



# International Disaster Response Laws, Rules and Principles (IDRL) in Vanuatu

A study on Vanuatu's legal and policy framework for managing foreign disaster response

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## About this report

This report was commissioned by the International Federation of Red Cross and Red Crescent Societies (IFRC) and the Vanuatu Red Cross Society (VRCS), and prepared by Giovanna Soldateschi, independent legal consultant. It analyses Vanuatu's current legal and policy frameworks for addressing the issues related to receiving international disaster assistance.

## About the IDRL Programme

The IFRC's "International Disaster Response Laws, Rules and Principles" (IDRL) 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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Cover photo: Distribution of relief items in response to cyclone Vania in 2011 (Vanuatu Red Cross Society).

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# Acronyms and abbreviations

<b>CCG</b>	Central Control Group
<b>CHARM</b>	Comprehensive Hazard and Risk Management
<b>DC</b>	Disaster Controller
<b>DCO</b>	Development Committee of Officials
<b>DM</b>	Disaster Management
<b>DMO</b>	Disaster Management Office
<b>DRM</b>	Disaster Risk Management
<b>DRR</b>	Disaster Risk Reduction
<b>DRR-DM</b>	Disaster Risk Reduction and Disaster Management
<b>FOB</b>	Forward Operational Base
<b>FRANZ</b>	France Australia and New Zealand Alliance
<b>FSPV</b>	Foundation for the Peoples of the South Pacific Vanuatu
<b>Geohazards</b>	Vanuatu Geohazards Observatory (Department of Geology and Mines)
<b>HFA</b>	Hyogo Framework for Action
<b>IDRL</b>	International Disaster Response Laws, Rules and Principles
<b>IDRL Guidelines</b>	Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance
<b>IFRC</b>	International Federation of Red Cross and Red Crescent Societies
<b>IMO</b>	International Maritime Organisation
<b>METEO</b>	Vanuatu Department of Meteorology
<b>MIA</b>	Ministry of Internal Affairs
<b>MIPU</b>	Ministry of Infrastructure and Public Utilities
<b>MOU</b>	Memorandum of Understanding
<b>MSG</b>	Melanesian Spearhead Group
<b>NAP</b>	National Action Plan
<b>NAPA</b>	National Adaptation Plan of Action
<b>NDC</b>	National Disaster Committee
<b>NDMO</b>	National Disaster Management Office
<b>NEOC</b>	National Emergency Operation Centre
<b>NGO</b>	Non-Governmental Organization
<b>ORSTOM</b>	Office de la Recherche Scientifique et Technique d'Outre-Mer
<b>PAA</b>	Priorities and Action Agenda
<b>PAC</b>	Public Accounts Committee

## Acronyms and abbreviations

<b>PFEM</b>	Public Finance and Economic Management
<b>RFA</b>	Pacific Regional Framework for Action on DRR-DM
<b>RNDRF</b>	Regional Natural Disaster Relief Fund
<b>SOPAC</b>	Pacific Islands Applied Geosciences Commission
<b>UNDP</b>	United Nations Development Programme
<b>UNICEF</b>	United Nations International Children's Fund
<b>UNISDR</b>	United Nations International Strategy for Disaster Reduction
<b>VAT</b>	Value Added Tax
<b>VPF</b>	Vanuatu Police Force
<b>VSO</b>	Voluntary Services Overseas
<b>WHO</b>	World Health Organization

# Executive summary

This report contains a review of Vanuatu's legal and policy framework governing situations of disaster, with the aim of assessing the level of preparedness to facilitate and regulate foreign humanitarian assistance during a disaster.

As its primary analytical lens, the study employed the "Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance" (also known as the "IDRL Guidelines") as adopted at the 30th International Conference of the Red Cross and Red Crescent in 2007. These IDRL Guidelines serve as a practical tool to advise governments on how to prepare their disaster laws and plans for international relief operations. The Guidelines are annexed to this report.

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## **The legal and institutional framework for disaster response in Vanuatu**

The regulatory framework for disaster risk reduction and disaster management in Vanuatu is primarily based on the National Disaster Act 2000, the National Action Plan for Disaster Risk Reduction and Disaster Management 2006-2016, and the National Disaster Plan (the most recent review available is for 2009-2010).

Vanuatu's preparedness has never been tested by a major disaster. Most of the legislative instruments in operation that would regulate the logistical flow of disaster aid and relief personnel in such circumstances do not directly address or provide specifically for a major national emergency situation. However, many interviewees have presumed that the directors of the various relevant departments would flexibly interpret existing laws in order to accommodate emergency aid.

The National Disaster Plan, reviewed on a yearly basis, provides for standard operating procedures and channels of communications during an emergency. The effectiveness of the plan, including the guidelines and procedures contained therein, and their practical implementation, has yet to be put to thorough test. This includes processes related to foreign disaster response.

It appears that there has been limited dissemination about the existence and content of the National Disaster Plan. In addition, it is evident that whilst systems for managing and dealing with disasters have been developed by the various government agencies, civil society organizations, the private sector and the donor community, they have been developed independently of each other. This highlights an urgent need for improved awareness and dissemination of information about the National Disaster Plan amongst the key stakeholders.

The Minister of Internal Affairs is appointed with the primary responsibility for disaster management. The National Disaster Committee, chaired by the Directory General of Internal Affairs, is the lead Government body which coordinates disaster management and supports the National Disaster Management Office (NDMO) in implementing the National Disaster Act and associated plans.

The Vanuatu Government has improved its disaster management capacity through the construction of a new building, which includes a new Emergency Operations Centre. This has brought together key agencies with functional responsibility for disaster risk reduction (DRR) and disaster management (DM), such as the National Disaster Management Office (NDMO), Department of Meteorology (METEO), Department of Geohazards and the Climate Change Unit all under one roof. There are also proposed legislative changes to the National Disaster Act of 2000 to formalize the amalgamation of the above agencies under a single entity.

## **Key findings**

### **Overview of national laws, policies and plans for disaster management**

Neither the current National Disaster Act nor the National Disaster Plan clearly delineate the roles of government departments in facilitating and regulating foreign disaster response in Vanuatu. It is noted that a new draft Disaster Management Act exists, but it has not yet been approved by the Council of Ministers.

While the National Disaster Act provides for the preparation of the National Disaster Plan, National Disaster Support Plans, and Provincial Disaster Plans, these plans have never been properly circulated amongst the key stakeholders, and in some cases they do not exist.

### **Declaration of emergency and requests for international assistance**

According to the National Disaster Act and the National Disaster Plan, international assistance will be requested once it has been established that the severity of the damage is beyond the capacity of national and provincial available resources in-country. This requirement will need to be determined by the National Disaster Committee (NDC), which will submit through the Minister of Internal Affairs, a formal request for international assistance by the Ministry of Foreign Affairs. This is facilitated by the National Disaster Committee through the National Emergency Operations Centre (NEOC), whenever a state of emergency is declared.

Consultations with concerned agencies indicated that there is substantial confusion as to the expected channels of communication in the event of a disaster, due to lack of awareness and circulation of the guidelines contained in the annual National Disaster Plan. This has created delays for donor agencies to receive any official requests to activate their systems of intervention, which in many cases is needed for authorization from their respective governments to provide support.

### **Legal status of entities providing overseas assistance**

The legal status that potential international disaster responders would enjoy in Vanuatu varies significantly by category. For international organizations with diplomatic status, there are various legal instruments providing for a variety of immunities, exemptions and privileges under the Diplomatic Privileges and Immunities Act of 1982. Many other civil society organizations, NGOs and international relief agencies have memoranda of understanding (MOUs) with the Vanuatu Government. However, there are no regulations providing for fast-tracked procedures for granting a legal status in emergency situations.

### **Customs, quarantine and tax arrangements for international humanitarian relief**

Pursuant to the Import Duties Act, relief items may be exempt from import duties and taxes if they either fall under an international convention or agreement entered into by the Government of Vanuatu or if they are donated to the Vanuatu Red Cross Society for an emergency. The extent of such exemptions, however, remain at the discretion of the Director of Customs and Taxes and there are no regulations or provisions for relief items in a disaster more generally.

The Quarantine Act contains provisions related to diseases affecting people and cattle upon the arrival of vessels. With regard to planes, the Cyclone Support Plan (2009) requires an aircraft's agent to notify the Department of Livestock and Quarantine services of the expected time of arrival prior to arrival of relief supplies. The Department will then facilitate the quarantine clearance of the relief supplies at the airport, in accordance to the quarantine legislation, to ensure that no foreign organisms are introduced.

### **International relief personnel**

Under the Immigration Act, relief personnel would need a visa permit unless they are citizens of a country exempted from visa requirements by an order of the Minister of Internal Affairs. Alternatively, the legal status agreement or MOU between an organization and the Government may contain special exemptions for their personnel.

There are no provisions in the Act for an exemption from visa permits for a separate category of person entering the country under a disaster relief programme or an emergency situation. However, it is anticipated that a flexible interpretation would be applied to the existing Immigration Act to facilitate the processing of foreign personnel entering the country during an emergency situation.

No specific provisions were found in Vanuatu laws and policies on the recognition of foreign qualifications (e.g. for medical professionals) of humanitarian personnel. In practice, it is presumed that technical experts selected by trusted organizations will be qualified, and that the organization will bear the responsibility of their actions.

### **International humanitarian transport arrangements**

The Civil Aviation Act of 1999 does not specifically set out procedures for unscheduled foreign humanitarian aircraft bringing in relief supplies. However, Section 41 (1) of the Civil Aviation Act states that the Director of the Civil Aviation Authority may, in consultation with the Minister for Public Utilities, exempt any person, aircraft, aeronautical product, airport or aviation related service from any specified requirement in any ordinary rule, if he or she considers it appropriate.

The Ports Act of 1999 states that Port Vila and Luganville are the only designated international ports of entry into Vanuatu, and does not provide any exemptions from the usual dues and charges in the event of a disaster. The minister responsible for ports and marine may, however, authorize the entry into and departure from Vanuatu of vessels at ports other than those of Port Vila and Luganville. The minister may also, by order, exempt any class of vessel or goods from the payment of dues.

## Executive summary

### Accountability and transparency

Government expenditures are scrutinized by the Public Accounts Committee (PAC) in Parliament, and the Auditor General's Office has the responsibility to conduct internal audits of departments. In reality, record keeping and financial accountability remains a significant challenge despite the role the Department of Finance plays in monitoring expenditures. PAC has also only recently begun meeting to carry out its role in scrutinizing government expenditures, after many years of not doing so.

In terms of comprehensiveness and transparency, its ability to oversee financial management and accountability of public funds remains a concern to the Government of Vanuatu, as many of the state enterprises and statutory bodies have not submitted accounts for several years. Currently, each organization contributing international relief, other than through direct donations to the government, manages its funds and activities independently and there are no clear common standards for the conduct of international relief operations. The MOU between the Government of Vanuatu and Vanuatu Association of NGOs (VANGO) signed in 2004 contains the recognition of the respective accountability requirements and processes of the Vanuatu Government and NGOs. Under the MOU, NGOs have multiple accountabilities to partners, donors, memberships and constituencies, which must be addressed through sound management practices and governance structures.

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### Summary of core recommendations:

In light of the above, the core recommendations of the report are to:

- Ensure that roles and responsibilities of relevant authorities in disaster response are clearly identified within the National Disaster Act. Provisions should also address the reporting lines and procedures in the event of a disaster.
- Include provisions in the National Disaster Plan on issuing a request for international assistance which addresses procedures and agencies involved and the content of such a request.
- Further describe the roles and responsibilities of departments in the National Disaster Plan to facilitate and regulate foreign disaster response in Vanuatu.
- Include procedures in the National Disaster Act (and/or relevant implementing guidelines/plans) for registering foreign entities (who meet certain eligibility requirements) to obtain temporary legal status.
- Amend the Customs Act (and/or relevant implementing guidelines/plans) to ensure that priority is given to customs clearance of goods imported for disaster relief during an emergency.
- Amend the Quarantine Act (and/or relevant implementing guidelines/plans) to ensure that priority is given to quarantine inspection of goods imported for disaster relief during an emergency.
- Amend the Immigration Act (and/or implementing guidelines/plans) to establish a special visa for international relief personnel for multiple entries, for a period of not less than three months and extendable for the duration of the operation, each time free of charge, as needed for the provision of relief. Holders of this visa should also be granted temporary recognition of professional qualifications under Vanuatu Law.
- Amend the relevant transport laws to provide for immediate approvals for landing permission, berthing and clearance of aircraft, marine vessels or

other modes of transportation, that are engaged by registered organizations and entering Vanuatu for the purposes of disaster relief, provided that their entry is acknowledged by the authorities in charge of the relief operation. Provide that the fees and duties usually imposed on such aircraft and vessels will be exempt.

- Include provisions in the National Disaster Act (and/or relevant implementing guidelines/plans) for monitoring the compliance of registered disaster relief agencies with minimum standards based upon the IDRL Guidelines paragraph 4.



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# Chapter 1

Introduction to the project  
and its methodology

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## **1.1 Background**

In October 2009, the International Federation of Red Cross and Red Crescent Societies (IFRC), in line with its International Disaster Response Laws, Rules and Principles (IDRL) Programme, offered technical assistance to support the Government of Vanuatu to have an overview of its legal preparedness for international disaster response. After discussions, the government accepted the technical assistance and in August 2010, IFRC appointed a legal consultant to take up the task.

This project builds on over nine years of global research and consultations undertaken by the IFRC through its IDRL Programme. To date, over two dozen country and regional studies have been commissioned to identify problem areas and best practice in the regulation of international disaster relief. They found a common set of legal problems arising in international operations, due mainly to a lack of legal preparedness at the national level. These include both barriers to access (including issues with visas, customs clearance, duties, taxes and charges, and legal personality problems), as well as failures of control over the quality, coordination and complementarities of international relief.

In 2007, the IFRC spearheaded negotiations on the “Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance” (“IDRL Guidelines”) which are based on existing international norms and address the most common problem areas. In 2007, the states parties to the Geneva Conventions unanimously adopted the IDRL Guidelines at the 30th International Conference of the Red Cross and Red Crescent.

The IDRL Guidelines recognize that it is first and foremost the responsibility of the government of the affected state to address the humanitarian needs caused by a disaster within its borders. This report examines Vanuatu’s legal preparation for undertaking that responsibility within the context of requesting international assistance.

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## **1.2 Scope and methodology**

Vanuatu is located in one of the most disaster prone areas in the world. As an island state, its geographical isolation imposes logistical challenges to international aid relief in the event of a natural disaster. Rapid and effective response to an emergency is the overriding objective in any disaster situation.

One of the areas often overlooked is the legal preparedness planning for disaster relief. Legal preparedness is having the legal instruments, laws, and regulations in place, to facilitate the rapid response to a natural disaster by relief agencies and foreign governments, and to ensure that logistical support, medical supplies, humanitarian assistance and other forms of relief are provided quickly and efficiently to those that are affected, whilst also ensuring quality and accountability of the aid providers.

This research study was conducted in Vanuatu between August 2010 and December 2010. It was managed by the Vanuatu Red Cross Society with technical oversight from the IFRC’s Pacific programme for International Disaster Response Laws, Rules and Principles (IDRL), which is funded by AusAID.

The project intended to assist the Vanuatu Government to make use of the IDRL Guidelines to examine its regulatory framework for international disaster response and

to suggest possible solutions to the common problems that could hamper international disaster response.

The terms of reference of this study were to:

- Map and review the legal instruments which are relevant to international response in case of national disasters.
- Identify the gaps between the domestic law and the practical reality in implementing the guidelines contained within the international and regional instruments.
- Recommend measures to minimize legal barriers for effective national and international response to national disasters.
- The methodology for this project included the following:
  - Research implementation, identification of stakeholders and consultation with them.
  - Research and identification of existing legal instruments and guidelines.
  - Analysis of research, the law, what is the practical reality and gaps, in particular in light of the recommendations of the IDRL Guidelines.
  - Report preparation and recommendations.
  - Preparation for workshop to review the project findings.

Major outputs were:

- A study report containing the findings and recommendations.
- A follow-up national IDRL workshop with key stakeholders to review the findings and encourage the development of a multi-stakeholder plan of action for implementing the recommendations.

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## **Chapter 2**

# Country background: disaster risks and legal framework

## 2.1 Geography and population

Vanuatu consists of an archipelago of about a dozen large islands and 70 smaller also inhabited islands. The total area of Vanuatu is approximately 860,000km<sup>2</sup>, taking into account the Exclusive Economic Zone of 200 miles from the shores. The total land area is only 12,336km<sup>2</sup>, which represents 1.4% of the total country area. Geologically, Vanuatu is part of the Pacific Ring of Fire and is an island arc resulting from the geological activity of the New Hebrides subduction zone.

