



# International disaster response law (IDRL) in The Gambia

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

Prepared by



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## About this report

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

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

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***International Disaster Response Law (IDRL) in Gambia***

# Executive summary

The Gambia Red Cross Society (GRCS) in collaboration with the International Federation of Red Cross and Red Crescent Societies (IFRC) commissioned this legal report research to review the current legal framework, policies and practices in disaster response preparedness in The Gambia. The report is based on a review of The Gambia's legislation applicable to international disaster response, in light of the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance (the 'IDRL Guidelines').<sup>1</sup>

The GRCS undertook to initiate the process of the research in response to the call by states made at the 31st International Conference of the Red Cross and Red Crescent, for national legal frameworks for the facilitation and regulation of international disaster response to be examined and strengthened.

It is for this reason that, in June 2014, the GRCS and the IFRC, in collaboration with the National Disaster Management Agency (NDMA) of The Gambia, began a process to sensitize relevant government partner agencies and law makers on the relevance of integrating facilitative domestic regulations for international disaster response in the national response system. The project was timely in light of the ongoing review of the National Disaster Management (NDM) Act of 2008.

These consultations were done with representatives from the Office of the President, NDMA, the National Assembly, GRCS and key government agencies and other humanitarian partners with the objectives of supporting government-initiated efforts to strengthen the country's legal preparedness for disasters, improving awareness on disaster law and knowledge, strengthening laws and procedures for disaster response, and promoting effective international disaster response laws among legislators and stakeholders involved in disaster management and response.

Generally, it was established that, even though the existing National Disaster Management Act of 2008 (hereinafter referred to as the "NDM Act 2008") has many solid aspects, there is a need for improvement in order to make it more comprehensive, coherent and adaptable to new problematic areas of disasters that have diversified and increased in recent years. In this regard, a disaster law workshop<sup>2</sup> proposed an audit of The Gambia's legal preparedness to facilitate and regulate international disaster assistance in the event of a disaster, which led to the initiation of this legal research and report.

<sup>1</sup> The IDRL Guidelines are available at <http://www.ifrc.org/en/what-we-do/idrl/idrl-guidelines/>

<sup>2</sup> See article about this workshop at <http://www.ifrc.org/ar/what-we-do/disaster-law/news/africa/preparing-the-gambia-laws-for-future-disasters1-67370/>



## Executive summary

In reviewing the relevant legal and institutional framework, the report has identified a number of strengths. For example, The Gambia has developed a National Policy on Disaster Management, a Strategic Framework, a National Disaster Risk Management Plan, and a Multi-Hazard Contingency Plan. Moreover, a number of national and institutional structures and coordinating mechanisms including a focal point for Disaster Risk Management (DRM) have been established namely the National Disaster Management Agency, directly under the Office of the President and the National Platform for Disaster Risk Reduction (DRR) and Climate Change Adaptation (CCA).

There are also many sectoral laws with provisions directly or indirectly dealing with DRM in general. However, by and large, these laws are fragmentary and difficult to apply in order to adequately coordinate and facilitate speedy and timely provision of international relief assistance.

There is therefore no comprehensive legislation governing the facilitation and regulation of international disaster assistance, as noted in this report. In light of these findings, this report puts forth a number of recommendations, with the main focus being on the following:

1. The Gambia should revise the existing NDM Act 2008 in order to capture the findings and recommendations in this report as they relate to international disaster relief and recovery assistance; and
2. In the short term, clear procedures for receiving international disaster assistance and coordinating national disaster relief efforts should be included in the National Disaster Risk Management Plan.

By adopting and implementing the recommendations set out in this report, The Gambia will improve its capacity to manage disasters nationally and properly regulate incoming international disaster assistance. A comprehensively revised national legal framework, including provisions catering for international disaster response, will ensure a well-coordinated assistance in the event of a major disaster, and will encourage prompt assistance for affected persons and assisting international bodies.

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# Acknowledgements

The Gambia Red Cross Society (GRCS) and the International Federation of Red Cross and Red Crescent Societies (IFRC) in partnership with the National Disaster Management Agency of The Gambia gratefully acknowledges the German Federal Foreign Office and the Permanent Mission of Germany to the United Nations, for their financial support that made possible the execution of the present study.

Special thanks and appreciation goes to the Office of the President for its constructive and thoughtful support throughout the project.

The research was undertaken by Messrs.; Gibriel Bah, Essa Khan and Modou Yaya Jallow of Bandirabeh Associates consultancy firm for the IDRL Project of The Gambia Red Cross Society, with oversight and technical guidance from Ida Marstein, Disaster Law Programme Coordinator for Africa, and Emebet Negussie, Disaster Law Officer, from the Africa Disaster Law Programme of the IFRC.

Sincere thanks to the following institutions and individuals for their unwavering support and collaboration during the study;

- Mr. Chernoh Marenah, Solicitor General and Legal Secretary at the Attorney General Chambers and Ministry of Justice Attorney General Chambers;
- Mr. Daniel Cardos, Deputy Clerk of The Gambia National Assembly;
- Ms. Zainab Jallow, Director General, FSQA;
- Ms. Mary Johnson, Legal Advisor, FSQA;
- Lt. Col. Alagie Sanneh, Executive Director, NDMA;
- Dr. Kebba Daffeh, Private Veterinary Consultant;
- The Joint Services of Customs, Immigration, Police and Armed Forces at the border posts of Soma in the Lower River Region and Farafenni in the North Bank Region respectively.

# Acronyms and abbreviations

<b>ACE</b>	African Coast to Europe
<b>ADSL</b>	Asymmetric Digital Subscriber Line
<b>AG Chambers</b>	Attorney General Chambers and Ministry of Justice
<b>AGIR</b>	Global Alliance for Resilience Building
<b>AGRHYMET</b>	Sub-Regional Meteorology and Early Warning Centre
<b>AOR</b>	Areas of Responsibility
<b>AU</b>	African Union
<b>AUC</b>	African Union Commission
<b>CAP</b>	Country Action Plan
<b>CBG</b>	Central Bank of The Gambia
<b>CBOs</b>	Community Based Organisations
<b>CBPP</b>	Contagious Bovine Pleuro Pneumonia
<b>CCA</b>	Climate Change Adaptation
<b>CEO</b>	Chief Executive Officer
<b>CERF</b>	Central Emergency Response Fund
<b>CILLS</b>	Inter-State Committee for the Control of Drought in the Sahel
<b>CAP</b>	Consolidated Appeals Process
<b>CPF</b>	Country Programme Framework
<b>CRS</b>	Christian Relief Services
<b>CSOs</b>	Civil Society Organizations
<b>DFID</b>	Department for International Development
<b>DIPECHO</b>	Disaster Preparedness ECHO Programme
<b>DMC</b>	Disaster Management Committee
<b>DREF</b>	Disaster Relief Emergency Fund
<b>DRM</b>	Disaster Risk Management
<b>DRR</b>	Disaster Risk Reduction
<b>DWR</b>	Department of Water Resources
<b>ECHO</b>	European Commission Humanitarian Aid and Civil Protection Department
<b>ECOWAS</b>	Economic Community of West African States
<b>EU</b>	European Union
<b>EVD</b>	Ebola Virus Disease
<b>EWS</b>	Early Warning Systems

<b>FAO</b>	Food and Agriculture Organization
<b>FSQA</b>	Food Safety and Quality Control Authority of The Gambia
<b>GAMTEL</b>	The Gambia Telecommunications Company Limited
<b>GAMCEL</b>	The Gambia Cellular Company Limited
<b>GCAA</b>	The Gambia Civil Aviation Authority
<b>GCCI</b>	The Gambia Chamber of Commerce and Industry
<b>GEF</b>	Global Environment Facility
<b>GFCS</b>	Global Framework for Climate Services
<b>GFDRR</b>	Global Facility for Disaster Reduction and Recovery
<b>GID</b>	The Gambia Immigration Department
<b>GNP</b>	The Gambia National Platform
<b>GoTG</b>	Government of The Gambia
<b>GPA</b>	The Gambia Ports Authority
<b>GPF</b>	The Gambia Police Force
<b>GRA</b>	The Gambia Revenue Authority
<b>GRCS</b>	The Gambia Red Cross Society
<b>HFA</b>	Hyogo Framework for Action
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<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>IFAD</b>	International Fund for Agricultural Development
<b>IFRC</b>	International Federation of Red Cross and Red Crescent Societies
<b>IGP</b>	Inspector General of Police
<b>ISPs</b>	Internet Service Providers
<b>LRR</b>	Lower River Region
<b>LTE</b>	Long Term Evolution
<b>MDG</b>	Millennium Development Goals
<b>MoFA</b>	Ministry of Foreign Affairs
<b>MoFEA</b>	Ministry of Finance and Economic Affairs
<b>MoHSW</b>	Ministry of Health and Social Welfare
<b>MoICI</b>	Ministry of Information and Communication Infrastructure
<b>NDM</b>	National Disaster Management Act
<b>NDM Act 2008</b>	National Disaster Management Act of 2008
<b>NDMA</b>	National Disaster Management Agency
<b>NDMC</b>	National Disaster Management Committee
<b>NEA</b>	National Environment Agency

<b>NGO</b>	Non Governmental Organisation
<b>NS</b>	National Society
<b>NTAG</b>	National Disaster Technical Advisory Group
<b>OP</b>	Office of the President
<b>PAGE</b>	Program for Accelerated Growth and Employment
<b>POA</b>	Programme of Action
<b>PRRO</b>	Protracted Relief and Recovery Operations
<b>PRSPII</b>	Poverty Reduction Strategy Paper
<b>PS</b>	Permanent Secretary
<b>PURA</b>	Public Utilities Regulatory Authority of The Gambia
<b>RDMCs</b>	Regional Disaster Management Committee
<b>RECs</b>	Regional Economic Communities
<b>SPHERE Standards</b>	Humanitarian Charter and Minimum Standards in Disaster Response
<b>TANGO</b>	Association of the Agency for Non-Government Organisations
<b>TIN</b>	Tax Identification Number
<b>UN</b>	United Nations
<b>UNCADRI</b>	United Nations Capacity for Disaster Reduction Initiative
<b>UNCT</b>	United Nations Country Team
<b>UNDAF</b>	United Nations Development Assistance Framework
<b>UNDP</b>	United Nations Development Program
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNFPA</b>	United Nations Fund for Population Affairs
<b>UNISDR</b>	United Nations Office for Disaster Risk Reduction
<b>UNOCHA</b>	United Nations Office for the Coordination of Humanitarian Affairs
<b>USAID</b>	United States Agency for International Development
<b>VAT</b>	Value Added Tax
<b>VC</b>	Village Committee
<b>VSAT</b>	Very Short Aperture Terminal
<b>WASH</b>	Water, Sanitation and Hygiene
<b>WCR</b>	West Coast Region
<b>WFP</b>	World Food Program
<b>WHO</b>	World Health Organization
<b>WiMAX</b>	Worldwide Interoperability for Microwave Access

**International Disaster Response Law (IDRL) in The Gambia**

A study on legal preparedness for regulatory issues in  
international disaster response

# Chapter 1

## Introduction

## Introduction

### 1.1 Background

Affected states in a number of recent large and medium disasters have found themselves ill prepared to handle international responders. Excessive regulation in some areas can sometimes restrict or delay the entry of urgent relief. Inadequate oversight in other areas can contribute to poor quality, poor coordination and poor complementarity of international relief with the efforts of domestic actors. These problems are getting worse over time, in part because the number and variety of international responders is increasing.

Developing rules and procedures in advance of a disaster can go a long way to adequately coordinating international relief assistance for effective response. This mitigates the impact of the disaster or calamity on the affected countries in general, and most importantly on the vulnerable communities and households in particular. When major disasters strike, international assistance can mean the difference between hardship and speedy recovery for affected communities.

It is in recognition of this fact, that in 2001, the International Federation of Red Cross and Red Crescent Societies (IFRC) launched its “International Disaster Response Laws, Rules and Principles” (IDRL) Programme to examine the legal issues in international disaster relief and recovery operations, later renamed the “Disaster Law Programme”. Over the course of several years, the IDRL Programme commissioned over two dozen country and regional studies and contacted Governments, National Societies, NGOs and UN agencies to identify common legal issues.

It 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 (such as issues with visas, lengthy customs clearance, costly duties, taxes and charges and legal personality problems) as well as failures of control over the quality, coordination and complementarities of international relief.

To assist governments in addressing these challenging issues, the IFRC and its members led a global consultation process which resulted in a set of recommendations on how to prepare disaster laws and procedures for the common regulatory problems in international disaster relief operations. The recommendations, also known as the “*Guidelines for the domestic facilitation and regulation of international relief and early recovery assistance*” (hereinafter referred to as the IDRL Guidelines) were adopted by states parties to the Geneva Conventions, and the components of the International Red Cross and Red Crescent Movement, at the 30th International Conference of the Red Cross and Red Crescent in 2007.

In June 2014, The Gambia Red Cross Society (GRCS) and the IFRC, in collaboration with the National Disaster Management Agency (NDMA) of The Gambia began a process<sup>3</sup> to revise and analyze The Gambia’s legal framework related to disaster response, with the assistance of relevant government partner agencies and law makers. The project was timely in light of the ongoing review of the National Disaster Management (NDM) Act of 2008. This review was initiated through a Common Country Assessment (CCA)

<sup>3</sup> See Annex 2 for the process leading to revision and analysis of The Gambia’s legal framework related to disaster response.



**Introduction**

between the Government of The Gambia (GoTG) and the UN Country Team (UNCT) to identify and agree on the key development priority areas that the UN systems could support during a five-year period. This review is part of a comprehensive assessment of the legal and institutional DRM framework of The Gambia.

Under the United Nations Development Assistance Framework (UNDAF)<sup>4</sup>, disaster risk management interventions were among the key areas identified for support involving specific activities such as review and update of the NDM Policy and Act 2008 under the leadership of the NDMA. The UNDAF represents a collective response of the UN system to the national development priorities as per the Millennium Development Goals (“MDG”) and the Programme for Accelerated Growth and Employment (PAGE) 2012-2015, as well as the Vision 2020 document.

This UNDAF was developed in partnership with the Government and the civil society, including The Gambia Red Cross Society. Under the UNDAF, the UNCT collaborates with the GoTG, civil society and other development partners on three strategic priorities<sup>5</sup> (Poverty Reduction and Social Protection, Basic Social Services, and Governance and Human Rights).

The outcomes of the review process were an updated revised draft of the NDM Policy and Strategic Action Plan (2014 – 2017). A comprehensive review report<sup>6</sup> of the 2008 NDM Act was also produced highlighting gaps and inconsistencies with the NDM 2008 Policy and the need to incorporate emerging issues in the arena of DRM both domestically and internationally.

Currently, the revised NDM Policy, Strategic Framework and review report of the NDM Act 2008 collectively are before the Cabinet for consideration and approval. Upon approval, the NDM Policy, Strategic Framework will become the guiding framework for DRM in The Gambia.

In line with these objectives, the GRCS and IFRC identified the need to conduct legal research on the existing legal framework for international disaster relief in The Gambia, in light of the IDRL Guidelines, and to publish a report aimed at identifying both challenges and recommendations on practical solutions. The findings of this report, including the recommendations, may support legal drafting of the revised NDM Act 2008.

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## **1.2 Scope**

This study is focused on the facilitation and regulation of international assistance in disasters. It is not intended to make a comprehensive review of law and policy regarding domestic disaster response, although it touches on domestic issues, mainly due to the importance of also reviewing the domestic disaster risk management system and the many links between regulating international and domestic response.

<sup>4</sup> See [http://countryoffice.unfpa.org/thegambia/drive/UNDAF\\_2012-2016-.pdf](http://countryoffice.unfpa.org/thegambia/drive/UNDAF_2012-2016-.pdf)

<sup>5</sup> Ibid p. 5.

<sup>6</sup> Review and Analysis of the National Disaster Management Act 2008, Bandirabeh Associates (Mr. Essa Khan; Mr. Gibriel Bah; Mr. Modou Yaya Jallow), March 2014.

## Introduction

This report's reference to disasters is inclusive of both "natural" and man-made crises, but does not extend to armed conflicts. Communicable disease emergencies are also identified as one type of disaster for which international assistance might be sought; however, this report does not make in depth analysis on this particular topic.

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### 1.3 Methodology

Based on the various consultations with the GRCS and the subsequent updating of the work plan by the consultant, the methodology used to execute this assignment was essentially composed of the following:

- Stakeholder consultations, focus group meetings and key informant interviews<sup>7</sup>; and
- Legal research – gathering and detailed review of relevant literature, including national legal and policy documents.

Moreover, questionnaires were developed and circulated to the relevant institutions to help guide the process of collecting information and relevant data, to assess the existing situation and identify gaps.

Detailed reviews of the NDM Act 2008, and other existing legislations, as well as procedures and processes, were conducted to determine their adequacy in relation to facilitating international relief assistance, identifying gaps and challenges in dealing with relief operations, and waiver requirements and the circumstances warranting a waiver of procedures and processes.

<sup>7</sup> See Annex 3: list of people consulted.

## **International Disaster Response Law (IDRL) in The Gambia**

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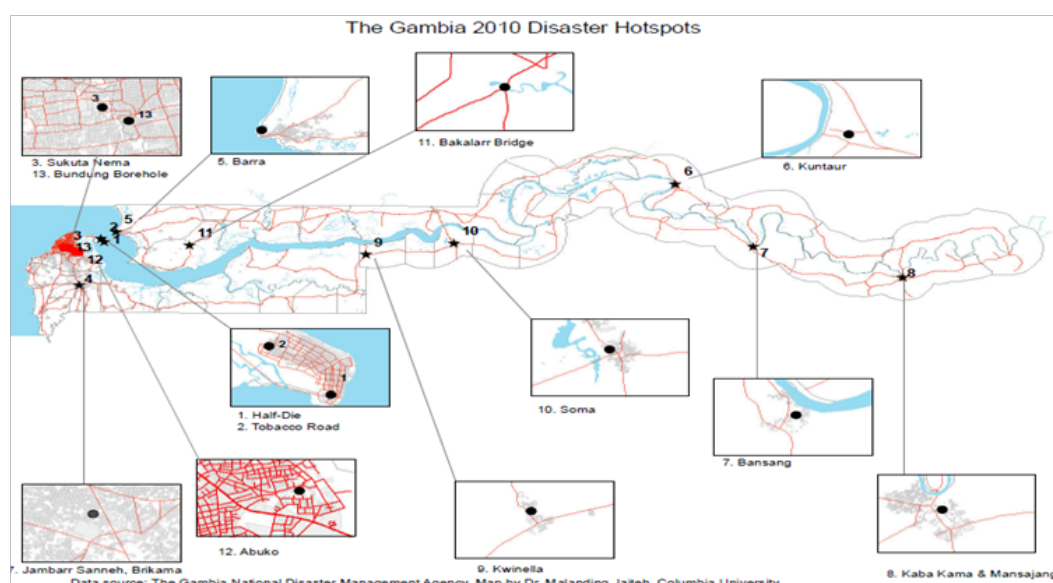
# **Chapter 2**

## Disaster scenarios in The Gambia

## Disaster scenarios in The Gambia

### 2.1 Risk profile of The Gambia

The Gambia is situated on the west coast of Africa between the Equator and the Tropic of Cancer. It is the smallest country in continental Africa forming a narrow strip of land on either side of the River Gambia, which varies in width from 24 to 48 kilo meters over an area of 11,295 square kilo meters. Bordering with Senegal, it is almost an enclave except for the western border to the Atlantic Ocean. Its topography consists of mangrove swamps, tidal creeks and savannah woodland. The Gambia has an estimated population of 1.7 million inhabitants with an annual growth rate of 2.7 per cent.<sup>8</sup>



**Figure 2: Major Disaster Hotspots in The Gambia**

Due to geo-physical conditions, climatic extremes, and high degrees of exposure and vulnerability, The Gambia is a highly disaster-prone country. A range of hazards including windstorms, droughts, floods, and epidemics pose risks to The Gambian society. Some of these hazards, such as floods, are predominantly seasonal and occur on an annual basis, whereas other hazards like drought are rare events but potentially highly destructive.<sup>9</sup>

Climate change is gradually altering average temperature, sea level, and the timing and amount of rainfall, as well as contributing to more frequent, severe and unpredictable climate-related hazards, such as droughts, floods and heat waves. Climate change acts as a magnifier of existing climate-related hazards, which for The Gambia imply unevenly distributed, and erratic rainfall, severe or more unpredictable flash floods, return period of drought, aridity and sea level rise.<sup>10</sup>

Additionally, a variety of human-induced hazards threaten the society, economy and environment. These human-induced hazards include industrial and transport disasters including oil spills, urban and forest fires and population movements, due to civil unrest in neighbouring countries.

