



LEGAL PREPAREDNESS FOR INTERNATIONAL DISASTER ASSISTANCE IN SOUTHERN AFRICA

Regional assessment and country profiles

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Legal preparedness for international disaster assistance in Southern Africa

Regional assessment and country profiles

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Mozambique, Beira district, 2020. One year after Idai people are still struggling to get back on their feet. Still dealing with the consequences of Idai, they are being hit by floods. © IFRC / Anette Selmer-Andresen

EXECUTIVE SUMMARY

This report analyses the national legal frameworks related to international disaster assistance across ten countries in Southern Africa, namely Angola, Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, South Africa, Zambia, and Zimbabwe, through a review of legislation, policies, and regulations. The focus of this research is to assess the legal preparedness of states in Southern Africa to facilitate international assistance in the event that a disaster exceeds national capacities. The assessment in this report has been conducted using the ten guiding questions from the Checklist on the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (the IDRL Checklist). The IDRL Checklist is based on the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (the IDRL Guidelines).¹ The IDRL Guidelines, which were unanimously adopted by the 30th International Conference of the Red Cross and Red Crescent in 2007, are a set of recommendations concerning domestic legal preparedness for international disaster assistance.

This report identifies several strengths and opportunities pertaining to domestic legal preparedness for international disaster assistance in the sub-region:

- most of the countries studied have dedicated disaster risk management (DRM) legislation, and some of these laws contain provisions on international disaster assistance. A number of countries also reference the need to develop regulations or guidance documents on international disaster assistance in their DRM laws, which indicates that there is a recognition of the importance of regulating and facilitating international disaster assistance. In some instances, the provisions on international disaster assistance in the law were limited but more detailed provisions could be found in the relevant DRM policies;
- legal facilities for international assisting actors could be found in the sectoral laws of some countries studied. For example, states that are party to the Southern African Customs Union Agreement (SACU Agreement), namely, Botswana, Eswatini, Lesotho, Namibia, and South Africa, make provision for goods imported for the relief of persons in case of famine or other national disaster to be imported under a full rebate of customs duty and free from VAT; and
- several countries in the sub-region are currently revising their DRM frameworks, such as Eswatini, Lesotho, Malawi, and Zimbabwe. These processes represent an important opportunity to include provisions that facilitate and regulate international disaster assistance in line with the IDRL Guidelines in new DRM laws.

¹ IFRC, Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (2008) (IDRL Guidelines). Note that the IDRL Guidelines have been re-issued with new forewords in 2011 and 2017.

This report also identified the following gaps in domestic legal preparedness for international disaster assistance:

- most of the countries studied adopt a dualist approach to international law, meaning that enacting legislation is required before international agreements are binding at the domestic level. However, many of the countries studied have not acceded to, or domesticated, most major treaties relevant to international disaster assistance;
- at present, there is no guiding framework on international disaster assistance at the regional or sub-regional level to promote a uniform approach to international disaster assistance in the sub-region. As a result, the approach to international disaster assistance varies widely across the sub-region;
- some countries, such as Botswana, do not have dedicated DRM legislation, instead relying on policy documents to guide DRM in the country;
- although the approach to international disaster assistance across the countries included in this study varies, in general, existing DRM legislation does not contain detailed provisions on international disaster assistance, and none of the legal frameworks studied fully comply with the IDRL Guidelines. In most instances the provisions related to international disaster assistance are fragmented, with provisions directly and indirectly relevant to international disaster assistance being found in DRM laws and policies as well as in various sectoral laws and regulations. While sectoral laws and regulations may be used to assist in disaster situations, this situation creates uncertainty for actors involved in international disaster assistance, who will be unfamiliar with the legal framework and who may struggle to identify the applicable legislation and to determine the applicability of the various laws to their operations; and
- linked to the previous finding, it is challenging to locate and access online primary and secondary legislation, policies, guidelines, and codes of practice in several counties included in this study. Even where the documents are accessible, it is challenging to determine whether the laws, regulations and policies are still up-to-date or whether they have been amended, repealed, or replaced. This adds to the uncertainty that international assisting actors may face when working in unfamiliar legal frameworks.

Zambia, 2013. A mother and daughter, who are among the 1500 people displaced by groundwater flooding in central Zambia in January, cook in the relocation camp where they will spend the next few months. © IFRC / Stanley Ndhlovu



Considering these findings, this report makes the following recommendations:

- states in Southern Africa should consider acceding to and domesticating treaties which relate to international disaster assistance;
- states which do not have dedicated DRM laws, or which have outdated DRM laws, should consider enacting national DRM legislation or reviewing their current legal frameworks in order to provide a legal and institutional framework for DRM in the country, which is comprehensive, climate smart, and inclusive. Comprehensive provisions regulating international disaster assistance should also be included within such legislative frameworks, which should:
 - clearly outline the process for assessing whether international disaster assistance is required and for requesting and terminating international disaster assistance;
 - clearly assign a focal point for the coordination of international disaster assistance;
 - facilitate the entry, operation, and transit of international actors through providing clear and detailed legal facilitates required for their operations;
 - outline eligibility criteria for assisting organisations to access legal facilities;
 - commit international actors to abide by relevant domestic and international standards;
 - prevent diversion, misappropriation or fraud concerning international disaster assistance goods and funds; and
 - clearly assign roles to governmental institutions and stakeholders, including Red Cross and Red Crescent National Societies (National Societies), at all levels for the functions listed above.

The IDRL Guidelines, IDRL Checklist and the [Model Act on IDRL](#) could assist lawmakers in developing such legislation. The development of a model act at sub-regional level could also be a useful tool to support states to develop such laws and policies at national level.

- states in Southern Africa should ensure that their main DRM instruments and relevant sectoral laws are readily accessible online, so that international assisting actors can identify the applicable provisions easily. It is also recommended that states prepare a short document summarising all the applicable legal provisions and publish this document online on the website of the main DRM government agency, department, or office, and
- in addition to strengthening national DRM Laws, the development of a protocol or guidelines on international disaster assistance at sub-regional level to lay the foundation for a sub-regional response mechanism, is also suggested to promote a uniform approach to international disaster assistance and ensure better coordination of international disaster assistance across Southern Africa.



Eswatini, 2020. Eswatini Red Cross Society Cash transfer operation. Calakalithethwa Dlamini has a broken hipbone. Before the injury he earned a small income by collecting and selling wood. He is a Red Cross beneficiary of the cash transfer program © Finnish Red Cross / Ville Palonen

INTRODUCTION

Every year, countries within Southern Africa are adversely affected by both human-induced and natural disasters, which result in loss of lives, assets, livelihoods, and damage to the environment. This consequently leads to weakened food and nutrition security, fragile environments, forced migration, increased health risks, increased vulnerability, and poverty. Climate change is further aggravating these crises.

In some instances, disasters may overwhelm the domestic capacity of a state. While states bear the primary responsibility to respond to disasters and to meet the needs of the affected population, support from the international community, through offers of assistance or in response to an emergency appeal, should complement national efforts when domestic capacity is exceeded.² In 2007, the International Federation of Red Cross and Red Crescent Societies (IFRC) embarked on a global study of international disaster response laws, rules, and principles (IDRL), to identify legal and regulatory barriers to international disaster assistance (the 2007 IDRL Study).³ The 2007 IDRL Study identified a number of recurrent regulatory challenges that can hamper the expedited delivery of international assistance in disaster settings.⁴ These recurrent issues are related to humanitarian access (such as restrictions in the clearance of goods and equipment, imposition of charges and taxes for humanitarian cargo, delays in the issuance of visas and work permits for international relief actors, and the lack of recognition of their professional qualifications) as well as quality, accountability, and coordination from international relief providers (such as inadequate or unnecessary goods, inexperienced personnel and poor-quality assistance).⁵

In many cases, these issues arise due to the absence of a legal framework that clearly stipulates the roles and responsibilities of the various government institutions and assisting actors as well as the procedures for requesting, channelling, and managing aid.⁶ As such, it is critical that national laws and policies provide clear rules and procedures to facilitate international disaster assistance and guide national and international humanitarian efforts. It is against this backdrop that the IDRL Guidelines were developed by the IFRC. The IDRL Guidelines provide guidance on how laws and policies may facilitate international assistance that complements domestic disaster relief efforts while at the same time ensuring that the necessary legal facilities are granted to humanitarian partners so that they can provide assistance effectively. The IDRL Guidelines have four core ideas:

2 IFRC, Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (2011) (IDRL Guidelines), paragraph 3.

3 IFRC, Law and Legal Issues in International Disaster Response: A Desk Study (2007), Part III.

4 IFRC, Law and Legal Issues in International Disaster Response: A Desk Study (2007), Part III.

5 IFRC, Law and Legal Issues in International Disaster Response: A Desk Study (2007), Part III.

6 IFRC, Law and Legal Issues in International Disaster Response: A Desk Study (2007), Conclusion.

1. **Domestic actors have the primary role**, meaning that it is first and foremost the responsibility of the government of the affected state to address the humanitarian needs caused by a disaster within its borders.⁷ However, National Red Cross or Red Crescent Societies (National Societies) and other domestic civil society actors in the affected state play a key supporting role and therefore international disaster assistance should be designed and implemented so as to be complementary to the efforts of these domestic actors;⁸
2. **International relief providers have responsibilities** and should be held responsible for abiding by certain minimum humanitarian standards, which include the principles of humanity, neutrality, and impartiality as well as minimum standards of coordination and quality in their relief goods, personnel, and programmes;⁹
3. **International actors need legal facilities**, and the IDRL Guidelines set out specific types of legal facilities that governments should provide to assisting states and humanitarian organisations so that they can do an effective job of responding to humanitarian needs.¹⁰ The term “legal facilities” refers to “special legal rights that are provided to a specific organisation (or a category of organisations) to enable it to conduct its operations efficiently and effectively”.¹¹ Legal facilities may take many forms: they may be positive rights or entitlements, an exemption from a law that would otherwise apply, or access to simplified and expedited regulatory processes.¹² Examples of legal facilities relevant to international disaster assistance include expedited visa processing and customs clearance for relief personnel, goods and equipment; facilitation of relief transport; exemptions from taxes, duties and fees on relief activities; and simplified means for humanitarian organisations to acquire temporary domestic legal personality in order to operate legally in the country;¹³ and
4. **Some legal facilities should be conditional** and should only be granted to eligible assisting actors.¹⁴ An assisting actor is any “assisting humanitarian organisation, assisting state, foreign individual, foreign private company providing charitable relief or other foreign entity responding to a disaster on the territory of the affected state or sending in-kind or cash donations”.¹⁵ However, legal facilities should not be granted to any actor wishing to participate in a disaster response operation, because of the potential to abuse or misuse such facilities.¹⁶ As recommended in the IDRL Guidelines, national laws could distinguish between legal facilities to be granted to assisting states and legal facilities granted to other international actors.¹⁷ In addition, states should develop mechanisms and criteria to determine eligibility to receive legal facilities, which should ideally include: a commitment to comply with minimum standards in humanitarian disaster relief and domestic laws; adherence to fundamental humanitarian principles such as humanity, neutrality and impartiality; and possessing adequate technical competences and capacity.¹⁸

The IDRL Guidelines are supported by additional tools including the [Model Act](#),¹⁹ the [Model Emergency Decree](#),²⁰ and the [IDRL Checklist](#). The latter of which contains a list of ten key questions relating to IDRL that can be used as an assessment tool to assist states when making use of the IDRL Guidelines.

7 IDRL Guidelines, page 9.

8 IDRL Guidelines, page 9.

9 IDRL Guidelines, page 9.

10 IDRL Guidelines, page 9.

11 IFRC, Guide to Strengthening the Auxiliary Role through Law and Policy (2021), page 24.

12 IFRC, Guide to Strengthening the Auxiliary Role through Law and Policy (2021), page 24.

13 IDRL Guidelines, page 9.

14 IDRL Guidelines, page 9.

15 IDRL Checklist, page 16.

16 IDRL Checklist, page 16.

17 IDRL Guidelines, paragraphs 13 and 14.

18 IDRL Checklist, page 16.

19 IFRC, Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (2013).

20 IFRC, Model Emergency Decree for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (2017).

The report examines legal preparedness for international disaster assistance in the following countries to identify trends, opportunities, and challenges related to legislative frameworks for both international and regional cooperation:

- **the Republic of Angola (Angola);**
- **the Republic of Botswana (Botswana);**
- **the Kingdom of Eswatini (Eswatini);**
- **the Kingdom of Lesotho (Lesotho);**
- **the Republic of Malawi (Malawi);**
- **the Republic of Mozambique (Mozambique);**
- **the Republic of Namibia (Namibia);**
- **the Republic of South Africa (South Africa);**
- **the Republic of Zambia (Zambia); and**
- **the Republic of Zimbabwe (Zimbabwe).**

This report aims to assist governments to integrate key aspects of IDRL into their national legal frameworks by analysing the legal preparedness for international disaster assistance of the above ten countries. This report begins by setting out the assessment of IDRL in Southern Africa, using the guidance contained in the IDRL Guidelines, as well as the following ten questions adapted from the IDRL Checklist:

1. Do the legal frameworks for disaster risk management address international disaster assistance?
2. Are there clear focal points for coordinating international disaster assistance?
3. Do laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?
4. Do laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?
5. Do laws and regulations provide for necessary legal facilities to be provided to international assisting actors?
6. Do laws and regulations set out quality standards for international assisting actors?
7. Do laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?
8. Do laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?
9. Do laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?
10. Do laws and regulations outline procedures for international disaster assistance sent from, and transiting through the country?

The research underpinning this report consisted of mapping the IDRL frameworks at global, regional, sub-regional and domestic level through desktop research. Therefore, following the assessment of IDRL in Southern Africa, brief overviews of the international, regional, and sub-regional IDRL frameworks are provided. The mappings of the domestic legal frameworks of the ten countries included in this study were also undertaken through desktop research using publicly available, online resources from each of the ten countries included in the study. In addition, where possible, the research team contacted relevant focal points from the National Societies by email and through virtual meetings to ensure the accuracy of the mappings. These mappings are included in this report as country profiles, following the overviews of the IDRL frameworks. The country profiles are followed by a brief conclusion.

The tables below set out the documents identified as the key DRM laws and policies for each country included in this study, as well as the acronyms or short titles used for these documents:

Country	Guiding legislation for DRM	Acronym/ short title
ANGOLA	Basic Civil Protection Law of 2003 (Law 28/03), as amended by Law 14/20 of 22 May 2020	The Basic Civil Protection Law
BOTSWANA	No dedicated DRM legislation	N/A
ESWATINI	Disaster Management Act 1 of 2006	DM Act
LESOTHO	Disaster Management Act 2 of 1997	Disaster Management Act
MALAWI	Disaster Preparedness and Relief Act of 1991 [Chapter 33:05 of the laws of Malawi]	DPR Act
MOZAMBIQUE	Law on Disaster Risk Reduction and Management (Law 10/2020); and Regulations approving the Law on Disaster Risk Reduction and Management (Decree 76/2020)	2020 DRM Law; and The Regulations
NAMIBIA	Disaster Risk Management Act 10 of 2012; and Disaster Risk Management Regulations of 2013.	DRM Act; and DRM Regulations
SOUTH AFRICA	Disaster Management Act 57 of 2002	DMA
ZAMBIA	Disaster Management Act 13 of 2010	2010 DM Act
ZIMBABWE	Civil Protection Act [Chapter 10:06] of 1989	CPA

Country	Guiding Policy Documents for DRM	Acronym/ short title
ANGOLA	Presidential Decree No. 29/16 of 1 February 2016: approving the national plan for preparation, resilience, response, and recovery from natural disasters for the period 2015–2017; and Presidential Decree no. 30/16 of 3 February 2016: approving the Strategic Plan for Disaster Prevention and Risk Reduction	The National Plan; and The Strategic Plan
BOTSWANA	National Policy on Disaster Management (1996); National Disaster Risk Management Plan (2009); and National Disaster Risk Reduction Strategy 2013–2018 (2013)	NPDM; NDRMP; and The Strategy
ESWATINI	National Emergency Response, Mitigation and Adaptation Plan 2016–2022 ²¹	N/A
LESOTHO	Multi-Hazard Contingency Plan 2015–2018 ²²	N/A
MALAWI	Disaster Risk Management Policy (2015)	The Policy
MOZAMBIQUE	National Policy on Disaster Management (1999); National Disaster Risk Reduction Master Plan 2017–2030 (2016)	NPDM; and PDRRD
NAMIBIA	National Disaster Risk Management Policy of 2009; and National Disaster Risk Management Plan of 2011	DRM Policy; and DRM Plan
SOUTH AFRICA	National Disaster Management Framework (2005)	The Framework
ZAMBIA	National Disaster Management Policy (2015); and Disaster Management Operations Manual, adopted in July 2015 (the Manual).	NDM Policy; and The Manual

The authors wish to express their gratitude to the National Societies across Southern Africa who took the time to review and provide input to the country profiles. Nevertheless, the challenges surrounding desktop legal research in Southern Africa means that errors may remain. This is particularly true where the research team was unable to gain feedback within the research timeframe. IFRC Disaster Law would therefore welcome further feedback on the contents of this report.

21 UNDRR Country Reports on Public Investment Planning for Disaster Risk Reduction: Kingdom of Eswatini Risk-sensitive Budget Review, page 11. This document was unfortunately not available for review.

22 Lesotho Disaster Risk Financing Diagnostic (2019) available at <http://documents1.worldbank.org/curated/en/555701578344878017/pdf/Lesotho-Disaster-Risk-Financing-Diagnostic.pdf>. This document was unfortunately not available for review.



Zimbabwe, 2020. Esinath Nine, 65 years, is leaving a Red Cross food distribution site in Siakobvu area, Zimbabwe. Beneficiaries receive food items such as cooking oil, maize meal and sugar beans.
© Finnish Red Cross / Ville Palonen

REGIONAL ASSESSMENT

Question 1

Do the legal frameworks for disaster risk management address international disaster assistance?

The [IDRL Guidelines](#) recommend that states adopt comprehensive legal, policy, and institutional frameworks for DRM which should *inter alia* adequately address the initiation, facilitation, transit, and regulation of international disaster assistance.²³

Most of the countries included in this study have dedicated DRM laws, with the exception of Botswana, whose DRM framework consists of policy documents. The NDRMP of Botswana does, however, note the importance of developing DRM dedicated legislation in the country.²⁴ The approach to IDRL in national legislation of Southern African states is varied. For example, the laws of Zimbabwe do not appear to reference international disaster assistance at all. Others contain minimal references to international disaster assistance, such as Angola, Eswatini, Lesotho, Malawi, South Africa, and Zambia. In some of these instances, the laws explicitly make provision for regulations on international disaster assistance to be promulgated, such as in South Africa, and Zambia, but such regulations do not appear to have been developed (or at least could not be found online). This does, however, indicate that there is a recognition of the importance of regulating and facilitating international disaster assistance in these countries. In some instances, the DRM laws of a country contain minimal references to international disaster assistance, but the DRM policies in place provide more detail. For example, in South Africa, the DMA does not contain comprehensive IDRL provisions, but the primary policy document on DRM, the Framework, contains more detailed provisions on international disaster assistance. There are also examples of national DRM laws that contain more detailed provisions on international disaster assistance, such as the DRM Act of Namibia, which also includes legal facilities for international assisting actors. Some countries do not have DRM legislation at all but instead have DRM policies or plans which contain elements of IDRL, such as Botswana.

In general, however, most of the legal frameworks included in this study do not contain detailed or comprehensive IDRL provisions and none of the states studied fully comply with the IDRL Guidelines. In general, Southern African states would benefit from more detailed laws and policies that comprehensively regulate international disaster assistance, in line with the IDRL Guidelines. In this regard, it is worth mentioning that several countries in the sub-region are currently revising their DRM frameworks, such as Eswatini, Lesotho, Malawi, and Zimbabwe. These processes represent an important opportunity

23 IDRL Guidelines, paragraphs 8(1) and (2).

24 NDRMP, page 6.

to include provisions that facilitate and regulate international disaster assistance in line with the IDRL Guidelines in newly developed DRM laws. It is important to note, however, that the international disaster assistance framework of a country is not limited to disaster risk management laws and policies. Other sectoral laws, such as tax laws, customs and excise laws, exchange control laws, immigration laws, company laws, and aviation laws could also contain elements that relate to international disaster assistance. The cross-cutting nature of facilities recommended by the IDRL Guidelines for international assisting actors may require revision of sectoral laws to ensure cohesiveness with updated DRM laws.

In addition to strengthening national DRM Laws, the development of a protocol on international disaster assistance at sub-regional level is also recommended to promote a uniform approach to international disaster assistance in the Southern African region and ensure better coordination of international disaster assistance. In this regard, it is very encouraging to see that the Southern Africa Development Community (SADC) is in the process of developing several new mechanisms to enhance regional disaster assistance. Given these developments, it is vital that states in the sub-region review their national laws and policies to ensure that they comprehensively regulate international disaster assistance. The development of a model act and/or guidelines at sub-regional level could be a useful tool to support states to develop such laws and policies at national level.

Question 2

Are there clear focal points for coordinating international disaster assistance?

A core tenet of the IDRL Guidelines is that the affected state has the primary responsibility to ensure disaster assistance in their territory, as well as the sovereign right to coordinate, regulate and monitor international disaster assistance provided by assisting actors.²⁵ It is therefore crucial that a focal point for the coordination of international disaster response is clearly designated.²⁶ The IDRL Guidelines recommend that governments should consider establishing a national focal point to liaise between international assisting actors and government actors at all levels.²⁷

Some of the countries studied clearly assign the coordination of international assistance to a specific body. For example, in Botswana, the National Disaster Management Office (NDMO), with the assistance of the National Committee on Disaster Management (NCDM) and under the supervision of the National Emergency Coordinator (NEC), is responsible for coordinating international assistance requested by the Minister of Foreign Affairs and Cooperation.²⁸ However, there are some instances where the focal point for international assistance is difficult to identify from reading the laws and policies alone, either because responsibility for the coordination of international disaster assistance is not explicitly assigned (e.g., Lesotho, Malawi and Zimbabwe), or it is assigned quite vaguely in the law (e.g., Mozambique). Conversely, in some instances several institutions appear to be assigned coordinating roles with respect to international disaster assistance (e.g., Eswatini and South Africa), which also makes it difficult to identify the focal point easily. In some instances, although a focal point could not be easily determined from the law alone, the focal point in practice could be identified through further research (e.g., Malawi and Mozambique).

Therefore, it is recommended that each state explicitly assign a clear and easily identifiable focal point for international assisting actors within their national DRM laws and policies. In practice, a specific agency or individual may not have the necessary powers to effectively coordinate international assistance alone, as the coordination and facilitation thereof may require actions by a number of other agencies (e.g., for granting specific facilities that relate to various Ministries).²⁹ Due to this, the focal

25 IDRL Guidelines paragraphs 3(1) and (3), and 8.

26 IDRL Checklist, page 17.

27 IDRL Guidelines, paragraph 8 (2).

28 NDRMP, section 5.2.3.

29 IFRC, IDRL in the Pacific, Regional Assessment, available at <https://www.rcrc-resilience-southeastasia.org/disaster-law/international-disaster-response-law-in-the-pacific/> accessed 26 February 2021.

point for international disaster assistance should ideally be the head of the specialised unit or agency established to facilitate international assistance, which would have the necessary powers to coordinate and facilitate such assistance (see Question 8 below).

Question 3

Do laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?

The IDRL Guidelines provide that the affected state has the sovereign right to coordinate, regulate, and monitor international disaster assistance provided by assisting actors. Legal frameworks should allow for the effective coordination of international disaster assistance and should designate governmental entities with responsibility and authority in these areas.³⁰

All the countries studied assign DRM roles and responsibilities to various governmental institutions. However, the extent to which the laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance in Southern Africa is varied. In some countries, the DRM roles and responsibilities of several governmental institutions are outlined in the law, but their roles *vis-à-vis* international disaster assistance is not clearly defined, such as is the case in Malawi. The laws and policies of certain other countries assign limited roles and responsibilities relating to international disaster assistance to specific institutions, such as in the case of Eswatini and Lesotho. For example, the DM Act of Eswatini provides that one of the functions of the National Emergency Committee (NE Committee) is to act as the interface between the government and the international community regarding “emergency management and assistance matters” during disasters, but it does not provide further details as to what this entails.³¹ In addition, the DM Act makes provision for the establishment of various technical working groups to assist the National Disaster Management Agency (NDMA) with its functions, and one of these include a working group on inter-country coordination. However, further details are not provided and the relationship between the NE Committee and this working group is not defined.³² In some instances, the laws and/or policies of other countries contain more detailed provisions on the roles and responsibilities of national governmental institutions regarding international disaster assistance, such as Botswana, Mozambique, Namibia, and South Africa. However, there are gaps and uncertainties even in these instances.

Therefore, in general, legal frameworks in Southern Africa could benefit from more detailed provisions which should include which person(s), or entity/entities are responsible for:

- making policy decisions relating to international disaster assistance;
- assessing and deciding whether international disaster assistance is necessary;
- making an appeal for international disaster assistance;
- assessing and deciding on the eligibility for legal facilities of international actors;
- facilitating the entry and operation of international actors;
- acting as the focal point and coordinate international assistance on its territory;
- liaising with national entities and actors to coordinate international assistance in matters related to the response and recovery;
- monitoring and guiding the assistance provided by international actors; and
- terminating international disaster assistance.

30 IDRL Guidelines, paragraphs 3 and 8.

31 DM Act, section 26.

32 DM Act, section 15(5).

Most of the countries studied assign DRM roles and responsibilities to various non-governmental stakeholders with regards to DRM (such as National Societies, the United Nations (UN) specialised agencies, community-based organisations etc.) or allow for their participation in DRM processes through their inclusion in various bodies or committees, although this occurs to varying degrees. However, the countries studied do not typically explicitly assign roles and responsibilities to these actors with regards to international disaster assistance. Exceptions are Namibia, which outlines the role of the Namibia Red Cross Society (NRCS) and international non-governmental organisations (INGOs) in the DRM Policy,³³ and Botswana, where the NDRMP outlines the role of BRCS with respect to requesting international disaster assistance. The role of the UN Resident Coordinator is also not typically clearly defined in the law, which could potentially impact the ability of the UN to coordinate with governments.

Ensuring that the roles and responsibilities of national and local non-governmental actors are outlined in the law provides a clear mandate to these actors and can empower them to act and respond to disasters effectively. It is critical to clearly define the roles and responsibilities of all actors with regards to international disaster assistance to avoid confusion, unnecessary delays, and costs. It is therefore recommended that states in Southern Africa include provisions in their legal frameworks that clearly assign roles and responsibilities of different governmental institutions as well as non-governmental stakeholders, including National Societies, with regards to international disaster assistance at all levels.

Question 4

Do laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?

A core tenet of the IDRL Guidelines is that the affected state should seek international and/or regional assistance to address the needs of affected persons if a disaster exceeds national capacities, and that 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.³⁴

The laws of most of the countries studied do not outline detailed processes for requesting international disaster assistance (or at least they are not publicly available) and do not regulate the termination of international assistance at all. This is a legal gap, as clear procedures for requesting and terminating international assistance are needed to avoid delays in providing lifesaving assistance, and to ensure that disaster relief and recovery efforts are not negatively impacted.³⁵ It is therefore recommended that states in Southern Africa consider including detailed provisions in their laws and regulations that clearly outline the process for requesting or welcoming offers of international disaster assistance, and for terminating international assistance and also assign clear responsibilities in this regard.

Question 5

Do laws and regulations provide for necessary legal facilities to be provided to international assisting actors?

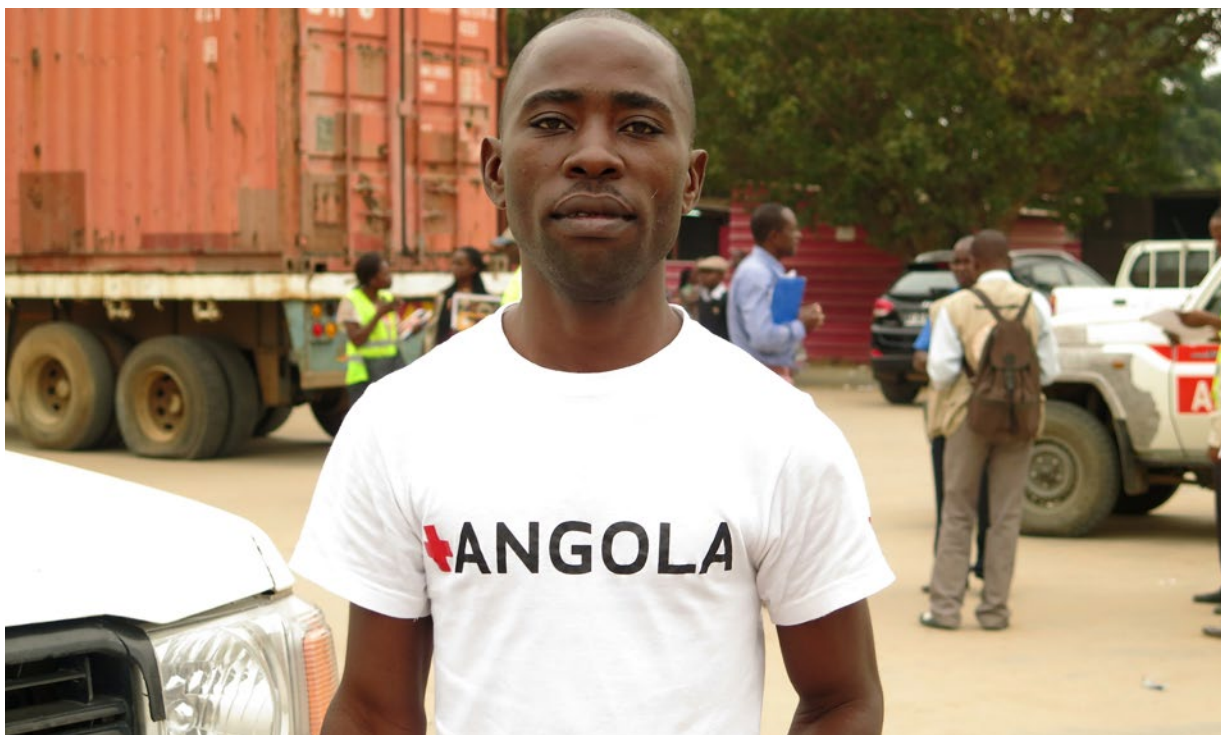
The IDRL Guidelines recommend that legal facilities pertaining to personnel, goods and equipment should be granted to eligible international assisting actors to create an enabling environment and allow them to effectively provide humanitarian assistance.³⁶

33 DRM Policy, sections 9.2 and 9.3.

34 IDRL Guidelines, paragraphs 3 (1) and (2); and 10.

35 IDRL Checklist, page 11.

36 IDRL Checklist, Part IV, and Part V. See also the IDRL Checklist, page 12.



Angola, 2016. An Angola Red Cross volunteer in the highly populated Viana municipality, where a major yellow fever outbreak occurred. Red Cross volunteers used mobilization techniques to inform people about yellow fever and convince the most sceptical to get vaccinated, slowly reducing the resistance rate among the population. © Monaco Red Cross / Marine Ronzi

The extent to which Southern African states provide specific legal facilities to international assisting actors varies. A few of the countries' DRM laws do mention legal facilities, but in general terms and without providing details. For example, the 2020 DRM Law of Mozambique provides that the government can establish migratory, customs, and fiscal facilities for emergency assistance in the event of a disaster.³⁷ Botswana is another example: the NDRMP provides that the Ministry of Trade and Industry is responsible for collaborating with the Ministry of Finance and the Office of the President (OP) in providing rebate certificates and import permits for goods intended for relief purposes;³⁸ and the Ministry of Finance and Development planning is responsible for facilitating the entry of all official disaster assistance commodities, as well as waiving customs and duty where appropriate.³⁹ The Basic Civil Protection law of Angola provides that the goods and equipment that constitute international assistance, requested or granted, are exempt from any duties or taxes, for their import or export, and their customs clearance must be granted priority.⁴⁰ Furthermore, the formalities for crossing borders by persons engaged in relief missions are reduced to the minimum.⁴¹ The law of Namibia provides more detail regarding legal facilities for incoming assistance in its DRM laws, although it lacks details as to the exact procedures to be followed by international assisting actors to obtain the facilities. The DRM Act of Namibia provides that the Prime Minister, in consultation with the ministers of immigration, finance, and transport (as applicable), must facilitate the entry and operation of international relief personnel and experts including: the expeditious granting of visas and waiver of work permits for relief personnel and experts; reduced and simplified customs procedures, exemption from duties, taxes and charges for donations of equipment and materials, including food, made during disaster situations and also including possessions of relief personnel; and transportation overflight and similar measures.⁴² The

37 2020 DRM Law, article 38.

38 NDRMP, section 4.15.

39 NDRMP, section 4.11.

40 Law 28/03, Basic Civil Protection Law, article 22.

41 Law 28/03, Basic Civil Protection Law, article 22.

42 DRM Act, section 52.

existence of these provisions is positive and is consistent with the IDRL Guidelines. However, in general, these provisions are quite high-level. In order to be operationalised and of benefit to international assisting actors, more detailed procedures should be developed and implemented.

In many instances, legal facilities are found in sectoral laws of the countries studied (whereas other aspects of international disaster response tend to be addressed in the DRM laws, policies, or plans). For example, the domestic laws of all of the states that are party to the SACU Agreement, namely Botswana, Eswatini, Lesotho, Namibia, and South Africa, make provision for goods imported for the relief of persons in case of famine or other national disaster to be imported under a full rebate of customs duty and free from VAT, but with certain conditions attached to make the consignment eligible for the rebate. This is in line with article 20 of the SACU Agreement which regulates the imposition of customs duties on goods imported into the territory of member states and provides that a member state may grant a rebate of customs duties in respect of goods imported for the relief of the distress of persons in cases of famine and other national disasters. However, it is unclear exactly what types of goods are contemplated in these provisions, and whether it would also include specialised goods and equipment such as vehicles and communications equipment. This creates uncertainty for international assisting actors.

In general, other legal facilities, including but not limited to landing rights, expedited visa processing, the recognition of foreign professional qualifications, expedited registration of international assisting actors, and expedited licensing of specialised equipment are rarely set out in the law. Another example relates to freedom of movement – research has shown that in some instances, disaster-affected states have imposed limitations on movement, including limitations on humanitarian access.⁴³ However, the laws of the countries studied do not explicitly ensure the freedom of movement of eligible international assisting actors. As mentioned above, although comprehensive facilities for international disaster assistance actors were not found in the laws of most of the countries included in this study, in some instances, provisions were found in a wide range of sectoral laws. Although such provisions may assist international assisting actors to operate in a country, they are applicable generally and are not specifically granted to international assisting actors. In addition, in some cases, the wording of these sectoral laws creates ambiguity as to whether the legal facilities apply to international assisting actors, their goods, and personnel.

Many of the countries studied for this report (e.g., Botswana, Malawi, South Africa, Zambia, and Zimbabwe) grant states and certain international organisations specific privileges and immunities under the relevant immunities and privileges legislation (although not disaster specific). These laws enact provisions of the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, the Convention on the Privileges and Immunities of the United Nations, and/or the Convention on the Privileges and Immunities of the Specialised Agencies into law. Depending on the country, these provisions typically allow for facilities such as inviolability of premises and personal inviolability of agents and officers; immunity from suit and legal process; and exemptions from taxation, work permits, customs duties, and inspection requirements. Such legislation also typically allows for approved international or regional organisations to be granted similar facilities, such as immunity from suit and legal process, inviolability of premises, exemptions from rates and taxes, and taxes on the importation or exportation of goods, by order or notice. It should also be noted that in the case of those countries in the region which adopt a monist approach to international law (e.g., Angola, Mozambique, and Namibia), the relevant conventions related to privileges and immunities would enter into force by virtue of the countries ratifying them.

Assisting actors that fall within the ambit of these privileges and immunities laws may therefore be aware of the facilities, privileges, and immunities applicable to them in a particular country. However, international actors not covered by the relevant diplomatic privileges and immunities laws have little certainty around their legal status within the countries concerned, as well as the processes for their

43 IFRC, *Law and Legal Issues in International Disaster Response: A Desk Study* (2007), page 122.



Zimbabwe, 2016. During a devastating drought that gripped the region, local communities were sometimes forced to dig a dry riverbed to obtain a small amount of water. © Juozas Cernius

entry and operation. In the absence of such legal facilities, international assisting actors may encounter issues and uncertainty in respect of, amongst others:

- their legal status, which may create difficulties in their operations, such as encountering barriers and delays with opening bank accounts and entering contracts;
- the entry and operation of assisting personnel in terms of the requirements for the granting of visas and work permits as well as the recognition of the professional qualifications of assisting personnel;
- the importation of relief goods and equipment and in the use of specialised equipment which may result in increased delays and costs; and
- the use of different currencies which may be restricted because of exchange control being administered by most countries in the sub-region. Relatedly, international assisting actors may face challenges and uncertainty in implementing cash and voucher programmes in emergency response operations.

This is not to say that the states concerned do not have processes in place to manage these issues in practice or regulate them on an *ad hoc* basis in the event of a disaster. For example, the sectoral laws reviewed in almost all instances allow for authorities to make exceptions to certain regulatory requirements, or to promulgate regulations pertaining to particular pieces of legislation which may allow for specific legal facilities to be granted to international assisting actors in the event of a disaster. Although these provisions may be used to facilitate international disaster assistance in the event of a disaster, the lack of a single framework regulating international assistance is likely to create uncertainty among international assisting actors as to what legal facilities are available and how to access them.⁴⁴

Most states in the sub-region would therefore benefit from greater consolidation and clarity around legal facilities in relation to international disaster assistance in their DRM laws and policies. As recommended in the IDRL Guidelines, national laws could distinguish between legal facilities to be granted to assisting states and legal facilities granted to other international actors.⁴⁵ In addition, the granting of legal facilities to other assisting actors should be based on certain specified eligibility criteria.⁴⁶ Legal instruments need to clearly detail the simplified or expedited procedures applicable to international assisting actors, including indicating which actors they apply to. This way, government officials know exactly what these processes entail and their role in applying them, and international assisting actors are able to easily prepare and provide any documentation that may be required from them.

As recommended above, the development of a model act and/or guidelines at sub-regional level could be a useful tool to support states to develop such laws and policies at domestic level. In addition, the development of a protocol or guidelines on international disaster assistance at sub-regional level is also recommended to lay the foundation for a sub-regional response mechanism and promote a uniform approach to the granting of legal facilities for international assisting actors across Southern Africa.

Question 6

Do laws and regulations set out quality standards for international assisting actors?

Issues with regards to the quality of the aid provided are common in international disaster operations.⁴⁷ Quality issues can seriously hinder humanitarian efforts and delay the distribution of essential goods and appropriate aid.⁴⁸ These issues include the donation of relief items that do not comply with applicable standards as well as the entry of unprepared and unqualified personnel.⁴⁹

44 A similar finding was made in IFRC, IDRL in the Pacific, Regional Assessment, available at <https://www.rcrc-resilience-southeastasia.org/disaster-law/international-disaster-response-law-in-the-pacific/> accessed 26 February 2021.

45 IDRL Guidelines, paragraphs 13 and 14.

46 IDRL Guidelines, paragraphs 14(2) and (4). See also the assessment of Question 7 below.

47 IDRL Checklist, page 15.

48 IDRL Checklist, page 15.

49 IDRL Checklist, page 15.



Malawi, 2016. Roster Kufandiko is the assistant disaster manager at the Malawi Red Cross society. Due to drought, Malawi experienced a severe food shortage amongst 3 million of the entire population. The Malawi national grain reserve is empty, and the government has started maize rations. © Norwegian Red Cross / Thea Rabe

There are few detailed references to the applicable standards for international assistance in the laws and policies of the countries included in this study. The NDRMP of Botswana provides that the Ministry of Trade and Industry is responsible for ensuring compliance with quality standards of relief material, which would presumably apply to both domestic and international relief efforts.⁵⁰ In addition, the primary DRM policy document in South Africa, the Framework, specifically states that the NDMC must initiate the development of regulations to standardise the practice and management of relief operations in line with international standards, although such regulations do not appear to have been promulgated to date. In Namibia, the law provides a clear reference to quality standards for international disaster assistance in its DRM legislation, stating that a person who enters into a cooperation agreement with the government must ensure that the assistance given is both appropriate to the assessed needs and compliant with domestic quality, health, and other standards.⁵¹ The code of conduct for DRM actors in Namibia also contains a number of provisions relating to standards.⁵² Lastly, in Namibia, food, medicines or other perishable item that is not fit for human consumption or that is close to its use-by date may not be donated, and medical and veterinary medicines donated must comply with the Medicines and Related Substances Control Act and Animal Health Act.⁵³ There are also laws which create general standards in a number of areas in many of the countries studied, such as food and medicines safety, road safety, and professions, which would apply to international assisting actors, in the absence of any exemptions being made.

Overall, it is recommended that states in Southern Africa adopt clear mechanisms to ensure that international actors comply with international quality standards and domestic laws, apply the core humanitarian principles of humanity, neutrality, and impartiality, and have the relevant technical competencies for the type of work they propose to carry out, in line with the IDRL Guidelines. In addition, guidelines on recommended standards for international assisting actors could be developed at the sub-regional level to support the development of national frameworks as well as ensure the coherence of quality standards across Southern Africa.

50 NDRMP, section 4.15.

51 DRM Act, section 54.

52 DRM Regulations, regulations 17 and 18.

53 DRM Regulations, regulation 14.



Namibia, 2020. Namibia Red Cross staff with a beneficiary handing over fire prevention relief kits at the Headquarters in Windhoek.
© Namibia Red Cross Society

Question 7

Do laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?

The IDRL Guidelines recommend in paragraph 14(2) that states should establish criteria for assisting humanitarian organisations and other actors, such as private companies, seeking eligibility for legal facilities. These criteria should include a showing by the organisation or entity of its willingness and capacity to act in accordance with the responsibilities set out in the IDRL Guidelines, namely:

- abiding by the domestic laws of the affected state and coordinating with domestic authorities;
- always respecting the human dignity of disaster-affected persons;
- ensuring that their assistance is provided in accordance with the principles of humanity, neutrality, and impartiality;
- ensuring that their assistance is:
 - responsive to the special needs, if any, of women and vulnerable groups;⁵⁴
 - adequate for the needs of affected persons and consistent with any applicable international quality standards;
 - coordinated with other relevant domestic and assisting actors;

54 For further reading on the effectiveness of national laws, policies and institutional frameworks in supporting gender equality in DRM and in preventing and responding to sexual and gender-based violence (SGBV) in disasters, see IFRC, *Effective Law and Policy on Gender Equality and Protection from Sexual and Gender-based Violence in Disasters* (2017) available at https://media.ifrc.org/ifrc/wp-content/uploads/sites/5/2017/10/Gender-SGBV-Report_Global-report.pdf accessed 24 March 2021. See also IFRC, *Checklist on Law and Disaster Preparedness and Response* (2019), available at <https://disasterlaw.ifrc.org/media/1287> (accessed 24 March 2021), page 31 – 34 and accompanying Multi-Country Synthesis Report on Law and Disaster Preparedness and Response (2019) available at <https://media.ifrc.org/ifrc/document/law-disaster-preparedness-response-multi-country-synthesis-report/> (accessed 24 March 2021), Chapter 9.

- provided in a manner that is sensitive to cultural, social, and religious customs and traditions;
- carried out at all stages in an inclusive manner and with the adequate involvement of affected persons;
- provided by competent and appropriately trained personnel;
- commensurate with their organisational capacities;
- conducted in a manner that strengthens disaster risk reduction (DRR), relief and recovery capacities and reduces future vulnerabilities to disasters;
- carried out in a manner that reduces any negative impacts on the community, economy, development objectives and environment; and
- provided in a transparent manner.

As seen in the assessment of Question 5 above, several countries assessed make provision for goods imported for the relief of persons in case of famine or other national disaster to be imported under a full rebate of duty, but with certain conditions attached to make the consignment eligible for the rebate. However, most of the countries studied do not provide comprehensive legal facilities to international assisting actors. Of those that do, most do not explicitly set out eligibility requirements for international assisting actors to receive legal facilities. For example, the NDRMP of Botswana provides that the Ministry of Trade and Industry is responsible for collaborating with the Ministry of Finance and the OP in providing rebate certificates and import permits for goods intended for relief purposes;⁵⁵ and the Ministry of Finance and Development planning is responsible for facilitating the entry of all official disaster assistance commodities, as well as waiving customs and duty where appropriate. However, it does not provide eligibility requirements for these facilities.⁵⁶ The DRM Act of Namibia provides that charitable or philanthropic organisations, development partners or other stakeholders in DRM must be approved by the Prime Minister in order for their donations to be exempt from customs excise duty, but it does not provide details as to the eligibility requirements or the process to be followed to gain approval.⁵⁷ However, the law does set out a code of conduct for all DRM actors in Namibia as well as eligibility requirements for actors to enter into DRM cooperation agreements with the government.⁵⁸ The 2020 DRM Law of Mozambique contains provisions which relate to legal facilities for international assisting actors but does not provide specific eligibility requirements to receive them, although the law does set out specific requirements for foreign NGOs to be registered to operate in Mozambique for disaster assistance programmes.⁵⁹ Another example is the Manual of Zambia, which, although it does not specify its applicability to international assisting actors, does set out specific eligibility requirements for Project Implementing Partners (PIPs) to be engaged by the Zambian Government to facilitate the speedy, transparent, and accountable transportation of distribution of disaster relief supplies.⁶⁰

A failure to explicitly establish eligibility requirements for assisting organisations may result in oversight gaps, which could lead to the entry of unqualified personnel, the delivery of inappropriate aid, and the misuse or abuse of legal facilities. It is therefore recommended that Southern African states consider including in their DRM laws and policies explicit and detailed eligibility requirements as well as clear procedures for assisting actors to participate in disaster response operations and receive legal facilities, in line with the IDRL Guidelines. It is also recommended that laws and policies should allow for the selection or approval of eligible international assisting actors to be undertaken before a disaster strikes to save time.⁶¹ As the laws and policies of most of the countries studied do not set out eligibility requirements for international assisting actors to receive legal facilities, sub-regional guidelines or a

55 NDRMP, section 4.15.

56 NDRMP, section 4.11.

57 DRM Act, section 52(2).

58 DRM Act, section 54; DRM Regulations, regulations 17 and 18.

59 2020 DRM Law, articles 38 and 42.

60 The Manual, page 25.

61 IDRL Checklist, page 16.



Malawi, 2019. Red Cross volunteers survey the damage caused by major flooding which has hit agricultural communities hard. © Danish Red Cross / Eskil Meinhardt Hansen

model act could be introduced to provide guidance on this aspect of international disaster assistance to support states in the development of their domestic legal frameworks.

Question 8

Do laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?

In order to improve the coordination and facilitation of international disaster assistance, the [IDRL Checklist](#) recommends the establishment of a specialised unit for expediting the entry of international disaster assistance, composed of representatives of the relevant government ministries and agencies such as, for example, foreign affairs, finance, interior affairs, national security, health, immigration, as well as other entities such as the defence force, the police force, the National Society and local government officers.⁶²

None of the laws and regulations of the countries studied make explicit provision for a specialised unit to expedite international disaster assistance to be established. The country which comes the closest to establishing such a unit is Namibia, as its DRM Law provides for the expedited entry of relief goods and equipment to be facilitated by the Prime Minister in consultation with the Ministers responsible for immigration, finance, and transport.⁶³

It is therefore recommended that states establish a specialised unit for expediting the entry of international disaster assistance, essentially adopting a “One Stop Shop” approach. This unit should be responsible for consolidating and expediting the entry of incoming international personnel, goods, and equipment of international disaster assistance (see Question 5 above). In addition, such a unit can apply the control mechanism for the selection of eligible assisting actors described in Question 7 above.⁶⁴

Question 9

Do laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?

