

# **LEGAL PREPAREDNESS FOR INTERNATIONAL DISASTER ASSISTANCE IN LESOTHO**

Mapping of Domestic Laws and Policies

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# ACKNOWLEDGMENTS

This mapping is an initiative of [IFRC Disaster Law](#). The author of this mapping is Jeanique Serradinho. Technical support and oversight were provided by María Martínez.

This mapping has been extracted from the report, [Legal Preparedness for International Assistance in Southern Africa: Regional Assessment and Country Profiles](#), which examines the legal frameworks of ten countries in Southern Africa to determine legal preparedness for international assistance should a disaster exceed national capacities, and proposes recommendations to strengthen international disaster response law (IDRL) in the region. A [summary version](#) of the report is also available.

This mapping seeks to chart the International Disaster Response Law Framework (IDRL) in the Kingdom of Lesotho (Lesotho) 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).<sup>1</sup> The IDRL Guidelines, which were unanimously adopted by the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent in 2007, are a set of recommendations concerning domestic legal preparedness for international disaster assistance.

Thanks are owed to the following individuals from the IFRC who provided technical review and support for the development of this mapping: Dr Michael Charles (IFRC), Isabelle Granger (IFRC), Rachel McLeod (IFRC), and Stella Ngugi (IFRC). Nevertheless, the challenges surrounding desktop legal research in Southern Africa means that errors may remain. IFRC Disaster Law would therefore welcome further feedback on the contents of this mapping.

This mapping was produced with the financial assistance of the European Union, the Finnish Red Cross, and the German Federal Ministry for Economic Cooperation and Development. The views expressed herein can in no way be taken to reflect the official opinion of the European Union, the Finnish Red Cross, or the German Federal Ministry for Economic Cooperation and Development.

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<sup>1</sup> 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.

The IFRC wishes to thank and acknowledge the support of the European Union, the Finnish Red Cross, and the German Federal Ministry for Economic Cooperation and Development, which enabled the development of this mapping.



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# Lesotho

## Political Framework

Lesotho is a constitutional monarchy. The King of Lesotho is Head of State and executive authority vests in the King and is exercised by him through officers of the Government of Lesotho.<sup>2</sup>

Legislative power in Lesotho vests in Parliament, which consists of the King, a Senate, and a National Assembly.<sup>3</sup> The Senate consists of twenty-two Principal Chiefs and eleven other Senators nominated by the King.<sup>4</sup> The National Assembly is comprised of eighty elected members.<sup>5</sup>

The King appoints the Prime Minister as well as Ministers from the members of the National Assembly or from among the Senators who are nominated as Senators by the King.<sup>6</sup> Cabinet, consisting of the Prime Minister and the other Ministers, advise the King in the Government of Lesotho.<sup>7</sup>

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

## DRM Framework

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

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

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

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<sup>2</sup> Constitution of Lesotho, section 44 and 86.

<sup>3</sup> Constitution of Lesotho, section 54.

<sup>4</sup> Constitution of Lesotho, section 55.

<sup>5</sup> Constitution of Lesotho, section 56.

<sup>6</sup> Constitution of Lesotho, section 87.

<sup>7</sup> Constitution of Lesotho, section 88.

- approving requests for donor assistance.<sup>8</sup>

The Disaster Management Act also establishes the Authority and its six working groups (the Executive Group; the Training Group; the Water and Sanitation Group; the Health and Nutrition Group; the Food and Logistics Group; and the Agriculture Group), each of which consist of senior officials of the Authority and senior representatives of government ministries and units as well as members of the Lesotho Defense Force, Royal Lesotho Mounted Police, Lesotho Council of NGOs, NGOs and other agencies directly involved in disaster management.<sup>9</sup> The Authority is managed and controlled by its board.