<sup>8</sup> UNCADRI Disaster Risk Reduction Capacity Assessment Report, February, 2012, p. 7.

<sup>9</sup> Ibid 9, p. 7.

<sup>10</sup> Ibid.

## Disaster scenarios in The Gambia

The major hazards affecting the country are as follows:

### Floods

The subtropical climate in The Gambia results in a distinct hot and rainy season from June to October, and a cooler dry season from November to May. The rainy season often causes flash floods and heavy rain falls. Between 2009 and 2011, increases in flood events were recorded, with up to 40,000 people affected.<sup>11</sup>

Between 2002 and 2006, there were 65 flood related disasters.<sup>12</sup> In particular, the Ebo Town floods in 2002, 2005 and 2007 caused loss of lives and properties, contributing to food insecurity of vulnerable households in the community. The widespread floods in 2009 and 2010 affected over 48,000 people throughout the country. Furthermore, the severe floods in 1999 and 2003 in Upper River and Central River Regions, and in many parts of the country, affected 13.1 per cent of the population.

### Drought

According to the Detailed Post Harvest Assessment in 2011, The Gambia was affected by drought due to late, unevenly distributed and erratic rainfall during the rainy season, with an overall deficit of 10% below normal and 37% below 2010 levels. Particularly affected was most of the North Bank Region with average rainfall being recorded at over 76% below normal in May-June and over 35% below normal in the period of July to October as well as Lower River Region at 82% and 41% below normal respectively.

The findings of the assessment revealed that a total of 520,583 people (of whom 208,233 were children under 15) living in the rural areas were seriously affected by the poor harvests.

In addition, approximately 192,850 people living in the poorest urban areas were at risk from food insecurity, due to the combined effects of rising food prices, ongoing recovery from and recurrent exposure to environmental shocks (i.e. floods) and additional economic pressure exerted from most affected rural areas.

### Disease Outbreak

Disease outbreaks in particular are major hazards affecting the country and are considered a major threat to human and animal welfare. In fact, the revised Multi-Hazard National Contingency Plan 2014 identifies disease outbreak as the second most serious and devastating hazard after flooding. Examples include the regular outbreaks of meningitis and cholera, which have, significantly, over time been contained to some extent.

The outbreak of the cattle disease known as Contagious Bovine Pleuro Pneumonia (CBPP) in 2012, caused the death of over 4000 heads of cattle which had a serious negative impact on, and affected the food security and livelihoods of, small holder farmers who provide close to 60% of domestic food consumption.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

## Disaster scenarios in The Gambia

Furthermore, the recent outbreak of the deadly Ebola Virus Disease (EVD) in neighbouring countries posed a significant threat to The Gambia due to the free movement of people and goods across borders. This led to a potential high risk for the cross border transmission of the disease, which could be repeated in any similar epidemic outbreak.

### Forest Fires

The total forest area of The Gambia is approximately 461,600 ha.<sup>13</sup> According to the Forestry Department, 183,803 ha of the forest area were burnt in 2004. Forest fires have been and continue to be a problem in The Gambia with negative impacts on people's lives and livelihoods, the economy, the ecosystem, the fauna and flora. In the Lower River Region (LRR), about 70% of community forests and 95% of forest parks were destroyed during this season. The primary causes are slash and burn crop agriculture, hunting, wild honey harvesting and charcoal burning.

According to the Vulnerability and Capacity Assessment Report of 2006 executed by NDMA, bush fires constantly damage The Gambia's natural environment, burning both fallow lands and rangeland. The resultant disturbed woodland and savannah vegetation also accumulates large amounts of combustible material in the rainy season, which results in fires during the dry season. This promotes a vicious cycle of forest destruction in Gambian communities. Moreover, they lead to desertification, accelerated wind and soil erosion, which are more prevalent in arable lands. As a result, forest fires are more common in the rural than urban areas.

Other major forest fire incidents include the Serrekunda market and Kanifing East Estate fires of 2006 and 45 other similar incidents in the highly populated and urbanized West Coast Region (WCR) of the country.

### Economic and political factors

Most of the above mentioned hazards and their related disaster impacts have been further accentuated by unregulated urban and rural planning, improper land-use, unmaintained drainage and sewage systems. A case in point would be the severe impact of floods (especially flash floods) on local populations, as a result of the stagnant water in failing drainage systems, and not necessarily due to the quantity of precipitation. For example, the floods caused severe damage to non-engineering designed houses, roads, bridges, power lines and other related infrastructure.

Furthermore, communities that have been living in hazard-prone areas for many years often do not have mechanisms that allow them to recognize and mitigate the threats that surround them. In many instances, they resort to negative coping strategies and techniques to strengthen their resilience against hazards. For example, there is an area within the Kanifing Municipality called Kotu which has an old quarry with several squatter settlements.

<sup>13</sup> Multi Hazard National Contingency Plan The Gambia, June 2014–June 2016, p. 25.



## **Disaster scenarios in The Gambia**

This area is prone to flooding during the rainy season and given that it is an illegal settlement, it lacks vital amenities such as clean portable drinking water and sewage facilities leading to poor hygienic conditions. In these circumstances, they resort to digging wells to access water. However, these wells are usually contaminated by the basic uncovered pit latrines used by these communities. This leads to the spread of incommunicable diseases such as diarrhoea.

In addition, The Gambia is undergoing rapid changes from a predominantly rural and agrarian way of life to light scale industrial, service-based and urban economy. This situation coupled with the decline of agriculture productivity over the years has forced people to migrate to the urban centres in search of greener pastures.

This phenomenon has led to rapid urbanisation with little attention devoted to settlement planning, proper construction norms and standards thus exposing increased number of people to risk. This rapidly evolving scenario is compounded by climate change, which threatens to alter precipitation and rainfall patterns further, and is predicted to lead to more severe and less predictable flooding and drought episodes.

The Gambia has experienced two major disasters in the recent past that required international assistance. These were the 2010 floods and the 2011 crop failure. In both situations, the Government of The Gambia had to declare a state of emergency based on a consolidated detailed multi-sectoral, inter-agency damage assessment report coordinated by the NDMC through the NDMA with a key role played by The Gambia Red Cross Society as an auxiliary in the humanitarian field to The Gambia Government.

This process provided a platform for all key partners such as UN agencies, NGOs, NS and others to seek funding and subsequently provide relief assistance to those affected in a coordinated and harmonised framework with NDMA being the coordinating agency for such interventions. In both cases, the partners provided direct support to the beneficiaries and therefore were not obliged to deliver such assistance to the Government. In both instances, the Government ensured that all interventions were transparent and coordinated to significantly minimise overlapping and duplication of resources.

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## **Chapter 3**

Overview of international  
and regional instruments  
applicable to The Gambia

### 3.1 Key Treaties Relevant To Disaster Response

It appears that there are no rules prescribing the procedure for the ratification of treaties and what obtains in practice involves a process of consultation and approval whereby the Executive satisfies the National Assembly that the treaty is in the best interest of The Gambia and will not derogate from its sovereignty.

The mere ratification of treaties without more, will not render them part of the laws of The Gambia. Such a treaty entered into by the Government does not become part of the laws of the country until enacted into law by the National Assembly. Before such incorporation, any claim or benefit under the agreements will not be justifiable in the courts of The Gambia.

There are many reasons why The Gambia should adopt and implement the treaties and conventions discussed in this section. Though a small country, The Gambia has made significant strides in developing an institutional framework for DRM and hence the benefits derivable from such adoption are immeasurable.

The Gambia is becoming more and more vulnerable to climate change effects and apart from the international support to be derived, it will be a major development toward disaster preparedness if the country adopts these commitments.

The Gambia is party to several treaties (sometimes called protocols or “conventions”) that are relevant to international disaster assistance. However, not all of these treaties have been domesticated into national laws. For the purpose of this research, the following treaties have been examined vis-à-vis the GoTG’s adherence to the obligations thus far as party to the instruments.

The Gambia is a member of the African Union (AU) and the Economic Community of West African States (ECOWAS).

#### The Kampala Convention on Internally Displaced Persons<sup>14</sup>

The African Union Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) of 2009, also known as the Kampala Convention, entered into force on December 6, 2012. The Kampala Convention requires member states to ensure assistance to internally displaced persons, by meeting their basic needs, as well as allowing and facilitating rapid and unimpeded access by humanitarian organizations and personnel.<sup>15</sup>

It also requires states parties to permit rapid and unimpeded passage of all relief consignments, equipment and personnel to internally displaced persons by both local and international organizations and humanitarian agencies.<sup>16</sup> The Gambia signed the Kampala Convention on 23<sup>rd</sup> October 2009 and ratified it on 27<sup>th</sup> April 2011.

<sup>14</sup> Available on this link <http://www.unhcr.org/4ae9bede9.html>

<sup>15</sup> Article 3(1)(j), Kampala Convention.

<sup>16</sup> Article 5(7), Kampala Convention.

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### ECOWAS Protocol Relating to Free Movement of Persons, Residence and Establishment

The ECOWAS Protocol relating to Free Movement of Persons, Residence and Establishment<sup>17</sup> from 1979 states that citizens of ECOWAS Member States have the right to enter, reside and establish in the territory of Member States. The protocol states that any citizen of the Community who wishes to enter the territory of any other Member State may do so upon possession of a valid travel document and international health certificate.<sup>18</sup> In addition, a citizen of the Community wishing to enter any ECOWAS Member State for up to ninety days may do so without any visa requirements. The Gambia ratified the Protocol on 30<sup>th</sup> October 1980.

These provisions would apply to relief workers who are citizens of other ECOWAS countries in the case they are deployed to a disaster relief operation in The Gambia.

### The Convention on Facilitation of International Maritime Traffic of 1965

The aim of the Convention on Facilitation of International Maritime Traffic is to facilitate maritime traffic by simplifying and reducing to a minimum the formalities, documentary requirements and procedures on arrival, stay and departure of ships engaged in international voyages. Articles 5.11 and 5.12 of the convention include specific provisions related to facilitating disaster relief shipments. The Gambia signed this convention on 1<sup>st</sup> November 1991 and ratified it on 31<sup>st</sup> December 1991.

### The Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations

The Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operation<sup>19</sup> came into force on 8 January 2005.<sup>20</sup> States party to the convention recognized the magnitude, complexity, frequency and impact of disasters, which affected communication facilities, and information flows. They noted that providing disaster response required reliable and flexible communications in order to respond effectively to reduce loss of life, human suffering and damage to property and the environment.

As a result, the convention requires states to reduce or remove, in as far as is possible regulatory barriers to the use of telecommunication resources for disaster mitigation and relief<sup>21</sup>, including to the provision of telecommunication assistance. The Gambia implemented/translated the convention into domestic law on 6<sup>th</sup> April 2003. The Gambia is not listed as a signatory state and therefore the status of accession is still unclear.<sup>22</sup>

<sup>17</sup> Available at [http://documentation.ecowas.int/download/en/legal\\_documents/protocols/PROTOCOL%20RELATING%20TO%20%20FREE%20MOVEMENT%20OF%20PERSONS.pdf](http://documentation.ecowas.int/download/en/legal_documents/protocols/PROTOCOL%20RELATING%20TO%20%20FREE%20MOVEMENT%20OF%20PERSONS.pdf)

<sup>18</sup> Article 3(1) Protocol relating to Free Movement of Persons, Residence and Establishment.

<sup>19</sup> Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations, Tampere, 18 June 1998.

<sup>20</sup> Available at [https://treaties.un.org/doc/Treaties/1998/06/19980618%2006-14%20PM/Ch\\_XXV\\_04p.pdf](https://treaties.un.org/doc/Treaties/1998/06/19980618%2006-14%20PM/Ch_XXV_04p.pdf).

<sup>21</sup> Article 3(1) Tampere Convention.

<sup>22</sup> The researchers were not able to conclude on this question. See list of states party available at <http://treaties.un.org/pages>.

### The International Convention on the Simplification and Harmonization of Customs Procedures (“revised Kyoto Convention”)

The revised International Convention on the Simplification and Harmonization of Customs Procedures, also known as the “revised Kyoto Convention”, which entered into force on 3<sup>rd</sup> February 2006, is geared towards the facilitation of international trade through the streamlining of national customs processes. Specific Annex J.5 of the Kyoto Convention<sup>23</sup> is dedicated to processing of relief consignments. The Gambia ratified the International Convention on the Simplification and Harmonization of Customs Procedures on 31<sup>st</sup> March 2010. The Gambia has not yet acceded to Specific Annex J.5.

The Convention includes requirements and recommendations for the timely and efficient clearance of relief consignments. It provides that relief consignments shall be cleared as a matter of priority<sup>24</sup>, it requires the use of simplified clearing documents for relief goods and provides for inspection and sampling only in exceptional circumstances.<sup>25</sup>

It also requires extended clearing hours outside of normal working time<sup>26</sup> and recommends waiver of taxes.<sup>27</sup> Moreover, Special annex J.5 recommends that goods received as gifts by approved organizations for use or distribution by such organizations should be admitted free of taxes.<sup>28</sup>

### The Convention on International Civil Aviation (“Chicago Convention”);

The Convention on Civil Aviation from 1944, known as the (Chicago Convention)<sup>29</sup> entered into force on 4<sup>th</sup> April 1947. Article 8.8 of the Annex 9 to the Chicago Convention provides that state parties are to “facilitate the entry into, departure from and transit through their territories of aircraft engaged in relief flights performed for or on behalf of international organizations recognized by the United Nations or by or on behalf of the states themselves.”<sup>30</sup>

Article 8.9 of Annex 9 of the Chicago Convention also obliges states parties to ensure that personnel and articles arriving on relief flights are cleared without delay.<sup>31</sup> The Chicago Convention formed the basis for article 19(2) of the IDRL Guidelines, which shall be considered later in this report. The Gambia acceded to the Chicago Convention

<sup>23</sup> Available at World Customs Organisation Website [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/~/\\_link.aspx?id=EC3DBF4147D14CDE8FDD412AFA604551&\\_z=z](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/~/_link.aspx?id=EC3DBF4147D14CDE8FDD412AFA604551&_z=z)

<sup>24</sup> Article 2 Special Annex J.5.

<sup>25</sup> Article 3 Special Annex J.5.

<sup>26</sup> Article 3 Special Annex J.5.

<sup>27</sup> Article 5 Special Annex J.5.

<sup>28</sup> Article 6 Special Annex J.5.

<sup>29</sup> Available at [www.ifrc.org/Docs/idrl/I275EN.pdf](http://www.ifrc.org/Docs/idrl/I275EN.pdf)

<sup>30</sup> Excerpt from Annex 9 to the Convention on International Civil Aviation of 1944, 12th Edition, July 2005 available at <http://www.ifrc.org/Docs/idrl/I275EN.pdf>

<sup>31</sup> Excerpt from Annex 9 to the Convention on International Civil Aviation of 1944, 12th Edition,

<sup>32</sup> July 2005 available at <http://www.ifrc.org/Docs/idrl/I275EN.pdf>

<sup>33</sup> Laws of The Gambia, Volume 11, CAP 71:01, Civil Aviation Act No. 11 of 2004 amended by Act No.6 of 2008, 8.

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on International Civil Aviation on 13<sup>th</sup> May 1977, empowering its government to make regulations to give effect to the provisions of the Chicago Convention under the Civil Aviation Act<sup>32</sup> and Civil Aviation Regulations.<sup>33</sup>

Given that The Gambia is party to the Chicago Convention, the Director General of the Civil Aviation shall facilitate the entry into, departure from and transit through the Gambian territory of aircraft engaged in relief flights, as well as ensuring that personnel and articles arriving on relief flights are cleared without delay.<sup>34</sup>

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

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

Annex B9 is concerned with goods imported for humanitarian purposes such as medical, surgical and laboratory equipment and relief consignments. It provides that goods imported for humanitarian purposes shall be granted temporary admission.

Further, an inventory of the goods together with a written undertaking to re-export may be accepted for medical, surgical and laboratory equipment, in lieu of a customs document for admission. However, The Gambia is yet to ratify this Convention and its Annex B9.

In addition to the above, The Gambia also acceded to the International Covenant on Civil and Political Rights (ICCPR)<sup>35</sup> on 22<sup>nd</sup> March 1979 and to the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>36</sup> on 29<sup>th</sup> December 1978. Both conventions set out rights (such as the rights to life, food, housing and health) that can be particularly relevant in disaster settings.

### Recommendations

The following recommendations are made:

- The Gambia should complete the process of accession and/or ratification to the Tampere Convention to be officially listed as a signatory state.
- The Gambia should consider acceding to Specific Annex J.5 to the Kyoto customs convention which contains rules on customs clearance of relief goods.
- The Gambia should consider ratifying Annex B9 to the Istanbul Convention on the admission of humanitarian goods.
- The Civil Aviation Act should be amended with clear provisions to ensure that personnel and articles arriving on relief flights are cleared without delay.

<sup>34</sup> Ibid 29, Part VI, Section 46, p31.

<sup>35</sup> Laws of The Gambia, Volume 11, CAP 71:01, Civil Aviation Regulations, [LN 10 of 2005], p102.

<sup>36</sup> List of States Party to the ICCPR is available on [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-5&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en)



## **International Disaster Response Law (IDRL) in The Gambia**

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# **Chapter 4**

Overview of The Gambia's  
national legal, policy and  
institutional framework for  
disaster risk management

## Overview of The Gambia's national legal, policy and institutional framework for disaster risk management

### 4.1 Institutional and legal framework for disaster risk management

#### IDRL Guidelines Article 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.

#### 4.1.1 Background

In light of the cumulative disaster scenarios, coupled with the changing patterns of risks and vulnerabilities caused by climate change and variability, human induced actions, inadequate regulatory frameworks and enforcement mechanisms, the Government of The Gambia (GoTG) has realised the importance of mainstreaming risk reduction into sustainable development and poverty reduction plans.

Previously, the management of disasters was organized through the Disaster Relief, Rehabilitation and Re-settlement Committee under the Office of the Vice President. The Committee was established in 1996 focusing on the distribution of relief, without comprehensive standard operating procedures associated with emergency response.

In this regard, disaster interventions were done on an ad hoc basis and could not meet the challenges associated with relief assistance and recovery efforts. In essence, it seemed that there was political commitment for DRM in The Gambia, but according to stakeholders interviewed for this research, this commitment was not adequately substantiated by a thorough and comprehensive approach to DRM.

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The above planning and structural inadequacies were further accentuated by the absence of a comprehensive and regulatory framework for disaster risk management in The Gambia.

It was in realisation of these inadequacies and the recognition of disaster risk management as a development imperative and priority that the GoTG sought assistance from the UNDP for the development of a comprehensive disaster risk management framework to adequately address all the stages of the disaster management cycle and to subsequently integrate DRM systems and practices into national development planning and poverty reduction frameworks such as the Poverty Reduction Strategy Paper (PRSPII) and its successor, the Program for Accelerated Growth and Employment (PAGE).

This request for support led to the formulation of a preparatory assistance project for the period; 2006 to 2009, funded by the UNDP. This project (UNDP Supported Disaster Management Project) ultimately led to the development of a comprehensive Disaster Management Framework for The Gambia, to enhance a coordinated and harmonised approach to disaster risk management. Thus, the 2008 Disaster Management Act, Policy and Strategic Action Plan (2008-2011) were developed.

This political commitment to DRM was further reinforced with the establishment of the National Disaster Management Council under the Office of the Vice President; and now under the purview of the Office of the President since 2013 as the highest policy and regulatory organ for DRM in the country.

### National Disaster Management Policy

The National Disaster Management Policy 2008<sup>37</sup> provides an overall guiding framework for addressing the high levels of disaster risks in The Gambia. It covers both natural and human-induced hazards and seeks to promote priority measures to improve already existing vulnerability to hazards, and equally taking important measures to ensure future development processes and programs to strengthen resilience.

The policy also serves as a guiding framework for DRR, climate change adaptation and relevant development plans and programs that focus on national development priority issues. The building blocks of the current DM policy reflect the priority actions of the Hyogo Framework of Action and are incorporated under the DM Act 2008 that decentralized responsibilities at the regional, district and community levels for the implementation of DRR.