Santo is the largest of the islands and is 4,010km<sup>2</sup>. Malekula follows, with a land area of 2,069km<sup>2</sup>, and Efate, where the capital city Port Vila is located, has a land area of 980km<sup>2</sup>. Erromango, closely follows, with a land area of 900km<sup>2</sup>, however, it is sparsely populated. Tanna has a land area of 565km<sup>2</sup>, and is ranked as the sixth largest island after Ambrym (682km<sup>2</sup>). Tanna, however, has the highest population density, with 51 inhabitants/km<sup>2</sup>.

The population of Vanuatu has increased by 47,345 people, from 186,678 in 1999 to 234,023 in 2009. This represents a growth rate of 2.3 percent per annum<sup>1</sup>.

## 2.2 Natural disaster risks

Vanuatu is vulnerable to a broad range of natural hazards. In particular, it is highly exposed to the risk of earthquakes, volcanic eruptions and annual cyclonic activity. It is therefore ranked alongside Solomon Islands as among the most disaster prone nations in the region<sup>2</sup>.

### 2.2.1. Earthquake risk

Earthquakes are a frequent occurrence in Vanuatu. About 4,000 earthquakes of magnitude greater than 4 were recorded in the years between 1961 and 1982<sup>3</sup>. The earthquakes often originate at considerable depth and are therefore not too destructive (large magnitude but low intensity). Some earthquakes, however, have caused considerable damage. In 2002, an earthquake of the magnitude of 7.3 on the Richter scale, with its epicentre located 35km west of Port Vila, caused widespread damage to buildings and infrastructure<sup>4</sup>.

Tsunamis occur occasionally as the result of earthquakes. In 1999, an earthquake and ensuing tsunami struck the island of Pentecost killing at least 10 people, injuring many, and caused extensive damage to homes and infrastructure. There was also considerable damage and loss of homes reported in the neighbouring islands of Ambrym and Malekula. The provinces of Penama and Malampa were declared disaster zones in the aftermath of this tsunami. In recent times, an earthquake of magnitude 7.2 on Santo Island on 2 August 2010, damaged buildings and their contents around the provincial capital Luganville, while a small tsunami was recorded to have occurred in September 2010, following a 7.3 earthquake located near the capital Port Vila<sup>5</sup>, there was minimal recorded damage to property.

<sup>1</sup> 2009 Vanuatu National Census. The breakdown of the population according to province was as follows: Malampa 36,724, Penama 30,819, Sanma 45,860, Shefa 78,721, Tafea 32,540, Torba 9,359.

<sup>2</sup> Catastrophe Insurance Pilot Study, Port Vila, Vanuatu: Developing Risk-Management Options for Disasters in the Pacific Region, SOPAC, 2003.

<sup>3</sup> ORSTOM Report 5, 1983.

<sup>4</sup> Volcano Live by John Seach: <http://www.volcanolive.com/vanuatu.html>

<sup>5</sup> Ibidem.

The two major centres of Port Vila and Luganville, where most of the built infrastructure is concentrated, are located in regions where the maximum intensity of earthquakes could reach 8 on the Richter scale. A study by the Office de la Recherche Scientifique et Technique d’Outre-Mer (ORSTOM), shows that the regions with the highest earthquake risk are the provinces of Torba, Sanma and Penama, due to the frequent occurrence of strong shallow earthquakes<sup>6</sup>.

### 2.2.2. Volcano risk

Volcanos, extinct and active, are found on nearly all the islands of Vanuatu. Currently nine volcanoes are active. The most active is Mount Garet (797m) located on the island of Gaua (in the Banks islands group). It is a large shield volcano with gentle outer slopes and a large caldera lake (Lake Letas). The caldera is 8 km x 6 km in diameter with Lake Letas occupying half the caldera, with an area of 19.7 sq km. It is about 100m deep and flat bottomed. The magmatic chamber of this volcano is separated from Lake Letas by a thin layer of rock, and it is believed that the rupture of this layer would lead to an enormous, potentially devastating explosion. In 1973, the island was temporarily evacuated due to this risk and in October 2009 some areas exposed to ash falls were evacuated<sup>7</sup>.

The volcano-island of Lopevi (1440m) is also very active and the entire island was evacuated in 1970, while summit eruptions were registered on the volcano of Ambae in 2005, and the one in Ambrym is still having regular small eruptions since 2005<sup>8</sup>.

The most famous volcano of Vanuatu is Yasur in Tanna. It is one of the most accessible volcanoes in the world. Its location on Tanna, where population density is the highest of all the islands of Vanuatu, makes it also one of the most monitored and recorded active volcanoes in the country<sup>9</sup>.

### 2.2.3. Cyclonic risk

Vanuatu is located in the latitudes where cyclones frequently occur on an annual basis. Cyclones normally occur between November and April, when water temperatures increase. They form near the equator and move south after forming, increasing in intensity as they move. Each year, some of these cyclones pass through the archipelago of Vanuatu causing damage to food gardens, infrastructure, commercial crops and homes. Winds vary in intensity, sometimes rising up to 250km per hour in the most destructive type of cyclones (category 5)<sup>10</sup>.

The largest and most destructive cyclone to hit Vanuatu in recent times was Cyclone Uma in 1987. An observer wrote the following in a letter that was posted on his website:

“The city is literally devastated, with damage ranging from a bit of the roof peeled back to complete destruction of nearly every building in the city. Every tree is damaged or uprooted”<sup>11</sup>.

<sup>6</sup> Penama Provincial DRM Arrangement, 2010/2011.

<sup>7</sup> Volcano Live, by John Seach. <http://www.volcanolive.com/vanuatu.html>

<sup>8</sup> Ibidem.

<sup>9</sup> Ibidem.

<sup>10</sup> NDMO Report on Funa and Gene, p.3, February 2008.

<sup>11</sup> A written account in a letter by Stan Coombs, Canadian volunteer, of the destruction caused by Cyclone UMA: <http://members.shaw.ca/scombs/letters/870207.html>

More recent destructive events were Cyclone Ivy in 2004, in the central areas of Vanuatu, Cyclone Kerry in 2005 in the islands of Santo, Banks and Torres, and Cyclone Gene in 2008 in the island of Futuna<sup>12</sup>.

## 2.3 Government and legislative structure<sup>13</sup>

The Republic of Vanuatu achieved its independence from France and the United Kingdom on 30 July 1980. It has a Westminster-style constitution<sup>14</sup>, with a republican political system headed by a president who has mainly ceremonial powers. The president is elected by a two-thirds majority in an electoral college consisting of members of Parliament and the presidents of the six provincial governments. The president serves a five year term, and may be removed by the electoral college for gross misconduct or incapacity. The prime minister, who is the head of government, is elected by a majority vote of the elected members of Parliament. The prime minister, in turn, appoints the Council of Ministers, whose number may not exceed one-fourth of the number of parliamentary representatives. The prime minister and the Council of Ministers constitute the executive government. Parliament normally sits for a four year term unless dissolved by majority vote of a three-fourth-quorum or a directive from the president on advice of the prime minister.

The legal framework in Vanuatu consists of the following:

1. The Constitution: The Constitution of Vanuatu is the Supreme Law of the country and was promulgated on 5 October 1979, prior to Independence in 1980.
2. Legislation: Statute Laws are passed by a majority of the members of Parliament and become law after the president has signed off on the bill and it is published in the official government gazette. Acts of Parliament are accompanied by further documentation, such as plans indicating in more detail the practical implementation of the Acts.
3. Customary Law. Customary Laws are not legally binding but deal mainly with matters relating to traditions and customs. It is overseen by the National Council of Chiefs (Malvatumauri)<sup>15</sup>.

The Vanuatu Constitution, Chapter 4, Section 16 provides for Parliament to make laws by passing bills introduced either by one or more members or by the prime minister or a minister. When a bill has been passed by Parliament it has to be presented to the President of the Republic who shall assent to it within two weeks. If the President considers that the bill is inconsistent with a provision of the Constitution, he refers it to the Supreme Court for its opinion. The bill shall be not promulgated if the Supreme Court considers it inconsistent with a provision of the Constitution.

Chapter 5, Section 30 of the Constitution deals with the structure and functions of the National Council of Chiefs. The Council “has a general competence to discuss all matters relating to custom and tradition and may make recommendations for the preservation and promotion of ni-vanuatu culture and language”. Furthermore, it may be

<sup>12</sup> NDMO Report on Funa and Gene, p.6, February 2008.

<sup>13</sup> Constitution of the Republic of Vanuatu, 1980, Chapters 4, 6 and 7.

<sup>14</sup> The Westminster system is a democratic parliamentary system of government modelled after the politics of the United Kingdom. This term comes from the Palace of Westminster, the seat of the Parliament of the United Kingdom: [http://en.wikipedia.org/wiki/Westminster\\_system](http://en.wikipedia.org/wiki/Westminster_system)

<sup>15</sup> Chapter 5, Part 30 (1), Constitution of the Republic of Vanuatu, 1980.

consulted on any question, particularly any question relating to tradition and custom, in connection with any bill before Parliament.

In 2010, Vanuatu had 12 government ministries and a prime minister, as well as a further 38 government departments under ministerial control. The Constitution states that there can be a maximum of one ministry for every four members of Parliament. This represents a maximum of 13 ministries.

Since 1994, the country has been divided into six provinces: Torba (Torres and Banks), Sanma (Santo and Malo), Penama (Pentecost, Ambae and Maewo), Malampa (Malekula, Ambrym and Paama), Shefa (Shepherds and Efate), and Tafea (Tanna, Aniwa, Futuna, Erromango and Aneityum). Each province hosts a provincial government that delivers services to the inhabitants. In addition, the two urban centres of Port Vila and Luganville have separate jurisdiction from the provincial governments, and conduct their own administration under their respective Municipal Councils. These Municipal Councils operate under the Municipalities Act Cap 126. Each of the respective Municipal Councils is comprised of a lord mayor and a number of elected councillors, who ensure that by-laws and policies are approved and implemented.



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## **Chapter 3**

Overview of applicable  
international and  
regional standards

## 3.1 International instruments

### 3.1.1. Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance

In 2007, the IFRC spearheaded negotiations on the “Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance” (“IDRL Guidelines”) which are based on existing international norms and address the most common problem areas. In 2007, the states parties to the Geneva Conventions unanimously adopted the IDRL Guidelines at the 30th International Conference of the Red Cross and Red Crescent, and they were welcomed by UN General Assembly resolutions.

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

The IDRL Guidelines include the following key concepts:

- a. Domestic actors have the primary role - Recognition that it is the responsibility of the government of the affected state to address the humanitarian needs caused by a disaster.
- b. International relief providers have responsibilities - The guidelines stipulate that international providers of relief also have to abide by minimum standards of humanitarian assistance, and quality of relief goods. These include the principles of humanity, neutrality, and impartiality.
- c. International actors need legal facilities - The Guidelines set out specific types of legal facilities or accommodations that the governments should provide to international relief organizations to facilitate an effective response to a request for disaster relief. These include expedited visa processing, customs clearance of goods and equipment, facilitation of logistics, exemptions from taxes, and a simplified means of obtaining temporary legal personality to operate within the country.
- d. Some legal facilities should be conditional - In order to lend weight to the responsibilities of assisting humanitarian organizations, the Guidelines encourage governments to condition the granting of legal facilities to these organizations on their commitment to, and on-going compliance with minimum standards described above. The Guidelines provide suggestions on how this could be implemented.

### 3.1.2. Hyogo Framework for Action 2005-2015 (HFA)

The HFA is a set of non-binding guidelines adopted by states at the World Conference on Disaster Reduction, organized by the UN International Strategy for Disaster Reduction. The five priorities contained within the HFA for consideration by the states are as follows:

- Disaster risk reduction is a national and local priority that must be recognized at all levels of government and the community with decentralized responsibilities and capacities.

- Identification, assessment and on-going monitoring of disaster risks are a priority to enhance early warning. This is achieved by providing facilities, equipment and implementing procedures and systems to monitor, report and analyze information that will assist with an early warning of a disaster.
- Use of knowledge, innovation and education to build a culture of safety and resilience at all levels. Information networks, educational material, and countrywide public awareness strategy should be promoted to improve community awareness of disaster risk and disaster management.
- Reduction of the underlying risk factors. Disaster risk reduction is an integral objective of natural resource management programmes, including land management, climate change and environmental impact assessments. In addition, economic and social development plans should also take into consideration risk reduction in their policies.
- Strengthen disaster preparedness for effective response at all levels. The priority here is to improve technical and institutional capacities and mechanisms for disaster management and to ensure that procedures and plans are in place at national, regional and international levels of administration. This includes legal preparedness to manage and facilitate foreign disaster response.

### 3.1.3. Chicago Convention on Civil Aviation 1944

Vanuatu is a signatory to the Convention on International Civil Aviation, also known as the Chicago Convention, which established the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations charged with coordinating and regulating international air travel<sup>16</sup>. The Convention establishes rules of airspace, aircraft registration and safety, and details the rights of the signatories in relation to air travel.

Major relief operations often require especially speedy air transport of relief personnel, goods and equipment. Annex 9 of the Chicago Convention calls for specific facilities to be provided to speed the entry of humanitarian relief flights, as well as their crew and cargo<sup>17</sup>.

### 3.1.4. Convention on the Facilitation of Maritime Traffic 1965

Vanuatu is a member state of the International Maritime Organization (IMO), which adopted the Convention on Facilitation of International Maritime Traffic (FAL) in 1967. The Convention's main objectives are to prevent unnecessary delays in maritime traffic, to aid cooperation between governments, and to secure the highest practicable degree of uniformity in formalities and other procedures<sup>18</sup>.

Major relief operations often require marine transport of relief personnel, goods and equipment. The Convention calls for specific facilities to be provided to speed the entry of humanitarian relief flights, as well as their crew and cargo.

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## 3.2 Regional organizations and instruments

In the case of the Pacific Island states, there are numerous regional agreements on cooperation, including for regional organizations. These focus to a large extent, but not

<sup>16</sup> The ICAO is discussed in more detail in Chapter 9 under International humanitarian transport arrangements.

<sup>17</sup> Convention on Civil Aviation, 1944, 9<sup>th</sup> edition 2006.

<sup>18</sup> The FAL is discussed in more detail in Chapter 9 under International humanitarian transport arrangements.

exclusively, on regional cooperation on economic development, transport and trade, and are in that context relevant to foreign disaster response.

### 3.2.1 Pacific Islands Forum<sup>19</sup>

The Pacific Islands Forum is a political grouping of 16 independent and self-governing states. Leaders of the Forum member countries meet annually to develop collective responses to issues of regional concern.

The Pacific Islands Forum Secretariat (PIFS) is the administrative arm of the Pacific Islands Forum. The primary roles of PIFS are to provide policy advice, coordination and assistance in implementing the decisions of the Forum Leaders. Such assistance can include the development of best practice principles and model laws, as well as the provision of legislative drafting resources.

The continuing problem of recurring cyclones and other natural disasters common to the member countries led to the establishment of the Regional Natural Disaster Relief Fund (RNDRF) in December 1975. PIFS administrates the fund, whose objective is to provide member countries with a readily available source of financial relief in the wake of natural disasters<sup>20</sup>.

### 3.2.2 Melanesian Spearhead Group (MSG)<sup>21</sup>

The MSG is an inter-governmental organization formed by the four Melanesian states of Papua New Guinea, Solomon Islands, Vanuatu and Fiji. In 2007, members of the MSG signed the Agreement Establishing the Melanesian Spearhead Group, formalizing the group under international law. Whilst the agreement is primarily to foster trade and economic development between member countries, the spirit of Melanesian solidarity is one of the main themes of the MSG<sup>22</sup>. Article 2 of the Agreement states:

*“The purpose of the MSG is to promote and strengthen inter-membership trade, exchange of Melanesian cultures, traditions and values, sovereign equality, economic and technical cooperation between states and the alignment of policies in order to further MSG members’ shared goals of economic growth, sustainable development, good governance and security.”*

### 3.2.3 France Australia New Zealand Cooperation Agreement (FRANZ)<sup>23</sup>

The FRANZ Agreement was signed on 22 December 1992, by dignitaries of France, Australia and New Zealand. The implementation of the FRANZ Agreement is an example of donor assistance in the event of a disaster. Since it was signed, the agreement has provided a mechanism for their joint cooperation in the South Pacific on humanitarian and maritime surveillance operations. The Southern Cross military exercises held every two years in New Caledonia also provide a level of regional military cooperation. FRANZ actively contributes to maritime surveillance, humanitarian and disaster relief assistance, and support to regional defence and police forces, in the Pacific and Southern Oceans.

<sup>19</sup> Pacific Islands Forum Secretariat website: [www.forumsec.org.fj](http://www.forumsec.org.fj).

<sup>20</sup> Regional Natural Disaster Relief Fund, PIFS.

<sup>21</sup> Agreement Establishing the Melanesian Spearhead Group, Art. 2, 2007.

<sup>22</sup> Agreement Establishing the Melanesian Spearhead Group, Art. 2, 2007.

<sup>23</sup> FRANZ Agreement 1992, FRANZ Guidelines 2006.

