, such as the website of the Ministry of Foreign Affairs or of the Office of the Prime Minister.

## Requests for External Assistance

### Requests for External Disaster Relief and Initial Recovery Assistance

The existing legal framework for disaster risk management in Namibia does not determine the procedure for making a request for international assistance in the event of a disaster. It is however clear from the institutional arrangements that such a request for international assistance will be made by the President, upon recommendation of Cabinet. However, in light of the provision in the Disaster Risk Management Policy, in terms of which the Secretary to Cabinet should arguably also have the authority to issue an appeal for international assistance, seen as he or she has the authority to make decisions and to mobilise resources for routine disaster risk management operations in the country as well for any urgent need arising from the occurrence of significant events and disasters.<sup>43</sup> In the absence of guidelines containing precise procedural steps

<sup>42</sup> Para.53(1)(a).

<sup>43</sup> Ibid,para.5.5.5 p. 32.

to be followed to make an international appeal, there is also no description of the circumstance under which such a request is to be made.

Moreover, from institutional framework, read together with the sections of the Constitution of Namibia dealing with states of emergencies, it must be concluded that an official declaration of a disaster is a necessary precursor to any request for international disaster relief assistance. International practice shows that the speed with which international assistance can be requested may be compromised by the requirement that a disaster be officially declared, in the case of Namibia by formal declaration of a disaster by notice in the Government Gazette.<sup>44</sup>

### Regional Cooperation

The stakeholders' workshop of 14 November 2011 advised that the various joint commissions on Defence and Security which Namibia is party to, also contain aspects relating to disaster management and undertakings by countries to help each other in disaster scenarios. For example, the 21<sup>st</sup> Session of the Namibia/Botswana Joint Permanent Commission on Defence and Security held at Swakopmund from 12 to 16 July 2011, the Namibian Delegation expressed appreciation to the Government of Botswana for having responded timely by providing humanitarian assistance to the Namibian Flood victims.<sup>45</sup> Furthermore, a number of the regional cooperation treaties contain provisions which are not only relevant for disaster response scenarios, but also for pre-disaster risk management, such as meteorological and river basin early warning systems and sharing of seismic data.

### Key Recommendations

- Requesting international assistance is a vital initial step in responding to a major disaster, and the national focal point should be able to do this without the need for formal declaration of a disaster by notice in the Government Gazette. It is therefore recommended that requesting for international assistance should not be subject to a formal declaration of a disaster.
- Namibia should maintain and strengthen the disaster response assistance undertakings in the regional agreements and protocols on mutual assistance with its neighbours in Southern Africa, through the institutions of the Southern African Development Cooperation and the African Union.

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## Legal Status of Foreign Entities Providing Assistance

### Privileges and Immunities

The IDRL Guidelines recommend that affected States grant legal facilities pertaining to diplomatic immunities and tax exemptions to assisting States and to eligible assisting humanitarian organisations.

Although there is no specific reference to (diplomatic) privileges and immunities for assisting States and eligible humanitarian organisations during disaster operations in Namibia, the applicable legal instrument on this topic is the Diplomatic Privileges Act

<sup>44</sup> Constitution of Namibia, Article 26(1).

<sup>45</sup> <http://www.gov.bw/en/Ministries--Authorities/Ministries/State-President/Office-of-the-President/Tools--Services/NewsPress-Releases/21ST-SESSION-OF-THE-NAMIBIABOTSWANA-JOINT-PERMANENT-COMMISSION-ON-DEFENCE-AND-SECURITY-/>.

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71 of 1951. This Act predates Namibia's Independence by 39 years and the last amendment was made in 1989, also before Independence in 1990. It is therefore not up to date with the reality that various international humanitarian organisations have diplomatic status in Namibia. Its definition for Diplomatic Agent only includes public representatives of foreign heads of state and the Act most notably lacks a provision which would enable the Minister of Foreign Affairs to confer the status or recognition as a Diplomatic Agent on someone who would merit having such status in the circumstances. The diplomatic relations between Namibia and other countries, as well as international agencies are therefore largely governed by bilateral and multilateral agreements.

Furthermore, the IDRL Guidelines recommend that immunity from civil and criminal liability for international disaster relief response organizations for entering Namibia and engaging in any disaster relief work.

However, the Act does confer immunity from Namibian civil and criminal courts to *inter alia* any organization or institution recognized by the Minister of Foreign Affairs for the purposes of conferring such immunity. The immunity also extends to members, agents or officers of and the delegates to such organizations or institutions, and the permanent representatives of other Governments to such organizations or institutions, together with their spouses and minor children, to the extent prescribed in any convention or agreement to which the Government of Namibia is a party;<sup>46</sup>

The above mentioned provision is unfortunately insufficient to meet the needs of a real life disaster response scenario, as the requirement of quick action is not met. The Minister of Foreign Affairs, although part of the National Disaster Risk Committee is not the national focal point for disaster risk Management, and therefore any recognition will be dealt with by two government ministries. The above provision lacks clear guidelines for deciding when an organization would qualify for immunity, and if any guidelines were developed they should expressly refer to disaster relief response organizations. Furthermore, the above legal provision should be ambivalent as to whether recognition of a private organization requires a convention or any agreement to which the Government is a party.

In addition, the Diplomatic Privileges Act] makes provision for the President of Namibia to confer, at the request of another government, such immunities, rights and privileges as the President may consider in the interest of Namibia on persons who are not public representatives of heads of states, and irrespective of whether there agreements, proclamations or other instruments in questions.<sup>47</sup> Whether the Minister would consider using this legal provision to confer diplomatic privileges on disaster relief organizations, some of which are very small organizations, is questionable.

To leave international disaster relief organization uncertain whether they could obtain legal immunity from civil and criminal liability through this section is not desirable in a disaster scenario which requires speedy response. It is a further stipulation of the above mentioned provision that the conferral of the immunities be by notice in the Government Gazette, which is a very slow process, and which involves yet another ministry, namely the Ministry of Justice.

Based upon its unique membership and mandate, the International Federation has been able to conclude legal status agreements which establish its status as an international

<sup>46</sup> Diplomatic Privileges Act 71 of 1951, para.2(d).

<sup>47</sup> Ibid, para.2B(b).



organisation within the host country and are based on the provisions contained in the 1947 Convention on Privileges and Immunities of the United Nations specialised agencies. This gives the International Federation and its staff the ability to legally operate in country and covers areas such as financial privileges, communications, freedom of movement, ability to conduct operations, tax exemptions, import and export of goods and protection of office premises, vehicles and goods and immunity from jurisdiction. In addition, these agreements generally protect delegates from prosecution, arrest and detention under local laws for acts or words spoken within the context of their official duties.<sup>48</sup> In Namibia, the Namibia Red Cross Act 16 of 1991 recognises the Namibia Red Cross as a voluntary aid society, auxiliary to the public authorities for the purposes of the Geneva Conventions,<sup>49</sup> the Fundamental Principles of the Red Cross and otherwise. As such the Namibia Red Cross has legal status in Namibia.

### Eligibility and Registration

The IDRL Guidelines recommend that States establish criteria and expedited registration procedures for assisting humanitarian organisations seeking eligibility for legal facilities. Preferably, the 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.<sup>50</sup>

Namibia does not have any law dedicated exclusively to the recognition, registration and rules governing the conduct of NGOs. As a result most civil society organisations are registered either as trusts, as companies not for gain, or as welfare organisations. The Government has already recognised this legal gap as a problem in its day to day interaction with the disaster risk management stakeholders that are active in Namibia, both local and international NGOs. As a result, the Government of Namibia Civic Organisations Partnership Policy of 2005 stated that a study into the current legal and regulatory governing the operations of COs shall be undertaken. This review will seek to clarify the roles and responsibilities of the various actors in partnership arrangements for national development. Thus, it will help reduce confusion and eliminate undue competition and overlapping mandates. The study will ultimately result in the formulation of a new Bill to address current deficiencies. The new Bill will provide a complementary system operating in parallel, and which will provide clear advantages to those organisations that do voluntarily choose to register. The review and the new Bill formulation process will be undertaken in a highly participatory manner involving the representatives of all stakeholders, and in the spirit of the Partnership policy.<sup>51</sup>

### Domestic Legal Status of Foreign Organisations

To date the intended Bill regulating civic organisations is not yet in place. Any international disaster response organisations would therefore have to obtain legal personality by the normal registration requirements in place for trusts, companies not for gain and welfare organisations. It is of course to be expected that disaster relief organisations will arrive on invitation of the Namibian Government, and that a letter from the Government confirming that they act on invitation will be issued to them,

<sup>48</sup> IDRL Project “Report on findings from South Asia, Southern Africa and Central Americas based on Field Studies commissioned by the International Federation” March 2003 p. 13.

<sup>49</sup> the four Geneva Conventions of 12 August 1949.

<sup>50</sup> IDRL Guidelines, para.14 p. 80.

<sup>51</sup> Government of Namibia Civic Organisations Partnership Policy of 2005, para.4.2.3.ii Legal & regulatory environment for Civic Organisations registration / incorporation.

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or even a memorandum of understanding will be signed between the parties. Such measures will however not suffice to give the international actors all the legal facilities which they require while working in Namibia. In light of the strict requirements against money laundering and terrorist financing in the Financial Intelligence Act 3 of 2007 for example, it is certain that banks will not give international organisations bank accounts, without legal statutes and only on the strength of a letter of recognition or a memorandum of understanding signed with the government. Furthermore, immunity from civil and criminal liability requires a legal basis, which is not created by either a letter of recognition nor by a memorandum of understanding.

Namibia's laws are drafted in such manner that each Act falls under the jurisdiction of one particular Ministry, and that any powers to grant special concessions or waivers fall under the Minister responsible for the administration of the particular Act in question, or to persons in the Ministry to civil servants in the Ministry to whom the delegates certain powers. Should an international relief response organisation seek to benefit from the legal facilities referred to in the IDRL Guidelines, such facilities as can be given by way of waiver or special consent by the Minister of Labour, the Minister of Works & Transport for vehicle registrations, the Minister of Finance for tax exemptions, the Minister of Home Affairs for permission for foreign staff to work in Namibia etc.

Hence, Namibian authorities will struggle to facilitate the entry and operations of foreign organisations, because none of the facilities can be granted without a legislative basis.

The IDRL Workshop, held in Windhoek on 14 November 2011, recommended that the central bank be empowered to provide banking facilities to assisting States and eligible disaster response organisations. The basis for this suggestion is the assumption that assisting bodies will inform the Namibian government before arrival of the amount of money that will be required and transferred to the Namibian central bank account for the intended disaster response operation, and that each periodical call up will be made after the previously released funds have been fully reported on. This reporting requirement is important so as to avoid corruption or even money laundering during disaster scenarios. The benefit of a system in which the central bank would provide banking facilities, is that it could do so on the strength of a letter of recognition issued by the Office of the Prime Minister, to the relevant disaster response operator, without the need to establish legal personality in Namibia. The accounts provided under this suggested facility would be on a temporary basis, and at the end of the disaster relief operation the accounts would have to be audited.

### Foreign Assistance from the Private Sector and Individuals

The IDRL Guidelines recommend that Affected States should consider extending, upon request, to make available some of the legal facilities to private assisting actors from abroad.<sup>52</sup>

Namibia's Disaster Risk Management Policy recognises the vital role which the private sector plays in the application of disaster risk management in Namibia, especially in terms of availing and mobilising resources, providing assistance with technical input, implementing safe work practices, conducting risk and vulnerability assessments and mainstreaming disaster risk reduction into all new development projects.<sup>53</sup> The policy

<sup>52</sup> Para.15.

<sup>53</sup> Disaster Risk Management Policy 2009, para.9.5 p. 94.

is however silent on the issue of granting legal facilities to foreign actors in a disaster relief response scenario, let alone to foreign private actors. The draft Disaster Risk Management Bill also has no provisions regarding granting of legal facilities to the private sector or indeed to any other actors.