The IDRL Guidelines provide that states and assisting humanitarian organisations should prevent unlawful diversion, misappropriation, or fraud concerning goods and equipment associated with international disaster assistance; and that affected states should use funds and relief goods donated to them in a manner consistent with the intent with which they were given.⁶⁵ It is also important that international disaster assistance meets minimum international standards and that there are specific measures in place to prevent diversion, misappropriation or fraud concerning international disaster assistance goods and funds. There should also be a clear legal authority mandated to receive and disburse international funding and donations made to the government, as well as to carry out monitoring and oversight activities.⁶⁶

Many of the countries studied in this report, such as Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, Zambia, and Zimbabwe have established specialised DRM funds, or in the case of Zimbabwe, a civil protection fund, which are administered by specific persons or entities and have specific accounting and auditing requirements. Some laws also contain explicit provisions stipulating that donated goods should only be used for their intended purpose, for example Eswatini, Lesotho and Namibia. In some instances, further reporting requirements are provided. For example, the DRM Regulations of Namibia specifically provide that: a person to whom a disaster relief item is entrusted

62 See the IDRL Checklist, page 18. IDRL Guidelines, paragraphs 4 and 6.

63 DRM Act, section 52(3).

64 IDRL Checklist, page 17.

65 IDRL Guidelines, paragraph 6.

66 See IDRL Checklist, page 18. See also the IDRL Guidelines, paragraphs 3,4,5 and 6.



Mozambique, 2019. Donor Advisory Group (DAG) Visit in Mozambique, taking stock of recovery efforts done by Mozambique Red Cross after Cyclone Idai. © IFRC / Corrie Butler

for custody or safekeeping must provide the Prime Minister with a report in writing to account for the item; and the Prime Minister must give a report or cause a report to be given to a person who donated a disaster relief item.⁶⁷ Zambian law specifically contemplates the government entering into MoUs with PIPs which must include provisions on accountability, transparency and monitoring.⁶⁸ In addition, although not directly related to international disaster assistance, most of the countries studied have adopted legislation specifically related to combatting corruption and money laundering (e.g., financial intelligence laws), which may help to safeguard against the unlawful diversion, misappropriation, or fraud concerning international disaster relief or initial recovery goods and equipment. Although such financial intelligence laws may contribute to promoting the transparency of international assisting organisations, it has been noted that in some instances, the requirements of these laws may slow down urgent cross-border money transfers and may also make it difficult for assisting organisations to open bank accounts, thereby impeding legitimate international assisting actors from operating efficiently.⁶⁹ It is therefore recommended that states ensure that eligible actors are able to open bank accounts and conduct transactions with greater flexibility, while still promoting transparency and accountability. This could be achieved by, for example, granting exemptions from certain requirements of these laws or by providing expedited processes to eligible assisting actors.

In some instances, DRM laws and policies contain principles related to accountability and transparency. For example, the law of Namibia includes several offences relating to the misappropriation of disaster relief as well as a code of conduct which contains several obligations related to transparency,⁷⁰ and the 2020 DRM law of Mozambique includes DRM principles relating to transparency and accountability that guide DRM in the country.⁷¹ In general, however, DRM legal frameworks in Southern Africa

67 DRM Regulations, regulations 14 and 32.

68 The Manual, page 23.

69 IDRL in Namibia, page 59.

70 DRM Regulations, regulations 17 and 18.

71 2020 DRM Law, article 4.

could be strengthened by including more detailed provisions on the receipt and use of international disaster assistance to safeguard against the unlawful diversion, misappropriation, or fraud concerning international disaster relief or initial recovery goods and equipment, in line with the IDRL Guidelines.

Question 10

Do laws and regulations outline procedures for international disaster assistance sent from, and transiting through the country?

The IDRL Guidelines contain several provisions relevant to the transit of international assisting goods and personnel. In particular, they provide that any applicable exit, transit, and entry visas for international assisting personnel should be promptly issued.⁷² In addition, goods, and equipment, including specialised equipment, should be exempted from export and transit restrictions and the procedures and documentation requirements for the exportation and transit of goods and equipment should be simplified.⁷³ Re-exportation of equipment and unused goods by assisting actors should also be permitted.⁷⁴

Although the customs and excise laws and immigration laws of the countries studied contain general provisions on the transit and export of goods, and many of the immigration laws allow for transit visas to be issued, they do not explicitly contemplate international disaster assistance or provide simplified procedures for the transit of international disaster assistance in particular. One exception is the law of Angola. Although the Basic Civil Protection law does not contain details on the procedures for international disaster assistance sent from, and transiting through the country, it does provide that goods and equipment that constitute international assistance, requested or granted, are exempt from any duties or taxes for their export, and that formalities for crossing borders by persons engaged in relief missions are reduced to the minimum.⁷⁵ However, in general, it appears that in most of the countries studied the normal rules relating to the transit of goods and personnel and the re-exportation of equipment would apply, which may result in international actors facing challenges with regards to the transit and re-export of goods, specifically goods which may be subject to transit and export restrictions such as specialised equipment and rescue dogs. This may result in significant delays and increased costs.

It is recommended that states consider including procedures for the transit of international disaster assistance from one state and across another, as well as for the re-exportation of equipment or unused relief goods from an affected state during and after operations, in their legal frameworks. Such provisions could include reducing any applicable restrictions on the exit of relief personnel, reducing any applicable export restrictions, duties or fees on relief goods and equipment and reducing inspection requirements for outgoing goods and equipment.⁷⁶ As there appears to be a lack of explicit regulation in this area in national legal frameworks in Southern Africa, sub-regional guidelines or protocol arrangements could be introduced to lay the foundation for a sub-regional response mechanism and which could also support states to include relevant provisions in their national legal frameworks.

72 IDRL Guidelines, paragraphs 16(2) and 19(3).

73 IDRL Guidelines, paragraphs 17(1)(b) and (c).

74 IDRL Guidelines, paragraph 17(1)(d).

75 Law 28/03, Basic Civil Protection Law, article 22.

76 See the IDRL Checklist, Question 10, page 19.



Mozambique, 2020. One year after Idai, food distribution in the community of Metanha. Many in the village received seeds and are now receiving food while they are waiting to harvest their crops.
© Anette Selmer-Andresen/IFRC

OVERVIEW OF IDRL FRAMEWORKS

Although this report is focussed on the national legal systems of the selected countries, there are several international, regional, and sub-regional agreements, instruments and developments which are relevant and have been set out below. Please note that this section does not provide a comprehensive overview of IDRL instruments at the international, regional, and sub-regional level, but rather provides a brief overview of the key instruments most relevant to the study. Chapter III of the 2007 IDRL Study should be consulted for a detailed analysis of all the human rights, international humanitarian law (IHL), refugee and internally displaced persons (IDP) law, privileges and immunities law, customs law, transport law, donor law, civil defence and military law, health law, environmental law, weapons control law, space law, and humanitarian personnel security law instruments which are directly and indirectly related to international disaster assistance.

International Framework

There is no binding international legal instrument that regulates international disaster response. However, various international law instruments, both binding and non-binding, contain provisions relevant to international assistance within various branches of international law. A selection of the instruments most pertinent to this study have been set out below.⁷⁷

Most relevant to this study are those instruments that expedite and facilitate the provision of international humanitarian assistance. The Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (Tampere Convention) provides legal facilities for the importation of telecommunications equipment and resources during emergencies, specifically requiring state parties to reduce or remove regulatory barriers to the use of telecommunication resources for disaster relief.⁷⁸ With regards to transport, of most relevance is Annexe 9 of the Chicago Convention on Civil Aviation (Chicago Convention) which provides procedural guidance for customs, immigration, agriculture, and public health clearance of aircrafts containing humanitarian assistance in response to disasters, including passengers, goods, and mail. Further, the Convention on the Facilitation of International Maritime Traffic mandates parties to facilitate the entry and exit of vessels engaged in natural disaster relief work and facilitate the entry of persons and cargo related to natural disaster relief work.⁷⁹

77 For a full review of agreements relating to international disaster assistance, see IFRC, Law and Legal Issues in International Disaster Response: A Desk Study (2007), Part II.

78 See article 9 of the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, June 18, 1998, UN depositary notification C.N.608.1998.TREATIES-8 of Dec. 4 1998 (entered into force Jan. 8, 2005) (Tampere Convention).

79 See article 5.11 and 5.12 of Annexe 1 of the Convention on the Facilitation of International Maritime Traffic, 9 April 1965, 591 U.N.T.S. 265.

In terms of customs, the International Convention on the Simplification and Harmonisation of Customs Procedures (Kyoto Convention),⁸⁰ which was adopted in 1973 and revised in 1999, and the Convention on Temporary Admission (Istanbul Convention),⁸¹ simplify and harmonise customs clearance procedures for the importation of goods. Specifically, Annexe B3 of the Kyoto Convention recommends as practice that states exempt goods, including “foodstuffs, medicaments, clothing and blankets sent as gifts to an approved charitable or philanthropic organisation for distribution free of charge to needy persons by the organisation or under its control”.⁸² Annexe J5 provides guidelines to expedite the clearance of relief consignments intended to assist those affected by disasters. Annexe B2 to the Istanbul Convention regulates the importation of professional and communication equipment for practitioners of various disciplines in support to relief efforts. The measures and exemptions for temporary admission of goods for humanitarian purposes in response to natural disasters and other catastrophes are stipulated in Annexe B9. In addition, Annexe C of the Istanbul Convention allows for the temporary admission of means of transport used by a foreign entity and Annexe D allows for temporary admission of animals, including those involved in rescue operations.

A number of other agreements and instruments are also relevant to international disaster assistance. As a starting point, the Sendai Framework for Disaster Risk Reduction 2015 - 2030 (Sendai Framework) aims to substantially reduce disaster risk and losses in lives, livelihoods, and health. The Sendai Framework details four priorities for action: understanding risk; strengthening risk governance; investing in DRR; and enhancing disaster preparedness for effective response and to “Build Back Better” in recovery, rehabilitation, and reconstruction. International, regional, sub-regional, and transboundary cooperation is recognised as a key element in DRR.⁸³ In addition, both Priority Two and Priority Four encourage states to strengthen national, institutional, and legal frameworks for the effective management of disaster risks. Most notably, article 33(p) encourages states to review and strengthen national laws and procedures on international cooperation, based on the [IDRL Guidelines](#).

It is also relevant to note treaties related to privileges and immunities law. As stated in the 2007 IDRL Study, the doctrine of privileges and immunities is not directly linked to disasters.⁸⁴ However, it is essential for those entities involved in disaster response to which it applies, as it addresses many of the access and operations related issues identified as problematic in field operations, as it typically allows the holder of privileges and immunities to easily enter, exit and operate in a foreign country with minimum interference from domestic authorities.⁸⁵ Much of the customary law in the area of privileges and immunities has been codified in the Vienna Convention on Diplomatic Relations⁸⁶ and the Vienna Convention on Consular Relations.⁸⁷ However, personal diplomatic and consular privileges and immunities generally do not extend outside the scope of mission staff and their families, and therefore civil protection, military and other disaster responders generally do not benefit from them.⁸⁸ Intergovernmental organisations have also traditionally been granted privileges and immunities to enable them to carry out their functions without undue interference, but in general NGOs do not benefit from privileges and immunities under international law.⁸⁹

In addition, the Framework Convention on Civil Defence Assistance provides a legal framework to reduce obstacles for effective international cooperation between states in disaster settings. It is also worth mentioning the Convention on the Safety of UN and Associated Personnel (UN Safety Convention) and the Optional Protocol thereto, which imposes an obligation on a state hosting a UN operation to

80 Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures of 18 May 1973, 26 June 1999.

81 Convention on Temporary Admission, 26 June 1990.

82 Annexe B.3 to the Kyoto Convention, recommendation 7.

83 Sendai Framework on Disaster Risk Reduction (2015 - 2030), for example, the Guiding Principles, article 8, 19 28 and part VI.

84 2007 IDRL Study, page 39.

85 2007 IDRL Study, page 39.

86 Vienna Convention on Diplomatic Relations, April 18, 1961, 500 U.N.T.S. 95.

87 Vienna Convention on Consular Relations, April 24, 1963, 596 U.N.T.S. 261.

88 2007 IDRL Study, page 40.

89 2007 IDRL Study, page 40.

protect UN personnel and property to prevent or reduce any impunity for those who attack UN or associated personnel or property.⁹⁰

In terms of human rights treaties, the Convention on the Rights of Persons with Disabilities references disaster assistance the most directly. State parties are required to take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including humanitarian emergencies and natural disasters.⁹¹ In addition, there are a number of global human rights treaties, such as the International Covenant on Civil and Political Rights⁹² and the International Covenant on Economic, Social and Cultural Rights⁹³ that set out rights closely linked to disaster relief and recovery assistance. These include the rights to life, food and water, housing, clothing, health, livelihood, and freedom from discrimination.⁹⁴

There are also instruments which regulate the management of specific types of disasters or emergencies. For example, the International Health Regulations (the IHR)⁹⁵ regulate health emergencies with potential transboundary effects, defining the rights and responsibilities for state parties in handling outbreaks and providing public health measures for international traffic and travel. Another example is the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, which sets out rules for the initiation, coordination, and operation of international assistance operations in case of nuclear or radiological events as well as for legal facilities to be granted for the effective administration of assistance.⁹⁶ A third example is the International Convention on Oil Pollution Preparedness, Response and Cooperation⁹⁷ and its Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances⁹⁸ which require state parties to cooperate and provide advisory services, technical support, and equipment when necessary and within their capabilities and resources, to respond to an oil pollution incident, as well as to take the legal or administrative measures necessary to facilitate the arrival and utilisation of vessels and the expeditious movement of personnel, cargoes, materials and equipment.⁹⁹

It is also important to mention the Draft Articles for the Protection of Persons in the Event of a Disaster (the Draft Articles) which were adopted by the International Law Commission (ILC) in 2016. The Draft Articles represent a significant opportunity for the codification of IDRL into a binding treaty in the future. The purpose of the Draft Articles is set out in draft article 2 as: “to facilitate the adequate and effective response to disasters, and reduction of the risk of disasters, so as to meet the essential needs of the persons concerned, with full respect for their rights”. The Draft Articles reiterate that the affected state has the duty to ensure the protection of persons and provision of relief assistance in its territory, but also has the duty to seek international assistance in the event a disaster exceeds domestic capacity.¹⁰⁰ The Draft Articles also provide for the facilitation of international disaster assistance as well as for the protection of relief personnel, equipment, and goods.¹⁰¹

90 UN Safety Convention, articles 7 and 11.

91 See article 11 of the Convention on the Rights of Persons with Disabilities.

92 International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171.

93 International Covenant on Economic Social and Cultural Rights, 16 December 1966, 999 U.N.T.S. 3.

94 2007 IDRL Study, page 34.

95 World Health Assembly, Revision of the International Health Regulations, Doc. No. WHA58.3 (23 May 2005).

96 Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency Sept. 26, 1986, 1439 U.N.T.S. 275, articles 1, 2, 3, 4, 7, 8, 9, 10, and 11.

97 International Convention on Oil Pollution Preparedness, Response and Cooperation, 30 November 1990, 30 I.L.M. 733 (1990).

98 Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 15 March 2000.

99 See article 7 on the Convention on Oil Pollution Preparedness, Response and Cooperation and article 5 of the Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances.

100 International Law Commission, Draft Articles for the Protection of Persons in the Event of a Disaster (2016), articles 10 and 11.

101 International Law Commission, Draft Articles for the Protection of Persons in the Event of a Disaster (2016), articles 15 and 16.

The tables below illustrate which of the countries included in this study are state parties to the instruments mentioned above.

Instruments related to telecommunications, air and maritime transport relevant to international humanitarian assistance

Country	Tampere Convention ¹⁰²	Convention on the Facilitation of International Maritime Traffic ¹⁰³	Chicago Convention ¹⁰⁴
Angola	No	No	Yes
Botswana	No	No	Yes
Eswatini	No	No	Yes
Lesotho	No	No	Yes
Malawi	No	No	Yes
Mozambique	No	No	Yes
Namibia	No	No	Yes
South Africa	No	No	Yes
Zambia	No	Yes	Yes
Zimbabwe	No	No	Yes

¹⁰² Information obtained from the UNTC available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXV-4&chapter=25 (accessed 13 January 2021).

¹⁰³ Information obtained from the UNTC available at <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280129d04> (accessed 13 January 2021).

¹⁰⁴ Information obtained from ICAO available at <https://www.icao.int/publications/Pages/doc7300.aspx> (accessed 12 January 2021).

Instruments related to customs arrangements for international humanitarian assistance

Country	Annexe B.3 to the Kyoto Convention ¹⁰⁵	Annexe J-5 to the Kyoto Convention ¹⁰⁶	Annexe B2 to the Istanbul Convention ¹⁰⁷	Annexe B9 to the Istanbul Convention ¹⁰⁸	Annexe C to the Istanbul Convention ¹⁰⁹	Annexe D to the Istanbul Convention ¹¹⁰
Angola	No	No	No	No	No	No
Botswana	No	No	No	No	No	No
Eswatini	No	No	No	No	No	No
Lesotho	No	No	No	No	No	No
Malawi	Yes	Yes	No	No	No	No
Mozambique	No	No	No	No	No	No
Namibia	No	No	No	No	No	No
South Africa	No	No	No	No	No	No
Zambia	No	No	No	No	No	No
Zimbabwe	No	No	Yes	No	No	No

¹⁰⁵ Information obtained from the World Customs Organization (WCO) available at http://www.wcoomd.org/en/Topics/Facilitation/Instrument%20and%20Tools/Conventions/pf_revised_kyoto_conv/Instruments (accessed 12 January 2021).

¹⁰⁶ Information obtained from the WCO available at http://www.wcoomd.org/en/Topics/Facilitation/Instrument%20and%20Tools/Conventions/pf_revised_kyoto_conv/Instruments (accessed 12 January 2021).

¹⁰⁷ Information obtained from the UNTC available at https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800b2770&clang=_en (accessed 13 January 2021).

¹⁰⁸ Information obtained from the UNTC available at https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800b2770&clang=_en (accessed 13 January 2021).

¹⁰⁹ Information obtained from the UNTC available at https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800b2770&clang=_en (accessed 13 January 2021).

¹¹⁰ Information obtained from the UNTC available at https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800b2770&clang=_en (accessed 13 January 2021).

Examples of instruments related to privileges and immunities, cooperation and human rights relevant to international humanitarian assistance

Country	Vienna Convention on Diplomatic Relations ¹¹¹	Vienna Convention on Consular Relations ¹¹²	Framework Convention on Civil Defence Assistance ¹¹³	UN Safety Convention and Optional Protocol ¹¹⁴	Convention on the Rights of Persons with Disabilities ¹¹⁵
Angola	Yes	Yes	No	No	Yes
Botswana	Yes	Yes	No	Yes (Convention and Protocol)	No
Eswatini	Yes	Yes	No	No	Yes
Lesotho	Yes	Yes	No	Yes (Convention only)	Yes
Malawi	Yes	Yes	No	Yes (Convention only)	Yes
Mozambique	Yes	Yes	No	No	Yes
Namibia	Yes	Yes	No	No	Yes
South Africa	Yes	Yes	No	No	Yes
Zambia	Yes	Yes	No	No	Yes
Zimbabwe	Yes	Yes	No	No	Yes

111 Information obtained from https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-3&chapter=3&clang=_en (accessed 13 April 2021).

112 Information obtained from the UNTC https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-6&chapter=3 (accessed 13 April 2021).

113 Information obtained from the UNTC available at https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280086ecb&clang=_en (accessed 13 January 2021).

114 Information obtained from the UNTC available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-8&chapter=18 and https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-8-a&chapter=18&clang=_en (accessed 12 January 2021).

115 Information obtained from the UN Treaty Collection (UNTC) available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4 (accessed 13 January 2021).

Examples of instruments regulating the management of specific types of disasters or emergencies

Country	IHR ¹¹⁶	Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency ¹¹⁷	International Convention on Oil Pollution Preparedness, Response and Cooperation ¹¹⁸
ANGOLA	Yes	No	No
BOTSWANA	Yes	Yes	No
ESWATINI	Yes	No	No
LESOTHO	Yes	Yes	No
MALAWI	Yes	No	No
MOZAMBIQUE	Yes	Yes	No
NAMIBIA	Yes	Yes	No
SOUTH AFRICA	Yes	Yes	No
ZAMBIA	Yes	No	No
ZIMBABWE	Yes	Signature only.	No

116 Information obtained from World Health Organisation available at https://www.who.int/ihr/legal_issues/states_parties/en/ (accessed 12 January 2021).

117 Information obtained from the International Atomic Energy Agency available at <https://www.iaea.org/topics/nuclear-safety-conventions/convention-assistance-case-nuclear-accident-or-radiological-emergency#:~:text=The%20Convention%20on%20Assistance%20in,in%20the%20event%20of%20nuclear> (accessed 13 January 2021).

118 Information obtained from the UNTC <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800aada6> (accessed 12 January 2021).

Regional Framework

There is no regional response mechanism that outlines protocols to coordinate relief operations for large-scale emergencies in Africa. However, the African Union (AU) has made significant advances in past years that may have an impact on the management of international disaster assistance in the region.

As a starting point, the AU's Agenda 2063: The Africa We Want, lists climate resilience and natural disaster preparedness as priority areas to achieve the aspiration of regional transformation.¹¹⁹ The AU has also outlined a strategic approach to strengthen the region's institutional framework and capacity to address the challenges identified in Agenda 2063 in its Humanitarian Policy Framework of 2015. The Humanitarian Policy Framework states, in respect of preparedness and response, that regional emergency response teams will be established, comprising of personnel from established regional, sub-regional, and national mechanisms which will be supported by a variety of tools and mechanisms such as the Centre for Disease Control, Disaster Management Guidelines, African Disaster Managers' Platform and Humanitarian Action and Natural Disaster Support.¹²⁰ In addition, the Assembly of the AU adopted a decision in 2016 to establish the African Humanitarian Agency (AFHA) to effectively respond to and coordinate humanitarian crises on the continent.¹²¹ This initiative has the potential to increase the coordination and regulation of international disaster assistance in Africa. Lastly, the AU's Department of Political Affairs, with support from the IFRC, is currently leading the drafting of a Model Act on the Facilitation of International Humanitarian Assistance, which draws from the standards, principles and facilities proposed in the IDRL Guidelines.

In terms of regional instruments, article 23 of the African Charter on the Rights and Welfare of the Child¹²² (ACRWC) provides that states shall take all appropriate measures to ensure that refugee children as well as children who have been internally displaced, including by disasters, receive appropriate humanitarian assistance. In addition, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), provides in article 5(7) that state parties are obligated to facilitate the coordination of international relief and allow rapid and unimpeded passage of humanitarian relief to internally displaced persons. Further, states shall enable and facilitate the role of local and international organisations and humanitarian agencies, as well as other relevant actors, to provide protection and assistance to IDPs.

Sub-Regional Framework

All of the countries studied in this research project are members of SADC. SADC established a Disaster Risk Reduction Unit (SADC DRRU) responsible for coordinating regional preparedness and response programmes for trans-boundary hazards and disasters, and the SADC Regional Platform for DRR was inaugurated in 2011.¹²³ However, there is no sub-regional protocol that lays out the procedures to coordinate relief operations for large-scale emergencies in Southern Africa. Nevertheless, a few of the SADC protocols and policies are indirectly relevant to international disaster assistance. Article 2 of the SADC Protocol on Politics, Defence and Security Cooperation, states that one of its objectives is to "enhance regional capacity in respect of disaster management and coordination of international

119 See the Goals and Priority Areas of Agenda 2063 available at <https://au.int/agenda2063/goals> (accessed 8 January 2021). See Agenda 2063, The Africa We Want (2015) available at https://au.int/Agenda2063/popular_version (accessed 12 January 2021).

120 See the African Union Humanitarian Policy Framework (2015), page 10 available at <https://www.peaceau.org/uploads/humanitarian-policy-framework-rev-final-version.pdf> (accessed 13 January 2021).

121 See the AU Assembly Decision on the Common African Position on Humanitarian Effectiveness Assembly/AU/Dec.604 (XXVI) of 30 January 2016 available at https://au.int/sites/default/files/decisions/29514-assembly_au_dec_588_-_604_xxvi_e.pdf (accessed 12 January 2021). See also the AU Concept Note for the African Humanitarian Agency available at https://au.int/sites/default/files/newsevents/conceptnotes/38500-cn-pa26405_e_original.pdf (accessed 12 January 2021).

122 African Charter on the Rights and Welfare of the Child, 11 July 1990, OAU Doc. CAB/LEG/24.9/49 (1990).

123 See the SADC Website, Disaster Risk Management, available at <https://www.sadc.int/themes/disaster-risk-management/> (accessed 8 January 2021).



Malawi, 2015. After a devastating rain storm ruined many community homes, the Chimombo family benefited from the Red Cross home rebuilding project. Their former home was made of mud-bricks, and as such, was especially vulnerable to rain. © IFRC / Juozas Cernius

humanitarian assistance”.¹²⁴ In addition, article 25 of the SADC Protocol on Health states that parties shall: (i) cooperate and assist each other in the coordination and management of disaster and emergency situations; (ii) collaborate and facilitate regional efforts in developing awareness, risk reduction, preparedness, and management plans for natural and man-made disasters; and (iii) develop mechanisms for cooperation and assistance with emergency services. Lastly, the SADC Regional Water Policy provides a strategy for security from water related disasters. The policy recognises the importance of developing specific policies to protect communities in the region from floods and droughts by developing a regional plan for prevention and preparedness, which may foreseeably include international assistance.¹²⁵

The table below illustrates which of the countries included in this study are state parties to the regional and sub-regional agreements mentioned above.

Country	ACRWC ¹²⁶	Kampala Convention ¹²⁷	SADC Protocol on Politics, Defence and Security Cooperation ¹²⁸	SADC Protocol on Health ¹²⁹
Angola	Yes	Yes	Yes	Yes
Botswana	Yes	No	Yes	Yes
Eswatini	Yes	Yes	Yes	Yes
Lesotho	Yes	Yes	Yes	Yes
Malawi	Yes	Yes	Yes	Yes
Mozambique	Yes	Yes	Yes	Yes
Namibia	Yes	Signed but has not ratified.	Yes	Yes
South Africa	Yes	No	Yes	Yes
Zambia	Yes	Yes	Yes	Yes
Zimbabwe	Yes	Yes	Yes	Yes

In addition, SADC issued the Guidelines on Harmonisation and Facilitation of Cross Border Transport Operations across the Region During the COVID-19 Pandemic in 2020 (SADC Guidelines) to, inter alia, facilitate interstate flow of essential goods such as fuel, food, medicines, and agricultural products in the

124 SADC Protocol on Politics, Defence and Security Cooperation (2001), article 2(l).

125 SADC Regional Water Policy (2005), article 6.

126 Information obtained from the AU available at <https://au.int/en/treaties/african-charter-rights-and-welfare-child> (accessed 14 January 2021).

127 Information obtained from the AU available at <https://au.int/sites/default/files/treaties/36846-sl-AFRICAN%20UNION%20CONVENTION%20FOR%20THE%20PROTECTION%20AND%20ASSISTANCE%20OF%20INTERNALLY%20DISPLACED%20PERSONS%20IN%20AFRICA%20%28KAMPALA%20CONVENTION%29.pdf> (accessed 14 January 2021).

128 Information obtained from SADC available at https://www.sadc.int/documents-publications/show/Protocol_on_Politics_Defence_and_Security20001.pdf (accessed 14 January 2021).

129 Information obtained from SADC available at https://www.sadc.int/documents-publications/show/Protocol_on_Health1999.pdf (accessed 14 January 2021).

region. The SADC Guidelines explicitly provide that trucks and vehicles carrying food; agricultural inputs and supplies, medical equipment and medicines, fuel, and security, emergency and humanitarian relief services should be allowed to operate within the region to ensure continuity of supply chains.¹³⁰ Member states are also encouraged to simplify and automate trade and transport facilitation processes whilst ensuring that all legal documents are in place and applicable regulatory requirements are complied with; and introduce or enhance pre-clearance of goods and single window processing to reduce delays at ports and borders.¹³¹ In addition, states are encouraged to put in place policies and procedures at the ports of entry to identify and accord priority to the clearance and transportation of essential goods and services.¹³² Lastly, the SADC Secretariat in consultation with Member states, key partners and stakeholders should: review national transport related policies, regulations and response measures to identify inconsistencies; and, based on this assessment, identify best practices and propose to the member states harmonised policies, regulations and measures.¹³³

It is also relevant to mention that the SADC Disaster Risk Reduction Unit (DRRU) was established to minimise the negative impacts of disasters in the subregion, by emphasising integration of DRR and disaster management into the regional poverty reduction, security and sustainable development agenda to help create safer and more resilient communities.¹³⁴ To accomplish this, the SADC DRRU has developed a regional framework for coordinating DRM activities.¹³⁵ In addition, SADC is currently in the process of strengthening its regional disaster preparedness and response institutional and coordination mechanisms. Once fully developed, these mechanisms will consist of the SADC Joint Operations Centre (JOC), SADC Humanitarian and Emergency Operations Centre (SHOC); SADC Regional Emergency Standby Mechanism; a deployable SADC Emergency Response Team (ERT), as well as a Regional Disaster Preparedness Fund and a Resource Mobilisation Strategy.¹³⁶

States in the sub-region have also entered into bilateral or multilateral agreements that regulate aspects of international disaster assistance.¹³⁷ Although a review of such agreements is outside the scope of this study, as an example, the Governments of Botswana, Eswatini, Lesotho, Namibia, and South Africa are party to the SACU Agreement which, amongst other things, aims to facilitate the cross-border movement of goods between the territories of the member states.¹³⁸ As stated above, article 20 of the SACU Agreement regulates the imposition of customs duties on goods imported into the territory of member states and provides that a member state may grant a rebate of customs duties in respect of goods imported into its area where such rebates are: for the relief of the distress of persons in cases of famine and other national disasters; for goods imported under a technical assistance agreement; or in compliance with an obligation under any multilateral agreement to which such a member state is a party.

130 SADC Guidelines on Harmonisation and Facilitation of Cross Border Transport Operations across the Region During the COVID-19 Pandemic (SADC/C-EM/1/2020/4) (SADC Guidelines), Guideline 3.1.1 and 3.2.1 (ii)(a).

131 SADC Guidelines, Guidelines 3.1.2 (i) and (ii).

132 SADC Guidelines, Guideline 3.4.1 (iii).

133 SADC Guidelines, Guidelines 3.6(i) and (ii).

134 See OCHA ROSA, Disaster Response and Preparedness in Southern Africa: A guide to International Tools and Services Available to Governments, page 19.

135 See OCHA ROSA, Disaster Response and Preparedness in Southern Africa: A guide to International Tools and Services Available to Governments, page 19.

136 See the SADC Terms of Reference: Strengthening Southern African Development Community (SADC) The Disaster Preparedness and Response Facilities and Fund available at https://www.sadc.int/files/3115/6209/3389/Final_TOR_Regional_Disaster_Preparedness_and_Response_Mechanisms.pdf (accessed 12 February 2021).

137 See IFRC, International Disaster Response Law Research Report: Southern African Region (2003).

138 Southern Africa Customs Union Agreement (2002, as amended in 2013), article 2(a).



A group of people, including women and children, are walking along a dirt road that stretches into the distance. The road is flanked by tall, dry grass and dense green trees and bushes. In the foreground, several women and children are walking towards the camera. One woman is wearing a blue shirt with a 'YOKOHAMA' logo and a yellow skirt. Another woman is wearing a blue dress with a red 'C' logo. A child is wearing a blue shirt with a 'YOKOHAMA' logo and a yellow skirt. In the background, two more people are walking away from the camera on the same road. The overall scene is a rural, natural setting.

COUNTRY PROFILES



Political Framework

Angola is a presidential republic, whereby the President is the Head of State, the Executive Power and the Commander-in-Chief of the Angolan Armed Forces.¹³⁹ The President is not elected directly; the 2010 Constitution provides that the President will be the head of the political party or coalition of political parties who holds the majority of seats in Parliament.¹⁴⁰ The President serves a five-year term and may be eligible for a second consecutive term.¹⁴¹ Legislative power is vested in the President, the government and Parliament.¹⁴² Angola has a unicameral Parliament, the National Assembly, which consists of one hundred and thirty elected members at national level and five members for each province.¹⁴³

Angola follows a civil law tradition. Legislation is the primary source of law, but customary law also plays an important role.¹⁴⁴ Angola adopts a monist approach to international law. Article 13 of the Constitution of Angola provides that international law forms an integral part of the Angolan legal system and that duly approved or ratified international treaties and agreements come into force after they have been officially published.

DRM Framework

The main legislative document on disaster management in Angola is the Basic Civil Protection Law of 2003 (Law 28/03) (the Basic Civil Protection Law), which was amended by Law 14/20 of 22 May 2020. The main objective of the Basic Civil Protection Law is to reduce disaster risk through the development of relief action, prevention, and training.

In addition, DRM in Angola is guided by Presidential Decree No. 29/16 of 1 February 2016: approving the national plan for preparation, resilience, response, and recovery from natural disasters for the period 2015–2017 (National Plan);¹⁴⁵ and Presidential Decree no. 30/16 of 3 February 2016: approving the Strategic Plan for Disaster Prevention and Risk Reduction (Strategic Plan). In its introduction, the Strategic Plan provides an overview of DRM in Angola and lists the most common disasters faced by the country. It establishes the principles that should guide disaster policy in Angola and provides strategic actions for the prevention and reduction of disaster risks. For each strategic action, the Strategic Plan establishes one leading national authority or body and lists other participating institutions.

The National Commission for Civil Protection (CNPC) and the National Civil Protection and Firefighter Service (SNPCB) are the two main institutions responsible for DRR activities in Angola.¹⁴⁶ The CNPC was established by the Basic Civil Protection Law as a multidisciplinary and multisectoral institution comprised of representatives of national ministries and directors from relevant services which operates under the Ministry of the Interior.¹⁴⁷ The main actions carried out by the CNPC seek to **reduce disaster risk**, with particular emphasis on issues related to education, institutional and national training and the strengthening of provincial structures, as well as training of its staff.¹⁴⁸

139 Constitution of Angola, 2010, article 108. See also See GlobalLex, Update: Republic of Angola -Legal System and Research available at <https://www.nyulawglobal.org/globalex/Angola1.html> accessed February 2021.

140 Constitution of Angola, 2010, article 109(1).

141 Constitution of Angola, 2010, article 108.

142 Constitution of Angola, article 119.

143 Constitution of Angola, articles 141 and 144.

144 See GlobalLex, Update: Republic of Angola -Legal System and Research available at <https://www.nyulawglobal.org/globalex/Angola1.html> accessed February 2021.

145 Although the period that the National Plan covers has expired, a new national plan does not appear to have been published.

146 UNDRR Country Reports on Public Investment Planning for Disaster Risk Reduction, Angola Risk Sensitive Budget Review (January 2020), page 6.

147 UNDRR Country Reports on Public Investment Planning for Disaster Risk Reduction, Angola Risk Sensitive Budget Review (January 2020), page 6.

148 UNDRR Country Reports on Public Investment Planning for Disaster Risk Reduction, Angola Risk Sensitive Budget Review (January 2020), page 6.

Question 1

Does Angola have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

As stated above, the legal framework for DRM in Angola is provided by the Basic Civil Protection Law. The Basic Civil Protection Law establishes the institutional framework, defining roles and responsibilities of the relevant bodies when assisting the government in directing and coordinating activities for civil protection and, among others, promoting disaster preparedness, response and recovery operations and DRM across the country.¹⁴⁹

The Basic Civil Protection Law contains minimal provisions on international disaster assistance. Article 22 provides that unless an international treaty or convention provides otherwise, the request and the granting of international assistance in the event of a serious accident, catastrophe, or calamity, is the responsibility of the government. In addition, the goods and equipment that constitute international assistance, requested or granted, are exempt from any duties or taxes, for their import or export, and their customs clearance must be granted priority.¹⁵⁰ Furthermore, the formalities for crossing borders by persons engaged in relief missions are reduced to the minimum.¹⁵¹ As stated above, the Basic Civil Protection Law was amended in 2020. However, detailed provisions on international disaster assistance were not included in the amendment.

In addition, the National Health Development Plan 2012–2025 also recognises the vital role of international partners in the implementation of prevention and control projects of infectious diseases, epidemics, and public health emergencies.¹⁵² Although not explicitly linked to DRM, this may be relevant as strengthening the healthcare system through international assistance may contribute to better preparedness when responding to a disaster, in particular public health emergencies.

Question 2

Do Angola's laws and regulations clearly set out a focal point for coordinating international disaster assistance?

With regard to coordination at the operational level, the Basic Civil Protection Law establishes the CNPC in Section IV as the specialised technical advisory and operational coordination body for civil protection organisations and structures, working directly under the supervision of the Ministry of Interior.¹⁵³ The functions of the CNPC include, among others, studying and proposing:

- legislative measures and technical standards necessary for the implementation of the Basic Civil Protection Law and for the pursuit of civil protection;
- institutional collaboration mechanisms between all the bodies and services with responsibilities in the field of civil protection, as well as forms of technical and operational coordination of the activities carried out by them, within their specific scopes;
- criteria and technical norms on the organisation of the inventory of resources and means, public and private, capable of mobilisation at local, provincial, and national levels, in the event of a serious accident, catastrophe or calamity;
- criteria and technical rules on the elaboration of emergency plans, general and special, at the local, provincial, and national level; and

149 Law 14/20, Amendments of the Basic Civil Protection Law, Chapters III-IV.

150 Law 28/03, Basic Civil Protection Law, article 22.

151 Law 28/03, Basic Civil Protection Law, article 22.

152 National Health Development Plan 2012–2025, page 23.

153 Law 28/03, Basic Civil Protection Law, article 15.

- forms of external cooperation that the bodies and structures of the civil protection system develop in the fields of their specific powers and competences.¹⁵⁴

However, the amendments to the Basic Civil Protection Law contained in Law 14/20 establish that the Chief of the Executive Branch is responsible for, among others, assuming the direction of operations in the event of a catastrophe or public disaster.¹⁵⁵ Given this amendment, it is not explicitly clear whether the focal point for international disaster assistance in Angola would be the CNPC or the Chief of the Executive Branch.

Question 3

Do Angola's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?

The roles and responsibilities of some of the relevant institutions have been outlined above. Additional governmental civil protection actors include:

- the National Civil Protection Council, which is an inter-ministerial consultation organ which consults with the Head of Government in matters of civil protection;
- the entity responsible for Civil Protection and Firemen;
- the Defence, Security and Internal Order organs; and
- the entities responsible for Civil Aviation, Merchant Navy and Ports, Maritime Inspection, Urban Planning, and the Environment.¹⁵⁶

The National Plan highlights the role of international partners and the international community during the preparedness phase regarding monitoring, evaluation, and participation. Although it does not specify liaison procedures between the resident / humanitarian coordinator and international partners, it provides that their contribution should promote the elaboration and implementation of the national plan monitoring mechanism, and the establishment of a National Consultative Platform for the Preparedness, Response and Recovery processes (within the scope of the United Nations Office for Disaster Risk Reduction's (UNISDR) National DRR Platforms).¹⁵⁷ The National Plan for Disaster Preparedness, Contingency, Response and Recovery 2014–2019 (National Plan II) provides that UN agencies such as FAO and UNICEF are two of the responsible actors during the contingency and response phase, providing general food assistance and emergency nutrition interventions in accordance with internationally required standards, establishing timely identification of nutrition and food security situations, performing food security assessments for populations in emergency situations, and providing food rations to affected households.¹⁵⁸

Question 4

Do Angola's laws and regulations outline a process for requesting/ welcoming offers of international disaster assistance, and for terminating international assistance?

The current legal framework for DRM in Angola does not establish specific procedures for requesting and/or terminating international disaster assistance, nor for the exchange of information among state and non-state actors.

However, as stated above, article 22 of the Basic Civil Protection Law establishes that the government is responsible for requesting external assistance, in the event of a serious accident, catastrophe or

¹⁵⁴ Law 28/03, Basic Civil Protection Law, article 16.

¹⁵⁵ Law 14/20, Amendments of the Basic Civil Protection Law, article 11.

¹⁵⁶ Law 14/20, Amendments of the Basic Civil Protection Law, articles 13 and 18.

¹⁵⁷ National Plan, page 455.

¹⁵⁸ National Plan for Disaster Preparedness, Contingency, Response and Recovery 2014–2019, section 4.1.



Angola, 2016. Angola Red Cross yellow fever social mobilisation campaign in the Viana municipality, where a major outbreak occurred. The campaign was undertaken to inform people about yellow fever and convince those sceptical to get vaccinated. © Monaco Red Cross / Marine Ronzi

calamity.¹⁵⁹ In addition, article 16 provides the functions of the CNPC, highlighting its vital role in the specific scope of public information and the training and updating of the personnel of bodies and structures that make up the civil protection system, and that of external cooperation.¹⁶⁰

Question 5

Do Angola's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?

The Basic Civil Protection Law does not provide comprehensive facilities for international assisting actors. It does, however, provide that goods and equipment that constitute international assistance, requested or granted, are exempt from any duties or taxes, for their import or export, and their customs clearance must be granted priority.¹⁶¹ In addition, the formalities for crossing borders by persons engaged in relief missions are reduced to the minimum.¹⁶² The sections below analyse whether the relevant sectoral laws provide for necessary legal facilities to be provided to international assisting actors.

Landing rights and general customs arrangements

The Civil Aviation law of Angola, Law 14/19, provides the national legal framework for civil aviation in compliance with the Chicago Convention. Article 75 provides that sanitary, customs and migratory control services – all of which are auxiliary aviation services – are performed by the competent bodies, under the terms provided for in the applicable law and regulations.¹⁶³ The Civil Aviation Law is, however, silent on simplified customs and landing procedures for airplanes carrying humanitarian assistance.

¹⁵⁹ Law 28/03, Basic Civil Protection Law, article 22.

¹⁶⁰ Law 28/03, Basic Civil Protection Law, article 16.

¹⁶¹ Law 28/03, Basic Civil Protection Law, article 22.

¹⁶² Law 28/03, Basic Civil Protection Law, article 22.

¹⁶³ Law 14/19, Civil Aviation Law, article 75.

However, Decree 142/20 stipulates the actions to be taken during the COVID-19 pandemic and is a good example of ad-hoc measures that may be implemented during a public health emergency and, potentially, in the event of a disaster. More specifically, article 8 of Decree 142/20 states that as a situation of Public Calamity was declared due to the COVID-19 pandemic, the borders of Angola remain closed, with the entrances and exits of the national territory subject to sanitary control defined by the competent authorities. However, some exemptions to this provision are provided, which include international humanitarian aid, and the entry and departure of diplomatic and consular personnel.¹⁶⁴

Food, medication, and quarantine and specialised goods and equipment

As stated above, the Basic Civil Protection Law provides that goods and equipment that constitute international assistance, requested or granted, are exempt from any duties or taxes, for their import or export, and their customs clearance must be granted priority.¹⁶⁵ However, further details are not provided. Further, the law does not appear to provide simplified procedures for the registration of specialised equipment such as communications equipment or vehicles for international disaster assistance. The law also does not appear to contain any provisions on special quarantine procedures for rescue dogs. Therefore, it appears that the normal rules relating to the registration and licensing of specialised equipment and the importation of rescue dogs would apply.

Immigration

Although the formalities for crossing borders by persons engaged in relief missions are reduced to the minimum under the Basic Civil Protection Law,¹⁶⁶ there are no specifications on how these “minimised formalities” should be implemented.

In terms of applicable sectoral laws, Law 13/19 establishes the Legal Regime for Foreign Citizens in the Republic of Angola, providing in article 14 that foreign citizens can enter the national territory provided that they meet, cumulatively, the following general requirements:

- hold a passport or any other international travel document valid in the Republic of Angola with a validity of longer than 6 months;
- have an entry visa in force and adequate for the purpose of travel;
- have means of subsistence under the terms of article 19 of Law 13/19;
- hold an international vacancy certificate; and
- not be subject to a ban on entry under the terms of article 23 of Law 13/19.

In addition, a foreign citizen with a safe-conduct or a laissez-passer issued by the state authorities of which he is a national or by an international organisation of which Angola is a member, is exempt from presenting a passport as long as there is an agreement in place for that purpose.¹⁶⁷

Chapter IV of Law 13/19 outlines the different types of entry visas applicable in Angola. The types of visas most relevant for international assisting actors include the following:

- Diplomatic, Official and Courtesy Visas, which are granted by the Ministerial Department of Foreign Affairs, through diplomatic or consular missions to the holder of a diplomatic, service, special or ordinary passport that travels to Angola on diplomatic, service, or official visit. This visa is valid for 60 days and exceptionally it can be granted for multiple entries;¹⁶⁸
- Short-Stay Visas, which are granted by diplomatic and consular missions to foreign citizens who, for

¹⁶⁴ Decree 142/20, article 8.

¹⁶⁵ Law 28/03, Basic Civil Protection Law, article 22.

¹⁶⁶ Law 28/03, Basic Civil Protection Law, article 22.

¹⁶⁷ Law 13/19, Legal Regime for Foreign Citizens in the Republic of Angola, article 14.

¹⁶⁸ Law 13/19, Legal Regime for Foreign Citizens in the Republic of Angola, article 48.

urgent reasons, need to enter national territory. These allow a stay in the country of up to 10 days. Although this type of visa is extendable, it does not allow its holder to establish residence in national territory, nor to exercise any paid activity;¹⁶⁹

- Work Visas, which are granted by diplomatic and consular missions and are intended to allow entry to the Angolan territory, in order to exercise paid professional activity. These do not entitle the holder to establish residence in national territory but allow a stay of up to 365 days and are renewable for the same period until the end of the contract. The contracting entity must notify the Migration Authority at all times and the holder will be subject to proof of compliance with the tax obligations;¹⁷⁰ and
- Temporary-Stay Visas, which are granted by diplomatic and consular missions and are intended for entry into national territory to carry out a mission in a religious institution or non-governmental organisation (NGO), or for a scientific research, mobility and university extension work, among others. These allow a 365-day stay with multiple entries and are extendable for an equal period of time.¹⁷¹

It should be noted that non-citizens working in Angola must hold a valid work visa and all employment contracts of foreign employees have to be registered with the Ministry of Labour.¹⁷² In addition, non-resident employees may only be hired when Angolan employees with comparable qualifications and experience are not available to fill a position and, generally, foreign employees may only be hired if an entity's staff include at least 70% Angolan nationals.¹⁷³ It is not clear whether the provisions of the Basic Civil Protection Law which stipulate that the formalities for crossing borders by persons engaged in relief missions are reduced to the minimum in situations of disaster would include exceptions to these provisions.¹⁷⁴

Registration of international assisting actors

There do not appear to be simplified procedures in place for the registration of international assisting actors in Angola, but limited information could be accessed regarding this question. In the absence of simplified procedures in place for the registration of international assisting actors in Angola, the normal rules applicable in the country would apply.

Recognition of professional qualification of foreign personnel

Current laws and policies in Angola do not appear to define specific procedures for recognition of professional qualifications of foreign personnel. For instance, although the National Health Development Plan 2012–2025 repeatedly mentions the need of recruiting foreign health personnel to strengthen the National Health Care System and contribute to its development, the document does not specify special provisions for the licences of these professionals to be recognised. In the absence of expedited procedures for the recognition of the professional qualifications of international assisting personnel, the normal rules applicable in the country would apply.

Tax and currency exchange for disaster relief activities

Angola has a residence-based tax system in terms of which residents are taxed on their worldwide income, whereas non-residents are subject to tax only on their Angolan-sourced income.¹⁷⁵ The Income Tax Code of Angola, approved by Law 18/14 provides a list of exemptions from income tax, including: income earned by agents of foreign diplomatic and consular missions whenever there is reciprocity of

169 Law 13/19, Legal Regime for Foreign Citizens in the Republic of Angola, article 52.

170 Law 13/19, Legal Regime for Foreign Citizens in the Republic of Angola, article 55.

171 Law 13/19, Legal Regime for Foreign Citizens in the Republic of Angola, article 56.

172 ENS, Doing Business in Angola (available at <https://www.ensafrica.com/doing-business/> accessed 8 March 2021).

173 ENS, Doing Business in Angola (available at <https://www.ensafrica.com/doing-business/> accessed 8 March 2021).

174 Law 28/03, Basic Civil Protection Law, article 22.

175 ENS, Doing Business in Angola (available at <https://www.ensafrica.com/doing-business/> accessed 8 March 2021).

treatment; income earned by personnel of the services of international organisations, under the terms established in agreements ratified by the competent body of the state; and income earned by the staff at the service of NGOs, under the terms established in the agreements with national entities, with the prior written recognition of the National Tax Director.¹⁷⁶ These provisions may provide tax relief to international assisting actors which fall within these categories. To the extent that an international assisting actor does not fall within any of these categories, it appears that the normal rules relating to taxation would apply.

Moreover, Chapter II of the Value Added Tax (VAT) Code provides a number of goods, services and operations that are exempt from the tax. Article 12 of the VAT Code provides that the acquisition of goods intended to mitigate the effects of natural disasters, such as floods, storms, droughts, cyclones, earthquakes and others of similar nature, are exempt from VAT.¹⁷⁷ In addition, article 8 of the VAT Code provides that the provision of: goods from the basic basket; medical and sanitary services (and operations closely related thereto); medicines, pharmaceutical specialties and other pharmaceutical products intended exclusively for therapeutic and prophylactic purposes; human organs, blood and milk; as well as the transport of sick or injured persons in ambulances or other appropriate vehicles carried out by duly authorised bodies, are exempt from VAT.¹⁷⁸

With regards to exchange control, Angola applies strict exchange control rules under the Angola Foreign Exchange Law and all companies operating in Angola are required to make payments through local banks using the Kwanza.¹⁷⁹ There do not appear to be exceptions relating to international disaster assistance. This may impact the ability of international assisting actors to freely bring currencies in and out of the country.

Freedom of movement of international assisting actors during a disaster response

There do not appear to be explicit provisions on the freedom of movement of international assisting actors in Angola.

Safety and security of international assisting actors

Measures to ensure the safety of international assistance personnel are not explicitly outlined in the law. Law 14/20 does, however, provide in article 18 that the Defence, Security and Internal Order bodies are among the agents responsible for civil protection. The declaration of a state of calamity in Angola enables the summoning of Defence, Security and Internal Order Bodies, as civil protection agents, to support citizens and guarantee compliance with the measures taken.¹⁸⁰ However, it is not clear whether these bodies will also be responsible for ensuring the safety and security of international assisting actors as well, as it is not explicitly stated.

