

LEGAL PREPAREDNESS FOR INTERNATIONAL DISASTER ASSISTANCE IN BOTSWANA

Mapping of Domestic Laws and Policies

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This mapping seeks to chart the International Disaster Response Law Framework (IDRL) in the Republic of Botswana (Botswana) as provided in domestic laws and policies, and is the result of a desktop review of information publicly available online. This mapping 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.

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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.

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European Union
Civil Protection and
Humanitarian Aid



Federal Ministry
for Economic Cooperation
and Development

Botswana

Political Framework

Botswana is a multi-party republic.² Executive power vests in the President, who serves as head of state.³ The President is indirectly elected to a five-year term and may not serve more than ten years.⁴ The President is assisted by the Vice President who is appointed by the President from among the Elected Members of the National Assembly.⁵

Legislative power in Botswana vests in Parliament, which consists of the President and the National Assembly.⁶ The National Assembly is composed of the President and 57 Elected Members as well as four Specially Elected Members.⁷ The *Ntlo ya Dikgosi* (House of Chiefs) serves an advisory role on matters of legislation pertaining to tribal law and custom.⁸ It is composed of between 33 and 35 members.⁹

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.¹⁰ There are currently three DRM policy instruments in place in Botswana:

- the National Policy on Disaster Management (1996) (the NPDM),¹¹ 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;¹² and

² Constitution of Botswana, section 30.

³ Constitution of Botswana, section 47.

⁴ Constitution of Botswana, sections 32 and 34.

⁵ Constitution of Botswana, section 32.

⁶ Constitution of Botswana, section 57 and 86.

⁷ Constitution of Botswana, section 58.

⁸ Constitution of Botswana, section 85.

⁹ Constitution of Botswana, section 77.

¹⁰ The National Disaster Risk Reduction Strategy 2013-2018 (2013) (the Strategy), page 26.

¹¹ Approved through Presidential Directive No. CAB. 27/96.

¹² NDRMP, Chapter 4.

- 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.

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.¹³ Through the National Disaster Management Office (NDMO), OP is responsible for implementing and monitoring the DRM activities in the country.¹⁴ 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.¹⁵

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.¹⁶ 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).¹⁷

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,¹⁸ 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.¹⁹ 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;

¹³ National Disaster Risk Management Plan, 2009 (NDRMP), page 10.

¹⁴ NDRMP, page 10.

¹⁵ NDRMP, page 10.

¹⁶ NDRMP, page 10.

¹⁷ NDRMP, page 10.

¹⁸ NDRMP, page 11.

¹⁹ 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.

- 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.²⁰

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).²¹

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.²²

The NDRMP also makes provision for the establishment of District Disaster Management Committees and Village Development Committees.²³

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.²⁴

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.²⁵ The NDRMP also makes provision for international assistance, acknowledging that depending on the type of disaster, external assistance may be needed.²⁶ 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

²⁰ NDRMP, page 11.

²¹ NDRMP, page 30.

²² NDRMP, page 12.

²³ NDRMP, pages 13 and 14.

²⁴ For a detailed analysis of IDRL in Botswana, see BRCS and IFRC, International Disaster Response Law (IDRL) In Botswana (2013) (IDRL in Botswana).

²⁵ The Strategy, section 7.

²⁶ NDRMP, page 47.

response and assistance needed.²⁷ 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).²⁸ 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.²⁹

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.³⁰

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.³¹

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.³² The Ministry of

²⁷ NDRMP, page 47.

²⁸ NDRMP, page 47.

²⁹ NDRMP, section 49.

³⁰ Emergency Powers Act [Chapter 22:04], section 3.

³¹ NDRMP, section 5.2.3.

³² NDRMP, section 4.15.

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.³³ 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.³⁴

As a member of the NCDM, BRCS plays an essential role in the coordination of disaster relief efforts in Botswana.³⁵ 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”.³⁶

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.³⁷ The Assistant Resident Representative of the UNDP is also a member of the NCDM, as stated above.

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.³⁸

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.³⁹ In addition, the NDRMP also provides that the Ministry of Foreign Affairs

³³ NDRMP, section 4.11.