In view of these increasing vulnerabilities coupled with the summary outcomes of the pre-Sendai consultations, there was the need to review the 2008 policy to reflect these global and continental realities and translates them into country specific actions. Hence, in 2013 the 2008 policy along with the 2008 NDM Act were revised and submitted for approval by the Cabinet of The Gambia. It is important to note however that at the time of the completion of this IDRL report, Cabinet has not yet approved the revised 2008 policy and the NDM Act. Therefore, the 2008 NDM policy and Act remains the legal framework currently in force regulating disaster management in The Gambia.

<sup>37</sup> This policy was adopted in April 2008.

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### National Disaster Management Act 2008<sup>38</sup>

The NDM 2008 policy was developed and finalised before the enactment of the NDM Act 2008. This Act provided the enabling legal framework for the establishment of the national NDM coordinating structures recommended in the policy. The NDM Act 2008 provides for an integrated and coordinated disaster management framework focusing on prevention, preparedness, response, mitigation, and recovery from disaster or emergency situations, and the management of their effects.

The Act established the National Disaster Management Agency (NDMA) as a body corporate in April 2009 to coordinate all disaster related issues in the country in close collaboration with all relevant partners. In addition, the NDMA was established with decentralised disaster management structures at the regional, district and village levels in line with the Local Government Decentralisation Act.

Through the NDM Act 2008, the NDMA, the National Disaster Management Council (NDMC) and regional, district and village Disaster Management Committees were established as the main coordination structures for disaster management as recommended in the policy.

### 4.1.2. National level

#### Office of the President

Overall, there is clear political commitment at the highest level of national authorities to engage in disaster management and risk reduction and reinforce preparedness for response in The Gambia. The Office of the President (OP) bears overall responsibility for ensuring security, safety and general well-being of the citizens of The Gambia.

It oversees and coordinates at the highest level the implementation of national DRM strategies, policies and programmes, including the declaration of a State of Emergency in line with the Emergency Powers Act conferred on the President of the Republic of The Gambia by the 1997 Constitution.

#### National Disaster Management Council (NDMC)

This Council is the Governing Body of the National Disaster Management Agency. The President of the Republic of The Gambia chairs the NDMC which includes various line ministries and is the highest decision making body on all matters of disaster management in the country. The composition and functions of the Council as stipulated in the NDMA Act 2008 are as follows:

#### Composition<sup>39</sup>

- The President of the Republic of The Gambia as Chair
- Minister of Environment, Water Resources, Climate Change and Parks and Wild life

<sup>38</sup> Laws of The Gambia, Volume 12, CAP 72:03 Act No. 13 of 2008.

<sup>39</sup> National Disaster Management Act, 2008, Chapter II, Part II, Sections 6-7, p15-16.

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- Minister of Health and Social Welfare
- Minister of Agriculture
- Minister of Lands and Regional Administration
- Minister of Fisheries
- Attorney General and Minister of Justice
- Minister of Finance and Economic Affairs
- Minister of the Interior
- Minister of Defence
- Association of Non-Governmental Organisations (TANGO) representing non state actors
- Gambia Chamber of Commerce and Industry (GCCI) representing the private sector
- National Search and Rescue Commission
- Executive Director of the NDMA as secretary to Council

The ongoing review of the NDM Act 2008 proposes expanding membership in the NDMC to include several Ministers, by virtue of the important role of their respective ministries on issues relating to the emerging trends in DRM globally. The following Ministers are suggested in the review to be included in the NDMC:

- Minister of Basic and Secondary Education
- Minister of Higher Education, Research, Science and Technology
- Minister of Information and Communication Infrastructure

It is noted that The Gambia Red Cross Society, is not member of the NDMC.

### National Disaster Management Agency

The NDMA serves as the secretariat to the NDMC and is under the Office of the President. The NDMA is assisted by the National Technical Advisory Group, which comprises of technical experts from within and outside the civil service. The NDMA is the coordinating body for all disaster management and risk reduction activities in The Gambia. Its functions include but are not limited to the following responsibilities<sup>40</sup>:

<sup>40</sup> National Disaster Management Act, 2008, Chapter II, Part I, Section 13, 18.

## Overview of The Gambia's national legal, policy and institutional framework for disaster risk management

- i. Lead the country's efforts to prepare for, respond to, recover from, and mitigate the risks of natural and man-made disasters;
- ii. Establish and maintain relations with international relief organizations in order to facilitate accessing of their resources in the event of a disaster;
- iii. Coordinate requests for aid, and to control and direct the allocation of aid provided by government and non-government agencies;
- iv. Advise and brief the NDMC from time to time on progress and major problems in disaster management, and if appeal for international assistance is required;
- v. Act as the central planning, coordinating and monitoring institution for disaster management and post-disaster recovery reconstruction;
- vi. Prepare, update, maintain, implement and monitor the National Disaster Plan; and
- vii. Lay down guidelines for the Regional Committees and District Committees in drawing up the Regional Disaster Plans and District Disaster Plans, as well as advise the sector Ministries on disaster-related issues.

Furthermore, the NDMA is specifically empowered to undertake the following actions while performing its role<sup>40</sup> as the central planning, coordinating and monitoring institution for disaster management and post-disaster recovery reconstruction in The Gambia: the coordination of international assistance is done by the NDMC and the role of the Ministry of Foreign Affairs is and has been to transmit diplomatic Note Verbale from foreign countries wishing to provide relief assistance. The NDMA has the following mandate:

- Coordinate the actions of Ministries, Government Agencies, Regional, District and Village Disaster Committees, Local Authorities and Non-Government Agencies; and
- Cooperate with UN agencies, other international organisations and governments of foreign countries for the purposes of disaster management under this Act. Coordinate requests for aid, and control and direct the allocation of aid provided by Government and Non-Government Agencies.
- Ensure that aid for disasters is used for the purpose for which it was provided;
- Establish and maintain relations with international relief organisations in order to facilitate accessing of their resources in the event of a disaster;
- Mobilise and organise technical assistance from interested national and international bodies to assist in the development of disaster response capabilities of the agency;

<sup>40</sup> National Disaster Management Act, 2008, Chapter II, Part I, Section 13, 18.

<sup>41</sup> Ibid 39.

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- Provide a clearing house for relevant information and intelligence in all matters in relation to disasters including current research being undertaken in all related institutions;
- Liaise with domestic and international persons and organisations to exchange information and facilitate the harmonisation of their relevant policies with the government.

### National Disaster Technical Advisory Group

The National Disaster Technical Advisory Group (NTAG) provides expert support to the NDMA, in various fields including making recommendations on different aspects of DM at the National, Regional, District and Village Levels. Generally, NTAG provides advice to the NDMC through the NDMA.

### Multi-Sector Joint Assessment Team

The Multi/Sector Joint Assessment Team is a platform where various stakeholder institutions periodically meet to conduct joint assessments when an emergency occurs or is imminent, to provide the necessary data and advisories for decision making in relation to either a declaration of a public emergency or otherwise, depending on the magnitude of the emergency.

### Ministry of Agriculture

The Ministry of Agriculture coordinates food security issues in the country, in close collaboration and partnership with the NDMA, the FAO and other government and non-state actors. This sector provides for over 60% of employment and the government as one of the main engines of economic growth considers it.

Food insecurity is a major challenge in The Gambia which impacts negatively on the livelihoods of the people and the economy in general. The agriculture sector has been severely affected by the 2011 drought leading to a significant shortfall in production of all major crops in the country. The Ministry of Agriculture conducted detailed post-harvest assessment in close collaboration with government, UN agencies, humanitarian partners and the Inter-State Committee for the Control of Drought in the Sahel (CILSS).

The assessment resulted in the declaration of a major crop failure and the consequent mobilization of international assistance to provide relief in the form of seeds, fertilizer and farm implements, especially to smallholder farmers who bore the greater burden of the impacts of the drought. This assistance was also supplemented by emergency food and cash distribution to affected vulnerable communities under the overall coordination of the NDMA, with support from the World Food Programme (WFP) and humanitarian partners.<sup>42</sup>

<sup>42</sup> See <http://archive.observer.gm/africa/gambia/article/emergency-food-distribution-wraps-up-in-crr>. [Viewed: 15/12/2015 at 21:40].



## Overview of The Gambia's national legal, policy and institutional framework for disaster risk management

The Government of The Gambia declared crop failure in 2011 based on the findings of the Detailed Post Harvest Assessment Report coordinated by the Ministry of Agriculture (MoA).<sup>43</sup> The major development and humanitarian partners including, but not limited to, UN agencies through the CERF, The Gambia Red Cross Society through the DREF, African Development Bank (ADB), provided relief support.

The support was provided by these agencies who directly procured the food and non-food items but there were no formal facilities for international disaster relief applicable at the time. Hence, this did not warrant the use of facilities as recommended in the IDRL Guidelines. However, given that a state of emergency was declared and international assistance sought and coordinated at the NDMC level, special privileges were in practice accorded, such as speedy clearance, ease of transport to warehouses and distribution to affected areas.

### Department of Physical Planning

In charge of implementing government's policy on land use planning, the Department of Physical Planning regulates the use of building codes and permits in close collaboration with the Department of Housing and Building Control. In this regard, the Greater Banjul Master Plan was developed to regulate issues of settlement planning.

However, due to challenges with enforcing the existing rules and regulations, communities have settled in swampy areas and along waterways, thereby increasing their vulnerability to flood hazards. During the consultations to revise the NDM Act 2008, stakeholders stressed the importance of proper, adequate and enforceable land use planning and the strengthening of the Department in order to reduce and mitigate the underlying risk factors associated with improper land use and violation of building codes.

### National Environment Agency (NEA)

The National Environment Management Act established the National Environment Agency (NEA) in 1991 to coordinate environment related issues in the country. Prior to the establishment of the NDMA, all disaster related activities were under the purview of the NEA with strategic supervision by the National Disaster Relief, Rehabilitation and Resettlement Committee. Currently, the NEA works closely with the NDMA on environmental emergencies, contingency planning and waste disposal and management issues. This collaboration also involves the Regional and Municipal Disaster Management Committees in which NEA staff are full members.

### Department of Forestry

The Department of Forestry is now under the purview of the OP and is responsible for the efficient management of forest resources. It also has a very effective community forestry programme in which communities are trained to enhance ownership of these vital resources essential for their livelihoods. Forestry officials are members of the

<sup>43</sup> See GoTG press release at <http://archive.observer.gm/africa/gambia/article/gambia-declares-2011-2012-farming-season-a-failure>. [Viewed: 15/12/2015 at 21:35].

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Regional Disaster Management Committees and play a vital role in supporting these committees to sensitize community members on the benefits of afforestation.

Some of the activities they conduct include bushfire campaigns and tree planting exercises during the rainy season as well as hosting community radio talk shows on disaster risk reduction in relation to proper forest management. The department is also a member of the multi-sector joint assessment team during emergencies.

### Department of Water Resources

The Department of Water Resources is the government focal institution for climate Change Adaptation (CCA). The Minister responsible for the Department serves as the chairman of the National Platform for DRM and CCA. The Department of Water Resources provides important climate services and information for early warning in food security.

The Department works closely with the NDMA and other sub-regional bodies in providing advisories to communities, in particular farmers, on the evolving rainfall and precipitation patterns in the country in order to enhance better preparedness and effective response in the event of imminent drought or significant rainfall deficits likely to result in crop failure. These advisories are also used by the Regional Disaster Committees for similar community early warning purposes.

### Other institutions

There are other critical institutions that are also very active in DRM related activities in the country. These include, but are not limited to, the following:

- i. The National Roads Authority - which works with the NDMA to address issues related to infrastructure, drainage and sanitation vis-a-vis the underlying risk factors to disasters (in line with Priority 4 of the HFA);
- ii. The Ministry of Health and Social Welfare - an active member of the NDM system leading the technical coordination on disease emergencies, Ebola Virus Disease planning and vaccination campaigns;
- iii. The Ministry of Basic and Secondary Education – a key member of the NDMC facilitating sensitization and education on DRM in schools and main streaming in the national education curriculum;
- iv. The Ministry of Finance & Economic Affairs - supports the NDMA with dedicated funding in the annual budgetary allocation for DRM, including extra budgetary support through resource mobilization with donor agencies and development partners;
- v. The Gambia Bureau of Statistics - provides capacity building support to enhance DRM capacities through data collection and analysis, GIS data mapping for disaster management and food security.

## Overview of The Gambia's national legal, policy and institutional framework for disaster risk management

### The Gambia National Platform for Disaster Risk Reduction and Climate Change Adaptation

The National Platform for Disaster Risk Reduction (DRR) and Climate Change Adaptation (CCA) was set up in June 2011 with the support of ECOWAS, as a national coordinating mechanism to strengthen vertical and horizontal linkages with all local and international disaster management actors. The chairman is the Minister of Environment and its members comprise of DRM stakeholder institutions from government, GRCS, NGOs, private sector, UN agencies, women and youth groups, development partners, representatives of vulnerable groups, faith based organizations, among many others.

The activities of the National Platform has been revised to focus on enhancing adequate preparedness for effective response and resilience building as well as climate change adaptation. However, the National Platform lacks the financial resources required to implement comprehensive DRM activities in the country.

### Multi Hazard National Contingency Plan

A revised Multi-Hazard National Contingency Plan (June 2014 to June 2016) was developed and simulated by all relevant state and non-state actors in 2014. In addition, seven Regional Contingency Plans are also developed representing the seven administrative regions of the country. These are designed to enhance a harmonized, integrated and well-coordinated disaster preparedness and response at the national level in line with priority 5 of the HFA and the revised NDM Policy 2013.

### 4.1.3. Local level

The disaster risk management system in The Gambia is decentralized down to the local level.<sup>44</sup> The NDM Act 2008 established functional disaster committees at the region and municipal, district, village and ward levels. These are the coordinating and monitoring structures for disaster risk management at these respective levels. These committees are multi-sectoral, multi-agency and multi-disciplinary in their composition.

The chairpersons of these committees are local government officials. In the case of the regional and municipal committees, the chairpersons are the regional governors or mayors whereas at the district level, it is the district Chief also locally known as “Seyfo”. At the village level, the village Head locally known as the “Alkalo” is the chairperson whereas at the ward level it is the ward Councilor.

Generally, these committees have the responsibility to coordinate and monitor the implementation of the national disaster plan within their administrative areas of responsibility (AOR). The NDM Act 2008 states that the Chairperson of a Regional Disaster Committee has, in the case of an emergency, power<sup>45</sup> to exercise all or any of the powers of the Regional Disaster Committee but is subject to ratification by the Committee itself. The powers and functions at the district and all other levels below are mutatis mutandis, i.e. same as those of the regional disaster committees.

<sup>44</sup> National Disaster Management Act, 2008, Chapter XIII-V, Sections 32-68, p28-40.

<sup>45</sup> National Disaster Management Act, 2008, Chapter III, Part I, Section 35(3), p30.

## Overview of The Gambia's national legal, policy and institutional framework for disaster risk management

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There are also regional Coordination Offices headed by regional Coordinators who are staff of the NDMA but under the direct supervision of the regional governors and mayors for the effective disaster coordination and management at the decentralized level.

In addition to the specific disaster management structures, several key national institutions and coordinating structures have a role to play in disaster risk management efforts in The Gambia. The institutions and their corresponding responsibilities in DRM are dealt with later in the report.

### 4.1.4 Conclusion

Given the current assessment, there are clear indications that the Government of The Gambia has taken committed initiatives to develop the national capacity for disaster risk management with the creation of the NDMA in 2009 under the Office of the President. This strong national commitment has been reflected in various recent measures to develop disaster management with the appropriate, policy, institutional and legal frameworks. This can be seen as a reflection of this strong national commitment at the highest level of government authorities.

In terms of international cooperation as well, significant progress has been made in relation to the implementation of international obligations. For example, the adoption of international and regional policies and strategies such as the Hyogo Framework for Action (HFA), the Africa Regional Strategy and Plan of Action and ECOWAS Disaster Risk Reduction Strategy and the consequent integration of some of the rules and principles reflected in these instruments.

The support provided by ECOWAS to establish a National Platform for DRR and CCA has enhanced the national response capabilities and subsequent preparedness measures in accordance with priority 5 of the Hyogo Framework and priority 6 of the Programme of Action (POA) of the Africa Regional Strategy and Plan of Action 2006 – 2015.

Additionally, at the African Union (AU level), The Gambia is a member of the Africa working group on DRM where issues are discussed at regional platform meetings and common positions adopted. Discussions also centre on implementation of the HFA by regional economic communities (RECs) and at national level including achievements and challenges and the sharing of best practices through interface with various centres of excellence in Africa.

Effective international disaster relief operations require the existence of strong policies, laws and structures on the ground to facilitate timely and coordinated assistance. The Gambia Disaster Risk Management (DRM) institutional and legal framework has been revised in 2013 and the building blocks of the revised DRM policy reflect the priority areas of the Hyogo Framework of Action.

Through a consultancy facilitated by Bandirabeh Associates in December 2013, a review of the NDM Act 2008 was conducted and the assessment revealed some inconsistencies with the disaster management policy and strategy. Furthermore, the review also addressed various horizontal and crosscutting legislations as well as their inter-relationship with international policy frameworks related to DRM.

## Overview of The Gambia's national legal, policy and institutional framework for disaster risk management

The NDM Act 2008 in particular is therefore being reviewed to address among others, regulatory challenges and opportunities in Disaster Relief Operations. One of the key recommendations in the report proposing a revision of the NDM Act 2008 is to further strengthen national coordination mechanisms and decentralisation of responsibilities for the implementation of DRM activities to the regional, district and village levels.

Furthermore, the recommendations specifically identified the need to incorporate issues relating to international disaster relief in the revision of the NDM Act 2008 and existing legislations in other sectors relevant to international relief assistance. Similarly, the national consultations organized by The GRCS referred to in section 1 – (introduction, subsection 1.1 – Background) of this report shows that consensus was reached on the importance of incorporation of the IDRL Guidelines into the proposed revision of the NDM Act 2008 as it applies to the regulation and facilitation of international disaster relief.

### Recommendations

- The NDM Act 2008 does not outline all the various processes and procedures relating to disaster management. Therefore, it is important to develop Standard Operating Procedures (SOPs) especially as it relates to the declaration of a state of emergency.
- The NDM Act 2008 does not regulate fully requesting for and receiving of international relief assistance, nor the facilitation of international disaster relief. Therefore, provisions for request, receipt and facilitation of international assistance should be developed in policy and legal frameworks, and it is recommended to build on the IDRL Guidelines. There is a need to develop operating manuals and guidelines to guide the implementation processes during and after disasters thereby enhancing the quality of response and strengthening coordination in emergency, not only of national actors but also between national and international actors.

## 4.2 Coordination of International Assistance

The coordinating mechanisms for disaster relief in The Gambia is established in the form of the disaster management committees and more specifically the National Platform for DRR and CCA, which have broad based representatives from all government agencies, NGOs, GRCS, private sector, UN agencies, and development partners. The NDMA was therefore, established as an institution responsible for coordinating this myriad of actors based on their respective mandates and comparative advantages in relation to disaster management.

The humanitarian country team for disaster and emergency operation in The Gambia is the forum where all the interventions, priorities and strategic directions for disaster response are discussed and planned at the national level. The humanitarian country team is a strategic outfit comprising the NDMC, UN Agencies in The Gambia, key partner NGOs and The GRCS including relevant international partners to coordinate both national and international response.

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There are also regional coordination offices headed by regional coordinators who are staff of the NDMA but under the direct supervision of the Regional Governors and Mayors for the effective coordination and management of all disaster risk management activities at the decentralized level.

### Gaps

Currently there are no clear guidelines and standard operating procedures in place to enhance the humanitarian architecture and support systems for effective coordination of international assistance by the actors in the event of a major disaster in The Gambia.

### Recommendation

In collaboration with partners, NDMA should develop guidelines and standard operating procedures to facilitate effective coordination of international relief assistance.