Question 6

Do Angola's laws and regulations set out quality standards for international assisting actors?

Angolan legislation does not explicitly specify the fundamental principles that shall guide international disaster assistance in the country. However, Law 14/20 establishes the Civil Protection Policy, which consists of a set of principles, guidelines, and measures for civil protection, stating that the fundamental principles and permanent objectives of civil protection derive from the Constitution and Law 14/20,

176 Income Tax Code of Angola, article 5.

177 Value Added Tax Code of Angola, article 12.

178 Value Added Tax Code of Angola, article 8.

179 ENS, Doing Business in Angola (available at <https://www.ensafrica.com/doing-business/> accessed 8 March 2021).

180 Basic Civil Protection Law, article 5 and 6. See also Lexology, Angola-State of public calamity and state of emergency (8 June 2020) available at <https://www.lexology.com/library/detail.aspx?g=63b71d23-b66f-4690-adbd-567d1ee8bffc> accessed 10 March 2021.

and the President of Angola, as incumbent on the Executive Branch, is responsible for defining the civil protection policy for Angola, its development and permanent updating.¹⁸¹

Question 7

Do Angola's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?

The law does not explicitly outline eligibility requirements for granting legal facilities to international assisting actors.¹⁸²

Question 8

Do Angola's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?

The legal framework in Angola does not establish a specialised unit for expediting the entry of international assistance. The current framework involves the engagement of various lead agencies, but there do not appear to be clear coordination procedures set out in the law.

Question 9

Do Angola's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?

There do not appear to be provisions in the law to prevent fraud or misappropriation concerning foreign disaster relief funds in Angola. There also do not appear to be provisions relating to the removal of legal facilities from international assisting actors which fail to adhere to international and domestic standards. However, Law 14/20 does provide that non-compliance with the legitimate **orders** of competent entities during a serious accident or declared catastrophe or public calamity situation is punishable as a crime of disobedience.¹⁸³

In addition, international actors would generally be subject to the laws of Angola, including the terms of the Criminal Code of Angola. The Criminal Code provides that anyone who, in the event of catastrophe or public calamity, prevents aid being given to a person in a life-threatening situation, fails to provide assistance, or is a health professional and illegitimately refuses to provide assistance, can be punished with imprisonment.¹⁸⁴ Furthermore, the Criminal Code establishes provisions to punish crimes against foreign states such as physical, defamatory or harmful attacks against foreign diplomatic officers or personnel of international organisations.¹⁸⁵ Although not directly related to international disaster assistance, these provisions provide protection mechanisms for diplomatic and consular personnel, and for international organisations operating in Angola, which could potentially apply to international disaster assistance actors which enjoy diplomatic privileges and immunities.

Question 10

Do Angola's laws and regulations outline procedures for international disaster assistance sent from and transiting through the country?

The Basic Civil Protection law does not contain details on the procedures for international disaster assistance sent from and transiting through the country, but it does provide that goods and equipment that constitute international assistance, requested or granted, are exempt from any duties or taxes

181 Law 14/20, Amendments of the Basic Civil Protection Law, article 5.

182 See however, Law 13/19, Legal Regime for Foreign Citizens in the Republic of Angola.

183 Law 14/20, Amendments of the Basic Civil Protection Law, article 24.

184 Criminal Code of Angola, articles 192–194.

185 Criminal Code of Angola, articles 311–313.



Angola, 2016. Angola Red Cross social mobilisation volunteers inform people about the yellow fever vaccination. © Monaco Red Cross / Marine Ronzi

for their export, and that formalities for crossing borders by persons engaged in relief missions are reduced to the minimum.¹⁸⁶

With regards to sectoral laws, the VAT Code contains a list of exports, assimilated operations and goods in international transportation which are exempt from the tax. These include, among others:

- transfers of goods to duly recognised organisations that export them abroad as part of their humanitarian, charitable, or educational activities, upon prior recognition of the right to exemption;
- transfers of goods made under diplomatic and consular relations, the exemption of which results from international agreements and conventions signed by Angola; and
- transfers of goods destined for international organisations recognised by Angola or for members of the same organisations, within the limits and with the conditions established in international agreements and conventions signed by Angola.¹⁸⁷

In addition, Law 13/19 outlines the regulations for transit visas, among others. This type of visa is granted by Angolan diplomatic and consular missions to foreign citizens who, in order to reach the country of destination, have to make a stop in national territory.¹⁸⁸ It is valid for 60 days, for one or two entries and allows a stay of up to 5 days and is not extendable.¹⁸⁹ Transit visas can exceptionally be granted at the border post to foreign citizens who interrupt a continuous journey for a mandatory stopover of the means of transport used.¹⁹⁰ This could theoretically include international relief personnel headed to an end destination other than Angola.

¹⁸⁶ Law 28/03, Basic Civil Protection Law, article 22.

¹⁸⁷ Value Added Tax Code of Angola, article 11.

¹⁸⁸ Law 13/19, Legal Regime for Foreign Citizens in the Republic of Angola, article 50.

¹⁸⁹ Law 13/19, Legal Regime for Foreign Citizens in the Republic of Angola, article 50.

¹⁹⁰ Law 13/19, Legal Regime for Foreign Citizens in the Republic of Angola, article 50.



Political Framework

Botswana is a multi-party republic.¹⁹¹ Executive power vests in the President, who serves as head of state.¹⁹² The President is indirectly elected to a five-year term and may not serve more than ten years.¹⁹³ The President is assisted by the Vice President who is appointed by the President from among the Elected Members of the National Assembly.¹⁹⁴

Legislative power in Botswana vests in Parliament, which consists of the President and the National Assembly.¹⁹⁵ The National Assembly is composed of the President and 57 Elected Members as well as four Specially Elected Members.¹⁹⁶ The Ntlo ya Dikgosi (House of Chiefs) serves an advisory role on matters of legislation pertaining to tribal law and custom.¹⁹⁷ It is composed of between 33 and 35 members.¹⁹⁸

Botswana has a mixed legal system of civil, common, and customary law. Botswana is a dualist state, meaning that provisions of international agreements must be formally incorporated into domestic law before they are enforceable before a domestic court.

DRM Framework

Botswana does not currently have legislation dedicated to DRM, although the development of DRM legislation has been identified as a priority.¹⁹⁹ There are currently three DRM policy instruments in place in Botswana:

- the National Policy on Disaster Management (1996) (the NPDM),²⁰⁰ which aims to create a framework which facilitates the preparation of plans and legislation for the effective implementation of DRM in Botswana. Additionally, it outlines the roles and responsibilities of personnel at different levels in the implementation of DRM;
- the National Disaster Risk Management Plan (2009) (NDRMP), which provides a framework to guide all sectors and stakeholders in preparing their own DRR and emergency management plans. It is the most extensive DRM instrument in Botswana. The NDRMP defines management structures through which DRM is to be implemented, coordinated, and facilitated. It also identifies roles and responsibilities of all the leading governmental as well as non-governmental actors for DRM in detail;²⁰¹ and
- the National Disaster Risk Reduction Strategy 2013–2018 (2013) (the Strategy). The Strategy aims to inform the legal and institutional basis for efficient DRR planning and implementation in Botswana. It also provides indicators for the achievement of DRR components and objectives.

191 Constitution of Botswana, section 30.

192 Constitution of Botswana, section 47.

193 Constitution of Botswana, sections 32 and 34.

194 Constitution of Botswana, section 32.

195 Constitution of Botswana, section 57 and 86.

196 Constitution of Botswana, section 58.

197 Constitution of Botswana, section 85.

198 Constitution of Botswana, section 77.

199 The National Disaster Risk Reduction Strategy 2013–2018 (2013) (the Strategy), page 26.

200 Approved through Presidential Directive No. CAB. 27/96.

201 NDRMP, Chapter 4.

Chapter Three of the NDRMP sets out the DRM organisational framework in Botswana at national, district and village level. At national level, the Office of the President (OP) bears overall responsibility for ensuring the security, safety, social, and economic well-being of the citizens of Botswana.²⁰² Through the National Disaster Management Office (NDMO), OP is responsible for implementing and monitoring the DRM activities in the country.²⁰³ The NDMO is responsible for the following:

- providing coordination of DRR activities in Botswana;
- developing tools, techniques, and systems to ensure effective implementation of DRM;
- facilitating the development and implementation of DRR activities at sector as well as district and community levels;
- coordinating and facilitating capacity building activities; and
- mobilising resources for DRR and response activities.²⁰⁴

The Minister for Presidential Affairs and Public Administration oversees the implementation of national DRR strategies, policies, and programmes, including advising the President when to declare a state of disaster.²⁰⁵ The Permanent Secretary for Presidential Affairs and Public Administration is the accounting officer on DRR issues and activities and also chairs the National Committee on Disaster Management (NCDM).²⁰⁶

The NCDM is an inter-ministerial committee of Deputy Permanent Secretaries from ministries and representatives of the Botswana Police Service, Botswana Defence Force, the Deputy Clerk of the National Assembly, Botswana Red Cross Society (BRCS), the Secretary of the Rural Development Council and the Assistant Resident Representative of the United Nations Development Programme (UNDP) and NGOs. It acts as a national platform for DRR,²⁰⁷ and is the policy formulation body responsible for developing a disaster management strategy for the country and for overseeing the implementation of disaster management activities.²⁰⁸ The NCDM:

- advises the OP on disaster situations requiring a declaration of a state of disaster-induced emergency;
- serves as a reference committee and make recommendations to the OP for the approval of national policies, plans and strategies related to DRR;
- facilitates and monitors the implementation of DRM related activities in the country and makes recommendations as may be required;
- endorses and recommends funding for the costs related to disaster preparedness and relief; and
- participates in emergency operations activities during disasters.²⁰⁹

In the event of a disaster, the chairperson of the NCDM commands all operations of the National Emergency Operation Centre (NEOC) as the National Emergency Coordinator (NEC).²¹⁰

202 National Disaster Risk Management Plan, 2009 (NDRMP), page 10.

203 NDRMP, page 10.

204 NDRMP, page 10.

205 NDRMP, page 10.

206 NDRMP, page 10.

207 NDRMP, page 11.

208 See NDRMP, page 11; National Disaster Risk Reduction Strategy, 2013 (the Strategy), page 10; and the National Policy on Disaster Management, 1996 (NPDM), page 13.

209 NDRMP, page 11.

210 NDRMP, page 30.

The final institutional body relevant to this study at national level is the National Disaster Management Technical Committee (NDMTC), a multi-sector advisory body composed of professionals and specialists from various development areas, including BRCS and the UNDP, which:

- provides advisory support to the NCDM and NDMO;
- participates in emergency operations activities;
- provides technical support to the NDMO in developing and implementing DRM related activities and building of district and village level disaster management teams and stakeholders; and
- represents the NDMO in various forums and events.²¹¹

The NDRMP also makes provision for the establishment of District Disaster Management Committees and Village Development Committees.²¹²

IDRL Assessment

Question 1

Does Botswana have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

Although a legislative framework for IDRL in Botswana does not exist, elements of IDRL can be found in the three policy documents listed above.²¹³

As a starting point, the Strategy provides that international and trans-boundary cooperation and integration must be ensured by all institutions, stakeholders, and role players.²¹⁴ The NDRMP also makes provision for international assistance, acknowledging that depending on the type of disaster, external assistance may be needed.²¹⁵ In terms of procedure, the NDRMP provides that the OP/the NDMO should request assistance through the Ministry of Foreign Affairs and International Cooperation, and that embassies should be updated and provided with regular feedback on the disaster response and assistance needed.²¹⁶ The NDRMP also provides that formal and informal mutual aid agreements between the government and private agencies to regulate their assistance during disaster operations should be put in place (it does not, however, specify whether this includes agreements with international assisting actors).²¹⁷ The NDRMP also provides that the Ministry of Foreign Affairs and International Cooperation is responsible for a number of functions related to international disaster assistance:

- developing procedures on international as well as regional assistance (including military assistance from neighbouring countries);
- acting as a liaison channel for all external involvement during DRM operations, working in conjunction with the relevant ministries;
- processing offers and requests for external disaster assistance through diplomatic channels;
- disseminating information to international partners, donors and governments on the DRM needs and requirements for international support; and
- maintaining guidelines on international arrangements concerning international disaster assistance.²¹⁸

211 NDRMP, page 12.

212 NDRMP, pages 13 and 14.

213 For a detailed analysis of IDRL in Botswana, see BRCS and IFRC, International Disaster Response Law (IDRL) In Botswana (2013) (IDRL in Botswana).

214 The Strategy, section 7.

215 NDRMP, page 47.

216 NDRMP, page 47.

217 NDRMP, page 47.

218 NDRMP, section 49.

In addition, the Emergency Powers Act empowers the President to make emergency regulations, which, although it is not explicitly stated, could regulate international assistance with regards to specific disaster induced emergencies.²¹⁹

Question 2

Do Botswana's laws and regulations clearly set out a focal point for coordinating international disaster assistance?

Although it is not explicitly assigned as a focal point as such, the NDMO, with the assistance of the NCDM and under the supervision of the NEC is responsible for coordinating international assistance requested by the Minister of Foreign Affairs and Cooperation.²²⁰

Question 3

Do Botswana's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?

The roles and responsibilities of different institutions in the context of international disaster assistance have been set out in Question 1 and 2 above, which have outlined the roles of the NDMO, NCDM and the Ministry of Foreign Affairs and Cooperation in international disaster assistance. The NDRMP also provides that the Ministry of Trade and Industry is responsible for collaborating with the Ministry of Finance and the OP in providing rebate certificates and import permits for goods intended for relief purposes, and for ensuring compliance with quality standards of relief materials.²²¹ The Ministry of Finance and Development planning is responsible for facilitating the entry of all official disaster assistance commodities, as well as waiving customs and duty where appropriate.²²² Lastly, in the event of a national or transboundary radiological emergency, the Ministry of Infrastructure, Science and Technology is responsible for liaising with the International Emergency Centre of the International Atomic Energy Agency.²²³

As a member of the NCDM, BRCS plays an essential role in the coordination of disaster relief efforts in Botswana.²²⁴ The role of BRCS in respect of disaster relief and international disaster assistance is provided in the NDRMP, which provides that "depending on the severity of the disaster, international assistance for disaster relief is requested by the NEC or the Botswana Red Cross Society after an official appeal for international assistance is made, based on identified needs that cannot be met nationally".²²⁵

The documents reviewed do not contain specific provisions about contacting the UN Emergency Relief Coordinator or any regional body, nor the general humanitarian community or for assistance in the event of a disaster. The NDRMP does, however, provide that the role of the UN in DRM in Botswana more generally, is as follows:

- providing technical and financial resources;
- knowledge management and sharing best practices of DRR; and
- supporting the country to mobilise international resources at the time of disaster.²²⁶ The Assistant Resident Representative of the UNDP is also a member of the NCDM, as stated above.

219 Emergency Powers Act [Chapter 22:04], section 3.

220 NDRMP, section 5.2.3.

221 NDRMP, section 4.15.

222 NDRMP, section 4.11.

223 NDRMP, page 21.

224 NDRMP, section 3.1.2.

225 NDRMP, page 46.

226 NDRMP, page 25.

In addition to the UN, SADC is recognised as playing a crucial role as a regional coordinator to mobilise resources and disseminate information within the region at the time of disaster.²²⁷

Question 4

Do Botswana's laws and regulations outline a process for requesting/ welcoming offers of international disaster assistance, and for terminating international assistance?

The NDRMP does not contain detailed procedures for requesting international assistance for disaster relief, nor does it indicate the criteria for making a request for international assistance. There are also no detailed provisions about the acceptance of foreign offers of assistance nor an indication of the level of detail to be included in the requests for assistance.

However, as stated above, the NDRMP does provide that the OP or the NDMO should request international assistance through the Ministry of Foreign Affairs and International Cooperation.²²⁸ In addition, the NDRMP also provides that the Ministry of Foreign Affairs and International Cooperation is responsible for: developing procedures on international and regional assistance; processing offers and requests for external disaster assistance through diplomatic channels; and maintaining guidelines on international arrangements concerning international disaster assistance (although to date, these do not appear to have been developed).²²⁹ The NDRMP also provides that international assistance disaster relief may be requested by the NEC or the BRCS after an official appeal for international assistance is made, based on identified needs that cannot be met nationally, and that unsolicited relief supplies from outside the country will only be accepted by the NEC.²³⁰ It is worth noting that declining international funding support is recognised as a threat to DRR in Botswana under the Strategy.²³¹

There is no indication whether a prior declaration of an official state of emergency or disaster is required before making the request for international assistance, but the Strategy provides that external funding for DRR should constantly be sourced through the National Disaster Management Office (including funding for specific DRR capacity and initiatives by UN Agencies, SADC and international humanitarian and relief organisations).²³²

Question 5

Do Botswana's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?

The DRM framework in Botswana contains limited provisions on legal facilities for international assisting actors in disaster situations. As stated above, the NDRMP provides that the Ministry of Trade and Industry is responsible for collaborating with the Ministry of Finance and the OP in providing rebate certificates and import permits for goods intended for relief purposes;²³³ and the Ministry of Finance and Development planning is responsible for facilitating the entry of all official disaster assistance commodities, as well as waiving customs and duty where appropriate.²³⁴

The sections below contain an analysis of sectoral legislation in Botswana to determine whether any additional facilities are provided.

227 NDRMP, section 4.21.

228 NDRMP, page 47.

229 NDRMP, section 4.9

230 NDRMP, page 46.

231 The Strategy, section 4.6.

232 The Strategy, section 6.6.

233 NDRMP, section 4.15.

234 NDRMP, section 4.11.



Botswana, 2020. The Botswana Red Cross Society team was in the village of Matagapswe to distribute food and hygiene parcels. This elderly man was being asked a couple of questions to record his particulars. © Botswana Red Cross Society

Landing rights and general customs arrangements

The Civil Aviation Act²³⁵ regulates air transport in Botswana. The Civil Aviation Act has no specific provisions for the overflight, landing and departure rights and fees for aircraft bearing relief goods, but it does have provisions that may be used to facilitate relief flights. In particular, the Civil Aviation Act allows regulations “giving effect to, and carrying out, the provisions of the Chicago Convention, as amended from time to time”²³⁶ to be made. However, to date there have been no regulations promulgated that relate to international disaster assistance. In addition, the Civil Aviation Act allows the relevant Minister to exempt any person, aircraft, aerodrome, aviation facility or service, from the application of any regulations, by-laws, requirements, directives, notices or information made or issued under the Act, if the exemption is in the public interest and is not likely to affect aviation safety.²³⁷ Lastly, section 91 of the Civil Aviation Act provides that in times of great national emergency, the Minister may regulate the navigation of aircraft in Botswana. These provisions could potentially facilitate the departure, overflight or landing of aircraft carrying humanitarian cargo in disasters.

Customs in Botswana is regulated by the Customs Act,²³⁸ which provides the procedure for the entry of goods into the country; and excise is regulated by the Excise Duty Act.²³⁹ Under the Customs Act, all goods imported into or exported from Botswana, including relief consignments, must be declared to the Revenue Service and placed under a customs procedure.²⁴⁰ A special procedure in respect of relief goods is provided for by the Customs Act, in terms of which the Revenue Service shall grant clearance of a relief consignment without regard to the country of origin or country of destination, provided the relief consignment is authorised by:

²³⁵ Civil Aviation Act [Chapter 71:01].

²³⁶ Civil Aviation Act [Chapter 71:01], section 89(2) xxi.

²³⁷ Civil Aviation Act [Chapter 71:01], section 91.

²³⁸ Customs Act, 2018.

²³⁹ Excise Duty Act [Chapter 50:01].

²⁴⁰ Customs Act, 2018, section 96.

- lodging of a customs declaration or of a provisional or incomplete customs declaration subject to completion of the declaration within a specified period;
- lodging, registering, and checking of a customs declaration and supporting documents prior to the arrival of the goods, and their release upon arrival;
- clearance outside the designated hours of business or away from customs offices and the waiver of any charges in this respect; or
- examination or sampling of goods only in exceptional circumstances.²⁴¹

In addition, goods imported:

- for the relief of distress of persons in cases of famine or other national disaster;
- under any technical assistance agreement; or
- in terms of an obligation under any multilateral international agreement to which Botswana is a party,

may be imported under a full rebate of customs duties provided that:

- a certificate is issued by the International Trade Administration Commission and any other conditions as may be agreed upon by the Governments of South Africa, Botswana, Lesotho, Eswatini, and Namibia are complied with; and
- the goods imported shall not be sold or disposed of to any party who is not entitled to any privileges under the rebate item, or be removed to the area of Botswana, Lesotho, Eswatini, or Namibia without the permission of the International Trade Administration Commission.²⁴²

In addition, relief consignments received as gifts by an approved organisation for use or distribution by or under the control of such organisation, may be admitted free of duties and taxes.²⁴³ However, the term “approved organisation” is not defined and therefore it is not clear which organisations may benefit from this provision.

These provisions are very much in line with the [IDRL Guidelines](#), which stipulate that disaster relief and initial recovery goods and equipment exported or imported by, or on behalf of eligible assisting actors should be exempted from all customs duties, taxes, tariffs or governmental fees as well as export, transit, and import restrictions; and that documentation and inspection requirements for export, transit and import should be minimised and simplified.²⁴⁴ They therefore constitute an example of good practice.

Customs arrangements for specialised goods and equipment

▼ Communications equipment

There do not appear to be specific provisions dealing with the importation and use of telecommunications equipment for purposes of disaster relief in Botswana, and therefore it appears that the normal rules would apply. The Communications Regulatory Authority Act provides that no person shall provide a telecommunications service, operate a telecommunications system, possess or operate a radio communication network, or possess or operate radio communication equipment without a licence issued by the Botswana Communications Regulatory Authority (BCRA).²⁴⁵ However, in theory, the BCRA may exempt a person from requiring a licence by regulation.²⁴⁶

²⁴¹ Customs Act, 2018, section 258.

²⁴² Section 71(1)(b) of the Excise Duty Act read with Schedule 4 (Item 412.11) of the Customs and Excise Duty Act.

²⁴³ Customs Act, 2018, section 258(2).

²⁴⁴ IDRL Guidelines, paragraph 17.

²⁴⁵ Communications Regulatory Authority Act 19 of 2012, sections 39, 40 and 45.

²⁴⁶ Communications Regulatory Authority Act 19 of 2012, section 94.

▼ Food, medication, and quarantine

It is likely that food imported as relief consignments in disaster settings would benefit from the special customs procedure and customs rebate described above.

However, with regards to medication, section 28 of the Medicines and Related Substances Act²⁴⁷ provides that no person shall import or export medicines without a licence, and licences can only be granted to residents of Botswana. This may make it challenging for international assisting actors to import/export medicine from the country. In addition, the Drugs and Related Substances Regulations provides that the importation of certain drugs requires special approval and detailed labelling and other requirements which must be adhered to.²⁴⁸

The law does not contain any explicit provisions on the importation of rescue dogs by international assisting actors. The Diseases of Animals Act provides that no person shall import or export any animal without the consent of the Director of Veterinary Services, who may direct that any imported or exported animal be held in a quarantine station and subjected to tests, inoculation, treatment, or dipping.²⁴⁹ In the absence of any special procedures being provided for international assisting actors, it appears that the normal rules would apply.

▼ Vehicles

There do not appear to be any explicit provisions on the importation, registration, and licensing of vehicles used by international assisting actors.

The importation of motor vehicles that would be used in the event of a disaster would likely be possible under Rebate Item 412.11 described above. With regards to registration and licensing, the Road Traffic Act provides that all vehicles owned or possessed in Botswana must be registered and licensed.²⁵⁰ In order to register a vehicle imported into Botswana the owner of the vehicle must satisfy the licensing officer that the vehicle has been lawfully exported from its country of origin or the country in which it was last registered; and that the vehicle has been lawfully imported into Botswana, and by producing documentary evidence, in the form of a customs clearance certificate issued by the Department of Customs and Excise; that the vehicle has been cleared from customs control.²⁵¹

Holders of foreign driving licences (except those issued within SADC states and holders of international driver's licences), may use their foreign driving licence for a maximum of 90 calendar days, after which they must apply for a Botswana driver's licence.²⁵²

Immigration

In terms of sectoral laws, immigration in Botswana is primarily regulated by the Immigration Act,²⁵³ which does not contain any specific provisions providing for expedited processes related to disaster relief personnel in particular.

Section 22 of the Immigration Act provides that a non-citizen is not permitted to work for reward or profit in Botswana unless he or she is issued a work permit. The Immigration Act does, however, provide for persons to be exempted from requiring a work permit as well as for the issuance of emergency work and residence permits if a Commissioner of Labour is of the opinion that an emergency exists which

247 Medicines and Related Substances Act [Chapter 63:04].

248 Drugs and Related Substances Regulations, 1993, regulations 7 and 8.

249 Diseases of Animals Act [Chapter 37:01], section 6.

250 Road Traffic Act [Chapter 69:01], sections 6, 10 and 16.

251 Road Traffic Act [Chapter 69:01], section 10.

252 See Government of Botswana, Foreign Driving Licence Conversion, available at <https://www.gov.bw/transport/foreign-driving-licence-conversion> (accessed 7 February 2021).

253 Immigration Act 3 of 2011.

requires the immediate commencement of employment of a non-citizen.²⁵⁴ This provision may allow international assisting actors to work in Botswana on an expedited basis. In addition, the Immigration (Exemption) Order exempts employees of several international organisations and agencies from requiring a permit to work in Botswana, such as UNDP, UN Office of Technical Cooperation, Canadian International Development Agency, Swedish International Development Agency, German Volunteer Service, International Medical Corporation Committee, expatriate doctors, nurses and other personnel employed by certain hospitals and persons on EU funded projects, to name a few.²⁵⁵

In addition, the Diplomatic Immunities and Privileges Act²⁵⁶ gives force of law to certain provisions of the Vienna Convention on Diplomatic Relations in Botswana. Organisational immunity is also afforded to certain organisations which are also granted the legal capacities of a body corporate.²⁵⁷

Registration of international assisting actors

There are no explicit provisions relating to the registration international assisting actors in Botswana. Generally, the legal personality of an entity would be recognised in Botswana if it can prove registration in another jurisdiction.²⁵⁸ However, proof of registration in Botswana would be necessary to access certain legal facilities such as opening bank accounts and accessing utilities.²⁵⁹ In general, international assisting actors could register in Botswana as societies under the Societies Act;²⁶⁰ or as external companies under the Companies Act.²⁶¹

Recognition of professional qualifications of foreign personnel

The recognition of qualifications of doctors, nurses and paramedics, engineers and architects in Botswana is regulated by law, and there are no explicit provisions relating to the speedy recognition of foreign qualifications for international disaster assistance purposes. However, a few provisions were identified as relevant.

The Botswana Health Profession Act²⁶² regulates the practice of medicine, dentistry, pharmacy, and allied health professions in Botswana. The Health Profession Act creates the Botswana Health Professions Council, which has as one of its functions the registration of health professionals.²⁶³ Section 9(1) provides that no person shall practise as a medical practitioner, dentist, pharmacist, intern, or as a member of an allied health profession unless he is registered as such with the Botswana Health Professions Council. The Health Profession Act does allow for registration of itinerant (travelling) medical practitioners in “very exceptional circumstances”.²⁶⁴ In addition, in terms of section 9(8) the Council may grant temporary registration entitling a person who is or intends to practise in the medical or allied health profession under the laws of another country to practise that profession in Botswana. These provisions may be useful in disaster situations to allow the for the registration of disaster assistance personnel who are medical practitioners.

The nursing profession is regulated by the Nurses and Midwives Act of Botswana, which establishes the Nursing and Midwifery Council of Botswana.²⁶⁵ No nurse or midwife may practise in Botswana

254 Immigration Act 3 of 2011, sections 22, 26, 27 and 32.

255 Immigration (Exemption Order), 7 March 1975, schedule 2.

256 Diplomatic Privileges and Immunities Act [Chapter 39:01], section 2. See the Diplomatic Immunities and Privileges (Designation of Organisations and Conferment of Immunities and Privileges) Order of 15 July 1983 for a list of designated organisations. In addition, the Diplomatic Immunities and Privileges (Conferment of Personal Immunities and Privileges) Order of 15 July 1983 confers certain immunities and privileges on specified officers from certain organisations, including the Regional Disaster Management Coordinator of the IFRC and UN agency staff.

257 Diplomatic Privileges and Immunities Act [Chapter 39:01], section 4.

258 See IDRL in Botswana, page 40.

259 See IDRL in Botswana, page 40.

260 Societies Act [Chapter 18:01].

261 Companies Act, 2003, sections 345, 352 and 354.

262 Botswana Health Professions Act [Chapter 61:02].

263 Botswana Health Professions Act [Chapter 61:02], sections 3 and Part III.

264 Botswana Health Professions Act [Chapter 61:02], sections 9(3).

265 Nurses and Midwives Act [Chapter 61:03], section 3.

without registration, and there is no provision for emergency registration.²⁶⁶ The Minister does have power to make regulations under the Act,²⁶⁷ which could allow for emergency registration of foreign qualified nurses and midwives in disaster settings in future through regulations.

Architects are regulated under the Architects Registration Act, which makes provision for temporary registration of non-resident architects who are in Botswana in connection with specified work.²⁶⁸ The temporary registration does not explicitly envisage disaster relief or initial recovery assistance but could potentially be relied on for the emergency registration of architects in such circumstances. The Architects Registration Regulations provides further details on the temporary registration of non-residents.²⁶⁹

Engineers are regulated under the Engineers Registration Act, which provides for temporary registration of engineers who are non-resident in Botswana in connection with a specified piece of work.²⁷⁰ Similar to the legislation regulating architects, temporary registration does not explicitly envisage disaster relief or initial recovery assistance but could potentially be relied on for the registration of engineers in such circumstances. In addition, regulations may be made under the Act,²⁷¹ which may allow for the emergency registration of engineers in Botswana in the future.

Tax and currency exchange for disaster relief activities

There are no foreign exchange controls in Botswana and no restrictions on the flow of currency through commercial institutions.²⁷² However, there are laws to identify suspicious activity and prosecute criminal conduct such as the Financial Intelligence Act as well as the Proceeds and Instruments of Serious Crime Act, which makes money laundering an offence.²⁷³

In terms of taxes, VAT is charged under the Value Added Tax Act²⁷⁴ on the supply of goods or the provision of services by a vendor in the course of doing business or on the importation of goods and services by any person. The Third Schedule of the Value Added Tax Act provides that the importation of donations and goods for the relief of distress of persons in cases of famine or other national disaster are exempt from VAT.²⁷⁵ In addition, the relevant Minister may authorise the granting of a refund of tax paid or borne on a supply to, or import by, an organisation or government to the extent provided under a technical assistance or humanitarian assistance agreement entered into between the Government of Botswana and any organisation or government of any country.²⁷⁶

Generally, both residents and non-residents are taxed on Botswana sourced income.²⁷⁷ However, the Income Tax Act exempts certain individuals and entities from tax.²⁷⁸ Under the Income Tax Act, any organisation in respect of which an order has been made under section 4 of the Diplomatic Immunities and Privileges Act is exempt from tax.²⁷⁹ A list of these organisations are contained in the Diplomatic Immunities and Privileges (Designation of Organisations and Conferment of Immunities and Privileges) Order. The official salaries and emoluments payable in respect of their offices to heads of diplomatic missions and consulates accredited to Botswana; and members of the staffs of such missions and consulates who are resident in Botswana solely for the purpose of carrying out duties as members of such missions are exempt from tax; as are the official salary and emoluments of an official of any

266 Nurses and Midwives Act [Chapter 61:03], section 10.

267 Nurses and Midwives Act [Chapter 61:03], section 12.

268 Architects' Registration Act, 2008, section 25.

269 Architects' Registration regulations, 2015 (Statutory Instrument No. 92 of 2015), regulations 6–8.

270 Engineers Registration Act [Chapter 61:06], section 9.

271 Engineers Registration Act [Chapter 61:06], section 20.

272 IDRL in Botswana, page 46.

273 Financial Intelligence Act [Chapter 08:07] and the Proceeds of Serious Crime Act [Chapter 08:03].

274 Value Added Tax Act [Chapter 50:03].

275 Value Added Tax Act [Chapter 50:03], section 14 (Exempt Imports) read with Items 405.04 and 412.11 of the Third Schedule.

276 Value Added Tax Act [Chapter 50:03], section 43.

277 IDRL in Botswana, page 62.

278 Income Tax Act [Chapter 52:01].

279 Income Tax Act [Chapter 52:01], Part I of the Second Schedule.

organisation in respect of whom an order has been made under section 4 of the Diplomatic Immunities and Privileges Act.²⁸⁰ Also exempt from tax are any amounts accrued from a business or employment carried on in Botswana by a citizen of any other country or by a company registered under any law in force in any other country, where such business or employment is carried out in Botswana under an agreement with the government for the provision of technical assistance to the government the extent to which the Minister may declare.²⁸¹ Lastly, the Minister may also enter into taxation agreements with persons to exempt such persons from tax, as well as agreements with the government of any other country with a view to the prevention of double taxation, the levying of tax, or to the rendering of reciprocal assistance in the administration of and in the collection of tax.²⁸² Although not directly related to international disaster assistance, certain assisting actors may fall within these categories, or may apply for exemption from taxation, should they meet the criteria required in these provisions.

Freedom of movement of international assisting actors during a disaster response

There are no explicit provisions regulating the movement of international relief personnel in Botswana.

Safety and security of international assisting actors

Although there are no laws which specifically provide for the safety and security of international assisting actors in Botswana, the NDRMP does provide that the Botswana Police Service is responsible for providing protection of the disaster affected areas and maintaining law and order within disaster affected areas.²⁸³ The IDRL in Botswana study notes that the security services provided by the police and the Botswana Defence Force are satisfactory to cover relief personnel goods and equipment, and notes that private security companies operate in the country and may be contracted privately for this purpose if required.²⁸⁴

Question 6

Do Botswana's laws and regulations set out quality standards for international assisting actors?

Although the Strategy provides that the National Disaster Management Office must establish mechanisms to ensure integration and joint standards of practice in the execution of DRM throughout the country,²⁸⁵ there do not appear to be laws which explicitly set out the quality standards for international disaster assistance in Botswana. However, the NDRMP does provide that the Ministry of Trade and Industry is responsible for ensuring compliance with quality standards of relief material, which would presumably be applicable to both domestic and international relief efforts.²⁸⁶ In addition, in general, international assisting actors would need to comply with relevant laws and standards applicable in Botswana.

Question 7

Do Botswana's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?

The laws and policies in Botswana do not set out special eligibility requirements for international assisting actors to receive legal facilities in Botswana.

280 Income Tax Act [Chapter 52:01], Part II of the Third Schedule, Items (i), (ii) and (iii).

281 Income Tax Act [Chapter 52:01], Part II of the Third Schedule, Item xix.

282 Income Tax Act [Chapter 52:01], section 53 and 54.

283 NDRMP, section 4.2.

284 IDRL in Botswana, page 69.

285 The Strategy, section 5.2.

286 NDRMP, section 4.15.

Question 8

Do Botswana's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?

As can be gleaned from Question 3 above, Botswana's laws and regulations do not currently establish a specialised unit for expediting the entry of international disaster assistance.

Question 9

Do Botswana's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?

There are no specific rules on the accountability of assisting organisations in Botswana. However, in general, international assisting actors would need to comply with relevant laws and standards described applicable in the country.

Although not directly related to international disaster assistance, the National Disaster Relief Fund (the NDR Fund) was established under the (now repealed) Finance and Audit Act.²⁸⁷ The Public Finance Management Act repealed the Finance and Audit Act, but provides that existing special funds shall continue to be administered in the manner provided by the law or instrument in terms of which it was established.²⁸⁸ Under the National Disaster Relief Fund Order, the purpose of the NDR Fund is to provide financial assistance to victims of natural disasters.²⁸⁹ The NDR Fund contains money appropriated by parliament and donations by persons and organisations.²⁹⁰ The NDR Fund is administered by the Permanent Secretary to the President, as the Accounting Officer, and is managed by the National Committee on Disaster Preparedness. With regards to accounting requirements, section 8 of the National Disaster Relief Fund Order stipulates that the Accounting Officer shall:

- keep and maintain proper accounts and records in respect of the NDR Fund;
- prepare in respect of each financial year a balance sheet and statement of income and expenditure in such form and manner as the Accountant-General may approve;
- at the time of submission of the balance sheet and statement of income and expenditure, submit to the Minister proposals for dealing with any surplus in the NDR Fund; and
- maintain an account in which shall be recorded all receipts into the NDR Fund and all disbursements from the Fund; such accounts shall be reconciled monthly with the account maintained by the Accountant General.

The balance sheet and statement of income and expenditure must be included in the Annual Statement of Accounts submitted by the Accountant General to the Auditor General.

NGOs are, however, free to use their own funds or funds donated directly to them as they choose and legal oversight over the use of relief funds is based on the organisations' responsibility to abide by their own constitutions and reporting requirements under any applicable empowering legislation.²⁹¹

287 Finance and Audit Act [Chapter 54:01], section 25.

288 Public Finance Management Act [Chapter 54:01], section 40.

289 National Disaster Relief Fund Order, section 3.

290 National Disaster Relief Fund Order, section 5. See also IDRL in Botswana, page 73.

291 IDRL in Botswana, page 74.

Question 10

Do Botswana's laws and regulations outline procedures for international disaster assistance sent from and transiting through the country?

Botswana's laws and regulations do not outline special or expedited procedures for international disaster assistance relief goods and personnel sent from and transiting through the country. As such, it appears that the normal rules and procedures relating to the transit of relief goods and personnel and the exportation of goods and equipment would apply.²⁹²



Botswana, 2020. The Botswana Red Cross Society installed water tanks to relieve the water shortage in the village of Tsetseng, as well as to promote hygiene and frequent washing of hands just after COVID-19 hit Botswana. This boy fetched some water with a drum. Because he doesn't have a wheelbarrow, he tied a rope to the drum and pulled it. © Botswana Red Cross Society

292 IDRL in Botswana, page 71. Note that in general, the Immigration (Visa) Regulations provide that a transit visa may be issued to individuals authorising them to pass through Botswana in transit to other countries and are typically valid for one week, or up to three years for transporters. In addition, goods in transit are exempt from VAT in Botswana in terms of section 14 (Exempt Imports) read with the Third Schedule of the Value Added Tax Act. Under the Customs Act, goods imported or exported for transit must be declared, but goods on board an aircraft or a cross-border train where the goods remain on board until the vehicle leaves Botswana are exempt from requiring a customs declaration. Under the Customs Duty Act, goods transported under a customs transit shall not be subject to the payment of duties and taxes; provided that the conditions laid down by Revenue Service are met; and a guarantee is furnished covering the duties and taxes that may become payable in case the goods are not delivered to the customs office of destination (see the Customs Duty Act, regulation 4 and Schedule 4; Value Added Tax Act, Item 490.00(g) of the Third Schedule; and Customs Act, section 96).



Political Framework

Eswatini is an absolute monarchy. The head of state is the King or iNgwenyama.²⁹³ The system of government in Eswatini is a participatory, tinkhundla based system,²⁹⁴ which emphasises devolution of state power from central government to tinkhundla areas and individual merit as a basis for election or appointment to public office.²⁹⁵

The head of the government is the Prime Minister, who is appointed by the King.²⁹⁶ The Prime Minister serves a five-year term and cannot serve more than two consecutive terms.²⁹⁷ The Prime Minister is a member of Parliament and chairman of Cabinet.²⁹⁸ The Cabinet of the Eswatini Government is appointed by the King on advice from the Prime Minister.²⁹⁹ The Parliament of Eswatini consists of a Senate and a House of Assembly, and elections are held every five years.³⁰⁰

Eswatini has a dual legal system comprising of common law, which is based on Roman Dutch law, and customary law, based on Swazi law.³⁰¹ Eswatini adopts a dualist approach to international law in terms of which, unless an international agreement is self-executing, it only becomes law once enacted by Parliament.³⁰²

DRM Framework

The Disaster Management Act of 1 of 2006 (DM Act)³⁰³ provides the framework for disaster management in Eswatini. Disaster management is defined in the DM Act as a collective term encompassing all aspects of planning for and responding to disasters, including both pre-and post-disaster activities. It also encompasses the management of both the risks and the consequences of disasters.³⁰⁴ The purpose of the DM Act is to provide for the integrated and coordinated disaster management in Eswatini and for the establishment of a Disaster Management Fund. Eswatini is currently in the process of reviewing its DRM legislation and has developed the Disaster Risk Management Bill, 2018 (2018 DRM Bill), which aims to repeal the DM Act. A review of the 2018 DRM Bill is not included in this study, as it has not yet been passed into law. In terms of policies governing DRM, Eswatini has prepared the National Emergency Response, Mitigation and Adaptation Plan (NERMAP), which covers the period January 2016 to March 2022.³⁰⁵

With regards to the institutional framework for DRM at national level, the DM Act establishes and outlines the roles and responsibilities of the following institutions:

- the Ministerial Disaster Management Team (the Team), an inter-governmental advisory body, whose objective is to ensure a sound policy and institutional framework for sustainable disaster management that will assist the country to reduce disaster risk through the creation of a resilient society;³⁰⁶

293 Constitution of the Kingdom of Swaziland Act 2005 (Constitution of Eswatini), section 4.

294 For purposes of political organisation and popular representation of the people in Parliament, Eswatini is divided into several areas called tinkhundla (section 80 of the Constitution of Eswatini).

295 Constitution of Eswatini, section 79.

296 Constitution of Eswatini, section 66.

297 Constitution of Eswatini, section 68.

298 Constitution of Eswatini, section 66.

299 Constitution of Eswatini, section 66.

300 Constitution of Eswatini, section 93.

301 Constitution of Eswatini, section 252.

302 Constitution of Eswatini, section 238.

303 Disaster Management Act 1 of 2006 (DM Act).

304 DM Act, section 2.

305 UNDRR Country Reports on Public Investment Planning for Disaster Risk Reduction: Kingdom of Eswatini Risk-sensitive Budget Review, page 11. This document was unfortunately not available for review.

306 DM Act, section 5(2). See section 6 (1) for the functions of this team.

- the National Disaster Management Council (NDM Council), whose objective is to support the development of a sustainable, integrated and coordinated system of disaster management in the country based on a consultative approach and partnerships between role-players. The Baphalali Eswatini Red Cross Society (BERCS) is included as a member of the NDM Council, together with representatives of organised labour, community-based organisations, NGOs, and others;³⁰⁷ and
- the National Disaster Management Agency (the NDMA), whose objective is to promote an integrated and coordinated system of disaster management in Eswatini focused on decreasing vulnerability and increasing preparedness and mitigation capacity.³⁰⁸ The NDMA was established in 2008 and is the national institution responsible for coordinating DRM programmes in the country. The Disaster Management Department, under the Deputy Prime Minister's Office, oversees and works in conjunction with the NDMA as well as NGOs and other development partners whose mandate is to prevent and reduce the impact of disasters.³⁰⁹ The DM Act also makes provision for the establishment of various technical working groups to assist the NDMA with its functions.

The DM Act further makes provision for the establishment of Regional Disaster Management Committees which serve as the principal interface for disaster management at regional, *inkhundla*, and community level.³¹⁰ BERCS is included a member of the Regional Disaster Management Committees.

Emergency management structures are established under Part IV of the DM Act, at the national and regional level, in the event of a disaster being declared. At national level, the Prime Minister shall constitute the Team as the National Emergency Committee (NE Committee), and a sub-committee thereof, the National Emergency Management Task Force will also be constituted.³¹¹ Provision is also made for the establishment of a Regional Emergency Management Task Force. The National Emergency Management Secretariat and National Emergency Coordinator are also created to serve as the operational unit of the task forces and are responsible for serving as the coordinating centre for emergency response management.

IDRL Assessment

Question 1

Does Eswatini have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

The DM Act is the main DRM statute of Eswatini. Although it does not contain detailed provisions on international disaster assistance, there are a few provisions which reference international disaster assistance either directly or indirectly.

As a starting point, the DM Act provides that one of the outcomes of Eswatini's national policy on DRM is to strengthen partnerships and coordination among various role-players, including at the international level.³¹² In addition, one of the functions of the Team includes making recommendations to the Prime Minister regarding compliance with international obligations and regional cooperation in disaster management with other Southern African countries.³¹³ The DM Act also provides that the functions and duties of the NE Committee include facilitating the exercise of the emergency powers of the Prime Minister, coordinating national and regional emergency management measures at the Cabinet level as well as acting as the interface between the government and the international community regarding

307 DM Act, section 8(2). See section 9(1) for the functions of this Council.

308 DM Act, section 14(2). The functions of the NDMA are listed under section 15.

309 See the website of the Deputy Prime Minister's Office available at <http://www.gov.sz/index.php/ministries-departments/the-deputy-prime-minister-s-office/disaster-management-agency> (accessed 11 February 2021).

310 DM Act, section 17. The functions of the regional committees are listed under section 18.

311 DM Act, sections 21 and 22.

312 DM Act, section 4(4)(d).

313 DM Act, section 6(1)(d).

emergency management and assistance matters.³¹⁴ Lastly, the DM Act provides that regulations can be made on any matter as considered necessary to achieve its objectives.³¹⁵ This provision allows for regulations on international disaster assistance to potentially be developed in the future.

There are also several sectoral laws which include provisions relating to international disaster assistance in Eswatini, such as the Biosafety Act, which requires international information sharing with the Biosafety Clearing House, established by the Cartagena Protocol.³¹⁶ In addition, the Environmental Management Act states that government shall cooperate with international organisations to protect the regional and global environment.³¹⁷

As mentioned above, Eswatini is currently in the process of reviewing its DRM legislation and has developed the 2018 DRM Bill, which aims to replace the DM Act. A review of the 2018 DRM Bill is not included in this study, as it has not yet been passed into law. However, it presents an opportunity for more detailed IDRL provisions to be incorporated into Eswatini law.

Question 2

Do Eswatini's laws and regulations clearly set out a focal point for coordinating international disaster assistance?

The focal point for the coordination of international disaster assistance (including governmental and non-state actors) is not explicitly identified in the DM Act. However, one of the functions of the NE Committee is to act as the interface between the government and the international community regarding emergency management and assistance matters during disasters.³¹⁸ In addition, the DM Act makes provision for the establishment of various technical working groups to assist the NDMA with its functions and one of these include a working group on inter-country coordination.³¹⁹ Therefore the coordination of international assistance would likely be conducted through these bodies.

Question 3

Do Eswatini's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?

The institutional structure for DRM in Eswatini has been outlined in the introduction above. Some of the functions of the various institutions relate to international disaster response, although they are not provided in detail. For example, one of the functions of the Team is to make recommendations to the Prime Minister regarding compliance with international obligations and regional cooperation in disaster management with other Southern African states.³²⁰

The role of the UN Resident Coordinator in disaster response is not specifically stated in the DM Act. However, the representatives from appropriate UN Agencies may be invited to serve on the NDM Council in an ex-officio capacity.³²¹ The role of local or civil society actors in disaster response is not stated in detail in the DM Act. However, representatives of traditional Chiefs, religious and welfare groups, community-based organisations, and others are included as members of the NDM Council as well as Regional Disaster Management Committees.

314 DM Act, section 26(a), (b) and (d).

315 DM Act, section 43.

316 Biosafety Act 7 of 2012, section 26.

317 Environmental Management Act 5 of 2002, section 49(2).

318 DM Act, section 26.

319 DM Act, section 15(5).

320 DM Act, section 6 (1)(d).

321 DM Act, section 10(4).



Eswatini, 2020. Eswatini Red Cross Society Cash transfer operation beneficiary Mavis Simelane and volunteer Mlungisi Matsebula. After her husband passed away, she became a Red Cross beneficiary as a part of the money transfer program. © Finnish Red Cross / Ville Palonen

Question 4

Do Eswatini's laws and regulations outline a process for requesting/ welcoming offers of international disaster assistance, and for terminating international assistance?

The DM Act does not specifically assign responsibility for requesting international disaster assistance or accepting offers to a particular government entity. The DM Act also does not contain provisions detailing the process on acceptance, refusal, or coordination of international disaster assistance.

Question 5

Do Eswatini's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?

The DRM framework in Eswatini does not provide specific facilities for international assisting actors. The sections below analyse whether the relevant sectoral laws provide for necessary legal facilities to be provided to international assisting actors.

Landing rights and general customs arrangements

The Civil Aviation Authority Act domesticates the Chicago Convention and provides the framework for the regulation of civil aviation in Eswatini.³²² The Civil Aviation Authority Act does not contain any specific provisions relating to airplanes carrying humanitarian assistance personnel or supplies into Eswatini, although it does make provision for regulations to be made on the control of aircraft in emergencies.³²³ If developed in the future, such regulations could potentially provide landing rights for international relief flights.

³²² Civil Aviation Authority Act 10 of 2009.

³²³ Civil Aviation Authority Act 10 of 2009, section 90 and 104.