³⁴ NDRMP, page 21.

³⁵ NDRMP, section 3.1.2.

³⁶ NDRMP, page 46.

³⁷ NDRMP, page 25.

³⁸ NDRMP, section 4.21.

³⁹ NDRMP, page 47.

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).⁴⁰ 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.⁴¹ It is worth noting that declining international funding support is recognised as a threat to DRR in Botswana under the Strategy.⁴²

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).⁴³

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;⁴⁴ 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.⁴⁵

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

Landing rights and general customs arrangements

The Civil Aviation Act⁴⁶ 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"⁴⁷ to be made. However, to date there have been no regulations promulgated that relate to

⁴⁰ NDRMP, section 4.9

⁴¹ NDRMP, page 46.

⁴² The Strategy, section 4.6.

⁴³ The Strategy, section 6.6.

⁴⁴ NDRMP, section 4.15.

⁴⁵ NDRMP, section 4.11.

⁴⁶ Civil Aviation Act [Chapter 71:01].

⁴⁷ Civil Aviation Act [Chapter 71:01], section 89(2) xxi.

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.⁴⁸ 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,⁴⁹ which provides the procedure for the entry of goods into the country; and excise is regulated by the Excise Duty Act.⁵⁰ 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.⁵¹ 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:

- 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.⁵²

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

⁴⁸ Civil Aviation Act [Chapter 71:01], section 91.

⁴⁹ Customs Act, 2018.

⁵⁰ Excise Duty Act [Chapter 50:01].

⁵¹ Customs Act, 2018, section 96.

⁵² Customs Act, 2018, section 258.

Botswana, Lesotho, Eswatini, or Namibia without the permission of the International Trade Administration Commission.⁵³

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.⁵⁴ 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.⁵⁵ 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).⁵⁶ However, in theory, the BCRA may exempt a person from requiring a licence by regulation.⁵⁷

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 Act⁵⁸ 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.⁵⁹

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

⁵³ Section 71(1)(b) of the Excise Duty Act read with Schedule 4 (Item 412.11) of the Customs and Excise Duty Act.

⁵⁴ Customs Act, 2018, section 258(2).

⁵⁵ IDRL Guidelines, paragraph 17.

⁵⁶ Communications Regulatory Authority Act 19 of 2012, sections 39, 40 and 45.

⁵⁷ Communications Regulatory Authority Act 19 of 2012, section 94.

⁵⁸ Medicines and Related Substances Act [Chapter 63:04].

⁵⁹ Drugs and Related Substances Regulations, 1993, regulations 7 and 8.

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.⁶⁰ 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.⁶¹ 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.⁶²

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.⁶³

Immigration

In terms of sectoral laws, immigration in Botswana is primarily regulated by the Immigration Act,⁶⁴ 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 requires the immediate commencement of employment of a non-citizen.⁶⁵ 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

⁶⁰ Diseases of Animals Act [Chapter 37:01], section 6.

⁶¹ Road Traffic Act [Chapter 69:01], sections 6, 10 and 16.

⁶² Road Traffic Act [Chapter 69:01], section 10.

⁶³ See Government of Botswana, Foreign Driving Licence Conversion, available at <https://www.gov.bw/transport/foreign-driving-licence-conversion> (accessed 7 February 2021).

⁶⁴ Immigration Act 3 of 2011.

⁶⁵ Immigration Act 3 of 2011, sections 22, 26, 27 and 32.

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.⁶⁶

In addition, the Diplomatic Immunities and Privileges Act⁶⁷ 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.⁶⁸

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.⁶⁹ However, proof of registration in Botswana would be necessary to access certain legal facilities such as opening bank accounts and accessing utilities.⁷⁰ In general, international assisting actors could register in Botswana as societies under the Societies Act;⁷¹ or as external companies under the Companies Act.⁷²

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 Act⁷³ 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.⁷⁴ 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”.⁷⁵ 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

⁶⁶ Immigration (Exemption Order), 7 March 1975, schedule 2.

⁶⁷ 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.

⁶⁸ Diplomatic Privileges and Immunities Act [Chapter 39:01], section 4.

