



LEGAL PREPAREDNESS FOR INTERNATIONAL DISASTER ASSISTANCE IN SOUTHERN AFRICA

Regional assessment

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Legal preparedness for international disaster assistance in Southern Africa

Regional assessment

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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 contains the findings of a larger study which 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. A longer version of this report, which includes the research underpinning the report, namely mappings of the IDRL frameworks at global, regional, sub-regional and domestic level (in the form of country profiles), is available on the website of IFRC Disaster Law.

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

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.

- 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.

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

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



- 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 countries 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.

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 sets 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. Overviews of the international, regional, and sub-regional IDRL frameworks are available in the longer version of this report. 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 also included in the longer version of this report as country profiles, following the overviews of the IDRL frameworks.

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?

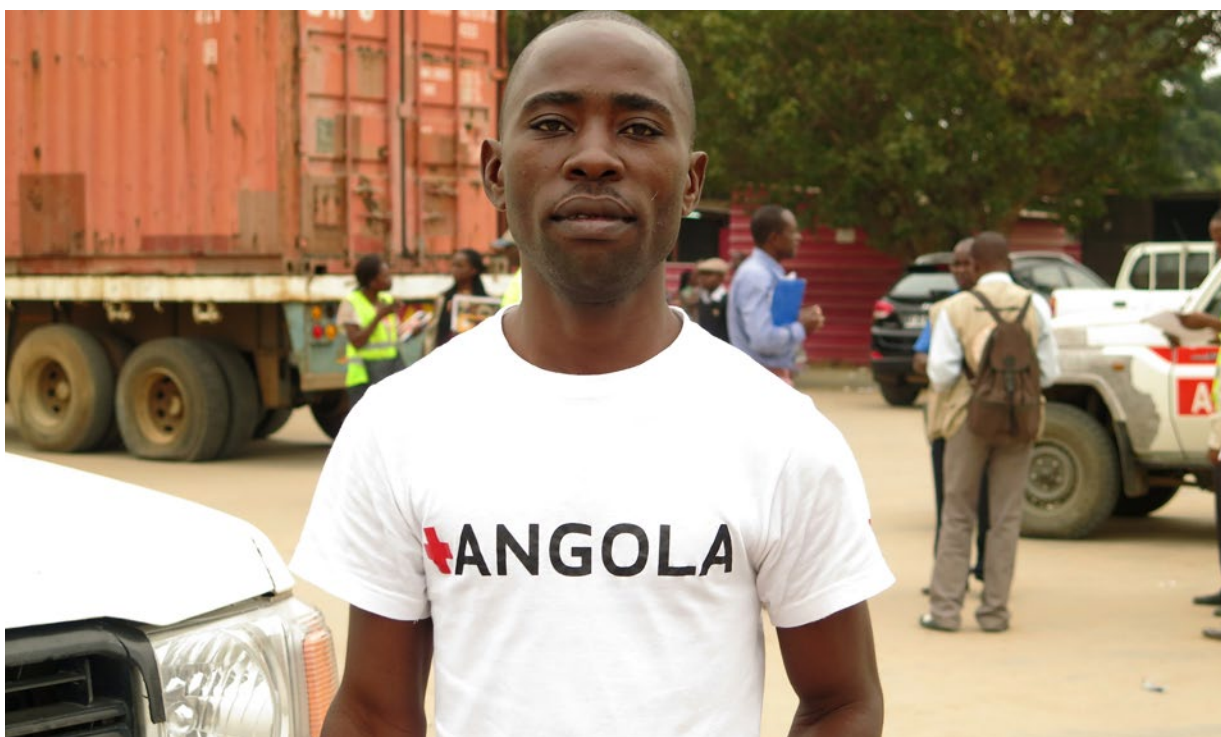
The IDRL Guidelines recommend that legal facilities pertaining to personnel, goods and equipment should be granted to eligible international assisting actors to create an enabling environment and allow them to effectively provide humanitarian assistance.³⁶

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

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.

The 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](https://media.ifrc.org/ifrc/wp-content/uploads/sites/5/2017/10/Gender-SGBV-Report_Global-report.pdf) (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

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. 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.⁷⁷ 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. 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.

77 2020 DRM Law, article 43.

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, such as in Botswana. Sectoral laws are also relevant to international disaster assistance. In particular, legal facilities relating to international disaster assistance are often found in sectoral laws. For example, the domestic laws of all of the states that are party to the SACU Agreement 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 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. 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.⁷⁸

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.

78 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.

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.