The Customs and Excise Act³²⁴ regulates customs and excise in Eswatini. The Customs and Excise Act does not provide simplified or expedited procedures in respect of goods imported for humanitarian purposes in disasters. However, Item 41211 of Schedule 4 provides that goods imported for the relief of distress of persons in cases of famine or other national disaster may be imported under a rebate of customs duty provided they have an International Trade Administration Commission (ITAC) certificate. Schedule 4 further provides that goods imported by international organisations and diplomatic and consular missions, goods imported under any technical assistance agreement, and goods imported in terms of an obligation under any multilateral international agreement to which Eswatini is a party may similarly be imported under a rebate of customs duty.³²⁵ The Customs and Excise Act does not, however, provide details on what type of goods may enjoy a rebate of duties under this item.

Furthermore, under the Import Control regulations, no goods may be imported into Eswatini from any place outside the Common Customs Area except under the authority of a valid import permit.³²⁶ However, certain goods, including goods imported by diplomatic missions, goods imported for the relief of distress of persons in cases of famine or other national disaster and goods imported under any technical assistance agreement are exempted from requiring an import permit.³²⁷ Any imported products would, however, need to comply with any standards applicable in Eswatini.

Customs arrangements for specialised goods and equipment

▼ Communications equipment

Telecommunications in Eswatini are primarily regulated by the Electronic Communications Act³²⁸ and the regulations thereto. A licence is required to import and use radio communication equipment in Eswatini.³²⁹ The Electronic Communications (Licensing) Regulations of 2016 provide further details on licensing requirements and procedures. The laws do not appear to provide exceptions or simplified procedures for the importation and use of communications equipment in disasters and it is not clear whether communications equipment would fall under Item 41211 of Schedule 4 of the Customs and Excise Act (therefore not requiring an import permit and enjoying a rebate of customs duty).

▼ Food

Although it is not explicitly stated, it is likely that foodstuffs imported for disaster relief operations would fall under Item 41211 of Schedule 4 of the Customs and Excise Act (therefore not requiring an import permit and enjoying a rebate of customs duty).

▼ Medication

It is not clear whether medication would fall under Item 41211 of Schedule 4 of the Customs and Excise Act (therefore not requiring an import permit and enjoying a rebate of customs duty), but it is arguable that it would.

If not, the Medicines and Related Substances Control Act states that an import permit is required to import certain medications into Eswatini, and all imported medications are required to comply with certain labelling requirements.³³⁰ The Medicines and Related Substances Control Act does not provide for special procedures or exemptions in respect of the importation of medication in disasters, but it does make provision for exemptions to be made for certain medications from the operation of certain provisions of the Act by the Medicines Regulatory Authority of Eswatini.³³¹

324 Customs and Excise Act, 1971.

325 Customs and Excise Act, 1971, Schedule 4, Items 40300, 40602, and 40605.

326 Import Control Regulations, 1980, regulation 3.

327 Import Control Regulations, 1980, regulation 8.

328 Electronic Communications Act 9 of 2013.

329 Electronic Communications (Importation, Type Approval and Distribution of Communications Equipment) Regulations, 2016 read with section 41 of the Electronic Communications Act 9 of 2013.

330 Medicines and Related Substances Control Act 9 of 2016, sections 34 and 42.

331 Medicines and Related Substances Control Act 9 of 2016, section 74

▼ Vehicles

It is not clear whether the importation of vehicles would fall under Item 41211 of Schedule 4 of the Customs and Excise Act (therefore not requiring an import permit and enjoying a rebate of customs duty), but it is arguable that it would. If vehicles are not covered by Item 41211, an import permit would be required.

In addition, the Road Traffic Act requires all vehicles in Eswatini to be registered and licensed.³³² There do not appear to be exceptions in respect of vehicles imported for international relief assistance, although provision is made for exemptions to be granted in respect of licensing and registration requirements.³³³ In addition, certain motor vehicles, including motor vehicles which are registered and licensed in accordance with the law of a state party to the international Convention Relative to Traffic, the UN Convention on Road Traffic of 1949 or 1968, and in accordance with the terms of these conventions, are deemed to be registered and licensed in Eswatini.³³⁴ The Road Traffic Act also provides that foreign issued driving licences and international driving licences are recognised in Eswatini.³³⁵ However, it stipulates that an international driving permit does not authorise the driving of a vehicle carrying passengers for which an operator must be registered in terms of any other law.

▼ Rescue dogs

It is not clear whether rescue dogs would fall under Item 41211 of Schedule 4 of the Customs and Excise Act (therefore not requiring an import permit) and being eligible for a rebate of customs duty. If not, an import permit is required to import any live animals into Eswatini, and the laws do not appear to make any exceptions for rescue dogs.

Immigration

Immigration in Eswatini is primarily regulated by the Immigration Act, 1982 and the Immigration Regulations, 1987, which do not provide special procedures for the entry of disaster relief personnel. The Immigration Act does, however, allow for regulations to be made exempting persons from any provisions of the Act,³³⁶ which may allow for regulations on the entry of disaster assisting actors to be made in the future. In general, expatriates working in Eswatini must hold a valid work permit, and when applying for a work permit, an employer must demonstrate that there is no Swati with adequate qualifications and experience to fill the position, and that the employer has instituted a training plan in terms of which the particular position would eventually be localised.³³⁷

With regards to diplomats and consular officials, Eswatini is a party to the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. The Diplomatic Privileges Act of 1968 gives effect to the Vienna Convention on Diplomatic Relations in Eswatini.³³⁸

Registration of international assisting actors

There do not appear to be special legal facilities relating to the registration of international assisting actors in Eswatini, and as such, it appears that the normal rules relating to the registration of foreign entities would apply.

332 Road Traffic Act 6 of 2007, sections 13 and 16.

333 Road Traffic Act 6 of 2007, section 18.

334 Road Traffic Act 6 of 2007, sections 14 and 17.

335 Road Traffic Act 6 of 2007, section 35.

336 Immigration Act, 1982, section 18(1)(g).

337 ENS, Doing Business in Eswatini, available at <https://www.ensafrica.com/doing-business/download/?termId=57> (accessed 11 February 2021).

338 This document was not available for review.

Recognition of professional qualifications of foreign personnel

▼ Physicians

The Medical and Dental Practitioners Act does not contain special arrangements for the recognition of the qualifications of foreign personnel in the context of disasters and provides that no person shall be entitled to practise as a medical practitioner or as a dentist unless he or she has obtained a certificate of registration issued by the Eswatini Medical and Dental Council.³³⁹ This may make it challenging for disaster assistance personnel who are foreign qualified physicians to work in the country.

▼ Nurses

The nursing practice in Eswatini is regulated by the Nurses and Midwives Act, 1965, which provides in section 15 that no person may practise as a nurse for gain without being registered with the Nursing Council. The Nurses and Midwives Act does not contain special arrangements for the recognition of the qualifications of foreign personnel in the context of disasters. This may make it challenging for disaster assistance personnel who are foreign qualified nurses to work in the country.

▼ Engineers and Architects

The registration of architects and engineers in Eswatini is regulated by the Registration of Architects, Engineers, Surveyors and Allied Professionals Act, 2013, which does not provide for the expedited registration of architects and engineers in international disaster assistance. However, it does make provision for the temporary registration of architects and engineers who are not ordinarily resident in Eswatini but who are completing specific work in Eswatini.³⁴⁰ Such a person is required to become a member of a professional association within two months of arrival in Eswatini and to register with the Architects, Engineers, Surveyors and Allied Professionals Registration Council within four months of arrival in Eswatini.³⁴¹ This may allow for disaster assistance personnel who are foreign qualified engineers and architects to register to work in the country, although it is not clear how long the process would take.

Tax and currency exchange for disaster relief activities

As a general rule, VAT is levied on the supply of goods and services in Eswatini as well as on the importation of goods and services. VAT is regulated in Eswatini primarily through the VAT Act, 2011.³⁴² Certain goods, including the supply of medical services, social welfare services and the supply of goods and services in a charity arrangement also exempt from VAT.³⁴³ Furthermore, an import of goods or services are exempt from VAT if they are exempt from customs duty under the Customs and Excise Act 1971, or would be exempt had they been supplied in Eswatini.³⁴⁴ As stated above, under Item 41211 of Schedule 4 of the Customs and Excise Act, 1971, goods imported for the relief of persons during disasters, provided they have an ITAC certificate, may be imported under a rebate of customs duty. Lastly, certain foodstuffs and medications are zero-rated for VAT.³⁴⁵ In addition, section 50 makes provision for a VAT refund to be granted to diplomats, diplomatic and consular missions, and international organisations in respect of tax paid or borne by:

- any person enjoying full or limited immunity, rights, or privileges under any local or international laws applicable in Eswatini or under recognised principles of international law; or

339 Medical and Dental Practitioners Act, 1970, section 17.

340 Registration of Architects, Engineers, Surveyors and Allied Professionals Act 15 of 2013, section 40.

341 Registration of Architects, Engineers, Surveyors and Allied Professionals Act 15 of 2013, section 40(6).

342 Value Added Tax Act, 2011 (VAT Act).

343 First Schedule (Exempt Supplies) read with section 19 of the VAT Act.

344 VAT Act, section 20.

345 VAT Act, section 24 (4), read with the Second Schedule (Zero-Rated Supplies).

- any diplomatic or consular mission of a foreign country or any public international organisation operating in Eswatini, relating to transactions concluded for its official purposes.

Eswatini has a source-based tax system, in terms of which both residents and non-residents are taxed on income sourced in Eswatini.³⁴⁶ Income tax in Eswatini is primarily regulated by the Income Tax Order of 1975, which does not provide explicit exemptions for international disaster assistance. It does, however, allow for certain exemptions in respect of income tax which may be relevant to international assisting actors, this includes, amongst others:

- the income of organisations which have been exempted by the Commissioner (including approved charitable organisations);
- the income of any person entitled to privileges under the Diplomatic Privileges Act;³⁴⁷
- the salaries of any person in respect of services rendered to the government of any country other than Eswatini if that person is not ordinarily resident in Eswatini or is ordinarily resident solely for the purpose of performing such services; and
- any amount received by or accrued to any person in respect of services rendered in Eswatini which the government has undertaken shall be exempt from normal tax by the terms of written agreements with the government of another state or with an international or world organisation or body.³⁴⁸

Furthermore, in the determination of taxable income of any person, certain deductions are made which includes any contribution made by a taxpayer and actually paid or transferred during the year of assessment to any national disaster scheme or national emergency body established by the government.³⁴⁹ Lastly, the Income Tax Order provides for double taxation agreements to be entered into between the Government of Eswatini and any other government with the view of preventing double taxation.³⁵⁰ Double taxation agreements are in force with Mauritius, South Africa, Seychelles, Taiwan, and the United Kingdom.³⁵¹

Regarding exchange control, Eswatini is a signatory to the Common Monetary Area (CMA) Agreement which allows for the free flow of funds between Eswatini, Lesotho, Namibia, and South Africa.³⁵² Each country, however, administers exchange control within its borders for transfers with the rest of the world. Exchange control is strictly regulated in Eswatini through the Exchange Control Order, 1974 and the Exchange Control Regulations issued under Legal Notice No.2 of 1975.³⁵³ Transactions involving the transfer of funds to countries outside the CMA are subject to approval by the Central Bank of Eswatini.³⁵⁴ In addition, the Money Laundering and Financing of Terrorism (Prevention) Act stipulates that all persons entering or leaving Eswatini with cash (whether in one currency or more than one currency) valued at more than fifteen thousand Emalangeni or equivalent are required to declare this amount to the police or customs officials at the point of entry/exit to/from the country.³⁵⁵ There do not appear to be any exemptions in respect of funds related to international disaster response operations. These provisions may limit the extent to which international assisting actors, especially those outside the CMA, are able to freely bring currencies in and out of the country.

346 ENS, Doing Business in Eswatini, available at <https://www.ensafrica.com/doing-business/download/?termId=57> (accessed 11 February 2021).

347 Further information on this is available in the Income Tax: Taxability of Diplomats and Others Associated with Diplomats Notice, 2006.

348 Income Tax Order 21 of 1975 (as amended), section 12.

349 Income Tax Order 21 of 1975, section 14.

350 Income Tax Order 21 of 1975, section 68.

351 ENS, Doing Business in Eswatini, available at <https://www.ensafrica.com/doing-business/download/?termId=57> (accessed 11 February 2021).

352 The Central Bank of Eswatini, A Simple Guide to Exchange Control in Swaziland available at <https://www.centralbank.org.sz/financialregulation/exchangecontrol/ExchangeControlGuide.pdf> accessed (11 February 2021), page 4.

353 These documents were not available for this review.

354 ENS, Doing Business in Eswatini, available at <https://www.ensafrica.com/doing-business/download/?termId=57> (accessed 11 February 2021).

355 Money Laundering and Financing of Terrorism (Prevention) Act, 2011, section 41.



Eswatini, 2020. After a cash distribution, beneficiary Chele Simon Pembuekwa bought groceries at a border shop, near the South African border where the items are cheaper. © Ville Palonen / Finnish Red Cross



Eswatini, 2020. March 2020 Eswatini Red Cross Society Cash transfer operation. A total of 2200 beneficiaries are targeted in Eswatini for humanitarian food assistance through mobile money or cash in hand. Assistant project coordinator Samson Dlamini knows the beneficiaries as he is monitoring the situation in the field. © Finnish Red Cross / Ville Palonen

Freedom of movement of international assisting actors during a disaster response

The law does not appear to contain explicit provisions relating to the freedom of movement of international assisting actors in disaster response.

Safety and security of international assisting actors

The laws of Eswatini do not make explicit provision for the safety and security of international assisting actors in disaster situations. However, the Police Service Act provides that the Police Service is mandated to inter alia maintain law and order, protect life and property, and prevent, investigate, and detect crime throughout Eswatini, which would presumably extend to actors providing international disaster assistance.³⁵⁶

Question 6

Do Eswatini's laws and regulations set out quality standards for international assisting actors?

The documents reviewed for this report make no mention of international quality standards or minimum humanitarian standards of international disaster assistance in Eswatini. International assisting actors would, however, need to comply with relevant laws and standards relating to goods and services applicable in Eswatini contained in the specific sectoral laws and regulations.

356 Police Service Act 22 of 2018, section 9.

Question 7

Do Eswatini's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?

The documents reviewed for this report do not provide eligibility requirements for international assisting actors to receive legal facilities.

Question 8

Do Eswatini's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?

The law does not establish a specialised unit for expediting the entry of international disaster assistance in Eswatini.

Question 9

Do Eswatini's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?

The documents reviewed for this report do not provide for special safeguards and accountability mechanisms for international disaster assistance. However, the DM Act establishes the Disaster Management Fund (DRM Fund) which has the objective of providing funding for the national disaster relief plan, emergency relief operations and the restoration of infrastructure and services in respect of disasters.³⁵⁷ Although it is not explicitly stated, the DRM Fund appears to be able to accept donations from international assisting actors in that it consists of inter alia "moneys donated from any source for the purpose of disaster management".³⁵⁸ The DRM Fund is subject to an annual audit.³⁵⁹ In addition, section 38 of the DM Act provides that donations will be taken on charge and accounted for in accordance with any applicable law governing the receipt, issue, and control of public resources and that donations will, when possible, only be used for the purpose for which they were donated. To the extent that international actors donate funds to the DRM Fund, then these funds will be subject to these transparency and accountability measures.

In terms of sectoral legislation, although not directly related to international disaster assistance, the Money Laundering and Financing of Terrorism (Prevention) Act, 2011, which aims to criminalise money laundering and suppress the financing of terrorism as well as the Prevention of Corruption Act, 2006 to prevent, investigate, and punish corrupt activities. Such legislation may indirectly promote transparency and accountability with regards to international disaster assistance operations.

Question 10

Do Eswatini's laws and regulations outline procedures for international disaster assistance sent from and transiting through the country?

The law does not appear to outline special procedures for international assistance sent from, and transiting through, Eswatini and therefore it appears that the normal rules and procedures relating to the transit of goods and personnel and the exportation of goods would apply.³⁶⁰

357 DM Act, section 35(2).

358 DM Act, section 36(1).

359 DM Act, section 38 read with section 41.

360 These are set out in the Customs and Excise Act, 1971, Chapter III. The Value Added Tax Act does provide, however, that the supply of goods or services where the goods or services are exported from Eswatini as part of the supply, are zero rated for VAT (Value Added Tax Act, 2011, Schedule Two, section 1(a)). In terms of personnel, the Immigration Regulations, 1987, make provision for a transit pass to be issued to a person who wishes to enter Eswatini for the purpose of travelling to a destination outside Eswatini (Immigration regulations, 1978, regulation 21).



Political Framework

Lesotho is a constitutional monarchy. The King of Lesotho is Head of State and executive authority vests in the King and is exercised by him through officers of the Government of Lesotho.³⁶¹

Legislative power in Lesotho vests in Parliament, which consists of the King, a Senate, and a National Assembly.³⁶² The Senate consists of twenty-two Principal Chiefs and eleven other Senators nominated by the King.³⁶³ The National Assembly is comprised of eighty elected members.³⁶⁴

The King appoints the Prime Minister as well as Ministers from the members of the National Assembly or from among the Senators who are nominated as Senators by the King.³⁶⁵ Cabinet, consisting of the Prime Minister and the other Ministers, advise the King in the Government of Lesotho.³⁶⁶

Lesotho has a mixed legal system based on Roman-Dutch, English, and customary law. Lesotho adopts a dualist approach to international law, thus viewing international law and domestic law as two separate legal systems.

DRM Framework

DRM in Lesotho is regulated primarily by the Disaster Management Act 2 of 1997 (Disaster Management Act), which was enacted to establish and regulate the Disaster Management Authority (the Authority) and other DRM institutions, as well as to make provision for the management of disasters including prevention, mitigation, preparedness, response, and recovery.

With regards to the institutional framework for DRM in the country, the Disaster Management Act provides for the establishment of the National Disaster Relief Task Force, composed of Ministers, and which is responsible for:

- providing policy guidelines to the Authority;
- mobilising funds, manpower and other resources required to implement the National Disaster Relief Plan (NDRP);
- supervising and monitoring the NDRP as well as District Disaster Relief Plans;
- initiating the creation of appropriate institutional structures to support the DRPs; and
- approving requests for donor assistance.³⁶⁷

The Disaster Management Act also establishes the Authority and its six working groups (the Executive Group; the Training Group; the Water and Sanitation Group; the Health and Nutrition Group; the Food and Logistics Group; and the Agriculture Group), each of which consist of senior officials of the Authority and senior representatives of government ministries and units as well as members of the Lesotho Defense Force, Royal Lesotho Mounted Police, Lesotho Council of NGOs, NGOs and other agencies directly involved in disaster management.³⁶⁸ The Authority is managed and controlled by its board.

361 Constitution of Lesotho, section 44 and 86.

362 Constitution of Lesotho, section 54.

363 Constitution of Lesotho, section 55.

364 Constitution of Lesotho, section 56.

365 Constitution of Lesotho, section 87.

366 Constitution of Lesotho, section 88.

367 Disaster Management Act, Part IV.

368 Disaster Management Act, Part V.

The Authority has several functions, such as to:

- act as the central planning, coordinating, and monitoring institution for disaster management and post-disaster recovery;
- warn the public of an approaching disaster and predict its effects on the country;
- maintain a data collection and dissemination system, and national strategic reserves of essential commodities and equipment for immediate disaster relief;
- formulate disaster mitigation, preparedness and response strategies and action plans to meet all foreseeable requirements in consultation with central and local government, NGOs, and donor agencies;
- prepare and update the National Disaster Management Plan and the supporting Disaster Management Manual; and
- develop and sustain viable, effective structures and capacities at central government level and within districts in case of a disaster.³⁶⁹

The Disaster Management Act also makes provision for the creation of Disaster Management Teams at district and village level.³⁷⁰

IDRL Assessment

Question 1

Does Lesotho have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

International disaster assistance is not explicitly mentioned in the Disaster Management Act and a procedure to report to other governments, regional organisations or the UN about emerging hazards that could lead to disasters or emergencies in the country or in neighbouring South Africa is also not mentioned. However, there are provisions which are indirectly relevant.³⁷¹ Section 13 of the Disaster Management Act states that one of the functions of the Authority is to receive, accept and account for any donations that may be given for its functions.³⁷² Furthermore, section 4 provides that the responsible Minister has the power to inter alia prepare an appeal for donor assistance and to receive, accept, or account for any donations given for the functions of the Authority.³⁷³ Additionally, the Disaster Management Act provides that one of the functions of the National Disaster Relief Task Force is to approve requests for donor assistance.³⁷⁴ The Disaster Management Act does not, however, specify whether these provisions relating to “donor assistance” apply to international assistance. In addition, the emphasis in these sections appears to be on donations, as opposed to in-kind assistance. It is unclear whether in-kind assistance is within the scope of the “donor assistance” referred to. It is also worth mentioning that section 48 of the Disaster Management Act permits regulations for its implementation to be made, which would allow for regulations on international disaster assistance to be promulgated in the future.

369 Disaster Management Act, section 3.

370 Disaster Management Act, Part VI and section 26.

371 In addition, the following documents could not be accessed for the purposes of this exercise: National Disaster Management Plan (1996); Disaster Management Manual (1996); Disaster Risk Reduction Strategy (2011); National Strategic Resilience Framework 2019 and National Climate Change Policy 2017 and Strategy.

372 Disaster Management Act, section 13(o).

373 Disaster Management Act, section 14(r).

374 Disaster Management Act, section 9(e).

Question 2

Do Lesotho's laws and regulations clearly set out a focal point for coordinating international disaster assistance?

The Disaster Management Act does not explicitly assign a focal point for coordinating international disaster assistance. However, the Chief Executive of the Authority acts as the National Relief Coordinator during an emergency and, therefore, may be the focal point for coordinating international disaster assistance at national level.³⁷⁵

Question 3

Do Lesotho's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?

As stated above, the Disaster Management Act does not explicitly mention international assistance. There are, however, several provisions which are relevant.

As a starting point, the Disaster Management Act provides that the Minister responsible for the administration of the Act has the power to inter alia prepare an appeal for donor assistance and to receive, accept or account for any donations given for the functions of the Authority.³⁷⁶ The Authority in turn is responsible for:

- formulating disaster mitigation, preparedness, and response strategies and action plans to meet all foreseeable requirements in consultation with central and local government, NGOs, and donor agencies;
- taking all necessary measures to prevent, alleviate, contain, and minimise the effects of disasters; and
- receiving, accepting, and accounting for any donations that may be given for its functions.³⁷⁷

In addition, the National Disaster Relief Task Force is responsible for:

- mobilising funds, manpower, and other resources required to implement the NDRP;
- initiating the creation of appropriate institutional structures to support the Disaster Relief Plans; and
- approving requests for donor assistance.³⁷⁸

Question 4

Do Lesotho's laws and regulations outline a process for requesting/ welcoming offers of international disaster assistance, and for terminating international assistance?

As stated above, the Disaster Management Act provides that the Minister is responsible for preparing the appeal for assistance as well as for receiving, accepting, and accounting for any donations given to the Authority,³⁷⁹ and that incoming donations can be accepted by either the Minister or the Authority.³⁸⁰ However, the Disaster Management Act does not provide detailed processes for requesting or welcoming offers of international assistance, or for terminating international assistance.

375 Disaster Management Act, section 21.

376 Disaster Management Act, section 4(r).

377 Disaster Management Act, section 13.

378 Disaster Management Act, sections 9 (b), (d) and (e).

379 Disaster Management Act, section 4.

380 Disaster Management Act, sections 4(r) and 13(o).



Lesotho, 2014. The Lesotho Red Cross runs workshops with communities to train them on agricultural practices, conservation of food. © IFRC / Benoit Matsha-Carpentier

Question 5

Do Lesotho's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?

The DRM framework in Lesotho does not provide specific facilities for international assisting actors. The sections below analyse whether the relevant sectoral laws provide for necessary legal facilities to be provided to international assisting actors.

General customs arrangements

The Customs and Excise Act³⁸¹ and Customs and Excise Regulations³⁸² regulate customs arrangements in Lesotho. Neither of these instruments contain provisions regarding simplified paperwork for emergencies, but the regulations do make provision for extra attendance by officers.³⁸³ In addition, in terms of Item 41211 of Schedule 4 of the Customs and Excise Act, the following goods may be imported under full rebate of customs duty:

- goods imported for the relief of distress of persons in cases of famine or other national disaster;
- goods imported under any technical assistance agreement; or
- goods imported in terms of an obligation under any multilateral international agreement to which the Republic is a party.

Their importation is, however, subject to a certificate issued by the International Trade Administration Commission (ITAC) and other conditions. In addition, goods imported under this rebate item may not be removed from the territory of Botswana, Eswatini, Lesotho or Namibia without the permission of the ITAC.

381 Customs and Excise Act 10 of 1982.

382 Customs and Excise Regulations, 1984 (Legal Notice No. 126 of 1984).

383 Customs and Excise Regulations, 1984 (Legal Notice No. 126 of 1984), Schedule 4.

Customs arrangements for specialised goods and equipment

▼ Communications equipment

It is not clear whether communications equipment would fall under item 41211 of the Customs and Excise Act, and therefore qualify for a rebate of customs duty, although it is arguable that they would. In general, however, telecommunications in Lesotho are regulated by the Communications Act,³⁸⁴ which does not provide exceptions or simplified procedures to import and/or export restrictions nor does it make special provision for the speedy licensing or waiver of licence requirements in disasters. It would therefore appear that the normal rules relating to the import, export and use of communications equipment would apply.

▼ Food

It is presumed that foodstuffs would fall under item 41211 of the Customs and Excise Act, and therefore qualify for a rebate of customs duty. In terms of other requirements, in general, food imports are regulated through the Agricultural Marketing Act³⁸⁵ and the regulations³⁸⁶ thereto, which prescribe that a permit is required for the importation of certain food stuffs, and do not provide for any special or simplified procedures in disaster settings regarding food imports.

▼ Medication

Although it is not explicitly stated, it is arguable that medicines would fall under item 41211 of the Customs and Excise Act, and therefore qualify for a rebate of customs duty. In terms of other requirements, the importation of medication is strictly regulated in Lesotho by the Drugs of Abuse Act,³⁸⁷ which requires an importer to be licensed and to obtain a permit prior to importing or exporting medication into or from Lesotho.³⁸⁸ The Drugs of Abuse Act outlines the procedure to obtain a licence and a permit but does not provide special or simplified rules to facilitate and monitor the import and export of medications for disaster relief.³⁸⁹

▼ Rescue Dogs

The importation of animals into Lesotho is regulated by the Importation and Exportation of Livestock and Livestock Products Proclamation,³⁹⁰ which provides that a permit is required for the importation of all live animals and does not provide any exceptional provisions for rescue dogs.

▼ Vehicles

The Road Traffic Regulations provide that all vehicles in Lesotho need to be licensed and registered.³⁹¹ The law does not appear to provide any special facilities for the importation and registration of foreign vehicles for relief and recovery work, and therefore it appears that the normal rules would apply.

With regards to foreign driving licences, the Road Traffic Regulations provide that licences issued while the holder was not resident in the Republic, are deemed to be a valid as long as: the licence has been issued in an official language of Lesotho (or a certificate of authenticity or a translation of that licence in an official language is attached to it), and such licence has a photograph and the signature of the licence holder.³⁹²

384 Communications Act 4 of 2012.

385 Agricultural Marketing Act 26 of 1967.

386 For example, the Agricultural Marketing (Distribution of Dairy Products) Regulations, 1992; and the Agricultural Marketing (Meat Import Control) Regulations, 1992.

387 Drugs of Abuse Act 5 of 2008.

388 Drugs of Abuse Act, Division 2.

389 Drugs of Abuse Act 5 of 2008, sections 14 and 15.

390 Livestock Products Proclamation 57 of 1952.

391 Road Traffic Regulations, 2000, regulation 13 and 18.

392 Road Traffic Regulations, 2000, regulation 110.

Immigration

There do not appear to be simplified procedures in place for international humanitarian assistance personnel to enter and work in Lesotho. However, section 9 of the Aliens Control Act³⁹³ provides that the relevant Minister may permit a person to enter Lesotho without holding any permit, which may facilitate the expedited entry of international assistance personnel into the country.

Registration of international assisting actors

The law does not make special provision for the registration of international actors assisting with disaster relief efforts, and as such, it appears that the normal rules relating to the registration of foreign entities would apply.

Recognition of professional qualifications of foreign personnel

The law does make provision for the speedy recognition of the qualifications of foreign personnel in disaster settings, and therefore it appears that the normal rules and time periods would apply. For example, it is an offence to practise as a nurse without a licence in Lesotho under the Nurses and Midwives Act and there are no special provisions for the speedy accreditation of foreign qualified nurses in disaster settings, although regulations may be made under the act.³⁹⁴ The Medical, Dental and Pharmacy Order of 1970 makes provision for the registration of medical practitioners in Lesotho.³⁹⁵ The Order does not make special provision for the speedy registration of foreign doctors, but section 6 does make provision for medical practitioners who do not intend to reside permanently in Lesotho but who enter Lesotho for employment to be granted registration in a separate register. This provision may be useful for international assisting personnel who are medical practitioners to be temporarily registered to practise in Lesotho.

Tax and currency exchange

Income tax is levied in Lesotho under the Income Tax Act.³⁹⁶ Lesotho has a residence-based tax system in terms of which residents are subject to tax on their worldwide income, whereas non-residents are subject to tax only on their Lesotho-sourced income.³⁹⁷ Lesotho has signed double taxation agreements with Mauritius, South Africa, and the United Kingdom to prevent double taxation.³⁹⁸ Although it does not specifically exempt the income of humanitarian organisations, the income of a charitable organisation is exempt from income tax provided it has obtained a written ruling from the Commissioner of Income Tax and none of its income or assets confers a private benefit on any person.³⁹⁹ However, property income or business income that is not related to the function constituting the basis for the organisation's exemption is not exempt from income tax.

393 Aliens Control Act 16 of 1966. See also the Lesotho Citizenship Order, 1971.

394 Nurses and Midwives Act, 1998, clauses 29 and 56.

395 Dental and Pharmacy Order of 1970, section 7.

396 Income Tax Act 9 of 1993.

397 ENS, Doing Business in Lesotho, available at <https://www.ensafrica.com/countries/lesotho/> (accessed 12 February 2021)

398 ENS, Doing Business in Lesotho, available at <https://www.ensafrica.com/countries/lesotho/> (accessed 12 February 2021).

399 Income Tax Act 9 of 1993, section 35.



Lesotho, 2013. Mapoulo Raleababa, 86, Mothibeli village Kena region. The region was one of the most affected by the food security situation in Lesotho. © IFRC / Benoit Matsha-Carpentier

The Value Added Tax Act⁴⁰⁰ regulates the levying of VAT in Lesotho. Although the VAT Act does not exempt humanitarian organisations from paying VAT, there are several provisions which may be relevant to their work. These include section 6(3) read with Schedule II of the VAT Act, which provides that goods imported for the relief of distressed persons in the case of national disasters or in terms of an obligation under any multilateral treaty are exempt from VAT. In addition, a supply of charity arrangements undertaken by a charitable organisation recognised by the Commissioner General is exempt from VAT, provided that:

- after such event, audited accounts are filed with Lesotho Revenue Authority within a period not exceeding two months from the date on which the event was held; and
- where such arrangement was made by a permanent establishment, such establishment shall first apply for exemption, and shall submit yearly audited accounts, at least two months after the financial year end.⁴⁰¹

Exchange control is administered by the Central Bank of Lesotho in conjunction with the South African Reserve Bank.⁴⁰² There do not appear to be any exemptions in respect of exchange control for actors involved in international disaster relief, and therefore international assisting actors may face challenges in moving currencies in and out of the country.

Freedom of movement of international assisting actors

There are no specific provisions relating to the freedom of movement of international assisting actors during a disaster response in Lesotho.

Safety and security of international assisting actors

There do not appear to be special provisions facilitating the safety and security of international assisting actors in Lesotho. However, the police force is mandated to preserve law and order in Lesotho and prevent offences against people and property under the Police Service Act.⁴⁰³

Question 6

Do Lesotho's laws and regulations set out quality standards for international assisting actors?

There are no specific provisions on quality standards for international assisting actors. In general, international assisting actors would need to comply with relevant standards applicable in Lesotho and will be subject to the laws of Lesotho.

Question 7

Do Lesotho's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?

The law does not explicitly set out eligibility requirements for international assisting actors to receive legal facilities and does not make provision for a list of approved international assisting actors to be maintained.

400 Value Added Tax Act 9 of 2001. See also the Value Added Tax (Amendment) Act 6 of 2003.

401 Value Added Tax (Amendment) Act, section 6(2) read with section 4.

402 Exchange Control Regulations (Legal Notice No. 175 of 1989).

403 Police Service Act 5 of 1998, section 24.

Question 8

Do Lesotho's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?

The law does not currently establish a specialised unit for expediting the entry of international assistance in Lesotho.

Question 9

Do Lesotho's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?

The Disaster Management Act does not explicitly make provision for transparency, safeguarding, and accountability in respect of international disaster assistance. However, several provisions were identified as indirectly relevant.

The Disaster Management Act establishes the Disaster Management Fund (DM Fund) and regulates its administration, whereby all receipts and disbursements are to be recorded. Although it is not explicitly stated, the DM Fund appears to be able to accept donations from international assisting actors in that it consists of *inter alia* "moneys donated from any source for the purpose of disaster management".⁴⁰⁴ The DM Fund is to be maintained in accordance with financial regulations and other applicable laws.⁴⁰⁵ Section 37 specifically regulates the receiving of and accounting for donations made to the DM Fund, stipulating that donations must be used for the purpose for which they have been donated. Provision is also made for the accounting and auditing of the Authority, providing *inter alia* that a statement must be produced showing the receipt and disposal of any donated stores. Given that the DM Fund appears to be able to accept donations from international assisting actors, international funds provided to the DM Fund would be subject to these transparency and accountability measures.

It is also relevant to note that, corruption, both by public officials as well as private actors is criminalised and regulated by the Prevention of Corruption and Economic Offences Act, which provides that a person commits the offence of cheating the public revenue if, as a result of his fraudulent conduct, money is diverted from the revenue.⁴⁰⁶

Question 10

Do Lesotho's laws and regulations outline procedures for international disaster assistance sent from and transiting through the country?

The law does not appear to outline special procedures for international assistance sent from, and transiting through, Lesotho and therefore it appears that the normal rules and procedures relating to the transit of goods and personnel and the exportation of goods would apply.⁴⁰⁷

404 Disaster Management Act, section 35(1).

405 Disaster Management Act, section 34.

406 Prevention of Corruption and Economic Offences Act 5 of 1999, section 30.

407 See the Customs and Excise Act 10 of 1982, Chapter III for the general rules on the exportation and transit of goods. In addition, note that the law does provide that goods temporarily admitted into Lesotho for a specific purpose are exempt from VAT; and the exportation of goods or services from Lesotho by a vendor is zero-rated for VAT (see the Value Added Tax Act 9 of 2001, section 19(2) and Schedule II(1)(h)).



Political Framework

Malawi is a multi-party republic. The Constitution of Malawi provides for the election of a President, who serves as Head of State and Government and Commander in Chief of the Defence Force of Malawi.⁴⁰⁸ The Constitution also makes provision for up to two Vice Presidents to hold office. The first Vice President is elected concurrently with the President, and the President may appoint a second Vice President at the time of taking oath or any time thereafter.⁴⁰⁹ The President and Vice Presidents are limited to serving no more than two five-year terms.⁴¹⁰ The Cabinet, consists of the President, Vice Presidents and Ministers and Deputy Ministers appointed by the President.⁴¹¹ The legislature, the National Assembly, is unicameral.⁴¹²

Malawi has a mixed legal system, which incorporates statutory law, common law, and customary law. Malawi adopts a dualist approach to international law in terms of which any international agreement entered into only forms part of the law if provided by an Act of Parliament.⁴¹³

DRM Framework

The Disaster Preparedness and Relief Act of 1991 (the DPR Act)⁴¹⁴ provides the legislative framework for DRM in Malawi. The principal aims of the DPR Act are to provide for: the coordination and implementation of measures to alleviate the effects of disasters; and the establishment of the Office of the Commissioner for Disaster Preparedness and Relief and the National Disaster Preparedness and Relief Committee (NDPRC) of Malawi. The government is, however, currently in the process of developing a new DRM law (the draft DRM Bill), which aims to replace the DPR Act. A study of the draft DRM Bill is not included in this report as it is yet to be passed into law.

In addition to the DPR Act, the government developed the Disaster Risk Management Policy of 2015 (the Policy). The Policy has a broad objective: to create an enabling framework for the establishment of a comprehensive DRM system for Malawi; as well as six specific objectives,⁴¹⁵ which are to:

- facilitate the mainstreaming of DRM into sustainable development policies and planning processes at all levels;
- develop an effective system for conducting comprehensive disaster risk assessments at all levels;
- develop an integrated and effective people-centred early warning system that is comprehensive and effective;
- promote a culture of safety and resilience among DRM stakeholders, including communities;
- assess and address the underlying risk factors; and
- strengthen the disaster preparedness system for effective response and recovery at all levels.

With regards to the institutional framework for DRM in Malawi, the Commissioner for Disaster Preparedness and Relief is responsible for the following:

408 Constitution of Malawi, sections 78 and 80.

409 Constitution of Malawi, section 80.

410 Constitution of Malawi, section 83.

411 Constitution of Malawi, section 92.

412 Constitution of Malawi, Chapter VI.

413 Constitution of Malawi, section 211.

414 Disaster Preparedness and Relief Act [Chapter 33:05 of the Laws of Malawi] (DPR Act).

415 Disaster Risk Management Policy of 2015 (the Policy), page 5.

- directing the establishment of civil protection organisations and civil protection areas;
- controlling and directing personnel, materials, and services for the purposes of the DPR Act;
- directing and assisting regional civil protection officers and area civil protection officers in the performance of their duties under the DPR Act;
- coordinating the training of personnel for civil protection purposes;
- generally coordinating the planning and execution of civil protection;
- promoting research in matters relating to civil protection and disseminating information on matters of civil protection and on activities in civil protection regions and civil protection areas;
- advising the Minister on all matters relating to civil protection; and
- performing any other functions relating to civil protection that may be assigned to him by the Committee or by the Minister under the DPR Act.⁴¹⁶

The NDPRC consists of governmental representatives such as the Chief Secretary to the President, the Secretaries for Health, Community Services, Local Government, Treasury, Economic Planning, Works, Agriculture, Forestry and Natural Resources, Transport and Communications, and Youth and Culture, and the inspector of Police, and the Army Commander, as well as three to five members representing the non-governmental sector.⁴¹⁷ The NDPRC is responsible for coordinating the implementation of measures to alleviate disasters in Malawi.⁴¹⁸ The DPR Act also provides for the establishment of sub-committees to the NDPRC.⁴¹⁹

The Policy dictates the role of other actors in disaster management, such as the National Disaster Risk Management Technical Committee (NDRM TC) and Sub-Committees. The NDRM TC is a multi-stakeholder committee which serves as the National Platform for Disaster Risk Management and which:

- acts as an advocate for DRM;
- provides advice and technical support; and
- acts as the coordinating mechanism for mainstreaming DRM into sustainable development policies, planning, and programmes.⁴²⁰

The NDRM TC is chaired by the Secretary and Commissioner of the Department of Disaster Management Affairs (DoDMA), and is composed of designated senior representatives who are formally appointed to serve on the NDRM TC as the DRM focal points for their government line ministries and departments, civil society organisations, scientific and academic institutions, the private sector, UN agencies, donor community, and the mass media.⁴²¹ The Policy further provides that the Disaster Risk Management Committees (DRMC) are responsible for implementing the Policy at city, municipal, district, area and village levels.⁴²² Therefore, while the NDPRC coordinates all DRM activities, the NDRM TC implements the various policies with the district, area and village protection committees supplementing its activities. The DoDMA serves as the Secretariat for the NDPRC and the NDRM TC.⁴²³

The Policy also recognises the critical role of civil society organisations, the private sector, development partners, media academia and research institutions in DRM from the national to community levels.⁴²⁴

416 DPR Act, section 4.

417 DPR Act, sections 5 and 6.

418 DPR Act, section 13.

419 DPR Act, section 14.

420 The Policy, page 10.

421 The Policy, page 10.

422 The Policy, page 11.

423 The Policy, page 11.

424 The Policy, page 11.

The Policy also recognises development partners as being able to assist in funding DRM programmes at all levels, as well as in providing technical support.⁴²⁵

IDRL Assessment

Question 1

Does Malawi have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

As stated above, Malawi's main national legal, policy and institutional framework for DRM is contained in the DPR Act and the Policy. The DPR Act does not make explicit provision for international disaster assistance, nor does it specify a procedure to report to other governments, regional organisations, or the UN about emerging hazards that could lead to disasters and/or emergencies in the country and/or in a neighbouring country. However, the DPR Act provides that regulations necessary or expedient to give effect to the DPR Act may be promulgated, which could potentially include regulations on international disaster assistance.⁴²⁶ The Policy also does not regulate international assistance comprehensively. Strengthening preparedness is, however, recognised as key to ensuring rapid and effective disaster response.⁴²⁷ To this end, the Policy states that the Government of Malawi will ensure that mechanisms are put in place for the receipt and accounting of international assistance during disasters.⁴²⁸

As mentioned above, Malawi is currently in the process of revising its DRM legislation. Once enacted, the DRM Bill will replace the DPR Act. The draft DRM Bill includes provisions on the facilitation and regulation of international disaster assistance.⁴²⁹ This assessment, however, is based only on the law currently in force in Malawi and does not include an analysis of the draft DRM Bill.

Question 2

Do Malawi's laws and regulations clearly set out a focal point for coordinating international disaster assistance?

The DPR Act does not contain any specific provisions related to the regulation and facilitation of international humanitarian assistance, or for its coordination. The DPR Act therefore does not establish a clear focal point for the coordination of international disaster assistance.

In practice, however, international assisting actors make requests for entry through DoDMA, which then formally applies to the Treasury Department in the Ministry of Finance, which in turn submits the application to the Malawi Revenue Authority to clear the relief items.⁴³⁰

Question 3

Do Malawi's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?

The DPR Act does not explicitly regulate international assistance. However, it does outline the roles and responsibilities of various actors in DRM, which have been set out in the overview above.

425 The Policy, pages 11–12.

426 DPR Act, section 47.

427 The Policy, page 8.

428 The Policy, statement 3.6.1.6.

429 Disaster Law in Action – Case Study: Leveraging the Auxiliary Role to Effect Legislative Changes available at <https://media.ifrc.org/ifrc/wp-content/uploads/sites/5/2019/05/CaseStudy-Malawi.pdf> accessed 3 March 2021.

430 See Malawi Red Cross Society and IFRC, International Disaster Response Law (IDRL) in Malawi (2015) (IDRL in Malawi), page 31.



Malawi, 2015. Red Cross home rebuilding project after a devastating rain storm ruined many community homes. © Juozas Cernius

Question 4

Do Malawi's laws and regulations outline a process for requesting/ welcoming offers of international disaster assistance, and for terminating international assistance?

The DPR Act does not provide for the process of requesting and terminating international disaster assistance. At present, this appears to be regulated on an ad hoc basis.⁴³¹

Question 5

Do Malawi's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?

The DRM framework in Malawi does not provide specific facilities for international assisting actors. The sections below analyse whether the relevant sectoral laws provide for necessary legal facilities to be provided to international assisting actors.

Landing rights and general customs arrangements

Section 19 of the Aviation Act⁴³² provides that regulations giving effect to, and carrying out the provisions of, the Chicago Convention, and any annexe thereto relating to international standards and recommended practices, may be developed. However, the Aviation Act does not make special provision for aircraft carrying relief supplies. Regulation 3 of the Air Transport Licensing Regulations⁴³³ does, however exempt rescue and ambulance services, as well as aircrafts carrying emergency food or emergency medical supplies from requiring a licence by agreement with the government. In addition, the Minister has been given extensive powers to formulate regulations and policies, including waiving

431 IDRL in Malawi, page 31.

432 Aviation Act [Chapter 70:01 of the Laws of Malawi].

433 Aviation (Air Transport Licensing) Regulations made under the Aviation Act [Chapter 70:01 of the Laws of Malawi].

fees as he deems fit under the Aviation Act, which means that more detailed regulations on international disaster assistance may be developed in the future. It should also be noted that Malawi passed a new Aviation Act in 2017, but to the authors' knowledge it is not available online and, therefore, could not be reviewed for this report.

The Customs and Excise Act⁴³⁴ is the main customs law in Malawi. The Customs and Excise Act does not provide for any exemptions for humanitarian goods. However, the Seventh Schedule provides that a refund of the duty paid shall be granted in respect of any goods where such refund is required in terms of an agreement between the government and any other government, organisation, institution, body, or person. This provision could potentially be utilised by humanitarian organisations, but agreements would first need to be concluded with the Government of Malawi. In terms of hours of service, the Customs and Excise Act provides that where any person requests the attendance of an officer outside the hours for service of the public such a request shall be dealt with in accordance with specified conditions and upon the payment of fees as may be prescribed.⁴³⁵ This may allow international assisting actors to access customs services after normal hours.

Customs arrangements for specialised goods and equipment

▼ Communications equipment

There do not appear to be provisions in the law that explicitly allow for the expedited import and use of communications equipment for international disaster assistance providers, and therefore it appears that the normal rules would apply to such actors. Under the Communications Act,⁴³⁶ a person shall not provide electronic communications services except in accordance with a licence issued by the Malawi Communications Regulatory Authority (MCRA), and a frequency spectrum licence shall be required in addition to any electronic communications licence where the operation of an electronic communications network or the provision of an electronic communications service entails the use of radio frequency. It is also noteworthy that the MCRA will not issue a licence unless the applicant for the licence is duly registered under the relevant laws of Malawi.⁴³⁷ The Minister responsible for telecommunications does have the power to exempt the requirement for licences for certain kinds of telecommunications by regulation. However, from the information currently available online, no regulations which pertain to international disaster assistance appear to have been developed to date. Additionally, a licensee may not use any equipment for connection to an electronic communications network without the prior approval by the MCRA of the type of equipment to be used and communications equipment imported would need to comply with the technical and performance standards for equipment.⁴³⁸

▼ Food, medicine, and quarantine

The law does not provide specific facilities for international assisting actors importing food, medicine, or rescue dogs, and therefore it appears that the normal rules and procedures would apply. Potential requirements which may pose delays or challenges in this regard are set out below.

In general, an importer wishing to import goods into Malawi must register with the Malawi Revenue Authority for a Tax Payer Identification Number (TPIN).⁴³⁹ The importation of certain items, including certain foods is further prohibited or controlled and an import permit may be required.⁴⁴⁰ In terms of the importation of medication, the Pharmacy, Medicines and Poisons Act provides that a product

434 Customs and Excise Act [Chapter 42:01 of the Laws of Malawi].

435 Customs and Excise Act [Chapter 42:01 of the Laws of Malawi], section 12.

436 Communications Act 34 of 2016, section 31.

437 Communications Act 34 of 2016, section 34.

438 Communications Act 34 of 2016, sections 95 and 96.

439 See IDRL in Malawi, Chapter 5 for more detail. Further information and a list of prohibited and restricted imports is available on the Malawi Trade Portal available at <https://www.malawitradeportal.gov.mw/> (accessed 12 February 2021).

440 See the Control of Goods Act [Chapter 18:08 of the Laws of Malawi]; Biosafety Act [Chapter 60:03 of the Laws of Malawi]; Milk and Milk Products Act 43 of 1971; and the Meat and Meat Products Act 3 of 1975.

licence is required for selling, supplying, exporting, or importing any medicinal product.⁴⁴¹ The importation of animals in Malawi is strictly regulated and the law does not make special provision for the importation of rescue dogs. An import permit is required to import any animals into Malawi⁴⁴² and any animals imported may be placed in quarantine stations and be subjected to tests, as may be directed.⁴⁴³

▼ Vehicles

The law does not provide special or simplified procedures for the importation and registration of vehicles for disaster relief and recovery.⁴⁴⁴ Therefore, it appears that the normal rules and procedures would apply.

The Road Traffic Act provides that all importers must apply for registration as an importer.⁴⁴⁵ Furthermore, no person may operate any motor vehicle in Malawi which is not registered and licensed.⁴⁴⁶ However, motor vehicles of which the owner is a foreign government, a diplomat representing a foreign country an international or intergovernmental organisation, or any person or class of persons as the Minister of Foreign Affairs and International Cooperation may determine are excluded from the payment of registration and licence fee.⁴⁴⁷ It is notable that the Road Traffic (Registration and Licensing) Regulations provide that motor vehicles used solely for charitable purposes or which are designed or adapted for fighting fires are exempt from registration.⁴⁴⁸

The Road Traffic (International Circulation) Regulations made under the Road Traffic Act provides that any motor vehicle brought into Malawi by a non-resident under the authority of an international certificate or registration certificate and vehicle licence issued elsewhere than in Malawi, may be used in Malawi for up to one year or until the expiry of its international certificate or registration certificate or vehicle licence, or up to 30 days after the date when such person becomes resident in Malawi, whichever is the shortest, without the need to be registered or licensed.⁴⁴⁹ This provision appears to apply to both natural as well as juristic persons. Lastly, the Road Traffic (Miscellaneous Fees) Regulations made under the Road Traffic Act provide for temporary recognition of foreign registrations and plates through a “short-term service permit” issued in respect of foreign registered vehicles at prescribed fees. These provisions, although not directly related to international disaster assistance, may allow for the prompt registration and use of vehicles in disaster assistance operations in Malawi.