## 4.3 Declaration of state of disaster and request for international disaster assistance

### 4.3.1 Definition of a disaster

The NDM Act 2008, defines disaster as

*“a progressive or sudden, wide-spread or localised actual or imminent occurrence of a natural or human-caused occurrence, or by accident or negligence, which results or can result in substantial loss of life or human suffering, or damage to, destruction of infrastructure, or property, or damage to, or degradation of, the environment arising from, but not limited to all major hazards in the country such as floods, drought, search and rescue operations, disease outbreaks, plague or epidemic, as well as human induced calamities, e.t.c. and is of a magnitude that exceeds the ability of those affected by the disaster to cope with its effects using their own resources.”*

The definition of disaster in the NDM Act 2008 covers both slow onset and sudden occurrences. For example, it highlights the situation where the magnitude of a disaster exceeds the ability of those affected to cope using existing national resources warranting the need for assistance.

### 4.3.2 Declaration of an emergency

The President of the Republic of The Gambia has the power to declare a State of Emergency<sup>46</sup> by virtue of the NDM Act 2008. The duration<sup>47</sup> of declaration of a State of Public Emergency becomes active and remains in force as provided for under the 1997 Constitution<sup>48</sup> of The Gambia. Accordingly, a declaration shall lapse at the expiration of a period of seven days or when the National Assembly is not in session, for a period of 21 days. In extreme circumstances, a declaration shall lapse after a period of 90 days if required under this provision.

<sup>46</sup> Laws of The Gambia, Vol. 12, CAP 72:03, National Disaster Management Act of 2008, Chapter X, Section 90, p52.

<sup>47</sup> National Disaster Management Act 2008, Chapter X, Section 91, p52.

<sup>48</sup> Laws of The Gambia, Volume 1 [Act No. 1 of 1997], Section 34, p31.



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Depending on the magnitude and the extent of the disaster, a rapid assessment which normally should not go beyond 72 hours, can provide a basis for a declaration of an emergency. A detailed assessment usually follows and is conducted for a period of one month, the findings of which provide a clear indication and basis for declaration of a Public Emergency.

### 4.3.3 Request for international disaster assistance

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

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

The power to request international disaster relief assistance rests with the President of the Republic of The Gambia under the emergency powers conferred by NDM Act 2008.<sup>49</sup> In addition, the NDMA shall advise and brief the President<sup>50</sup> of the Republic of The Gambia on progress and major problems in disaster management and if appeal for international assistance is required.

The request for aid is sent out by the President of the Republic as Chairman of the NDMC, through a Multi-Sector Joint Assessment process, comprising key Government institutions, UN agencies and other assisting humanitarian organizations where the damages are quantified and the needs estimated such as the specific types of goods, services, technical assistance and expertise required.

The findings and recommendation from the assessment forms the basis of the declaration and the subsequent request for assistance. It is important to note that two types of scenarios have occurred in the past in The Gambia. During the 2010 floods, a declaration was made based on a rapid assessment whereas in 2011 a late declaration was made for crop failure based on the findings of a detailed post-harvest assessment report.

<sup>49</sup> Laws of The Gambia, Volume 1 [Act No. 1 of 1997], Section 34, p31.

<sup>50</sup> National Disaster Management Act, 2008, Chapter X, Section 90, p51.



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Generally, there are no systematic and well-established standard operating procedures defining the process of declaration of emergency, and the timely request for assistance in line with the IDRL Guidelines.

The general emergency powers set out under the Constitution of The Gambia and the Emergency Powers Act<sup>51</sup>, both provide an enabling environment for the facilitation and regulation of foreign assistance from all sources including from private and individual sources in the event of a declaration of an emergency where the situation goes beyond the coping capacity of the Government.

However, in non-emergency situations, where only some parts of the country are affected such as when floods occur in the urban areas or unevenly distributed rainfall affects specific parts of the country, emergency assistance may need to be extended to those affected without necessarily requiring a declaration of request for assistance.

Additionally, there are no provisions in the NDM Act 2008, the NDM Policy, the Constitution or other disaster related policies and regulations for:

- A period of notification to international actors prior to terminating their disaster-related legal facilities; and
- Giving consideration of the impact of termination on beneficiaries of relief assistance.

### Recommendations

The NDM Act 2008 should be revised to include clear provisions:

- for systematic and standard operating procedures in the process of declaration of emergency, and the timely request for international assistance; and

## 4.4 Role of The Gambia Red Cross Society in disaster response

### IDRL Guidelines Article 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.

<sup>51</sup> National Disaster Management Act, 2008, Chapter II, Part III, Section 13 (1) (g), p18.

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The Gambia Red Cross Society (GRCS) is recognized by the government of The Gambia as a voluntary aid society<sup>52</sup> auxiliary to the public authorities. It works closely with the government of The Gambia and other non-state actors to provide capacity development support especially in community-based disaster risk management, simulation exercises, training on first aid, contingency planning and voluntary support services among many others.

The main objectives<sup>53</sup> of the GRCS include undertaking and assisting in the work of health improvement, prevention of disease and mitigation of suffering throughout the world both in times of peace or war.

The GRCS works in adherence to the seven principles of the RCRC movement. These principles guide the work of the GRCS and establish that GRCS shall not in any of its work make any adverse distinction founded on sex, race, nationality, religion or faith, political opinion or any other similar criteria.

The roles and responsibilities of the GRCS as specified in the GRCS Act<sup>54</sup> are to maintain an organisation capable of rapid mobilisation and effective expansion to meet the needs of war, disasters, and other emergencies. In particular, the GRCS is mandated to organise and provide relief services, supply personnel, stores and equipment among others as a temporary measure in an emergency until the official services are ready to take over or the need ceases to exist. Furthermore, the NS supports medical services by providing trained auxiliaries for the medical services of the Armed Forces<sup>55</sup> and other medical and nursing services.

The GRCS is a member of the humanitarian country team for disaster and emergency operation in The Gambia. Additionally, the GRCS is also a member of the National Platform for DRR and CCA as well as a member of the National Food Security Governing Council. However, it is noted that the GRCS is not one of the members of the National Disaster Response Council, contrary to what is the case in many other countries.<sup>56</sup>

Furthermore, the GRCS is a member of the regional disaster management committees (RDMCs) in all the administrative regions of the country and the two municipalities (Banjul City Council and Kanifing Municipal Council). These regional and municipal committees host a representative from the GRCS. Among other auxiliary functions, the GRCS also plays a pivotal role in disaster assessment, response and contingency planning.

The GRCS performs its auxiliary role independent of government interference in its functions including administration of its own funds, personnel and material. The GRCS also retains the power to deny sharing of the Red Cross name<sup>57</sup> or emblem for appeal or other purposes.

<sup>52</sup> National Disaster Management Act, 2008, Chapter X, Section 90, p51.

<sup>53</sup> The Gambia Red Cross Society Act, [Act No 7 of 1966], Section 5, 6.

<sup>54</sup> Ibid, Section 4 (1 and 2), 6.

<sup>55</sup> The Gambia Red Cross Society Act, (Subsidiary Legislation – LN40 & 48 of 1968), Section 2 and 3 12.

<sup>56</sup> Ibid 51, Section 3 (a) and (b), 12.

<sup>57</sup> See list of members in Chapter 4.1.2 in the present report,.

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In addition, the GRCS supports other functions as auxiliary to government including but not limited to the following:

- Supplement official services engaged in relief work or in promoting the health and welfare of the people of The Gambia for example, in an emergency situation; and
- Co-operate with government and local authorities and other voluntary organisations in works similar to that of the GRCS.

#### 4.5 Role of other civil society organisations

Civil society organizations (CSOs) are non-state, not-for-profit, voluntary organizations<sup>58</sup> and include a wide range of networks, associations, groups and movements that are independent from government formed by people to advance their common interests through collective action.

CSOs through their work seek to complement government services (such as health and education). They usually have a formal structure, offer services to people other than their members, and are, in most cases, registered with national authorities. They vary hugely in their size, scope of activity and goals.

The NDM Act 2008 and Policy clearly recognizes the important role of non-state actors in the delivery of humanitarian assistance during and after disasters.

Being the umbrella body of NGOs and civil society actors in The Gambia, the Association of Non-Governmental Organisations (TANGO) represents civil societies at the National Disaster Management. Furthermore, local NGOs and community-based organisations are made integral members of the decentralised regional, district, and village and ward DM committees.<sup>59</sup>

This signifies that non-state actors are recognised by the government as invaluable partners in disaster management. This has created an enabling environment for NGOs and civil society actors to do an effective job of responding to humanitarian needs, more so during emergencies and in times of need of support for recovery and reconstruction efforts including risk reduction to build resilience.

Moreover, the close interaction civil society organisations at the local level have promoted the communities' active and supportive role in risk reduction, relief and recovery assistance. For example, during the 2010 national flood disaster and the 2011 crop failure, CSOs coordination with the government through the NDMA resulted in a harmonised and integrated response with joint assessment and provision of relief based on respective mandates and comparative advantages.

During that time, CSOs were also able to mobilize additional resources in collaboration with their international partners that enabled the channelling of relief assistance to disaster-affected communities in the form of food and non-food items and cash transfers. Hence, NGOs are direct consignees of international relief goods and equipment.

<sup>58</sup> Ibid 52

<sup>59</sup> National Disaster Management Act, 2008, Chapter III, Part I, Section 33 (1) (b), p28.

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The distribution of relief materials was also effectively conducted through the engagement of community-based partners and close coordination between CSOs and the DM government structures in place. This approach enhanced targeted outreach of beneficiary communities nationwide.

NGOs can be direct consignees of international relief goods and equipment although the distribution of those relief materials is coordinated through the NDMA based on the assessments conducted collectively by all partners and coordinated by NDMA.

### 4.6 Early warning systems

#### IDRL Guidelines Article 7 –Early Warning

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

The NDM Act 2008 and NDM Policy of 2008 provide a clear framework for planning, coordination, monitoring and evaluation, and implementation modalities essential for predictability, certainty and order. In this regard, the NDM Act 2008 clearly provides for the development of standard instruments for disaster preparedness, mitigation, response, relief and recovery.

Accordingly, the multi-hazard national contingency plan 2014 has been developed and simulated. Seven regional contingency plans have also been developed with technical support from the World Food Programme under a contribution agreement with the European Union. The plans prioritize the main hazards affecting the country through a hazard ranking methodology, the various contingency scenarios, triggers, and early warning indicators linked to each contingency scenario.

These hazards include disease outbreaks/epidemics, floods, forest and domestic fires, drought, pest invasion, population movements, etc. The documents identify hazard specific institutions including coordination mechanisms required for the activation and operationalisation of the plans.

The NDM Act 2008 also provides strategic and operational structures and coordinating mechanisms such as the National Platform for DRR and CCA. Some key members of the Platform such as the Department of Water Resources (DWR) and the planning services of the Ministry of Agriculture provide metrological data on daily and weekly weather forecasts. In this regard, the provision of such information plays a key role in enhancing adequate preparedness for effective response at all levels.

Other equally relevant systems and measures recognised the need for an integrated and comprehensive early warning system (EWS) and closer international cooperation to enhance surveillance for cross-border disaster and communicable disease outbreaks.

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However, the NDM Act 2008 does not specifically address the issue of linkage of the national with regional and sub-regional EWS. Notwithstanding, there is in practice a strong linkage<sup>60</sup> and partnership of The Gambia with sub-regional early warning organizations and centers such as, the sub-regional Meteorology and Early Warning Centre (AGRHYMET) in Niamey, Republic of Niger and Inter-State Committee for the Control of Drought in the SAHEL (CILSS), in Ouagadougou, Republic of Burkina Faso.

The fact that The Gambia experiences a range of regularly occurring hazards provides a strong rationale for investing in multi-hazard EWS that provides advance warnings to both decision-makers and communities. Effective EWS depend upon risk knowledge, an effective hazard monitoring and threat assessment, warning system, dissemination and communication of warning messages and communities that respond to warnings.

Early warning messages need to give greater focus on communities by ensuring that they easily understand messages for timely action. The system must also recognize the added value of indigenous knowledge, which has proven to be effective to prepare communities to understand and manage the hazards around them.

However, in The Gambia, the EWS does not operate very satisfactorily as there are gaps and deficiencies in the national system. As the principal agency of government dealing with early warning, the Department of Water Resources (DWR) is more focused on hydro-metrological messages, drawn from daily weather forecasts and regional forecasts for the months of July, August and September (JAS) weather reports. The information provided in the form of advisories is often shared with the different agencies based on their respective areas of work. On the other hand, many agencies do not utilize such advisories to enhance preparedness for effective response.

Furthermore, the Department acquires information on the regional forecasts through its strong links with AGRHYMET. In terms of building its capacity, the Department received substantial support from Global Environment Facility (GEF) to implement an Early Warning project through the upgrading of the national metrological station with equipment and related paraphernalia, although the support did not cover the entire spectrum of early warning.

Other institutions with EWS are the Ministry of Agriculture (pre-harvest assessment reports), Ministry of Trade, the Central Bank (financial early warning on the state of the economy, trade, production and inflationary trends). However, despite these measures the various EWS are not coordinated and integrated while community, EWSs are at best ad-hoc.

With a view to enhancing effective preparedness and response to disasters, the revised NDM Policy 2013 recommends addressing the current gaps and deficiencies for an integrated, coordinated and harmonized national EWS. This will be done through collaborative work between the NDMA, DWR, National Environment Agency, Ministry of Agriculture, key UN and NGO partners as well as the GRCS to develop the national EWS, drawing useful inspiration from the DWR early warning project, and the Global Framework for Climate Services (GFCS). This approach is all the more important, as 75% of disasters are weather and climate related.

<sup>60</sup> Consultations with DRM stakeholders in The Gambia including, Departments of Water Resources and Meteorology.

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In terms of information dissemination, the NDM Act 2008 provides that the NDMA and its decentralized structures may request the GoTG to give direction<sup>61</sup> to any authority or person in control of any audio or audio-visual media or of such other means of communication, as may be available, to carry any warning, or advisories regarding any threatening disaster situation or disaster, and the authority or person so directed shall comply with the direction.

In addition, the fact that DRM system in The Gambia is decentralized down to the local level has enabled the creation of regional coordination offices headed by regional coordinators who are staff of the NDMA but under the direct supervision of the regional governors and mayors. This in turn facilitates the effective coordination and management of all disaster risk management activities at the decentralized level towards the implementation of priority 5 of the HFA, namely adequate preparedness for effective response at all levels.

### Recommendations

- The Gambia Red Cross Society should be member of the NDMC, in view of its crucial role as auxiliary to the public authorities in the country in disaster preparedness and response;
- The NDM Act 2008 should be revised to make provisions for the National Platform for DRR and CCA to strengthen communication and information sharing with the Regional EWS networks. This will facilitate timely provision and dissemination of climate related information and services to enhance EWS;
- There should be a specific allocation of resources into a fund for investment in an early warning system, and other disaster preparedness measures;
- Following the provisions of the NDM Policy of 2013, develop an integrated, coordinated and harmonized EWS;
- NDMA to conduct regular simulation exercises on the national and regional contingency plans in close collaboration with UN agencies, GRCS and other key partners to identify the national response capability of The Gambia and gaps for improvement;
- NDMA should update its current database and website to facilitate information sharing among and between the various in disaster response.

The NDM Act 2008 does not have specific provisions conferring legal facilities for national and international organizations when responding to an emergency. However, various other laws relevant to disaster relief and the provision of legal facilities equally do not make such provisions.

Nonetheless, some of these other laws provide wide discretionary powers to a director general of a government agency or a minister to confer certain privileges. On that basis, one could assume that such benefits could include legal facilities for national and international organisations when responding to an emergency.

<sup>61</sup> Ibid 55, Section 86, p50.

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A study on legal preparedness for regulatory issues in  
international disaster response

## **Chapter 5**

# Legal status of foreign entities providing assistance



## Legal status of foreign entities providing assistance

The NDM Act 2008 is the main DRM legislation dealing with disaster situations including the requests for international relief assistance in The Gambia during emergency situations. As noted previously above, the NDM Act 2008 does not have specific provisions conferring legal facilities for national and international organizations when responding to an emergency. However, various other laws relevant to disaster relief and the provision of legal facilities equally do not make such provisions.

Nonetheless, some of these other laws provide wide discretionary powers to a Director General of a Government Agency or a Minister to confer certain privileges. On that basis, one could assume that such benefits could include legal facilities for national and international organisations when responding to an emergency.

### 5.1 Privileges and Immunities

Diplomatic Privileges (International Organizations) Act<sup>62</sup> confers immunities and privileges to the staff of organisations and representatives of foreign Governments, in respect of premises and documents of such organisations, and for connected matters.

By virtue of the Diplomatic Privileges Act, the President may by Order published in the Gazette confer immunities<sup>63</sup> and privileges to the following categories of organisations and persons: representatives of any organisation whether of Governments or not, officers holding high offices in such international organisations, persons employed on missions on behalf of the organisation, or such other classes of officers and servants of the organisation.

Under this definition, immunities and privileges are applicable to staff and experts performing mission for the United Nations, IFRC, regional economic communities (RECs) and other international organisations, their personnel and representatives particularly in the event of disaster and relief operations.

The other category of foreign personnel to enjoy diplomatic privileges and immunities in The Gambia in line with the Vienna Convention is Officers of foreign States as stipulated in the Consular Conventions Act.<sup>64</sup> This Act makes provision for the conferring of certain privileges upon Consular Officers of foreign States with which Consular Conventions are concluded by The Gambia, and for connected matters.

The privileges and immunities accorded to these international organisations and their personnel are consistent with the UN Conventions which include but are not limited to immunity from suit and legal process; exemption from taxes, for goods directly imported by the organisation<sup>65</sup> for official use in The Gambia or for exportation. However, such exemptions are subject to measures prescribed by the Commissioner General of The Gambia Revenue Authority (GRA) for the protection of the Revenue.

<sup>62</sup> Laws of The Gambia, CAP 25:01, Vol. 5, Diplomatic Privileges (International Organizations) Act [Act No. 19 of 1947],.

<sup>63</sup> Ibid 61, Section 3, .

<sup>64</sup> Laws of The Gambia, CAP 24:02, Vol. 5, Consular Conventions Act [Act No. 12 of 1950], .

<sup>65</sup> See: Customs and Excise Act 2010 (Schedules), Ninth Schedule, Privileged International Organization and Personnel, 888.

**Legal status of foreign entities providing assistance**

A third category of foreign institutions whose personnel do not fall within the above mentioned categories may constitute essential providers of relief assistance in times of disasters based on their documented expertise and experience in relief and recovery operations.

However, organisations such as Oxfam, Save the Children, Action Aid International, Christian Relief Services (CRS), etc., and their personnel do not enjoy such privileges and immunities. Therefore, foreign assisting humanitarian organizations and their relief personnel are not entitled to claim benefit from Diplomatic Privileges Act including protection from liability.

The NDM Act 2008 provides for immunity from suit<sup>66</sup> but only for the Government and its officials or employees working for or on behalf of bodies within the national disaster management structures. Therefore, the NDM Act abstains from conferring similar liability protection to foreign humanitarian organisations and their relief personnel in disaster or communicable disease emergencies.

## 5.2 Access to legal facilities

### **IDRL Guidelines: Article 14 Facilities for Assisting Humanitarian Organizations**

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

<sup>66</sup> Laws of The Gambia, Vol.12, CAP 72:03, National Disaster Management Act [Act No. 13 of 2008], section 134.

## Legal status of foreign entities providing assistance

### Article 20(1) IDRL Guidelines

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.

The Companies Act<sup>67</sup>, an Act revising the 1955 law relating to incorporation, management and dissolution of companies and international organisations, is the applicable law for the registration of international disaster relief organizations in The Gambia. Chapter XII of this Act clearly stipulates the procedures for the incorporation of charitable and non-profit associations including international disaster relief organizations. In particular, the Act requires the submission of an application to the Registrar of Companies<sup>68</sup> for registration as a corporate body.

Furthermore, the Companies Act states that an application is made through a prescribed form and shall specify the name of the association or international organisation<sup>69</sup>, its aims and objectives, which, among other things, must be for the lawful advancement of charitable work or purposes in The Gambia. Upon registration, the Association and/or international organisation becomes a corporate body.

Neither the Companies Act nor the Non-Governmental Organisation Act provides any specific provisions related to the granting of legal facilities in disaster relief situations. In respect of the Companies Act, power is given to the Minister responsible for legal affairs to make regulation for the better administration of the Act.<sup>70</sup> On the other hand, the Non-Governmental Organisation Act<sup>71</sup> also gives power to the Minister responsible for NGO Affairs to make regulations for the purpose of carrying out this Act.