Any donations by foreign private actors would have to be dealt with in terms of the normal foreign exchange control regulations, which involve the central bank as ultimate supervisory authority in such matters. The Bank of Namibia Act 15 of 1997 determines inter alia, that the Bank of Namibia shall act as agent for the Government in the administration of any law relating to exchange control, in accordance with such instructions or directives as the Minister may from time to time issue for this purpose.<sup>54</sup>

### Key Recommendations

- The current situation in Namibia is that international organisations without legal personality in Namibia would not be able to open bank accounts to fund their operations, nor would they be able to enter into agreements to rent offices or hire staff without legal status in Namibia. The provision of temporary domestic legal status is something which needs to be especially legislated for, and the Disaster Risk Management framework should contain a chapter dealing with this issue. Part 5 of the IDRL Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance<sup>55</sup> contains the suggested articles which legislating countries should incorporate into their disaster management laws or into their company laws for temporary recognition of foreign or international legal personality.
- The Draft Disaster Risk Management Bill and its Regulations should contain a chapter in which a legal framework is established for processing of foreign assistance from the private sector. Such a chapter should include the applicable rules for distinguishing between private sector donations and for profit interventions, and remove all onerous obligations from the donations and the donors.
- Namibia should incorporate into its Draft Disaster Risk Management Bill and its Regulations the provisions of Part 5 of the IDRL Programme's draft Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance<sup>56</sup> which suggests articles to be incorporated in domestic legislation which enables the temporary recognition of foreign or international legal personality.

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## Customs Arrangements for the Arrival of Relief Goods in Disaster

### General Customs Arrangements

At the time of writing of this report, neither the Disaster Risk Management Policy nor the Disaster Risk Management Bill makes any provision for special customs arrangements for disaster relief goods. Any disaster relief goods and equipment would therefore have to be imported under provisions of the Customs & Excise Act 20 of 1998. This Act does contain certain categories of goods on which rebates may be obtained by an importer, but it does not contain any category of duty exempt items. However, the Commissioner of Customs & Excise may in writing exempt any goods from the entire, or from any portion of any duty payable on the grounds of the period or the extent of use in accordance with the item under which the goods were entered, or on

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<sup>54</sup> Para.46(1).

<sup>55</sup> Version of 10 August 2011.

<sup>56</sup> Version of 10 August 2011.



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any other ground which the commissioner deems reasonable.<sup>57</sup> This effectively means that relief goods would need to be imported and categorized in the same way as commercial goods, including categorizing them in terms of the items contained in the Act and he schedules to the Act, and then a formal application for duty exemption would need to be filed.

The experience of the participants to the IDRL Workshop held at Windhoek on 14 November 2011 that, in practice, the Commissioner of Customs extends waivers of customs duties, upon receipt of confirmation from the Directorate of Disaster Risk Management or other parts of government, that a certain expected shipment is for a specific humanitarian or disaster relief purpose. But this good practice is not based on any regulation.

This lack of regulations also applies to relief goods in transit to other countries. Namibia is located on the western coast of the southern African sub-region and as such forms a strategic access to shipping transport for a number of landlocked southern African Countries. As many disasters affect more than one country simultaneously, it is important to make sure that national legislation is compatible regionally. Ideally, prior bilateral and regional agreements on mutual assistance should be signed so that they can be applied should a hazard event occur that exceeds national capacities or crosses international borders. Rules and procedures for requesting and receiving international or regional assistance should also be agreed and approved in advance, even if it is not anticipated that they will be necessary for responses in most cases.<sup>58</sup>

## Recommendations

The Disaster Risk Management Bill should have an entire section dealing with the importation of disaster relief goods and the exemption of customs duties from imported disaster relief goods. The section dealing with customs arrangement should also include provision for simplified paperwork and priority treatment for the disaster relief goods and disaster relief organisations. The draft Bill or the regulations to be published under the draft Bill should further make provision for customs officials to work outside normal business hours and outside of customs offices to process disaster relief goods as expediently as possible. The same would however also apply to immigration officials, medical (accreditation) authorities, veterinary services and many others.

## Communications Equipment

The IDRL Guidelines recommend that 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 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.<sup>59</sup>

<sup>57</sup> Section 84(7)(b).

<sup>58</sup> Disaster Preparedness for Effective Response - Guidance and Indicator Package for Implementing Priority Five of the Hyogo Framework para.1.2 p. 11.

<sup>59</sup> IDRL Guidelines, para.18(2) p. 83.

*The Communications Act*<sup>60</sup>

The applicable law in Namibia is the Communications Act, which regulates the conduct of telecommunications services and establishes the Communications Regulatory Authority of Namibia. The Authority's power to regulate and restrict the provision of telecommunications equipment relate to its powers to maintain standards in the telecommunications industry and to prohibit anti-competitive behaviour by entities which trade in telecommunications equipment.<sup>61</sup> The Authority may make regulations prescribing the classes of telecommunications services that may be provided without a license,<sup>62</sup> as well as prescribing the classes of electronic telecommunications network which may be constructed, operated or used without a license.<sup>63</sup> However, no such regulations are yet in place.

The Communications Act does not at all consider the possibility of a disaster scenario and therefore contains no enabling provisions to assist the government to respond quickly to a need for immediate availability and use of communications services and equipment.

The Act regulates broadcasting services<sup>64</sup> and determines that broadcasting licenses shall only be issued by the Authority to Namibian nationals or entities controlled by Namibian nationals.<sup>65</sup> However, the minister responsible for communications may authorize the issuing of a broadcasting license to foreign persons or entities.<sup>66</sup> The effect hereof is that in the event of a disaster, any license to be issued to a foreign relief organization can only be issued after the minister responsible for communications has authorized the Communications Regulatory Authority to do so.

The Act does not contain any exception to the rule that no broadcasting services may be conducted without a license.<sup>67</sup> However, under the chapter which deals with the regulation of the radio spectrum,<sup>68</sup> the Authority is obliged to honour present and future commitments of Namibia in terms of international agreements and standards in respect of radio communication and telecommunication matters.<sup>69</sup>

The Act prescribes the requirement of an issued spectrum license for permission to transmit any signal by radio waves or for the use of any radio apparatus to receive any signal transmitted by radio waves.<sup>70</sup> The authority may prescribe categories of radio apparatus, the use or possession of which; or the circumstances in which the use or possession of radio apparatus, does not require a licence, certificate or authority in terms of law.<sup>71</sup> No regulations containing such categories of apparatus have yet been promulgated.

A person may only be in possession of any radio apparatus, (except as a customer or end user of a telecommunications service) if the person is in possession of a permit

<sup>60</sup> Act 8 of 2009.

<sup>61</sup> Ibid, sections 44 and 80.

<sup>62</sup> Communications Act 8 of 2009 section 37(5)(a).

<sup>63</sup> Ibid, section 37(5)(b).

<sup>64</sup> Ibid, Chapter VI, ss 82 – 93.

<sup>65</sup> Ibid, section 85(2).

<sup>66</sup> Ibid, section 85(3).

<sup>67</sup> Ibid, section 83.

<sup>68</sup> Ibid, Chapter VIII ss 99 – 102.

<sup>69</sup> Ibid, para.99(3).

<sup>70</sup> Ibid, section 101.

<sup>71</sup> Ibid, section 101(16).

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authorizing such possession or of a spectrum license.<sup>72</sup> Failure to have a required permit or license when in possession of a radio apparatus, can lead to seizure of the apparatus, and forfeiture thereof to the state.<sup>73</sup> The Act does not contain any power of the authority or the Minister responsible for communications to waive the requirement of a permit for possession of radio equipment or for a spectrum license.

### Recommendations

With regard to telecommunications and the importation and use of telecommunications equipment, legislative amendments are required that would enable the Communications Regulatory Authority of Namibia to waive the application procedures and licensing requirements for international disaster relief organisations. The provisions which are in place, which require the minister responsible for communications to authorise the granting of a relevant telecommunications licence to a disaster relief organisation are inadequate to meet the need of speedy availability of telecommunications use in a disaster scenario.

There is a further need to promulgate regulations in which categories of licence exempt communications equipment are stipulated. The regulations should contain a category of communications equipment owned and operated by disaster relief organisations, as being exempt from the licensing requirements of the Act. The responsible agency to achieve this is the Ministry of Works Transport & Telecommunications in cooperation with the legal drafters in the Ministry of Justice.

As the Communications Act does not have any provisions which cater for the special circumstances which will be brought about by a disaster scenario, the entire Act should be amended, to cater for the special circumstances which will arise in a disaster scenario, and thereby to meet the recommendations of the IDRL Guidelines and the provisions of the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations. Namibia should further become a party to this convention.

### Food

The IDRL Guidelines recommend that affected States should consider reducing the normal fumigation requirements and restrictions on food imports and exports by assisting States and eligible humanitarian organisations in disaster relief operations.

Namibia has a very scattered body of laws on food safety, which means that in the event of food imports, the importer would have to have regard to the particular Act dealing with the foodstuff in question. By way of example, some applicable laws are the Control of the Importation and Exportation of Dairy Products and Dairy Product Substitutes Act 5 of 1986, the Meat Industry Act 12 of 1981, and the Sugar Act 28 of 1936. It would not be feasible to have to comply with the provisions of each of the various laws on food safety when importing a shipment of disaster relief food to Namibia. The draft Disaster Response Management Bill should therefore contain a chapter dealing with the relaxation of food health legislation.

It must however be acknowledged that food safety concern in recent times rightly become bio-safety concern, which if not protected properly can have devastating

<sup>72</sup> Ibid, section 102.

<sup>73</sup> Ibid, section 102(4).

effects on a country's biodiversity, agricultural sector and on food security. Due to these concerns, Namibia passed the Bio-safety Act 7 of 2006. The Act is however not yet operational even though the Regulations to the Act have also been drafted. The full implementation of the Act is awaiting the establishment of the National Research, Science and Technology Council. It can be deduced from the above that relaxing of food health or bio-safety standards for the importation of food will not be considered lightly. In view of the protection which the authorities must implement for the Namibia population, an alternative to relaxations of standards might be to require relief food importers to provide certification from an independent public agency in the assisting country, containing certain guarantees about the quality and nature of the relief foods, before importation. This is a procedure which may however also take longer than a quick food relief response situation may be able to be put on hold for.

### Recommendations

With regard to food safety a balance must be struck between enabling relief foods to be imported and distributed quickly to disaster survivors in need on the one hand, and protecting public health and the environment generally but also with specific regard genetically modified food. It is suggested that any measures put in place to assist in fast tracking importation of food and fumigation and other controls, should at the same time also include an internationally binding undertaking by the importer not to import genetically modified food and to be able to provide where it sources its disaster relief food supplies.

### Medication

The IDRL Guidelines recommend that 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 organisations or on their behalf in disaster relief and initial recovery assistance, to the extent consistent with public safety and international law.<sup>74</sup>

In Namibia the applicable law is the Medicines and Related Substances Control Act 13 of 2003 in terms of which medicines and scheduled substances are controlled and regulated. The Act makes provision for the categorisation of all medicines in one of five schedules. The schedules are contained in the Regulations to the Act. Sale, possession, handling, administering, import and export of medicines are regulated in the Act and the Regulations, and are all subject to licenses which must be issued by the Namibia Medicines Regulatory Council or by the Minister of Health or the Permanent Secretary in the Ministry of Health.<sup>75</sup> Each application for the sale, possession, import and export of medicine must be in the format prescribed for the schedule under which the medicine falls. The Permanent Secretary has the powers to refuse to issue an import permit if, after consultation with the Council, the Permanent Secretary is of the opinion that (a) the applicant is not capable of keeping or storing the scheduled substances concerned in a satisfactory manner in order to prevent its loss; or (b) the annual importation quota, if such a quota has been determined by the Council for the scheduled substance concerned, has been exceeded or will be exceeded; or (c) the scheduled substance

<sup>74</sup> IDRL Guidelines para.18(3).

<sup>75</sup> Para.29.