⁶⁹ See IDRL in Botswana, page 40.

⁷⁰ See IDRL in Botswana, page 40.

⁷¹ Societies Act [Chapter 18:01].

⁷² Companies Act, 2003, sections 345, 352 and 354.

⁷³ Botswana Health Professions Act [Chapter 61:02].

⁷⁴ Botswana Health Professions Act [Chapter 61:02], sections 3 and Part III.

⁷⁵ Botswana Health Professions Act [Chapter 61:02], sections 9(3).

practise that profession in Botswana. These provisions may be useful in disaster situations to allow 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.⁷⁶ No nurse or midwife may practise in Botswana without registration, and there is no provision for emergency registration.⁷⁷ The Minister does have power to make regulations under the Act,⁷⁸ 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.⁷⁹ 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.⁸⁰

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.⁸¹ 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,⁸² 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.⁸³ 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.⁸⁴

In terms of taxes, VAT is charged under the Value Added Tax Act⁸⁵ 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

⁷⁶ Nurses and Midwives Act [Chapter 61:03], section 3.

⁷⁷ Nurses and Midwives Act [Chapter 61:03], section 10.

⁷⁸ Nurses and Midwives Act [Chapter 61:03], section 12.

⁷⁹ Architects' Registration Act, 2008, section 25.

⁸⁰ Architects' Registration regulations, 2015 (Statutory Instrument No. 92 of 2015), regulations 6-8.

⁸¹ Engineers Registration Act [Chapter 61:06], section 9.

⁸² Engineers Registration Act [Chapter 61:06], section 20.

⁸³ IDRL in Botswana, page 46.

⁸⁴ Financial Intelligence Act [Chapter 08:07] and the Proceeds of Serious Crime Act [Chapter 08:03].

⁸⁵ Value Added Tax Act [Chapter 50:03].

persons in cases of famine or other national disaster are exempt from VAT.⁸⁶ 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.⁸⁷

Generally, both residents and non-residents are taxed on Botswana sourced income.⁸⁸ However, the Income Tax Act exempts certain individuals and entities from tax.⁸⁹ 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.⁹⁰ 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 organisation in respect of whom an order has been made under section 4 of the Diplomatic Immunities and Privileges Act.⁹¹ 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 to the extent to which the Minister may declare.⁹² 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.⁹³ 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.

⁸⁶ Value Added Tax Act [Chapter 50:03], section 14 (Exempt Imports) read with Items 405.04 and 412.11 of the Third Schedule.

⁸⁷ Value Added Tax Act [Chapter 50:03], section 43.

⁸⁸ IDRL in Botswana, page 62.

⁸⁹ Income Tax Act [Chapter 52:01].

⁹⁰ Income Tax Act [Chapter 52:01], Part I of the Second Schedule.

⁹¹ Income Tax Act [Chapter 52:01], Part II of the Third Schedule, Items (i), (ii) and (iii).

⁹² Income Tax Act [Chapter 52:01], Part II of the Third Schedule, Item xix.

⁹³ Income Tax Act [Chapter 52:01], section 53 and 54.

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.⁹⁴ 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.⁹⁵

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,⁹⁶ 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.⁹⁷ 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.

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.

⁹⁴ NDRMP, section 4.2.

⁹⁵ IDRL in Botswana, page 69.

⁹⁶ The Strategy, section 5.2.

⁹⁷ NDRMP, section 4.15.

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.⁹⁸ 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.⁹⁹ Under the National Disaster Relief Fund Order, the purpose of the NDR Fund is to provide financial assistance to victims of natural disasters.¹⁰⁰ The NDR Fund contains money appropriated by parliament and donations by persons and organisations.¹⁰¹ 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.¹⁰²

⁹⁸ Finance and Audit Act [Chapter 54:01], section 25.

⁹⁹ Public Finance Management Act [Chapter 54:01], section 40.

¹⁰⁰ National Disaster Relief Fund Order, section 3.

¹⁰¹ National Disaster Relief Fund Order, section 5. See also IDRL in Botswana, page 73.

¹⁰² 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.¹⁰³

¹⁰³ 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).



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