Immigration

Immigration in Malawi is regulated by the Immigration Act, as amended, and the Immigration Regulations.⁴⁵⁰ The Immigration Act does not make special provision for the granting of expedited visas and work permits for international disaster assistance personnel. In terms of visas, only nationals from the countries listed in Schedule 2 of the Immigration Regulations are exempted from requiring a visa to enter Malawi. In practice, however, in emergency situations the Department of Immigration issues “facilitation letters” for persons to travel to a port of entry in Malawi for the issuance of the visa on entry.⁴⁵¹

441 Pharmacy, Medicines and Poisons Act 15 of 1988, section 35.

442 Animal (Import) Rules, regulation 3.

443 Control and Diseases of Animals Act [Chapter 66:02 of the Laws of Malawi], section 7.

444 IDRL in Malawi, page 48.

445 Road Traffic Act [Chapter 69:01 of the Laws of Malawi], section 13. The procedure for registration is set out in Part VII of the Road Traffic (Registration and Licensing) Regulations made under the Road Traffic Act.

446 In terms of section 11 of the Road Traffic Act read with regulation 7 of the Road Traffic (Registration and Licensing) Regulations. The requirements for registration of motor vehicles which have previously been registered outside Malawi are provided in regulation 9,10 and 15.

447 Road Traffic (Registration and Licensing) Regulations, regulation 66.

448 Road Traffic (Registration and Licensing) Regulations, regulation 23.

449 Road Traffic (Registration and Licensing) Regulations, regulation 9.

450 Immigration Act of 1964 and Immigration Regulations of 1968.

451 IDRL in Malawi, page 54.



Malawi, 2015. Mary Chitsiru, 66, has been in a Village Savings and Loans Group since 2014. She received a loan to build her house. It took two months to repay the loan, including 10% interest.
© IFRC / Benoit Matsha-Carpentier

The Immigration Act and Immigration Regulations do not make special provision for expedited or special work permits to be issued to disaster relief personnel. For relief work requiring a stay not exceeding six months, a temporary residence permit would be required.⁴⁵² This permit can be used for work if, at the time of application, the applicant specifically indicated an intention to work temporarily and is renewable within Malawi for a further period of six months. For relief work requiring a stay exceeding six months and up to two years, a Temporary Employment Permit (TEP) would be required.⁴⁵³ This permit is renewable within Malawi. However, in general, all applications for a TEP should indicate that the post was advertised locally and that it was not possible to identify a suitably qualified person locally and include details of a qualified Malawian who will understudy the expatriate and eventually take over the position.⁴⁵⁴

The Immunities and Privileges Act⁴⁵⁵ enacts certain provisions of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations into law and provides certain immunities and privileges to states, diplomats, consular officials, as well as certain international organisations, which are also deemed to have the legal capacities of a body corporate in terms of section 24, and the staff of such organisations, which are exempt from both suit and legal process, immigration restrictions and income tax.⁴⁵⁶ The following international organisations are listed in the Fourth Schedule:

- the UN;
- the International Court of Justice;
- the International Labour Organization;
- the Food and Agriculture Organization;
- the International Civil Aviation Organization;
- the UN Educational, Scientific and Cultural Organization;
- the World Health Organization;
- the UN International Children's Emergency Fund;
- the Inter-Governmental Maritime Consultative Organization;
- the International Atomic Energy Agency;
- the International Refugee Organization;
- the International Telecommunication Union;
- the Universal Postal Union;
- the World Meteorological Organization;
- the Organization of African Unity;
- the Commonwealth Secretariat;
- the International Red Locust Control Organization for Central and Southern Africa;
- the Regional Testing Resource and Training Centre;
- the Southern African Regional Tourism Council;
- the Delegation of the Commission of the European Economic Community in Malawi (E.E.C. Commission Delegation); and
- the African Development Fund.

452 Immigration Act of 1964, section 25, read with Immigration Regulations of 1968, section 24.

453 Immigration Act of 1964, section 25.

454 ENS, Doing Business in Malawi, available at <https://www.ensafrica.com/doing-business/> (accessed 12 February 2021).

455 Immunities and Privileges Act 12 of 1984.

456 Immunities and Privileges Act 12 of 1984, Parts II-V.



Malawi, 2019. A donation made by Nissan Malawi distributed to people affected by floods in Mulanje District. The distribution happened in Mwanakhu camp and was carried out together with Malawi Red Cross volunteers and staff and Nissan Malawi staff. © Finnish Red Cross

Goods imported by diplomatic missions and the listed international organisations for official use are exempt from taxes. However, section 31 of the Immunities and Privileges Act provides that the Controller of Customs and Excise may require customs duties to be paid on goods that were imported free from customs duties, if they are disposed of to a person who is not entitled to customs privileges. The Immunities and Privileges Act allows for privileges and immunity to be afforded to other external agencies through agreement and by declaration, which may allow disaster relief organisations to be afforded such privileges, which may facilitate their work in the country.⁴⁵⁷

With regards to foreign driver's licences, regulation 7 of the Road Traffic (International Circulation) Regulations provide that an international driving permit issued elsewhere than in Malawi to a person not resident in Malawi is deemed to have effect within Malawi.

Registration of international assisting actors

The law does not provide a special procedure for the registration of international assisting actors in disaster relief. Foreign humanitarian organisations can establish their legal identity in Malawi through registration: as a trust (charity or association) under the Trustees Incorporation Act;⁴⁵⁸ as a local company limited by guarantee under the Companies Act, as amended;⁴⁵⁹ or as an external company under the Companies Act.⁴⁶⁰ If the applying organisation is classified as an INGO, it will be required to apply for and meet the requirements for registration as an NGO with the NGO Board, pursuant to the NGO Act,⁴⁶¹ unless it is exempted from the requirement of registering in terms of section 5. It will also be required to register with the Council for NGOs in Malawi, obtain approval from the line Ministry responsible for the activities to be undertaken by the organisation and register with the Board of NGOs.⁴⁶² There is also a possibility for a humanitarian organisation to establish its legal entity through an agreement entered into with the Malawi Government.⁴⁶³

⁴⁵⁷ Immunities and Privileges Act 12 of 1984, section 26.

⁴⁵⁸ Trustees Incorporation Act [Chapter 5:03 of the Laws of Malawi], section 3.

⁴⁵⁹ Companies Act [Chapter 46:03 of the Laws of Malawi], sections 23 and 26.

⁴⁶⁰ See the Companies (Amendment) Act, 1971, section 273. Section 274A provides the procedure and documents required to register as an external company in Malawi. In terms of section 275, an external company has the power to hold land in Malawi.

⁴⁶¹ NGO Act, sections 20 and 21. See also IDRL in Malawi, pages 40–42.

⁴⁶² IDRL in Malawi, page 42.

⁴⁶³ IDRL in Malawi, page 42, read with section 24 (1) (a) of the Immunities and Privileges Act.

Recognition of professional qualification of foreign personnel

There do not appear to be any provisions on the recognition of qualifications of foreign international disaster assistance personnel under Malawian law, and as such the normal rules and procedures would apply.

▼ Medical Personnel

The medical profession in Malawi is regulated by the Medical Practitioners and Dentists Act⁴⁶⁴ and the Nurses and Midwives Act.⁴⁶⁵

The recognition of medical qualifications for doctors is regulated at the national level by the Medical Council of Malawi, which is established under the Medical Practitioners and Dentists Act.⁴⁶⁶ The Medical Practitioners and Dentists Act does not have any specific provisions for expedited review of foreign qualifications for the purpose of providing assistance in disasters. All applicants for registration are to meet the certain requirements, including a residential requirement, although there are exceptions to this requirement.⁴⁶⁷

The Medical Practitioners and Dentists Act also provides for temporary registration of medical practitioners or dentists who have been temporarily employed and do not intend to reside in Malawi for a period exceeding twelve months.⁴⁶⁸ In addition, section 62 of the Medical Practitioners and Dentist Act exempts a delegate of the International Committee of the Red Cross (ICRC) who has entered Malawi with the consent or upon invitation of the government, from the requirements of the Act (provided the consent of the Chairman of the Council has been obtained).

For nurses, the recognition of medical qualifications is regulated at the national level by the Nurses and Midwives Council of Malawi established under the Nurses and Midwives Act, which to the authors' knowledge is not available online and, therefore, could not be reviewed for the purposes of this research.

▼ Engineers

The engineering profession is regulated by the Malawi Engineering Institution Act, which provides that all engineers must be registered to practise in Malawi.⁴⁶⁹ In terms of section 41, the registration Council may register a person who is not a citizen of Malawi. The same section further provides that an immigration officer shall not issue an employment or other permit to a person on the basis that he intends to practise as an engineer in Malawi without the approval of the registration Council. This requirement may pose delays for international disaster assisting personnel who are foreign qualified engineers.

▼ Architects

The architectural profession is regulated by the Architects and Quantity Surveyors Act,⁴⁷⁰ which does not make special provision for the registration of architects providing disaster relief assistance. In terms of section 23, no person may engage in the practice of architecture or quantity surveying in Malawi or hold himself out as being entitled to do so, unless he is registered. It is not clear how long registration takes to complete, but it is foreseeable that without expedited processes in place, international disaster assisting personnel who are foreign qualified architects may face delays in their ability to conduct work in the country.

464 Medical Practitioners and Dentists Act 17 of 1987.

465 IDRL in Malawi, page 56.

466 Medical Practitioners and Dentist Act, section 3.

467 Medical Practitioners and Dentist Act, sections 25 and 29.

468 Medical Practitioners and Dentist Act, section 33.

469 Malawi Engineering Institution Act 13 of 2019, section 25.

470 Architects and Quantity Surveyors Act [Chapter 53:02 of the Laws of Malawi].

Tax and currency exchange for disaster relief activities

VAT is generally chargeable on the supply and import of goods in Malawi under the Value Added Tax Act.⁴⁷¹ However, section 4 of the Third Schedule of the Value Added Tax Act states that certain goods are exempted from VAT, including goods for use by diplomatic staff, as well as goods for the use of international agencies or technical assistance schemes where the terms of an agreement made with the Malawi Government include such exemption from taxes. This means that international humanitarian organisations assisting in disaster relief would either need recognition under the Immunities and Privileges Act, as described above, or would need to enter into an agreement with the Government of Malawi to benefit from the exemption of VAT.

As for income tax, section 76A of the Taxation Act⁴⁷² provides that any income payable to a person, not being resident in Malawi, arising from a source within Malawi and not attributable to a permanent establishment of that person in Malawi shall be liable to a final tax at the rate of 15% of the gross amount of such income. However, the First Schedule of the Taxation Act provides for an exemption that may apply to international disaster response actors. The Schedule stipulates that income payable to any person pursuant to any arrangement agreed to be exempted is excluded from the application of the Taxation Act.⁴⁷³ The nature of such an arrangement is defined in the same section to mean “any arrangement between the government and any other government, or any international organisation, institution or body, or any person”. Any assisting actor would, therefore, need to enter into an arrangement with the Government of Malawi for the exemption of income tax. It is also worth noting that Malawi has entered into a number of double taxation agreements with a view to the prevention, mitigation, or discontinuance of the levying under the laws of Malawi and of another country of taxes with respect to the same income.⁴⁷⁴

Exchange control is strictly regulated in Malawi.⁴⁷⁵ The Exchange Control Regulations provide that a person is not allowed to be in possession of foreign currency in Malawi without the consent of the Minister and it is an offence for a person to exchange currency with any person other than a bank.⁴⁷⁶ It is not permissible for any person (including humanitarian organisations) to take currencies in and out of Malawi without the authority of the central government bank.⁴⁷⁷ However, regulation 11(3) provides that this does not apply in relation to a person: who is not resident in Malawi; and who takes or sends out of Malawi an amount of foreign exchange which is not in excess of the amount of foreign currency brought or sent by him into Malawi.

Freedom of movement of international assisting actors during a disaster response

The law does not make specific provision for the freedom of movement of international assisting actors in disaster relief.⁴⁷⁸

Safety and security of international assisting actors

There are no specific provisions on ensuring the safety of international assisting actors in disaster relief under Malawian law. The police service is mandated to provide protection of property and facilitate enforcement of all laws and regulations.⁴⁷⁹

471 Value Added Tax Act 7 of 2005.

472 Taxation Act [Chapter 41:01 of the Laws of Malawi].

473 Taxation Act [Chapter 41:01 of the Laws of Malawi], First Schedule, paragraph (i)(m).

474 Taxation Act, section 122.

475 IDRL in Malawi, page 50.

476 Exchange Control Regulations made under the Exchange Control Act [Chapter 45:01 of the Laws of Malawi], regulations 10 and 25.

477 Exchange Control Regulations made under the Exchange Control Act [Chapter 45:01 of the Laws of Malawi], regulation 11.

478 IDRL in Malawi, page 63.

479 IDRL in Malawi, page 63. See also the Police Act [Chapter 7:01 of the Laws of Malawi].

Question 6

Do Malawi's laws and regulations set out quality standards for international assisting actors?

The law does not explicitly provide for quality standards with respect to international disaster assistance. In general, however, international assisting actors would need to comply with relevant standards applicable in Malawi and would be subject to the laws of Malawi.

Question 7

Do Malawi's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?

The DPR Act does not provide for eligibility requirements for international assisting actors to receive legal facilities.

The IDRL in Malawi report highlights that failure by an organisation to establish recognition under the laws of Malawi will result in it not being recognised as a body corporate with powers to make business transactions or pursue its humanitarian objectives (unless the provisions of the Immunities and Privileges Act apply).⁴⁸⁰ An unregistered organisation would also not be permitted to open bank accounts with any of the registered commercial banks in Malawi since the showing of a certificate of registration/incorporation is one of the prerequisites to benefit from such rights.⁴⁸¹ They are not prohibited from signing contracts and entering into lease agreements although these may be unenforceable in case of breach as they were entered in the absence of the legal capacity.⁴⁸²

The Employment Act defines an employer as any person, body corporate, undertaking, public authority or bodies of persons who or which employs an employee and includes heirs, successors, and assignees of the employer.⁴⁸³ Based on this definition, there are no legal barriers for an unregistered organisation to legally hire local personnel, but they may face challenges in paying benefits as it would not have an operating bank account.⁴⁸⁴ Regarding the employment of non-nationals, the Immigration Act does not specifically prohibit unregistered organisations from sponsoring entry visa for its foreign employees.⁴⁸⁵ However, in practice, the Immigration Department would require a sponsoring letter from a registered organisation and therefore an unregistered organisation would not be able to obtain permits for its employees.⁴⁸⁶

In light of the above, an international assisting actor will need to establish its legal personality in order to be able to operate effectively in Malawi. As noted in the answer to question 5, this could be achieved by registering as a trust, a local company limited by guarantee, or as an external company.

Question 8

Do Malawi's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?

Malawian law does not currently establish a specialised unit for expediting the entry of international disaster assistance. As a result, expediting entrance of international disaster assistance appears, in practice, to have been occurring on an ad hoc basis.⁴⁸⁷

480 IDRL in Malawi, page 40.

481 IDRL in Malawi, page 40.

482 IDRL in Malawi, page 40.

483 Employment Act, 1999, section 3.

484 IDRL in Malawi, page 40.

485 Immigration Act, 1964.

486 IDRL in Malawi, page 40. See regulation 25 of the Immigration Regulations, 1968, read with Form 21.

487 IDRL in Malawi, page 31.

Question 9

Do Malawi's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?

Part X of the DPR Act establishes the National Preparedness and Relief Fund (the NPR Fund), which consists of *inter alia* sums or assets donated by any foreign government, international agency, or foreign institution and which has the object of developing, promoting, managing, and administering civil protection. The DPR Act also sets out a list of specific purposes for which the NPR Fund may be used.⁴⁸⁸ The administration of the NPR Fund is vested in the Minister.⁴⁸⁹ In terms of transparency and accounting, section 39 of the DPR Act provides that:

- the Minister will cause to be kept proper books and other records of account in respect of receipts and expenditures of the NPR Fund;
- the accounts of the NPR Fund shall be audited by the Auditor General; and
- the Minister will cause to be prepared an annual report on all the financial transactions of the NPR Fund, which will include: a balance sheet, an income and expenditure account, and the annual report of the Auditor General.

In addition, all sums received for the purposes of the NPR Fund will be paid into a banking account and will not be withdrawn except by means of cheques signed by persons authorised by the Minister.⁴⁹⁰ Given that the that the NPR Fund is able to accept donations from international assisting actors, international funds provided to the NPR Fund would be subject to these transparency and accountability measures.

Lastly, financial crimes such as money laundering and corruption are regulated by specific legislation, including the Money Laundering and Proceeds of Serious Crime and Terrorist Financing Act⁴⁹¹ and the Corrupt Practices Act, which may indirectly promote transparency and accountability with respect to international disaster relief operations.⁴⁹²

Question 10

Do Malawi's laws and regulations outline procedures for international disaster assistance sent from and transiting through the country?

The law does not appear to outline special procedures for international assistance sent from, and transiting through, Malawi and therefore it appears that the normal rules and procedures relating to the transit of goods and personnel and the exportation of goods would apply.⁴⁹³

488 DPR Act, section 37.

489 DPR Act, section 35.

490 DPR Act, section 40.

491 Money Laundering and Proceeds of Serious Crime and Terrorist Financing Act, 2006.

492 Corrupt Practices Act [Chapter 7:04 of the Laws of Malawi].

493 The Immigration Act does, however, make provision for certain exemptions as well as regulations to be made, which may allow for regulations on the entry, exit, and transit of international disaster assistance personnel in future. The Customs and Excise Act regulates goods in transit in Part X, providing that goods in transit must be entered for transit by the owner, but that goods imported on any conveyance which are intended to remain in and do remain in that conveyance may, subject to the approval of the proper officer, pass through Malawi without entry and be deemed to be goods in transit. In addition, unless exempted, the owner of goods in transit shall give security in in transit such sum as the proper officer may require for the protection of the revenue and compliance with the customs laws in respect of such goods. Lastly, section 21 provides that provisions relating to prohibited goods and restricted goods shall not apply to goods in transit provided that such goods are duly exported (see Customs and Excise Act [Chapter 42:01 of the Laws of Malawi], Part X; sections 60–62). Part VII of the Customs and Excise Act regulates the exportation of goods from Malawi.



Political Framework

Mozambique is a multi-party republic.⁴⁹⁴ The President of Mozambique is Head of State and Head of Government.⁴⁹⁵ The President is elected through universal suffrage, serves a term of five years and may be re-elected only once.⁴⁹⁶ A President who has been elected on two consecutive occasions may be a candidate for further presidential elections five years after the end of his last term of office.⁴⁹⁷ The President appoints the Prime Minister, Ministers and Deputy Ministers who assist and advise the President in the running of the government.⁴⁹⁸

The Council of State advises the President on the performance of his functions when requested as well as several compulsory issues, which include the declaration of a state of war, a state of siege, or a state of emergency.⁴⁹⁹ The Assembly of the Republic is the representative assembly of all Mozambican citizens and is the highest legislative body in the country.⁵⁰⁰ The Assembly of the Republic consists of 250 deputies who are elected through universal suffrage.⁵⁰¹ The Government of Mozambique is the Council of Ministers, which consists of the President, the Prime Minister and the Ministers.⁵⁰²

With regards to international law, approved and ratified international treaties and agreements enter into force in Mozambique once they have been officially published and, as such, norms of international law have the same force in the Mozambican legal order as legislative acts.⁵⁰³

DRM Framework

The Government of Mozambique has adopted numerous DRM related laws, policies, strategies, and plans over the past 20 years. As a starting point, Mozambique adopted the National Policy on Disaster Management (NPDM) in 1999. Mozambique then developed its first Master Plan for Prevention and Mitigation of Natural Disasters in 2006 (*Plano Director of Prevenção e Mitigação das Calamidades Naturais* or PDPMCN), which was in place until 2016. This was replaced in 2017 by the National Disaster Risk Reduction Master Plan (*Plano Director para a Redução do Risco de Desastres* or PDRRD), which is set to cover the period from 2017 to 2030. The law establishing the legal framework for disaster management⁵⁰⁴ was adopted in 2014 (2014 DRM Law) but was repealed in 2020 by the Law on Disaster Risk Reduction and Management (Law 10/2020) (2020 DRM Law), which is the focus of this report.⁵⁰⁵ The 2020 DRM Law is complemented by a set of regulations approving the Law on Disaster Risk Reduction and Management (Decree 76/2020) (the Regulations).

494 Constitution of Mozambique, 2004 (as amended in 2007) (English translation), article 1.

495 Constitution of Mozambique, 2004 (as amended in 2007) (English translation), article 146(1).

496 Constitution of Mozambique, 2004 (as amended in 2007) (English translation), articles 147 (1), (2) and (3).

497 Constitution of Mozambique, 2004 (as amended in 2007) (English translation), article 147(5).

498 Constitution of Mozambique, 2004 (as amended in 2007) (English translation), article 160 and 205.

499 Constitution of Mozambique, 2004 (as amended in 2007) (English translation), article 166.

500 Constitution of Mozambique, 2004 (as amended in 2007) (English translation), article 168 and 169.

501 Constitution of Mozambique, 2004 (as amended in 2007) (English translation), articles 170 (1) and (2).

502 Constitution of Mozambique, 2004 (as amended in 2007) (English translation), articles 200 and 201(1).

503 Constitution of Mozambique, 2004 (as amended in 2007) (English translation), article 18.

504 Law No. 15/2014 of 20 June 2014, establishing the legal framework for disaster management.

505 For an overview of IDRL in Mozambique under the 2014 DRM Law, see PIROI, IDRL in the south-west Indian Ocean, Study of legal frameworks to facilitate and regulate international disaster response in: Union of the Comoros, Mayotte and Reunion, Madagascar, Mauritius, Mozambique, Seychelles, and Tanzania (2020) (in French, summary available in English).

Several other policy documents related to development and climate change have also been identified as relevant to the DRM framework of Mozambique.⁵⁰⁶ These include:

- the government's five-year programme (*Programa Quinquenal do Governo* 2015–2019), which advocates for the integration of guidelines on DRM and climate change adaption (CCA) into national, sectoral, and local development plans;⁵⁰⁷
- *Agenda 2025 (Visão Estratégica de Nação)* which indicates that the impact of disasters on Mozambique's development must be considered;⁵⁰⁸ and
- the 2013–2025 National CCA and Mitigation Strategy (ENAMMC), which outlines the key areas of action the government is focussing on to reduce the impacts of climate change.⁵⁰⁹

The institutional structure for DRM in Mozambique is set out in the 2020 DRM Law, which provides that the main bodies of the DRM system at central level are as follows:

- a. the government;
- b. the Coordinating Council for Disaster Management and Risk Reduction;
- c. the Technical Council for Disaster Management and Risk Reduction; and
- d. the Coordinating Entity for Disaster Management and Risk Reduction (the National Institute for Disaster Risk Management and Reduction or INGD).⁵¹⁰

Under the 2020 DRM Law, the government has the responsibility to:

- approve management policies, strategies, and plans;
- approve regulations necessary for the proper implementation of the 2020 DRM Law;
- ensure the integration of disaster management and reduction in governance processes at all levels;
- approve the risk subsidy for employees and state agents when deployed in operations of emergency;
- guarantee investment in DRM and DRR, with a focus on capacity building for the financial management of disaster risk;
- strengthen multi-sectoral coordination and planning mechanisms;
- establish and strengthen partnerships at national, regional, and international level;
- map and determine disaster-prone areas and prohibit their occupation;
- expropriate or limit, in part or in whole, the property of any person upon fair compensation, under the law;
- guarantee the observance and implementation of 2020 DRM Law; and
- define the attributions, competences, composition, organisation and functioning of the:
 - Coordinating Council for Disaster Management and Risk Reduction;
 - Coordinating Entity for Disaster Management and Risk Reduction (the INGD); and
 - Technical Council for Disaster Management and Risk Reduction.⁵¹¹

506 See PIROI, Summary: IDRL in the South West Indian Ocean (2020), page 14.

507 Plano Director para a Redução do Risco de Desastres (PDRRD), page 20. See also PIROI, page 14.

508 PDRRD, page 18. See also PIROI, page 14.

509 República de Moçambique Ministério para a cooperação da acção ambiental, 2013–2025, Estratégia Nacional de Adaptação e Mitigação de Mudanças Climáticas (ENAMMC). See also PIROI, page 14.

510 2020 DRM Law, article 8.

511 2020 DRM Law, article 9.

The Regulations provide that the Coordinating Council for Disaster Management and Risk Reduction is a government agency that aims to coordinate multi-sectoral DRM actions.⁵¹² It has the responsibility to, *inter alia*:

- propose to the government policy projects and strategies related to DRM;
- approve the content of risk management and reduction disaster relief and reconstruction programmes;
- propose to the government the declaration of disaster;
- approve emergency programmes with the objective to help victims and rehabilitate damaged infrastructure;
- mobilise the national and international community to support disaster victims and recovery;
- propose to the government the ratification of relevant conventions and agreements;
- adopt protocols to adequately address each type of disaster, depending on its nature and magnitude;
- regulate the organisation and functioning of the National Emergency Operations Centre and the National Civil Protection Unit;
- activate the Emergency Operations Centres, provincial Emergency Operations Centres in case of imminent disasters; and
- propose to the government the activation, deactivation and duration of orange and red alerts whenever required.⁵¹³

The Technical Council for Disaster Management and Risk Reduction is a multisectoral advisory body to the Coordinating Council for Disaster Management and Risk Reduction.⁵¹⁴ It is responsible for *inter alia*:

- proposing to the Disaster Management and Risk Reduction Coordinating Council the state of public emergency or disaster;
- formulating and proposing the legal framework that defines the applicable emergency measures, levels of action, procedures, and preventive acts;
- proposing the launch of humanitarian assistance appeals;
- preparing contingency plan proposals and annual reports on risks and threats; and
- deciding on the activation and deactivation of the yellow alert level whenever necessary.⁵¹⁵

The 2020 DRM Law creates the Coordinating Entity for Disaster Management and Risk Reduction i.e., the IGND, which is established in terms of article 10 of the 2020 DRM Law, and is responsible for *inter alia*:

- coordinating disaster prevention and mitigation actions;
- coordinating emergency management and response;
- coordinating post-disaster reconstruction;
- coordinating the National Civil Protection Unit;
- coordinating the processes of disaster prevention, mitigation, preparedness, and response with other actors; and
- strengthening resilience and DRM programmes.⁵¹⁶

512 The Regulations, article 33.

513 The Regulations, article 33.

514 The Regulations, article 35.

515 The regulations, article 35.

516 2020 DRM Law, article 11. See also article 34 of the Regulations.

The Statutes of the INGD establish the INGD as a public institution with legal personality and technical, administrative, and financial autonomy.⁵¹⁷ The INGD is subordinate to the Council of Ministers, and is governed by the statutes, internal regulations, and other legislation applicable to public institutions. The INGD constitutes the main body in disaster prevention and mitigation, preparedness, relief, and rehabilitation operations in Mozambique.⁵¹⁸ As per Article 4, the objectives of the INGD include, among others to:

- coordinate actions for prevention, mitigation, preparedness, and response to disasters;
- coordinate emergency management and response;
- coordinate the development of arid and semi-arid areas;
- coordinate post-disaster reconstruction;
- coordinate the National Civil Protection Unit;
- coordinate the process of prevention, mitigation, readiness, and response to the phenomena of risks and threats; and
- strengthen DRM and resilience programmes.⁵¹⁹

The competencies, organisational structure and functioning of the INGD are further defined in Presidential Decree 41/2020 which, in article 23, revokes Decree 38/99 that created the National Institute for Disaster Management (INGC),⁵²⁰ which was the leading government institution mandated to coordinate DRM efforts in Mozambique prior to the promulgation of the 2020 DRM Law. The INGC was essentially replaced by the INGD, which has been designated as the Coordinating Entity for Disaster Management and Risk Reduction in Mozambique.⁵²¹

IDRL Assessment

Question 1

Does Mozambique have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

As stated above, the 2020 DRM Law provides the framework for DRM in Mozambique. Although it is not detailed, article 43 regulates international emergency assistance, providing that the coordination, direction and supervision of international humanitarian aid, as well as the authorisation of the entry of international assisting personnel and relief goods are the responsibility of the government.⁵²² The Regulations contain a similar provision, adding that international emergency assistance can be in kind or in monetary values donated, offered or assigned temporarily by a natural or legal person, public or private, in order to support affected populations.⁵²³ The Coordinating Entity for Disaster Management and Risk Reduction (the INGD) is responsible for defining the places for channelling donated, offered or assigned goods and to coordinate with the competent entities the procedures for importing foreign aid.⁵²⁴

More generally, the NPDM states that it seeks to promote regional or international coordination in DRM, particularly in the case of cross-boundary disasters originating in neighbouring countries, as well

⁵¹⁷ Resolução no. 3/2021 de 15 de Janeiro, article 1.

⁵¹⁸ Resolução no. 3/2021 de 15 de Janeiro, article 3.

⁵¹⁹ Resolução no. 3/2021 de 15 de Janeiro, article 4.

⁵²⁰ Presidential Decree 41/2020, article 23.

⁵²¹ Presidential Decree 41/2020.

⁵²² 2020 DRM Law, article 43.

⁵²³ The Regulations, article 30(3).

⁵²⁴ The Regulations, article 30(5).

as to mobilise all the necessary domestic and external resources to assist victims and affected areas and, if necessary, resort to an emergency appeal to national and international solidarity. However, further details are not provided.⁵²⁵

Question 2

Do Mozambique's laws and regulations clearly set out a focal point for coordinating international disaster assistance?

Neither the previous nor the current legal regime for disaster management in Mozambique explicitly establishes a clear focal point for coordinating international disaster assistance. The 2020 DRM Law only states that the government will be responsible for coordinating international humanitarian aid, but no particular body is specified. The need to clearly define focal or reference points for all actions at all levels in the event of an emergency is, however, included as one of the core principles of the NPDM.⁵²⁶

In addition, Decree 55/98 provides the legal framework that defines the criteria for authorisation, objectives to be achieved and mechanisms for the performance of foreign NGOs in Mozambique in the context of *inter alia* emergency, rehabilitation or development programmes and provides that the activities of foreign NGOs will complement government efforts and will therefore be coordinated by the corresponding government agency. In practice, the INGC appears to have been the focal point for international disaster assistance in Mozambique in disasters in the past.⁵²⁷ As mentioned above, the INGC has recently been replaced by the INGD. As such, the INGD would presumably be the focal point for international disaster relief in Mozambique in disasters.

Question 3

Do Mozambique's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?

The main bodies of the DRR and DRM system at central level in Mozambique have been set out above.

Several functions of these entities may be of relevance to international disaster assistance, although they are not defined in detail. The coordination, direction and supervision of international humanitarian aid, as well as the authorisation of the entry of international assisting personnel and relief goods are the responsibility of the government;⁵²⁸ whereas the Coordinating Entity for Disaster Management and Risk Reduction (the INGD) is responsible for defining the places for channelling of donated, offered or assigned goods and to coordinate with the competent entities the procedures for importing foreign aid.⁵²⁹ In addition, the Regulations provide that the Coordinating Council for Disaster Management and Risk Reduction is responsible for, amongst others: mobilising the national and international community to support disaster victims and recovery; proposing to the government the ratification of relevant conventions and agreements; and adopting protocols to adequately address each type of disaster, depending on its nature and magnitude.⁵³⁰ The Technical Council for Disaster Management and Risk Reduction is responsible for *inter alia*: formulating and proposing the legal framework that defines emergency measures and levels of action; and proposing the launch of humanitarian assistance appeals for disaster relief and rehabilitation actions.⁵³¹

525 See also the PDRRD, section 2.1.6, which states that it seeks to promote the adoption of rules related to the Law and the International Strategy for Disasters, including aspects of mobilisation of people and goods for humanitarian assistance.

526 Resolução n° 18/99, Política de Gestão de Calamidades, page 3.

527 IFRC, International Disaster Response Law (IDRL) in Mozambique (2012) (IDRL in Mozambique), page 5.

528 2020 DRM Law, article 43.

529 The Regulations, article 30(5).

530 The Regulations, article 33. See also Resolução no. 3/2021 de 15 de Janeiro, article 14 which also sets out the functions of the Coordinating Council for Disaster Management and Risk Reduction.

531 The Regulations, article 35.



Mozambique, 2019. Local workers of Red Cross field hospital in Nhamatanda assembling a warehouse tent. © Finnish Red Cross / Saara Mansikkamäki

With regards to other actors involved in international disaster assistance, article 5 of the 2020 DRM Law provides that national public and private organisations as well as foreign, technical and scientific research institutions who work in DRM have a special duty to, in the event of imminence or the occurrence disaster, cooperate and collaborate with the government entity responsible for the management of disasters (namely the INGD). The participation of specialised UN agencies in disaster management in Mozambique is also briefly mentioned in Chapter VI of the NPDM, stating that experts and representatives from UN agencies, alongside NGOs, public and private entities shall be invited to the sessions of the technical and the executive bodies for disaster management.

Question 4

Do Mozambique's laws and regulations outline a process for requesting/ welcoming offers of international disaster assistance, and for terminating international assistance?

The law does not provide clear procedures for requesting and/or welcoming offers of international disaster assistance, or for terminating international assistance. It only provides that proposing the launch of humanitarian assistance appeals is a function of the Technical Council for Disaster Management and Risk Reduction and that international assistance should be authorised and regulated by the government.

Question 5

Do Mozambique's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?

The 2020 DRM Law contains several provisions which relate to legal facilities for international assisting actors, although these are not detailed. As a starting point, article 38 (emergency assistance) of the 2020 DRM Law provides that the entity responsible for disaster risk management and reduction must ensure humanitarian assistance to disaster victims and that once a red alert has been activated, the

government can establish migratory, customs, and fiscal facilities. This may include the suspension of payment of fees adjusted to the specific situation, indicating its duration, as proposed by the Coordinating Entity for Disaster Management and Risk Reduction (the INGD). Furthermore, assets for operational readiness benefit from tax facilities.⁵³² A similar provision is included in article 30 of the Regulations. Further details are not provided in the 2020 DRM Law or Regulations. Although it does not specify its applicability to international disaster assistance, article 42 provides that when an orange or red alert is activated, the entity responsible for DRM and DRR and can enter into contracts using an exceptional regime for the acquisition of goods and the provision of emergency services for humanitarian assistance.⁵³³ Equipment and other goods provided under such contracts, are subject to prior inspection and evaluation by specialised technical entities.⁵³⁴

The NPDM indicates in Chapter V that appropriate measures should be taken in the sectors to guarantee a regular flow of the necessary logistical resources and communication for timely and effective humanitarian assistance to the affected areas. Once an emergency situation has been declared in an area, administrative measures such as those relating to the payment of fiscal obligations and customs duties, entry visas and others can be suspended in accordance with the law. However, no clear procedures are specified for these facilities.

Lastly, the IDRL in Mozambique Report indicates that special procedures for importation of relief goods in emergency situations have been developed, as recommended by the [IDRL Guidelines](#), in the form of an INGC manual on customs clearance procedures for emergency goods, which was still in draft form at the time of the publication of the report.⁵³⁵ It was not possible to confirm whether this manual has since been finalised and published.

The sections below examine whether the sectoral laws of Mozambique provide any additional facilities for international assisting actors in disaster response.

Landing Rights

The Civil Aviation Law 21/2009 (*Lei de Aviação Civil*), establishes in article 8 that the government is responsible for ensuring the implementation of the Chicago Convention and its Annexes and also makes provision for regulations to be made under the Act. In addition, article 12(3) provides that domestic aerodromes can be used by international traffic in cases of emergency, alternation, search and rescue operations, or special exemptions issued by the Aeronautical Regulatory Agency, which may facilitate the landing of humanitarian relief flights in disaster situations.

Customs arrangements for specialised goods and equipment

As stated above, the law provides that the Coordinating Entity for Disaster Management and Risk Reduction (the INGD) is responsible for defining the places for channelling donated, offered or assigned goods and to coordinate with the competent entities the procedures for importing foreign aid.⁵³⁶ The government can establish customs facilities, including the suspension of payment of fees adjusted to the specific situation in the event of a disaster.⁵³⁷ However, no further details are provided in this regard.

In terms of general customs laws, Decree 34/2009 establishes the general rules for customs clearance of goods, which includes in article 27 special regimes that can benefit from tax exemption or reduction of duties. The special regimes consist of temporary importation/exportation where the goods involved have a different purpose of consumption and are subject to subsequent re-export to the country of

532 2020 DRM Law, article 38(4).

533 2020 DRM Law, article 42(3).

534 2020 DRM Law, article 42(3).

535 IDRL in Mozambique, page 7.

536 The Regulations, article 30(5).

537 2020 DRM Law, article 38.

origin.⁵³⁸ These goods can be exempt from taxation and customs duties and include animals, medicines, vehicles, or goods imported for diplomatic activities.⁵³⁹ However, no specific mention of international relief goods or equipment is made in this law.

▼ Vehicles

Decree 19/2002 establishes the necessary regulations for vehicle taxes in Mozambique. Although it does not mention international disaster assistance, it does provide a list of entities which are exempt from vehicle tax, some of which may be applicable to certain international assisting actors. These include:

- the state and any of its services, establishments, and bodies;
- local authorities and their associations and / or federations of municipalities;
- foreign states (when there is reciprocity of treatment);
- staff of diplomatic and consular missions, under the terms of the respective conventions; and
- foreign or international organisations, under the terms of agreements signed by the government.⁵⁴⁰

▼ Communications equipment

The National Telecommunications Law⁵⁴¹ does not have any provisions on international disaster assistance specifically, only stating in article 10 that the government is responsible for ensuring adequate coordination of the telecommunication service networks in emergency situations, public calamity, crises, or war, according to the legislation in force. However, the law does not provide clear procedures on the importation of communications equipment in emergency situations. Article 22 of this law mentions that in situations of crisis or war, emergency, or catastrophes, officially declared by the government, radio services are governed by decisions issued by the competent bodies in control of the country's telecommunications. Although the law is silent on licensing requirements and procedures for telecommunications/radio equipment used by international assisting actors, it provides that once the necessary application procedure and requirements have been met, telecommunication and radio licences may be attributed to any legal person registered in Mozambique.⁵⁴² This indicates that international actors would need to be registered in Mozambique to use telecommunications equipment, unless a special regime is established (as is contemplated by the 2020 DRM Law).

Immigration

There are no specific provisions on the entry into the country of humanitarian personnel for disaster response operations, save that the 2020 DRM Law provides that the government can establish migratory facilities in disasters.⁵⁴³ In practice, the government has created conditions to make the visa procedure faster and easier, depending on the gravity of the situation.⁵⁴⁴ In addition, under an emergency declaration, it is possible for the government to define specific entry procedures (such as one-off simplified registration measures for foreign entities to operate in the country and rapid entry procedures for international staff).⁵⁴⁵ In the absence of such a special regime being created, the normal rules relating to immigration and the hiring of foreign personnel in Mozambique would apply.

538 Decree 34/2009, article 28.

539 See Tables III and IV.

540 Decree 19/2002, [Chapter II], article 5.

541 Lei no. 8/2004 Lei das Telecomunicacoes.

542 Lei no. 8/2004 Lei das Telecomunicacoes, article 17 (Attribution of licences and registrations).

543 PIROI, Chapter III (Mozambique), section 6.1.1.

544 PIROI, Chapter III (Mozambique), section 6.1.1.

545 PIROI, Chapter III (Mozambique), section 6.1.1, referencing FICR, Lei de Resposta a Desastres de Dimensao Internacional (IDRL) em Moçambique, 2012, page 60.



Mozambique, 2020. One year after Cyclone Idai people are still struggling to get back on their feet. Still dealing with the consequences of Idai, they are being hit by floods. © IFRC / Anette Selmer-Andresen

Decree 108/2014 approves the legal regime applicable to foreign citizens, regarding the entry, stay and exit from the country. This Decree provides specifications on different types of entry visas in articles 1 and 5, as well as their respective application procedures and eligibility requirements. The following visa types are available:

- diplomatic visa;
- courtesy visa;
- official visa;
- student visa;
- frontier visa;
- business visa;
- work visa;
- transit visa;
- tourist visa;
- residence visa;
- visitor visa;
- visa for sports and cultural activities;
- visa for investment activity;
- temporary stay visa; and
- crew transshipment visa.

The types of visas provided in Decree 108/2014 which may be relevant in international disaster response operations include diplomatic visas, which are defined as the document granted to individuals who travel to the country for diplomatic activities.⁵⁴⁶ It is emphasised in the Decree that diplomatic visa holders are also holders of a diplomatic passport and, therefore, no immigration laws and customs duties apply to such individuals, in line with the Vienna Convention on Diplomatic Relations and the

⁵⁴⁶ Decree no. 180/2014, article 1(w).

Vienna Convention on Consular Relations. A work visa is defined as one which is granted to a foreigner who travels to the country with a view to providing work for others, with or without remuneration.⁵⁴⁷ A work visa must be used within 60 days following the date of its granting and allows the holder multiple entries and permanence until the end of the employment contract.⁵⁴⁸ A business visa is defined as that which is granted to foreign citizens who travel to the country in connection with the activity they carry out.⁵⁴⁹ A business visa must be used within 60 days following the date of its granting and allows its holder to remain for a period of 30 days, extendable to 90 days.⁵⁵⁰ The business visa entitles the holder to dedicate himself exclusively to the exercise of the activity that determined the granting of the visa, but does not allow its holder to obtain a residence and work permit. A courtesy visa is defined as one that is granted to foreign individuals who travel to the country at the invitation of Mozambican authorities, and the Ministry of Foreign Affairs and Cooperation is responsible for granting entry visas and extending the period of stay for this type of visa, along with Diplomatic and Official visas.⁵⁵¹ A courtesy visa may be particularly relevant to international assisting actors. Lastly, a residence visa is one which is granted to foreign citizens wishing to settle in the country under the terms of the law,⁵⁵² while a temporary stay visa may be granted to the foreign spouse and minor or disabled children of the foreign citizen holding the work visa.⁵⁵³

Registration of international assisting actors

The 2020 DRM Law does not provide a special procedure for the registration of international assisting actors in disaster situations. As stated above, Decree 55/98⁵⁵⁴ does however provide the legal framework that defines the criteria for authorisation, objectives to be achieved, and mechanisms for the performance of foreign NGOs in Mozambique in the context of *inter alia* emergency, rehabilitation, or development programmes and provides a list of documents required for the application.⁵⁵⁵ Decree 55/98 establishes in article 5 that the Minister of Foreign Affairs and Cooperation is responsible for authorising foreign NGOs to commence activities in Mozambique. The application must include the name of the NGO, its headquarters and domicile, and must be accompanied, upon request, by the following documents:

- certified copy of statutes that prove its legal existence in the country of origin;
- proposal for the general programme of activities intended to be carried out in Mozambique;
- description of the organisation's history and its work experience;
- framework of staff that is proposed to be used; and
- documentation proving the capacity and availability of financial resources necessary to carry out activities in Mozambique.

Decree 55/98 further provides that foreign NGOs must only commence activities upon authorisation, and that foreign NGOs within Mozambiquan territory must register with the Financial Repartition of the respective tax area before the start of their activity.⁵⁵⁶ The NGOs must also submit annual reports of activities in agreement with procedures to be defined by the Minister of Foreign Affairs and Cooperation.⁵⁵⁷

547 Decree no. 180/2014, article 1(ee).

548 Decree no. 180/2014, articles 19.

549 Decree no. 180/2014, article 1(aa).

550 Decree no. 180/2014, article 18.

551 Decree no. 180/2014, article 1(v) read with article 5.

552 Decree no. 180/2014, article 1(cc).

553 Decree no. 180/2014, article 1(kk).

554 Decree no. 55/98, 13 October 1998.

555 Decree no. 55/98, 13 October 1998, article 5.

556 Decree 55/98, articles 6 and 9.

557 Decree 55/98, article 8.

Recognition of professional qualifications of foreign personnel

It was not possible to identify any laws which provide for the speedy recognition of foreign qualifications in disaster situations in Mozambique.

Tax and currency exchange for disaster relief

There do not appear to be specific provisions on the taxation of international assisting actors or provisions facilitating currency exchange for international disaster actors in Mozambique, save that the 2020 DRM Law provides that the government can establish fiscal facilities in disasters,⁵⁵⁸ which may foreseeably include tax and currency exchange facilities.

Freedom of movement of international assisting actors during a disaster response

Mozambiquan law does not make specific provision for the freedom of movement of international assisting actors in disaster relief, but in practice nothing prevents the free circulation of people and goods during relief activities, as long as the appropriate coordination is established through the existing mechanisms, so that security can be guaranteed.⁵⁵⁹

Safety and security of international assisting actors

Law 17/97 approves the Policy for Defence and Security for Mozambique. In terms of article 3, one of the objectives of this Policy is to ensure mechanisms aimed at prevention and relief for populations in the event of disasters and accidents. Although no direct references to international disaster assistance are included, Law 17/97 establishes in article 13 a mission for internal security which aims, among others, to guarantee the protection and personal security of senior national and foreign entities, as well as other individuals, when subject to situations of significant threat.

Question 6

Do Mozambique's laws and regulations set out quality standards for international assisting actors?

The government promotes the adoption of standards related to the international legal framework including aspects relating to the mobilisation of humanitarian aid and, more specifically, the entry and exit of property and persons.⁵⁶⁰ In practice, Mozambique observes international quality standards for emergency operations and international assisting actors would need to comply with relevant laws and standards applicable in Mozambique.⁵⁶¹

In addition, the 2020 DRM Law establishes core principles of disaster management, consistent with the principles of humanity, neutrality, and impartiality. Article 4 provides the principles as follows:

- the principle of human dignity and well-being;
- the prevention principle;
- the principle of participation and service;
- the command unit principle;
- the principle of solidarity;
- the principle of universality;

558 PIROI, Chapter III (Mozambique), section 6.1.1.

559 IDRL in Mozambique, page 7.

560 PIROI, page 119, and PDRRD, page 34.

561 IDRL in Mozambique, page 7.

- the principle of equality and equity;
- the principle of sustainable protection;
- the information principle;
- the principle of public education and awareness;
- the principle of transparency;
- the accountability principle;
- the principle of effectiveness and efficiency;
- the cooperation principle;
- the principle of proportionality; and
- the principle of sustainability.

It is also noteworthy that Decree 55/98 provides that, in the pursuit of their activities, foreign NGOs are prohibited from carrying out or promoting actions of a political nature.⁵⁶²

Question 7

Do Mozambique's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?

The law does not appear to provide specific eligibility requirements for international assisting actors to receive legal facilities, apart from Decree 55/98 which establishes a list of requirements for NGOs to gain authorisation to implement their activities in the country, as stated above.

Question 8

Do Mozambique's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?

The law does not establish a specialised unit for expediting the entry of international disaster assistance.

Question 9

Do Mozambique's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?

The law does not contain explicit accountability mechanisms for international disaster assistance in Mozambique. However, as stated above, the 2020 DRM Law establishes in Article 4 the principles of disaster management in Mozambique, some of which are intended to promote transparency and accountability in the disaster relief and initial recovery phases. Relevant principles include:

- the principle of transparency, which determines that the resources for DRM and DRR should be managed clearly based on evidence and with evaluation models;
- the accountability principle, which requires regular reporting of all achievements, decisions public policies, programmes, and DRM and DRR projects; and
- the principle of sustainability, which consists of ensuring that DRM projects are durable in the short-, medium- and long-term.

The Disaster Management Fund (FGC), is a dedicated fund for DRM in Mozambique, administered by the INGD.⁵⁶³ The revenue of the FGC is constituted by, among others, a state endowment of at

⁵⁶² Decree 55/98, article 2(3).

⁵⁶³ See the website of the INGD available at <https://www.ingd.gov.mz/o-que-e-fgd/> accessed 30 April 2021.

least 0.1% of the state budget, donations, capitalisations (investments) and contributions from national and foreign companies and legal persons operating in national territory.⁵⁶⁴ As per the administrative and financial procedures of the FGC, the process of making a contribution to the FGC is called a Risk Transfer, which aims to ensure timely allocation and application of resources to response activities and to address priorities and urgency in the context of an emergency.⁵⁶⁵

Furthermore, there are specific procedures guiding the classification and recording of contributions to the FGC as per Ministerial Diploma 96/2019. More specifically, the accounts will be kept in accordance with internationally accepted accounting practices. All transactions shall be accounted for through a computer system and in accordance with the chart of accounts specifically approved for the FGC, according to the principles of continuity, historical cost, consistency, prudence, and materiality. Each accounting record shall be supported by a dated supporting document, which may be presented upon request.⁵⁶⁶ In order to ensure transparency in the management of the FGC, the fund is subject to internal and external auditing procedures.⁵⁶⁷ Given that the FGC appears to be able to accept donations from international assisting actors, international funds provided to the FGC would be subject to these transparency and accountability measures.