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concerned, of an acceptable quality, is already available in Namibia.<sup>76</sup> It must be a condition of every permit referred to in the regulation that there may be no deviation, during the relevant importation of the scheduled substance concerned, from the particulars concerning that importation as set out in the relevant permit.<sup>77</sup> The same conditions relating to permit requirement and the stipulation not to deviate from the particulars as set out in the permit also apply with respect to exportation of medicines.<sup>78</sup>

The effect of the above is that an importer of any medicine in a disaster relief operation would first have to find out under which schedule the medicine falls, so that the application can be made as prescribed for that particular schedule. In the circumstances of a disaster scenario it may be possible that the importer or exporter would not be able to guarantee that no deviation of the conditions imposed in the permit would occur, either through occurrences beyond the importer or exporter's control or in order to respond to newly arisen but unplanned circumstances.

A further condition contained in the Regulations relating to the import and export of medicine is that it may only be imported and exported at an official border post or at a post office in Namibia.<sup>79</sup> This requirement will cause severe obstruction of any relief operation requiring importation of medicines, especially in a flood disaster scenario in the north eastern parts of the country, when access to the border posts, post offices and roads may be blocked. The Regulations do not make provision for exceptions and exemptions from the above stipulations due to special circumstances, such as a disaster scenario.

The Regulations also contain rules applicable to the transit of medicines through Namibia.

(1) *Scheduled substances that are transmitted through Namibia –*

(a) *if offloaded from the carrier while in Namibia, must be stored in a customs and excise warehouse contemplated in section 19 of the Customs and Excise Act, 1998 (Act No. 20 of 1998); and*

(b) *may not be manipulated in any way while in Namibia, unless authorised by the Council.*

(2) *The name, form of preparation and quantity of the scheduled substances referred to in subregulation (1) must be declared to staff members of the Office of the Commissioner for Customs and Excise at the port or place of entry and of exit.*

(3) *Every person who has made a declaration referred to in subregulation (2) must forward a copy thereof to the Council.*<sup>80</sup>

The above requirement that the medicines may only be stored in a customs and excise warehouse will delay transmitting medicine to a neighbouring country which requires the medicine on an urgent basis. The requirement may further be in violation of a regional mutual disaster relief assistance agreement between Namibia and its neighbours (such as the SADC Protocol on Health<sup>81</sup>), in light of the negative if not fatal

<sup>76</sup> Medicines and Related Substances Control Act Regulations Government Notice 178 of 2008, Government Gazette 4088 of 25 July 2008 Regulation 28(2).

<sup>77</sup> Ibid, Regulation 28(4).

<sup>78</sup> Ibid, Regulation 29.

<sup>79</sup> Ibid, Regulation 37.

<sup>80</sup> Ibid, Regulation 40.

<sup>81</sup> One of its objectives in terms of Article 3 is the objective to co-ordinate regional efforts on epidemic preparedness, mapping, prevention, control and where possible the eradication of communicable and non-communicable diseases.



consequences it can have. The Regulations do not contain any exemptions or waivers for the above requirements.

In a disaster relief response scenario the distribution of medicines may be facilitated by repacking the medicines into patient ready packs. Such an activity is also subject to conditions imposed by the regulations and some of the conditions may hamper the efficiency and basic progress of a disaster relief effort:

- (1) *The re-packing of medicines into patient ready packs may only be carried by -*
  - (a) *a pharmacist, or a pharmacist's assistant, a pharmaceutical technician or a pharmacist intern, acting under the personal supervision of a pharmacist; or*
  - (b) *any other person authorised in terms of the Pharmacy Act, 2004 (Act No. 9 of 2004).*
- (2) *Every person re-packing medicines as contemplated in subregulation (1) -*
  - (a) *must use a batch numbering system; and*
  - (b) *must do the re-packing concerned –*
    - (i) *under the required temperature and humidity conditions specified by the manufacturer;*
    - (ii) *in an area of the premises concerned specially used for re-packing only; and*
    - (iii) *in accordance with the procedures relating to good manufacturing and distribution practices recommended by the World Health Organisation.*
- (3) *The date of re-packing of any medicine must appear on the label of each container containing the repacked medicines.*<sup>82</sup>

During disaster scenarios, the disaster relief operators, including the affected State often rely on volunteers to help with the efficient distribution of disaster relief goods, including medicines. The requirement that only the professional staff authorised in terms of the Pharmacy Act may repack medicine may create a serious obstruction to urgent delivery in a disaster relief operation. The further requirements that every person re-packing medicines must use a batch numbering system and do the repacking under the required temperature and humidity conditions specified by the manufactures, will not always be able to be followed in a disaster relief operation. The Regulations should therefore allow the disaster relief operation authorities to decide on a case by case basis whether the re-packing under different conditions is feasible because the medicines will not be destroyed thereby and because the urgency of delivery to the patients requires immediate re-packing.

The only provision in the Regulation which allows for adjustment of the prescribed conditions to special circumstances is the provision relating to the expedited registration process for medicines for human use.<sup>83</sup> However, the process still requires a formal application to the Namibia Medicines Regulatory Council.<sup>84</sup> The provision appears to be written with faster availability of medicines on the Namibian market in mind, rather than with much faster delivery requirements for disaster relief scenarios in mind. Although the regulation allows for an abbreviated medicines review process for medicines with new chemical entities considered essential for national health by

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<sup>82</sup> Ibid, Regulation 42.

<sup>83</sup> Ibid, Regulation 45.

<sup>84</sup> Ibid, Regulation 45(1)(a).

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the Ministry of Health, as communicated in a written notice,<sup>85</sup> the very requirements of the review process, albeit abbreviated and the Minister's notification can delay delivery to after the most important initial phase of a disaster response operation.

#### 45 Expedited registration process for medicines for human use

(1) The Council may consider an expedited registration process for medicines for human use in the case –

(a) of an application for essential medicines which is accompanied by a declaration by the applicant that such a medicine is listed in the prevailing Namibian Essential Medicines List published by the Ministry responsible for health;

(b) subject to subregulation (3), of any medicine containing new chemical entities that is considered essential for national health and which is accompanied by a written notification to that effect from the Minister, but which do not appear on the Namibian Essential Medicines List referred to in paragraph (a);

(c) of any medicine tendered internationally to the State for supply to state hospitals and state health facilities.

(2) A medicine contemplated in subregulation (1)(c) may be supplied on condition –

(a) that the manufacturing facilities where the medicine is manufactured, have prior to the supply thereof been approved by a good manufacturing practice inspection according to the guidelines of the World Health Organisation; and

(b) that the application for registration has been submitted to the Registrar prior to the supply thereof; or

(c) that a registration has been granted by other medicines regulatory authorities recognised by the Council.

(3) An application in respect of a medicine referred to in subregulation (1)(b) must be accompanied by a summary of the registration application which must be in such format and contain such information as the Council may determine.

(4) Subject to subregulation (3), the Council may subject certain applications in respect of a medicine referred to in subregulation (1)(b) to an abbreviated medicine review process as determined by the Council if registration has been granted by other medicines regulatory authorities for the purpose applied for.

(5) The Council must within three months review an application for registration submitted in accordance with subregulation (2)(b) and must inform the applicant of the outcome within three months.

(6) The Council may request any information with respect to an application under consideration, and the information concerned must be submitted by the applicant within the period indicated by the Council, failing which the Council may reject an application.

The Act and the regulations both need to be redrafted in such a way so as to enable the relevant authorities to act proactively and make decisions in real time of unforeseen circumstances. One possibility could be for the Draft Disaster Risk Management Bill and its Regulations to contain a provision in terms of which certain sections of

<sup>85</sup> Ibid, Regulations 45(1)(b) and 45(4).

the Medicines and Related Substances Control Act 13 of 2003 can be suspended in a disaster scenario.

Arguably this possibility is already included in Article 26(5) of the Constitution which gives the President the power to suspend the operation of any rule of the common law or statute law; but for the sake of clarity of authority and quick response in a disaster scenario it would be more desirable if the power to suspend certain sections of the Medicines and Related Substances Control Act were not vested in the President but were delegated to an official in the Ministry of Health stationed at the local level of the particular disaster in question.

### Recommendations

Medical supplies are crucial in any disaster relief scenario. As demonstrated above, the applicable legislation in Namibia, the Medicines and Related Substances Control Act 13 of 2003 places onerous import and transit requirements on medicines and even prescribes that repackaging of medicines requires professional staff. This Act would need to be amended to allow for exemptions or expedition from strict adherence to the requirements in a disaster relief scenario. It is suggested that the include a section in terms of which the Ministry of Health can suspend some of the requirements or expedite of the Medicines and Related Substances Control Act.

### Vehicles

The IDRL Guidelines recommend that affected States should grant temporary recognition to foreign registration and plates with regard to vehicles imported by assisting States and eligible assisting humanitarian organisations or on their behalf in disaster relief and initial recovery assistance.

Registration, and licensing of motor vehicles is regulated by the Road Traffic & Transport Act 22 of 1999 and the Regulations<sup>86</sup> promulgated there under. The Act stipulates that no person shall operate on a public road any motor vehicle which is not registered and licensed in accordance with the regulations<sup>87</sup> but the Act also allows for the regulations to make provision for an exemption of any person or category of person or any vehicle or class of vehicles from the requirement of registration or licensing.<sup>88</sup> In terms of the Regulations all vehicles in Namibia must, whether driven on a public road or not, be registered by the title-holder thereof in accordance with the Regulations.<sup>89</sup> However, the Regulations also contain a deeming provision in terms of which a foreign registered vehicle is deemed to be registered in Namibia.

#### *Motor vehicle deemed to be registered*

*(1) Subject to subregulation (3), a motor vehicle which is registered and licensed in terms of any law of any country other than Namibia and which is not permanently or ordinarily kept in Namibia while it is registered and licensed in terms of that law is deemed to be registered in terms of this Part while being operated in Namibia by or on behalf of the person in whose name the motor vehicle is registered and licensed.*

<sup>86</sup> Government Notice 53 of 2001 in Government Gazette 2503 of 30 March 2001.

<sup>87</sup> Road Traffic & Transport Act 22 of 1999 para.20(2).

<sup>88</sup> Ibid, para.20(3).

<sup>89</sup> Ibid, footnote 92 supra, Regulation 11.



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(2) Subject to subregulation (3), a motor vehicle which is registered in accordance with a law of a contracting State to the Convention and in accordance with the terms of the Convention, is deemed in be registered in terms of this Part while in Namibia-

(a) during a continuous period of 12 months calculated from the date on which that motor vehicle brought into Namibia.

(b)until the registration ceases to be of force and effect in terms of the Convention.<sup>90</sup>

whichever event is the earlier, and that vehicle may, notwithstanding anything to the contrary contained in this Part be operated on a public road while it complies with the Convention.

(3) A motor vehicle referred to in subregulation (1) or (2) is no longer deemed to be registered if it does not comply with this regulation while in Namibia.<sup>91</sup>

On the basis of this article, assisting organisations could import their cars under the deeming provision of the Regulations. The operators of the vehicles would however have to comply with the necessary renewal conditions if the vehicles were to be used for longer than twelve months, as the deeming provision only applies for a period of twelve months.

## Recommendations

Namibia's road transportation law, the Road Traffic & Transport Act 22 of 1999 is the most progressive from a disaster risk management point of view, as it was drafted with several international conventions relating to vehicle registration and international travel in mind. Not only does the Act make provision for exemptions to the registration requirement, but it also contains a deeming provision in terms of which vehicles, registered in other countries, will be deemed to be registered in Namibia as well. The most important recommendation to come from this piece of legislation is that other Namibia legislation should also be drafted with Namibia's obligations in terms of international law in mind.

## Animals

In the event of a disaster it may be necessary for disaster relief actors to come to Namibia with for example search dogs for the purposes of finding and retrieving people. In such an event it would be vitally important that the search dogs be able to be deployed to the disaster scenes immediately to avoid precious time being lost, during which un-retrieved persons may die due to exposure, lack of food or any other condition. Inflexible quarantine requirements would function against the ability for fast deployment of rescue dogs.