It commits its signatories to “exchange information to ensure the best use of their assets and other resources for relief operations after cyclones and other natural disasters in the region”<sup>24</sup>. While cyclones remain the chief natural disaster across the South Pacific, FRANZ has in practice been an effective system against the wide range of disasters experienced in the region<sup>25</sup>. This agreement is relevant to several of the major potential aid providers to Vanuatu, whilst Vanuatu is not a party to it.

### 3.2.4 Pacific Regional Disaster Risk Reduction and Disaster Framework for Action (RFA)

The Regional Framework for Action was endorsed by Pacific Leaders in 2005. It is a Pacific regional agreement, which underscores the importance of disaster risk reduction and disaster management as a multi-stakeholder and cross cutting development issue, establishing appropriate institutional and legal frameworks, and mainstreaming this into all development programmes, sector plans and budgets. The six key themes of the RFA are:

- Governance - organizational, institutional, policy and decision making frameworks.
- Knowledge - information, public awareness and education.
- Analysis and evaluation of hazards, vulnerabilities and elements of risk.
- Planning for effective preparedness, response and recovery.
- Effective, integrated and people-focused early warning systems.
- Reduction of underlying risk factors.

The Vanuatu National Action Plan for Disaster Risk Reduction and Disaster Management (NAP) was developed in 2005 with assistance from the Pacific Islands Applied Geosciences Commission (SOPAC), and endorsed by the Vanuatu Council of Ministers in 2006, using the themes and priorities of the Pacific RFA and the Hyogo Framework for Action (HFA).

### The Pacific Islands Applied Geosciences Commission (SOPAC)

The Pacific Islands Applied Geosciences Commission (SOPAC)<sup>26</sup> has had the mandate for implementing this framework across the Pacific region. SOPAC is also the implementing agency for disaster risk management (DRM) in the Pacific. As such, they look at the end process of disaster risk reduction, mitigation, and risk mapping.

Apart from the FRANZ Agreement, these agreements do not specifically address the area of regional cooperation amongst Pacific Island states during a disaster. The RFA and SOPAC focus on policy and planning for disasters. Other regional organizations and instruments provide for a sense of regional community amongst the Pacific Island states, and that in the case of a disaster of regional proportions would require a regional and international effort in coordinating an effective response for delivery of international relief.

<sup>24</sup> FRANZ Agreement 1992, FRANZ Guidelines 2006.

<sup>25</sup> In Tonga (cyclone Waka) in December 2001; in Niue (cyclone Heta) and Vanuatu (cyclone Ivy) in February 2004; in Fiji (floods) in 2004; in Cook Islands (cyclones Meena, Nancy, Olaf and Percy) in 2005; on the Ambrym Island in Vanuatu (acidic rains) in 2005; in Solomon Islands (tsunami) in 2007 and in Papua New Guinea (floods) in 2007. Wikipedia

<sup>26</sup> From January 2011 SOPAC is a division of the Secretariat of the Pacific Community (SPC).

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## **Chapter 4**

Overview of national laws,  
policies and plans for  
disaster management

## 4.1 The national disaster response coordination structure<sup>27</sup>

The regulatory framework for disaster risk reduction and disaster management in Vanuatu is primarily based on the National Disaster Act 2000, the National Action Plan 2006-2016<sup>28</sup> and the National Disaster Plan (Review 2009)<sup>29</sup>. It is noted that a new draft Disaster Management Act exists, but it has not been approved by the Council of Ministers.

The National Disaster Act does not clearly indicate the roles of government departments in facilitating and regulating foreign disaster response in Vanuatu.

The National Action Plan provides a long term plan for overall disaster risk reduction and management in Vanuatu, whilst the National Disaster Plan provides an overview of the standard operating procedures, channels of communication and operational structure of disaster management. Like the National Disaster Act, the National Disaster Plan does not describe the roles and responsibilities of government departments facilitating and regulating foreign disaster response in Vanuatu.

**The Minister for Internal Affairs** is the Minister appointed with specific responsibilities for disaster management within the country, and as such is responsible to the Cabinet of Ministers for ensuring that adequate disaster management measures exist before, during and after a disaster.

**The National Disaster Committee (NDC)** is responsible to the Minister of Internal Affairs for assisting the National Disaster Management Office (NDMO) in the execution of its duties associated with mitigation, prevention and preparedness, response and recovery programmes, and for the provision of technical advice and resource support to the Central Control Group (CCG) during disaster response operations. The NDC is chaired by the Director General of Internal Affairs. The CCG is also chaired by the same director general.

The NDC shall, through the conduct of meetings, review and discuss sectoral disaster plans and related programmes identified by the NDMO and ensure that the commit-

<sup>27</sup> National Disaster Plan, Annex Two: National Disaster Coordination System (also Annex 1 to this report).

<sup>28</sup> The NAP was developed in 2005 and endorsed by Vanuatu's Council of Ministers in 2006. It spans the ten year period from 2006-2016. Vanuatu was the first country in the Pacific region to develop a **National Action Plan (NAP)** for disaster risk reduction and disaster management (DRR-DM). The NAP came about in 2005 when the government recognized that **the Priorities and Action Agenda (PAA)** did not fully address the disaster risk reduction and risk management issues and challenges at the time. The PAA is integral to the Vanuatu government's national planning and budgetary process. Vanuatu first produced a PAA in 2003 and it is this document that provides the link between policy and planning by the Vanuatu government. In 2005, a supplementary PAA on DRR and DM was prepared with the assistance of SOPAC and other regional aid agencies. The 2005 supplementary PAA was prepared in tandem with the NAP and these two documents as a package provide the basis for DRR and DM in the country. The Vanuatu NAP articulates how the government plans to strengthen DRR-DM at national level, in keeping with its commitments to key regional and global agreements. These include the *Pacific Disaster Risk Reduction and Disaster Management Framework for Action (2005-2010)* or *Regional Framework for Action (RFA)*, a Pacific regional agreement which was endorsed by Pacific leaders, and the *Hyogo Framework for Action (2005-2015)*, a global agreement which the Vanuatu government endorsed at the World Conference on Disaster Reduction in 2005 (see above). Under the main thematic areas of the NAP, the government is endeavouring to streamline and improve coordination of DRR-DM by simplifying governance, increasing recognition of the importance of DRR-DM within the mainstream of government policy in the areas of national planning and trying to improve public awareness. National Action Plan, 2006.

<sup>29</sup> The National Disaster Plan superseded the 1987 National Disaster and Emergency Plan. A requirement for a plan is stated in National Disaster Act 2000, Part 3, Section 9.

ment of their respective departments or organizations is provided to facilitate the implementation of plans and achievements of the programme objectives<sup>30</sup>.

The function of the NDC is in line with Section 4 (2) Part 2 of Disaster Act 2000, as follows:

- a. To develop policies for the prevention of, preparation for, response to and recovery from disaster;
- b. To ensure that such strategies and policies are implemented by the National Disaster Management Office, other government agencies and non-government agencies;
- c. To advise the minister on the need for aid to counter the effect of a disaster and on any agreement proposed to be entered into by the government in relation to such aid;
- d. To advise the minister on the declaration of states of emergencies;
- e. Subject to the approval of the Commission of Police, to determine the number of members of the Vanuatu police force to be deployed in the prevention of, preparation for, response to and recovery from a particular disaster;
- f. To ensure that government agencies comply with directions given by the minister under Section 16; and
- g. To advise the minister on all other matters relating to disasters<sup>31</sup>.

The Director General of the Ministry for Internal Affairs is the **National Disaster Controller** when disasters escalate from the capacity of provincial governments to manage, to a situation where a national response is required. On the other hand, the provinces are at the front line of response to disaster impact on the communities in their jurisdiction. The control and cooperation of response by support organizations and agencies within a province is the responsibility of the provincial secretary general<sup>32</sup>.

The function of the **NDMO** is in line with the provision of National Disaster Act, 2000, Part 3, Section 6 (2):

- a. To implement the strategies and policies of the National Disaster Committee;
- b. To advise the Committee in relation to disasters;
- c. To ensure that aid for a disaster is used for the purpose for which it was provided;
- d. To establish clear communication networks between government and non-government agencies at all levels;
- e. To develop disaster education programmes for the community and to organize disaster training exercises;
- f. To perform such other functions as are conferred on it by or under the Act.

<sup>30</sup> The formation of the NDC is legislated under the provision of Section 4 and 5 Part 2 of the National Disaster Act No 31 2000. National Disaster Plan Review December 2008, Part 3, Paragraph 1-3.

<sup>31</sup> The Committee is composed of six members: Director General of the Ministry of Internal Affairs (Chairperson); Director of the National Disaster Management Office (Secretariat); Commissioner of Police; Director Provincial Affairs; Director Women's Affairs; Director Generals of the Ministries of Education, Health, PIU, Agriculture, Fisheries & Forestry, Lands, Geology, Water, Volcanology, MOFEM, NGO Representative(s) as decided by the Chair; Private Agencies i.e. Telecom and Unelco may be called to attend. Ibid., Paragraph 4.

<sup>32</sup> It is not the Disaster Controller national level's responsibility to manage or direct operations within a province. This separation is essential to ensure that provinces utilize and activate their resources in accordance with the prioritisation of needs as they have determined. Ibid., Paragraph 7 and 8.



The NDMO is responsible to the NDC Chairman for the development, implementation, daily management and maintenance of disaster prevention and preparedness activities for disaster response/recovery procedures<sup>33</sup>.

Operational support plans are required to facilitate effective response to specific hazards, which are likely to affect the Republic of Vanuatu. This includes the development of provincial disaster plans, departmental disaster plans, municipal disaster plans, NGOs disaster plans and private agencies disaster plans. The requirement for such plans will be determined by the NDC, however all heads of above mentioned agencies are responsible for the development and the management of their respective disaster plans within the provision of Section 10 (1-5) Part 3 of the National Disaster Act. According to information available at the time of writing the report, only a limited number of support plans have been created<sup>34</sup>.

Furthermore, interviews indicated that the Director of NDMO is currently responsible in various ways to the Police Commissioner, the Director General of Internal Affairs, the Head of Provincial Affairs and the Director General of the Prime Minister's Office. Furthermore, he must also work through his Director General (Ministry of Internal Affairs) to cooperate with other key line ministries.

**Provincial Disaster Committees (PDC)** must be formed by all six provinces throughout the Republic of Vanuatu. The respective Secretary Generals of the provinces, in consultation with the Director of Provincial Affairs, are responsible for the establishment of Provincial Disaster Committees, as provided for under the National Disaster Act 2000, Part 3, Section 11, paragraph 1. The Secretary Generals also become the Provincial Disaster Controllers and are to be assisted by the Provincial Police Commander or Officer in Charge, as their Disaster Operation Officers<sup>35</sup>. It appears that neither the Disaster Act nor the National Disaster Plan provide clear guidance on the Provincial Disaster Committees' reporting lines when they participate in disaster response led by the central government.

The National Disaster Plan describes also in broad terms the role of **other government departments**<sup>36</sup>. It is noted that they are not meant to be in addition to normal functions, but "to utilise current expertise and recourse" for effective disaster risk management. It further explains that the National Disaster Plan provides general direction for departments, whilst it is each department's responsibility "to review and analyse its services and technical support it can offer for disaster planning, response and recovery".

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## 4.2 Disaster response operations

The Director General of the Ministry for Internal Affairs is the nominated Disaster Controller (DC) for each disaster and major emergency which occurs within the Republic of Vanuatu. He will be assisted in the performance of his duties through the provision

<sup>33</sup> Ibid., section 6 (9).

<sup>34</sup> Ibid., Part 5 Paragraph 2. The Support Plans created up to now are: the Operational Support Plan on Ambae Volcano, 1995; Cyclone Support Plan Review of October 2009-October 2010; the Penama Provincial DRM Arrangement 2010/2011 and the Lolovoli Community Disaster Plan 2010/2011.

<sup>35</sup> Some of the functions of the PDC are the following: a) dissemination of public education material and conduct of awareness activities in accordance with national programmes but relative to local requirements; b) establish a Provincial Emergency Operation Centre; c) conduct hazard and risk assessments, identify and develop disaster mitigation plans; etc. Ibid., Paragraph 9.

<sup>36</sup> National Disaster Plan, Annex Four: National Disaster Coordination System (also Annex 2 to this report).

of technical advice and resource support, by the police/Vanuatu mobile force, disaster response liaison officers in government departments, as well as the Central Control Group (CCG) under his chairmanship<sup>3738</sup>.

The National Disaster Plan describes that the CCG will be responsible for collecting information and needs assessments, and coordination of resources during a disaster or major emergency situation. This function “will be performed from the National Emergency Operation Centre (NEOC), with the Disaster Controller having specific responsibility for developing the operational procedures to facilitate the coordination process”<sup>39</sup>.

As explained above, the National Disaster Committee (NDC) is responsible for assisting the National Disaster Management Office (NDMO) in the execution of its duties associated with mitigation, prevention and preparedness, response and recovery programmes, and for the provision of technical advice and resource support to the Central Control Group (CCG) during disaster response operations. How this assistance of the NDC and provision of technical advice and resource support from the NDMO to the CCG takes place appears not to be explained further in the National Disaster Plan.

The Joint Planning Operation Centre (JPOC), located at the Vanuatu Police Force Command Headquarters, is the nominated **National Emergency Operation Centre (NEOC)**<sup>40</sup> for all major disaster and emergency operations requiring coordination<sup>41</sup>. The Centre has specific functions as to the coordination of the actions of all government and non-government agencies, to control and direct the allocation of aid provided by the above agencies, to coordinate requests for aid, to prepare and disseminate situation reports, damage and needs assessments, and other information, through public broadcasting networks, other media outlets and communication facilities, so as to keep members of the public throughout Vanuatu well informed<sup>42</sup>. The relationship between NEOC and the CCG appears not to be explained in detail in the National Disaster Plan.

### 4.3 Committee system<sup>43</sup>

The attainment of effective response to hazards is addressed through the use of committees which will have primary responsibility for the development and review of operational procedures and policy for their given functions. The advantages of such committees are that they can assess situations and make decisions more quickly, and they have through this representation a specialized core of expertise<sup>44</sup>.

The two key response committees are:

<sup>37</sup> National Disaster Plan, Annex Two: National Disaster Coordination System (also Annex 1 to this report). Please note that in this diagram the CCG is called Coordination and Control Group, whilst the text calls it Central Control Group.

<sup>38</sup> In the absence of the Director General responsible for Disaster Management, the Minister for Internal Affairs will nominate a relevant Director General based on advice from the NDC, Commissioner of Police and the NDMO. National Disaster Plan, Part 6(1).

<sup>39</sup> Ibid., Part 6(2).

<sup>40</sup> National Disaster Plan, Annex Three: National Disaster Coordination System (also Annex 3 to this report).

<sup>41</sup> National Disaster Plan, Part 6 (3).

<sup>42</sup> Ibid., Part 6(4).

<sup>43</sup> National Disaster Plan, Annex Five: National Disaster Coordination System (also Annex 4 to this report).

<sup>44</sup> National Disaster Plan, Part 7.

■ Central Control Group (CCG) (operational level)

The CCG is responsible to the Chairperson of the NDC for the implementation and management of disaster response operations. This includes both pre-impact preparedness measures and post-impact relief. In particular, the CCG will activate departments and organizations in response to the given threat, and liaise with and guide government departments, provincial governments, NGOs and community groups in the execution of their disaster roles and responsibilities. Its members will include representation from the NDMO (Chair), Deputy Commissioner of Operations, Commander of Vanuatu Military Forces, Director Provincial Affairs, Director Meteorological Department, NGO representative (as determined by the Chair) and other lead response agencies, as well as technical agencies as determined by the Chair<sup>45</sup>.

■ Damage Assessment Response Committee

This Committee is responsible for assessing damage reports and prioritising resource allocations to affected areas based on resource availability, access and transport requirements. In reporting to the NDC on the extent and scale of damage, it will make recommendations on response to areas of high needs. Committee representatives are drawn from NDMO (Chair), Public Works Department, Health Department, Department of Agriculture, Water Supply Department, Finance Department, Department of Foreign Affairs, Department of Education, response agencies representatives and other technical agencies and NGO representatives, as required by the Chair<sup>46</sup>.

The exact relationship of these committees (and others) with other parts of the disaster response structure appears not to be explained in detail in the National Disaster Plan.

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## 4.4 Achievements and challenges

An independent progress review of the National Action Plan was undertaken in 2010. There it is noted that the government has made significant progress in building its disaster management capacity, including through the construction of a new building, which includes a new Emergency Operations Centre bringing key agencies with functional responsibility for DRR-DM, such as NDMO, METEO, Geohazards and the Climate Change Unit all under one roof. This is expected to significantly strengthen future coordination and communication as those agencies are all currently located under different ministries and departments, with differing lines of accountability and reporting responsibility<sup>47</sup>.

The government also plans to amend the National Disaster Act in order to amalgamate METEO and Geohazards under a single new department within the Ministry of Infrastructure and Public Utilities, although the NDMO would continue under the Ministry of Internal Affairs.