Although there are no specific rules on the accountability of international disaster assisting actors in Mozambique, in general, as stated above, international assisting actors would need to comply with relevant laws and standards applicable in Mozambique. For example, Decree 55/98 provides that it is a general objective of NGOs to dedicate themselves to providing assistance to populations regardless of their ethnicity, race, religion or social status, and there is also a requirement for them to submit annual reports according to procedures to be defined by the Minister for Foreign Affairs and Cooperation.⁵⁶⁸ In addition, a number of provisions of the Criminal Code of Mozambique may be relevant to the activities of international assisting actors, although they are not directly related to international disaster assistance. For instance, it is an offence for anyone to:

- prevent the arrival or provision of aid for a person in danger of life, a serious offense to his or her integrity or freedom or to combat an accident that presents a danger to the safety of people;⁵⁶⁹
- abstain from providing assistance which can be provided by personal action or by asking for help in situations of disaster, accident, public calamity, or situation of danger, which endangers the life, physical integrity or freedom of another person;⁵⁷⁰
- abuse the use of a signal or alarm or distress call or pretend that someone else's assistance is necessary due to disaster or danger;⁵⁷¹ and
- refuse or fail to perform the services or provide the assistance required in circumstances of turmoil, shipwreck, flood, fire or other calamity, or any accidents.⁵⁷²

Question 10

Do Mozambique's laws and regulations outline procedures for international disaster assistance sent from and transiting through the country?

The law does not appear to outline special procedures for international assistance sent from, and transiting through, Mozambique and therefore it appears that the normal rules and procedures relating to the transit of goods and personnel and the exportation of goods would apply.

⁵⁶⁴ Decree 53/2017, article 6.

⁵⁶⁵ Ministerial Diploma 96/2019, article 17.

⁵⁶⁶ Ministerial Diploma 96/2019, article 21.

⁵⁶⁷ Decree 53/2017, article 13.

⁵⁶⁸ Decree 55/98, articles 3 and 8.

⁵⁶⁹ Criminal Code of Mozambique (Lei no. 24/2019), article 221.

⁵⁷⁰ Criminal Code of Mozambique (Lei no. 24/2019), article 221.

⁵⁷¹ Criminal Code of Mozambique (Lei no. 24/2019), article 347.

⁵⁷² Criminal Code of Mozambique (Lei no. 24/2019), article 354.



Political Framework

Namibia is a sovereign, secular, democratic and unitary state.⁵⁷³ The President is elected and serves as Head of State and as Head of the Government as well as the Commander-in-Chief of the Defence Force.⁵⁷⁴ The executive power of Namibia vests in the President and the Cabinet.⁵⁷⁵ The President's term of office is five years, and a person may not serve more than two terms as President.⁵⁷⁶ A Vice President is appointed by the President from the elected members of the National Assembly.⁵⁷⁷

The Prime Minister is appointed by the President and serves as the leader of government business in Parliament and coordinates the work of the Cabinet as head of administration.⁵⁷⁸ The Cabinet consists of the President, the Vice President, the Prime Minister, Deputy Prime Minister, and other Ministers as appointed for the purposes of administering and executing the functions of the government.⁵⁷⁹

Parliament is the law-making body of Namibia's legislature. It is composed of the National Council, which consists of 42 representatives of the Regional Councils; and the National Assembly, which comprises 104 members, 96 of which are elected by parliamentary election and eight of which are appointed by the President.⁵⁸⁰

Namibia has a "hybrid" or "mixed" legal system consisting of civil law, common law, and customary law. Namibia is a monist state: article 144 of the Namibian Constitution provides that the general rules of public international law and international agreements binding upon Namibia form part of the law of Namibia.

DRM Framework

The Disaster Risk Management Act 10 of 2012 (DRM Act) provides the framework for DRM in Namibia. The DRM Act was promulgated to provide for:

- the establishment of institutions for DRM in Namibia;
- an integrated and coordinated DRM approach that focusses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters, and post-disaster recovery;
- declarations of national, regional, and local disasters; and
- the establishment of the National Disaster Management Risk Fund (NDMR Fund).

In addition to the DRM Act, the Namibian Government has published several implementing policies and regulations concerning DRM, these include:

- the Namibia National Disaster Risk Management Policy (DRM Policy), adopted in August 2009, which seeks to provide for a "coherent, transparent and inclusive" policy on DRM in Namibia;⁵⁸¹
- National Disaster Risk Management Plan, adopted in 2011 (DRM Plan), which provides a framework

⁵⁷³ Constitution of Namibia, article 1.

⁵⁷⁴ Constitution of Namibia, article 27(1).

⁵⁷⁵ Constitution of Namibia, article 27(2).

⁵⁷⁶ Constitution of Namibia, article 29.

⁵⁷⁷ Constitution of Namibia, article 28(1A).

⁵⁷⁸ Constitution of Namibia, article 35 read with article 32(3)(i)(bb).

⁵⁷⁹ Constitution of Namibia, article 35.

⁵⁸⁰ Constitution of Namibia, articles 46 and 69.

⁵⁸¹ National Disaster Risk Management Policy, 2009, (DRM Policy), page 1.

to operationalise the DRM legislation and policy and to provide a framework for sectoral and regional DRM in Namibia;⁵⁸² and

- the Disaster Risk Management Regulations (DRM Regulations),⁵⁸³ introduced in 2013 to provide for the implementation of the DRM Act.

The DRM Act establishes several institutional bodies for the implementation of DRM in Namibia at national level:

- the National Disaster Risk Management Committee (NDRMC), an inter-ministerial governance body responsible for DRM at national level. The NDRMC has the power to establish sub-committees to be responsible for specific DRM topics including health emergency management, drought management, emergency response, recovery, and resource mobilisation;
- the Directorate: Disaster Risk Management, which is the administrative body responsible for DRM at national level; and
- the Namibia Vulnerability Assessment Committee, which is responsible for a wide range of activities relating to the assessment and monitoring of vulnerability in Namibia.⁵⁸⁴

The DRM Act also makes provision for regional, constituency, local and settlement DRM committees to be established, which are charged with coordinating DRM activities within their respective areas of responsibility.⁵⁸⁵ In terms of emergency structures, the DRM Act makes provision for the establishment of a National Crisis Committee and a Regional Crisis Committee during a state of national and regional disaster, respectively.⁵⁸⁶

In addition to the bodies listed above, the DRM Act mandates the establishment of a National Focal Person's Forum for national focal persons.⁵⁸⁷ Every permanent secretary or head of a governmental institution, association, organisation, and private institution involved in DRM activities must ensure that, at all times, a focal person from the organisation is designated to communicate with the Director: DRM in relation to their respective organisation's disaster management procedures.⁵⁸⁸

The DRM Act provides for civil society participation in DRM. Representatives of NGOs and faith-based organisations as well as traditional leaders and development partners are included as members of Constituency DRM Committees and Settlement DRM Committees.⁵⁸⁹ The DRM Act makes provision for a representative of the Namibian Red Cross Society (NRCS) to be included on the Vulnerability Committee, Regional DRM Committees, and the Regional Crisis Committees. NRCS also serves on the DRM committees at national and constituency levels. Additionally, the DRM Policy recognises that NRCS, as auxiliary to the government, is a critical partner in DRM and instrumental in the provision of humanitarian assistance to communities affected by disasters as well as in contributing to DRR and resilience.⁵⁹⁰ Representatives from certain UN specialised agencies are also included as members of the Namibia Vulnerability Committee.⁵⁹¹

582 National Disaster Risk Management Plan, 2011, (DRM Plan), page 5.

583 Government Notice 349 of 2013, adopted on 31 December 2013.

584 Disaster Risk Management Act 10 of 2012 (DRM Act), section 3.

585 DRM Act, sections 3, 14, 15, 16 and 17.

586 DRM Act, sections 40(1) and (2).

587 DRM Act, section 12.

588 DRM Act, section 12.

589 DRM Act, sections 15(2) and 16(2).

590 DRM Policy, section 9.2.

591 DRM Act, section 13.

Question 1

Does Namibia have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

In 2012, the IFRC and NRCS collaborated on a research project to examine Namibia's legal preparedness to facilitate and regulate international disaster response operations.⁵⁹² The outcomes of the study were included in a detailed report (IDRL in Namibia). This report takes stock of the developments in IDRL since the publication of the IDRL in Namibia report.

The DRM Act contains several provisions on international disaster assistance, which are further detailed in the DRM Regulations. As a starting point, the National Disaster Risk Management Committee is responsible for periodically reviewing policy issues regarding international appeals and the solicitation, acceptance and use of international assistance, including international personnel.⁵⁹³ More notable is the fact that the DRM Act makes provision for certain legal facilities to be granted to international disaster relief responders, which are discussed in detail in Question 5 below. The DRM Act further provides that the Prime Minister may enter into cooperation agreements with any entity or person within or outside Namibia on any matter relating to DRM if the objectives of that entity or person are consistent with the objectives of the DRM Act.⁵⁹⁴ An entity or person that enters into a cooperation agreement with the Government of Namibia is subject to and must respect the sovereignty of Namibia, obey local laws, cooperate with authorities, abstain from political or commercial activities, and ensure that the assistance given is both appropriate to the assessed needs and compliant with domestic quality, health and other standards.⁵⁹⁵ The DRM Regulations provide additional information on what is envisaged in terms of these cooperation agreements, providing that such agreements may include provisions:

- for disaster relief personnel and expert, equipment, and materials to be used during a disaster;
- for any service to be rendered before, during and after a disaster;
- to render services on early warning and emergency alert information;
- for the purchasing or leasing of material or equipment to be used during a disaster; or
- for any other matter relating to DRM as the Prime Minister may consider necessary.⁵⁹⁶

The DRM Policy also contains provisions that are relevant to international disaster assistance and recognises that the institutional arrangements for DRM in Namibia must include establishing relationships with neighbouring and other states in both the Southern African region and internationally for the purposes of DRM.⁵⁹⁷

592 See IFRC and NRCS, Legal Preparedness for International Disaster Response in Namibia (2012) (IDRL in Namibia).

593 DRM Act, section 5(q).

594 DRM Act, section 54(1).

595 DRM Act, section 54(3).

596 DRM Regulations, regulation 15.

597 DRM Policy, section 5.4.

Question 2

Do Namibia's laws and regulations clearly set out a focal point for coordinating international disaster assistance?

The DRM Act provides that the NDRMC is responsible for coordinating and supervising disaster response operations at national level and that the Prime Minister in consultation with the ministers of immigration, finance, and transport (as applicable), must facilitate:

- the entry and operation of international relief personnel and experts, including the expeditious granting of visas and waiver of work permits for relief personnel and experts;
- reduced and simplified customs procedures, exemption from duties, taxes, and charges for donations of equipment and materials, including food, made during disaster situations including possessions of relief personnel; and
- transportation overflight and similar measures.⁵⁹⁸

In addition, the DRM Regulations provides that the international community, civil society organisations, and NGOs may act as disaster relief organisations under the supervision of the disaster institutions, without stipulating whether a particular institution serves as the overall focal point for international responders.⁵⁹⁹

Question 3

Do Namibia's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?

The roles and responsibilities of different governmental institutions relating to international disaster assistance have been outlined above. The legal framework also outlines the role of non-governmental actors in respect of international disaster assistance. For example, the DRM Policy “recognises the role of the NRCS and facilitates unimpeded access to enable it to deliver humanitarian assistance to those affected by disaster, as well as the vital role it plays in the mobilisation of both internal and external resources for disaster risk management.”⁶⁰⁰ With regards to INGOs, the DRM Policy recognises that cooperation with INGOs is crucial to strengthening capacities for DRM, and that it is important to adopt an inter-agency approach by integrating the individual mandates of the INGOs to avoid gaps and duplications.⁶⁰¹ Further, the DRM Policy recognises the need to coordinate the influx of international aid in the country in times of significant events and disasters in order to effect a fair distribution of capacities and resources, and at the same time to optimise the assistance they have offered for the purposes of DRM.⁶⁰² The DRM Policy also “provides mechanisms for the coordination and integration of the contributions of NRCS, UN Agencies, INGOs and other stakeholders such as NGOs, faith and community based organisations with those of other DRM stakeholders in Namibia through the NDRMC and similar multi-stakeholder platforms in the regional and local context.”⁶⁰³ However, the DRM Act appears to have changed the institutional framework for DRM in Namibia - under the DRM Act, the NDRMC is an inter-ministerial committee, although the Prime Minister may appoint representatives of associations, organisations and institutions to serve on the Committee.⁶⁰⁴

598 DRM Act, section 52.

599 DRM Regulations, regulation 13.

600 DRM Policy, section 9.2.

601 DRM Policy, section 9.3.

602 DRM Policy, section 9.3.

603 DRM Policy, section 9.3.

604 DRM Act, section 4(2)(e).

Question 4

Do Namibia's laws and regulations outline a process for requesting/ welcoming offers of international disaster assistance, and for terminating international assistance?

The DRM Act does not outline a specific process for requesting and terminating international disaster assistance, although it does provide that the NDRMC is responsible for periodically reviewing policy issues regarding international appeals and the solicitation, acceptance and use of international assistance, including international personnel.⁶⁰⁵

The DRM Policy provides that Cabinet, on the advice of the NDRMC, approves the release of monies from the National Disaster Fund to support DRM activities and that Cabinet is responsible for determining the need for international appeals for assistance for disaster relief and the nature of the assistance that is required during a state of disaster.⁶⁰⁶ The DRM Plan echoes this provision, providing that the need for external and or international appeals and the types of assistance needed during emergency operations will be determined by the Cabinet on the basis of the recommendations of the NDRMC and that the NDRMC will periodically review policy issues regarding international appeals.⁶⁰⁷

Question 5

Do Namibia's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?

Landing rights and general customs arrangements

Namibian law makes express provision to ensure the landing rights of international disaster assisting actors. The DRM Act stipulates that the Prime Minister, in consultation with the Minister responsible for transport, must facilitate transportation, overflight and similar measures for disaster response.⁶⁰⁸

In terms of customs, the DRM Act exempts from customs duty donations received in kind, materials and equipment donated to the National Disaster Fund during a state of disaster to facilitate disaster response from stakeholders approved by the Prime Minister, including charitable or philanthropic organisations, and development partners.⁶⁰⁹ The Prime Minister in consultation with the ministers responsible for finance, must also facilitate reduced and simplified customs procedures, exemption from duties, taxes, and charges for donations of equipment and materials, including food, made during disaster situations.⁶¹⁰ The DRM Regulations provide further details on the procedure, providing that a donor must within 48 hours prior to the arrival of the disaster relief item donated, furnish the Prime Minister with a list of items to be donated, and the Director must ensure that a copy of the list is submitted to the Minister responsible for finance for exemption from customs excise duty.⁶¹¹ In addition, the person receiving donated disaster relief items at a point of entry must ensure that the items donated correspond with the list of items submitted.⁶¹² The exemption of any disaster relief items donated from customs excise duty must be made under the Customs and Excise Act.⁶¹³ It is also worth noting that in terms of section 84(1)(b) read with Item 412.11 of Schedule 4 of the Customs and Excise Act,⁶¹⁴ goods imported for the relief of distress of persons in cases of famine or other national disaster, or under any technical assistance agreement, or in terms of an obligation under any

605 DRM Act, section 5(q).

606 DRM Policy, section 5.5.2.

607 DRM Policy, page 22.

608 DRM Act, section 52(3).

609 DRM Act, section 52(2).

610 DRM Act, section 52(3).

611 DRM Regulations, regulations 12(1) and (2).

612 DRM Regulations, regulation 12(3).

613 DRM Regulations, regulation 12(4).

614 Customs and Excise Act 20 of 1998.

multilateral international agreement to which Namibia is a party are admitted subject to a rebate of any customs duties. These provisions are very much in line with the [IDRL Guidelines](#), which stipulate that disaster relief and initial recovery goods and equipment exported or imported by, or on behalf of eligible assisting actors should be exempted from all customs duties, taxes, tariffs or governmental fees as well as export, transit, and import restrictions; and that documentation and inspection requirements for export, transit and import should be minimised and simplified.⁶¹⁵ They therefore constitute an example of good practice.

The IDRL in Namibia report identifies the following additional facilities which may be relevant to international disaster assistance.⁶¹⁶ Section 31(1) of the Public Service Act,⁶¹⁷ provides that the permanent secretary of any office, ministry or agency may direct any staff member to perform duties or work other than the staff member's ordinary duties or work as long as such other duties or work are appropriate to the grade or designation of the post or rank held by the staff member. This must be read together with the provision that every staff member will place the whole of their time at the disposal of government.⁶¹⁸ This provision may be relevant to international disaster assistance as it may allow international assisting actors to access services that fall within this piece of legislation after normal service hours. This is in line with the IDRL Guidelines, which recommend that affected states should, when necessary, endeavour to ensure that state operated offices and services essential to the timely delivery of international disaster relief function outside of normal business hours.⁶¹⁹ In addition, the Airports Company Act, the Namibia Ports Authority Act and the National Transport Services Holding Company Act provide that if the Minister considers it necessary for national security or for the discharge of an international obligation of the state, he or she may issue a direction to the company to perform any function conferred or imposed on the company by or under the relevant legislation.⁶²⁰ These provisions may be relevant to international disaster assistance as they may allow the relevant Minister to issue directions to the service providers to take steps to facilitate the work of international assisting actors.

Customs arrangements for specialised goods and equipment

▼ Communications equipment

The law does not explicitly make exceptions or simplified procedures to import or export communications equipment in Namibia in disaster situations. However, as stated above, it does provide for the Prime Minister in consultation with the Ministers responsible for finance, to facilitate reduced and simplified customs procedures, exemption from duties, taxes, and charges for donations of equipment and materials made during disaster situations.⁶²¹ This would likely include the importation of communications equipment.

With regards to licensing, the Communications Act prescribes the licensing requirements to operate broadcasting services as well as radio equipment.⁶²² The Communications Act does not make special provision for the speedy licensing or waiver of licensing requirements in disasters, although it does provide for regulations to be made, which may allow for this issue to be regulated in the future.

615 IDRL Guidelines, paragraph 17.

616 IDRL in Namibia, pages 66 and 67.

617 Public Service Act 13 of 1995.

618 Public Service Act 13 of 1995, section 17(1)(a). See also IDRL in Namibia, page 66.

619 IDRL Guidelines, paragraph 23.

620 Airports Company Act 25 of 1998, section 9; the Namibia Ports Authority Act 2 of 1994, section 18; and the National Transport Services Holding Company Act 28 of 1998, section 8.

621 DRM Act, section 52(3).

622 Communications Act 8 of 2009, sections 82, 101 and 102.



Namibia Red Cross has been on the ground since the beginning of the floods © IFRC

▼ Food, medication, and quarantine

Food donated for disaster relief is explicitly mentioned in the DRM Act as being exempted from duties, taxes, and charges. Regulation 14 of the DRM Regulations further provide that a person must not donate food, medicines or other perishable items that are not fit for human consumption or that is closer to its use-by date, and that medical and veterinary medicines donated must comply with the Medicines and Related Substances Control Act⁶²³ and Animal Health Act.⁶²⁴

▼ Vehicles

Although the DRM Act does not explicitly exempt vehicles imported by international assisting actors from customs duties, it is arguable that they would benefit from the reduced and simplified customs procedures, exemption from duties, taxes and charges discussed above.

With regards to licensing and registration of vehicles, the Road Traffic and Transportation Act provides that all vehicles in Namibia must be registered and licensed to operate on public roads.⁶²⁵ The Road Traffic and Transportation Act does not prescribe any special or simplified provisions for the registration or licensing of foreign vehicles for relief and recovery work. However, the Road Traffic and Transport Regulations contain a provision which may reduce the obligation for international assisting actors to register and license the vehicles that are imported for disaster response operations, providing that a vehicle which is registered and licensed in a foreign country which is a party to the applicable Road Traffic Convention,⁶²⁶ which enters Namibia temporarily, may be deemed to be registered and licensed in Namibia for up to one year (provided its registration and licence are still valid).⁶²⁷

In addition, foreign and international driving permits which were issued to persons while they were not permanent residents of Namibia are recognised in Namibia, but international driving permits

623 Medicines and Related Substances Control Act 13 of 2003.

624 Animal Health Act 1 of 2011.

625 Road Traffic and Transportation Act 22 of 1999, section 20.

626 The term "Convention" is defined in section 1 of the Road Traffic and Transport Regulations, 2001, as the International Convention relative to Motor Traffic (Paris, 1926); the UN Convention on Road Traffic (Geneva, 1949); the UN Convention on Road Traffic (Vienna, 1968); or any subsequent related convention ratified by the Government of Namibia.

627 Road Traffic and Transport Regulations, 2001, regulation 12.

do not authorise the driving of a motor vehicle carrying passengers if use of the type of vehicle requires the operator thereof to be registered.⁶²⁸

Immigration

Section 52(3) of the DRM Act provides that the Prime Minister, in consultation with the Minister responsible for immigration, must facilitate the entry and operation of international relief personnel and experts, including the expeditious granting of visas and waiver of work permits for relief personnel and experts. The DRM Regulations provide further detail in this regard, providing in regulation 13 that:

1. A state or international organisation that provides international relief personnel or experts must, within 72 hours prior to the arrival of the international relief personnel or experts, provide the Prime Minister with -
 - a. full particulars of the international relief personnel or experts;
 - b. letter of appointment of the international relief personnel or experts; and
 - c. passport details of the disaster relief personnel or experts.
2. The Director must ensure that -
 - a. details referred to in sub-regulation (1) are furnished to the Minister responsible for immigration to facilitate the entry of the international relief personnel or experts, including the expeditious granting of visas and waiver of work permits; and
 - b. arrangements are in place for the transportation of international disaster relief personnel or experts as well as disaster relief items donated.
3. The entry and operation of international relief personnel or experts, the granting of visas and waiver of work permits for relief personnel and experts must be made in terms of the Immigration Control Act, 1993 (Act No. 7 of 1993).
4. The international community, civil society organisations, and non-governmental organisations may act as disaster relief organisations under the supervision of the disaster institutions.

In addition, the Prime Minister, in consultation with the Minister responsible for finance, must facilitate reduced and simplified customs procedures, exemption from duties, taxes and charges for the possessions of relief personnel.⁶²⁹

With regards to immunities and privileges, Namibia is a state party to both the Vienna Convention on Diplomatic Relations as well as the Vienna Convention on Consular Relations and the Diplomatic Privileges Act, 1951 provides for certain privileges and immunities for heads of state, diplomatic agents, and certain other persons.

Registration of international assisting actors

Although the DRM Act provides the Prime Minister must facilitate the entry and operation of international relief personnel and experts, this provision appears to apply only to natural and not juristic persons. Namibia does not have any law dedicated exclusively to the recognition, registration and rules governing the conduct of NGOs and most civil society organisations are registered either as trusts, companies not for gain, or welfare organisations.⁶³⁰ The law also does not appear to set out

628 Road Traffic and Transportation Act 22 of 1999, section 41. Further details are provided in regulation 121 of the Road Traffic and Transport Regulations, 2001.

629 DRM Act, section 52(3)(b).

630 IDRL in Namibia, page 38–40.

a special and simplified system for the registration of international assisting actors in the context of disasters.

Recognition of professional qualifications of foreign personnel

There are no specific provisions in the various professional bodies' regulatory rules of Namibia that provide for expedited recognition of foreign professional qualifications.⁶³¹ The DRM Act provides that the Prime Minister, in consultation with the Minister responsible for immigration, must facilitate the entry and operation of international relief personnel and experts, including the expeditious granting of visas and waiver of work permits for relief personnel and experts. It is not clear whether this would include simplified procedures for the speedy accreditation of foreign qualifications, but it is arguable that it would.

Both the Medical and Dental Act and the Nursing Act provide that no person is allowed to practise in Namibia unless such person is registered to practise the profession concerned.⁶³² It is also prohibited to practise as an architect or quantity surveyor in Namibia without being registered under the Architects and Quantity Surveyors Act, although it does provide for the exemption of persons from operation of provisions of the Act, through notice in a Gazette.⁶³³ With regards to engineers, the Engineering Profession Act provides that any person who is not registered as a professional engineer and who performs any work reserved for professional engineers, or who holds himself out or allows himself to be held out as a professional engineer shall be guilty of an offence and liable on conviction to a fine.⁶³⁴ Any person not ordinarily resident in Namibia and who has been engaged to perform the work of a professional engineer may apply for temporary registration, which may be useful for international assisting actors.⁶³⁵ In addition, the Minister has the power to exempt any person, or class of such persons from the operation of any or all of the provisions of the Act by notice.⁶³⁶

Tax and currency exchange for disaster relief activities

▼ Exchange Control

Namibia applies a comprehensive regime of exchange control.⁶³⁷ The function to administer exchange control has generally been assigned by the Bank of Namibia to local commercial banks.⁶³⁸ Namibia is part of the CMA, and no exchange control restrictions exist between CMA countries, provided that the flows are strictly in local currency.⁶³⁹ Transactions that involve the transfer of funds to countries outside the CMA are subject to Bank of Namibia approval.⁶⁴⁰

▼ Income Tax

Namibia has a source-based taxation system in terms of which both residents and non-residents are subject to tax on income earned from a source in Namibia.⁶⁴¹ Under the Income Tax Act, the income of certain organisations or associations, including certain foreign organisations, is exempted from income tax.⁶⁴² The Income Tax Act further exempts the income of any organisations

631 IDRL in Namibia, page 53.

632 Medical and Dental Act 10 of 2004, section 17 (see section 19 for registration requirements); Nursing Act 8 of 2004, section 17 (see section 18 and 19 for registration requirements).

633 Architects' and Quantity Surveyors' Act 13 of 1979, section 13 read with section 23.

634 Engineering Profession Act 18 of 1986, section 16 read with section 7(3)(b).

635 Engineering Profession Act 18 of 1986, section 11(6).

636 Engineering Profession Act 18 of 1986, section 28.

637 ENS, Doing Business in Namibia, available at <https://www.ensafrica.com/doing-business/> (accessed 12 February 2021).

638 ENS, Doing Business in Namibia, available at <https://www.ensafrica.com/doing-business/> (accessed 12 February 2021).

639 ENS, Doing Business in Namibia, available at <https://www.ensafrica.com/doing-business/> (accessed 12 February 2021).

640 ENS, Doing Business in Namibia, available at <https://www.ensafrica.com/doing-business/> (accessed 12 February 2021).

641 ENS, Doing Business in Namibia, available at <https://www.ensafrica.com/doing-business/> (accessed 12 February 2021).

642 Income Tax Act 24 of 1981, section 16(1)(e)(i).

or associations, registered or not, including foreign organisations whose sole or principal object is to provide medical, dental, blood transfusion, hospital, or nursing services from taxation.⁶⁴³

For individuals, the Income Tax Act exempts the salaries and emoluments payable to any person who holds office in Namibia as an official of any government, other than the Government of Namibia, or any specialised agency of the UN as contemplated in the Convention on the Privileges and Immunities of the Specialised Agencies as approved by the General Assembly of the UN on 21 November 1947, provided such person is stationed in Namibia for that purpose by virtue of an agreement between such government or such a specialised agency and the Government of Namibia, is not a Namibian citizen or ordinarily resident in Namibia, and the salaries and emoluments concerned are paid from a source outside Namibia.⁶⁴⁴ The income of any person or organisation entitled to privileges under the Diplomatic Privileges Act is also exempted from income tax.⁶⁴⁵ The Income Tax Act also provides for the prevention and relief from double taxation through double taxation agreements.⁶⁴⁶ Double taxation agreements have been entered into and are in force with France, Germany, India, Malaysia, Mauritius, Romania, Russia, South Africa, Sweden, and the United Kingdom.⁶⁴⁷

▼ VAT

Section 52(3) of the DRM Act provides that the Prime Minister, in consultation with the Minister responsible for finance, must facilitate the exemption from taxes and charges for donations of equipment and materials, including food, made during disaster situations. This exemption would likely include VAT, although this is not explicitly stated.

The Value Added Tax Act⁶⁴⁸ defines taxable activity as inter alia any activity which is carried on continuously or regularly by any person in Namibia or partly in Namibia, whether or not for a pecuniary profit, that involves or is intended to involve, in whole or in part, the supply of goods or services to any other person for consideration. The IDRL in Namibia report notes that: "The activities of international disaster assistance organisations which would operate in Namibia only for the initial response and recovery period would thus fall outside of this definition which refers to continuous or regular activity. However, for any organisation which would be active for longer than maybe three months or possibly 6 months, an unfavourable interpretation may hold that they are continuously or regularly conducting their activities."⁶⁴⁹

The Value Added Tax Act also contains a schedule which lists all the tax-exempt supplies of goods and services and another schedule which lists all tax-exempt imports, which includes the services of various medical practitioners who are registered under the respective Namibian law applicable to their professions, as well as goods imported for the relief of distress of persons in cases of famine or other national disaster, or under any technical assistance agreement, or in terms of an obligation under any multilateral international agreement to which Namibia is a party.⁶⁵⁰

Freedom of movement of international assisting actors during a disaster

There do not appear to be any provisions in Namibian law which explicitly ensure the freedom of movement of international assisting actors during a disaster response. However, as stated above, regulation 13 of the DRM Regulations provides that international assisting actors may act as disaster relief organisations under the supervision of the disaster institutions. This indicates that such actors

643 Income Tax Act 24 of 1981, section 16(1)(f)(i)(bb).

644 Income Tax Act 24 of 1981, section 16(1)(c).

645 Diplomatic Privileges Act 71 of 1951, section 5.

646 Income Tax Act 24 of 1981, section 100.

647 ENS, Doing Business in Namibia, available at <https://www.ensafrica.com/doing-business/> (accessed 12 February 2021).

648 Value Added Tax Act 10 of 2000.

649 IDRL in Namibia, page 61.

650 Value Added Tax Act 10 of 2000, sections 10 and 13 read with Schedule IV (Item 2(l)) and Schedule V (Item 412.11).

may enjoy freedom of movement under the supervision of the national disaster institutions. In addition, the DRM Policy “recognises the role of the NRCS and facilitates unimpeded access to enable it to deliver humanitarian assistance to those affected by disaster, as well as the vital role it plays in the mobilisation of both internal and external resources for disaster risk management.”⁶⁵¹

Safety and Security of international disaster relief

The law does not appear to make special provision for the safety and security of international assisting actors in Namibia. In general, the Namibian Police Force is responsible for: preserving the internal security of Namibia; maintaining law and order; investigating any offence or alleged offence; preventing crime; and protecting life and property.⁶⁵² The Police Act has provisions specifically applicable to emergency situations, providing in section 10 that regulations may be made directing the Police Force to assist in countering any such emergency and may place the Police Force while so employed under the order and directions of a person whom the President appoints for that purpose. Part of the Police Force could, therefore, be placed under the command of a member of the relevant DRM committee and be ordered to protect relief personnel and property.⁶⁵³

The Defence Act, 2002 provides that the Defence Force or any portion or member thereof may be employed: on service in defense of Namibia; on service in the prevention or suppression of terrorism; on service in the prevention or suppression of internal disorder in Namibia; on service in the preservation of life, health, or property; and on service in the maintenance of essential services.⁶⁵⁴ While employed as such, the Defence Force may be used for the police functions listed above.⁶⁵⁵

Therefore, the protection of persons and property in Namibia is the responsibility of the Police Force and Defence Force, and this would include such personnel and property related to international disaster assistance.

Question 6

Do Namibia’s laws and regulations set out quality standards for international assisting actors?

The DRM Act provides for cooperation agreements to be entered into between the Government of Namibia and other actors. The DRM Act further provides that any person that enters into a cooperation agreement regarding DRM with the Prime Minister must:

- respect the sovereignty of Namibia;
- obey local laws;
- cooperate with authorities;
- abstain from political and commercial activities; and
- ensure that the assistance given is both appropriate to the assessed needs and compliant with domestic quality, health, and other standards.⁶⁵⁶

The DRM Regulations also contain provisions relevant to quality standards, providing that food, medicines or other perishable item that is not fit for human consumption or that is close to its use-by date may not be donated; and that medical and veterinary medicines donated must comply with the Medicines and Related Substances Control Act and Animal Health Act.⁶⁵⁷ Furthermore, regulations 17

651 DRM Policy, section 9.2.

652 Police Act 19 of 1990, section 13.

653 IDRL in Namibia, page 65.

654 Defence Act 1 of 2002, section 5(2)(a).

655 Defence Act 1 of 2002, section 5(2)(b).

656 DRM Act, section 54.

657 DRM Regulations, regulation 14.

and 18 provide a code of practice for persons involved in DRM and volunteers, providing that such a person must:

- perform his or her duties with due care, skills, diligence, and professionalism;
- act fairly and unbiased in dealing with people affected by a disaster;
- be familiar with and abide by the DRM Act, regulations, rules, policies, and directives issued under the DRM Act on matters pertaining to DRM;
- promote accountability, efficiency, effectiveness, and transparency in implementing DRM programmes;
- report to the Prime Minister or any other relevant authority incidents of fraud, corruption, nepotism, or maladministration which come to his or her knowledge;
- act in a manner that upholds the reputation of the Namibian Government; and
- be honest and accountable in dealing with public funds and disaster relief items and only use such funds or items for their intended purpose.

The DRM Regulations further provide that, where possible, a person involved in DRM should use local persons for activities pertaining to DRM and procure local resources.⁶⁵⁸

In addition, the DRM Policy stipulates that it shall respect the rights of citizens to receive humanitarian assistance and for humanitarian assistance to be offered in accordance with inter alia the Sphere Standards and the Red Cross and Red Crescent Societies' Codes of Conduct.⁶⁵⁹ The DRM Policy further provides that in rendering humanitarian assistance, persons shall be treated humanely and with respect, irrespective of gender, creed, race, or political affiliation.⁶⁶⁰

Question 7

Do Namibia's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?

As stated above, the DRM Act provides that charitable or philanthropic organisations, development partners or other stakeholders in DRM must be approved by the Prime Minister for their donations to be exempt from customs excise duty.⁶⁶¹ However, it does not provide details regarding the process to be followed to gain approval.

Question 8

Do Namibia's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?

The DRM Act does not establish a specialised unit for expediting the entry of international disaster assistance, but provision is made for the expedited entry of international relief personnel and experts as well as for the expedited entry of relief goods and equipment through the Prime Minister in consultation with the Ministers responsible for immigration, finance, and transport, respectively.⁶⁶²

658 DRM Regulations, regulation 17(5).

659 DRM Policy, section 2.2.

660 DRM Policy, section 2.2.

661 DRM Act, section 52(2).

662 DRM Act, section 52(3).

Question 9

Do Namibia's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?

With regards to international disaster assistance in particular, the DRM Regulations stipulate that a person to whom a disaster relief item is entrusted for custody or safekeeping must, from time to time or as the Prime Minister may require, provide the Prime Minister with a report in writing to account for the item.⁶⁶³ In addition, the Prime Minister must give a report or cause a report to be given to a person who donated a disaster relief item received for or on behalf of the Namibian Government.⁶⁶⁴

Several other provisions are also relevant, although they do not explicitly state their applicability to international disaster assistance. As a starting point and as stated above, regulations 17 and 18 of the DRM Regulations provide a code of practice for persons involved in DRM and volunteers. The code of practice includes several obligations related to transparency, including requiring persons involved in DRM and volunteers to:

- promote accountability, efficiency, effectiveness, and transparency in implementing DRM programmes;
- report to the Prime Minister or any other relevant authority incidents of fraud, corruption, nepotism, maladministration which come to his or her knowledge;
- act in a manner that upholds the reputation of the Namibian Government; and
- be honest and accountable in dealing with public funds and disaster relief items and only use the public funds or disaster relief items for the intended purpose.

Furthermore, the DRM Regulations provide that a person may not act in a position where he or she has a personal, financial, or other interest that might influence the way in which he or she exercises power or performs his or her functions.⁶⁶⁵ A person involved in DRM also may not: use his or her position to seek or obtain financial or other advantage for himself or herself or his or her family, friends or any other person; or obtain private gifts or benefits for himself or herself when exercising his or her power or performing his or her duty; or accept any gift or benefit without the approval of the Prime Minister.⁶⁶⁶ The DRM Regulations further stipulate that persons involved in DRM also have an obligation to share disaster related information in a transparent way in order to promote coordination and more coherent disaster response among every person involved in DRM or affected by disaster.⁶⁶⁷ With regards to professional services, regulation 18 provides that a person rendering professional services during a disaster must comply with the ethical rules applicable to his or her respective area of speciality. In addition, regulation 32 provides for several penalties with respect to DRM, including making it an offence for any person:

- who sells, buys, or misuses a disaster relief item;
- whose action or omission endangers life, property, or environment;
- who misrepresents for the purposes of acquiring disaster funds or disaster relief items;
- who fails to return, upon his or her resignation, to the issuing authority the identification card, uniform or equipment issued to him or her for DRM or disaster response;
- who buys for consumption or sale any disaster relief item;

663 DRM Regulations, regulation 14.

664 DRM Regulations, regulation 14.

665 DRM Regulations, regulation 17(2).

666 DRM Regulations, regulation 17.

667 DRM Regulations, regulation 17(4).

- who diverts the delivery of disaster relief items to a person other than the intended person;
- who uses or disposes of disaster relief items for a purpose other than the intended purpose;
- who misrepresents the source of disaster relief items by:
 - covering, replacing, or defacing the labels of the disaster relief item to make it appear that the disaster relief item is from another person or is not intended for DRM or disaster response;
 - repacking the disaster relief item into a container with different markings to make it appear that the disaster relief item is from another person or is not intended for DRM or disaster response; or
 - substituting or replacing disaster relief items with the same items or of inferior or cheaper quality;
- who uses false information to acquire disaster funding or disaster relief items;
- who steals disaster relief items;
- who distorts or alters evidence or documents given, produced, or provided by the person appointed to conduct investigations;
- who refuses or prevents any other person to be relocated from an area where disaster occurs or is about to occur;
- who tempers with any evidence, document or a report relating to compensation; or
- who claims compensation under the DRM Act in respect of the same event that he or she is entitled under any other law.

In addition, the DRM Act establishes the National Disaster Fund, which consists inter alia of moneys from partnerships with stakeholders and development partners.⁶⁶⁸ The DRM Act provides a list of uses of the Fund and stipulates that specific donations to the Fund must be utilised in a manner as agreed to between the Fund management and the donor.⁶⁶⁹ The Committee is responsible for the administration of the Fund and the Fund is also subject to certain auditing requirements.⁶⁷⁰

Lastly, Namibia passed the Financial Intelligence Act⁶⁷¹ which seeks to regulate all activities, persons and institutions which may be used by money launderers and places obligations on accountable institutions to have certain anti-money-laundering measures in place, including the duty to ascertain: the correct identity of the client; the actual existence of the client if the client is a legal entity; and the authority of the representative of the client to act on behalf of the client.⁶⁷² Accountable institutions are also obliged to maintain accounts in the name of the account holder and not to open, operate or maintain any anonymous account or any account in a fictitious, false or incorrect name.⁶⁷³ Accountable institutions are listed in Schedule 1 of the Financial Intelligence Act and include banks, lawyers and currency exchange dealers, including persons who sell or redeem travellers' cheques, money orders or similar payment instruments. These provisions would appear to apply to assisting organisations in international disaster response operations. Although they may contribute to promoting the transparency of international assisting organisations, it has been noted that these provisions may also impede legitimate international assisting actors from operating efficiently in Namibia as the requirements of such legislation may slow down urgent money transfers to Namibia and the requirements of the Act may also make it difficult for assisting organisations to open bank accounts.⁶⁷⁴

⁶⁶⁸ DRM Act, sections 45 and 46.

⁶⁶⁹ DRM Act, section 49(1) and (2).

⁶⁷⁰ DRM Act, section 50 and 51.

⁶⁷¹ Financial Intelligence Act 3 of 2007.

⁶⁷² Financial Intelligence Act 3 of 2007, section 21.

⁶⁷³ Financial Intelligence Act 3 of 2007, section 21(4).

⁶⁷⁴ IDRL in Namibia, page 59.



Namibia, 2019. Namibia Red Cross Khomas regional team in the informal settlement of Goreangab dam. © Namibia Red Cross Society

Question 10

Do Namibia's laws and regulations outline procedures for international disaster assistance sent from and transiting through the country?

Although the DRM Act explicitly contemplates the expedited entry of relief personnel and the reduction of import restrictions, duties or fees on relief goods and equipment entering Namibia, it does not contemplate special or expedited procedures for international disaster assistance sent from and transiting through Namibia and it therefore appears that the normal rules would apply.⁶⁷⁵

⁶⁷⁵ DRM Act, section 52(3). See on this IDRL in Namibia, page 71.



SOUTH AFRICA

Political Framework

South Africa is a sovereign, multi-party democratic state.⁶⁷⁶ The President of South Africa is elected as Head of State and Head of the National Executive.⁶⁷⁷ Elections are held every five years and a person may only serve two terms as President.⁶⁷⁸

Parliament consists of the National Assembly and the National Council of Provinces, which participate in the legislative process in the manner set out in the Constitution.⁶⁷⁹ The National Assembly is elected to represent the people and to ensure government by the people under the Constitution.⁶⁸⁰ The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of government.⁶⁸¹ The legislative authority: of the national sphere of government is vested in Parliament; of the provincial sphere of government is vested in the Provincial Legislatures; and of the local sphere of government is vested in the Municipal Councils.⁶⁸²

South Africa has a mixed civil, common, and customary legal system. The Constitution is the highest law in the country.⁶⁸³ The Constitution sets out the rights and duties of the citizens and the Government of South Africa. The Bill of Rights, contained in section 2 of the Constitution, is a cornerstone of democracy in South Africa, which enshrines the rights of all people in the country and affirms the democratic values of human dignity, equality, and freedom.⁶⁸⁴ With regards to international law, South Africa follows a dualist approach as far as treaties are concerned, but a monist approach to customary international law. In terms of section 231 of the Constitution, an international agreement binds South Africa only after it has been approved by resolution in both the National Assembly and the National Council of Provinces and any international agreement becomes law in South Africa when it is enacted into law by national legislation.⁶⁸⁵

DRM Framework

Since 1994, the South African Government's approach to dealing with disasters has changed significantly. One of the main reasons was the need to modernise the law to be in line with international best practice in the field of DRM. In addition, the government intended to systematically mainstream DRR into developmental initiatives at national, provincial, and municipal levels.

As a starting point, section 37 of the Constitution, which forms part of the Bill of Rights, provides that a state of emergency may be declared when: "(a) the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster, or other public emergency; and (b) the declaration is necessary to restore peace and order." States of Emergency are further governed by the States of Emergency Act, 1997. In addition, the Constitution defines several "functional areas" of state competence and allocates these among the three different spheres of government (national, provincial, and local) in Schedule 4 (areas of concurrent national and provincial competence) and Schedule 5 (areas of exclusive

676 Constitution of the Republic of South Africa, 1996, section 1.

677 The Constitution of the Republic of South Africa, section 83. See Chapter 5 of the Constitution of the Republic of South Africa for further details on the powers and functions of the President.

678 Constitution of the Republic of South Africa, 1996, section 88.

679 Constitution of the Republic of South Africa, 1996, section 42.

680 Constitution of the Republic of South Africa, 1996, section 42(2).

681 Constitution of the Republic of South Africa, 1996, section 42(3).

682 Constitution of the Republic of South Africa, 1996, section 43.

683 Constitution of the Republic of South Africa, 1996, section 2.

684 Constitution of the Republic of South Africa, 1996, Chapter 2.

685 Constitution of the Republic of South Africa, 1996, section 231(2) and (4). However, note that section 231(3) provides that some international agreements, such as those of a technical, administrative, or executive nature, or those which do not require either ratification or accession, bind South Africa without approval by the National Assembly and the National Council of Provinces. Section 232 determines that customary international law is law in South Africa unless it is inconsistent with the Constitution or an act of Parliament.

provincial competence) respectively. Each Schedule is divided into two parts. The lists in Part B are also regarded as “local government matters” over which the local sphere of government has administrative powers and the power to develop by-laws. “Disaster management” is listed as a functional area in Part A of Schedule 4. Therefore, both the national and provincial spheres of government are competent to develop and execute laws within this area, but it is not assigned as a local government matter. However, section 156(4) of the Constitution obligates national and provincial governments to assign the administration of matters listed in Part A of Schedule 4 to particular municipalities if that matter would be most effectively administered by that municipality (also taking into account the capacity of the municipality).

It is, however, the Disaster Management Act of 2002, as amended (DMA),⁶⁸⁶ that provides the framework for DRM in South Africa. The DMA was enacted to provide for an integrated and coordinated disaster management policy that focuses on preventing and reducing disaster risk, mitigating the severity of disasters, disaster preparedness, and response as well as post-disaster recovery. The DMA recognises the opportunities in the country to avoid and reduce disaster risk through the efforts of all spheres of government, civil society, and the private sector.⁶⁸⁷ However, it also acknowledges the need for uniformity in the approach taken by DRM stakeholders and role-players.⁶⁸⁸

The DMA sets out the institutional bodies related to DRM in South Africa. In a nutshell, the bodies are:

- in the national sphere: The Inter-Governmental Committee on Disaster Management (ICDM),⁶⁸⁹ the National Disaster Management Advisory Forum⁶⁹⁰ and the National Disaster Management Centre (NDMC),⁶⁹¹
- in the provincial sphere: The Provincial Disaster Management Centres (PDMCs) and the Provincial Disaster Management Advisory forums (PDMAFs),⁶⁹² and
- in the local spheres: Municipal Disaster Management Centres (MDMCs)⁶⁹³ and Municipal Disaster Management Advisory Forums (MDMAFs).⁶⁹⁴

The ICDM comprises Cabinet Members and the MECs of each province involved in DRM, and members of municipal councils, selected by the South African Local Government Association (SALGA).⁶⁹⁵ The ICDM is mandated to give effect to the principles of cooperative governance; report to Cabinet on the coordination of disaster management among the spheres of government; and generally advise Cabinet on issues relating to disaster management and the establishment of the NDMF. In addition to the ICDM, the DMA establishes disaster management centres within each sphere of governance which play a variety of coordination and monitoring functions. The DMA explicitly requires that these disaster management centres give guidance to organs of state, the private sector, NGOs, communities and individuals to assess and prevent or reduce the risk of disasters and to promote formal and informal initiatives that encourage risk-avoidance behaviour.⁶⁹⁶ Section 8 of the DMA provides for the establishment of the NDMC, which has the objective to promote an integrated and coordinated system of disaster management, with an emphasis on prevention and mitigation of disasters by national, provincial, and municipal organs of state.

The last pillar of the institutional framework provided in the DMA is the disaster management advisory forums, which serve as spaces for consultation and coordination between state officials from all

686 Disaster Risk Management Act 57 of 2002 as amended by the Disaster Management Amendment Act of 2015 (DMA).

687 The Policy Framework for Disaster Risk Management in South Africa, 2005 (the Framework), Introduction.

688 The Framework, Introduction.

689 DMA, section 4.

690 DMA, section 5.

691 DMA, section 8.

692 DMA, section 37(1).

693 DMA, section 43.

694 DMA, section 51.

695 DMA, section 4.

696 DMA, sections 20, 33 and 47.

three spheres of government and a potentially long list of disaster management role-players in civil society including: representatives of organised business; the Chamber of Mines; organised labour; the insurance industry; organised agriculture; traditional leaders; religious and welfare organisations; medical, paramedical and hospital organisations; the disaster management profession; relevant NGOs and inter-governmental organisations and relief agencies; statutory bodies regulating safety standards in particular industries; institutions of higher education or institutions that can provide scientific and technological advice; and disaster management experts.⁶⁹⁷ At national level, section 5 of the DMA provides for the establishment of the National Disaster Management Advisory Forum (NDMAF), which is described as “a body in which national, provincial and local government and other disaster management role-players consult one another and coordinate their actions on matters relating to disaster management”.⁶⁹⁸ The NDMAF is, therefore, responsible for the coordination of disaster management activities across the national, provincial and municipal spheres of government. While the NDMAF must be established, the DMA affords a discretion to the provincial and municipal spheres of government to establish PDMAFs and MDMAFs for each province and each metropolitan and district municipality respectively.⁶⁹⁹

In addition to the DMA, the Policy Framework for Disaster Risk Management in South Africa (the Framework) was developed in 2005 to address this need for consistency across multiple stakeholders, by providing “a coherent, transparent and inclusive policy on disaster management appropriate for the Republic as a whole”.⁷⁰⁰

In South Africa, all national, provincial, and municipal organs of state, municipal entities and other institutional partners identified as key role-players in DRM are required to prepare and complete disaster management plans.⁷⁰¹ The Framework adopts a phased approach in this regard to address the wide range of DRM planning and implementation capabilities, comprising of three progressive steps from a Level 1 DRM Plan to a Level 3 DRM Plan.⁷⁰² Briefly, a Level 1 DRM Plan must be developed by national or provincial organs of state and municipal entities that have not previously developed a coherent DRM plan, focusing primarily on “establishing foundation institutional arrangements for DRM, putting in place contingency plans for responding to known priority threats as identified in the initial stages of the disaster risk assessment, identifying key governmental and other stakeholders, and developing the capability to generate a Level 2 Disaster Risk Management Plan.”⁷⁰³ A Level 2 DRM Plan applies to “national, provincial and municipal organs of state that have established the foundation institutional arrangements, and are building the essential supportive capabilities needed to carry out comprehensive DRM activities. It includes establishing processes for a comprehensive disaster risk assessment, identifying and establishing formal consultative mechanisms for development of DRR projects and introducing a supportive information management and communication system and emergency communications capabilities”.⁷⁰⁴ Lastly, a Level 3 DRM Plan “applies to national, provincial and municipal organs of state that have established both the foundation institutional arrangements for DRM and essential supportive capabilities.”⁷⁰⁵ The plan must specify clear institutional arrangements for coordinating and aligning the plan with other governmental initiatives and plans of institutional role-players. It must also show evidence of informed disaster risk assessment and ongoing disaster risk monitoring capabilities as well as relevant developmental measures that reduce the vulnerability of disaster-prone areas, communities and households.”⁷⁰⁶ The first two levels therefore deal with

697 DMA, section 5(1).

698 DMA, section 5(3)(a).

699 DMA, sections 37 and 51.

700 DMA, section 7.

701 The Framework, section 3.1.1.2.

702 The Framework, section 3.1.1.2.

703 The Framework, section 3.1.1.2.

704 The Framework, section 3.1.1.2.

705 The Framework, section 3.1.1.2.

706 The Framework, section 3.1.1.2.

establishing mechanisms to ensure that the legislative and policy requirements are implemented whereas the third level focuses on maintaining relevance and applying ongoing DRM best practice.⁷⁰⁷

The Local Government: Municipal Systems Act of 2000 (the Systems Act) also mandates the inclusion of applicable DRM plans as core components of municipal Integrated Development Plans (IDPs).⁷⁰⁸ The requirement for DRM planning and implementation is the starting point of the South African Disaster Risk Management Series, which is an integrated package of handbooks and supporting materials in the form of guidelines, templates and other documents for the implementation of DRM in municipalities and provinces in South Africa.