## Animal Diseases and Parasites Act 13 of 1956

The applicable law in Namibia is the Animal Diseases and Parasites Act 13 of 1956 which controls *inter alia* the importation of animals. In terms of the Act it is forbidden to import an animal in respect to which the provisions of the Act apply into Namibia except under authority of a permit.<sup>92</sup> Furthermore, the Act enables the establishment

<sup>90</sup> In terms of the definition section of the Regulations "Convention" means- a) the International Convention relative to Motor Traffic (Paris, 1926); b) the United Nations Convention on Road Traffic (Geneva, 1949); c) the United Nations Convention on Road Traffic (Vienna, 1968); or d) any subsequent related convention ratified by the Government of Namibia.

<sup>91</sup> Ibid, fn 92 supra, Regulation 12.

<sup>92</sup> Animal Diseases & Parasites Act 13 of 1956 para.2(1).

of quarantine stations<sup>93</sup> and stipulates that no permit shall be granted to anybody who is indebted to the State for the quarantine costs,<sup>94</sup> which must be paid monthly in advance.<sup>95</sup> As there is not exemption contained to stipulation of prior payment before the issuing of the permit, someone would have to pay the quarantine fees, even if the disaster relief operator and the Government of Namibia have agreed beforehand that the operator shall not be liable for certain types of costs and fees payable in Namibia.<sup>96</sup>

### **The Regulations under the Animal Diseases and Parasites Act**

In terms of the Regulations to the Animal Diseases and Parasites Act, which deal with inter alia the importation of dogs<sup>97</sup>, dogs may not be imported into Namibia without a written permit issued by a state veterinarian.<sup>98</sup> The Regulations do not contain any exemptions from the permit requirement. Any disaster relief operator intending to import dogs on an urgent basis into Namibia would thus be well advised to make prior arrangement to ensure that a state veterinarian is available upon arrival in Namibia, and to ensure that the operator has available all information and proof required to minimize or totally obviate the need for quarantining the dogs.

The regulations further compel anybody who possesses a dog to have it vaccinated against rabies not before such a dog is three months old and not later than when the dog is seven months old, and then at least every three years after that.<sup>99</sup> The veterinarian who administers the vaccination is obliged to issue a vaccination certificate which must include inter alia the name, age, breed, colour and distinguishing marks of the dog concerned, the date of the vaccination or re-vaccination, the type of the vaccine used and the name of the person who was the owner of or had custody of the dog at the time of vaccination.<sup>100</sup> The above is thus a summary of the minimum information that a disaster relief operator would have to bring along when it is intended to import rescue dogs into Namibia.

### **The Animal Health Act 1 of 2011**

The Animal Health Act 1 of 2011 is a very new piece of legislation which has already been promulgated in the Government Gazette in April 2011.<sup>101</sup> This Act will however only come into operation when the regulations and the commencement of the Act are also published by notice in the Government Gazette. When that happens, this new Act will repeal the Animal Diseases and Parasites Act 3 of 1956 in its entirety.<sup>102</sup> At the time of writing this report no confirmation could be obtained as to when it is envisaged that commencement of the new Act will be promulgated, except that the task of drafting of the regulations has already been initiated.

Agricultural livestock trade and even game trade are in increasing economic sector in Namibia, which explains why Namibia has passed the new Animal Health Act 1 of 2011 in April 2011 to replace in its entirety the Animal Diseases and Parasites Act 13 of 1956. As in the case of food import controls, the controls with regard to animal importation

<sup>93</sup> Ibid,para.18(1)(c).

<sup>94</sup> Ibid,para.2(2).

<sup>95</sup> Ibid,para.2(3).

<sup>96</sup> Draft Disaster Risk Management Bill,para.49.

<sup>97</sup> Government Notice R 1924 of 1974 in Government Gazette of 25 October 1974.

<sup>98</sup> Ibid,para.13.

<sup>99</sup> Ibid,para.14.

<sup>100</sup> Ibid,para.15.

<sup>101</sup> Government Gazette No 4694 of 20 April 2011.

<sup>102</sup> Animal Health Act 1 of 2011,para.37.

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are in place to protect an entire and very important economic sector of the country from disastrous consequences if a veterinary disease were to be imported with animals under uncontrolled circumstances. This also explains the hefty fines imposed in the new Act for violations of the import stipulations.

The new Act prohibits importation of animals except with an import permit and on condition that the importation is carried out in accordance with the conditions as prescribed and specified in the permit.<sup>103</sup> The Act further stipulates that despite being in possession of an import permit, a person may not import any animal if the person knows or has reason to believe that the animal is infected with a disease or infectious agent.<sup>104</sup>

It is a further condition of the Act that an animal in respect of which an import permit has been issued, may only be imported into the country at the place specified in the permit.<sup>105</sup> The animal must then be made available at a place of entry to a veterinary official for the purpose of inspection.<sup>106</sup> Thereafter, the animal may only be removed from the place of entry with the written consent of a veterinary official.<sup>107</sup> A person who contravenes or fails to comply with any provision of this and other provisions in the same section commits an offence and is liable to a fine not exceeding N\$1,000,000 (one million Namibia dollars) or to imprisonment for a term not exceeding 20 years or to both such fine and such imprisonment.<sup>108</sup> The Act does not contain any exemption or waiver conditions.

### Transit of Animals through Namibia

For the purposes of Transit an animal may also only be imported into Namibia if a transit permit has been issued, which authorizes the importation and transit of the animal.<sup>109</sup> The criminal liability in the case of importing an animal in respect of which the importer has reason to believe that it is infected also applies in the transit scenario.<sup>110</sup> There is no stipulation with regard to keeping the animal at the place of entry pending inspection, but the Chief Veterinary Officer may specify other conditions to be complied with by the importer or other person in charge of the animal.<sup>111</sup> The same penalty provisions of up to N\$ 1 million or up to 20 years imprisonment also apply to violation of the transit conditions.<sup>112</sup> Thus, fast response time for disaster risk assistance with rescue dogs to a neighbouring country is severely hampered by this Act.

### Recommendations

It is recommended that the regulations of the new Animal Health Act, which are currently being drafted, include specific exemptions from import permit requirements and that quarantine stipulations can be kept to a minimum for dogs and other animals used in rescue operations. The regulations should make special mention of disaster

<sup>103</sup> Ibid,para.7(1).

<sup>104</sup> Ibid,para.7(2).

<sup>105</sup> Ibid,para.7(8)(a).

<sup>106</sup> Ibid,para.7(8)(b).

<sup>107</sup> Ibid,para.7(8)(c).

<sup>108</sup> Ibid,para.7(11).

<sup>109</sup> Ibid,para.8(1).

<sup>110</sup> Ibid,para.8(2).

<sup>111</sup> Ibid,para.8(6).

<sup>112</sup> Ibid,para.8(7).

relief scenarios and accommodate the special need for quick response and transfer of disaster relief animals to the disaster location in order to save lives.

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## **The Management of Foreign Personnel during a Disaster**

### **Entry of Response Personnel**

The IDRL Guidelines recommend that, in case of international disaster response the affected State should waive or expeditiously grant visas and any necessary work permits for the relief and recovery personnel of assisting states and approved humanitarian organisations. Where visas are required, they should ideally be provided without cost and should be renewable within the territory of the affected state for the time required for the response.

The Immigration Control Act 7 of 1993 has no specific provisions for visas for international relief personnel. Visas in Namibia can be obtained either at the point of entering Namibia or at Namibian embassies abroad. People who visit Namibia for tourism for less than 90 days per year can obtain visas at the port of entry and do not need visas prior to entering the country. However, travellers coming for work, whether paid or voluntary, must obtain a work permit prior to entering Namibia.

This means that a disaster response provider would be required to obtain a work permit for their operations in Namibia prior to entering Namibia. No time frame can be given for the processing of work permits, because the Immigration Selection Board is overburdened with the number of applications and in addition does not always meet regularly. As a result, some applicants wait for many months before any response or acknowledgment of receipt of the application is received.

The Minister of Home Affairs may exempt any person or category of persons from all or any of the provisions of the Act with respect to visa requirements. The Minister may even exercise this power retrospectively.<sup>113</sup> There is no requirement that the Minister gives effect to any exemptions by Notice in the Government Gazette. The Minister must only inform the Chief of Immigration of the decision made.<sup>114</sup>

It would appear, therefore, that while there are no specific provisions about disasters, existing Namibian Immigration law would be adequate to expedite the entry of foreign relief personnel, as well as granting the necessary exemptions and permissions to enable the foreign personnel to conduct their relief activities in Namibia.

The participants at the IDRL Workshop advised that in practice the issuing of special visas or granting of exemptions is done very effectively by the Ministry of Home Affairs, if a notice is issued to it by the Directorate of Disaster Risk Management. Such notice must include the names and passport numbers of the persons to enter the country under special permission. This means that in a disaster scenario which requires a very quick response from an international response operator, the operator would first have to obtain confirmation from the Directorate of Disaster Risk Management has submitted all details of the arriving crew members to Ministry of Home Affairs and has obtained clearance for their entry into and permission to work in Namibia.

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<sup>113</sup> Immigration Control Act, para.35(1).

<sup>114</sup> Ibid.

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For the benefit of increased efficiency it may however be recommendable if for the draft Disaster Risk Management framework to contain a section in which an international disaster personnel visa is created - as suggested by the draft IDRL Model Act for the Facilitation and Regulation of International Disaster Relief and Recovery Assistance.<sup>115</sup> The benefit hereof would be that the necessary legal basis would already be in place at the time of a disaster and that the immigration officials at the ports of entry would already be empowered to allow the international disaster relief personnel to enter the country with permission to work, instead of having to wait for the Minister's exemptions and waivers in terms of the Immigration Control Act.

### Recognition of Professional Qualifications of Foreign Staff

The IDRL Guidelines recommend that affected States should establish expedited procedures for temporary recognition of professional qualifications of foreign medical personnel, architects and engineers that are necessary for the performance of disaster relief.<sup>116</sup>

There are no specific provisions in the various professional bodies' regulatory rules of Namibia that provide for expedited recognition of foreign professional qualifications. With regard to medical practitioners, no person is allowed to practice any medical profession in Namibia unless such person is registered in terms of the Act, to practice the profession concerned.<sup>117</sup>

For example, a foreign medical doctor wishing to practice in Namibia, must obtain permission from the Minister of Health as provided for under the Medical and Dental Act<sup>118</sup> and would be required to present the following documents:

- a. the certificate relating to the qualification;<sup>119</sup>
- b. written proof that the applicant has satisfactorily completed the period of practical training and has met all the requirements prescribed in respect of such practical training;<sup>120</sup>
- c. if the applicant was registered previously in a country other than Namibia to practise the profession, a letter of good standing from the registering authority concerned of each country in which the applicant was registered or practised his or her profession during the five years immediately preceding the date of the application;<sup>121</sup>
- d. payment of the fees determined by the Council in respect of such application, or written proof of the payment to the Council;<sup>122</sup>

The documents above have to be presented to the professional body in original or in copies certified by a commissioner of oaths.

The Act does not contain any exemption provision in terms of which the Minister of Health can exempt a foreign qualified medical practitioner from the registration requirement before being allowed to practice in Namibia. Nor does the Act contain any expedited registration or recognition of qualification provision. In light of the fact that

<sup>115</sup> Article 27.

<sup>116</sup> IDRL Guidelines para. 16(1)(c).

<sup>117</sup> Para.17(1).

<sup>118</sup> Act No. 10 of 2004.

<sup>119</sup> Medical and Dental Act sec 19 (2) a.

<sup>120</sup> Medical and Dental Act sec 19 (2) b.

<sup>121</sup> Medical and Dental Act sec 19 (2) c.