An amendment of the National Disaster Act was drafted in 2009, but has yet to be approved by the Council of Ministers. The amendment additionally aims to clarify institutional/governance arrangements, and to formally establish the National Disaster Management Office (NDMO) as a civilian authority. This legislative amendment was

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<sup>45</sup> Ibid., Part 7(1).

<sup>46</sup> Ibid., Part 7(2).

<sup>47</sup> METEO is under the Ministry for Infrastructure and Public Utilities, Geohazards is under the Department of Geology and Mines, NDMO is under the Ministry of Internal Affairs. See Chapter 11 on Transparency and Accountability.

one of the first recommendations in the 2009 review of the Act. Currently, the Act is still to be approved by the Council of Ministers<sup>48</sup>.

Improved public and private awareness of DRR-DM has also been part of the main themes of the National Action Plan (NAP). The government has been able to achieve a high level of awareness of this across all levels of government, the community and the private sector. It has raised the profile of DRR-DM by conducting numerous programmes, national disaster awareness events and distributed information material throughout the country<sup>49,50</sup>.

Despite the apparent high level of awareness of DRR-DM within all levels of government, the community and the private sector, it is reported that the Provincial Disaster Committees still lack the human resources to conduct routine training of government officers and to implement community awareness programmes<sup>51</sup>.

The establishment of the National Emergency Operations Centre is also intended to place under one roof an information system that will be able to provide data compiled and archived by the various agencies, i.e. of METEO, Geohazard, the Climate Change Unit and the NDMO, thus improving coordination and sharing of vital information needed in times of national disasters<sup>52</sup>.

Despite provision in the National Disaster Act under section 8, for the National Emergency Operations Centre to be staffed on a 24 hour basis, it currently operates for only 18 hours a day due to lack of resources. Interviewees indicated that although there have been some improvements, coordination and communications between the NDMO in Port Vila and the island provinces generally remain weak. The mobile phone operator, DIGICEL, which has the most extensive mobile phone coverage (85%) within the country, is working with METEO to provide mass broadcast SMS text warnings as a means of disseminating information. This arrangement could also include other

<sup>48</sup> In addition to improved governance, the Vanuatu government has also increased funding to the NDMO to help implementation of the NAP. Funding has increased from 11m in 2005 to 32m in 2010, and approval in principle has been granted to increase the level of human resources allocated to the NDMO. However, in a review of the NAP conducted in 2009, by an independent consultant, it was concluded that the NDMO was still under-resourced and had significant capacity constraints. In the event of an emergency, there are provisions under the FMA Act and the Public Finance and Economic Management (PFEM) Act of 1998, to enable the government to quickly mobilize additional budget resources without having to seek Parliamentary approval. The PFEM Act allows the minister to sign an order approving a supplementary budget of up to 1.5% of the national budget. In practice, however, accessing funds can still take time. This is not because of bureaucratic delays within the Department of Finance, but due to the process involved in declaring a state of emergency by the Council of Ministers. Vanuatu NAP for DRM, Independent Progress Review, 2010.

<sup>49</sup> Vanuatu NAP for DRM, Independent Progress Review, 2010.

<sup>50</sup> In addition, the NAP, under the theme of mainstreaming disaster risk reduction, includes strengthening compliance with key regulations and policies which address DRR-DM. This includes land use planning and a building code. Currently there is an absence of a building code although one has been in draft form for over 10 years and has yet to be enacted as legislation. At present, the insurance industry plays a pseudo role in ensuring that buildings are built to standards that will withstand earthquakes and major cyclones. It does so by insisting that certain standards of construction are met prior to the provision of insurance cover. This, however, is not mandatory and property owners may elect to avoid insurance cover.

<sup>51</sup> The only province with a disaster office operating and a Provincial Disaster Plan is Penama, and only recently (November 2010) the Public Service Commission has increased the number of staff members of the NDMO from six to 13. Interviews with Job Esau, Director of the NDMO, and Edward Kaltamat, Director of the Provincial Affairs Department.

<sup>52</sup> These include the provision of weather forecasts, cyclone predictions and seasonal forecasting by the METEO, working with DIGICEL in the distribution of timely SMS messages in sudden onset of events such as disasters and cyclones, and websites by METEO and Geohazard.

broadcasts under the Geohazard and the NDMO. The improvement in mobile phone coverage within the country, and the increased levels of telecommunication services by existing telecommunications providers, has greatly improved two-way information flow, which in the past had been problematic.

Infrastructure (roads, wharves, ports, airstrips) in the outer islands remains poor. Vanuatu is an archipelago of many islands spread over thousands of kilometres, creating major logistical challenges in the event of an emergency. The poor infrastructure creates many challenges in moving people and goods in the event of an emergency<sup>53</sup>.

Although significant progress has been made to strengthen Vanuatu's DRR-DM information and systems, it is noted by interviewees that integration of these systems remains a major challenge. The various agencies, including METEO, Geohazard and NDMO have developed their own information systems with support from a variety of donors and regional technical agencies. This has resulted in a patchwork of different systems being used that are poorly integrated. Overall, the current coordination system appears too complex and many roles are intertwined.

On the positive side, work has already begun to develop a Pacific Catastrophe Risk Financing mechanism, including a regional GIS based Pacific Exposure Database. This initiative is expected to provide better information for vulnerability assessment, strengthen links with development partner financing, and improve risk sharing between public-private entities<sup>54</sup>.

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## 4.5 Recommendations

This chapter has described in broad terms the national laws, policies and plans for disaster management. It is noted that a new draft Disaster Management Act exists, but it has not been approved by the Council of Ministers. As such, consideration should be given to revising the National Disaster Act. It is recommended that:

- The National Disaster Act should clearly identify roles and responsibilities of relevant authorities in disaster response and describe coordination between authorities.
- The National Disaster Plan should address the reporting lines between authorities and procedures in the event of a disaster, particularly with regard to the NDMO, NDC and NEOC and other relevant actors.
- The National Disaster Act or National Disaster Plan should require relevant Government departments to finalise guidelines or regulations that govern their actions related to foreign disaster response. It should also provide guidance on their content to ensure consistency.
- Greater efforts should be made in educating and informing the government agencies and other key stakeholders on the guidelines and procedures contained within the National Disaster Plan and National Disaster Act.

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<sup>53</sup> To address the above, the NDMO plans to extend its reach through the establishment of provincial disaster management offices and disaster management plans for high risk areas including Tanna, Ambae, Torba and Ambrym in its future programme.

<sup>54</sup> Vanuatu NAP for DRM, Independent Progress Review, 2010.

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## **Chapter 5**

# Declaration of emergency and requests for international assistance

## 5.1 Early warnings and declaration of a disaster

Under the National Disaster Plan, information on a developing disaster<sup>55</sup> situation will come from official sources such as the police, meteorology, geology and provincial departments and/or from unofficial sources like members of the public.

It is the responsibility of the NDMO or province to verify the accuracy of unofficial reports before activating any organizational response under the authority of the National Disaster Plan<sup>56</sup>, and for the various departments, agencies and organizations to ensure that representatives are available at all times, in particular, during the cyclone season<sup>57</sup>. It is the responsibility of the CCG to also ensure that timely and appropriate messages are broadcast to the public advising of the degree of the threat, and action that should be taken before, during and after a disaster impact. Departments and organizations are to appoint respective liaison officers to link their organizations to the NEOC/NDMO before, during and after a response operation<sup>58</sup>.

In accordance with Part 4.13 of the National Disaster Act and Part 9.6 of the National Disaster Plan, and on the basis of the result of aerial reconnaissance and disaster impact reports from Provincial Disaster Committees, the Chairperson of the National Disaster Committee (NDC) may advise the Minister for Internal Affairs to recommend to the President to declare a state of emergency for all or part of the country. According to the law, the President may do so, if s/he is satisfied that a disaster constitutes a) significant and widespread danger to life or property in Vanuatu and b) exceeds the affected community's capabilities to deal with that disaster.

As soon as practicable after the President makes a declaration of a state of emergency, the National Disaster Act requires the Minister for Internal Affairs to ensure notice of the declaration to be broadcast throughout Vanuatu by public broadcasting networks and other media outlets.

The National Disaster Act Part 16 explains that "while a declaration of a state of emergency is in force, the Minister for Internal Affairs may, on the advice of the National Disaster Committee, direct any government agency to do or refrain from doing any act, or to exercise or refrain from exercising any function"<sup>59</sup>. If a direction is given to a government agency under this Part 16<sup>60</sup>, the government agency must comply with the direction despite any other Act or law of the country.

Upon a declaration of a state of emergency in relation to a disaster, the Director of NDMO must, as soon as possible, ensure the National Disaster Operations Centre becomes operational in relation to that disaster (see Chapter 4).

<sup>55</sup> Definition of disaster: "An event producing widespread destruction of the functional infrastructure of a community and processes of social organization become disrupted to the extent that normal human existence within a particular location is severely threatened". National Disaster Plan (Review 2009), Section 14.0.

<sup>56</sup> Ibid., Section 5.6.

<sup>57</sup> Details of the national activation system can be found in National Disaster Plan Section 6.5 and onwards, whilst details on the warning system used by the Meteorological Service are contained within the Cyclone Support Plan.

<sup>58</sup> Cyclone Support Plan, Annex C; National Disaster Plan Annex 3.

<sup>59</sup> National Disaster Act 2000, Part II, section 16.1.

<sup>60</sup> National Disaster Act 2000, Part II, section 16.2.

## 5.2 Requests for international disaster relief and assistance

A declaration of a state of emergency is made by the President when the situation exceeds the affected community's capabilities to deal with a disaster. The National Disaster Plan<sup>61</sup> explains that under the same conditions international assistance can be requested, i.e. once it has been established that the severity of the damage is beyond the capacity of national and provincial available resources in-country. This requirement will need to be determined by the National Disaster Committee, which will "submit through the Minister of Internal Affairs", a formal request for international assistance "with consultation with the Ministry of Foreign Affairs, and Aid Coordination Office under the Prime Minister's Ministry".

Under the National Disaster Plan<sup>62</sup>, once a formal request for assistance has been made through the Ministry of Internal Affairs, a direct contact consultation and contact will continue between the Aid Coordination Unit and Department of Foreign Affairs to donors to ensure that an international assistance requirement has been made known. All departments and agencies which have identified the need for assistance must submit their requests to the NDC as part of their assessment reports. They are not allowed to make direct approaches or requests to aid agencies and donors without the prior endorsement of the NDC.

The NDC will also be accountable to the respective donors for ensuring that all relief assistance is provided and distributed in accordance with the guidelines governing the provision of such assistance and for the preparation of a report on expenditures and distribution of the assistance provided<sup>63</sup>.

Regional and international aid agencies wishing to assist Vanuatu in times of a disaster should ensure their interest is channelled through the Ministry of Foreign Affairs, with a copy to the NDMO. Whilst not addressed in detail in the National Disaster Plan, the National Cyclone Support Plan (Review 2009) explains that no regional and international organization is authorized to be directly involved in any assessment or relief assistance to communities, unless the formal procedures are followed<sup>64</sup>.

After consultation with the various departments and agencies that are involved, it was evident that there is substantial confusion as to the expected channels of communication in the event of a disaster, due to lack of awareness and circulation of the guidelines contained in the annual National Disaster Plan. This is both related to national response and international response. This has created delays for donor agencies to receive official requests, which are needed to activate their systems for offering and providing support to disaster operations.

In addition, it is noted that there is lack of clarity on the exact roles and responsibilities of NDMO, NDC, NEOC, Ministry of Foreign Affairs and other key actors.

## 5.3 Recommendations

In addition to the recommendations contained in Chapter 4 on national laws, policies and plans for disaster management, it is recommended that:

<sup>61</sup> National Disaster Plan, Part 9(2).

<sup>62</sup> Ibidem.

<sup>63</sup> Ibid., Part 9(4).

<sup>64</sup> Part 13, Cyclone Support Plan.



- Provisions should be included in the National Disaster Act or National Disaster Plan on the procedure for issuing a request for international assistance which addresses the agencies involved and the content of a request.
- The National Disaster Plan should identify specific criteria for determining when a disaster has exceeded local and national capacities, based on the initial and on-going assessment reports provided by the agencies responsible.
- The procedures for requesting and accepting international assistance should be disseminated to all relevant government departments and actors from the international community.

### United Nations Disaster Assessment and Coordination Team (UNDAC)

An example of initial disaster assistance is the roster for the United Nations Disaster Assessment and Coordination Team (UNDAC), established by the United Nations. UNDAC can be deployed in support of national responses to hazard impacts and other major emergencies, and are most effective when deployed early in an operation. Team members are drawn from other Pacific Island countries and beyond (globally, including UN staff), and are placed on stand-by for rapid deployment at the formal request of national governments via the UNDAC focal point to the respective UN resident coordinator.

In the case of Vanuatu, the focal point is the Ministry of Foreign Affairs, and the UN resident coordinator is based in Suva, Fiji (covering Vanuatu and nine other Pacific Island countries). The teams would be activated by the UN resident coordinator, through the Pacific Regional UN OCHA Office in Suva, Fiji.

UNDAC teams can contribute to the rapid assessment and sharing of information to the government through the NDC and among active donors in Vanuatu and the region, facilitating coordination with and mobilization of appropriate resources from donors, who might not be operational in the region but are interested to assist<sup>1</sup>.

<sup>1</sup> Information from UN OCHA, Suva, Fiji. Furthermore, the Cyclone Support Plan (Review 2009) does also contain a (slightly incorrect) representation of the UNDAC system.

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## **Chapter 6**

# Legal status of organizations providing assistance

## 6.1 International organizations with diplomatic status

In accordance with the Diplomatic Privileges and Immunities Act of 1982, the diplomatic missions are governed by diplomatic immunity laws, on the basis of the Vienna Convention on Diplomatic Relations 1961, which Vanuatu has ratified.

Among the rights conferred by this Convention and Act to diplomatic missions, are immunity to any form of criminal or civil proceedings, inviolability of their premises, and exemptions from all customs duties and visa fees.

However, the Act only applies to members of a diplomatic mission, and does therefore not cover foreign government relief teams and personnel, goods or equipment in the event of a disaster.

On the other hand, the privileges and immunities of that Act do also apply to the personnel of a number of international organizations, some of which are active in disaster response. As set out in Schedule 6, Section 6 of the Act, covered agencies include:

- United Nations
- The Commonwealth Secretariat
- Asian Development Bank
- International Monetary Fund
- International Finance Corporation
- South Pacific Commission
- South Pacific Bureau for Economic Co-operation
- United Nations Food and Agricultural Organization (F.A.O.)
- European Community
- Association des Universités Entièrement ou Partiellement de Langue Française et l'Université des Réseaux d'Expression Français
- Pacific Aviation Safety Office (PASO)

## 6.2 Vanuatu Red Cross Society

The Vanuatu Red Cross Society was founded on 11 October 1982, pursuant to the Vanuatu Red Cross Society Act<sup>65</sup>. Its constitution is based on the Geneva Conventions and the Additional Protocols, to which Vanuatu is a party. It is a voluntary aid society, auxiliary to the public authorities in the humanitarian field, and acting for the benefit of the civilian population.

In accordance with paragraph 10(3) (b) and schedule 2 item (f) of the Value Added Tax Act 1998 and Schedule 3 Section 3 item X.30 of the Import Duties (Consolidation) Act 2006<sup>66</sup>, all goods donated to the Red Cross Society for use or free distribution in emergencies, are to be admitted into Vanuatu free of duty, as long as they are certified by the Chief Executive Officer, or the President of the Society, that they are for use or free distribution in emergencies.

In addition, under the MOU<sup>67</sup> signed between the Vanuatu Red Cross Society and the Government of Vanuatu in 2010, staff who are employed for specific roles, such as a temporary, acting or interim expatriate or non-resident chief executive officer, and other

<sup>65</sup> Vanuatu Red Cross Society Act of 1982.

<sup>66</sup> Import Duties Act, Consolidated Edition, 2006.

<sup>67</sup> Memorandum of Understanding between the Government of the Republic of Vanuatu and the Vanuatu Red Cross Society, January 2010.

such skill providers, are exempted from having to apply and pay for a work and residency permit for the duration of their employment.

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### **6.3 Civil society organizations and international NGOs**

Non-governmental organizations (NGOs) play a critical role in Vanuatu, filling gaps in the social safety net. A large number of foreign donor programmes work in these areas as well, either directly or indirectly by funding NGOs. There are a variety of types of civil society organizations (CSO) and NGOs in Vanuatu. They range from informal organizations that have no formal legal status to organizations with formal legal structures. An organization acquires status of a legal entity upon registration under the Charitable Associations Act of 1982.

Most of the CSO in Vanuatu are registered as Charitable Associations, which are governed by their respective constitutions, according to the Charitable Associations Act, 1982. A CSO becomes a legal personality upon registration under the Charitable Associations Act and can then enter into legal relations with other bodies.

Some organizations such as the Foundation for the People of the South Pacific (FSP) and Voluntary Services Overseas (VSO) operate under a Memorandum of Understanding with the Government of Vanuatu. Entering into an MOU requires submitting to the Ministry of Foreign Affairs their founding act and other proof that their internationally agreed obligations have been fulfilled.