The Authority has several functions, such as to:

- act as the central planning, coordinating, and monitoring institution for disaster management and post-disaster recovery;
- warn the public of an approaching disaster and predict its effects on the country;
- maintain a data collection and dissemination system, and national strategic reserves of essential commodities and equipment for immediate disaster relief;
- formulate disaster mitigation, preparedness and response strategies and action plans to meet all foreseeable requirements in consultation with central and local government, NGOs, and donor agencies;
- prepare and update the National Disaster Management Plan and the supporting Disaster Management Manual; and
- develop and sustain viable, effective structures and capacities at central government level and within districts in case of a disaster.<sup>10</sup>

The Disaster Management Act also makes provision for the creation of Disaster Management Teams at district and village level.<sup>11</sup>

## IDRL Assessment

Question 1: Does Lesotho have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

International disaster assistance is not explicitly mentioned in the Disaster Management Act and a procedure to report to other governments, regional organisations or the UN about emerging hazards that could lead to disasters or emergencies in the country or in neighbouring South Africa is also not mentioned. However, there are provisions which are indirectly relevant.<sup>12</sup> Section 13 of the Disaster Management Act states that one of the functions of the Authority is to receive, accept and account for any donations that

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<sup>8</sup> Disaster Management Act, Part IV.

<sup>9</sup> Disaster Management Act, Part V.

<sup>10</sup> Disaster Management Act, section 3.

<sup>11</sup> Disaster Management Act, Part VI and section 26.

<sup>12</sup> In addition, the following documents could not be accessed for the purposes of this exercise: National Disaster Management Plan (1996); Disaster Management Manual (1996); Disaster Risk Reduction Strategy (2011); National Strategic Resilience Framework 2019 and National Climate Change Policy 2017 and Strategy.

may be given for its functions.<sup>13</sup> Furthermore, section 4 provides that the responsible Minister has the power to *inter alia* prepare an appeal for donor assistance and to receive, accept, or account for any donations given for the functions of the Authority.<sup>14</sup> Additionally, the Disaster Management Act provides that one of the functions of the National Disaster Relief Task Force is to approve requests for donor assistance.<sup>15</sup> The Disaster Management Act does not, however, specify whether these provisions relating to “donor assistance” apply to international assistance. In addition, the emphasis in these sections appears to be on donations, as opposed to in-kind assistance. It is unclear whether in-kind assistance is within the scope of the “donor assistance” referred to. It is also worth mentioning that section 48 of the Disaster Management Act permits regulations for its implementation to be made, which would allow for regulations on international disaster assistance to be promulgated in the future.

### Question 2: Do Lesotho’s laws and regulations clearly set out a focal point for coordinating international disaster assistance?

The Disaster Management Act does not explicitly assign a focal point for coordinating international disaster assistance. However, the Chief Executive of the Authority acts as the National Relief Coordinator during an emergency and, therefore, may be the focal point for coordinating international disaster assistance at national level.<sup>16</sup>

### Question 3: Do Lesotho’s laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?

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

As a starting point, the Disaster Management Act provides that the Minister responsible for the administration of the Act has the power to *inter alia* prepare an appeal for donor assistance and to receive, accept or account for any donations given for the functions of the Authority.<sup>17</sup> The Authority in turn is responsible for:

- formulating disaster mitigation, preparedness, and response strategies and action plans to meet all foreseeable requirements in consultation with central and local government, NGOs, and donor agencies;
- taking all necessary measures to prevent, alleviate, contain, and minimise the effects of disasters; and
- receiving, accepting, and accounting for any donations that may be given for its functions.<sup>18</sup>

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<sup>13</sup> Disaster Management Act, section 13(o).

<sup>14</sup> Disaster Management Act, section 14(r).

<sup>15</sup> Disaster Management Act, section 9(e).

<sup>16</sup> Disaster Management Act, section 21.

<sup>17</sup> Disaster Management Act, section 4(r).

<sup>18</sup> Disaster Management Act, section 13.

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

- mobilising funds, manpower, and other resources required to implement the NDRP;
- initiating the creation of appropriate institutional structures to support the Disaster Relief Plans; and
- approving requests for donor assistance.<sup>19</sup>

Question 4: Do Lesotho's laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?