<sup>122</sup> Medical and Dental Act sec 19 (2) f.

contravention of the Act amounts to a crime, there is the need for legislative intervention to address this situation. The draft IDRL Model Act for the Facilitation and Regulation of International Disaster Relief and Recovery Assistance suggests that a legislating state shall establish lists of countries and or educational institutions whose health professionals, architectural, engineering and other relevant professionals may be given automatic recognition of their foreign qualifications when deployed by an eligible assisting international actor during an international disaster relief or initial recovery period. The list shall be reviewed at least once per year.<sup>123</sup>

The Model Act further provides that the legislating state shall also establish expedited procedures to be applied for the assessment and recognitions of the foreign qualifications of the international disaster personnel of eligible assisting international actors originating from countries or institutions not included on the above-mentioned lists. These procedures shall balance safeguards for public safety and health against the urgency or disaster needs.<sup>124</sup> A further provision is that the recognition of the foreign qualification shall exempt the international disaster personnel from the requirement of compulsory membership of professional associations or other professional registration processes within the legislating country until the end of the initial recovery period.<sup>125</sup> Namibia should include such a provision in the draft Disaster Risk Management Bill, especially for medical practitioners.

## Recommendations

- Although the Immigration Control Act 7 of 1993 empowers the Minister of Home Affairs to grant exemptions and waivers with regard to all the entry visa and work permit requirements in terms of the Act, it is recommended that an international disaster personnel visa be created in terms of the draft Disaster Risk Management framework, as suggested by the draft IDRL Model Act for the Facilitation and Regulation of International Disaster Relief and Recovery Assistance. This would have the benefit that at the time of entry of international disaster relief personnel, there would already be a legal basis upon which immigration officials could give disaster personnel the permission to work in Namibia. This will be much faster than waiting for the Minister to give the waivers and exemptions as provided for in the Immigration Control Act.
- With regard to the recognition of the qualifications of international professional disaster relief personnel, especially for medical personnel, it is recommended that the suggested provisions as contained in the IDRL Model Act also be incorporated into the draft Disaster Risk Management Bill, namely the expedited registration or recognition of qualification provision with reference to a pre-approved list of countries and institutions whose graduates would qualify for this expedited procedures, and the exemption from the requirement to be registered with local professional bodies. With the current Namibian legislation it would not be possible for foreign personnel to work in Namibia without the necessary recognitions and registrations, without thereby committing a punishable crime.

<sup>123</sup> Article 28(a).

<sup>124</sup> Ibid, Article 28(b).

<sup>125</sup> Ibid.



## Transport during Disaster

### Transport of Relief Goods

The IDRL Guidelines recommend that originating, transit and affected States should not delay permission for the speedy passage of land, marine and air vehicles operated by an assisting State or eligible assisting humanitarian organisation for the purpose of transporting disaster relief or initial assistance recovery and the originating, transit and affected States should ideally waive the applicable fees.<sup>126</sup>

The Road Traffic and Transport Act<sup>127</sup> which deals *inter alia* with cross border road transport between Namibia and contracting countries,<sup>128</sup> prescribes that no person shall undertake road transport on a public road from a point in Namibia crossing or intending to cross its border into the territory of a contracting country to a destination in that country unless such person is the holder of a cross border permit issued by a competent authority.<sup>129</sup> The same condition also applies to a person who undertakes road transport or intends to do so from a point in a contracting country crossing Namibia's border to a destination in Namibia.<sup>130</sup> However, the chapter under which these provisions fall, contains a definition for road transport for the chapter, in terms of which it is defined as "the transport of passengers or freight by road for reward or in the course of the industry, trade or business of a carrier or by means of a hired vehicle"<sup>131</sup>

It is clear that vehicles owned and used by a disaster relief operator do not fall into the definition of road transport as defined in chapter dealing with cross border road transport.<sup>132</sup> To ensure that the section not be misinterpreted it would however be advisable for the draft Disaster Management Bill to refer specifically to this chapter of the Road Transportation Act and to explicitly state that relief vehicles do not conduct road transport as defined in the Road Transport Act, and to explicitly exempt vehicles hired by disaster relief operator locally from the obligation to have cross border permits.

Namibia should further enter into agreements with neighbouring countries to make these exemptions applicable and binding there as well. Disaster relief operations would benefit from such agreements in the event that Namibia needs to be used as a transit state for disaster relief, destined for other countries in the Southern African region.

### Foreign Aircraft in Relief Operations

The Aviation Act 74 of 1962 enables the Minister responsible for transport to promulgate regulations relating to *inter alia* the delimitation, designation or restriction of airspace, or the purpose for which such airspace may be used<sup>133</sup> and the general operating rules, flight rules and air traffic rules in respect of civil aviation.<sup>134</sup> The Minister's powers also extend to making regulations relating to the manner in which, or the conditions under which, any license or certificate required by or under this Act, the Convention on

<sup>126</sup> IDRL Guidelines, art. 19(1).

<sup>127</sup> [a22y1999]Road Traffic and Transport Act 22 of 1999.

<sup>128</sup> According to the definition in section 1, a "contracting country" means a country other than Namibia which is a party to a cross-border road transport agreement.

<sup>129</sup> Ibid,para.70(1)(a).

<sup>130</sup> Ibid,para.70(1)(b)

<sup>131</sup> Ibid,para.68.

<sup>132</sup> Road Traffic and Transport Act 22 of 1999, Part II,para.68 – 72.

<sup>133</sup> Aviation Act,para.22(1)(l).

<sup>134</sup> Ibid,para.22(1)(m).

International Civil Aviation (the Chicago Convention)<sup>135</sup> or the International Air Services Transit Agreement (the Transit Agreement)<sup>136</sup> shall be issued, renewed or confirmed,<sup>137</sup> and most importantly, also relating to the exemption from any of the provisions of the Act, the Convention or the Transit Agreement of any aircraft operated for experimental purposes, or of any other aircraft or of any person in or under the circumstances or conditions prescribed by regulation,<sup>138</sup> and in general, any matter which the Minister may consider necessary or expedient to prescribe in order that the objects of the Act may be achieved.<sup>139</sup>

Therefore, even though the Act does not specifically create any exemptions or fee waivers for aircraft operated by or for disaster relief operations, the Act does enable the Minister responsible for transport to issue regulations which grant these specific exemptions. The Ministry should thus draft such Regulations, which can be in line with the International Federation of the IDRL Model Act for the Facilitation and Regulation and International Disaster Relief and Initial Recovery Assistance.<sup>140</sup> In terms of this Model Act eligible assisting international actors shall be accorded priority in air traffic routing and landing permission, and they shall be exempt from all applicable taxes, levies, duties, fees and other charges for landing, parking, take off and navigation services, as well as from prohibitions, limitations and restrictions in respect of entry, over flight or exit of the legislating country's airspace.<sup>141</sup> Another possibility would be to include a section in the Draft Disaster Risk Management Bill and its Regulations which confers the necessary powers of granting exemptions and waivers on a disaster risk management authority, in the event of a disaster which requires an international response.

The Aviation Act further stipulates that the provisions of the Act and of the Chicago Convention shall, except where expressly excluded under the Act or by Regulation, apply to all aircraft whilst in or over any part of Namibia or the territorial sea thereof and to all Namibian aircraft and personnel wherever they may be.<sup>142</sup> As such, the provisions of Article 5 of the Chicago Convention which deals with aircraft on non-scheduled flights into or in non-stop transit flights over the territory of contracting States to the Convention are binding on Namibia as well:

*Each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing. Each contracting State nevertheless reserves the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions which are inaccessible or without adequate air navigation facilities to follow prescribed routes, or to obtain special permission for such flights. Such aircraft, if engaged in the carriage of passengers, cargo, or mail for remuneration or hire on other than scheduled international air services, shall also, subject to the provisions of Article 7, have the privilege of taking on or discharging*

<sup>135</sup> Drawn up at Chicago on 7 December 1944.

<sup>136</sup> Drawn up at Chicago on 7 December 1944.

<sup>137</sup> Ibid, section 22(1)(q).

<sup>138</sup> Ibid, para. 22(1)(v).

<sup>139</sup> Ibid, para. 22(1)(w).

<sup>140</sup> Version of 10 August 2011.

<sup>141</sup> International Federation of the IDRL Model Act for the Facilitation and Regulation and International Disaster Relief and Initial Recovery Assistance, Article 50.

<sup>142</sup> Aviation Act, para. 2(1).



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*passengers, cargo, or mail, subject to the right of any State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable*

This Article 5 of the Chicago Convention will become very relevant when international disaster response operators originating from contracting States to the Convention intend to fly into Namibia to provide disaster response services, as well as when such operators wish to use Namibia as a transit route (with or without landing) to reach their ultimate destination in another country for the purposes of providing disaster response services.

### Insurance of Vehicles

No law in Namibia compels motor vehicle owners or users to have the vehicles insured for third party liability. There is however the statutory Motor Vehicle Accident Fund, created by the Motor Vehicle Accident Fund Act 10 of 2007. The Fund receives monies through a portion of the fuel price, which is allocated to the Fund.<sup>143</sup> The Fund is liable for any loss or damage suffered as a result of personal injury or death of a person.<sup>144</sup> In other words, no compensation claims for damages to property lie against the fund. Therefore, in the absence of a legal mechanism which gives international disaster response operators immunity from legal liability, such operators will have to obtain private insurance against third party claims against loss and damage suffered as a result of the use of their vehicles or of loss and damage suffered by any conduct of an international disaster response organisation staff member.

An alternative could be that the National Disaster Risk Fund established in terms of National Policy for Disaster Risk Management in Namibia<sup>145</sup> pays for any insurance premiums for private insurance for disaster relief operations. This could however be a very costly commitment, which would divert necessary resources away from the people in need, who are a priority in the wake of a disaster scenario.

### Driving Licenses

The IDRL Programme's draft Model Act for the Facilitation and Regulation of International Disaster Relief and Recovery Assistance<sup>146</sup> advises in Article 29 that the Ministry of Transport of the legislating state shall accord temporary recognition of foreign driving licences of international disaster personnel of eligible assisting international disaster response operators, at a minimum during the disaster response and initial recovery periods. This provision is not necessary if the legislating country already recognizes international driving licences pursuant to the Convention on Road Traffic, Vienna, 1968 (which had 70 state parties as at July 2011). Namibia's Road Traffic and Transport Act 22 of 1999 does in fact recognise foreign driving licences pursuant to this Convention.<sup>147</sup> For any disaster relief operators from one of the 70 member countries of the convention, there will therefore be no problems when their staff need to drive vehicles in Namibia.

<sup>143</sup> Motor Vehicle Accident Act, para.4 read with the Petroleum Products and Energy Act 13 of 1990.

<sup>144</sup> Motor Vehicle Accident Act, para.24.

<sup>145</sup> 2009, chapter 6, p. 39.

<sup>146</sup> Version of 10 August 2011.

<sup>147</sup> Road Traffic and Transport Act 22 of 1999, para.41.

### Recommendations

- Namibia should grant permission for a 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. 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.
- It is recommended that all pertinent authorities in Namibia should facilitate the entry into, exit from and transit through its territories of the ground, air and water transport carrying personnel, goods or equipment of eligible assisting international actors. The Minister of Finance should allow ground vehicles operated by or on behalf of eligible assisting international actors, including spare parts and fuel supplies necessary for the operation of the vehicle, to be exempted from import and export taxes and any other financial burdens.
- It is also recommended that the Minister of Transport should allow aircrafts vehicles and vessels entering Namibia via air, water or road and which are operated by or on behalf of assisting international actor's priority in the various areas of traffic for landing, entering into ports and driving permissions. In addition, they should all be exempt from all taxes, levies, duties, landing fees, parking fees, docking fees, taking off and navigation services fees. However this will pose a duty on the assisting international actors or their carriers to inform the authorities of their intended route of arrival in Namibia, type and call signs of the aircraft, the vessel name, the character of the cargo they are transporting and the list of all passengers.
- It should be made unequivocally clear in the Draft Disaster Risk Management Bill and its Regulations that any transportation of people, goods or equipment by or on behalf of disaster response operators are not transportation operations for the purposes of the Road Traffic and Transport Act 22 of 1999. A road transport official dealing with a disaster scenario should not have to try to interpret the current provisions of the Act if it seems unclear. In such a situation it may be that the official would err on the overcautious side and require the relevant road transportation permits to be in place.
- It is recommended that the National Disaster Fund should allocate a certain amount of monies specifically for paying insurance premiums on behalf of international disaster response operators, so that they are covered for third party liability. When doing so, the Fund will have to carefully scrutinise how much money is set aside for this purpose, as it will potentially deprive people in need of disaster relief goods such as clothing, food, water etc from essential provisions.
- As Namibia is already a party to the Convention on Road Traffic, Vienna, 1968, most countries' disaster relief operators will be able to operate in Namibia with their driving licences, which are recognised in Namibia. It may however be prudent for Namibia to nevertheless include a provision in its Draft Disaster Risk Management Bill and its Regulations which stipulates that for the duration of disaster response and initial recovery periods Namibia shall accord temporary recognition of foreign driving licences of international disaster personnel of eligible assisting international disaster response operators so that the operators from countries other than the 70 members of the Convention can also operate in Namibia in the event of a disaster.