Registration is a requirement if the organization decides to take specific action, employ staff, rent or buy a property, raise funds from local or international funding agencies and, if needed or desired, provide liability protection for officers or staff. Also, some tax concessions and exemptions are available only to registered organizations. Vanuatu has no taxes on income, capital gains and inheritance, nor any other forms of direct taxation; the only form of tax is indirect taxes on consumption, such as value added tax (VAT), import and custom duties (see Chapter 7).

The authority for determining exemption under the Import Duties Act is the Director of Inland Revenue and Taxation. Under this Act, under Section 5 category X.65 (h) international NGOs are exempted from VAT and import duties if this is provided for in the Memorandum of Understanding signed between the Government and that particular organization (See Chapter 7).

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### **6.4 Vanuatu Association of Non-Government Organizations (VANGO)**

Many NGOs are members of an umbrella organization, VANGO (Vanuatu Association of Non-Government Organizations). In accordance with Article 4 of VANGO's Constitution as amended in 2006, full membership status is open to organizations registered as charitable organizations in Vanuatu, that agree to abide by the constitution, mission and goals of VANGO.

Any organization that wishes to become a full member of VANGO must make a written application to the registered office of VANGO submitting necessary documentation. Members shall meet the following criteria:

- i. Be voluntary, independent, not-for-profit and not self-serving in aims and related values;

- ii. Be registered under the Charitable Organizations Act (Chapter 140) or be recognized locally or internationally as a non-governmental organization;
- iii. Have a local, national or regional focus in the conduct of its activities.

VANGO signed an MOU with the Government of Vanuatu in 2004, which is currently under a revision process, and which provides the following:

- a. It permits member organizations to implement their activities in locations outside the capital with the agreement of local authorities, with technical expertise and funding to be supplied by the organization.
- b. Entry visas are issued free of charge to overseas personnel of member organizations and their families.
- c. It permits member organizations to lease, rent or construct office buildings.
- d. Member organizations are allowed the importation of materials, equipment and machinery in accordance to the rules and regulations of Vanuatu.

Not all NGOs do advise VANGO of their presence in Vanuatu. Interviews indicate that this is because they feel that in the past VANGO has failed to show leadership in representing NGOs in Vanuatu. The process of becoming part of VANGO has been criticized, owing to a lack of communication and transparency in its operations<sup>68</sup>.

There are no provisions in place under the legal framework for organizations entering Vanuatu for the first time to provide emergency disaster relief, and such organizations would be required to enter into a formal agreement with the government (via VANGO or independently). It is not clear whether the process would be expedited in the event of a disaster relief operation, nor is it clear whether the facilities included in the MOU would apply in an emergency situation when an organization may need to undertake activities outside of its first mandate and project budget.

## 6.5 Recommendations

It is recommended that the National Disaster Act should:

- Set out a procedure for foreign entities to register as a disaster relief agency in Vanuatu in order to receive certain legal facilities. Eligibility of foreign entities should be based on certain criteria, including their ability to comply with the responsibilities described in the IDRL Guidelines paragraph 4.
- Designate a Government agency to be responsible for the maintenance of the register of disaster relief agencies.
- Provide that registered disaster relief agencies will be granted a number of legal facilities, including temporary legal status upon arrival for the duration of its operation. Such measures would be in addition to any facilities, privileges, and immunities which are already required to be provided under domestic and international law (for example, to international organizations covered by the Diplomatic Privileges and Immunities Act).

<sup>68</sup> In August 2009, the NGOs Umbrella organization almost went into liquidation, because of lack of funds to support its administrative functions. On 24 December 2009, an agreement was signed between VANGO and the New Zealand Aid Programme, that has revived the organization by providing funding to the organization of Vt 32 million. The New Zealand Aid funding is for three years (2009-2012) and it will cover core areas of (1) information and communication (2) capacity building (3) networking, advocacy and volunteering and (4) effective management. With these recent developments, VANGO hopes to become the leading agency for the coordination of the NGOs in management and response to disasters, and improve cooperation with the NDMO. Interview with Secretary General of VANGO, Viviane Licht.

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## **Chapter 7**

Customs, quarantine and tax  
arrangements for the entry of  
relief goods and equipment

In major disaster situations, there is often a need for rapid importation of relief goods and equipment in order to address critical humanitarian gaps. Standard customs procedures and requirements may delay that importation. At the same time, crises can also be a good opportunity for mal-intentioned actors to seek to bypass normal customs rules in order to import illegal items under the guise of humanitarian assistance. This can create an important dilemma for customs authorities.

The IDRL Guidelines recommend that disaster affected states exempt disaster relief and recovery items imported by approved assisting governments and humanitarian organizations from all customs duties, taxes, tariffs, or governmental fees, and exempt them from any restrictions. They also urge that governments simplify and minimize document requirements, waive or reduce inspection requirements, and permit re-exportation of any equipment or unused goods which the assisting state or humanitarian organization owns and wishes to retain.

## 7.1 Customs and import tax exemptions

We have already noted provisions in the Vanuatu law relating to exemptions from tax and customs duties by law for diplomatic missions and recognized international organizations.

Contained within the Import Duties Act Consolidation 2006 are two specific categories of exemptions that deal with relief of import duties for goods imported for disaster relief.

Under Section 5, X.65 Goods Imported under an International Convention or Agreement, goods are admissible free of duty or tax, when covered by an international convention or agreement (see Chapter 6) signed by the Government of the Republic of Vanuatu. Part (h) refers to goods imported by or on behalf of the Government of Vanuatu for disaster relief projects funded by foreign states or international organizations, provided that a signed copy of the convention or agreement is lodged with the Minister of Finance, together with a list of persons entitled to privileges under such convention or agreement. The Director of Customs is allowed to impose additional conditions as he may consider necessary in any particular case.

Under Section 3, X30 part (b), Charities Act, there is provision for exemption of import duties on goods donated to the Vanuatu Red Cross Society.

As explained in Chapter 6, goods donated to the Vanuatu Red Cross Society, and certified by it as destined for use or free distribution in emergencies, can be admitted free of duty, provided that any used clothing must be accompanied by a certificate of fumigation, and further provided that the Director of Customs and Taxes may determine the quantity of goods that may be imported by each agency.

The Director of Customs advised the consultant that all the other NGOs providing goods, imported as disaster relief, must do so through the Vanuatu Red Cross Society. This is not written in the Act, but is a decision by the Director to facilitate the process of customs clearance. This has led to complaints by other NGOs and international organizations who allege discrimination<sup>69</sup>.

<sup>69</sup> The Director of the Vanuatu Red Cross Society has written to the Director of Customs requesting a written ruling / notice to all NGOs of this procedure and for these NGOs to be informed of their respective responsibilities for transportation and distribution, in the process of obtaining customs clearance. By January 2011, the written notice had not been provided.

### 7.1.1 Medications

UNICEF and WHO both have international agreements with the government, for the exemption of tax and import duties on medical equipment and medicines. This is covered by Section X.65 (h)<sup>70</sup> of the Import Duties Act. In addition, any importations of relief supplies undertaken directly by the Vanuatu Health Department are free of import duties and taxes.

Moreover, Section 5 of the Import Duties Act, X.60, states that all medications falling under Tariff Classification Headings 3003 and 3004, may be admitted free of duties if (a) the medications are imported by the government entity Central Medical Store, Importer Code C0160; (b) the medications are for use only in hospitals within Vanuatu and (c) the importer complies with such terms and conditions as may be imposed by the Director<sup>71</sup>. There appears not to be any further restrictions on medicines imported to Vanuatu.

### 7.1.2 Food

There are no specific provisions within the Import Duties Act or other regulations concerning humanitarian aid that cover the importation of food for humanitarian purposes. However, the Vanuatu Red Cross Society (and through VRCS, other civil society organizations), may import food free of import duties under X65(h) or X30(b) categories<sup>72</sup> (as per above).

### 7.1.3 Special equipment and vehicles

Currently there are no specific references in the Import Duties Act that deal with the importation of special equipment, vehicles and other modes of transport by humanitarian organizations, nor are there clear standards as to what is accepted or prohibited. Instead there are provisions, which could be extended to humanitarian organizations, in case of a disaster. Again, X65(h) and X30(b) can be used to provide exemption from taxes and import duties.

According to Section 4 of the Import Duties Act, Subsection X.43 on Temporarily Imported Goods, tools of trade and professional equipment which, in the opinion of the Director of Customs, are necessary for the exercise of the calling, trade or profession of a person visiting Vanuatu for the purpose of performing a specific task may be admitted free of duty, once proof has been provided that the tools or equipment:

- a. shall be owned by a natural person resident abroad or by a legal person established abroad;
- b. shall be imported by a natural person resident abroad or by a legal person established abroad;
- c. shall be used solely by or under the personal supervision of the visiting person, save in any case otherwise approved by the Director;

<sup>70</sup> Ibidem.

<sup>71</sup> Ibid., Section 5, X.53 states that (a) surgery equipment including dental chair units, sterilizers, dental instruments and units for storing such instruments; (b) laboratory equipment including lathes, clamps, teeth, wax, stainless steel and (c) filling materials including dental cements may be admitted free of duty, once it has been provided that such articles are imported on a signed declaration by an approved dental surgeon, certifying that the goods are solely for use in his dental surgery.

<sup>72</sup> Ibidem.



- d. shall be re-exported from Vanuatu within a period of six months, save for reason of circumstances accepted by the Director as being of an exceptional and unavoidable nature.

Therefore, specialist equipment, vehicles and other modes of transport that are imported into the country temporarily as part of international disaster relief, could be done so, free of import duties and taxes, under the categories of subsection X.43 on Temporarily Imported Goods. If the equipment is to remain within the country, exemption of duties is possible if it is through either the Red Cross, or the importing entity has an agreement with the Vanuatu Government.

## 7.2 Other taxes and government levies

Vanuatu has a Value Added Tax Act of 1988. In Vanuatu, Value Added Tax of 12.5% is levied at the point of importation and sale of goods and services. It is one of the main sources of government revenue. During a disaster relief operation, in addition to the importation of supplies intended for disaster relief, local purchases from in-country suppliers may also be required. Exemption from VAT and other tax exemptions are provided for, within existing legal status arrangements for different types of organizations (see above) and are also granted under the Import Duties Act for diplomatic missions and international organizations, for goods for official use by the organization or its personnel. If granted an exemption, a certificate of VAT exemption is issued by the VAT Office for those organizations who qualify for this.

Interviews with international organizations reveal a wide range of experiences in importing goods and equipment. While UN Agencies such as UNICEF and WHO were generally satisfied with the process of obtaining customs and tax exemptions for normal non-emergency purposes, other NGOs reported more difficulties, and noted that customs clearance time and the application of tax exemptions could take a long time, sometimes more than six months.

Current customs and tax regulations do not include any expedited procedures for emergency settings or for customs clearance outside of business hours. The Director of Customs advised the consultant that in case of an emergency, Customs will apply Part 7 Section 32 of the Customs Act on "Provisional Declarations" which states: "If an importer has insufficient information to make a declaration, the Director may allow a provisional declaration to be made and the goods to be examined, so that the necessary information for a "full declaration" may be obtained". A full declaration must be made within: (a) 21 days or (b) such other period of time that the Director may approve. The Director advised the consultant he would allow three days in case of an emergency.

Under the existing laws, there are provisions in place for exemptions from import duties and taxes under a number of avenues. Primarily, the exemptions fall under the Import Duties Act. However during an emergency, when the timely delivery of disaster relief is the main objective, the laws are not framed such that the importation process is expedited, which has previously resulted in some delays.

## 7.3 Quarantine Measures

Contained within the Quarantine Act are provisions related to arrival of vessels, but not arrival of planes. It focuses primarily on diseases affecting people and cattle. On the other hand, a review of the Cyclone Support Plan (2009), includes a specific section

on quarantine that describes that prior to arrival of relief supplies, the aircraft's agent must notify the Department of Livestock and Quarantine services of the expected time of arrival, and that the Department will facilitate the quarantine clearance of the relief supplies at the airport, in accordance to the quarantine legislation to ensure that no foreign organisms are introduced.

In relation to food, the Food (Control) Act of 1993 prohibits all activity involving fake (counterfeit), expired and poor quality food and the Quarantine Act must still be followed under any importation of food<sup>73</sup>. Permits and quarantine fees are applicable only for certain types of food. Should a relief agency import food under a disaster relief operation, there are no provisions under the quarantine laws for exemptions from fees or the requirement to comply with the procedure in obtaining import permits for the food supplies.

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## 7.4 Recommendations

The discretion by the Director to allow provisional declarations is one avenue, but specific provisions for expediting the process of importation of disaster relief supplies would clarify expectations and procedures in advance, reducing the potential for confusion and delay.

It is therefore recommended that the Customs Act (and other relevant laws and regulations) be amended to provide:

- Priority customs clearance for relief goods imported during an emergency period by registered disaster relief agencies (pursuant to the recommendations of Chapter 6).
- Exemptions from all import duties, taxes and duties on relief items that have been requested by the Vanuatu Government.
- Reduced documentation requirements for import clearance and tax exemptions for registered disaster relief agencies.

The Quarantine Act (and/or relevant implementing guidelines/plans) should be amended to provide:

- Priority quarantine inspection of relief goods imported for disaster relief during an emergency.
- Exemptions from quarantine fees for relief goods of a registered disaster relief agency.

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<sup>73</sup> Quarantine Act, Consolidated Edition, 2006.

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## Chapter 8

# International relief 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 organizations. 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.

## 8.1 Entry permits and visas

Under the Immigration Act<sup>74</sup>, all non-citizens who are not resident of Vanuatu require a visa to enter, unless their country of nationality is specifically exempted from visa requirements by order of the Minister.

There is an exemption for many countries of nationality, but not all. The individuals receive a four months visitor's permit upon entering the country, provided that the person entering the country holds a plane ticket or ticket for other means of travel to another country.

Entry and visa arrangements available for foreign staff of Vanuatu-based humanitarian organizations and NGOs are generally determined by the legal status of the organization. UN personnel are subject to Part 3 of the Immigration Act, 1972. Under the Act, any member of a diplomatic mission based in Vanuatu is entitled to enter Vanuatu without a visa permit.

The Vanuatu Red Cross Society and Voluntary Services Overseas (VSO) have MOUs with the Government, which provide for visa permits at no cost, for their personnel and their families. The standard MOU for NGOs which are members of VANGO also includes a provision that the Government will issue visa permits free of charge to personnel and their family members. Interviewees note that there are instances where the exemptions have not been granted, but in turn a visa has been granted via a quick simple process.

The Immigration Act provides for several types of visa permits that might be relevant to disaster response, but the process involved and the time required to approve these permits are not specified in the Act. There is no specific provision in the Act for visa exemptions for disaster responders. However, the Principal Immigration Officer advised that, in a case of an emergency, he could apply Sections 9 and 12 of the Act, which provide exemptions for visitors entering Vanuatu without previously obtaining visas. Under this section, a person who satisfies the principal immigration officer that s/he qualifies under the following categories is entitled to enter Vanuatu without a permit<sup>75</sup>:

- Any person granted exemption by the Minister;
- Any person employed by or seconded to the Government of Vanuatu;
- Any member of a diplomatic mission based in Vanuatu.

Also, Section 13 (1)<sup>76</sup> on Permit to enter and reside, states: "The principal Immigration Officer may upon application being made in the form prescribed under this Act issue a permit authorizing any person to enter and reside in Vanuatu, upon such conditions

<sup>74</sup> Immigration Act, Consolidated Edition, 2006.

<sup>75</sup> Immigration Act, Consolidated Edition, 2006 Part 3, Section 14, states that "the Principal Immigration Officer may issue a visitor's permit to a visitor if he is satisfied that the visitor has a ticket or other means of traveling from Vanuatu to some other country which he will be able to enter and the visitor's permit shall entitle a visitor to remain in Vanuatu for a period or periods in the aggregate not exceeding 4 months in any period of 12 months."

<sup>76</sup> Ibidem.

as the Principal Immigration Officer may think fit". Under this section, there is provision for a certain amount of discretion given to the Principal Immigration Officer, on the granting of visas or exemptions to persons entering Vanuatu.

In addition, as an alternative, it is possible for citizens of most countries<sup>77</sup>, to obtain a visitors permit on arrival in Vanuatu, for a period of not more than four months, provided that the person entering the country holds a plane ticket or ticket for other means of travel to another country. There is no wording in the Act that restricts the activities of the person holding a visitor permit from engaging in disaster relief during this period.

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## 8.2 Recognition of professional qualifications and licenses

Under the IDRL guidelines, international relief providers have responsibilities to ensure that minimum standards of humanitarian relief are provided. This includes the personnel provided.

No specific provisions were found in Vanuatu laws and policies on the recognition of qualifications for foreign humanitarian personnel. The practice is that technical experts are selected by the organization concerned, with a requirement to inform the government of their name and, in the case of international NGOs, with a copy of the employment contract.