Therefore, based on these provisions, the respective Ministers may grant certain legal facilities in disaster relief operations.

### Registration of NGOs

The incorporation of companies and NGOs<sup>72</sup> is now centralised under a Single Window Business Registration to eliminate unnecessary bottlenecks and avoid burdensome and costly registration processes. The newly introduced system allows completion of registration within 72 hours and costs about US\$300.

<sup>67</sup> Companies Act [No. 09 of 2013].

<sup>68</sup> Ibid, Section 567, .

<sup>69</sup> Ibid, Section 568, .

<sup>70</sup> Section 616.

<sup>71</sup> Section 14.

<sup>72</sup> Documentary requirements: Constitution of the NGO, Form C.O. 1 (Statutory Declaration of Compliance with Requirements for Registration), C.O. 2 (Consent to act as Members of the Organisation), the particulars of members, Tax Identification Number (TIN) and a fee of GMD2,000. If all these requirements are produced, the registration could be completed within 24 hours.

For any organisation to be recognised as an NGO in The Gambia<sup>73</sup>, it must in addition to the process of incorporation, comply with the rules and regulations set out within the Non-Governmental Organisations Act. This law regulates the registration and operation of NGOs.

The Act establishes the NGO Affairs Agency<sup>74</sup> whose functions include but are not limited to the granting of Clearance Certificate to prospective NGOs, whether local or international organisations, prior to their incorporation under the Companies Act.

The Act empowers the Agency to act as the main administrative link between the Government and NGOs; facilitate, monitor and evaluate the activities of NGOs and through this process, the Agency to ensure that NGOs comply with the Protocol of Accord and the NGO Code of Conduct.<sup>75</sup>

At the end of each year before renewal of license, the Agency requires NGOs to submit audited accounts; current and projected activity reports, fees<sup>76</sup> and Article 13 of the Protocol.<sup>77</sup> This process serves as a check and accountability on NGOs.

### Opening of Bank Accounts

There are no special conditions attached to the opening of bank accounts in The Gambia by foreigners, provided they fulfil the verification and identification requirements stated below and paying an initial deposit of at least GMD 500-1,500 (USD\$10-30).

Specifically, the Anti-Money Laundering Act<sup>78</sup> provides that in order to avail any person of banking services, a bank has a duty to establish and verify the identity of a customer. For the purposes of the Act, identification for a natural person should be in the form of name, address and occupation, a valid photo bearing a national identity card, drivers' license and passport or other official identification document including a tax identification number (TIN) certificate. Hence, any person or entity which fulfils these requirements, could open a bank account whether resident or living abroad.

For a legal entity, verification must be in the form of its legal existence and structure such as certificate of incorporation, memorandum and articles of association bearing the address and names of directors, principal owners, beneficiaries and control structure<sup>79</sup> including a tax identification number (TIN) certificate.

It is important to note that except for business registration documents and tax identification number mentioned above, the banks have some flexibility to use their discretion to waive or temporarily suspend the need to provide certain documentary requirements especially in an emergency situation. In practice, financial institutions usually carry out the following checks and verifications:<sup>80</sup>

<sup>73</sup> Laws of The Gambia, Vol. 7, CAP 50:04, Non-Governmental Organisations Act [Decree No. 81 of 1996], .

<sup>74</sup> Ibid, section 3, .

<sup>75</sup> Ibid, section 4, p3.

<sup>76</sup> Local NGOs (USD\$28.75) and International NGOs (USD\$57.50).

<sup>77</sup> List issues mentioned in S.13 of Protocol of Accord.

<sup>78</sup> Anti-Money Laundering and Combating of Terrorism Financing Act (Act No.4) 2012.

<sup>79</sup> Anti-Money Laundering and Combating of Terrorism Financing Act (Act No.4) 2012, section 25(2), p29.

<sup>80</sup> See: [http://www.tblgambia.com/index.php?option=com\\_content&view=article&id=20&Itemid=72](http://www.tblgambia.com/index.php?option=com_content&view=article&id=20&Itemid=72) [Viewed: 10/03/2015 at 9:29pm].

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- A reference to be obtained from a credible banking customer, professional, employer of the customer, who knows the applicant;
- In the case of non-residents, obtaining references from their foreign banks, where possible;
- Copy of work permit for foreigners working in The Gambia;
- TIN Certificate;
- An original recent council rates or utility bill receipt;
- Certificate of incorporation with details of the registered office and the place of business;
- Details of the nature of the corporate body's business, reason for opening the account, indication of expected turnover and source of funds;
- Copy of the resolution of the Board authorizing the account signatories.

Under the Act, customers undertaking transactions of a value over D200,000 (and of any value where it is suspected that drug trafficking or other crime is involved) must be identified; information must be sought on the origin and destination of transactions of over USD\$10,000 that are “surrounded by conditions of unusual or unjustified complexity and appear to have no economic justification or lawful object” and, if they are suspected as being related to money laundering, these must be reported to the supervisory authority.

Anyone leaving The Gambia with over D200,000 or its equivalent in cash or negotiable bearer instruments, should report to the supervisory authority.

### 5.2.3 Legal personality

#### Ability to enter into contracts

The contractual capacity of natural persons is generally assumed to exist except where it is proven not to exist by reason of minority, insanity or other legal incapacity of an individual.<sup>81</sup>

A legal entity that has legal personality and the capacity in terms of its memoranda and articles of association will be able to enter contracts in The Gambia.<sup>82</sup> The legal personality that is not incorporated in The Gambia may have to be proved by provision of the requisite memoranda and articles of association and certificate of incorporation in the country of origin.

<sup>81</sup> A study on IDRL in Botswana final web version.pdf, [Footnote 70 at p. 43].

<sup>82</sup> Companies Act, Chapter II, Part I, Section 5-6, .

## Legal status of foreign entities providing assistance

Like any other forms of conveyances, contracts may also be registered with the deeds registry of the Attorney General's Chambers upon payment of the related fees. It is the duty of every person entering into a contract with any person or entity to ensure that the necessary due diligence checks are conducted about that person or entity. All contracts, whether oral or written are enforced by the courts provided the relevant evidence and witnesses are produced.

Similarly, transactions like the purchase of land by foreign companies are subject to the State Lands Act.<sup>83</sup> According to the State Lands Act, the Minister may on the recommendations of the Department of Lands and Surveys, approve the grant of lands for residential or other purposes to Gambians for a period of 99 years and to a non-Gambian for 21 years.

However, a non-Gambian who is granted land other than for residential shall not be able to assign or sublease such land. Similarly, a private person or foreign registered NGO (which fulfils the requirements and granted clearance under the NGOs Act) could purchase land in The Gambia for an emergency operation.

### Initiate Legal Proceedings

By virtue of the Companies Act, an incorporated entity in The Gambia shall have the right to sue and be sued on its own accord.<sup>84</sup> Any individual, natural or legal entity can initiate legal proceedings in any court of law in The Gambia provided they have full legal status and capacity. This would mean that a foreign NGO which does not have such is not in a position to initiate legal proceedings.

### Right to Hire and Terminate Local Staff

Any alien or foreign corporation wishing to hire and terminate local staff may do so in keeping with the provisions of the Labour Act of 2007. The Act contains provisions defining the relationship between the employer and employee specifically on the formation and termination of employment contracts.

Foreign organizations that are registered in The Gambia could hire Gambian staff. However, there are no specific provisions dealing with foreign organizations hiring local staff for disaster response. Hence contracts between foreign registered organizations and their Gambian staff would be based on the general provisions of the Labour Act 2007.

Based on the summation above, it is clear that any NGO, whether local or international, must undergo a registration process in order to be conferred legal status and thus be recognised as a legal entity. However, the Minister is conferred powers<sup>85</sup> to make regulations setting out rules with respect to exemptions permitted under the Act which may be applicable to not-for-profit organizations such as foreign disaster relief organizations.

<sup>83</sup> Laws of The Gambia, Vol. 8, CAP 57:02, State Lands Act [Act No 2 of 1991].

<sup>84</sup> Companies Act, Chapter II, Sub-Part VI, Section 24, p46.

<sup>85</sup> Companies Act, Section 616 (e), p497.



## Legal status of foreign entities providing assistance

Notwithstanding, the Act does not expressly make provision for the granting of special concessions to foreign disaster relief organizations in emergency or disaster situations. This could hamper the timely access to emergency relief assistance.

### Recommendations

- The Gambia should consider adopting a mechanism for temporary recognition and registration of entities engaged in international assistance during periods of emergencies, in line with the recommendations of the IDRL Guidelines and article 14 a of the Model Act on IDRL. This should include possibility of fast tracking registration and recognition for purposes of opening bank accounts, getting visas and conducting general business in the country.
- It is recommended to establish a so-called Single Window International Facilitation Team (SWIFT) for the purpose of consolidating and expediting the legal requirements concerning entry of incoming international personnel, goods, equipment and transport, as well as the application process for eligibility.
- The Gambia should consider inserting provisions establishing the above mentioned mechanisms in the revised NDM Act, which supersede any contrary provisions in other existing laws.

## 5.3 Foreign assistance from the private sector and individuals

### IDRL Guidelines Article 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.

In practice, the private sector, individuals and organisations, including those linked to the Diaspora as well as UN agencies provide humanitarian assistance in close coordination with the NDMA. As far as the NDM Act 2008 is concerned, there are no restrictions on the private sector (whether inside or outside The Gambia) making donations to the NDMA. However, the Act is very clear that such donations shall have no condition attached.<sup>86</sup>

<sup>86</sup> National Disaster Management Act, 2008, Chapter XII, Part I, Section 114, p62.



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international disaster response

## **Chapter 6**

# Border control requirements and transport arrangements

## Border control requirements and transport arrangements

### 6.1 Customs arrangements for the arrival of relief goods in disaster

#### IDRL Guidelines Part V: Legal facilities for entry and operations

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

#### IDRL Guidelines Article 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;
  - 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. Arrange for inspection and release outside business hours and/or at a place other than a customs office is 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.

#### IDRL Guidelines Article 21: Taxation

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

The NDM Act 2008 does not make any specific provisions relating to customs arrangements for relief items and equipment. However, the Act does not limit the operation of any other Act or law except as expressly provided by it.<sup>87</sup> Given that the NDM Act 2008 does not make any provisions relating to customs, all arrangements for the arrival of relief goods in disaster situations may be governed by provisions in the Customs and Excise Act 2010.<sup>88</sup>

<sup>87</sup> Ibid, Chapter XIV, Section 136, p70.

<sup>88</sup> Customs and Excise Act [No. 11 of 2010], p13.

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The Customs Act is designed specifically to provide for the management of the customs, for the assessment of charges and collection of customs and excise duties and other related matters. The Minister of Finance and Economic Affairs may, by order published in the Gazette, waive in whole or in part, duty payable by any person on goods, aircraft, vessels or vehicles imported where he is satisfied that to do so is in the public interest.<sup>89</sup>

Although it is not stated explicitly what “in the public interest” refers to, the waiver for duty payable on imported goods, aircraft, vessels or vehicles in the public interest is commonly interpreted and applied to goods imported for the purpose of charitable causes including disaster relief.

However, in the event that goods in respect of which duty is waived under the above section are disposed of locally, in a manner inconsistent with the purpose for which waiver was granted, they will be liable to duty<sup>90</sup> on disposal.

However, the Minister may direct the Commissioner-General of Customs to waive the duty, pending the publication of an order as though the order had actually been published *provided* that the order shall be published within ninety days.<sup>91</sup> This provides a window to fast track the entry and clearance of relief goods and equipment imported into the country.

In addition, there are exceptional circumstances when these duties, tariffs and fees could be exempted under the Customs and Excise Act. This Act exempts goods imported for temporary use from liability to duty *provided* that the goods are imported for a temporary use<sup>92</sup> or purpose only and that the owner has deposited or given security for, the amount of the duty to which the goods would otherwise be liable. In this regard, this may be useful where there is the need for importation of equipment during emergency and relief situations, which will subsequently be re-exported.

In practice, relief goods, including donated goods imported into the country, are generally exempted from duties and taxes through the application of a duty waiver to the Ministry of Finance and Economic Affairs (MoFEA).<sup>93</sup> Depending on the items/goods/equipment imported, the applicant for duty waiver is required to fill the form<sup>94</sup>, and submit it to the Ministry under whose responsibility such goods would fall.

Although this procedure is an unwritten practice, it is based on the powers given to the Minister by the Customs and Excise Act 2010. For example, if the items/equipment/goods are educational materials, then an application in writing is sent to the Ministry of Education along with the two aforementioned forms as well as all other relevant supporting documents such as the Bill of Lading and Invoices.

<sup>89</sup> Ibid, part XII, section 190 (1), p150. Ibid, Chapter XIV, Section 136, p70.

<sup>90</sup> Ibid, Section 190 (4), p151.

<sup>91</sup> Ibid, Section 190 (3), p151.

<sup>92</sup> Ibid, Section 195, p157.

<sup>93</sup> Interview with officials of the MoFEA.

<sup>94</sup> The two official forms generally used are: the Duty Exemption form from MoFEA.

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Provided that the necessary forms are filled and submitted to the responsible Ministry, approval could be granted within 48 hours. There are no restrictions on imports of relief items and therefore relief items can be consigned directly to the organization that is trying to get them into the country for distribution.

Upon receipt of this application, the Ministry of Education will endorse the application and forward it to MOFEA. When this application is received, MOFEA will forward it to GRA, which also forwards it to the Office of the President (OP) for approval. This same process will apply for relief items/goods/equipment related to food, medical, telecoms, etc.

Such waiver applications must provide details on the nature of the goods, quantity, value, vessel carrying the goods and the port of entry. Once the exemption is granted, the goods are released to the applicant. This process is usually completed within a period of twenty-four hours upon the submission of all the required information and documentation.

### Recommendations

- It is recommended to codify the good ad hoc practice of exempting relief items from taxes and duties through revision of the 2008 NDM Act. A provision should be included that provides customs facilities for relief items as set out in IDRL Guidelines and Model Act on IDRL.

### Clearance outside ordinary business hours and outside customs offices

The Minister of Finance and Economic Affairs prescribes the business working days and hours through regulation.<sup>95</sup> Currently, the business working days and hours of customs officials specifically at the sea port is from 8 am to 4:30 pm from Monday to Thursday and 8 am to 1.30 pm on Friday and then re-opens 2.30 pm to 4.30 pm whereas on Saturday 8am to 1:30 pm. However, the border posts and airports are open twenty-four hours and seven days a week (24/7).

Generally, the Minister is conferred with powers to make regulation for the effective carrying out of the provisions of this Act.<sup>96</sup> As such, in case of need, the Minister could pass a regulation to extend working hours in case of a state of emergency, or a request from the government for assistance for disaster response or initial recovery assistance work.

### Inspection requirements

The whole of the cargo of an aircraft or vessel which is unloaded shall be entered by the owner within such period after the commencement of discharge as may be allowed by the proper officer, either for home use, warehousing, transshipment, or transit.<sup>97</sup> Where an entry is delivered to the proper officer, the owners shall furnish therewith-full particulars supported by documentary evidence of the goods referred to in the entry.<sup>98</sup>

<sup>95</sup> Customs and Excise Regulations 2013, Part II, Section 3, p12.

<sup>96</sup> Customs and Excise Act, Part XX, Section 297, p223.

<sup>97</sup> Customs and Excise Act, Part II, Section 51(1), p69.

<sup>98</sup> Ibid, Section 51(2), p69.

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Entries for goods to be unloaded may be delivered to the proper officer for checking before the arrival at the port of discharge of the aircraft or vessel in which the goods are imported; and in that case the Commissioner-General may permit goods to be entered before the arrival of the aircraft or vessel.<sup>99</sup>

In practice, if the examination officer is satisfied that the documentary requirements for the goods are in order, the goods shall then be released for their prescribed usage. Inspection of goods are carried out by relevant line Ministries or Agencies of Government and only in instances where these personnel are not in post that Customs officials will do such inspection of goods.

For example, if WFP imports food items for use in relief operations, the FSQA will be the relevant government agency to ensure that such food items in the consignment are fit for consumption.

Generally, if the goods/items are from a country with high quality standards such as the EU, the inspection process is minimal. Therefore, if the goods/items are accompanied by all necessary documentation and have met high quality manufacturing procedures and standards, the process of inspection of the imported good/items and their relevant documentation could be done within 24 hours.

**Re-exportation of unused goods and equipment**

The Customs and Excise Act 2010 states that there are no prohibitions or restrictions on goods in transit, or for transshipment or exported as stores of an aircraft or vessel.<sup>100</sup> Therefore, there are no restrictions on the re-exportation of unused relief goods and equipment to other countries.

**6.2 Communications Equipment****IDRL Guidelines Article 18(2) Telecommunications**

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

The Information and Communications Act of 2009<sup>101</sup> specifically deals with issues related to emission, transmission or reception of information, including without limitation voice, sound, data, text, video, animation, images, signals or a combination by means of magnetism, radio or electromagnetic waves, optical or any agency of a like nature, whether with or without the aid of tangible conduct. Therefore the Act governs telecommunication services and regulations especially related to licensing matters.

<sup>99</sup> Ibid, Section 51(3), p69.

<sup>100</sup> Ibid, Part VI, Section 101, p99.

<sup>101</sup> Laws of The Gambia, Vol. 12, CAP 74:03, Information and Communications Act [Act no. 2 of 2009], p1.

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This Act states that a person shall not establish, install, operate or maintain an information or communications system, or provide information and communications service or install an information and communications apparatus in the country without an authorisation<sup>102</sup> issued for that purpose by the Public Utilities Regulatory Authority (PURA) of The Gambia.

The two types of equipment relevant to disaster relief operations are: radio and satellite communication equipment [Very Small Aperture Terminal (VSAT)].

The PURA Guidelines to Install and Operate a VSAT<sup>103</sup> require the submission of an application form to PURA by the applicant. Upon satisfactory review of the application, PURA prepares a report and recommends to the Minister of Information and Communication Infrastructure for the approval or otherwise of the application. This process shall be completed within three months and the licence issued is valid for one year subject to renewal.

In the case of radio communication and telecommunications equipment, the PURA Guidelines for Type Approval Applications<sup>104</sup> apply.

The process involves the submission of an application for review by PURA. If the relevant requirements as stipulated in the guidelines are met by the applicant, PURA will issue a certificate to use and operate the equipment in The Gambia. The Type approval Certificate is valid for two years from the date of issue by PURA.

The Minister responsible for Information and Communications has the power under the provisions of this Act<sup>105</sup> and in close consultation with PURA to make regulations providing exceptions that may cater for needs of an emergency situation. However, such a regulation is not currently in place and given that the process to make regulations could take time, this may not be ideal for emergency situations requiring speedy action – it would be best to have such a provision explicit in the legal framework.

Neither the NDM Act 2008 nor the Information and Communications Act expressly provide exceptions for the import/export of communications equipment to be used in emergency operations. However, the Customs Act permits the import/export of goods for temporary use without restrictions<sup>106</sup> and this could be interpreted as extending to communication equipment imported during crisis.

In addition to the Customs Act, the National Search and Rescue Commission Act 2008<sup>107</sup> which falls under the overall framework of the NDM law, specifically provides for the expedient facilitation of entry of search and rescue units, aircraft, vessels, persons and equipment under the following sections of the Act:

<sup>102</sup> Ibid, Section 10, p31.

<sup>103</sup> [http://www.pura.gm/images/DG\\_Final\\_Docs/VSAT\\_scan0001.pdf](http://www.pura.gm/images/DG_Final_Docs/VSAT_scan0001.pdf), viewed [16/10/2015 at 21:45 GMT].

<sup>104</sup> [http://www.pura.gm/images/DG\\_Final\\_Docs/Guidelines%20for%20Type%20Approval%20Application%20July%202013.pdf](http://www.pura.gm/images/DG_Final_Docs/Guidelines%20for%20Type%20Approval%20Application%20July%202013.pdf), viewed [16/10/2015 at 21:43 GMT].

<sup>105</sup> Ibid, Section 250, p165.

<sup>106</sup> Customs and Excise Act, Part XII, Section 195, p157.

<sup>107</sup> National Search and Rescue Commission Act, [Act No. 14 of 2008].