As stated above, the Disaster Management Act provides that the Minister is responsible for preparing the appeal for assistance as well as for receiving, accepting, and accounting for any donations given to the Authority,<sup>20</sup> and that incoming donations can be accepted by either the Minister or the Authority.<sup>21</sup> However, the Disaster Management Act does not provide detailed processes for requesting or welcoming offers of international assistance, or for terminating international assistance.

Question 5: Do Lesotho's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?

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

#### *General customs arrangements*

The Customs and Excise Act<sup>22</sup> and Customs and Excise Regulations<sup>23</sup> regulate customs arrangements in Lesotho. Neither of these instruments contain provisions regarding simplified paperwork for emergencies, but the regulations do make provision for extra attendance by officers.<sup>24</sup> In addition, in terms of Item 41211 of Schedule 4 of the Customs and Excise Act, the following goods may be imported under full rebate of customs duty:

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

Their importation is, however, subject to a certificate issued by the International Trade Administration Commission (ITAC) and other conditions. In addition, goods imported

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<sup>19</sup> Disaster Management Act, sections 9 (b), (d) and (e).

<sup>20</sup> Disaster Management Act, section 4.

<sup>21</sup> Disaster Management Act, sections 4(r) and 13(o).

<sup>22</sup> Customs and Excise Act 10 of 1982.

<sup>23</sup> Customs and Excise Regulations, 1984 (Legal Notice No. 126 of 1984).

<sup>24</sup> Customs and Excise Regulations, 1984 (Legal Notice No. 126 of 1984), Schedule 4.



under this rebate item may not be removed from the territory of Botswana, Eswatini, Lesotho or Namibia without the permission of the ITAC.

### *Customs arrangements for specialised goods and equipment*

#### Communications equipment

It is not clear whether communications equipment would fall under item 41211 of the Customs and Excise Act, and therefore qualify for a rebate of customs duty, although it is arguable that they would. In general, however, telecommunications in Lesotho are regulated by the Communications Act,<sup>25</sup> which does not provide exceptions or simplified procedures to import and/or export restrictions nor does it make special provision for the speedy licensing or waiver of licence requirements in disasters. It would therefore appear that the normal rules relating to the import, export and use of communications equipment would apply.

#### Food

It is presumed that foodstuffs would fall under item 41211 of the Customs and Excise Act, and therefore qualify for a rebate of customs duty. In terms of other requirements, in general, food imports are regulated through the Agricultural Marketing Act<sup>26</sup> and the regulations<sup>27</sup> thereto, which prescribe that a permit is required for the importation of certain food stuffs, and do not provide for any special or simplified procedures in disaster settings regarding food imports.

#### Medication

Although it is not explicitly stated, it is arguable that medicines would fall under item 41211 of the Customs and Excise Act, and therefore qualify for a rebate of customs duty. In terms of other requirements, the importation of medication is strictly regulated in Lesotho by the Drugs of Abuse Act,<sup>28</sup> which requires an importer to be licensed and to obtain a permit prior to importing or exporting medication into or from Lesotho.<sup>29</sup> The Drugs of Abuse Act outlines the procedure to obtain a licence and a permit but does not provide special or simplified rules to facilitate and monitor the import and export of medications for disaster relief.<sup>30</sup>

#### Rescue Dogs

The importation of animals into Lesotho is regulated by the Importation and Exportation of Livestock and Livestock Products Proclamation,<sup>31</sup> which provides that a permit is required for the importation of all live animals and does not provide any exceptional provisions for rescue dogs.

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<sup>25</sup> Communications Act 4 of 2012.

<sup>26</sup> Agricultural Marketing Act 26 of 1967.

<sup>27</sup> For example, the Agricultural Marketing (Distribution of Dairy Products) Regulations, 1992; and the Agricultural Marketing (Meat Import Control) Regulations, 1992.

<sup>28</sup> Drugs of Abuse Act 5 of 2008.