It is therefore the responsibility of the organization engaging the personnel to ensure that these proper qualifications and skills are recognized.

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## 8.3 Recommendations

It is recommended that the Immigration Act (or implementing guidelines/plans) should be amended to:

- Establish a special visa for international relief personnel of registered disaster relief agencies. The visa should allow for multiple entries, for a period of not less than three months and extendable for the duration of the operation, each time free of charge, as needed for the provision of relief.
- Upon presentation of a valid passport and letter of authorization from the registered entity documenting their qualifications/ professional licenses, humanitarian purpose and duration of the mission, the Principal Immigration Officer should immediately grant the visa upon arrival in Vanuatu, or through Vanuatu consulates or embassies prior to departure.
- Provide that holders of the international relief personnel visa should also be granted temporary recognition of professional qualifications under Vanuatu Law including driving licenses, medical qualifications and other types of technical skills required to operate within the country.

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<sup>77</sup> See the list of the countries on the website: [www.vanuatu-vacation.com](http://www.vanuatu-vacation.com)

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## **Chapter 9**

# International humanitarian transport arrangements

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 organization, for the purpose of transporting disaster relief or initial recovery assistance, and ideally waive the applicable fees.

## 9.1 Air transport

Vanuatu has three international airports: one in the capital, Port Vila, on the island of Efate, the second in Luganville, on the island of Espiritu Santo, and the third on the island of Tanna.

The three international airports implement standard regulations under the Civil Aviation Act of 1999, to ensure that information about flights, cargo and types of goods being transported is received prior to the flight's arrival. Under the Civil Aviation Act, incoming international flights must also comply with rules relating to safety, security, airspace, and conditions of operation concerning foreign aircraft in Vanuatu. Incoming international flights must clear customs and immigration at one of these airports<sup>78</sup>.

In addition to the three international airports, Vanuatu has a number of airstrips on the outer islands where smaller aircraft can land.

All aircraft landing within the Republic of Vanuatu are generally charged for landing or parking fees. Exemptions may be made for aircraft if engaged in technical, humanitarian, or search and rescue operations; or if it is being used for the military, diplomatic or ceremonial purposes of the government of any country; or is accorded any privileges or immunities under the Diplomatic Privileges and Immunities Act<sup>79</sup>. The procedures for this are not detailed.

In the event of a national disaster, there is beyond the above circumstances, no specific provision within the Act for procedures to follow on requests for landing permission, by unscheduled foreign humanitarian aircraft that may be bringing in relief supplies. However, Section 41 (1) of the Civil Aviation Act<sup>80</sup>, states that the Director of the Civil Aviation Authority and Department may, in consultation with the Minister for Public Utilities, exempt any person, aircraft, aeronautical product, airport or aviation related service from any specified requirement in any ordinary rule, if he or she considers it appropriate. According to section 41 (2)<sup>81</sup>, before granting an exemption, the Director must be satisfied of the circumstances of each case, that the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case, and that the risk to safety will not be significantly increased by the granting of the exemption. This provision has never been put into practice.

At the international level, Vanuatu is signatory to the Chicago Convention on Civil Aviation<sup>82</sup>. Under article 22 of the Chicago Convention:

*“Each contracting State agrees to adopt all practicable measures, through the issuance of special regulations or otherwise, to facilitate and expedite navigation by aircraft between the territo-*

<sup>78</sup> Civil Aviation Act, 1999.

<sup>79</sup> Ibid., Section 50, a, 1999.

<sup>80</sup> Ibidem.

<sup>81</sup> Ibidem.

<sup>82</sup> Chicago Convention on International Civil Aviation, 1944.

ries of contracting States, and to prevent unnecessary delays to aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance”<sup>83</sup>.

The Convention is supported by eighteen annexes containing standards and recommended practices (SARPs). Annex 9, which deals with facilitation of aircraft, crews, passengers and cargo, is an important document for international civil aviation. It includes two key paragraphs specifically addressing foreign disaster response.

The National Airline of Vanuatu, Air Vanuatu, has developed its own plan for dealing with a disaster situation<sup>84</sup>. Section 11 of the Plan covers procedures to be followed by the airline and its staff in the event of a disaster. The types of incidents covered include aircraft accidents, dangerous goods, fire and natural disasters.

In the event that the international airports in Vanuatu are required to receive incoming international relief, it has been noted that the airports in Port Vila and Santo are well equipped, whilst the one in Tanna has very limited capacity to store goods, and does not have facilities such as refrigeration, nor adequate security for special items.

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## 9.2 Land transport

Vanuatu’s Road Traffic (Control) Act of 2005, contains a number of provisions related to the entry of foreign vehicles, their registration, and recognition of foreign drivers’ licenses. The total loading of all vehicles including any articulated vehicle shall not exceed 8 tons per axle, or 24 tons overall, in the absence of special approval from the Director of Public Works,<sup>85</sup> and no owner of any registered vehicle shall drive or permit to be driven on a public road unless it be fitted with plates in front and at the rear showing the registration number<sup>86</sup>.

According to Section 40(b), prior to the registration of a foreign vehicle, the following documents shall be submitted to the Ministry of Public Utilities:

- a. The original invoice from the vehicle manufacturer or selling agent
- b. The former original vehicle registration certificate
- c. Original proof of valid third party insurance
- d. Original certificate of roadworthiness issued by a reputable vehicle inspection garage
- e. A colour photograph of the said foreign vehicle
- f. A colour photograph of the registered owner
- g. A photocopy of the registered owner’s driving license
- h. A photocopy of the registered owner’s passport

Foreign vehicles are exempt from the payment of the registration fee and the annual tax if they are temporally imported into Vanuatu for a period not exceeding four months<sup>87</sup>.

<sup>83</sup> Ibidem. Annex 9 of the Convention further reinforces this mandate.

<sup>84</sup> Air Vanuatu Emergency Response Plan Version 1.1.

<sup>85</sup> Road Traffic (Control) Act, 2005, Section 21.

<sup>86</sup> Ibid., Section 26.

<sup>87</sup> Ibid., Section 40(d).



The fees payable in respect of foreign vehicles are a registration fee of 10,000 vatu, and in case of a transfer of ownership, 5000 vatu<sup>88</sup>.

Embassies, UN and international organizations may apply for special IO, UN or CD license plates for their vehicles after approval from the Ministry of Public Utilities. Other organizations must comply with standard motor vehicle registration policies applicable to international citizens who live in Vanuatu, and no special exemptions are included for emergency situations.

Every driver of a motor vehicle must be in possession of a driving license delivered according to the provision of Section 44. Provided that a person passing through, or residing in Vanuatu for a period not exceeding three months, shall be deemed to comply with provisions of this section, if he is in possession of a current international driving license or a current driving license issued by the licensing authority of a country other than Vanuatu<sup>89</sup>.

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### 9.3 Maritime transport

The maritime transport industry in Vanuatu was previously managed and administered through the Vanuatu Maritime Authority Act 1998. This Act was repealed in 2007 through the Vanuatu Maritime Authority (Repeal) Act No. 22 of 2007. Currently, there is no legislation in place and a statutory minute passed by Parliament after the repeal of the Act is the only document that the maritime industry uses. A new Act is currently being drafted.

Shipping activity in Vanuatu ports is regulated under the Ports Act of 1998. Under the Act, the ports of Port Vila and Luganville are the only ports of entry into Vanuatu. All vessels entering and leaving the country from foreign destinations, must report to these ports to clear customs and immigration<sup>90</sup>.

In addition, the Act provides for:

- a. The payment of Port Dues by all vessels entering the country.
- b. The payment of tonnage dues, wharfage charges, and other port charges<sup>91</sup>.

There is no provision within the Act to allow for exemptions from the above in the event of a disaster. Section 2 of the Act, however, provides the power to the Minister responsible for ports and marine to authorise the entry into and departure from Vanuatu of vessels at ports other than those of Port Vila and Luganville. The Minister may also, by order, exempt any class of vessel or goods from the payment of dues<sup>92</sup>.

Under Section 23, the Minister may licence occupation of the foreshore for certain purposes as he may deem fit. These purposes being:

- The building or repairing of vessels of any kind.
- The erection of and use of any boatshed, landing place or wharf.
- Any other purposes related to the convenience of shipping.

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<sup>88</sup> Ibid., Section 40(e).

<sup>89</sup> Ibid., Section 42.

<sup>90</sup> Ports Act, Section 2, 1998.

<sup>91</sup> Ibid., Section 3.

<sup>92</sup> Ibid., Section 32.

At the international level, Vanuatu is a member state of the International Maritime Organization (IMO), which adopted the Convention on Facilitation of International Maritime Traffic (FAL) in 1967.

The Convention's main objectives are to prevent unnecessary delays in maritime traffic, to aid cooperation between governments, and to secure the highest practicable degree of uniformity in formalities and other procedures. In its Annex, the Convention contains "standards" and "recommended practices" on formalities, documentary requirements and procedures which should be applied on arrival, stay and departure to the ship itself, and to its crew, passengers, baggage and cargo. The Convention defines standards as internationally-agreed measures which are "necessary and practicable in order to facilitate international maritime traffic", and recommended practices as measures the application of which is "desirable"<sup>93</sup>.

Section 5 of the FAL covers natural disaster relief work, providing:

- 5.11 Public authorities shall facilitate the arrival and departure of vessels engaged in natural disaster relief work.
- 5.12 Public authorities shall to the greatest extent possible facilitate the entry and clearance of persons and cargo arriving in vessels referred to in Standard 5.11.

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## 9.4 Recommendations

Relevant transport laws in Vanuatu should be amended to provide for:

- Immediate approvals for landing permission, berthing and clearance of aircraft, marine vessels or other modes of transportation, for registered disaster relief agencies entering Vanuatu for the purposes of disaster relief provided that their entry is acknowledged by the authorities in charge of the relief operation.
- Permission for vehicles of registered disaster relief agencies to enter the country through identified alternative entry points apart from the current designated international ports of entry.
- The waiver of fees, charges and dues levied by the respective authorities and agencies on incoming land, air and marine vehicles of registered disaster relief agencies.

<sup>93</sup> ([http://www.imo.org/About/Conventions/ListOfConventions/Pages/Convention-on-Facilitation-of-International-Maritime-Traffic-\(FAL\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/Convention-on-Facilitation-of-International-Maritime-Traffic-(FAL).aspx))

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# Chapter 10

## Accountability and transparency

The IDRL Guidelines state that assisting actors and their personnel should abide by the laws of the affected state and applicable international instruments, coordinate with domestic authorities and respect the human dignity of disaster affected persons at all times. Part I section 4 of the Guidelines provides that disaster relief and initial recovery assistance should be provided in accordance with the principles of humanity, neutrality and impartiality, and aid priorities should be calculated on the basis of need alone. They also call on international aid providers, to the degree possible in the circumstances, to abide by internationally-accepted standards of quality.

While there are existing international standards on the quality of international relief, existing mechanisms for enforcement are generally weak. Affected states should therefore be in a position to monitor the quality of international relief activities in their territories. Indeed, it is their responsibility to do so in light of their obligation to ensure that the humanitarian needs of persons within their territories are met.

## 10.1 Government expenditures

Government accountability for aid funding rests with different departments depending on the context of the aid provided. In the event of a national disaster, the Public Finance and Economic Management (PFEM) Act<sup>94</sup> allows for the Minister to sign an order, approving a supplementary budget of 1.5% of the national budget. Within the Department of Finance, there is a detailed and thorough accounting for these expenditures.

In relation to the accountability for donor funds, the government operates two accounts. One is for the expenditure of public funds and the other is used for donor funds. Donor funds are released immediately when requested by the relevant agencies, but the advantage of having these funds transact through the Department of Finance allows for an accounting record of these expenditures. Some stakeholders have expressed concerns however, that in the past, donor funds have been deposited directly into bank accounts opened by the various government agencies in respect of disaster relief and that there has been a lack of accounting for these funds. Reportedly, this practice has now been stopped and most of these accounts closed<sup>95</sup>.

On paper, government expenditures are scrutinised by the Public Accounts Committee (PAC) in Parliament<sup>96</sup>, and the Auditor General's Office has the responsibility to conduct internal audits of departments. For general loans and grants made directly to the Government of Vanuatu, the Public Accounts Committee has the responsibility to conduct audits on financial and other reports that are requested by a donor, in accordance with the terms and conditions of the project agreement.

The reality, however, is that record keeping and financial accountability remains a challenge, despite the role the Department of Finance plays in monitoring expenditures. It has only been recently that the PAC has finally commenced meeting to perform its role in scrutinising government expenditures after many years of not doing so.

<sup>94</sup> Public Finance and Economic Management Act of 1998.

<sup>95</sup> The case in point is the Vanuatu Ombudsman's Report 98-06, which covered the investigation into the alleged mismanagement of the Cyclone Betsy Relief account in the 1990s.

<sup>96</sup> The PAC is part of the Parliamentary Standing Committee's system of the Vanuatu Parliament. Its membership consists, pursuant to the Standing Orders 49 (3) of Parliament, of not more than seven members representing proportionally the political parties represented in Parliament.

In terms of comprehensiveness and transparency, its ability to oversee financial management and accountability of public funds remains a concern to the Government of Vanuatu, as many of the state enterprises and statutory bodies have not submitted accounts for several years<sup>97</sup>.

### 10.1.1 Accountability of government agencies

In the case of a national disaster, the primary agencies responsible for DRR-DM (METEO, Geohazards and NDMO) are all currently located under different ministries and departments (see Chapter 4), with different lines of accountability and reporting responsibility. The Director of NDMO currently reports to the Police Commissioner, the Director General of Internal Affairs, the Head of Provincial Affairs and the Director General of the Prime Minister's Office. He must also work through his Director General (Ministry of Internal Affairs) to cooperate with other key line ministries.

As a consequence, information sharing about sources and amounts of aid being provided as part of disaster risk reduction and disaster management continues to be a problem that needs addressing.

Under the National Disaster Plan, the NDMO is responsible to the chairman of the NDC for the management of all funds provided for disaster relief purposes, and prior authorization for the expenditure of such funds must be received<sup>98</sup>.

### 10.1.2 Civil society organizations and NGOs

Civil society organizations and other NGOs are monitored and regulated by the Registrar of Charitable Associations, under the Vanuatu Financial Services Commission.

At the moment, each organization contributing international relief, other than through direct donations to the government, manages its funds and activities independently, and there are no clear common standards for the conduct of international relief operations.

The MOU between the Government of Vanuatu and VANGO signed in 2004, Section 3.3<sup>99</sup> on Accountability, contains the recognition of the respective accountability requirements and processes of the Vanuatu Government and NGOs. The Vanuatu Government is accountable to the public for expenditure of public funds and the implementation of its development programmes, and it requires similar accountability from NGOs for funding provided through various government programmes. NGOs have multiple accountabilities to partners, donors, memberships and constituencies which must be addressed through sound management practices and governance structures. Together the Vanuatu Government and NGOs recognize that they are accountable to the public for reporting on initiatives on which they work together.

Section 4, Undertaking by the NGO sector, includes a list of requirements on funding and accountability (4.1). These include the obligations to:

<sup>97</sup> Many of the state enterprises and statutory bodies have not submitted accounts for several years. In order to help address this problem, a first draft of a Public Enterprise Accountability Bill has been prepared. Enforcement of the legislation will clearly be key to resolving the issue. Vanuatu public expenditure and financial accountability report 2006: [http://ec.europa.eu/europeaid/what/economic-support/public-finance/documents/vanuatu\\_pefa\\_en.pdf](http://ec.europa.eu/europeaid/what/economic-support/public-finance/documents/vanuatu_pefa_en.pdf)

<sup>98</sup> National Disaster Plan Review, Part 9 Paragraph 4, 2008.

<sup>99</sup> Memorandum of Understanding between the Government of the Republic of Vanuatu and the Vanuatu Association of Non-Government Organizations (VANGO), 2004.

- To maintain high standards of governance and conduct, and to meet reporting and accountability obligations to funding agencies and partners.
- To respect and be accountable to the law, particularly those regulating charitable organizations.
- To develop quality financial standards that are appropriate to NGOs.
- To develop quality management and operational standards, that are appropriate to NGOs.

Apart from standards of quality and accountability with respect to customs requirements for certain goods such as food and medication, as described in the previous chapters, it is unclear which standards would apply to organizations arriving in Vanuatu to provide emergency assistance.

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## **10.2 Recommendations**

It is recommended that the National Disaster Act should:

- Appoint a government agency to be responsible for monitoring the transparency and accountability of the use of funds received by the Government from external sources for disaster relief.
- Appoint a government agency to monitor the on-going compliance of registered disaster relief agencies with the eligibility requirements described under the recommendations in Chapter 6, and provide that continued registration will be dependent on their ability to comply with these requirements.

The Vanuatu Government must continue to pass legislation that will strengthen and improve accountability and transparency in the various agencies that receive donor funds.