## Tax, Currency Exchange and Charges

### Tax and Currency Exchange for Disaster Relief Activities

The IDRL Guidelines suggest that assisting States and eligible assisting humanitarian organisations should be granted the right to freely bring the necessary funds and currencies in or out of the affected State through legal means and to obtain legal exchange rates in connection with their disaster relief or initial recovery assistance.<sup>148</sup>

In the wake of international terrorism, and the funding for such terrorism, Namibia passed the Financial Intelligence Act 3 of 2007. This Act seeks to regulate all activities and persons and institutions which may be used by money launderers. As such, it places certain obligations on accountable institutions to have certain anti money laundering measures in place, including the duty to ascertain the correct identity of the client,<sup>149</sup> the actual existence of the client if the client is a legal entity,<sup>150</sup> and the authority of the representative of the client to act on behalf of the client.<sup>151</sup> Accountable institutions include banks, lawyers and currency exchange dealers, including persons who sell or redeem travellers' cheques, money orders or similar payment instruments.<sup>152</sup>

The Act further obliges accountable institutions to maintain accounts in the name of the account holder and not to open, operate or maintain any anonymous account or any account in a fictitious, false or incorrect name.<sup>153</sup> Contravention of any of the stipulations can lead to a fine of up to N\$ 500,000.00 or to imprisonment of up to 30 years or to both.<sup>154</sup> This will make urgent money transfers to Namibia difficult for disaster response operators, as the Namibian accountable institution will first have to ascertain that the money really comes as part of a disaster relief response. As this may entail that the accountable institution pursues its own investigation into the identity and other details of the client, it may take several days before the accountable institution has satisfied itself about the legality of the transfer. As the Act also specifically prohibits the opening of a bank account in a false name, it will not be possible for a staff member of a disaster relief organisation to put money into an account, opened in the name of a staff member, as disaster relief operators sometimes do, to overcome the problem of a lack of legal personality in the affected country.

The problem is compounded by the obligation on accountable institutions to notify the central bank of electronic transfers which are beyond a certain prescribed amount.<sup>155</sup> The situation must therefore be addressed by including in the Draft Disaster Risk Management Bill and its Regulations a provision which enables the Ministry of Finance and the central bank to facilitate the transit through Namibia of funds and currencies by eligible assisting international actors as they deem necessary to provide international disaster relief and initial recovery assistance, as suggested in the IDRL Programme draft Model Act for the Facilitation and Regulation of International Disaster Relief and initial Recovery Assistance.<sup>156</sup> Namibia should also include a provision in the Draft Disaster Risk Management Bill and its Regulations which enables the central bank

<sup>148</sup> Para.20(2).

<sup>149</sup> Para.13(2)(a).

<sup>150</sup> Para.13(3)(a).

<sup>151</sup> Para.13(3)(c).

<sup>152</sup> Para.1(1) read with Schedule 1.

<sup>153</sup> Para.13(4).

<sup>154</sup> Para.13(5).

<sup>155</sup> Para.22.

<sup>156</sup> Article 61.

to make available to eligible international actors the most favourable legal exchange rates available, as further suggested by the draft Model Act.<sup>157</sup> The Model Act further suggests a clause in terms of which the legislating state allows eligible assisting international actors to open accounts in domestic banks, or in domestic branches of international banks.<sup>158</sup> This should also be included in the draft Disaster Risk Management Act. However a minimum of scrutiny should be allowed, including some details and proof which the international actor should provide before the Namibian banks should be able and obliged to open a bank account. In such a way, the real danger of money laundering can be fought more effectively by Namibia in the event of a disaster.

### **Income Tax for Humanitarian Organisations and Personnel Providing Relief in Namibia**

The IDRL Guidelines suggest that affected States should provide exemptions to assisting States and eligible assisting humanitarian organisations from value-added and other taxes or duties directly associated with disaster relief and initial recovery.<sup>159</sup>

The Income Tax Act 24 of 1981 provides exemptions from income tax for income of certain organisations or associations, registered or deemed to be registered, including foreign organisations, the sole object or one of the principal objects of which are *inter alia* to provide useful commodities, amenities, or services to the State, or the inhabitants of Namibia in general.<sup>160</sup> All international disaster response organisations should fall under this category. The more pertinent question is however what kind of income by an international disaster response actor would be counted as taxable income in the first place, even without regard to the exemptions. The answer to this will depend on how any receipt of money is constructed legally. Thus, if it were for example agreed beforehand, that a local authority or even a domestic NGO would compensate an international disaster relief organisation for disaster response services provided, then such exchange of money should not be constructed contractually as a payment for goods and services but rather as a compensation for expenses incurred. Even prior to the actual transaction, the framework within which the international disaster response operator will operate in Namibia should be delineated at the beginning when the international organisations are requested to enter Namibia for the purposes of providing disaster relief work.

The Income Tax Act further exempts income of any organisations or associations, registered or not, including foreign organisations whose sole or principal object is to provide medical, dental, blood transfusion, hospital or nursing services.<sup>161</sup> The income of international disaster response organisations which provide medical relief work would thus fall under the exemption. The section which further exempts from tax, income of all ecclesiastical, charitable and educational institutions of a public character (whether or not supported wholly or partly by grants from the public revenue)<sup>162</sup> unfortunately does not explicitly state that such organisations can be unregistered and foreign. An international disaster relief organisation might therefore be faced with an unfavourable interpretation of this section by the relevant tax authorities, which would mean that

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<sup>157</sup> Article 62.

<sup>158</sup> Article 63.

<sup>159</sup> Para.21.

<sup>160</sup> Para.16(1)(e).

<sup>161</sup> Para.16(1)(f)(i)(bb).

<sup>162</sup> Para.16(1)(j).

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such an organisation's income would not be tax exempt if the organisation did not fall into either of the first mentioned categories of tax exempt bodies.

It is therefore necessary that the Draft Disaster Risk Management Bill and its Regulations include a section in which international disaster relief organisations are a specified category of organisations, whose income is exempt from income tax. This would obviate the need to potentially have to show and prove that an international actor falls within the existing exemptions of the Income Tax Act. The provision would also apply to the income of international disaster relief personnel.

The Income Tax Act 24 of 1981 exempts salaries and emoluments payable to any person who holds office in Namibia as an official of any government, other than the government of Namibia, or any Specialized Agency of the United Nations as contemplated in the Convention on the Privileges and Immunities of the Specialized Agencies as approved by the General Assembly of the United Nations on 21 November 1947, provided such person is stationed in Namibia for that purpose by virtue of an agreement between such government or such a Specialized Agency and the Government of Namibia, is not a Namibian citizen or ordinarily resident in Namibia, and the salaries and emoluments concerned are paid from a source outside Namibia.<sup>163</sup> Income of any person or organisation entitled to privileges under the Diplomatic Privileges Act 71 of 1951 is also exempted from income tax.

The above mentioned provisions are thus only applicable to international staff based on a long term basis in Namibia, based on diplomatic relations and the relevant agreements. The personnel of emergency response operations are not covered by this provision and that is why it is necessary that the Draft Disaster Risk Management Bill and its Regulations include a section which specifically exempts such personnel from income tax liability, as the IDRL Programme's draft Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance suggests.<sup>164</sup>

### Value Added Tax (VAT)

The IDRL Guidelines recommend that 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.<sup>165</sup>

The IDRL Programme's draft Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance suggests that zero rating the supply of goods and services by international disaster relief organisations is the more practicable approach, as it places the least administrative burden or financial penalty on local suppliers.<sup>166</sup> This could also be a useful construction for Namibia. By zero rating such supplies, local suppliers would not have to charge an international disaster response organisation VAT instead of first having to charge and then later apply for reimbursement from the receiver of revenue.

The Value Added Tax Act 10 of 2000 defines taxable activity as inter alia any activity which is carried on continuously or regularly by any person in Namibia or partly in Namibia, whether or not for a pecuniary profit, that involves or is intended to involve,

<sup>163</sup> Income Tax Act sec 16 (c).

<sup>164</sup> Article 59.

<sup>165</sup> Para.21.

<sup>166</sup> Article 58.



in whole or in part, the supply of goods or services to any other person for consideration.<sup>167</sup> The activities of international disaster relief organisations which would operate in Namibia only for the initial response and recovery period would thus fall outside of this definition which refers to continuous or regular activity. However for any organisation which would be active for longer than maybe three months or possibly 6 months, an unfavourable interpretation may hold that they are continuously or regularly conducting their activities. It is thus necessary that the Draft Disaster Risk Management Bill and its Regulations include a provision which exempts the activities of international disaster response organisations and thereby removes all ambiguities and uncertainties.

The Value Added Tax Act contains a schedule which lists all the tax exempt supplies of goods and services<sup>168</sup> and another schedule which lists all tax exempt imports.<sup>169</sup> The former schedule exempts inter alia the services of various medical practitioners who are registered in terms of the respective Namibian law applicable to their professions.<sup>170</sup> These exemptions would thus not apply to international disaster relief medical staff. The schedule for exemptions of imports lists inter alia goods imported for welfare or charitable purposes consisting of used clothing purchased by or forwarded unsolicited and free to any church or any welfare organisation as defined in section 1 of the National Welfare Act 79 of 1965, for distribution free of charge by such church or organisation to indigent persons, subject to production at the time of importation of a written declaration by such church or organisation that the goods have been purchased or forwarded unsolicited and free and that they will be distributed free of charge to indigent persons;<sup>171</sup> This begs the question whether any imports arriving as a result of an official call for disaster relief response by the government of Namibia, will still be considered as unsolicited.

The Schedule also specifically lists for tax exemption, goods imported for the relief of distress of persons in cases of famine or other national disaster, or under any technical assistance agreement, or in terms of an obligation under any multilateral international agreement to which Namibia is a party.<sup>172</sup>

## Recommendations

Although the Income Tax Act 24 of 1981 and the Value Added Tax Act 10 of 2000 both contain exemption provisions which would apply to international disaster relief organisations and the goods and services supplied by them, it is recommended that for ease of reference the applicable exemption and waiver provisions be incorporated in the draft Disaster Risk Management framework. This would avoid potentially unfavourable interpretations being made of legal provisions which are not one hundred percent unambiguous as their applicability in very specific cases or with reference to specific goods and services. Inclusion in the draft Disaster Risk Management framework should also contain clear procedural steps to be followed by the international disaster relief organisations, as well as local suppliers which will be dealing with them, as well as the tax authorities.

<sup>167</sup> Para.4(1)(a).

<sup>168</sup> Schedule IV, read with section 13 of the Act .

<sup>169</sup> Schedule V, read with section 13 of the Act.

<sup>170</sup> Schedule IV,para.2(b).

<sup>171</sup> Schedule V,para.2(c).

<sup>172</sup> Schedule V,para.2(g)(i), rebate item 412.11.

## Freedom of Access and Security

### Freedom of Movement during Disaster

The IDRL Guidelines recommend that affected states should facilitate access to affected persons and freedom of movement of disaster relief and initial recovery personnel of assisting States and assisting humanitarian organizations into and from disaster affected areas, bearing in mind the safety of disaster relief and initial recovery personnel.<sup>173</sup>

There are no laws in Namibia that restrict movement. In light of Namibia's apartheid history up to Independence in 1990, during which time there were certain areas reserved for access only to certain people, based on race, it is no wonder that the Namibian Constitution now contains the fundamental freedom of all persons to move freely throughout Namibia.<sup>174</sup> The Constitution also contains the fundamental right to freedom of association,<sup>175</sup> which, it is submitted, would be violated if any person would be denied access to disaster affected persons.