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Section 41(3) – subject to such conditions as may be prescribed, the Minister responsible for Transport may:

- Permit immediate entry into The Gambia of search and rescue units of any other state for the purpose of search and rescue;
- Grant any necessary permission for the entry of aircraft, vessels, persons or equipment into The Gambia; and
- Make the necessary arrangements with the appropriate customs, immigration, or other authorities with a view to expediting entry into The Gambia.

Where the Commission or any search and rescue co-ordination centre wishes to enter into the territory of another State for the purpose of search and rescue, the minister responsible for transport shall transmit to the search and co-ordination centre of the State concerned, or to such other authority as has been designated by the State, a request giving full details of the projected mission and the need for it.

According to Section 63(d) of the Act, the minister responsible for transport may, in consultation with the Commission make regulations regarding any matter, which is necessary or expedient to prescribe for the effective carrying out or implementation of this Act.

In light of the provisions above, it can be concluded that emergency communications equipment can enjoy special dispensation related to expedient facilitation of their import/export, as well as speedy licensing for their use in response and relief operations – although this is not explicitly set out in the legislation.

### Recommendations

- The Information and Communications Act of 2009 should make clear provisions for the facilitation and regulation of communications equipment for use in international disaster relief and initial recovery assistance, including an express provision for the expedient granting of licenses or authorizations for use of communications equipment in the event of disaster relief or initial recovery assistance.

## 6.3 Food

### IDRL Guidelines Article 18(4) Importation of Food

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

## Border control requirements and transport arrangements

The Food Safety and Quality Control (FSQ) Act 2011 repealed the Food Act of 2005, establishing the Food Safety and Quality Authority which oversees food safety issues whether under import or export situations. The FSQ Act of 2011 provides for emergency and crisis management under part XVI which states:

*“Where it is evident to the Authority that food or feed is likely to constitute a serious risk to human or animal health or the environment, and that such risk cannot be contained satisfactorily through measures taken under this Act, the Authority shall immediately adopt a number of mitigating measures depending on the gravity of the situation.”*

On the other hand, the Authority, in close cooperation with the Ministries responsible for Natural Resources, Health and Environment sectors and the NDMA, has developed a general plan for crisis management and emergency in the field of food and feed safety as specified under section 55 of the Act.

The management plan specifies practical procedures necessary to manage a crisis, including the organisation and establishment of a task force, transparency principles to be applied; and the communication strategy to put in place. Moreover, the FSQ Act 2011 stipulates there should be specific measures<sup>108</sup> in place to ensure that quality of food imported into the country is not compromised. This has not been applied in the past in drought emergencies.

There are no special procedures under the FSQ Act to expedite the clearance of food items for relief in emergency situations as recommended in IDRL Guideline 18(4). However, in practice, when food items are imported into the country including for relief, FSA generally inspects:

- the documentation of the consignment;
- integrity of the packaging e.g. that it is not open; and
- the expiry date.

All the above measures seek to ensure quality and safety standards of food and feed products imported into The Gambia, and if all the above procedural measures are satisfactory, there will be no delays in the importation/exportation of food items into The Gambia by humanitarian organizations for relief operation.

Usually, the process could be done within 24 hours. However, the applicable stringent food safety measures could be obstacles against the timely dispatch of relief items to affected communities and beneficiaries in an emergency setting.

Based on consultations with the Food Safety and Quality Authority (FSQA)<sup>109</sup>, it was confirmed that there have not been any incidents when food items were imported into The Gambia and found to be unfit for human consumption. In the same way, there have never been any serious delays in the importation of food items in an emergency.

<sup>108</sup> These measures include but are not limited to the inspection, sampling, analysis, and medical examination of food items and accompanying documents.

<sup>109</sup> Consultation with Ms. Zainab Jallow, Director General, FSQA of The Gambia.

## Recommendations

It is recommended that a new set of regulations to the FSQ Act of 2011 be promulgated to incorporate the below listed recommendations. Alternatively, these provisions may be incorporated in the proposed revision of the NDM Act 2008: The Act has specifically given the Authority powers to use regulations to deal with unforeseen circumstances including where necessary emergency situations requiring speedy inspection and clearance of relief goods and food items.

- Procedures introduced for the speedy approval and clearance of food importation into The Gambia by humanitarian organizations for relief operation and initial recovery assistance;
- Fast-track and simplify normal inspection for ensuring clean, safe and wholesome food, in order to expedite delivery of food for disaster relief and initial recovery assistance;
- Introduce pre-approval procedures for eligible humanitarian actors who wish to import food consignments; and develop and publish a list of import specifications of potential disaster relief food items.

## 6.4 Medication

### IDRL Guidelines Article 18(3) Importation of medicines

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

- a. Any medications they import should be approved for use in the originating and affected State;
- b. Medications they use in their own operations should be:
  - i. Transported and maintained in appropriate conditions to ensure their quality and;
  - ii. Guarded against misappropriation and abuse.
- c. Any medications they donate for use by others in the affected State should be:
  - i. At least twelve months from their expiration date upon arrival, unless otherwise agreed by receiving authorities;
  - ii. Transported and maintained in appropriate conditions to ensure their quality until they reach the affected State; and

## Border control requirements and transport arrangements

- iii. Appropriately labeled in a language understood in the affected State with the international non-proprietary name or generic name, batch number, dosage form, strength, name of manufacturer, quantity in the container, storage conditions and expiry date.

The Medicines Act prohibits the importation and distribution of medicinal products unless approved and registered by the Medicines Board.<sup>110</sup> The Act specifies certain rules and procedures for the registration and licensing of medicinal products imported for distribution in The Gambia, including the fees payable and the standard quality threshold facilitating monitoring of imported medicinal products into the country.

Unless the imported medication is restricted in The Gambia, a licensed importer would not be subjected to registration and licensing of each dispatch of medicines. Registration of products lasts for three years and during that period a licensed importer will not be required to register each dispatch of medicine.

Although the registration process is stringent, the process could be done within three months provided the applicant produces all the relevant documentation. This process, which currently is an administrative measure, has been captured in the new regulation being developed by the Medicines Board.

The Medicines Board has wide-ranging powers and responsibilities to provide advisory services to the Government on all aspects of the importation, sale and distribution of medicinal products in The Gambia. The Board may from time to time review the policies of the Government on the use and application of medicinal products and make such recommendations, as it considers necessary.<sup>111</sup> In this regard, the Medicines Board could review the policy on the import of products in disaster relief and initial recovery assistance.

This shows clearly that a coherent administrative structure exists for the regulation, monitoring and control of entry and distribution of medicines. It provides an enabling administrative and policy environment to ensure that sub-standard and banned products are prevented from entry into the country.

This enhances the quality of medicinal products reaching disaster-affected victims during relief operations and therefore strengthens the accountability to the communities at risk.

However, the Medicines Act does not provide any specific provisions or rules of procedures facilitating the import/export of medications by relief organizations for the purpose of disaster response in terms of ensuring speedy entry into the country and subsequent speedy delivery to the disaster affected population. The Act was enacted in 1984 during when, disaster and climate change matters were not major topical issues on the global political agenda and hence could not have been factored in the deliberation of the provisions.

<sup>110</sup> Laws of The Gambia, Vol. 6, CAP 40:01, Medicines Act[Act No. 2 of 1984], Section 11 and 13, p9.

<sup>111</sup> Ibid, Section 5(4), p7.

**Border control requirements and transport arrangements**

The Medicines Act states that the Minister of Health has power to promulgate regulations prescribing the forms of application for the registration of medicinal products, the procedures for application for licenses and the fees applicable for registration or licensing.<sup>112</sup> These discretionary powers of the Minister may include the promulgation of regulations on the import of medicines for relief and initial recovery assistance.

To avoid the lengthy process of going through legislative amendments in general, the Minister's power to make regulation under the Medicines Act could specify the circumstances relating to the making of such regulations including the necessary exemptions in disaster situations.

This will therefore, facilitate the speedy entry into the country of medicinal products by assisting organisations especially given that the NDM Act 2008 does not have any provision relating to the import of medicines.

**Recommendations**

- The Medicines Act needs amendment to cater for exemptions in emergency/disaster situations requiring the facilitation and speedy entry into the country of medicinal products by assisting organisations, including exploring a pre-admission list for generic essential medicines, whilst ensuring the safety and adequacy of medicines brought into The Gambia.
- The Medicines Act needs amendment to cater for appropriate labeling of medicines in the languages commonly understood in The Gambia with the international non-proprietary name or generic name, batch number, dosage form, strength, name of manufacturer, quantity in the container, storage conditions and expiry date.

**6.5 Importation of vehicles****IDRL Guidelines Article 18(1) Importation of vehicles**

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

The Motor Traffic Act consolidates the law relating to motor traffic, and related matters.<sup>113</sup> The initial procedure for the use of all imported vehicles into the country for whatever purpose, including for disaster relief and recovery operations, is to first undergo customs clearance procedures except where an exemption may be granted by the Minister under Section 92 of the Act.

Once the clearance procedures are complete<sup>114</sup>, all motor vehicles and trailers including the drivers of such motor vehicles and trailers will need to undergo licensing and registration procedures under Part III of the Motor Traffic Act.

<sup>112</sup> Ibid, Section 16(2), p10.

<sup>113</sup> Laws of The Gambia, Vol. 10, CAP 70:03, Motor Traffic Act [Act No. 7 of 1948 and its subsequent amendments], p9.

<sup>114</sup> This process can be completed within 24 hours [as confirmed by Customs officials at any Gambian Port].

## Border control requirements and transport arrangements

Specifically, the Act empowers the Minister to make regulations exempting from all or any of the provisions of this Act any specified class of vehicles or the drivers of any specified class of motor vehicles.<sup>115</sup> In this regard, vehicles imported into the country specifically for disaster relief and recovery operations including their drivers may be exempt from the licensing procedures through the discretionary powers vested in the Minister.

The regulation<sup>116</sup> facilitates the modification and amplification of the provisions of this Act relating to registration and licensing of motor vehicles, trailers and drivers in the case of vehicles brought temporarily into The Gambia. This facilitation also includes entry of foreign personnel such as drivers, to The Gambia for the purpose of operating the vehicles.

In addition, all vehicles coming from an ECOWAS country bearing a number-plate of that country in practice, is allowed entry<sup>117</sup> through the issuance of a *laissez-passer*<sup>118</sup> for an initial maximum period of three months which can then be extended on a monthly basis. However, upon expiry of the *laissez-passer*, the vehicle must leave the country or obtain Gambian registration documents including the number-plate subject to the payment of GRA taxes.

This system is designed to prevent motor vehicles from other ECOWAS states from being sold into The Gambia without proper payment of Customs duties and taxes. This process is not set out in procedure and is based on the internationally recognized standards. This Motor Traffic Act provides that any application for a license for a motor vehicle<sup>119</sup> or trailer must be in the prescribed form and accompanied by a statement in writing issued by the Commissioner General of the GRA certifying the payment of, or satisfactory arrangements for payment of taxes under the Income Tax and Sales Act.

The Act specifies that the purpose for which the vehicle is used is in accordance with the conditions specified in the license.<sup>120</sup> For the purposes of identification and registration, the licensing Authority shall assign a separate registration number and shall register the vehicle in the prescribed manner.

Furthermore, cross-border provision of insurance services is allowed meaning Gambian residents may freely purchase insurance abroad. Therefore, motor insurance under the “Brown Card” system for ECOWAS provides Gambian residents with cover in other member States, and vice-versa.

<sup>115</sup> Motor Traffic Act, Section 92(1)(p), p46.

<sup>116</sup> The Motor Traffic Regulations 14 of 1948 and subsequent Regulations, [Made under section 92].

<sup>117</sup> A *laissez-passer* is issued at the port of entry and renewable thereafter.

<sup>118</sup> The *laissez-passer* is instantly issued at the relevant border post provided the applicant produces proper registration documents, including ECOWAS insurance policy from a reputable insurance company. Furthermore, the issuance of the *laissez-passer* is to the driver of the vehicle and not to the vehicle – meaning that only the driver could drive the vehicle in that country and nobody else.

<sup>119</sup> Ibid, Section 6, p12.

<sup>120</sup> Ibid, Section 7, p12.



**Border control requirements and transport arrangements**

Specifically on the insurance of vehicles, the Motor Vehicles (Third Party Insurance) Act [Act No. 28 of 1948] is the law regulating motor vehicles insurance in The Gambia.<sup>121</sup> This Act does not say anything specific about the availability of vehicle insurance for relief organizations. In fact, Section 3 of the Act stipulates that a person shall not use or permit any other person to use a motor vehicle unless they have a third party insurance policy. In principle, all vehicles must therefore have a minimum of third party insurance policy and this includes all persons or international organisations conferred with diplomatic immunities and or privileges.

However, this Act provides certain exemptions for any persons or class of persons or motor vehicles declared by the President to be so exempted from the provisions of this Act.<sup>122</sup> In disaster or emergency situations, the need for such declaration by the President exempting international relief organisations from acquiring insurance can be easily obtained by virtue of Section 7 of the National Disaster Management Act 2008 given that the President is the Chairperson of the National Disaster Management Council.

In practice, any person or international organisation exempted under these provisions may also be required to set aside a deposit in respect of third party risks.

**Recommendations**

- The NDM Act should be revised to include specific provisions facilitating the speedy entry and clearance of motor vehicles into the country for the purpose of relief and recovery operations, and exempt motor vehicles imported for the same purpose from registration procedures and grant temporary recognition of vehicles registered abroad. These provisions should supersede any contrary provisions in other legislation in a situation of disaster.

**6.6 Animals****Model Act on IDRL Article 41**

Search dogs imported temporarily by Eligible Actors shall be admitted without the need for quarantine so long as they meet the conditions and requirements of special regulations to be developed within (6 months) of the entry into force of this Act by the (relevant authority).

The Gambia has no specific law dealing with the importation of animals including rescue dogs especially in the event of a major disaster. The only law which speaks to the entry of animals into the country is the Diseases of Animals Act.<sup>123</sup> The Act empowers the Minister responsible for Animal Health and Production (Ministry of Agriculture and Natural Resources) to make regulations for the prevention and introduction into and spread of disease in or from The Gambia and generally for the purpose of implementation of the Act.

<sup>121</sup> Laws of The Gambia, Vol. 10, CAP 70:04, Motor Vehicles (Third Party Insurance) Act [Act No. 28 of 1948].

<sup>122</sup> Ibid, Section 5(d) and (e), p6.

<sup>123</sup> Laws of The Gambia, Vol. 9, CAP 58:01, Diseases of Animals Act [Act No. 1 of 1948, and subsequent amendments], p23.

## Border control requirements and transport arrangements

In this regard, the existing regulation empowers the Deputy Director of the Department of Animal Health and Production to subject any animal imported into the country to be examined, disinfected, detained in quarantine at the risk and expense of the owner as may be deemed necessary by the Deputy Director.<sup>124</sup>

Both the Quarantine Act<sup>125</sup> and Dogs Act<sup>126</sup> are silent on the importation and licensing to own such dogs. In relation to quarantine of animals including rescue dogs, the period in practice is 21 days.<sup>127</sup> However, the Dogs Act requires that a person keeping a dog of whatsoever description or denomination, other than a dog under the age of six months, shall apply for a license and effect fee.<sup>128</sup>

Furthermore, the same Act authorises the Inspector General of Police (IGP) to issue a metal badge<sup>129</sup> of such kind as determined by the IGP after the issuing of the license. On the other hand, the Dogs Act empowers the Minister to make, vary, suspend or revoke rules for better carrying into effect the provisions of this Act.<sup>130</sup> From the foregoing, it can be concluded there are no exceptional provisions relating to rescue dogs.

However, there is flexibility in the provisions of the Dogs Act giving the Minister discretionary powers<sup>131</sup> to accommodate unforeseen circumstances, which may include the need for importation and licensing of rescue dogs in emergency response operations. The Gambia has not experienced any major disaster or emergency warranting the request for international relief assistance and hence the use of rescue dogs.

The National Search and Rescue Commission Act 2008 also does not specifically address the use of rescue dogs in emergency situations where it may be necessary the entry into The Gambia of rescue dogs.

### Recommendations

- The NDM Act 2008 should be amended to make clear provisions for speedy entry, clearance, registration and the use of rescue dogs for emergency relief operations.

## 6.7 Management of foreign personnel during a disaster

### 6.7.1 Entry of response personnel

#### IDRL Guidelines Article 16 Personnel

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

<sup>124</sup> Laws of The Gambia, Vol. 9, CAP 58:01, Diseases of Animals (Importation Restriction) Regulations [No.3 of 1949, made under section 22], p25.

<sup>125</sup> Laws of The Gambia, Vol. 6, CAP 40:03, Quarantine Act [Act No. 15 of 1932 subsequently amended], p5.

<sup>126</sup> Laws of The Gambia, Vol. 9, CAP 62:04, Dogs Act [Act No. of 24 of 1916 and subsequent amendments], p5.

<sup>127</sup> Source: Department of Veterinary Services.

<sup>128</sup> Quarantine Act, section 3, p5.

<sup>129</sup> Dogs Act, section 7(1), p6.

<sup>130</sup> Dogs Act, section 19, p11.

<sup>131</sup> Ibid, p11.

## Border control requirements and transport arrangements

- 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 licenses and other types of licenses and certificates that are necessary for the performance of disaster relief or initial recovery functions and that have been certified as genuine by the concerned assisting State or eligible assisting humanitarian organization, for the time necessary to carry out disaster relief or initial recovery activities.

The Immigration Act governs all matters related to entry, residency and the issuing of work permits of foreign personnel among many other related issues.<sup>132</sup> Generally, persons shall not enter or reside in The Gambia unless they possess special immigration status or pass or permit or are a dependent of a person possessing a special immigration status.

It is important to note however, that granting of these privileges is not an entitlement and can be revoked or withdrawn if those in possession of such privileges act in a manner inconsistent with the provisions of the Immigration Act and other laws of the country. In addition, as a result of the rise and complexity of global instability and crises including cross-border movement of unlawful persons and their illegal activities, extra precautionary measures are taken in some exceptional circumstances in the interest of national security over and above the normal entry clearance procedures.

The procedure for issuing of passes for a temporary stay<sup>133</sup> is provided for in the Immigration Act and involves an application made to the Director General of Immigration on a prescribed form.<sup>134</sup> The application should state the purpose and duration of the invitee, accompanied by the filled relevant forms, a copy of the National ID of the inviting person/organization and the current prescribed fee of one thousand Dalasi (GMD1,000). The application and supporting documents must be submitted seven days before the expected arrival time of the invitee.

The visiting pass issued is valid for a period of one month and is renewable for a period not exceeding three months. The issuance of passes and renewal may be subject to such conditions, whether relating to employment, residence or otherwise as the Director General of Immigration may in his or her discretion impose as stipulated under Section 9 of the Act.<sup>135</sup>

<sup>132</sup> Ibid, Part IV, Section 7, p13.

<sup>133</sup> Ibid 124, Subsidiary Legislation, p35 [Form 1, The Gambia Immigration Rules, Visiting Pass (Face)]

<sup>134</sup> Ibid, Section 9, p14.

<sup>135</sup> Permit A – NGOs benefit under this section and in the regulation.

## Border control requirements and transport arrangements

In addition to visiting passes, which facilitate entry, the Director General of Immigration may grant a residential permit valid for one year to any person and such permit shall specify whether the person is for residence only<sup>136</sup> or for residence and employment.<sup>137</sup> However, the Act states that the power of the Director General of Immigration to grant a person both residence and employment permit is subject to directions and instructions issued to the Director General by Government from time to time in line with Government's policy on immigration.<sup>138</sup> Once the application is submitted with the relevant supporting documents and a background check conducted, the pass could be issued within 72 hours.

This is a clear indication that there are checks and balances relating to the issuing of permits for residence and employment as important safeguards for strengthening credibility, transparency and mutual accountability vis-à-vis relief personnel in the event of the provision of international relief assistance.

On the other hand, the Act provides for waiver of formalities and in particular, the Director General of Immigration is authorised to waive or relax any of the provisions of this Act in his/her discretion<sup>139</sup> in the case of distinguished visitors of high rank, holders of diplomatic passports accredited to The Gambia, and any other person to whom the Vienna Convention on Diplomatic Relations apply. However, this is unlikely to apply to a large number of assisting humanitarian personnel.