<sup>29</sup> Drugs of Abuse Act, Division 2.

<sup>30</sup> Drugs of Abuse Act 5 of 2008, sections 14 and 15.

<sup>31</sup> Livestock Products Proclamation 57 of 1952.

## Vehicles

The Road Traffic Regulations provide that all vehicles in Lesotho need to be licensed and registered.<sup>32</sup> The law does not appear to provide any special facilities for the importation and registration of foreign vehicles for relief and recovery work, and therefore it appears that the normal rules would apply.

With regards to foreign driving licences, the Road Traffic Regulations provide that licences issued while the holder was not resident in the Republic, are deemed to be a valid as long as: the licence has been issued in an official language of Lesotho (or a certificate of authenticity or a translation of that licence in an official language is attached to it), and such licence has a photograph and the signature of the licence holder.<sup>33</sup>

## Immigration

There do not appear to be simplified procedures in place for international humanitarian assistance personnel to enter and work in Lesotho. However, section 9 of the Aliens Control Act<sup>34</sup> provides that the relevant Minister may permit a person to enter Lesotho without holding any permit, which may facilitate the expedited entry of international assistance personnel into the country.

## *Registration of international assisting actors*

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

## *Recognition of professional qualifications of foreign personnel*

The law does make provision for the speedy recognition of the qualifications of foreign personnel in disaster settings, and therefore it appears that the normal rules and time periods would apply. For example, it is an offence to practise as a nurse without a licence in Lesotho under the Nurses and Midwives Act and there are no special provisions for the speedy accreditation of foreign qualified nurses in disaster settings, although regulations may be made under the act.<sup>35</sup> The Medical, Dental and Pharmacy Order of 1970 makes provision for the registration of medical practitioners in Lesotho.<sup>36</sup> The Order does not make special provision for the speedy registration of foreign doctors, but section 6 does make provision for medical practitioners who do not intend to reside permanently in Lesotho but who enter Lesotho for employment to be granted registration in a separate register. This provision may be useful for international assisting personnel who are medical practitioners to be temporarily registered to practise in Lesotho.

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<sup>32</sup> Road Traffic Regulations, 2000, regulation 13 and 18.

<sup>33</sup> Road Traffic Regulations, 2000, regulation 110.

<sup>34</sup> Aliens Control Act 16 of 1966. See also the Lesotho Citizenship Order, 1971.

<sup>35</sup> Nurses and Midwives Act, 1998, clauses 29 and 56.

<sup>36</sup> Dental and Pharmacy Order of 1970, section 7.

### *Tax and currency exchange*

Income tax is levied in Lesotho under the Income Tax Act.<sup>37</sup> Lesotho has a residence-based tax system in terms of which residents are subject to tax on their worldwide income, whereas non-residents are subject to tax only on their Lesotho-sourced income.<sup>38</sup> Lesotho has signed double taxation agreements with Mauritius, South Africa, and the United Kingdom to prevent double taxation.<sup>39</sup> Although it does not specifically exempt the income of humanitarian organisations, the income of a charitable organisation is exempt from income tax provided it has obtained a written ruling from the Commissioner of Income Tax and none of its income or assets confers a private benefit on any person.<sup>40</sup> However, property income or business income that is not related to the function constituting the basis for the organisation's exemption is not exempt from income tax.

The Value Added Tax Act<sup>41</sup> regulates the levying of VAT in Lesotho. Although the VAT Act does not exempt humanitarian organisations from paying VAT, there are several provisions which may be relevant to their work. These include section 6(3) read with Schedule II of the VAT Act, which provides that goods imported for the relief of distressed persons in the case of national disasters or in terms of an obligation under any multilateral treaty are exempt from VAT. In addition, a supply of charity arrangements undertaken by a charitable organisation recognised by the Commissioner General is exempt from VAT, provided that:

- after such event, audited accounts are filed with Lesotho Revenue Authority within a period not exceeding two months from the date on which the event was held; and
- where such arrangement was made by a permanent establishment, such establishment shall first apply for exemption, and shall submit yearly audited accounts, at least two months after the financial year end.<sup>42</sup>

Exchange control is administered by the Central Bank of Lesotho in conjunction with the South African Reserve Bank.<sup>43</sup> There do not appear to be any exemptions in respect of exchange control for actors involved in international disaster relief, and therefore international assisting actors may face challenges in moving currencies in and out of the country.