It must however be pointed out that the Constitution allows for reasonable restrictions to be imposed by law on the fundamental freedoms contained in Article 21(1), which restrictions are necessary in a democratic society and are required in the interest of the sovereignty and integrity of Namibia, national security, public order or morality, or in relation to contempt of court, defamation or incitement to an offence.<sup>176</sup>

It is possible that an international disaster response operation may require access to refugees in Namibia. The Namibia Refugees (Recognition and Control) Act 2 of 1999 does in fact restrict access to refugees, in that it stipulates that access to a refugee settlement requires written permission from the Minister of Home Affairs or the Commissioner of Refugees.

*Any person (other than a person who is required in terms of section 20 to reside in a reception area or a refugee settlement) who, without the prior written permission of the Minister or the Commissioner or the authorized officer in charge of a reception area or refugee settlement, enters or is on or in any reception area or refugee settlement shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$ 2,000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.*<sup>177</sup>

As Namibia's Commissioner for Refugees is also the Deputy Director in the Directorate for Disaster Risk Management in the Office of the Prime Minister, the required consent could be obtained fairly quickly, provided that in any particular case of required access the consent will really be able to be given (an decided on) by the Commissioner rather than the Minister.

The Namibia Refugees Act stipulates that the provisions of the UN Convention on Refugees, 1951, as amended by the Protocol on Refugees, 1967, and the OAU Convention on Refugees, 1969 shall have the force and effect of law in Namibia.<sup>178</sup> Therefore Namibia is bound to the principle of non-discrimination contained in the Convention on Refugees, which states that *The Contracting States shall apply the provisions of this Convention*

<sup>173</sup> IDRL Guidelines, para.16(1)(d), p .81.

<sup>174</sup> Constitution of Namibia, Article 21(1)(g) .

<sup>175</sup> Ibid, Article 21(1)(e).

<sup>176</sup> Ibid, Article 21(2).

<sup>177</sup> Namibia Refugees (Recognition and Control )Act 2 of 1999, para.22.

<sup>178</sup> Ibid, para.2.



to refugees without discrimination as to race, religion or country of origin.<sup>179</sup> However, it must be pointed out that in terms of the Refugee Act, a person is only a refugee after the status of refugee has officially been granted to that person by the Commissioner of Refugees,<sup>180</sup> on the recommendation of the Namibia Refugees Committee, which is also established in terms of the Act.<sup>181</sup> This if a disaster scenario results in a number of people fleeing from a neighbouring or any other country, a disaster relief operator may only be able to use the provisions of the Refugee Convention to secure access, after the persons in need of the disaster relief have had the refugee status officially bestowed on them. This does not mean that access of international disaster relief operators would automatically be restricted due to non conferral of the disaster status. However, in a possible scenario, where a disaster has been formally declared, there might be a problem of conflicting jurisdictions between such international disaster relief operator and the relevant disaster risk management committee, at least if the conduct of the international operator and the local disaster committee are not coordinated and agreed upon.

### Ensuring the Safety and Security of Assistance

The IDRL Guidelines recommend that affected States should take appropriate measures to address the safety and security of disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organisations 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 organisations should also take appropriate steps in their own planning and operations to mitigate security risks.<sup>182</sup>

In Namibia there is no legal provision that grants special protection measures for relief personnel. The tasks of protecting all persons and all property in Namibia fall on the Police Force and the Defence Force. The laws establishing the two forces<sup>183</sup> both contain provisions which would allow for special safety arrangements which could be made for relief personnel, premises, transport, equipment and goods.

### The Police Act

The general functions of the Police Force include the preservation of the internal security of Namibia<sup>184</sup> as well as the prevention of crime<sup>185</sup> and the protection of life and property.<sup>186</sup> In exercising the abovementioned functions, a police officer has the power to erect barriers, or a cordon in or across any road, street or any other public place,<sup>187</sup> or across or around any private property.<sup>188</sup> Insofar as exercising any of the above powers interfere with or limit a person's constitutional rights, they may be exercised by the police only on the grounds of prevention of crime<sup>189</sup> or the protection of the constitutional privacy rights<sup>190</sup> of others.<sup>191</sup>

<sup>179</sup> United Nations Convention Relating to the Status of Refugees of 28 July 1951, Article 3.

<sup>180</sup> Namibia Refugees (Recognition and Control) Act 2 of 1999, para.6(a).

<sup>181</sup> Ibid, para.7.

<sup>182</sup> IDRL Guidelines, para.22.

<sup>183</sup> Police Act 19 of 1990 and the Defence Act 1 of 2002.

<sup>184</sup> Police Act, section 13(a).

<sup>185</sup> Ibid, para.13(d).

<sup>186</sup> Ibid, para.13(e).

<sup>187</sup> Ibid, para.16(1)(a).

<sup>188</sup> Ibid, para.16(1)(b).

<sup>189</sup> Ibid, para.16(4)(a).

<sup>190</sup> Constitution of Namibia, Article 13(1).

<sup>191</sup> Police Act, para.16(4)(b).

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The Police Act also has provisions specifically applicable to emergency situations. The President may in any regulations to be made under Article 26(5) of the Constitution, during a state of emergency make provision for the employment of the Police Force to assist in countering any such emergency and may place the Force while so employed under the order and directions of a person whom he president appoints for that purpose.<sup>192</sup> Part of the Police Force could therefore in terms of this provision be placed under the command of a member of the relevant Disaster Risk Management Committee and be ordered to protect relief personnel and property.

It must further be pointed out that during such employment of the Police Force or a part the employed part shall during the operation be subject to the laws governing discipline, command and control of the Namibia Defence Force when on active military service, but shall not thereby be excluded from the operation of the Police Act, provided that no member of the Force shall be prosecuted for an offence under the Police Act as well as under the laws governing the discipline, command and control of the Defence Force.<sup>193</sup>

The disadvantage of the above provision, though, is that it requires the special deployment of the Police to be gazette in the Government Gazette, which may take more time than might be available in a disaster scenario.

### The Defence Act

The Namibia Defence Force may be employed *inter alia* for the prevention or suppression of internal disorder in Namibia<sup>194</sup> and for the preservation of life, health and property.<sup>195</sup> Furthermore, the defence force may be used to exercise the functions mentioned in section 13 of the Police Act,<sup>196</sup> which are the preservation of the internal security of Namibia, the maintenance of law and order; the investigation of any offence or alleged offence; the prevention of crime; and the protection of life and property.<sup>197</sup> While on such deployment for police functions, a defence force member has all the powers and duties as are conferred on a police officer by the Police Act.<sup>198</sup> Therefore the defence force or portion thereof could be deployed to secure the safety of relief personnel and property.

### Confiscating Property

The draft Disaster Risk Management Bill empowers an authorised officer to take possession of or control over any land or other property for the purpose of dealing with a disaster situation.<sup>199</sup> An authorised officer also has the power to direct a person who is the owner of or who has possession or control over any land or other property which is required for the purposes of dealing with the disaster situation to surrender the use of such land to a specified person or authority.<sup>200</sup> This provision mentioned above may be used to give a relief organisation special access to a needed private property for the purpose of executing the necessary relief operations.

<sup>192</sup> Ibid, para.10(1).

<sup>193</sup> Ibid, para.10(2).

<sup>194</sup> Defence Act 1 of 2002, para.5(2)(a)(iii).

<sup>195</sup> Ibid, para.5(2)(a)(iv).

<sup>196</sup> Ibid, para.5(2)(b).

<sup>197</sup> Police Act, para.13 (a) – (e).

<sup>198</sup> Defence Act, para.5(4)(a).

<sup>199</sup> Draft Disaster Risk Management Bill, para.37((2)(a).

<sup>200</sup> Ibid, para.37(2)(b).

The owner or occupier of land or property who is directed to vacate may notify the authorised officer of any objection.<sup>201</sup> Then the authorised officer must within 14 days apply to a court for a determination of the entitlement to order the vacation of the land or property.<sup>202</sup>

### Recommendations

It is recommended that the draft Disaster Risk Management framework refers specifically to section 10(1) of the Police Act and mentions a person, preferably the Director of Disaster Risk Management in the Office of the Prime Minister as the person whom the President can appoint to take command over a section of the Police force to ensure the safety of disaster relief personnel and property. The draft Bill should also make provision for such appointment to happen without the need of publication in the Government Gazette, so that the necessary arrangements which might have to be executed on an urgent basis are not delayed by the publication requirement.

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## Additional Facilities and Measures for International Disaster Relief

### Special Services & Extended Hours

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

Civil Servants are regulated by the Public Service Act 13 of 1995. The Prime Minister has the function to direct the Public Service.<sup>203</sup> The administration of each office, ministry or agency in the Public Service is headed by a permanent secretary.<sup>204</sup> The permanent secretary of any office, ministry or agency may with due regard to the exigencies of the Public Service direct any staff member to perform for such period as that permanent secretary may determine, duties or work other than the staff member's ordinary duties or work as long as such other duties or work are appropriated to the grade or designation of the post or rank held by the staff member.<sup>205</sup> This must be read together with the stipulation that every staff member shall place the whole of their time at the disposal of Government.<sup>206</sup>

Some of the state owned companies have their own constitutive pieces of legislation and therefore the staff in these companies do not fall under the provisions of the Public Service Act. However, the Airports Company Act 25 of 1998 for example stipulates that the Minister of Works and Transport may, if the Minister considers it necessary for, or expedient to, the national security or for the discharge of an international obligation of the State, and after consultation with the company, by notice in writing to the company, issue a direction to the company to perform any function conferred or imposed on the company by or under the Airports Company Act, or to perform such function subject to such limitations or conditions, as the case may be.<sup>207</sup> An identical provision

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<sup>201</sup> Ibid,para.37(5).

<sup>202</sup> Ibid,para.37(6).

<sup>203</sup> Public Service Act 13 of 1995,para.5(2).

<sup>204</sup> Ibid,para.11.

<sup>205</sup> Ibid,para.31(1).

<sup>206</sup> Ibid,para.17(1)(a).

<sup>207</sup> Airports Company Act 25 of 1998,para.9.

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is contained in the Namibia Ports Authority Act 2 of 1994.<sup>208</sup> The National Transport Services Holding Company Act 28 of 1998, which has jurisdiction over *inter alia* the railways, also has the identical provision.<sup>209</sup> The Minister for Works and Transport and Communication is responsible for all of the above mentioned enterprise sectors, aviation, the ports and the railways.

### Costs of Disaster Relief Operations

The IDRL Guidelines recommend that the costs of providing international relief of initial recovery assistance should normally be borne by the assisting State or assisting humanitarian organisation. 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.<sup>210</sup> The Guidelines further recommend that 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 use of cargo handling equipment and logistic support.<sup>211</sup>

The Namibia Disaster Risk Management Policy of 2009 establishes the National Disaster Fund.<sup>212</sup> The policy makes provision for funding of disaster risk management materials,<sup>213</sup> funding for human resources<sup>214</sup> and for post disaster recovery and rehabilitation.<sup>215</sup>

### Recommendations

- As there are no specific provisions for special services and extended hours in disaster scenarios in current legislation, it is necessary to include such a provision in the draft Disaster Risk Management framework. This will ensure that the necessary extra services will be in place immediately when the need arises. Including such a provision in the draft Disaster Risk Management Bill will facilitate matters further as there will be one legal basis for implementing extended hours and special services across all state operated offices in the event of a disaster, instead of each Ministry having to implement it in terms of its own legislation.
- It is further recommended that the draft Disaster Risk Management framework should specify that procedures for accessing any needed money on an urgent basis should also be laid out in Regulations to the Bill. Finally, measures should be put in place to ensure that at all times there is a minimum amount of money available in the fund, which would cover the costs associated with providing special services and extended hours in disaster scenarios.

<sup>208</sup> Namibia Ports Authority Act .

<sup>209</sup> National Transport Services Act 28 of 1998, para.8(1).