The Immigration Act<sup>140</sup> specifies the payment of fees to be levied on the issue of any pass, permits or certificate. However, it states that the Director General of Immigration may in his/her discretion issue a residential permit or renewal of a visiting pass without payment of the related fees in respect of persons among others, whose presence in The Gambia is considered to be of benefit to the country.<sup>141</sup>

Since international relief organisations and all categories of their personnel provide essential humanitarian and immediate lifesaving assistance, recovery and reconstruction activities serving humanitarian and development objectives, this waiver may apply to them.

The Immigration Act<sup>142</sup> also provides for the issuing of a certificate to exempted persons and in this case international relief personnel may fall under this category. An exempted person is a person granted special immigration status<sup>143</sup> by the Minister by Notice Published in The Gazette and such person must have rendered outstanding service to The Gambia.

<sup>136</sup> Ibid, Part V, Section 10, p15.

<sup>137</sup> Ibid, Section 10(4), p15.

<sup>138</sup> Ibid, Section 10(4), p15.

<sup>139</sup> Ibid, Part X, Section 23(1), p21.

<sup>140</sup> Section 27(1).

<sup>141</sup> Ibid, Section 27(7), p23.

<sup>142</sup> Section 30.

<sup>143</sup> Ibid, Part II, Section 3, p8.

## 6.7.2 Recognition of professional qualifications of foreign personnel

### IDRL Guidelines Article 16. Personnel

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

c. Establish expedited procedures for temporary recognition of professional qualifications of foreign medical personnel, architects, and engineers, drivers licenses and other types of licenses and certificates that are necessary for the performance of disaster relief or initial recovery functions and that have been certified as genuine by the concerned assisting State or eligible assisting humanitarian organization, for the time necessary to carry out disaster relief or initial recovery activities<sup>144</sup>

The recognition of qualifications of Medical and Dental Practitioners in The Gambia is regulated by the Medical and Dental Practitioners Act 1998<sup>145</sup> which makes provision for the establishment of a Medical and Dental Council, registration of Medical and Dental Practitioners; discipline of persons registered under the Act and for connected matters. This Act creates the Medical and Dental Council whose main mandate is the registration of these professionals.<sup>146</sup>

This Act prescribes the registration process for medical and dental practitioners who are citizens of The Gambia.<sup>147</sup> Among many other things, such a medical and dental practitioner must in the opinion of the Medical Council be of good character; possess a primary qualification in Medicine or Dentistry granted by an institution in any country recognized by the Council; payment of the prescribed fees and be registered as a Medical and Dental Practitioner in the permanent register.

However, all foreign Medical and Dental Practitioners who satisfy the Medical Council to have good character; possess a primary qualification in Medicine or Dentistry granted by an institution in any country<sup>148</sup> approved by the Council is entitled to be registered in the temporary register if they are specifically appointed by the Government; engaged by an organization recognized by the Government or to practice in a designated area by the Government.<sup>149</sup>

A practitioner is on the temporal register for a period of two years and during that period he/she undergoes houseman-ship. During the period of housemanship, such a practitioner works under the supervision of a qualified medical practitioner. A favorable report and grading by such medical practitioner determines the acceptance into the permanent register by the Medical and Dental Council.

<sup>144</sup> See also Model Act on IDRL, Article 26.

<sup>145</sup> Medical and Dental Practitioners Act [No. 6 of 1998].

<sup>146</sup> Laws of The Gambia, Vol. 6, CAP 37:01, Medical and Dental Practitioners Act [No. 6 of 1998], p5.

<sup>147</sup> Ibid, Part III, Sections 13 and 14, p9.

<sup>148</sup> There is no approved list of countries – the Council verifies the qualifications including subjects of specialization and on that basis determine the eligibility for registration in the temporary register.

<sup>149</sup> Laws of The Gambia, Vol. 6, CAP 37:01, Medical and Dental Practitioners Act, Section 15, p9.

## Border control requirements and transport arrangements

The procedure for registration of a foreign citizen or foreign registered Gambian as a Practitioner is described in Section 21 of the Act which among others includes application to be made in writing to the Registrar, submission of copies of certificates of qualification, evidence of registration from the country where qualification was obtained and payment of the prescribed registration fee. The Registrar submits the application to the relevant Committee delegated by the Medical Council for consideration within 14 days.

Medical and Dental Practitioners Act states that the provisions of this Act do not apply to any person who practices a customary system of therapeutics and hence is not authorized to perform such services.<sup>150</sup> On the other hand, Section 42 provides that the Minister of Health may make Regulations for the better carrying out of the purposes of this Act.

The nursing profession in The Gambia is regulated by the Nursing and Midwives Act 1990.<sup>151</sup> This Act established a Council for Nursing, Midwifery and Community Health Nursing and to make provision for the education, training, registration and discipline of nurses and midwives, and for connected matters.<sup>152</sup>

This Act prescribes the application procedures for registration into the register of qualified nurses and midwives.<sup>153</sup> In particular, Section 16 states that in order to practice as a qualified practitioner, a nurse or midwife must be registered and enrolled upon successful completion of a prescribed course and practical experience from training establishments approved by the Council.

There are no specific provisions for registration and enrolment procedures for general medical practitioners during emergency or disaster situations. However, the Nurses Act empowers the Nurses and Midwives Council to make certain rules that include the recognition of qualifications from certain jurisdictions, prescribing fees for registration under that Act, and prescribing the form of the practicing certificate to be issued.<sup>154</sup>

Therefore, the power conferred on the Council to recognize qualifications from foreign jurisdictions and prescribe both the fees for registration and the certificate to be issued may be relied on to make some provision for emergency registration of nurses and midwives in a disaster relief and initial recovery period.

### Recommendations

- The Immigration Act and the NDM Act should include provision for the expedited provision of visas and work permits for humanitarian personnel in the case of disaster response or initial recovery assistance;
- There is a need to establish prequalification procedures for temporary recognition of professional qualifications of foreign medical personnel, including expedited procedures for emergency review of such qualifications;

<sup>150</sup> Ibid, Part V, Section 41, P17.

<sup>151</sup> Nursing and Midwives Act [No. 4 of 1990]

<sup>152</sup> Laws of The Gambia, Vol. 6, CAP 38:01, Nursing and Midwives Act [No. 4 of 1990], p5.

<sup>153</sup> Ibid, Part III, Section 15, p10.

<sup>154</sup> Ibid, Part V, Section 30, p14.



- It is recommended that the recognition of foreign professional qualifications be provided for in the proposed revision or the NDM Act in line with Article 26 of the Model Act on IDRL, which requires:
  - Recognition of their foreign professional qualifications;
  - Establish expedited procedures to be applied for the assessment and recognition of the foreign qualifications;
  - Exempt International Personnel of Eligible Actors from any obligations for compulsory membership of professional associations or other professional registration processes within the country until the end of the International Initial Recovery Period; and
  - Remain valid until the end of the International Initial Recovery Period.

### 6.7.3 Driving Licenses

The law governing the recognition or obtaining of valid driving licenses<sup>155</sup> in The Gambia is the Motor Traffic Regulations [Regulations 14 of 1948 and subsequent Amendments]. The Regulation provides for the licensing of drivers of motor vehicles and related matters. However, there are no special rules or exceptions for licensing for driving motor vehicles carrying disaster relief goods, or for drivers of such vehicles.

However, Section 66 (1) (b) of the Motor Traffic Regulations provides that a driver's license/permit issued in a foreign country will be valid for 12 months and be accepted for operating a motor vehicle of any class authorized by that license/permit in The Gambia.

Furthermore, the same regulations provide that international circulation permits may be granted to any person bringing a motor vehicle into The Gambia and that such permit shall not be valid for more than ninety (90) days.<sup>156</sup> The international circulation permit can be obtained within 72 hours and it applies to both driver and vehicle.

## 6.8 Taxation and movement of foreign currencies

### **IDRL Guidelines Article 20(2). Temporary domestic legal status**

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.

### **Article 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.

<sup>155</sup> Laws of The Gambia, Vol. 10, CAP 70:03, Motor Traffic Regulations [Regulations 14 of 1948 and subsequent Amendments], p60.

<sup>156</sup> Ibid, Section 68 and 69, p88-89.

## Border control requirements and transport arrangements

### 6.8.1 Movement of foreign currencies and preferential exchange rates

There are no foreign exchange controls or restrictions in the free flow of foreign currency in and out of The Gambia. However, the Anti-Money Laundering Act 2012<sup>157</sup> is designed to identify suspicious activity and prescribes stringent penalties for criminal conduct including measures to combat money laundering and the financing of terrorism.

In particular, the Anti-Money Laundering Act<sup>158</sup> prescribes that a person who leaves or arrives in The Gambia with more than seven thousand and five hundred US Dollars (USD 7,500) or its equivalence in local currency and/or an amount prescribed by the Central Bank of The Gambia in cash or bearer negotiable instruments in his or her luggage, shall disclose the cash or bearer negotiable instruments to a customs officer at the point of arrival or departure. If one is able to prove that such moneys are legitimate then he/she would be allowed to use it. On the other hand, if such person cannot prove the money is from legitimate means he/she would lose it to the state.

All foreign currency exchange rates dealings in The Gambia are determined by market forces of demand and supply and therefore, the law does not specifically accord preferential exchange rates to any individual or institutions. Given that international humanitarian organizations generally transact their operations through financial institutions, they will be subjected to the same prevailing daily open market rates.

### Recommendations

- The Exchange Control Act should be amended to accord legal exchange rates to international humanitarian relief organizations in connection with their disaster relief or initial recovery assistance.
- [Depending on the consequences of bringing large amounts of cash into the country] The Anti-Money Laundering Act should include a provision stating that humanitarian actors are permitted to freely bring necessary funds into The Gambia, for the purpose of disaster relief or initial recovery assistance.

### 6.8.2 Taxation

The Income and Value Added Tax Act<sup>159</sup> repealed and replaced the Income and Sales Tax Act 2004 (as amended), relating to the supply of goods or the provision of services, and for connected matters. For the purposes of identification and cross-checking, the Commissioner General of the GRA may require taxpayers to apply for a Tax Identification Number (TIN) in the prescribed form, accompanied by documentary evidence of the person's identity.<sup>160</sup>

<sup>157</sup> Act No. 4 of 2012.

<sup>158</sup> Section 48.

<sup>159</sup> Income and Value Added Tax Act [No. 03 of 2012], p11.

<sup>160</sup> Ibid, Part VII, Section 221, p163.

**Border control requirements and transport arrangements**

However, it would be assumed that the Minister of Finance and Economic Affairs may direct the Commissioner-General of Customs to grant exemptions under the powers conferred on him to make regulation under section 190 of the Customs and Excise Act 2010.

The Act requires a person to register for value added tax (VAT) whose annual turnover equals or exceeds one million Gambian Dalasi<sup>161</sup> on all taxable goods and/or supplies in the course of doing business or on the importation of goods and services by any person.<sup>162</sup>

On the other hand, the Act<sup>163</sup> provides for voluntary registration for taxpayers with an annual turnover of five hundred thousand Dalasi. The current rate of VAT is zero percent on all zero-rated goods and/or supplies whereas in any other case, it is fifteen percent.<sup>164</sup>

This Act makes VAT exemptions provisions for certain organisations and their personnel. For example, it states that the following imports of goods among others are exempt imports<sup>165</sup>:

- An import of goods the supply of which is exempt from tax under Section 154 (which include but are not limited to the following): basic foods; medical, dental, optical, veterinary services; and prescription drugs;
- An import of goods that is exempt from customs duties under Section 161(2) and parts A and B, of the Customs and Excise Act<sup>166</sup>;
- An import of goods that is exempt under an international assistance agreement. In this Act, international assistance agreement<sup>167</sup> is:
  - a. An agreement between the Government of The Gambia and the government of a foreign country providing for the relief from double taxation and the prevention of fiscal evasion; or
  - b. An agreement between the Government of The Gambia and the government of a foreign country providing for reciprocal administrative assistance in the enforcement of income tax liabilities.

<sup>161</sup> The equivalent in USD 25,284.45 (at the exchange rate of GMD39.55), [Source: <http://www.cbg.gm>] as at 30/09/2015 at 22.35 GMT.

<sup>162</sup> Ibid, VIII, Section 172, p120.

<sup>163</sup> Section 173.

<sup>164</sup> Ibid, Part II, Section 142(3), p99.

<sup>165</sup> Section 156.

<sup>166</sup> See Third Schedule of Customs and Excise Act 2010, PART A, S.5, p84 – S.5 specifically captures Aid Agencies and the goods referred to there include: household and personal effects of any kind imported by entitled personnel or their dependants, including one motor vehicle imported or purchased by them prior to clearance through Customs.

<sup>167</sup> Income and Value Added Tax Act, Sub-Part IV Tax Treaties, Section 76(5), p65.

## Border control requirements and transport arrangements

Based on the provisions above, it seems clear that “international assistance agreements”, as understood in the Income and Value Added Tax Act, does not cover circumstances related to international relief operations. Furthermore, this Act also makes provisions exempting certain organisations and their personnel from income tax and fringe benefits.

For example, the Act<sup>168</sup> exempts from income tax, any income derived by an individual and a public international organisation entitled to privileges under the Diplomatic Privileges (International Organizations) Act. However, an assisting organization which is not included under that Act, will not be able to access such benefits.

The fringe benefits among other benefits include<sup>169</sup>:

- Housing fringe benefit – accommodation or housing provided by an employer to an employee; and
- Motor vehicles – a motor vehicle provided by an employer to an employee wholly or partly for the private use of the employee.

The Act<sup>170</sup> clearly exempts the income of a non-profit making organisation other than business income derived from the carrying on of a business. In particular, clause 2 defines a non-profit making organisation to include a religious, charitable or an educational institution of a public character, among many others.

Based on the foregoing, it is clear that non-profit making organizations including humanitarian organizations and their disaster relief personnel shall benefit from the exemptions specifically provided by the above-mentioned laws relating to VAT, income tax/corporate tax.

### Recommendation

- There should be a clear provision in the Income and Value Added Tax Act, for exemptions from income tax for assisting humanitarian actors.

<sup>168</sup> Section 21.

<sup>169</sup> Ibid, Chapter V, Part I, Sections 126-128, p88-89.

<sup>170</sup> Section 25.

**International Disaster Response Law (IDRL) in The Gambia**

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# Chapter 7

## Transport during disaster

## Transport during disaster

### 7.1 Transport of relief goods

#### IDRL Guidelines Article 19. Transport

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

#### 7.1.1 Aircrafts bearing relief goods

Air transport and related matters in The Gambia are regulated<sup>171</sup> by the Civil Aviation Act 2004 (as amended) and the Civil Aviation Regulations 2005. Although the Civil Aviation Act has no special provisions for the over flight, landing and departure rights and fees for aircraft bearing relief goods, some of the provisions are flexible to facilitate relief flights.

For instance, the Act confers power to the Director General of The Gambia Civil Aviation Authority (GCAA) to make regulations, rules and orders for the better implementation<sup>172</sup> of the Act. In particular, the Act empowers the Director General of the GCAA to act consistently with any international obligation<sup>173</sup> assumed by the Government under any treaty or convention including, the provisions of the Chicago Convention on International Civil Aviation.

Given that The Gambia is party to the Chicago Convention on International Civil Aviation, the Director General of the GCAA shall facilitate the entry into, departure from and transit through their territories of aircraft engaged in relief flights as well as ensuring that personnel and articles arriving on relief flights are cleared without delay, as per the requirements of the Chicago Convention, although this is not expressly set out in The Gambia legislation.

In practice, the procedure is that an approval is sought for over-flight and landing clearance for the organization bringing the relief goods conveyed through the Permanent Secretary (PS) Ministry of Foreign Affairs to the PS Ministry of Defense for onward transmission to the OP for approval. The approval is then communicated to the Ministry of Foreign Affairs and copied to the Director General of the GCAA for action.

<sup>171</sup> Laws of The Gambia, Vol. 11, CAP 71:01, Civil Aviation Act [Act No.11 of 2004 Amended by Act No.6 of 2008] and the Civil Aviation Regulations [LN 10 of 2005].

<sup>172</sup> Ibid, Part XV, Section 119, p70.

<sup>173</sup> Ibid, Part VI, Section 46, p31.



**Transport during disaster**

This is an administrative process which can be approved within twenty-four hours. For example, overflight and landing clearance was granted to a Turkish Military flight bringing Turkish Red Cross relief items to The Gambia. This was in the immediate aftermath of the 2010 major floods that resulted in a declaration of a State of National Disaster and the request for International relief assistance.

**7.1.2 Trucks bearing relief goods**

As indicated earlier in this report, the Motor Traffic Act 1948<sup>174</sup> stipulates the rules and regulations related to motor traffic and vehicles including for the carriage and other requirements for trucks bearing relief goods.

This Act empowers the Minister of Interior to make regulations on the use of motor vehicles, trailers and equipment and the conditions under which they can be used. Among many other aspects, this discretionary power of the Minister will provide exceptions for carriage and other requirements for trucks bearing relief goods.<sup>175</sup>

**7.1.2.1 Waiver of tolls for relief vehicles**

Although The Gambia does not have a toll road/charge system yet, it is anticipated that the joint-project between Senegal and The Gambia for the construction of the Trans-Gambia “Yelitenda-Bambatenda” bridge would raise the need to accommodate such a regulation.

**7.1.3 Speedy clearance of relief vessels**

The Ports Act [Act No 21 of 1972] and subsequent amendments] regulates all port and harbour undertakings in all parts of The Gambia. The Act established The Gambia Ports Authority whose main function is the operation of port and port facilities including the granting of licence, permit and certificate; imposition of fees and charges and any port related matters in the best interest of the public.<sup>176</sup>

Under this Act, the Minister for Transport is empowered to give directions to the Authority in relation to policy matters that may be of public interest and the Authority shall give effect to any such directions.<sup>177</sup> Given that disaster relief issues could be considered as matters of public interest, the Minister may under this provision give direction to the Authority for the waiver or reduction of port and related fees. This would clearly facilitate the speedy clearance of relief vessels and therefore accelerate the relief operations especially the distribution of goods, equipment and movement of relief personnel.

<sup>174</sup> Motor Traffic Act [Act No. 7 of 1948 and subsequent amendments].

<sup>175</sup> Motor Traffic Act, Part IX, Section 92, p45.

<sup>176</sup> Laws of The Gambia, Vol. 10, CAP 68:01, Ports Act [Act No 21 of 1972 subsequently amended], p9.

<sup>177</sup> Ibid, Part III, Section 9, p17.

## Transport during disaster

In addition, and more specifically, Section 41(3) (c) of the National Search and Rescue Commission Act 2008 empowers the Minister to make necessary arrangements with the appropriate customs, immigration, or other authorities with a view to expediting entry into The Gambia for relief operations. This discretion shall among others provide for the speedy clearance of relief vessels including the waiver or reduction of port, demurrage or docking fees.

### Recommendations

The Civil Aviation Act should be amended to make specific provisions for the facilitation of air transport during a disaster relief and initial recovery period, whilst clarifying the existing procedure and expediting it where possible.

The NDM Act 2008 should be revised in line with Articles 45, 46 and 47 of the Model Act on IDRL to include clear provisions exempting motor vehicles imported for the purpose of relief and recovery operations from registration fees, and speedy licensing procedures.

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## **Chapter 8**

# Freedom of movement, access and security

## Freedom of movement, access and security

## 8.1 Freedom of movement during disaster

### IDRL Guidelines Article 16(d). Personnel

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

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

In The Gambia, there are no specific law/policies or plans which state that approved international disaster relief providers will have freedom of access to disaster-affected persons.

However, the NDM Act 2008<sup>178</sup> states that if the President, on the advice of the Disaster Management Council, is satisfied a disaster in any area is of such a nature and extent that exceptional measures are necessary or that circumstances are likely to arise making it necessary to take those measures, to assist and protect the public of the area, he/she shall in accordance with Section 34 of the Constitution declare that a state of public emergency exists.

Under this Act, the Executive Director of the National Disaster Management Agency, subject to the Emergency powers of the President (under Section 92), during a state of public emergency may if it is necessary take measures to ensure public safety.<sup>179</sup>

In particular, the Executive Director can give directions on access to and freedom of movement during a major emergency or disaster to any person or agency and by extension international relief agencies, whose responsibilities generally require them to engage in disaster response or recovery operations.<sup>180</sup> In this regard, there could be an in built flexibility in the provisions of the NDM Act to allow freedom and access to disaster-affected persons but in close coordination with the NDMA.

On the other hand, this seems rather like a restriction on movement, instead of a guarantee on free movement, which would be required in an emergency.