There are also sectoral laws that deal with specific types of disasters and emergencies in South Africa such as the National Veld and Forest Fire Act,⁷⁰⁹ the Fire Brigade Services Act,⁷¹⁰ and the Safety at Sports and Recreational Events Act;⁷¹¹ as well as several pieces of legislation which regulate different aspects of disaster management within the regulation of broader sectors such as the environment, mine health and safety, and building and construction.⁷¹²

IDRL Assessment

Question 1

Does South Africa have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

The DMA contains limited provisions relating to international disaster assistance. Section 16 stipulates that the NDMC must establish communication links with foreign disaster management agencies to exchange information and to have access to international expertise in and assistance in respect of disaster management. Although the provisions on IDRL are limited, the DMA makes provision for regulations to be made in this regard in the future, as section 27(2) stipulates that if a national state of disaster has been declared, regulations or directions may be made on inter alia steps to facilitate international disaster assistance. In addition, section 7(2) stipulates that the Framework must inter alia facilitate South Africa's cooperation in both regional and international disaster management.

The Framework explicitly sets out South Africa's policy on international cooperation during disasters, stating that:

*"climatic changes and disasters originating from natural phenomena, environmental degradation and technological developments are becoming global problems, requiring global strategies and solutions. It is essential, therefore, that disaster risk management in South Africa is informed by a global perspective. In order for South Africa to remain at the cutting edge of developments, to learn from international best practice, and to be in a position to contribute to global thinking on disaster risk management, South Africa must support and actively participate in the strategies and efforts of the international community to reduce disaster risk. It must associate itself with selected international development protocols, agendas, and commitments, such as the Millennium Development Goals outlined in the United Nations (UN) Millennium Declaration adopted at the UN Millennium Summit in September 2000 (A/RES/55/2)."*⁷¹³

⁷⁰⁷ The Framework, section 3.1.1.2.

⁷⁰⁸ Local Government: Municipal Systems Act 32 of 2000, section 26(g).

⁷⁰⁹ National Veld and Forest Fire Act 101 of 1998.

⁷¹⁰ Fire Brigade Services Act 99 of 1987.

⁷¹¹ Safety at Sports and Recreational Events Act 2 of 2010.

⁷¹² IFRC, Analysis of legislation related to disaster risk reduction in South Africa, Annexe C.

⁷¹³ The Framework, section 1.4.5.

A further aspect of South Africa's involvement in the international DRM arena under the Framework is that of humanitarian assistance.⁷¹⁴ The Framework recognises that there are numerous international relief donor agencies that operate in the wake of disasters and that there is a pressing need for South Africa to strengthen its engagement with these organisations.⁷¹⁵ The Framework states that it is a fundamental objective of effective disaster response and recovery management to collect and channel resources optimally, and South Africa must tap into the expertise and resources of international relief agencies.⁷¹⁶ The Framework further stipulates that as a matter of priority, appropriate protocols to clarify procedures for requesting external assistance and discouraging ad hoc and unsolicited appeals for relief must be established.⁷¹⁷ It appears such protocols have not been developed to date.

The Framework also deals with South Africa's capacity to provide assistance in the field of humanitarian aid. The Framework recognises that the country's resources are limited, so capacity is focused on the SADC region, but that appeals for assistance from outside the region will be considered in the context of the circumstances prevailing at the time and that appeals for assistance must be directed to the NDMC, which is also responsible for the facilitation of assistance and mobilisation of resources in response to such requests.⁷¹⁸

The Framework further states that to keep abreast with international developments, the NDMC must seek membership of international bodies and professional institutes and must establish links with disaster management institutions in other countries.⁷¹⁹ The Framework provides that the Department of Foreign Affairs (now the Department of International Relations and Cooperation (DIRCO)) is the national department responsible for promoting and facilitating South Africa's role in international cooperation in DRM which must, in liaison with the NDMC and the relevant organs of state, forge links with national agencies that render relief assistance internationally, as well as with international agencies, organisations and institutions involved in DRM, including, amongst others the ICRC, Intergovernmental Panel on Climate Change (IPCC), IFRC, UNDP, UN Disaster Management Training Programme (UNDMTP), UN Environment Programme (UNEP), UN High Commissioner for Refugees (UNHCR), and the World Meteorological Organization (WMO).⁷²⁰

With respect to regional cooperation, the Framework recognises that measures taken in South Africa have the potential to increase or reduce risk in neighbouring countries and that, conversely, threats in countries beyond South Africa's borders have the potential to increase or reduce South Africa's disaster risk.⁷²¹ The Framework proposes that a consultative process be undertaken to establish a SADC forum for the purpose of DRM cooperation in the region, which, among others, should have the following objectives:

- sharing information on disasters and important DRR issues;
- developing and monitoring early warning systems for the region and issuing advisories so that precautionary measures can be taken timeously in the event of threats due to natural hazards, technological accidents, or environmental degradation;
- establishing strategic communication links and emergency telecommunication procedures and protocols;
- concluding bilateral and multilateral agreements with clearly defined protocols to provide for shared DRR interventions, preparedness and cross-border disaster response and recovery operations;
- sharing expertise in disaster response and recovery, and establishing specialist teams, to assist in response and recovery efforts;

714 The Framework, section 1.4.5.

715 The Framework, section 1.4.5.

716 The Framework, section 1.4.5.

717 The Framework, section 1.4.5.

718 The Framework, section 1.4.5.

719 The Framework, section 1.4.5.

720 The Framework, section 1.4.5.

721 The Framework, section 1.4.4.

- ensuring the clear definition of responsibilities between the various regional and international role players in cross-border disaster response;
- promoting and facilitating the establishment of joint standards of practice across the region by:
 - developing standards for DRR;
 - developing standards for disaster risk assessment;
 - developing standards for response management systems and the establishment of regional disaster operations centres to ensure the effective coordination of disaster response and recovery management;
 - ensuring uniformity in standards for humanitarian assistance and mitigation interventions; and
 - establishing uniform protocols and clearly defined responsibilities, which differentiate between responsibilities in the event of persons crossing borders in search of humanitarian assistance only and those seeking (political) asylum.⁷²²

It could not be determined whether or not this has actually consultative process has taken place. The also Framework recognises that arrangements for cooperation in disaster management must be made between the governments of those provinces in South Africa that border neighbouring countries and the governments of those countries, and partnerships must be created within each sphere with the private sector and NGOs through memoranda of understanding.⁷²³ The parameters of these arrangements must be clearly defined and should include details of financial arrangements, reimbursements and liability, and must be in compliance with the national standard guidelines on mutual assistance agreements developed by the NDMC.⁷²⁴

With regards to granting humanitarian assistance in other countries, the Framework recognises that South Africa is well placed to provide technical advice on DRM and humanitarian assistance in the event of a regional disaster.⁷²⁵ The Framework stipulates that the establishment of structures for regional cooperation as well as the provision of ongoing technical assistance must be funded from the NDMC's budget, therefore the NDMC must have access to emergency funds in the case of regional disasters, while the budgets of PDMCs in provinces that border neighbouring countries must also have allocations for establishing and maintaining structures for inter-regional cooperation.⁷²⁶ The Framework also stipulates that national departments that deal with regional and international relief efforts must budget for humanitarian relief.⁷²⁷ The Framework further provides that regulations must be made permitting the speedy withdrawal of funds from the National Revenue Fund for immediate response efforts in the case of a national disaster, and/or to fund rapid emergency interventions in neighbouring countries.⁷²⁸ In addition, the budgets of the NDMC and relevant organs of state must include allocations for membership or subscription fees aimed at fostering international cooperation and forging links with international organisations involved in DRM.⁷²⁹ The Framework also states that the PDMCs must establish mechanisms to monitor and manage cross-boundary disaster risks within a province and enter into mutual assistance agreements for the purpose of DRM.

Lastly, the Handbooks on Establishing Foundational Institutional Arrangements for DRM at provincial and municipal levels both recognise international cooperation as part of the institutional arrangements

⁷²² The Framework, section 1.4.4.

⁷²³ The Framework, section 1.4.4.

⁷²⁴ The Framework, section 1.4.3.

⁷²⁵ The Framework, section 7.4.1.3.

⁷²⁶ The Framework, section 7.4.1.3.

⁷²⁷ The Framework, section 7.4.1.3.

⁷²⁸ The Framework, section 7.7.1.2.

⁷²⁹ The Framework, section 7.4.1.3.

necessary for DRM.⁷³⁰ In addition, the Framework stipulates that DRM plans of provincial and municipal DRM centres must be shared with DRM entities in neighbouring countries.⁷³¹

Question 2

Do South Africa's laws and regulations clearly set out a focal point for coordinating international disaster assistance?

As stated above, the Framework explicitly states that the NDMC is the focal point for all appeals for assistance and the mobilisation of resources in respect of requests for assistance from other states, whereas the DIRCO is the lead national department responsible for promoting and facilitating South Africa's role in international cooperation in DRM.⁷³² The Framework stipulates that DIRCO must, in liaison with the NDMC and the relevant organs of state, forge links with national agencies that render relief assistance internationally, as well as with international agencies, organisations, and institutions involved in DRM.⁷³³ In this regard, the Framework specifically states that disaster relief measures need to be coordinated and that the NDMC must initiate the development of regulations to standardise the practice and management of relief operations which must address inter alia appeals for donations, standards of relief (in keeping with international standards), the acceptance of international assistance, and South Africa's assistance to other countries.⁷³⁴ Such regulations do not appear to have been promulgated to date.

In addition, DIRCO has been tasked with developing a set of measures and guidelines on matters relating to international relations, applicable to international relations practitioners in all three spheres of government. This has resulted in the development of Measures and Guidelines for the Enhanced Coordination of South Africa's International Engagements (the DIRCO Guidelines).⁷³⁵ The DIRCO Guidelines are part of a composite whole that includes the DMA and the Framework. Together, these legal and policy instruments constitute a bank of knowledge on DRM for South Africa. Although the DIRCO Guidelines do not deal with international disaster assistance directly, they stipulate that DIRCO should be the focal point for all matters relating to international relations of national, provincial, and local government as well as of other institutions of state.⁷³⁶ In addition, the DIRCO Guidelines stipulate that DIRCO is and should be the first point of contact between any South African government entity and any foreign mission or international organisation accredited to South Africa.⁷³⁷

The focal point for the coordination of international disaster assistance is, therefore, not entirely clear from a reading of the law alone, but the primary focal points for international disaster assistance would appear to be the NDMC and DIRCO. However, in practice, it was found that to ensure effective coordination of disaster response, engagements are undertaken between the Department of Cooperative Governance and Traditional Affairs (CoGTA) and the NDMC to ensure sustainable measures in affected areas are in place and to ensure that the disaster response is coordinated in accordance with the disaster declaration, disaster reports from affected municipalities as well as the post-disaster damage assessments and cost verifications by PMDC and NDMC.

730 South African Disaster Risk Management Handbook Series, Handbook 2: Establishing foundational institutional arrangements for disaster risk management (district municipalities) (available at <http://www.ndmc.gov.za/Guidelines/South%20African%20Risk%20Management%20Handbook%20Series%20for%20District%20Municipalities%20Handbook%202.pdf> (accessed 19 January 2021), page 44; South African Disaster Risk Management Handbook Series, Handbook 2: Establishing foundational institutional arrangements for disaster risk management (provinces) available at <http://www.ndmc.gov.za/Guidelines/South%20African%20Risk%20Management%20Handbook%20Series%20for%20Provinces%20Handbook%202.pdf> (accessed 19 January 2021), page 44.

731 The Framework, section 1.2.4.1.

732 The Framework, section 1.4.5.

733 The Framework, section 1.4.5.

734 The Framework, section 4.4.1.

735 DIRCO, Measures and Guidelines for the Enhanced Coordination of South Africa's International Engagements available at http://www.dirco.gov.za/docs/2013/measures_guidelines_book.pdf (accessed 19 January 2021).

736 The DIRCO Guidelines, paragraph 4.2.1.

737 The DIRCO Guidelines, paragraph 4.4.1.

Question 3

Do South Africa's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?

The roles and responsibilities of various institutions are outlined in the DMA and the Framework, and the roles of some of these bodies have already been mentioned above. Section 26 of the DMA provides that the National Executive is responsible for the overall coordination and management of national disasters. The DMA also makes provision for other bodies to play a role in the coordination of disasters which may be relevant to the coordination of international disaster assistance. In terms of section 16(3) of the DMA, the NDMC is responsible for making connections with foreign disaster management agencies to exchange information and have access to international expertise and assistance with respect to DRM. In terms of section 17(2)(j), the NDMC must also act as a repository of information concerning disasters and disaster management and must develop an electronic database on disasters including emergency response resources and capacity in neighbouring states and relevant international relief agencies, which must be accessible to all role-players, including NGOs.⁷³⁸ The NDMC therefore facilitates the exchange of information and the coordination of disaster relief efforts in South Africa.

With regards to the role of the South African Red Cross Society (SARCS) in DRM, SARCS is statutorily recognised in South Africa through the South African Red Cross Society and Legal Protection of Certain Emblems Act 10 of 2007, which recognises the objects and functions of the society and allows for its medical personnel and resources to be put at the disposal of the state. It also provides legal protection for the emblems of the Red Cross and Red Crescent. There are, however, no explicit references to SARCS in the DMA. The Framework, however, explicitly states that government departments or commissioned agents undertaking disaster risk assessments must *inter alia* consult with SARCS. SARCS is also noted as a source of information for the purpose of disaster event tracking. In addition, SARCS is a member of the NDMAF as well as the Provincial Disaster Management Advisory Forums of all provinces, as well as several Municipal Disaster Management Advisory Forums.

As mentioned above, all national, provincial, and municipal organs of state, municipal entities and other institutional partners identified as key role-players in DRM are required to prepare and complete DRM plans. A study of these plans did not form part of this mapping exercise, but it is possible that the plans of certain national, provincial, and municipal organs of state, municipal entities and other institutional partners contain elements relevant to international disaster assistance.

Question 4

Do South Africa's laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?

Neither the DMA nor the Framework provides details as to the procedure to be followed to request, accept, or reject international disaster assistance. Section 27(2) of the DMA does, however, stipulate that if a national state of disaster has been declared, the Minister may make regulations or issue directions on *inter alia* steps to facilitate international disaster assistance, allowing for this issue to be regulated in the future. The Framework provides that all appeals for assistance must be directed to the NDMC and that the mobilisation of resources in response to such requests will be facilitated by the NDMC.⁷³⁹ It is also worth noting that the Framework prioritises the establishment of appropriate protocols to clarify procedures for requesting external assistance and to discourage ad hoc and unsolicited appeals for relief.⁷⁴⁰ Such regulations or guidelines, once developed, may contain details as

⁷³⁸ The Framework, section 5.2.2.

⁷³⁹ The Framework, section 1.4.5.

⁷⁴⁰ The Framework, section 1.4.5.

to which governmental entity would be responsible for requesting international assistance as well as how offers for international assistance would be facilitated. In practice, at present CoGTA, through the NDMC in consultation with National Treasury, is the governmental entity responsible for requesting international disaster assistance or accepting offers of international assistance.

Question 5

Do South Africa's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?

The DRM framework in South Africa does not provide specific facilities for international assisting actors. The sections below analyse whether the relevant sectoral laws provide for necessary legal facilities to be provided to international assisting actors.

Landing rights

The Civil Aviation Act regulates civil aviation in South Africa.⁷⁴¹ Although the Civil Aviation Act does not contain any provisions on international disaster assistance, the Chicago Convention has force of law in South Africa in terms of section 5. As mentioned above, Annexe 9 of the Chicago Convention obliges member states to ensure that personnel and articles arriving on relief flights are cleared without delay.

Customs arrangements for specialised goods and equipment

Goods imported for the relief of distress of persons in cases of famine or other national disaster qualify for a rebate of any customs duties, excise duty, fuel levy or Road Accident Fund levy applicable in respect of such goods in terms of Item 412.11 of Schedule 4 of the Customs and Excise Act.⁷⁴² Details are not provided as to what types of goods are contemplated as falling under this item. During the COVID-19 pandemic, "essential goods" have been defined as food, cleaning and hygiene products, medical supplies and equipment, fuel (including coal and gas), and basic goods (including mobile airtime and electricity).⁷⁴³ These goods are subject to a VAT exemption during the COVID-19 pandemic and may be imported under a full rebate of customs duty. However, it is possible that other items may be included in this list, depending on the particular disaster. In addition, under the Customs and Excise Act, special or extra attendance (i.e., attendance where any officer is required to perform customs and excise services outside the prescribed hours of attendance for that office or service) may be applied for and will not be charged in respect of the entry, examination and release of goods imported for the relief and distress of persons in a national disaster.⁷⁴⁴ This may allow for relief goods to be processed expeditiously.

It should be noted, however, that in order to import goods into South Africa, an entity will need to be registered as an importer and, depending on the goods to be imported, apply for, and be issued with a letter of authority and import permit which ensures that the goods intended for import, conform to the safety, quality, environmental, and health requirements of South Africa.⁷⁴⁵ There do not appear to be exceptions for international disaster assistance actors. The South African Revenue Service (SARS) also administers certain prohibitions or restrictions on the import of certain items in terms of section 113(8)(a) of the Customs and Excise Act on behalf of a number of government departments, institutions, or bodies, such as the Department of Agriculture, Forestry and Fisheries, National Regulator for Compulsory Specifications, and the South African Reserve Bank (SARB). The prohibitions

741 Civil Aviation Act 13 of 2009.

742 Customs and Excise Act 91 of 1964, Schedule 4, item 412.11.

743 Government Notice 398 in Government Gazette No. 43128 of 25 March 2020.

744 See Rule 120.06 read with Rule 120.03.

745 These requirements are contained within a wide variety of legislation such as the Customs and Excise Act, 1964; the International Trade Administration Act, 2002; the Import Control Regulations, 2012; the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972 and the Labelling Regulations, 2010; the Meat Safety Act 40 of 2000, the Medicines and Related Substances Act Regulations, 2017 as well as the standards prescribed by the South African Health Products Regulatory Authority.

and restrictions from all different government departments, institutions or bodies are incorporated in the Consolidated List of Prohibited and Restricted Imports and Exports.⁷⁴⁶ An international disaster assistance actor may therefore face delays or challenges, should it wish to import any goods included on this list.

▼ Communications Equipment

It is not clear whether communication equipment would fall under Item 412.11 of the Customs and Excise Act and therefore be exempt from customs duty. In general, no person may transmit any signal by radio or use radio apparatus to receive any signal by radio except under and in accordance with a radio frequency spectrum licence. Exceptions can, however, be made in specific circumstances, such as performing duties in the service of the state, which could potentially be useful to facilitate the use of communications equipment by approved international assisting actors.⁷⁴⁷ Although they are no specific exemptions in respect of the import and use of communications equipment in disasters, the Radio Frequency Spectrum Regulations, 2015, do prescribe additional exemptions in respect of the use of specific radio apparatus and related radio frequency spectrums.

▼ Rescue dogs

Section 9 of the Animal Health Act⁷⁴⁸ provides that no person may import any animal into South Africa without a permit, except if there is an international agreement stipulating otherwise. Section 28 of the Animal Health Act does, however, provide that regulations may be made regarding the importation and quarantine of animals, including the exemption of persons in respect of prohibitions and restrictions. However, there do not appear to be any regulations made with respect to the importation of rescue dogs which would exempt them from the normal import, testing and quarantine requirements.

▼ Vehicles

It is not clear whether vehicles would fall under Item 412.11 of the Customs and Excise Act and therefore be exempt from customs duty, but it is arguable that they would.

The primary laws regulating the licensing and registration of motor vehicles is the National Road Traffic Act and the National Road Traffic Regulations,⁷⁴⁹ which do not provide any special provisions for the registration of foreign vehicles for disaster relief and recovery work. With regards to the recognition of foreign driver's licences, section 23 of the National Road Traffic Act and regulation 110 of the National Road Traffic Act Regulations provide that a licence authorising the driving of a motor vehicle and which was issued in any other country; and international driving permits are deemed to be valid licences for the period for which they have been issued, provided that it is in an official language of South Africa (or is accompanied by an official translation) and contains a photograph of the holder.

⁷⁴⁶ Consolidated List of Prohibited and Restricted Imports and Exports available on the SARS website at <https://www.sars.gov.za/ClientSegments/Customs-Excise/Pages/Prohibited-and-Restricted-goods.aspx> (accessed 21 January 2021).

⁷⁴⁷ Electronic Communications Act 36 of 2005, section 31(1).

⁷⁴⁸ Animal Health Act 7 of 2002.

⁷⁴⁹ National Road Traffic Act 93 of 1996 and the National Road Traffic Regulations, 2000.



South Africa, 2020. Red Cross volunteers at a call centre in South Africa, assisting with screening, contact tracing, and psychosocial support related to COVID-19. © IFRC / Moeletsi Mabe

Immigration

The Immigration Act⁷⁵⁰ regulates the admission of persons to, their residence in, and their departure from South Africa. The Immigration Act does not contain any provisions regulating the admission of disaster relief personnel in particular. However, section 31 provides for various exemptions which may be relevant, including exemptions in respect of:

- members of a military force of another state which has been granted consent by the government to enter South Africa; and
- the officers and crew of a public conveyance of a foreign state, while such conveyance is in the port of entry.

In addition, the Minister of Home Affairs has the power in terms of section 31(2) to grant a foreigner or a category of foreigners the rights of permanent residence for a specified or unspecified period when special circumstances exist and may also waive any prescribed requirement under the Immigration Act for good cause. Should no such exemptions be made, types of visas which may be applicable to international humanitarian relief personnel are:

- Volunteer's Visas, which are a type of visitor's visa, that may be issued in terms of section 11(1)(b) of the Immigration Act by the Director General of the Department of Home Affairs for up to three years to a foreigner who is engaged in voluntary or charitable activities;
- Corporate Visas, which may be issued by the Director General to a corporate applicant, to employ foreigners who may conduct work for such corporate applicant in South Africa;⁷⁵¹ and
- Work Visas, including critical skills visas.⁷⁵²

The visa and application requirements and processes for each visa type, as well as the exemption application process and forms are set out in the Immigration Regulations, 2014.⁷⁵³

⁷⁵⁰ Immigration Act 13 of 2002.

⁷⁵¹ Immigration Act 13 of 2002, section 21.

⁷⁵² Immigration Act 13 of 2002, section 19.

⁷⁵³ Government Notice R413 in Government Gazette 37679 dated 22 May 2014 (as amended).

Lastly, members of certain international organisations who travel on a laissez-passer, volunteers attached to the UN, persons involved in any UN agency, and persons performing services on behalf of the UN (including their spouses, dependent relatives, and other members of their households) do not require port of entry visas when visiting South Africa for periods up to 90 days, including official visits and transit. Members of foreign military forces attending any military related matters with the South African National Defence Force also do not require port of entry visas, irrespective of their duration of stay, provided that they are in possession of valid passports and letters of invitation by the South African National Defence Force, as well as letters of consent from the military force of which they are members.

With regards to diplomatic privileges and immunities, the Diplomatic Privileges and Immunities Act⁷⁵⁴ makes provision for certain immunities and privileges for diplomatic missions and consular posts and their members, of Heads of States, special envoys and certain representatives, the UN and its specialised agencies, and certain other international organisations. The Diplomatic Privileges and Immunities Act also enacts the Convention on the Privileges and Immunities of the UN, 1946, the Convention on the Privileges and Immunities of the Specialised Agencies, 1947, the Vienna Convention on Diplomatic Relations, 1961, and the Vienna Convention on Consular Relations, 1963 into law.⁷⁵⁵

Registration of international actors

South African law does not contain specific provisions on the registration of disaster assistance providers. An international assisting organisation would generally need to register under specific pieces of legislation to gain access to certain legal facilities in South Africa, such as opening bank accounts. Foreign non-profit entities most commonly register as non-profit companies under the Companies Act⁷⁵⁶ and/or as NGOs under the Non-Profit Organisations Act.⁷⁵⁷

In terms of section 23 of the Companies Act, an external company must register with the Companies and Intellectual Property Commission (CIPC) within 20 business days after it first begins to conduct non-profit activities within South Africa. A foreign company is regarded as “conducting non-profit activities” in South Africa if that company is a party to one or more employment contracts within South Africa; or “is engaging in a course of conduct, or has engaged in a course or pattern of activities within South Africa over a period of at least six months, such as would lead a person to reasonably conclude that the company intended to continually engage in business or non-profit activities within South Africa”.⁷⁵⁸

Recognition of professional qualifications of foreign personnel

In order to be granted a Work, Critical Skills or Corporate Visa under the Immigration Act, foreign qualifications need to be evaluated by the South African Qualifications Authority (SAQA), which was established under the National Qualifications Framework Act, 2008. It is unclear whether there are simplified procedures in place for the speedy accreditation of qualifications - the SAQA website states that there is no fast-track procedure available.⁷⁵⁹ However, a SAQA directive has been issued outlining the process for fast tracking the evaluation of foreign qualifications.⁷⁶⁰

Doctors and nurses need to be registered with the relevant boards to practise in South Africa, and there are no special provisions in respect of international disaster assistance.⁷⁶¹ However, the Health Professions Act and the Nursing Act both make provision for regulations to be made on matters relating

754 Diplomatic Immunities and Privileges Act 37 of 2001.

755 Diplomatic Immunities and Privileges Act 37 of 2001, section 2.

756 Companies Act 71 of 2008.

757 Non-profit Organisations Act 71 of 1997.

758 Companies Act 71 of 2008, section 23.

759 SAQA, Foreign Qualifications Evaluation and Advisory Services (DFQEAS) available at <https://www.saqa.org.za/foreign-qualifications-evaluation-and-advisory-services-dfqeas> (accessed 21 January 2021).

760 SAQA Directive, Client Information: Special Applications for 48-hour processing available at https://www.saqa.org.za/docs/misc/2014/48hour_applications.pdf (accessed 22 January 2021).

761 Health Professions Act 56 of 1974, section 25 and the Nursing Act 33 of 2005, section 31.

to these laws, which may allow for the process to be expedited by regulation. With regards to engineers and architects, section 18 of the Engineering Professions Act⁷⁶² makes provision for the registration of qualified engineers with the Engineering Council of South Africa. There are no special provisions in respect of international disaster assistance. It is also illegal to provide architectural services of any nature without being registered with the South African Council for the Architectural Profession and there are no special provisions in respect of international disaster assistance.⁷⁶³

Tax and Currency Exchange for disaster relief activities

With regards to VAT, Item 412.11 of Schedule 1 of the Value Added Tax Act (VAT Act)⁷⁶⁴ provides that goods imported for the relief of distress of persons in cases of famine or a national disaster will be exempt from VAT on importation.

In terms of income tax, although there do not appear to be specific provisions relating to international disaster assistance, as of 2006, a tax exemption is granted to branches of foreign legal entities operating in South Africa. This is, however, on condition that the entity qualifies for tax exemption in the country in which they were established.⁷⁶⁵ The law does not provide specific tax exemptions for the personnel of humanitarian organisations responding to disasters in South Africa. South Africa has a residence-based tax system, which means that, in general, residents are taxed on their worldwide income, irrespective of where their income was earned.⁷⁶⁶ By contrast, non-residents are taxed on their income from a South African source.⁷⁶⁷ To prevent the levying of income tax on the same income by more than one country (double taxation), the South African Government has entered into double taxation treaties with a number of other countries.⁷⁶⁸ With respect to diplomats, the remuneration of a foreigner working for a foreign diplomatic or consular mission in South Africa or the UN or its specialised agencies are generally exempt from tax.

South Africa is subject to strict exchange control laws which regulate inflows and outflows of capital from South Africa.⁷⁶⁹ While exchange controls do not apply to non-residents, non-residents may be impacted indirectly as acquisitions of South African assets and transactions with residents may require exchange control approval.⁷⁷⁰

Freedom of movement of international assisting actors

South African law does not contain specific provisions on the freedom of movement of international assisting actors during disaster response.

Safety and security of international assisting actors

South African law does not specifically provide for the safety and security of international assisting actors in disaster response. In general, however, the South African Police force is mandated to ensure the safety and security of all persons and property in the country, which would include international disaster assistance personnel and property.⁷⁷¹

762 Engineering Profession Act 46 of 2000.

763 Architectural Profession Act 44 of 2000, section 18.

764 Value Added Tax Act 89 of 1991.

765 Revenue Laws Amendment Act, 2006, section 24.

766 ENS, Doing Business in South Africa, available at <https://www.ensafrica.com/doing-business/> (accessed 21 January 2021).

767 ENS, Doing Business in South Africa, available at <https://www.ensafrica.com/doing-business/> (accessed 21 January 2021).

768 A list of Double Taxation Agreements (DTAs) is available on the SARS website at <https://www.sars.gov.za/Legal/International-Treaties-Agreements/DTA-Protocols/Pages/default.aspx> (accessed 21 January 2021).

769 Bowmans, A Brief Guide to Doing Business in South Africa (2018), page 18, available at <https://www.bowmanslaw.com/wp-content/uploads/2016/11/Guide-Doing-Business-in-South-Africa-Digital.pdf> (accessed 21 January 2021).

770 Bowmans, A Brief Guide to Doing Business in South Africa (2018), page 18, available at <https://www.bowmanslaw.com/wp-content/uploads/2016/11/Guide-Doing-Business-in-South-Africa-Digital.pdf> (accessed 21 January 2021).

771 See the South Africa Police Service Act 68 of 1995, preamble.



South Africa, 2020. The Bloemfontein branch and the Department of Health in the Free State have set up a testing mobile lab, where volunteers help with temperature reading, medical history and if the patient may have been in contact with COVID19. © IFRC / Moeletsi Mabe

Question 6

Do South Africa's laws and regulations set out quality standards for international assisting actors?

There are no laws which explicitly set out the quality standards for international disaster assistance in South Africa. However, as stated above, section 27(2) of the DMA stipulates that if a national state of emergency has been declared, the Minister may make regulations or issue directions on inter alia steps to facilitate international disaster assistance. Such regulations may set out minimum standards for international disaster assistance. In addition, the Framework specifically states that the NDMC must initiate the development of regulations to standardise the practice and management of relief operations which must address standards of relief in keeping with international standards. Such regulations do not appear to have been promulgated to date.

In addition, international assisting actors would need to respect South African laws and standards and will be subject to the criminal law of South Africa (which exists both in common law as well as legislation). In addition, although it is not stipulated in the law, disaster responders in South Africa adhere to the standards set out in the Sphere Handbook, and international assistance providers would be expected to uphold the same standard of humanitarian assistance.

Question 7

Do South Africa's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?

South African law does not explicitly set out eligibility requirements for international assisting actors to receive special legal facilities.

In terms of approved actors, section 17(2)(j) of the DMA stipulates that the National Centre must act as a repository of information concerning disasters and disaster management and must develop an electronic database on disasters including emergency response resources and capacity in neighbouring states and relevant international relief agencies. This database may serve as a starting point for developing a list of actors approved to provide international disaster assistance.

Question 8

Do South Africa's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?

South Africa's laws and regulations do not establish a specialised unit for expediting the entry of international disaster assistance.

Question 9

Do South Africa's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?

The Framework recognises that it is vital to strike a balance in the disaster financing framework between the need for adequate financial controls and oversight and the need to ensure that rapid response and recovery are not compromised both in the case of a national disaster, as well as to fund rapid emergency interventions in neighbouring countries.⁷⁷² However, there are no specific provisions on transparency and accountability mechanisms for international disaster assistance in particular.

In terms of transparency and accountability generally, section 34 of the Public Finance Management Act (PFMA),⁷⁷³ prescribes the general responsibilities of the accounting officers of each national department, which includes responsibilities with respect to establishing a transparent system of financial management and audit controls. Section 55 of the PFMA requires each governmental department to publish an annual report that fairly presents the state of its affairs, its financial results and position at the end of the financial year, as well as its performance against pre-determined objectives. The annual report must include particulars of any material losses through criminal conduct, and any unauthorised, irregular, fruitless, and wasteful expenditure; together with any criminal or disciplinary steps taken as a result of such losses. The Guide for Accounting officers of the Public Finance Management Act, published by National Treasury in 2000, states that the annual report should also indicate the department's use of any foreign assistance or aid-in-kind.⁷⁷⁴ The Prevention and Combatting of Corrupt Activities Act may also be relevant.⁷⁷⁵ This Act strengthens measures to prevent and combat corruption and corrupt activities, including those committed by public officials, foreign public officials, and agents. In addition, the Financial Intelligence Centre Act⁷⁷⁶ was introduced to fight financial crime, such as money laundering, tax evasion, and terrorist financing activities, and may indirectly contribute to increased transparency with regards to international disaster assistance.

Question 10

Do South Africa's laws and regulations outline procedures for international disaster assistance sent from and transiting through the country?

South Africa's laws and regulations do not outline special or expedited procedures for international disaster assistance personnel sent from and transiting through the country. As such the normal rules and procedures relating to the transit of relief goods and personnel (e.g., the granting of transit visas) and the exportation of goods and equipment would apply.⁷⁷⁷

⁷⁷² DMA, section 7.2.

⁷⁷³ Public Finance Management Act 1 of 1999.

⁷⁷⁴ National Treasury, Guide for Accounting Officers (October 2000), page 21.

⁷⁷⁵ Prevention and Combating of Corrupt Activities Act 12 of 2004.

⁷⁷⁶ Financial Intelligence Centre Act 38 of 2001.

⁷⁷⁷ The applicable legislation would be Customs and Excise Act 91 of 1964 (particularly Chapter III), Value Added Tax Act 89 of 1991, and the Immigration Act 13 of 2002 (particularly section 24 (cross-border and transit passes)).



Political Framework

The Constitution of the Republic of Zambia provides that Zambia is a sovereign republic under a constitutional form of governance; and a unitary, indivisible, multi-ethnic, multi-racial, multi-religious, multi-cultural, and multi-party democratic state.⁷⁷⁸

Executive power in Zambia rests with the President, who serves as the Head of State, Head of Government, and Commander-in-Chief of the armed forces.⁷⁷⁹ Elections are held every five years and a person may only serve two terms as President.⁷⁸⁰ Legislative powers are vested in the unicameral Parliament.⁷⁸¹ Parliament enacts legislation through bills passed by the National Assembly and assented to by the President.⁷⁸² The members of the National Assembly are elected for five year terms using a first-past-the-post electoral system and single member constituencies.⁷⁸³ Zambia's legal system is based on English common law and customary law.⁷⁸⁴

DRM Framework

The Disaster Management Act 13 of 2010 (2010 DM Act) provides Zambia's legislative framework for DRM. The 2010 DM Act:

- provides for the maintenance and operation of a system for the anticipation, preparedness, prevention, coordination, mitigation, and management of disaster situations as well as for the organisation of relief and recovery from disasters;
- establishes the National Disaster Management and Mitigation Unit (the Unit) and provides for its powers and functions;
- establishes the National Disaster Relief Trust Fund (NDRT Fund); and
- provides for the responsibilities and involvement of the members of the public in disaster management.

In addition to the 2010 DM Act, the Zambian Government has published several implementing policies and regulations concerning DRM, such as the:

- National Disaster Management Policy (2015) (the NDM Policy), adopted in July 2015;
- Disaster Management (National Disaster Management Council) Regulations, adopted on 15 June 2012;
- Disaster Management Operations Manual, adopted in July 2015 (the Manual); and
- Disaster Management (Qualifications of National Coordinator) Regulations, adopted on 22 January 2019.

Under the Constitution of Zambia (amendment) Act, 2016, the management and administration of the political, social, legal, and economic affairs of the state is devolved from the national government level to the local government level, with the concurrent and exclusive functions of the national, provincial,

⁷⁷⁸ Constitution of the Republic of Zambia, article 4.

⁷⁷⁹ Constitution of the Republic of Zambia, article 91.

⁷⁸⁰ Constitution of the Republic of Zambia, article 106.

⁷⁸¹ Constitution of the Republic of Zambia, article 62.

⁷⁸² Constitution of the Republic of Zambia, article 63.

⁷⁸³ Constitution of the Republic of Zambia, article 47.

⁷⁸⁴ ENS, Doing Business in Zambia, available at <https://www.ensafrica.com/doing-business/> (accessed 24 January 2021).

and local government levels listed in the Annexe thereto.⁷⁸⁵ Under the Annexe, disaster management is a function of national level government exclusively.

The 2010 DM Act outlines the roles and responsibilities of various institutions involved in disaster management as follows:

- the Disaster Management and Mitigation Unit (DMMU) is established by section 4 and is responsible for the implementation of the 2010 DM Act, as well as the implementation of all disaster management programmes and activities in the country.⁷⁸⁶ The DMMU acts as the central planning, coordinating and monitoring institution for prevention, mitigation, preparedness, response, and post-disaster recovery.⁷⁸⁷ The National Coordinator for the DMMU is responsible for its day to day running, and is *inter alia* responsible for maintaining a directory of details of UN and other international organisations and voluntary agencies as well as establishing a database containing *inter alia* the emergency response resources and capacity of neighbouring countries and international relief agencies.⁷⁸⁸ Provision is also made for the establishment of provincial and district disaster management coordinators;⁷⁸⁹
- the National Disaster Management Council (Zambia NDMC) is established by section 8 of the 2010 DM Act and is responsible for *inter alia* directing Ministries to take up their responsibilities during disasters and to mobilise resources for disaster management;⁷⁹⁰ and
- The National Disaster Management Technical Committee (NDM TC), which is established by section 10 of the DM Act, whose functions among others are: (i) to recommend policy and programme direction to the Council; (ii) to coordinate the implementation of decisions of the Council, using the sectoral skills and resources of line Ministries; (iii) to supervise disaster management activities in Zambia and, in particular, to coordinate the disaster management content of development and reconstruction programmes; (iv) to supervise monitoring and review of disaster management plans; and (v) to control disbursements from the Fund created under Part V of the DM Act. The Zambia Red Cross Society (ZRCS) and the UN Resident Coordinator are members of the NDM TC.⁷⁹¹

Provision is also made for the establishment of provincial and district disaster management committees.⁷⁹²

The Manual further elaborates on the roles and responsibilities of these bodies during all phases of disaster preparedness and response in detail, as well as the responsibilities of other actors such as partner NGOs, community-based organisations (CBOs), religious organisations, the private sector and donor communities.⁷⁹³ In addition, the NDM Policy describes the role of the National Disaster Management Consultative Forum (NDCF) as a coordination mechanism which operationalises the NDM Policy under stakeholder engagement provided for in the DM Act.⁷⁹⁴

785 Constitution of the Republic of Zambia, article 147.

786 Disaster Management Act, 2010 (DM Act), section 5.

787 DM Act, section 15(2)(a).

788 DM Act, sections 14 and 15.

789 DM Act, Part III and IV.

790 DM Act, section 9.

791 DM Act, sections 10(2)(d) and 10(2)(e).

792 DM Act, Part III and IV.

793 The Manual, section 3.

794 The NDM Policy, section 4.2. Stakeholders are identified as NGOs, Donors, UN Disaster Management Country Team and the UN System, the private sector, the church, and the community.

Question 1

Does Zambia have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

The DM Act, NDM Policy and Manual contain limited provisions that reference international disaster assistance directly.

One of the few explicit references to international assistance in the 2010 DM Act is in section 37(o), which provides that the President may make regulations on steps to facilitate international assistance once a disaster has been declared. The NDM Policy provides that disasters that have cross border effects will be handled in line with existing bilateral or regional protocols, and that if no such protocols exist, bilateral, tripartite, or regional memoranda of understanding should be entered into. It is further stipulated that these agreements should address issues relating to the establishment of a command post, joint operations, and safe havens for evacuations during disasters.⁷⁹⁵ The Manual provides that it is the DMMU's responsibility to notify and initiate cooperation with disaster management authorities in neighbouring countries in the event of a disaster that has cross-border effects.⁷⁹⁶

Question 2

Do Zambia's laws and regulations clearly set out a focal point for coordinating international disaster assistance?

The focal point for coordinating international disaster assistance in Zambia is not explicitly stated in the law, but may be the DMMU, headed by the National Coordinator, which acts as the central planning, coordinating and monitoring institution for prevention, mitigation, preparedness, response, and post-disaster recovery in Zambia.⁷⁹⁷ The 2010 DM Act further stipulates that the DMMU shall "work with authorities in other countries that are responsible for disaster management to exchange information and have access to international expertise and assistance in respect of disaster management".⁷⁹⁸

Question 3

Do Zambia's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?

The 2010 DM Act outlines the roles and responsibilities of various institutions involved in disaster management, which have been set out above. The roles and responsibilities of different institutions relating to international disaster assistance are not set out in detail in the law, but a number of provisions are indirectly relevant.

As a starting point, the Manual states that during the disaster phase, the Zambia NDMC shall *inter alia* make appeals for assistance from cooperating partners, both local, regional, and international, and that the NDM TC is responsible for coordinating appeals for relief resources from partners as directed by the NDMC.⁷⁹⁹ The Manual also provides that when a drought, flood, epidemic or pest related disaster occurs, the President shall make formal appeals for assistance from partners where necessary.⁸⁰⁰ In the case of droughts or floods, the Manual additionally recognises that food shortages may occur,

795 The NDM Policy, section 47.

796 The Manual, page 12.

797 DM Act, section 5(2)(a).

798 DM Act, section 5(1)(r).

799 The Manual, pages 6 and 10.

800 The Manual, pages 28, 31, 35 and 38.

which will be mitigated through partnerships with the UN system as well as local and international NGOs and the Food Reserve Agency.⁸⁰¹

The 2010 DM Act stipulates that the DMMU shall “work with authorities in other countries that are responsible for disaster management to exchange information and have access to international expertise and assistance in respect of disaster management”.⁸⁰² In addition, in the event of a disaster, the DMMU may request from *inter alia* any institution or organisation equipment, materials and supplies necessary to mitigate the disaster.⁸⁰³ However, it is unclear from this provision whether its application is limited to national institutions and organisations.

Question 4

Do Zambia’s laws and regulations outline a process for requesting/ welcoming offers of international disaster assistance, and for terminating international assistance?

Zambian law does not appear to provide detailed processes for requesting/welcoming offers of international disaster assistance, and for terminating international assistance. The provisions which are relevant in this regard have been set out in Question 3 above.

Question 5

Do Zambia’s laws and regulations provide for necessary legal facilities to be provided to international assisting actors?

The DRM framework in Zambia does not explicitly provide facilities for international assisting actors. Although it does not specify its applicability to international assisting actors, the Manual does provide for Project Implementing Partners (PIPs) to be engaged by the Zambian Government to facilitate the speedy, transparent, and accountable distribution of relief supplies, and for memoranda of understanding (MoUs) to be signed between the DMMU and PIPs.⁸⁰⁴ Although it is not stated, it is possible that these MoUs may grant legal facilities to PIPs on an ad hoc basis.

As the DRM framework in Zambia does not provide specific facilities for international assisting actors, the sections below analyse whether the relevant sectoral laws provide for necessary legal facilities.

Landing rights and customs arrangements

The Civil Aviation Act, 2016, provides the legislative framework in respect of civil aviation in Zambia. No provision is made for the priority landing of airplanes carrying humanitarian supplies, save that section 125(2) provides that during industrial action, the operation of aircraft engaged in humanitarian missions must be ensured. One of the purposes of the Civil Aviation Act is to give effect to the Chicago Convention, which obliges member states to ensure that personnel and articles arriving on relief flights are cleared without delay. The Chicago Convention is domesticated into Zambian law in terms of section 3 of the Civil Aviation Act, which also provides that the Minister may do all things necessary and expedient to give effect to, and for the carrying out of, the Chicago Convention.⁸⁰⁵ This provision may allow for the Minister to take steps to ensure the landing rights of international disaster assistance providers in Zambia in future.

In terms of customs fees, the Control of Goods Act provides that goods for use in humanitarian aid, when imported by an organisation recognised by the Ministry of Finance and Economic Development, are exempt from the import declaration fees which are imposed on goods imported into Zambia.⁸⁰⁶ However, the procedure to gain recognition is not provided.

801 The Manual, pages 28 and 31.

802 DM Act, section 5(1)(r).

803 DM Act, section 6(1).

804 The Manual, page 22 - 24.

805 Civil Aviation Act, 2016, section 3(3).

806 See section 3A of the Control of Goods Act [Chapter 421 of the laws of Zambia] read with Item 11 of the First Schedule thereto.



Zambia, 2019. © IFRC / Sanja Gohre

Customs arrangements for specialised goods and equipment

In general, with the exception of certain goods, no person may import goods into Zambia without obtaining a licence for their import from the Ministry of Trade and Industry.⁸⁰⁷ In terms of exports, only goods listed in the First Schedule of the Control of Goods (Export) Open General Licence as well as goods which do not exceed K10,000.00 in value may be exported from Zambia without a licence. In addition to an import/export licence, certain goods also require an import/export permit to be imported or exported from Zambia. This would presumably include certain goods imported/exported by international assisting actors.

▼ Communications equipment

The law does not provide special or expedited procedures for the import and licensing of communications equipment, and therefore it appears that the normal rules would apply. In terms of the importation of electronic equipment, the Information and Communication Technologies Act, 2009 (ICT Act) provides that all importers must register their equipment with the Zambia Information and Communication Technology Authority (ZICTA).⁸⁰⁸ The licensing and use of communications equipment and radio frequencies is also regulated by the ICT Act. The ICT Act provides that no person may operate an electronic communications network without a licence.⁸⁰⁹ In addition, no person may use frequency bands in Zambia without an assignment; unless they have been designated for use without an assignment by ZICTA.⁸¹⁰ Furthermore, the ICT Act provides that no person shall use radio communication apparatus unless the equipment has been approved by ZICTA.⁸¹¹ Section 66(2) of the ICT Act also makes provision for the ZICTA to determine which types of equipment do not require approval.⁸¹²

807 Control of Goods Act [Chapter 421 of the Laws of Zambia] read with the Control of Goods (Import) (Exemptions from Licences) Order (regulation 3 and Schedule 2), available at <http://www.parliament.gov.zm/sites/default/files/documents/acts/Control%20of%20Goods%20Act.pdf> (accessed 8 January 2021).

808 ICT Act, section 64.

809 ICT Act, section 9.

810 ICT Act, section 53 and 54. See also the ZIGTA Regulatory Guidelines on the Use of ISM Bands for Radiocommunications Services in Zambia, 2013 available at <https://www.zicta.zm/storage/posts/attachments/CgHyPD89rwghfjNM2hgqsaIlgGDmrcYXzmngRsZ.pdf> (accessed 8 January 2021).

811 ICT Act, section 66.

812 The ZICTA Type Approval Guidelines contain detailed information in this regard, including equipment exempt from approval: ZICTA Type Approval Guidelines (August 2011) available at http://onlinesystems.zicta.zm:8585/zers/downloads/New%20Type%20Approval%20Guidelines_Website-Version_Rev3_19-03-2013.pdf (accessed 8 January 2021).

Finally, the ICT Act does not make special provision for the licensing and use of electronic equipment by international relief personnel, but it does provide that ZICTA may exempt a person or class of persons from licensing requirements,⁸¹³ which could potentially be applicable in respect of international assisting actors in the context of disaster relief assistance.

▼ Food, medication, and quarantine

There do not appear to be any specific provisions in Zambian law that grant legal facilities to international assisting actors in disaster situations with respect to the importation of food, medication, or rescue dogs, and therefore it appears that the normal rules and procedures related to the import and export of these items would apply, which may pose delays or challenges for international assisting actors.