<sup>210</sup> IDRL Guidelines, para.24(1) p .84.

<sup>211</sup> Ibid, para.24((2), p. 84.

<sup>212</sup> National Policy for Disaster Risk Management in Namibia 2009, para.6, p. 39.

<sup>213</sup> Ibid, para.6.3, p. 40.

<sup>214</sup> Ibid, para.6.4, p.40.

<sup>215</sup> Ibid, para.6.5, p. 41.

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## **Accountability and Transparency**

### **Accountability and Transparency of the Host Government**

The IDRL Guidelines suggest that States and assisting humanitarian organisations should cooperate to prevent unlawful diversion, misappropriation, or fraud concerning disaster relief or initial recovery goods, equipment or resources.<sup>216</sup> Affected States should further 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.<sup>217</sup>

As Namibia's current Disaster Risk Management Policy and the Draft Disaster Risk Management Bill and its Regulations do not contain provisions for operational procedures, there are also no specific procedures or institutions in place to guard against diversion, misappropriation or fraud concerning disaster relief and recovery goods / funds. The institutions which normally receive international aid in terms of bilateral and multilateral international agreements are in place, most notably the National Planning Commission, and their internal checks and balances. The need for special procedures and institutions to safeguard against diversion, misappropriation and fraud would only arise if international disaster response relief aid were to be received and administered by totally different institutions.

In terms of the National Disaster Risk Management Policy<sup>218</sup> the National Disaster Fund is subject to the terms and conditions of the State Finance Act 31 of 1991, and will be managed by the Office of the Prime Minister. The State Finance Act provides that an accounting officer may, with the authorisation of the Treasury, open an account at the central bank or any commercial bank into which all State moneys received by the accounting officer and as determined by the Treasury, shall be deposited, and from which all expenditure shall be defrayed and all amendments shall be made as the Treasury may determine.<sup>219</sup> This section enables the Permanent Secretary in the Office of the Prime Minister, in her capacity as the accounting officer of the Prime Minister's Office to pay all or some of the monies received from donors as part of a disaster relief response, into a special interest bearing account with a commercial bank. When doing so, the Permanent Secretary will be mindful that the best interest rates are offered by accounts which have a long call up period (usually a month or more). A balance must therefore be struck between receiving interest on monies which are not immediately required and having enough immediate liquidity for the event of an unexpected disaster.

### **Accountability of Assisting Organisations**

The IDRL Guidelines stipulate that assisting actors and their personnel should abide by the laws of the affected State and applicable international law. Assisting actors and their personnel should further respect the human dignity of disaster affected persons at all times.<sup>220</sup> Assisting actors should ensure that their disaster relief and initial recovery assistance is provided with the principles of humanity, neutrality

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<sup>216</sup> Para.6(1).

<sup>217</sup> Para.6(2).

<sup>218</sup> Para.6.1.

<sup>219</sup> Para.4(a).

<sup>220</sup> Para.4(1).

and impartiality.<sup>221</sup> The principles of humanitarian assistance are already central to major international instruments, such as the Fundamental Principles of the Red Cross and Red Crescent Movement<sup>222</sup> and the United Nations General Assembly Resolution 46//182.<sup>223</sup> These principles were therefore incorporated into the IDRL Programme's draft Modal Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance.<sup>224</sup>

Neither Namibia's National Disaster Risk Management Policy, nor the draft Risk Management Bill contain any enforcement provisions of technical quality standards. In practice this would mean that each category of relief item received in Namibia, would have to first be screened by the officials of the relevant ministry whose legislative framework gives it jurisdiction over the goods or services received. For many goods and services there would not even be any recorded or stipulated standards, but donated goods may nevertheless be culturally or socially or otherwise unacceptable or offensive or substandard to Namibian populations. It is therefore necessary that Namibia puts in place certain standards specifically for disaster relief operations, enforceable against assisting agencies.

The text of the IDRL Model Act provides that assisting actors must not "seek to further a particular political or religious standpoint or interfere in internal matters irrelevant to the disaster response." The concept of independence for non-government actors as described in the draft Model Act is widely accepted, and there is strong consensus that „humanity and „impartiality are essential, for example in the Sphere Humanitarian Charter.<sup>225</sup> Many specific standards also give concrete expression to these principles in the way humanitarian actors conduct themselves regarding the rights of the affected populations, the most widely-used of which are the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief.<sup>226</sup>

The choice which the IDRL Model Act gives between developing or adopting standards recognises that states may not wish to develop new standards for humanitarian assistance, but may prefer to adopt existing standards developed by the international humanitarian community.<sup>227</sup> It is recommended that Namibia adopts the internationally developed standards, save for the unlikely event that the internationally developed ones are considered not appropriate for Namibia, in which event Namibia should develop its own standards or adopt a revised version of the international one. The draft Disaster Risk Management Bill or the Regulations to be promulgated under it should incorporate by reference the international humanitarian standards.

## Namibia as a Transit or Sending State for International Assistance

### Transit of Disaster Relief

Namibia is located at the south western coast of Africa and its harbour town of Walvis Bay is a crucial hub for shipping routes to its land locked neighbours further inland (Botswana, Zimbabwe, Zambia). There are furthermore direct international flights from

<sup>221</sup> Para.4(2).

<sup>222</sup> Cf at [www.redcross.int/en/](http://www.redcross.int/en/).

<sup>223</sup> Cf at [www.un.org/documents/ga/res/46/a46r182.htm](http://www.un.org/documents/ga/res/46/a46r182.htm).

<sup>224</sup> version of 10 August 2011, Article 18.

<sup>225</sup> <http://www.sphereproject.org/>.

<sup>226</sup> [www.ifrc.org/e/publications-and-reports/code-of-conduct](http://www.ifrc.org/e/publications-and-reports/code-of-conduct).

<sup>227</sup> Article 20(b), fn 28.



Frankfurt to Windhoek. For these reasons Namibia may be a transit destination for international disaster relief assistance. It is therefore important that the legal framework for disaster risk management does not only optimise procedures for receiving international disaster relief assistance as a final destination, but that onward forwarding or through passage of disaster relief assistance can take place as efficiently as possible and with an absolute minimum in bureaucratic and administrative hurdles.

The IDRL Guidelines suggest that transit States should 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 organisations.<sup>228</sup> Namibia's Immigration Control Act 7 of 1993 does contain a provision that requires non-citizens to obtain a transit visa when travelling through Namibia to a destination in another country.<sup>229</sup> The Minister of Home Affairs and Immigration may however exempt any person or category of persons from the requirement of obtaining a transit visa.<sup>230</sup>

### Visa

In practice, transit visas are, like regular visas, obtained at the port of entry by means of a stamp into the travel documents by the border officials. Transit visas are therefore not required prior to arrival in Namibia. In the case of travellers who arrive in Namibia with the intention of proceeding by road through Namibia to another country, a regular visa may be used to transit through Namibia. In the case of arrival by plane, with the intention to transit on an onward flight, it is more likely that a transit visa will be stamped into the passports of the travellers, with a view that the travellers will remain in the transit lounge of the airport until their onward flight proceeds.

### Goods and Equipment

It is recommended that the draft Disaster Risk Management framework be amended to include a section which provides for expedited processing of arriving goods in case of a disaster scenario in a neighbouring country, so that additional processing capacity can immediately put in place when an unusually large number of travellers arrive in Namibia for the purposes of transiting to another country. The IFRC Disaster Law Programme's IDRL Model Act for the facilitation and Regulation of international Disaster Relief and Initial Recovery Assistance contains an entire chapter devoted to transit of international disaster assistance, and its provisions should be incorporated into the Namibian draft Bill. In addition, Namibia should enter into bilateral agreements with its neighbours, or deal with transit arrangement within the multilateral framework of the Southern African Development Community (SADC). This would be the preferred option instead of attempting to address transit issues in a fractured manner by amending the relevant shipping legislation, road transportation legislation, customs and other taxation legislation et cetera.

### Sending of International Assistance from Namibia

Namibia has in the past assisted other countries in the southern African region with disaster management, mainly by sending food relief to flood victims. It is envisaged that Namibia's activities in this role will continue as other countries in the southern African region will be faced with disasters for which they need outside assistance.

<sup>228</sup> Para.16(2).

<sup>229</sup> Para.13(1).

<sup>230</sup> Para.13(2).



## Detailed Findings

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When exporting (but also when importing or transiting) disaster relief assistance the provisions of the Customs & Excise Act 20 of 1998 apply. This Act has no provisions for administering goods in disaster situations either in Namibia or somewhere else. The Act has no general exemption powers, which would enable the Minister of Finance or the Permanent Secretary or the Commissioner for Customs and Excise to exercise their discretion in an a disaster scenario and thus be able to reduce any customs stipulations or to allow for new ports of exit of goods or to reduce any inspection requirements.

At the time of writing of the report, the above matters were not addressed in the Disaster Risk Management Policy of Namibia, nor in the draft Disaster Risk Management Bill. The provisions of Chapter VII of the IDRL Programme's draft Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance should, with the necessary changes be included in the draft Disaster Risk Management Bill.

### Recommendations

- It is recommended that the provisions of the IDRL Programme's draft Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance should, with the necessary changes, be included in the draft Disaster Risk Management framework.
- Furthermore, the various Disaster Risk Management Committees established by the Disaster Risk Management Policy and confirmed in the draft bill should be made responsible for including in their disaster risk management programmes and plans, specific procedural steps and processes to be followed when the responsibility to act for the transiting and sending of disaster relief assistance befalls them.

Legal Preparedness for International Disaster Response in Namibia

# Chapter 5

## Conclusion

## Conclusion

5

At the time of writing, the legal framework for disaster risk management in Namibia consisted of the Constitution of Namibia and the National Policy for Disaster Risk Management, neither of which take international disaster response operations explicitly into account. However, the Government of Namibia has committed itself to have a comprehensive legislative and institutional disaster risk management system in place. As an important milestone, the government published the National Policy for Disaster Risk Management in Namibia in 2009. One of the imperatives under Key Performance Area 1 of the Policy is to develop and promulgate a disaster Risk Management Act for Namibia. At the time of writing of this report, the draft Disaster Risk Management Bill and its Regulations were being developed. Therefore the main conclusion which this report comes to is that several of the provisions of the *IDRL Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* be considered for inclusion into the draft Disaster Management Bill as well as the Regulations to be promulgated under it, as suggested in the recommendations in this report. Should these recommendation be implemented, several shortcomings in other pieces of legislation which will be relevant in the event of an international response to a disaster situation will be clear and unambiguous and will ensure that a speedy response action can be initiated by international actors.

From the research it became evident that in practice the Namibian authorities, neighbouring States and international humanitarian organisations, in particular the Namibia Red Cross Society, find solutions to legal barriers at customs and inside the country in situations that require an international response – at the time of writing of the report without the legal basis of a Disaster Risk Management Act. However, as the *Desk Study on Law and Legal Issues in International Disaster Response of the International Federation of Red Cross and Red Crescent Societies* shows, an *ad hoc* approach this is not based on legal certainty may count against an effective international disaster relief operation in the event of a disaster which is much more severe than the usual ones, or when the services of operators which have hitherto not been active in the country are required.

For this reason the overall consensus among the participants to the IDRL Workshop, held in Windhoek on 14 November 2011, was that implementing amendments to various separate laws should be kept to an absolute minimum, and all aspects relating to international disaster response which need some statutory foundation should be addressed in the draft Disaster Risk Management Bill. Inclusion of the necessary legal provision in the Bill, read together with the President's power to suspend the operation of any provision of common law or statutory law, should suffice to guarantee a smooth international response to a disaster scenario.

As the institutional framework has already been put in place by the National Policy for Disaster Risk Management in Namibia, by establishing disaster risk management committees at national, regional, local and constituency levels, the drafting of the Bill is a great opportunity to close the gaps highlighted in the Recommendations of this report. The provisions of the *IDRL Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* may be helpful to strengthen the national disaster risk management system, as it provides model articles for ensuring that all aspects of enabling an international disaster response will be implemented quickly and efficiently in the event of a disaster.



# 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.



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