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# Chapter 11

## Summary of recommendations

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## Overview of national laws, policies and plans for disaster management

It is noted that a new draft Disaster Management Act exists, but it has not been approved by the Council of Ministers. As such, consideration should be given to revising the National Disaster Act. It is recommended that:

- The National Disaster Act should clearly identify roles and responsibilities of relevant authorities in disaster response and describe the coordination between authorities.
- The National Disaster Plan should address the reporting lines between authorities and procedures in the event of a disaster, particularly with regard to the NDMO, NDC, NEOC and other relevant actors.
- The National Disaster Act or National Disaster Plan should require relevant Government departments to finalise guidelines or regulations that govern their actions related to foreign disaster response. It should also provide guidance on their content to ensure consistency.
- Greater efforts should be made in educating and informing the government agencies and other key stakeholders on the guidelines and procedures contained within the National Disaster Plan and National Disaster Act.

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## Declaration of emergency and requests for international assistance

In addition to the recommendations contained in Chapter 4 on national laws, policies and plans for disaster management, it is recommended that:

- Provisions should be included in the National Disaster Act or National Disaster Plan on the procedure for issuing a request for international assistance which addresses the agencies involved and the content of a request.
- The National Disaster Plan should identify specific criteria for determining when a disaster has exceeded local and national capacities, based on the initial and on-going assessment reports provided by the agencies responsible.
- The procedures for requesting and accepting international assistance should be disseminated to all relevant government departments and actors from the international community.

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## Legal status of foreign entities providing assistance

It is recommended that the National Disaster Act should:

- Set out a procedure for foreign entities to register as a disaster relief agency in Vanuatu in order to receive certain legal facilities. Eligibility of foreign entities should be based on certain criteria, including their ability to comply with the responsibilities described in the IDRL Guidelines paragraph 4.
- Designate a Government agency to be responsible for the maintenance of the register of disaster relief agencies.
- Provide that registered disaster relief agencies will be granted a number of legal facilities, including temporary legal status upon arrival for the duration of its operation.



Such measures would be in addition to any facilities, privileges, and immunities which are already required to be provided under domestic and international law (for example, to international organizations covered by the Diplomatic Privileges and Immunities Act).

## Customs, quarantine and tax arrangements for the entry of relief goods

The discretion by the Director to allow provisional declarations is one avenue, but specific provisions for expediting the process of importation of disaster relief supplies would clarify expectations and procedures in advance, reducing the potential for confusion and delay.

It is therefore recommended that the Customs Act (and other relevant laws and regulations) be amended to provide:

- Priority customs clearance for relief goods imported during an emergency period by registered disaster relief agencies (pursuant to the recommendations of Chapter 6).
- Exemptions from all import duties, taxes and duties on relief items that have been requested by the Vanuatu Government.
- Reduced documentation requirements for import clearance and tax exemptions for registered disaster relief agencies.

The Quarantine Act (and/or relevant implementing guidelines/plans) should be amended to provide:

- Priority quarantine inspection of relief goods imported for disaster relief during an emergency.
- Exemptions from quarantine fees for relief goods of a registered disaster relief agency.

## International relief personnel

It is recommended that the Immigration Act (or implementing guidelines/plans) should be amended to:

- Establish a special visa for international relief personnel of registered disaster relief agencies. The visa should allow for multiple entries, for a period of not less than three months and extendable for the duration of the operation, each time free of charge, as needed for the provision of relief.
- Upon presentation of a valid passport and letter of authorization from the registered entity documenting their qualifications/professional licenses, humanitarian purpose and duration of the mission, the Principal Immigration Officer should immediately grant the visa upon arrival in Vanuatu, or through Vanuatu consulates or embassies prior to departure.
- Provide that holders of the international relief personnel visa should also be granted temporary recognition of professional qualifications under Vanuatu Law including driving licenses, medical qualifications and other types of technical skills required to operate within the country.

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## **International humanitarian transport arrangements**

Relevant transport laws in Vanuatu should be amended to provide for:

- Immediate approvals for landing permission, berthing and clearance of aircraft, marine vessels or other modes of transportation, for registered disaster relief agencies entering Vanuatu for the purposes of disaster relief provided that their entry is acknowledged by the authorities in charge of the relief operation.
- Permission for vehicles of registered disaster relief agencies to enter the country through identified alternative entry points apart from the current designated international ports of entry.
- The waiver of fees, charges and dues levied by the respective authorities and agencies on incoming land, air and marine vehicles of registered disaster relief agencies.

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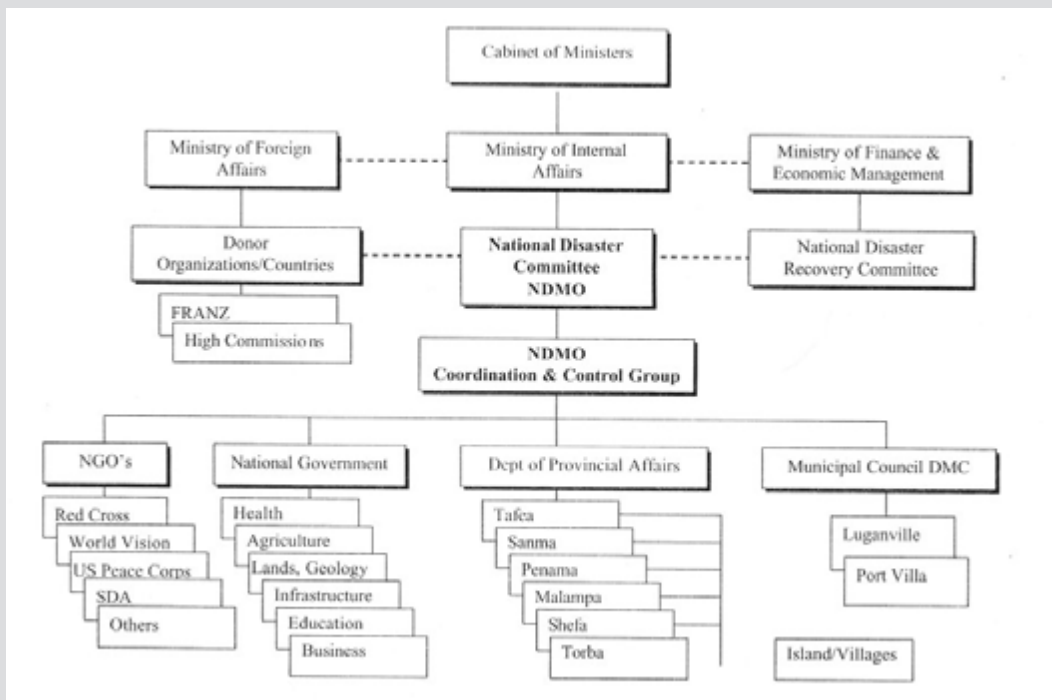
## **Accountability and transparency**

It is recommended that the National Disaster Act should:

- Appoint a government agency to be responsible for monitoring the transparency and accountability of the use of funds received by the Government from external sources for disaster relief.
- Appoint a government agency to monitor the on-going compliance of registered disaster relief agencies with the eligibility requirements described under the recommendations in Chapter 6, and provide that continued registration will be dependent on their ability to comply with these requirements.
- The Vanuatu Government must continue to pass legislation that will strengthen and improve accountability and transparency in the various agencies that receive donor funds.

# Annex 1

## National disaster coordination system



# Annex 2

## Government department roles and responsibilities

The following outlines the roles and responsibilities of various government departments and organizations. These roles and responsibilities are not in addition to normal functions, but utilize current expertise and resources for the effective management of disaster planning, response and recovery, for the benefit of communities, government and the nation.

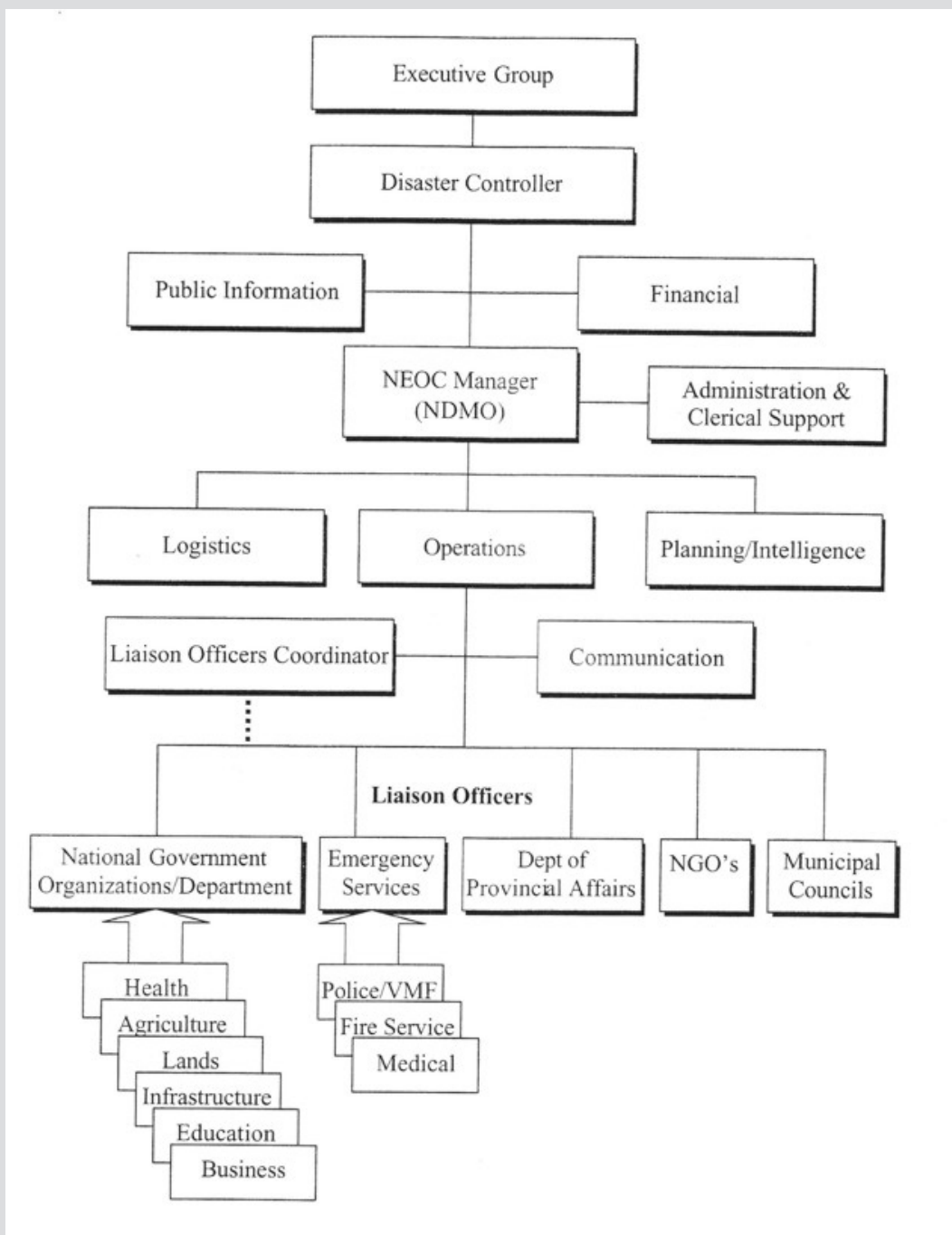
It is not the purpose of this plan to identify each and every role and responsibility, but to provide general direction of department and organizational contribution. It is each departments and organizations responsibility to review and analyse its services and technical support it can offer for disaster planning, response and recovery.

	Ministry of Foreign Affairs	Ministry of Internal Affairs	Ministry of Finance & Economic Management	Ministry of Health	Ministry of Education Youth & Sport	Ministry of Trade & Business Development	Ministry of Agriculture, Quarantine, Forestry & Fisheries	Ministry of Infrastructure & Public Utilities	Ministry of Lands, Geology & Mines
<b>Disaster Planning</b>	<ul style="list-style-type: none"> <li>Ensure Hyogo Framework is reflected in National plan.</li> <li>Readiness on foreign aids.</li> <li>Relief procedures is developed</li> </ul>	<ul style="list-style-type: none"> <li>NEMO</li> <li>Liaison with NGO's</li> <li>Develop policy statement</li> <li>Review National Disaster Plan.</li> <li>Planning awareness.</li> <li>Pre-Hazard Briefing</li> </ul>	<ul style="list-style-type: none"> <li>Disaster finance advice.</li> <li>Advice all sector to mainstream DRR and DM.</li> </ul>	<ul style="list-style-type: none"> <li>Disaster medical planning</li> <li>Disaster health education</li> <li>Revised MOH Disaster Plan</li> </ul>	<ul style="list-style-type: none"> <li>Public safety education programs</li> <li>Schools awareness.</li> <li>School safety Planning</li> <li>MOE Disaster Plan in place</li> </ul>	<ul style="list-style-type: none"> <li>Advice to business on disaster planning and business continuity</li> </ul>	<ul style="list-style-type: none"> <li>Develop Pest disease response plan</li> <li>Animal disease plan</li> <li>Chemical hazard plan</li> </ul>	<ul style="list-style-type: none"> <li>Planning advice to communities and Provincial governments</li> <li>Cyclone monitoring</li> <li>Hazard and risk assessment services.</li> <li>Risk Reduction planning in all infrastructures.</li> </ul>	<ul style="list-style-type: none"> <li>Hazard and risk assessments</li> <li>Establish Early warning advice</li> <li>Planning advice on development projects</li> </ul>
<b>Disaster Response</b>	<ul style="list-style-type: none"> <li>Liaison with donor organizations and countries</li> </ul>	<ul style="list-style-type: none"> <li>NDC</li> <li>NEOC</li> <li>CCG</li> <li>Customs</li> <li>Disaster</li> </ul>	<ul style="list-style-type: none"> <li>Emergency funding</li> </ul>	<ul style="list-style-type: none"> <li>Distribution of medical supplies</li> <li>Administration of disaster</li> </ul>	<ul style="list-style-type: none"> <li>Activate MOE Disaster Plan.</li> <li>Liaise with</li> </ul>	<ul style="list-style-type: none"> <li>Advice to business on response</li> </ul>	<ul style="list-style-type: none"> <li>Activate MOA Disaster Plan.</li> <li>Make contact</li> </ul>	<ul style="list-style-type: none"> <li>Issuing of Cyclone warnings</li> <li>Supply of resource where</li> </ul>	<ul style="list-style-type: none"> <li>Technical advice and support.</li> <li>Hazard impact</li> </ul>

		<ul style="list-style-type: none"> <li>logistical support (VMF)</li> </ul>		<ul style="list-style-type: none"> <li>medical services</li> </ul>	<ul style="list-style-type: none"> <li>NEOC</li> <li>Establish contacts with all affected schools.</li> <li>Initial Damage assessment.</li> <li>Submit situation report to NDMO</li> <li>Coordination of relief aids.</li> </ul>		<ul style="list-style-type: none"> <li>with NEOC.</li> <li>Establish comms with AFO.</li> <li>Damage assessment.</li> <li>Submission of report to NDMO.</li> </ul>	<ul style="list-style-type: none"> <li>possible</li> <li>Disaster logistical support</li> <li>Activate PWD Disaster Plan.</li> <li>Establish comms with NEOC.</li> <li>Damage assessment report.</li> <li>Response to emergency repair as required.</li> </ul>	<ul style="list-style-type: none"> <li>assessment.</li> <li>Develop new risk data for promulgation.</li> </ul>
<b>Disaster Recovery</b>	<ul style="list-style-type: none"> <li>Consult Donors to support government recovery plans as approved by the National Disaster Recovery Committee.</li> </ul>	<ul style="list-style-type: none"> <li>Support NDRRC with damaged information to facilitate NDRRC recovery plans</li> </ul>	<ul style="list-style-type: none"> <li>Provide the funding provision for prioritised Recovery projects</li> <li>As member of NDRRC.</li> </ul>	<ul style="list-style-type: none"> <li>Disaster health recovery services</li> <li>Member of NDRRC.</li> <li>Provide NDRRC Sector recovery plans with costs.</li> </ul>	<ul style="list-style-type: none"> <li>Education recovery services.</li> <li>Member of NDRRC.</li> <li>Provide education sector recovery plans with costs</li> </ul>	<ul style="list-style-type: none"> <li>Assistance for business recovery</li> <li>Advocate Disasters and Business development.</li> <li>Encourage Business risk reduction at all level.</li> </ul>	<ul style="list-style-type: none"> <li>Advise farmers on immediate planting of crops.</li> <li>Advise on food security.</li> <li>Recovery assessment in Agriculture sector.</li> <li>Monitor the situation</li> </ul>	<ul style="list-style-type: none"> <li>Infrastructure recovery and rebuilding.</li> <li>Compile major infrastructure recovery plan and advise NDRRC.</li> <li>Member of NDR.</li> <li>Mainstream Disaster Risk Reduction in recovery &amp; reconstruction plans.</li> </ul>	<ul style="list-style-type: none"> <li>Post disaster technical hazard and risk assessments reports and review hazard information.</li> </ul>