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<sup>37</sup> Income Tax Act 9 of 1993.

<sup>38</sup> ENS, *Doing Business in Lesotho*, available at <https://www.ensafrica.com/countries/lesotho/> (accessed 12 February 2021)

<sup>39</sup> ENS, *Doing Business in Lesotho*, available at <https://www.ensafrica.com/countries/lesotho/> (accessed 12 February 2021).

<sup>40</sup> Income Tax Act 9 of 1993, section 35.

<sup>41</sup> Value Added Tax Act 9 of 2001. See also the Value Added Tax (Amendment) Act 6 of 2003.

<sup>42</sup> Value Added Tax (Amendment) Act, section 6(2) read with section 4.

<sup>43</sup> Exchange Control Regulations (Legal Notice No. 175 of 1989).

### *Freedom of movement of international assisting actors*

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

### *Safety and security of international assisting actors*

There do not appear to be special provisions facilitating the safety and security of international assisting actors in Lesotho. However, the police force is mandated to preserve law and order in Lesotho and prevent offences against people and property under the Police Service Act.<sup>44</sup>

### Question 6: Do Lesotho's laws and regulations set out quality standards for international assisting actors?

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

### Question 7: Do Lesotho's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?

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

### Question 8: Do Lesotho's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?

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

### Question 9: Do Lesotho's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?

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

The Disaster Management Act establishes the Disaster Management Fund (DM Fund) and regulates its administration, whereby all receipts and disbursements are to be recorded. Although it is not explicitly stated, the DM Fund appears to be able to accept donations from international assisting actors in that it consists of *inter alia* "moneys donated from any source for the purpose of disaster management".<sup>45</sup> The DM Fund is to be maintained in accordance with financial regulations and other applicable laws.<sup>46</sup> Section 37 specifically regulates the receiving of and accounting for donations made to the DM Fund, stipulating that donations must be used for the purpose for which they have been

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<sup>44</sup> Police Service Act 5 of 1998, section 24.

<sup>45</sup> Disaster Management Act, section 35(1).

<sup>46</sup> Disaster Management Act, section 34.

donated. Provision is also made for the accounting and auditing of the Authority, providing *inter alia* that a statement must be produced showing the receipt and disposal of any donated stores. Given that the DM Fund appears to be able to accept donations from international assisting actors, international funds provided to the DM Fund would be subject to these transparency and accountability measures.

It is also relevant to note that, corruption, both by public officials as well as private actors is criminalised and regulated by the Prevention of Corruption and Economic Offences Act, which provides that a person commits the offence of cheating the public revenue if, as a result of his fraudulent conduct, money is diverted from the revenue.<sup>47</sup>

**Question 10: Do Lesotho's laws and regulations outline procedures for international disaster assistance sent from and transiting through the country?**

The law does not appear to outline special procedures for international assistance sent from, and transiting through, Lesotho and therefore it appears that the normal rules and procedures relating to the transit of goods and personnel and the exportation of goods would apply.<sup>48</sup>

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<sup>47</sup> Prevention of Corruption and Economic Offences Act 5 of 1999, section 30.

<sup>48</sup> See the Customs and Excise Act 10 of 1982, Chapter III for the general rules on the exportation and transit of goods. In addition, note that the law does provide that goods temporarily admitted into Lesotho for a specific purpose are exempt from VAT; and the exportation of goods or services from Lesotho by a vendor is zero-rated for VAT (see the Value Added Tax Act 9 of 2001, section 19(2) and Schedule II(1)(h)).



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