In terms of the applicable laws, the Control of Goods (Import and Export) (Agriculture) Order prescribes foodstuffs which require an import/export permit to be imported and exported from Zambia. The Medicines and Allied Substances Act, 2013, regulates the manufacture, import, export, distribution, and supply of medicines in Zambia. This Act provides that a person may not import or export any medicine or allied substance, including medical devices, without an import permit. In respect of the import and export of narcotics and psychotropics, a person must also obtain additional authorisation from the relevant authority and comply with the Dangerous Drugs and Psychotropic Substances Act.⁸¹⁴ Section 39 further provides that a person shall not import or supply medication without a marketing authorisation issued by the Zambia Medicines Regulatory Authority. It is noteworthy that this section does not apply to donated medicines and medicines imported or exported in response to a declared health emergency.⁸¹⁵ In addition, regulation 3 of the Control of Goods (Import of Medicinal Substances and Poisons Regulations) provides that only medical practitioners who are registered or exempted from registration may import medicine into Zambia. There do not appear to be any special provisions in respect of the importation of rescue dogs to assist with relief work. Section 27 of the Animal Health Act, 2010, provides that live animals may not be imported to Zambia without an import permit, which will stipulate the conditions under which the importation will be carried out.

▼ Vehicles

The procedure to register vehicles, which includes special requirements applicable to vehicles imported into Zambia, are prescribed in the Road Traffic Act.⁸¹⁶ The Road Traffic Act does not provide simplified procedures for the registration of foreign vehicles for relief and recovery work. Certain exemptions for the requirements of registration are provided for, however, including for motor vehicles or trailers brought into Zambia by visitors.⁸¹⁷ Although special provision is not made for the importation of vehicles into Zambia for relief and recovery work, the Control of Goods (Import) (Exemptions from Licence Order) provides that an import licence is not required in respect of vehicles, aircraft, and rail trucks used or to be used for the transport of goods or persons to destinations within Zambia or entering Zambia temporarily for such purposes. This provision may be of relevance for the transport of relief supplies and personnel into Zambia.

Immigration

The Immigration and Deportation Act, 2011, regulates the entry, exit, and stay of immigrants and visitors in Zambia. The Immigration and Deportation Act does not contain any specific provisions, expedited processes, or waivers for visas for international disaster assistance personnel. Therefore, it appears

813 ICT Act, section 20.

814 Medicines and Allied Substances Act, 2013, section 26. See also section 35 and 36.

815 Medicines and Allied Substances Act, 2013, section 39(4).

816 Road Traffic Act, 2002, sections 10 and 11.

817 Road Traffic Act, 2002, section 26.

that the normal rules applicable to the entry of foreign personnel in Zambia would apply, which may pose challenges and delays for international assisting actors. Potential visas or permits which may be applicable to international relief personnel which enable work to be undertaken are:

- Diplomatic Permits, which may be issued to officials or employees of a foreign government or international organisation accepted by the Minister responsible for foreign affairs (note that the holder of a diplomatic permit may not engage in work, unless the diplomatic permit is combined with a separately issued employment permit);⁸¹⁸
- Business Permits, which may be issued for a period of not more than 30 days to business visitors, which includes an overseas worker who is paid by an overseas employer and who comes to Zambia for a short period to work.⁸¹⁹ A business visitor who intends to stay in Zambia for a period exceeding 30 days may be issued a temporary employment permit for up to six months;⁸²⁰ and
- Employment Permits or Temporary Employment Permits, which may also be issued to a volunteer for a period that the Director General of Immigration sees fit, and which are capable of extension for up to five years.⁸²¹

The procedures to apply for the abovementioned permits are set out in the General Regulations to the Immigration and Deportation Act, 2011.

There do not appear to be special or expedited procedures in place for the recognition of foreign/international driver's licences in Zambia or registration of foreign vehicles. The Road Traffic Act makes provision for international driving permits and driving licences issued outside of Zambia to be deemed to have effect in Zambia by regulation.⁸²² However, no such regulations could be found for the purposes of this report. In addition, the Road Traffic Act provides that regulations may be made prescribing the procedure to be adopted and the conditions to be observed in connection with the issue of international certificates for motor vehicles and international driving permits,⁸²³ but it is not clear whether these have been made to date.

Registration of international assisting actors

Zambian law does not provide special procedures or exemptions with regards to the registration of international assisting actors. Therefore, it appears that the normal rules applicable to the registration of foreign entities would apply, which may pose challenges and delays for international assisting actors. For example, the Non-Governmental Organisations Act, 2009, prohibits the operation of NGOs, including INGOs, in Zambia unless they are registered with the Non-Governmental Organisations' Registration Board.⁸²⁴ Section 11 sets out the registration process and provides that an NGO which has applied for registration may operate until a decision has been made in respect of its registration. The application procedure requires the following information to be specified:

- the office bearers of the NGO;
- the head office and postal address of the organisation;
- the sections of the proposed operations;
- the districts, divisions, and locations of the proposed activities;
- the duration of the activities;
- all proposed sources of funding;

818 Immigration and Deportation Act, 2011, section 22.

819 Immigration and Deportation Act, 2011, section 24.

820 Immigration and Deportation Act, 2011, section 28.

821 Immigration and Deportation Act, 2011, section 28.

822 Road Traffic Act, 2002, section 56.

823 Road Traffic Act, 2002, section 233(gg).

824 Non-Governmental Organisations Act, 2009, section 10.

- the national and international affiliation and the relevant certificates of incorporation; and
- such other information as the Minister may prescribe.⁸²⁵

Although the Non-Governmental Organisations Act does not provide a special procedure for the registration of international assisting actors in the event of a disaster, section 23 may be relevant as it provides that the Minister may, on the recommendation of the Non-Governmental Organisations Registration Board, exempt any NGO from registration.

Recognition of professional qualifications of foreign personnel

There do not appear to be simplified procedures in place for the speedy accreditation of foreign qualifications in Zambia in respect of relief personnel. In general, the Zambia Qualifications Authority (ZAQA) carries out verification and evaluation of foreign qualifications to their equivalent on the Zambia Qualifications Framework. The verification and evaluation of foreign qualification takes approximately 30 days.⁸²⁶

▼ Doctors

The Health Professions Act, 2009, provides that no person may practise as a health practitioner in Zambia unless they are registered with the Health Professions Council of Zambia, and does not provide any exceptions for international disaster relief personnel.⁸²⁷ Sections 9 and 10 do, however, provide for the provisional and temporary registration of holders of foreign qualifications, which may allow for the registration of international disaster relief personnel who are foreign qualified health practitioners. In addition, section 77 allows for regulations to be made in respect of various aspects of the Act, which may allow for expedited processes or exemptions for the registration of foreign qualified health practitioners assisting in disaster response operations to be developed in the future.

▼ Nurses

The Nurses and Midwives Act, 2019, provides that no person may practise as a nurse or midwife unless the person is registered with the Nursing and Midwifery Council of Zambia and obtains a certificate to practise, and does not provide any exceptions for international disaster relief personnel.⁸²⁸ Section 17 provides for the provisional registration of foreign practitioners in certain circumstances. In addition, section 29 provides that regulations may be made regarding the issuance of practicing certificates and other matters. These provisions may allow nurses working in relief operations to be afforded an expedited registration process or to be exempted from the registration requirements in future.

▼ Engineers

The Engineering Institution of Zambia Act provides for the registration and issuance of practicing certificates to engineers in Zambia.⁸²⁹ In terms of section 32, no person may: establish a practise as an engineer or be a partner in any such practice; accept any appointment which includes the words “engineer” or “engineering” in its title or functions; teach, practise or offer his services as or hold himself out to be a qualified engineer, engineering consultant or adviser; adopt, use or exhibit the titles “engineer”, “registered engineer”, “project engineer”, “consulting engineer” or any other terms of like description; or do anything likely to lead persons to infer that he is a registered engineer. In addition, only residents of Zambia may register as engineers under the Act.⁸³⁰ These provisions

825 Non-Governmental Organisations Act, 2009, section 11(5).

826 See the ZAQA website: <https://www.zaqa.gov.zm/learners#services> (accessed 8 January 2021).

827 Health Professions Act, 2009, section 6.

828 Nurses and Midwives Act, 2019, section 14.

829 Engineering Institution of Zambia Act [Chapter 432 of the laws of Zambia].

830 Engineering Institution of Zambia Act [Chapter 432 of the laws of Zambia], section 29.

may make it challenging for international disaster assistance personnel who are foreign qualified engineers to enter and support disaster response operations in the country.

▼ Architects

The Zambia Institute of Architects Act provides for the registration of and issuance of practising certificates to architects.⁸³¹ Section 35 provides that a person not registered shall not: establish a practise as an architect or be a partner in any architectural firm; practise or offer his services as, or hold himself out to be, a qualified architect, consultant, or advisor; adopt, use, or exhibit the titles “architect”, “registered architect”, “project architect”, “consulting architect” or any other term of similar description; or do anything likely to lead persons to infer that he is a registered architect. Only residents of Zambia may be registered as architects.⁸³² These provisions may make it challenging for international disaster assistance personnel who are foreign qualified architects to enter and support disaster response operations in the country.

Tax and currency exchange for disaster relief activities

▼ Exchange Control

Zambia does not impose any exchange control restrictions and investors are free to repatriate any funds, whether they are generated from a source in Zambia or not, provided they have been derived from legitimate sources and the necessary taxes and duties have been paid.⁸³³ However, section 41A of the Customs and Excise Act⁸³⁴ provides that any person that imports or exports currency notes in any currency, exceeding in value the equivalent of 5000.00 US Dollars must declare same.

▼ Taxation

Zambia imposes a source-based tax system in terms of which residents as well as non-residents are taxed on income sourced in Zambia as well as certain types of foreign income.⁸³⁵ The Income Tax Act, does, however, make provision for the President to enter into double taxation agreements with other states to prevent the double taxation of income.⁸³⁶ The Income Tax Act also provides that the following are exempt from tax, which may be relevant to international assisting actors:

- the emoluments payable to any individual who is not a Zambian citizen and who is temporarily employed in Zambia in connection with any technical assistance scheme provided by any foreign country, any international organisation, or agency, any foreign foundation, or any foreign organisation under the terms of an agreement entered into with the Zambian Government;⁸³⁷
- the emoluments of any individual in respect of service with any international organisation or any agency of a foreign government or any foreign foundation or organisation, which organisation, agency or foundation is approved by the Minister by order, and such individual is not a Zambian citizen and is resident in the Zambia solely for the purpose of rendering the said service or secondment to any Zambia organisation, agency, or foundation;⁸³⁸ and
- the income of any international organisation, agency of a foreign government or foreign foundation or organisation as approved by the Minister by order.⁸³⁹

831 Zambia Institute of Architects Act [Chapter 442 of the laws of Zambia].

832 Zambia Institute of Architects Act (Chapter 442 of the laws of Zambia), section 29.

833 ENS, Doing Business in Zambia, available at <https://www.ensafrica.com/doing-business/> (accessed 8 January 2021).

834 Customs and Excise Act [Chapter 322 of the Laws of Zambia].

835 ENS, Doing Business in Zambia, available at <https://www.ensafrica.com/doing-business/> (accessed 8 January 2021).

836 Income Tax Act [Chapter 323 of the Laws of Zambia], section 74. A list of countries with which Zambia has entered into double taxation agreements is available at <https://www.zra.org.zm/tax-information-details/#1577367497756-ce96c379-3429> (accessed 8 January 2021).

837 Income Tax Act, Schedule 2, section 3(c).

838 Income Tax Act, Schedule 2, section 3(d).

839 Income Tax Act, Schedule 2, section 4.

In addition, it is relevant to note that the Diplomatic Privileges and Immunities Act enacts certain provisions of the Vienna Convention on Diplomatic Relations into national law and provides for certain tax exemptions and immunities in respect of diplomats, consular officials, and officials from certain international organisations such as the UN and the ICRC.⁸⁴⁰

With regards to NGOs generally, the mere fact that an organisation has a non-profit motive, or is registered as an NGO, does not automatically exempt it from income tax under Zambian law.⁸⁴¹ The organisation will only be exempt from income and related taxes if it is specifically approved for this purpose by the Minister of Finance and National Planning and if it complies with the relevant requirements which includes that it be involved in undertaking one or more Public Benefit Activities.⁸⁴² Public Benefit Organisations (PBOs) are entitled upon application to zero-rating on certain building materials and are entitled to the exemption of VAT at importation for imported goods which enjoy remission, rebate, or refund of duty under the Customs and Excise (General) Regulations subject to same limitations and conditions as pertain to the remission, rebate, or refund of duty, upon application to the Ministry of Finance and National Planning.⁸⁴³ If an INGO commences operations in Zambia, it may be approved as a PBO and therefore exempt from income and related taxes on condition that the foreign organisation is exempt from income tax in its country of origin.⁸⁴⁴ The organisation will need to submit this confirmation, together with an undertaking to comply with the provisions of the Income Tax Act, insofar as the governance, funding and activities of the branch are concerned.⁸⁴⁵

Question 6

Do Zambia's laws and regulations set out quality standards for international assisting actors?

There are currently no laws which explicitly set out the quality standards for international disaster assistance in Zambia. In general, international assisting actors would need to comply with relevant Zambian laws and standards. In addition, the sections of the Manual which set out the requirements to be a PIP may be relevant and are set out in detail in Question 7 below.

Question 7

Do Zambia's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?

As no specific legal facilities are provided for international assisting actors under the Zambian DRM Framework, no eligibility requirements exist. However, although it does not specify its applicability to international assisting actors, the Manual does set out eligibility qualifications for PIPs to be engaged by the Zambian Government to facilitate a speedy, transparent, and accountable distribution of relief supplies within areas designated to them by the DDMC or DMMU.⁸⁴⁶ The Manual states that the selected PIP(s) must have the institutional, organisational, and technical capacity to sustainably facilitate relief operations and should:

- have a legal status or be a legal entity capable of entering into contractual obligations with the Zambian Government;

840 Diplomatic Privileges and Immunities Act [Chapter 20 of the laws of Zambia].

841 See the Zambia Revenue Authority, Public Benefit Organisation Fact Sheet available at <https://www.zra.org.zm/wp-content/uploads/2020/01/Public-Benefit-Organisation-1.pdf> (accessed 8 January 2021).

842 See the Zambia Revenue Authority, Public Benefit Organisation Fact Sheet available at <https://www.zra.org.zm/wp-content/uploads/2020/01/Public-Benefit-Organisation-1.pdf> (accessed 8 January 2021).

843 See the Zambia Revenue Authority, Public Benefit Organisation Fact Sheet available at <https://www.zra.org.zm/wp-content/uploads/2020/01/Public-Benefit-Organisation-1.pdf> (accessed 8 January 2021).

844 See the Zambia Revenue Authority, Public Benefit Organisation Fact Sheet available at <https://www.zra.org.zm/wp-content/uploads/2020/01/Public-Benefit-Organisation-1.pdf> (accessed 8 January 2021).

845 See the Zambia Revenue Authority, Public Benefit Organisation Fact Sheet available at <https://www.zra.org.zm/wp-content/uploads/2020/01/Public-Benefit-Organisation-1.pdf> (accessed 8 January 2021).

846 The Manual, pages 22 - 24.

- have demonstrated the capacity (human resource and logistics) to successfully undertake relief operations for DMMU;
- be actively involved in or have been undertaking relief, humanitarian, or development-oriented projects in its operational area;
- preferably have permanent establishment or presence in the operational area; and
- preferably have warehousing capacity to rationalise and optimise logistical arrangements in the event of distribution of relief supplies.⁸⁴⁷

In terms of transportation of relief goods, the Manual states that transporters shall be engaged to facilitate a speedy, transparent, and accountable distribution of relief supplies.⁸⁴⁸ Similar to the requirements to be a PIP, the elected transporters should have a positive appraisal in terms of institutional, organisational, and technical capacities to facilitate sustainable relief supply operations.⁸⁴⁹ The transporters should also:

- have a legal status or be a legal entity capable of entering into contractual obligations;
- be able to demonstrate capacity to successfully transport relief supplies in the past;
- have a well-developed and defined organisational and managerial structure where applicable; and
- be well-versed in clearing, consigning and delivery procedures where applicable.⁸⁵⁰

It is also relevant to mention that the 2010 DM Act stipulates that the National Coordinator is to maintain a directory showing the names, addresses and other details of all UN and other international organisations and voluntary agencies, and that the DMMU will act as a repository for information concerning disaster management and will develop and maintain an electronic database which must include *inter alia* emergency response resources and capacity in Zambia, neighbouring countries and relevant international relief agencies.⁸⁵¹ This directory and database contemplated in the 2010 DM Act may be a starting point to develop a list of actors approved to provide international assistance.

Question 8

Do Zambia's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?

Zambian law does not establish a specialised unit for expediting the entry of international disaster assistance.

847 The Manual, page 23.

848 The Manual, page 25.

849 The Manual, page 25.

850 The Manual, page 25.

851 DM Act, sections 14 and 15.



Zambia, 2019. 12.5 kg of maize are being delivered by the Zambia Red Cross to a remote village in western Zambia. The villages lie along a plain that is normally flooded during the rainy season but as there is no rain, so the truck is able to reach these far-flung places. 2.3 millions Zambians were facing crisis and emergency food insecurity at the end of 2019. © IFRC / Sanja Gohre

Question 9

Do Zambia's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?

The DMA establishes the National Disaster Relief Trust Fund (NDRTF) to be managed and administered by the Unit and used for matters related to the preparedness, prevention, mitigation, and recovery from disasters.⁸⁵² Section 30(2)(c) specifically provides that the NDRTF shall consist of grants mobilised from any source within or outside Zambia for the purpose of disaster management, thus indicating that it will receive funding from international sources. In terms of transparency, the 2010 DM Act stipulates that an annual statement of the income and expenditure of the NDRTF shall be prepared and presented to the National Assembly.⁸⁵³ The Manual provides guidelines for the administration of the NDRTF, which stipulates that the DMMU shall ensure that proper books of account and other records relating to their accounts must be kept and updated, and must be audited at least once a year; and that financial reports must be regularly prepared.⁸⁵⁴ Given that the NDRTF appears to be able to accept donations from international assisting actors, international funds provided to the DM Fund would be subject to these transparency and accountability measures. The Manual also provides a reporting mechanism for international assistance, providing that during the post disaster phase the Zambia NDMC shall receive and consider post disaster reports from cooperating local, regional, and international partners.⁸⁵⁵

With regards to the removal of legal facilities, the Manual provides that a renewable MoU setting out the terms on which the PIP is to be engaged must be signed between the Government of the Republic of Zambia through DMMU and the PIP, which should:

- outline circumstances that relate to misuse, abuse or misapplication of relief supplies and provide for penalties;

⁸⁵² DM Act, section 30.

⁸⁵³ DM Act, section 34(2).

⁸⁵⁴ The Manual, pages 50 - 52.

⁸⁵⁵ The Manual, section 6.1.3.

- provide for access through monitoring and evaluation by DMMU to the relief supplies being managed by the PIP; and
- oblige the implementing partner to submit reports fortnightly to DDMC and DMMU on the status of the relief operation under its management.⁸⁵⁶

In terms of transportation of relief goods, the Manual states that transporters shall be engaged to facilitate a speedy, transparent and accountable distribution of relief supplies and a comprehensive MoU shall be signed with the transporter to facilitate the transport of relief supplies to the disaster areas.⁸⁵⁷ Similar to the requirements to be a PIP, an MoU setting out terms on which the relief supplies are to be moved by the selected transporter must be signed between the parties which should outline circumstances or conditions that would amount to misuse, abuse, or misapplication of relief supplies by the transporter and provide for the prosecution of the transporter or its employees and provide for transparency of the handling of relief supplies in transit with the transporter.⁸⁵⁸ In addition, the following conditions should be put in place at all levels of transportation:

- the transporter should be obliged to submit a delivery report within 48 hours after the relief supplies have been delivered;
- payment should be effected to the transporter only after proof of delivery;
- the selected transporter should pay for, restore, or otherwise replace any lost, missing, or damaged relief items whilst in his/her custody; and
- the Regional Coordinator should verify the delivery of relief within 48 hours of receiving the delivery report.⁸⁵⁹

More generally, the Non-Governmental Organisations Act, 2011, provides that a certificate of registration may be cancelled where the organisation misappropriates funds or violates the Code of Conduct (which is to be developed by the Council of NGOs in terms of section 32 of the Act).⁸⁶⁰ The Code of Conduct is unfortunately not available online and therefore could be reviewed for the purposes of this report. Lastly, the Director General of Immigration has the power to revoke any permit issued to foreign personnel if the holder has contravened any law of Zambia in terms of section 34 of the Immigration and Deportation Act, 2010.

Question 10

Do Zambia's laws and regulations outline procedures for international disaster assistance sent from and transiting through the country?

Zambia's laws and regulations do not outline special procedures for international disaster assistance personnel sent from and transiting through the country, as such the normal rules and procedures relating to the transit of relief goods and personnel and the exportation of goods and equipment⁸⁶¹ would apply.⁸⁶²

⁸⁵⁶ The Manual, page 23.

⁸⁵⁷ The Manual, page 25.

⁸⁵⁸ The Manual, page 25.

⁸⁵⁹ The Manual, page 25.

⁸⁶⁰ Non-Governmental Organisations Act, 2011, section 17.

⁸⁶¹ See Part V of the Customs and Excise Act [Chapter 233 of the Laws of Zambia] for the rules on exports.

⁸⁶² Note, however, that the Control of Goods (Import) Exemptions from Licences Order provides that a licence is not required for the importation of goods in transit. In general, goods which are normally subject to an import or export permit are also exempt from requiring such a permit if the goods are in transit through Zambia. See Control of Goods (Import) Exemptions from Licences Order, regulation 3 and Schedule 2. There are certain exceptions. For example, the Control of Goods (Import and Export) (Agriculture) Order specifies that any person importing certain maize products shall require an import permit in relation to goods which are in transit through Zambia. With respect of the transit of personnel, Zambian law does not make any special provision in respect of the transit of relief personnel. The Immigration and Deportation Act, 2010, prescribes that an immigration officer may issue a transit visa authorising a foreigner travelling to a foreign country, to make use of the transit facilities at a port of entry; or to travel from a port of entry through Zambia to a foreign country. Immigration and Deportation Act, 2010, section 32.



Political Framework

The 2013 Constitution of Zimbabwe states that Zimbabwe is a unitary, democratic and sovereign republic.⁸⁶³ The executive authority in Zimbabwe vests in the President, who serves as the Head of State and Government and the Commander in Chief of the Defence Force.⁸⁶⁴ The President is elected for a five year term and can serve no more than two terms.⁸⁶⁵ The President is assisted by two Vice Presidents.⁸⁶⁶ Legislative power is vested in Parliament and the President.⁸⁶⁷ Parliament is comprised of the Senate, which consist of 80 senators, and the National Assembly, which consists of 210 members.⁸⁶⁸

Zimbabwe has a mixed legal system comprising of common law, civil law, and customary law. Zimbabwe adopts a dualist approach to international law. In terms of section 34 of the Constitution, the state must ensure that all international conventions, treaties, and agreements to which Zimbabwe is a party are incorporated into domestic law.

DRM Framework

The legislative framework for DRM in Zimbabwe is currently limited to the Civil Protection Act [Chapter 10:06] of 1989 (the CPA). The Department of Civil Protection (DCP), which falls under the, Ministry of Local Government, Public Works & National Housing, administers CPA.⁸⁶⁹ The CPA is focussed on civil protection and the regulation and funding of civil protection in times of disaster. The CPA details different organisations and individuals that oversee civil protection in Zimbabwe. At national level, section 3 provides for the Director of Civil Protection (the Director) who is responsible for:

- directing the establishment of civil protection organisations in civil protection provinces and civil protection areas;
- controlling and directing personnel, materials, and services;
- advising and assisting provincial civil protection officers and area civil protection officers in the performance of their duties;
- coordinating the training of personnel for civil protection purposes;
- coordinating the planning and execution generally of civil protection;
- promoting research into matters relating to civil protection and disseminating information on matters relating to civil protection to civil protection provinces and civil protection areas; and
- advising the Minister on all matters relating to civil protection.

Section 4 of the CPA establishes the National Civil Protection Committee (NCPC), which is responsible for advising and assisting the Director in the planning and implementation of measures for the establishment, maintenance, and effective operation of civil protection. In addition, section 9 makes provision for the appointment of planning committees to prepare plans in respect of any aspect of civil protection, in any civil protection province or in any civil protection area. Provision is also made for the

863 Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (Constitution of Zimbabwe), section 1.

864 Constitution of Zimbabwe, section 88.

865 Constitution of Zimbabwe, section 91.

866 Constitution of Zimbabwe, section 92.

867 Constitution of Zimbabwe, section 116.

868 Constitution of Zimbabwe, section 188.

869 See the website of the DCP, available at <https://drmzim.org/about-us/> (accessed 29 April 2021).

appointment of protection officers, who are responsible for a number of coordination functions at provincial and area level.⁸⁷⁰

The CPA contains limited provisions on civil society participation. The Secretary General of the Red Cross Society is included as a member of the NCPC;⁸⁷¹ NGOs may also be represented on planning committees established to develop plans on civil protection.⁸⁷² Cooperation with the police and military forces is contemplated in the CPA, which provides that an area civil protection officer shall exercise his powers under the CPA after consultation and in cooperation with the commanding officers of the Police Force and the Defence Forces within the civil protection area whenever possible.⁸⁷³ Representatives from the military and the police are also included on the NCPC.⁸⁷⁴

Since approximately 2003, a draft DRM bill (draft Bill) has been under development, which aims to provide for integrated, coordinated and mainstreaming of DRM in Zimbabwe and which focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, emergency fire services, rapid and effective response to disasters and post-disaster recovery. Furthermore, it provides for the establishment of DRM structures at national, provincial, district and local authority levels. The draft Bill has been revised on three occasions, but it has not yet been adopted. A review of the Draft Bill is therefore not included in the IDRL assessment below.

IDRL Assessment

Question 1

Does Zimbabwe have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

The CPA does not contain provisions on international disaster response. However, provision is made for regulations to be made on any matter related to the Act, which means that regulations on international disaster assistance could theoretically be promulgated in the future.⁸⁷⁵

In addition, the Emergency Powers Act⁸⁷⁶ allows the President to make emergency regulations in respect of the assistance to be afforded to persons affected by natural disaster. It is possible that such regulations may regulate international assistance, even though it is not explicitly stated.

Question 2

Do Zimbabwe's laws and regulations clearly set out a focal point for coordinating international disaster assistance?

The CPA does not explicitly set out a focal point for coordinating international disaster assistance. Section 3 of the CPA, however, establishes the Director of Civil Protection, who is responsible for coordinating the planning and execution of civil protection generally. As such, this may include the coordination of international disaster assistance at national level.

Question 3

Do Zimbabwe's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?

870 Civil Protection Act [Chapter 10:06] of 1989 (CPA), sections 13 and 17.

871 CPA, section 4(2)(e).

872 CPA, section 9.

873 CPA, section 18(3).

874 CPA, sections 4(2)(c) and (d).

875 CPA, section 44(1).

876 Emergency Powers Act [Chapter 11:04], section 3(1)(i).

The CPA details different organisations and individuals that oversee civil protection in Zimbabwe which are set out above. However, the roles and responsibilities of these institutions in respect of international disaster assistance is not explicitly outlined.

Question 4

Do Zimbabwe's laws and regulations outline a process for requesting/ welcoming offers of international disaster assistance, and for terminating international assistance?

The CPA does not outline a process for requesting offers of international disaster assistance and for terminating international assistance.

Question 5

Do Zimbabwe's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?

The DRM framework in Zimbabwe does not provide specific facilities for international assisting actors. The sections below analyse whether the relevant sectoral laws provide for necessary legal facilities to be provided to international assisting actors.

Landing rights and general customs arrangements

The Civil Aviation Act,⁸⁷⁷ enacts the Chicago Convention into domestic law and provides the framework for the regulation of civil aviation in Zimbabwe. The Civil Aviation Act itself does not contain any specific provisions relating to airplanes carrying humanitarian assistance personnel or supplies into Zimbabwe.

The Customs and Excise Act⁸⁷⁸ regulates customs and excise in Zimbabwe. The Customs and Excise Act does not provide simplified or expedited procedures in respect of goods imported for humanitarian purposes in disasters. With regards to duties payable, the Customs and Excise Act provides that regulations may be made to provide for appropriate suspensions, rebates, remission, or refunds of duty in respect of goods donated for welfare or relief purposes.⁸⁷⁹ Such regulations could not be located for the purpose of this research. In addition, the Commissioner may, under such conditions as he thinks fit, permit the temporary importation of goods without payment of duty thereon on importation for any purpose approved by him.⁸⁸⁰

▼ Food

The importation of food in Zimbabwe is primarily regulated by the Food and Food Standards Act,⁸⁸¹ and the regulations made thereto,⁸⁸² which do not provide for any special or simplified procedures to facilitate the import of food in disaster settings, as such, it appears that the normal rules and procedures applicable to the importation of foodstuffs would apply.

▼ Medicines

The import of medication in Zimbabwe is primarily regulated by the Medicines and Allied Substances Control Act [Chapter 15:03] and regulations thereto, particularly the Medicines and Allied Substances Control (Import and Export of Medicines) Regulations, neither of which provide special or simplified procedures to facilitate the import of medications in disaster settings.⁸⁸³ As

⁸⁷⁷ Civil Aviation Act [Chapter 13:16] as amended by the Civil Aviation Amendment Act, 2018 (No. 10 of 2018).

⁸⁷⁸ Customs and Excise Act [Chapter 23:02].

⁸⁷⁹ Customs and Excise Act [Chapter 23:02], section 120(6)(e).

⁸⁸⁰ Customs and Excise Act [Chapter 23:02], section 124.

⁸⁸¹ Food and Food Standards Act [Chapter 15:04].

⁸⁸² See for example, the Food and Food Standards (Import and Export) Regulations, 2015.

⁸⁸³ See the Medicines and Allied Substances Control Act [Chapter 15:03] and regulations thereto, particularly the Medicines and Allied Substances Control (Import and Export of Medicines) Regulations, 2008 (S.I. No. 57 of 2008).

such, it appears that the normal rules and procedures applicable to the importation of medicines would apply.

▼ Rescue dogs

The Animal Health Act⁸⁸⁴ read with the Animal Health (Import) Regulations, 1989, make it clear that an import permit is required to import dogs to Zimbabwe. There do not appear to be any exceptions for the import of rescue dogs in disaster settings. This may result in international disaster assisting actors facing delays or challenges when importing rescue dogs into the country.

▼ Vehicles

The Vehicle Registration and Licensing Act⁸⁸⁵ provides that all vehicles in Zimbabwe are to be registered and licensed.⁸⁸⁶ Although it does not explicitly state that it applies to international disaster assistance providers, section 40 allows for an exemption from the requirements of licensing and registration of vehicles for certain visitors, which may allow international assisting actors to easily use vehicles they have imported into the country. It provides that a person may bring a vehicle into Zimbabwe from another country for the purposes of a visit provided that it is validly registered and licensed in terms of the Convention,⁸⁸⁷ on condition that, upon entering Zimbabwe, the vehicle's registration certificate is presented; and the vehicle bears the identification marks of the territory where it was last registered.⁸⁸⁸ Proof of insurance may also need to be presented in certain instances.⁸⁸⁹ If these conditions are complied with, the vehicle may be used in Zimbabwe without being registered and licensed in the country.⁸⁹⁰

With regards to international and foreign driver's licences and permits, the Road Traffic Act provides for the recognition of foreign driver's licences and international driving permits of persons not ordinarily resident in Zimbabwe.⁸⁹¹

Immigration

The Immigration Act,⁸⁹² and regulations thereto⁸⁹³ provide the framework for the immigration systems and processes in Zimbabwe. Neither the Immigration Act nor the regulations thereto make provision for the reduction of any restrictions for the entry of relief personnel in Zimbabwe. Section 29(1) provides that no person may be or remain in Zimbabwe unless he is in possession of a permit or a visitor's entry certificate. However, section 30 gives the Minister the power to exempt any person from this requirement, which may facilitate the expedited entry of international disaster assistance personnel into the country in disaster relief operations. In the absence of being granted specific facilities, international assisting actors may face challenges or delays in bringing personnel into the country, as in general, expatriates working in Zimbabwe must hold a valid work permit and a residence permit approved by the Chief Director of Immigration. Expatriates intending to work in Zimbabwe for a period less than six months must obtain a Temporary Employment Permit.⁸⁹⁴ While there is no restriction on the number of foreigners that an entity may employ, it must be shown that the required skill cannot be sourced

884 Animal Health Act [Chapter 19:01].

885 Vehicle Registration and Licensing Act [Chapter 13:14].

886 Vehicle Registration and Licensing Act [Chapter 13:14], sections 6 and 22.

887 "Convention" is not defined in the Vehicle Registration and Licensing Act [Chapter 13:14], but it is defined in section 16 of the Road Traffic Act (Chapter 13:11) as the "the Convention on Road Traffic signed at Geneva on the 19 September 1949; or the Convention on Road Traffic signed at Vienna on the 8 November 1968, as may be appropriate".

888 Vehicle Registration and Licensing Act [Chapter 13:14], section 40.

889 Vehicle Registration and Licensing Act [Chapter 13:14], section 40(2)(c).

890 Vehicle Registration and Licensing Act [Chapter 13:14], section 40.

891 Provided their licence has been issued by a state party to the Convention on Road Traffic, 1949; or the Convention on Road Traffic, 1968) as well as holders of temporary or permanent residence permits. See section 18 of the Road Traffic Act [Chapter 13:11].

892 Immigration Act [Chapter 4:02].

893 See for example the Immigration Regulations, 1998.

894 ENS, Doing Business in Zimbabwe, available at <https://www.ensafrica.com/doing-business/> (accessed 27 January 2021).

from within Zimbabwe.⁸⁹⁵ In addition, expatriates are expected to be understudied by Zimbabweans and training programmes are to be conducted for local staff.⁸⁹⁶

Zimbabwe recognises privileges and immunity to diplomats and consular officials through the Privileges and Immunities Act,⁸⁹⁷ which provides in sections 3 and 5 that the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations have force of law in Zimbabwe to the extent provided therein. Section 7 read with Schedule 3 of the Privileges and Immunities Act also makes provision for privileges and immunities of certain approved international organisations and persons connected therewith, which includes immunity from suit and legal process as well as tax exemptions and exemptions from restrictions on the importation and exportation of goods.

Registration of international assisting actors

NGOs in Zimbabwe are usually registered under the Private Voluntary Organisation Act (PVO Act).⁸⁹⁸ Registration is done through the Department of Social Welfare under the Ministry of Public Service Labour and Social Welfare. A Private Voluntary Organisation (PVO) is defined as “any body or association of persons, corporate or unincorporate, or any institution, the objects of which include or are one or more of the following:

- the provision of all or any of the material, mental, physical, or social needs of persons or families;
- the rendering of charity to persons or families in distress;
- the prevention of social distress or destitution of persons or families;
- the provision of assistance in, or promotion of, activities aimed at uplifting the standard of living of persons or families;
- the provision of funds for legal aid;
- the prevention of cruelty to, or the promotion of the welfare of, animals;
- such other objects as may be prescribed;
- the collection of contributions for any of the foregoing.”⁸⁹⁹

Any organisation seeking to carry out work as defined under section 2 of the PVO Act must be registered. Section 9 of the PVO Act provides a list of documents required for the application. The PVO Act does not set out a special or simplified system for the registration of international assisting actors, although section 7 does allow the Minister to grant exemptions to organisations from certain requirements under the Act, upon application, which may allow such international assisting organisations to be exempted from the registration requirements.

Zimbabwean law also makes provision for the registration of trusts,⁹⁰⁰ as well as for organisations to operate under the common law without registration (however, it is not clear whether this option is available to international assisting actors).

Recognition of professional qualifications of foreign personnel

Zimbabwean law does not appear to contain provisions for the speedy accreditation of foreign qualifications of foreign personnel in respect of international disaster response operations. As such, it would appear that the normal rules and procedures in this regard would apply.

895 ENS, Doing Business in Zimbabwe, available at <https://www.ensafrica.com/doing-business/> (accessed 27 January 2021).

896 ENS, Doing Business in Zimbabwe, available at <https://www.ensafrica.com/doing-business/> (accessed 27 January 2021).

897 Privileges and Immunities Act [Chapter 3:03].

898 Private Voluntary Organisation Act [Chapter 17:05] (PVO Act).

899 PVO Act, section 2.

900 Deeds Registries Act [Chapter 20:05].



Zimbabwe, 2020. Zimbabwe food distribution supported by Finnish Red Cross. Beneficiaries are verified at a food distribution site in Mola village, Zimbabwe. © Finnish Red Cross

Tax and currency exchange for disaster relief activities

Zimbabwe has a source-based tax system, in terms of which both residents and non-residents are subject to tax on income earned from a source in Zimbabwe.⁹⁰¹ However, the Income Tax Act⁹⁰² is under review and the Income Tax Bill of 2012 makes provision for Zimbabwe to move to a residence based, instead of a source-based, tax system.⁹⁰³

The law does not provide any specific facilities related to tax or exchange control for international disaster assisting actors. However, the income of societies organised and operated solely for social welfare as well as the income of charitable organisations of a public character is generally exempt from income tax.⁹⁰⁴ Furthermore, Schedule 3 makes provision for the income of certain international organisations as well as agencies of foreign governments to be exempt from income tax as well for income to be exempted from tax through agreements entered into by the Government of Zimbabwe with any other government or organisation.⁹⁰⁵ Provision for relief of double taxation is also made by section 91 of the Income Tax Act, which provides for double taxation agreements to be entered into. Such agreements are in force with Botswana, Bulgaria, Canada, China, France, Germany, Kuwait, Malaysia, Mauritius, the Netherlands, Norway, Poland, South Africa, Sweden, and the United Kingdom, which may allow for tax relief for international assisting actors from these countries.⁹⁰⁶

901 ENS, Doing Business in Zimbabwe, available at <https://www.ensafrica.com/doing-business/> (accessed 27 January 2021).

902 Income Tax Act [Chapter 23:06].

903 Income Tax Bill, 2012.

904 Income Tax Act, section 14 read with the Third Schedule of the Income Tax Act.

905 Income Tax Act, schedule 3, sections 3(a) and 3(b).

906 ENS, Doing Business in Zimbabwe, available at <https://www.ensafrica.com/doing-business/> (accessed 27 January 2021).

Zimbabwe applies foreign exchange controls under the Exchange Control Act,⁹⁰⁷ which is administered by the Reserve Bank of Zimbabwe. There are no special provisions relating to international disaster assistance in the Exchange Control Act, Exchange Control Regulations, 1996 or the Exchange Control (General Order), 1996, and therefore, in general, the normal rules relating to exchange control would apply to such actors.

Freedom of movement of international assisting actors during a disaster response

Zimbabwean law does not appear to contain explicit provisions guaranteeing the freedom of movement of international assisting actors during a disaster response.

Safety and security of international assisting actors

Zimbabwean law does not appear to contain explicit provisions on the safety and security of international assisting personnel and equipment during a disaster response. However, the Police Force and the Defence Force both have functions which may be relevant in this regard. The Police Force is responsible for *inter alia* detecting, investigating, and preventing crime; protecting and securing the lives of people and maintaining law and order in Zimbabwe.⁹⁰⁸ In addition, the Defence Force, which is mandated to protect Zimbabwe, its people, its national security, and interests (section 211 of the Constitution), may be deployed in support of the Police Services in the event of a disaster.⁹⁰⁹

Question 6

Do Zimbabwe's laws and regulations set out quality standards for international assisting actors?

The CPA does not set out quality standards for international assisting actors. In general, international assisting actors would need to comply with relevant laws and standards applicable in Zimbabwe.

Question 7

Do Zimbabwe's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?

The law does not set out eligibility requirements for international assisting actors to receive legal facilities in disaster situations.

Question 8

Do Zimbabwe's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?

The CPA does not make provision for a specialised unit for expediting the entry of international disaster assistance.

Question 9

Do Zimbabwe's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?

907 Exchange Control Act [Chapter 22:05].

908 Constitution of Zimbabwe, section 219. See also the Police Act [Chapter 11:10].

909 Constitution of Zimbabwe, sections 211 and 21(2)(c).



Zimbabwe, 2020. PMER officer Tasiyana Bakasa from the Zimbabwe Red Cross Society is describing the impacts of the food distributions in the areas of Siakobvu in Kariba district, Zimbabwe, where drought has been ruining harvests and livelihoods for four years. © Finnish Red Cross

The financing of DRM in Zimbabwe is done through the National Civil Protection Fund (the NCP Fund) which is established by the CPA for the development and promotion of civil protection in Zimbabwe.⁹¹⁰ The NCP Fund consists of “such moneys as shall be payable to the Fund from moneys appropriated by Act of Parliament to the purposes of the Fund; advances made to the Fund, and any other moneys to which the Fund may be lawfully entitled, including gifts from any person”.⁹¹¹ This would presumably include donations from international assisting actors. The NCP Fund may be used for:

- research and training related to civil protection;
- the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objects of the NCP Fund;
- the cost of any scheme which the Minister considers to be in the interests of civil protection;
- meeting any expenses arising from the establishment and maintenance of the NCP Fund; and
- any purpose which the Minister considers to be in the interests of the development and promotion of civil protection.

The CPA also makes provision for the accounting and auditing requirements of the NCP Fund.⁹¹² Given that the NCP Fund appears to be able to accept donations from international assisting actors, international funds provided to the DM Fund would be subject to these transparency and accountability measures.

Question 10

Do Zimbabwe’s laws and regulations outline procedures for international disaster assistance sent from and transiting through the country?

Zimbabwean laws and regulations do not outline special procedures for international disaster assistance personnel sent from and transiting through the country, as such the normal rules and procedures relating to the transit of relief goods and personnel and the exportation of goods and equipment would apply.⁹¹³

910 CPA, sections 29 and 32.

911 CPA, section 29(2).

912 CPA, section 35.

913 Section 234 (Goods in Transit) of the Customs and Excise Act provides that security must be given in respect of goods in transit and that all goods in transit shall be: entered in terms of section 39; and exported within such time as prescribed and shall not be diverted for local

CONCLUSION

The aim of this report is to analyse the legal of preparedness of states in Southern Africa to facilitate international assistance if a disaster exceeds national capacities. Most of the countries included in this study do have dedicated DRM legislative frameworks, with the exception of Botswana, which relies on DRM policies to guide DRM in the country. However, in many instances the DRM legislative frameworks pre-date the publication of the [IDRL Guidelines](#). This is the case in Angola (barring the amendment to the Basic Civil Protection Law in 2020), Eswatini, Lesotho, Malawi, South Africa, and Zimbabwe. It is important to note that Eswatini, Lesotho, Malawi and Zimbabwe are currently in the process of reviewing their DRM laws, which represents an important opportunity to include provisions that facilitate and regulate international disaster assistance in line with the IDRL Guidelines in new DRM laws. Indeed, as mentioned above, the draft DRM Bill of Malawi includes provisions on the facilitation and regulation of international disaster assistance, although it has not yet been passed into law.

In general, the primary DRM laws of the countries studied which pre-date the IDRL Guidelines either do not regulate international disaster assistance at all, or contain minimal references to IDRL. In some of these instances, such as South Africa, the laws explicitly make provision for regulations on international disaster assistance to be promulgated. Although such regulations could not be found online, this is not to say that such regulations do not exist. As stated above, conducting online research in the region can be challenging and in some instances, legislation may not have been located. Even if such regulations have not been made, these provisions at a minimum do indicate that there is a recognition of the importance of regulating and facilitating international disaster assistance in these countries.

The primary DRM laws of Mozambique, Namibia, and Zambia, were developed after the publication of the IDRL Guidelines. The 2010 DM Act of Zambia contains few explicit references to international disaster assistance, although section 37(o) provides that the President may make regulations on steps to facilitate international assistance once a disaster has been declared. Although it is not detailed, article 43 of the 2020 DRM Law of Mozambique regulates international emergency assistance, providing that the coordination, direction, and supervision of international humanitarian aid, as well as the authorisation of the entry of international assisting personnel and relief goods are the responsibility of the government.⁹¹⁴ The DRM Law of Namibia is particularly detailed with regards to international disaster assistance, and also includes legal facilities for approved international disaster assistance actors. The DRM Act of Namibia provides that the Prime Minister, in consultation with the ministers of immigration, finance, and transport (as applicable), must facilitate the entry and operation of international relief

consumption without written authority of the Commissioner and without the duty due being paid and shall be subject to such provisions as may be prescribed. See part V for the rules on export. Also note that section 124 allows for the Commissioner to permit the temporary importation of goods without payment of duty thereon on importation for any purpose approved by him, and may finally remit the duties ordinarily payable on such goods if they are exported from Zimbabwe within a period fixed by him, which period shall not exceed twelve months.

914 2020 DRM Law, article 43.

personnel and experts including: the expeditious granting of visas and waiver of work permits for relief personnel and experts; reduced and simplified customs procedures, exemption from duties, taxes and charges for donations of equipment and materials, including food, made during disaster situations and also including possessions of relief personnel; and transportation overflight and similar measures.⁹¹⁵ However, gaps were still identified in some areas, for example relating to the process for requesting and terminating international disaster assistance and the eligibility of international assisting actors to receive legal facilities.

With regards to policy documents, in some instances, provisions on international disaster assistance could be found in the DRM policies in the region which pre-date the IDRL Guidelines, such as in South Africa (which are more detailed than those contained in the DMA). Provisions on international disaster assistance could also be found in DRM policies which were published after the publication of the IDRL Guidelines, including in some instances references to legal facilities for international assisting actors. For example, the NDRMP of Botswana provides that the Ministry of Trade and Industry is responsible for collaborating with the Ministry of Finance and the OP in providing rebate certificates and import permits for goods intended for relief purposes;⁹¹⁶ and the Ministry of Finance and Development planning is responsible for facilitating the entry of all official disaster assistance commodities, as well as waiving customs and duty where appropriate.⁹¹⁷

Sectoral laws are also relevant to international disaster assistance. In particular, legal facilities relating to international disaster assistance are often found in sectoral laws (whereas other aspects of international disaster response tend to be addressed in the DRM laws, policies, or plans). For example, the domestic laws of all of the states that are party to the SACU Agreement, namely, Botswana, Eswatini, Lesotho, Namibia, and South Africa, make provision for goods imported for the relief of persons in case of famine or other national disaster to be imported under a full rebate of customs duty and free from VAT, but with certain conditions attached to make the consignment eligible for the rebate. In general, other legal facilities, including but not limited to landing rights, expedited visa processing, the recognition of foreign professional qualifications, expedited registration of international assisting actors and expedited licensing of specialised equipment are rarely explicitly set out in the law. Although in some instances provisions were found which may assist international assisting actors to operate in a country, they are applicable generally and are not specifically granted to international assisting actors. In some cases, the wording of these sectoral laws creates ambiguity about whether the legal facilities apply to international assisting actors, their goods, and personnel.

The approach to IDRL in national legislation of Southern African states is therefore mixed, but in general, the laws and policies of Southern African states do not contain detailed provisions on international disaster assistance, and none fully comply with the IDRL Guidelines. This is not to say that the states concerned do not have processes in place to manage international disaster assistance in practice, but from a desktop review, there is a need to have detailed laws and policies that comprehensively regulate international disaster assistance, in line with the IDRL Guidelines. Indeed, it must be noted that conducting this study revealed that primary and secondary legislation, policies, guidelines, and codes of practice are challenging to access online in several counties included in this study. Even when such documentation is accessible, it is challenging to determine whether the documents are up-to-date or whether they have been amended, repealed, or replaced. By nature, these laws impact not only national governmental and non-governmental local actors which may be familiar with the law and the legal system, but also international assisting actors that will likely be less familiar with the country's legal system. It is therefore particularly important for provisions on international disaster assistance to be clearly described in the law, consolidated as far as possible, and easily accessible.⁹¹⁸

915 DRM Act, section 52.

916 NDRMP, section 4.15.

917 NDRMP, section 4.11.

918 A similar finding was made in IFRC, IDRL in the Pacific, Regional Assessment, available at <https://www.rcrc-resilience-southeastasia.org/disaster-law/international-disaster-response-law-in-the-pacific/> accessed 26 February 2021.

Having clear and accessible laws that regulate international assistance from initial response to recovery can act as an enabler to facilitate well-coordinated international assistance if a disaster exceeds domestic capacities. As SADC is in the process of developing new mechanisms to enhance disaster assistance in the sub-region, it is recommended that states review their national laws and policies to ensure that they comprehensively regulate international disaster assistance. The development of a model act at sub-regional level could be a useful tool to support states to develop such laws and policies at domestic level. In addition to strengthening national DRM laws, the development of a protocol or guidelines on international disaster assistance at sub-regional level is also recommended to lay the foundation for a sub-regional response mechanism to not only promote a uniform approach in Southern Africa, but also to ensure better coordination of international disaster assistance.

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.



The International Federation of Red Cross and Red Crescent Societies (IFRC) is the world's largest humanitarian network, with **192 National Red Cross and Red Crescent Societies** and around **14 million volunteers**. Our volunteers are present in communities before, during and after a crisis or disaster. We work in the most hard to reach and complex settings in the world, saving lives and promoting human dignity. We support communities to become stronger and more resilient places where people can live safe and healthy lives, and have opportunities to thrive.