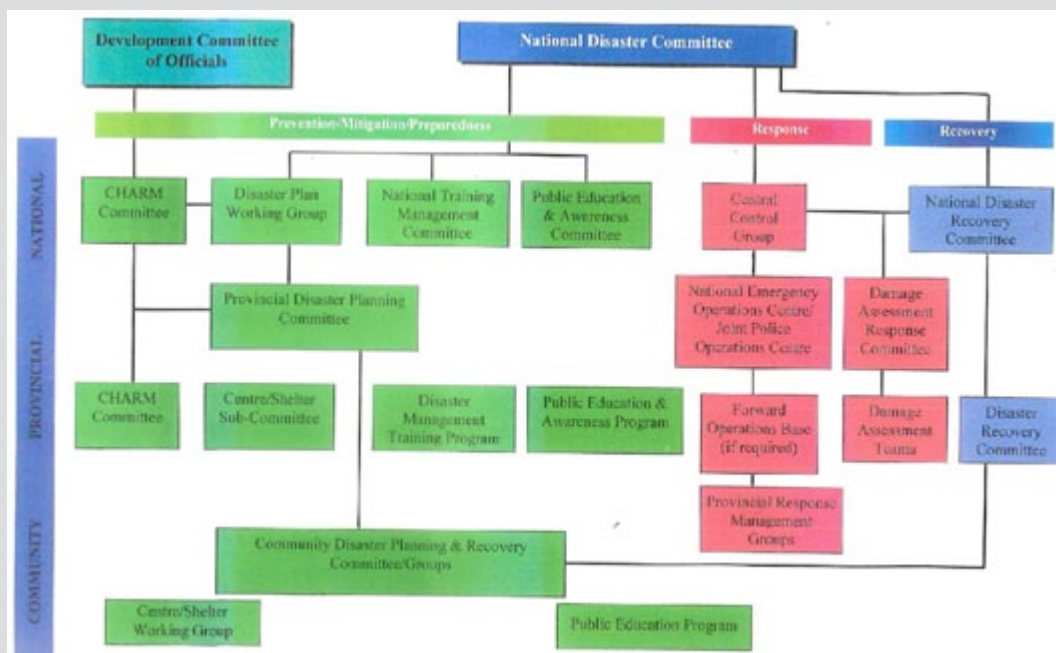
# Annex 3

## Organization of national emergency operations



# Annex 4

## Disaster Management Committee structure





# Annex 5

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## List of key references

### International/regional instruments

Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (2007)

Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters (2005)

Vienna Convention on Diplomatic Relations (1961)

Convention on Civil Aviation (1944) 9<sup>th</sup> Edition 2006

Convention on the Facilitation of Maritime Traffic (1965)

Agreement establishing the Melanesian Spearhead Group (2007)

FRANZ Agreement (1992), FRANZ Guidelines (2006)

Pacific Islands Forum – Regional Disaster Relief Fund (1975)

Pacific Regional Disaster Risk Reduction and Disaster Framework for Action Agreement (2005)

### National legal instruments

#### Laws

National Disaster Act (2000)

Diplomatic Privileges and Immunities Act (1982)

Vanuatu Red Cross Society Act (1982)

Import Duties Act, Consolidated Edition (2006)

Charitable Associations Act (1982)

Quarantine Act, Consolidated Edition (2006)

Value Added Tax Act (1998)

Immigration Act, Consolidated Edition (2006)

Civil Aviation Act (1999)

Public Finance and Economic Management Act (1998)

Road Traffic (Control) Act (2005) Ports Act (1998)

Vanuatu Association of Non-Government Organizations (VANGO) Constitution (2006)

### **Memoranda of Understanding**

Memorandum of Understanding between the Government of the Republic of Vanuatu and the Vanuatu Red Cross Society, adopted by the Council of Ministries 10 January 2010, Government of Vanuatu (2010)

Memorandum of Understanding between the Government of the Republic of Vanuatu and the Vanuatu Association of Non-Government Organizations (VANGO), adopted by the Council of Ministries 8 September 2004, Government of Vanuatu (2004)

Memorandum of Understanding between the Government of the Republic of Vanuatu and Voluntary Services Overseas (VSO), adopted by the Council of Ministries 10 May 2010, Government of Vanuatu (2010)

### **Plans/Strategies**

National Action Plan for Disaster Risk Reduction and Disaster Management, 2006-2016 (2006)

National Disaster and Emergency Plan (1987)

National Disaster Plan (Review 2009)

Operational Support Plan on Ambae Volcano (1995)

Cyclone Support Plan Review (October 2009-October 2010)

Penama Provincial DRM Arrangement (2010/2011)

Lolovoli Community Disaster Plan (2010/2011)

Other sources

Vanuatu National Census (2009)

Catastrophe Insurance Pilot Study, Port Vila, Vanuatu: Developing Risk-Management Options for Disasters in the Pacific Region, SOPAC, (2003)

Office de la Recherche Scientifique et Technique d'Outre-Mer (ORSTOM), Report 5 (1983)  
NDMO Report on Funa and Gene (2008)

Vanuatu Ombudsman's Report 98-06 (1998)



# Annex 6

## Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance ('IDRL Guidelines')

### Introduction

#### 1. Purpose and Scope

1. These Guidelines are non-binding. While it is hoped that States will make use of them to strengthen their laws, policies and/or procedures related to international disaster response, as appropriate, the Guidelines do not have a direct effect on any existing rights or obligations under domestic law.

2. They draw from many existing international instruments, including United Nations General Assembly Resolutions 46/182 of 1991 and 57/150 of 2002, the Measures to Expedite International Relief of 1977 and the Hyogo Framework for Action of 2005.

3. Their purpose is to contribute to national legal preparedness by providing guidance to States interested in improving their domestic legal, policy and institutional frameworks concerning international disaster relief and initial recovery assistance. While affirming the principal role of domestic authorities and actors, they recommend minimum legal facilities to be provided to assisting States and to assisting humanitarian organizations that are willing and able to comply with minimum standards of coordination, quality and accountability. It is hoped that the use of these Guidelines will enhance the quality and efficiency of international disaster relief and initial recovery assistance in order to better serve disaster-affected communities.

4. These Guidelines are not intended to apply to situations of armed conflict or disasters that occur during armed conflicts, or to imply changes in any rules governing relief in those contexts. They are also not intended to recommend any changes to, or affect the meaning or implementation of, any existing international law or agreements, including but not limited to:

(a) International humanitarian, human rights and refugee law;

(b) The legal personality and status of States, inter-governmental organizations, the

International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross;

(c) International law related to privileges and immunities;

(d) The Statutes and regulations of the International Red Cross and Red Crescent Movement and existing legal arrangements between the individual components of the Movement and States; and

(e) Existing agreements between States or between States and assisting actors.

## 2. Definitions

For the purposes of these Guidelines,

1. **“Disaster”** means a serious disruption of the functioning of society, which poses a significant, widespread threat to human life, health, property or the environment, whether arising from accident, nature or human activity, whether developing suddenly or as the result of long-term processes, but excluding armed conflict.
2. **“Disaster relief”** means goods and services provided to meet the immediate needs of disaster-affected communities.
3. **“Initial recovery assistance”** means goods and services intended to restore or improve the pre-disaster living conditions of disaster-affected communities, including initiatives to increase resilience and reduce risk, provided for an initial period of time, as determined by the affected State, after the immediate needs of disaster-affected communities have been met.
4. **“Goods”** means the supplies intended to be provided to disaster-affected communities for their relief or initial recovery.
5. **“Services”** means activities (such as rescue and medical care) undertaken by disaster relief and initial recovery personnel to assist disaster-affected communities.
6. **“Equipment”** means physical items, other than goods, that are necessary for disaster relief or initial recovery assistance, such as vehicles and radios.
7. **“Personnel”** means the staff and volunteers providing disaster relief or initial recovery assistance.
8. **“Affected State”** means the State upon whose territory persons or property are affected by a disaster.
9. **“Assisting State”** means a State providing disaster relief or initial recovery assistance, whether through civil or military components.
10. **“Originating State”** means the State from which disaster relief and initial recovery personnel, goods and equipment begin travel to the affected State.
11. **“Transit State”** means the State through whose territorial jurisdiction disaster relief or initial recovery assistance has received permission to pass on its way to or from the affected State in connection with disaster relief or initial recovery assistance.
12. **“Assisting humanitarian organization”** means a foreign, regional, intergovernmental or international non-profit entity whose mandate and activities are primarily focused on humanitarian relief, recovery or development.
13. **“Eligible assisting humanitarian organization”** means an assisting humanitarian organization determined to be eligible to receive legal facilities pursuant to Part V by the originating, transit or affected State, as applicable.
14. **“Assisting actor”** means any assisting humanitarian organization, assisting State, foreign individual, foreign private company providing charitable relief or other foreign entity responding to a disaster on the territory of the affected State or sending in-kind or cash donations.

## Part I: Core Responsibilities

### 3. Responsibilities of Affected States

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

### 4. Responsibilities of Assisting Actors

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

- (f) Provided by competent and adequately trained personnel;
- (g) Commensurate with their organisational capacities;
- (h) Building upon and conducted in a manner that strengthens local disaster risk reduction, relief and recovery capacities and reduces future vulnerabilities to disasters;
- (i) Carried out so as to minimize negative impacts on the local community, economy, job markets, development objectives and the environment; and
- (j) Provided in a transparent manner, sharing appropriate information on activities and funding.

### **5. Additional Responsibilities of All States**

1. States providing funding to other assisting actors should encourage them to act in a manner consistent with the provisions of paragraph 4.
2. All States should actively encourage members of the public interested in contributing to international disaster relief or initial recovery to make financial donations where possible or otherwise donate only those types of relief goods expressly requested by the affected State.

### **6. Responsibilities Concerning Diversion and the Intended Use of Resources**

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

## **Part II: Early Warning and Preparedness**

### **7. Early Warning**

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

### **8. Legal, Policy and Institutional Frameworks**

1. As an essential element of a larger disaster risk reduction programme, States should adopt comprehensive legal, policy, and institutional frameworks and planning for disaster prevention, mitigation, preparedness, relief and recovery which take full account of the auxiliary role of their National Red Cross or Red Crescent Society, are inclusive of domestic civil society, and empower communities to enhance their own safety and resilience. States, with the support, as appropriate, of relevant regional and international organizations, should devote adequate resources to ensure the effectiveness of these frameworks.

2. These frameworks should also adequately address the initiation, facilitation, transit and regulation of international disaster relief and initial recovery assistance consistent with these Guidelines. They should allow for effective coordination of international disaster relief and initial recovery assistance, taking into account the role of the United Nations Emergency Relief Coordinator as central focal point with States and assisting humanitarian organizations concerning United Nations emergency relief operations. They should also clearly designate domestic governmental entities with responsibility and authority in these areas. Consideration should be given to establishing a national focal point to liaise between international and government actors at all levels.

3. Where necessary and appropriate, national governments should encourage other domestic actors with authority over areas of law or policy pertinent to international disaster relief or initial recovery assistance, such as provincial or local governments and private regulatory bodies, to take the necessary steps at their level to implement the Guidelines.

### **9. Regional and International Support for Domestic Capacity**

1. With a view to increasing resilience and reducing the need for international disaster relief and initial recovery assistance, the international community, including donors, regional and other relevant actors, should support developing States, domestic civil society actors and National Red Cross and Red Crescent Societies to build their capacities to prevent, mitigate, prepare for and respond to disasters domestically.

2. The international community should also support developing States to build the capacity to adequately implement legal, policy and institutional frameworks to facilitate international relief and initial recovery assistance. This support should be provided to States in a coordinated manner among the relevant actors.

## **Part III: Initiation and Termination of International Disaster Relief and Initial Recovery Assistance**

### **10. Initiation**

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

2. Requests and offers for assistance should be as specific as possible as to the types and amounts of goods as well as the services and expertise available or required, respectively. Affected States may also wish to indicate particular types of goods and services likely to be offered that are not needed.

3. Affected States should make available to assisting actors adequate information about domestic laws and regulations of particular relevance to the entry and operation of disaster relief or initial recovery assistance.

### **11. Initiation of Military Relief**

Military assets should be deployed for disaster relief or initial recovery assistance only at the request or with the express consent of the affected State, after having considered comparable civilian alternatives. Prior to any such deployment, terms and conditions (including such issues as the duration of deployment, whether they must be unarmed or may be armed the use of their national uniforms, and mechanisms for cooperation with civilian actors) are to be agreed by the affected and assisting States.

### **12. Termination**

When an affected State or an assisting actor wishes to terminate disaster relief or initial recovery assistance, it should provide appropriate notification. Upon such notification, the affected State and the assisting actor should consult with each other, bearing in mind the impact of such termination on disaster-affected communities.

## **Part IV: Eligibility for Legal Facilities**

### **13. Facilities for Assisting States**

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

### **14. Facilities for Assisting Humanitarian Organizations**

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

## 15. Facilities for Other Assisting Actors

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

## Part V: Legal Facilities for Entry and Operations

*It is recommended that States provide the legal facilities described in paragraphs 16-24 to assisting States and eligible assisting humanitarian organizations. It is understood that the granting of these facilities will be subject to the interests of national security, public order, public and environmental health, and public morals of the concerned affected, originating and transit States. Measures to protect such interests should be tailored to the exigencies of the specific disaster and consistent with the humanitarian imperative of addressing the needs of affected communities.*

*Where specific facilities recommended here are within the competence of authorities other than the national government, the national government should, where possible and appropriate, encourage those authorities to provide the relevant facilities to assisting States and eligible assisting humanitarian organizations.*

## 16. Personnel

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

(a) Grant visas and any necessary work permits, ideally without cost, renewable within their territory, for the time necessary to carry out disaster relief or initial recovery activities;

(b) In disaster relief operations, waive or significantly expedite the provision of such visas and work permits;

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

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

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

3. Assisting States and eligible assisting humanitarian organizations should consider to what degree disaster relief and initial recovery objectives can be met through hiring local staff.

### 17. Goods and Equipment

1. With regard to disaster relief and initial recovery goods and equipment exported or imported by, or on behalf of, assisting States and eligible assisting humanitarian organizations, originating, transit and affected States should:

- (a) Exempt them from all customs duties, taxes, tariffs or governmental fees;
- (b) Exempt them from all export, transit, and import restrictions;
- (c) Simplify and minimize documentation requirements for export, transit and import;
- (d) Permit re-exportation of any equipment or unused goods which the assisting State or assisting humanitarian organization owns and wishes to retain.

2. With regard to disaster relief goods and equipment only, originating, transit and affected States should additionally:

- (a) Waive or reduce inspection requirements. Where waiver is not possible, clear relief goods and equipment rapidly and as a matter of priority, through a “preclearance” process where feasible; and
- (b) Arrange for inspection and release outside business hours and/or at a place other than a customs office as necessary to minimize delay, in accordance with the safety regulations of the affected State. Assisting States and eligible assisting humanitarian organizations should respect any routes and delivery points prescribed by the affected State.

3. In order to benefit from the facilities above, assisting States and assisting humanitarian organizations should, in accordance with agreed international standards, appropriately pack, classify and mark disaster relief and initial recovery goods and equipment, and include detailed manifests with each shipment. They should additionally inspect all such goods and equipment to ensure their quality, appropriateness for the needs in the affected State, and conformity with the national law of the affected State and international standards.

4. Assisting States and eligible assisting humanitarian organizations should assume responsibility for removing or disposing of any unwanted and unused relief and initial recovery goods, particularly if they may pose a threat to human health or safety, or the environment.

### 18. Special Goods and Equipment

In addition to the facilities described in paragraph 17:

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

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



bandwidth, frequencies and satellite use for telecommunications and data transfer associated with disaster relief operations.

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

(a) Any medications they import should be approved for use in the originating and affected State;

(b) Medications they use in their own operations should be:

(i) transported and maintained in appropriate conditions to ensure their quality and;

(ii) guarded against misappropriation and abuse.

(c) Any medications they donate for use by others in the affected State should be:

(i) at least twelve months from their expiration date upon arrival, unless otherwise agreed by receiving authorities;

(ii) transported and maintained in appropriate conditions to ensure their quality until they reach the affected State; and

(iii) appropriately labelled in a language understood in the affected State with the International Nonproprietary Name or generic name, batch number, dosage form, strength, name of manufacturer, quantity in the container, storage conditions and expiry date.

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

## **19. Transport**

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

2. In particular, permission should be granted for overflight, landing and departure of aircraft. Such aircraft should also be authorized to operate within the territory of the affected State as required for the delivery of assistance.

3. Any applicable exit, transit and entry visas for the operating personnel of such transport vehicles should be promptly issued.

## 20. Temporary Domestic Legal Status

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

## 21. Taxation

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

## 22. Security

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

## 23. Extended Hours

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

## 24. Costs

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

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

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

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

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

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

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

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

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



International Federation  
of Red Cross and Red Crescent Societies  
[www.ifrc.org](http://www.ifrc.org) **Saving lives, changing minds.**