### 8.1.1 Assisting affected migrants (undocumented workers or any other groups)

The Immigration Act<sup>181</sup> is the main law regulating the entry and status of persons in The Gambia. There are no specific provisions in this Act or other existing laws (immigration or penal law) that would interfere with the ability of aid providers to assist affected migrants (undocumented workers) or any other group.

The general rule in the Immigration Act is that all persons entering The Gambia must regularise their status through the registration formalities and payment of relevant immigration fees.

<sup>178</sup> Laws of The Gambia, Vol. 12, CAP 72:03, National Disaster Management Act of 2008, Chapter X, Section 90, p51.

<sup>179</sup> Ibid, Section 94, p54.

<sup>180</sup> Ibid, Section 94 (3) (n), p55.

<sup>181</sup> [Act No. 2 of 1965 and subsequent Amendments.]

However, the law does not make distinction between persons, whether documented or otherwise, during a public emergency or disaster. Therefore, relief workers will be able to extend relief assistance to undocumented migrants based on humanitarian principles.<sup>182</sup>

### 8.1.2 Distribution of relief items

There are no specific provisions in the NDM Act 2008 or other existing laws and rules that would impede humanitarian organizations from distributing their own relief according to humanitarian principles. The standard operating procedures for emergency relief assistance in The Gambia is that such assistance has to be coordinated through the NDMA<sup>183</sup> to avoid duplication of efforts and resources and thus to generate maximum impact from the operations as well as to maximise the use of available resources.

## 8.2 Ensuring the safety and security of assistance

### IDRL Guidelines Article 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.

As the main legislation dealing with disaster law issues in The Gambia, the NDM Act 2008 does not make any special provision for the safety and security of relief personnel, premises, transport equipment or goods. There are also private security firms such as G4S, whose services can be utilized on a contractual basis to secure the personnel, premises, goods and equipment of any relief organization.

The NDM Act 2008<sup>184</sup> does provide for restrictions on travel to affected areas for the purposes of safety and security of personnel and equipment especially during disaster situations. However, it does not address specific measures such as the use of military/armed escorts to travel to affected areas.

### Recommendations:

- There should be a clear provision in the NDM Act guaranteeing the freedom of movement of humanitarian personnel for the purposes of disaster response or initial recovery assistance.
- There should be a clear provision in the NDM Act assigning responsibility for action to ensure the safety and respect of humanitarian personnel.

<sup>182</sup> Focus group meeting with the combined security services (Police, Immigration and Customs & Excise) at the Soma Border Post (LRR).

<sup>183</sup> Ibid, Chapter IX, p47–50.

<sup>184</sup> Ibid, Chapter X, State of Emergency, Sections 93 & 94, p53–54.

## Freedom of movement, access and security

### 8.3 Additional facilities and measures

#### IDRL Guidelines Article 23. Extended Hours

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

#### Article 24. 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.

As previously mentioned in Chapter 6 above, all the customs and immigration border posts including the Banjul international airport operate on a twenty-four hour basis. This is essential to facilitate the movement and entry clearance of international relief personnel, their goods and equipment into The Gambia.

Under the NDM Act 2008, the Executive Director of the NDMA is conferred authority in a state of emergency to make provisions for additional facilities and measures during recovery operations.<sup>185</sup>

These powers include the use of facilities for relief providers for transport, use of buildings and land, use of cargo equipment and loading/unloading support for free or reduced price or where necessary to pay compensation.<sup>186</sup>

<sup>185</sup> National Disaster Management Act 2008, Chapter X, Section 96, P56.

<sup>186</sup> National Disaster Management Act 2008, Chapter XI, Section 97, P57.



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# **Chapter 9**

## Accountability and transparency

## Accountability and transparency

### **IDRL Guidelines Article 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.

### **Article 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.

### **Article 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.

## 9.1 Accountability and transparency of the government

The NDMA is the main institution charged under the NDM Act 2008 for the coordination of all disaster related issues in The Gambia including the authority to receive and disburse international assistance provided to the country.

The Act empowers the NDMA to establish a National Disaster Fund<sup>187</sup> where monetary assistance from both internal and local donor are lodged and is designed for disaster risk reduction and relief activities.

In maintaining the National Disaster Fund, the Agency shall observe the provisions of the financial instructions and other laws governing the receipt, control and disbursement of public funds. The Act stipulates that donation shall not be diverted for any other purpose without the authority of the donor, agencies or Government.<sup>188</sup>

Furthermore, the NDM Act 2008<sup>189</sup> also expressly states that all forms of assistance, within and outside The Gambia, shall be utilized for the purposes for which they have been intended only. In addition, the Act<sup>190</sup> requires the submission of the Agency's income and expenditure to the Auditor General Office for audit within three months of the end of each financial year and these audited accounts are subsequently laid before Parliament for public scrutiny.<sup>191</sup>

Notwithstanding the Criminal Code, the Act<sup>192</sup> also prescribes penalties for offenses relating to the misappropriation of funds, materials and other items meant for providing relief in disaster situations. The penalties, which are determined by the courts, include heavy fines and/or prison sentence.

## 9.2 Accountability of assisting organisations

Article 4 of the IDRL Guidelines enumerates responsibilities of assisting actors in providing humanitarian assistance, including abiding by the laws of the affected State and applicable international law, coordinating with domestic authorities, and respect of the human dignity of disaster-affected persons at all times.

Concerning the provision of humanitarian assistance in disasters, neither the NDM Act 2008 nor other disaster related legislations expressly require for the observance of minimum standards. However, the standard operating procedures under the national humanitarian architecture and support systems recognise the application of the SPHERE<sup>193</sup> standards in emergency response. In practice therefore, these rules are applied as international standards in all emergency relief operations in The Gambia.

In addition, the Gambian NGO Code of Conduct sets out the rules for ensuring that NGOs are accountable and transparent; and that they do not divert from their stated missions and goals.

<sup>187</sup> Laws of The Gambia, Vol. 12, CAP 72:03, National Disaster Management Act, Chapter XII Part I, Section 108, p60.

<sup>188</sup> Ibid, Chapter XII, Part II, Section 116 (5), p63.

<sup>189</sup> Ibid, Chapter XII, Part I, Section 114 (1), p62.

<sup>190</sup> Ibid, Chapter II, Part V, Section 26, p26.

<sup>191</sup> Ibid, Chapter II, Part VI, Section 26, p26.

<sup>192</sup> Ibid, Chapter XIII, Section 124, p66.

<sup>193</sup> See: <http://www.sphereproject.org/about/> [Viewed: 16th March 2015 at 10:43am].

## Accountability and transparency

Failure to comply with the Code of Conduct does not automatically lead to deregistration. The situation would be discussed with the NGO in question to find a suitable solution in compliance with the Code of Conduct. It is only under extreme circumstances that an NGO's licence will not be renewed for non compliance with the Code of Conduct.

### Recommendations

A revised NDM Act 2008 should make provisions for the application of uniform minimum quality standards and respect of international principles by international organizations operating in the country in its proposed revision, whilst providing for an oversight mechanism.

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## **Chapter 10**

The Gambia as a transit  
or sending state for  
international assistance

## The Gambia as a transit or sending state for international assistance

### IDRL Guidelines Article 16(2). Transit

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

### Article 17 IDRL Guidelines: Goods and Equipment

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

The Customs and Excise Act 2010<sup>194</sup> states that there are no prohibitions or restrictions on goods in transit, transshipment or exportation as stores of an aircraft or vessel. This is in conformity with The Gambia's obligation under Article VII (Freedom on Transit of Goods) of the General Agreement on Tariffs and Trade 1947 of World Trade Organization.

Also stated in the Customs and Excise Act 2010<sup>195</sup> is that goods in transit shall be exempted from all customs duties, taxes, tariffs or governmental fees.<sup>196</sup> Moreover, there are no restrictions on the transit of relief goods or relief personnel to other countries or on the sending of international relief goods and personnel from The Gambia.

The Gambia has not been involved in any major health related disaster requiring the country to serve as a major transit state for the facilitation and movement of relief assistance to other countries. However, the recent outbreak of Ebola Virus Disease (EVD) in the sub-region exposed The Gambia to the risk of an outbreak of EVD in the country.

This worrying situation resulted in the closure of borders with the affected countries and in this case, the temporary cancellation of flights coming from the affected countries of Sierra Leone, Guinea and Liberia and the temporary cancellation of flights coming from them. While The Gambia was not alone in these actions, they were contrary to WHO advice and to specific decisions by the African Union and UN Security Council.<sup>197</sup>

<sup>194</sup> Customs and Excise Act 2010, Part VI, Section 101, p99.

<sup>195</sup> Ibid 191, p60.

<sup>196</sup> Customs and Excise Act 2010 (Schedules), Eight Schedule (Prohibited and Restricted Goods Section 38), Part C, p887.

<sup>197</sup> IFRC, The hard sell: containing Ebola by lifting travel bans, 23 October 2014. Available at <http://www.ifrc.org/en/what-we-do/disaster-law/news/africa/the-hard-sell--opening-borders-to-contain-ebola-67267/>



## The Gambia as a transit or sending state for international assistance

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Furthermore, the Transit of relief goods and personnel to and from the Republic of Senegal through the Trans-Gambia border is specified in the Immigration Act.<sup>198</sup> In this case, the Minister may make rules waiving or authorising the Director General of Immigration to waive any requirements of the Act in respect of bona fide travellers that may include foreign relief personnel passing through The Gambia in disaster situations en route from one part of the Republic of Senegal to another part of that Republic via the Trans-Gambia border road or such other route as the Minister of the Interior may by the rules prescribe.

<sup>198</sup> Laws of The Gambia, Vol. 4, CAP 16:02, The Immigration Act, Part X, Section 23(2), p22.

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# **Chapter 11**

## Summary of recommendations

**Summary of recommendations****The Gambia's Legal Framework for Disaster Risk Management**

The NDM Act 2008 has provided the enabling policy and regulatory framework for DRM in The Gambia including the institutional support structures. However, the Act is not comprehensive and should be revised to include clear provisions to regulate and facilitate international disaster relief and recovery assistance as recommended in this study.

In light of the gaps and other important issues raised, the following specific recommendations are being proposed:

- Update the NDM Act 2008 in accordance with the recommendations provided in the report and in light of the IDRL Guidelines and the Model Act on IDRL;
- Develop the necessary regulation to establish the special mechanisms that offers legal facilities for registered actors in providing relief and initial recovery assistance after disasters;
- Create a pre-accreditation mechanism to allow international actors to register in the country and access legal facilities in disasters as set out in Chapter V of the Model Act on IDRL;
- Create within the amended NDM Act 2008 an IDRL technical committee comprised of the governmental entities with a role in the disaster response with a mandate to work on improving the legislation pertinent to international disaster assistance and during disasters be deployed to the different entry points to allow the registration of actors and conducting the special procedures that grant legal facilities to humanitarian providers ("one stop shop");
- Adopt a mechanism for temporary recognition and registration of entities engaged in international assistance during periods of emergencies. This should include possibility of fast tracking registration and recognition for purposes of opening bank accounts, getting visas and conducting general business in the country.
- It is recommended to establish a so-called Single Window International Facilitation Team (SWIFT) for the purpose of consolidating and expediting the legal requirements concerning entry of incoming international personnel, goods, equipment and transport, as well as the application process for eligibility for accessing legal facilities in disasters.
- Policy and legal frameworks should be amended to include provisions for request, receipt and facilitation of international assistance and it is recommended to build on the IDRL Guidelines. There is a need to develop operating manuals and guidelines to guide the implementation processes during and after disasters thereby enhancing the quality of response and strengthening coordination in emergency, not only of national actors but also between national and international actors.

## Summary of recommendations

### Treaties

The Gambia has ratified a number of treaties and conventions relevant to international disaster response law. While some of them may have already been domesticated into relevant national laws, others not yet incorporated need to be domesticated. Therefore the following recommendations are made:

- The Gambia should complete the process of accession and/or ratification to Tampere Convention be officially listed as a signatory state;
- The Gambia should consider acceding to Specific Annex J.5 to the Kyoto customs convention which contains rules on customs clearance of relief goods;
- The Gambia should consider ratifying Annex B9 to the Istanbul Convention on the admission of humanitarian goods;
- The Civil Aviation Act should be amended with clear provisions to ensure that personnel and articles arriving on relief flights are cleared without delay in light of existing obligations under Annex 9 of the Chicago Convention.

### Coordination and request for international assistance

- In collaboration with partners, NDMA should develop guidelines and standard operating procedures to facilitate effective coordination of international relief assistance;
- NDMA to conduct regular simulation exercises on the national and regional contingency plans in close collaboration with UN agencies, GRCS and other key partners to identify the national response capability of The Gambia and gaps for improvement;
- NDMA should update its current database and website to facilitate information sharing among and between the various in disaster response.

In relation to request for international relief assistance, it is recommended that the NDM Act 2008 should be revised to include clear provisions:

- For systematic and standard operating procedures for declaration of emergency, and the timely request for international assistance.

### Role of The Gambia Red Cross Society in disaster response

- The Gambia Red Cross Society should be member of the National Disaster Management Council, in view of its crucial role as auxiliary to the public authorities in the country in disaster preparedness and response.

## **Summary of recommendations**

### **Early Warning Systems**

- The proposed revision of the NDM Act 2008 should make provisions for the National Platform for DRR and CCA to strengthen communication and information sharing with the Regional EWS networks. This will facilitate timely provision and dissemination of climate related information and services to enhance EWS;
- There should be a specific allocation of resources into a fund for investment in an early warning system, and other disaster preparedness measures;
- Following the provisions of the NDM Policy of 2013, develop an integrated, coordinated and harmonized EWS.

### **General Customs Arrangements**

Amend the NDM Act 2008 with clear provisions to facilitate the entry and speedy clearance of goods/equipment in accordance with Article 29 of the Model Act on IDRL.

To codify the good ad hoc practice of exempting relief items from taxes and duties, the provisions should include exemptions from all duties, taxes and restrictions on relief goods and equipment in accordance with Article 32 of the Model Act on IDRL.

### **Use of Telecommunication Equipment for Disaster Relief Operations**

The Information and Communications Act 2009 should be amended and expanded to make clear provisions for the speedy licensing and waiver of license requirements and fees.

### **Importation of Food**

It is recommended that a new set of regulations to the FSQ Act 2011 be promulgated to facilitate the speedy approval and clearance of food importation into The Gambia by international humanitarian organizations for relief operation. Alternatively, these provisions may be incorporated in a revised NDM Act for international disaster relief and initial recovery assistance.

### **Importation of Medicines**

It is recommended that the Medicines Act is amended to cater for exemptions to facilitate and ensure speedy entry into the country of medicinal products by assisting organisations, and ensuring appropriate labeling of medicines in the languages commonly understood in The Gambia.

### **Use of Rescue dogs in Emergency Relief and Rescue Operations**

The NDM Act 2008 should be amended to make clear provisions for speedy entry, clearance, registration and the use of rescue dogs for emergency relief

### **Taxation**

There should be a clear provision in the Income and Value Added Tax Act, for exemptions from income tax for assisting humanitarian actors.

## Summary of recommendations

### Importation of Vehicles

The Customs Act should be amended with specific provisions facilitating the speedy entry and clearance of motor vehicles into the country for the purpose of relief and recovery operations. The regulations to the Motor Traffic Act should also include provisions exempting such imported motor vehicles from registration procedures.

## Management of foreign personnel during a disaster

### Facilitation of entry permits and visas

The Immigration Act and the NDM Act should include provision for the expedited provision of visas and work permits for humanitarian personnel in the case of disaster response or initial recovery assistance.

### Recognition of professional qualifications of foreign personnel

The NDM Act 2008 should be amended to include specific provisions recognizing the foreign professional qualifications including pre qualification systems and expedited procedures for emergency review of qualifications in line with Article 26 of the Model Act on IDRL.

### Air transport for relief Goods and Equipment

The Civil Aviation Act should be amended with specific provisions for the priority of landing and facilitations of air transport during a disaster relief and initial recovery period.

### Freedom of movement, access and security

- Amend the NDM Act 2008 to include a provision guaranteeing the freedom of movement of humanitarian personnel for the purposes of disaster response or initial recovery assistance.
- Amend the NDM Act 2008 with a clear provision assigning responsibility for action to ensure the safety and respect of humanitarian personnel.

### Accountability and Transparency

The NDM Act 2008 should be amended with clear provisions for the application of uniform minimum standards and provide enforcement mechanisms for accountability and transparency of the assisting organizations. Such revision should provide a framework to monitor compliance of registered disaster relief agencies regarding financial reporting requirements to ensure greater fiscal responsibility in the civil society and NGO sector thereby building donor confidence in local organizations as partners in disaster relief.



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# Chapter 12

## Annex

# Annex 1: List of References

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## Annex 2: Consultation process

It was in the framework of the Disaster law project in The Gambia, a collaboration between The Gambia Red Cross Society and the Disaster Law Programme of the IFRC, which was initiated in May 2014, that the current report has been produced. During the process to revise and analyze The Gambia's legal framework related to disaster response that the various efforts of sensitization and consultation of various a wide range stakeholders took place. The consultation process was conducted through the organization of a series of consultative meetings and bilateral meetings with relevant stakeholder. These aimed at increasing awareness and knowledge on disaster law issues and promoting IDRL Guidelines among legislators, and other stakeholders involved in disaster risk management, and supporting government-initiated efforts to strengthen the country's legal preparedness for disasters.

The consultations resulted in discussions on possible amendments to existing legislations in relevant areas, such as customs, immigration, civil aviation acts pertinent to the regulation and facilitation of international disaster relief and recovery assistance. The meetings brought together key stakeholders including representatives from OP, GRCS, MoFEA, GID, NDMA and NEA.

In a dedicated workshop, it was found that although the existing NDM Act 2008 has many solid aspects, there is a need for improvement in order to make it more comprehensive, coherent and adaptable to new problematic areas of disasters that have diversified and increased in recent years.

As a result, the Office of the President, the NDMA, GRCS and IFRC reached a consensus on the need to hold two additional training workshops on disaster law in The Gambia; the first workshop, held on September 17, 2014, targeted parliamentarians, customs officers, governors, senior officers of immigration, Ministry of Justice, Attorney General Office, Gambia Civil Aviation Authority and Gambia Ports Authorities. The second targeted members of the National Platform for DRR and CCA. Both workshops included some training on legal issues in international disaster relief as well as discussion of the domestic situation.

## Annex 3: List of stakeholders consulted

Name	Title	Institution
Cherno Marenah	Solicitor General and Legal Secretary	AG's Chambers and Ministry of Justice
Col. Alagie Sanneh	Executive Director	NDMA
Mrs. Fatou Gaye	Acting Secretary General	GRCS
Mr. Buba Darboe	Disaster Management & Food Security Coordinator	GRCS
Mr. Daniel Cardos	Deputy Clerk	National Assembly of The Gambia
Baboucarr Jobe	Senior Economist	MoFEA
Makaira Badjan	Managing Director	Royal Insurance Company Limited
Mr. Joseph Njie	Commissioner of Tariffs and International Trade Agreements	GRA
Lalo Badjie	Senior Customs Officer, Soma Border Post	GRA
Lamin King Kolley	Police Commander, Farafenni Border Post	GPF
Zainab Jallow	Director General	FSQA
Mary Johnso	Legal Advisor	FSQA
Dr. Kebba Daffeh	Veterinarian	Private Veterinary Consultant
Musukebba Sonko	Executive Director	NGO Affairs Agency
Momodou Badjie	Deputy Director	NGO Affairs Agency
Mr. AlagieTaal	Director, Economic Policy Analysis	MoFEA
Mr. Baboucarr Jobe	Economic Policy Analyst	MoFEA
Mr. Saihou Touray	Senior Banking Officer	CBG
Dr. Samba Ceesay	Director of Health Services	MoHSW
Mr. Sarjo Khan	Director Customer Services	Gamtel/Gamcel
Mr. Babanding Sabally	Director Pharmaceutical Services	MoHSW
Ellen Tida Manga	Legal Advisor	GCAA
Karalang Jarju	Senior Immigration Officer	GID
Arona Njie	Director	The Gambia Maritime Administration

The table includes stakeholders consulted in bilateral interviews and those who attended the validation workshop for the present report. Additional institutions and persons have been adding input to the report through workshops as part of the project.



# 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.